

(1980) 07 BOM CK 0010

In the Bombay High Court

Case No : Special Civil Application No. 161 of 1976

Abdul Karim Pirsahab Sheikh

APPELLANT

Vs

Laxman Bapu Bhosale and Others

RESPONDENT

Date of Decision : 25-07-1980

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 2(2), 2(6), 63, 64, 85
Constitution of India, 1950 — Article 227

Citation : AIR 1981 Bom 168 : (1981) MhLj 352

Hon'ble Judges : M.P. Kanade, J

Bench : Single Bench

Advocate : P.S. Patankar, for the Appellant; J.R. Lalit, for the Respondent

Judgement

M.P. Kanade, J.—All the three Authorities below have held that although the petitioner Abdul Karim Pirsahab Shaikh is an agriculturist from Karnataka State, however he will not be deemed to be an agriculturist within the State of Maharashtra unless he personally cultivates the agricultural land in the State of Maharashtra. This view of the Authorities below is challenged in this Special Civil Application under Article 227 of the Constitution of India. Few facts leading to this application are as under:--

2. In the first instance, respondents Nos. 1 to 3 agreed to sell the land Survey No. 64, from village Bale, Taluka North Sholapur, on Feb. 3, 1967 for a consideration of Rupees 21,500/- and Rs. 2,500/- were paid by the petitioner by way of art earnest. The petitioner had given a notice on June 16, 1967 to sell the land in his favour to the respondents Nos. 1 to 3. Further, respondents Nos. 1 to 3 agreed to sell the land to respondent Mo. 4 for an amount of Rs. 28,000/-. It is, therefore, a Special C. Suit No. 8 of 1970 was filed for specific performance of the contract and for actual possession of the land to him. In the suit itself a plea was taken that the petitioner is not an agriculturist and therefore, there could not be sale in favour of the petitioner. On the basis of the said plea and in view of the provisions of Sections 63 and 64 of the Bombay Tenancy and Agricultural Lands

Act, 1948 (hereinafter referred to as the Tenancy Act) a reference was made to the Tenancy Authorities u/s 85-A of the Tenancy Act.

3. The petitioner led the evidence to prove that he is an agriculturist before the Tahsildar, North-Sholapur. The petitioner brought on the record a rent-note dated May 18, 1972 in respect of the land held by the petitioner's joint family at Shindagi(Karnataka State). He has also produced some evidence to show that he has cultivated the land in the Maharashtra State. However, that evidence was not believed by the learned Tahsildar. The learned Tahsildar, on careful consideration of the evidence on record observed :--

"In view of the facts discussed above, it is clear that there is no evidence on record to prove that the plaintiff is an agriculturist except the evidence of land at village Shindagi in District Vijapur in Karnataka State. But the Bombay Tenancy Act is applicable only to the Bombay area of the Maharashtra State. The provisions of the Act will only govern the persons and the lands situate within the area. It cannot be given an extra-territorial application beyond the limits of the Maharashtra State area."

In view of these observations, it was held that the petitioner is not an agriculturist. On appeal by the petitioner, the Sub-Divisional Officer, Sholapur Division Sholapur in Tenancy Appeal No. 11 of 1974, was pleased to dismiss the appeal by holding that--

"It is well-settled fact that the lands held by a person outside the Maharashtra State cannot be taken into account in spite of fact that they are agriculturist."

On revision by the petitioner, the Maharashtra Revenue Tribunal, confirmed the said view and dismissed the revision application by judgment and order dated January 14, 1975. Against the said judgment, and order, the present Special Civil Application is filed under Article 227 of the Constitution of India.

4. Mr. P. S. Patankar, the learned counsel appearing on behalf of the petitioner, submitted that the view taken by the Courts below is erroneous. He submitted that if a person is an agriculturist in another State, he cannot be denied a right to purchase the land in this State under the provisions of Sections 63 and 64 of the Bombay Tenancy Act.

5. Mr. J. R. Lalit, the learned counsel appearing on behalf of the respondents, tried to support the finding recorded by the Courts below. He submitted that whether a person is an agriculturist or not is to be decided having regard to his own avocation or occupation in the State of Maharashtra.

6. In my view, all the three Authorities below misdirected themselves and erroneously held that the petitioner is not an agriculturist within the meaning of Bombay Tenancy Act. Section 63 of the said Act reads as under:

"63. (1) Save as provided in this Act --

(a) No sale (including sale in execution of a decree of Civil Court or for recovery

of arrears of land revenue or for sums recoverable as arrears of land revenue) gift, exchange or lease of any land or interest therein, or

(b) No mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee,

shall be valid in favour of a person who is not an agriculturist or who being an agriculturist, will after such sale, gift, exchange, lease or mortgage, hold land exceeding two-thirds of the ceiling area determined under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, or who is not an agricultural labourer."

7. This section prohibits and/or bars sales of agricultural lands to non-agriculturists. The said provision does not bar or prohibit a sale of the land to a person residing outside the State of Maharashtra. If a person is an agriculturist from outside the State of Maharashtra and intends to purchase lands within the State of Maharashtra he should comply with the requirements of the provisions of Section 63 of the Bombay Tenancy Act. The view taken by the lower Authorities on the face of it, appears to be erroneous because no such restriction or a bar is contemplated by the provisions of Section 63 of the Bombay Tenancy Act. What has got to be seen is as to whether the person, intending to purchase the land is an agriculturist or not and whether he establishes his status as an agriculturist, and if he is non-agriculturist, then such a sale would be invalid.

8. The second question which is required to be taken into account is as to whether the petitioner is an agriculturist within the meaning of the Bombay Tenancy Act. Section 2 (2) of the said Act defines "Agriculturist" as under:

"2. In this Act unless there is anything repugnant in the subject or context, --

(2) "Agriculturist" means a person who cultivates land personally";

Section 2 (6) defines the words "to cultivate personally", and it reads as under:

"2. In this Act unless there is anything repugnant in the subject or context,--

(6) "to cultivate personally" means to cultivate the land on one's own account --

(i) by one's own labour, or

(ii) by the labour of any member of one's family; or

(iii) under the personal supervision of oneself or any member of one's family, by hired labour or by servants on wages payable in cash or kind but not in crop share"

Keeping in view the abovesaid provisions, referred to above the learned Tahsildar has recorded a finding that the petitioner is an agriculturist of village Shindagi in Vijapur District in Karnataka State. The petitioner has brought on record the rent-note dated May 18, 1972 about the lands held by the petitioner's joint family at that village Shindagi and this establishes his status as an agriculturist. This fact

has been held proved. Similarly, the Appellate Court also held that the petitioner may be an agriculturist in the State of Karnataka but he cannot be an agriculturist in the State of Maharashtra. This finding clearly shows that the petitioner is an agriculturist within the meaning of the Tenancy Act. Therefore, there is no bar in his purchasing lands in the State of Maharashtra. In this view of the matter it must be held that all the three Authorities below have not taken a correct view of the provisions of the Tenancy Act.

9. The Authorities referred to and relied upon by the Courts below are not relevant for the purposes of deciding as to whether the petitioner is or is not an agriculturist. The fact that the petitioner is an agriculturist within the State of Karnataka is sufficient for the purpose of recording a finding that he is an agriculturist, and he having established his status as an agriculturist is entitled to purchase the land in the State of Maharashtra. In this view of the matter, this Special Civil Application will have to be allowed.

10. In the result, the judgment and orders passed by the Maharashtra Revenue Tribunal dated Jan. 14, the judgment and order dated August 13, 1974 by the Sub-Divisional Officer, Sholapur, and that of the trial court, Sholapur passed in Ten. Ref. No. 5 of 1973 on Dec. 29, 1973, are set aside, and it is held that the petitioner is an agriculturist within the meaning of the Bombay Tenancy Act, and is entitled to purchase the land in the State of Maharashtra.

11. Thus, the rule is made absolute.

12. In the circumstances of the case, there will be no order as to costs.

13. Application allowed.