

(1953) 09 BOM CK 0027

In the Bombay High Court

Case No : Civil Application No's. 1027 and 1028 of 1952

Appa Ganpat Sathe and Others

APPELLANT

Vs

K.B. Wassoodew and Others

RESPONDENT

Date of Decision : 16-09-1953

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 64(3), 89(2)
Constitution of India, 1950 — Article 226, 227

Citation : AIR 1954 Bom 511 : (1954) 56 BOMLR 517

Hon'ble Judges : Chagla, C.J.;Shah, J

Bench : Division Bench

Advocate : S.R. Parulekar, for the Appellant; H.M. Choksi, Govt. Pleader, B.G. Padhye and B.S. Brahme, for the Respondent

Judgement

Chagla, C. J.

1. By this petition an order passed by the Revenue Tribunal is challenged on the ground that the order is vitiated by an error apparent on the face of the record.
2. The property in question, which are lands bearing survey Nos. 189, 190 and 200 situate at Man, taluka Mulshi, District Poona, belonged to one Chitaman vasudeo Bhat, and the opponent Narayan Hari Bharane was his protected tenant. An agreement of sale dated December 17, 1948, was entered into between Bhat and the petitioners. The consideration was Rs. 5,999, and Rs. 1,001 were paid by the petitioners to Bhat on the date when the agreement of sale was executed. In pursuance of this agreement a registered sale-deed was passed by Bhat in favour of the petitioners on 20-4-1949.

The petitioners thereafter served the opponent Bharane with one year's notice on 30-3-1950; and when the period of notice expired, they took out proceedings before the Mamlatdar for possession of the property. The Mamlatdar ordered the possession of the property to be handed over to the petitioners. An appeal was preferred to the Collector at Poona, who reversed the decision of the Mamlatdar.

In revision the Revenue Tribunal upheld the decision of the Collector.

3. The short point that arises for consideration in this application is whether the sale which was effected on 20-4-1949, after the Bombay Tenancy and Agricultural Lands Act, 67 of 1948, came into force was saved by reason of the fact that the agreement of sale was executed on December 17, 1948, prior to the coming into force of the Bombay Tenancy and Agricultural Lands Act.

4. Under Section 64, Sub-section (3), of the Act, it is provided that any sale made in contravention of that section shall be void; and it is not disputed that the sale we are considering was in contravention of this section. What was urged before the Revenue Tribunal by the petitioners was that the sale was saved by reason of Section 89, Sub-section (2), of the Act, and on construction of Section 89, Sub-section (2), the Revenue Tribunal came to the conclusion that the sale was not saved.

5 It is difficult to understand how it can be said that there is an error apparent on the face of the record which would justify us in interfering with the decision of the Revenue Tribunal by a writ or direction under Article 226 or Article 227. The Revenue Tribunal has not overlooked any provision of the law. In fact it has given effect to the provision of Section 64, Sub-section (3); and the most that could be said about the decision of the Tribunal is that it has put a wrong construction upon Section 89, Sub-section (2), of the Act.

It may also be urged that the decision of the Tribunal is erroneous in law, but as we have had occasion to say in the past, every wrong decision in law is not one which would entitle this Court to interfere with decisions of Courts or tribunals by a writ or direction under Article 226 or 227 of the Constitution. An erroneous decision in law is something very different from a position arising out of an error being apparent on the face of the record. But even assuming that we were entitled to interfere with the decision of the Tribunal, in our opinion, the decision of the Tribunal seems to be correct.

6. The view taken by the Tribunal is that the right as saved u/s 89, Sub-section (2), is a right which must be considered "ejusdem generis" with title and interest which occur in the same subsection, and as the agreement of sale creates no right in property, the Tribunal has taken the view that the right contemplated by Section 89, Sub-section (2), is not a right which a person has when he enters into an agreement of sale.

But apart from that, the only right which the petitioners had when they entered into the agreement of sale was a right of action. They had a right to file a suit for specific performance, if the contract was not completed by the vendor. Specific performance is a discretionary remedy, and the Court was not bound to grant specific performance to the vendee in a suit for specific performance. Therefore, the right that the petitioners had was not a right to obtain a sale-deed but a right to file a suit in which the proper relief would have been granted by the Court.

7. There is a further aspect of the question which must be taken into consideration. Though it is perfectly correct that the contract when it was entered into on December 17, 1948, was valid, the Legislature made the performance of it void; and, therefore, to a suit for specific performance the answer that could have been properly given by the vendee would have been that he could not perform the contract because the performance of it was rendered void by the Legislature.

Further Section 64, Sub-section (3), is unequivocal in the expression used by the Legislature, and any sale made subsequent to the passing of the Act has been rendered void. If we were to accept the contention of Mr. Parulekar on behalf of the petitioners, we would be importing into the section something which the Legislature has not thought fit to introduce. Sub-section (3) in that case would read that any sale made in contravention is void, excepting such sales in respect of which an agreement of sale has been entered into before the Act was passed.

8. Mr. Parulekar says that if we uphold the sale, then we would not be giving effect to S. 89, Sub-section (2), and the right that the petitioners have with regard to the agreement of sale. Now, the right that is protected u/s 89. Sub-section (2), is a right independent and different from sale, which has been rendered-void u/s 64, Sub-section (3). If the petitioners have a right other than the right of having a sale effected in their favour, that right is undoubtedly saved u/s 89, Sub-section (2). We refuse to pronounce upon what the nature of that right might be; but if the law confers any right upon the petitioners as persons to whose favour an agreement of sale has been entered into, that right cannot be interfered with under the Act. But when it comes to a question of sale being effected in favour of the petitioners, that was not the right which they had when the agreement of sale was entered into, and therefore when the sale is rendered void by Section 64, Sub-section (3), of the Act, that is not saved by Section 89, Sub-section (2), of the Act.

9. Therefore, in our opinion, on the merits the view taken by the Revenue Tribunal is right.

10. The result is that the petition fails, and must be dismissed with costs.

11. Petition dismissed.