
(2002) 01 BOM CK 0111

In the Bombay High Court

Case No : Writ Petition No. 4502 of 1988

Shantabai Surayakant Bankar

APPELLANT

Vs

Laxman Balk Madane and Others

RESPONDENT

Date of Decision : 09-01-2002

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32F, 32O, 32O(1A)
Bombay Tenancy and Agricultural Lands Rules, 1956 — Rule 20
Constitution of India, 1950 — Article 227

Citation : (2002) 3 BomCR 647 : (2002) 1 BOMLR 422 : (2002) 2 MhLj 616

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : Rege and D.R. More, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

1. Writ Petition pertains to the year 1988 and it has been taken on board for final hearing with due intimation. Therefore, this petition is being heard and decided finally treating the respondents exparte.

2. Few facts need to be stated for understanding the matter in a better way. The petitioner happens to be the tenant of the suit land bearing Gut No.565, situated at village Madhve, Tal. Baramati, District Pune and the suit land belonged to one late Balku Sadu Madane. After the death of Balku Sadu Madane the present respondents name were brought on record by mutation entry No.2925. The petitioner filed application before A.L.T. and Tahasildar, Baramati on 12/11/1984 stating therein that late Shri Balku Sadu Madane had leased the suit land to her in the year 1973-74 and since then, she was cultivating the said land. His Tenancy was created after tillers day, the provisions of section 32 of Tenancy Act happened to be applicable and in view of that intimation was given to landlord about tenants desire to purchase the said land on 26/4/1974 and consequently the request was made for fixing the purchase price of the suit land.

3. The Additional Tahasildar and A.L.T. Baramati held enquiry u/s 32 O of

Bombay Tenancy and Agricultural Lands Act 1948 (hereinafter referred to as Act for convenience). It fixed the purchase price by the judgment and order dated 28/10/1985 in Tenancy Case No.320 of Madhave 157/84.

4. Being aggrieved by the said judgment and order dated 28/10/1985 in Tenancy Case No.320 Madhave 157/2984 the respondents No.1 to 3 preferred appeal bearing No.56/1985 before the learned Sub-Divisional Officer, Baramati, Division Baramati. The learned S.D.O. Baramati decided the said appeal by its judgment and order dated 5/2/1987 and confirmed the judgment and order passed by A.L.T. and Additional Tahasildar, Baramati.

5. Defeated landlord filed Revision Application before M.R.T. and M.R.T. passed judgment and order in that revision application No.M.R.T.P-IV-2/87 (TEN-B 88/87) on 26/7/1988 and allowed the revision application and quashed the judgment and order passed by A.L.T. and Additional Tahsildar as well as S.D.O., Baramati.

6. The said judgment and order passed by the learned Member of M.R.T. is being assailed by this writ petition.

7. Shri Rege, Counsel appearing for the petitioner submitted that the learned Member of M.R.T. without sufficient grounds dislodged the finding of facts concurrently recorded by two Courts below and appreciated the evidence on his own accord which was not permissible by the jurisdiction vested in him. He submitted that the findings of facts recorded by both the Courts below were borne out by the evidence on record. He pointed out that both the Courts held that there were entries in 7/12 extracts for continuously 12 years showing that, the present petitioner was the tenant of the suit land and nothing contrary was brought on record. Therefore, in view of that , both the Courts were correct in coming to the conclusion that the petitioner happens to be the tenant of the suit land. He submitted that when that was so, there was no reason for the learned Member of M.R.T. to dislodge it and when he did so, he crossed his jurisdiction and therefore, on that count the judgment and order passed by him needs to be set aside.

8. Shri Rege further submitted that the learned Member held that in the present case the tenant did not give the notice in prescribed form No.X expressing his desire to purchase the land. He submitted that the said view taken by the learned Member of M.R.T. is contrary to the view taken by this High Court in Special Civil Application No.159 of 1969 and view taken in Writ Petition No.2606 of 1982. Shri Rege submitted that, though these judgments are dealing with section 32F, phraseology used in sections 32F and 32O in respect of giving intimation is the same. Shri Rege further submitted that keeping in view the benevolent spirit behind enacting Bombay Tenancy and Agricultural Lands Act 1948 such technicalities should not be brought into play for rejecting the rightful right of tenant to purchase the land.

9. This Court finds substance in his submission. The Act has been brought in

existence for the purpose of protecting the tenants who are cultivating the lands prior to tillers day i.e. 1/4/1957. It is for the purpose of increasing the agricultural produce, strengthening the rural economy and developing the agriculture at large. In view of that the Act marched towards the goal of making tillers the owners of the lands which they were tilling prior to 1.4.1957 (tillers day). Section 32O speaks two things one the right of a tenant who happens to be the tenant of the agricultural land to purchase it and secondly the necessity of giving intimation of his intention to purchase the land. It is pertinent to note that, the language used in section 32F, subsection (1A) is "A tenant desirous of exercising the right conferred on him under sub-section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section. The same phraseology has been used in section 32O (1A) which reads" "A tenant desirous of exercising the right conferred on him under sub-section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section" Rule 20 of Bombay Tenancy and Agricultural Lands Rule 1956 provides that intimation under sub-section (1-A) of section 32F or sub-section (1-A) of section 32O shall be given in Form X by hand delivery or post. Section 32O speaks of the right of such a tenant to purchase the land and further states that, he should express his desire and should give intimation thereof to the landlord . The rules are made for the purpose of regulating the manner. Rules are complimentary and they lead towards intention expressed by the enacted sections. Rule cannot be permitted to over-ride the spirit of the section which has been enacted by the Legislature. Form has been prescribed and that is meant for regulating the desire of giving such intimation. But that form cannot be permitted to subvert the intention which has been expressed by section and the right which has been conferred by section 32F or 32O.

10. The learned Member of Tribunal was totally wrong in dislodging the right of tenant to purchase the said land only on the ground of technicalities. He did not notice that the provisions of the Act have been enacted for the purpose of rustic villagers and therefore, their legal right cannot be uprooted on technicalities. The view expressed by this Court has been fortified by the single Bench of this Court which has been followed by other Benches also. In the matter of Special Civil Application No.159 of 1969, Single Bench has taken such a view which has been followed in the year 1995 by another single Bench of this Court in W.P.No.2606/1982 and, as Shri Rege has submitted, it has been also followed by other Benches. For the purpose of avoiding burden to the record it is not necessary to mention all the judgments.

11. The learned Member committed the error of dislodging findings of facts recorded by the two Courts below, when those findings are borne out by the material on record. For 12 years continuously 7/12 extracts were showing that the petitioner happens to be the tenant of the said land and that was never challenged by the landlord. When nothing was brought on record contrary to that, both the Courts below were legally entitled to draw such conclusion. It was

not proper for the learned Member to dislodge the concurrent findings recorded by two Courts below without any material to do so. On that count also the judgment happens to be incorrect, perverse, and illegal.

12. What is illegal cannot be permitted to survive when this Court is exercising the jurisdiction of superintendence in view of Article 227 of Constitution of India. Thus, the said judgment and order passed by the M.R.T. stands set aside by allowing this writ petition with costs. Rule stands made absolute.