
(2000) 09 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition No's. 920 of 1984 and 1257 of 1988

Babasaheb Dnyanoba Ritpure and Others

APPELLANT

Vs

Dagdu Ritpure and Others

RESPONDENT

Date of Decision : 22-09-2000

Acts Referred:

Citation : (2001) 2 ALLMR 146 : (2001) 3 BomCR 18

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : Savita Sonpethkar, A.B. Naik, in W.P. No. 920/1984 and A.B. Bajpai, in W.P. No. 1257/1988, for the Appellant; V.G. Mete in W.P. No. 920/1984 for Respondent No. 1 and in W.P. No. 1257/1988, for Respondent No. 3, S.G. Mantri in W.P. No. 920/1984, for Respondent No. 2, R.R. Jethalia in W.P. No. 920/1984 for Respondent No. 3, Savita Sonpethkar and A.B. Naik, in W.P. No. 1257/1988, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—Since a common question of law and facts arise in both these petitions, they were heard and are being disposed of together by this common judgment.

2. In Writ Petition No. 920/1984, the order of the Maharashtra Revenue Tribunal is challenged by the legal representatives of the original tenant, on the ground that the confirmation of ownership of land, u/s 38-E of the Hyderabad Tenancy & Agricultural Lands Act, 1950 (hereinafter called as "the said Act"), in favour of co-tenant Dagadu, is contrary to the material on record, whereas in Writ Petition No. 1257/1988, the same order of the Tribunal is challenged as far as it relates to rejection of the revision application filed by the petitioners on the ground of same being barred by limitation.

3. Few facts which are relevant for the decision in both the matters are that the properties bearing Survey Nos. 152 and 153 situated in the village of Mangrul (Taluka : Kallam, District : Osmanabad) were cultivated jointly by two tenants, namely, Dnyanoba and Dagadu. The said Dnyanoba expired on 16-9-1956,

leaving behind him two sons, Babasaheb and Ramratan who are petitioners in Writ Petition No. 920/1984. The individual holdings of land of said Dnyanoba on the specified date, that is, 25-3-1957 were 23 Acres and 14 Gunthas. This fact was confirmed by necessary declaration u/s 38E of the said Act, and the legal representatives of said Dagadu, should be Dnyanoba that is, Babasaheb and Ramratan, were allotted 26 Gunthas from Survey No. 152 to make up the deficit in the family holdings they were entitled to have in terms of the provisions of the said Act.

4. Being aggrieved by the said declaration, the petitioners in Writ Petition No. 920/1984 i.e. Babasaheb and Ramratan filed appeal before the Deputy Collector in terms of the provisions of the said Act and the Deputy Collector by order dated 18-11-1982, set aside the said declaration restricting the allotment of 26 Gunthas from Survey No. 152 and increased it to 6 Acres 34 Gunthas in favour of Babasaheb and 6 Acres 33 Gunthas in favour of Ramratan. In the process, Dagadu being affected by the said order, he filed revision application against the said order of the Deputy Collector, being Revision Application No. 211/B/1982-Osmanabad, before the Maharashtra Revenue Tribunal, Aurangabad.

5. Thereafter, the petitioners in Writ Petition No. 1257/1988 i.e. the landlords Bansilal and Shankarlal filed another Revision Application bearing No. 156-B-1983 against the order of Deputy Collector. Both these revision applications were disposed of by the common order dated 26-9-1984 i.e. the impugned order. In the revision application filed by Dagadu, that is, Revision Application No. 211/B/1982-Osmanabad, the M.R.T. set aside the order of the Deputy Collector and confirmed the order of the Tahsildar as far as it related to Dagadu's case, however, the Maharashtra Revenue Tribunal dismissed the revision application filed by the petitioners, Bansilal and another, on the ground that the same was barred by law of limitation.

6. As far as Writ Petition No. 920/1984 is concerned, the grievance of the petitioner is that Dagadu was cultivating half portion of each of the Survey Numbers and, therefore, no declaration could have been issued u/s 38E of the said Act, in relation to the land which was not possessed by Dagadu as the tenant. Therefore, no declaration u/s 38E of the said Act could have been issued in favour of Dagadu in relation to area of 13 Acres 14 Gunthas from Survey No. 153, as the total acreage of Survey No. 153 is 17 Acres and 20 Gunthas and Dagadu was the joint tenant in respect of half of the same. The half of the area of Survey No. 153 would be 8 Acres and 30 Gunthas. Hence the declaration in favour of Dagadu beyond the area of 8 Acres 30 Gunthas from Survey No. 153 is bad in law since that would amount to eviction of the petitioners Babasaheb and Ramratan from the property bearing Survey No. 153 in contravention of the said Act. Even though the said petitioners are held to be not entitled for declaration u/s 38E of the said Act in relation to any of the area of the Survey No. 153, yet they would be entitled to continue to be the tenants in respect of the said property and their tenancy right would remain in tact till the same are legally

terminated. Being so, the order of the Maharashtra Revenue Tribunal having passed without application of mind in that regard, the same is required to be modified and the declaration u/s 38E in favour of Dagadu in relation to Survey No. 153 is to be restricted to an area of 8 Acres and 30 Gunthas instead of 13 Acres and 14 Gunthas from the property bearing Survey No. 153 and the balance area of 4 Acres and 24 Gunthas should be from the property bearing Survey No. 152 is well founded.

7. It is not in dispute that Dagadu and Dnyanoba were joint tenants and, therefore, both were entitled for half share in each of the properties bearing Survey Nos. 152 and 153. It is also undisputed fact that the total area of Survey No. 153 is 17 Acres 20 Gunthas. Therefore, each of the tenants is entitled for 8 Acres 30 Gunthas from said property as the tenants. Accordingly, while considering their claim u/s 38E of the said Act, in respect of the property bearing Survey No. 153, the declaration in favour of Dagadu in relation to the said property cannot exceed the area of 8 Acres 30 Gunthas. At the same time, it cannot be disputed that even though tenant is not entitled for declaration u/s 38E beyond the said area, nevertheless his tenancy rights in relation to all his holdings remain in tact and undisturbed. The declaration u/s 38E of the said Act cannot be beyond the area of land from a property held by the person as the tenant thereof. Such declaration in relation to any property in favour of a person should always be restricted to the extent such person enjoys tenancy rights in the property. Being so, as rightly contended by the petitioners on account of declaration of an area of 13 Acres 14 Gunthas from Survey No. 153 alone in favour of Dagadu, the petitioners tenancy right in the said property is not only affected, but naturally it would virtually amount to illegal termination of their tenancy right in relation to an area of 4 Acres and 24 Gunthas from the said property bearing Survey No. 153. Therefore, the impugned order to the extent it relates to the declaration u/s 38E in favour of Dagadu beyond the area of 8 Acres 30 Gunthas from Survey No. 153 is to be set aside and modified by restricting it to the said area of 8 Acres 30 Gunthas from Survey No. 153. While modifying the impugned order by restricting the declaration u/s 38E in favour of Dagadu from Survey No. 153 to the extent of 8 Acres 30 Gunthas, it is also to be seen that no injustice is caused to Dagadu. Undoubtedly, Dagadu is entitled for total area of 13 Acres 14 Gunthas u/s 38-E. It is also an undisputed fact that Dagadu is the protected tenant in relation to half the area of Survey No. 152 which has total area of 10 Acres 30 Gunthas. Being so, Dagadu would be entitled for necessary declaration u/s 38E in respect of area of 4 Acres and 24 Gunthas from Survey No. 152. Accordingly, the impugned order has necessarily to be modified to that extent.

8. As regards Writ Petition No. 1257/1988, it is seen that the Tribunal while rejecting the revision application of the petitioner, it has observed that if the Tribunal was required to give finding on merits, it would have given in favour of the petitioner, but only because the revision application was filed beyond the period of limitation, the same was rejected. The Tribunal has nowhere discussed

as to whether there was any justification disclosed by the petitioner for delay in approaching the Tribunal or not. Apparently the Tribunal has adopted totally wrong approach while dismissing the revision application. It was necessary for the Tribunal to find out whether the petitioner had disclosed justification for delay and to analyse material on record in that regard and to find out whether it discloses sufficient cause for condonation of delay and accordingly pass an appropriate order. Having not done so, the Tribunal has clearly acted arbitrarily while rejecting the revision application filed by the petitioner.

9. It is not in dispute that the petitioners were not informed about the order of the Deputy Collector and they got knowledge about the same only after receipt of copy of the revision application filed by Dagadu against the order of Deputy Collector. Once this was apparent from the records, it was evident that the petitioner had no occasion to file the revision application prior to the date of acquiring knowledge about the order passed by the Deputy Collector. Being so, the petitioner had made out a clear case for condonation of delay having shown sufficient cause for delay in filing the revision application. On this count alone, the impugned order dismissing the revision application for being barred by limitation, is liable to be set aside. On merits, the challenge to the order of Deputy Collector by the petitioners was on the similar grounds as those by Dagadu. The plea of Dagadu in his revision application having been allowed and order of Deputy Collector to that extent having been set aside, on merits, the petitioners have already succeeded in the matter.

10. In the result, therefore, Writ Petition No. 920/1984 is partly allowed and the impugned order is modified whereby the declaration u/s 38E of the said Act in favour of Dagadu in respect of the property bearing Survey No. 153 is restricted to 8 Acres 30 Gunthas and he is declared to be entitled for declaration u/s 38E of the said Act in respect of the property bearing Survey No. 152 to the extent of area of 4 Acres 24 Gunthas.

11. Writ Petition No. 1257/1988 is hereby allowed. The impugned order, so far it dismisses the revision application of the petitioner on the ground of bar of limitation, is hereby quashed and set aside, and the revision application filed by the petitioner before the Tribunal against the order of Deputy Collector declaring Babasaheb and Ramratan to be entitled for declaration u/s 38-E for an area beyond 26 Gunthas, is hereby allowed and the order of Deputy Collector to that extent is set aside and the order of Tahsildar dated 27-3-1982 to that extent is confirmed.

12. Rule is made absolute in the above terms in both the Writ Petitions with no order as to costs.

Rule made absolute.