

(1998) 05 BOM CK 0011

In the Bombay High Court

Case No : Writ Petition No's. 678, 679 and 680 of 1992

Ramesh Ramnarayan Dangare

APPELLANT

Vs

Vithabai Wakchaure and another

RESPONDENT

Date of Decision : 06-05-1998

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32
Constitution of India, 1950 — Article 226, 227

Citation : (1998) 4 BomCR 761

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : S.C. Bora, for the Appellant; R.D. Bhalerao, for the Respondent

Judgement

D.G. Deshpande, J.—Heard the advocate for the petitioner and the respondents.

2. All these petitions have been filed by the tenant and respondents are the legal heirs of the original owner, Bala Landge Landge of the land Survey Nos. 36/8, 36/9, 27/5 situated at village Indori, Tq. Akole, District Ahmednagar. Bala Landge died in the year 1980. Respondent No. 2 Shewanta is the wife of Bala Landge and respondent No. 1 Vithabai is the daughter of Bala. The three petitions arise out of 3 proceedings started separately in respect of above 3 lands.

3. Admittedly all the lands were owned by Balaji on 7-3-69, he leased out Survey No. 36/8 to the petitioner Ramesh. Secondly, on the same day i.e. on 7-3-69, land Survey No. 36/9 was leased by Bala Landge to Ramesh the petitioner and on 7-3-75, Survey No. 27/5 was leased to Ramesh. In addition to these lands, one more Survey No. 47/2 was sold by Bala to Ramesh on 27-11-1970.

4. It appears from the record that the legality of the sale deed of Survey No. 47/2 dated 27-11-1970 was challenged on the ground that Ramesh, the petitioner was not an agriculturist at all and hence he had no right to purchase the lands and the sale deed was in contravention of section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948. However, the plea and objection was taken down in

the proceedings. It was held that on the date of the sale i.e. on 27-11-1970 Ramesh was tenant because he was a lessee of Survey Nos. 36/8 and 36/9 by virtue of lease dated 7-3-1969 from deceased Balaji. There was no appeal against this decision though according to the respondent, this order is illegal and void ab-initio because even for taking the lease deed on 7th March, 1969, petitioner Ramesh was not an agriculturist.

5. After the death of Bala Landge, the present respondents started 3 proceedings for taking back the 3 Survey Nos. 27/5, 36/8 and 36/9 from the petitioner. Before the Additional Tahsildar, all these 3 applications were clubbed together and heard together. It is the case of the respondent that these 3 applications were under sections 84, 63 and also u/s 32-P of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Tenancy Act, 1948) and all the leases of the abovesaid 3 lands in favour of petitioner Ramesh were illegal and void as Ramesh was not an agriculturist on those respective dates viz. 7th March, 1969 and 7th March, 1975. The Additional Tahsildar decided all these 3 applications against the present respondents. They, therefore filed 3 revision petitions vide Petition Nos. MRT-AH-VI-3/85 (TNC-B-149/85/Pune), MRT-A.H.-VI-4/85 (T.N.C.-B-150/85/Pune) and MRT-A.H.-VI-5/85 (TNC-B-151/85/Pune). It was held by the M.R.T. that so far as 2 lease deeds dated 7th March, 1969 are concerned, the present petitioner Ramesh was not an agriculturist and therefore, he set aside the judgment and orders and directed the lower courts to dispose of 3 matters u/s 84-C (4) of the Tenancy Act, 1948. So far as Survey No. 27/5 was concerned, the M.R.T. remanded the matter to the Tahsildar to enquire whether the present petitioner Ramesh had given intimation, expressing his willingness to purchase the land Survey No- 27/5 within one year from 7th March, 1975 and to decide the case accordingly. Therefore, according to the respondent, the impugned order of the M.R.T. is correct, proper and does not require any interference.

6. On the other hand, it is the case of the petitioner Ramesh that whether Ramesh was a tenant or not has been conclusively decided in proceedings relating to Survey No. 47/2 by judgment dated 30-8-1971 and since respondents did not challenge this order, the said order declaring respondent as agriculturist has become conclusive.

7. Three important questions arose in this matter; firstly whether Ramesh was an agriculturist on 7th March, 1969 and whether the leases in his favour are hit by section 84-C of the Bombay Tenancy Act. Second question is, what is the effect of the order dated 30-8-1971 in respect of Survey No. 47/2 wherein Ramesh was declared as an agriculturist and what is the effect of this order on the leases and purchases made by Ramesh. The third question is what is the effect of failure of Ramesh to apply for purchasing the land within one year from the date of commencement of his lease for 99 years in respect of Survey No. 27/5 dated 7th March, 1975 u/s 32-P of the Tenancy Act, 1948. The contention raised by Mr. Bora that the M.R.T., while passing the impugned order exceeded

its jurisdiction in appreciating the evidence, is also required to be considered. A perusal of the judgment of the M.R.T. which was a common judgment in all the 3 revision petitions show that the said judgment is not based on reappraisal of evidence. What the learned member of the M.R.T. has done, is to scrutinise the relevant provisions, consider the cases of the parties with reference to those provisions and as such, the objection raised by Mr. Bora against the order of M.R.T. that the M.R.T. has exceeded its jurisdiction in reappraising evidence, cannot be accepted and has to be rejected.

8. It is the case of the respondents that Bala Landge was addicted to vices i.e. heavy drinking liquor and taking advantage of his mental condition, the petitioner who is a trader, got the different documents executed from Bala and therefore, the respondents were constrained to initiate 3 proceedings in respect of 3 aforesaid Survey Nos. against Ramesh under different provisions of the Tenancy Act, 1948. However, the Counsel for the respondents laid stress on the legal provisions as quoted above.

9. As to whether Ramesh was an agriculturist or not on 7-3-1969, it was contended by Mr. Bora that respondent has given evidence that he was an agriculturist and that in the sale deed Ramesh was described as an agriculturist, and therefore, according to him, none of the transfers effected by Bala in favour of Ramesh in the form of lease deeds or sale deeds are affected or hit by section 84-C of the Tenancy Act, 1948.

10. Section 84-C provides that Mamlatdar may start suo motu proceedings or any application of any person interested in such land. If there are reasons to believe that a transfer or acquisition of land becomes invalid under any of the provisions of this Act, and if after the enquiry, the Mamlatdar comes to the conclusion that the transfer or acquisition of land is invalid, he shall make an order to that effect accordingly.

11. If the sequence of the transactions between Ramesh and Bala is considered, there are 2 sale deeds of 7th March, 1969 and third in respect of Survey Nos. 36/8 and 36/9, then there is sale deed of Survey No. 47/2 on 27-11-1970 (however, proceedings before the revenue authorities were not in respect of this survey number by the present respondents and the proceedings started probably by Bala were decided on 30-8-1971 holding that Ramesh is an agriculturist because of the existing leases in his favour from 1969) and the last lease Survey No. 70/5 is dated 7th March, 1975.

12. Section 63 of this Act provides that no sale, gift or release shall be valid in favour of a person, who is not an agriculturist. Therefore, crucial question is whether Ramesh was an agriculturist before entering into the aforesaid 3 transactions of leases dated 7-3-1969 and 7-3-1975. It is true that M.R.T. has given a finding while deciding the legality of the sale of Survey No. 47/2 dated 27-11-1970 that Ramesh was an agriculturist in view of the leases in his favour in 1969."According to the respondents, section 63 makes invalid even leases in

favour of a non agriculturist and if Ramesh was" not an agriculturist on 7th March, 1969, then a finding validating his sale in respect of Survey No. 47/2 is illegal and void ab-initio. Whereas, on the other hand, according to Mr. Bora, in the sale deed, Ramesh is described as an agriculturist and Ramesh has given evidence that he was an agriculturist, on 7th March, 1969 and therefore, none of the transfers in favour of Ramesh are affected by section 63 of the Tenancy Act, 1948.

13. The learned member of the M.R.T. has after hearing both the parties and without discussing the evidence in detail or without reappreciating the evidence, as is alleged by Mr. Bora, held that so far as last 2 lease deeds of 7th March, 1969 are concerned, Ramesh was not an agriculturist at that time. The admission given by Ramesh in his evidence to the effect that he had no evidence to show that on relevant date i.e. 7th March, 1969, he or his any family members were doing agricultural operations. If this is the position and admission given by Ramesh, then the learned Member of the M.R.T. was justified in setting aside the 2 lease deeds and allowing the appeals in respect of 2 Survey Nos. 36/8 and 36/9. As such, the finding of the M.R.T. cannot be said to be perverse, nor there is any excess exercise of jurisdiction.

13A. So far as Survey No. 27/5 is concerned, there was a lease of 99 years in favour of Ramesh executed on 7th March, 1975 and u/s 32-O Ramesh was entitled to purchase the land within one year from the commencement of such tenancy. However, the member of the M.R.T. after going through the record, did not find that the tenant Ramesh has given any such intimation of his willingness to purchase the land within one year from taking lease. Mr. Bora even during his argument could not show that any such intimation was given by Ramesh. As such, the order of the M.R.T. in remanding the matter in respect of Survey No. 27/5 i.e. Tenancy Case No. 16/81 to the trial Court for making an enquiry u/s 32-P cannot be said to be illegal and unwarranted.

14. Considering therefore, all the facts, I am constrained to hold that the tenant has failed to make out any case for interference in the common impugned order of the M.R.T. dated 17th September, 1987 and hence petitions are liable to be dismissed.

15. Rule discharged. All the petitions are dismissed. Interim stay vacated. Record and proceedings be immediately sent to the Additional Tahsildar, Akole for deciding Tenancy Case No. 16/81 with reference to the guidelines and directions given by member of the M.R.T.

16. Petition dismissed.