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In the Bombay High Court

Case No : Writ Petition No. 4128 of 1990

Ganapatrao Anandrao Bhosale — APPELLANT

Vs

Dinkarrao Manyaba Bhosale and Others — RESPONDENT

Date of Decision : 22-09-2004

Acts Referred:
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32, 32A, 32B, 32C, 32D
Maharashtra Revenue Patels (Abolition of Offices) Act, 1962 — Section 3, 32G, 5, 6, 8

Citation : (2005) 1 ALLMR 370 : (2005) 2 BomCR 282 : (2005) 1 MhLj 1162

Hon'ble Judges : D.B. Bhosale, J

Bench : Single Bench

Advocate : S.M. Dandekar, for the Appellant; R.V. More, for the Respondent

Judgement

D.B. Bhosale, J.—The petitioner-tenant has filed this petition under Article 227 of the Constitution of India against the Judgment and order dated 16-8-1990 rendered by the Maharashtra Revenue Tribunal, Pune, Camp at Kolhapur, in the revision application filed by respondent Nos. 1 to 3-landlords, by which their revision application has been allowed and the orders passed by the authorities below have been quashed and set aside.

2. The proceedings were initiated u/s 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "Act of 1948") in 1985 at the instance of Anandrao Akaram Bhosale, father of the petitioner. Earlier, the proceedings u/s 32G were initiated in 1958 and they were dropped on the ground that the landlady Jankibai was widow. Jankibai died on 17-10-1973. The A.L.T and the Assistant Collector, Miraj Division, Miraj, by their orders dated 26-5-1986 and 1-8-1987 respectively, decided the proceedings in favour of the petitioner declaring him as deemed purchaser in respect of the land, in question, and fixed the purchase price u/s 32G of the Act. That order was carried in the revision by the respondents.

3. Admittedly the land, in question, was Patel Watan land and it was governed by the provisions of the Maharashtra Revenue Patels (Abolition of Office) Act, 1962

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(for short "Act of 1962"). The Act of 1962 came into force on 1-1-1963. On that date, the petitioner was in possession of the land in question. There does not seem to be any dispute that though the landlord being watandar was entitled to get the Watan land regranted to him u/s 5 of the Act of 1962 he did not pay the occupancy price within the prescribed period and in the prescribed manner. The petitioner-tenant, admittedly, paid the occupancy price on 27-12-1965 and the regrant order in favour of the petitioner was passed on 22-9-1989.

4. Section 6 of the Act of 1962 clearly provides that when any watan land resumed u/s 3 is held by an authorised holder, it shall on an application therefore be regranted to the authorised holder on payment by him to the State Government of the occupancy price mentioned in section 5 and subject to the like conditions and consequences; and all the provisions of section 5 shall apply mutatis mutandis in relation to the regrant of the land under this section to the authorised holder, as if he were a watandar. Section 5 deals with regrant of watan land to watandar. Under that provision, the watandar is empowered to pay the occupancy price and get the watan land regranted in his favour and the watandar on payment of the occupancy price becomes an occupant within the meaning of the relevant Code, i.e. The Bombay Land Revenue Code, 1879 in respect of the watan land and becomes primarily liable to pay land revenue to the State Government in accordance with the provisions of that Code and the Rules thereunder. Sub-sections (2) and (3) and the proviso appended thereto of section 5 further provide the consequences of failure to pay the occupancy price and the conditions to be complied with by the landlord in relation to regrant of the watan land. Section 3 of the Act of 1962 deals with abolition of patel watans together with incidents thereof. The effect of the provisions of section 3 is that it abolishes all patel watans which upon abolition stand resumed subject to the provisions of sections 5, 6 and 9. The appointed day as referred to in section 3 is 1-1-1963.

4.1 The provisions of sections 5 and 6 of the Act of 1962 are absolutely clear which make "the Watandar" or "the authorised holder" an absolute owner of the watan land whosoever pays the occupancy price as contemplated under the provisions of sections 5 and 6 of the Act of 1962. An authorised holder of the watan lands gets right to pay the occupancy price u/s 6 of the Act of 1962 subject to the like conditions and consequences; and all the provisions of section 5 shall apply mutatis mutandis in relation to the regrant of the land u/s 5 to the authorised holder, as if he were a watandar.

4.2 Another important section which would have a bearing on the facts of the present case is section 8 of the Act of 1962. It reads thus :

"8. If any watan land has been lawfully leased and such lease is subsisting on the appointed day, the provisions of the relevant tenancy law shall apply to the said lease, and the rights and liabilities of the holder of such land and his tenant or tenants shall, subject to the provisions of this Part, be governed by the provisions of that law :

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Provided that, for the purposes of application of the provisions of the relevant tenancy law in regard to the compulsory purchase of land by a tenant, the lease shall be deemed to have commenced from the date of the regrant of the land u/s 5 or 6 or 9 as the case may be.

Explanation - For the purposes of this section, the expression "land" shall have the same meaning as is assigned to it in the relevant tenancy law."

This section provides that the provisions of the Act of 1948 shall apply to the watan land which has been legally leased, but nevertheless makes the application "subject to the provisions of the Act of 1962". The proviso appended to section 8 provides that for the purpose of application of the provisions of the relevant tenancy law in regard to the compulsory purchase of the land by a tenant, the lease shall be deemed to have commenced from the date of the regrant of the land under sections 5 or 6 or 9 as case may be. The tenancy law is, thus, made applicable to a subsisting lease only after compliance with the provisions of resumption and regrant of the lands to the landlord. In other words, if there is no regrant of the lands to the landlord the provisions of Tenancy Act would not apply and in such case if there was an order of regrant of the land to the Authorised Holder, whether he is a tenant or not, he would became the owner of such land.

4.3 This Court had an occasion to consider the scheme of Bombay Inferior Village Watans Abolition Act (1958) and sections 4, 5, 6 and 8 thereof in particular in Rangnath Dashrath Vadar since deceased through heirs Kalavati Rangnath Vadar and Others Vs. Bhagatsing Vithalsing Kotwal, . The provisions of those sections and sections 3, 5, 6 and 8 of the Act of 1962 respectively are similar. In paragraph 12 of the judgment, this Court after considering the aforesaid provisions, held thus :

"12. Thus, the legislative scheme of the Watans Abolition Act provides for resumption of the land, its regrant to the watandar or an authorised or an unauthorised holder. As far as leases are concerned, the watans Abolition Act provides that the leases shall be governed by the relevant tenancy law, however; "subject to the provisions of this Act". It is, therefore, clear that the Act requires its own provisions pertaining to resumption and regrant to be complied with, even in a case of land lawfully leased. In other words, the tenancy law is made applicable to a subsisting lease only after compliance with the provisions of resumption and regrant of the lands to the landlord. Indeed, there can be no escape from that, because if there is no regrant under the provisions of the Watans Abolition Act, the land stands resumed vide section 4; and if not regranted, it is clear that the title to the land would vest exclusively in the State until the State parts with it by regrant. In a situation where there is no regrant, it would not be possible to apply the provisions of the Bombay Tenancy Act, particularly those relating to the deemed purchase of the land from the landlord and determination and payment of purchase price to the landlord. This is so because the tenant, under the provisions of the Bombay Tenancy Act, is deemed

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to be a purchaser from the landlord and is liable to pay the purchase price to the landlord. The Bombay Tenancy Act does not contemplate the State Government in whom the lands would vest on resumption if not regranted as a landlord. This is further clear from section 88 (1) (a) which reads as follows :-

"88. (1) Save as otherwise provided in sub-section (2) nothing in the foregoing provisions of this Act shall apply, -

(a) to lands belonging to or held on lease from, the Government." There appears to be no doubt whatsoever about the fact that the Watans Abolition Act deals with hereditary offices created by the Bombay Hereditary Offices Act, 1874. Therefore, it must be held that unless the land is regranted, after resumption, it would not be possible to apply the provisions of the Bombay Tenancy Act, in particular sections 32 to 32R."

The tenancy law is made applicable to a subsisting lease only after compliance with the provisions of resumption and regrant of the land to the landlord. If there is no regrant under the provisions of the Act of 1962, the land stands resumed vide section 3; and if not regranted, it is clear that the title to the land would vest exclusively in the State until the State parts it by regrant. It is thus clear that in a situation where there is no regrant of the land to the landlord it would not be possible to apply the provisions of the Tenancy Act particularly those relating to the deemed purchase of the land from the landlord and determination and payment of purchase price to the landlord. This is so because the tenant, under the provisions of the Bombay Tenancy Act, is deemed to be a purchaser from, the landlord and is liable to pay purchase price to the landlord and that it does not contemplate the State Government to whom the land would vest on the resumption if not regranted as a landlord. I have, therefore, no hesitation in following the ratio laid down by this Court in Hemendra Mathuradas Kothari case (supra) and holding that unless the land is regranted to the landlord after resumption it would not be possible to apply the provisions of the Act, in particular sections 32 to 32R.

5. In the instant case, admittedly, the father of the petitioner was a tenant in the land in question. He paid the occupancy price on 27-12-1965 and the order of regrant was passed on 22-9-1989. It is thus clear that there was no relationship of landlord and tenant after regrant or because there was no regrant of the land to the landlord. The Tribunal, therefore, has committed a grave error of law in applying the provisions of section 32F(1)(a) of the Act holding that the petitioner-tenant failed to give an intimation under this provision to the respondent-landlord. As a matter of fact, the tenant had no reason to seek statutory purchase of the land u/s 32G of the Act of 1962. In the result, I find that the proceedings initiated u/s 32G at the instance of the petitioner-tenant bearing case No. 32G/Agran-Dhulgaon 6/1985 itself was redundant. The relationship between the parties in respect of the land in question would not be liable to be governed by the provisions of the Act. Accordingly, the Judgment and order passed by the Maharashtra Revenue Tribunal dated 16-8-1990 is quashed and

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set aside. The orders passed by the authorities below u/s 32G would also render ineffective. The rule is made absolute. No cost.

6. At this stage, Mr. More learned counsel for the respondents-landlords, submits that the petitioner be given liberty to adopt appropriate proceedings against the order dated 22-9-1989 of regrant of the land to the tenant. I am not granting such liberty since it is always open for the parties to adopt appropriate proceedings as may be available in law.

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