(1977) 07 BOM CK 0037

In the Bombay High Court

Case No : Spl. C Appln No. 3747 of 1976

Sadashio Sambashio Mungantiwar APPELLANT

Vs

State of Maharashtra and another RESPONDENT

Date of Decision : 12-07-1977

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 10, 10(1)(a), 19, 2(14), 8
Transfer of Property Act, 1882 — Section 53A

Citation : (1977) MhLj 783

Hon'ble Judges : B.C. Gadgil, J

Bench : Single Bench

Advocate : K.G. Chendke, for the Appellant; G.A. Paunikar, for the Respondent

Final Decision : Allowed

Judgement

B.C. Gadgil, J.—The writ petition involves a question as to whether 6 acres and 16 gunthas of land from out of survey No. 30 should be included in the holding of the petitioner while determining the ceiling area and delimiting the excess land under the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act. 1961 (hereinafter referred to as the ''Ceiling Act''). At the stage of this petition there is no dispute that the petitioner was holding more than 75 acres of land (including 6.16 acres out of survey No. 36) and that the determination of the excess area at 21.22 acres would be quite legal and proper if the contention of the petitioner with respect to the validity of the transaction of survey No. 30 is rejected.

2. The petitioner''s case is that survey No 30 admeasures 25 acres 26 gunthas and that this land is owned by four persons. The petitioner is one of them and that he has 1/4 share which is equal to 6.16 acres. This position is not challenged. The petitioner alleges that on May 25, 1962, all the four sharers agreed to sell survey No. 30 to respondent No. 2 for a price of Rs. 4,000. The agreement was oral. The vendors received consideration of Rs. 3,000 and

handed over possession of the entire field to respondent No. 2. The sale-deed, however, was actually executed on May 13, 1971. Under the Ceiling Act, all transfers effected between September 26, 1970 and October 2, 1975 are to be ignored while determining the ceiling of the holder. Section 10 provides that such transfers shall be presumed to have been made in anticipation of or in order to avoid or defeat the objects of the Amending Act, 1972. Of course, this presumption is rebuttable and the burden is on the claimant to prove that the transaction is bona fide one. The Surplus Lands Determination Tribunal'' (S. L. D. T.) held that the transfer of possession under the oral agreement of sale is of no use and that the sale-deed dated May 13, 1971 has to be ignored as it is after September 26, 1970. The Maharashtra Revenue Tribunal (M. R. T.) has confirmed this finding in appeal.

3. Mr. Chendke for the petitioner submitted two points in this petition. Firstly, he urged that the transfer in question should not be treated as a transfer on May 13, 1971 inasmuch as there was already a transfer of possession on May 28, 1962 under the oral agreement of sale. His next contention is that even if the transfer is treated as dated May 13, 1971 (i.e. the date on which the sale-deed was executed), still that transfer is protected inasmuch as the transfer was a bona fide transaction and it has not been entered into in anticipation of or in order to avoid or defeat the objects of the Amending Act, 1972.

4. Mr. Chendke appears to be on a sound footing so far as the second contention is concerned and in view of this position, it is not really necessary to decide the first point. However, I will briefly make a mention of the submissions made by him as also by Mr. Paunikar in that respect. The crop-statements of the year 1963-64 onward show that the land is in possession of respondent No. 2 under an oral agreement of sale. The question as to whether the possession under an agreement of sale can be treated as a transfer under the Ceiling Act has been considered by this Court in Gulabrao v. State 1976 Mh. LJ 727. It was a case of written agreement of sale entered into by the holder in favour of the intending purchaser on April 1, 1968. Under that agreement, the holder delivered possession of the property to the intending purchaser and that possession continued even at the time when the question of determining the ceiling of the holder was enquired into. The Surplus Lands Determination Tribunal held that the land cannot be left out from the holding of the holder inasmuch as he has not transferred the property by any registered sale-deed before the prescribed date. The contention of the holder as well as the intending purchaser was that the transaction of delivering possession under the written agreement may be termed as a transfer so as to make the intending purchaser an owner. This has been accepted and the material head note of the case is as follows :

The words "any other disposition" occurring in Explanation to section 8, white defining "transfer" which is also the meaning of the word ''transfer'' used in section 10(1)(a) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, will include a transaction known as a contract of sale, under which the purchaser is put in possession of the property as a part performance of the contract. Such a transaction is covered by Explanation to section 8 as well as Explanation to section 10 of the Ceiling Act. It is not necessary that such a transaction should only be by a registered document. A genuine transaction covered by section 53-A of the Transfer of Property Act which incorporates an equitable doctrine in the matter of transfer of property if proved by adducing cogent evidence that it had taken place before 26th September 1970, then only because the said transaction or the document is not registered cannot invalidate the said transaction or the document. If such a transaction which is a transfer within the meaning of section 8 of the Ceiling Act is effected after 26th September 1970, then obviously it will be covered by section 10 of the Act.

5. Mr. Chendke submitted that the principle enunciated in the above mentioned decision may be extended even when there is no written contract of sale. According to him. the transfer of possession under oral agreement of sale may be treated as transfer. By this he wants to say that in the present case, the petitioner has transferred the property to respondent No. 2 on May 28, 1962, i.e., on the date on which there was an oral agreement coupled with the delivery of possession. He also relied upon certain observations of this Court in G. L. Sonavane v. Saswad Mali Sugar Factory 1972 TLR 114 20 (Spl. C. Appln. No. 1566 of 1966. decided on 30-9-1970). In that case the tenant (respondent No. 2) has sub-let the property to respondents 3 and 4. The question was regarding the determination of the ceiling area held by respondent No. 2, viz., the Sugar Factory. The contention of the Sugar Factory was that the land was sublet to respondents 3 and 4 and as such it should be excluded from the holding of the Factory for determining the ceiling area. It was submitted that the sub-lease in favour of respondents 3 and 4 was bad, and as such, the land in question should be added to the holding of the Factory and that thereafter it should be allowed to be resumed by the landlord u/s 19. While deciding the matter, it was held that the sub-lease in favour of respondents 3 and 4 was quite legal and proper and that there was no infirmity, thus, there was no question of including that land in the holding of the Sugar Factory. After recording this finding, the following observations have been made in that judgment:

I may also add that the real question that requires consideration in this case is not so much the legality and validity of the transaction between respondent No. 1 (sic, respondent No. 2) and respondents Nos. 3 and 4. The point that essentially and virtually requires consideration is: Was or was not the respondent No. 2 in actual possession of the lands in dispute from 4-8-1959? If the possession has its inception on any date before 4-8-1959, even as a result of some unlawful transaction, and it is found that respondent No. 2 was not in actual possession of the land, he could not be held to be in actual possession of the land on the appointed day. as contemplated under the Ceiling Act.

6. Mr. Chendke, therefore, submitted that in the present case the actual possession is with respondent No. 2 since 1962 and, as such, the land survey No.

30 or its portion cannot be included in the holding of the petitioner. To strengthen this argument, he also drew my attention to the definition of the term ''to hold land given in section 2 (14) of the Ceiling Act. As per that definition, to hold land means to be lawfully in actual possession of land as owner or as tenant. He, therefore, urged that the petitioner cannot be termed as a holder of the land as he was not in actual possession of the land on the relevant date.

7. Shri Paunikar for the State contended that the submission of Mr. Chendke does not deserve to be accepted. He argued that the case of a person in possession under a written agreement of sale is quite different and distinguishable from that of a person in possession under an oral agreement. According to him, the principle of part performance incorporated in section 53-A of the Transfer of Property Act would come to the help of the person in possession whenever there is a written contract. Under that section, a transferor is debarred from enforcing against the transferee any right other than the right expressly provided by the terms of the contract. This position would not be available if the agreement is an oral one. He also submitted that in such a case the possession of the intending purchaser should be treated as for and on behalf of the real owner. He relied upon a decision of this Court in Abdul Rahiman v. Hari 1969 I LR 49 (Spi. C. A. No. 713 of 1965, decided on August 31,1966). It was a case under the Hyderabad Tenancy Act. The petitioner before the High Court was the owner while respondents 1 and 2 were protected tenants of Survey Nos. 113 /B and 114/B. They were declared as provisional owners as the petitioner was having more than 2 family holdings. This was on the basis that S, No. 97 was a part of the holding of the petitioner. The petitioner has agreed to sell that land prior to the notified date 1-2-1957 though the sale-deed was effected in 1960. The petitioner contended that under this oral agreement he has transferred possession to the intending purchaser and as such S. No. 97 should be excluded from his holding. He wanted to rely on the principles of part performance as contemplated by section 53-A of the Transfer of Property Act. This contention has been rejected in the following words:

It is common ground in this case that until, at any rate, the notified date no written agreement was at all executed by the petitioner in favour of the vendee and, therefore, it is not right to hold that the possession of the vendee was under a contract of sale as contemplated by section 53A. As a written agreement of sale was not executed by the parties prior to the notified date, the possession of Sakharam (intending purchaser) must be held to be for and on behalf of the petitioner and, therefore, survey No. 97 must be held to be included in the holding of the petitioner which would then exceed two family holdings.

8. Another contention of Mr. Paunikar is that a anomalous position is likely to arise in case the submission made by Mr. Chendke is accepted, for example, in the instant case the petitioner wants that the land though belonging to him should be excluded from his holding as he is not in possession. Mr. Paunikar urged that the viability of the argument may be decided by assuming that

intending purchaser is also holding some other lands and the question was as to whether his holding exceeded the ceiling limit. It was submitted on behalf of the State that the intending purchaser would not be wrong if he makes a submission that the land agreed to be purchased by him cannot be included in his holding, as the land neither belonging to him nor was he the tenant of the land. I have already made a mention of the definition of the term ''to hold land''. It requires that the land must be in actual possession and that possession must be as an owner or as a tenant. It is on the basis of this definition that Mr. Paunikar made the above mentioned submission. As stated above, this controversy, however, need not be gone into in details inasmuch as the petitioner is on a stronger grounds when he contends that the sale-deed dated May 13, 1971 should be termed as a bona fide transaction and not the one with a mala fide intention.

9. The oral agreement dated May 28, 1962 appears to be a genuine transaction. In the crop-statements the name of respondent No. 2 has been shown as a person in possession under such oral agreement, These entries are from the year 1963-64. The recitals in the sale-deed sho v that the purchaser has paid the amount of Rs. 3,000.00 on May 28, 1962 i.e., at the time of the agreement and that the remaining amount was paid on the date of the document. The sale-deed also states that the purchaser has been in possession of the land since 1962. It was contended on behalf of the State that the conduct of the parties in not completing the transaction for nine years i. e. upto May 13, 1971, may be treated as a circumstance to suggest that the transaction is not a bona fide one. I do not think that an inference of mala fides can be drawn simply because for some reason or other the sale-deed cannot be completed till 1971. The important point would be as to whether in fact there was an agreement of sale in 1962 and as discussed above, the probabilities are more in favour of the existence of such an agreement.

10. Thus, here is a case where the petitioner was under an obligation to convey the property to respondent No. 2 as there was an agreement of sale. All that the petitioner did on May 13, 1971 can as well be termed as the performance of that obligation, which he was bound to do. The fact that the sale-deed was executed after September 26, 1970 will not, therefore, be decisive in this case. The parties intended to convey the property to respondent No. 2 since 1962. At that time there was no question attempting to avoid or defeat the provisions of the Amending Act, 1972. In fact, such an amendment was not in contemplation in 1962. The conduct of the parties in transferring the possession of the land in 1962 is also eloquent. That shows that the parties intended to go through the transaction as agreed. I would, therefore, hold that in the peculiar circumstances of the case, it will be very difficult for the State to contend that the sale-deed dated May 13, 1971 is hit by the provisions of section 10. As a matter of fact, my finding is that the petitioner has proved that while effecting that sale-deed, he had no intention of conveying the property in anticipation of or in order to avoid or defeat the provisions of the Amending Act, 1972.

11. The result, therefore, is that the petition succeeds. The rule is made absolute. The orders of the Surplus Lands Determination Tribunal and the Maharashtra Revenue Tribunal are modified by directing that the excess ceiling of the petitioner should be determined at 15.6 acres (instead of 21.22 acres) and that this excess ceiling should be delimited from out of the eastern and southern portion of S. No. 334 of Adegaon. The rest of the orders remain as they are.

12. The parties to bear their own costs of this petition.

