

(2004) 07 BOM CK 0085

In the Bombay High Court

Case No : Writ Petition No's. 1683, 1684 and 1685 of 1986

Shri Appasaheb Dadasaheb Mohite (deceased through heirs
Vasant Appalaheb Mohite, Surendra Appasaheb Mohite,
Anandrao Appasaheb Mohite, Smt. Tarabai Appasaheb Mohite
and Smt. Sulochana Vithal Surte), Chandarrao Dadasaheb
Mohite and Bapurao Dadasaheb Mohite

APPELLANT

Vs

Narayan Dhondiba Ghanawat (since deceased by his heirs
Smt. Tukabai Narayan Ghanawat, Shri Dashrat Narayan
Ghanawat, Sou. Gajarabai Jagganath Borate, Khajabai Nattaba
Shende, Vijabai Govindrao Shinde, Chandrabhaga Dattoba
Abdogire and Housabai Bire Phule) and Others

RESPONDENT

Date of Decision : 27-07-2004

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G, 32P, 74, 74(2)
Mamlatdars Court Act, 1906 — Section 18(3)

Citation : (2005) 1 ALLMR 94 : (2004) 6 BomCR 716 : (2004) 4 MhLj 269

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

Bench : Single Bench

Advocate : Vishwanath Talkute, for the Appellant; P.B. Shah, for Respondent No. 1, K.B. Sonwalkar, for Resp. No. 3 and Vikas Mail, for Resp. No. 4, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—All these three writ petitions can be disposed of by common judgment. The land in question is an agricultural land bearing Survey No. 5 and 11/C situated at village Pimplat, Tal.Phaltan, District Satara. The petitioners claim to be the landlords in respect of the suit land and the Respondents as tenants thereof. As the suit land was held by the tenants, proceedings u/s 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 were commenced, in which, by a judgment and order of the Agricultural Lands Tribunal (ALT) dated 16th March, 1960, statutory purchase in favour of the tenants was declared ineffective as tenants did not appear in the said proceedings. Consequent to this order,

landlords applied for restoration of the land. The Agricultural Lands Tribunal by an order dated June 5, 1962, directed the tenants to deliver possession of the suit land to the landlords. Both the aforesaid orders were subject matter of appeals and the Appellate Authority allowed the appeals preferred by the tenants setting aside the said orders, and remanded the case back to the Agricultural Lands Tribunal for fresh enquiry u/s 32G of the Act, by an order dated November 30, 1962. Upon remand, the tenancy authority declared that tenant - Shri.Maruti Laxman Ghanwat was entitled to purchase the area of 10 acres and 30 Gunthas, and in respect of other three tenants (original Respondent Nos. 1 to 3) the purchase was held to be ineffective on the ground that their holding exceeded the ceiling limits. Proceedings were accordingly disposed of by a judgment and order dated August, 18, 1966. Aggrieved tenants - Shri. Narayan Dhondiba Ghanwat, Shankar Kondiba Ghanwat and Shri.Khandu Sawala Ghanwat (Respondents 1 to 3) preferred an appeal, which was however dismissed by an order dated February 10, 1968 passed by the Appellate Authority. In other words, purchase was declared ineffective qua those tenants as their holding exceeded the ceiling limits. In so far as the appeal filed by 4th tenant - Shri.Maruti Laxman Ghanwat, the same was allowed and it was held that equal area proportionately from each survey number should be given to the said tenant. The landlord had also filed an appeal against the aforesaid order, but the said appeal came to be dismissed. Against the decision of the Appellate Authority, revision applications were filed by three tenants which were allowed by the Maharashtra Revenue Tribunal by order dated 27th October, 1970 remanding the matters to the Agricultural Lands Tribunal for holding proper enquiry on the issue of the holding of the respective tenants. In the second remand proceedings, which were ordered at the instance of three tenants, the Agricultural Lands Tribunal by a decision dated February 28, 1974 held that the tenants - Shri.Narayan Dhondiba Ghanwat, Shankar Dhondiba Ghanwat and Khandu Sawala Ghanwat were not entitled to purchase the suit land as their holding exceeded the ceiling limits. However, the tenancy authority allowed the tenant Shri.Maruti Laxman Ghanwat to purchase 7 acres 21 Gunthas out of the said land. In the circumstance, aggrieved three tenants once again preferred appeal before the Appellate Authority. During the pendency of the said appeal, the Respondent in the appeal viz. Shri.Appasaheb Mohite died, however, his heirs and legal representatives were not brought on record. On the other hand, the Appellate Authority proceeded to dispose of the appeal on merits by a judgment and order dated November 29, 1975 directing fresh remand before the Agricultural Lands Tribunal for the reasons recorded in the said order. Against the said remand order, the petitioner/landlord had preferred revision application before the Maharashtra Revenue Tribunal questioning the order of remand, interalia, on the ground that the appeal could not have proceeded on merits as the heirs of the deceased Respondent in the said appeal were not brought on record. In other words, it was contended in the revision that the order passed in appeal was nullity. However, the said revision application was not prosecuted by the petitioner landlord and it came to be dismissed for want of prosecution by a

judgment and order dated August 30, 1977 passed by the Maharashtra Revenue Tribunal. The case of the petitioner landlord is that the petitioner adopted that course as he was advised that the order passed by the Appellate Authority being nullity, the same could be ignored. Whereas, the petitioner landlord filed an application for restoration of the suit land u/s 32P of the Act, on the assumption that the order passed by the Sub-Divisional Officer in the Tenancy Appeal No. 95 of 1974 dated November 29, 1975 was nullity being passed against a dead person i.e. Respondent Shri.Appasaheb Mohite who died during the pendency of the appeal. The Agricultural Lands Tribunal proceeded to entertain the said application preferred by the petitioner landlord u/s 32P of the Act and by an order dated 15th October, 1980 directed that steps be taken to proceed in respect of the suit land in terms of provisions of Section 32P of the Act. The three tenants referred to above, preferred three separate appeals against this decision before the Sub-Divisional Officer. The Appellate Authority allowed the appeals preferred by the Respondent tenants, holding that the failure to bring on record the heirs and legal representatives of the deceased Respondent in the earlier round of Appeal was not fatal. The Appellate Authority took a view that since the proceedings u/s 32G were still pending in view of the remand order, the action u/s 32P of the Act cannot proceed. Against this decision of the Appellate Authority dated February 28, 1982, the petitioners preferred three separate revision applications before the Maharashtra Revenue Tribunal. The Tribunal by its judgment and order dated September 9, 1985 dismissed all the three revision application, upholding the view taken by the Appellate Authority. The Revisional Authority has held that having regard to the provisions of the Tenancy Act as well as the Mamlatdars' Courts Act and the Maharashtra Land Revenue Code, there is no provisions of abatement of the appeal. The Revisional Authority further found that all the Respondents were common and had interest in the suit land for which reason also there was no question of abatement of the appeal. Having taken that view, the Revisional Authority found that there was no infirmity in the opinion expressed by the Appellate Authority that the proceedings u/s 32P of the Act cannot proceed. It is this concurrent view taken by two authorities below is the subject matter of three petitions filed by the Petitioners - landlord.

2. Mr. Talkute for the petitioners submits that the appeal would abate having regard to the express provisions contained in Section 18(3) of the Mamlatdar's Courts Act, 1906 read with Section 74 of the Bombay Tenancy and Agricultural Lands Act. He submits that there is express provision of abatement of application and in view of expansive language of the relevant provisions it will have to be held that same principle would apply to the appeal stage being continuation of the proceedings arising from such application. It is submitted that, in any case even if there is no express provision for abatement of appeal, by applying the principles analogous to the provisions contained in the Code of Civil Procedure, it will have to be held that the appeal had abated and the decision passed in such an appeal was nullity. He further submits that the entire appeal would abate since the deceased Respondent was co-owner of the said land with undivided

share in the property. According to him, since the interest of the deceased Respondent was inseparable, the entire appeal ought to abate. Reliance is placed on the decisions of the Apex Court reported in *Municipal Council, Mandsaur Vs. Fakirchand and another*, , *Rameshwar Prasad and Others Vs. Shyam Beharilal Jagannath and Others*, . He has also relied on the decision of the Apex Court reported in *Kiran Singh and Others Vs. Chaman Paswan and Others*, that the order of nullity can be ignored by the concerned parties and it was open to the petitioners landlords to set up plea of nullity in collateral proceedings u/s 32P of the Act. It is lastly submitted that the remedy of appeal was not available to the Respondents tenants against the decision of the Agricultural Lands Tribunal dated October 15, 1980 which only observed that the proceedings u/s 32P of the Act should be started. It is contended that having regard to the nature of the order passed, the same was interlocutory and not final order, against which the appeal could be filed. On the above arguments, the learned Counsel contends that the order passed by the Appellate Authority and as confirmed by the Maharashtra Revenue Tribunal deserves to be set aside and instead the order passed by the Agricultural Lands Tribunal dated 15th October, 1980 be restored.

3. On the other hand, Mr. Shah and Mr. Sonwalkar for the Respondents-tenants contend that the basis on which the arguments have been canvassed before this Court is untenable. It is submitted that whether the appeal abates or not, that question is no more res-integra. Reliance is placed on the decision of the Division Bench of our High Court reported in 1963 (75) Bom LR 525 in the case of *Keshav Dnyanu Gorambekar v. Dnyanu Rama Patil*, as well as unreported decision of the Division Bench of our High Court in *Dhondi Santu Karande v. Laxman Gangadhar* which decision has been referred to in the reported case referred to above. The principle expounded in these decisions is that during the pendency of the appeal, if one of the party to the appeal dies and even if the appellant fails to take care to bring on record the legal heirs and representatives of the deceased party within time, the appeal cannot be said to have abated. It has been held that there is no provision with regard to the abatement of the cause in appeal. It is therefore submitted that in view of the well settled principle referred to above, it is not open for this Court to take a different view of the matter; and it will have to be held that the appeal filed by the tenants did not abate and the decision rendered therein is valid and binding on the parties. It is also contended that there is no substance in the argument canvassed on behalf of the petitioners landlords that the entire appeal ought to abate. Learned Counsel have distinguished the decisions of the Apex Court which are pressed into service on behalf of the petitioners referred to above. It was argued that there is nothing on record to show that the surviving Respondents did not form Joint Hindu Family, whereas the suit land appears to be held by them as co-parceners of the Joint Hindu Family. It was next contended that the order passed by the first authority, although observed that the proceedings u/s 32P of the Act be started, but on fair reading of the said order, it is seen that the authority has already concluded the issue that action u/s 32P of the Act be taken against the tenant sand that opinion

was obviously an appealable decision. What remains to be done pursuant to the order passed by the Additional Tahasildar and ALT Phaltan was only to take ministerial steps of restoring possession of the suit lands to the landlords. On the above arguments, learned Counsel contend that there is no substance in all these petitions preferred before this Court.

4. Having considered the rival submissions, I have no hesitation in rejecting the argument that the appeal preferred by the tenants before the Appellate Authority had abated due to failure to bring on record the heirs and legal representatives of the deceased Respondent. This view is fortified by the exposition in the decisions of the Division Bench of our High Court in Keshav Dnyanu's case (supra reported) and Dhondi Santu karande's case (supra unreported). As mentioned earlier, the decision in the case of Keshav Dnyanu has referred to the earlier decision in the case of Dhondi Santu Karande. In the later case, the question that arises for our consideration, was directly put in issue. In Dhondi Karande's case, during the proceedings of the appeal one of the party died and no steps were taken to bring on record the heirs and legal representatives of the deceased party within time. In spite of that position, this Court observed, considering the relevant provisions of the Bombay Tenancy and Agricultural Lands Act as well as Mamlatdars Courts Act and the Maharashtra Land Revenue Code, that there is no provision with regard to the abatement of cause in appeal unlike the express provision with regard to the application. To get over this position, Mr. Talkute for the petitioners contended that the Division Bench has not considered the efficacy of the expression "save as otherwise" provided in this Act under Sub-section (2) of Section 74 of the Act. According to him on proper construction of Section 74 of the Act, it is possible to take a view that the provision contained u/s 18(3) of the Mamlatdar's Courts Act would apply even to the proceedings in appeal, being the continuation of application preferred u/s 32G of the Act. However there is no substance in this argument. In my opinion, the view expressed by the Division Bench of our High Court will bind this Court and it is not open for this Court to entertain the contention canvassed on behalf of the petitioners. In any case, the contention as canvassed, does not find favour with me.

5. From the aforesaid discussion, it is amply clear that the principal argument canvassed on behalf of the petitioners is untenable and cannot be accepted. In other words, it is not possible to hold that the appeal preferred by the tenants had abated. It necessarily follows that, the decision rendered in such an appeal cannot be said to be nullity. A priori, it is not necessary for this Court to burden this judgment with other contentions because, once the order passed in the appeal dated November 29, 1975 is held to be binding on the petitioners, no other arguments need to be examined. Inasmuch as, the question of going into the appropriateness of the proceedings u/s 32P of the Act will arise only after culmination of proceedings u/s 32G of the Act, which are still pending in view of the remand order passed by the Appellate Authority. In other words, the decisions pressed into service on behalf of the petitioners and the arguments

that the order passed by Tahasildar and ALT Phaltan is an appealable order, are of no avail to the fact situation of the present case. Accordingly, all these three petitions would fail and the same are dismissed with no order to costs.

6. At this stage, Counsel for the petitioners submits that since the order of remand has been passed as back as on November 29, 1975 the tenancy authority be directed to expedite the hearing of the proceedings. I find substance in this request. Tenancy Authority is directed to proceed with the proceedings in view of the order of remand and finally dispose of the same as expeditiously as possible preferably within a period of six months from the receipt of writ of this Court.

7. All the concerned to act on the copy of this order duly authenticated by the Personal Secretary / Sheristedar.