(1996) 07 GUJ CK 0006

In the Gujarat High Court

Dhanlaxmiben APPELLANT

Vs

Hasumiya Akbarmiya Malek and Another RESPONDENT

Date of Decision : 25-07-1996

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 10A, 29, 31, 32, 32G
Constitution of India, 1950 — Article 226, 227

Citation : (1998) 1 GLR 705

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Judgement

J.N. Bhatt, J.—What is the real purport, interpretation and then application of the provisions of Sections 32G(4), 32H and 63A(3) of the Bombay Tenancy and Agricultural Lands Act, 1948 (''Bombay Tenancy Act'' for short) is the issue to be resolved in this petition under Articles 226 and 227 of the Constitution of India.

2. The petitioner has questioned the legality and validity of the order passed by the Deputy Secretary, Revenue Department, Government of Gujarat in not considering the review application filed by the petitioner by his order dated 8-11-1993.

3. One Chaturbhai Muljibhai purchased land bearing survey number 703 situated in the sim of village Kalsar, District Kheda (''disputed land'' for short). It was purchased by registered sale deed for Rs. 3,000/-. Name of Chaturbhai was mutated in the record of rights. Upon death of Chaturbhai, the disputed land came to be inherited by Chandanben Chaturbhai, Amratlal Chaturbhai and the present petitioner Dhanlaxmiben.

4. Name of the first respondent was entered in the revenue record as a tenant in January 1957 and at the relevant point of time, the original landlord Chaturbhai was lunatic and, therefore, the sale was postponed. Thereafter, proceedings under Sees. 29 and 31 of the Bombay Tenancy Act had been started for obtaining possession from the tenant and ultimately, the same came to be rejected against which an appeal was preferred which was also dismissed by the

Deputy Collector by his order dated 22-9-1981. The Deputy Collector had also directed the Mamlatdar and A.L.T. to fix the price under the provisions of Section 32G of the Bombay Tenancy Act. A revision application against the decision in appeal came to be filed before the Gujarat Revenue Tribunal which also came to be dismissed. Thus, the order of the Deputy Collector directing to fix purchase price came to be confirmed.

5. The Mamlatdar and A.L.T. in Tenancy Case No. 171 of 1981 by his order dated 30-12-1981 fixed the purchase price as well as price of the trees. The petitioner being aggrieved by the said order of fixation of price of the land to be paid by the tenant, went in appeal before the Deputy Collector, Kheda. By an order in appeal, the matter came to be remanded for disposal in accordance with law after hearing the parties by a judgment and order of the Deputy Collector dated 15-12-1982.

6. The first respondent had preferred a revision application before the G.R.T. which came to be rejected by the Tribunal holding that the Tribunal had no jurisdiction to hear the revision against the order of the Deputy Collector. The Tribunal, therefore, returned the papers to the first respondent. The first respondent thereafter filed a revision application before the Special Secretary. The Special Secretary allowed the revision and partly modified the order of the Deputy Collector by judgment dated 1-6-1990.

7. According to the case of the petitioner, there was mistake in calculation of trees and price of the trees was not properly considered while passing the order in revision by the Special Secretary. Therefore, the petitioner preferred a review application before the Special Secretary on 18-12-1991. However, the review application came to be rejected holding that it was not maintainable. Hence, this petition under Articles 226 and 227 of the Constitution of India praying for a direction to the Deputy Secretary, Revenue Department to decide the review application on merits.

8. It could very well be seen from the facts of the present case that the purchase price for the land in question to be paid by the tenant came to be fixed at Rs. 2,000/- by the Mamlatdar and A.L.T. An amount of As. 1,000/- came to be ordered to be paid to the landlord for price of trees grown by him. This order of the Mamlatdar came to be partly confirmed in appeal. In other words, price fixed for land came to be confirmed but the price fixed for trees was required to be reconsidered and, therefore, remand order was passed. Upon remand, price of trees came to be fixed at Rs. 1,050/- for five trees.

9. The Tribunal under the Bombay Tenancy Act is empowered to determine price of land to be paid by the tenant u/s 32G. In a given case, if the tenant is ready to purchase the land, the Tribunal has to fix purchase price of such land u/s 32G(4). Section 32G(4) reads as under:

32G. xxx xxx xxx

(4) If a tenant is willing to purchase, the Tribunal shall, after giving an opportunity to the tenant and landlord and all other persons interested in such land to be heard and after holding an inquiry, determine the purchase price of such land in accordance with the provisions of Section 32H and of Sub-section (3) of Section 63A:

Provided that where the purchase price in accordance with the provisions of Section 32H is mutually agreed upon by the landlord and the tenant, the Tribunal after satisfying itself in such manner as may be prescribed that the tenant''s consent to the agreement is voluntary may make an order determining the purchase price and providing for its payment in accordance with such agreement.

The Tribunal is empowered to hold an inquiry and determine the purchase price of land in accordance with provisions of Section 32H and Sub-section (3) of Section 63A.

10. Section 32H provides the mechanism for reckoning and determining the purchase price by the Tribunal to be paid by the tenant. The Tribunal is required to consider various aspects and circumstances while fixing the price. Section 32H reads as under:

32H. (1) Subject to the additions and deductions as provided in Sub-sections (1A) and (1B), the purchase price shall be reckoned as follows, namely-

(i) in the case of a permanent tenant who is cultivating the land personally the purchase price shall be the aggregate of the following amounts, that is to say-

(a) an amount equal to six times the rent of the land;

(b) the amount of the arrears of rent, if any, lawfully due on the Tiller''s Day or the postponed date;

(c) the amounts, if any, paid by or recovered from the landlord as land revenue and cesses referred to Clauses (a), (b), (c) and (d) of Sub-section (1) of Section 10A, in the event of the failure on the part of the tenant to pay the same;

(ii) in the case of other tenants, the purchase price shall be the aggregate of the following amounts, that is to say-

(a) such amount as the Tribunal may determine not being less than 20 times the assessment and not more than 200 times the assessment;

(b) the value of any structures, wells and embankments constructed and other permanent fixtures made and trees planted by the landlord on the land;

(c) the amount of the arrears of rent if any lawfully due on the Tiller''s Day or the postponed date;

(d) the amounts, if any, paid by or recovered from the landlord as land revenue and other cesses referred to in Clauses (a), (b), (c) and (d) of Sub-section (1) of Section 10A, in the event of the failure on the part of the tenant to pay the same.

Explanation (1): For the purpose of calculating the price under this sub-section, the amount of water rate, if any, levied u/s 55 of the Bombay Land Revenue Code, 1879, and included in such assessment, shall be excluded.

Explanation(2): for the purposes of this sub-section the expression shall have the meaning assigned to it in section 8, (1A) Where a tenant to whom Sub-section (I) and (2) of Section 10A do not apply, has, after the commencement of the Bombay Tenancy and Agriculatural Lands (Amendment) Act, 1955, paid in respect of the land held by him as tenant, land revenue and other cesses referred to in Sub-section (1) of that section on account of the failure of the landlord to pay the same, a sum equal to the total amount so paid by the tenant until the date of the determination of the purchase price, shall be deducted from the aggregate of the amounts determined under Sub-section (1).

(IB)(a) On the amount arrived at in accordance with the provisions of Sub-section (1) and (1A) there shall be calculated interest at 4V4 percent per annum for the period between the date on which the tenant is deemed to have purchased the land u/s 32 and the date of the determination of the purchase price.

(i) The amount of interest so calculated shall be added to, and

(ii) the amount of rent, if any, paid by the tenant to the landlord and the value of any products of trees planted by the landlord if such products are removed by the landlord during the said period shall be deducted from the amount so arrived at.

(2) The State Government may, by general or special order, fix different minima and maxima for the purpose of Sub-clause (a) of Clause (ii) of Sub-section (1) in respect of any kind of land held by tenants in any backward area. In fixing such minima and maxima, the State Government shall have regard to the rent payable for the land and the factors specified in Sub-section (3) of Section 63A.

While fixing the price of land to be paid by the willing tenant, the Tribunal has also to consider the provisions of Section 63A which provides for reasonable price of land to be fixed for the purpose of its sale and purchase. What facts and circumstances the Tribunal should take into account are enumerated therein. Section 63A reads as under:

63A. (1) Except as otherwise expressly provided in this Act, the price of any land sold or purchased under the provisions of this Act shall consist of the following amounts, namely:

(a) an amount not being less than 20 times the assessment levied or leviable in respect of the land and not being more than 200 times such assessment excluding, however, for the purpose of calculation, the amount of water rate, if any, levied u/s 55 of the Bombay Land Revenue Code, 1879 and included in such assessment.

(b) the value of any structures, wells and embankments constructed, permanent fixtures made and trees planted on the land.

(2) Where under the provisions of this Act any land is sold or purchased by mutual agreement, such agreement shall be registered before the Mamlatdar, and the price of the land shall, subject to the limits specified in Sub-section (1), be such as may be mutually agreed upon by the parties. In the case of disagreement between the parties, the price shall be determined by the Tribunal having regard to the factors mentioned in this section.

(3) Where in the case of a sale or purchaese of any land under this Act, Tribunal or the Mamlatdar has to fix the price of such land under this Act, the Tribunal or the Mamlatdar, as the case may be, shall, subject to the quantum specified in Sub-section (1), fix the price having regard to the following factors-

(a) the rental value of lands used for similar purposes in the locality;

(b) the structures and wells constructed and permanent fixtures made and trees planted, on the land by the landlord or tenant;

(c) the profits of agriculture of similar lands in the locality;

(d) the prices of crops and commodities in the locality;

(e) the improvements made in the land by the landlord or the tenant;

(f) the assessment payable in respect of the land; and

(g) such other factors as may be prescribed.

Explanation: For the purposes of this section, the expression ''assessment'' shall have the meaning assigned to it in Section 8.

11. After having taken into consideration the facts and circumstances, the statutory authority under the Bombay Tenancy Act has fixed the price of the disputed land to be paid by the tenant at Rs. 2,000/- and price of five trees to be paid by the tenant to the landlord at Rs. 1,050/-. This finding is assailed in this petition. The petitioner filed the review petition before the Deputy Secretary, Revenue Department to review his earlier order in respect of fixing of price of trees. The Deputy Secretary rejected the application holding that he has no power of review. Reliance is placed on the order dated 9-3-1992 passed by the Special Secretary, Revenue Department. In fact, it is not an order but it is a yadi (note) whereby the Deputy Collector was directed to offer remarks pursuant to the review application and then to fix purchase price u/s 32G(4) In fact, it appears, it was an administrative letter and not a judicial order. As such, the Special Secretary, after receipt of review application and before its decision, wanted to ascertain certain facts. Therefore, he had written a note to the Deputy Collector. However, such note cannot be said to be an order or decision. Therefore, the contention that rejection of review application holding that the authority had no power to review is contrary to the order dated 9-3-1992, is not

acceptable and not maintainable. What was written on 9-3-1992 was not for the purpose of ascertaining certain information from the Deputy Collector so as to decide the review application on merits. However, on 8-11-1993, review application came to be rejected by the Deputy Secretary, Revenue Department holding that there was no power of review. This finding of the Deputy Secretary cannot be said to be perverse, illegal or unjust requiring interference of this Court.

12. However, it is true that in the earlier order, there was mention of ten trees and thereafter, in the subsequent order, price is fixed for five trees only. Under the provisions of law, amount by way of price of trees grown by the landlord while fixing the price of such land to be paid to the tenant is required to be ascertained. Of course, finding of fact cannot be assailed in a petition under Articles 226 and 227 of the Constitution of India where jurisdiction sweep is very much circumscribed. Since there is apparent error in calculation and considering the price of trees for which price is fixed to be paid to the landlord, it would be necessary and appropriate to direct the first respondent to pay a lumpsum amount of Rs. 1,500/- by way of price of remaining five trees, in the larger interest of justice, to the petitioner who is also a widow having minor children, within a period of two months from today. This direction is issued while dismissing this petition, keeping in mind the unfortunate position of the petitioner who is a widow having minor children and who has not been awarded price for remaining five trees on account of some factual mistake.

13. In view of the aforesaid facts and circumstances and the above direction, this petition is rejected leaving the parties to bear their own costs. Notice is discharged.

