(1987) 09 BOM CK 0014

In the Bombay High Court

Case No : Letters Patent Appeal No. 27 of 1985 in Writ Petition No. 1114 of 1978

Ganpatlal Baldeo Chamedia APPELLANT

Vs

Purshottam Ramgopal Bajoria and Another RESPONDENT

Date of Decision : 02-09-1987

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 57, 57(1)

Citation : (1988) 1 BomCR 562 : (1988) MhLj 469

Hon'ble Judges : V.A. Mohta, J;G.G. Loney, J

Bench : Division Bench

Advocate : A.M. Tayade, A.G.P., V.R. Manohar, for the Appellant; A.M. Bapat, for the Respondent

Judgement

V.A. Mohta, J.—u/s 57 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (the Tenancy Act), a tenant who purchases land under certain provisions of the said Act cannot make certain transfers without previous sanction of the Collector, which sanction is to be accorded in the circumstances specified by Rule 31-A of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Rules, 1959 (the Rules). We extract the relevant provisions :

Section 57. (1) No land purchased by a tenant u/s 41 or 46 or 49-A or 57-D or 130 or sold to any person u/s 91 or 122 shall he transferred by sale, gift, exchange, mortgage, lease or assignment without the previous sanction of the Collector. Such sanction shall be given by the Collector in such circumstances and subject to such conditions as may be prescribed by the State Government.

(2) Any transfer of land in contravention of sub-section (1) shall be invalid:

Provided that nothing in this section shall apply to the lands purchased by an occupancy tenant.

Rule 31-A (k) : that the land is being mortgaged for securing a loan from Government or a co-operative society;

(1) that the land is being mortgaged for securing a loan from the State Bank of India for improvement of the land or for better or efficient utilization of the land for purposes of agriculture.

Point that arises is whether an exception about mortgage without delivery of possession---in this case simple mortgage u/s 58(b) of the Transfer of Property Act (the T.P. Act) can be carved out.

2. The land in question at one time belonged to Purushottam Bajoria (respondent No. 1). Ganpatlal Chamedia (appellant) was a tenant in whose favour the land was compulsorily transferred under the provisions of the Act on 22nd April, 1970. Within two days thereof, he took a loan from the Yavatmal District Land Development Bank (respondent No. 2) on the basis of a simple mortgage of the said land created without sanction of the Collector. The original land owner filed an application u/s 122 of the Ceiling Act in the year 1972 alleging breach of section 57. The Tahsildar and the Sub-Divisional Officer came to the conclusion that as the appellant had not parted with the possession, bar created by section 57 was not attracted. Maharashtra Revenue Tribunal, however, set aside those orders holding that simple mortgage is not outside the purview of section 57. Aggrieved thereby, a writ petition was filed in this Court. The learned Single Judge was pleased to dismiss the same. This letters patent appeal arises out of the said order.

3. The learned Counsel for the appellant contends that absence of the words "interest in the property" in section 57 as contrasted with the use of those words in section 89 and 119-B of the Tenancy Act indicates the legislative intention of not bringing into the net of prohibition, transactions where possession is not parted with buy the statutory owner. Further submission is that the only object behind section 57 is to see that the tenant who has been conferred with statutory ownership continues to cultivate the land as before and does not part with possession and the said object is not defeated by creating a simple mortgage. Now, as there can be no manner of doubt that the term "mortgage" must be given the meaning assigned to the said term under the T.P. Act in view of section 2(34) of the Tenancy Act which states that the words and expressions used in this Act but not defined shall have the meanings assigned to them in the Code and the Transfer of Property Act, 1882 as the case may be. There are several varieties of mortgages as specified in section 58 of the T.P. Act. The distinction between "Sale" and the "Mortgage" is well known. "Sale" defined by section 54 of the T.P. Act is a transfer of ownership for a price. In a sale, there is absolute transfer of all rights in the property sold and there is no remainder whatsoever. "Mortgage" as defined by section 58 is a transfer of only some interest. Thus the very term "Mortgage" means transfer of only some interest in the property. Under the circumstances, nothing turns on the absence of the words, "interest in the property" in section 57, as transfer of some interest in the property is implied in every mortgage. Section 89 of the Tenancy Act creates a bar against transfer of land to non-agriculturists. Sub-section (1)(a) deals with

sale, gift, exchange or lease of any land or interest therein, and sub-section (b) deals with mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee. Section 119B provides for the consequences of acquisition of land by invalid transfer. In the said section, the expression used is any transfer of land or of any interest therein." We are unable to see how the language used in these two sections which are intended to achieve altogether different, object can be used to seem the legislative intent of section 57. Sub- Rules (k) and (1) of Rule 31-A cover such transactions which leave no manner of doubt whatsoever that they are covered by section 57. The language used is plain and unambiguous and must be given its natural meaning unless by that violence is done to the legislative intention.

4. Is it the legislative intention to control only transfer of possession. It does not seem so. Tenant acquires the land not at market price but at statutory nominal price. He not only must cultivate the land but also not derive profits out of transfer of land. It is possible to earn profit even by simple mortgage. Heavy loan on the basis of its market value can be taken and Property allowed to be sold by the mortgagee and there by the object of the legislation can be defeated. It is understandable that for bona fide cultivation and/or improvement of the land raising of loan may become necessary. There is no prohibition from taking such loan by creating mortgage. All that is required is that before so doing the Collector must be approached for permission which can always be granted in genuine cases and under specified circumstances. Thus no question of hardship also arises.

5. Could the original land owner move the machinery u/s 122 of the Tenancy Act is the next question. It is urged that the land owner is not the "person interested" within the meaning given to the term in section 122(1) and hence the revenue authorities had no jurisdiction to initiate the action u/s 122 for non-compliance of section 57 at the instance of the land owner. The learned Single Judge literarily interpreted the said expression and has held that the land owner is a "person interested". Our attention was invited to the case Shree Vyankatesh Housing Society v. Ramchandra, 1986 Maharashtra Law Journal 421 which takes a view that the original land owner has no locus standi in the matter of proceedings for sanction by Collector u/s 57 as he does not have any subsisting interest in the land. It is unnecessary to dwell upon that part of the controversy, as nothing turns on it. Action u/s 122 can be taken by the Collector even sou motu and section 107 and section 111 (provisions of appeal and revision respectively) do not even make a whisper about that expression. After some debate that point is not even pressed. Though validity of section 57 is questioned in the appeal due to which notice to the Advocate General was issued the said point was also given up at the stage of hearing.

6. Letters Patent Appeal dismissed. No costs.

