

(1996) 09 BOM CK 0052
In the Bombay High Court
Case No : Writ Petition No. 270 of 1983

Shri Tukaram Bango Thakare	Vs	APPELLANT
Shri Nago Padu Kumbhar and Others		RESPONDENT

Date of Decision : 30-09-1996

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43

Citation : (1997) 99 BOMLR 404

Hon'ble Judges : V.P. Tipnis, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.P. Tipnis, J.—The respondents were tenants in respect of the suit agricultural land and on 1.4.1957 they have become statutory purchasers. In the year 1967 under the agreement for sale for some-consideration, possession of the land was transferred to the petitioner. Thereafter it appears that the respondents filed an application before the Sub-Divisional Officer, Bhiwandi, Thane under the provisions of Section 84C of the Tenancy Act, contending that the petitioner has not paid the full consideration; no sale deed was effected in favour of the petitioner; that no permission from the Collector as required was obtained for the transfer of possession and as such the petitioner was in unauthorised possession and he is required to be evicted under the provisions of Section 84C of the Bombay Tenancy and Agricultural Tenancy Act. The Sub-Divisional Officer Bhiwandi by his judgment and order dated 26th October 1981 directed that the petitioner be evicted from the suit land u/s 84C of the Tenancy Act.

2. Being aggrieved by the said judgment and order, the petitioner preferred revision application to the Maharashtra Revenue Tribunal bearing No. TEN/A-367/81. The learned President and the Member of the Tribunal by judgment and order dated 9th December 1982 were pleased to confirm the order passed by the Sub-Divisional Officer, Bhiwandi and dismissed the revision.

3. Being aggrieved by the said judgment and orders petitioner has preferred this petition.

4. Shri Desai learned Counsel for the petitioner submitted that in as much as there was a registered agreement of sale and possession was transferred for valuable consideration and in as much as vendors did not obtain proper permission from the Collector the vendors should not be allowed to take the advantage of their own wrong.

5. It is not possible to accept the submission of the Learned Counsel for the petitioner. The petitioner could have approached the competent court for specific performance of the agreement of sale and for compelling the respondents to take appropriate steps in accordance with law. However, admittedly the petitioner has not taken any steps for enforcement of the alleged agreement of sale. The provisions of Section 43 of the Bombay Tenancy and Agricultural Lands Act are clearly applicable and as such any transfer of possession without any prior permission of the Collector, is absolutely illegal. On the basis of the facts and circumstances of the case petitioner is obviously in unauthorised occupation of the suit land. It is also relevant to notice that one of the deemed purchasers Smt. Kashi Chahu Somate is not party to the alleged agreement of sale. As such her interest can never be affected by the alleged agreement of sale. As the possession of the petitioner is clearly illegal and unauthorised, both the courts below were fully justified in ordering eviction under the provisions of Section 84 of the Tenancy Act.

6. Accordingly there is no merit in this petition. Rule discharged. In the circumstances of the case there shall be no order as to costs.