

(2009) 08 BOM CK 0126

In the Bombay High Court

Case No : Writ Petition No. 5146 of 1994

Subhadra Nivrutti Dhere, Gajendra Narsu Dhere and
Bhagwan Narsu Dhere

APPELLANT

Vs

Shankar Digambar Dixit, Decd. (through Lrs. Khanderao
Shankar Dixit, Pandurang Shankar Dixit and Govind Shankar
Dixit) and Others

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 33B, 37, 88C

Citation : (2009) 5 BomCR 25

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : K.Y. Mandlik, for the Appellant; T.D. Deshmukh, for Respondent Nos. 1(a) to 1(c), for the Respondent

Judgement

Nishita Mhatre, J.—The petitioners are aggrieved by the order passed by the Maharashtra Revenue Tribunal, Pune in Revision Application No. MRT-SH-III-2-1992 on 12th September, 1994. Shankar Digambar Dixit was the owner of the lands which were part of Survey No. 434 situated at Village Pangaon, Tal. Barshi, Dist. Solapur. The petitioners are the tenants in respect 6th of the said lands. On June, 1961, Shankar Digambar Dixit sought an exemption certificate u/s 88C of the Bombay Tenancy and Agricultural Lands Act, 1948 (in short "the said Act"). This Application was dismissed by the Tahsildar, Barshi. An Appeal was preferred by the owner which was allowed on 12th December, 1964. The matter was then remanded to the Tahsildar for disposing it of in accordance with law. The proceedings were dismissed again by the Tahsildar and an Appeal was preferred before the Deputy Collector. That Appeal was dismissed on 19th April, 1968 pursuant to which the landlord filed Writ Petition No. 2729 of 1968. The Petition was allowed and the matter was remanded by the High Court for a fresh hearing.

2. On 16th September, 1977, an exemption certificate was granted to the

landlord in TNC Case No. 46 of 1967. Aggrieved by this decision, the petitioners preferred Tenancy Appeal No. 50 of 1977. That Appeal was dismissed and a Writ Petition was filed by the petitioners being Writ Petition No. 2533 of 1979. The main contention of the petitioners was that Shankar Digambar Dixit was not the exclusive 1st owner of the lands on April, 1957 i.e. on the tiller" s day. The petitioners contended that partition had taken place only after 1st April, 1957. This Court by an order of 10th January, 1982 called for findings on the issue as to whether partition had been effected prior to 1st April, 1957 between the deceased Shankar Digambar Dixit and his brother. The Tenancy Avval Karkoon by his order dated 15th November, 1983 held that the partition had indeed being effected prior to 1st April, 1957. After the findings were remitted to this Court, the petitioners" Writ Petition was dismissed. A further direction was issued to the Tahsildar, Barshi to hear and decide the Application of the deceased Shankar Digambar Dixit for possession u/s 33B of the said Act. A SLP was preferred by the petitioners challenging that order of the High Court. The SLP was dismissed on 24th September, 1984.

3. An enquiry was conducted by the Tenancy Avval Karkoon in Tenancy Case No. 33 of 1977. The petitioners contended that during the proceedings, the deceased respondent had sold the lands at Kalegaon and therefore the demand or requirement of the land for personal cultivation was not bonafide. These submissions made on behalf of the petitioners were not countenanced by the Tenancy Avval Karkoon who by its order dated 20th January, 1986 directed the petitioners to hand over possession of the lands to the deceased respondent i.e. Shankar Digambar Dixit.

4. An Appeal was preferred by the petitioners against this order in Tenancy Appeal No. 9 of 1986. The Assistant Collector, Solapur dismissed the Appeal on 20th February, 1987. The petitioners then approached the Maharashtra Revenue Tribunal in Revision. They contended that the deceased respondent did not require the disputed lands bonafide for his personal use and cultivation. They also contended that the holdings of the petitioners and the respondents were wrongly calculated. The Maharashtra Revenue Tribunal allowed the Revision Application and remanded the matter for a decision on the comparative holdings of the landlord and tenants.

5. The enquiry resulted in a decision from the Tenancy Avval Karkoon to the effect that the deceased respondent was entitled to possession of the entire disputed lands. He, therefore, directed the petitioners to hand over possession of the lands to the deceased landlord. An Appeal was preferred by the petitioners contending that the calculations for the respective land holdings were not correct. They also contended that the lands were not required by the deceased respondent for his personal cultivation and therefore his requirement was not bonafide. The petitioners pointed out that the deceased respondent had sold the land after obtaining the certificate u/s 88C of the said Act, however, the Appeal of the petitioners was dismissed.

6. A Revision Application was preferred by the petitioners before the Maharashtra Revenue Tribunal contending that the need of the deceased respondent was not bonafide in view of the sale of the lands. The Maharashtra Revenue Tribunal dismissed the Revision Application as it found that the submissions made on behalf of the petitioners were not tenable.

7. Mr. Mandlik appearing for the petitioners submits that the Tribunal and the courts below have ignored the provisions of law while dismissing the contentions raised by the petitioners. He submits that it was necessary for the Tribunal to consider whether the need of the landlord was bonafide. According to him, the mere fact that the certificate is issued u/s 88C of the said Act would not permit the landlord to sell the property immediately when he has sought possession of the property on the ground that he requires the same for his personal use and cultivation. He submits that the very fact that the property was sold indicates that it was not required by the deceased respondent for his personal use and cultivation. To buttress these arguments, the learned Advocate relies on the decision of the Division Bench of this Court in the case of Hariba Keshav Barbole v. Motibai Deepchand reported in 1974 Mh.L.J. 823. The learned Advocate also points out that now that the respondent-Shankar Digambar Dixit has expired during the pendency of the Revision before the Maharashtra Revenue Tribunal, it is necessary to ascertain the bonafide requirements of his heirs. He submits that even assuming the requirement of Shankar Digambar Dixit was bonafide, the same could not be said about his heirs. According to the learned Advocate, Shankar 6th Digambar Dixit expired on October, 1994 and unless respondents 1(a) to 1(c) and other legal representatives of the deceased prove and establish that they required the land, their need is bonafide, that they are in a position to cultivate the land and that their holdings are such that they can claim the land, the respondents are not entitled to the resumption of the aforesaid lands. He submits further that the respondents herein had made no application for restoration of the lands after the death of Shankar Digambar Dixit and therefore the matter ought to be remanded for a decision on the bonafide requirement.

8. Mr. Deshmukh appearing for respondents 1(a) to 1(c) submits that three courts have taken the concurrent view that the requirement of Shankar Digambar Dixit was bonafide and that the lands would be used for personal cultivation. He, therefore, submits that in such a situation, there is no need for this Court to interfere with the concurrent findings of facts recorded by all the courts below. He relies on the judgment of a learned Single Judge of this Court in the case of Vithal Genu Satav since deceased by his heirs and legal representatives Vs. Smt. Krishnabai Bapurao Arde deceased by heirs, .

9. A Division Bench of this Court in the case of Shankar Gopal Jagdale Vs. Prabhakar Dattatraya Kulkarni, had concluded that although the heirs of a certificated landlord are entitled to continue proceedings u/s 33B started by their predecessor, it was further necessary for them to establish that they required the land in dispute bonafide for their personal cultivation. Similarly, the Division

Bench in Hariba Keshav Barbole's case has held that " the legal heir who is brought on record during the pendency of the proceedings must establish his own bonafide requirement as on the date he comes on record, as that would be the date for him for all practical purposes to establish his case to recover possession." It was further held that the holding of the heir on the date when he is brought on record needs to be considered for the purposes of equalization of holdings of the tenants and the legal heir of the landlord.

10. In the case of Maruti Namdeo Gade [reported in 78 Bom LR 602], Deshpande, J. speaking for the Bench has observed as follows:

An order of possession passed by the Mamlatdar in favour of landlord cannot be sustained, if the landlord dies during the pendency of proceedings and claim also cannot be rejected or allowed without enquiry into the holdings and bonafides of the heirs. Though, therefore, claims under s. 33B also are of personal nature, proceedings do not abate with the death of the claimant but enure for the benefit of the heirs. Heirs, however, cannot succeed in claiming resumptions unless they prove their qualifications as to bonafides and holdings, by reference to the date of their being brought on record. That would be the deemed date of their application. This should be so without regard to whether the landlord dies before, or after, succeeding at any stage. In either case, resumption is not permissible unless the claimant proves his personal qualifications. Question of defending estate and, benefits arising thereto, under a decree cannot arise till the litigation goes through all the stages at the choice of the parties, and order becomes final and immune from any interference. That the death of such landlord, after such termination, but before execution, relieves the heirs from proving their qualifications, is besides the point as such accidents are always implicit in any litigation. Section 37 of the Act however gives some relief to such tenants by enabling them to claim restitution when land is not cultivated personally by such heirs.

11. The judgment cited by Mr. Deshmukh, learned Advocate for the respondents, in the case of Vithal Genu Satav (supra) is that of a learned Single Judge of this Court where he has held that only if the proceedings are pending before the hierarchy of courts under the Bombay Tenancy and Agricultural Lands Act, will it be necessary to consider whether the heirs of a certificated landlord must reestablish before the Authorities their own bonafide requirement. The learned Judge took note of the fact that the tenants did not dispute the bonafide requirement of the landlady in that case at any point of time and, therefore, it was held that it was not necessary for her heirs to establish their bonafide requirement for the lands. However, the case of Vithal Genu Satav (supra) can be distinguished from the facts in the present case. The tenants have all along being contending that the suit lands were not required by Shankar Digambar Dixit, the deceased certificated landlord, for his personal cultivation.

12. In my opinion, therefore, the submission made by Mr. Mandlik for the petitioners must be accepted and an enquiry must be made;

(i) whether the heirs of Shankar Digambar Dixit who died during the pendency of this Petition are required the land;

(ii) Whether their need is bonafide;

(iii) Whether they are in a position to personally cultivate it and;

(iv) Whether their holdings qualify them to so claim.

13. The order of the Tribunal is set aside and the matter is remanded to the Tenancy Avval Karkoon to conduct an enquiry as to whether the heirs of Shankar Digambar Dixit bonafide require the suit lands. The enquiry will be completed within six months from today.

14. Rule made absolute accordingly.

15. No order as to costs.