
(1974) 04 BOM CK 0012

In the Bombay High Court

Case No : Special Civil Application No. 2606 of 1970

Bhau Martand Shelar

APPELLANT

Vs

Hajabai Bala Nadaf and Another

RESPONDENT

Date of Decision : 16-04-1974

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32
Civil Procedure Code, 1908 (CPC) — Section 11

Citation : AIR 1975 Bom 233 : (1975) 77 BOMLR 141

Hon'ble Judges : Shah, J

Bench : Single Bench

Advocate : N.D. Hambalkar, for the Appellant; R.G. Samant, for the Respondent

Judgement

1. This Special Civil Application filed by the petitioner who is the landlord, under Article 227 of the Constitution of India raises a question of law as to whether the order of the Agricultural Lands Tribunal dropping the proceedings u/s 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Act) on the ground that the tenants was a widow on the tiller's day and her right to purchase the land was postponed u/s 32-F (1) (b) of the Act, which order Section 32-F (1) (b) of the Act, which order was confirmed by the Revenue Tribunal, operates as res judicata, and, therefore, fresh proceedings u/s 32-G of the Act at the instance of the widow were not maintainable.

2. The facts of the case are few and are no longer in dispute. The lands bearing Survey Nos. 340-2B, 341-1A, 341-2, 340-2C and 341-1B of village Soni in Miraj Taluka belong to the petitioner. The respondent is a widow since before April 1, 1957, the tiller's day. She is in possession of the said lands as a tenant service before the tiller's day. The Agricultural Land's Tribunal Suo mote commenced proceedings u/s 32-G of the Act in respect of the said lands and by its order dated November 16, 1960, held that the respondent No. 1 being a widow on the tiller's day, her right to purchase the lands was postponed u/s 32-F (1) (b) of the Act and in this view of the matter dropped the proceedings. Its order of the

Agricultural Lands Tribunal was challenged in appeal by the respondent No. 1. The Special Deputy Collector who heard the appeal disagreed with the view of the Agricultural Lands Tribunal and took the view that the widow-tenant is entitled to exercise her right to purchase the land during her lifetime. He, therefore allowed her appeal and remanded the case for fresh inquiry to the Agricultural Land's Tribunal. In a revisional application filed by the petitioner, the Revenue Tribunal set aside the order passed in appeal and restored that of the Agricultural Lands Tribunal. The Revenue Tribunal followed the view taken by the Bench of the Maharashtra Revenue Tribunal and restored the order passed by the Agricultural Lands Tribunal. This order was passed by the Revenue Tribunal on August 12, 1964. It appears that that after this decision of the Revenue Tribunal a view was taken by the Revenue Tribunal that the provisions of Section 32-F (1) (b) were optional and the rights conferred on the widow or a minor by the said provision were independent of and in addition to their right u/s 32 of the Act. The respondent No. 1. therefore, filed another application to the Agricultural Lands Tribunal to start proceedings u/s 32-G for determining the price of the said lands. The Agricultural lands Tribunal, however, was of the view that the final order was passed by the Revenue Tribunal and the remedy of respondent No. 1 was to approach the Revenue Tribunal, for review of the order passed by it. The Agricultural Lands Tribunal, therefore, directed respondent No. 1 to approach the Revenue Tribunal for review of its order. This order of the Agricultural Lands Tribunal was confirmed in appeal by the Collector. In a revision filed by the respondent No. 1 challenging the order of the Collector, the Revenue Tribunal held that in the circumstances of the case, the previous order did not stand in the way of the petitioner for starting fresh proceedings u/s 32-G. The Revenue Tribunal, therefore, set aside the order passed by the two authorities below and the case was remanded back to the Agricultural lands Tribunal for taking proceedings u/s 32-G of the Act.

3. The short question for consideration that arises in this petition, therefore, is whether the order passed by the Agricultural Lands Tribunal dropping the proceedings which was confirmed by the Revenue Tribunal by its order dated August 12, 1964, bars initiation of fresh proceedings for determination of price of the land at the instance of the widow-tenant.

4. Mr. Paranjpe, the learned Counsel appearing for the petitioner contends that the previous order dropping the proceedings u/s 32-G would operate as *judicata*, and, therefore, proceedings on the application of the respondent No. 1 could not be entertained,. He submits that in effect, the Revenue Tribunal has reviewed its own previous order on the ground that the earlier view which disentitled the widow-tenant to purchase the land u/s 32 was later on not accepted and a view was taken that it was so optional to the widow-tenant to exercise her right u/s 32 to purchase the land. According to him, a review on such a ground is incompetent.

5. In order to appreciate the contention raised by Mr. Paranjpe, it would be necessary to consider the scheme of Section 32 and 32-G of the Act. It is not disputed before me that the correct position in law is that the provisions of Section 32-F (1) (b) of the Act were optional and the widow can, if she so chooses, claim to take advantage of Section 32-G and become a deemed purchaser u/s 32-G. It would be open to a widow not to claim the benefit conferred on the tenant u/s 32 of the Act and in that event, the right to purchase the land could be exercised by a successor-in-title within the prescribed time u/s 32-F (1) (b). It is, therefore, not disputed before me that the view taken by the Revenue Tribunal relying on its order dated August 12, 1964 was not in accordance with law. The question then arises as to what is the effect of the previous orders passed by the Agricultural Lands Tribunal and the Revenue Tribunal dropping the proceedings u/s 32-G on the ground that the right of purchase is postponed u/s 32-F (1) (b). Section 32 inter alia provides that on the 1st of April, 1957, which is called "the tillers" day, every tenant shall subject to the other provisions contained in the very section and the provisions of the next succeeding section be deemed to have purchased from his landlord, free of all encumbrances subsisting thereof on the said day, the land held by him as a tenant. It is unnecessary to refer to the other provisions as it is not disputed that a widow-tenant has a right to claim the benefit of Section 32 of the Act by becoming a deemed purchaser on April 1, 1957. In the case of a deemed purchaser, the Agricultural Lands Tribunal is enjoined to take proceedings u/s 32-G by following the procedure thereunder. Such proceedings have to be commenced by the Agricultural Lands Tribunal suo motu, and the landlord or the tenant need not make an application for taking proceedings u/s 32-G. It would, therefore, be necessary to consider the scheme of Section 32-G. Sub Section (1) thereof inter alia provides for publication of a public notice calling on the persons interested in the land including the tenant who is deemed to have purchased the land and the landlord, to appear before it on the specified date. In addition, the Tribunal has to give a notice individually to each such tenant, landlord and also, as far as practicable other persons interested in the land to appear before it on the date specified date. In addition, the Tribunal shall by an order in writing declare that such tenant is not willing to purchase the land held by him as the tenant. Under sub-section (3), where any tenant fails to appear or makes a statement that he is not willing to purchase the land and that the purchase is ineffective. There is also a proviso to sub-section (3) which gives a further opportunity to the tenant who has failed to appear before the Tribunal on the due date to review the order passed by the Tribunal declaring that the tenant is not willing to purchase the land under sub-section (4), the Tribunal is required to determine the purchase price. On the deposit of the price fixed by the Tribunal, the Tribunal has to issue a certificate of the land under sub-section (1) of S. 32 F. It also provides for the consequences of non deposit of the purchase price. viz., that the purchase shall become ineffective and the land shall be at the purchase price, viz. that the purchase shall become ineffective and the land shall be become ineffective and the land shall be at the disposal of the Tribunal u/s 32-

P. It would thus appear from the scheme of the said relevant provisions that duty is cast on the Tribunal to act suo motu and take the necessary proceedings u/s 32-Government and the other relevant provisions of the Act.

6. Now, let us see what is the effect of the earlier order passed by the Agricultural Lands Tribunal. On a perusal of the order, it is quite obvious that the Tribunal refused to exercise the powers conferred on it u/s 32-G on the assumption that the tenant being a widow, her right to purchase the land was postponed by virtue of the provisions of Section 32-F (1) (b). The order clearly shows that the Tribunal was of the view that it had no jurisdiction whatsoever to proceed u/s 32-Government in view of the fact that the tenant was a widow on the tillers' day, and she had no powers to commence the proceedings contemplated by Section 32-Government. The said view of the Agricultural Lands Tribunal was confirmed by the Revenue Tribunal as indicated above. In other words, what has been done in this case is to refuse to start proceedings u/s 32-G on the ground that the Agricultural Lands Tribunal would have no jurisdiction to do so. In the present case, there was a widow on April 1, 1957 and the primary question that was required to be decided by the Agricultural Lands Tribunal was whether in view of the provisions of the Act it had jurisdiction to initiate the proceedings u/s 32-G or not. This is exactly what is done by the Agricultural Lands Tribunal in this case. There is no proceeding u/s 32-Government which has been actually held nor any final order has been passed as contemplated by Section 32-G. The order of the Agricultural Lands Tribunal does not show that the procedure regarding the publication of the public notice or giving individual notices as required by sub-section (1) of S.32-G was taken by it. It is also quite clear that in the view taken by the Agricultural Lands Tribunal, no statement of the tenant as to whether she was or was not willing to purchase the land was recorded nor was any price of the land fixed. It would, therefore, be obvious that this is a case where the Agricultural Lands Tribunal dropped the proceedings on the basis that it had no jurisdiction to take such proceedings u/s 32-G. The decision of the Agricultural Lands Tribunal or the Revenue Tribunal was based on an erroneous interpretation of the provisions of the Act that the tenant who is a widow is not entitled to purchase the land and her right to purchase the land is postponed in accordance with provisions of Section 32-F (1) (b) and the right of purchase could only be exercised by the successor-in-title of the widow. After the sad decision, the view has been changed and it has been held that the provisions of Sections 32-F (1) (b) are optional and those provisions do not prevent the tenant who is a widow to purchase the land under S.32-G, and that the right conferred under S.32-F(1) (b) is in addition to the right of the widow tenant to purchase the land herself.

7. It is urged by Mr. Paranjpe that merely because the judgment is based on an erroneous interpretation of the provisions of res judicata are not applicable. He submits that a wrong decision even on a point of law parties. In support of his contention, he has cited several decisions of various High Court, and in particular reliance has been placed on a decision of this court in Rajaram Tukaram Vs.

Central Bank of India Ltd., . I shall have an occasion to refer to this decision later. For the present, I may observe that the Counsel is right when he says that a decision on an issue of law will operate as resjudicata in a subsequent proceedings between the same parties if the cause of the subsequent proceedings is the same as in the previous proceedings. It will not, however, operate as res judicata when the cause of action is different nor when the law has since the earlier decision been altered by a competent authority. However these broad principles relating to the application of the bar of res judicata even on a point of law cannot apply when the decision relates to the jurisdiction of the court to try earlier proceedings. If the Agricultural Lands Tribunal on an erroneous interpretation of law dropped the proceedings on the ground that it has no jurisdiction to hold an inquiry u/s 32-G, such a decision cannot operate as res judicata. Just as a decision given by a Court which has no jurisdiction to try the suit is a nullity and will not operate as resjudicata for a fresh suit, similarly, refusal to exercise jurisdiction on a wrong view of law would not, in my opinion, operate, as res judicata in a subsequent proceedings. In this connection, I may refer to a decision of the Supreme Court in Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, where it is observed-

"The doctrine of res judicata belongs to the domain of procedure: it cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to the interpretation of enactment affecting the jurisdiction of a court finally between them, even though no question of fact or mixed question of law and fact and relating to the right in dispute between the parties has been determined thereby. A decision of a competent court on a matter in issue may be res judicata in another proceeding between the same parties: the "matter in issue" may be an issue of fact. An issue of fact or an issue of mixed law and fact decided by a competent court is finally determined between the parties and cannot be re-opened between them in another proceeding.

The previous decision on a matter in issue alone is res judicata: the reasons for the decision are not res judicata. A matter on issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is res judicial, it is meant that the right, cannot be deemed to be a matter in issue. When it is said that a previous decision of a competent Court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right is res judicata. A previous decision on a matter in issue is a composite decision: the decision on law cannot be dissociated from the decision on facts on which the right is founded.

A decision on an issue of law will be as res judicata in a subsequent proceeding

between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor when the decision relates to the jurisdiction of the court to try the earlier proceeding nor when the earlier proceeding, nor when the earlier decision declared valid a transaction which is prohibited by law." It is further observed by the Supreme Court that the question, relating to the jurisdiction of the Court cannot be deemed to have been finally determined by an erroneous decision of the court. if by an erroneous interpretation of the status the Court holds that it has no jurisdiction, the question would not operate as res judicata. Similarly by an erroneous decision if the court assumes jurisdiction which it does not possess under the statute, the question cannot operate as res judicata between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise. The facts of the case before the Supreme Court were that the tenant made an application to the court of the Civil Judge for determination of standard rent u/s 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. This application was dismissed on the ground that the Act did not apply to open land let for constructing buildings, and this order was affirmed in revision. However in view of another decision of this court in Vinayak Gopal Limaye Vs. Laxman Kashinath Athavale, the tenant filed a fresh petition in the court of Small Causes as the area was included within the limits of the application on the ground that the question whether the Act applied to the case was res judicata since it had been finally decided by the High Court between the same parties in respect of the same land in the earlier proceedings, for fixation of standard rent. The decision of the High Court was challenged in appeal before the Supreme Court. The decision of the High Court was challenged in appeal before the Supreme Court. The Supreme Court took the view that the earlier decision did not operate as res judicata and a fresh application for fixation of standard rent was maintainable as the question relating to jurisdiction of the court cannot be deemed to have been finally determined by an erroneous decision of the court.

8. In the instant case also the Agricultural Lands Tribunal refuses to exercise jurisdiction and powers u/s 32-G on an erroneous interpretation of the provisions of the Act holding that it had no jurisdiction to take proceedings under Sec.32-G as the respondent No.1 was a widow on the tiller's day.

9. Reliance was placed by Mr. Paranjpe on a decision of this court in Rajaram Tukaram Vs. Central Bank of India Ltd., . This decision far from supporting the contention of the petitioner supports the view that on the question of jurisdiction there can be no res judicata. In this connection, it would be worthwhile to refer to the following observations of Fawcett, J. at p.895 of Bom LR = (at p.490 of AIR) of the report:-

"Therefore, so far as any argument may be raised that in any argument may be raised that in any case the judgment on a point of law cannot be res judicata. I hold that in a case like the present the principle of res judicata does apply, although there was an adjudication on a point of law. I fully realize the distinction

between cases where an erroneous decision on a point of law. I fully realize the distinction between cases where an erroneous decision on a point of law. I fully realize the distinction between cases where an one which does not affect the Court's Jurisdiction and cases where the point of law is one which does affect, it,"

10. The position in law on the point raised can be summed up thus. Where the Agricultural Lands Tribunal or any other authority empowered to deal with matters under the Provisions of the statute passed an order refusing to act or exercise jurisdiction over the subject-matter on a misconception of or otherwise, such an order passed by it refusing to exercise powers cannot operate as res judicata and fresh proceedings in respect of the same subject-matter is maintainable. There is no question of res judicata when the question of jurisdiction is involved. and the authority is competent to start fresh proceedings on the assumption that it had jurisdiction to proceed with the matter and pass the appropriate orders.

11. In view of the above discussion, it is not possible to accept the contention of Mr. Paranjpe and the orders passed by the Agricultural Lands Tribunal on November 16, 1960 and the Revenue Tribunal on August 12, 1964 refusing to take proceedings under Sections 32-Government in respect of the suit lands cannot operate as res judicata, and the fresh proceedings for fixation of the price u/s 32-G in respect of the suit lands cannot operate as res judicata, and the fresh proceedings for fixation, of the price u/s 32-Government at the instance of respondent No.1 would be maintainable in law. In the view of the matter I am taking, it is not necessary to consider the other contention raised by Mr. Paranjpe regarding the powers of review which can be exercised by the Revenue which can be exercised by the Revenue Tribunal or the Agricultural Lands Tribunal.

12. In the result, the Tribunal was right in quashing the orders passed by the two authorities below and remanding the matter to the Agricultural Lands Tribunal for taking proceedings u/s 32- G of in respect of the suit lands proceedings for fixation of the price under No.1 would be maintainable in law. In the view of the matter I am taking, it is not necessary to consider the other contention raised by Mr. Paranjpe regarding the powers of review which can be exercised by the Revenue Tribunal or the Agricultural Lands Tribunal.

13. In the result, the Tribunal was right in quashing the orders passed by the two authorities below and remanding the matter to the Agricultural Lands Tribunal for taking proceedings u/s 32-G of the Act.

14. Rule discharged. In the circumstances of the case, there shall be no order as to costs.

15. Rule discharged.