

(2002) 09 BOM CK 0128

In the Bombay High Court

Case No : Writ Petition No's. 4127 and 4294 of 1983

Sitabai Anant Deshpande and Others

APPELLANT

Vs

Rau Santu Deuskar since deceased through his L.Rs. and Others

RESPONDENT

Date of Decision : 06-09-2002

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G

Citation : (2003) 4 BomCR 354

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : S.S. Pandit, for the Appellant; M.R. Suryawanshi, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—These writ petitions under Article 227 of the Constitution of India take exception to the orders passed by the Maharashtra Revenue Tribunal, Kolhapur dated 10-3-1983 in M.R.T. KP-15/1982 and 16/1982 respectively. The petitioner herein claims to be the landlady in respect of the land bearing Survey Nos. 87 and 89 both situated at Village Honyali, Taluka Ajara, District Kolhapur. The respondents in Writ Petition No. 4127/1983 were tenants in respect of lands bearing Survey No. 87, whereas the respondents in the companion Writ Petition No. 4294/1983 were tenants in land bearing Survey No. 89 referred to above. It is not in dispute that the petitioner's predecessor, her husband, was the landlord in respect of both these lands and that he was a certificated landlord, as certificate was issued in his favour u/s 88-C of the Bombay Tenancy and Agricultural Lands Act. He died some time in 1971. After his death the name of his son was mutated in the record as Karta of the family. However, subsequently, the name of the petitioner herein came to be mutated in place of her son as landlady in respect of the suit lands. It is also not in dispute that the proceedings u/s 32-G were commenced and the tenancy authority had given notice in that behalf to the original landlord-predecessor of the petitioner and that after his

demise fresh notice was given to the petitioner's son whose name was mutated in the village record as Karta of the joint family in respect of the suit lands. Thereafter, tenancy authority declared that the respondents have become deemed purchasers on the Tiller's day and, therefore, fixed the purchase price in respect of both the suit lands by order dated 27-8-1980. The petitioner, however, carried the matter in appeal before the Appellate Authority contending that the proceedings u/s 32-G have been concluded without notice to her. That contention found favour with the Appellate Authority, for which reason the Appellate Authority allowed her appeal on 29-10-1981 and remanded the case for fresh enquiry at her instance. Against that decision the matter was carried by the respondents-tenants in revision before the Maharashtra Revenue Tribunal which has allowed the revision application and reversed the view taken by the Appellate Authority by order dated 10-3-1983, which is the subject matter of challenge in these writ petitions. The Revisional Authority has held that the petitioner has no locus in the proceedings and that necessary notice was duly served upon the petitioner's son who was shown as Karta of the joint family immediately after the demise of the petitioner's husband. Accordingly, revision applications were allowed.

2. Mr. Pandit, for the petitioner contends that the Revisional Authority has clearly exceeded its jurisdiction in overturning the finding of fact recorded by the Appellate Authority while exercising its revisional jurisdiction. He further contends that since the petitioner's husband was a certificated landlord, the petitioner was entitled to claim resumption of land. In support of his contention, he has placed reliance on the decision of this Court in *Maruti namdeo Gade Vs. Dattatraya Vishnu Maval*, .

3. Having considered the rival submissions, I see no reason to take a different view than the one taken by the revisional authority that the petitioner in that sense has no locus standi, to prosecute the appeal or challenge the order passed in favour of the tenants declaring them as deemed purchaser and/or fixing purchase price in respect of the suit lands. The Tribunal has rightly observed that, after the demise of the original landlord, the name of his son was mutated in the village record mentioning that he was the Karta of the joint family. Besides, it is found that notice was given to the petitioner's son and the enquiry was proceeded further by the authority concerned. Then, no fault can be found with the decision of the tenancy authority. In other words, if the petitioner's son was shown as Karta of the joint family, the authorities were right in giving notice to him after the demise of his father original landlord and proceed with the enquiry. What is relevant to note is that the petitioner's son has not questioned the order passed by the tenancy authority but the petitioner has chosen to challenge the order before the Appellate Authority. In such situation, to my mind the Tribunal was right in observing that there was no question of giving notice to the petitioner. Accordingly, the decision of the tenancy authority cannot be set at nought at the instance of the petitioner merely on the ground that no notice was given to her.

4. However, Mr. Pandit to over come this difficulty placed reliance on the abovesaid decision. Before proceeding to examine the application of the said decision, it is relevant to find out as to whether the right u/s 33-B of the Act has been exercised by the landlord in whose favour certificate was issued u/s 88-C of the Act. Mr. Pandit fairly concedes that there is nothing on record to show that such a right was exercised by the original landlord himself or that the petitioner had exercised that right as required by the provisions u/s 33-B of the Act. Section 33-B postulates that the certificated landlord should terminate the tenancy by giving notice in writing to be served upon the tenant before the first day of January 1962 and, if certificate has been issued in his favour subsequent to that date then within 3 months from receiving such certificate. If the landlord has failed to exercise that right within the statutory period then the authorities would be justified in declaring the tenant as deemed purchaser and proceed with the enquiry for determination of purchase price in respect of the lands in question. Section 33-B provides that in case of a widow, as in the present case, by the successor in title within one year from the date on which widow's interest in the land ceases. This provision would not apply because the petitioner was not landlady on the Tiller's day. Taking any view of the matter there is nothing on record to show that the right as required u/s 33-B of the Act has been exercised, then merely because certificate has been issued in favour of the petitioner's predecessor would be of no consequence. If that be so, the Tribunal was right in restoring the order passed by the tenancy authority declaring the respondents as deemed purchasers and fixing purchase price in respect of the suit lands. No fault can be found either with the approach or the reasoning or the conclusion reached by the Tribunal in this behalf. Accordingly, both these petitions fail and accordingly dismissed with costs.