(1998) 09 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No''s. 4313 and 4314 of 1984

Kishor Govardhandas Tanna APPELLANT

Vs

Malhari Nimbaji Patil and others RESPONDENT

Date of Decision : 11-09-1998

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32K, 32M, 32MM, 32P, 32Q

Constitution of India, 1950 — Article 227

Citation : (1999) 1 ALLMR 310 : (1999) 1 BomCR 217

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : P.S. Dani and A.K. Abhyankar, for the Appellant; G.R. Rege for Respondents Nos. 7 to 10, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—These two writ petitions filed under Article 227 of the Constitution of India relate to identical facts and arise out of common judgment passed by the Maharashtra Revenue Tribunal on 26-6-1984 and, therefore, both the writ petitions have been heard together and are disposed of by this common judgment.

2. In Writ Petition No. 4313 of 1984 the land in dispute is survey No. 26/1 and 25/2 situate at village Sarasan, Taluka Khalapur, District Raigad. One Parsu Tukaram Patil was in possession of the said land as tenant on 1-4-1957, more commonly known as tiller''s day, and as such became deemed purchaser under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "Bombay Tenancy Act"). The purchase was effected in favour of Shri Parsu Tukaram Patil on 12-4-1969. He sold the said land in favour of one Shri Bhatia without seeking appropriate permission as required u/s 43 of the Bombay Tenancy Act. The proceedings were initiated u/s 84-C by the competent revenue authority for setting aside the sale made by Shri Parsu Tukaram Patil in favour of

Shri Bhatia and by the order dated 30-5-1981 the sale in favour of Shri Bhatia was set aside. On 11-11-1981 the Tahsildar, Khalapur issued proclamation for disposing of the said land comprising of survey No. 26/1 and 25/2 as aforestated. In pursuance to the said proclamation the petitioner as well as few others applied for grant of land. An enquiry was conducted and the Tahsildar, Khalapur granted the said land on 30-4-1982 in favour of petitioner by fixing price of Rs. 19,440/-. A complaint was made regarding the sale of the said land. On receipt of the complaint, the Collector, Raigad suo motu started review proceedings u/s 76-A of the Bombay Tenancy Act. The Collector after hearing the petitioner by his order dated 4-11-1982 set aside the order of Tahsildar, Khalapur holding that the procedure as contemplated under the law was not followed while granting the said land in favour of the petitioner. The Collector, Raigad by his order directed the Tahsildar, Khalapur, to initiate fresh proceedings for disposal of land; dispossess the petitioner and refund the price to the petitioner. Upset by the order passed by the Collector on 4-11-1982, the petitioner filed revision application before the Maharashtra Revenue Tribunal which was registered as Revision No. 248 of 1982. In the other Writ Petition No. 4314 of 1984 the land bearing survey No. 24 situate at village Sarasan, Taluka Khalapur, District Raigad is the land in question. One Nana Malu Patil was tenant of the said land on tiller''s day and as such he became deemed purchaser. The purchase was effected in his favour. However, on 7-3-1968 Nana Malu Patil sold the said land to Shri Bhatia without obtaining prior permission as required u/s 43 of the Bombay Tenancy Act. The proceedings were initiated u/s 84-C by the competent authority and on 30-5-1981 the said sale made in favour of Shri Bhatia was set aside. On 11-11-1981 the Tahsildar, Khalapur issued proclamation for disposing of the said land u/s 84-C. The petitioner as well as few others applied for grant of land. The Tahsildar, Khalapur conducted an enquiry and on 2-5-1982 granted the said land in favour of the petitioner by fixing price of Rs. 11,130/-. A complaint was lodged against the said grant made by Tahsildar, Khalapur in favour of the petitioner to the Collector, Raigad who started review proceedings based on the said complaint suo motu u/s 76-A of the Bombay Tenancy Act. After giving notice, on 23-5-1983 the Collector Raigad set aside the order of Tahsildar granting the land in question in favour of the petitioner and directed the Tahsildar to initiate fresh proceedings for disposal of the land in accordance with law with further direction to him to take possession of the land in question from the petitioner and refund the price to him. The order passed by the Collector, Raigad, was challenged in Revision Application by the petitioner. Both the revision applications were heard by the Maharashtra Revenue Tribunal together and by the common order dated 26-6-1984 the Tribunal rejected both the revision applications and maintained the order of the Collector, Raigad.

3. Mr. Dani, the learned counsel appearing for the petitioners in both the writ petitions urged that the suo motu review proceedings initiated by Collector, Raigad, under purported exercise of his power u/s 76-A was not maintainable. According to him, the orders passed by Tahsildar, Khalapur granting lands in

question to the present petitioners u/s 84-C were not appealable orders u/s 74 of the Bombay Tenancy Act and when the said orders were not appealable, no review could be entertained u/s 76-A.

4. The aforesaid contention raised by the learned counsel for the petitioners is devoid of any merit and is noted to be rejected. Section 76-A reads thus :-

76-A Where no appeal has been filed within the period provided for it, the Collector may, suo motu or on a reference made in this behalf by the Divisional Officer or the State Government, at any time, -

(a) call for the record of any inquiry or the proceedings of any Mamlatdar or Tribunal for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of such Mamlatdar or Tribunal, as the case may be, and

(b) pass such order thereon as he deems fit;

Provided that no such record shall be called for after the expiry of one year from the date of such order and no order of such Mamlatdar or Tribunal shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard.

5. Section 74 of the Bombay Tenancy Act makes provision for an appeal against the orders of Mamlatdar and Agricultural Lands Tribunal before the Collector. To the extent it is necessary section 74 of the Bombay Tenancy Act reads thus :

74. (1) An appeal against the orders of the Mamlatdar and the Tribunal may be filed to the Collector in the following cases -

(a) ....

(b) ....

(c) ....

(d) ....

(e) ....

(f) ....

(g) ....

(h) ....

(i) ....

(j) ....

(k).....

(1) ....

(m) ....

(m-1) ....

(ma) ....

(mb) ....

(n) an order u/s 32K, 32M. 32MM or 32Q.

(na) an order u/s 33B,

(o) an order u/s 33,

(oo) an order under sub-section (5) of section 34,

(p) an order u/s 37,

(q) an order u/s 39,

(r) an order u/s 41,

(rr) an order made pursuant to a notification under sub-section (3) of section 43A,

(ra) an order u/s 43B,

(s) an order u/s 64,

* * * *

(u) an order u/s 84A, 84B, or 84C, (v) an order u/s 85A, (w) an order u/s 88C.

(2) Save as otherwise provided in this Act, the provisions of Chapter XIII of the Bombay Land Revenue Code, 1879, shall apply to appeals to the Collector under this Act, as if the Collector were the immediate superior of the Mamlatdar or the Tribunal. The Collector in appeal shall have power to award costs.

6. It would be, thus, seen that an order passed u/s 84A, 84B, 84C is an order appealable u/s 74. There is no dispute that the proceedings were initiated u/s 84C of the Bombay Tenancy Act for disposal of the disputed land and the proclamation was issued in that regard by the concerned Tahsildar. Pursuant to the said proclamation, the grant of the disputed land was made in favour of the present petitioner under sub-section (4) of section 84-C. Obviously such an order which is in the nature of the grant in favour of the petitioners under sub-section (4) of section 84-C is appealable u/s 74 because the orders passed u/s 84-C are appealable. Section 74(1)(u) does not carve out any category of orders passed u/s 84-C as not appealable. Irrespective of any nature of the order that may be passed u/s 84-C, such order is appealable to the concerned Collector u/s 74. By no stretch of imagination can it be said that the order which is passed under sub-section (4) of section 84-C is not appealable since it is not an order but a grant. I have, therefore, no hesitation in holding that the order passed under sub-section (4) of section 84-C was appealable u/s 74(l)(u). Since no appeal was preferred

within time challenging the said grants made in favour of the petitioners u/s 84-C(4), the Collector could suo motu invoke its revisional power u/s 76A and such power having been exercised by the Collector in reasonable time, cannot be said to have been invoked without justification.

7. Mr. Dani, the learned counsel for the petitioners then urged that rule 21 of the Bombay Tenancy and Agricultural Lands Rules, 1956 is not applicable so far as disposal of land u/s 84-C(4) of the Bombay Tenancy Act is concerned. His contention is that rule 51 of the Rules of 1956 only provides that when the Mamlatdar grants under sub-section (4) of section 84-C he shall as far as may be follow the same procedure as prescribed in rule 21. Mr. Dani''s contention is that the expression "as far as may be" follow "occurring in rule 21" which makes it clear that the procedure prescribed under rule 21 is not applicable so far as grant under sub-section (4) of section 84-C are concerned. He, therefore, submits that the basis upon which the Collector and the Maharashtra Revenue tribunal declared the grants made in favour of the petitioners bad in law does not exist and the impugned orders deserve to be set aside.

8. Section 84-C in the Bombay Tenancy Act deals with the disposal of land by the Mamlatdar where acquisition of such land is invalid. Section 84-C reads thus :-

84-C. (1) where in respect of the transfer or acquisition of any land made on or after the commencement of the Amending Act, 1955, the Mamlatdar suo motu or on the application of any person interested in such land has reason to believe that such transfer or acquisition is or becomes invalid under any of the provisions of this Act, the Mamlatdar shall issue a notice and hold an inquiry as provided for in section 84-B and decide whether the transfer or acquisition is or is not invalid.

(2) If after holding such inquiry, the Mamlatdar comes to a conclusion that the transfer or acquisition of land is invalid, he shall make an order declaring the transfer or acquisition to be invalid :

Provided that, where the transfer of land was made by the landlord to the tenant of the land and the area of the land so transferred together with the area of other land, if any, cultivated personally by the tenant did not exceed the ceiling area, the Mamlatdar shall not declare such transfer to be invalid -

(i) if the amount received by the landlord as the price of the land is equal to or less than the reasonable price determined u/s 63-A and the transferee pays to the State Government a penalty of one rupee within such period not exceeding three months as the Mamlatdar may fix;

(ii) if the amount received by the landlord as the price of the land is in excess of the reasonable price determined u/s 63-A and the transferor as well as the transferee pays to the State Government each a penalty equal to one-tenth of the reasonable price within such period as the Mamlatdar may fix.

(3) On the declaration made by the Mamlatdar under sub-section (2),-

(a) the land shall be deemed to vest in the State Government, free from all encumbrances lawfully subsisting thereon on the date of such vesting, and shall be disposed of in the manner provided in sub-section (4); the encumbrances shall be paid out of the occupancy price in the manner provided in section 32-Q for the payment of encumbrances out of the purchase price of the sale of land but the right of the holder of such encumbrances to proceed against the person liable, for the enforcement of his right in any other manner, shall not be affected :

(b) the amount which was received by the transferor as the price of the land shall be deemed to have been forfeited to the State Government and it shall be recoverable as an arrear of land revenue; and

(c) the Mamlatdar shall, in accordance with the provisions of section 63-A determine the reasonable price of the land.

(4) After determining the reasonable price, the Mamlatdar shall grant the land on new and impartible tenure and on payment of occupancy price equal to the reasonable price determined under sub-section (3) in the prescribed manner in the following order of priority :-

(i) the tenant in actual possession of the land;

(ii) the persons or bodies in the order given in the priority list:

Provided that, where the transfer of land was made by the landlord to the tenant of the land and the area of the land so transferred together with the area of the land, if any, cultivated personally by the tenant did not exceed the ceiling area then -

(i) If the amount received by the transferor as the price of the land is, equal to or less than the reasonable price, the amount forfeited under sub-section (3) shall be returned to the transferor and the land restored to the transferee on payment of penalty of rupee one in each case; and

(ii) if the amount received by the transferor as the price of the land is in excess of the reasonable price, the Mamlatdar shall grant the land to the transferee on new and impartible tenure and on payment of occupancy price equal to one-tenth of the reasonable price and out of the amount forfeited under sub-section (3), the transferor shall be paid back an amount equal to nine-tenths of the reasonable price.

(5) The amount of the occupancy price realised under sub-section (4) shall, subject to the payment as aforesaid of any encumbrances subsisting on the land, be credited to the State Government:

Provided that where the acquisition of any excess land was on account of a gift or bequest, the amount of the occupancy price realised under sub-section (4) in respect of such land shall, subject to the payment of any encumbrances subsisting thereon, be paid to the donee or legatee in whose possession the land had passed on account of such acquisition.

Explanation. - For the purposes of this section "new and impartible tenure" means the tenure of occupancy which is non-transferable and non-partible without the previous sanction of the Collector.

9. There is no dispute that the tenants who were in possession of the disputed land on tillers day became deemed purchasers and the sales were effected in their favour. However, the said purchasers without prior permission as required u/s 43 of the Tenancy Act sold the disputed land in favour of one Bhatia. The said sales were declared invalid by Mamlatdar by following the procedure prescribed under sub-sections (1) and (2) of section 84-C. Sub-section (3) of section 84-C makes a provision that on declaration by the concerned Mamlatdar that such transfer, acquisition or grant is invalid under sub-section (2) of section 84-C, the land vests in State Government free from all encumbrances and is required to be disposed of in the manner provided in sub-section (4). Reasonable price for sale is required to be determined by Mamlatdar in accordance with provisions of section 63-A. After determining the reasonable price, sub-section (4) of section 84-C provides that the Mamlatdar shall grant the land on new and impartible tenure on payment of occupancy price equal to the reasonable price determined under sub-section (3) in the order of priority and the manner prescribed under sub-section (4). It would be thus seen that the price of the land is required to be determined in respect of land which has vested in the State Government free from all encumbrances under sub-section(3) of section 84-C in accordance with the provisions of section 63-A.

10. Section 63A which provides for reasonable price of the land for the purpose of sale and purchase reads thus :

63-A. (1) Except as otherwise expressly provided in this Act, the price of any land sold or purchased under the provisions of this Act shall consist of the following amounts, namely :-

(a) an amount not being less than 20 times the assessment levied or leviable in respect of the land and not being more than 200 times such assessment excluding, however, for the purpose of calculation, the amount of water rate, if any, levied u/s 55 of the Bombay Land Revenue Code, 1879 and included in such assessment.

(b) the value of any structures, wells and embankments, constructed, permanent fixtures made and trees planted on the land.

(2) Where under the provisions of this Act any land is sold or purchased by mutual agreement, such agreement shall be registered before the Mamlatdar, and the price of the land shall, subject to the limits specified in sub-section (1), be such as may be mutually agreed upon by the parties. In the case of disagreement between the parties, the price shall be determined by the Tribunal having regard to the factors mentioned in this section.

(3) Where in the case of a sale or purchase of any land under this Act, the

Tribunal or the Mamlatdar has to fix the price of such land under this Act, the Tribunal or the Mamlatdar, as the case may be, shall, subject to the quantum specified in sub-section (1), fix the price having regard to the following factors, namely :-

(a) the rental values of lands used for similar purposes in the locality;

(b) the structures and wells constructed and permanent fixtures made and trees planted, on the land by the landlord or tenant;

(c) the profits of agriculture of similar lands in the locality;

(d) the prices of crops and commodities in the locality;

(e) the improvements made in the land by the landlord or the tenant;

(f) the assessment payable in respect of the land; and

(g) such other factors as may be prescribed.

Explanation. - For the purposes of this section the expression ''assessment'' shall have the meaning assigned to it in section 8.

11. Rule 51 of the Rules of 1956 is as follows :

51. Grant of land by the Mamlatdar. - When the Mamlatdar grants under sub-section (4) of section 84-C he shall so far as may be follow the same procedure as is prescribed under rule 21.

12. Since Rule 51 provides that when the Mamlatdar grants under sub-section (4) of section 84-C, he shall as far as shall follow the same procedure as procedure under rule 21 as far as possible, it would be necessary to quote rule 21 which reads thus :-

21. Disposal of land by Tribunal. - (1) When the Tribunal directs the sale of any land under clause (c) of sub-section (2) of section 32-P, it shall publish or cause to be published in the village in which the land is situated a public notice in Form XI stating therein. - (i) survey number and other description of the land; (ii) the price fixed for the land under sub-section (5) of section 32-P and requiring the persons who are included in clause (c) of sub-section (2) of section 32-P to intimate to the Tribunal, if it is satisfied that the person is eligible for such inclusion, are willing to accept the land. The notice shall be published in the village by beat of drum and also by affixing a copy of it in the chavdi.

(2)(a) If only one person who is included in the priority list intimates to the Tribunal his willingness to accept the land for the price fixed, the Tribunal, if it is satisfied that the person is eligible for such inclusion, shall, after due notice to such person, fix under sub-section (5) of section 32-P the installments by which the price shall be payable and shall call upon such person by a notice in writing to pay the first installment of the price within one month or such further period as it may consider reasonable from the date of receipt of the notice by such person;

(b) If more than one person intimate to the Tribunal their willingness to accept the land and are eligible for inclusion in the priority list, it shall, after giving due notice to the person having the highest priority in the "Priority list", laid down in clause (c) of sub-section (2) of section 32-P, fix the installments by which the price shall be payable and shall call upon such person by a notice in writing to pay the amount of the first installment within one month or such further period as it may consider reasonable from the date of receipt of notice by such person.

(c) Where more than one person having the highest priority in the priority list are willing to accept the land, the Tribunal shall give notice under clause (b) to such one of them who in its opinion is most suitable having regard to -

(i) the agricultural implements in the possession of such person,

(ii) other land cultivated by such person personally, if any,

(iii) the financial condition of such person, and

(iv) any other factor which may be relevant for ascertaining the capacity of such person to cultivate the land :

Provided that where the Tribunal is of opinion that more than one person is so suitable for giving notice under clause (b), the matter shall be decided by drawing lots in the following manner in respect of all such persons for disposal of land under this rule :-

(i) prepare as many identical slips of paper as there are such suitable persons;

(ii) write the name of each person on a separate slip on one side and fold all such slips in identical manner so as to completely enclose the name written thereon;

(iii) place all the slips in an empty box of a suitable size, and thoroughly mix them by shaking the box;

(iv) ask one of such persons or any other person who may be present to draw from the box with his hand but without looking at the box one of the folded slips in the box.

12.1 A composite reading of section 84-C(4), section 63-A, rule 51 and rule 21 would indicate that for the disposal of the land which has vested in the State Government under sub-section (3) of section 84-C has to be effected by following the procedure contemplated under sub-section (3) of section 84-C, section 63-A and rule 51. The Mamlatdar is required to determine reasonable price of the land in accordance with provisions of section 63-A. The procedure is given for determination of reasonable price of land in section 63-A. When the Mamlatdar initiates proceedings for grant of land under sub-section (4) of section 84-C, the procedure prescribed under rule 21 is required to be followed as far as possible. The expression "as far as may be followed" is used in rule 51 in relation to the procedure prescribed in rule 21 because rule 21 apparently relates to the disposal of land u/s 32-P and since the sale under sub-section (4) of section 84-C is not specifically stated in rule 21, by virtue of rule 51 the procedure and the provisions contemplated under rule 21 has been made applicable to such grants under sub-section (4) of section 84-C as far as practicable.

13. Sub-section (4) of section 84-C starts with the expression "after determining the reasonable price", the Mamlatdar shall grant the land. That means the process of grant of land under sub-section (4) of section 84-C can only start after the reasonable price has been determined by Mamlatdar in accordance with section 63-A Thus, determination of reasonable price u/s 63-A is condition precedent for initiation of process of grant of the land by the Mamlatdar under sub-section (4) of section 84-C. The process of grant of the land is initiated by issuance of publication of notice- Obviously, therefore, in the said notice the price of the grant as determined by the Mamlatdar u/s 63-A is required to be mentioned and while issuing notice, the Mamlatdar is required to state the price determined. Form 11 of rule 21 of the Rules of 1956 which has been made applicable by virtue of rule 51 does provide the column of the price fixed for the grant. Therefore, it was incumbent upon the Tahsildar to mention the price determined by him u/s 63-A in the notice issued by him inviting applications for grant of the land under sub-section (4) of section 84-C. Admittedly in the notice published by Tahsildar, the price of the land determined u/s 63-A was not mentioned. It is admitted case of the learned counsel for the petitioners that price u/s 63-A was determined by the Tahsildar after the public notice was issued on 21-11-1981. Obviously, therefore in the public notice in the form under rule 21 published on 21-11-1981 the price of the land could not have been mentioned. Thus the Tahsildar committed fundamental error by not determining the price of the land u/s 63A before issuance of the public notice on 21-11-1981. The error was so fundamental that it vitiated the entire proceedings of grant of land u/s 84-C to the petitioners. The public notice was not in accordance with law. The Collector as well as the Maharashtra Revenue Tribunal, therefore, were justified in holding that by not stating the price by the Tahsildar u/s 63-A, in the notice published in form 11 under rule 21 which was applicable by virtue of rule 51, a gross error was committed by the Tahsildar which vitiated the entire proceedings of grant of land in favour of the petitioners.

14. It may he observed that one more reason which weighed with the Collector and Maharashtra Revenue Tribunal in setting aside the grant under sub-section (4) of section 84-C in favour of the petitioners related to not giving 30 days period in the notice issued under rule 21. Mr. Rege, the learned counsel for respondents Nos. 7 to 10 fairly conceded that rule 21 does not provide 30 days period in the notice published thereunder. In the notice published on 21-11-1981 the period prescribed for making an application was on or before 31-11-1981. In the absence of any provision that the said notice must give 30 days time for inviting applications, the Collector and Maharashtra Revenue tribunal were not justified in holding that the applications made after 31-11-1981 were not time barred. To that extent the order of the Collector and Maharashtra Revenue

Tribunal cannot be justified but that does not alter the ultimate order passed by them for the reasons which I have already indicated above.

15. The order passed by the Maharashtra Revenue Tribunal on 26-6-1984 maintaining the orders passed by the Collector therefore, cannot be faulted to the extent they have set aside the order of grant passed by the Tahsildar in favour of the petitioners u/s 84-C(4) of the Bombay Tenancy Act. However, the direction given by the Collector to Tahsildar to take possession of the disputed land from the petitioners needs to be modified by observing that Tahsildar shall take the possession of the disputed land from the petitioners in accordance with law.

16. Both the writ petitions therefore are dismissed with no order as to costs.

17. Needless to say that in the proceedings to be initiated afresh by Tahsildar for disposal of the disputed land, the petitioners shall be at liberty to apply and the order passed by the Collector and Maharashtra Revenue Tribunal shall not come in the way of the petitioners in fresh offer for purchase of the disputed land in accordance with law.

