
(1977) 09 BOM CK 0023
In the Bombay High Court
Case No : Spl. C. A. No. 236 of 1973

Ganesh Govindrao Khuley

APPELLANT

Vs

Narayan Wasudeo Band and others

RESPONDENT

Date of Decision : 20-09-1977

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 46, 49A

Citation : (1977) MhLj 906

Hon'ble Judges : B.C. Gadgil, J

Bench : Single Bench

Advocate : P.Y. Deshpande, for the Appellant; S.N. Kherdekar, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Gadgil, J.—The petitioner, who is the owner of survey Nos. 18/2, 26/6 and 24/2, situate at Kodorj, has filed this petition challenging the orders of the Maharashtra Revenue Tribunal, whereunder the respondents-tenants were held to be entitled to purchase the lands under sections 46-49-A of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as the Tenancy Act).

2. The above mentioned three lands were let out to three brothers Parashram Daulat, Mahadeo Daulat and Bapurao Daulat. Parashram is dead and the present respondents 1 and 2 are his heirs and legal representatives. The petitioner-landlord filed an application u/s 38 read with section 36 of the Tenancy Act for getting possession of these lands for personal cultivation. That application Was Revenue Case No. 946/59 (6)/60-61. It was decided on 30-11-1960. Resumption to the extent of 8 acres of land was allowed to the petitioner of survey No. 18/2. Thus, the remaining area of 7.16 gunthas from these fields continued to be with the respondents as tenants. A suo motu proceeding was started by the Agricultural Lands Tribunal in order to decide as to whether the respondents were

entitled to have a transfer of ownership of 7 acres 16 gunthas from out of these three lands. These cases were Revenue Cases Nos. 2126, 2127 and 2128/59(13) 64-65. The right of getting a transfer of ownership under sections 46-49-A is controlled by some other sections. For example, section 42 or section 49A (4) imposes a condition that after such a compulsory purchase, the holding of the tenure holder should not exceed three family holdings. Here a family holding is of 26 acres, and, as such, three family holdings would constitute 78 acres. Respondents 1 and 2 together were holding 26 acres while respondent No. 3 Mahadeo owns 16 acres and 30 gunthas. Respondent No. 4 Bapurao is having 29,20 acres of land of his own. The Agricultural Lands Tribunal came to a conclusion that all these three holdings exceed 78 acres and, as such, the respondents together were owning more than 3 family holdings. The Agricultural Lands Tribunal, therefore, dropped the proceedings as the transfer of additional area of 7.16 acres is not permissible u/s 42 as also u/s 49-A (4).

3. The matter was taken up by the respondents in an appeal before the Sub-Divisional Officer, Achalpur. The appeals were Nos. 26, 27 and 28/59 (13)/70-71. The appellate Authority dismissed these appeals by holding that the present respondents were not entitled to a purchase of the land under sections 46 or 49 A. The respondents then filed revision applications Nos. 1110/71, 1111/71 and 1112/71. These three revisions were also decided by a common judgment. The Maharashtra Revenue Tribunal held that the respondents (who belonged to the said family), had already partitioned the private property in 1952. It was, therefore, held that the tenancy rights over the disputed property was as tenants in common. The three brothers Parashram (predecessors-in-title of respondents 1 and 2), Mahadeo (respondent No. 3) and Bapurao (respondent No. 4) were each holding less than one family holding. The Maharashtra Revenue Tribunal, therefore, came to the conclusion that the transfer of ownership of 7.16 acres in favour of these three branches would not increase the holding of each of these 3 branches so as to exceed three family holdings. It is in this manner that the Maharashtra Revenue Tribunal held that the respondents would not be prohibited to have the ownership of the land on account of the fact that their individual holdings, if added together exceed three family holdings. The Tribunal, therefore, remanded the cases to the Agricultural Lands Tribunal for determining the purchase price of the fields in dispute. It is this order that is being challenged before me.

4. At this stage, there is no dispute that if the lands separately owned by the three branches of Parashram, Mahadeo and Bapurao are clubbed together, the area would exceed more than three family holdings. Mr. Deshpande for the petitioner relied upon this position for the purposes of submitting that the respondents would not be entitled to have the ownership of 7.16 acres of land transferred in their favour. According to him, such transfer would be in breach of the provisions of sections 42 and 49A (4) of the Tenancy Act. It would be advisable to reproduce one of these sections. Section 42 reads as under :

The right of a tenant u/s 41 to purchase from his landlord the land held by him as a tenant shall be subject to the following conditions, namely :

(a) if the tenant does not hold and cultivate personally any land, as a tenure holder, the purchase of the land by him shall be limited to the extent of three family holdings;

(b) if the tenant holds and cultivates personally any land as a tenure-holder the purchase of the land by him shall be limited to such area as will be sufficient to make up the area of the land held by him as a tenure-holder 10 the extent of three family holdings.

It is not necessary to reproduce section 49A (4) as it is in similar terms. The contention of Mr. Deshpande is that the area of 7.16 acres of the tenanted land is being held by the respondents under one lease. It was urged that such a lease is indivisible and each of the four tenants would not be able to say that they are holding a particular area under a separate lease from the petitioner. It was, therefore, submitted that this is a joint tenancy and, as such, the holding of all the respondents will have to be computed by clubbing their separate holdings together in order to decide as to whether that area exceeds the three family holdings.

5. It will not be correct to say that the respondents are holding the property as joint tenants. It is one thing to treat the said tenancy as one and indivisible while it is another thing to say that the property held by the co-lessees is of the character of joint tenants. Two or more persons are entitled to hold and own one and the same property. The character of ownership of these joint owners may be different. For example, they may be tenants in common or joint tenants. In the case of tenants in common, the owners own the property in ascertained or defined shares though the property has not been divided into shares. In the case of owners who are termed as joint tenants, they own the property not in ascertained shares till the property is actually partitioned. The main difference in the two types of holdings is that when the co-owners are tenants in-common, the share of each is inherited on his death by his heirs while in the case of a joint tenancy, the property belongs to the surviving joint owners after the death of one of them. The joint tenancy in the above discussion is different from the term joint tenancy when it is used to connote the tenancy which is one and indivisible. It cannot be doubted that though the tenancy in favour of more than one person will be indivisible, still the various co-lessees hold the property in such a manner that after the death of one of them, his rights, title and interest devolve upon his heirs and they do not go to the surviving co-lessees. It would thus be clear that in the present case, the tenancy in favour of the respondents is to be treated as indivisible. At the same time, right, title and interest of the four respondents in the lease-hold property bear the character of tenants-in-common. After the death of each of them, the concerned share would go to the heirs of the respective co-lessees.

6. If the character of the present respondents being tenants in-common is kept in mind, there would not remain any difficulty in arriving at a correct conclusion as to whether the right of the respondents is curtailed on account of the provisions of sections 42 or 49A (4). What is contemplated by these sections is that the total area held by tenants as a tenure holder should not exceed three times family holdings even if the area, the title of which is transferred under sections 46 and 49 is added. 1 may also state that the respondents would be holding 7.16 acres of land (that is the disputed land) as tenants-in-common, even after the title to that much area is transferred in their favour under sections 46 or 49-A. The necessary result of holding 7.16 acres as tenants-in-common is that 3 branches would be having $1/3$ rd undivided ownership in the area of 7.16 acres after the purchase is made effective. It is this $1/3$ rd area that is to be added to the individual tenure holding of each of the three branches. For example, the branch of Parashram is having 26 acres as tenure holder. This holding would not exceed three family holdings even after $1/3$ rd of 7.16 acres is added to those 26 acres. The same is the position with respect to the holdings of the remaining two branches of Mahadeo and Bapurao.

7. Mr. Deshpande contended that the respondents are having tenancy rights under an indivisible lease and, as such, it should be treated that the four respondents together constitute one unit. He continued his arguments by submitting that the holding of this unit of three branches should be counted and determined by adding together the holdings of the three branches and thereafter it may be decided as to whether the additional area of 7.16 acres would transgress the limits of three family holdings. This submission is not acceptable for the simple reason that the rights of these co-lessees (respondents) in the leasehold property is of the character of tenants-in-common, though the lease itself is one and indivisible. It would, therefore be necessary to determine the individual holding of each of the co-lessees and then adding his share in the disputed property in order to find out as to whether his holdings exceed three family holdings. As discussed above, there would not be any such excess. Hence the Maharashtra Revenue Tribunal has rightly held that there is no bar of sections 42 and /or section 49A (4) of the Tenancy Act.

8. It was lastly urged that survey Nos. 18/2, and 22/6 would be fragments as their respective areas are less than two acres and that, therefore, the transfer of ownership of these lands in favour of the respondents would be hit by the provisions of the Bombay Prevention of Fragmentation of Holdings Act. It is not clear as to whether those provisions would apply to the transfer of ownership u/s 46 and/or u/s 49-A. However, the petitioner will be at liberty to agitate that point before the Agricultural Lands Tribunal when the matter will be further enquired into by him.

9. The result is that subject to the above directions, the petition fails and the rule is discharged. No orders as to the costs and this petition.