(1997) 11 BOM CK 0053

In the Bombay High Court

Case No : Writ Petition No. 2636 of 1984

Anna Babu Sul and another — APPELLANT

Vs

Laxman Pandurang Tiwatne (since deceased through L.Rs.) and others — RESPONDENT

Date of Decision : 19-11-1997

Acts Referred:
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 29, 32

Citation : (1998) 1 ALLMR 269 : (1998) 5 BomCR 301 : (1998) 1 MhLj 614

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : K.B. Sonwalkar, for the Appellant; V.S. Gokhale and K.J. Abhyankar, for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—The petitioners challenge the order passed in revision by the Maharashtra Revenue Tribunal in proceedings No. MRT.SH.VI. 6/81 (TEN.B. 185/81) : Pune dated 13th April, 1983 wherein the revision application filed by respondents Nos. 2 to 5 is allowed and the order passed by the Appellate Authority is set aside restoring the order passed on 30th November 1977 wherein the right of respondent Nos. 2 to 5 u/s 32-G of the Bombay Tenancy and Agricultural Lands Act, 1984 has been recognised.

2. A few facts of this case are necessary for the purpose of disposal of this writ petition :

One Dagadu Ramji Raut was the original owner of the land comprising Survey No. 27/11 (Gat No. 215) admeasuring 1 H. 76 R. in Jalabhavi village, Taluka Malsiras, District Solapur. It appears that he sold the land to Laxman Pandurang Tiwatne who is the 1st respondent in this petition. Interestingly, the 1st respondent again gave the land back to Dagadu Ramji Raut and allowed him to possess and cultivate the land as a tenant. This was done in 1952-53. Admittedly, therefore, Dagadu Ramji Raut was the tenant till his death on 9th January, 1956. On his death, his son-respondent No. 2 was cultivating the land

and his name was entered into Revenue Records. Subsequently, 32-G proceedings have been initiated in favour of the tenants. The said proceedings are stated to have been "declared ineffective" for the reasons that the tenant remained absent on 1st May, 1966.

3. In that event, the landlord filed application u/s 32-P of the Act for possession of the property. On 9th December, 1969, the application filed by the landlord was ordered. The tenants--- respondents Nos. 2 to 5 --- filed an appeal against both the orders, viz., invalidating the proceedings u/s 32-G and also the order passed u/s 32-P of the Bombay Tenancy and Agricultural Lands Act, 1948. As per the order dated 26th September, 1970, the appeal filed by tenants was allowed and the order passed on 1st May 1966 and 9th December, 1969 were set aside and the matter has been remanded back with a direction to proceed with matter u/s 32-G of the Act. In the meantime, on 4th August, 1967, the landlord executed sale deed in favour of the present petitioners. The case of the petitioners is that by virtue of sale deed, they came to be in possession of the land.

4. After remand, the Additional Tahsildar has passed an order u/s 32-G of the Act and this order was challenged by the landlord before the Sub-Divisional Officer and the Sub-Divisional Officer allowed the appeal. Against that order, the tenants preferred revision before the Maharashtra Revenue Tribunal which was allowed on 10th February, 1975, and while remanding the matter, it has been directed that an enquiry u/s 32-G has to be proceeded with and as a result of this direction, the authority has passed an order u/s 32-G of the Act which is annexed as Ex. ''A'' to the petition. For all practical purposes, this writ petition is a sequel of third round of the litigation.

5. Under Exh. ''A'', the right of respondents Nos. 2 to 5 as the tenant of the property has been confirmed and the purchase price has been fixed at Rs. 730/-. Against this order, the present petitioners filed appeal before the Appellate Authority. The Appellate Authority by its order dated 10th March, 1981, allowed the appeal and set aside the order evidenced by Exh. ''A'' and the matter is remanded back to the lower Authority for disposal according to law. Against this order, respondents Nos. 2 to 5 have filed revision before the Maharashtra Revenue Tribunal and the Maharashtra Revenue Tribunal has set aside the Appellate order and restored the order passed by the Additional Tahsildar on 30th November, 1977. It is in these circumstances that the petitioners approached this Court to challenge the order passed by the Maharashtra Revenue Tribunal confirming the order of the Additional Tahsildar.

6. The main contention of Mr. Sonwalkar, Counsel for the petitioners, is that though proceedings are pending throughout, before the authorities under the Act, either at the instance of the tenant or the landlord, by virtue of the sale deed dated 4th August 1967, the petitioners came to be in possession of the land and, therefore, without invoking section 29 of the Act, the dispossessed tenants cannot get the land restored to their possession. I cannot agree with the contention of the Counsel for the petitioner. Admittedly since 1 st May 1966, the

proceedings in respect of the land, either at the instance of the tenants or the landlords, were pending before the authorities under the statute. During this period, the sale deed has been executed. Therefore, whatever may be the intention of the parties, as discernible from the sale deed, those facts cannot be legally countenanced to, because the subject matter of the sale deed has already become subject of the litigation as mentioned above. Therefore, the sale deed and recitals therein cannot be considered for the purpose of this case. It can be treated only as a sale pendente lite. Next, the learned Counsel for the petitioners contends that assuming that the sale deed executed on 1st May 1966 is illegal, as per section 84(a) of the Bombay Tenancy and Agricultural Lands Act, 1948, the sale deed executed on 4th August, 1967 cannot be declared illegal. Assuming that the argument is relevant for the purpose of this case, even then the petitioner is not going to succeed in the case on that ground. As I pointed out earlier, even assuming that the sale deed is valid as contended by the Counsel for the petitioners, as I observed earlier, that cannot be considered as a document evidencing the possession of the tenant for the purpose of this Act. Therefore, as I pointed out earlier, even though the sale deed recital shows that the tenant was actually dispossessed, that dispossession was during the pendency of the various proceedings pending between the parties. For the purpose of deciding this case, the sale deed has to be ignored. As established in this case, respondents Nos. 2 to 5 are considered to be tenants in possessions on the tillers'' day, viz. 1st April 1957 and that right as declared by the Supreme Court in Amrit Bhikaji Kale and Others Vs. Kashinath Janardhan and Another, as unalienable right intended to be vested by the Act on the tenants on the tillers'' day cannot be taken away by the act of the parties. It is worth noting the observations of the Apex Court in this context as stated in paragraph 6 of the judgment :

"The title of the landlord to the land passes immediately to the tenant on the tillers'' day and there is a completed purchase or sale thereof as between the landlord and the tenant. The title of the land which was vested originally in the landlord passes to the tenant on the tillers'' day and this title is defeasible only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or commit default in payment of the price thereto as determined by the Tribunal. Therefore, it is unquestionably established that on the tillers'' day, the landlord''s interest in the land gets extinguished and simultaneously by a statutory sale without anything more by the parties, the extinguished title of the landlord is kindled or created in the tenant. That very moment landlord-tenant relationship as understood in common law or Transfer of Property Act comes to an end. The link and chain is broken. The absent non-cultivating landlord ceases to have that ownership element of the land and the cultivating tenant, the tiller of the soil becomes the owner thereof. This is unquestionable. The landlord from the date of statutory sale is only entitled to receive the purchase price as determined by the Tribunal u/s 32-G. In other words, the landlord ceases to be landlord and the tenant becomes the owner of the land and comes in direct contact with the State. Without any act of transfer inter vivos the title of the landlord is extinguished and is created simultaneously in the tenant making the tenant the deemed purchaser."

Therefore, as observed by the Hon''ble Supreme Court an unalienable and unfettered right has been conferred on the tenant who is in possession of the land on 1st April, 1957. That right, however, cannot be taken away by any action either by the landlord or the tenant unilaterally. Therefore, the argument of the petitioners'' Counsel on the basis of sale deed dated 4th August 1967 that the tenant was dispossessed cannot be accepted. In view of this, I find no grounds to interfere with the order passed by the Maharashtra Revenue Tribunal.

7. In the result, the writ petition fails and it is dismissed. Rule discharged. There shall be no order as to costs.

8. Petition dismissed.

