

(2001) 12 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 1768 of 1988

Haribhau Madhusudan Kakde

APPELLANT

Vs

Shankar Maruti Honkalas and Another

RESPONDENT

Date of Decision : 06-12-2001

Acts Referred:

Bombay Tenancy Act, 1958 — Section 43, 84CC
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G
Constitution of India, 1950 — Article 227

Citation : (2002) 2 MhLj 776

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : G.S. Godbole and D.J. Deshmukh, for the Appellant; S.G. Karandikar, for the Respondent

Final Decision : Allowed

Judgement

J.G. Chitre, J.—Few facts needs to be stated for unfolding the matter. Shankar Maruti Honkalas was the owner of Gat No. 703 of village Puluji. Shri Ganpat Yadav, father of present respondent No. 2, was the tenant of the said land. In a proceeding initiated in view of Section 32-G of Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Bombay Tenancy Act" for convenience) he was declared as purchaser by fixing the purchase price. He paid it and certificate in view of Section 32-M was issued in his favour. On 26-2-1982 by a sale deed he sold an area admeasuring 1 Hectare 50 Ares to the present petitioner. The mutation entry bearing No. 662 was entered on 29-2-1982 in that context. An application was moved by the present respondent No. 1 to concerned Collector and the said application was treated as an application submitted in view of provisions of Section 54-CC/4 of the Bombay Tenancy Act. An enquiry was made and the said application was decided against the present petitioner. The present petitioner moved a petition before the Sub-Divisional Officer, Pandharpur who decided it in favour of the present petitioner. The present respondent No. 1 moved a petition before M.R.T. which was heard and decided against the present

petitioner and the order which was passed by the ALT was upheld by setting aside the Judgment and order which was passed by S.D.O. That is the cause for this petition.

2. Mr, Godbole, Counsel appearing for the petitioner, submitted that the M.R.T. misdirected itself in coming to the conclusion that as the parties did not have any right to move a petition for revising the order passed by A.L.T. S.D.O. could not have the jurisdiction and power to treat the appeal as suo motu revision and to decide it on merits and thereby to set aside the judgment and order which was passed by A.L.T. Mr. Godbole further submitted that the A.L.T. committed a gross error of law in treating the said application as an application in view of Section 84-CC/4 of the Bombay Tenancy Act and thereby landed in error in passing the judgment and order which was rightly set aside by the S.D.O. He submitted that the learned Member of M.R.T. did not consider this important aspect of the matter and, therefore, landed in error of recording a judgment and order against the present petitioner. He submitted that that being an illegal order, this Court be pleased to quash it by issuing a writ of certiorari.

3. Mr. Sunil Karandikar, Counsel appearing for respondent No. 1, vehemently submitted that the parties had no right to move a revision petition in such proceeding because Section 76A of the Bombay Tenancy Act stands involved. He placed reliance on the judgment of the Supreme Court in the matter of Patel Chunilal v. Narayanrao, reported in 7966 Mh.LJ. 475 (SC) : 1966 14 Tenancy Law Reporter 49. He submitted that the judgment and order which has been passed by M.R.T. is correct, proper and consistent with the ratio of the Judgment of the Supreme Court in the matter of Patel Chunilal v. Narayanrao.

4. In the matter of Patel Chunilal v. Narayanrao (supra), the Supreme Court did observe in paragraph 7 as under :--

"It was, however, said on behalf of the landlord that the Collector had by the earlier orders of October, 1958, refused to call for the record and thereby fully exercised his powers under the Section and could not make the order of February 17, 1959. The High Court held that a refusal to send for the record was an administrative act and it was not an order made under the Section in a judicial capacity and such an order did not exhaust the Collector's power under the Section."

The Supreme Court further held in that matter :--

"The Section does not create any right in any party to move the Collector under it. Under it the Collector is either to act suo motu or at the instance of the Divisional Officer of the State Government."

It is pertinent to note that the Supreme Court had made the observations this way in a different context and that is not applicable so far as the present case is concerned. Unfortunately, in the present case the said application was treated improperly from the initial stage where the ALT treated it to be an application in

purview of provisions of Section 88CC. In fact when that application was presented, the ALT should have concentrated on provisions of Section 84C and should have made the enquiry and should have decided in that direction. Had that been done, all these problems would not have arisen and that too at this stage after a time gap of number of years. It would be good if the authorities at the bottom start concentrating on the matters before them in proper perspective right from the beginning. It would avoid the consumption of time and lingering of the Us in the Courts and resultant frustration in the minds of the litigants. It would save them from time consuming exercise in the Courts with resultant expenditure.

5. This Court is entertaining and hearing this petition in view of Article 227 of the Constitution of India. When it comes to the notice of this Court that a particular judgment and order is grossly incorrect, malafide and illegal, it becomes the duty of this Court to set it aside for the purpose of maintaining the flow of administration of justice flawless and without any obstruction.

6. The Member of M.R.T. did not consider the observations of the Supreme Court in Patel Chunilal's case (supra) in proper perspective and, therefore, it allowed itself to be misdirected. It considered the revision petition before it as touching the provisions of Section 84-CC. It should have also concentrated its attention towards the provisions of Section 84-C of the Bombay Tenancy Act while deciding the matter before it.

7. In view of the notification issued long back, the powers of the Collector in such matters have been delegated to Sub-Divisional Officer. There is no dispute about it between the parties. Therefore, the S.D.O. was competent to exercise the powers of suo motu revision in view of provisions of Section 76-A which reads that:

"Where no appeal has been filed within the period provided for it, the Collector may, suo motu or on a reference made in this behalf by the Divisional Officer or the State Government, at any time,--

(a) call for the record of any inquiry or the proceedings of any Mamlatdar or Tribunal for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of such Mamlatdar or Tribunal, as the case may be, and

(b) pass such order thereon as he deems fit:

Provided that no such record shall be called for after the expiry of one year from the date of such order and no order of such Mamlatdar or Tribunal shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard."

In the present case, the S.D.O. Pandharpur has treated the said matter as a revision petition by exercising his powers suo motu. The S.D.O. was justified in doing so because the order which was passed by the ALT was apparently

improper, illegal and without jurisdiction.

8. When the said land which was sold to the tenant in view of the proceedings initiated in view of provisions of Section 32G of the Bombay Tenancy Act and the said land was sold by such tenant to third party without obtaining the permission of the appropriate authority as indicated in view of provisions of Section 43, the A.L.T. was entitled to initiate the proceeding in view of Section 43 of the Bombay Tenancy Act. He should have proceeded further in such matter in view of provisions of Section 84-C but it was not done and, therefore, the A.L.T. landed in obvious error and had acted without jurisdiction and passed the judgment and order which was devoid of any jurisdiction, and, therefore, illegal. The S.D.O. was in bounden duty to correct the said error by even exercising his revisional powers suo motu. When that was the act of S.D.O. in correcting the error of law and setting aside the said judgment and order, the M.R.T. should have considered it in proper perspective and should not have passed the judgment and order which is being assailed by this writ petition.

9. As this Court is exercising its jurisdiction and powers in view of Article 227 of the Constitution of India for maintaining the administration of justice flawless, the said judgment and order which has been passed by M.R.T. will have to be corrected by setting aside it by issuing the writ of certiorari in favour of the petitioner. The point of limitation would not come in play at this stage because the jurisdiction which was exercised by ALT and Mamlatdar in passing the said illegal judgment and order was by itself a gross error of law. In the interest of justice, the parties need to be permitted to agitate all possible points before the A.L.T. which needs to be directed to start the enquiry de novo in view of the spirit of the judgment which has been passed by the S.D.O. which this Court confirms.

10. As the parties have been dragged upto this level on account of the said judgment and order which has been passed by the A.L.T. and Mamlatdar who acted without legal jurisdiction, this Court finds it proper not to saddle the parties with costs of litigation. Therefore, this petition stands allowed without any cost. The Judgment and order passed by the A.L.T. and Mamlatdar, Pandharpur in proceeding No. 84-CC/4 dated 15-7-1983 stands set aside by writ of certiorari. The original application submitted by respondent No. 1 be tried as if that is an application presented in view of provisions of Section 84-C.

11. Parties to act on ordinary copy of this judgment duly authenticated by the Private Secretary of this Court.