
(1988) 08 BOM CK 0007
In the Bombay High Court
Case No : Writ Petition No. 120 of 1983

Akaram Balaram Bundeale

APPELLANT

Vs

Ramrao Trimbakrao Deshmukh and others

RESPONDENT

Date of Decision : 12-08-1988

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1988) 08 BOM CK 0007

Hon'ble Judges : M.M. Qazi, J

Bench : Single Bench

Advocate : V.S. Sohoni, for the Appellant; B.S. Deshpande, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Qazi, J.—The petitioner applied to the Agricultural Lands Determination Tribunal and Additional Tahsildar, Khamgaon, on 5-4-1980 u/s 49-A read with sections 47 and 48 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short "the Tenancy Act"), stating that he has been a tenant in respect of field Survey Nos. 183 and 184/1, situated at Khamgaon, for more than three decades and, therefore, ownership of the said field be conferred on him as per section 49-A of the Tenancy Act. The respondents contested the claim of the petitioner essentially on the ground that the application was not maintainable in view of section 60 of the Tenancy Act. According to them, the land in question is situated within the municipal limits and hence section 49-A of the Tenancy Act was not applicable. The Agricultural Lands Tribunal rejected the objection and allowed the claim of the petitioner vide order dated 24-7-1980. The respondents challenged the said order by way of appeal, but the appeal also came to be dismissed by the Sub-Divisional Officer, Khamgaon, vide order dated 6-6-1981. The respondents, therefore, filed a revision before the Maharashtra Revenue Tribunal, Nagpur. The revision was allowed vide order dated 28-10-1982. The Maharashtra Revenue Tribunal found that the land in question was situated within the municipal limits and, therefore, section 49-A of the

Tenancy Act Was not applicable in the present case, and hence the present petition by the tenant.

2. The question that falls for consideration is whether the petitioner is entitled to become owner of the land in question even though the land is situated within the municipal limits. Mr. Sohoni contended that section 49-A was added by section 9 of Maharashtra Act No. 2 of 1962. According to him, section 39-A was added by section 5 of Maharashtra Act No. 2 of 1962. Section 60 of the Tenancy Act was amended by section 15 of Maharashtra Act No. 2 of 1962. According to Mr. Sohoni, section 49-A is not specifically mentioned in section 60 even though it came to be amended by Maharashtra Act No. 2 of 1962. In view of this he contended that the Legislature intended to maintain the old phraseology and, therefore, section 49-A could not be read in section 60 of the Tenancy Act.

3. In order to appreciate the above contention, it is necessary to examine section 60 of the Tenancy Act. Prior to amendment, it reads thus -

60. Nothing in sections 38 to 44 (both inclusive), 46 to 50 (both inclusive) and section 57 shall apply to lands in the areas within the limits of a municipality constituted under the Central Provinces and Berar Municipalities Act, 1922, and within the limits of the City of Nagpur as constituted under the City of Nagpur Corporation Act, 1948 excluding the areas of the villages specified in Schedule IV:

Provided that if any person has acquired any right under the Berar Regulation of Agricultural Leases Act, 1951, the said right shall not be deemed to have been affected by this section save as provided in section 61.

After the amendment, it reads as under:

60. Nothing in sections 38, 39 and 39-A and sections 40 to 44 (both inclusive), 46 to 50 (both inclusive) and section 57 shall apply to lands in the areas within the limits of a municipality constituted under the Central Provinces and Berar Municipalities Act, 1922, and within the limits of the City of Nagpur as constituted under the City of Nagpur Corporation Act, 1948 excluding the areas of the villages specified in Schedule IV:

Provided that if any person has acquired any right under the Berar Regulation of Agricultural Leases Act, 1951, the said right shall not be deemed to have been affected by this section save as provided in section 61.

Mr. Sohoni contended that it was not necessary to mention section 39-A specifically in section 60, as it stands after the amendment, if the same could be read in the words "sections 38 to 44" which was the phraseology prior to amendment. He contended that the Legislature thought it necessary to mention section 39-A specifically in section 60 while enacting the said section by section 5 of Maharashtra Act No. 2 of 1962. On this analogy he contended that since section 49-A is not specifically mentioned in section 60 even after the amendment, it would show that the Legislature did not intend that section 49-A be read in section 60, notwithstanding the words used "sections 46 to 50 (both

inclusive)" According to him, section 49-A has the overriding effect and is a complete Code by itself.

4. It is difficult to accept the contention of Mr. Sohoni. I have already shown above that when section 60 of the Tenancy Act came to be amended by Maharashtra Act No. 2 of 1962, section 39-A was added for the first time by section 5 of Maharashtra Act No. 2 of 1962; so also section 49-A was added by section 9 of Maharashtra Act No. 2 of 1962. In spite of all this, the Legislature thought it fit to retain the words "sections 46 to 50 (both inclusive)" in section 60. In my view, this would mean that the Legislature intended to include section 49-A as well in section 60, otherwise the phraseology of section would have been "sections 46 to 50 (both inclusive) except section 49-A". Since no such exception is made in respect of section 49-A, it is not possible to agree with Mr. Sohoni that the Legislature did not intend to include section 49-A in section 60 even after the amendment, even though by then section 49-A was also enacted. Section 39-A came to be specifically mentioned in the earlier part of section 60 because the entire phraseology of the earlier part of the section is changed. It is not merely section 39-A that has been mentioned but even other sections like sections 38, 39 and 40 to 44 are also specifically mentioned even though previously sections 39 and 39-A were not so mentioned. At any rate, in my view, it is the entire province of the Legislature to use the phraseology as it deems fit and proper. In my view, there is much substance in the contention of Mr. Deshpande that from the plain reading of section 60 it is obvious that section 49-A is included in section 60. There is no question of any ambiguity or uncertainty in the section.

5. There is no dispute that the land in question is situated within the municipal limits and since it is so situated, section 49-A cannot be invoked by the petitioner in respect of the said land in view of section 60 of the Tenancy Act. Sections 38, 39 and 39-A deal with the rights of the landlord to terminate the tenancy of the tenant for personal cultivation. From the scheme of the section it is also obvious that without recording any finding under clauses (i), (ii) and (iii) of sub-section (1) of section 49-A, there can be no adjudication on the point of vesting. No finding can be recorded under sub-section (6) of section 49-A in relation to sections 47 and 48 which deal with purchase price, since these sections are not applicable to the land situated within the municipal limits. There seems to be much substance in the contention of Mr. Deshpande that prior to the amendment of section 60, only the landlords falling under the category of sections 38 and 39 were entitled to terminate the tenancy in view of section 61, as it then was. Section 61 now completely stands deleted by Maharashtra Act No. 10 of 1977. It appears that section 39-A was specifically mentioned in section 60 because the Legislature wanted to cover special type of category of landlords covered by section 39. It is merely a re-arrangement of section by grouping sections 38 and 39-A which relate to the rights of the landlords. Sections 40 to 44 relate to the mode and right of purchase by the tenant and sections 46 to 50 relate to compulsory transfer and fixation of price. The fact that sections 46 to 50 have been mentioned with the rider "both inclusive" cannot be interpreted in any other

way than the one Maharashtra Revenue Tribunal has done. Excluding section 49-A from the words "sections 46 to 50" would amount to doing violation to the plain language which is not capable of any other interpretation. It is a settled principle of interpretation that as far as possible every word used in the section has to be given full effect and it has to be interpreted in such a way that it does not render any word ineffective or meaningless. Having regard to the above facts, I see no force in the contention of Mr. Sohoni that section 49-A cannot be read in section 60. Mr. Sohoni has invited my attention to the decisions reported in Wasudeo Madhaorao Assarkar and Another Vs. The State of Maharashtra, , Jagir Singh and Others Vs. State of Bihar and Another etc. etc., and Municipal Corporation of City of Hubli Vs. Subha Rao Hanumatharao Prayag and Others, . These decisions lay down general principle about the interpretation about which there can be no dispute or debate, but in my view, all these decisions do not help the petitioner.

6. Mr. Deshpande relied on the decision reported in 1987 Mh.L.J. 143, Chandbi Amirshah vs. Narayan Karnoo Lengure. This decision fully supports him. The portion which is material for our purpose from paragraphs 8 and 10 is reproduced below:

8. There is also no merit in the submission on behalf of the defendant that since the proviso to section 60 is an exception to an exception created in the substantive part of section 60 it should mean that all the rights under the Tenancy Act are available to a protected lessee. The above submission suffers from oversimplification of the principle of construction invoked on behalf of the defendant. If the language of the statute is clear and unambiguous there is no question of invoking any canon of construction in interpreting the same. No such construction is admitted by the clear language used in section 60 of the Tenancy Act including its proviso.

* * * *

10. It has, therefore, to be held that what is protected under the proviso to section 60 is the right acquired by any person of being a protected lessee as well as the right to him as protected lessee under the Leases Act and since the Leases Act does not confer upon him any right of statutory ownership or even a right to purchase the field as provided in sections 46 to 50 of the Tenancy Act no such right is available to the protected lessee by virtue of proviso to section 60 of the said Act. In other words, the substantive portion of section 60 would be applicable to a protected lessee so far as the question of statutory ownership is concerned in which case the suit field which is situated within the limits of a Municipality would stand exempted from the provisions of sections 46 and 49-A of the Tenancy Act. The defendant would not, therefore, be entitled to become a statutory owner u/s 46 or section 49-A of the said Act. The impugned order of the learned Agricultural Lands Tribunal conferring upon him the status of a statutory owner u/s 46 as well as fixation of purchase price for the same was thus illegal and without jurisdiction.

7. Mr. Sohoni contended that the provision of section 60 of the Tenancy Act should be struck down since it discriminates the tenant cultivating the land within the municipal limits and the tenant cultivating land outside the municipal limits. In this connection he has relied on Article 14 of the Constitution of India. Reasonable classification is not hit by Article 14 of the Constitution. There can be no doubt that the land situated within the municipal limits and outside the municipal limits fall in different category and, therefore, the law enacted keeping in view this distinction cannot be termed as bad in view of Article 14 of the Constitution. Presumption is always in favour of the constitutionality of the enactment. At any rate, there can be no doubt that the classification of the two lands, viz., one situated within the municipal limits and the other outside it, is based on rational basis and, therefore, there is no question of any discrimination as alleged.

8. Lastly, Mr. Sohoni contended that the order dated 24-7-1980 passed by the Additional Tahsildar was an interlocutory order and, therefore, the same could not be challenged either by way of appeal or revision. It does not appear that the order dated 24-7-1980 is an interlocutory order. The objection of the landlords was overruled and the application of the petitioner u/s 49-A of the Tenancy Act was allowed. Besides that, this point is being raised for the first time and hence it is not possible to entertain the same at this stage.

9. The Maharashtra Revenue Tribunal has written a well reasoned order and I do not see any reason to interfere with the same. The petition is without substance and hence dismissed. Rule is discharged, with no order as to costs.