
(1966) 05 GUJ CK 0001
In the Gujarat High Court

Natha Mohan

APPELLANT

Vs

Bai Shanta and Others

RESPONDENT

Date of Decision : 06-05-1966

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43, 43, 64, 64, 84C
Constitution of India, 1950 — Article 226, 227

Citation : (1967) 8 GLR 1

Hon'ble Judges : N.M. Miabhoy, C.J.;A.R. Bakshi, J

Bench : Division Bench

Judgement

N.M. Miabhoy, C.J.—Petitioner Natha Mohan has filed this writ petition under Articles 226 and 227 of the Constitution of India, praying for the issuance of a writ of certiorari or any other appropriate writ or direction or order for quashing or setting aside certain orders, to be presently mentioned.

2. The facts which require to be mentioned to dispose off the petition may, at first, be stated. We are concerned in the present petition with a land bearing survey No. 164 situated in the village Nana Ankadia, Amreli District. Bai Shanta, respondent No. 1 was, at the relevant time, the occupant of this land and Harjivandas, respondent No. 2, was its tenant. On 31st December 1956, respondent No. 1 sold by a registered sale deed that land to respondent No. 2 for Rs. 3, 000/-. However, on the same day, respondent No. 2 sold by another registered document the same land to petitioner for Rs. 6, 500/-. The Talati of the village prepared case papers in regard to these two sale transactions and submitted them to the Tenancy Mahalkari, respondent No. 4, for passing the necessary orders in view of the fact that both the sale transactions had taken place without undergoing the procedure required by the Bombay Tenancy and Agricultural Lands Act, 1948, (hereafter called "the Act") for obtaining the requisite permission thereunder. On 19th April 1959, respondent No. 4 passed an order in regard to the sale transactions. In regard to the sale by respondent No. 1 in favour of respondent No. 2 (hereafter called "the first sale"), respondent No. 4 ordered that respondent No. 2 " shall pay penalty of Re. 1/- to the State

Government within a period of one month for validation of sale of Survey No. 164 of Nana Ankadia u/s 64 of the Act read with Section 84C as modified on 17th July 1958. " In regard to second sale, respondent No. 4 made a declaration that that sale was invalid. He further ordered that the land shall vest in the State Government, that the amount of Rs. 6, 500/- shall stand forfeited to the State Government and that the land be given on new and impartible tenure in the prescribed manner after payment of the reasonable price which was determined by him u/s 63A. Petitioner filed an appeal to the Prant Officer from the above order. The latter is respondent No. 5. That officer modified respondent No. 4's above order. He got aside that part of the order which forfeited the amount of consideration of Rs. 6, 500/- and confirmed the rest of the order. Petitioner then filed a revision application to the Revenue Tribunal, represented in this Court by respondent No. 3. On 22nd September 1961, the Tribunal dismissed the revision application and confirmed the order of respondent No. 4 as modified by respondent No. 5. In the present petition, petitioner challenges the validity of the aforesaid three orders passed by respondents Nos. 4, 5 and 3 respectively. The Revenue Tribunal has ultimately upheld the orders of respondents Nos. 4 and 5 on the ground that the second sale was bad u/s 43 of the Act.

3. Mr. Shah, the learned advocate for petitioner, challenges the validity of the order dated 22nd September 1961, on the ground that the Revenue Tribunal had committed an error apparent on the face of the record by holding that the second sale was hit by the provision contained in Section 43 aforesaid.

4. Now, in order to dispose this and the other contentions raised by the learned Assistant Government Pleader, it is necessary first to read the relevant parts of Sections 43, 64 and 84C of the Act as they stood on the date on which the impugned order was passed by respondent No. 4. The relevant parts of those sections were as follows on the latter date.

43. (1) No land purchased by a tenant under Sections 32, 32F, 32-I or 32-O or sold to any person u/s 32P or 64 shall be transferred by sale...without the previous sanction of the Collector.

(2) Any transfer...in contravention of Sub-section (1) shall be invalid.

64. (1) Where a landlord intends to sell any land, he shall apply to the Tribunal for determining the reasonable price thereof.

(8) Any sale made in contravention of this section shall be invalid.

Section 64 prescribes the procedure which is to be followed when a landlord intends to sell his land. Shortly, the prescribed procedure is as follows. The intending landlord must first make an application to the Tribunal for determination of the reasonable price of the land intended to be sold. After the Tribunal has fixed reasonable price, the landlord has to make an offer for sale of land to the persons mentioned in Sub-section (2). The persons to whom the offer is made are required to intimate to the landlord their willingness to purchase

within one month from the date of the receipt of the offer. If the landlord receives a single acceptance, then, he is required to sell the land to the acceptor. If he receives more than one acceptance, then, in that case, he has to sell the land in accordance with a certain priority laid down in the section. Sub-section (8), which we have already reproduced, says that any sale which takes place in contravention of the procedure laid down in Section 64 is invalid. The relevant part of Section 84C is as follows:

84C. (1) Where in respect of the transfer...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 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 84B 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...is invalid, he shall make an order declaring the transfer or acquisition to be invalid.

Provided that in the case of a transfer by the landlord to the tenant of the land:

(i) where 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, the Mamlatdar shall not declare the transfer to be invalid if the transferee pays to the State Government a penalty equal to Re. 1 within such period not exceeding three months as may be fixed by the Mamlatdar;

(ii) where the amount received by the landlord as the price of the land is in excess of the reasonable price determined u/s 63-A, the Mamlatdar shall not declare the transfer to be invalid if 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 may be fixed by the Mamlatdar.

(iii) 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 32Q 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 63A determine the reasonable price of the land.

Then Sub-sections (4) and (5) provide for the procedure which is to be undergone for sale of the land forfeited to the Government under Sub-section (3). 5. Now, as already stated, the second sale has been held to be invalid u/s 43 of the Act. That section deals with two kinds of sales: (i) a compulsory sale by a landlord to his tenant under Sections 32, 32F, 32-I or 32-O; (ii) a voluntary sale by any person to whom land has been sold u/s 32P or Section 64. The first part of the provisions of Section 43 are not attracted to the facts of the present case. This is so because respondent No. 2 is not a purchaser of the land under Sections 32, 32F, 32-I or 32-O. All the revenue authorities, however, have held that respondent No. 2 was a purchaser u/s 64. It is quite obvious that if the seller himself is a purchaser u/s 64, then, he is prohibited u/s 43 from selling the land without the previous sanction of the Collector. Therefore, the second sale can be hit by Section 43 only if respondent No. 2 is a purchaser u/s 64. Now, on the facts of the present case, there cannot be any doubt that respondent No. 2's purchase, that is, the first sale was not u/s 64. When respondent No. 1 sold the land under the first sale to respondent No. 2, admittedly the procedure u/s 64 was not gone through. But the Tribunals have taken the view that the first sale was u/s 64 because of the order passed by the 4th respondent in regard to the first sale. They have taken the view that the order passed by the 4th respondent in regard to the first sale had the effect, in law, of making respondent No. 2 a purchaser u/s 64. Therefore, in order to appreciate this finding, it is necessary to understand the scheme underlying Section 84C and the provisions contained therein. Sub-section (1) of Section 84C empowers the Mamlatdar to start proceedings for determination of the question as to whether any transfer of land is or has become invalid under any of the provisions of the Act. That sub-section empowers the Mamlatdar to decide that question. Sub-section (2) enables the Mamlatdar to make a declaration that a transfer is invalid if he comes to the conclusion that the transfer was, in fact, invalid. The proviso, however, enjoins on the Mamlatdar not to make such a declaration if the conditions mentioned therein are satisfied. It is quite obvious that the proviso relates to a transfer between a landlord and his tenant. It says that even if a transfer between these two persons is invalid, a declaration shall not be made by the Mamlatdar, provided, in the circumstances mentioned, the party concerned pays a penalty as laid down in the proviso. Then comes Sub-section (3). That sub-section says that certain consequences will follow on a declaration being made by the Mamlatdar under Sub-section (2) and the consequences mentioned are that the land shall stand forfeited to the State Government and the amount of consideration which passed under the invalid sale shall also stand forfeited to the same Government. Having regard to the aforesaid provisions, there cannot be any doubt as to the object of enacting Section 84C. The object obviously is to forfeit land which has been transferred in violation of the provisions of the Act. It will be noticed that though Sections 43 and 64 state that, in case of violation of the provisions of those sections, the sale will be invalid, Section 84C of the Act does not provide for forfeiture of land passed in contravention of those two or any of the sections automatically on the sale taking place. A land does not stand forfeited simply

because of the invalidity of the sale because of the provisions of both or any of those two sub-sections. The consequence of forfeiture and the other consequences follow under Sub-section (3) only if a declaration to that effect happens to be made by the Mamlatdar. Therefore, the provisions contained in Sub-sections (1) and (2) are all designed to enable the Mamlatdar to make a declaration to the aforesaid effect so that the consequences laid down in Sub-section (3) may follow. On a mere perusal of Section 84C, it is quite clear that the consequences laid down in Sub-section (3) cannot follow without the declaration of the Mamlatdar. Now, the declaration which the Mamlatdar is required to make under Sub-section (2) is only a declaration in regard to the invalidity of the transfer. That section does not empower the Mamlatdar to make a declaration about the validity of a transfer. The language used by the Legislature in Sub-section (2) of Section 84A in this connection may be contrasted. That sub-section empowers the Mamlatdar to issue a certificate "to the transferee that such transfer is not invalid". Therefore, reading Section 84C as a whole, it is quite clear that the proceedings under that section are not designed to make valid a sale which is invalid under the provisions of the Act. No power is conferred, either expressly or impliedly, on the Mamlatdar for converting an invalid transfer into a valid transfer. The section empowers the Mamlatdar to make a declaration except in the cases provided for in the proviso to the effect that the transfer is invalid if the transfer is so under the provisions of the Act. Therefore, though, when a Mamlatdar does make a declaration to the effect that a transfer is invalid, that declaration has the effect of bringing about the consequences laid down in Sub-section (3), in the converse case, where the Mamlatdar does not make the declaration because of the provisions contained in the proviso, it does not follow that the transfer becomes valid simply by virtue of the fact that the Mamlatdar is required not to make the declaration. There is nothing in Section 84C which has the effect of permitting the Mamlatdar to declare an invalid transfer as a valid transfer or to convert an invalid transfer into a valid one. Having regard to the provisions contained in Sub-section (2) of Section 43 or Sub-section (1) of Section 84C, the transaction will remain invalid, even if the Mamlatdar in a proceeding u/s 84C refuses to make a declaration either on account of the fact that the proviso applies or for any other reason. Under the circumstances, in our judgment, the fact that, in regard to the first sale, the Mamlatdar did not make the declaration under Sub-section (2) of Section 84C, it cannot be held that the transaction which was invalid under Sub-section (8) of Section 64 became validated under the same section. If the Legislature had intended any such result, then, there would have been an express provision or some other provision from which it could have been necessarily implied that, though, in a given case, the procedure prescribed in Section 64 of the Act had not been followed, the refusal of the Mamlatdar to make the declaration would have the effect of the procedure laid down in Section 64 having been applied to the transfer. Therefore, in our judgment, the Tribunal was not right in holding that the second respondent, the purchaser under the first sale, was a purchaser u/s 64 of the Act. In that view of the matter, in our

judgment, Mr. Shah has been able to substantiate his point that the Tribunal had committed an error in holding that the second sale was vitiated by the provisions contained in Section 43 of the Act.

6. Mr. Sompura, however, argues that, even if the Tribunal is wrong in applying Section 43 of the Act, the order can be upheld under Sub-section (8) of Section 64 of the Act. Mr. Sompura contends that ex hypothesi, the procedure u/s 64 of the Act was not followed in the case of the second sale. However, in our judgment, there is no substance in this contention. Section 64 of the Act applies only to a sale by a landlord. From the facts of the present case, there is no doubt whatsoever that the second respondent was not a landlord at the time when the second sale took place. The second respondent, prior to the first sale, was the tenant and the moment the first sale took place, he became the occupant of the land. There is not a title of evidence in the case to show that between the first and the second sales, any tenant was introduced on the land. Therefore, Section 64 is not attracted to the facts of the present case and the second sale also cannot be said to have been vitiated under Sub-section (8) of Section 64 of the Act.

7. However, Mr. Sompura places reliance upon the order passed by the fourth respondent in regard to the first sale. From the order which relates to the first sale and which we have already reproduced above, it is quite clear that the fourth respondent's view was that the penalty of Re. 1/- was to be paid "for validation of the sale... u/s 64 of the Act... ". Mr. Sompura contends that, right or wrong, fourth respondent's view was that he had the power of validating an invalid sale. He submits that the aforesaid part of the order has not been challenged in the present writ petition and, that being so, Mr. Sompura contends that we must hold that the provisions of Section 43 of the Act had been contravened. We do not think we can agree with this submission. In the present petition, petitioner wants the issuance of a writ of certiorari for quashing the order in regard to the second sale and the order holding that the consequences mentioned in Sub-section (3) of Section 84C shall follow. Now, the power of the fourth respondent to make the declaration under Sub-section (2) of Section 84C of the Act is derived from the provisions of that section itself. The jurisdiction of the fourth respondent to make that declaration is dependent upon his finding that a transfer "is or becomes invalid under any of the provisions of this Act". Therefore, it is quite clear that unless the facts of a case show that a transfer is invalid under the provisions of the Act a declaration to the aforesaid effect cannot be made. The mere fact that the fourth respondent has taken the view that he has the power of validating a sale as if it had taken place u/s 64 will not necessarily attract the provisions of that section. Such a conclusion can only be arrived at on its own merits and on a consideration whether the provisions of Section 64 do or do not apply to those facts. Under the circumstance, in our judgment, the mere fact that the fourth respondent has recorded a finding in the aforesaid words in regard to the first sale and that that part of the fourth respondent's order has not been challenged in the present petition cannot have

any repercussions on the validity or otherwise of the impugned order forfeiting the land to the Government.

8. Mr. Shah very strongly relies upon two decisions recorded by the Maharashtra High Court. The first is the judgment of a Division Bench consisting of Chainani, C. J., and Abhyankar J., recorded on 19th December 1961, in Special Civil Application No. 605 of 1961. The second is the judgment of another Division Bench consisting of Tarkunde and Chitley, JJ., recorded on 23rd March 1965 in Special Civil Application No. 858 of 1961. The second judgment follows the first judgment. The facts obtaining in the first case were similar to the facts obtaining in the present case. In that case, Chainani, C. J., held that the order in regard to the first sale required to be set aside because the Tribunals concerned had not determined the question as to whether the transferees were or were not tenants and in joint personal cultivation of the land and whether the total area held by them was in excess of the ceiling area fixed under the law. After so holding, the learned Judge proceeded to consider an alternative argument advanced by the learned Government Pleader and that was that, in any case, the second sale by the tenants was invalid u/s 43 of the Act. That argument was negatived by the learned Judge on the ground that there was no provision either in Section 84C or in any other part of the Act providing that a sale held in contravention of the provisions of Section 64 but subsequently validated shall be regarded as a sale u/s 43 of the Act. There is no doubt that the aforesaid judgment does support the contention of Mr. Shah. But, having regard to the view that we take of the provisions contained in Section 84C, we are unable to agree with the assumption made by the Division Bench of the Maharashtra High Court that a sale in regard to which a declaration is not made u/s 84C becomes subsequently validated. We find that the learned Chief Justice has not given any reasons in support of this assumption. In our judgment, having regard to the scheme of Section 84C and for the reasons which we have already given, the correct view is that, when a declaration is not made by a Mamlatdar in regard to an invalid sale, the only effect thereof is that the consequences mentioned in Sub-section (3) of Section 84C do not follow, and that it has not the effect of converting an invalid sale into a valid sale as if the procedure laid down in Section 64 had been followed.

9. The result of the aforesaid discussion is this. The second sale is not vitiated either u/s 43 or Section 64 of the Act. Though this is so, the first sale, in spite of the fact that the Mamlatdar has refused to make a declaration that it is invalid, retains its invalid character. In that view of the matter, it is possible to take the view that respondent No. 2 did not become the occupant of the land in question and that being so, petitioner, who is a transferee from him, would acquire no title to the aforesaid land. However, we must make it clear that this should not be regarded as a decision on our part. The question may have to be re-examined if and when the question is raised in a proper proceeding: But, assuming that such is the result as is contended for by Mr. Sompura, the learned Assistant Government Pleader, the question arises as to whether the order of forfeiture passed by the fourth respondent and upheld by the respondents Nos. 5 and 3

can be sustained. From the discussion that we have had in regard to the provisions of Section 84C of the Act, it is quite clear that such a consequence can follow only if the Mamlatdar makes a declaration that the sale is invalid. The Mamlatdar has jurisdiction or power to make such a declaration only, as already stated by us, if the sale is invalid under the provisions of the Act. Having regard to the fact that the sale is not invalid under the provisions of the Act but its assumed invalidity arises on account of the fact that the transferee of the petitioner, respondent No. 2, has no title to the land, it is quite clear that the fourth respondent has no power to make a declaration u/s 84C of the Act that the sale is invalid. On the assumption we have made, the second sale would not pass title to the petitioner because the second respondent himself had no title to the land and thus the second transaction will be invalid under the general law. But, it is clear that the second transaction will not be invalid by reason of any of the provisions contained in Section 43 or Section 64 of the Act and, that being so, the second transaction will not be invalid under the Act but it will be so under the general law. In that view of the matter, in our judgment, the impugned orders require to be quashed and set aside.

10. The learned Assistant Government Pleader, however, contends that we should not exercise our prerogative jurisdiction because, on the facts aforesaid, petitioner has no title to the land in regard to which the order of forfeiture is passed. We cannot agree with the submission. Even on the aforesaid assumption, it cannot be stated that petitioner is not entitled to show to this Court that respondents aforesaid had no jurisdiction to pass the orders that they have done. Petitioner was a party at all relevant times to the proceedings aforesaid. Even if he has no title, he is in possession of the land in question and- has sufficient interest in the same to continue to remain in possession. The only person, on the assumption aforesaid, who would be entitled to challenge his possession would be the rightful owner, either respondent No. 1 or respondent No. 2.

Under the aforesaid circumstances, in our judgment, petition deserves to be allowed. However, having regard to the fact that petitioner succeeds ultimately on a view of the law which was not propounded by him in the petition, the best order as to costs would be that each party must bear its own costs.

11. We quash that part of the order of the fourth respondent which declares the second sale to be invalid and further declares that the land in question shall vest in the State Government and the orders of the fifth and third respondents which confirm those declarations. Rule made absolute to the extent mentioned above. Each party to bear its own costs.