
(2002) 08 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No's. 4667 and 5021 of 1984

Rama Dhondu Date

APPELLANT

Vs

Krishnaji Bhikaji Kadam and Others

RESPONDENT

Date of Decision : 16-08-2002

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G, 48, 5, 79, 85

Citation : (2003) 2 ALLMR 1029 : (2003) 4 BomCR 365 : (2003) 2 MhLj 664

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : G.R. Rege, for the Appellant;

Judgement

A.M. Khanwilkar, J.—Both these writ petitions can be disposed of by common judgment since they are between the common parties and involve same question.

2. Writ Petition No. 4667 of 1984 pertains to land bearing Survey Nos. 17 and 18 situated at Terao, whereas Writ Petition No. 5021 of 1984 pertains to land bearing Survey No. 298 Hissa No. 1 at village Terao. Respondent Nos. 1 and 2 were landlords of the said lands. The respondent No. 3 is the uncle of the petitioner herein in both these matters. It is the petitioner's case that respondent Nos. 1 and 2 granted the abovesaid suit lands to the petitioner's father and the respondent No. 3 under registered lease deed dated 31-8-1944 for a period of 5 years. It is not in dispute that Section 5 of the Act of 1948 (The Bombay Tenancy and Agricultural Lands Act, 1948) provided security from termination of lease upto a period of 10 years except on the grounds u/s 14 of the Act. As the persons in possession under such leases were treated to be protected tenants. Section 5 of the Act of 1948 was further amended in 1952 and again in 1956. By Act of 1956 which came into force on 1-8-1956, Section 4B in the present form came to be inserted. Accordingly, though the lease in favour of the petitioner's father and uncle (respondent No. 3) expired on 31-8-1949, they continued to be tenants and became deemed tenants. By the amendment to the provisions of the Act of 1948, a person in lawful cultivation of any agricultural

land belonging to another person became deemed tenant and a deemed purchaser with effect from 1-4-1957. In this backdrop it is the petitioner's case that the petitioner's father and respondent No. 3 jointly became deemed purchaser of the suit lands on 1-4-1957. It is also not in dispute that the respondent Nos. 1 and 2 landlords had filed suit for recovery of possession of the suit lands against the petitioner's father as well as respondent No. 3 sometime in 1953; which fact presupposes that the petitioner's father was treated as a joint tenant even by the landlords having regard to the registered lease referred to above.

3. The petitioner's father, however, died in the year 1958. At the relevant time, the petitioner was serving in Armed forces and was away from the village. It appears that although the petitioner's father and respondent No. 3 came in possession of the suit land as joint tenants, but in the record of rights only the name of the respondent No. 3 was shown in the cultivation column. It is on that premise the tenancy authority initiated suo motu proceedings u/s 32G of the Act only in favour of the respondent No. 3. That proceedings were commenced sometime in 1965 and ultimately allowed in favour of the respondent No. 3 by declaring him as deemed purchaser by order dated 19-8-1972. As mentioned earlier, the petitioner was away from the village as he was in the Armed forces and coupled with the fact that the petitioner never got or had notice of that proceedings. The petitioner retired from the Armed forces in 1978 and after returning to his village started asserting his right over the suit lands claiming that he had equal share therein which was inherited through his father who was the joint tenant along with the respondent No. 3. It is only thereafter the respondent No. 3 filed a suit against the petitioner being Civil Suit No. 29 of 1980 and the petitioner was served with the injunction order. As soon as injunction order was served along with the other documents, it is stated that, the petitioner got knowledge about the proceedings u/s 32G which had ended in favour of the respondent No. 3 and, therefore, he immediately rushed to the Appellate Authority by filing two separate appeals challenging the orders passed by the tenancy authority dated 21-1-1965 with regard to the survey Nos. 17 and 18 at village Terao and dated 19-8-1972 with regard to Survey No. 298 Hissa No. 1 at village Terao, being Appeal Nos. 24 and 23 respectively. Both these appeals were heard and disposed of on the same day on 23-8-1982, albeit by separate orders. The Appellate Authority in substance held that there was inordinate and unexplained delay inasmuch as in one proceedings the order was passed in the year 1965 and in the other in the year 1972; whereas the appeals were filed in the year 1980. Further, the Appellate Authority observed that the petitioner had no locus to challenge the orders passed by the tenancy authority since he was not a party in the original proceedings. The Appellate Authority further held that the grievance made by the petitioner that he had no notice about the earlier tenancy proceedings is devoid of merit, for it was not necessary to give him notice u/s 32G as the same was sent to the respondent No. 3 whose sole name appeared in the revenue records as cultivating the suit lands as tenant. Further,

the Appellate Authority observed that the matter in issue could be answered only by a Civil Court. Moreover, the Appellate Authority held that the petitioner failed to produce any documentary or circumstantial evidence on record to prove his case that his father was jointly cultivating the suit land as joint tenant along with the respondent No. 3. Accordingly both the Appeals were dismissed.

4. The petitioner therefore carried the matter in revision before the Tribunal by way of Revision No. TEN/A/15 of 1983 and TEN/A/16 of 1983. Both the revision applications were heard and decided together by common order dated 27th March 1984, which is impugned in the present writ petitions.

5. It is relevant to note that the Tribunal has observed that there is no dispute between the parties that the registered lease deed was executed in the year 1944 and that the tenancy was granted initially for a period of 5 years. The Tribunal has further observed that the contention of the respondent No. 3 was that when the entries in the record of rights were made in the year 1954, he alone was in possession of the suit land as a tenant and, therefore, he alone would become deemed purchaser being in lawful cultivation of the suit land on the tiller's day. The Tribunal has accepted this contention and has affirmed the view taken by the Appellate Authority. The Tribunal has held that no fault can be found with the Tahasildar for having initiated proceedings u/s 32G of the Act only with regard to the respondent No. 3, whose name appeared in the record of rights. The Tribunal has further observed that the dispute raised by the petitioner was essentially between two tenants and which dispute cannot be entertained by the tenancy authority. Taking overall view of the matter the Tribunal confirmed the order passed by the lower authority. These concurrent findings are subject matter of challenge in the present writ petitions.

6. The learned Counsel for the petitioner contends that the approach adopted by both the authorities below, viz., the Appellate Authority as well as the revisional authority is completely misdirected and, in fact, have failed to exercise jurisdiction vested in them. He contends that the questions which have been raised by the petitioner were such that it could be exclusively decided by the tenancy authority; and it was, therefore, inappropriate on the part of the authorities to observe that the claim set up by the petitioner could be adjudicated only by the Civil Court. He submits that the questions that would arise for consideration on the basis of materials on record were that:--

1) "Whether petitioner's father and respondent No. 3 were inducted as joint tenants in the suit lands under the registered lease deed of 1944?"

2) If yes, whether the petitioner has inherited any right in the suit land in particular as a joint tenant through his father?

3) Where the declaration in favour of the respondent No. 3 that he was the sole tenant could have been made in the fact situation of the present case and in particular in the wake of the registered lease deed which mentions the fact that the petitioner's father and the respondent No. 3 were induced as joint tenants in

the suit land?"

He therefore submits that these questions essentially revolve around claims that could be authoritatively determined only by the tenancy authorities. In the circumstances, he submits that the courts below were completely wrong in non-suiting the petitioner. He submits that insofar as delay in filing appeals is concerned, it cannot be disputed that the petitioner at the relevant time was serving in the Armed forces and was away from his village till 1978. If this be so, then the petitioner cannot be faulted for not filing the appeals till 1980 and more so because the petitioner acquired knowledge of the earlier proceedings only when he was served with the injunction order which was accompanied with documents that revealed that the respondent No. 3 has been declared as a deemed purchaser way back in 1972. He submits that there was sufficient cause made out by the petitioner and the Courts below were therefore wrong in non-suiting the petitioner on the ground of delay and laches. He further contends that even the observation made that the petitioner had no locus to pursue the present proceedings is inappropriate inasmuch as the petitioner was claiming rights through his father who was a joint tenant along with the respondent No. 3 and, therefore, was an aggrieved person on account of declaration made only in favour of the respondent No. 3 that he had become a deemed purchaser of the suit lands. The learned Counsel, therefore, submits that the entire approach of the two authorities below is manifestly wrong and further that the said view has caused grave injustice to the petitioner.

7. Though the respondents have been served none appears. Record indicates that the respondent Nos. 1 and 2 are represented by Advocate S.B. Patil but he was not present when the matter was called out. Accordingly, I have gone through the entire record with the assistance of the learned Counsel for the petitioner and would proceed to decide the matter on merits.

8. Insofar as the question of appeals filed by the petitioners being hopelessly barred by limitation, to my mind, that opinion of the authorities below cannot be sustained either on facts or in law. The record clearly indicates that the petitioner was employed in the Armed forces and was away from his village till 1978, till he retired from the Armed service. It is only when the petitioner came back to his village and started asserting his right over the suit land, the respondent No. 3 chose to file suit for injunction and obtained injunction against the petitioner. The record shows that the petitioner, for the first time in 1980, became aware about the existence of the order passed by the tenancy authority in favour of the respondent No. 3. It is not in dispute that immediately thereafter the petitioner preferred the appeals. Understood thus, it is not possible to say that the petitioner failed to make out any sufficient cause for condoning the delay in filing the appeals. In the circumstances, the view taken by the authorities below that there was no sufficient cause for condoning the delay is completely wrong and cannot be supported by the materials on record and that view has caused manifest injustice to the petitioner; who has no doubt made out an arguable case

of the basis of the registered lease deed of 1944 which was in favour of his father along with the respondent No. 3 in respect of the suit land. Accordingly, that reasoning cannot be sustained.

9. Reverting to the second aspect that has weighed with the authorities below that the petitioner has no locus standi to file the appeals is concerned, even that reasoning is palpably wrong. The authorities below have clearly over looked the fact that the petitioner is the nephew of the respondent No. 3 and that he was claiming right in respect of the suit land through his father. If that be so, it is not a case that the petitioner was a stranger claiming right in respect of the suit lands but he was claiming through his father who had a right in respect of the suit lands under the registered lease deed of 1944. Understood thus, it is incomprehensible as to how the petitioner can be non-suited on the ground that he had no locus to institute the appeals. However, the petitioner was obviously an aggrieved person because of the nature of order passed by the tenancy authority. Understood thus, even this reasoning returned by the two authorities below cannot stand the test of judicial scrutiny.

10. The next aspect that has weighed with the authorities below is that since the petitioner was not a party in the earlier proceedings, it was not necessary to issue notice to him. No doubt, ordinarily, that would be the correct approach in the matter, but when the petitioner has come before the court and has brought to the notice of the Court that declaration obtained by the respondent No. 3 is inappropriate and that the petitioner was also entitled to be declared as deemed purchaser along with the respondent No. 3 then, surely, in such a situation, the authorities ought to have reexamined the contention of the petitioner on its own merit instead of taking a hyper technical attitude that he was not a party in the earlier proceedings and no notice was necessary and for which reason the Tahasildar could not be blamed for having proceeded to decide the matter in favour of respondent No. 3 alone.

11. What is further relevant to note is that the authorities below have gone to the extent of observing that the dispute raised by the petitioner were of such nature that it could be decided only by the Civil Court and not by the tenancy authority. To my mind, this reasoning is completely fallacious and cannot be accepted for more than one reason. In the first place, the questions that would arise for consideration, inter alia, formulated in para 6 above, are clearly questions which could be exclusively tried and decided by the tenancy authority. It will be apposite to advert to Section 85 of the Act which postulates that no civil court shall have jurisdiction to settle, decide or deal with any question (including a question whether a person is or was at any time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord the land held by him) which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal. If this is the purport of Section 85 of the Act then it is incomprehensible as to how the claim set up by the petitioner can be said be one outside the jurisdiction of the tenancy

authority. The view taken by the Tribunal that the dispute is one between two tenants and therefore outside the purview of the Tenancy Act, is totally amiss. The fact remains that the petitioner was not only raising the dispute with regard to the declaration in favour of the respondent No. 3 alone but was also asking for further relief that he should also be declared as a deemed purchaser jointly along with respondent No. 3 which he was entitled to seek for having inherited that right through his father. In this view of the matter, the questions which have been raised cannot be decided by the Civil Court. On the other hand, if the petitioner was forced to take the matter to the Civil Court then surely the Civil Court will be obliged to make a reference to the tenancy authority by virtue of mandate of Section 85A of the Act, relegating the petitioner to the tenancy authority.

12. In the circumstances, the view taken by the two authorities below, though seemingly concurrent, cannot be sustained. The Appellate Authority has also observed that the petitioner has failed to produce any documentary or circumstantial evidence in support of his case. However, the Tribunal has correctly noted that it is not in dispute that the registered lease deed was executed in 1944. In the circumstances, taking overall view of the matter, to my mind, the orders passed by the two authorities below cannot be sustained and will have to be reversed. As a necessary consequence, the two orders passed by the first authority, viz., the Tahasildar dated 21-1-1965 as well as on 19-8-1972, are set aside and the matter is remanded to the Additional A.L.T. Chiplun for reconsideration of the case afresh on its own merit and in accordance with law. The ALT shall finally dispose of the proceedings u/s 32G after giving opportunity to all the parties to adduce such or further evidence as may be required and appropriate for full, complete and effectual adjudication of the matter. The ALT shall finally decide the proceedings as expeditiously as possible, within six months from the receipt of writ of this Court. All questions are left open to be decided by the tenancy authority after giving opportunity to all the parties to adduce evidence as aforesaid.

Petitions disposed of in the above terms. No order as to costs.

All concerned to act on the copy of this order duly authenticated by the Sheristedar of the Court.