
(1982) 10 BOM CK 0009

In the Bombay High Court

Case No : Special Civil Application No. 2162 of 1978

Hanmatrao

APPELLANT

Vs

Bhimrao and Others

RESPONDENT

Date of Decision : 12-10-1982

Acts Referred:

Citation : (1983) 1 BomCR 30 : (1983) MhLj 434

Hon'ble Judges : S.J. Deshpande, J

Bench : Single Bench

Advocate : A.G. Godhamgoankar, for the Appellant; A.H. Vaishnav, for the Respondent

Final Decision : Allowed

Judgement

S.J. Deshpande, J.—This special civil application raises a curious and interesting question and I am told at the Bar by the learned Counsel appearing for both sides that such a question has not so far arisen for decision and it arises in the following manner.

2. The petitioner in the case is the landlord of the disputed land Survey No. 3 admeasuring 10 acres and 7 gunthas situated at village Akhargoan in Mukhed Tahsil of Nanded District. The present respondent are heirs and legal representatives of one Govinda. It appears that Govinda Piraji was declared to be protected tenant of this land in proceedings u/s 38-E. Declaration of ownership was made in favour of Govinda Piraji. We find from the record of the Deputy collector that there is a Pherpar register wherein there is any entry that the land is declared in the name of Govinda Piraji under the Hyderabad Tenancy and Agriculture Land Act (hereinafter referred to as the Tenancy Act) section 38-E and a request was made to the concerned officer for sanction of this entry and this entry is sanctioned by the upper Tahsildar : The Pherpar register is at page No. 6 in the file of the Deputy collector. It is, therefore, apparent that a declaration of ownership was made in favour of Govinda Piraji. Mr. Godhamgaonkar appearing for the petitioner contend that the petitioner was not

a party to these proceedings and so it is not binding him and his another contention was that the petitioner's son was a party of these proceedings. Mr, Vaishnav appearing for the respondent was right when he urged that there is no record whatsoever to hold that the petitioner was not served and that the said order was passed in the proceedings ,where petitioner's son was a party.

3. It appears from the record that on 7-3-62, Govinda Piraji appeared before the Tahsildar in pursuance of a notice issued to him u/s 38-E. This notice is at page 13 in the field of the Tahsildar. It is stated in this notice that the matter arises out of proceedings u/s 38-E of the Tenancy Act Govinda Piraji was informed that the date was fixed on 7-3-62. It appears that the present petitioner was also served with a similar notice and, therefore, on 7-3-62, both the present petitioner and Govinda Piraji appeared the Tahsildar. The present petitioner contended that Govinda Piraji was not his tenant at all and, therefore, there is no question of handing over possession of land to Govinda Piraji. He made a further grievances that the land was declared in favour of Govinda Piraji through mistake and that he had preferred an appeal also against the declaration. The record further shows that 7-3-62, Govinda Piraji also gave in writing that he did not want the land and that he was owing 8 acres of his own land. He further mentioned therein that an appeal was pending between the son of the present petitioner and himself regarding declaration. He also mentioned in this petitioner that the name of his father was wrongly entered as a tenant of this land in the year 1953. As this was a written application given by Govinda, the statement of Govinda was recorded by the Tahsildar on oath and the Tahsildar made an entry behind the back of this petitioner that govinda was admitting the contents of this petition on oath and there is signature of Govinda even below this writing. The papers show that on 31-5-64/1-6-64 a panchanama was made by the Tahsildar in the presence of panchas and even in the presence of Govinda Piraji. First of all the say of the present petitioner was recorded and it is further mentioned that the Tahsildar informed Govinda that the say of the present petitioner could not be considered and that Govinda should take the land in his possession. The Panchanama further says that Govinda again made a statement on that day that he did not want the processional of the land declared in his favour and that he was having his own personal land of his ownership, it is further clearly mentioned that Govinda made a statement that he did not want to pay the price of this land and that the he did not want this land at all, and, therefore, the Panchanama is made by the Tahsildar in the presence of the panchas and in the presence of Govinda. This Panchanama is signed by the Govinda. Behind the back of this Panchanama, the learned Tahsildar passed the following order :-

"In this case refusal is accepted by the Deputy Collector. Hence as per order of the Collector (LR) Nanded, the proceedings are dropped. Close the case."

Therefore, the case was closed at that time. This order was passed by the Tahsildar on 22-5-71 and the matter rested there and the land continued to remain with the landlord-petitioner.

4. Then on 5-4-76, Bhimrao, the eldest son of Govinda who is respondent No. 1 in this petition gave an application to Tahsildar for restoration of possession of this land to him on the ground that he was a resident of the same village, that he belonged to Scheduled Case, that his father was a statutory owner and lastly he was a minor at the time of his father's death and he was making that application after majority. On 17-7-66, Bhimrao gave another application purposing it to be on behalf of himself and on behalf of his minor brothers who are respondent Nos. 2 to 4 in this petition. On 5-10-76, the Tahsildar passed an order directing delivery of possession of land to the present respondent Nos. 1 to 4 holding that the landlord failed to prove that the declaration was cancelled and he held that the order for possession could be passed at any times. Now, it is an admitted fact that no appeal was filed against this order dated 5-10-76.

5. On 30-4-77, the Revenue Inspector was directed by the Tahsildar to hand over possession of the land to respondent Nos. 1 to 4. It is thereafter the landlord-petitioner is stated to have filed two appeals before the Deputy Collector viz. one against the alleged declaration u/s 38-E in favour of Govinda contending that he had no notice of the said proceedings for declaration if any and so was not bound by it and, therefore, declaration may be cancelled. I am told at the Bar by Mr. Godhamgaonkar appearing for the petitioner that this appeal is still undecided and is lying on the file of the Deputy Collector. Mr. Vaishnav appearing for the respondents No. 1 to 4 was unable to controvert this statement. Be it so. The other appeal was against the order dated 30-4-77 directing delivery of possession.

6. On 3-8-77, the Deputy Collector disposed of the appeal filed against the order dated 30-4-77 and he dismissed the appeal. Feeling aggrieved by this decision, the petitioner approached the Maharashtra Revenue Tribunal and the Tribunal also dismissed the revision application and, therefore, that petitioner has filed this writ petition in this Court.

7. Now the real question that arises for consideration is the effect of the refusal of Govinda to purchase the land and to pay its price. According to Mr. Vaishnav, this does not amount to a surrender and according to him it does not comply with the statutory provides of section 19 of the Tenancy Act. He contended that the statement of Govinda cannot amount to a surrender u/s 19 of the Tenancy Act. According to him at best it would be an admission of Govinda and he urged further that this admission would not revert the land back to the land owner. He contended that by operation of law, the ownership was transferred to Govinda and it would not revert back to the landlord by virtue of the admission made by Govinda on 7-3-62 and on 31-5-64 or 1-6-64. Mr. Vaishnav placed reliance upon two rulings of this Court. One is Apparao v. Sadhu 1972 RR 217. I do not think that this ruling has any application to the facts of the instance case. In that ruling, the question this Court was the question of limitation. In that case a tenant in possession was forcibly ousted from the land. It was held by Abyankar, J., that there was presumption that the tenant remained in possession till ousted

in due course of law. The second ruling also is a decision of his Court Bhoomanna v. Nagorao 1972 RR 357. That rulings is not applicable to the facts of the instance case. Mr. Godhamgaonkar reliance upon the decisions of this Court. One is Anasuyabai v. Sopan 1965 MH LJ 66. In that ruling, the question for consideration was that the landlord objected to the provisional declaration. The tenant stated on oath that he has enough land of his own and he has already surrendered that land before 1950 and he was not interested in the land. It appears that the tenant gave evidence on solemn affirmation that he surrender the land voluntarily. Inspite of this, the courts below gave a decision in favour of the tenant and, therefore, this court interfered with those orders and held that the admission given by the tenant could not be ignored by the Revenue Authorities. This ruling will also not apply to the facts of the instant case. There is nothing in the petition or in the statement of Govinda to the effect that he had already surrender the land. The next ruling is Babanji v. Kachroji 1965 MH LJ 109. This ruling also relates to a surrender and, therefore, it is not relevant for our purpose.

8. As already stated, the question is of the effect of Govinda's refusal to purchase the land even after the declaration was made in his favour and to refuse to pay the purchase price for which declaration was made in his favour.

9. Now the scheme of the Act is to confer ownership of agricultural land on tenant cultivating the land. Section 38 which is included in Chapter 4-A of the Tenancy Act confer rights on protected tenants to purchase land. Section 38-A (i) enables the Tribunal to determine the encumbrance subsisting on the land purchased by the tenant. This is not of important to us in this case. Then section 38-A lays down the procedure when reasonable price is agreed to between the landlord and the protected tenant or the ordinary tenant. Section 38-B lays down the procedure when the land holder agrees to relinquish the right in favour of the tenant. Section 38-C and D are deleted by the amendments made in 1959 and 1965. What is relevant for our purpose is sanction 38-E. This section lays down the provisions relating to ownership of land held by protected tenants to stand transferred to them from the notified date. Now I have already stated that there is a declaration of ownership in favour of Govinda u/s 38-E. Sub-section (2) of section 38-E lays down that a certificate in the prescribed form declaring the tenant to be the owner shall be issued by the Tribunal to every protected tenant and notice of such issue simultaneously to the landlord. Sub-section (3) lays down that within 90 days from the date of notification under sub-section (1), the landlord has to apply before the Tribunal for determination of reasonable price and this sub-section further lays down that if an application is not so filed within which such period but a certificate under sub-section (2) has been issued by the Tribunal, the Tribunal may suo motu proceed to determine such price and thereupon at the provisions of sub-sections (4) to (9) of section 38 shall mutatis mutandis apply to such application. Then first proviso to sub-section (3) lays down that if the protected tenant commits in respect of any installment, it shall be recovered by the Government as arrears of land revenue and paid to the land-

holder.

10. Then comes important provision containing second proviso to sub-section (3) and it runs as follows :-

"Provided further that if the whole or any part of the price due to the land-holder cannot be recovered as arrears of land revenue, the transfer shall not be effective and the amount, if any, already paid by the protected tenant towards the price shall be refunded to him together with interest at three percent annum and the land revenue paid by him, if any, after deducting there from the rent for the period."

It is this provision, which now arises for my consideration. As already stated, it is clear that although there is a scheme for transferring ownership to the tenant, this second proviso provides that the transfer shall not be effective in the circumstance mentioned in it. Extending this logic further it can very well be said that if a tenant appears before the competent authority at a stage earlier to the fixing of a price and gives in writing and makes a statement on oath before that competent authority that he does not want purchase the land, in my opinion this statement has the same effect as provided in second proviso to sub-section (3). As already stated, Govinda gave a written application on 7-3-62 and then made a statement on oath before the Tahsildar to the same effect. Again on 31-5-64 or 1-6-64 he made the same statement before the Tahsildar in the presence of the panchas and thereafter the file was directed to be closed. In my opinion , in view of the refusal of Govinda to purchase the land, the transfer does not become effective.

11. Even if, we consider the panchanama dated 3-5-64 or 1-6-64, Govinda has clearly stated before the Tahsildar in the presence of panchas that he is not prepared to pay the price of the land. Hence this statement clearly falls within the ambit of the second proviso of sub-section (3) of section 38-E of the Tenancy Act. There is a total refusal on the part of Govinda to pay any price and this includes the price that would be fixed by the Tahsildar. Hence on this count also, the transfer in favour of Govinda becomes ineffective. Unfortunately all the authorities below have not taken this aspect into consideration and have come to wrong conclusion in this respect. In my opinion this writing given by Govinda and the statement made by Govinda on oath on these two dates conclude the whole issue and they go to show that the transfer has become ineffective and, therefore, respondents Nos. 1 to 4 are not entitled to possession of this land.

12. The result is that special civil application deserves to be allowed and it is accordingly allowed and the orders dated 30-4-77 of the Tahsildar, 3-8-67 of the Deputy Collector and dated 7-7-78 of the Maharashtra Revenue Tribunal are hereby quashed and the petition filed by respondent Nos. 1 to 4 is dismissed. Rule made absolute. No order as to costs throughout.