
(1993) 04 BOM CK 0042
In the Bombay High Court
Case No : Writ Petition No. 817 of 1988

Hiralal Gupta and Others

APPELLANT

Vs

Ulhas Hambarde

RESPONDENT

Date of Decision : 07-04-1993

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 60

Citation : (1994) 2 BomCR 24

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : P.Y. Deshpande, for the Appellant; J.N. Chandurkar, for the Respondent

Judgement

D.R. Dhanuka, J.—This petition has been filed under Articles 226 and 227 of the Constitution of India. The petitioners have impugned the order dated 24th November, 1987, passed by the Maharashtra Revenue Tribunal, Nagpur in the revision application No. Ten. A. 130 of 1986. This petition raises question relating to interpretation and applicability of section 60 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. Section 60 of the said Act reads as under :---

"Nothing in sections 38, 39 and 39-A and sections 40 to 44 (both inclusive), 46 to 50 (both inclusive) and section 57 shall apply to lands in the areas within the limits of a municipality constituted under the Central Provinces and Berar Municipalities Act, 1922, and within the limits of the City of Nagpur as constituted under the City of Nagpur Corporation Act, 1948 excluding the areas of the villages specified in Schedule IV :

Provided that if any person has acquired any right under the Berar Regulation of Agricultural Leases Act, 1951, the said right shall not be deemed to have been affected by this section."

Thus sections 38, 39 and 39-A and sections 40 to 44, 46 to 50 and section 57

are not applicable to :

(a) lands in the areas within the limits of Municipalities constituted under the Central Provinces and Berar Municipalities Act, 1922 and :

(b) lands situated within the limits of the city of Nagpur as constituted under the City of Nagpur Corporation Act, 1948 excluding the areas of the villages specified in Schedule IV.

Proviso to section 60 of the said Act is not relevant for our purpose.

2. It must be stated here and now before even summarising the material facts having the bearing on the subject matter of this petition that the lands in question were always situate beyond the limits of Amravati Municipality constituted under the Central Provinces and Berar Municipalities Act, 1922. The said lands were not situate within the municipal limits even after the coming into force of the Maharashtra Municipalities Act, 1955 when the Central Provinces and Berar Municipalities Act, 1922 was repealed. It is not disputed that the said lands are situate at Amravati and are not within the limits of city of Nagpur as constituted under the City of Nagpur Corporation Act, 1948, on 15th August, 1983. The said lands formed part of the area of Amravati Municipal Corporation for the first time on constitution of Amravati Municipal Corporation under the provisions contained in the Bombay Provincial Municipal Corporation Act, 1949. In this view of the matter it is obvious to me that section 60 of the above referred Act has no application to the instant case. It is well settled that the provisions contained in the Statute cannot be extended by an analogy and cannot be deemed to have been amended in the absence of actual amendment thereto. It is plain from reading of the said section that as far as Corporation areas are concerned, section 60 of the Act is applicable only to areas which are within the limits of the city of Nagpur as constituted under the City of Nagpur Corporation Act, 1948 and no other Corporation whatsoever.

3. The relevant facts have a bearing on the subject matter of this petition are briefly summarised hereinafter:

(a) The petitioners are the agriculturists. They are the legal representatives of one Bhagwandas Gupta (hereinafter referred to as the deceased). The deceased was the father of the petitioners. The deceased was the tenant of the fields bearing Survey No. 46 admeasuring 8 acres 15 gunthas and Survey No. 120 admeasuring 25 acres and 29 gunthas situated at village Naosari, taluka and district Amravati.

(b) The respondent is the owner of the said fields by virtue of the registered partition deed dated 9th October, 1954. On the date of the partition the respondent was a minor. The respondent was born on 9th May, 1952.

(c) Some time in the year 1965-66, suo motu proceedings for transfer of statutory ownership of the said fields to the name of the petitioners/agents were commenced before the Agricultural Lands Tribunal, Amravati u/s 46 of the

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. The said proceedings were numbered as Revenue Case No. 231 of 1959 (13)65-66 of Naosari. The learned Agricultural Lands Tribunal came to the conclusion that partition deed dated 9th October, 1954 was not a genuine and the device of partition was resorted to only for the purpose of defeating the rights of the tenant. The Agricultural Lands Tribunal fixed the purchase price at Rs. 4147.80 by his order dated 21st January, 1970. By an order dated 17th November, 1970, the Revenue Appeal No. 70-71/59(13)/69-70 of Naosari preferred by the respondent was dismissed by the Special Deputy Collector, Amravati. The revision application bearing No. Ten-A/8 and 13/71 preferred by the respondent was dismissed by the Maharashtra Revenue Tribunal. The respondent filed Writ Petition No. 828 of 1973 before this Court against the above order of the Maharashtra Revenue Tribunal, Nagpur. By its order dated 19-1-1977 this Court set aside the 3 orders of the revenue courts and remanded back the matter to the Revenue Tribunal with a direction to rehear the case afresh, in the light of the observations made by this Court.

(d) By an order dated 5th April, 1979 the Maharashtra Revenue Tribunal, Nagpur remanded the matter to the Agricultural Lands Tribunal for fresh enquiry in the light of the directions given by this Court. The Tribunal was required to find out as to whether the property was ancestral property and as to whether the respondent had any share therein. The Agricultural Lands Tribunal was further directed inter alia to determine the various questions relating to fairness of the said partition. The Tribunal observed that an elaborate enquiry was necessary on various facets of the matter and evidence was required to be recorded. The Tribunal observed that the trial Court was best suited to do so. Thus the above referred proceedings were remanded to Agricultural Lands Tribunal for fresh enquiry in the light of the order passed by the Maharashtra Revenue Tribunal on 5th April, 1979.

(e) In the proceedings on remand it was admitted on both the sides that village Naosari (the village where their lands in question were situated) was never the part of Municipal limits until 15th August, 1983 and that the said village straightway was declared to be part of the Corporation area of Amravati with effect from 15th August, 1983 for the first time when Amravati Municipal Corporation was constituted as a Corporation under the Bombay Provincial Municipal Corporations Act, 1949. The pleadings were amended. By insertion of para 9-A in his written statement the respondent contended that section 60 of the above referred Act was applicable and it had become applicable to this case in view of the Constitution of the Amravati Municipal Corporation as aforesaid with effect from 15th August, 1983. The respondent contended that the petitioners were not entitled to statutory purchase of these lands in view of the fact that these lands were now situate in Corporation area of Amravati with effect from 15th August, 1983. The petitioners also filed their additional written statement in the proceedings after remand. The petitioners contended that the partition deed dated 9th October, 1954 was never acted upon. The petitioners

contended that the statutory ownership of the said land was deemed to have been transferred in favour of the petitioners on the respondent's attaining the age of majority. The petitioner raised several other contentions in the matter.

4. It is most unfortunate that in an ancient proceeding of this kind, the parties agreed to trial of issue of applicability of section 60 of the Act to the lands in dispute as a preliminary issue. It is equally unfortunate that the learned Agricultural Lands Tribunal agreed to try the issue of applicability of section 60 of the said Act as a preliminary issue, instead of trying all the issues together.

5. By an order dated 23rd September, 1985 the Agricultural Lands Tribunal held that village Naosari was included in the Corporation limits of Amravati taluka with effect from 15th August, 1983 and in view thereof section 60 of the Act could be invoked by the landlord. The Tribunal held that as a result thereof the petitioners were not entitled to the benefit of the provisions concerning statutory purchase or statutory vesting of the land. The Agricultural Lands Tribunal dismissed the proceedings in this view of the matter without deciding any of the further issues framed in pursuing order of remand although further issues were required to be decided by the above referred order of remand dated 5th April, 1979 passed by the Maharashtra Revenue Tribunal. The learned S.D.O. Amravati dismissed the appeal preferred by the petitioner by his order dated 7th March, 1986. The Maharashtra Revenue Tribunal dismissed the revision application preferred by the petitioner by its order dated 24th November, 1987.

6. All the three impugned orders suffer from patent and clear error of law apparent on the face of record. Having regard to plain language of section 60 of the Act, and the admitted facts, the petitioner is entitled to succeed in this petition. It is not disputed and it is not disputable that the provisions of section 60 of the Tenancy Act were not made applicable to Amravati Municipal Corporation by subsequent notification or by amendment of the Act. It is not disputed and it is not disputable that Amravati Corporation is neither referred to nor mentioned in section 60 of the said Act expressly or by necessary implication. The exemption conferred by section 60 of the Act is not automatically extended to the newly formed Corporation or newly added areas of the Corporation. The provisions like section 60 of the Act cannot be applied by analogy to the Corporations other than Nagpur Municipal Corporation. If the lands in question were situated within the limits of Amravati Municipality constituted under the Central Provinces and Berar Municipalities Act, 1922 at the material time, the respondent would have been entitled to avail of the provisions contained in section 60 of the Act. It is, however, not disputed that these lands were situated in a village which are never the part of the area of the Municipal limits of the Municipality constituted under the C.P. & Berar Municipalities Act, 1922 or under the Maharashtra Municipalities Act, 1965.

7. The learned Counsel for the petitioners is fully justified in relying the plain language of section 60 of the Act and inviting the Court to hold that the impugned orders are liable to be quashed and set aside in this writ petition. Mr.

Chandurkar, the learned Counsel for the respondent made some attempt to apply section 60 of the Act to this case by analogy by referring to section 9 of the Bombay General Clauses Act, 1904. Section 9 of the Bombay General Clauses Act, 1904 reads as under :--

"Where this Act, or any Bombay Act or Maharashtra Act made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then reference in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as reference to the provision so re-enacted."

In view of section 9 of the Bombay General Clauses Act, 1904, reference to C.P. & Berar Municipalities Act, 1922 in section 60 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 shall have to be read as if reference is made to Maharashtra Municipalities Act, 1965. By section 343 of the Maharashtra Municipalities Act, 1965 the Central Provinces and Berar Municipalities Act 1922 as enforced in Vidarbha region of the State was repealed. It is, however, admitted fact that the lands in question in this case was situated in a village which was never the part of the Municipal limits of Amravati Municipality when it was constituted under the C.P. & Berar Municipalities Act, 1922 or even thereafter when the said Municipality was constituted or deemed to have been constituted under the Maharashtra Municipalities Act, 1965. I have no doubt in my mind that the submission of the learned Counsel for the respondent is misconceived in law and does not carry his case anywhere. The only question to be asked by the Court is as to what is the legal effect of the area where lands are situate being made part of Amravati Municipal Corporation when Amravati Municipal Corporation for the first time was constituted as a Corporation under the Bombay Provincial Corporation Act, 1949. To my mind, the answer to this question is that such inclusion in the area of Amravati Corporation is of no consequence whatsoever for the purpose of interpretation of section 60 of the Act. As far as the Corporation areas are concerned, only one Corporation is referred to or mentioned in section 60 of the Act. Section 60 of the Act is applicable to the lands situated within the limits of the city of Nagpur as constituted under the City of Nagpur Municipal Corporation Act, 1948. The lands in question in this case are neither situated within the limits of Municipality constituted under the Central Provinces and Berar Municipalities Act, 1922 or Maharashtra Municipalities Act, 1965 nor situated within the limits of the city of Nagpur as constituted under the City of Nagpur Corporation Act, 1948. Accordingly, I hold that section 60 of the Act is not applicable to the instant case.

8. The learned Counsel for the petitioners also relied on the judgment of brother Justice B.V. Chavan in the case of Thakubai Maruti Tupe and Others Vs. Ankush Hiranman Magar and Others, . The learned Counsel submitted that the vested right of the tenants could not be taken away to acquire statutory ownership of the land by subsequent inclusion of the land within the Municipal Limits. Since on plain language of section 60 of the Act, section 60 is not applicable with the

above referred alternative submissions made by the learned Counsel for the petitioners.

9. In the result, the petition succeeds. Rule is made absolute. The impugned orders are quashed and set aside. It is hereby declared that section 60 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 is not applicable to this case and in view thereof, all the other provisions of the Tenancy Act can be invoked by the petitioners.

10. It is unfortunate that this old dispute cannot be initially resolved. The Agricultural Lands Tribunal decided the issue of applicability of section 60 of the Act as a preliminary issue. The Agricultural Lands Tribunal has not decided other issues arising in the case as directed by order dated 5th April, 1979 passed by the Maharashtra Revenue Tribunal, Nagpur. The proceeding in question are, therefore, remanded to the Agricultural Lands Tribunal for deciding the remaining issues after giving an opportunity to the parties to lead evidence and dispose of the said proceeding expeditiously and as far as possible within 4 months from receipt of the writ of this Court. Having regard to the facts and circumstances of the case, there shall be no order as to costs.