
(2009) 07 BOM CK 0186

In the Bombay High Court

Case No : Writ Petition No's. 4891 and 4892 of 1991

Dhanwant Parashram Kadam

APPELLANT

Vs

Smt. Putlabai Gulab Kadam and Others

RESPONDENT

Date of Decision : 02-07-2009

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1965 — Section 32G, 32M

Citation : (2009) 07 BOM CK 0186

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : L.S. Gaikwad, for the Appellant; A.J. Joshi, for the Respondent

Judgement

Nishita Mhatre, J.—These two petitions have been filed against the order passed by the Maharashtra Revenue Tribunal in MRT.NS.I 10/91 (Tnc.8.17/91). The undisputed facts in the present case are as follows:

2. Respondent No. 3 (against whom the petition has been dismissed) was the owner of the land bearing gat No. 59/7 admeasuring 1 hectare 80 acres and gat No. 556 admeasuring approximately 8 hectares. One Hari Narayan Kadam the grandfather of the petitioner herein was the tenant of the land on 1.4.1957 i.e. on the tiller's day. Proceedings u/s 32G of the Bombay Tenancy and Agricultural Lands Act commenced in 1965. However, Respondent No. 3 at that point of time was a minor and therefore, the consideration of the enquiry u/s 32G for half of the land was postponed. The enquiry in respect of half of the land was completed on 11.1.1965 by the Agricultural Lands Tribunal, Koregaon (for short, hereinafter referred to as the "ALT") in case No. 467 of 1965. The ALT held that Hari Narayan Kadam was the sole tenant of both the lands on tiller's day and, therefore was the deemed purchaser and owner of the lands. The purchase price was fixed and paid to the original owner. Hari Narayan Kadam died on 15.4.1965. However, during his lifetime, he informed the Tehsildar that the name of his elder son Parshuram should be included in the record of rights as he wished to give his land to his eldest son, Parshuram. Parshuram died in 1977. The petitioner is the

son of Parshuram.

3. Since the enquiry in respect of the remaining half of the land was yet to be conducted it was commenced in 1987. It appears that the case number allotted for the enquiry was the same as was allotted for the other half of the land being Case No. 467 of 1965. This was so despite the fact that the enquiry was commenced in 1987 for that half of the land. It appears that the ALT, Koregaon, without notice to all the heirs of the Hari Narayan Kadam who was declared a tenant of the entire land, commenced proceedings in respect of the second half of the land. This enquiry had been postponed as stated above because Respondent No. 3 the land owner was a minor when the enquiry u/s 32G in respect of the first half of the land was conducted in 1965. It appears that the ALT proceeded with the enquiry without considering the fact that Hari Narayan Kadam was declared the tenant of the land much earlier. Notice was only issued to one Gulab Hari Kadam, one of the four sons of Hari Narayan Kadam. Accordingly, the enquiry was completed when only Respondent No. 3 and Gulab Hari Kadam were present. The ALT held, by relying on the statement of Respondent No. 1 i.e. the wife of Gulab Hari Kadam, that the latter was the tenant of the land. The purchase price was fixed on 30.10.1987. Respondent No. 1 accordingly, got her name mutated in the record of rights by mutation entry No. 16112. It appears that thereafter the petitioner was dispossessed of the lands in his possession for which the petitioner has adopted other remedies for redressal of his grievance.

4. The order passed by the ALT on 30.10.1987 was challenged by the petitioner by preferring an appeal No. 62 of 1990 before the Sub-Divisional Officer. The Petitioner's uncle Rajaram i.e. Respondent No. 2 herein, another son of Hari Narayan, also preferred an appeal being Appeal No. 69 of 1990 before the SDO. It was contended in both the appeals that Hari Narayan being the tenant on the tiller's day was entitled to purchase the property after the enquiry was conducted u/s 32G. Accordingly he had in fact purchased half the property and it was only because Respondent No. 3 was a minor in 1965 when the enquiry was conducted that the enquiry in respect of the remaining half of the land was postponed.

5. The SDO allowed both the appeals by concluding that the order passed by the ALT on 30.10.1987 was required to be set aside. The SDO found that all the heirs of Hari Narayan, the original tenant had not been noticed and heard by the ALT and, therefore, set aside the order.

6. Aggrieved by this decision of the SDO, respondent No. 1 preferred a revision before the MRT. The Tribunal upheld the contention of Respondent No. 1 and set aside the order passed by the SDO. The Tribunal concluded that the issuance of a certificate u/s 32M in the name of Gulab was justified, although the purchase price was paid by Parshuram, because there was a partition and alternate arrangement made between the sons in which survey No. 131/2 was allotted to the shop of Parshuram. The Tribunal therefore concluded that there was a

miscarriage of justice against Respondent No. 1. It set aside the order passed by the SDO on 28.12.1990 and confirmed the order passed by the ALT on 30.10.1987.

7. The main contention of the petitioner as well as the Respondent No. 2 is that no notice was issued to all the heirs of Hari Narayan, the original tenant, before the Section 32G enquiry was conducted in respect of half of the land in 1987. It is contended that the enquiry was postponed only because Respondent No. 3 the original land owner was a minor. It is further submitted that when the order passed by the ALT on 11.1.1965 by which Hari Narayan was declared a tenant of the entire land, the question of accepting Gulab as the tenant for half the portion of the land does not arise. Hari Narayan has been accepted as a tenant for the entire land and therefore unless there were any proceedings by which Gulab became the tenant of half the land, the order of the MRT was unsustainable.

8. It is now well settled that before the enquiry u/s 32G can be conducted and the price of the land is determined, notice must be issued to all persons interested therein. Admittedly, Hari Narayan who was declared the tenant of the entire land had four sons and therefore when the enquiry u/s 32G was held in respect of half the land in 1987 it was incumbent on the authorities to issue notice to all his heirs. The order of the ALT and the Tribunal thus cannot be sustained. There is no whisper about any partition of the land in the order of ALT. Therefore, it is surprising that the Tribunal has referred to such a partition.

9. In these circumstances, the impugned orders in both the petitions are set aside. The matters are remanded to the ALT. The ALT shall conduct an enquiry u/s 32G in respect of half the land after giving adequate notice to all the heirs of Hari Narayan. That enquiry be conducted as expeditiously as possible.

10. Rule made absolute accordingly. No costs.