

(1983) 06 BOM CK 0016
In the Bombay High Court
Case No : Writ Petition No. 564 of 1980

Shaikh Noor and Others	Vs	APPELLANT
Shaikh Rasool and Others		RESPONDENT

Date of Decision : 21-06-1983

Acts Referred:

Citation : (1988) 3 BomCR 311

Hon'ble Judges : M.P. Kanade, J

Bench : Single Bench

Advocate : R.G. Bhadekar, for the Appellant; V.B. Patil, for the Respondent

Judgement

M.P. Kanade, J.—By this application under Article 227 of the Constitution of India, the petitioner-original owner of land Survey No. 61/1 admeasuring 18 acres and 28 Gunthas and land Survey No. 53/AA admeasuring 18 acres and 1 guntan, both the lands situated at Simodi, Taluka Kalamnuri, District Parbhani, the judgment and order dated August 14, 1975 passed by the learned member of Maharashtra Revenue Tribunal is challenged.

2. The few facts leading to this petition are....

That the respondent No. 1 and one Kondiba, whose heirs are respondents No. 2 & 3 on record, were declared the owner under the provisions of section 38-E of Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as the "Tenancy Act"). The date of declaration of ownership is May 25, 1957. It further appears that in the exercise of powers under sub-section (3) of section 38-E of the Tenancy Act the learned Tahsildar fixed the price of the said land at Rs. 4,115.12/- in respect of the land Survey No. 61/1 and Rs. 354/- in respect of land Survey No. 53/AA. The learned Tahsildar who fixed the price also fixed the specified dates for payment at the specified rates of installments each year. Installments in respect of land Survey No. 61/1 for 8 years and in respect of land Survey No. 53/AA are for 12 years.

3. It appears that 3 notices have been issued prior to the filing of the application

and they are dated 31-7-1971, 8-8-1973 and 10-12-1973. In spite of the said notices the respondents did not pay any installment whatsoever. On failure of the payment of the purchase price within the stipulated period, the original owner filed an application on August 26, 1974 under sub-section (5) of section 38-E of the Tenancy Act for cancellation of ownership rights. Similar application was also made against the original protected tenant-Kondiba on August 27, 1974. It appears that the learned Tahsildar reviewed the purchase price on August 27, 1971 and fixed it at Rs. 285.20/- for land Survey No. 61/1. It is rather surprising to note that the said price is reviewed without any authority of law. Sub-section (3) of section 38-E of the Tenancy Act itself empowers the Tahsildar to fix the price in the presence of the parties and once the purchase price is fixed the Tahsildar is supposed to pass an order fixing the dates of installments for the payment of the purchase price. Such an order was already passed by the Tahsildar on declaration of the ownership in favour of the tenants. The application filed by the petitioner was dismissed by the learned Tahsildar and Agricultural Tribunal, District Kalamnuri by judgment and order dated September 6, 1975. Thereafter, the Dy. Collector, Hingoli dismissed the appeal filed by the petitioners and those orders are confirmed by the learned Member, Maharashtra Revenue Tribunal at Aurangabad. It is that order of the learned Member, Maharashtra Revenue Tribunal is challenged in this petition.

4. The orders passed by all the authorities appear to be misconceived. The authorities have not taken into consideration the scheme of law under the Tenancy Act and, therefore, committed an error apparent on the face of the record which requires to be corrected by this Court.

5. Shri R.C. Bhadekar, the learned Counsel appearing in support of this petition, contended that the tenants have not paid a single farthing towards the purchase price fixed by the Tahsildar. The respondent No. 1 had paid an amount of Rs. 150/. On April 11, 1975. That payment is also made on the expiry of the date by the Tahsildar. According to Shri Bhadekar the defaults committed by the respondents are more or less admitted by all the three authorities and still erroneously rejected the application.

6. Shri V.B. Patil, the learned Counsel appearing in support of the respondents, strenuously argued that the respondent No. 1 has paid the purchase price fixed by the Tahsildar somewhere in the year 1971, although late, and therefore, the application against the respondent No. 1 is not maintainable. So far as the respondents Nos. 2 & 3 are concerned none appeared, although served. There is a statement made by respondent No. 3 that she does not want to purchase the land and expressed her inability to pay the price of the land. The respondent No. 2, although served, has not appeared before the lower Courts or pleaded his case.

7. This Scheme under the provisions of section 38-E of the Tenancy Act, is very clear. On the tillers" day the ownership of the land held by such protected tenant has been transferred under sub-section (2) of section 38-E of the Tenancy Act

and certificate in the prescribed form declaring to be the owners, requires to be issued by the tribunal to every such protected tenant and a notice of such order shall simultaneously be issued to the land holder. Such a certificate shall be a conclusive evidence of protected tenant having become the owner of the land with effect from the date of the certificate. Under sub-section (3) of section 38-E of the Tenancy Act a landlord is supposed to make an application for fixing the price within 90 days from the date specified. If the landlord does not make an application in the specified time the Tahsildar is empowered to take proceedings and fix up the purchase price. In determining the purchase price all provisions of sub-section (4) to (9) of section 38 would apply mutatis mutandis to such an application. The proviso of sub-section (3) further lays down that if the protected tenant commits default in respect of any installment, it shall be recovered by the Government as arrears of land revenue and paid to the landholder. The second proviso further lays down that if the whole or any part of the price due to the landholder cannot be recovered as arrears of land revenue, the transfer shall not be effective and the amount, if any, already paid by the protected tenant towards the price shall be refunded to him together with interest at three per cent, per annum and the land revenue paid by him, if any, after deducting therefrom the rent for the period. It is useful to refer to sub-clause 6(d) of section 38 of the Tenancy Act. It lays down that-if the protected tenant or, as the case may be, ordinary tenant fails to pay the entire amount of the reasonable price within the period fixed under sub-section (5) or the same is not recovered from him, the purchase by the protected tenant or, as the may be, ordinary tenant shall not be effective and he shall forfeit the right of purchase of the land, and the amount paid by him towards the reasonable price shall be refunded to him with interest at three per cent, per annum together with land revenue paid by him if any after deducting therefrom the rent due from him for the period.

8. The provisions referred to above make it very clear the scheme for the compulsory purchase of the land by the protected tenant. It is a statutory transfer of ownership, and the purchase price is also to be fixed under the said provisions of the Act. In respect of land Survey No. 61/1 the price was fixed in the presence of the parties. The respondent No. 1 agreed to pay the said price of Rs. 4,115.12/- in 12 installments each year. That price was fixed on October 27, 1960. It is an admitted fact that till October 27, 1972 the respondent No. 2 has not paid a single farthing towards the purchase price. Somewhere in the year 1971 the learned Tahsildar without any authority of law altered the purchase price fixed by him to Rs. 205.20/-. I am unable to appreciate that the Tahsildar could exercise the power to alter the purchase price once fixed in the presence of the parties. There is no provision in the whole Act which empowers the Tahsildar to revise the purchase price. Accordingly the order passed by the Tahsildar and Agricultural Tribunal on August 27, 1971 fixing the purchase price of the land at Rs. 285.20/- is either arbitrary or without jurisdiction. Therefore, that order has got to be ignored since not sanctioned by law. Even assuming that the subsequent order dated August 27, 1971 was correct, still the said amount was

not paid within the stipulated period of 12 installments. The respondent No. 1 had admittedly paid some amount after April 11, 1975. It is, therefore, under the second proviso to section 38-E of the Tenancy Act or sub-section 6(d) of section 38 the purchase becomes ineffective and the tenants' right to purchase the land gets forfeited.

9. Shri V.B. Patil, the learned Counsel appearing in support of the respondents submitted that the State has to recover the purchase price by way of land revenue and in the absence of such procedure being followed by the State the purchase cannot be declared to be ineffective. I am unable to persuade myself to accept this submission. The power to recover the purchase price is also sought by the proviso to section 38-E. The first proviso lays down thatif the protected tenant commits default in respect of installment it shall be recovered by the Government as arrears of land revenue and paid to the landholder. The power is given under the said proviso to the State Government to recover the installments only. That power can be exercised by the Government till the expiry of the period specified. In the instant case that power could have been exercised by the State within 12 years from the date of fixing the purchase price. Admittedly the Tahsildar has not exercised that power till the expiry of the period specified by the Act. The said section does not empower the Tahsildar to extend the period once fixed by the authority.

10. The legal effect of the said proviso to section 38-E of the Tenancy Act is that the statutory purchase shall be ineffective and the right to purchase the land by the tenant is forfeited. The petitioner admittedly made an application after 12 years, from the date of fixing the price and the installments thereof. The price was fixed on October 27, 1960. The facts are not disputed by the respondent that they failed to pay the purchase price or any installment within the stipulated period fixed by the Tahsildar and Agricultural Tribunal. In view of those admitted facts the legal consequences must follow viz. declaring that the purchase has become ineffective and the right to purchase the land by the protected tenant or ordinary tenant is forfeited. It is, therefore, the purchase of the land Survey No. 61/1 by the respondent No. 1 has become ineffective and the right to purchase is forfeited. So far as respondents Nos. 2 & 3 are concerned, their purchase also should be declared to be ineffective. They have not paid any amount or installment towards the purchase price. The respondent No. 3 has expressed her inability to pay the amount and to purchase the land. The respondent No. 2 has not appeared to plead the case although served. The conduct of respondents No. 2 & 3 shows that they are not willing to purchase the land. It is, therefore, the declaration of ownership made in their favour shall be ineffective, and their right to purchase the land should also be forfeited. This Court in a reported judgment in Maharashtra Law Journal, 1983 in case of Hanumantrao Vithalrao v. Bhimrao and others Page 434, held that if the protected tenant refuses to purchase the land, such a transfer of ownership should be declared ineffective. The respondent No. 2 has made such a statement. Therefore, there is no difficulty in declaring her purchase to be ineffective. So far as the respondent No. 3 is concerned she

has not showed her willingness to purchase the land. Further she is not willing to plead her own case in this matter. Even she has not remained present in the Court or engaged any advocate although served. In view of this conduct, the purchase of land Survey No. 53/AA should be declared ineffective, and the right to purchase the land should be forfeited. All the three Courts below had not taken into consideration any of the provisions referred to above and, therefore, there is an error apparent on the face of the record which calls for interference by this Court under Article 227 of the Constitution of India.

11. In the result the rule is made absolute. The order passed by the learned Member of Maharashtra Revenue Tribunal dated August 14, 1979 in Case No. 103/B/76/PBN confirming the order passed by the Dy. Collector, Hingoli dated July 30, 1976 and that of the learned Tahsildar and Agricultural Tribunal dated September 6, 1976 is quashed and set aside. The purchase of the land by the respondents 1 to 3 is hereby declared ineffective and their right to purchase the land is also forfeited. In the facts and circumstances of the case there will be no order as to costs.