

(1999) 08 BOM CK 0026
In the Bombay High Court
Case No : W. P. No. 3866 of 1985

Sangmeshwar Devasthan, Haripur

APPELLANT

Vs

Shripati Bala Kubadage deceased through L.Rs. Laxman
Shripati Kubadage

RESPONDENT

Date of Decision : 02-08-1999

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G, 88, 88(1), 88(1)(a), 88B

Citation : (2000) 1 BomCR 171 : (1999) 3 MhLj 622

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

Bench : Single Bench

Advocate : M. A. Rane with P. L. Naik, for the Appellant; Y. R. Naik, for the Respondent

Judgement

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

2. The petitioner is a Devasthan and the respondent claims to be its tenant. The petitioner has challenged the Order of the Maharashtra Revenue Tribunal (M.R.T.), Kolhapur, dated 18-3-1985 by which the M.R.T. allowed the revision of the respondent and set aside the order of the Sub-Divisional Officer (S.D.O.) Miraj, dated 30-6-1982.

3. When the petition came up for hearing, counsel for the respondent raised a preliminary objection to the tenability of the petition on the ground that petitioners are challenging an order dated 30-10-1973 passed by the Additional Tahsildar and A.L.T. Miraj, in this petition after 12 years. Therefore, petition is barred by limitation and secondly since order dated 30-10-1973 was not challenged it has achieved finality, which cannot be now reopened by this petition.

4. Before considering this preliminary objection, it is necessary to note certain facts regarding the dispute between the petitioner Devasthan on one hand and the respondent-tenant on the other hand. The respondent tenant initiated

proceedings u/s 32G of the Bombay Tenancy And Agricultural Lands Act, 1948 (hereinafter referred to as the "Tenancy Act") before the Additional Tahsildar and A.L.T. Petitioner Devasthan opposed the proceedings, notices were issued, statements were filed and thereafter the Additional Tahsildar framed two issues, namely :-

(1) Whether the suit land is exempted u/s 88-B of the Tenancy Act? and

(2) Whether the provisions of section 32-G of the Tenancy Act are applicable to the suit land?

Additional Tahsildar gave finding on issue No. 1 in the affirmative. Petitioner Devasthan challenged this order before the S.D.O. but the appeal was dismissed on the ground that the said impugned order dated 30-10-1973 was a preliminary order. Thereafter, as directed by the Additional Tahsildar in his order dated 30-10-1973, further proceedings u/s 32G were started, purchase price was fixed and those orders came to be challenged by the petitioner before the S.D.O. by filing appeal. S.D.O. allowed the appeal and set aside the order of the Additional Tahsildar fixing the purchase price. Tenant filed a revision before the M.R.T. and the same was allowed.

5. Preliminary objection of the respondent is two fold, firstly, according to him the Additional Tahsildar's order dated 30-10-1973 was not persuaded by the petitioner Devasthan upto the High Court and they remained contended by the finding of the S.D.O. that the order was an interlocutory order. According to the respondent this order dated 30-10-1973 is not an interlocutory order and the petitioner Devasthan should have challenged it upto the High Court and since they have not done so they are not now bound by the said order.

6. I am not inclined to accept this objection for two reasons, firstly, because the proceedings were initiated by the respondent-tenant u/s 32G of the Tenancy Act. In those proceedings, after perusing the respondent's contentions or written statements Additional Tahsildar framed only two issues, referred to above, and did not frame other issues including the applicability of section 32G of the Tenancy Act in the instant case. It is therefore clear that the Tahsildar decided the case piecemeal and gave finding only on two issues and from his order dated 30-10-1973 it is clear that after deciding those two issues, the Additional Tahsildar further ordered that enquiry u/s 32G should be conducted.

7. It is necessary to bear in mind that the matter pending before the Additional Tahsildar was itself a proceeding u/s 32G, therefore, there was no necessity for the Additional Tahsildar to order that an enquiry u/s 32G should be conducted. It appears that the Additional Tahsildar by the aforesaid direction only meant that further steps u/s 32G should be taken pursuant to the application filed by the respondent-tenant.

8. In fact it was necessary for the Additional Tahsildar while deciding the application u/s 32G to pass only one order covering all the objections raised by

the tenant respondent and by the petitioner Devasthan. and not to decide the matter piecemeal. However, he adopted a different course and decided two issues first and thereafter continued the proceedings for decision on other issues.

9. It is therefore clear that the order dated 30-10-1973 is a preliminary order. It is not that the petitioner-Devasthan did not challenge this order and remained contended by the order passed by the Additional Tahsildar. The said order was challenged, but the S.D.O. and M.R.T. rejected the appeal and the revision on the ground that it was an interlocutory order. According to the counsel for the respondent-tenant the petitioner Devasthan should have approached the High Court and challenged the order of the M.R.T. and S.D.O. and since they did not prefer to challenge those orders before the High Court, the order dated 30-10-1973 has reached finality.

10. I do not find any legal force behind this objection because obviously the impugned order dated 30-10-1973 was an interlocutory order and when a litigant challenges the said order before two forums and both of which hold that it was an interlocutory order then option is open to the litigant to go to the trial Court and face the case on merits.

11. Even if an interlocutory order is not challenged earlier, the final order if culminates into or is in conformity with the interlocutory order, the same can be challenged under the provisions of law. Therefore, it cannot be said that the petitioner Devasthan having not exercised their option to challenge the order dated 30-10-1973 before the High Court, had lost their right to challenge the same by this petition when they along with that order also challenged the orders which subsequently came to be passed on merits in the proceedings u/s 32G of the Tenancy Act.

12. There is also one more reason for not agreeing with the submissions made by the counsel for the respondent, firstly, this order dated 30-10-1973 is in respect of applicability of section 88B of the Tenancy Act and because admittedly even if the petitioner Devasthan was registered as a Public Trust in 1953 the suit land was not shown as the land belonging to the Trust and the situation continued thereafter and all the Courts right from the Additional Tahsildar upto M.R.T. have held that since the suit land was not shown as trust land at the time of formation of the trust, the petitioner trust is not entitled to exemption u/s 88B of the Tenancy Act. Counsel for the petitioner fairly conceded that the petitioner cannot undo what it has been done or what has not been done, namely petitioners cannot after registration of the trust show the suit land as trust property and therefore the petitioners have not challenged all the impugned orders for rejection of their contention u/s 88B. To the contrary, counsel for the petitioner contended that right from the first Court they have been claiming protection u/s 88B of the Tenancy Act read with section 56C of the Bombay Public Trusts Act, 1959 (hereinafter referred to as the "Trusts Act") since the order of the Additional Tahsildar dated 30-10-1973 is in relation to exemption u/s 88B of the Tenancy Act and since that ground is not pressed in this petition, it is

not necessary to reject the petition on the ground that the order of Additional Tahsildar dated 30-10-1973 is being challenged after 12 years.

13. The only point therefore requires consideration is whether the provisions of section 88 of the Tenancy Act read with 56C of the Trusts Act are applicable and whether the facts brought on record justify application of these two sections to the instant case.

14. Section 88 of the Tenancy Act grants exemption of government land and certain other lands and section 88 (1) provides "Save as otherwise provided in sub-section (2), nothing in the foregoing provisions of this Act shall apply, - (a) to lands belonging to or held on lease from, the Government" (stress added). Counsel for the petitioner contended that the petitioner Devasthan is claiming exemption u/s 88(1)(a) of the Tenancy Act in addition to section 56C of the Trusts Act, which is part of Chapter VI-A which was substituted in 1960. Section 56C of Trusts Act provides that "The provisions of this chapter shall apply to every temple, mosque or endowment created for a public religious or charitable purpose, which vests, in, or the management of which vests in, the State Government and which (a) has been registered under the provisions of this Act, as or (b) is declared by the State Government.....to be a public trust."

15. With reference to the aforesaid two provisions, it was contended by the counsel for the petitioner that there is no dispute between the parties that the petitioner is a trust and the land belongs to the trust. It was also pointed out that though the land was not shown as trust property when the trust came to be registered in 1953, the land continued to be a trust property and the management of which was with the Government. According to the counsel for the petitioner Devasthan, the respondent tenant never disputed that in 1952-53 the land was leased to him by Tahsildar and therefore according to the petitioner once a relationship of lessor and lessee existed between the petitioner and the respondent from 1952-53 the same relationship would continue and it will have to be held that for all the subsequent years the land was leased out by the Government as provided u/s 88(1)(a) of the Tenancy Act.

16. On the other hand it was contended by the counsel for the respondent that the respondent is a tenant from 1944-45 and even though in 1952-53 the land was leased by the Government, there is no such lease for all the subsequent years particularly in 1957 i.e. on 1-4-1957 and therefore according to him the provisions of section 88(1)(a) of the Tenancy Act or those of section 56(c) of the Trusts Act, would not apply.

17. Counsel for the petitioner also drew my attention to a Government Notification dated 8-10-1968 published in the Official Gazette by which the management of the petitioner trust vested in the Government. My attention was also drawn to the reference to this notification made by the M.R.T. in its order dated 18-3-1985, i.e. the impugned order, particularly in paragraph 5. Counsel

for the respondent also relied upon para 5 of the said judgment in support of his contention that the petitioner cannot get any exemption u/s 88(1)(a) of the Tenancy Act and u/s 56C of the Trusts Act.

18. The question is whether the land was leased to the respondent by the Government as is provided u/s 88(1)(a) of the Tenancy Act. Since it is an admitted fact that in 1952-53 it was the Tahsildar who leased the property to the respondent presumption would be in favour of the petitioner. Even though it might be that for the subsequent years i.e. from 1953 onwards there was no lease between the Tahsildar and the respondent but the relationship and particularly contractual relationship once created continues to exist unless and until the original agreement provides to the contrary or till one of the parties is in a position to show that the said relationship has come to an end. There is nothing with the respondent tenant to show that after 1952-1953 he got lease from other authority which was not an authority of the Government or an agency of the Government or that he got the land on lease from some person other than the trust. Therefore once it is borne out by the record that in 1952-53 Tahsildar leased out property to the respondent tenant then it has to be presumed that the subsequent possession from 1953 onwards of the respondent-tenant was for and on behalf of the Government even though there may not be any specific lease agreement for the subsequent periods.

19. The record of 1952-53 is therefore crucial in deciding the question in this case and that itself is sufficient to show that on 1-4-1957 the land was held by the tenant as on lease from the Government. Once the Court comes to the aforesaid conclusion then both these provisions of section 88B of the Tenancy Act and 56C of the Trusts Act are attracted then consequently it, has to be held that the petitioner is entitled to the provisions of section 88B of the Tenancy Act. The M.R.T. has not at all considered this important aspect and it only concentrated only on deciding the applicability of section 88B of the Tenancy Act to the petitioner.

20. Since there is non application of mind by the M.R.T. regarding the applicability of section 88(1)(a) of the Tenancy Act and section 56C of the Trusts Act, the impugned order of the M.R.T. cannot be upheld or sustained. In view of these facts the petition is allowed in terms of prayer (a) of the petition and the orders referred to in the prayer (a) of the petition are quashed and set aside. No order as to costs. After this order, the counsel for the respondent prayed for stay of operation of this order. Counsel for the petitioner left the matter at the discretion of the Court, hence, operation of this order is stayed for eight weeks on condition that the respondent shall give advance notice of filing appeal, writ petition or SLP whatever it is, to the petitioner.