

(2009) 07 BOM CK 0125

In the Bombay High Court

Case No : Writ Petition No. 5381 of 1994

Shri Murgappa Shivarudrappa

APPELLANT

Vs

Shri Amarsihna Babasaheb Dafale

RESPONDENT

Date of Decision : 07-07-2009

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32, 32G, 32O, 32P, 32P(1)
Constitution of India, 1950 — Article 227

Citation : (2009) 6 BomCR 197

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : R.P. Walvekar, instructed by R.R. Salvi, for the Appellant; S.V. Sadavarte, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—The petitioner has challenged orders passed by the Tehsildar and Agricultural Lands Tribunal as also by the subdivisional officer confirming that order. The order passed by the Maharashtra Revenue Tribunal in revision has also been impugned. The petitioner, who claims to be a tenant of the respondent, has been directed to hand over the lands which are owned by the trust of which the respondent is a trustee.

2. The undisputed facts in the present case are as follows:

The respondent is a trustee of a public trust known as Khairat Peechandhe Nawaz Trust. His father who was also a trustee of the devasthan lands, had filed a civil suit against the petitioner. That suit was dismissed as it had abated. The respondent filed an application u/s 32P off the Bombay Tenancy and Agricultural Lands Act, 1948. By this application the respondent sought restoration of the possession of the land of the Devasthan which was occupied by the petitioner. The respondent contended in the application that it was declared a public trust in 1960. It was further pleaded that the petitioner had not at any point of time

exercised his option u/s 32G to purchase the land from the landlord by contending that he was in possession as a tenant on the Tillers day, that is on 1st April 1957. The respondent contended that since the land belonged to a public trust, an exception was carved out u/s 88B of the Bombay Tenancy and Agricultural Lands Act, making certain Sections of the Act inapplicable. It was therefore contended that the petitioner had no right to continue in occupation of the devasthan land. This application was opposed by the petitioner by contending that he was in possession of the land on the tillers day. It was further contended that no notice was given the petitioner when proceedings were initiated for exemption u/s 88B of the act. It was also pleaded that the trust was registered only in 1960 and in any event the petitioner was a tenant at that point of time and ought to have been given an option to exercise this right u/s 32G for purchasing the land occupied by him as a tenant.

3. In the order dated April 29, 1987 the tenancy court held that tenant that is the petitioner could not be declared as a deemed purchaser of the land u/s 32O of the Act. It was held that the purchase was ineffective u/s 32P(1) and the petitioner was directed to be evicted u/s 32P(2)(b). The tenancy court rejected the argument of the petitioner that it had no jurisdiction to entertain the application filed by the respondent. It further held that the land did not fall within the ambit of Section 88B of the Act and that the petitioner was not a deemed purchaser.

4. Being aggrieved by the order of the tenancy court, the petitioner preferred an appeal before the Sub divisional officer u/s 74 of the act. The sub divisional officer confirmed the order passed by the tenancy court. The petitioner then preferred revision application number MRT--SS--70 of 1990 before the Maharashtra Revenue Tribunal Kolhapur. The revision application was rejected for the same reasons as stated by the tenancy court. This order was passed on 19th October 1994. The petitioner has preferred the present petition against these orders.

5. The main contention raised by the advocate for the petitioner is that the petitioner had not been given any notice when the order u/s 88B was passed. Reliance is placed on the judgements of this Court in the case of Keraba Dattu Borachata and Ors. v. Shri Sheshashai & Vishnu Trust 1990 Mh.L.J. 1183 and Dattu Hari Mali " Dattu Rau Mali since deceased by his legal heirs and Others Vs. Peer Alli Darga Masjid (Powali Peer) through its Vahiwatdar, in support of his submission that the rules of natural justice must be observed before any order can be passed u/s 88B of the act since the tenants must be given notice as they would effectively be deprived of their valuable right to purchase the tenanted properties. It was further contended that the trust was registered only in 1960, much after the tillers day and therefore the petitioner could not be evicted as he had been denied the opportunity to exercise his right to purchase the property.

6. On the other hand, the learned advocate for the respondent pointed out that the possession of the land in question had been taken after due process on 28th

may 1995 and therefore the petition has become infructuous. He submitted that the petitioner had been inducted in 1966-67 and therefore the question of the petitioner exercising his right to purchase the property did not arise since the petitioner was not in possession of the lands on the Tillers day.

7. It is true that before an order is passed u/s 88B of the act a tenant occupying the land's of the charitable trust must be given notice as his valuable right or purchase the lands occupied by him u/s 32 of the act would be seriously affected. In fact the judgement of the division bench of this Court relied by the learned advocate the petitioner takes this view. However in the present case the petitioner has not challenged the order passed u/s 88B of the act. What is challenged are the orders passed by the tenancy court and by the appellate authority and the revenue tribunal. A perusal of the impugned orders indicate that all the authorities below have rightly held that the petitioner had no right to continue in possession of the devasthan lands as there was no material before the authorities to establish that the petitioner was in possession of the land on the tillers day. Had the petitioner in fact been in possession of the lands on the tillers day he would have exercised his option immediately for purchasing the land occupied by him. The petitioner in my opinion has rightly been evicted from the devasthan lands as he was unable to establish any right to occupy those lands.

8. The learned advocate for the petitioner had also raised the contention that the respondent could not file the tenancy proceedings against the petitioner since the respondents father had filed a civil suit against him which had abated. In my opinion the authorities below have dealt with this contention raised on behalf of the petitioner in its proper perspective which requires no interference from this Court.

9. In my opinion the learned advocate for the petitioner has been unable to establish that the authorities below have committed any error of law apparent on the face of the record or that the impugned orders are perverse. It is therefore not necessary to exercise the writ jurisdiction of this Court under Article 227 of the Constitution of India. Apart from this, the lands have already been restored to the respondent as there was no stay granted by this Court when the petition was admitted. The petition is therefore dismissed.

10. Rule discharged. No order as to costs.