

(1997) 11 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No. 2074 of 1984

Sahebrao Shripati Godse

APPELLANT

Vs

Chandar Bhau Chavan and others

RESPONDENT

Date of Decision : 21-11-1997

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 31, 32
Constitution of India, 1950 — Article 226, 227

Citation : (1998) 1 ALLMR 545 : (1998) 2 BomCR 612

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : S.G. Page, for the Appellant; M.A. Rane, for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—The petitioner who is the original Opponent No. 1 in the Tenancy Case No. 27 of 1967, is the petitioner herein. The Tenancy Case No. 27 of 1967 of Tenancy Awal Karkun, Khatau, Dist. Satara arises out of an application filed u/s 70(b) of the Bombay Tenancy and Agricultural Land Act, 1948 (hereinafter referred to as the "Tenancy Act") by the Respondent No. 1 herein. In that application the Respondent No. 1 approached the Mamlatdar for declaration u/s 70(b) of Tenancy Act that he is a protected tenant. In fact 1st respondent was applied u/s 70(b) for the land comprising of Survey No. 55 and Survey No. 78 but ultimately dispute centres reserved only of Survey No. 78. The petitioner's claim is that the respondent No. 1 is not the tenant at all. On the other hand the respondent No. 1 contested that he is in possession of 1/4 of land comprising of Survey No, 78. It is the case of the 1st respondent that this extract of Survey No. 78 was in possession of his father which was traced out from 1932. It appears that on account of proceedings initiated u/s 32-G in favour of the petitioner, in respect of the said Survey No. the entry of 7/12 extract has been changed and the petitioner's name was shown therein in the year 1961. Immediately 1st respondent made a complaint before the concerned village officer on the ground that the said entry was made behind back of the 1st respondent at the time of the Pot Hissa which took place during the year 1958.

According to the 1st respondent, while he was in actual possession of the land it is illegal on the part of the Revenue Authority to delete his name in the 7/12 extract and entered the name of the petitioner, there. It is in these circumstances that he filed the application u/s 70(b) as mentioned above.

2. The original authority after appreciating the oral and documentary evidence found that the 1st respondent was the protected tenant, the entry made in favour of the petitioner was deleted. The main evidence that has been relied upon by the original authority that apart from the receipts which show the personal cultivation Exhs. 43 to 51 and land Revenue L.R. Receipts Exhs. 52 to 54 and 58 to 67. The Tenancy Awal Karkun has found the strong and corroborative evidence to establish the possession and cultivation of the 1st respondent, the entries made in the village records. The Tenancy Awal Karkun find that there is an entry in the records, the name of the 1st respondent's father was found in the rights column, as protected tenant. However, there is no entry in the lower half col. from the years 1949-50 to 1954-55 but Tenancy Awal Karkun found that there is an entry in the record of rights in the name of father of respondent No. 1, Bhau Mahadu Chambhar as shown as tenant from 1955-56 to 1960-61. On this material available with the original authority it was declared that the 1st respondent who is a protected tenant in terms of section 70(B) of the Tenancy Act. This finding was based on relevant material entered by the Tenancy Awal Karkun.

3. The petitioner has taken out an appeal being Tenancy Appeal No. 40 of 1968 before the Court of the Special Deputy Collector for Tenancy Appeals, Phaltan Division, Phaltan. The appellate authority though did not upset the finding of the original authority, the matter remanded back to the original authority for considering the material produced by the petitioner. The petitioner contested before the appellate authority that the original authority has not taken into account the legal effect of the proceedings initiated in his favour u/s 32-G and also the proceedings filed by the landlord against him u/s 31 of the Tenancy Act. On this ground the appellate authority has directed the original authority to consider this aspect earlier. Against that order a Revision filed by the 1st respondent before the Maharashtra Revenue Tribunal, Kolhapur being Revision Application No. MRT/NSV/22/69. The revisional authority though the reason was incomprehensible from its order, set aside the order of appellate authority and remanded the matter back to the appellate authority again for disposal. The appellate authority after said remand passed a detailed order taking into account the legal effect of the proceedings of 32-G and 31 between the petitioner and the landlord, had come to the conclusion that the declaration made by the original authority that the 1st respondent is a protected tenant was legal and requires no interference. I see from the order of appellate authority, he has confirmed the order of the original authority. Against this order the petitioner approached the revisional authority, Maharashtra Revenue Tribunal, Pune and Revenue Tribunal, Pune vide its order dated 6th October, 1983 had dismissed the revision. This writ petition is filed to challenge the said order.

4. I heard Counsel for the petitioner, Shri S.G. Page and for respondent No. 1 Shri M.A. Rane. I find no merits in the contents of the petitioner. All the authorities below has found on facts that the 1st respondent is a protected tenant. The contentions of the learned Counsel for the petitioner that the authorities have not examined the legal effect of proceedings taken out in favour of his client u/s 32-G and 31 are not worth consideration. It is not disputed that the revenue record shows that the respondent No. 1 was in possession and cultivation during the period from 1955 to 1961. If that be so in proceedings taken over u/s 32-G and 31, respondent No. 1 should have been given notice. Any proceedings behind his back cannot be considered as binding on him nor it could not be a legal one. Moreover, on facts even on a local inspection it was found that the properties are separately held and purchased by respondent No. 1. On the basis of the conclusion arrived at the authorities concerned on the materials available with them I do not think it is legal on the part of this Court to interfere in Article 227 of the Constitution of India.

5. I find no merits in the petition. In the result petition is dismissed. In the circumstances no order as to costs.

6. Petition dismissed.