(1998) 09 BOM CK 0108

In the Bombay High Court

Case No : Writ Petition No. 5302 of 1984

Shrikant Gangaram Teli APPELLANT

Vs

Bhaskar Narayan Kuvalekar and others RESPONDENT

Date of Decision : 17-09-1998

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G, 32K, 32M, 32M(1), 32P

Constitution of India, 1950 — Article 227

Citation : (1998) 4 ALLMR 403 : (1999) 1 BomCR 49 : (1998) 3 MhLj 542

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

Bench : Single Bench

Advocate : S.A. Ghaisas, for the Appellant;

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—The Petitioner in this writ petition filed under Article 227 of the Constitution of India prays for quashing the order dated 17th August, 1994 passed by the Maharashtra Revenue Tribunal affirming the order passed by the Collector, Sindhudurg on 8th September, 1982.

2. The Petitioner made an application before the Tahsildar and Agricultural Lands Tribunal, Deogad u/s 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "Bombay Tenancy Act") praying that the Petitioner be declared as deemed purchaser of agricultural land bearing Survey Nos. 159, 162, 166 and 167, the details of which have been given in the application. In the said application, the Petitioner averred that he was a tenant of the land in question and was in possession as on 1st April, 1957 and therefore became deemed purchaser under law. The Tahsildar, Deogad, after holding the inquiry, held that the Petitioner was tenant in the suit land and was entitled to purchase the same. The Tahsildar declared the earlier purchase of the land in question in favour of Respondent No. 1 void and declared the earlier order passed in favour of Respondent No. 1, whereby certificate u/s 32M of the Bombay Tenancy Act was

issued, as nullity. Dissatisfied with the order passed by the Tahsildar, the Respondent No. 1 herein filed an appeal before the Collector, Sindhudurg u/s 74 of the Bombay Tenancy Act who allowed the appeal and set aside the order of the Tahsildar. The Petitioner challenged the order of the Collector in Revision before the Maharashtra Revenue Tribunal, but failed there. In the circumstances, the present writ petition has been filed.

3. From the available material, it is clear that the Respondent No. 1 herein claimed to be tenant of the land in question on tiller''s day i.e. on 1st April. 1957. The proceedings u/s 32G of the Bombay Tenancy Act were initiated at the instance of Respondent No. 1 against Respondents No. 2 to 5 who are landlords. In the said proceedings initiated by Respondent No. 1. he was declared as deemed purchaser and price of the land was fixed. Thereafter the certificate u/s 32M of the Bombay Tenancy Act was issued in favour of the present Respondent No. 1 in the year 1960. The Petitioner did not challenge the issuance of the certificate u/s 32M in favour of Respondent No. 1 herein.

4. Section 32M of the Bombay Tenancy Act reads thus :

32M (1) On the deposit of the price in lump sum of the last installment of such price the Tribunal shall issue a certificate of purchase in the prescribed form, to the tenant purchaser in respect of the land. Such certificate shall be conclusive evidence of purchase. In the event of failure of recovery of purchase price as arrears of land revenue under sub-section (3) of section 32K, the purchase shall be ineffective and the land shall be at the disposal of the Tribunal u/s 32P and any amount deposited by such tenant purchaser towards the price of the land shall be refunded to him.

(2) Where the purchase of any land has become ineffective for default of payment in time of the price in lump sum or in installment, but the tenant purchaser has nevertheless continued in possession at the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1964 then the purchase of the land shall not be deemed to be ineffective, until the Tribunal fails to recover the amount of the purchase price under sub-section (3) of section 32K.

5. It is apparent from the aforesaid provision of section 32M that the certificate issued under this section is conclusive evidence of purchase. The said certificate was not challenged by the Petitioner in appeal. The certificate u/s 32M was issued in favour of Respondent No. 1 in the year 1960 and that conclusively establishes that Respondent No. 1 was purchaser of the land which would mean that Respondent No. 1 was in possession of the land in question as tenant on 1st April, 1957. The certificate issued u/s 32M having attained finality in all respects, it was not open to the Tahsildar to declare the said certificate nullity in the proceedings initiated by the Petitioner u/s 32G of the Bombay Tenancy Act. Even if it is assumed that the Petitioner had no notice of the proceedings initiated by Respondent No. 1 u/s 32G and pursuant thereto the certificate u/s 32M was issued in favour of Respondent No. 1, upon acquiring the knowledge of such

certificate having been issued in favour of Respondent No. 1, the Petitioner could have only challenged its legality in appeal and not by way of proceedings u/s 32G of the Bombay Tenancy Act. The Tahsildar acted without jurisdiction in declaring the certificate issued in favour of Respondent No. 1 as nullity and grossly erred in declaring the Petitioner as deemed purchaser on the face of the certificate issued u/s 32M in favour of Respondent No. 1. The said order passed by the Tahsildar being patently erroneous has rightly been set aside by the Collector, Sindhudurg. The Maharashtra Revenue Tribunal also did not commit an error in affirming the correct order of the Collector, Sindhudurg.

6. For the aforesaid reasons, the writ petition has no merit and the same is dismissed with no order as to costs. Rule is discharged accordingly.