
(2011) 02 BOM CK 0099
In the Bombay High Court
Case No : First Appeal No. 443 of 1994

State of Maharashtra

APPELLANT

Vs

Chintal Maisayya and Others

RESPONDENT

Date of Decision : 08-02-2011

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 29, 41, 46
Maharashtra Agricultural Lands (Lowering Ceiling on Holdings) (Declaration and Taking Possession of Surplus Land) Amendment Rules, 1975 — Rule 13

Citation : (2011) 3 ALLMR 33 : (2011) 6 BomCR 129 : (2011) 3 MhLj 677

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

Bench : Single Bench

Advocate : M.A. Kadu, A.G.P, for the Appellant; S.Y. Jaiswal, h/f, Anjan De, for the Respondents 1, 3, 5, 7 and 9 and A.S. Mehadia, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Savant, J.—The above First Appeal takes exception to the judgment and decree dated 31.3.1994 passed by the learned 2nd Joint Civil Judge, Senior Division, Chandrapur by which the suit filed by the Respondents herein came to be decreed and the Appellant herein was directed to pay an amount of Rs. 54,162.75 which was the total amount arrived at after calculating the interest @ 6% p. a. on the principal amount of Rs. 37,353.60 and the said interest was to be paid to the Plaintiffs from the date of the institution of the suit till recovery of the entire amount. The Defendant No. 1 was also directed to pay notice charges of Rs. 100/ as well as pay costs of the suit to the Plaintiffs.

2. The parties would be referred to, as per their nomenclature, at the trial stage. The factual matrix involved in the above First Appeal can be stated thus:

The Appellant above named is the original Defendant; whereas the Respondents are the original Plaintiffs, who are the holders of land bearing Khasra Nos. 435/2 and 435/3 of village Sasti, Tahsil Rajura, District Chandrapur. One Chintal Rajan, who died in the year 1987 was holder of plot bearing Khasra No. 435/4. Each of

the said Khasra numbers was admeasuring 1.70 hectors and land Revenue Assessment was Rs. 7.47 each. The said lands were allotted to the Plaintiff Nos. 1 and 2 and the said deceased Chintal Rajan under the provisions of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. (For the sake of brevity referred to as "said Act"). The Plaintiff Nos. 3 to 9 are the legal heirs of the deceased Chintal Rajan. By a registered sale deed (Ex.50) dated 18.3.1986 the Plaintiffs 1 and 2 and the said deceased Chintal Rajan sold the said land to the Defendant No. 2 for a consideration of Rs. 25,500/ each, totaling to Rs. 76,500/. The Defendant No. 2 paid Rs. 38,250/ only i. e. 12,750/ each to the Plaintiffs Nos. 1 and 2 and deceased Chintal Rajan and the balance amount of Rs. 38,250/ was not paid as the said amount was deposited in the Treasury by Defendant No. 2 vide Challan Nos. 28 to 30 dated 27.3.1986. The cause for depositing the said amount in the Treasury was that the Plaintiffs 1 and 2 and the deceased Chintal Rajan had sought permission from the Sub Divisional Officer to transfer the aforesaid lands in Revenue Case No. 15 to 18/109/198586. Pursuant to the said application, the Sub Divisional Officer vide letter dated 21.2.1986 had directed the Manager of the Defendant No. 2 to deposit the said amount in the Government Treasury. It was the case of the Plaintiffs that after the aforesaid amount came to be deposited by Defendant No. 2 on 27.3.1986 the Sub Divisional Officer, Rajura passed an antedated order dated 17.3.1986 whereby permission was granted to the Plaintiffs and the said deceased Chintal Rajan to sell the lands to the Defendant No. 2. The said order, according to the Plaintiff, was signed after 27.3.1986 and was the composite order for all the three cases viz. Revenue Case Nos. 15 to 18/109/198586.

3. It was the case of the Plaintiffs that the said order dated 17.3.1986 passed by the Sub Divisional Officer Rajura to recover excess amount of Rs. 38,250/ is illegal and void, inter alia, on various grounds, primarily that the said order was passed by the S.D.O. without any jurisdiction, that the said order was in violation of the Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) (Distribution of Surplus Land) and (Amendment) Rules, 1975. (for the sake of brevity "the Rules"). Thus, according to the Plaintiffs, by the said illegal order, the Plaintiffs and the Defendants have been deprived of a total amount of Rs. 37,353.60 by the illegal recovery in the aforesaid manner. After issuing the statutory notice, the Plaintiffs were thereafter constrained to file a suit for declaration that the order dated 17.3.1986 passed by the Sub Divisional Officer, Rajura was illegal and void. It was the case of the Plaintiffs that in terms of the Rule, the Plaintiffs and the said Chintal Rajan were liable to pay Rs. 298/ each totaling to Rs. 890/ for permission to transfer the said land. The Plaintiffs therefore claimed refund of the said amount paid by them with interest.

4. The Defendant No. 1 filed its written statement. The sum and substance of the case of the Defendant No. 1 was that the recovery of 50% of the sale consideration was based on the Government Resolution bearing No. LND/1083/27925/CH3671/G 6, dated 8th September, 1983. The said recovery, according to the Defendant No. 1, was therefore legal and valid. The Defendant

No. 1 also questioned the invocation of the jurisdiction of the Civil Court in the teeth of Section 41 of the said Act.

5. Insofar as Defendant No. 2 was concerned, it was contended by him that the Plaintiffs have themselves deposited 50% of sale consideration in the Treasury on 27.3.1986. It was admitted that the Plaintiffs and said Chintal Rajan had sold the said land for total consideration of Rs. 76,500/ to the Defendant No. 2 under the registered sale deed dated 18.3.1986. The Defendant No. 2 prayed for dismissal of the suit.

6. The Trial Court framed as many as 13 issues. Issue Nos. 1 to 3, 5 and 7 are relevant for the purposes of considering the controversy involved in the above First Appeal. The same are reproduced herewith for the sake of convenience:

(1) Whether the jurisdiction of this Court to entertain suit is barred u/s 41 of Maharashtra Agricultural Lands (Ceiling on holding) Act, 1961?

(2) Whether the jurisdiction of the Court to entertain suit is barred under the provisions of Revenue Jurisdiction Act?

(3) Do the Plaintiffs prove that payment of Nazrana equal to 40 times assessment of land is condition precedent for seeking permission to sell suit lands under Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings, Distribution of Surplus, Rules 1975?

(4) Do the Plaintiffs prove that an order of S. D. O. Rajura dated 17.3.1986 directing to deposit excess Rs. 12,451.20 each total Rs. 37,353.60 is illegal and void?

The Trial Court answered the said issues in favour of the Plaintiffs and against the Defendants. Insofar as the said issues are concerned, in view of the reliance placed by Defendant No. 1 on the said Government Resolution dated 8th September 1983, the Trial Court considered the application of the said Government Resolution in the facts of the Plaintiffs' case. On such consideration, the trial Court was of the view that the said Government Resolution applied to the regularization of the encroachment on Government lands. The Trial Court further held that in the teeth of the said Rules, the Government Resolution would not be applicable in the facts of the present case. The finding of the Trial Court in respect of the application of the Government Resolution finds place in paragraph 27 of the impugned judgment which is reproduced hereunder:

From the plaint reading of the aforesaid Government resolution, it would be clear that it is applicable to the person who has made encroachment on Govt. land and seeking permission for the disposal of the Govt. land. This Govt. resolution is applicable to the regularization of unauthorized sale made by the encroacher on the Govt. land. In this view of the matter, the aforesaid Govt. resolution authorizing the Divisional Commissioner who finally dispose of the application for the transfer of Govt. land, directing the applicant, the encroacher of Govt. land, to deposit 50 per cent of the sale consideration, while granting permission for

sale or regularizing un authorized sale.

Since the Plaintiffs challenged the very authority of the Sub Divisional Officer to pass the said order the Trial Court taking into consideration the said Government Resolution, has recorded a finding that since the powers were vested in the Divisional Commissioner by the said Government Resolution, the Sub Divisional Officer was not the proper Authority to dispose of an application for transfer as envisaged, under the said Government Resolution.

7. Insofar as the amount of Rs. 38,250/ which was recovered by the State Government i. e. 50% of the amount of sale consideration, the Trial Court on the application of the relevant statutory provisions, was of the view that since Rule 13 of the said Rules would be applicable in the facts of the present case, the recovery of the said amount of Rs. 38250/ each was illegal. The Trial Court was of the view that the said Government Resolution insofar as it directs recovery of 50% of the difference between current market value or the price realized by sale whichever is higher was against the statutory provisions being against the said Act and the said Rules. The Trial Court held that in terms of Rule 13, the Plaintiffs were liable to deposit an amount calculated on the basis of 40 times of the assessment since it was admitted fact that each of the suit land was assessed Rs 7.47 paise, the total assessment of the suit land was Rs. 22.40, 40 times assessment of each of the suit land was Rs. 298.80 paise and, therefore, total assessment of all the lands was Rs. 896.40 by way of Nazrana to the Government for obtaining permission for sale.

8. Insofar as the issue about the bar of jurisdiction of the Civil Court was concerned, the Trial Court in view of the fact that the order passed by S. D. O. was challenged on the ground of it being illegal, was of the view that the suit as filed was maintainable and the reliance was placed upon the judgments of the Apex Court which find place in paragraphs 27 to 41 of the impugned judgment. The Trial Court, therefore, recorded a finding that the suit as filed was maintainable against the Defendants.

9. As indicated above, aggrieved by the decreeing of the said suit the Defendant No. 1Appellant has filed the instant First Appeal.

10. I have heard the learned Counsel for the parties.

11. On behalf of the Appellant, the learned AGP submitted that in terms of the Government Resolution dated 8th September 1983 the Plaintiffs and the said Chintal was liable to pay 50% of consideration for being granted permission to transfer the land in question. The learned A.G.P. would contend that the said Government Resolution as can be seen from preface postulates that an Occupant ClassII who holds the land on restricted tenure and who seeks permission to sell, gift, mortgage his lands, as also the applications for regularization of unauthorized sale of the agricultural land held as Occupancy ClassII, are to be recommended by the Collectors for consideration of such transfer/regularization and in terms of the said Government Resolution can be granted on payment of

50% of the consideration amount. The learned A. G. P. would contend that in the light of the said Government Resolution, Rule 13 of the said Rules would have no application. The learned A. G. P. further contended that the First Appellate Court in one breath has held that the said Government Resolution dated 8th September 1983 was not applicable, however, in another breath has held that since S.D.O. is not the authority under the said Government Resolution, the order under challenge was illegal. This, according to learned A. G. P. was a contradiction in sorts.

12. Per contra, it is submitted by the learned Counsel appearing on behalf of the Plaintiffs that the instant case is covered by the Rules in question and the permissions for transfer would have to be regulated by Rule 13 of the said Rules. The learned Counsel drew my attention to the said Rule 13 of the said Rules, proviso to which posits that no permission can be granted without payment of 40% of the assessment. The learned Counsel would contend that in the absence of any amendment to the said Rules, the Government Resolution cannot be applied. The learned Counsel submitted that there are no powers vested in the State Government to issue an executive fiat by which the terms and conditions for permission to transfer can be sought to be regulated by issuance of a Government Resolution, when the Rules are already occupying the field

13. Having heard the learned Counsel for the parties, I have given the anxious consideration to the rival contentions of the parties.

14. As can be seen, the entire substratum of the claim of Defendant No. 1 for 50% of the sale consideration which the Plaintiffs have received from the Defendant No. 2 is based on the said Government Resolution dated 8th September 1983. Hence, before considering the application of the said Resolution, it would be apposite to consider the facts in the present case. The Plaintiffs and the said Chintal Rajan are admittedly the persons who have been allotted the lands under the said Act. The transfer of the said lands by the Plaintiffs would, therefore, be governed by the Rules framed by the State Government u/s 46 of the said Act. The State Government in exercise of the powers u/s 46 of the said Act has framed the said Rules. Rule 13 of the said Rules is material and is reproduced here under:

13. Provision for transfer of land u/s 29 - u/s 29, the Collector may sanction transfer of land in any of the following circumstances, that is to say,

(a) if the land is required by an industrial undertaking in connection with any bona fide industrial operations carried on or to be carried on by such undertaking:

(b) if the land is required for the benefit of any educational or charitable institution:

(c) if the land is required by a cooperative society;

(d) if the land is being exchanged

(i) for land of equal or nearly equal value owned and cultivated personally by a member of the donor's family, or

(ii) for land of equal or nearly equal value in the same village owned and cultivated personally by a land owner with a view to forming compact block of his holding or better management thereof; Provided that the total land held and cultivated personally by any done whether as owner or tenant or partly as owner and partly as tenant does not exceed the ceiling area as a result of the exchange;

(e) if the land is being leased by a lesser who is a person under disability;

(f) if the land being partitioned among the heirs or survivors of the deceased grantee of the land, and no party, after the shares are defined or partition, gets land which is a fragment:

Provided that no sanction shall be accorded to any transfer of land falling under Clause (a), (b) or (c) unless the transferor agrees to the condition to pay to the State Government a premium equal to 40 times the assessment of the land.

15. As can be seen, Rule 13 provides that no sanction shall be accorded to any transfer of land falling under Clauses (a), (b) and (c) unless the transferor agrees to the condition to pay to the State Government a premium equal to 40% times the assessment of the land.

16. Now, coming to the Government Resolution though the preface to the said Government Resolution talks about the same being applicable to an Occupant Class II, who is occupying lands on restricted tenure and who seeks to mortgage, sell or transfer his land, it also applies for regularization of unauthorized sale, the latter part of the said Government Resolution contemplates permission for conversion of agricultural land to nonagricultural purposes. The said Government Resolution, therefore, seems to have been issued to cover eventualities not covered by the said Rules. It is well settled that the administrative orders can only supplement the statutory provisions and cannot supplant them. If the Government Resolution is to be made applicable then it would be in direct conflict with Rule 13 which contemplates permission to be granted on the basis of payment of 40% of the assessment. The learned A. G. P. fairly conceded that the said Rules were not amended at the relevant time so as to incorporate the essence of the said Government Resolution. In my view, therefore, the trial Court was right in holding that the said Government Resolution dated 8th September 1983 is violative of the statutory provisions as contained in the Act and the Rules made there under and would therefore have no application.

Insofar as the jurisdiction of the S. D.O. is concerned, in my view the Trial Court after holding that the said Government Resolution would not apply has erred in holding that the order passed by the S. D.O. is without authority, as the S.D.O. is not the authority contemplated in the said Government Resolution. The said finding of the Trial Court is therefore a contradiction in sorts.

If that be so, then the Plaintiffs and said Chintal would be entitled to permission for transfer of lands on the application of the said Rule 13 and on such application, the Plaintiffs and the said Chintal are liable to pay a total amount of Rs. 896. 40 paise. The finding of the trial Court in that regard cannot be faulted with.

17. Insofar as the jurisdictional point is concerned, it is well settled that unless jurisdiction of the Civil Court is expressly or implied barred, a party is entitled to invoke the same. In the instant case, the Plaintiffs had filed the suit in question on the ground that the order passed by the S. D.O. was illegal on account of various infirmities, which were pleaded by the Plaintiffs in the said suit. The Trial Court relying upon the judgments of the Apex Court wherein the Apex Court has held that when illegality in the action is alleged and injunction sought, the suit cannot be said to be not maintainable merely because an Appeal is provided against such action. In my view, the reasons mentioned by the Trial Court for holding the suit as maintainable cannot be faulted with.

18. In that view of the matter, there is no merit in the above First Appeal, which is accordingly dismissed.