
(2010) 08 BOM CK 0136
In the Bombay High Court
Case No : Writ Petition No. 690 of 1993

Kisan Sayaji Shelke

APPELLANT

Vs

Madhukar Mohan Deshpande, Ananda Krishna Mahakal, Dada
Ananda Mahakal and Tejrao Ananda Mahakal

RESPONDENT

Date of Decision : 11-08-2010

Acts Referred:

Citation : (2010) 6 BomCR 124

Hon'ble Judges : V.R. Kingaonkar, J

Bench : Single Bench

Advocate : M.L. Sangit, holding for and V.J. Dixit, for the Appellant; M.M. Ambhore, for Respondents Nos. 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

V.R. Kingaonkar, J.—Challenge in this petition is to Judgment and order rendered by learned Incharge President of Maharashtra Revenue Tribunal, Aurangabad (M.R.T.) in exercise of appellate jurisdiction (Case No. 27/A92-J). By that Judgment, the appeal preferred by the respondents has been allowed and the application filed by the petitioner for eviction u/s 98 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (for short, "the HT&AL Act") came to be rejected.

2. Indisputably, father of the petitioner, namely, Sayaji Shelke was the protected tenant in respect of agricultural land Survey No. 52, admeasuring 9 acres 18 gunthas, situated at village Gokul under Bhokardan Tahsil. It is also an admitted fact that father of the respondent No. 1, namely, deceased Mohan alias Mohiniraj Deshpande was the landlord. The name of deceased Sayaji Shelke was recorded in the revenue record vide the relevant orders. A final declaration under the HT&AL Act was made in his favour. He was found in possession of the tenanted land i.e. Survey No. 52 as on the tillers" day. The petitioner"s father was duly declared as a protected tenant of the said land u/s 38E of the HT&AL Act. It is an admitted fact that respondent No. 2 - Ananda was not in picture when the

petitioner was allegedly dispossessed from the land in question in the year 1965. The respondent No. 2 - Ananda purchased that land subsequently.

3. The impugned order is founded on premise that the only remedy available to the petitioner was u/s 32 of the HT&AL Act and the same is now unavailable because the application was not filed against the landlord within prescribed period of limitation. Another ground in support of the impugned Judgment is that the application filed by the petitioner after 22 years of dispossession was barred and action for eviction could not be taken u/s 98 of the HT&AL Act.

4. Section 98 of the HT&AL Act reads as follows:

98. Summary eviction: Any person unauthorisedly occupying or wrongfully in possession of any land--

(a) the transfer of which either by the act of parties or by the operation of law is invalid under the provisions of this Act, or

(b) the management of which has been assumed under the said provisions, or

(c) to the use and occupation, of which he is not entitled under the said provisions; may, if the said provisions do not provide for the eviction of such person, be summarily evicted by the Collector." Perusal of Section 98 would make it explicit that the legal requirements to seek remedy of summary eviction are as follows:

i) The person in possession should be shown as unauthorised occupier of the tenanted land;

ii) The transfer of the tenanted land by operation of the law should be shown as invalid under provisions of the HT&AL Act or that the Management of which has been assumed under the said provisions; and

iii) There is no specific provision to provide for the eviction of such person.

5. In the present case, the transfer in favour of respondent No. 2 - Ananda is clearly against the provisions of the HT&AL Act. No permission was obtained from the competent authority for such transfer. Nor, the petitioner surrendered his rights. The petitioner was not a consenting party to the transaction of the transfer. The rights of the petitioner as a protected tenant were never abrogated on account of any legal surrender thereof.

6. The remedy u/s 32 of the HT&AL Act stands on different footings. The remedy can be availed by the tenant within a period of two (2) years from the date of commencement of the HT&AL Act if the tenant is found to be dispossessed before commencement of the said Act. The learned Incharge President of the M.R.T. failed to appreciate the purport of Section 32(1). The remedy is also available even after the two (2) years on the date on which the right to such possession accrued to the tenant. The question is whether the right of the petitioner has been extinguished only because within two (2) years of dispossession, he did not

apply for restoration. A plain reading of Section 32(1) would show that the tenant's right to seek remedy of restoration is against the landlord and moreover, the period of two (2) years' limitation is applicable only in cases where the tenant is found to be out of actual possession as on the date of commencement of the HT&AL Act. In the present case, the petitioner continued to remain in possession as protected tenant till the year 1965. He filed certified copy of register of the protected tenancy pertaining to his rights recognized in 1950. The name of his father i.e. Sayaji s/o Ganu has been recorded as protected tenant in the tenancy register. The landlord never challenged the entry in the tenancy register. The name of the petitioner's father was deleted from the revenue record only after the death of latter. So, the dispossession was in the year 1965 and until the petitioner noticed induction of the purchaser, he may not have decided to evict such unauthorised occupant. The application for eviction u/s 98 is maintainable against the person who is found in unauthorised possession of the tenanted land. Prior to transfer of the tenanted land to the respondent No. 2, such remedy could not have been availed against the landlord whose possession may not be described as "unauthorized".

7. Faced with the above legal difficulty, Mr. Ambhore, appearing for respondents No. 2 to 4, would submit that the application was barred in view of delay as it was filed after 22 years. He seeks to rely on certain observations in case of Radhu Gokul Gawali, died, through LRs., Shamlal Gokul Gawali, died, through LRs., Shankar Gokul Gawali died, through LRs. and Babulal Gukul Gawali died, through LRs. Vs. Mohan Kishan Gawali, died through LRs., Bajrang Kishan Gawli, Kishor Someshwar Varma and The Maharashtra Revenue Tribunal, Aurangabad, as well as Kashim Faridsaheb and Ors. v. Naseer Mohammad @ Ahmed s/o Walli Mohammad Chaudhari and Ors. 2009 (2) Mh.L.J. In "Radhu Gokul Gawali and Ors.", a Single Bench of this Court has not laid down that in no case, the application u/s 98 of the HT&AL Act will be maintainable after lapse of 18/19 years. It has been observed that the applicability of the provisions laid down u/s 32 and/or Section 98 has to be decided by the Court, considering the fact situation obtained in that case. It is further observed that facts in each case may differ and, therefore, the Court has to record a finding regarding the maintainability or remedy available to the party concerned. It is true that the remedy is required to be availed within a reasonable period. At the same time, one cannot be oblivious of the fact that Section 98(1) does not prescribe for any limitation period in respect of remedy available against unauthorised possessor. The petitioner's application was for removal of the respondents No. 2 to 4 from the tenanted land. He did not seek eviction of the landlord i.e. the respondent No. 1. The respondent No. 1 himself had not challenged the order of eviction before the M.R.T. The case of "Kasim Faridsaheb and Ors." (supra) stands on different footings and is not relevant for the present purpose.

8. In Ganpat Deshmukh Vs. Yeshwant Deshmukh, , a Division Bench of this Court held that the transfer u/s 38E of the HT&AL Act will be deemed as ineffective only when it is proved that the tenant committed default in the payment of entire

purchase price, and inspite of the proceedings for recovery, the entire price amount could not be recovered. The rights of statutory purchaser cannot be abrogated without following due procedure. It is nobody's case that the petitioner validly surrendered his rights. Obviously, the subsequent purchaser, who has entered in the tenanted land without legal transfer is an unauthorised possessor thereof. To say that the petitioner lost right to recover the tenanted land because of the delay in filing of the application is to deny the relief which is otherwise available to him and inspite of any limitation period under the tenancy law, which would cause extinguishment of such right. In other words, where the rights of the statutory tenants are protected under the Agrarian Law, which is a social welfare Legislature, it is difficult to read something to wipe out the tenancy rights which is not provided for under the HT&AL Act.

9. Considering the foregoing reasons, it will have to be said that the impugned Judgment rendered by the Maharashtra Revenue Tribunal is unsustainable.

10. In the result, the petition is allowed. The impugned Judgment is set aside. The Judgment and order rendered by the learned Deputy Collector (Land Reforms), Jalna on 07-10-1991 in Case No. LR/TNC/CR/16 is restored. Rule made absolute accordingly. No costs.