
(2014) 06 BOM CK 0021
In the Bombay High Court
Case No : Writ Petition No. 191 of 1994

Sadhashiv

APPELLANT

Vs

Mahadeo Krishna Warke

RESPONDENT

Date of Decision : 26-06-2014

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 29(2), 32G, 33B, 33C, 63A
Constitution of India, 1950 — Article 227

Citation : (2015) 1 BomCR 655

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : T.S. Ingale, Advocate for the Appellant; S.V. Sadavarte, Advocate for the Respondent

Final Decision : Dismissed

Judgement

R.M. Savant, J.—The Writ Jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the order dated 27th April, 1992, passed by the learned Member of the Maharashtra Revenue Tribunal (for short "the MRT"), by which order, the Revision Application filed by the Petitioner was partly allowed to the extent of the matter being remanded back to the Agricultural Land Tribunal (ALT) for a de-novo fixation of the purchase price.

2. The facts giving rise to the filing of the above Petition in a nutshell can be stated thus:

The Petitioners herein are the landlords and the Respondents herein are the tenants. The dispute revolves around agricultural lands bearing Gat No. 569 (Revisional Survey No. 130) admeasuring 28 Gunthas, Gat No. 560 (Revisional Survey No. 128) admeasuring 1 Acre and 7 Gunthas and Gat No. 581 (Revisional Survey No. 140) admeasuring 1 Acre and 31 Gunthas. Out of these lands, the dispute is regarding half portion of the said lands, which are all situated at Village-Turambe, Taluka-Radhanagari, District-Kolhapur.

3. The starting point of the controversy is the application made u/s 88C of the Bombay Tenancy and Agriculture Lands Act, 1948 (for short "the BTAL Act") by the landlords before the Tenancy Awal Karkoon, Radhanagari. A certificate accordingly came to be issued to the landlord for half the lands on 27th July, 1960 the landlords thereafter applied u/s 33B read with Section 29(2) of the BTAL Act for possession, which was numbered as Tenancy Case No. 16 of 1962. The said application was founded on the certificate issued to the landlords u/s 88C of the BTAL Act. The said Tenancy Case No. 16 of 1962 for possession came to be allowed by the ALT and the possession was directed to be given to the landlords. The tenants preferred a Revision before the Sub-Divisional Officer u/s 76A of the BTAL Act. The tenants, it seems, simultaneously filed an application u/s 88D of the said Act challenging the certificate issued u/s 88C of the BTAL Act and prayed for cancellation of the certificate. The Revision Application filed by the tenants against the order dated 29th January, 1965 granting possession to the landlords was dismissed by the Sub-Divisional Officer by his order dated 24th July, 1965. Insofar as the application u/s 88D filed by the tenants is concerned, the same came to be allowed by the Commissioner by order dated 21st January, 1966 and resultantly the 88C certificate granted in favour of the landlords came to be cancelled.

4. The landlords filed Special Civil Application No. 1145 of 1966 in this Court, challenging the order dated 21st January, 1966 passed by the Divisional Commissioner cancelling the 88C certificate. The Tenants also filed a Revision Application being No. 376 of 1965 challenging the order dated 24th July, 1965 passed in Revision Application No. 50 of 1965 dismissing the Revision Application filed by the tenants against the order of possession. The said Revision Application No. 376 of 1965 was allowed by the MRT and resultantly, Tenancy Case No. 16 of 1962 filed by the landlords for possession was dismissed on the ground of the cancellation of the 88C certificate by the Divisional Commissioner. Insofar as Special Civil Application No. 1145 of 1966 is concerned, this Court, by Judgment and order dated 21st July, 1971, allowed the said Special Civil Application and set aside the order dated 21st January, 1966 of the Commissioner and resultantly, the certificate issued u/s 88C of the BTAL Act came to be restored. It appears that, thereafter, a possession notice came to be issued to the tenants by the Tahsildar, Radhanagari based on the landlords' application, which was founded on the reinstatement of the 88C certificate. It appears that since the application did not meet with success, the landlords filed Revision Application No. KP-105 of 1979 in the MRT. The MRT, by order dated 21st August, 1980, rejected the Revision Application filed by the landlords (this fact can be gathered from the order of the ALT dated 7th April, 1981).

5. The tenants thereafter moved applications u/s 33C of the said Act being Tenancy Case No. 63 of 1981 and 63-A of 1981. The said applications were allowed by the ALT by order dated 7th April, 1981. The tenants also preferred an application for purchase u/s 32G of the BTAL Act. The said application was also allowed by an order passed on the same day i.e. 7th April, 1981 and the tenants

were declared as deemed purchasers and the ALT fixed the purchase price and also granted the 32M certificate. Against the said order dated 7th April, 1981, the landlords filed an Appeal being Appeal No. 74-A of 1982 before the Sub Divisional Officer, Shahuwadi, District-Kolhapur. The Sub-Divisional Officer set aside the order dated 7th April, 1981 passed by the ALT and remanded the matter back, as, according to the Sub-Divisional Officer, the ALT had not considered the following issues:

- i) Whether the landlord was certificated landlord and his application u/s. 33-B of the Act stands rejected;
- ii) that there is no proper basis on which the purchase price was fixed by the trial court;
- iii) that the suit lands were Inam Lands which were not regranted to landlord or tenant and this aspect was not considered by the trial court;
- iv) that the trial court committed an error in granting interest at 41/2% from the date of its order, which should in fact have been granted from the tiller's day.

The tenants, aggrieved by the said order dated 5th August, 1985 remanding the matter back to the Trial Court passed by the Sub-Divisional Officer, took exception to it by filing a Revision Application before the MRT, which was numbered as MRT-195 of 1985. The said Revision Application came to be partly allowed by the MRT. The MRT set aside the Judgment and Order dated 5th August, 1985 of the Sub-Divisional Officer insofar as it directed a remand as regards the issue whether the landlord was a certificated landlord and his application u/s 33B stands rejected, however, came to a conclusion that the purchase price has not been properly fixed, as the exercise which is contemplated by Section 63A of the BTAL Act has not been properly carried out by the Trial Court and hence, for the said limited purpose of fixing the purchase price, the MRT remanded the matter back to the Trial Court. Insofar as the third issue is concerned, the MRT has accepted the contention raised on behalf of the tenants based on Sub-Section 6 of Section 32G of the BTAL Act and has therefore declined to remand the matter for the said purpose.

The gist of the reasoning of the Tribunal, as can be seen from the impugned order, is that the order dated 9th December, 1966 rejecting the application made by the landlords u/s 33B had become final, as it was not challenged by the landlords though a challenge was raised to the cancellation of the certificate issued u/s 88C of the BTAL Act. The MRT held that the said order had become final and binding and would have to be given its effect unless it is set aside and if that be so, the tenants' application u/s 33C could not be questioned. The MRT also accepted the case of the tenants based on Sub-Section 6 of Section 32G of the BTAL Act. As indicated above, it is the said order dated 27th April, 1992, which is taken exception to by way of the above Petition.

6. Heard the learned Counsel appearing for the parties. The principal contention

of the learned Counsel appearing for the Petitioner is that the Tribunal had erred in holding that since the order dated 9th December, 1966 has not been set aside, the tenants would be entitled to file an application u/s 33C of the BTAL Act. The learned Counsel would contend that the order for possession was set aside in view of the setting aside of the certificate granted u/s 88C and once the certificate u/s 88C was restored, the logical corollary would be that the order of possession which was solely based on the cancellation of the certificate would revive. The learned Counsel would contend that once the Petitioners are certificated landlords, then, the provisions of the BTAL Act which are mentioned in Section 88C do not apply and therefore, the application filed by the tenants u/s 33C was not maintainable. The learned Counsel would therefore submit that the order passed by the Sub-Divisional Officer remanding the matter back to the Trial Court i.e. the ALT was therefore not required to be interfered with.

7. Per contra, the learned Counsel appearing for the Respondent/tenants Shri Sadavarte would support the impugned order. The learned Counsel would contend that though the certificate u/s 88C was restored on account of the decision rendered in Special Civil Application No. 1145 of 1966 by this Court, the fact remains that there was an order operating against the landlords dated 9th December, 1966, by which, the order for possession was set aside. The learned Counsel would contend that even after the certificate u/s 88C was restored, it seems that the landlords had filed a fresh application for possession u/s 33B which was also rejected and the Revision Application arising therefrom being No. KP-105 of 1979 was also rejected on 21st February, 1980 and therefore, insofar as the aspect of possession is concerned, the order dated 9th December, 1966 became final and binding and the tenants were accordingly entitled to file an application u/s 33C as also u/s 32G. The learned Counsel would contend that the Tribunal has taken into consideration the relevant facts including the fact that the tenants are in possession since last 50 to 60 years and has accordingly set aside the order passed by the Sub-Divisional Officer remanding the matter back to the Trial Court. The learned Counsel would contend that this Court would therefore not exercise its Writ Jurisdiction in such a case.

8. Having heard the learned Counsel appearing for the parties, I have considered the rival contentions. The question which is posed in the above Petition is therefore whether the matter was required to be remanded back to the Trial Court as ordered by the Sub-Divisional Officer by his order dated 5th August, 1985.

9. As indicated above, the said remand was ordered by the Sub-Divisional Officer as according to him the Trial Court had not rendered a decision on the point as to whether the landlord was a certificated landlord and his application u/s 33B of the BTAL Act has been rejected. Insofar as the said issue is concerned, the MRT has considered the said issue and in the background of the fact that though the certificate u/s 88C has been reinstated by virtue of the order passed by this Court in Special Civil Application no. 1145 of 1966, the order dated 9th

December, 1966 passed by the MRT allowing the Revision Application filed by the tenants has become final and binding. The Tribunal has accordingly set aside the order passed by the Sub-Divisional Officer remanding the matter back to the Trial Court for de-novo consideration of the said aspect. In the said context, it is required to be noted that though the certificate u/s 88C came to be reinstated, the order passed allowing the application for possession filed u/s 33B came to be set aside by the MRT by its order dated 9th December, 1966. Even after the certificate came to be reinstated, it seems that the landlords had filed a fresh application for possession, in which, they were not successful resulting in the filing of Revision Application No. KP-105 of 1979, which was dismissed by the MRT by order dated 21st February, 1980, therefore, the dis-entitlement of the landlords to possession has become final and binding against them. The contention of the learned Counsel appearing for the Petitioner that in view of the reinstatement of the certificate u/s 88C, the order of possession would revive therefore cannot be accepted. As indicated above, the fresh application for possession as also the Revision Application have been rejected by the authorities after the certificate was reinstated. The MRT has therefore rightly held the said aspect of possession to be the defining aspect insofar as the present proceedings are concerned. In my view therefore, the MRT was right in setting aside the order passed by the Sub-Divisional Officer remanding the matter back for the consideration of the issue which has been adverted to in the earlier part of this Judgment. If such a course is followed it would unnecessarily vex the tenants when the landlord has already lost the battle for possession. Insofar as the issue of the lands in question being Inam lands which were not regranted to landlords or tenants is concerned, the MRT was right in accepting the contention raised on behalf of the tenants based on Sub-Section 6 of Section 32G of the BTAL Act. The tenants obviously cannot be deprived of their right to purchase the said lands on the basis that there is a prohibition. The said provision itself carves out an exception. It is required to be borne in mind that the BTAL Act is a beneficial piece of legislation and therefore would have to be interpreted in a manner beneficial to the tenants. In my view therefore, the impugned order does not suffer from any illegality or infirmity for this Court to interfere with in its Writ Jurisdiction under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed. Rule is discharged. No order as to costs. It is made clear that the authorities would now proceed to fix the purchase price in terms of the directions issued by the MRT, expeditiously.