
(2014) 07 BOM CK 0113
In the Bombay High Court
Case No : Writ Petition No. 454 of 1994

Hanuman P. Shingan

APPELLANT

Vs

Vithal Deo Karad Public Trust

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2014) 6 MhLj 198

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : Kayval Shah i/b Prafulla Shah, Advocate for the Appellant; S.G. Karandikar, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

R.M. Savant, J.—Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The Writ Jurisdiction of this Court under Article 226 and 227 of the Constitution of India is invoked against the order dated 16-8-1993 passed by the Maharashtra Revenue Tribunal (MRT for short) holding that no revision lies against the order passed u/s 88-B and the MRT therefore directed the application to be returned to the Applicant for presentation to the proper authority. The Petitioners were the Applicants before the MRT in the said revision proceedings. The Petitioners claim to be the tenants of the land bearing survey Nos. 235 and 234 totally admeasuring 2 Hectors and 46 Ares situated at Kasbe Karad Taluka Karad, District Satara. The Respondent No. 1 is a public trust who had filed an application u/s 88-B of the Bombay Tenancy and Agricultural Lands Act, 1946 (for short the said Act), seeking exemption certificate as postulated in the said Section. The Petitioners had filed their reply to the said application. The Sub Divisional Officer allowed the said application filed by the Respondent No. 1 by his order dated 23-4-1993 and thereby made the Respondent No. 1 trust entitled to the certificate u/s 88-B of the said Act. The Petitioners aggrieved by the said

order dated 23-4-1993 preferred a Revision Application before the MRT which was numbered as MRT/NS/7/3/1993. The MRT as indicated above disposed of the said application on the ground that a revision would not lie against the certificate granted u/s 88-B of the said Act. The issue which therefore arises for consideration is as to whether a notice is required to be given to the tenants in a proceeding u/s 88-B of the said act and whether a Revision would lie against the certificate issued u/s 88-B.

3. The said issue had come up before a Learned Single Judge of this Court in the case of Jagdeorao Anandrao Pawar Vs. Kisan Namdeo Pawar and Another, The Learned Single Judge B.A. Masodkar, J. (as His Lordship then was) held that in so far as the proceedings u/s 88-B is concerned, the same are between the Collector and the Trust and there is no lis in so far as the tenants are concerned. The Learned Judge held that no notice is therefore required to be issued to the tenants in respect of the proceedings u/s 88-B. The Learned Judge relied upon the Judgment of the Apex Court in Maneksha Ardeshir Irani and Another Vs. Manekji Edulji Mistry and Others, The issue had once again come up before a Division Bench of this Court in the case of Keraba Dattu Borachate and Others Vs. Sheshashai and Vishnu Trust, . The Division Bench comprising of M.L. Pendse and M.F. Saldanna JJ. (as their Lordships then were) held that the reliance placed by the Learned Single Judge in Shrimant Jagdeorao Pawar on the Judgment of the Apex Court in Ardeshir Irani's case was not accurate. The Division Bench held that observations were made by the Apex Court in the peculiar facts of the said case before it and it is not possible to conclude that the Apex Court intended to lay down that in the inquiry conducted by the Collector u/s 88-B(2) of the said Act, it is not necessary to serve any notice upon the tenants whose valuable property rights would be destroyed by the grant of exemption certificate. It is in the said circumstance that the Division Bench therefore observed that the reliance placed on the decision of the Apex Court in Maneksha Ardeshi Irani's case by the Learned Single Judge in Shrimant Jagdeorao Pawar's case was not accurate. The Division Bench concluded that the Collector was bound to issue notice to the tenants of the agricultural lands before holding an inquiry and must permit the tenants to participate in the inquiry proceedings u/s 88-B of the said Act, meaning thereby that there is a lis between the tenants and the landlord in so far as the proceedings u/s 88-B is concerned. The sequitur to the said Judgment of the Division Bench in Kerba Dattu Borachate's case would be that the certificate granted u/s 88-B would be revisable and therefore the Revision Application would be maintainable against the grant of the certificate u/s 88-B. The impugned order is accordingly set aside. The Revision Application is relegated back to the MRT for a de novo consideration of the same. Needless to state that all the contentions of the parties on merits are kept open for being urged before the MRT. On remand the MRT to decide the Revision Application expeditiously and latest by 31-3-2015. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

4. In view of the fact that there is a stay operating in the above Petition, the same would operate pending the decision in the Revision Application.