

(2003) 01 BOM CK 0100

In the Bombay High Court

Case No : Writ Petition No. 4636 of 1988

Mallappa Kallapa Shahapure and Others

APPELLANT

Vs

Narasingh Saraswati Deo

RESPONDENT

Date of Decision : 10-01-2003

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G, 76, 88B

Citation : (2003) 2 ALLMR 64 : (2003) 3 BomCR 858

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : S.G. Karandikar and V.B. Rajure, for the Appellant; N.D. Hombalkar, for the Respondent

Final Decision : Allowed

Judgement

S.A. Bobde, J.—This petition is by tenants or agricultural land whose rights to purchase the land u/s 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Act") have been interfered with by the Maharashtra Revenue Tribunal (for short the "M.R.T.") by remanding the proceedings to the Tahsildar for enabling the respondent to produce an exemption certificate, even though the matter had been remanded earlier for the same purpose, but to no avail.

2. The petitioners' father deceased Kallapa Ningappa Shahapure was a tenant in possession and cultivation of the agricultural land bearing Survey No. 321/2, admeasuring six acres 39 gunthas, now gat No. 1095, situate at Alas, taluka Shirol, District Kolhapur, on the tiller's day. The father was a tenant of the suit land even prior to 1957. The petitioners assert that the land in question belonged to one Vasudeo Pujari.

3. Proceedings u/s 32-G of the Act were initiated in order to enable the petitioners to purchase the land under the provisions of the Act since the petitioners have been found to be in possession on 1-4-1957. These proceedings

were, however, dropped. The petitioners, therefore, filed an appeal before the Deputy Collector for Tenancy. The Appellate Court observed that the A.L.T. who had dropped the proceedings had wrongly presumed that the suit property is covered under the provisions of section 88-B of the Act. Section 88-B exempts lands which are property of the trust, including a public trust registered under the Bombay Public Trusts Act from the applicability of several provisions of the Act, including the provisions which confer the rights of statutory purchase on tenants. The Appellate Court rightly observed that for the applicability of section 88-B resulting in exemption of the lands, two things are necessary. Firstly, that the suit land must be a property of the trust for educational purpose or public religious worship, etc., and secondly, that there is a certificate from the Collector to the effect that the entire income of such land is appropriated for the purpose of the said trust.

4. The relevant extract of section 88-B reads as under :-

"88-B. (1) Nothing in the foregoing provisions except sections 3, 4-B, 8, 9, 9-A, 9-B, 9-C, 10, 10-A, 11, 13 and 27 and the provisions of Chapters VI and VIII in so far as the provisions of the said Chapters are applicable to any of the matters referred to in the sections mentioned above shall apply-

(a) to lands held or leased by a local authority, or University established by law in the Bombay area of the State of Maharashtra; and

(b) to lands which are the property of a trust for an educational purpose, a hospital, Panjarapole, Gaushala or an institution for public religious worship;

Provided that-

(i) such trust is or is deemed to be registered under the Bombay Public Trusts Act, 1950, and

(ii) the entire income of such lands is appropriate for the purposes of such trust;

(c)

(2) For the purposes of this section, a certificate granted by the Collector, after holding an inquiry, that the conditions in the proviso to sub-section (1) are satisfied by any trust shall be conclusive evidence in that behalf."

After the remand, proceedings u/s 32-G were resumed before the A.L.T. However, the respondent did not produce any certificate, even though he was specifically called upon to do so by the A.L.T. The A.L.T., therefore, held that the suit land cannot be excluded from the provisions of sections 32 to 32-R and, therefore, the petitioners are entitled to purchase the land in question.

5. The respondent appealed against the order of the A.L.T. to the Special Land Acquisition Officer No. 6 invested with the powers of the Appellate Court. The Appellate Court observed that not only there was no certificate issued by the Collector to prove that the land in question was not held to be belonging to the

public trust, the income from which was entirely appropriated for the purpose of such trust; but further observed that the certificate of registration of the public trust i.e. Shri Narasingh Saraswati Deo through Vahiwardar, Sakharam Ganesh Pujari did not contain any list of properties belonging to the trust. Therefore, there was nothing to show that this property belonged to the said public trust. The Appellate Court, therefore, dismissed the appeal.

6. The respondent carried the matter by way of revision to the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal reversed the concurrent findings of facts arrived at by the courts below. The Maharashtra Revenue Tribunal strangely observed that the Court below ought to have given sufficient opportunity to the present applicant (the respondent herein) to prove that the entire income of the suit land was utilised and appropriated for the purpose of the trust and, ultimately, took the view that the courts below have not properly appreciated the evidence on record and have not given sufficient opportunity to the respondent and, therefore, remanded the matter with a direction to the trial Court to ascertain the nature of the suit property and whether the income thereof was utilised for the purpose of the trust. It is this order of the M.R.T. which is challenged before this Court.

7. Mr. Karandikar, learned Counsel for the petitioners, submitted that the M.R.T. has committed an error of law in remanding the matter to the trial Court to ascertain the nature of the suit property and whether the income thereof was utilised for the purpose of the trust. In the submission of the learned Counsel for the petitioners, it is not the jurisdiction of the courts while determining ownership on the tenant to adjudicate the questions whether the lands belong to the public trust or not.

8. The contention on behalf of the petitioners deserves acceptance. The provisions of sections 32 to 32-R deal with conferring the status of a deemed purchaser on a tenant who is in possession on 1-4-1957 and provide for determination of purchase price, etc., payable by the tenant to the landlord and for the eventual purchase of the land by the tenant from the landlord. In the course of these proceedings, the landlord is entitled to point out to the courts that the lands belong to a public trust and, therefore, are exempted from the aforesaid provisions. The method of proving the fact that the lands belong to a public trust is provided by section 88-B, sub-section (2) reproduced above. That method is a mere production of certificate granted by the Collector. In fact, sub-section (2) lays down that such a certificate shall be conclusive evidence in that behalf. The fact that the certificate by the Collector is deemed to be a conclusive evidence is itself sufficient to hold that in the course of proceedings, no other proof is admissible for the purpose of proving whether the land belongs to a public trust or not and, therefore, no inquiry in that regard is necessary. Therefore, it is clear that the M.R.T. could not have remanded the matter back for the purposes of an inquiry to enable the respondent to prove the land belongs to a public trust or not. It would have been different if the respondent would

have stated before the M.R.T. that it was in possession of a certificate and sought leave to produce the same before the courts below. The certificate was not altered. The M.R.T. completely lost sight of the fact that the Appellate Court had as far back as on 11-12-1967 remanded the matter back to the A.L.T. with a direction to the landlord to produce the requisite certificate from the Collector and the landlord had failed to do so in spite of sufficient opportunity. There was absolutely no justification for the M.R.T. to have again under taken the same exercise for the same purpose.

9. Moreover, the M.R.T. clearly stepped outside the well-established parameters of its jurisdiction u/s 76 of the Act by interfering with the concurrent findings of fact which were not vitiated by any error of law or perversity. Indeed, the courts below have rightly followed the law by declining to exempt the said land from the provisions of sections 32 to 32-R on the ground that the landlord had not produced the requisite evidence viz. the certificate to show that the land belongs to a public trust.

10. The order of the M.R.T. is, therefore, vitiated by an error of law apparent on the fact of the record in that the Tribunal has remanded the matter back to the trial Court for holding an inquiry which it is not authorised to hold. As observed earlier, the authorities or courts while giving effect to the provisions of statutory purchase merely act on a certificate which is declared by law to be conclusive evidence and do not hold an inquiry to ascertain the nature of the suit property and whether the income thereof is utilised for the purpose of the trust. Even otherwise, the order of the M.R.T. is vitiated by an error of jurisdiction, in that it enters into field of appreciation of evidence and disturbs the concurrent findings of the courts below. I, therefore, consider it as an appropriate case for the exercise of jurisdiction of this Court under Article 227 of the Constitution of India for interfering with and setting aside the order of the M.R.T.

11. Moreover, the learned Counsel for the petitioners points out and this not disputed by the learned Counsel for the respondent that the lands in question were recorded as properties of the trust on 2-8-1962. It is settled law that a property to be exempted from the provisions of compulsory purchase provided by the Act, the property should have been a property of the trust and the property must be a property belonging to the public trust on 1-4-1957.

12. Mr. Hombalkar, learned Counsel for the respondents, relied on a decision of the Supreme Court in *Essen Deinki Vs. Rajiv Kumar*, wherein the Supreme Court has observed that exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature. In that very judgment, Their Lordships have observed as follows :-

"It is so exercised in normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of natural justice, to name a few."

I am of view that for the reasons stated earlier, this is a case which calls for the exercise of jurisdiction of this Court under Article 227 of the Constitution of India,

particularly since the M.R.T. has exercised the jurisdiction not vested in it and has further erroneously exercised its jurisdiction, as pointed out above.

13. In the result, the writ petition is allowed. The rule is made absolute in terms of prayer Clause (b). The impugned judgment and order of the M.R.T. is set aside. There shall be no order as to costs.

14. P.S. to give ordinary copy of this judgment to the parties concerned.