

(1997) 10 BOM CK 0011

In the Bombay High Court

Case No : Writ Petition No. 2742 of 1981

Shri S.A. Rahim, since deceased

APPELLANT

Vs

Shidu Laxman Ramoshi since deceased by his heirs and
others

RESPONDENT

Date of Decision : 13-10-1997

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 2(18), 32, 4

Citation : (1998) 1 ALLMR 608 : (1998) 3 BomCR 1 : (1998) 1 MhLj 58

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : R.T. Walawalkar and S.G. Rajput, for the Appellant; R.T. Shinde, for the Respondent

Judgement

S.S. Nijjar, J.—The interesting point of law raised in this petition is as to whether an order dropping the proceeding u/s 32-G of the Bombay Tenancy & Agricultural Lands Act, 1948, (hereinafter referred to as "the Act"), on the statement of the so called tenant to the effect that he is not a tenant on the suit land, can be equated to a declaration to the effect that the purchase has been declared to be ineffective.

2. It appears from the facts as narrated by the Maharashtra Revenue Tribunal (hereinafter referred to as "the M.R.T.") in Revision Application No. M.R.T. N.S. XII.1/ 78 (T.N.C. B. 359/78) dated 8th February, 1980 that the respondent was wrongly recorded as a tenant in the Record of Rights with regard to the suit lands. When proceedings u/s 32-G of the Act were initiated, the respondents made a statement to the effect that he is wrongly shown as a tenant in the Record of Rights. It was, therefore, prayed by him that his name be removed from the other rights column in the Record of Rights with regard to the suit lands. On the basis of this statement, the Additional Mamlatdar & A.L.T. No. 1 directed that the name of the respondent and the tenant shall be deleted from the other rights column in the Record of Rights and orders to that effect will be

issued to the village officer concerned to effect the necessary change in the Record of Rights. The respondents accepted that order. However, after 13 years filed Tenancy Appeal No. 103 of 1977 in the Court of Assistant Collector, Paltan Division, Paltan. The appeal was also dismissed by the Assistant Collector on 29th April, 1978. It was held that the statement recorded is voluntary and correct and therefore, rightly the proceedings u/s 32-G had been dropped. Against the aforesaid decision, the revision application was filed, which came to be decided on 8th February, 1980. The Maharashtra Revenue Tribunal held that there has been a delay of 13 years in filing the appeal. The explanation for delay was also rejected. It was held that no sufficient explanation has been given for condonation of delay. In view of the above, the revision application was dismissed. The petitioner filed an application for summary eviction u/s 84 of the Act. This application came to be numbered as Tenancy Case 36 of 1977. The Assistant Collector allowed the application by his order dated 29th April, 1978, but in the opening line of the order it is mentioned that the application is for summary eviction u/s 32-P and section 84 of the Act.

3. Against the aforesaid judgment, the respondents filed Revision Application No. M.R.T. N.S. XII. 1/78 (T.N.C. B. 359/78) which came to be decided on 8th February, 1980. In this revision, it was argued by the respondents that 32-P proceedings could not have been started as there is no declaration to the effect that the purchase is ineffective. The Counsel for the petitioners, however, had argued that the findings regarding non-tenancy were binding on the respondents by virtue of section 70(b) of the Act. On the other hand, respondents had argued that the proceedings u/s 32-G had been held illegally. Thus, the order passed by the Sub-Divisional Officer was stated to be without jurisdiction. The petitioner, however, reiterated the submission that the Sub-Divisional Officer was perfectly within his jurisdiction to order eviction u/s 84. Merely because while giving the brief history of the case, the Sub-Divisional Officer made mention of section 32-P of the Act, it cannot be said that the order was passed under the said section. The M.R.T. came to the conclusion that section 32-P requires elaborate enquiry as detailed in the said section. This enquiry is to be made by the Tahasildar immediately after holding an enquiry u/s 32-G in respect of the land where the enquiry has been dropped because of ineffective purchase. Since no enquiry had been made by the Tahasildar, it is held that the petitioner cannot claim right of restoration of the suit land unless and until an enquiry is held u/s 32-P and an order is passed by the Tahasildar as required by section 32-P of the Act. Thus, the order of the Sub-Divisional Officer has been set aside and the revision application was partly allowed and the case is remanded to the Tahasildar for holding an enquiry u/s 32-P and passing an order according to law. Against the aforesaid order, the petitioners preferred Review Application No. MRT-NS-IX-5/80 (Review) TEN-5/80) which has been decided on 21st April, 1981. This review application was, however, dismissed by the order dated 21st April, 1981.

4. The proceedings u/s 32-G of the Act are to be held as soon as possible after the tillers" day by the Tribunal established under the Act for this purpose, who is

to publish a public notice in the prescribed form calling upon among others all tenants who u/s 32 are deemed to have purchased the land. The prerequisite for commencing the proceedings u/s 32-G are that there shall be a landlord, who does not suffer any disability as provided under various other provisions of the Act. There must also be a tenant, who must fulfil the conditions laid down in section 32 of the Act. If after notice to the interested parties, a person claiming to be a tenant states that he is a tenant and he is prepared to purchase the suit land, the proceedings u/s 32-G proceed to their logical conclusion. If on the other hand, a person claims that he is a tenant, but he is not prepared to purchase the land, the A.L.T. is to declare that the purchase is ineffective. What is the situation when a person who is recorded as a tenant in the Record of Rights states that he is not a tenant, is not dealt under the provisions of section 32-G. Necessarily it would not be dealt with under the provisions of section 32-G as the provision applies to regularise the deemed purchase by a tenant of the land which before 1-4-1957 belonged to the landlord. In such circumstances, it cannot be held that when the proceedings are dropped they are to be treated as a declaration to the effect that the purchase is ineffective. The purchase can only be said to be ineffective in the case of a tenant, who satisfies the conditions laid down u/s 32 and shows his inability to purchase the land. Once the A.L.T. holds that there is no tenant on the suit lands, the question of continuing 32-G proceedings does not arise. The title in the land does not pass to the person who is in occupation of the land in a capacity other than a tenant as defined in section 32 of the Act read with section 2(18) and section 4 of the Act. Once the proceedings are dropped, then the only alternative left with the landlord is to claim possession u/s 84 of the Act. This application is to be made to the Sub-Divisional Officer and is not to be made to the A.L.T. The provisions of section 32-P in these circumstances will have no application whatsoever. In these circumstances, the facts of the present case have to be noticed, because the name of the respondent was recorded as a tenant in the Record of Rights. Naturally notice was issued to him when the proceedings u/s 32-G were commenced. It was open to the respondent to claim that he is rightly recorded as a tenant in the Record of Rights. In that eventuality, the A.L.T. has no option, but to continue with 32-G proceedings. If the landlord in that eventuality claims that the name of the respondent is wrongly shown as a tenant in the Record of Rights, the onus would have been upon the landlord to prove that the respondent is wrongly recorded as a tenant in the Record of Rights. In the present case, the respondent voluntarily made a statement that he is wrongly shown as a tenant in the other rights column of the Record of Rights. It was he who sought a direction that his name be deleted from the other rights column. On the basis of this, the A.L.T. No. 1, Man, passed the order dated 21st February, 1964. This order has been up-held to the highest Tribunal established under the Act.

5. When the petitioner took the proceedings u/s 84 of the Act, the same had to be taken out before the Sub-Divisional Officer only. Even if the petitioner had wrongly mentioned in his application that it is an application u/s 32-P read with

section 84, that would not establish a right in favour of the respondents to the effect that his tenancy is admitted. The substance of the order passed by the Sub-Divisional Officer is to the effect that the respondent is directed to be summarily evicted as provided u/s 84 of the Act. This order has been upheld in appeal. The M.R.T. has erroneously held that the proceedings u/s 32-P had to be conducted on the assumption that the order of dropping the proceedings is to be equated with the declaration to the effect that the purchase has become ineffective. When the proceedings are dropped on account of the fact that the person who is in possession of the land makes an unequivocal statement to the effect that he is not a tenant, such an order cannot be said to be a declaration that the purchase has become ineffective. That order is merely an order declaring that it is not necessary to continue any further with proceedings u/s 32-G of the Act. Thus, this Court is of the opinion that the orders passed by the M.R.T. in the revision application and also in the review application are without jurisdiction. The M.R.T. also failed to take notice of the fact that after the initial order was passed by the A.L.T. No. 1 Man on 21st February, 1964, the tenant, did not care to challenge the same for 13 years. Thus, the order of the A.L.T. No. 1 Man has been upheld by the M.R.T. in Revision Application No. MRT. NS. VII. 7/78 in its order dated 8th February, 1980. Having held that the respondent cannot be treated as a tenant, the M.R.T. could not have up set now the earlier order when examining the legality and propriety of an order passed in summary proceedings for eviction.

6. In view of the above, the writ petition is allowed. Rule is made absolute in terms of prayer Clause (b). Consequently, judgement and order dated 8th February, 1980 passed in the earlier Revision Application No. MRT.NS.XII. 1/78 and the order dated 21st April, 1981 passed in Review Application No. MRT-NS-IX-5/80 (Review) TEN-5/ 80 are hereby quashed and the order passed by the Sub-Divisional Officer dated 29th April, 1978 in Tenancy Case No. 36/77 is hereby confirmed.

No order as to costs.

7. Petition allowed.