
(1965) 06 GUJ CK 0012
In the Gujarat High Court

Haji Begum and Others

APPELLANT

Vs

Raisang Bechar and Another

RESPONDENT

Date of Decision : 29-06-1965

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G, 32G, 32G(4),
32G(4), 63A(3)(c)

Citation : (1965) 6 GLR 810

Hon'ble Judges : P.N. Bhagwati, J;N.G. Shelat, J

Bench : Division Bench

Judgement

P.N. Bhagwati, J.—This petition is directed against an order passed by the Collector of Broach reducing the purchase price for certain lands fixed by the Agricultural Lands Tribunal u/s 32G of the Bombay Tenancy and Agricultural Lands Act 1948 (hereinafter referred to as the Act). The petitioners were the owners of lands bearing Survey Nos. 121 122 and 123 situate in village Osara Taluka Broach District Broach. The respective areas of these lands were 2 acres 33 gunthas 4 acres 11 gunthas and 5 acres 11 gunthas and their respective assessments were Rs. 15-56 Rs. 23-50 and 29-00. The first respondent was the tenant of the petitioners in respect of the lands and there is no dispute that on the tillers day that is 1 April 1957 the first respondent was deemed to have purchased the lands from the petitioners. The petitioners and the first respondent could not reach an agreement in regard to the purchase price of the lands and proceedings for determining the purchase price of the lands were therefore initiated by the Agricultural Lands Tribunal u/s 32G of the Act. The Agricultural Lands Tribunal after giving an opportunity to the parties and holding an inquiry fixed the purchase price of the lands at 115 times the assessment and since the assessment of the lands aggregated to Rs. 68-06 nP. the purchase price was calculated at Rs. 7 826 nP. The Agricultural Lands Tribunal in arriving at this figure of the purchase price took into account what it called the features of the case the prices of corn etc. prevailing and the profits of agriculture in the locality. The Agricultural Lands Tribunal also awarded interest on the amount of the

purchase price at the rate of 4 1/2 per cent per annum from 1st April 1957 to 26th April 1961 being the date of the order and directed that the total amount of Rs. 8 629 made up of the purchase price and interest after deducting therefrom the amount of rent paid by the first respondent after 1st April 1957 should be paid by the first respondent to the petitioners in twelve annual instalments. The first respondent was aggrieved by this order passed by the Agricultural Lands Tribunal and he therefore preferred an appeal to the Collector Broach. The Collector took the view that the Agricultural Lands Tribunal had fixed the purchase price at 115 times the assessment without showing how the various factors referred to by it had influenced the price fixation and that the reasons given by the Agricultural Lands Tribunal were vague. The Collector observed that it was for the parties to adduce evidence on the relevant factors prescribed in the Act and the Rules made under the Act and held that since the parties in the case before her had led no evidence in regard to the rental value or profits of agriculture of similar lands in the locality or other factors prescribed in the Act or the Rules the best way in which the purchase price of the lands could be fixed was by capitalisation of the rent payable by the first respondent to the petitioners and in her opinion twenty times represented a reasonable rate of capitalisation and applying that rate she fixed the purchase price of the lands at Rs. 4 950. The Collector regarded capitalisation of the rent as a scientific method of arriving at the purchase price of the lands since in her view after the coming into force of the Act rent was the only benefit that a landlord could hope to derive in respect of land leased by him fixity of tenure and fixity of rent being guaranteed to the tenant by the Act. The petitioners thereupon preferred the present petition challenging the validity of this order passed by the Collector.

2. The main ground of attack against the order of the Collector was that the Collector fixed the purchase price of the lands in breach of the provisions of Section 32G Sub-section (4) read with Section 63A Sub-section (3). The argument was that by reason of the combined effect of Section 32G Sub-section (4) and Section 63A Sub-section (3) the Agricultural Lands Tribunal acting u/s 32G and the Collector in appeal u/s 32J were bound to fix the purchase price of the lands having regard to the factors set out in Section 63A Sub-section (3) and that though the Agricultural Lands Tribunal had taken these factors into account the Collector had failed to do so and the purchase price fixed by the Collector without taking into account these factors was therefore liable to be set aside. This contention involves an examination of the provisions of Section 32G Sub-section (4) and Section 63A Sub-section (3) and we shall therefore immediately proceed to state these provisions and to determine their true scope and effect in relation to the questions arising in the petition.

3. Section 32G Sub-section (4) deals with a situation where a tenant appears before the Agricultural Lands Tribunal pursuant to the notice issued by it u/s 32G Sub-section (1) and intimates to the Agricultural Lands Tribunal that he is willing to purchase the land of which he is a tenant. What is to happen in such a case is provided by Section 32G Subsection (4) in the following terms:

(4) If a tenant is willing to purchase the Tribunal shall after giving an opportunity to the tenant and landlord and all other persons interested in such land to be heard and after holding an inquiry determine the purchase price of such land in accordance with the provisions of Section 32H and of Sub-section (3) of Section 63A:

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Section 32H which is referred to in Section 32G Sub-section (4) declares as to how the purchase price should be reckoned by the Agricultural Lands Tribunal and it lays down two different modes of computation one in respect of land personally cultivated by a permanent tenant and the other in respect of Land cultivated personally by what we may call a non-permanent tenant. We are concerned in this petition with the case of a nonpermanent tenant and we shall therefore refer only to that part of Section 32 which refers to land personally cultivated by a non-permanent tenant. In the case of such tenant Section 32H declares that the purchase price shall be the aggregate of four items one of them being such amount as the Tribunal may determine being not less than 20 times the assessment and not more than 200 times the assessment. This provision thus fixes the maximum and the minimum within which the first item constituting the purchase price must be fixed by the Agricultural Lands Tribunal and as already pointed out above the amount representing this item has to be fixed by the Agricultural Lands Tribunal in accordance with the provisions of Subsection (3) of Section 63A. Section 63A Sub-section (3) requires the Agricultural Lands Tribunal to fix the purchase price and consequently also the first item of the purchase price having regard to the following factors namely:

- (a) the rental values of lands used for similar purposes in the locality;
- (b) the structures and wells constructed and permanent fixtures made and trees planted on the land by the landlord or tenant;
- (c) the profits of agriculture of similar lands in the locality
- (d) the prices of crops and commodities in the locality;
- (e) the improvements made in the land by the landlord or the tenant;
- (f) the assessment payable in respect of the land; and
- (g) such other factors as may be prescribed.

Rule 37 read with Rule 29 of the Bombay Tenancy and Agricultural Lands Rules 1956 prescribes the other factors to be taken into consideration in fixing the purchase price of land as provided in Clause (g) of Sub-section (3) of Section 63A. These other factors referred to in Rule 37 read with Rule 29 are however not relevant for the purpose of the present discussion and we need not therefore dwell on them.

4. It is clear on a plain reading of these provisions that in fixing the purchase

price of the land of which the tenant has become the deemed purchaser under the provisions of the Act the Agricultural Lands Tribunal and the Collector are bound to have regard to the factors set out in Section 63 Sub-section (3) and Rules 37 read with Rule 29. The purchase price of the land must be fixed by the Agricultural Lands Tribunal and the Collector having regard to these factors and a fortiori no other factors can be taken into account by them. The question which must therefore necessarily arise whenever an order made by the Agricultural Lands Tribunal or the Collector fixing the purchase price is challenged as illegal or invalid is whether any of the factors set out in Section 63A Sub-section (3) and Rule 37 read with Rule 29 is ignored or brushed aside or whether any extraneous or irrelevant factor has been taken into account in making the order. The argument urged on behalf of the petitioners was that in fixing the purchase price of the lands in the present case at Rs. 4 950 the Collector had failed to take into account the factors set out in Clauses (c)(d) and (0 and that the purchase price was fixed solely having regard to the factor set out in Clause (a) and that this constituted an error of law apparent on the face of the order. Now when we turn to the order of the Collector we find that the only factor which has been taken into account by the Collector is the rent of lands payable by the first respondent to the petitioners. The factor which is required to be taken into account under Clause (a) of Sub-section (3) Of Section 63A is the rental value of the lands used for similar puposes in the locality and rental value is defined in Clause (7) of Section 117C of the Bombay Land Revenue Code 1879 to mean-and that is the definition which is also applicable under the Act by reason of Section 2(21) of the Act-the consideration for which the land is or could be leased for a period of one year for its most advantageous use. Now the rent in respect of lands governed by the Act is no longer a matter of mutual agreement between the parties. Section 8 fixes a maximum beyond which rent cannot be charged by the landlord to the tenant and that maximum is five times the assessment or Rs. 20/ per acre whichever is less. There is also a minimum fixed by the section which says that the rent shall not be less than twice the assessment. Section 9 Sub-section (1) provides that subject to the maximum and minimum limits of rent fixed u/s 8 the Mamlatdar shall for each village or group of villages or for any area within his jurisdiction fix the rate of rent payable by a tenant for the lease of different classes of land situate in such village or group of villages or areas as the case may be. The rent fixed by the Mamlatdar u/s 9 Sub-section (1) cannot therefore exceed five times the assessment or Rs. 20/per acre whichever is less and once the rent is fixed by the Mamlatdar the landlord cannot charge the tenant any rent in. excess of the rent so fixed. It is therefore evident that though in all cases the rent actually charged by the landlord to the tenant would not necessarily represent the rental value of the land in cases governed by the Act the rental value would be the rent actually paid by the tenant to the landlord where the rent is being paid at a rate fixed for the land by the Mamlatdar u/s 9 Sub-section (1) and this rental value would generally be the same in respect of lands used for similar purposes in the locality. The rent payable by the first respondent to the petitioners in respect of the lands being at a rate fixed by the Mamlatdar u/s 9

Sub-section (1) could therefore be rightly regarded as the rental value of the lands and consequently of other lands used for similar purposes in the locality and be taken into account as a relevant factor under Clause (a) of Sub-section (3) of Section 63A. But that appears to be the only factor taken into account by the Collector. The order of the Collector does not show that any of the one factors set out in Clauses (C) (d) and (f) were taken into account by him. So far as factors set out in Clauses (c) and (d) are concerned the Collector obviously did not take these factors into account on the ground that it was upto the parties to adduce evidence in regard to these factors and the parties before her had failed to adduce such evidence. This reasoning adopted by the Collector is in our opinion unsound in that it ignores the true character of the inquiry which is required to be held by the Agricultural Lands Tribunal. The inquiry before the Agricultural Lands Tribunal is not initiated as a result of any application made by a party moving the Agricultural Lands Tribunal for redress and the other party opposing such application. If such were the case it would be possible to say that the burden of leading the evidence relevant to the issues in the inquiry would be on the parties and if any party on whom the burden of proving a particular issue lies does not lead evidence to prove such issue he must fail. But the inquiry which is to be held by the Agricultural Lands Tribunal is of a different character and the purpose of the inquiry is to fix the purchase price consequent upon the tenant being declared to be the owner of the land tilted by him. Section 32G lays an obligation on the Agricultural Lands Tribunal to determine the purchase price of the land and in doing so the Agricultural Lands Tribunal is required to give an opportunity to the tenant and landlord and all other persons interested in the land to be heard and to hold an inquiry for the purpose. The section also lays down the method of computation of the purchase price and the factors which are required to be taken into account by the Agricultural Lands Tribunal in determining the purchase price. The Agricultural Lands Tribunal is therefore not tied down to the evidence which may be adduced before it by the parties but can also rely on other material before it provided of course the parties are given an opportunity to say whatever they want to in regard to such material and to render their explanation in regard to it. This last qualification is plainly nothing but a requirement of the principles of natural justice which must be observed by Agricultural Lands Tribunal as a quasi-judicial body. If neither the landlord nor the tenant appears, at the hearing of the inquiry or leads evidence relating to the factors set out in Section 63A Sub-section (3) the Agricultural Lands Tribunal cannot refuse to determine the purchase price on the ground that no material has been placed before it by the parties. The purchase price has got to be determined by the Agricultural Lands Tribunal and the material on the basis of which the purchase price is fixed may be material produced by the parties or material which is otherwise available to the Agricultural Lands Tribunal.

5. The Collector was therefore clearly in error in observing that since the parties had not led any evidence in regard to the factors set out in Clauses (c) and (d) of Sub-section (3) of Section 63A she was not: bound to take those factors into

account. We may point out here that the factors set out in Clauses (c) and (d) are required by the Legislature to be taken into account for the reversion of the landlord which is taken away by the Legislature by making the tenant the owner of the land cannot: be properly evaluated unless these factors are also taken into account along with the rental value of the land. The reversion of the landlord would consist not merely of the right to receive rent but would also include the contingent right to recover possession of the land under certain circumstances and to be able to personally cultivate it. Moreover as already pointed out above in cases governed by the Act rent is no longer a matter of mutual agreement between the parties and in any event it cannot go beyond an artificial maximum limit fixed by the statute. Capitalisation of the rent cannot therefore yield the real value of the reversion of the landlord. Since it would not be possible to arrive at a proper evaluation of the reversion by taking into account merely the rent of the land the Legislature has provided that besides the rental value the profits of agriculture of similar lands in the locality and the prices of crops and commodities in the locality must also be taken into account. Now so far as these two factors are concerned it is no doubt true that the parties did not adduce evidence before the Agricultural Lands Tribunal but it does appear that there was some material before the Agricultural Lands Tribunal in regard to these two factors for the Agricultural Lands Tribunal has clearly stated in its order that it was fixing the purchase price at 115 times the assessment taking into consideration amongst other things the prices of corn etc. prevailing and the profits of agriculture in the locality. What that material could possibly be will be clear if we look at Rule 19J of the Land Revenue Rules made by the Government of Bombay in exercise of the powers conferred upon it u/s 213 and 214 of the Bombay Land Revenue Code 1879 Sub-rule (1) of that Rule provides that the Mamlatdar shall ascertain each month the wholesale prices (in terms of rupees per maund) and retail prices (in seers of 80 tolas per rupee) of the classes of agricultural produce with reference to which a settlement may be declared to have been made under Sub-section (3) of Section 117M prevailing at the taluka headquarters and record them in a register which shall be carefully maintained and he shall also show in such register the average prices during the period from January to September of each year and under Sub-rule (2) the prices recorded in such register are required to be published in the Official Gazette. It is therefore likely that the Mamlatdar had before him the record of prices of crops and commodities in the locality maintained under Rule 19J. It is also clear from the various Government Resolutions referred to by Mr. K.S. Gupte in his Commentary on the Bombay Land Revenue Code 1879 (1962 Edition) at pages 838 and 839 that the Government must be maintaining a record of the standard normal yield in respect of various localities and there might. It also be the record relating to the anna valuation of the crops of various villages maintained by the Mamlatdar or the Collector. There might also be other official records such as those referred to in Rule 6 of the Bombay Tenancy and Agricultural Lands Rules 1956 These records would give an indication of the average produce per acre in the locality during a particular season or year and by reference to the prices of crops and

commodities shown in the register maintained under Rule 19J and other similar records it would be possible to arrive at the profits of agricultural of any particular type of lands in that locality. It is therefore quite possible that all this material was before the Agricultural Lands Tribunal when it fixed the purchase price at 15 times the assessment. If this material was available the Collector was bound to look at it for the purpose of determining the purchase price in appeal. But it appears from her order that the Collector did not apply her mind to this aspect of the matter since in her view it was for the parties to lead evidence in regard to these factors and since the parties did not lead such evidence she was not bound to take these two factors into account. The Collector also did not take into account the factor set out in Clause (f) of Section 63A Sub-section (3). The order passed by the Collector therefore discloses an error of law apparent on the face of the order and must be set aside.

6. We therefore allow the petition set aside the order passed by the Collector and remand the appeal to the Collector with a direction to dispose it of in accordance with law in the light of the observations contained in this judgment. If there is any material of the type indicated by us or any other material bearing on the factors set out in Section 63A Sub-section (3) the Collector will look at such material and take such material into account after giving an opportunity to the parties to render their explanation in regard to it and dispose of the appeal in accordance with the legal position as set out by us. There will be no order as to costs of the petition.