
(1972) 03 BOM CK 0010

In the Bombay High Court

Case No : Special Civil Application No. 2140 of 1968 (with Spl. C.A. No. 2141 of 1968)

Pralhad Ganaba Kapare

APPELLANT

Vs

Sadaba Rambhau Bhonsale and Another

RESPONDENT

Date of Decision : 08-03-1972

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32, 32

Citation : AIR 1973 Bom 172 : (1972) 74 BOMLR 687 : (1973) MhLj 124

Hon'ble Judges : Vaidya, J

Bench : Single Bench

Advocate : K.J. Abhyankar, for the Appellant; R.G. Samant, for the Respondent

Judgement

1. These two petitioners raise a common question and can be disposed of by a common judgment. The petitioner is the owner of lands situated in Hadapsar, which are the subject-matter of the two petitioners. Survey Nos. 159/5 and 160/14 are the subject-matter of Special Civil Application No. 2140 of 1968. Survey Nos. 148A/3, 160/3 and 160/17 are the subject-matter of the second petition. The only question which arises under the said petitioners is whether the Revenue Tribunal was right in holding that the statutory title vested in the tenant of the said lands, respondent No.1, u/s 32 of the Bombay Tenancy and Agricultural Lands Act, 1948, was not divested by a notification issued by the Government which resulted in excluding the lands from the operation of Sections 32 to 32-R u/s 88-C (1) (b) of the said Act. The notification was admittedly issued after the vesting of the title in the respondent No.1. The same was issued under the Provincial Municipal Corporation Act including the area in which the lands are situated into the area of the Municipal Corporation of the City of Poona.

2. The proceedings from which the impugned order of the Tribunal dated June 28, 1968 arises were suo motu proceedings started by the Agricultural Lands Tribunal, Haveli u/s 32-G of the Act. By its order dated October 31, 1964, the Agricultural Lands Tribunal held that as a result of the notification including the

area in which the lands were situated within the limits of the Poona Municipal Corporation, the respondent No.1 could not claim any right under the Act in view of the provisions of Section 88-C (1) (b), as the government had reserved all lands falling within the limits of the Poona Municipal Corporation for non-agricultural and industrial development. On an appeal filed by the respondent No.1 - tenant, the Deputy Collector for Tenancy Appeals, Poona set aside the order of the Agricultural Lands Tribunal, following the decision of a Division Bench of this Court of Chainani, C. J. and V. S. Desai, J. in Spl. Civil Appln. No. 225 of 1959 D/- 8-10-1959 (Bom). The petitioner filed a revision application against the said decision before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal by its order dated June 28, 1968 dismissed the revision application with the following observations :

"..... It is an admitted fact that the petitioner landlord had made an application to the Mamlatdar for the termination of tenancy of the opponent-tenants in respect of the suit lands and other lands u/s 29 read with Section 31 of the Tenancy Act. It was Tenancy case No. 3/58. Against this order there was an appeal No. 195/58 decided on 31-7-1960. The said case came up before this Tribunal and this Tribunal by its order dated 16-3-1962, decided the revision application No. MRT. P. VIII, 8/60. Against this order of the Tribunal, the landlord had approached the Hon''ble High Court under Art, 227 of the Constitution of India and their Lordships were pleased to uphold the claim of the landlord in Special Civil Application No. 952/62, decided on 21-6-1963, except three pieces of land, admeasuring A.1 Gs. 31 which were found to be within the Corporation limits of Poona. Their Lordships were pleased to grant 1/4 portion of the leased lands to the landlord u/s 29 read with Section 31 of the Tenancy Act. Therefore, the position of law would be that the tenant had become a statutory purchaser of the suit lands on 21-6-1963 where the action of the landlord had reached finality. It must be stated that when the landlord had taken up the position that only A.1 Gs. 31 of land was within the limits of Poona Corporation and the remaining lands were governed by the provisions of Section 29 read with Section 31 of the Tenancy Act and in fact it was accepted by the Hon''ble High Court, it cannot now lie in the mouth of the landlord to challenge the said verdict of higher judiciary. He would be estopped from agitating the same point which was concluded by the verdict of the High Court"

3. The Tribunal also found that the petitioner could not have any grievance because the petitioner had claimed that there was a partition of his family property and the lands which are the subject-matter of the present petitioners were allotted to his mother Laxmibai Kapare who died on July 29, 1963 and as the landlord had not exercised his right in resuming the land for personal cultivation within the prescribed period the tenant gave notices to the landlord and the Agricultural Lands Tribunal that he had become a statutory purchaser of the suit land u/s 32-F of the Act.

4. The said decisions of the Tribunal and the Deputy Collector are challenged in

the above petitioner firstly, on the ground that the principles of res judicata or estoppel will not apply as the notification excluding the lands in dispute was issued under S. 88-C (1) (b) after the High Court decided the matter in Special Civil Application No. 952 of 1962 on June 21, 1963. Secondly, it was contended that the view taken by the Tribunal and the Deputy Collector is contrary to the decisions of this Court in Narayan Gopal Mhatre Vs. Shankar Sitaram Sontakke, ; Sidram Narsappa Kamble Vs. Sholapur Borough Municipality Another, and the unreported judgment of Bhasme, J., D/- 8-4-1970 in Speclause Civil Appln. No. 150 of 1966 (Bom). These contentions are repelled by Mr. Samant who appears for the respondent No. 1 - tenant. He argued that the Deputy Collector had rightly followed the decision of Chainani C. J. and v. Sa. Desai J. referred to above, and the said decision was binding on the Tribunal and also on a single Judge of this Court.

5. Turning to the first contention it is not clear either from the petition or from the material before the Tribunal as to on what date the notification u/s 88-C (1) (b) of the Act was issued by the Government. It is as the stated above admitted by Mr. Abhyankar, the learned counsel for the petitioner that the notification including the area in which the lands are situated into the limits of the Municipal Corporation was issued after the decision of the High Court and it was not in existence on the date of the decision of the High Court. There is therefore considerable force in the argument of Mr. Abhyankar that the view taken by the Tribunal that the contention of the petitioner was barred by the principles of res judicata and estoppel is not in accordance with the law. But in view of that follows it is unnecessary to consider the validity of his contention any further.

6. So far as the second contention is concerned, Mr Samant's argument must be accepted because the facts of the case in Spl. Civil Appln. No. 225 of 1959 (Bom) were similar to the facts in the instant case. The land in that case was situated in village Kopri in Thana Taluka. u/s 32 the tenant of that land had become the owner on April 1, 1957. The Deputy Collector, Thana who was constituted the Agricultural Lands Tribunal for Thana Taluka, issued notices to the tenants and also to the landlords in the proceedings u/s 32-G started by him. During the pendency of these proceedings the lands in question were included within the limits of Thana Municipal Borough with effect from August 1, 1958 by a notification issued by the Government dated June 23, 1958. It was contended before the Deputy Collector that after the lands were included in the limits of the Municipal borough u/s 43-C, nothing in Sections 32 to 32-R apply to them and hence the Tribunal had no jurisdiction to determine the purchase price. This contention was rejected by the Tribunal. The order of the Tribunal was upheld by Chainani, C. J. and V. S. Desai, J. with the following observations :

"..... The scope and effect of Section 32 and the following sections were considered by the Supreme Court in Sri Ram Ram Narain Medhi Vs. The State of Bombay, At page 825 it was observed that the title of the land, which was vested originally in the landlord, passed to the tenant on the tillers" day, 1st April, 1957,

that there was a completed purchase or sale as between the landlord and the tenant and that the title acquired by the tenant is defeasible only in the event of the tenant failing to appear before the Tribunal or making a statement that he is not willing to purchase, or committing default in the payment of the price as determined by the Tribunal. The tenant gets a vested interest in the land defeasible only in either of these cases. In view of this decision of the Supreme Court, it must become the owners of the lands and had acquired title thereto on 1st April, 1957, a right to pay only such purchase price as is specified in the Act and to get it determined in the manner laid down in the Act by the Tribunal. These rights had become vested in the tenants on 1st April, 1957. They could not, therefore, be lost on subsequent inclusion of the lands within the limits of the Thana Municipal Borough and the relevant provisions of the Act ceasing to apply to them. In holding an enquiry in these cases for the purpose of fixing the purchase price of the lands, the Tribunal will only be determining the rights which had been acquired before the said provisions of the Act ceased to apply to the lands. The jurisdiction of the Tribunal to determine these rights is not lost merely by reason of the fact that after 1st August 1958 these provisions of the Act did not apply to the lands."

7. The ratio of that decision will apply with all force to the facts of the present case as in the present case also the lands were excluded from the operation of the Act because they were included in the limits of the Poona Municipal Corporation; and under an earlier notification of 1956 all lands included within the limits of Poona Municipal Corporation were reserved for non-agricultural and industrial purposes within the meaning of Section 88-C (1) (b). Although the notification under S. 88-C 91) (b) was prior to the Tillers" day the notification including the area which is the subject-matter of these petitions was subsequent to the vesting of the title u/s 32 to the tenants. With respect therefore, I being bound by the said decision of the Division Bench, must hold that the Deputy Collector in the instant case was right in holding following the said decision that the Agricultural Lands said decision that the Agricultural Lands Tribunal had power to determine the purchaser price in respect of the land.

8. The decision of Bhasme, J. in Spl. Civil Appln. No. 150 of 1966 (Bom) undoubtedly supports the contention of Mr. Abhyankar. But it is a decision arrived at, with respect, because the above Division Bench decision in Spl. Civil Appln. No. 225 of 1959 (Bom) was not brought to the notice of the learned Judge. Mr. Abyankar submitted that the decision of the Supreme Court in the decision of the Supreme Court in Ishverlal Thakorelal Almaula Vs. Motibhai Nagjibhai, and Sidram Narsappa Kamble Vs. Sholapur Borough Municipality Another, support his contention. But those were not cases where the statutory title had vested in the tenants u/s 32 as in the instant case. Mr. Abhyankar further submitted that as I am taking a view contrary to the view taken by Bhasme, J. it is desirable that the matter should be referred to a larger Bench. As stated above, if Bhasme, J's attention was drawn to the aforesaid Division Bench decision and he had taken a view different from mine, which perhaps he would never have taken, I would

have considered the request for referring the matter to a larger Bench.

9. The Division Bench decision is dated October 8, 1959. In spite of several amendments of the Tenancy Act thereafter the Legislature has not thought of amending the Act and Mr. Abhyankar is unable to draw my attention to any other decision of a Division Bench of this Court or decision of the Supreme Court which was taken a contrary view in the matter. I am, therefore, of the opinion that the decision of the Division Bench must be taken as settling the law for all purposes; and what is settled by the Division Bench decision cannot be disturbed by a decision of a single Judge before whom that decision was, unfortunately, not cited. In any event, I find that the Deputy Collector and the Maharashtra Revenue Tribunal have taken a view consistent with the view taken by this Court in the above Spl. Civil Appln. No. 225 of 1959 (Bom). I, therefore, find no reason to interfere with the orders passed by the Tribunal and the Deputy Collector.

10. In the result, the petitions fail. Rule in both the petitions discharged with costs in one set.

11. Petitions dismissed.