

(1992) 03 BOM CK 0039

In the Bombay High Court

Case No : Civil Appeal No. 2407 (N) of 1979

Dadu Rau Yelavade (Deceased by his heirs and L.RS.)

APPELLANT

Vs

Himmat Rasul Patel

RESPONDENT

Date of Decision : 10-03-1992

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1992) 3 BomCR 601 : (1992) 94 BOMLR 685

Hon'ble Judges : Yogeshwardayal, J;S. Ranganathan, J;Ramaswami, J

Bench : Full Bench

Judgement

S. Ranganathan, J.—This is an appeal from a judgment of the Bombay High Court dismissing a petition filed by "Dadu Rau Yelavade" (now represented by his legal representatives) under Article 227 of the Constitution of India.

2. One Anant Gopal Prabhu ("Prabhu", for short) was the owner of 2 acres 25 gunthas of land bearing Survey No. 54 in village Ingali in Hatakanangale Taluka of Kolhapur district. The lands were under the cultivation of one Rau, who was the father of the petitioner before the High Court. The landlord instituted proceedings u/s 31 read with Section 29 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter called "the Act") against the tenant Rau. During the pendency of these proceedings, Rau died and his tenancy rights were inherited by his four sons; Dadu (predecessor of the present appellants), Mahadu, Ganpati and Shripati. These proceedings came to an end eventually by an order dated 24.5.1961, on which date the petition u/s 29 read with Section 31 was dismissed. Subsequently, proceedings were initiated by the Tahsildar u/s 32-G of the Tenancy Act. This was sometime in 1969 and will be referred to later. In the meantime, on 27.4.1961, the landlord Prabhu had decided to sell the suit land to the fourth son of Rau, who effected a partition of the property and Mahadu, one of the other sons of Rau, sold his share in the suit land in favour of the present respondent Patel by a registered document dated May 11, 1966. In view of this, the proceedings u/s 32-G, initiated by the Tahsildar, came to an end with an

order of the Tahsildar declaring the fourth son of Rau as the purchaser. His order was passed on 21.12.1969: After discussing the questions whether the tenants were in lawful possession of the suit land, whether they were entitled to purchase the suit land and whether the purchase price fixed in the voluntary sale between Prabhu and Rau's fourth son was reasonable and whether the sale effected between the landlord and tenants could be regularised, the Tahsildar decided to regularise the purchase of the suit land by the tenants, and directed that a certificate u/s 32-M read with Section 43 of the Act should be issued to the tenants Dadu Rau and his brothers. In the course of his order, he also discussed the alleged sale in respect of Patel, on whom notice had been served and who had participated in the proceedings. He came to the conclusion that the sale effected by Mahadu in favour of Patel being contrary to law, was illegal and directed that his name should be removed from the revenue records.

3. In the meanwhile, the petitioner, one of the sons of Rau, had instituted a suit against Patel for an injunction restraining him from obstructing his possession of the property. Patel resisted the suit claiming to be the purchaser of share of Mahadu and, therefore, entitled to remain in possession as a co-owner alongwith the petitioner. In view of the rival contentions of the parties the Civil Court referred the following two issues for determination of the tenancy authorities as contemplated by provisions of Section 85-A of the Act:

(1) Was the plaintiff a tenant of the suit property and did he subsequently become its deemed purchaser?

(2) Is the sale deed by Mahadu to Patel invalid under the Act?

4. In the proceedings before the revenue authorities, the Tahsildar answered both questions in the affirmative. He held that the plaintiffs were the deemed purchasers of the land on 1.4.1959 and he also came to the conclusion that the transfer by Mahadu in favour of Patel was hit by the provisions of Section 43 of the Tenancy Act. According to him, therefore, Patel had no right or title to the portion of the land in suit which Mahadu had sold him. This order was confirmed in appeal on 23.10.71, by the Assistant Collector.

5. Patel thereupon filed a revision before the Revenue Tribunal which set aside the order of the authorities below and held that the sale deed by Mahadu in favour of respondent No. 1 was not invalid under the provisions of the Act. The Revenue Tribunal agreed that the sons of Rau became deemed purchasers only on 24.5.1961 and became actual purchasers only on 21.12.1969 when the sale in their favour was regularised u/s 32-M of the Act. However, in regard to the sale by Mahadu, it observed:

But, the important point to be gone into in this case is, whether the sale of such a land by Mahadu, one of the owners of deceased Rau, to Himmat was hit by the provisions of Section 43 of the Act. It is nobody's case that the sale to Himmat by Mahadu, was after 21.12.1969. According to Himmat, it is on 11.5.66. This is not challenged. It will be thus seen that this sale to Himmat, of his share in the

suit land by Mahadu is dated 11.5.66 long before Mahadu and his brothers came to be regarded as purchasers u/s 32 of the Act. Section 43 of the Act, according to me, applied to transfers subsequently effected by purchasers under Sections 32, 32-F, 31-1, 32-O, 33-G or 41-D. Similarly, restriction contained in Section 43-G of the Act, applied to transfers by persons, after the land was sold to them u/s 32-P or 64 of the Act. In this case, it is clear that selling his share in the property, Mahadu was not a landlord intending to sell the tenanted land. So a sale by him to Himmat could not be said to be a contravention of Section 64 of the Act. The point, whether Himmat Patel was an agriculturist or non-agriculturist or whether he was or was not an agriculturist labourer is not enquired into even if it is held for some time, that he was a person to whom the land could not be sold u/s 63 of the Act. But Mahadu ventured to do so. The sale by Mahadu would be at the most hit by Section 63 of the Act. This Section (43 of the Act) does not mention Section 63 of the Act. Therefore, it is not possible to uphold the findings of the first two Courts with regard to the transfer of a portion of land by Mahadu to Himmat Patel. This sale effected in favour of Himmat Patel by Mahadu in 1966 is of date prior to Mahadu, and his brothers came to be regarded as purchasers of the land u/s 32 of the Act.

We have seen that originally the sale in favour of Rau's sons by Prabhu was in contravention of Section 64 of the Act. But such sale is not covered by Section 43 of the Act. This view can be fortified by following in Special C.A. 605 of 61 referred to on page 179 of Tenancy Law Digest (reported and un-reported cases) by Gadgil, 1965. It is observed that to such a sale even, Section 43 of the Act does not apply. Such a sale, even if it is validated under proviso Section 84(2) cannot be regarded as a sale u/s 64 of the Act. Where a sale is made in favour of a tenant by the landlord in contravention of Section 64, it may be regularised by the Mamlatdar. Where the same is sold by the tenant to some other person, such a sale is valid and is not affected by provisions of Section 43 of the Act.

In this view of the matter, the Revenue Tribunal answered the questions referred by saying (a) that the plaintiff and his brothers had become deemed purchasers on the postponed day under the Act and (b) that the sale deed by Mahadu in favour of Patel was not invalid.

6. The present appellants preferred a petition under Article 227 of the Constitution. The High Court endorsed the conclusion of the Revenue Tribunal but on a ground somewhat different from the one on which the Tribunal allowed the revision petition. It was pointed out that the Revenue Tribunal had proceeded on the footing that the tenants (including Mahadu) had become purchasers of the suit land under the provisions of Section 32 of the Tenancy Act on May 24, 1961 when proceedings u/s 31 came to an end. But this ignored the fact that, during the pendency of the proceedings u/s 29 and 31 of the Act, the landlord and tenants by a private agreement had transferred the ownership of the property in favour of the tenants on 27.4.1961. The tenants, therefore, became owners not on 24.5.61 but on 27.4.61. Section 64 did not, in the opinion of the Court,

prohibit the landlord from selling his land to the tenants by a private agreement. It only required the owner, in case he desired to sell, to have a reasonable price fixed therefore by moving the Land Tribunal. This being so, the ownership rights of the tenants had been acquired not under the provisions of Section 32 of the Act but by virtue of a sale between the landlord and the tenants. Since the transfer in favour of the tenants was not one u/s 32, the provisions of Section 43 of the Act were not attracted by the sale of 11.5.1966. In this view of the matter, the revision petition before the High Court was also dismissed.

7. Dadu Rau is in appeal from the order of the High Court. Though the proceedings have had a chequered history, the issue before us is a very simple one; Does the sale by Mahadu to Patel on 11.5.66 confer on the latter any valid title to the land in question? The High Court has answered this question in the affirmative by upholding the sale by Prabhu to his tenants on 27.4.61. Sri Ganpule argues, and rightly in our opinion, that the High Court erred in holding that the sale in favour of the tenants was not affected by Section 64 of the Act. The High Court has over-looked the clear provisions of Section 64(8), which declare that any transfer by a landlord after tiller's day would be void. The tenants could not, therefore, have acquired any right or title under the sale deed executed by the landlords. It is no doubt true that ultimately the proceedings u/s 32-G went in their favour and the sale certificate issued in their favour was regularised. Though the order u/s 32-G purports to ratify the earlier transaction of sale by the landlord to the tenants, the transaction acquires its validity not by virtue of the sale deed of 27.4.1961 but only by virtue of the order u/s 32-M dated 21.12.1969. On 11.5.1966, the date of the sale to Patel presently impugned the tenants (including Mahadu) had no title to the property which they could validly convey in favour of Patel. That title vested in them only on 21.12.1969, when the order u/s 32-G was passed. This being so, the logic of the Tribunal and High Court that the transfer in favour of Patel was not of property acquired u/s 32 but of a property acquired by a voluntary process is not correct. As we have already pointed out, on the date of the sale deed in favour of Patel, the vendor had no title to the land in view of the provisions of Section 64(8). Even if the subsequent conferment of title on them by the order u/s 32-G be treated to date back to 24.5.61, still Mahadu, being a tenant who acquired title under the Act, his sale to Patel will fail in view of the provisions of Section 43(2) of the Act. We may indeed point out that this decision had already been given by the revenue authorities in the order dated 21.12.1969. There is a reference in the order of the Assistant Collector to an appeal claimed to have been preferred by Patel from this order but we are informed that no such appeal was filed or is pending. But this circumstance apart, Patel's claim cannot be upheld for the reasons given above.

8. We are, therefore, of the opinion that the High Court erred in upholding the order of the Revenue Tribunal. The orders of the High Court and the Revenue Tribunal are therefore set aside and the order of the lower revenue authorities restored. The questions referred to the tenancy courts by the Civil Court have to

be answered accordingly by saying that the sale deed by Mahadu in favour of Patel is invalid under the provisions of the Act. The appeal is disposed of accordingly and the matter will go back to the Civil Court for the disposal of the civil suit filed before it in the light of the answers given to the referred questions set out above. In the circumstances of the case we make no order regarding costs.