
(2000) 06 BOM CK 0105

In the Bombay High Court

Case No : Writ Petition No. 5000 of 1986

Rangrao Nivritti Lad and others

APPELLANT

Vs

Vishnu Joti Thorbole and another

RESPONDENT

Date of Decision : 22-06-2000

Acts Referred:

Citation : (2000) 4 ALLMR 105 : (2001) 1 BomCR 157

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

Bench : Single Bench

Advocate : M.R. Katikar, for the Appellant;

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J.—This petition has been filed by the original defendants 1 to 10 land owners in respect of Survey No. 743/2 situated at village Kundal, Taluka Tasgaon. The suit land originally belonged to Shri Daulu Nana Thorbole who had four daughters. The suit land was bequeathed by him by executing a Will as back as in the year 1919 in favour of one of the daughters Smt. Radhabai w/o Bhau Ghadage. the predecessor in title of the petitioner herein. The respondent No. 1 claims to be the tenant in respect of the said suit land.

2. The petitioners herein filed a suit being Suit No. 187 of 1970. Another suit came to be filed by the respondent No. 2 herein being Civil Suit No. 1 of 1972. Both the suits were tiled for declaration and possession. In the said suits the respondent No. 1 raised a plea that he was the tenant of deceased Radhabai Ghadage; and therefore requested the Civil Court to frame issue as to whether he was the tenant in respect of the suit land, so that the said issue can be referred to the Tenancy Court for its decision in view of the provisions of the Bombay Tenancy Act. Accordingly Issue No. 10 was framed by Civil Court which reads thus :

Issue No. 10. Does defendant No. 1 I prove that he is a tenant in respect of the suit land?

3. The said reference was made before the Tahsildar, Tasgaon, who in turn, after considering the materials on record, answered the said issue in the negative and against the respondent No. 1. According to the Tahsildar the said Radhabai had died on 24-2-1970 and the respondent No. 1 was very much aware about her death and therefore it was incumbent upon him to give intimation for purchase of land before 24-2-1972 to all the successors of Radhabai i.e. petitioners herein as required by section 32F(I-A) of the Act. The Tahsildar therefore held that the respondent No. 1 having failed to exercise the said option became liable to be evicted from the suit land u/s 32P(1) of the Act. The Tahsildar therefore concluded that the respondent No. 1 had lost his right to continue on the land as tenant, even assuming that he was inducted initially as tenant.

4. The respondent No. 1 took up the matter in Appeal before the Deputy Collector, Sangli. The Appellate Court by its judgment and order dated 19-9-1981 was pleased to allow the appeal. According to the Appellate Court it was not open to the petitioners to challenge the status of respondent No. 1 as a tenant having regard to the previous proceedings u/s 32G of the Act. Moreover, with regard to the crucial question which found favour with the Tahsildar to negative the claim of respondent No. 1, the Appellate Court totally misdirected itself. The Appellate Court took the view that failure of the respondent No. 1 to give intimation, as required u/s 32F(1-A), did not visit him with the consequence of taking away his right to continue as a tenant in the suit land. This conclusion is clearly contrary to the purport of section 32P of the Act. The Appellate Court accordingly allowed the appeal and declared that the respondent No. 1 was a tenant in the suit land.

5. The petitioners challenged the said decision of the Appellate Court before the Maharashtra Revenue Tribunal, Kolhapur. The Tribunal, although referred to the contentions raised on behalf of the petitioners, has not adverted to the main issue which had found favour with the Tahsildar. Naturally, the Tribunal has not examined the correctness of the view taken by the Appellate Court on the said matter.

6. After considering the arguments advanced by the Ld. Counsel for the petitioners I am of the view that the Tribunal clearly misdirected itself in not adverted to the main issue, which according to the Tahsildar went to the root of the matter. At the first blush was inclined to remand the matter to the Tribunal to consider the same afresh, however, since the proceedings are pending since year 1974. I thought it appropriate to decide the matter on merits as the issue involved is a pure question of law which could be decided on the basis of admitted facts. It is seen that the original owner Radhabai died on 24-2-1970 and the respondent was fully aware of her death being her cousin brother. It is nobody's case that respondent No. 1 was not aware of the death of the said Radhabai. Since these facts are admitted, in view of the provisions u/s 32F(1-A). it was incumbent upon the respondent No. 1 to give intimation of his willingness to purchase the suit land to the successors of the deceased Radhabai within two years from the death of Radhabai i.e. before 24-6-1972. It is admitted position

that such intimation has not been given by the respondent No. 1. In the circumstances, the Tahsildar has rightly concluded that the respondent No. 1 had lost his right to remain in the suit land as tenant. In my view, both the Appellate Court as well as the Tribunal, were clearly misdirected in not considering the matter from this perspective. That the consequences of failure to give intimation by the tenant within the stipulated period is that the tenant becomes liable to be evicted from the land u/s 32P of the Act. In this case the respondent No. 1 became liable to be evicted on or after 25-6-1972. As per section 32P it is the duty of the Agricultural Lands Tribunal to evict such a person and dispose of the land in the manner provided by sub-section (2) of section 32P.

7. Accordingly the decision of the Appellate Court as well as the Tribunal is set aside and the conclusion reached by the Tahsildar. Tasgaon is restored. In other words, the issue which has been referred to the Tenancy Court by the Civil Court being Issue No. 10 is answered in the negative.

In the circumstances, writ petition is allowed with costs. Rule is made absolute.

Parties to act on copy of this order duly authenticated by the Sherestedar of this Court.