
(2012) 07 BOM CK 0096

In the Bombay High Court

Case No : Writ Petition No. 2749 of 2006 (D)

M/s. S. Kumar Developers and Builders

APPELLANT

Vs

Bhimrao Jadhao and others

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 19, 22, 22A, 28, 29

Citation : (2012) 6 ALLMR 575

Hon'ble Judges : Vasanti A. Naik, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : Dharmadhikari and N.D. Khamborkar, for the Appellant;

Final Decision : Dismissed

Judgement

A.B. Chaudhari, J.—We have heard learned counsel for the appellant at length. By the present letters patent appeal, the appellant, who is the purchaser of a tenanted agricultural land, has challenged the judgment and order dated 11/06/2012 passed by the learned Single Judge of this Court setting aside the order of sanction u/s 36 of the Bombay Public Trusts Act, 1950 for sale of the suit land and remanded the proceedings at the behest of the tenants to the Joint Charity Commissioner, Amravati.

2. Mr. A. C.Dharmadhikari, learned counsel for the appellant, in support of the appeal, made the following submissions.

(1) The original tenants of the suit land i.e. respondent Nos. 1 to 3 herein had no locusstandi to claim to be the necessary parties in the proceedings u/s 36 of the Bombay Public Trusts Act, 1950 or the right of hearing as wrongly held by the learned Single Judge

(2) The grant of sanction to sell the suit land u/s 36 of the Bombay Public Trusts Act, 1950 nowhere envisages a notice of hearing or of the said proceedings u/s 36 of the Act of 1950 and that is another reason why they were neither necessary, nor proper parties.

(3) After the sanction was granted by the Joint Charity Commissioner, a sale deed came to be executed in favour of appellant and thus in the wake of the said fact accomplished the writ petition could not have been entertained by the learned Single Judge to reopen the proceedings of sanction u/s 36 of the Bombay Public Trusts Act, 1950. He relied on the judgment in the case of Shri Mahadeo Deosthan, Wadali and others vs. Joint Charity Commissioner, Nagpur and others reported in 1989 Mh.L.J. 269 and another judgment in the case of Shailesh Developers and another vs. Joint Charity Commissioner, Maharashtra and others reported in 2007(3) Mh.L.J. 717.

(4) The public trust-respondent No. 4 was having an exemption certificate u/s 129(b) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 and that being so the tenants i.e. respondent Nos. 1 to 3 had no right at all to make any grievance.

3. We have perused the judgment and order dated 11/06/2012 passed by the learned Single Judge. We have heard Mr. Dharmadhikari, learned counsel for the appellant, at length. We have seen the order made by the Joint Charity Commissioner, Amravati u/s 36 of the Bombay Public Trusts Act, 1950.

4. At the outset, it will be useful to note the relevant facts which were within the full knowledge of the Joint Charity Commissioner. The suitland is situated at Mouza Kali, Taluka Karanja (Lad), District Washim. The tenants are the residents of Karanja (Lad), District Washim. Advertisement was published by respondent No. 4-Trust in the news papers daily Insight? on 17/03/2005 and Amravati Evening? on 21/03/2005, published at Amravati. In para 3 of his order the Joint Charity Commissioner says thus

It is further submitted that the aforesaid property is not in possession of the Trust but is in possession of the tenants. In para 7, it is said thus

These papers appear to be of wide circulation in the area where the property is situated. The advertisement specifically states that the property is to be sold with the disputed tenants in the Court with tenancy right.

5. From the above, it is clear that the Joint Charity Commissioner was fully aware about the fact that the land was tenanted land and they were in possession and not respondent No. 4-Trust. Despite this position, the Joint Charity Commissioner did not issue any notice to the tenants, nor directed the applicant before him to add the tenants as parties to the proceedings u/s 36 of the Bombay Public Trusts Act, 1950. In our opinion, in the above factual background and in the light of the fact that the tenancy rights are governed by the provisions of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 and not only that the proceedings for conferral or ownership rights of tenancy on them have also been pending it was all the more necessary to notice them. The tenancy rights of the tenants conferred by the Special Act, namely the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 cannot be superseded or overridden, nor they can be ignored in the proceedings relating to sanction for

sale of the land occupied by them. In our opinion, therefore, they are obviously the necessary and proper parties and in their absence, the proceedings were hit by the defect of non-joinder of necessary parties, which ought to have resulted into dismissal of the proceedings. The submission made by Mr.A.C. Dharmadhikari, Advocate that the land was being sold along with the tenancy rights of the tenants to the third purchaser is wishy-washy. No tenanted land could at all be sold or permitted to be sold without following the procedure under the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. At any rate, the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 is a Special Law and the provisions of the Bombay Public Trusts Act, 1950 cannot override the mandate of the said Special Law. Thus, we hold that the rights of the tenants to participate in the proceedings u/s 36 stand on a higher footing.

6 Next, Rule 7 of the Bombay Public Trusts Rules, 1951 reads thus

7. Manner of inquiries

[Except as otherwise provided in the Act and these rules, inquiries under or for purposes of sections 19, 22, 22A, 28, 29,36, 39, 41D, 41E(3), 43(2)(a), 47, 50A, 51,54(3) and 79AA(2) or any other in query which the Charity Commissioner may direct to be held for the purposes of the Act,]shall be held, as far as possible, in the Greater Bombay Region in accordance with the procedure prescribed for the trial of suits under the Presidency Small Cause Court Act, 1882, and elsewhere under the Provincial Small Cause Court Act, 1887. In any enquiry a party may appear in person or by his recognised agent or by a pleader duly appointed to act on his behalf

Provided that any such appearance shall, if the Deputy or Assistant Charity Commissioner so directs, be made by the party in person.

7. 7 of the Bombay Public Trusts Rules, 1951 by following the procedure prescribed for trial of suits under the Presidency Small Cause Court Act, 1882 and here in Vidarbha the Provincial Small Cause Court Act, 1887. Needless to say that the trial of the proceedings u/s 36 of Perusal of the above Rule shows that Section 36 of the Bombay Public Trusts Act, 1950 relating to the previous sanction for sale is included in the said Rule for the purposes of holding enquiries. It is, thus, clear that for conduct of enquiry in the prescribed manner, the enquiry is to be held as per Rule the Bombay Public Trusts Act, 1950 would obviously mean dismissal of such proceedings if there is anon-joinder of necessary parties. Thus, for this additional reason also the initiation and culmination of the proceedings u/s 36 of the Bombay Public Trusts Act, 1950 was illegal. This takes care of the issue of locus standi argued by Mr.Dharmadhikari, learned counsel for the appellant.

8. Next issue whether tenants did not have any right because of the exemption certificate obtained by respondent No. 4-Trust u/s 129(b) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 is an issue to be considered upon hearing the tenants in the said proceedings u/s 36 of the Bombay Public

Trusts Act, 1950 and one does not know what submissions could be advanced on the said aspect by the tenants.

9. The reliance placed by learned counsel for the appellant on the judgment in the case of Shri Mahadeo Deosthan, Wadali and others vs. Joint Charity Commissioner, Nagpur and others reported in 1989Mh.L.J. 269 is misplaced. In the said case one of the trustees had filed an application u/s 36(2) of the Bombay Public Trusts Act, 1950 for revoking the sanction and it is in that context this Court held that revocation was not possible. The said decision is obviously not applicable to the case at hand. 10. In this context a Division Bench decision in the case of Shri Keraba Dattu Borachate and others v. Shri Sheshashai and Vishnu Trust reported in 1990(3) BCR 656 would be slightly relevant as to whether the tenants have any right to be heard or not. That was a case where the Trust had claimed exemption certificate without notice to the tenant and a Single Judge of this Court held in the case of Shrimant Jagdesras Anandrao Pawar v. Kisan Namdeo Pawar and others reported in 1979 Mh.L.J. 687 that such an hearing to the tenants was not contemplated. The Division Bench in the case of Shri Keraba DattuBorachate and others v. Shri She shashai and Vishnu Trust reported in 1990(3) BCR 656 rejected the argument that the enquiry held by the Collector before grant of exemption certificate is a matter exclusively between the Collector and the Trust and the tenants are not entitled to appear in such proceedings.

The said decision has been followed by three learned Single Judges of this Court. At any rate, in our opinion, when the requirement of notice and the mode of service on the parties concerned(here the tenants) are regulated by statutes setting up and regulating the functions of the Courts or Tribunals, the proceedings must be conducted in accordance with the provisions as laid down in the Statute. A judicial decision rendered where there is no notice to the necessary party is without jurisdiction and is liable to be quashed. Such an order clearly violates the fundamental and basic rule of natural justice.

11. The upshot of the discussion is that the learned Single Judge was right in following the above principle and remanding the proceedings to the Joint Charity Commissioner for fresh disposal in accordance with law. In the result, we find no error in the impugned judgment as the same is just, legal and proper. Letters Patent Appeal No. 279/2011 is thus dismissed summarily. No costs.