
(2002) 03 BOM CK 0079

In the Bombay High Court

Case No : Writ Petition No. 2761 of 2000

Shivaji Ganpat Mandlik and Another

APPELLANT

Vs

Dilipsinha Dinkar Mahadik

RESPONDENT

Date of Decision : 28-03-2002

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 29(3)A, 43(1)B, 43(1)E, 43C

Citation : (2002) 3 ALLMR 385 : (2002) 6 BomCR 290

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : Anil A. Desai, for the Appellant; A.A. Kumbhakoni, for the Respondent

Final Decision : Allowed

Judgement

F.I. Rebello, J.—Rule. Respondent waives service. Heard forthwith.

2. The respondent-landlord filed an application under the provisions of section 43-1B read with section 29(3-A) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "BT & AL Act"). It was the case of the applicant-landlord (the respondent herein) that the opponents in the application who are the petitioners herein, were the tenants of the land. The property was described as 1/3rd portion of the land situated in Village Kasba Karveer, Taluka Karveer, District Kolhapur bearing Block No. 648, Hissa No. 19 admeasuring 18 areas and assessed at Rs. 0-31. The land was situated within the Urban Agglomeration of Kolhapur Municipal Corporation. The name of the opponent stood recorded in the 7 x 12 extract revenue records as tenant in the capacity of Manager of Joint Hindu Family. The applicant-landlord retired from the services of the Indian Armed Forces on the post of Colonel. The landlord invoked the provisions of section 43-1B of the BT & AL Act. It was further contended that on getting possession of the land, the holdings would not exceed the ceiling limit.

3. By order dated 29th June, 1996, the Additional Collector, Kolhapur in TNC

Application No. 2 of 1995 upheld the objection of the petitioners that the land was situated within the Urban Agglomeration and consequently dismissed the same. A review was preferred. In review, the order was reversed insofar as the earlier ground of objection. It was held that the land is situated outside the limits of Kolhapur Municipal Corporation and, as such, the provisions of section 43-1B was attracted. It was however, held that u/s 43-1B, the benefit could be given to landlords who retire from Military Service. Such landlord who retired from Military Service, should apply for termination of tenancy within two years of such retirement. It was noted that the notice of termination was given on 4th November, 1994. The respondent-landlord retired on 31st March, 1995. Notice of termination was given while the applicant was in service which is illegal. The notice was also not given to all the other heirs of Ganpatrao. It was further noted that Ganpatrao was survived by two sons and six daughters. For the aforesaid reasons, the application was rejected.

4. The respondent-landlord preferred a revision against the said order dated 12th June, 1997. The Additional Commissioner, Pune, reversed the finding that the notice could not be given when the landlord was in service of the Armed Forces. Considering the provisions of BT & AL Act, it was noted that the landlord can be a serving member or one who has ceased to be a serving member. The landlord who has ceased to be a serving member had to give notice of termination within two years from the date of his cessation. In fact, when such a landlord was serving in the Armed Forces, notice can be given while in service. Hence, the Additional Commissioner reversed the finding on that count and the revision was allowed. While allowing the revision, however, it appears that there was no specific direction given for giving possession. That seems to be an omission which can be corrected if the Court otherwise sustains the order of the Additional Commissioner, Pune Division, Pune.

5. At the hearing of the petition, on behalf of the petitioners it is contended as under:

The tenant was a deemed purchaser from the date the application was given. Once he was a deemed purchaser, the application filed was without jurisdiction and, consequently, ought to be set aside; It is then contended that the application was not maintainable as all parties who were required to be joined were not made parties to the proceedings. The petition therefore, it is contended, ought to be dismissed on that count; The land, it is contended, falls within Urban Agglomeration and considering the provisions of section 43-C of the BT & AL Act, the entire application was not maintainable;

Lastly, it is contended that the Additional Collector could not exercise the power of review and consequently the order reversing the findings was also without jurisdiction.

6. With the above, let us first consider the contention that the provisions of section 43-1B could not be resorted to after the tenant had become a deemed

purchaser.

In the first instance, we need to refer to section 43-1E of the Act which reads as under :-

"Nothing in this Chapter shall apply in relation to land, which before the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act, 1964 is purchased by any tenant under the provisions of Chapter III."

It is, therefore, clear from a bare reading of the section that in the event land has been purchased then nothing in the Chapter shall apply in relation to that land. Admittedly, in the instant case, there has been no purchase. The argument is that the tenant was a "deemed purchaser" and, therefore, the chapter was inapplicable. To my mind, that issue in so far as this Court is concerned stands concluded considering the judgment of the Division Bench of this Court in *Bhimrao Tatoba Sawant and Another Vs. Heramb Anant Patwardhan and Others*, . The very issue which is in issue before this Court was in issue before the learned Division Bench. On a consideration of the various provisions, the Division Bench observed as under :-

".....It is material to note that section 43-1E uses the words "purchase by the tenant". It appears that the legislature has purposefully chosen not to use the words "deemed to have been purchased by the tenant" under Chapter III. The words "purchased by the tenant" will have to be interpreted in such a manner that the intention of the legislature to give additional benefits to the landlords belonging to the armed forces is implemented. This is permissible if there is no violence to the language used by the legislature and the meaning of the phrase "purchased by the tenant" can be properly understood as not to cover "deemed to have been purchased by the tenant".

Having so held, a distinction was made between "purchase" and "deemed purchase".

The argument on behalf of the petitioners however proceeds on the footing that the judgment of the Division Bench of this Court is no longer good law in view of the subsequent judgment of the Apex Court in the case of *Amrit Bhikaji Kale and Others Vs. Kashinath Janardhan and Another*, . It is contended that the Apex Court has now held that unquestionably that on the tillers' day, the landlord's interest in the land gets extinguished and simultaneously by a statutory sale without anything more by the parties, the extinguished title of the landlord is kindled or created in the tenant. That very moment the landlord-tenant relationship as understood in common law or Transfer of Property Act comes to an end. The link and chain is broken and the landlord ceases to have that ownership element of the land and the cultivating tenant, the tiller of the soil becomes the owner thereof. The landlord from the date of statutory sale is only entitled to receive the purchase price as determined by the Tribunal u/s 32-G. The Apex Court relied on its earlier judgment in the case of *Sri Ram Ram Narain Medhi Vs. The State of Bombay*, . It is, therefore, contended that the judgment of the

Division Bench having not considered the ratio of the Apex Court judgment in the case of Sri Ram Ram Narain Medhi (cited supra) and in view of the subsequent judgment in the case of Amrit Bhikaji Kale and others (cited supra) is no longer good law. In fact, it is contended that the learned Single Judge of this Court in the case of Shankar Yeshwant Kadam Vs. Khashaba Nana Nimbalkar and another, has taken the view that title to the land passes to the tenant on the tillers day by operation of law.

7. To my mind, those judgments are clearly distinguishable. If the argument advanced by the petitioners is accepted, it would result in rendering the entire Chapter III-AA otiose. The amendment was introduced by Maharashtra Act 9 of 1964. A tenant has been deemed to have purchased the land on the tillers" day which is 1-4-1957. If that be the case, the argument advanced by the petitioners that the purpose and intent of the legislature in providing for Chapter III-AA would be defeated. The solitary exception would be those cases where the deemed date of purchase was differed. To my mind, this could not have been the intention of the legislature. The legislature has deliberately noted by introducing section 43-1E that nothing in this Chapter shall apply in relation to land, which before the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act, 1964, is purchased by any tenant under the provisions of Chapter III. In other words, once the purchase has been completed by resorting to section 32-G and the certificate issued u/s 32-M, then the provisions of Chapter III-AA would not apply. There is, therefore, a clear distinction between the "purchase" and "deemed purchase". In the judgment of the Apex Court and of the learned Single Judge relied upon by the petitioners, the present issue was not in issue. Once that be the case, the ratio of those judgments would not apply insofar as the present case is concerned. The present case is squarely covered by the judgment of the Division Bench in Bhimrao Tatoba Sawant (supra) when the present issue was directly in issue. The first contention must therefore be rejected.

8. The next contention was that the land is situated within Urban Agglomeration and considering section 43(c), the Court will have no jurisdiction. A look at section 43(c) shows that it does not apply to land situated within certain areas set out thereto. It does not include an Urban Agglomeration. In the instant case, there is a clear finding that land is not situated within the Kolhapur Municipal Corporation. Once that be the case, and as the finding is purely a finding of fact, it is not possible for this Court to interfere with that finding of fact. On the contrary, in the application, it was clearly set out that the land is situated within Village Kasba, Karveer Taluka, District Kolhapur. It is, therefore, outside the limits of the Kolhapur Municipal Corporation. The finding on that count must be sustained.

9. We then come to the issue as to whether the application ought to have been rejected merely on the ground that all the legal heirs of the original tenant had not been brought on record when the application was moved. It is case of the

respondent-landlord that in the land revenue records, the name of only Shivaji Ganpat Mandlik was shown as tenant and in the capacity of Manager of the Joint Hindu Family. However, apart from him, his brother Shahaji Ganpat Mandlik was also joined. It is true that in the review application, it was noted that Ganpat was survived by two sons and six daughters. The issue is not whether Ganpat was survived by two sons and six daughters. The issue would be as to in whose name the tenancy would be continued. The point it seems has not been taken before the revisional Court. Even otherwise, to my mind, even if it is held that sisters were required to be joined, it cannot be said that the sisters would have any additional rights than what the brothers had or claimed. At any rate, the sisters have not filed any petition challenging the orders of the courts below. In these circumstances, the petitioners alone participated with the proceedings. It will not be possible for them to now raise the point that their sisters have a right. This aspect was only considered in the review petition which was at the instance of the respondent herein. In a review, that aspect could not have been considered in view of the fact that there was not a ground while disposing of the T.N.C. Application. In the reply to the application, English translation which is filed on record by the petitioners, it is only averred that other heirs of the deceased Ganpat are not brought on record. There is no pleading that the other heirs are co-tenants along with the petitioners. The petition will have to be considered on the touchstone of the rights of the petitioners themselves. That point must therefore be rejected.

10. The last point taken is whether the Additional Collector, Kolhapur, had power of review. Section 258 of the Maharashtra Land Revenue Code, 1966 specifically provides for such a power. Even otherwise, the matter was in issue in revision. Therefore, irrespective of the exercise of power in review, the order of the revisional Court will have to be considered. Considering that to my mind, once again, there is no case for interference.

11. In the light of that, there is no merit in this petition. Consequently, Rule is discharged. It is however made clear that by allowing the revision, what the Additional Commissioner has really done is to direct possession to be handed over to the landlord-respondent, though not specifically so ordered. It is therefore directed that as a consequences of the revision being allowed, possession to be handed over to the respondent landlord. There shall be no order as to costs.