

(2004) 06 BOM CK 0002
In the Bombay High Court
Case No : Writ Petition No. 739 of 1986

Malu Shripati Gadekar and Others	Vs	APPELLANT
Raosaheb Gadekar through LR. Kalubai Gadekar and Others		RESPONDENT

Date of Decision : 28-06-2004

Acts Referred:

Citation : (2005) 1 MhLj 999

Hon'ble Judges : B.H. Marlapalle, J

Bench : Single Bench

Advocate : P.R. Deshmukh, V.G. Sakolkar and S.R. Chandole, for the Appellant; S.S. Choudhari and D.N. Suryawanshi for respondent Nos. 2 and 3, Sangita Dhumal, for respondent No. 4, S.B. Agrawal, for respondent No. 6, N.P. Patil, for respondent Nos. 7 to 12 and C.K. Shinde, A.G.P. for respondent No. 13, for the Respondent

Final Decision : Allowed

Judgement

B.H. Marlapalle, J.—Agricultural land in Survey No. 24 (Gat No. 33) and Survey No. 25 (Gat No. 34), admeasuring about 34 Acres and 29 Gunthas and 16 Acres 28 Gunthas, respectively, of village Vasangaon, was owned by Shri Raosaheb Gadekar. Shri Shripati Gadekar, resident of the same village, was tenant on the said land and declaration of ownership u/s 38E of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as the Hyderabad Tenancy Act) came to be made in favour of Shripati on 1st February, 1957. Finalisation of the said declaration, by the Tahsildar, was on 30th January, 1960, whereas ownership certificate was issued on 11th April, 1961 in respect of land admeasuring 17 Acres and 14 Gunthas from Survey No. 24 and 4 Acres and 16 Gunthas from survey No. 25. Appeal against this declaration and ownership certificate was moved by Raosaheb belatedly and the same was dismissed on 28th March, 1970. His revision bearing No. 240/BN/1969 was also dismissed on 10th December, 1970. Raosaheb, therefore, approached this Court in Special Civil Application No. 1649 of 1972, which was also rejected summarily on 10th September, 1972. Though, the declaration of ownership was finalised u/s 38E of

the Hyderabad Tenancy Act on 30th January, 1960 and ownership certificate was issued on 11th April, 1961 Shripati was not put in possession after he was dispossessed of the said land and prior to Raosaheb filing tenancy appeal before the Deputy Collector, Osmanabad on 21st May, 1969, he (Shripati) had moved an application u/s 98 of the Hyderabad Tenancy Act before the Deputy Collector at Latur and the said application was decided in his favour on 21st November, 1967. Aggrieved by the said order, Raosaheb moved an appeal before the Maharashtra Revenue Tribunal and it was remanded by decision dated 11th December, 1968. On remand, the appeal was decided by the Sub Divisional Officer, Latur and it was rejected on 26th November, 1969. Appeal to Maharashtra Revenue Tribunal also resulted in an order of dismissal on 10th December, 1971 and so also the Special Civil Application No. 965 of 1972, moved before this Court, was also rejected on 20th June, 1972.

2. Raosaheb did not stop here alone and he filed Regular Civil Suit No. 67 of 1973 on or about 28th February, 1973. The said suit was dismissed on 29th June, 1984. Regular Civil Appeal No. 136 of 1984, challenging the order of the trial Court, was also dismissed by the lower Appellate Court on 21st April, 1997. Second Appeal No. 277 of 1998, filed by Raosaheb before this Court, was dismissed on 27th June, 2000.

3. After the proceedings u/s 38E and u/s 98 of the Hyderabad Tenancy Act were concluded finally by the orders of this Court, Shripati approached the Deputy Collector on 10th August, 1973 and prayed for the possession of the suit land being handed over to him. The Sub Divisional Officer decided the said application on 31st July, 1973 and passed the following order:

"The Applicant Shripati s/o Sanganna Gadekar should approach the Tribunal to get decided the location of the areas in dispute under Rule 21 of the Hyderabad Tenancy and Agricultural Lands Rules, 1958 (Hyderabad Tenancy Rules, for short)....."

However, in the said order the Sub Divisional Officer also noted : thus,

"It is evident that the applicant is to be put in possession of part of areas of Survey Nos. 24 and 25 and there is no such exact location of such, thus to be given in possession. The result is that it would not be possible for the Tahsildar to proceed further under Rule 43.1 am inclined to agree with the learned counsel for the respondent that the only course open for the applicant was to approach the Tribunal to get clarified the location of the areas in dispute....."

4. Shripati, therefore, approached the Tahsildar, Latur by his application dated 16th January, 1975. The said application was decided on 25th August, 1975. He declared that the area of 17 Acres and 14 Gunthas of Survey No. 24 and 4 Acres 16 Gunthas of Survey No. 25, both from western side from which Latur-Ausa road passes, be the specified location of declaration certificate issued in favour of the tenant/purchaser Shripati s/o Sanganna.

5. Raosaheb, being aggrieved, approached the Deputy Collector, Latur in Case No. 75/TNC/4 and the same was decided against him on 9th of October, 1975. He then approached the Maharashtra Revenue Tribunal at Aurangabad in Case No. 378 of 1975. This revision application was partly allowed by setting aside the order of the Deputy Collector and the case was remanded to him to decide the appeal of the revision petitioner i.e. Raosaheb, afresh in accordance with law in the light of the observations made in the said judgment dated 2nd November, 1976. The Deputy Collector, Latur decided the appeal afresh on remand on 1st June, 1985 and it was dismissed. The order dated 25th August, 1973 passed by the A.L.T., Latur was confirmed. The specific location of the declared land was held to be Survey No. 24 and 25 to the extent of 17 Acres 14 Gunthas and 4 Acres 16 Gunthas of village Vasangaon, both from the western side from which Latur-Ausa road passed. This decision of the Deputy Collector was again challenged before the Maharashtra Revenue Tribunal in revision Application No. 81/B of 1985 and it came to be allowed by the learned Member vide his judgment and order dated 8th April, 1986. The orders of both the Deputy Collector and Tahsildar were set aside. In addition, the application filed by the present petitioner before the A.L.T. was also rejected. This petition takes exception to the judgment and order of the Maharashtra Revenue Tribunal passed on 8th April, 1986.

6. The Maharashtra Revenue Tribunal, in the impugned order, held that there could not have been any declaration made in favour of Shripati unless the boundaries of the subject land were determined and, therefore, the declaration made in his favour was without any foundation. The tenants, if so advised, were directed to start independent proceedings for fresh declaration on the basis of their tenancy, by taking into consideration the total area of the land of two survey Nos. 24 and 25 and that too in respect of portions which were in possession of the two tenants and the area occupied in construction of Latur-Ausa road from the Revision Petitioner also. The Tribunal referred to the provisions of Rule 21 of the Hyderabad Tenancy Rules and held that if the said rules are read with Section 38(8) the declaration made in favour of Shripati was a total nullity and would not be of any legal validity in the eyes of law.

7. Shri Deshmukh, the learned senior counsel with Shri Sakolkar, at the first instance, referred to the names of the petitioners, who moved the revision petition No. 81/B of 1985 before the Maharashtra Revenue Tribunal and pointed out that none of them were impleaded as parties in the earlier proceedings resulting in the order dated 1st June, 1985 passed by the Deputy Collector at Latur and which was a subject matter of challenge in the said revision. The appeal was filed by Raosaheb and Shripati through his legal representatives i.e. the present petitioners, was arrayed as respondent No. 1 whereas Padminibai Bhimrao Dhonmare was respondent No. 2. The revision applicants in Revision No. 81/B of 1985 were the present respondent Nos. 2 to 4. Shri Deshmukh, therefore, submitted that the revision filed by them was required to be dismissed at the threshold by the learned Member of the Tribunal as they had no locus-

standi to challenge the order passed by the Deputy Collector. On merits, Shri Deshmukh submitted that once the order passed u/s 38E regarding the declaration of ownership had received finality by the order passed by this Court on 18th September, 1972 in Special Civil Application No. 1649 of 1972 it was not open for the Maharashtra Revenue Tribunal to adjudicate upon this issue. The Tribunal, therefore, committed a manifest error in law and its order holding that the declaration was illegal was obviously without authority. It was also pointed out that the proceedings initiated for restoration of possession u/s 98 of the Hyderabad Tenancy Act had also reached its finality by the order of this Court dated 20th June, 1972 thereby Special Civil Application No. 965 of 1972 was rejected. Thus, Shripati's right as a purchaser of the suit land and for repossession of the same was confirmed by this Court and it was, therefore, not permissible for the Tribunal, while deciding a revision filed by aliens to adjudicate upon these settled issues. Even otherwise, the declaration certificate u/s 38E issued on 11th April, 1961 remained incomplete inasmuch no boundaries of the suit land were described and, therefore, the said certificate could not be acted upon. The application submitted by Shripati to the Deputy Collector was only by way of seeking to implement the orders already finalized but the Deputy Collector noticed that the boundaries of the suit land were not specified and unless that was done it was not possible to put the petitioner in possession of the land which had come to his ownership. He was, thus, advised to approach the Tahsildar, who was competent enough to determine the boundaries under Rule 21 of the Hyderabad Tenancy Rules.

8. Shri N. P. Patil, the learned counsel for respondent Nos. 7 to 12 and Shri. S. S. Choudhari for respondent Nos. 2 and 3 supported the impugned order and submitted that if regards be had to the scheme of Rules 21 and 28 of the Hyderabad Tenancy Rules and sections 36, 38 as well as Section 38E of the Hyderabad Tenancy Act, unless the boundaries were earmarked, the order of declaration could not have been passed and, therefore, the declaration so made was invalid and could not be acted upon. They urged that the impugned order is required to be followed and suitable directions may be given. It was also pointed out that in the year 1975 Raosaheb had sold 15 Acres and 35 Gunthas of land from Survey No. 25 to the respondent No. 6 and the balance of about 1 Acre land from the said survey number was acquired for public road. It appears that present respondent Nos. 2 and 3 are the purchasers of the land from Survey No. 24 to the extent of 15 Acres and 35 Gunthas vide sale deed dated 4th October, 1975. It was also pointed out that the other declared purchaser Dhondiba had surrendered his share to the original landlord and, thus, it would not be difficult to execute the declaration order even if it is finally held that the Tribunal's order was unsustainable. Shri S. B. Agrawal, the learned Advocate appearing for respondent No. 6, who has purchased the land, admeasuring 4 Acres and 16 Gunthas from Survey No. 25 from Shri Gaddine, respondent No. 4, also submitted that the respondent No. 4 is still in possession of about 4 Acres 16 Gunthas land towards the western side and about 8 Acres from the eastern side.

The 7/12 extracts as on 1st July, 2003 in respect of both the lands are placed on record and it appears that the respondent No. 4 has further alienated some portion of the land in his possession from Gat No. 34 or survey No. 25 by making plots. In short, he submitted that the execution of the declaration and restoration order passed in favour of the petitioners would not be difficult to execute even as at present without, in any way, disturbing the land/plots in possession of the other respondents or the subsequent purchasers.

9. In the case of " Ganpat Deshmukh Vs. Yeshwant Deshmukh, the scheme of Section 38E of the Hyderabad Tenancy Act fell for consideration before us (Marlapalle and Bagga, JJ.). We had noted that Sub-section (2) of Section 38E provides for a certificate being issued in the prescribed form declaring the protected tenant to be the owner and notices of such issuance be simultaneously issued to the landlord and such certificate shall be conclusive evidence of the protected tenant having become an owner of the land with effect from the date of the certificate, as against the landholder and all other persons having any interest therein. The certificate is in Form XVI under Rule 23(4) of the Hyderabad Tenancy Rules. For setting out the description of the land the certificate has prescribed the details to be furnished viz. district, Taluka, village, survey number, Pot-hissa number, area, revenue assessment and boundaries. In the case at hand, when the ownership certificate was issued on 11th April, 1961 it was without indicating the boundaries. It gave the description of the land like district, Taluka, village, survey number, area and land revenue but in the column of boundaries there was nothing mentioned and, therefore, when the petitioner approached the Deputy Collector seeking directions for being put in possession of the land admeasuring 17 Acres and 15 Gunthas from Survey No. 24 and 4 Acres and 16 Gunthas from Survey No. 25, the Deputy Collector, by his order dated 31st July, 1973 advised the petitioner to approach the Tahsildar for merely filling in the blanks but this clerical correction has obviously kept the litigation going on for the last more than thirty years and the possession of the suit land is still an elusion to the petitioners. This is astonishing and sheer abuse of the process of law.

10. Rule 21 of the Hyderabad Tenancy Rules provides for the manner of deciding questions arising in respect of the kind, extent or location of any particular area of land to be purchased by a tenant. Shri Patil and Shri Choudhari, the learned counsel for the respective respondents, submitted that the compliance of Rule 21 is a condition precedent for passing any order u/s 38E of the Hyderabad Tenancy Act and unless the boundaries were decided no declaration could have been made. As stated earlier, the challenge to the declaration is not open after the same issue has been finally concluded by the order of this Court and it was not so open before the Tribunal as well. Nonetheless, the rules are merely the handmade of procedural details so as to implement the provisions of the statute and they cannot override the statutory provisions. It cannot be said that the provisions of Rule 21 will operate first and then the order u/s 38E will have to be passed. In fact, the provisions of Section 38E operate automatically keeping in

mind the spirit of the welfare legislation viz. the Hyderabad Tenancy Act and while handing over the land to the declared purchaser, if there are any clarifications or disputes regarding the kind of land, the extent of land or location of the land, the same could be decided by taking into consideration the factors set out under Rule 21 of the Hyderabad Tenancy Rules by the A.L.T. The Maharashtra Revenue Tribunal fell in gross error in reading the provisions of the said rule and to invalidate the declaration made earlier in favour of the petitioners. It certainly exceeded its jurisdiction while deciding a revision by third parties.

11. In Ganpat Sakharam Deshmukh's case (supra) this Court held that the transfer of ownership as made u/s 38E of the Hyderabad Tenancy Act would not be ineffective unless two conditions are satisfied namely; (a) erstwhile tenant commits default to pay the entire purchase price and (b) in spite of recovery proceedings initiated by the trial Court, the purchase price could not be recovered from the said tenant. The tenancy proceedings initiated u/s 38E of the Act were confirmed by this Court and so was the case with respect to the proceedings initiated u/s 98 of the Act and therefore, there was no other reason to declare the transfer ineffective which has been impliedly done by the Tribunal by holding that the declaration made was ineffective. What was sought by the application dated 10-8-1971 was only correction of a clerical error that had erupted on account of the boundaries column having been left blank and pursuant to the directions issued by the Deputy Collector to approach the Tahsildar for the said correction. This was not an independent proceeding so as to invite an adjudication on the main issues which had attained judicial finality. The Tribunal while dealing with the revision application should not have ventured to record a finding which ultimately nullified the view taken by this Court in two simultaneous proceedings. Both the authorities below namely; the Tahsildar and the Collector had rightly appreciated the clerical error to be corrected by marking the area to be given in the share of the petitioner and there was no vagueness or absurdity in the same. The petitioners contentions that the Tribunal entered into an arena not meant for it in its revisional jurisdiction has substantial force. The view taken by the Tribunal, if allowed to remain on record, would certainly result in absurdities. On the other hand, it was necessary for the Tribunal to keep in mind the benevolent intentions embodied in the Hyderabad Tenancy Act which is a special legislation enacted for the welfare of the tillers. The interests of tillers/tenants as attained by them under the Act are required to be protected in the proceedings initiated under the Act. The Tribunal had failed to keep these basic doctrine in mind and entered into an arena which was not open to adjudicate upon.

12. The petitioners have been waiting for the last more than three decades. They had approached this Court in the instant petition by interlocutory applications but failed and in the meanwhile, there have been alienations. In fact, the parties who approached the Tribunal and obtained the impugned order in their favour were not the parties either before the Tahsildar or the Deputy Collector. They had

purchased part of the land from respondent No. 1 Raosaheb. This basic issue regarding the locus standi was required to be examined by the Tribunal notwithstanding the fact whether the opponents namely; the present petitioners had failed to raise such an issue.

The revisional applicants were thus alien to challenge the order passed by the Deputy Collector and their approach to the Tribunal has undoubtedly resulted into abuse of process of law. The learned Counsel for the respective parties and more particularly the purchasers right from 1975 in respect of part of the land, submitted that even as at present the petitioners' share as determined in the ownership certificate issued in favour of Shripati could be marked out even from the land in possession of the respondents No. 1 to 4 and without disturbing in any way their possession. It appears that some of the purchasers have constructed their bungalows on the plots from part of the land which was sold to them by respondent No. 4 or to others like respondent No. 6. All these details will have to be gone into by the Collector, Latur, while ensuring that the petitioners are put in possession of the share declared in their favour vide ownership certificates. Nonetheless this exercise is required to be undertaken and completed after hearing all the parties concerned at the earliest possible. The petitioners deserve to be put in possession of their rightful share. The transfers of land by way of sale etc. after 30th January, 1960 made in favour of any or all the respondents of any land covered by the declaration made in favour of Shripati are void ab-initio and the Collector has to execute the order disregarding such transfers.

13. In the result, this petition succeeds. Rule is made absolute in terms of prayer clauses (B), (B1) and (B2). The Collector, Latur, is directed to take due steps to put the petitioners in possession of the land from the respective gut numbers i.e. 33 and 34 as per the ownership certificate dated 11-4-1961 and with the boundaries/locations as specified in the order dated 1-6-1985 passed by the Deputy Collector, after hearing all the parties concerned. The Collector may consider, as far as possible, not to disturb the possession of the parties who have built their residential dwellings by marking the petitioners shares and taking into consideration the present availability of the land either on western or eastern side of the road. The final order should be passed by the Collector within two months from the date of receipt of writ of this Court. Costs ordered.