

(2000) 06 BOM CK 0028

In the Bombay High Court

Case No : Writ Petition No's. 2806 of 1983 and 2301 of 1990

Smt. Radhabai Balkrishna Deshpande and Another

APPELLANT

Vs

Shri Babu Dhondu Shewale, deceased, by his heirs and Others

RESPONDENT

Date of Decision : 13-06-2000

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G, 32P, 64, 84C

Citation : (2000) 4 ALLMR 120 : (2001) 1 BomCR 141 : (2001) 1 MhLj 629

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

Bench : Single Bench

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

Judgement

A.M. Khanwilkar, J.—These two writ petitions, under Article 227 of the Constitution of India, challenge the judgment and order passed by the Maharashtra Revenue Tribunal, Pune, dated 22-4-1983. Writ Petition No. 2806 of 1983 is filed by the owners in respect of the lands bearing survey Nos. 127 and 59/1 (part), situate at village Chinchodi, Tahsil- Ambegaon, District Pune; whereas Writ Petition No. 2301 of 1990 is filed by the alleged tenants in respect of the said lands. (The land owners will be referred to hereinafter as petitioners and the alleged tenants as respondents). To be more accurate, petitioner No. 1 is the original owner of the suit lands and petitioner No. 2 is the transferee, who has purchased the suit lands from petitioner No. 1.

2. The present proceedings are arising out of suo motu proceedings initiated by the Mamlatdar and Tenancy Awal Karkun u/s 84-C of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the said Act"). The reason for initiating the said action indicated by the authority is that the petitioners, the original landowners, had sold these lands in contravention of the provisions of section 64 of the Tenancy Act.

3. Before I proceed to consider the rival contentions, the facts on the basis of which the present proceedings arise can be broadly stated as follows:

The suit lands were originally owned by petitioner No. 1 on the tiller's day, i.e., 1-4-1957. Respondent No. 1 was the tenant in respect of the said lands on the tiller's day. However, since petitioner No. 1 was a widow at the relevant time, the right to purchase the suit lands of respondent No. 1 stood postponed, in view of section 32-F of the Tenancy Act. Later on, in the year 1962, suo motu proceedings u/s 32-G of the said Act were initiated for fixing the purchase price in respect of the said lands. In the said proceedings, the respondent-tenant appeared before the concerned authority and made a statement that he was not interested in purchasing the suit lands and that section 32-G proceedings be dropped. On the basis of the said statement made by the tenant, the said section 32-G proceedings came to be dropped. Since the respondent-tenant failed to exercise the option to purchase the suit lands, as required under the Act, the authorities initiated proceedings u/s 32-P of the Act. In the said proceedings, the respondent-tenant handed over physical possession of the suit lands to the petitioner No. 1, without any demur.

4. Admittedly, the respondent-tenant did not challenge the orders passed either in section 32-G proceedings, or in section 32-P proceedings and as such the decision recorded by the Tenancy Court between the landlord and tenant became final and binding on the parties. What is important to note is that the respondent-tenant not only did not challenge the orders passed in the abovesaid proceedings, but acted as witness along with his brother on January 31, 1964 in the sale transaction between the petitioner No. 1 and petitioner No. 2 in respect of the land bearing Survey No. 59/1 which was by a registered sale-deed for consideration of Rs. 8,000/-. In other words, the respondent-tenant at no point of time made any grievance to anyone about the proceedings which had concluded against him, but on the other hand, had full knowledge about the subsequent steps taken by the petitioners and the third party rights created in the said land. Pursuant to the said agreement between the petitioner No. 1 and petitioner No. 2, the petitioner No. 2 was put in actual possession of the suit land on January 31, 1964. On the same day, interestingly, another piece of land out of the same Survey No. 59/1 was sold by petitioner No. 2 in favour of respondent No. 1 admeasuring about 1 Acre and 20 Rs. by a registered sale deed for a consideration of Rs. 1.000/-. All these circumstances clearly go to show that the respondent-tenant had voluntarily made a statement before the concerned authority and declined to exercise his right to purchase the lands and later on also handed over physical possession thereof to the petitioner No. 1 without any demur.

5. Notwithstanding the aforesaid fact, that too after a lapse of about 15 years, the Tahasildar initiated suo motu proceedings u/s 84-C of the said Act on the ground that the transaction entered into between petitioners inter se was in contravention of section 64 of the said Act. The Tahsildar also gave notice to the respondent-tenant of having initiated the abovesaid proceedings. On receipt of this notice, the respondents suddenly became active and took a stand contrary to the earlier events. The Tenancy Awal Karkun, Ambegaon, after considering the

pleadings and evidence on record, by his order dated January 10, 1979, took the view that the transaction effected between the petitioners inter se should not be declared invalid. However, the said authority directed the petitioner to pay penalty of Rs. 24. 25 each to the State Government. Against the said decision, the respondent-tenant preferred appeal before the Additional Collector, Pune. The respondent, by no standard, could be said to be the aggrieved person, having regard to the facts of the case, nevertheless preferred an appeal, which appeal was entertained by the Additional Collector. The Appellate Court went on to decide the appeal in favour of the respondents by holding that at the relevant time the landlady was a widow on account of which the tiller's day stood postponed and thus there was no question of initiating proceedings u/s 32-G of the Tenancy Act. According to the Appellate Court, the statement made by the respondent-tenant before the concerned authority in the said proceedings was of no avail. The Appellate Court, accordingly, went on to hold that the proceedings u/s 32-G and 32-P of the Tenancy Act between the parties were null and void. In that view of the matter, the Appellate Court allowed the appeal preferred by the respondent and declared that the transaction between the parties was invalid and was in contravention of section 64 of the Tenancy Act. The petitioners herein preferred revision application before the Tribunal. The grievance made by the petitioners was twofold. Firstly, it was contended that having regard to the facts of the case, it cannot be said that section 64 of the Tenancy Act had any application and as such the action u/s 84-C of the Tenancy Act was unwarranted. The second grievance was that, at any rate, the Appellate Court had clearly exceeded its jurisdiction in declaring the proceedings u/s 32-G and section 32-P of the Tenancy Act as null and void. The Tribunal, however, accepted the later contention of the petitioners that it was wholly unnecessary for the Appellate Court to go into the question of validity of proceedings u/s 32-G and section 32-P. The Tribunal, however, negated the plea on merits and held that section 84-C of the Tenancy Act was rightly invoked by the authorities below.

6. The present petitions have been filed by the landlords as well as the tenants challenging the aforesaid view taken by the Tribunal. The main contention pressed on behalf of the petitioners-owners in Writ Petition No. 2806 of 1983 is that on a plain reading of section 64 of the Tenancy Act it cannot have any application to the facts of the present case. According to learned Counsel, the said provision would apply only when the relationship of landlord and tenant exists between the parties, however, in the present case the same had ceased to exist after the tenant had failed to exercise his right to purchase and having handed over physical possession of the suit land as far back as in 1962. Thus, it cannot be gainsaid that the said relationship between the parties continued. It is also contended on behalf of the petitioners that the said provisions can be invoked only in respect of the tenant who is in actual possession of the land in question.

7. The next contention raised on behalf of the petitioners is that the action u/s 84-C of the Tenancy Act is vulnerable as the same having been initiated after a

lapse of 15 years for the first time, while third party rights and interest were created in respect of the said lands. According to him, even assuming that section 64 of the Tenancy Act is attracted and that an action u/s 84-C of the Tenancy Act could have been initiated, the same ought to have been done within a reasonable time. Learned Counsel relied on the decision of the Apex Court in the case of Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, , which squarely applies to the facts of the present case.

8. Learned Counsel for the petitioner further contends that in so far as the cross writ petition filed by the respondent-tenant, being Writ Petition No. 2301 of 1990, is concerned, the same deserves to be dismissed. Firstly, on the ground of laches as the judgment of the Tribunal was passed on 22-4-1983, but has been challenged for the first time in the year 1990. It is further contended that, in any case, since respondent-tenant having failed to challenge the decisions passed by the authorities under the provisions of section 32-G and 32-P of the Tenancy Act and allowed it to attain finality, although the tenant could have challenged the same by way of an appeal, was incompetent to contend that the transaction between petitioners inter se was invalid. It is thus contended that since the orders under sections 32-G and 32-P passed between the parties inter se, had become final and binding, the same cannot be allowed to be questioned at the instance of the respondent-tenant that too in a suo motu action initiated by the authorities u/s 84-C of the Tenancy Act. In this connection, reliance has been placed on the decision of the Apex Court in the case of V.S. Charati v. Hussain Nhanu 1991(1) Mh.L.J. 782 and in the case of State of Punjab and Others Vs. Gurdev Singh, .

9. It is further contended on behalf of the petitioners-owners that the respondent-tenant are estopped from challenging the orders passed against them in section 32-G and 32-P proceedings, both in law as well as in equity, for the simple reason that the said proceedings had concluded on the basis of a voluntary statement made by the respondent-tenant and at no point of time the respondent-tenant had retracted the said statement, nor has he challenged the same before any higher authority. The additional reason for non-suiting the respondent-tenant, mentioned by learned Counsel for the petitioner, is that the respondent-tenant not only made the statement before the tenancy authorities but later on acted as a witness in the sale transaction entered between the petitioners inter se in respect of the very suit lands and also purchased portion of land from petitioner No. 2 out of the suit lands. Therefore, it was not open for the tenants to challenge the orders passed in the proceedings u/s 32-G and 32-P of the Tenancy Act and that too in the suo motu proceedings u/s 84-C of the Tenancy Act, which were put into action belatedly. It is vehemently contended by learned Counsel for the petitioners that the respondents have also purchased land admeasuring about 1 Acre and 20 Rs. out of the suit land on January 31, 1964 from petitioner No. 2 and having entered into the said transaction with open eyes, it does not lie in the mouth of the respondent-tenant now to challenge the orders passed in the proceedings u/s 32-G and section 32-P of the

Tenancy Act.

10. Learned Counsel for the respondents, on the other hand, contends that the question regarding the maintainability of the proceedings ought not to be gone into for the first time before this Court. He contends that the question whether the authorities ought to have initiated the proceedings u/s 84-C of the Tenancy Act within a reasonable time is also raised for the first time before this Court. On merits, it is contended that since on the tiller's day, i.e., 1-4-1957, the petitioner No. 1 was a widow, naturally by operation of section 32-F the tenant's right to purchase the land stood postponed. According to him, since the tiller's day stood postponed, there was no occasion to initiate proceedings u/s 32-G of the Act and, therefore, the statement made therein by the tenant would be of no avail. Learned Counsel for the respondents supported the reasoning of the Additional Collector as well as the Tribunal in holding that the transaction in question was invalid and in contravention of section 64 of the Tenancy Act and as such the proceedings u/s 84-C of the Tenancy Act were rightly initiated. Learned Counsel contended that the orders passed by the Additional Collector, Pune be maintained and possession of the land in question be handed over to the respondent-tenant.

11. Having gone through the record and considered the rival contentions, I would prefer to first deal with the contention regarding the validity of the proceedings u/s 32-G and 32-P of the Act. The law requires, and, in fact, casts duty on the tenancy authority to initiate proceedings for determination of the purchase price of the land to be paid by the tenant after the tiller's day. However, the right of a tenant of a disabled landlord to purchase is postponed on account of section 32-F of the Tenancy Act till the disability is removed. In other words, what is postponed is the tenant's right to purchase the land as a deemed purchaser due to the disability of the landowner, just as in the given case the landlady was a widow on the tiller's day, i.e., 1-4-1957. So long as the tiller's day is not matured, the tenant does not become a deemed purchaser of the land and his liability to pay the purchase price to be fixed by the authorities within the stipulated time would not arise, in which case, he continues to be the tenant in the suit land. There is no provision in the Tenancy Act which prohibits a tenant from relinquishing or surrendering the suit land. No doubt, procedure for surrender is provided for in section 15 of the Tenancy Act. In other words, the Act permits a tenant to determine his tenancy by opting to surrender the land.

12. In the present case, the tenant not only appeared before the tenancy authorities in section 32-G proceedings and made a voluntary statement that he was not interested in purchasing the suit land, but also voluntarily handed over physical possession of the suit land in the proceedings taken out u/s 32-P of the Tenancy Act. In substance, the tenant surrendered his tenancy rights in respect of the suit lands and also handed over possession thereof to the petitioner No. 1-landlady. After the possession was acquired, the petitioner-landlady entered into a transaction to sell the suit land in favour of petitioner No. 2. All this was done in the presence and with the full knowledge of the respondent-tenant and at no

point of time did the respondent-tenant take any exception to the said transaction. On the other hand, he alongwith his brother acted as a witness during the execution and registration of the said document. Furthermore, the tenant purchased portion of land from the petitioner No. 2 by a registered sale deed. If all these facts are taken into account, it is absolutely unbelievable that the tenant had not voluntarily surrendered the land and to have relinquished all the rights that of a tenant therein. In the circumstances, it is too late in the day for the respondent to now challenge the decision rendered in the proceedings u/s 32-G and section 32-P of the Tenancy Act, especially when they have not only acquiesced of the said proceedings by not challenging the same but acted upon it by purchasing a part of the suit land admeasuring 1 Acre and 20 Rs. in January 1964 from petitioner No. 2. Moreover, the challenge regarding the validity of proceedings under sections 32-G and 32-P is sought to be raised by the tenants by way of assailing the impugned decision of the Tribunal dated 22-4-1983 in the writ petition filed on 8-2-1990. There is absolutely no explanation to justify such a belated action. Accordingly, I accept the stand taken by learned Counsel for the petitioners that the writ petition preferred by the respondent-tenant deserves to be dismissed, not only on the ground of laches but because the respondents are estopped from challenging the correctness and validity of section 32-G and 32-P of the Tenancy Act by way of present writ petition.

13. Now, going back to the scope and purport of section 64 of the Tenancy Act, it would be seen from the plain language of section 64 of the Tenancy Act that the said provision could be invoked only when relationship between the parties as landlord and tenant exists. For the sake of convenience, section 64 of the Tenancy Act is reproduced thus :

"64. (1) Where a landlord intends to sell any land, he shall apply to the Tribunal for determining the reasonable price thereof. The Tribunal shall thereupon determine the reasonable price of the land in accordance with the provisions of section 63-A. The Tribunal shall also direct that the price shall be payable either in lump sum or in annual installments not exceeding six carrying simple interest at $4\frac{1}{2}$ percent per annum :

Provided that, in the case of sale of the land in favour of a permanent tenant when he is in possession thereof, the price shall be at six times the annual rent.

(2) After the Tribunal has determined the reasonable price, the landlord shall simultaneously in the prescribed manner make an offer :---

(a) in the case of agricultural land---

(i) to the tenant in actual possession thereof, notwithstanding the fact that such land is a fragment, and

(ii) to all persons and to bodies mentioned in the priority list;

(b) in the case of a dwelling house, or a site or a dwelling house or land appurtenant to such house when such dwelling house, site or land is not used or

is not necessary to carry on agricultural operations in the adjoining lands---

(i) to the tenant thereof;

(ii) to the person residing in the village who is not in possession of any dwelling house; Provided that if there are more than one such person the offer shall be made to such person or persons and in such order of priority as the Collector may determine in this behalf having regard to the needs of the following persons, namely

(i) an agricultural labourer,

(ii) a artisan,

(iii) a person carrying on an allied pursuit,

(iv) any other person in the village,

(3) The persons to whom such offers are made shall intimate to the landlord within one month from the date of receipt of the offer whether they are willing to purchase the land at the price fixed by the Tribunal.

(4)(a) If only one person intimates to the landlord under sub-section (3) his willingness to accept the offer made to him by the landlord under sub-section (2), the landlord shall call upon such person by a notice in writing in the prescribed form to pay him the amount of the reasonable price determined by the Tribunal or to deposit the same with the Tribunal within one month or such further period as the landlord may consider reasonable from the date of receipt of the notice by such person.

(b) If more than one person intimate to the landlord under sub-section (3) their willingness to accept the offers made to them by the landlord under sub-section (2), the landlord shall call upon by a notice in writing in the prescribed form the person having the highest priority in the order of priority given in sub-section (2) to pay him the amount of the reasonable price determined by the Tribunal or to deposit the same with the Tribunal within one month or such further period as the landlord may consider reasonable from the date of receipt of the notice by such person."

14. Sub-section (1) of section 64 of the Tenancy Act opens with the expression : "Where a landlord", which presupposes that the relationship between the parties of landlord and tenant should exist at the time when the said provision is sought to be invoked. Even the proviso to sub-section (1) provides for the sale of the land in favour of a permanent tenant when he is in possession thereof. The same position is reiterated in sub-section (2) as the expression used is : "the landlord shall". Clause (a) of sub-section (2) of section 64 of the Tenancy Act conceives of a situation where the agricultural land is held by a tenant who is in actual possession. In other words, the plain language of section 64 of the Tenancy Act clearly indicates that the same can be invoked only where the relationship between the parties of landlord and tenant is subsisting at the relevant point of

time and the tenant is in possession of the land in question. In my view, once it is held that section 64 of the Tenancy Act is not attracted, it should necessarily follow that the action u/s 84-C of the Tenancy Act would be wholly without authority of law in that the same can be invoked only when the transaction in question is said to be in contravention of section 64 of the Tenancy Act.

15. Apart from the aforesaid, what is relevant to note is that in the present case the transaction in question took place in the year 1964 and it is after lapse of about 15 years that the authority chose to initiate suo motu proceedings u/s 84-C of the Tenancy Act. Learned Counsel for the petitioner is right in relying on the decision of the Supreme Court in the case of Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, , which is squarely applicable to the facts of the present case. The Apex Court has held that although no limitation is provided to initiate action u/s 84-C, yet the authority should act within a reasonable period. The Apex Court in the said decision was pleased to hold that the proceedings initiated by the authorities after a lapse of nine months was wholly beyond reasonable period and, therefore without the authority of law. In the present case, the action has been initiated after a lapse of 15 years, which by no standards can be said to be a reasonable period. Consequently, the petition should succeed on this short ground that the proceedings u/s 84-C of the Tenancy Act having been initiated after an unreasonable period cannot be sustained in law.

16. The petition filed by the petitioner should succeed on the aforesaid short ground. In any case, I have accepted the contention raised on behalf of the petitioners that the respondent-tenants were not entitled for any relief in their writ petition and this aspect has been already discussed in the foregoing paragraphs of the judgment. Learned Counsel for the petitioner is also right in relying upon the decision in the case of V.S. Charati v. Hussain Nhanu 1999(1) Mh.L.J. 782, and in the case of State of Punjab and Others Vs. Gurdev Singh, to contend that the respondents are estopped from challenging the proceedings u/s 32-G and 32-P of the Tenancy Act in these proceedings which have been initiated by the authorities u/s 84-C of the Tenancy Act.

17. For the aforesaid reasons, Writ Petition No. 2806 of 1983 is allowed and the judgment and orders passed by the Maharashtra Revenue Tribunal dated 22-4-1983 and that the Additional Collector, Pune dated 20-7-1981 under challenge are quashed and set aside. The orders passed by the Tenancy Awal Karkun in directing the petitioner to pay penalty is also set aside. In the circumstances, the proceedings u/s 84-C of the Tenancy Act initiated by the authorities against the petitioner is quashed and set aside in its entirety. Consequently, writ petition filed by the respondents-tenant, being Writ Petition No. 2301 of 1990 is dismissed with costs.