

(2001) 12 BOM CK 0036
In the Bombay High Court
Case No : Writ Petition No. 5611 of 1988

Nana Hari Gaikwad and Others

APPELLANT

Vs

Badsha Alli Mulla

RESPONDENT

Date of Decision : 14-12-2001

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G, 88B, 88G
Constitution of India, 1950 — Article 227

Citation : (2002) 2 ALLMR 146 : (2002) 4 BomCR 327

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : N.D. Hombalkar, for the Appellant; D.A. Nalawade, for the Respondent

Final Decision : Dismissed

Judgement

J.G. Chitre, J.—Heard Shri Hombalkar. By this petition the petitioners are assailing the correctness, propriety and legality of the judgment and order passed by the members of M.R.T. in the matter of MRT-NS-I-10/83 (TEN.B. 16/83) Pune, dated 24-6-1988. By the said judgment and order, the learned Judge dismissed the revision petition filed by the present petitioners meant for challenging the judgment and order passed by S.D.O. in TNC Appeal No. 115/1981 on 30-4-1982 by which learned S.D.O. had set aside the judgment and order passed by Additional Tahsildar and A.L.T. No. 1, Karad. The respondents had moved an application on 1-6-1981 to the Collector, Satara contending therein that they were tenants since long in suit land bearing Survey No. 574/10 (now Survey No. 276/10) admeasuring 35 areas and Survey No. 574/14 (now Survey No. 276/14) admeasuring 13 areas situated within the limits of Karad town. They contended that proceedings u/s 32-G of Bombay Tenancy and Agriculture Lands Act, 1948 (hereinafter referred to as the Bombay Tenancy Act for convenience) were dropped by then Deputy Collector and A.L.T. on 5-12-1961 as the suit lands were Deosthan and Inam lands of Class III and as such the purchase of the suit lands by the tenants was declared ineffective. The

application preferred by the petitioners was forwarded to the Additional Tehsildar and A.L.T. Karad for detailed enquiry and final disposal. The Additional Tehsildar and A.L.T. No. 1 Karad conducted the detailed enquiry in the said proceedings bearing No. E.R. 1088. The A.L.T. held that if at all the petitioners were tenants in the suit land, they cannot become the deemed purchaser on tillers day in view of provisions of section 88-B of the Bombay Tenancy Act as those lands were Deosthan Inam Class III land and as such, the provisions of sections 32-G to 32-R were not applicable to the suit lands.

2. The petitioners moved an appeal before the S.D.O. Karad who allowed the appeal and set aside the judgment and order passed by the Tehsildar and A.L.T. The respondents moved a revision petition before the M.R.T. and the M.R.T. set aside the judgment and order passed by the S.D.O. Karad.

3. Mr. Hombalkar submitted that the learned members of the M.R.T. did not apply provisions of section 88B of the Bombay Tenancy Act and did not declare that the suit lands were lands belonging to institution for public religious worship. He further submitted that the members of M.R.T. introduced a new case altogether and, therefore, that judgment and order stood vitiated.

4. This Court is exercising jurisdiction in view of Article 227 of the Constitution of India and that of superintendence. Therefore, this Court will have to see whether the judgment and order which has been passed by the M.R.T. which has been assailed by this writ petition happens to be consistent with the provisions of law. Provisions of section 88B(1)(b) provides that nothing in the foregoing provisions except sections 3, 4B, 8, 9, 9A, 9B, 9C, 10, 10A, 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 section mentioned above shall apply to lands which are the property of a trust for an educational purpose, a hospital, Panjarapole, Gaushala or an institution for public religious worship.

5. The members should have considered the revision petition in view of provisions of section 88B and should have decided it by quoting section 88B in their discussion. But when the conclusion drawn by the members of the M.R.T. in their judgment and order which is being assailed by this petition is correct and consistent with law, this Court does not find any necessity for interfering with it in view of Article 227 of the Constitution of India. This petition stands dismissed with costs. Rule stands discharged.