

(1997) 11 BOM CK 0055

In the Bombay High Court

Case No : Writ Petition No. 2783 of 1984

Jagu Tukaram Waghmale

APPELLANT

Vs

Dnyandeo Bala Waghmale and another

RESPONDENT

Date of Decision : 25-11-1997

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32

Citation : (1998) 1 ALLMR 267 : (1998) 2 BomCR 433

Hon'ble Judges : T.K. Chandrashkhara Das, J

Bench : Single Bench

Advocate : Vineet B. Naik, for the Appellant; Rajendra V. Pai, for the Respondent

Judgement

T.K. Chandrasekhara Das, J.—The petitioner herein challenges the orders impugned in this case evidenced by Exhibit A, B, and C, whereby the claim of the petitioner that he is a tenant in respect of the land comprised in Section No. 414 now Gat No. 1004 measuring 5 acres and 5 gunthas in Arale Village, Dist. Satara are negated. According to the petitioner he was the tenant under the respondent No. 2 in possession and his name appears in wheat column of the record of rights of the suit land during the period from 1956 to 1960-61. By virtue of the proceedings u/s 32-G of the Bombay Tenancy and Agriculture Land Act, 1948 an order came to be passed in favour of the petitioner on 10-10-1965. Accordingly purchase price was fixed at Rs. 391.59. It appears that this order has become final as the land lord did not take the matter in appeal. The petitioner when he was dispossessed at the instance of the respondent No. 1 who was the purchaser of the land from respondent No. 2 landlord, approached the Civil Court by filing suit as Civil Suit No. 245 of 1967 on the file of the 2nd Joint Civil Judge, Junior Division, Satara for recovery of the possession of the property. The respondents 1 and 2 both contested the suit. An issue has been framed as Issue No. 1(a) which reads as follows:---

"Whether the plaintiff proves that he was a tenant in the suit property, as on 1-4-57 and become purchaser of the suit property u/s 32-G of the B.T. & A.L. Act.

Another issue was also referred to the Tenancy Awal Karkoon Satara as Tenancy Court Reference No. 5 of 1969. It was held that the petitioner was not a tenant. The petitioner then took up the matter in appeal and Appellate Court also rejected the appeal and confirmed the order of the Awal Karkoon. The revisional authority also followed the same. Hence the petitioner has filed this petition."

4. Heard the Counsel for the petitioner and respondent No. 1. Considering the facts and circumstances of the case it appears to me that there can not be any dispute with regard to the tenancy of the petitioner in respect of the property. There is no dispute that section 32(g) proceedings have been concluded in favour of the petitioner, in which case, by the operation of statute he has become the purchaser of the land, of course, on fulfilling certain conditions under the Act. Therefore technically speaking the question of tenancy is no more a res integra as far as the suit is concerned. Be that as it may, the authorities concerned who passed the impugned orders, under any circumstances, cannot question the validity of the order passed u/s 32-G. When a proceedings u/s 32-G was passed in favour of a tenant unless it is set aside by the competent authority as provided under the Act or declared by Civil Court to be illegal, it is a document evidencing the title and possession of the property concerned. I am at a loss to understand how the authorities created under the Bombay Tenancy and Agriculture Land Act, 1948 could declare an order passed by competent authority under the same statute u/s 32-G to be illegal and upset the rights conferred by the authority under the certificate. On this ground the authorities viz., Tenancy Awal Karkoon. Satara and Additional Collector Satara and Maharashtra Revenue Tribunal, Pune, has committed a serious error of jurisdiction. Therefore the impugned orders are vitiated by lack of jurisdiction and they are liable to be set aside.

5. In the result the writ petition is allowed in terms of prayer Clause (b). In the circumstances of the case there shall be no orders as to costs.

6. The learned Counsel for the petitioner submits that the Regular Civil Suit No. 245 of 1967 is pending before the Court below for a long time. Hence I direct the 2nd Joint Civil Judge "Junior Division" Satara to dispose of the suit within 6 months. I make it clear that I have not spoken in this judgement on any other points raised in the suit. The order is confined only to the impugned orders in this petition.

7. Petition allowed.