

(2003) 09 BOM CK 0068

In the Bombay High Court

Case No : Writ Petition No. 1324 of 1990

Gajanan Nagu Patil

APPELLANT

Vs

Nama Laku Ughada and Assistant Collector

RESPONDENT

Date of Decision : 03-09-2003

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G, 32M

Constitution of India, 1950 — Article 227

Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 3

Citation : (2004) 2 ALLMR 477

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

Bench : Single Bench

Advocate : S.C. Karnadikar, for the Appellant; None, for the Respondent

Judgement

A.M. Khanwilkar, J.—This Writ Petition under Article 227 of the Constitution of India takes exception to the Judgment and Order passed by the Member, Maharashtra Revenue Tribunal, Mumbai dated January 24, 1990 in Appeal No. Revision Tribunal 16 of 1989. The land in question admeasures about 2 acres 10 gunthas situated at Village Dhamani, in Tahsil Panvel. The land was originally owned by Mr. M.E. Amir and Mr. A.K. Amir. Proceedings u/s 32G of the Bombay Tenancy and Agricultural Lands Act were initiated in respect of the suit land on the assumption that one Rama Kanu Ughada was lawfully cultivating the suit land as a tenant on the tillers day. On that basis, the Tenancy Authority by Judgment and Order dated 24th January, 1990 declared that the said Rama Kanu Ughada is entitled to purchase the suit land by determining the purchase price. However, it is not in dispute that Rama Kanu Ughada did not pay the purchase price determined by the said order, so as to obtain Certificate u/s 32M of the Tenancy Act. Moreover, sometime in 1970, said Rama Kanu Ughada made an application before the Tahsildar stating that he was not the tenant of the suit land, whereas, the Petitioner was actually tenant cultivating the land for 15 to 16 years. On that basis, he requested to cancel the earlier order determining the purchase price in his favour and instead, fix the purchase price to be paid by the Petitioner herein.

That Application was granted by the Tahsildar on 14th July, 1970. On the basis of statement made by the landlords, the said Rama Ughada as well as the Petitioner, the earlier order in favour of the said Rama Ughada was set-aside. Consequently, order for deleting the name of Rama Ughada from the record of rights was passed. On 31st July, 1970, the Tahsildar proceeded to determine the purchase price to be paid by the Petitioner, so as to purchase the suit land as deemed purchaser. Pursuant to that order, the Petitioner deposited purchase price and as a consequence of which, Certificate u/s 32M of the Act was issued in favour of the Petitioner. By issuance of certificate u/s 32M of the Act, there is presumption that the Petitioner has become owner of the suit land. By this process, the land which was originally owned by Mr. M.E. Amir and Mr. A.K. Amir stood transferred in favour of the Petitioner. It is nobody's case that the erstwhile owners were the tribals. However, the Assistant Collector initiated suo-motu proceedings in the year 1988 in exercise of powers u/s 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 on the assumption that the suit land has been transferred by the tribal namely Rama Kanu Ughada in favour of the Petitioner - a non-tribal. Various objections were raised before the Assistant Collector on behalf of the Petitioner, including that the suo-motu action was beyond limitation and in any case, not within reasonable time, for which reason, it cannot be proceeded further. It was also contended that the land in question has been transferred in favour of the Petitioner directly from the original owner, who was a non-tribal, and therefore, the provisions of the Act will have no application in such a situation. The Assistant Collector, however, by Judgment and Order dated 17th April, 1989 directed the Petitioner to hand over possession of the suit land to the natural heir of the said Rama Kanu Ughada, who had since died and the purchase price be paid to the petitioner Gajanan Patil by the said natural heir of deceased Rama Kanu Ughada, to whom the land shall stand restored. The justification for passing such a drastic order is that the land ought to have been transferred in favour of the said Rama Kanu Ughada pursuant to order dated 21st January, 1967 and since that order has been recalled by the Tenancy Authority, which was in excess of jurisdiction, the subsequent proceedings will have to be ignored. The Authority proceeded on the assumption that the transfer of suit land in favour of the Petitioner was by the Tribal on the above reasoning. Accordingly, order of restoration came to be passed. The Petitioner carried the matter in appeal before the Maharashtra Revenue Tribunal. The Tribunal by the impugned Judgment and Order has affirmed the view taken by the Assistant Collector and dismissed the appeal. It is against this concurrent decision that the present Writ Petition has been filed under Article 227 of the Constitution of India.

2. Learned Counsel for the Petitioner contends that none of the reasons given by the two authorities below can be sustained either on facts or in law. He submits that in fact, suo motu action was initiated almost after lapse of twelve years from the transfer in favour of the Petitioner and therefore, the same was impermissible having regard to the principle underlying in decision reported in

Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, . Learned Counsel further submits that in any case, the provisions of Act of 1974 have no application to the fact situation of the present case because the transfer in favour of the Petitioner is not by the tribal Rama Kanu Ughada but by the original owners, who were non-tribals. Besides, learned Counsel submits that the Courts below have proceeded to decide the matter on the basis of surmises and conjectures that the Petitioner must have instigated Rama Kanu Ughada - the tribal, to file application for recall of the earlier order in his favour dated 21st January, 1967. That was not the case set-up by the private Respondent before this Court. Besides, learned Counsel contends that the Court below has proceeded on the assumption that the transfer of suit land was effected by the Tribal in favour of the Petitioner who was a non-tribal, which supposition was factually inappropriate. Although Respondents have been served, none appears.

3. Having perused the relevant records and considering the above submissions, I have no hesitation in allowing this Writ Petition. The Petitioner is justified in contending that the suo-motu action initiated by the Assistant Collector in exercise of powers u/s 3 of the Act of 1974 is impermissible, since it was so invoked after lapse of more than 12 years from the date on which the Act of 1974 came into force. In the present case, the transaction was effected in the year 1970, whereas, the suo-motu action was initiated in the year 1988. The Act of 1974 came into force in the year 1974. Reliance has been rightly placed on the decision of the Apex Court reported in Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, , when the Statute does not provide for any particular time, in which action should be initiated, then, it has to be initiated within the reasonable time. Obviously, twelve years period cannot be said to be reasonable time, so as to justify the suo-motu action initiated by the Assistant Collector. On this reasoning alone, the Petition should succeed.

4. Assuming that the Assistant Collector was justified in initiating suo-motu action, however, no such action could be resorted to in the fact situation of the present case, inasmuch as the record clearly establishes that the suit lands were originally owned by Amir brothers, who were non-tribals. The purchase price has been determined by the Tenancy Authority in favour of the Petitioner, treating the Petitioner as the tenant and the Petitioner has paid the purchase price pursuant to which, Certificate u/s 32M of the Tenancy Act has been issued in favour of the Petitioner. It is nobody's case that Amir brothers were tribals. If that is so, the transfer of the suit land, pursuant to the order passed by the Tenancy Authority is in effect between the non-tribals. A priori, the provisions of Section 3 will have no application. To overcome this position, the lower Authority has proceeded on the assumption that the subsequent application filed by the said Rama Kanu Ughada was because of the instigation by the Petitioner. There is no material on record to support this position. It was therefore not open to the Authorities to assume that there was mala fide transfer in favour of the Petitioner on that account muchless to defeat the provisions of the Act of 1974. In fact, when the said application was filed and the transfer has been effected, at that point of time,

the Act of 1974 was not even in contemplation. Be that as it may, merely because an order was passed by the Tenancy Authority in favour of the said Rama Kanu Ughada on 21st January, 1967, that by itself would not result in said Rama Ughada becoming the owner of the suit land. That order would have only enabled the said Rama Ughada to purchase the suit land on depositing the purchase price determined under that order. Admittedly, the said Rama Ughada has not deposited the purchase price, whereas, subsequently, made application that the order be recalled. If no purchase price was paid by said Rama Ughada, in such a situation, the question of Rama Ughada becoming the owner of the suit land does not arise. Instead, the purchase would become ineffective by operation of law. Taking any view of the matter, Rama Ughada was not the owner of the suit land either in fact or in law. The land came to be transferred in favour of the Petitioner, as the Tenancy Authority has decided the issue on the basis of the materials before it that the Petitioner was lawfully cultivating the suit land on the tillers day and therefore, had become deemed purchaser by operation of law. This finding cannot be brushed away by the Authority in proceeding under the Act of 1974 on the assumption that the said proceedings was a nullity. In any case, there is nothing on record to show that either in fact or in law, the said Rama Ughada was the owner of the suit land, therefore, the question of invoking provisions under the Act of 1974 does not arise. In the circumstances, the impugned Judgment and order is set-aside and the suo-motu action initiated by the Assistant Collector stands discharged. No order as to costs.