(2012) 06 BOM CK 0140

In the Bombay High Court

Case No : Writ Petition No. 1295 of 1992

Kashinath Sukhlal Patil APPELLANT

Vs

Vazirabai Karimoddin Shaikh (Smt.) RESPONDENT

Date of Decision : 27-06-2012

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 14, 29, 31A(C), 32, 32(p)

Citation : (2012) 5 BomCR 690 : (2012) 6 MhLj 922

Hon'ble Judges : Shinde S.S., J

Bench : Single Bench

Advocate : V.T. Choudhari, for the Appellant; Kalyan V. Patil, h/f. S.R. Barlinge, for the Respondent

Judgement

Shinde S.S., J.—This writ petition is filed challenging the judgment and order of the Maharashtra Revenue Tribunal, Bombay dated 12th February, 1992 in Revision Application No. Ten A 148 of 1990 whereby the judgment and order passed by the Sub-Divisional Officer, Amalner Division, Amalner Division, Amalner dated 1st October, 1990 in Appeal No. TNC/Appeal 6/89 came to be reversed. The back ground facts as disclosed in the writ petition are as under :

The suit land is comprised in Gat No. 143 admeasuring 3 Hector and 46 Are, assessed at Rs. 4/and 6 paise situated at village pimpalbnhairav, Parola, District Jalgaon (For short, "suit land"). The petitioner was inducted as tenant on the suit land in the year 1952-53, by the husband of the respondent i.e. deceased Karimoddin. The suit land was previously divided in two survey numbers i.e. Survey No. 61/2 admeasuring 4 Acres and 37 gunthas and pot kharab 15 gunthas, total area 3 Acres and 12 gunthas and Survey No. 61/3 admeasuring 3 Acre and 33 gunthas. The petitioner was cultivating the suit land as tenant from the year 1952-53 and he became deemed purchaser of the suit land on the "TILLERS DAY". It is the case of the petitioner that, the husband of the respondent Karimoddin died on 3rd March, 1962 and thereafter, the name of the respondent alongwith her children were corded, as the heirs of the deceased.

It is the case of the petitioner that, Mutation Entry No. 1013 was recorded in the revenue record which has been certified on 30th May, 1962.

2. It is the case of the petitioner that, the respondent i.e. landlady filed an application, purported to be an application u/s 33-B read with section 29 of the Bombay Tenancy and Agricultural Lands Act, 1948 (For short, "said Act"). It was stated in the said application that, she has obtained certificate u/s 88-C and hence, the application u/s 33-B read with section 29 of the said Act is maintainable and prayed for restoration of the suit land, as she requires the suit land bona fide for personal use.

The said application of the respondent was allowed and the Additional Mamlatdar by his judgment and order dated 29th February, 1964 restored the possession to the extent of 1 acre and 21 guntha of the Survey No. 61/2.

3. It is the case of the petitioner that, he had already become purchaser of the suit land on the TILLERS DAY" Therefore, he filed an application u/s 32-G of the said Act for fixation of price. It is the case of the petitioner that, he never made any statement before the Tahsildar or before any other authority to the effect that, the petitioner has leased out the suit land in the year 1980 for Rs. 4000/- for five years to Shri. Raghunath Savant Patil, who is Special Mukhtyar (Special power of attorney). It is further case of the petitioner that, there are 7/12 extracts of the suit land from the year 1975-76 to 1991-92, to show that, continuously the petitioner is in possession of the suit land and cultivating the" suit land since 1952. The 7/12 extracts are also placed on record by the petitioner.

It is further case of the petitioner that, to his surprise, his application for fixing the price of the land, came to be rejected by the Tahsildar with direction to hand over possession of the suit land to the respondent. It is the case of the petitioner that, the observations of the authority that, the petitioner failed to cultivate the land personally and hence, the respondent is entitled to restore the possession of the suit land for cultivation u/s 31-A(C) of the said Act, is not sustainable.

4. Being aggrieved and dissatisfied by the judgment and order of the Tahsildar and A.L.T. Parola dated 23rd May, 1989, the petitioner preferred an appeal under section/ "74 of the said Act before the Sub- Divisional Officer, Amalner Division, Amalner. The Sub-Divisional Officer, Amalner Division, Amalner set aside the order passed by the Tahsildar, Parola.

Being aggrieved and dissatisfied by the judgment and order of the Sub-Divisional Officer, Amalner Division, Amalner, the respondent preferred Revision u/s 76 of the said Act being Revision Application No. Ten/A/148/1990 before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal by its judgment and order dated 12th February, 1992 allowed the said revision and set aside the order passed by the Sub-Divisional Officer, Amalner Division, Amalner and confirmed the order passed by the Tahsildar, Parola dated 23rd May, 1989. Hence this writ petition is filed.

5. The learned Counsel appearing for the petitioner submits that, the petitioner has become deemed purchaser on "TILLERS DAY", therefore, when the application was filed by the petitioner for determination of the price, the Tahsildar has no reason to travel beyond the averments in the said application and record the findings that, the petitioner has given the land on lease for cultivation and therefore, his application for fixation/determination of the price, cannot be entertained. It is submitted that, further direction of the Tahsildar to hand over the possession of the suit land to the respondent-original landlady is not sustainable in law. In fact, already section 33-B. proceedings have been concluded by the authority. The application was filed by the original landlady u/s 33-B of the said Act and the said application was allowed by the Additional Mamlatdar, Parola and by his judgment and order dated 29th February, 1964, the possession of 1 Acre 21 Guntha out of Survey No. 61/2 has been restored with the original landlady. Therefore, according to the Counsel for the petitioner, the Tahsildar had no occasion to hold that, the petitioner has given the said land on lease in the year 1980 for Rs. 4000/ for five years to Raghunath Savant Patil. It is further submitted that, the view taken by the Sub-Divisional Officer, Amalner Division, Amalner is in consonance with the provisions of section 32-G of the said Act. It is submitted that, the petitioner being protected tenant, his right to purchase the land, cannot be taken away.

6. It is further submitted that, the provisions of section 33-C of the said Act are not applicable to the facts and circumstances of this case. It is further submitted that, when the petitioner has filed an application u/s 32-G of the said Act for fixation of the purchase price of the suit land, maximum such application can be dismissed, but in the same application an order u/s 32-P could not have been passed by the Tahsildar with further direction to restore the possession of the suit land to the respondent i.e. landlady. It is submitted that, the husband of the respondent herein was alive on 1st April, 1957 i.e. "TILLERS DAY" and hence, there is no question of postponement of right of purchase and the petitioner became deemed purchaser of the suit land on the "TILLERS DAY". It is an error to hold that, excluded tenant has failed to exercise his right within one year and thus, he lost right of purchase. It is further submitted that, it is an error to hold that, the petitioner has leased away the suit land to one Raghunath Savant Patil and hence, created sub tenancy. It is submitted that, the Tahsildar and also the Maharashtra Revenue Tribunal has not appreciated the fact that, an application u/s 33-B read with section 29 of the said Act was filed by the respondent landlady and in the said proceedings 1 Acre 21 Guntha land from the suit land was restored to the respondent and therefore, there was no question of, again entertaining the prayer for restoration of the suit land to the respondent. Therefore, relying upon the pleadings in the petition, annexures there, grounds taken therein, the Counsel for the petitioner would submit that, this writ petition deserves to be allowed.

7. On the other hand, the learned Counsel appearing for the respondent submits that, the judgment and order passed by the Maharashtra Revenue Tribunal is in

consonance with the documents on record and therefore, this Court may not interfere.

8. I have given anxious consideration to the rival submissions. Perused the petition, annexures thereto and original record made available for perusal and I am of the opinion that, in application filed by the petitioner u/s 32-G for fixation of the purchase price, the Tahsildar was not right in holding that, the petitioner is not personally cultivating the land and therefore, same is required to be restored with the respondent. In fact, the application of the petitioner u/s 32-G of the said Act was for fixation of the purchase price of the suit land. It is not in dispute that, the petitioner has become deemed purchaser. The petitioner was cultivating the suit land as tenant from the year and he became deemed purchaser of the suit land on the "TILLERS DAY". It is also not in dispute that, on the said day, the original landlord namely Karimoddin was alive and he died on 3rd March, 1962 and thereafter, the name of the respondent alongwith her children are recorded as the heirs of the deceased Karimoddin. It is also not in dispute that, the respondent herein filed an application u/s 33-B read with section 29 of the said Act and in the said proceedings, 1 Acre 21 Guntha out of the suit land was restored to the respondent. From perusal of the said proceedings from the original record, the concerned authority has taken in to consideration the holding of the respondent and also the holding of the tenant i.e. petitioner herein and after taking into consideration the holding of the petitioner as well as the respondent, the concerned authority has restored the possession of the respondent to the extent of 1 Acre 21 Guntha from the suit land. In fact, it was possible for the petitioner herein to challenge the said proceedings, however, the said decision of the authority restoring the possession of the respondent to the extent of 1 Acre 21 Guntha has not been challenged by the petitioner herein and therefore, the said proceedings/decision has attended finality.

9. At this juncture, it would be apposite to reproduce herein below the provisions of section 32-G of the said Act, which reads thus:

32-G. Tribunal to issue notice and determine price of land to be paid by tenants. (A) As soon as may be after the tillers'' day the Tribunal shall publish or cause to be published a public notice in the prescribed form in each village within its jurisdiction calling upon.

(a) all tenants who u/s 32 are deemed to have purchased the lands,

(b) all landlords of such lands, and

(c) all other persons interested therein, to appear before it on the date specified in the notice. The Tribunal shall issue a notice individually to each such tenant, landlord and also, as far as practicable, other persons calling upon each of them to appear before it on the date specified in the public notice.

(2) The Tribunal shall record in the prescribed manner the statement of the tenant whether he is or is not willing to purchase the land held by him as a

tenant.

(3) Where any tenant fails to appear or makes a statement that he is not willing to purchase the land, the Tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective:

Provided that if such order is passed in default of the appearance of any party, the Tribunal shall communicate such order to the parties and any party on whose default the order was passed may within 60 days from the date on which the order was communicated to him apply for the review of the same.

(4) If a tenant is willing to purchase, the Tribunal shall, after giving an opportunity to the tenant and landlord and all other persons interested in such land to be hard and after holding an inquiry, determine the purchase price of such land in accordance with the provisions of section 32-H and of sub-section (3) of section 63-A:

Provided that where the purchase price, in accordance with the provisions of section 32-H is mutually agreed upon by the landlord and the tenant, the Tribunal after satisfying itself in such manner as may be prescribed that the tenant''s consent to the agreement is voluntary may make an order determining the purchase price and providing for its payment in accordance with such agreement.

(5) In the case of a tenant who is deemed to have purchased the land on the postponed date the Tribunal shall, as soon as may be after such date determine the price of the land.

(6) If any land which, by or under the provisions of any of the Land Tenures Abolition Acts referred to in Schedule into this Act, is regranted to the holder thereof on condition that it was not transferable, such condition shall not be deemed to affect the right of any person holding such land on lease created before the regrant and such person shall as a tenant be deemed to have purchased the land under this section, as if the condition that it was not transferable was not the condition of regrant.

Sub-section (1) of section 32-G provides for, as soon as may be after the tillers'' day the Tribunal shall publish or cause to be published a public notice in the prescribed form in each village within its jurisdiction calling upon all tenants who u/s 32 are deemed to have purchased the land, all landlords of such lands and all other persons interested therein, to appear before it on the date specified in the notice. It is contemplated under the said provisions that, the Tribunal shall issue a notice individually to all concerned. Sub-section (2) of the said section provides for, the Tribunal shall record in the prescribed manner the statement of the tenant whether he is or is not willing to purchase the land held by him as a tenant. Sub-section (3) of the said Act states that, where any tenant fails to appear or makes a statement that he is not willing to purchase the land, the Tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective, however, if such order is passed by the Tribunal in default of the appearance of any party, the Tribunal shall communicate such order to the parties and any party on whose default the order was passed may within 60 days from the date on which the order was communicated to him apply for the review of the same.

Sub-section (4) of the section 32-G of the said Act makes a provision that, if a tenant is willing to purchase, the Tribunal shall, after giving an opportunity to the tenant and landlord and all other persons interested in such land to be heard and after holding an inquiry, determine the purchase price of such land in accordance with the provisions of section 32-H and sub-section (3) of section 63-A. If the purchase price is mutually agreed upon by the landlord and the tenant, the Tribunal after satisfying itself in such manner as may be prescribed that the tenant''s consent to the agreement is voluntary may make an order determining the purchase price and providing for its payment in accordance with such agreement.

10. Therefore, it follows from the careful perusal of section 32-G of the said Act that, the Tribunal shall publish or cause to be published a public notice calling upon the tenants, landlords and other concerned persons. However, in the present case, there was no such exercise by the Tribunal as envisaged in the provisions of subsections (1) to (4) of section 32-G of the said Act. Therefore, though the petitioner herein on "TILLERS DAY" became deemed purchaser, there was no determination of purchase price of the suit land and therefore, the petitioner herein filed an application for determination of price. The Tahsildar and A.L.T. Parola in its judgment and order dated 23rd May, 1989 observed that, notices were issued to both the parties and in the course of inquiry u/s 32-G of the Act, the purchase of the suit land declare to as ineffective. It is therefore, necessary to hold an ending u/s 32(p) and accordingly, notices were issued to both the parties. In fact, upon careful perusal of the Record and Proceedings made available for perusal, the aforesaid observations/findings recorded by the Tahsildar has no basis since there is no record available to suggest that, the said proceedings were taken up by the said authority. Therefore, the said observations/ findings have no any basis. It is also beyond comprehensive to understand that, in an application filed u/s 32-G of the said Act for determination of the purchase price, why Tahsildar has travelled beyond the pleadings and prayers in the said application and reached to the conclusion that, the tenancy over the suit land comprised in Gat No. 143 i.e. suit land should be terminated and the possession of the suit land be given to the respondent landlady. Therefore, the concerned authority has clearly exceeded its jurisdiction and travelled beyond the pleadings and prayers in the application.

As stated earlier, there is no any documents available to suggest that, the concerned authority has followed the procedure as prescribed u/s 32-G of the said Act and recorded the findings that, the petitioner i.e. original tenant is not willing to purchase the land and that the purchase is ineffective.

11. The Sub Divisional Officer, Amalner Division, Amalner has rightly entertained the appeal filed by the petitioner herein and set aside the order of the Tahsildar and A.L.T. Parola and direction was given to the Tahsildar to make inquiry u/s 32-G of the said Act. In fact, the order passed by the Sub Divisional Officer, Amalner Division, Amalner is correct adjudication of appeal filed by the petitioner herein. There was no reason for the Maharashtra Revenue Tribunal to upset the order passed by the Appellate Authority in appeal. In the facts of this case, the provisions of section 33-C(1) of the said Act are not attracted. Section 33-C(1) of the said Act reads thus:

33-C. Tenant of lands mentioned in section 88-C to be deemed to have purchased land and other incidental provisions. - (1) Notwithstanding anything contained in sub-section (1) of section 88-C, every excluded tenant holding land from a certificated landlord shall, except as otherwise provided in sub-section (3), be deemed to have purchased from the landlord, on the first day of April 1962, free from all encumbrances subsisting thereon on the said day, the land held by him as tenant, if such land is cultivated, by him personally, and

(i) the landlord has not given notice of termination of tenancy in accordance with sub-section (3) of section 33-B or

(ii) the landlord has given such notice, but has not made an application thereafter u/s 29 for possession as required by the said sub-section (3), or

(iii) the landlord, not belonging to any of the categories specified in sub-section (4) of section 33-B, has not terminated the tenancy on any of the grounds specified in section 14, or has so terminated the tenancy but has not applied to the Mamlatdar on or before the 31st day of March 1962 u/s 29 for possession of the land:

Provided that, where the landlord has made such application for possession, the tenant shall, on the date on which the application is finally decided, be deemed to have purchased the land which he is entitled to retain in possession after such decision.

Bare perusal of section 33-C(1)(i) of the said Act would make it abundantly clear that, the provisions of section 33-C of the said Act are attracted if the landlord has not given notice of termination of tenancy in accordance with sub-section (3) of section 33-B. In fact, in the present case, the respondent landlady did file proceedings u/s 33-B read with section 29 of the said Act and in the said proceedings at the instance of the respondent landlady, the tenancy of the present petitioner i.e. original tenant in respect of the suit land to the extent of 1 Acre 21 Guntha has been terminated and the landlady is given possession of the said land. It goes without saying that, for remaining land, the status of the petitioner became deemed purchaser.

12. Therefore, in my opinion, the judgment and order passed by the Tahsildar and A.L.T. Parola and the judgment dated 23rd May, 1989 in Tenancy Case No. 2

of 1985 and order passed by the Maharashtra Revenue Tribunal, Bombay dated 12th February, 1992 in Revision No. Ten. A. 148 of 1990, cannot be sustained. Therefore, the judgment and order passed by the Maharashtra Revenue Tribunal, Bombay, dated 12th February, 1992 in Revision No. Ten. A. 148 of 1990 is quashed and set aside. The order passed by the Sub-Divisional Officer, Amalner Division, Amalner in the proceedings No. TNC/A/6/89 dated 1st October, 1990 is upheld. As directed by the Sub-Divisional Officer, Amalner Division, Amalner, the Tahsildar and A.L.T. Parola is directed to hold an inquiry u/s 32-G of the said Act and determine the purchase price of the remaining suit land excluding 1 Acre 21 Guntha of which tenancy of the petitioner is terminated and possession of the respondent is restored. The Tahsildar to hold such inquiry within six months from today after following procedure contemplated u/s 32-G of the said Act and other relevant provisions of the said Act and rules thereunder, if any. It is needless to mention that, the direction given by the Sub-Divisional Officer, Amalner Division, Amalner, which are confirmed by this Court are confined to the proceedings arising out of the application filed by the petitioner herein u/s 32-G of the said Act for determination of the purchase price. Rule made absolute on the above terms. Writ petition stands disposed of.