
(1993) 08 GUJ CK 0037
In the Gujarat High Court

Harisinh Jaysinh Barad

APPELLANT

Vs

Chhaganbhai Shivabhai Patel and Others

RESPONDENT

Date of Decision : 10-08-1993

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32, 32G, 32G(3), 76
Constitution of India, 1950 — Article 227

Citation : (1994) 1 GLR 526

Hon'ble Judges : D.G. Karia, J

Bench : Single Bench

Judgement

D.G. Karia, J.—This petition under Article 227 of the Constitution of India has been directed against the decision dated November 14, 1984 passed by the Gujarat Revenue Tribunal in Revision Application No. TEN. B. A. 223 of 1983 dismissing the revision application of the petitioner herein. By the impugned judgment, the Tribunal confirmed the judgments of the Courts below holding that the respondents were entitled to purchase the land in question u/s 32PP of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "the Tenancy Act").

2. The respondents herein, by their application dated October 18, 1978, requested the Mamlatdar and Agricultural Lands Tribunal, Hansot, for a declaration that the purchase in respect of the agricultural land bearing Survey No. 116/4 admeasuring A 1-24 Gunthas had not become ineffective u/s 32PP of the Tenancy Act. The respondents contended that the father of the respondents, Shivabhai Rambhai, was cultivating the said land as a tenant thereof and he had died before about eight years since the date of the application. In an inquiry u/s 32G of the Tenancy Act, the Mamlatdar and A.L.T. held that after service of the notice to the party concerned, the matter was fixed on 28-9-1976, 7-10-1976, 2-12-1976 and 9-12-1976. However, either party did not remain present. The tenant had died and his heirs or legal representatives did not remain present. The Mamlatdar, therefore, declared that the tenant was not willing to purchase the land and that the purchase was ineffective u/s 32G(3) of the Tenancy Act. The said order declaring the purchase of the land to be ineffective was passed by

the Mamlatdar on October 15, 1976. Mamlatdar and A.L.T., Ankaleshwar, by his judgment dated May 21, 1982, held, as a result of the aforesaid application of the respondents, dated October 18, 1978, that the respondents were entitled to be tenants u/s 32 of the Tenancy Act in respect of the land in question and the tenants were dispossessed from the land without due process of law and as such the respondents were entitled to be resorted to the said land. It was, therefore, ordered to hand over the possession of the land to the respondents and to fix the purchase price thereafter.

3. The petitioner, being aggrieved by the aforesaid judgment and order of the A.L.T., preferred Tenancy Appeal No. 43 of 1982 before the Assistant Collector, Bharuch. The Assistant Collector, Bharuch, by his judgment dated November 8, 1982, dismissed the said appeal. The petitioner thereupon approached the Gujarat Revenue Tribunal by way of aforesaid revision application u/s 76 of the Tenancy Act. The Tribunal held that the deceased father of the respondent-tenants was in possession of the land as a tenant during the years from 1951-52 to 1954-55 and thereafter the deceased tenant was not dispossessed of the land. In accordance with the law and as such the respondents were entitled to the benefit u/s 32PP of the Act. The Tribunal thus dismissed the revision application confirming the judgments of the Courts below. It is against this judgment that the petitioner has approached this Court by the present petition.

4. It is clear and established from the record that the name of the deceased tenant Shivabhai Rambhai was shown as tenant of the land bearing old Survey No. 116/4 admeasuring 1 Acre 24 Juntas as per entry No. 702 dated 29-1-1948. It is, however, the case of the petitioner that the entry was only nominal and that in fact the deceased Shivabhai never cultivated the land in dispute as a tenant. The land in question is a grass land. When this fact was brought to the notice of the concerned authority, entry No. 1195 was mutated on February 20, 1957 to the effect that name of deceased Shivabhai as tenant of the land be struck off. Therefore, the deceased Shivabhai was shown to be the tenant of the land in question till 1954-55. He was not, therefore, tenant on 1-4-1957 in respect of the land in question. It is not in dispute that in the proceedings of the Tenancy Case No. 924 of 1976, the parties did not remain present and the Mamlatdar and A.L.T., passed the order on October 15, 1976 declaring the purchase to be ineffective u/s 32G(3) of the Tenancy Act, as the tenant had failed to appear before the Mamlatdar and A.L.T.

4.1. It is difficult to subscribe to the interpretation of Section 32PP as adopted by the Tribunal, particularly when the respondent-tenants or deceased Shivabhai were not shown to be the lawful tenants on 1-4-1957 in respect of the land in question. u/s 32PP of the Tenancy Act, the person who has failed to appear before the Tribunal in a proceeding u/s 32G would be entitled to make an application. In the instant case, the statutory sale was declared ineffective. But on that account, the respondents making an application u/s 32PP cannot be accepted as tenants without further inquiry and without permitting the landlord

to challenge the status of the respondents. This is not warranted by the language of Section 32PP. It is true that an application u/s 32PP can be made where the purchase of the land by the tenant has been declared ineffective u/s 32G(3), by reason of the tenant failing to appear before the Tribunal or on making a statement expressing his unwillingness to purchase the land, but it cannot be overlooked that where a notice was sent by the Tribunal u/s 32G to the person to whom the Tribunal prima facie believed to be tenant and if such a tenant did not appear and the Tribunal without anything more proceeded to declare the sale becoming ineffective, the application u/s 32PP would not preclude the landlord from contesting the petition by showing that the respondents were not tenant on 1-4-1957. In any proceedings under Sections 32G and 32PP, the most important issue to be determined is whether the person claiming to be a tenant was a tenant on April 1, 1957 and an additional issue will have to be determined in an application u/s 32PP whether to such a person notice had been issued u/s 32G and on his failure to appear the sale became ineffective. In the facts of the case, the deceased Shivabhai is not proved to be the tenant of the land on April 1, 1957. Revenue Entry No. 1195 effected on February 20, 1957 is eloquent enough to disprove the tenancy of deceased Shivabhai in respect of the land in question on April 1, 1957. It appears that this important aspect of the case has been lost sight of by the Tribunal while examining the judgments of the Courts below. The approach adopted by the Tribunal overlooks the possibility of the tenant, to whom notice was served, not appearing for the reason that he had nothing to do with the land.

5. In such a situation, an unadjudicated inferential determination of status cannot preclude an enquiry into the status which is a sine qua non for claiming the right in a subsequent proceeding between the parties. Therefore, the failure of the landlord to question the sale being declared ineffective on account of the absence of the person to whom notice was sent and who defaulted would not either on the general principle of res judicata or principle analogous to constructive res judicata preclude the landlord from challenging the status in the subsequent enquiry. It is not the case that though the tenant did not appear and the landlord appeared and unequivocally admitted that the defaulting respondent was a tenant on the relevant date, and on his failure to appear before the A.L.T., the sale should be declared ineffective and in that case, the landlord would be precluded from questioning the status of the respondent as tenant in the subsequent proceedings u/s 32PP of the Act. It is not the case here. On a challenge by the landlord in a proceeding u/s 32PP, the Tribunal will have to determine the jurisdictional facts that (i) the respondents were tenants on April 1, 1957 and (ii) that the sale was declared ineffective u/s 32G. In the facts and circumstances of the case, the view taken by the Tribunal giving benefits to the respondent-tenants u/s 32PP is not correct.

6. In the above premises, the petition succeeds. The impugned judgment of the Tribunal confirming the judgments of the Courts below are quashed and set aside. The matter is remanded back to the Tribunal for (sic) it afresh in light of

the aforesaid observations and in (sic) of the provisions of Sections 32G and 32PP of the Tenancy Act, after (sic) due opportunity of hearing to the parties. Rule is accordingly made absolute with no order as to costs.