

(2003) 07 BOM CK 0053

In the Bombay High Court

Case No : Writ Petition No. 3911 of 1989 of 1989 and W.P. No's. 516 and 1581 of 1990

Digambar Dharma Deshmukh

APPELLANT

Vs

Shri Rustam Apparao Deshmukh, since deceased through his L.R.s.
 Shri Rustom Apparao Deshmukh, since deceased through his legal heirs and Others Vs Shri Nana Tatya Shinde and Another
 Shri Rustom Apparao Deshmukh, since deceased through his L.R.s. Vs Shri Nana Tatya Shinde since deceased through his legal heirs and Another

RESPONDENT

Date of Decision : 04-07-2003

Acts Referred:

Citation : (2003) 4 ALLMR 558 : (2004) 1 BomCR 799 : (2003) 4 MhLj 842

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

Bench : Single Bench

Judgement

A.M. Khanwilkar, J.—These three set of writ petitions can be heard and decided together as the subject matter and the parties are common. The land in question is Gut No. 184 admeasuring 21 Acres 11 Gunthas situated at Wadasyinge, Taluka Madha, District Solapur. It is undisputed that the land was vatan land. The Watandar of the said land was one Rustum Deshmukh. The land has been subsequently regretted in favour of Rustum Deshmukh and, therefore, he became the absolute owner thereof. According to Rustum, Nana Tatya Shinde was cultivating the suit land as a tenant. But he surrendered his possession sometime in 1955. It appears that, later on Nana Tatya Shinde disputed the surrender, because of which an order was passed by the appropriate authority on 30.3.1958, against the owner Rustum Deshmukh, to restore the possession of the land to Nana Tatya Shinde. That order was challenged by Rustum Deshmukh. That appeal was allowed and the matter was remanded to the first authority. Before the first authority, however, Nana Tatya Shinde appeared and made statement that he was not interested in restoration of the land. In view of that statement, authority dropped the restoration proceeding on 16.2.1963. With this

order the land remained in possession of Rustum Deshmukh.

2. In the mean time, Rustum Deshmukh landlord had already inducted one Digambar Deshmukh as a tenant in the suit land. The revenue record clearly establishes that on the Tiller's day i.e. on 1.4.1957 Digambar Deshmukh was lawfully cultivating the suit land on crop share basis. The said Digambar Deshmukh claims that he was in lawful cultivation of the suit land on 1.4.1957 as well as when the regrant of the land was made in favour of the Rustum Deshmukh. It is his case, therefore, he became deemed purchaser by operation of law and entitled to purchase the suit land. It is also seen that Digambar Deshmukh had given intimation u/s 32(O) and started proceeding under Section-32G for purchase of the suit land. It appears that Digambar Deshmukh made statement in those proceedings that he was not willing to purchase the suit land. Even Nana Shinde who had appeared in those proceedings did not express his willingness to purchase the suit land. In the circumstances, the authority proceeded to declare that the sale/purchase in respect of the suit land has become ineffective and, therefore, directed the occupants to restore the possession of the suit land to the owner u/s 32-P of the Act. That order, u/s 32-P in favour of Rustum Deshmukh came to be passed on 30.3.1967. Against this order, suo motu revision proceedings were initiated some time in July, 1967. The Revisional authority by order dated 30.3.1969 remanded the matter to the first authority holding that the authority could not have passed order u/s 32P. Accordingly, the matter stood remanded to the first authority. The first authority after remand, on enquiry found that, Digambar Deshmukh was in lawful cultivation of the suit land on the relevant dates and, therefore, became deemed purchaser and entitled to purchase the suit land from the owner. The first authority therefore, proceeded to determine the purchase price in respect of the suit land. Admittedly this order has not been challenged by the owner Rustum Deshmukh himself. In other words, Rustum Deshmukh acquiesced of this order for which reason Digambar Deshmukh was entitled to purchase the suit land. However, that process was interdicted because of the appeal preferred by Nana Shinde, the erstwhile tenant. Nana Shinde challenged the order passed in favour of Digambar Deshmukh and instead claimed that he was entitled to be declared as deemed purchaser. That appeal came to be dismissed by the Appellate Authority on 30.4.1985. Against this decision, Nana Shinde filed revision application. Even the owner Rustum Deshmukh filed another revision application before the Maharashtra Revenue Tribunal but against the remand order passed by the suo motu revision dated 30.3.1969. The Revisional Authority has rejected the revision preferred by Rustum Deshmukh, which challenged the remand order dated 30.3.1969. In so far as Revision filed by Nana Shinde is concerned, the Revisional authority by the impugned Judgment and order dated 12.8.1988 thought that further enquiry was necessary and remanded the matter for fresh adjudication to the first authority. The Revisional authority has, however, clearly found that the revenue records would indicate that Digambar Deshmukh was in lawful possession and cultivating the suit land on the relevant dates.

3. Accordingly, the aforesaid remand order has been challenged in three sets of writ petitions filed before this court. The owner Rustum Deshmukh has filed writ petition challenging the order passed by the Revisional authority dismissing his revision which had taken exception to the order dated 30.3.1969. The owner Rustum Deshmukh has filed another writ petition also challenging the remand order passed by the Tribunal dated 12.8.1988, whereas tenant Digambar Deshmukh has challenged the same remand order passed by the Tribunal dated 12.8.1988 on the ground that there was no occasion for the Tribunal to remand the matter for further enquiry.

4. Having considered the rival submissions, the position that emerges from the record is that, in so far as Rustum Deshmukh the owner is concerned, he had received possession of the suit land from the erstwhile tenant Nana Shinde and that action became final with the statement made by Nana Shinde in the restoration proceeding that he was not interested in restoration of the suit land. Moreover, order has been passed by the competent authority u/s 32P of the Act declaring sale/purchase of the suit land having become ineffective. Besides, the declaration made by the competent tenancy authority in favour of Digambar Deshmukh that he was in lawful cultivation of the suit land on the relevant dates and, therefore, became deemed purchaser, has been allowed to become final by Rustum Deshmukh-the owner. That order was passed by the Competent Tenancy Authority on 27.9.1973 pursuant to the remand order passed by the Revisional authority on 30.3.1969. Indeed, the owner Rustum Deshmukh had challenged the said remand order dated 30.3.1969. But, to my mind, that challenge has been rightly negated by the Tribunal in the impugned Judgment- because Rustum Deshmukh acquiesced of that order by participating in the remand proceedings and after proper enquiry order has been passed on 27.9.1973. In such situation, it was not open to Rustum Deshmukh to challenge the remand order dated 30.3.1969; whereas, it will have to be held that the remand proceedings were properly and legitimately conducted by the first authority and the order passed on 27.9.1973 in favour of Digambar Deshmukh was in accordance with law. Interestingly, Rustum Deshmukh-the owner did not think it necessary to challenge the order dated 27.9.1973 and this position is not in dispute at all. If that order remained unchallenged, it necessarily follows that, it is not open to Rustum Deshmukh to now challenge the correctness of the order dated 27.9.1973 by taking advantage of the remand order passed by Maharashtra Revenue Tribunal in the revision preferred by erstwhile tenant Nana Shinde. Understood thus, the revision preferred by Rustum Deshmukh against the order dated 30.3.1969, to my mind, has been rightly rejected by the Revisional authority. Similarly, Rustum Deshmukh will not be entitled to question the correctness of the order dated 27.9.1973 passed in favour of Digambar Deshmukh, having failed to challenge that order by way of statutory appeal. In that sense, it is not open to Rustum Deshmukh to institute writ petition questioning the correctness of the order passed by the Revisional authority dated 12.8.1988. On the other hand, Rustum Deshmukh-the owner will be bound by

the order dated 27.9.1973 which is in favour of Digambar Deshmukh. This is on the principle that, the finality of the order will have to be observed. Even on this reasoning the Tribunal could not have remanded the matter to the first authority as has been done by the impugned order.

5. In so far as Nana Shinde, the Ernst while tenant is concerned, it is seen that he had surrendered possession in 1955. That position is conceded by Nana Shinde and in fact, he went a step further and stated that he was not interested in restoration of the suit land. With that statement, which has remained unchallenged rather acted upon, his right, title and interest in the suit land came to an end. Moreover, the competent authority passed order u/s 32P of the Act during which proceedings once again Nana Shinde showed his unwillingness to purchase the suit land. Besides, the revenue record clearly establishes that, Digambar Deshmukh was in possession of the suit land on the relevant dates. It has been so held even by the Tribunal in the impugned decision. In that view of the matter, Nana Shinde has no casual connection to assail the order passed by the first authority dated 27.9.1973 in favour of Digambar Deshmukh. The appeal filed by Nana Shinde was incompetent on this count alone. None the less, the Appellate authority has gone into the efficacy of the rival contentions and rejected the claim of Nana Shinde. Even the Tribunal having accepted that Digambar Deshmukh was found to be lawfully cultivating the land on the relevant dates, then there was no occasion to remit the case for further enquiry having regard to the fact situation of the present case. And that cannot be countenanced, for the inevitable is that the said Digambar Deshmukh would become deemed purchaser of the suit land and entitled to purchase the same from the owner Rustum Deshmukh.

6. In other words, neither Rustum Deshmukh nor Nana Shinde could be permitted to challenge the order passed by the Tenancy authority on 27.9.1973 in favour of Digambar Deshmukh. For the above reasons, the remand order passed by the Revisional authority, by the impugned Judgment and order dated 12.8.1988, cannot be sustained either on facts or in law.

7. On the above reasoning, the writ petition filed by Digambar Deshmukh would succeed as the impugned Judgment and order will have to be set aside. As a necessary consequence, the two writ petitions filed by the successor in title of the said Rustum Deshmukh are dismissed. The order passed by the first authority dated 27.9.1973 as confirmed by the Appellate authority on 30.4.1985 is accordingly restored. No order as to costs.