
(1955) 02 BOM CK 0017
In the Bombay High Court
Case No : First Appeal No. 607 of 1953

Shankar Shiddappa Kore

APPELLANT

Vs

Jaysingrao Lingoji Desai

RESPONDENT

Date of Decision : 11-02-1955

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 64

Citation : (1955) 57 BOMLR 505

Hon'ble Judges : Gokhale, J;Bavdekar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bavdekar, J.—This is an appeal arising from a suit filed by the appellant for recovery of possession of S. No. 264/2 of the village of Ankli in Taluka Chikodi. The land was Inam land and originally belonged to defendant No. 1 Jayasingrao, who got it converted into rayatava land on October 27, 1947. He sold it to the plaintiff on March 9, 1949, for Rs. 11,000. It was his case however that the agreement of sale had taken place on December 1, 1948, and the sale was effected in pursuance of the agreement. The contesting defendant was defendant No. 2 and he claimed that the sale deed was void as being in contravention of Section 64 of the Bombay Tenancy Act. Defendant No. 1 admitted that he sold the land to the plaintiff but said that he had received only Rs. 10,500 for it and not Rs. 11,000. He said that he could not hand over possession to the plaintiff because defendant No. 2 was a protected tenant. So far as the question of the agreement was concerned, he supported defendant No. 2's case that the agreement was antedated.

2. The learned trial Judge has held that there was no agreement to sell on December 1, 1948 and the agreement as a matter of fact took place at or about the time when the sale was effected, and the document which is relied upon in support of an agreement of sale on December 1, 1948, was ante-dated. He held that consequently the sale was void u/s 64 of the Bombay Tenancy Act and

dismissed the plaintiff's suit.

3. The plaintiff has come in appeal, and the first point which has been made on his behalf is that in this case there was no Tribunal constituted for performing the duties and functions laid upon the Tribunal under the Act; that there was also no form proscribed for the purpose of the landlord intending to sell his land, making offers to persons to whom he has got to make offers in turn u/s 64(2); and finally that certain supplementary procedure has been prescribed by rules which came into operation on April 27, 1949. It is contended consequently that Section 64 of the Act did not come into operation or become effective till the forms were prescribed and the supplementary procedure was laid down by rules on April 27, 1949, and the sale was therefore valid.

4. Now, in support of this proposition reliance is placed upon a passage in para. 105 at p. 151 of Crawford's Statutory Construction :-

As will be seen hereafter, statutes do not always take effect upon their enactment but the effective date may be postponed either by virtue of their own provisions, or by the terms of a general law or a constitutional requirement upon the subject. In fact, constitutional provisions governing the time for statutes to take effect will be found in at least thrityone states, and most of the others fix the effective date by general states.

We do not understand this passage to mean that the operation of a statute is postponed because a portion of it contemplates the doing of something, in this case the appointment of a Tribunal, and that something is not done. What the passage means is that there may be provisions in the statute itself, for example, that it will come into operation on a particular date or such date as may be notified by the Central Government or the Provincial Government, for its coming into operation. When that is the case, the operation of the whole or a portion of the statute will be postponed in virtue of its own provisions. That this is the moaning of the passage is quite clear from the fact that reference is made in the passage to "constitutional provisions governing the time for statute to take effect." As a matter of fact, even in Bombay the Bombay General Clauses Act provides in Section 5 for the coming into operation of a statute upon particular dates, though this of course is subject to the statute not providing to the contrary. It is not possible therefore to accept the contention that Section 64 of the Bombay Tenancy Act did not come into operation or become effective either because there was no appointment of a Tribunal or officer to perform the duties and functions of the Tribunal or because the form in which offers had to be made u/s 64(2) had not been prescribed or because certain supplementary proceedings relating to the procedure of a Tribunal were prescribed by rules made under the Act only on April 27, 1949.

5. It is nevertheless correct to say that if no Tribunal or officer so empowered to per form the duties and functions of the Tribunal was appointed, the sale could not possibly be held invalid. But that would be because it could not be said that

there was a contravention of Section 64(1) of the Act. In order that any one could be said to have contravened a particular section, it must be shown that he acted against its provisions, If there is appointed a Tribunal or officer who could perform the duties and functions of the Tribunal because he is so empowered, then failing to make an application to him as required by Section 64(1) would be acting against the provisions of that sub-section. But it is obvious that if a Tribunal or officer empowered to act as a Tribunal is not appointed, no landlord intending to sell his land could possibly make an application to him. It would not be correct to say therefore that in not making such application he contravenes the provisions of Section 64(2). Failure to do what the statute requires does amount to contravention, but no statute requires or expects anyone to do the impossible.

6. In this case, however, the Mamlatdar had been empowered at the time when the sale in this case took place to perform the duties and functions of a Tribunal. We do not wish to go in this appeal into the question as to whether the agreement of sale took place on December 1, 1948, or it took place at or about the time when the sale was effected, for the reason that so far as this Court is concerned the position is quite clear now that whenever an agreement may have taken place, if the sale deed is executed after the coming into operation of the section, then the sale is void: Appa Ganpat v. K.B. Wassoodew (1954) 56 Bom. L.R. and Bhima Balu Vs. Basangouda Mamgouda, That, of course, pro-supposes that the landlord could have made an application and followed the procedure laid down in Section 64 of the Act.

7. The principal question in this appeal, however, is whether it can be said that the landlord had contravened the provisions of Section 64, even though no form had been prescribed in which he could under the provisions of Section 64(2) make offers successively to the persons mentioned therein. Now, what Section 64(-3) provides is that a sale held in contravention of Section 64 is void. Section 64 would necessarily include each one of the preceding sub-sections and consequently a sale would be void even if it contravened the provisions of one of the two sub-sections. A landlord may, for example, make an application to the Tribunal in order to have a reasonable price fixed but may not make an offer as referred to in Section 64(2), in spite of the fact that the Tribunal had fixed a reasonable price. It cannot possibly be said in that case that the landlord has not contravened the provisions of Section 64.

8. Mr. Datar, who appears on behalf of the appellant, concedes that, but says that the whole of Section 64 embodies a scheme and it cannot be separated into several parts. The idea underlying the making of an application by the landlord to the Tribunal for fixing a reasonable price is that the landlord should be able to make in turn offers to sell the land at that price to the various persons mentioned in Section 64(2). It is only if he finds that none of the persons will buy his land at the price fixed by the Tribunal that he can sell the land to any one he likes. Mr. Datar argues that it is no use making an application to the Tribunal if

the landlord is inevitably going to be met with a difficulty, when the price has been fixed, in regard to the making of offers to the persons mentioned in Section 64(2). Now, once it is conceded that before the landlord could sell the property to any persons not mentioned in Section 64(2) or for the matter of that even to those persons he must follow the procedure which has been provided for in Section 64, any breach of any of the provisions would amount to contravention of the section. If the landlord fails to make an application when he could have made it, he could say that the failure to make the application does not amount to contravention of the section only in case it is shown that making an application was futile. It is not possible to say, however, that his making an application when no form had been prescribed in which he could make offers successively to persons mentioned in Section 64(2) was a useless procedure likely to turn out a waste of time, for the reason that the Local Government must have been contemplating making rules u/s 82 and prescribing the form referred to in Section 64(2). As a matter of fact, the rules and the forms were published on April 27, 1949, in about a month and a half after the sale in this case took place. It could not be said, therefore, that making an application was useless ; for, what the landlord knew, the rules might have been made long before the Tribunal fixed the reasonable price. In fixing a reasonable price u/s 12 of the Act the Tribunal has to follow the procedure laid down under the Code of Civil Procedure. It would obviously, therefore, give notice to the tenant and to any other persons which it considers should be notified and then it would have to take evidence to determine the reasonable price of the property. Mr. Datar's contention is that in this case we should not allow ourselves to be influenced by the fact that the rules framed under the Act under which the form has been prescribed came into force on April 27, 1949. Now we are not being influenced by that fact. We are merely pointing out that in this case the rules came into force within a very short time after the date of the sale, in order to reinforce what we said above that it must have been obvious that the State Government must have been busy framing rules. In any case, there was nothing to show to the landlord that the rules would not come into force before the Tribunal fixed the reasonable price. That is why it is impossible to accept the contention that it was a useless formality for the landlord to make an application to the Tribunal.

9. For the same reason we do not think that there is any force in the contention that the landlord was absolved from the necessity of making an application because any rules of procedure were framed on April 27, 1949. Any rules so framed may be called supplementary to the procedure laid down by the Act itself, which the Tribunal is required to follow. Even if those rules had been there, there was available the procedure laid down by the Act itself for the Tribunal. It could follow that procedure in proceedings for the determination of reasonable price of the land.

10. The next point which has been made is that the Mamlatdar of Chikodi has been appointed to do the duties and functions of the Tribunal, but making an application to him would not have amounted to making an application to the

Tribunal which is the requirement of Section 64(1). Now, we do not think that there is any substance in this contention. It is quite true that the application which Section 64(1) requires has to be made to a Tribunal. "Tribunal" has been denned to mean a Tribunal constituted u/s 67. Sub-section (3) of Section 67 itself provides that the Local Government may empower any person to perform the duties and functions of the Tribunal and to exercise its powers. The Mamlatdar who has been appointed consequently to perform the duties and functions of a Tribunal would have the duty consequently of entertaining an application u/s 64(1). It is obvious, therefore, that even if no Tribunal was constituted for the area in which the land in suit is situated, a landlord could make an application to the Mamlatdar. It is impossible to hold that it was the duty of the Mamlatdar to entertain an application u/s 64(1) if it was made to him and yet to hold that the landlord could not make an application to him or that any application whioh he made to him would not satisfy the requirement of Section 64(1) which requires that the application must be made to the Tribunal. That is apart from the fact that "Tribunal" has been defined as a Tribunal constituted u/s 67 and the Mamlatdar is appointed to perform the duties and functions of the Tribunal under Sub-section (3) of that section.

11. The learned trial Judge was, therefore, quite right in holding that the sale was void u/s 64.

12. The rest of the judgment is not material to the report.

13. The appeal having failed substantially is dismissed with costs.