
(2002) 06 BOM CK 0108
In the Bombay High Court
Case No : Writ Petition No. 1497 of 1990

Bharart Dagadu Gavate

APPELLANT

Vs

Mahadu Bala Gavate

RESPONDENT

Date of Decision : 19-06-2002

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G, 32M

Citation : (2002) 4 ALLMR 196 : (2002) 6 BomCR 756

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : Sujata Mogre, for the Appellant; Sanjeev Rairkar, for the Respondent

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J.—This writ petition under Article 227 of the Constitution of India takes exception to the order dated 12th March, 1990 in Revision Application No. MRT-P/VIII/1/87 (TNC.B. 179/87) by the member of Maharashtra Revenue Tribunal, Pune.

2. The petitioner claims to be tenant in respect of the entire Land Bearing Gat No. 2162 admeasuring 16H.26R at village Chakan, District Khed. The respondent is the real paternal uncle of the petitioner. The petitioner's father was enjoying the said land as a tenant of Shankar Narayan Bhagat and Shri Daval Bhagat. Both the landlords had share in half portion of the said land. It is not in dispute that with regard to the land owned by Shri Shankar Narayan Bhagat, which was occupied by the petitioner's father as a tenant, proceedings u/s 32-G of the Bombay Tenancy & Agricultural Lands Act ("Act" for brief) were commenced in which it was held that the petitioner's father was tenant and he was declared as deemed purchaser. Thereafter, purchase price was also fixed and it was duly paid by the petitioner's father. As a consequence of which, section 32-M certificate was issued in his favour. Those proceedings have culminated on 31st December, 1959. The present proceedings relate to the other half portion which was owned by Shri Dhaval Bhagat. The petitioner claims that even this land was occupied by

the petitioner's father as a tenant; whereas the respondent claims that the petitioner's father was enjoying the said portion of the land, being the elder brother and was holding the same for and on behalf of the joint family of which the respondent was a member. It is relevant to note that since the whereabouts of Shri Daval Bhagat was not known, the Tenancy Authority did not commence the proceedings u/s 32-G of the Act. However, the respondent filed application claiming that he was a tenant in respect of the portion owned by Shri Dhaval Bhagat and for declaration in that behalf and for passing consequential order. In these proceedings, the tenancy authority enquired into the matter and held that the petitioner's father was the tenant even in respect of this portion of the land owned by Shri Dhaval Bhagat. This was challenged by the respondent before the Appellate Authority. The Appellate Authority remanded the matter to the Tenancy Authority to enquire, essentially: (1) As to whether the name of the petitioner's father which appeared as protected tenant came to be deleted and (2) As to whether the petitioner's father and respondent were staying together and (3) The subject land was cultivated by the petitioner's father on behalf of the joint family. After remand, the tenancy authority analysed the entire materials on record produced by the respective parties and recorded a clear finding of fact that the petitioner's father was the tenant in respect of the land in question which was owned by Shri Dhaval Bhagat. It is relevant to note that neither before the Tenancy Authority nor at any stage thereafter, the original owner Shri Dhaval Bhagat appeared and resisted the claim of the petitioner's father, in respect of the land owned by him. The respondent carried the matter in appeal. The Appellate Authority once again confirmed the finding of fact recorded by the authority that the petitioner's father was the tenant in respect of the subject land vide order dated 29th June, 1987. The respondent thereafter carried the matter in the Tribunal. The Maharashtra Revenue Tribunal after analysing the materials on record has not disturbed the findings of fact recorded by the two courts below that it is established from the record that the land was cultivated by the petitioner's father as a tenant and that it was not of joint family of which the respondent was a member. The Tribunal has also recorded a clear finding that the respondent has not adduced evidence to show that the suit land was taken for the benefit of the joint family. Notwithstanding these findings, the Tribunal was pleased to set aside the order passed by the lower authorities and remanded the matter for further enquiry on the singular ground that the landlord was not served in the proceedings. In the circumstances, this petition takes exception to that remand order passed by the Tribunal.

3. The main grievance of the petitioner is that on merits, the Tribunal has not disturbed the findings of fact recorded by the authorities below that the petitioner's father was a tenant in respect of the said land. In such a case, there would be no question of remanding the matter for further enquiry on the stated ground that the landlord was not served in the 32-G proceedings. It is contended that assuming that the landlord has not been served in accordance with the requirement of the statutory provisions, but that grievance can be made only by

the landlord. The learned Counsel for the respondent on the other hand supported the view taken by the Tribunal for remanding the case. In support of his submission, reliance has been placed on the decision reported in the case of Madhav Kesun Khuspe v. Sundrabai Mugutrao Phadatare since deceased through heirs Krishna Dagdu Khuspe and others, reported in 1978 Mh.L.J. 289 Emphasis is placed on paras 9 & 10 of this decision to contend that if necessary formalities required under the Act are not complied with, the proceedings will have to be held as vitiated.

4. Having considered the rival submissions, I have no hesitation in reversing the view taken by the Tribunal. Having taken a clear view with regard to the fact that the petitioner's father was a tenant in the suit land and that no evidence was adduced by the respondent to show that the suit land was taken for the joint family, there was no reason for the Tribunal to remand the case for further enquiry at the instance of the respondent herein who unquestionably had complete opportunity of a full trial and failed to succeed on merit. Moreover, this plea was raised only before the Tribunal. Accordingly, the Tribunal was obliged to affirm the declaration. Once the Tribunal has affirmed the said findings that the petitioner's father was tenant in the suit land and having become deemed purchaser, the validity of the proceedings could be questioned only at the instance of the landlord and not the respondent. The contention of the respondent that the respondent was an interested person as he was also claiming to be a tenant is of no consequence. The authority having held that the petitioner's father was the tenant, it has necessarily rejected the stand taken by the respondent that he is a tenant. If that be so, then the respondent cannot be said to have any interest in the suit land so as to enable him to challenge the validity of the proceedings. The decision relied upon in Madhav Kesun Khuspe's case (supra) cannot be of any avail in the facts and circumstances of the present case. Moreover, on close examination of the view taken by the Tribunal, it is seen that the Tribunal has merely observed that the landlord was not served. There is no clear opinion recorded by the Tribunal that the procedure, as required under the relevant provisions regarding the other modes of service namely publication on the village chavadi etc., was also not followed. Only then the final opinion on the issue of inappropriate service on the landlord could have been recorded. In any case, as observed earlier, that grievance can be made only by the landlord and not by any other person. Understood thus, the impugned order cannot be sustained and the same deserves to be set aside and instead the orders passed by the authorities below are restored. Rule made absolute.

5. Petition allowed in the above terms. No order as to costs.

6. Certified copy expedited.