

(1984) 12 BOM CK 0002

In the Bombay High Court

Case No : Spl. Civil Application No. 1114 of 1978

Ganpatlal Baldeo Chamedia

APPELLANT

Vs

Purushottam Ramgopal Bajoria and another

RESPONDENT

Date of Decision : 21-12-1984

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 33
Maharashtra Co-operative Societies Act, 1960 — Section 120

Citation : (1985) MhLj 123

Hon'ble Judges : H.W. Dhabe, J

Bench : Single Bench

Advocate : R.N. Deshpande and S.R. Deshpande, for the Appellant; A.M. Bapat, for the Respondent

Final Decision : Dismissed

Judgement

H.W. Dhabe, J.—This is a writ petition arising out of the proceedings under the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short, "the Tenancy Act").

2. Survey No. 73 admeasuring 27 acres 4 gunthas of Yeotmal originally belonged to the respondent No. 1. The petitioner was a tenant in respect of the aforesaid field, hereinafter referred to as "the suit land". The petitioner purchased the suit land on 22-4-1970 under the provisions of the Tenancy Act. On 24-4-1970 he mortgaged the suit land with the respondent No. 2 i.e. the Yeotmal District Land Development Bank Ltd., Yeotmal.

3. The respondent No. 1 i.e. the original owner of the suit land filed an application on 6-10-1972 u/s 122 of the Tenancy Act complaining that the petitioner has committed a breach of section 57 insofar as the petitioner has mortgaged the suit land without the previous sanction of the Collector. Sub-clause (k) of rule 31A (1) of the Rules framed under the Tenancy Act specifically requires the sanction of the Collector for mortgaging the land for securing a loan from the Government or a co-operative society. Section 119 B of the Tenancy Act

renders invalid the acquisition of any land under transfer which is invalid under the provisions of the Tenancy Act and further makes such acquisition liable to consequences provided for in section 120 or 122 of the Tenancy Act.

4. The Additional Tahsildar held that there is no breach of section 57 of the Tenancy Act. He, therefore, rejected the application filed by the respondent No. 1. The respondent No. 1 preferred an appeal which was dismissed by the Sub-Divisional Officer (for short, "the SDO"). He, therefore, preferred a revision before the Maharashtra Revenue Tribunal (for short, the MRT) which was allowed. Being aggrieved by the order of the MRT the petitioner has preferred the instant writ petition in this Court.

5. The Learned Counsel for the petitioner has at the outset raised the question about the locus standi of the respondent No. 1 to initiate the proceedings u/s 122 of the Tenancy Act. The submission is that the respondent No. 1 who although originally was the owner of the suit land had no right, title or interest in the suit land after the petitioner who was tenant became its statutory owner u/s 46 or 49A of the Tenancy Act. According to the "petitioner the respondent No. 1 cannot be said to be a person interested in the suit land within the meaning of the said expression used in section 122 of the Tenancy Act. He has, therefore, according to him, no locus standi to initiate any proceedings by filing any application u/s 122 of the Tenancy Act. It is, therefore, urged that the impugned order of the MRT passed pursuant to the initiation of the proceedings by the respondent No. 1 is illegal and invalid. Alternatively it is contended that even assuming that the respondent No. 1 can be an informant or realtor of the facts to put in motion the suo motu proceedings u/s 122 of the Tenancy Act which provided for initiation of suo motu proceedings by the Tahsildar, the respondent No. 1 has no right to prefer an appeal u/s 107 and a further revision u/s 111 of the Tenancy Act since he cannot be said to be a person aggrieved by the order of the Tahsildar in suo motu proceedings u/s 122 of the Tenancy Act.

5A. The first question that has to be therefore examined in this petition is whether the respondent No. 1, to whom originally the suit land belonged, is "a person interested in such land" (i.e. the suit land)" within the meaning of section 122(1) of the Tenancy Act. Reliance is placed on behalf of the petitioner upon two decisions. The first decision is of the Supreme Court in the case of *Adi Pherozshah Gandhi Vs. H.M. Seervai*, Advocate General of Maharashtra, Bombay, in which the question involved was whether the Advocate General of Maharashtra is a "person aggrieved" within the meaning of section 37(1) of the Advocates Act so as to maintain in appeal to the Bar Council of India against the decision of the disciplinary committee of the State Bar Council. The Supreme Court has held in the said decision that the Advocate General is not a person aggrieved within the meaning of the said section. Following the said decision the Allahabad High Court has held in the Case of *State of U.P. Vs. Smt. Ram Sri and Another*, that in order to be entitled to file an appeal a person must have a legal grievance which might have deprived him of the benefit in the case if the judgment had gone the other

way. However, in the facts of the case the Court held in the aforesaid decision that the state of U.P. was an aggrieved party and the appeal filed by it was maintainable.

6. In dealing with the above question in this petition I am not directly concerned with the concept of a "person aggrieved" for the purpose of an appeal. The expression "any person interested in such land" occurring in section 122 (1) of the Tenancy Act, to give such person a locus standi to file an application under the same must be construed in the light of the provisions of the said Act looking to its objects and its" scheme. After vesting the right of ownership upon the tenants the said right is hedged in by certain restrictions carved u/s 57(1) of the Tenancy Act. Since the main object of the Tenancy Act is that the land should be owned by the tiller of the land a restriction is imposed upon the tenant of the land who becomes its owner being in its cultivating possession that he shall not transfer the said land by sale, gift, exchange, mortgage, lease or assignment without the previous sanction of the Collector. The restriction u/s 57(1) is intended to be mandatory because any transfer in breach of section 57(1) is declared invalid by section 57(2) of the Tenancy Act.

7. Section 122(1) of the Tenancy Act provides for an enquiry by the Tahsildar into the question whether any transfer or acquisition of any land made on or after the commencement of the Tenancy Act is invalid under any of the provisions of the said Act. Sub-section (2) provides that if after holding such enquiry the Tahsildar comes to a conclusion that the transfer or acquisition of land is invalid he has to make an order declaring the transfer or acquisition to be invalid. There is, however, an exception made in the proviso to sub-section (2) of section 122 under which if the transfer is to the tenant in possession of the land, the Tahsildar shall not declare such transfer to be invalid if the price paid by the tenant thereof is in accordance with clauses (i) and (ii) of the said proviso. However, after the declaration is made that the transfer or acquisition is invalid, sub-section (3) of section 122 provides that the land in regard to which there is a declaration that its transfer or acquisition is invalid shall be deemed to vest in the State Government free from all encumbrances. Sub-section (4) of section 122 then provides that after determining the reasonable price the Tahsildar shall dispose of the land by sale at a price equal to the reasonable price determined under sub-section (3) in the following order of priority :

- (i) the tenant in actual possession of the land;
- (ii) the persons or bodies in the order given in section 84.

8. It cannot be disputed that the Tenancy Act is a piece of social Legislation enacted primarily for the purpose of conferring rights of ownership upon the tenants who are actually the tillers of the soil. It is clear that the provisions of sections 57, 89 and section 119D etc. are also intended to serve or effectuate the social purpose underlying the Tenancy Act, the social purpose being that the land should continue to vest in the person who actually cultivates the same.

Section 57(1), therefore, puts certain restrictions upon the transfers of land purchased by a tenant under sections 41,46,49A,57D or section 130 of the Tenancy Act. The tenant is not allowed to transfer by sale, gift, exchange, mortgage, lease or assignment any land purchased by him without the previous sanction of the Collector which can be granted only in such circumstances and subject to such conditions as may be prescribed by the State Government. Section 122 of the Tenancy Act is also intended to serve a social purpose behind it, because after declaring that the transfers of the land in contravention of the provisions of the Tenancy Act are invalid, such lands vest in the State with a view to dispose them of to the persons as given in the order of priority prescribed in section 122(4) of the Tenancy Act. The intention is clear that the person to whom the land is sold under sub-section (4) of section 122 would cultivate the same personally.

9. Since the provisions of the Tenancy Act, and in particular the provisions of section 122(1) of the said Act, are intended to serve a social purpose it is necessary in my view to give a liberal construction to the expression "any person interested in such land" occurring therein. The expression "any person interested in such land" need not be restricted only to such persons who have actual interest in the land at the time of making an application u/s 122(1) of the Tenancy Act but may cover those who had previously an interest in such land or those in whom in future the interest may be created under sub-section (4) of section 122. It is pertinent to notice that by filing an application u/s 122 (1) any person does not get any benefit to himself because if the transfer or acquisition is declared invalid the land vests in the State under sub-section (3) of section 122 of the Tenancy Act. It is only some of the persons or bodies who are covered by the order of priority given in sub-section (4) of section 122 read with section 84 of the Tenancy Act to whom the land is disposed of who are likely to benefit by getting such land from the State Government. The theory of "present and immediate interest in the land" is, therefore, absent in the scheme of section 22(1) of the Tenancy Act. The concept of "person aggrieved" cannot be, therefore, made applicable in construing locus standi of the persons to initiate proceedings u/s 122(1) of the Tenancy Act. The decisions, therefore, relied upon on behalf of the petitioner in this regard are not apt for construing the phraseology "any person interested in such land" used in section 122(1) of the Tenancy Act. It is pertinent to notice that the expression used in section 122(1) of the Tenancy Act is not "any person having interest in such land" but is an expression "any person interested in such land". If the former expression were used it would contemplate some definite tangible interest in the land as such. The same strict connotation is not attached to the later expression which has a wider connotation than the former.

10. In my view, what has to be seen in considering the locus standi of a person to initiate proceedings u/s 122(1) is that a person who moves the Tahsildar thereunder should not be merely a stranger, an intermeddler or a busy body but must have some nexus with the land in question so that the application by which

the enquiry which he puts into motion u/s 122(1) and which is pro bono publico to effectuate the purpose of the Act is not frivolous or male fide. In the instant case the respondent No. 1 was admittedly the previous owner of the suit land and was, therefore, "a person interested in such land" within the meaning of section 122(1) of the Tenancy Act as he had thereby sufficient nexus with the land to cause inquiry into matters covered u/s 122(1). Similarly in my view a person who is covered by any of the priorities given in section 122(4) of the Tenancy Act has also a sufficient nexus to initiate the proceedings u/s 122(1) although he may not have any present or immediate interest, in the land. I may refer in this regard to a decision of the Supreme Court in the case of Bhikoba Shankar Dhumal (Dead) by legal Representatives and others Vs. Mohanlal Punamchand and others 1982 Mh.L.J. 329 in which in interpreting section 33 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, the Supreme Court held that any person entitled to grant of surplus land on its distribution under any of the provisions of the Ceiling Act can question in appeal an order resulting in reducing the extent of total surplus land (see para 11 of the report). On the same analogy, a person who falls in the order of priority given in section 122(4) of the Tenancy Act is a person competent to initiate the proceedings u/s 122(1).

11. I may at this stage point out that clause (ii) of section 122(4) incorporates the priorities given in section 84 of the Tenancy Act. A perusal of section 84 of the Tenancy Act, shows the various categories of agriculturists having varying interests in agriculture. Its last category shows that "any person not being an agriculturist who intends to take the profession of agriculturist" is also covered in the order of priority given in it. If all such persons in the priority given in section 84 can be said to be persons interested in such land within the meaning of section 122(1) there is no reason why a person who was the previous owner of the land cannot be characterised as a person interested in such land within the meaning of section 122(1) of the Tenancy Act. Although it is not so specifically stated by the respondent No. 1 in his application it is possible that he may be covered by some of the categories or at any rate the last category referred to above in the order of priority given in section 84 of the Tenancy Act. However, as stated above, construing the expression "any person interested in such land" liberally the previous owner of the land, in my view, is a person interested in such land. The first contention raised on behalf of the petitioner is, therefore, rejected.

12. Turning to the merits of the case it is first contended that section 57(1) of the Tenancy Act contemplates transfer of actual possession of the land by the modes of transfers referred to therein. According to the petitioner, since in this case there is a simple mortgage under which the suit land is the security for the loan advanced by the Land Development Bank and, therefore, since no possession is transferred to the Bank, as is clear from clause 5 of the mortgage deed also there is no contravention of section 57(1) of the Tenancy Act. It is, however, contended on behalf of the respondent No. 1 that the word "transfer"

used in section 57(1) of the Tenancy Act has the same meaning as in the Transfer of Property Act. It is therefore contended on behalf of the respondent No. 1 that any charge or encumbrance created on the land is sufficient to bring it within the mischief of section 57(1) of the Tenancy Act. In support of his submission sub-clauses (k) and (1) of rule 31A (1) are also relied upon to show that the sanction of the Collector is necessary if the land is being mortgaged for securing a loan from the Government or a co-operative society or the State Bank of India.

13. In my view, the provisions of section 89 of the Tenancy Act would be of assistance in interpreting section 57(1) of the Tenancy Act. It is provided in section 89(1) (b) that "no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee, shall be valid in favour of a person who is not an agriculturist " which would show that where the legislature contemplated delivery of possession to the mortgagee it is so specifically provided for by the legislature. Looking to the object of the Tenancy Act that the land which is purchased by the tenant should not be allowed to be alienated to defeat the purpose of the said Act or at any rate should not be allowed to be lost to him knowingly or unknowingly, any charge or encumbrance sought to be created by him upon such land is also made subject to scrutiny and sanction of the Collector. This construction is supported by rule 31A (I) (k) (1) referred to above which is framed as provided in section 57(1) to lay down the circumstances under which the sanction should be granted by the Collector. I do not, therefore, feel that a narrow or restricted view of section 57(1), as urged on behalf of the petitioner, should be taken so as to make it applicable only in a case where the possession of land is transferred. The said contention is, therefore, rejected.

14. It is next contended that in view of section 120 of the Maharashtra Co-operative Societies Act, 1960, the provisions of section 57(1) of the Tenancy Act are overridden in the case of a mortgage executed in favour of a Land Development Bank. A perusal of section 120 of the Act (ibid) shows that it relates to the priority of a mortgage. Sub-section (1) of section 120 provides that a mortgage executed in favour of a Land Development Bank, shall have priority over any claim of the Government arising from a loan granted after the execution of the mortgage under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884 or under any other law for the time being in force. It is clear that sub-section (1) of section 120 is not attracted in the facts of this case as it provides for priority to the loan of the Land Development Bank over any claim of the Government.

15. Sub-section (2) of section 120 of the Act (ibid) provides that notwithstanding anything contained in the Bombay Tenancy and Agricultural Lands Act, 1948, or any other corresponding law for the time being in force, where a mortgage in favour of a Land Development Bank is in respect of land in which a tenant purchaser or tenant has an interest, the mortgage may be against the security of

such interest, and the rights of the mortgagee shall not be affected by the failure of the tenant purchaser or tenant to comply with the requirements of such law, and the sale of the land and his interest therein under such law shall be subject to the prior charge of the Land Development Bank. It is true that sub-section. (2) of section 120 of the Act (ibid) operates notwithstanding anything contained in the Tenancy Act. However, a scrutiny of the said provisions shows that what it seeks to achieve is the protection of the loan given by the Land Development Bank to the tenant purchaser or the tenant. It provides that even if there is failure on the part of the tenant purchaser or the tenant to comply with the requirements of the Tenancy Act in obtaining loan from the Land Development Bank by mortgaging his interest in the land it would not affect the rights of the said Bank because of such illegality and any sale of the land and the interest of the tenant purchaser or the tenant therein under the Tenancy Act would be subject to the prior charge of the Land Development Bank. The effect of sub-section (2) of section 120 of the Act (ibid) would, if at all, be that after the vesting of the suit land in the state under sub-section (3) of section 122 it may not be free from the charge or encumbrance created by the loan of the Land Development Bank, which would further be binding upon the purchaser to whom the land is sold by the State under sub-section (4) of section 122. The said provision, however, is of no assistance to the petitioner to save his suit land to him by making his mortgage transaction valid u/s 57(1) or by placing it outside the mischief of section 122(1) of the Tenancy Act. The above contention on behalf of the petitioner is also, therefore, rejected.

16. The last contention urged on behalf of the petitioner is based upon section 33(3) of the Tenancy Act. It is clear from section 33(3) that it is applicable to the tenant only. As already stated above, the petitioner has become the statutory owner of the suit land which he purchased on 22-4-1970. Section 33(3) is, therefore, not applicable to the petitioner who has ceased to be the tenant and has become the owner of the suit land. Reliance is, however, placed upon section 37 of the Tenancy Act to show that the rights and the privileges of the tenants are saved thereunder.

17. Section 37 of the Tenancy Act provides that "Save as provided in this Act, the rights and privileges of any tenant under any usage or law for the time being in force or arising out of any contract, grant, decree or order of a Court or otherwise howsoever shall not be limited or abridged." In the first place what are saved u/s 37 are the rights and privileges of a tenant. As already stated, the petitioner is no more the tenant but is the owner of the suit land and section 37 cannot, therefore, apply to him. However, the submission is that a right is created in the tenant u/s 33(3) and the same is saved by section 37. The submission is fallacious because as already stated section 37 relates to the rights and privileges of the tenant only. The expression "save as provided in this Act" would show that a tenant will have the same rights and privileges as he has under any usage or law for the time being in force or arising out of any contract, grant, decree or order of a court or otherwise except insofar as they have not

been limited or abridged by the provisions of the Tenancy Act. The said section does not deal with the rights and privileges of the owners of the land or the tenant purchasers. There is, therefore, no merit in the above contention raised on behalf of the petitioner which also deserves to be rejected.

18. In the result, the writ petition fails and is dismissed. However, in the circumstances, there would be no order as to costs.