

(2003) 09 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 3617 of 1990

Shamrao Joti Kumbhar and Another

APPELLANT

Vs

Ramesh Khandu Sapre deceased through heirs Shailaja and
Others

RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G, 76
Constitution of India, 1950 — Article 227

Citation : (2003) 09 BOM CK 0048

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : Anil Desai, for the Appellant; M.R. Katikar, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—This writ petition under Article 227 of the Constitution of India takes exception of the judgment and order dated 5/6/1998 passed by the Maharashtra Revenue Tribunal, Kolhapur in Revision Application Nos. MRT/KP/55/87 and MRT/KP/56/87.

2. The land in question is land bearing Survey No. 98 situate at Kumbharwadi, Taluka - Radhanagari, District - Kolhapur, admeasuring 2 acres and 23 gunthas. The predecessor of the petitioners Joti Amruta Kumbhar was cultivating the land as a tenant. Proceedings u/s 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 were initiated. However, the tenant did not appear in the said proceedings. On account of which, the Additional Tahsildar by order dated 12/5/1961 declared the purchase to be ineffective. After that decision, the tenant Joti Amruta Kumbhar died. The petitioners herein, claim to be the heirs of the original tenant and having succeeded to her rights and interests in the said property, filed an application before the Tenancy Authority for restoration of proceedings u/s 32G of the Act sometime on 27/11/1972. Pursuant to that application, the proceedings were restored and fresh notices were issued by

order dated 18/12/1972. Pursuant to the said notices, the petitioners appeared and made joint statement before the Authority that they were unwilling to purchase the suit land. That statement was recorded by the Tenancy Authority on 28/12/1973. Accordingly, on the basis of the joint statement, an order came to be passed on 29/12/1973 and the tenancy stood terminated and the purchase became ineffective. The petitioners also made a statement that they were ready and willing to hand over possession of the suit land to the respondents-landlords. Against that decision, the petitioners carried the matter by way of two separate Appeals before the Assistant Collector, Shahuwadi Division, Kolhapur being (1) Tenancy Appeal No. 16 of 1986 and (2) Tenancy Appeal No. 17 of 1986 challenging the orders passed u/s 329 and 32-P proceedings. The Appellate Authority was pleased to allow the Appeals and remanded the matters for fresh consideration to the First Authority by judgment and order dated 30/4/1986. According to the Appellate Authority, proper procedure was not followed and that it was impermissible to record joint statement of unwillingness to purchase the suit land as was recorded by the Authority. Against this decision, the respondents filed Revision Application before the Tribunal. The Tribunal on analyzing the entire material on record found that both these above points expressed by the Appellate Authority were untenable. On the basis, the Tribunal concluded that there was no need of remanding the matters especially having regard to the express statement made by the tenants regarding unwillingness to purchase the suit land. The Revisional Authority has considered all aspects of the matter in paragraphs 5 and 6 of the impugned order to allow the Revision Application preferred by the respondents.

3. According to the petitioners, the Revisional Authority had exceeded its jurisdiction, for it could not have entertained the Revision against an order of remand. The learned counsel contended that the Appellate Authority had observed that the order passed by the First Authority was without following necessary procedure of law. In such a case, the question of entertaining Revision Application would not arise. The learned counsel further submits that in any case, the Revisional Application because, the same was barred by limitation and no sufficient cause was shown. Further contends, the learned counsel that, the Revisional Authority, in any case, could not have proceeded ex- parte against the petitioners and the petitioners are entitled to atleast one fair opportunity to contest the proceedings. On the above submissions, the learned counsel contends that the impugned judgment cannot be sustained.

4. On the other hand, the learned counsel for the respondents would contend that no fault can be found either with the approach or the conclusion reached by the Tribunal. He submits that the basis on which the Appellate Authority remanded the case has been found to be unavailable by the Revisional Authority: and on that finding, no fault can be found with the conclusion reached by the Revisional Authority. The learned counsel submits that there is no question of delay in filing of the Revision Application as has been rightly noted in paragraph 7 of the impugned judgment. Besides, the learned counsel has placed reliance on

the evidence which is available on record that notice regarding hearing of Revision Application was duly given to the petitioners and that notice has been acknowledge by the petitioners. In such a situation, it is not possible to even suggest that the order suffers from principles of natural justice as the petitioners have not availed of the opportunity which was offered to them.

5. Having considered the rival submissions, I have no hesitation in accepting the submissions advanced on behalf of the respondents. The first argument canvassed on behalf of the petitioners, to my mind, is inappropriate. Section 76 of the Act permits institution of Revision Application against any order of the Collector, much less a remand order. However, the scope of interference has been circumscribed by Section 76 for the exercising revisional jurisdiction. In the present case, the Revisional Authority has found that the Appellate Court was completely misguided in assuming that no appropriate procedure was followed or that recording of joint statement was impermissible in law; and if that finding is to prevail then no fault can be found with the interference in revisional jurisdiction by the Tribunal. Understood thus, it is no possible to even suggest that no revision is available against order of remand passed by the Appellate Authority. Therefore, the first argument should fail.

6. The next argument canvassed on behalf of the petitioners that the Revision Application was barred by limitation and ought not to have been entertained as no sufficient cause was shown, is also without any merit. The Revisional Authority has considered this aspect in paragraph 7 of the Appellate Authority was passed on 30/4/1986 and the intimation whereof was sent on 31/12/1986 which was actually received by the respondents on 3/2/1987. Since, the Revision Application was filed immediately thereafter, the question of the same being barred by limitation does not arise because the limitation would commence only after the intimation of the decision is received by the respondents on 3/2/1987. The revisions has been filed within the statutory period from that date i.e. 3/2/1987. Therefore, even the second objection raised on behalf of the petitioners would fail.

7. That takes me to the third aspect canvassed before this Court. On perusing the record, I found that the petitioners were given sufficient notice of the revisional proceedings which fact is established from the acknowledgement which is available on record. If the petitioners had notice about the revisional proceedings and they have failed to appear before the authority, that would not mean that the revisional authority has decided the matter in breach of principles of natural justice. There is nothing on record to show as to what prevented the petitioners from appearing before the Revisional Authority. No case has been made out in that behalf in the memo of Writ Petition as filed. Understood thus, it is not open for the petitioners to blame the revisional Authority having proceeded with the matter ex-parte since the petitioners themselves failed to avail of the opportunity given to them pursuant to the notice received by them. Therefore, even this contention does not merit any interference.

8. In so far as the merits are concerned, I am in agreement with the opinion expressed by the Revisional Authority. As can be discerned from paragraphs 5 and 6 of the judgment, there is no procedural infirmity. The record clearly indicates that pursuant to the application filed by the petitioners' proceedings u/s 32G were restored and fresh notices were issued to the parties pursuant to which the petitioners appeared before the First Authority. On making appearance before the First Authority, a joint statement came to be made regarding the unwillingness to purchase the suit land. There is nothing on record to suggest that the petitioners have disputed the correctness of the statement so recorded by the First Authority. The only argument canvassed before me, for the first time, is that the petitioners, later on, filed an appeal. That does not mean that the correctness of the statement is disputed by them. According to the Appellate Authority, recording of joint statement was impermissible. The Appellate Authority has mentioned that recording of joint statement is not permitted by the provisions of Evidence Act. No specific provision has been adverted to by the Appellate Authority. Moreover, the learned counsel for the petitioners fairly accepts that there is no express provision either in the Evidence Act or, for that matter, in the Tenancy Act which prohibits recording of joint statement. If that is so, no fault can be found with the joint statement recorded by the First Authority and, that, since the correctness of that statement has not been disputed, the question of ignoring that statement does not arise whereas, the same would bind the petitioners. Understood thus and for the other reasons recorded by the Revisional Authority, to my mind, no interference is warranted in exercise of writ jurisdiction.

9. Hence, the above writ petition is dismissed with no order as to costs.