

(1997) 11 BOM CK 0036

In the Bombay High Court

Case No : Writ Petition No. 1398 of 1984

Gajarabai Narayan Chauvan

APPELLANT

Vs

Ratnabai Vishnu Gaikwad

RESPONDENT

Date of Decision : 17-11-1997

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32
Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (1998) 1 ALLMR 585 : (1998) 4 BomCR 81 : (1998) 1 MhLj 562

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : R.A. Thorat, for the Appellant; Arun H. Palekar and M.V. Sali, for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—This writ petition is directed against the order passed by Maharashtra Revenue Tribunal, Pune in exercise of revisional jurisdiction u/s 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the said Act").

2. Under the impugned order, the preliminary objection raised by the landlord viz. the respondent herein, has been sustained by the revisional authority.

3. The petitioner is in succession in interest of one Hausabai who was a widow of Laxman Jadhav to whom the property originally belongs to. While the property was being enjoyed by the said widow as a tenant, a suo motu proceedings u/s 32-G of the said Act, has been taken by the authority and in that proceedings, it is alleged, that Hausabai had made a statement that she was not cultivating the land. However, after the death of widow Hausabai, the petitioner filed an application u/s 32-G of the Act, for fixation of purchase price. In that application that the preliminary objection has been raised by the respondent as stated earlier. It is to be noted that original authority and the appellate authority however, had rejected the preliminary objection; but only revisional authority, as stated earlier, sustained the preliminary objection raised by the respondent. The

preliminary objection raised by the respondent was that by virtue of the statement made in an earlier proceeding by Hausabai, the widow, that she was not cultivating the land, her successor, the petitioner-herein cannot claim any right u/s 32-G of the Act, as such contention of the present tenant is barred by the principle of res-judicata.

I heard the Counsel for the petitioner. On hearing the Counsel and examining the facts and circumstances of this case, I do not think the reasoning stated by the revisional authority is on a sound footing. First of all, in order to bring in the principle of res-judicata, it should be established that earlier decision was between the same parties. Admittedly, the decision rendered herein, was not between the same parties. Admittedly, the decision rendered herein, was not between the same parties, therefore, prima facie, I am of the view that the principle of res-judicata cannot be made applicable on its first principle. Further it is to be noted that by virtue of section 32-F and 32-F(b) the widow has not been given any right to apply for fixation of the price u/s 32-G of the Act. The policy of Legislature is very clear by a mere reading of section 32-F(a) and 32-F(b), the widows either as landlord or as a tenant, cannot be disturbed from the position after death of her husband. Legislature seems to insist upon the status quo to be maintained and any right could be exercised against her or obligation to be performed by her, only by her legal representative after her death. In this legal premises, it cannot be very well held that any decision taken in any proceedings by any authority where a widow is party, it cannot set up res-judicata in a subsequent proceeding filed by the legal representative of the widow because any proceedings initiated against a widow has to be treated as nullity as it is ab initio void. Any statement made by the widow in such proceedings which has the effect of disturbing the position of status quo as on the death of her husband with regard to the property has only to be ignored. On this reasoning, the revisional order is liable to be set aside holding that the preliminary objection raised by the Counsel being unsustainable.

3(A). In the result, the petitioner is allowed and the order under challenge viz. the order passed by the revisional authority dated 13.11.1983 is set aside. Consequently, the Additional Tahsildar and A.T.L. at Koregaon is to proceed with the proceedings u/s 32-G and decide the matter on merits after hearing the parties concerned. I hope and trust since it is an old matter, Tahsildar will pass final order as expeditiously as possible, at any rate, within six months from today. I make it clear that parties are at liberty to take all the contentions plausible and possible in support of their case.

Petition is disposed of and rule made absolute in the above terms. No order as to costs.

4. Petition allowed.