

(1980) 02 BOM CK 0036

In the Bombay High Court

Case No : Special Civil Application No. 954 of 1974

Baburao and Others

APPELLANT

Vs

Trimbak and Others

RESPONDENT

Date of Decision : 07-02-1980

Acts Referred:

Citation : (1980) 02 BOM CK 0036

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Advocate : R.M. Agarwal, for the Appellant; A.V. Sawant and K.M. Kanade for respondent 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pratap, J.—This petition by the original tenants under Article 227 of the Constitution is directed against the order dated 31st of July, 1973 passed by the Maharashtra Revenue Tribunal in the present petitioners' revision application thereto against the appellate order dated 25th August, 1971 in turn confirming the order dated 8th July, 1970 passed by the Tahsildar, Bhokerdan, in Tenancy Case No. 67/TNC/26.

2. The original proceedings arose under the provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as "the Tenancy Act"), the lands involved being Survey Nos. 87 and 88 situated at village Nanja, District Aurangabad. Respondent Trimbak was the landlord. Original tenant was one Govinda, the father of the present petitioners. He came on the lands as an ordinary tenant, but by, virtue of section 34 of the Tenancy Act, he acquired the status of a protected tenant. In due course and by virtue of section 38-E of the Tenancy Act, he became the deemed purchaser and owner with effect from 26th January, 1956 of 3 acres and 24 gunthas out of the two suit lands. The remaining suit lands continued with him as protected tenant, He could not become the owner or deemed purchaser of the remaining suit lands in view of the fact that apart from the suit lands, he already had, as his own family holding, an area of

20 acres and 16 gunthas. He, therefore, became the deemed purchaser to the extent of only 3 acres and 24 gunthas making up, along with his own lands, a total holding of 24 acres. Sometime after he became the deemed purchaser aforesaid, Govinda expired leaving behind Baburao, Kaduba and Yeduba, his three sons. Mutation Entry No. 11 was effected on 6th May, 1957 bringing on record the name of the eldest son Baburao as Karta of the joint family of the said three sons inheriting the rights of Govinda by virtue of section 40 of the Tenancy Act.

3. Subsequently, the Tahsildar made a Provisional declaration in favour of the three sons u/s 38-G of the Tenancy Act. This was challenged by the landlord. The authorities below held that section 38-G applied to an ordinary tenant and not to a protected tenant. Govinda was a protected tenant. And he having already become, in that capacity, the deemed purchaser u/s 38-E (which applied to a protected tenant such as Govinda), his sons who inherited his interest cannot get an additional right of purchase. The provisional declaration was thus cancelled. Hence this petition.

4. Mr. R.M. Agarwal, the learned Advocate for the petitioners, contended that though the petitioners inherited the rights of Govinda by virtue of section 40 of the Tenancy Act, the rights which they actually succeeded to were not or cannot be Govinda's protected tenancy rights but only ordinary tenancy rights. Contention was that protected tenancy was a status additional conferred upon Govinda but this additional status could not be subject matter of devolution or inheritance u/s 40. Therefore, all that the sons inherited or succeeded to was an ordinary tenancy. Consequently, they were, u/s 38-G of the Tenancy Act, entitled to become owners of the suit lands in addition to the lands of which their father had already become owner.

5. Skilful and ingenious though this contention is, I am afraid, it is not possible to accept the same. The same runs contrary to the relevant scheme of the Tenancy Act and particularly sections 38-E, 38-G and 40. It is not the object of sections 38-E and 38-G to confer any conjoint, cumulative or successive rights of purchase. Indeed, the said two sections cover each a different field and situation, one relating to a protected tenancy and the other relating to an ordinary tenancy. So also, it is not the object of section 40 to whittle down at the time of inheritance thereunder the attributes and incidents of a protected tenancy. A protected tenancy does not become extinct on demise of the erstwhile protected tenant who leaves behind an heir nor does it, through inheritance and transmission u/s 40, transform itself or get converted and diluted into an ordinary tenancy. A protected tenancy remains a protected tenancy after inheritance. Indeed, section 40 covers both classes of tenancies, be it protected tenancy or ordinary tenancy. It, however, confers no higher right than the one inherited nor does inheritance thereunder result in anything less than what was held by one to whose tenancy inheritance opened. If a protected tenant dies, his heir would become a protected tenant. If an ordinary tenant dies, his heir in turn

would become an ordinary tenant.

6. Construction and interpretation otherwise would mean that whereas a protected tenant such as Govinda did not himself have any additional right of purchase, his heirs can claim such additional right. This certainly cannot be the object of the provisions in question. Govinda being a protected tenant of the suit land and having, by virtue thereof, already become, in his life time, deemed purchaser, the heirs to his surviving tenancy can not get any further right de novo to purchase any additional land by virtue of such inheritance. The heirs step into the shoes of Govinda and would, therefore enjoy all his rights qua his protected tenancy but subject to all the limitations to, which he, Govinda, himself held the said tenancy. Thus, if Govinda himself could not have become deemed purchaser of any additional land over and above those of which he had already so become the deemed purchaser, much less would his heirs, inheriting his tenancy claim to become the deemed purchasers of any additional land.

7. In these circumstances and in this view of the matter that I take, the challenge to the impugned orders is of no avail. The said orders are correct and deserve to be upheld; In the result, this petition fails and is dismissed. Rule earlier issued "stands discharged, but, in the circumstances, with no order as to costs.