(1998) 09 BOM CK 0049

In the Bombay High Court

Case No : Writ Petition No. 4395 of 1984

Shri Vijaykumar Balkrishna Kulkarni APPELLANT

Vs

Shri Shiva Rama Anekar since deceased by his legal heirs RESPONDENT

Date of Decision : 01-09-1998

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 31, 32
Constitution of India, 1950 — Article 227

Citation : (1999) 1 BomCR 138

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : V.S. Gokhale, for the Appellant; S.V. Sadavarte, for the Respondent

Judgement

R.M. Lodha, J.—The petitioner is the original landlord of agricultural lands bearing Survey Nos. 134/6 and 165/10-B situated at Kandgaon, Taluka Karvir, District Kolhapur and by this writ petition filed under Article 227 of the Constitution, he seeks to impugn the order dated 12th June 1984 passed by the Maharashtra Revenue Tribunal, Kolhapur whereby it allowed the original tenant''s Revision Application and set aside the order of the Deputy Collector dated 22nd August 1983.

2. The facts which are essential for the disposal of the writ petition are in a narrow compass.

3. The original landlord was born on 17th December, 1955. In the family partition dated 28th July 1956 the said properties fell in the share of the petitioner who was minor and he thus became the landlord. Shiva Rama Anekar, the respondent since deceased, now represented by legal representatives, was the tenant in the said land and on 1st April 1957, i.e. the Tiller''s Day, he was in possession of the said land as tenant. Since the landlord was minor on Tiller''s Day, the tenant could not become deemed purchaser of the land in question. It appears that on 24th August 1962, the proceedings initiated u/s 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "the Tenancy Act") were dropped

since the landlord was minor. The landlord attained the majority on 17th December 1973 and it is the case of the landlord that on 12th December 1974 he sent intimation of his attainment of majority to the tenant by registered post. The landlord also made an application u/s 88-C of the Tenancy Act for revision of rent as belonging to weaker section. But the said application was rejected on 24th January 1975 and in appeal also he was unsuccessful. On 4th March 1977 the tenant sent a letter to the landlord intimating his willingness to purchase the land in dispute. The proceedings again were initiated u/s 32-G of the Tenancy Act in which the landlord took the plea that the tenant had not exercised his right of purchase within time contemplated u/s 32-F(1)(a) and therefore the proceedings u/s 32-G of the Tenancy Act deserved to be dropped and the tenant cannot be declared purchaser. The Additional Tahsildar and Agricultural Lands Tribunal, Karvir, however, by the order dated 31st December 1980 fixed the purchase price and ordered issuance of the purchase certificate u/s 32-M of the Tenancy Act. The order passed by the Additional Tahsildar and A.L.T., Karvir on 31st December 1980 was challenged by the petitioner landlord before the Deputy Collector, Kolhapur who allowed the appeal and by his order dated 22nd August 1993 held that the tenant failed to exercise his right of purchase within the time stipulated u/s 32-F of the Tenancy Act and therefore the land should be disposed of in accordance with section 32-P of the Tenancy Act. Upset by the order of the Deputy Collector dated 22nd August 1983, the tenant filed Revision before the Maharashtra Revenue Tribunal. The tribunal held that in view of the proceedings initiated by the landlord u/s 88-C of the Tenancy Act, the period lost in getting exemption certificate by the landlord must be given credit to the tenant u/s 32-F of the Tenancy Act and if such period is excluded, it cannot be said that the tenant did not exercise his option within time. The order passed by the Maharashtra Revenue Tribunal on 12th June 1984, as stated above, is under challenge.

4. Mr. Gokhale, the learned Counsel appearing for the petitioner landlord, urged that the time prescribed u/s 32-F of the Tenancy Act for exercise of the right of purchase by the tenant is mandatory and the tenant could not have been given any advantage of the pendency of proceedings u/s 88-C of the Tenancy Act. Mr. Gokhale urged that the Deputy Collector found as a fact that the tenant was intimated by the landlord by his notice dated 12th December 1974 and though this fact was challenged by the tenant, the Maharashtra Revenue Tribunal did not go into this question and therefore the matter needs to be remanded back to the tribunal for fresh decision in accordance with law.

5. Mr. Sadavarte, the learned Counsel appearing for the legal heirs of the original tenant, submits that the Maharashtra Revenue Tribunal was right in excluding the period taken in the proceedings u/s 88-C of the Tenancy Act and after exclusion of the said period, it cannot be said that the tenant did not exercise his right of repurchase within the time prescribed u/s 32-F of the Tenancy Act. However, Mr. Sadavarte could not point out any finding recorded by the Tribunal that the tenant received the intimation sent by the landlord on 12th December 1974 or

not.

6. Section 32-F of the Tenancy Act provides for right of tenant to purchase where landlord is a minor or a widow or a person subject to mental or physical disability. The said section also provides where the tenant is a minor or a widow or a person subject to any mental or physical disability or serving member of armed forces. However, in the present case, since the right of a major tenant to purchase where landlord is a minor is involved, the relevant section is section 32-F(1)(a) which reads thus.

"32-F. (1) Notwithstanding anything contained in the preceding sections ---

(a) where the landlord is a minor, or a widow, or a person subject to any mental or physical disability, the tenant shall have the right to purchase such land u/s 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31 and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31."

7. The landlord''s right to terminate tenancy for personal cultivation and non-agricultural purpose and use is provided in section 31 of the Tenancy Act. It also provides where a landlord is a minor or a widow or a person subject to mental or physical disability, then such notice may be given by the minor within one year from the date on which he attains majority, by the successor in title of a widow within one year from the date on which in the land ceases to exist. Section 31-F(1)(a) of the Tenancy Act, as quoted above, would show that in case of a minor landlord, the tenant shall have right to purchase such land u/s 32 of the Tenancy Act within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31. It is further provided that for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant to the effect that he has attained majority before the expiry of the period, during which such landlord is entitled to terminate the tenancy u/s 31 of the Tenancy Act. What is thus provided in section 32-F(1)(a) is that within one year of attaining majority, such landlord should intimate the tenant that he has attained majority, that is before the expiry of one year during which he can terminate the tenancy of the tenant as provided u/s 31 and the tenant has to exercise his right to purchase within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31 of the Tenancy Act. To put it simply, in other words, the minor landlord upon his attainment of majority within one year therefrom should intimate the tenant of the fact that he has attained majority and the tenant has to exercise his right of purchase of land u/s 32 within 2 years from the date of minor landlord''s attaining majority. In the scheme of legal provision provided u/s 32-F and 31 of the Tenancy Act, the pendency of proceedings u/s 88-C has no application. Section 88-C provides for exemption of provisions from section 32 to 32-R to lands leased by persons with the annual income not exceeding Rs. 1500/-.

Section 88-C reads thus.

"88-C. (1) Save as otherwise provided by sections 33-A, 33-B and 33-C, nothing in sections 32 to 32-R shall apply to lands leased by any person if such land does not exceed an economic holding and the total annual income of such person, including the rent of such land does not exceed Rs. 1500/-."

8. The perusal of the aforesaid provision contained in section 88-C would reveal that it protects the rights of the landlord in respect of the leased lands when such landlord does not have any annual income exceeding Rs. 1500/-i.e. he belongs to economic weaker section. Such provision has nothing to do with the right of purchase which is to be exercised by the tenant. Independent of the proceedings pending u/s 88-C the tenant must express his willingness to purchase the land u/s 32 within time prescribed u/s 32-F. The limitation prescribed u/s 32-F is not postponed due to pendency of proceedings u/s 88-C. In this view of the matter, the Maharashtra Revenue Tribunal was not justified in holding that the tenant is entitled to the credit of time consumed in the proceedings u/s 88-C of the Tenancy Act.

9. The Maharashtra Revenue Tribunal did not advert itself to the controversy addressed by the landlord that the intimation of his attainment of majority was sent on 12th December 1974 to the tenant and the contention of the tenant that the said intimation dated 12th December 1974 was never received by him. Thus the tribunal has not recorded any finding whether the intimation dated 12th December 1974 allegedly sent by the landlord to the tenant was received or not though the Appellate Authority, namely the Deputy Collector, has given a categorical finding that the notice dated 12th December 1974 sent by the landlord was received by the tenant.

10. In the circumstances, the order passed by the Maharashtra Revenue Tribunal cannot be sustained and has to be set aside and the matter needs to be remanded back to the Tribunal for fresh decision in accordance with law.

11. Consequently the writ petition is allowed. The order passed by the Maharashtra Revenue Tribunal on 12th June 1984 is quashed and set aside. The said Tribunal is directed to hear and decide Revision Application No. M.R.T.-KP-166/1983 afresh in accordance with law within 4 months from the date of production of the certified copy of the order or receipt of the writ whichever is earlier. The parties are directed to appear before the Tribunal on 5th October 1988. The office is directed to transmit concerned record before the Tribunal immediately.

12. Petition allowed.

