

(1956) 10 BOM CK 0005

In the Bombay High Court

Case No : Special Civil Application No. 604 of 1956 with Civil Application No. 1057 of 1956

Balkrishna Sakharam Naik

APPELLANT

Vs

Siddappa Vithoba Gangade

RESPONDENT

Date of Decision : 04-10-1956

Acts Referred:

Bombay Tenancy And Agricultural Lands Act, 1948 — Section 12, 32, 32(1), 32(2), 32(3), 32(5), 64, 64(2)(A)(i), 71, 71(a), 72
Constitution Of India, 1950 — Article 227

Citation : (1957) 59 BOMLR 54

Hon'ble Judges : Gokhale, J;Bavdekar, J

Bench : Division Bench

Judgement

Gokhale, J.—This is a Special Application under Article 227 of the Constitution of India by the landlord against the decision of the Revenue Tribunal remanding opponent No .1's application to the Mamlatdar for the determination of reasonable price of certain lands and disposal of the application u/s 32 of the Bombay Tenancy and Agricultural Lands Act, 1948. The petitioner-landlord is the owner of six pieces of land admeasuring about 103 acres at Karajgi, Taluka Akalkot, District Sholapur. Opponent No. 1 is the protected tenant in respect of these lands. In 1952 the petitioner wanted to sell three out of these six pieces of lands, S. Nos. 93, 94 and 142, admeasuring 17 acres and 13 gunthas, and he accordingly applied to the Mamlatdar u/s 64 of the Tenancy Act for determination of reasonable price of these lands. To these proceedings the opponent was not made a party. It is not in dispute that the opponent is a protected tenant of these lands. On July 24, 1952, the Mamlatdar fixed the total price of these lands at Rs. 24,500, valuing under Se No. 93 at Rs. 15,000, S. No. 94 at Rs. 5,000 and S. No. 142 at Rs. 4,500. After the price was so fixed by the Mamlatdar, the petitioner-landlord offered to sell the lands to the opponent-tenant on August 1, 1952. To this offer the opponent gave a reply on September 24, 1952, that he was not willing to purchase the lands at the price mentioned in the landlord's notice but

he was willing to do so at a price to be fixed by the Mamlatdar as the Tribunal u/s 32. It appears that thereafter the landlord offered these lands to contiguous cultivators according to the priorities mentioned in Section 64. As none of them seems to have accepted his offer, on December 24, 1952, the petitioner-landlord agreed to sell these lands to one Gangawwa for Rs. 22,000 out of which Rs. 3,100 are alleged to have been paid as earnest money. It is said that the sale-deed was completed in pursuance of this agreement on June 8, 1954. But before the sale-deed came to be completed, on June 1, 1953, i.e., nearly 9 months after he gave the reply to the landlord, the tenant made an application to the Mamlatdar u/s 32(3) of the Tenancy Act for determination of reasonable price of the three lands. The landlord contested the tenant's application. He urged that no offer was made by the tenant as was contemplated u/s 32(2) of the Act, that the price of the lands had been already fixed by the Mamlatdar on his application u/s 64 and, therefore, no question of fixing reasonable price afresh arose and that the price already fixed was binding on the opponent. He also urged that the opponent's application should not be entertained because the lands had been already sold by him to Gangawwa. The Mamlatdar held that the applicant before him was a protected tenant but that he had made no offer in writing to the landlord stating the amount of the price for which he intended to purchase the lands and consequently it could not be said that the landlord had refused to accept the offer and to execute the sale-deed within three months. On this ground he held that he had no jurisdiction to determine the price and he dismissed the tenant's application. Before the learned District Deputy Collector in appeal the main ground taken by the tenant was that as no notice of the proceedings u/s 64 of the Act was given to him by the landlord and he was not heard, he was not bound by that determination of price. The appellate authority held that there was no provision in Section 64 making it necessary to give a hearing to the parties for fixing the reasonable price and there was nothing also in the rules. All that the Tribunal had to do in fixing the price was to consider the factors u/s 12 of the Act. The appellate authority was also influenced by the fact that the tenant had put in his application after a lapse of nearly 10 months. Consequently the District Deputy Collector dismissed the tenant's appeal. In revision the Revenue Tribunal reversed the decisions of the Mamlatdar and of the District Deputy Collector on the ground that rules of natural justice required that the tenant should be heard in proceedings u/s 64 of the Act, and since the tenant was not heard when the price was fixed, the said price could not bind the tenant. It was urged on behalf of the landlord before the Revenue Tribunal that the tenant's application was not maintainable because he had not made any offer as contemplated u/s 32(2) of the Tenancy Act. But the Revenue Tribunal was inclined to put "a liberal construction on the wording of the letter dated 24-9-1952" in reply to the landlord's offer and took the view that there was a substantial compliance with Section 32(2) of the Act. The Revenue Tribunal consequently allowed the tenant's application in revision and, as I have already stated, remanded the case to the Mamlatdar for fixation of reasonable price u/s 32.

2. Now, in this application, Mr. Rege, the learned advocate for the landlord, in the first instance contends that the Revenue Tribunal was in error in holding that notice was necessary to be given to the tenant in the proceedings started by the landlord u/s 64 of the Tenancy Act. We are not prepared to accept that argument. In our opinion, it is even not necessary to invoke the principle of natural justice as the Revenue Tribunal did. The provisions of Section 64 read with Sections 71 and 72 of the Tenancy Act would, in our view, make it necessary in law to make the tenant a party, to give notice to him and to hear him in those proceedings. u/s 64 where a landlord intends to sell any land he has to apply to the Tribunal, which in this case would be the Mamlatdar, for determining its reasonable price. In determining the reasonable price the Tribunal has to take into consideration the factors which are referred to in Section 12 for fixing the reasonable rent of lands. After the Tribunal has determined the reasonable price, Section 64 makes it incumbent upon the landlord to make an offer in the prescribed form to persons in the order of priority given in the section. It would be seen from Clause A(i) of Sub-section (2) of Section 64 that the tenant in actual possession of the land stands first in the list and after him comes the person or persons personally cultivating any land adjacent to the land to be sold. u/s 32(5) of the Tenancy Act nothing in Section 64 shall affect the right of the protected tenant to purchase u/s 32 the land held by him on lease. It would be obvious, therefore, that the tenant would not be bound by the price fixed in the proceedings conducted in his absence u/s 64. Besides, if we turn to Section 71, all inquiries and other proceedings before the Mamlatdar or the Tribunal have to be commenced by an application which shall contain the particulars mentioned in the section, and in Clause (a) to Section 71 there is a reference to the name, age, profession and place of residence of the applicant and the opponent. u/s 72, in all inquiries and proceedings commenced on the presentation of applications u/s 71 the Tribunal is competent to exercise the same powers as the Mamlatdar's Court under the Mamlatdars' Courts Act, 1906. In our opinion, therefore, the application presented by the landlord u/s 64 would require the mention as an opponent of the name of the tenant in actual possession of the land who stands first in the list of priorities u/s 64 and who, if he was not served with notice of the proceedings, would not be bound by the results of such proceedings. We are, therefore, of the opinion that it was necessary for the landlord to mention the name of the protected tenant in this case in his application and to issue notice to him before that application was heard and decided by the Mamlatdar and price was fixed at Rs. 24,500. The view of the learned Members of the Revenue Tribunal, therefore, that the fixation of price of these lands at Rs. 24,500 by the Mamlatdar would not bind the opponent-tenant is correct.

3. Then Mr. Rege argues that the application of the tenant was incompetent because the essential requisites u/s 32 were not complied with by him. u/s 32(1) as protected tenant he will be entitled to purchase from the landlord the land held by him as a protected tenant. But Sub-section (2) of that section shows that the protected tenant has in the first instance to make an offer in writing to the

landlord stating the amount of the price for which he intended to purchase the land. In case the landlord refused or failed to accept the offer and to execute the sale-deed within three months from the date of the offer, then under Sub-section (3), the protected tenant can apply to the Mamlatdar for the determination of the reasonable price of the land. It seems clear, therefore, that the essential condition precedent to the making of an application by the protected tenant u/s 32(3) is that he must first make an offer in writing to the landlord, state therein the amount of the price for which he intends to purchase the land, and if, after such an offer is made, the landlord refuses or fails to accept the offer and execute the sale-deed within three months from the date of the offer, then he can apply to the Tribunal for determination of the reasonable price. As I have already stated, the Mamlatdar found as a fact that there was no such offer made by the tenant mentioning any particulars and consequently there could be no refusal on the part of the-landlord to accept that offer. If no offer is made, then there is no question of the landlord refusing or failing to accept the offer. The landlord must know the amount of the price at which the tenant intends to purchase the land. If such an offer is made, then he can either refuse it, or accept it and execute the sale-deed within three months from the date of the offer. But if no offer is made, there is no question of any refusal or failure on his part to execute the sale-deed within three months from the date of the offer. The learned Members of the Revenue Tribunal were inclined not to place reliance on this infirmity on the ground that they wanted to put a liberal construction on the wording of the tenant's reply dated September 24, 1952, In that reply he had refused to accept the landlord's offer to sell the lands to him at the price fixed by the Mamlatdar in the landlord's application u/s 64, namely, Rs. 24,500; but h? stated that he was prepared to purchase the land at a price to be fixed by the Mamlatdar u/s 32. It means therefore that he wanted the fixation of the price afresh by the Mamlatdar. Mr. Padhye, the learned advocate for opponent No. 1, contends that his client has substantially complied with the provisions of Sub-section (2) of Section 32. We cannot accept that contention. What that sub-section requires is an offer in writing to the landlord stating the amount of the price at which the tenant intends to purchase the land. Mr. Padhye says that his client was convinced that no useful purpose would be served by his mentioning any price less than the price already fixed by the Mamlatdar u/s 64. That argument is not sound. As the tenant failed to make any offer to the landlord, it would be sheer speculation as to what the reactions of the landlord would have been if any such offer had been made.

4. In our opinion, opponent No. 1's application in this case u/s 32 suffers from the serious infirmity in that, the provisions of Section 32(2) were not. complied with. Consequently the order of the Revenue Tribunal is erroneous and will have to be set aside.

5. We accordingly make the rule absolute, set aside the order of the Revenue Tribunal and dismiss opponent No. 1's application. Opponent No. 1 will have to pay the costs of the petitioner. The order of stay granted in the stay application

has come to an end. There will. be. no order as to costs in the stay application.