
(2004) 02 BOM CK 0095
In the Bombay High Court
Case No : Writ Petition No. 163 of 2003

Gulab Lahanu Dorge

APPELLANT

Vs

Namdeo Ramkrishna Katkar and Others

RESPONDENT

Date of Decision : 24-02-2004

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 57

Citation : (2004) 2 ALLMR 882 : (2005) 1 MhLj 149

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : S.M. Puranik, for the Appellant; K.R. Lambat and S.Y. Deopujari, A.G.P. for Respondent Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

S.T. Kharche, J.—Rule, made returnable forthwith by the consent of the parties.

2. The learned counsel for the petitioner contended that the petitioner's father had entered into sale transaction of the suit land for Rs. 50,000/- in contravention of the provisions of Section 57 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short, the tenancy Act). He contended that, therefore the petitioner, after the death of his father instituted an application before the Naib Tahsildar for declaring the sale deed as void. He contended that the Sub Divisional Officer, by his order dated 24-2-1999 held against the petitioner and rejected the said application. The petitioner being aggrieved, went in appeal before the Additional Collector and the Additional Collector recorded his findings in favour of the petitioner by an order dated 27-8-2000 and declared the sale transaction as void by virtue of Section 57 of the Tenancy Act. He contended that the respondent No. 1, who is vendee, had preferred revision before the Divisional Commissioner and the revision came to be allowed and the findings of the Additional Collector were reversed by the order passed by the Divisional Commissioner on 24-12-2001. He further contended that the order passed by the Additional Commissioner cannot be

sustained in law as much as the order of the Additional Collector was perfectly justified in declaring the sale transaction as invalid in accordance with the provisions of the Tenancy Act.

3. The learned counsel for the respondent No. 1 contended that the Additional Collector had no jurisdiction to entertain the appeal and the petitioner ought to have preferred appeal before the Maharashtra Revenue Tribunal (MRT). He further contended that necessary sanction is to be accorded from the Collector for the transaction as per Section 57 of the Tenancy Act and the Sub Divisional Officer exercises the powers of the Collector and hence the appeal before the Collector was not maintainable and as such the said order was without jurisdiction.

4. The learned A.G.P. supports the impugned order passed by the Divisional Commissioner on 24-12-2001 who set aside the findings of the Additional Collector and observed that the aggrieved party is at liberty to approach the competent forum for redressal of his grievance, He contended that the revenue authorities had no jurisdiction to entertain the point in issue as to whether the sale transaction between the petitioner's father and the respondent No. 1 is void.

5. I have carefully considered the contentions canvassed by the learned counsel for the parties. It is not disputed that petitioner's father had executed the registered sale deed dated 17-9-1993 in favour of the respondent No. 1 and only after the death of the father, the petitioner made futile attempt to raise the defence that the land was sold to respondent No. 1 and sale deed was executed by way of security for the loan amount borrowed by his father.

6. Section 57 of the Tenancy Act contemplates that:

(1) No land purchased by a tenant u/s 41 or 46 or 49A or 57D or 130 or sold to any person u/s 91 or 122 shall be 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.

7. Plain reading of the aforesaid provisions of law would reveal that some restrictions have been put on transfer of land purchased or sold in consequence of the provisions of the Tenancy Act. Though, sub-section (2) lays down that any transfer of land under sub-section (1) shall be invalid, that does not mean that the revenue authorities gets the jurisdiction to entertain the issue as to declaration of title to the land as invalid by virtue of this provision. It is settled law that when the question of title is raised by the parties by raising contentions that any transfer of any land is invalid either in accordance with the provisions of the Tenancy Act or the Transfer of Property Act, 1852, the Civil Court alone has

jurisdiction to decide the said question. In such circumstances, the impugned order passed by the Divisional Commissioner, does not suffer from any illegality nor it is erroneous, and therefore, this Court is of the considered opinion that the only remedy available to the parties was to approach the Civil Court for redressal of their grievance. Thus, this petition is dismissed with no orders as to the cost. Rule is discharged.