
(1995) 03 BOM CK 0023
In the Bombay High Court
Case No : Writ Petition No. 2671 of 1990

Shankar Kharat	Vs	APPELLANT
Namdeo Kharat (Mali) and Another		RESPONDENT

Date of Decision : 16-03-1995

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 111, 57

Citation : (1996) 2 BomCR 473 : (1996) 1 MhLj 717

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

Bench : Single Bench

Advocate : V.N. Patil, for the Appellant; A.M. Gordey, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Lodha, J.

1. By this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner is seeking to challenge the legality and correctness of the order dated 27-12-1989 passed by the Maharashtra Revenue Tribunal, Nagpur (for short, the "M.R.T.") whereby the M.R.T. allowed the revision application filed by the respondent No. 1 herein and set aside the order passed by the Sub-Divisional Officer, Mehkar on 24-3-1986 and restored the order passed by the Tahsildar on 11-10-1985.

2. The only contention raised by the learned Counsel for petitioner in support of the writ petition is that revision application filed by the respondent No. 1 herein before the M.R.T. against the order dated 24-3-1986 passed by the Sub-Divisional Officer was not maintainable u/s 111 of the Bombay Tenancy & Agricultural Lands (Vidarbha Region) Act, 1958 (for short, the "Tenancy Act of 1958"). In support of his contention, Mr. Patil the learned Counsel for petitioner relied upon decision of this Court in Shree Vyankatesh, Collector, Staff Co-op. Housing Society v. Ramchand Bapurao & others, 1986 Mah.L.J. 421.

3. On the other hand, Mr. Gordey, the learned Counsel for the respondent No. 1 submits that the revision application filed by the respondent No. 1 before the M.R.T. aggrieved by the order dated 24-3-1986 passed by the Sub-Divisional Officer, Mehkar (for short, the "S.D.O.") was maintainable u/s 111 of the Tenancy Act of 1958. In support of his contention, Mr. Gordey relies upon, Ganpatlal Baldeo Chamedia v. Purushottam Ramgopal 1985 Mah.L.J. 123. Mr. Gordey also submits that the respondent No. 1 was party before the S.D.O. and since the order dated 24-3-1986 was passed against him, there was no bar in filing the revision by the respondent No. 1 herein before the M.R.T. u/s 111 of the Tenancy Act of 1958.

4. To appreciate the rival contentions of the learned Counsel for the parties, few relevant facts may be noted. Respondent No. 1 Namdeo was the original owner of fields Survey No. 103/6, area 2.13, acres and Survey No. 99/8, area 15 gunthas of village Jambhora, Tahsil Sindkhedraja, District Buldana. Since respondent No. 2 Sakharam was tenant in the said land, in the proceedings u/s 46 of the Tenancy Act of 1958, an order dated 30-9-1969 was passed whereby ownership of the aforesaid land was conferred on the respondent No. 2 Sakharam. It appears that in the year 1979, Sakharam transferred the aforesaid land by way of registered sale deed to the petitioner and since according to the respondent No. 1 the said transfer was in contravention of section 57 of the Tenancy Act of 1958, he made an application before the Tahsildar, Sindkhedraja which was registered as Revenue Case No. 1/59/32/82-83 Jambhora. Tahsildar held enquiry. The respondent No. 1 examined his son Ramrao. The present petitioner Shankar also examined himself. After holding enquiry, the Tahsildar concluded that the transfer has been made by respondent No. 2 Sakharam to the present petitioner Shankar without obtaining prior permission from the Collector, Buldana and, therefore, the said transfer was in contravention of section 57 of the Tenancy Act. The Tahsildar, thus directed that the transfer was without the order of the Competent Authority and in contravention of the provision of section 122(1) and (2) of the Tenancy Act of 1958.

5. Dissatisfied with the order passed by the Tahsildar on 11-10-1985 holding the transfer to be in contravention of section 57 of the Tenancy Act and initiation of action u/s 122(1), (2) of the Tenancy Act, the present petitioner Shankar filed an appeal before the S.D.O., Mehkar. During the pendency of appeal, it was brought to the notice of the S.D.O. that on 15-4-1985, permission has been granted by the Collector, Buldana and, therefore, it cannot be said that there was any contravention of section 57 of the Tenancy Act. In view of this submission, the S.D.O. allowed the appeal, set aside the order passed by Tahsildar on 11-10-1985.

6. Respondent No. 1 herein was aggrieved by the order passed by the Sub-Divisional Officer and challenged the said order by filing revision u/s 111 of the Tenancy Act of 1958. The M.R.T. after hearing the learned Counsel for the parties held that u/s 57 of the Tenancy Act, permission was required to be obtained prior

to the transfer and since no prior permission was obtained, transfer made by respondent No. 2 Sakharam in favour of petitioner Shankar was in contravention of section 57 of the Tenancy Act and consequently, set aside the order passed by the S.D.O. and restored the order of Tahsildar dated 11-10-1985.

7. Section 57 of the Tenancy Act of 1958 reads as under :-

"57(1) No land purchased by a tenant u/s 41 or 46 or 49-A or 57-D or 130 or sold to any person u/s 91 or 122 shall be transferred by sale, gift, exchange, mortgage, lease or assignment without the previous sanction of the Collector. Such sanction shall be given by the Collector in such circumstances and subject on such conditions as may be prescribed by the State Government. (2) Any transfer of land in contravention of sub-section (1) shall be invalid: Provided that nothing in this section shall apply to the lands purchased by an occupancy tenant".

8. Section 107 of the Tenancy Act of 1958 reads as under :- "107(1) An appeal against the order of the Tahsildar or Tribunal may be filed to the Collector in the following cases :- (a-i)..... to (ya) (za) an order u/s 122, and Provided that where an order has been passed by a Sub-Divisional Officer exercising powers of a Tahsildar under a notification issued under sub-section (3) of section 2 an appeal against such order shall lie to the Collector-in-charge of the District. (2) Every petition for an appeal under sub-section (1) shall be accompanied by a certified copy of the order to which objection is made unless the production of such copy is dispensed with....."

9. Section 111 of the Tenancy Act of 1958 reads as under :- "111(1) Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1957, an application for revision may be made to the Maharashtra Revenue Tribunal constituted under the said Act against any order of the Collector on the following grounds only :- (a) that the order of the Collector was contrary to law ; (b) that the Collector failed to determine some material issue of law; or (c) that there was a substantial defect in following the procedure provided by this Act, which has resulted in the miscarriage of justice. (2) In deciding applications under this section the Maharashtra Revenue Tribunal shall follow the procedure which may be prescribed by rules made under this Act after consultation with the Maharashtra Revenue Tribunal".

10. It is admitted by the learned Counsel for the petitioner that appeal was preferred by the petitioner u/s 107 of the Tenancy Act of 1958 aggrieved by the order passed by the Tahsildar on 11-10-1985 u/s 57 of the Tenancy Act of 1958. It is also not disputed by the learned Counsel for the petitioner that till date no order has been passed by the Tahsildar in the proceedings u/s 122 of the Tenancy Act and the order passed is only u/s 57 of the said Act. It is admitted by the learned Counsel for petitioner that appeal was filed by the present petitioner against the order passed by Tahsildar u/s 57 by invoking the provisions of section 107 of the Tenancy Act of 1958. A bare perusal of the provisions of section 107

would reveal that no appeal is provided against the order u/s 57 and only the order passed u/s 122 is appealable. Since no order u/s 122 of the Tenancy Act of 1958 has been passed, no appeal lay against the order of the Tahsildar which was passed by the Tahsildar which was passed u/s 57 of the Tenancy Act. Be that as it may, the grievance in the writ petition raised by the learned Counsel for petitioner is that the revision application filed by the respondent No. 1 before M.R.T. against the order dated 24-3-1986 passed by the S.D.O. was not maintainable.

11. Perusal of section 111 of the Tenancy Act of 1958 would show that application for revision may be made to the M.R.T. against the orders of the Collector on the grounds mentioned in Clauses (a), (b) and (c) thereof. There is no restriction that revision has to be filed by a particular category of persons. Undisputedly, the proceedings u/s 57 were initiated at the instance of the respondent No. 1 and the order was passed by the Tahsildar on 11-10-1985 at the instance of the respondent No. 1 in the application filed by him u/s 57 and in appeal having been filed by the petitioner against the order of the Tahsildar before the Sub-Divisional Officer, the respondent No. 1 was also respondent No. 1. therein. Thus, when the S.D.O. decided the appeal in favour of the present petitioner, the respondent No. 1 who was respondent No. 1 also in appeal, aggrieved by the order passed by the S.D.O. could challenge the said order in a revision u/s 111 of the Tenancy Act, 1958. No restriction is imposed in section 111 permitting only a particular class of persons to prefer revision. Naturally, when the respondent No. 1 was a party before the S.D.O. and after hearing him some order came to be passed which was not in accordance with law, the respondent No. 1 was competent to file revision application u/s 111 of the Tenancy Act of 1958 before the M.R.T.

12. In Ganpatlal Baldeo Chamedia's case (cited supra), this Court while considering the entitlement of the original landlord to file an application u/s 122 of the Tenancy

Act held as under :-

"5-A The first question that has to be therefore examined in this petition is whether the respondent No. 1, to whom originally the suit land belonged, is "a person interested in such land" (i.e. the suit land)" within the meaning of section 122(1) of the Tenancy Act. Reliance is placed on behalf of the petitioner upon two decisions. The first decision is of the Supreme Court in the case of *Adi Pheroze Shah Gandhi v. Advocate General of Maharashtra, Bombay* in which the question involved was whether the Advocate General of Maharashtra is "a person aggrieved" within the meaning of section 37(1) of the Advocates Act so as to maintain in appeal to the Bar Council of India against the decision of the disciplinary committee of the State Bar Council. The Supreme Court has held in the said decision that the Advocate General is not a person aggrieved within the meaning of the said section. Following the said decision the Allahabad High Court has held in the case of *State of Uttar Pradesh v. Smt. Ram Sri*, that in order to be

entitled to file an appeal a person must have a legal grievance which might have deprived him of the benefit in the case if the judgment had gone the other way. However, in facts of the case the Court held in the aforesaid decision that the State of Uttar Pradesh was an aggrieved party and the appeal filed by it was maintainable.

6. In dealing with the above question in this petition I am not directly concerned with the concept of a "person aggrieved" for the purpose of an appeal. The expression "any person interested in such land" occurring in section 122(2) of the Tenancy Act, to give such a person a locus standi to file an application under the same must be construed in the light of the provisions of the said Act looking to its objects and its" scheme. After vesting the right of ownership upon the tenants the said right is hedged in by certain restrictions carved u/s 57(1) of the Tenancy Act. Since the main object of the Tenancy Act is that the land should be owned by the tiller of the land a restriction is imposed upon the tenant of the land who becomes its owner being in its cultivating possession that he shall not transfer the said land by sale, gift, exchange, mortgage, lease or assignment without the previous sanction of the Collector. The restriction u/s 57(1) is intended to be mandatory because any transfer in breach of section 57(1) is declared invalid by section 57(2) of the Tenancy Act.

9. Since the provisions of the Tenancy Act, and in particular the provisions of section 122(1) of the said Act, are intended to serve a social purpose it is necessary in my view to give a liberal construction to the expression "any person interested in such land" occurring therein. The expression "any person interested in such land" need not be restricted only to such persons who have actual interest in the land at the time of making an application u/s 122(1) of the Tenancy Act but may cover those who had previously an interest in such land or those in whom in future the interest may be created under sub-section (4) of section 122. It is pertinent to notice that by filing an application u/s 122(1) any person does not get any benefit to himself because if the transfer or acquisition is declared invalid the land vests in the State under sub-section (3) of section 122 of the Tenancy Act. It is only some of the persons or bodies who are covered by the order of priority given in sub-section (4) of section 122 read with section 84 of the Tenancy Act to whom the land is disposed of who are likely to benefit by getting such land from the State Government. The theory of "present and immediate interest in the land" is, therefore, absent in the scheme of section 22(1) of the Tenancy Act. The concept of "person aggrieved" cannot be, therefore, made applicable in construing locus standi of the persons to initiate proceedings u/s 122(1) of the Tenancy Act. The decisions, therefore, relied upon on behalf of the petitioner in this regard are not apt for construing the phraseology "any person interested in such land" used in section 122(1) of the Tenancy Act is not "any person having interest in such land" but is an expression, "any person interested in such land". If the former expression were used it would contemplate some definite tangible interest in the land as such. The same strict connotation is not attached to the later expression which has a wider connotation

than the former.

10. In my view, what has to be seen in considering the locus standi of a person to initiate proceedings u/s 122(1) is that a person who moves the Tahsildar thereunder should not be a mere stranger, an inter-meddler or a busy body but must have some nexus with the land in question so that the application by which the enquiry which he puts into motion u/s 122(1) and which is pro bone publico to effectuate the purpose of the Act is not frivolous or mala fide. In the instant case the respondent No. 1 was admittedly the previous owner of the suit land and was, therefore, "a person interested in such land" within the meaning of section 122(1) of the Tenancy Act as he had thereby sufficient nexus with the land to cause inquiry into matters covered u/s 122(1). Similarly in my view a person who is covered by any of the priorities given in section 122(4) of the Tenancy Act has also a sufficient nexus to initiate the proceedings u/s 122(1) although he may not have any present or immediate interest, in the land. I may refer in this regard to a decision of the Supreme Court in the case of Bhikoba Dhumal (Dead) by Legal Representatives and others v. Mohanlal Punamchand and others, in which in interpreting section 33 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, the Supreme Court held that any person entitled to grant of surplus land on its distribution under any of the provisions of the ceiling Act can question in appeal an order resulting in reducing the extent of total surplus land (see para 11 of the report). On the same analogy, a person who fails in the order of priority given in section 122(4) of the Tenancy Act is a person competent to initiate the proceedings u/s 122(1)".

13. Case of Ganpatlal Baldeo came up for consideration before this Court in Shree Vyankatesh, Collector Staff Co-operative House Society's case (cited supra), and this Court held as under :-

"7. The first question raised on behalf of the petitioner was regarding the locus standi of respondent Nos. 4 to 6 to file revision application before the Maharashtra Revenue Tribunal. It was urged that these respondents had no interest left in the property in their capacity as successor-in-interest of Narottamdas Suchak after Bapurao had become the owner of the field Survey No. 62/1 of Yavatmal. Such persons cannot have any right, muchless the locus standi to interfere with the property that passed on to Bapurao and thereafter to respondents Nos. 1 to 3. On the other hand, it was very vehemently contended on behalf of respondents Nos. 4 to 6 that though these respondents have lost the interest in the property, they can still have right to raise objection on the ground of public interest. In this connection reliance was also placed on behalf of the respondents on a decision of this Court in Ganpatlal v. Purushottam, 1985 Mah.L.J. 123.

8. In the aforesaid case the statutory owner mortgaged the land by simple mortgage on 24-4-1970 with the Land Development Bank, continuing the possession of land with the mortgagor. An application was moved by the ex-landlord that there was a breach committed by the tenant of section 57 of the

Act, since he had mortgaged the land without the previous sanction of the Collector. The application was rejected by the Additional Tahsildar and the appeal was also dismissed by the Sub-Divisional Officer. The Maharashtra Revenue Tribunal allowed the revision, which order was impugned in this Court. It was held that the original landlord was entitled to file an application u/s 122 of the Act. The expression, "any person interested in such land" was interpreted to include persons who had interest in the land.

9. The aforesaid case can have no application to the facts involved in the present case. In Ganpat's case (cited supra) the power to file an application through an interested person flowed from section 122 of the Act. No such provision is pointed out by which the ex-landlord could raise objection being interested in the property. Merely stating that respondent Nos. 4 to 6 could intervene on the ground of public interest is not enough. Even looking to the object of the Act, the land which was purchased by the tenant should not be allowed to be alienated to defeat the purpose of the Act or the land should not be allowed to be lost knowingly or unknowingly and, therefore, such alienation or loss is made subject to the provisions of section 57(1) of the Act. No doubt, the power of the Collector to accord the sanction is limited and confined to such conditions as may be prescribed by the Rules. Nonetheless the power can be exercised in bona-fide and genuine cases, and the concerned authority has power to sanction the intended transaction. In such circumstances, I do not see how other persons having no interest left in the property could, on the ground of public interest, have a right of interference. In my opinion, respondents No. 4 to 6 have no locus-standi to intervene in the matter and create impediment in the affairs of the property in the hands of respondents Nos. 1 to 3 and which property was lost to respondents Nos. 3 to 6 years back. Consequently, respondents No. 4 to 6 had no right to file the objection before the Sub-Divisional Officer, Yavatmal or even to prefer the revision application before the Maharashtra Revenue Tribunal at Nagpur".

14. The case of Shree Vyankatesh, Collectors Staff Co-operative Housing Society v. Ramchand, (cited supra) has no application in the facts and circumstances of the present case. As observed above, in the present case an application u/s 57 of the Tenancy Act was filed by the respondent No. 1 who was original owner of the land in question challenging the transfer of land made by respondent No. 2 to the petitioner. Locus standi of the respondent No. 1 in making the application u/s 57 of the Tenancy Act was never challenged before the Tahsildar by the petitioner. Application u/s 57 filed by the respondent No. 1 before the Tahsildar was, thus decided on merits. Section 57 of the Tenancy Act creates restriction on transfers of land purchased or sold under the Act and whenever there is contravention of section 57, if the previous owner brings to the notice of the Tahsildar by making an application u/s 57 of the Tenancy Act, that statutory purchaser has contravened the provisions of section 57 in transferring the land without seeking previous sanction of the Collector, it cannot be said that the previous owner had no locus standi to make such an application. The respondent No. 1 cannot be

said to be a mere stranger or a busy body having no nexus with the land in question. That was the reason that before the Tahsildar when an application was made by the respondent No. 1 u/s 57 of the Tenancy Act, no challenge was made to his locus standi. When, before the Tahsildar no such objection was raised by the present petitioner about the locus standi of the respondent No. 1, it is not permissible for the petitioner now to raise an objection that revision filed by the respondent No. 1 aggrieved by the order passed by the Sub-Divisional Officer challenging the order of Tahsildar was not maintainable. The order of the Tahsildar dated 11-10-1985 has been passed on the application made by the respondent No. 1 and it was the petitioner who was aggrieved by the said order and he filed appeal before the Sub-Divisional Officer. Without going into the merits of the maintainability of the appeal filed by the present petitioner, because section 107 does not contemplate filing of appeal against the order passed on the application u/s 57 of the Tenancy Act, it may be observed that in the appeal filed by the petitioner, the respondent No. 1 herein was also respondent No. 1 therein and after hearing the parties, the order came to be passed by the Sub-Divisional Officer by which the order of the Tahsildar was set aside. In this view of the matter, it is clear that in the present case, the observations made in Ganpat's case (supra) are applicable and it cannot be said that the revision application filed by the respondent No. 1 before the Tribunal against the order of the Sub-Divisional Officer was not maintainable.

15. No challenge has been made by the learned Counsel for the petitioner on merits of the order passed by the Maharashtra Revenue Tribunal.

16. Consequently, there is no merit in this writ petition and the same is dismissed with no order as to costs. Rule is discharged.