

(2002) 08 BOM CK 0092
In the Bombay High Court
Case No : Writ Petition No. 763 of 1980

Dattatraya Sakharam Kabadi

APPELLANT

Vs

Raghu Luma Bhalerao and Others

RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32, 43
Maharashtra Land Revenue Code, 1966 — Section 36A

Citation : (2003) 1 ALLMR 554 : (2003) 3 BomCR 234 : (2003) 2 BOMLR 142 :
(2003) 1 MhLj 174

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

Bench : Single Bench

Advocate : R.S. Apte, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—This writ petition, under Article 227 of the Constitution of India, takes exception of the judgment and order passed by the Maharashtra Revenue tribunal, Pune dated 15th December 1979 in MRT. P.STA III 1/79 (TFN B 22/79) and No. MRT P.STA III 2/79 (Ten B. 23/79). The suit land is situated at Survey No. 33 at village Padali, Taluka Junnar, District Pune. The respondent No. 2 became deemed purchaser of the suit land on the tillers day as he was cultivating the same as tenant. It is not in dispute that the respondent No. 2 is a tribal. Respondent No. 2 subsequently purchased the suit land u/s 32G of Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Tenancy Act) and sale certificate u/s 32M was issued in his favour by the Tenancy Authority, which is the conclusive proof that he has become owner of the suit land. It is the case of the petitioner that respondents Nos. 1 and 2 intended to sell the suit land and had approached the petitioner in that behalf. Pursuant to which parties made application to the Collector for permission to purchase the suit land. The Collector granted that permission in exercise of powers u/s 43 of the Tenancy Act. That order is at Exh. F of this writ petition which clearly specifies that the permission is granted u/s 43 of the Tenancy Act. After the

insertion of Section 36A of Maharashtra Land Revenue Code, 1966 (hereinafter referred to as the said Code) the Tahasildar, Junnar passed an order dated 6-3-1979 holding that the respondents Nos. 1 and 2 are tribals and the petitioner has purchased the suit land from them without obtaining prior permission of the Collector as required u/s 36A of the Code and therefore directed the petitioner to hand over possession of the suit land to the respondents Nos. 1 and 2. That order also provides for installment to be paid by the respondents Nos. 1 and 2 towards the price of the restoration of that land. This decision was challenged by the petitioner before the Tribunal by way of above numbered appeals. The only contention raised before the Tribunal was that the petitioner had already obtained permission of the Collector and therefore the transaction between the petitioner and respondents Nos. 1 and 2 cannot be invalidated. However, the Appellate authority has rejected that contention holding that the permission granted by the Collector was u/s 43 of Tenancy Act and, admittedly, there was no permission or sanction granted within the meaning of Section 36A of the Code. Accordingly both the appeals preferred by the petitioner came to be dismissed. Against that order the present writ petition has been filed under Article 227 of the Constitution of India.

2. The first contention raised on behalf of the petitioner is that in the present case sanction has been granted by the Collector and therefore the Tahasildar had no power to invalidate the transaction. There is no force in this contention. No doubt permission was granted by the Collector on 1-1-1975, but the same was u/s 43 of the Tenancy Act. Whereas, the Tahasildar has acted on the basis of mandate of Section 36A of the Code. It is therefore not possible to accept the above plea because Sub-section (3) empowers the Tahasildar to initiate suo motu action for restoration of possession of the occupancy to the tribal if the transfer was found to be without prior permission under that provision. That power is obviously coupled with the duty.

3. The next contention raised is that the Collector had granted sanction, albeit u/s 43 of Tenancy Act and that would enure in favour of the petitioner. Inasmuch as, the petitioner had made application to the Collector which clearly mentions that the respondents Nos. 1 and 2 were tribals from whom the petitioner was intending to purchase the land. However, there is no force in this submission, for the Collector has granted permission on 1-1-1975 only in the context of the requirements u/s 43 of the Tenancy Act. The petitioner ought to have approached the Collector specifically for permission in the context of Section 36A of the Code. Because the mandate of Section 36A requires that no transaction can be entered except with the prior permission of the Collector in that behalf. Moreover, from the proviso to Sub-section (1) thereto it is clear that before according sanction u/s 36A, the Collector is required to be satisfied that no tribal residing in the village in which the occupancy is situated or within 5 Kms thereof is prepared to take the occupancy from the owner on lease or by sale or otherwise. Admittedly, no such enquiry has been undertaken in this case before according permission u/s 43 of the Tenancy Act. If that be so, sanction accorded

to the petitioner for the purpose of Section 43 of the Tenancy Act would be of no avail. Whereas, sanction u/s 36A can be accorded only on compliance of the above said requirement, which has not been done in the present case.

4. It is next contended that the petitioner was not aware about the requirement of obtaining prior permission u/s 36A of the Code. In the first place, no such grievance has been made before the lower authorities. In any case, ignorance of law can be no excuse. Understood thus, there is no substance in this grievance as well.

5. The next contention raised on behalf of the petitioner is that Section 36A of the Code has no application to the present case because the respondents Nos. 1 and 2 were not the original owners. It is submitted that Section 36A would apply only when the land has been purchased from the tribal who were the original owners thereof. There is no substance in this contention. No doubt, the respondents Nos. 1 and 2 were not the original owners, but it is not in dispute that they became the deemed purchasers on the tillers day on 1-4-1957. The Tenancy Authority after undertaking necessary enquiry has issued certificate in favour of the respondents Nos. 1 and 2 u/s 32M of the Tenancy Act which is the conclusive proof that they are the owners of the land. What is relevant for our purpose is that when Section 36A became applicable to the suit land, the respondents Nos. 1 and 2 were the lawful owners thereof. If that be so, the fact that the respondents Nos. 1 and 2 were not the original owners would be of no consequence. It is not the case of the petitioner that the tribal has purchased the suit land from the non tribal after coming into force of the relevant provisions of Section 36A of the Code, after it became applicable to the suit land. Only in that situation perhaps this contention could have been pressed into service. Hence there is no force in this contention either.

6. The next grievance made on behalf of the petitioner is that the proceedings initiated by the authority below are arbitrary. It is submitted that the order passed by the Tahasildar, Junnar is unintelligible and that the appellate authority viz. the Tribunal has not considered the relevant fact relating to petitioner having spent huge amount for developing the said land after purchasing the same. In the first place it needs to be noted that order passed for giving effect to the provisions of Section 36A of the Code is dated 25-2-1979, as is noted by the appellate authority in its order. However, copy of that order dated 25-2-1979 is not placed on record. Going by the purported order at Exh. G produced by the petitioner, stated to be passed by the Tahasildar Junnar dated 6-3-1979, it seems, it only reproduces the operative order passed by the Authority. As observed earlier, the impugned order dated 25-2-1979 which was subject matter of challenge in the appeal before the Tribunal at the instance of the petitioner, has not been produced before this Court. Moreover, no grievance has been made before the appellate authority that the order of Tahasildar was unintelligible. Whereas, the only contention raised before the appellate authority, as noted by the tribunal, is that, the permission has already been granted by the Collector u/

s 43 of the Tenancy Act which was substantial compliance of the requirement of Section 36A of the Code. Moreover, the grievance made in the memo of writ petition as can be seen from para 8 thereof is that it was argued before the Appellate Authority that the petitioner had purchased the land after obtaining permission u/s 43 of the Tenancy Act. No other grievance has been made. It is, therefore, not possible to accept the argument now advanced that the authorities below have not considered all the aspects of the matter urged before it. Moreover, the fact that the petitioner had purchased the suit land for a sum of Rs. 7,000/- or that the petitioner has thereafter spent huge amount for developing the said land is of no consequence. Under the Scheme of Section 36A of the Code, the authorities are obliged to restore the land to the tribal on requiring the tribal to pay compensation to the extent of 40 times of the assessment of the said land and nothing more. All other considerations would be irrelevant for making an order u/s 36A of the Code. Accordingly even this grievance made by the petitioner is devoid of merits.

7. The learned Counsel for the petitioner has next relied upon the decision of the Apex Court reported in 7995 Supp. (2) SCC 549 Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde and Anr. However, that decision would be of no avail to the petitioner. The learned Counsel has pressed this decision to support the proposition that the orders passed by the authority below cannot be sustained because they are not in conformity with the requirement of law. As observed earlier, this grievance has not been made before the appellate authority and that no specific plea has been taken in the writ petition in this behalf. The learned Counsel for the petitioner concedes this position. If that be so, it is not necessary to go into that aspect of the matter. In any case, no grievance is made about the decision making process followed by the appellate authority. Besides the above contentions no other arguments was advanced before this Court.

Accordingly, the petition is devoid of merits. The same is, therefore, dismissed with costs all throughout Rule discharged.