(1996) 07 BOM CK 0037

In the Bombay High Court

Case No : Writ Petition No. 4760 of 1988

Ganpat Tatyaba Khadtale APPELLANT

Vs

Smt. Ushabai Bhimrao Chavan and others RESPONDENT

Date of Decision : 30-07-1996

Acts Referred:

Bombay Hereditory Offices Act, 1827 — Section 23, 7
Bombay Inferior Villages Watans Abolition Act, 1958 — Section 2(10), 4, 4, 6
Constitution of India, 1950 — Article 226, 227
Maharashtra Land Revenue Code, 1966 — Section 247, 59

Citation : (1998) 1 BomCR 595

Hon'ble Judges : S.M. Jhunjhunuwala, J;D.K. Trivedi, J

Bench : Division Bench

Advocate : D.S. Sawant, for the Appellant; V.Z. Kankaria, A.G. Bagla, A.G.P., for the Respondent

Judgement

D.K. Trivedi, J.—The petitioner has filed this petition challenging the order passed by the Officer on Special Duty (Appeals and Revision) dated 17th February 1988 in Revision No. BIW-3087/1031/L.5/CR/503 of 1987 (A & R). The disputed land is bearing Survey No. 266/4-C (now gat No. 268) situated at Niphad Dist. Nasik. The said land gat No. 268 is originally class XVI B of Indian land granted to original Watandar u/s 23 of the Hereditary Offices Act, 1827 as a remuneration of official or for his services. The said land was granted in favour of late Tatyaba Khandu Khadtale under the said provisions of the Act. The petitioner is the son of the late Tatyaba Khandu challenging the proceedings initiated and the order passed by the Officer on Special Duty in revision filed by the respondent No. 1 herein. The late Tatyaba Khandu on 5th June 1956 under the registered sale deed had sold the suit land to the respondent No. 2 Smt. Shantabai Gangadhar Khadtale for Rs. 300/- on the condition that if the owner Watandar late Tatyaba Khadtale pays back the purchase price of Rs. 300/- to the purchaser Smt. Shantabai within five years, the suit land will revert back to the owner/Watandar and the purchaser will execute the sale deed to that effect. The said land gat No.

268 was granted in favour of said late Tatyaba under the provisions of Hereditary Offices Act, 1827. Watandar Tatyaba the father of the petitioner died on or about in the year 1959. It is the case of the petitioner that when his father had executed a registered deed on 5th June, 1958 in favour of the respondent No. 1 for a consideration of Rs. 300/- the petitioner was minor about 12 years old. The Bombay Inferior Village Watan Abolition Act, 1958 came into force and made applicable to the Nasik District with effect from February 1959. In 1958, the Bombay Inferior Village Watan Abolition Act came into force and the said Act was applied to the Nasik District. It is the case of the petitioner that in view of the provisions of section 4 of the Watan Abolition Act, the land resumed by the Government and the suit land then came to be granted to the respondent No. 2 on 17th December 1963. The respondent No. 2 had made an application on 12th February 1965 to the Collector, Nasik for converting the said land into the old tenure. It is also the case of the petitioner that the respondent No. 2 Shantabai sold the said land in favour of the respondent No. 3 on 23rd February, 1967 and even the respondent No. 3 had also sold the said land in favour of the respondent No. 4 in or about April, 1976.

2. The petitioner had made an application before the Tahsildar, Niphad, District Nasik u/s 59 of the Maharashtra Land Revenue Code for evicting the respondent No. 4 from the land as at the relevant time he was occupying the suit land. The application was numbered and registered as IVS. Case No. 145 of 1976. Considering the application, Tahsildar Niphad as per order dated 23rd August, 1978 passed an order directing the transferee to be evicted summarily u/s 59 of the Maharashtra Land Revenue Code, 1966 and ordered that the land in question should be forfeited to Government. He further ordered that the transferer comes from the backward class and since it is his first breach the land is regranted to the transferor on payment of Re. 1/-.

3. The said order of the Tahsildar Niphad dated 23rd August, 1978 was challenged by the respondent No. 4 before the Sub Divisional Officer, Niphad at Nasik by way of preferring appeal u/s 247 of the Maharashtra Land Revenue Code and the said appeal was registered being No. IVS 67 of 1978 and dealing with the said appeal, the Sub Divisional Officer as per order dated 1st August, 1980 has allowed the appeal and he set aside the order of the Tahsildar and ordered that the possession of the land should be restored to the appellant. While dealing with the appeal, Sub Divisional Officer has observed that the appellant/respondent No. 4 herein has purchased the land in the year 1976 from the respondent No. 3 who has purchased the said land in the year 1967 from the respondent No. 2 as it was in her name. The respondent No. 2 has credited the necessary ''Nazrana'' amount at the time of transaction and it was old tenure at the time of purchase of the land. The said land is converted into old tenure in the year 1967 and he has observed that while treating old tenure land, the petitioner has not raised any objection. The decision taken by the Sub-Divisional Officer was based as per the decision of the Bombay High Court in Special Civil Application Nos. 2177 of 1978, 2319 of 1978, 3222 of 1978, 3323 of 1978 and

2413 of 1978. The said decision is reported in Indian Law Reports, 1982 in the case of Trimbak Anna Ambade and another v. The Tahsildar Newasa, District Ahmednagar and others.

4. The said decision of the Sub Divisional Officer, Niphad was challenged by the petitioner before the Collector, Nasik by preferring appeal u/s 247 of the Maharashtra Land Revenue Code, 1966 on various grounds. Dealing with the said appeal, the Collector, Nasik has dismissed the appeal and confirmed the decision of the Sub Divisional Officer, Niphad as per his order dated 23rd March 1982. While dealing with the said appeal, the Collector, on considering the case put forward before him by the parties, and considering the provisions of section 2(10) of the Bombay Inferior Watan Abolition Act, 1958, has raised two points, which are reproduced below:

(1) Whether Smt. Shantabai and the respondent No. 1 are the unauthorised holder of the land, if so,

(2) Whether action as per section 59(2) of the M.L.R.C. 1966 could be taken in this case.

The Collector has also on considering the findings given by the Sub-Divisional Officer confirmed the order of the Sub Divisional Officer and accordingly dismissed the appeal. Being aggrieved by the said decision of the Collector, the petitioner has approached the Additional Commissioner, Nasik by filing revision application and the Additional Commissioner, Nasik as per his judgment and order dated 23rd March 1987 has allowed the revision application filed by the petitioner and set aside the order passed by the Collector and confirmed the first order passed by the Tahsildar in the application filed by the petitioner. While dealing with the said revision application, learned Additional Commissioner has observed in para 4 of his judgment as under :---

"Perusal of the record in this case show that the suit land was held by the father of the present applicant as Watandar under the Bombay Hereditary Offices Act. As per the section 7 of the Bombay Hereditary Offices Act, the said suit land could not be transferred to others except by prior permission of the competent authority. In this case the suit land was transferred by way of conditional sale by the father of the present applicant late Tatya Khandu Khadtale to opponent No. 1 Smt. Shantabai Gangadhar Khadtale on 5th June 1958. This is an admitted fact. This particular transaction itself is illegal as no prior permission was taken of the competent authority by both the father of the present applicant and opponent No. 1. The Tahsildar, Niphad has passed order in Case No. Watan/SR/757/67 dated 26th July, 1967 regranting the suit land. Perusal of this order show that the name of the person in whose favour suit land is regranted has been kept blank. Thus, it is not clear in whose favour the suit land was re-granted by the Tahsildar. When the first transaction of the conditional sale dated 5th June, 1958 itself was illegal, opponent No. 1 had no locus-standi to deposit amount of Nazrana and request the Tahsildar for re-grant of the suit land. As a result all further sale transactions between opponent No. 1 to opponent No. 2, opponent No. 2 to opponent No. 3 and opponent No. 3 to opponent No. 4 were illegal...."

5. This decision of the Additional Commissioner, Nasik dated 23rd March 1987 was challenged by the respondent No. 1 herein before the Officer on Special Duty (Appeals and Revision) Revenue and Forest Department by preferring the revision application. The Officer on Special Duty as per his order dated 17th February 1988 has allowed the revision application and set aside the order of the Additional Commissioner passed in revision dated 23rd March 1987. It is this order of the Officer on Special Duty is challenged in this petition by filing this petition under Articles 226 and 227 of the Constitution of India on various grounds.

6. The learned advocate appearing on behalf of the petitioner took us through the judgments and orders passed by the authorities below as well as the order under challenge. Mr. Sawant also took us through the certain provisions of the Maharashtra Land Revenue Code and the provisions of the Hereditary Offices Act, 1827. The learned Counsel for the petitioner has submitted that the Officer on Special Duty has not considered the certain provisions of the Act and mechanically allowed the revision application filed by the respondent and set aside the order of the Additional Commissioner and the said order is against the certain provisions of the Act. Mr. Sawant submitted that Tahsildar Niphad, considering the application filed by the petitioner u/s 59 of the Maharashtra Land Revenue Code, has rightly passed the order and even when the petitioner has challenged the order of the Collector, Nasik by preferring the revision application, the Additional Commissioner, on going through the record of the case and on considering the provisions of Bombay Hereditary Offices Act, 1827 has set aside the order of the Collector, Nasik and restored the order of the Tahsildar Niphad dated 23rd August, 1978. He submitted that considering the provisions of section 7 of the Bombay Hereditary Offices Act, the said land should not be transferred to others except by prior permission of the competent authority. He submitted that as per the findings recorded by the Additional Commissioner, Nasik, admittedly the transaction of conditional sale made by the father of the present petitioner in favour of respondent No. 1 on 5th June 1958 is without permission of the competent authority and considering the provisions of the Act the said transaction is illegal. Mr. Sawant while taking us through the order of the Officer on Special Duty dated 17th February, 1988, has submitted that he has not recorded any finding while deciding the revision application and he has merely confirmed the findings recorded by the Collector. He has submitted that the Officer on Special Duty was required to give his findings on examining record however, he has merely confirmed the order passed by the Collector by observing that he could not find any evidence contrary to the findings of the Collector and submitted that the order of the Officer on Special Duty be set aside and confirm the order passed by the Tahsildar, Niphad dated 23rd August. 1978 as well as the order passed in revision application by the Additional Commissioner, Nasik dated 23rd March, 1987.

7. Mr. Kankaria the learned advocate for the respondents has supported the order of the authority viz. order passed by the Collector as well as the order passed by the Officer on Special Duty dated 17th February, 1988. In support of his case, he took us through the certain provisions of the Inferior Village Abolition Act.

Section 6 of the Inferior Village Abolition Act reads under :---

"Where any Watan land resumed u/s 4 is held by an authorised holder it shall be regranted to the authorised holder on the 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 the Watandar.''''

8. Mr. Kankaria has submitted that order of granting the land and by issuing the Sanad dated 17th December, 1963 is not challenged by the petitioner. By virtue of the Sanad issued and not challenging the order by the petitioner, it will not be permissible for the petitioner to move the revenue authority by filing application u/s 59 of the Maharashtra Land Revenue Code, 1966. In support of his submission, he relies upon the decision in the case of Sambhaji Baloji Solankar v. The Mamlatdar of Baramati, reported in 1952 The Bombay Law Reporter page 281. Considering the said judgment and as per section 211 of the Bombay Land Revenue Code, he has submitted that section 211 does not apply to documents embodying terms and conditions agreed to between the Government and occupants. He has further submitted that action initiated by the petitioner by resorting to the provisions of section 59 of the Maharashtra Land Revenue Code will not give any effect when the Sanad was issued in favour of the respondents. He has further submitted that as per the finding recorded by the Collector and as per the decision of the Collector dated 23rd March, 1982 the Collector has rightly held that the proceedings initiated u/s 59 of the Maharashtra Land Revenue Code, 1966 cannot be resorted in the present case and accordingly, he confirmed the decision of the Sub Divisional Officer, Niphad, Division Nasik by dismissing the appeal. He further submitted that in view of the above, when the Collector has recorded the finding that the initiations of the proceedings u/s 59 itself is illegal, the Officer on Special Duty has accordingly confirmed the order passed by the Collector by allowing the revision application filed by the respondent No. 1 herein. He has further submitted that this Court is not required to entertain the present petition filed by the petitioner who is the son of late Watandar who had sold the land in favour of the respondent No. 1 on 5th June 1958 under a sale deed for a consideration of Rs. 300/-.

9. We have perused the orders passed by the authorities as well as the order passed by the Officer on Special Duty, as well as the provisions of the Bombay Hereditary Offices Act, 1827 and Bombay Inferior Village Watan Abolition Act. We are conscious that this petition is filed by the son of late Tatyaba Khadtale in whose favour the land was regranted for the services rendered by him. The

original Watandar viz. the father of the petitioner has sold the land on 5th June, 1958 in favour of the respondent No. 2 for Rs. 300/- on condition of re-purchase within five years. Thereafter, the land in question passed through various persons i.e. respondent No. 1 (sic respondent No. 2) to respondent No. 3, from respondent No. 3 to respondent No. 4. The petitioner has while making application before the Tahsildar, initiated the proceedings u/s 59 of the Maharashtra Land Revenue Code, 1966. As per the order passed by the Tahsildar, he has held that the transferee to be evicted summarily in exercise of powers u/s 59 of Maharashtra Land Revenue Code. He further ordered that as per the breach and as the transferor comes from the backward class, the land in question was regranted in favour of the transferor on payment of Re. 1/-. The Additional Commissioner, on examining the record has allowed the revision application filed by the petitioner on examining the order of the Collector, has set aside the said order and restored the order of the Tahsildar, dated 23rd August, 1978. While exercising the power under the Maharashtra Land Revenue Code, the Officer on Special Duty without assigning any reasons, has dismissed the revision application and merely observed in his judgment at para No. 4 as under :---

"I could not find any evidence contrary to the findings of the Collector. It is thus clear that the findings of the Additional Commissioner are based on incomplete appreciation of the evidence and his order needs to be set aside. In other words, the order of the Collector should be upheld."

10. In our view, the Officer on Special Duty has merely discussed the case put forward by the parties and as reflected in the order, has disposed of the said Revision Application without assigning any reason and without considering any findings on merits. Accordingly, we are of the view that the order passed by the Officer on Special Duty is required to be set aside by directing the Officer on Special Duty to decide afresh the said Revision Application in accordance with law and give his findings while arriving at a proper conclusion. We are also conscious that this petition is of the year 1988 and the Officer on Special Duty has dismissed the revision application as back as on 17th February, 1988. Accordingly, this will be in the fitness of things to direct the Officer on Special Duty to decide the said revision application afresh in accordance with law as expeditiously as possible.

11. Accordingly, this petition is allowed. The order dated 17th February, 1988 passed by the Officer on Special Duty is set aside and Officer on Special Duty is directed to decide the said Revision Application afresh in accordance with law as expeditiously as possible but not later than 31st December, 1996.

In the facts and circumstances of the case, there will be no order as to costs.

Rule is accordingly made absolute in the above terms.

Office is directed to issue writ to the Officer on Special Duty.

12. Petition allowed.

