
(2005) 01 BOM CK 0063
In the Bombay High Court
Case No : Writ Petition No. 2592 of 1992

Takdirullahkhan

APPELLANT

Vs

Rashidkhan and Others

RESPONDENT

Date of Decision : 14-01-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 27, 29(1),
29(2), 29(3)

Citation : (2005) 2 ALLMR 638 : (2005) 4 BomCR 351 : (2005) 2 MhLj 902

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : A.J. Thakkar, for the Appellant; Thakare and S.G. Loney, A.G.P. for respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—By this petition under Articles 226 and 227 of the Constitution of India the petitioner questions order dated 6th April, 1991 passed by Sub-Divisional Officer, Akot whereby the said Authority has held that the field Survey No. 272/1 are 1.34 Hectares situated at village Hiwarkhed has been vested in the State Government, free from encumbrances with immediate effect and has further directed the Tahsildar, Telhara to take suitable action for disposal of the said land by putting it for fresh distribution in accordance with provisions of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 and Rules framed thereunder. The facts in this respect are that, the field No. 272/1 was allotted to present respondent No. 1 Rashid in the year 1976 after it was declared surplus under the provisions of Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1961 (hereinafter referred to as "Ceiling Act") and later on he leased out that field on Batai terms to present petitioner in the year 1987. The present petitioner who is holding the said land on Batai is in possession and this has been found by the Tahsildar, Telhara in the inquiry conducted by him and there is also report of Talathi about the same. It appears that on 20th July, 1989

the respondent No. 1 moved application before the Tahsildar, Telhara for restoration of the possession of the suit field to him mentioning therein that he got it in ceiling proceedings. The Tahsildar conducted inquiry in view of the said application and thereafter made report to the Sub-Divisional Officer (S.D.O.) mentioning his finding as narrated above. The S.D.O. thereafter issued notices to parties and after hearing them has passed impugned order on 6th April, 1991.

2. I have heard Adv. S. J. Thakker for the petitioner who contends that the agreement of Batai between respondent No. 1 and petitioner cannot be construed as transfer and the Batai agreement is not prohibited by Section 29(1) (a) of the Ceiling Act. He further states that the authorities below ought to have ascertained the terms and conditions of Batai Agreement between parties and thereafter only could have recorded findings whether there was in fact transfer of suit land by respondent No. 1 in favour of the petitioner. He places reliance upon the Division Bench judgment of this Court reported at 7962 N.L.J. 166, Mohanlal Chandanmal v. Maharashtra Rev. Tri. in support of this proposition. He further contends that after holding that the transfer between parties is prohibited by Section 29(1), the Sub-Divisional Officer ought to have given fresh opportunity to show cause to the petitioner as also to the respondent No. 1 and after hearing them only the direction to forfeit the land free from all encumbrances by the State Government could have been issued. He contends that no such show cause notice has been issued and no such opportunity was given either to the petitioner or to respondent No. 1.

3. As against this the learned A.G.P. Mr. Loney appearing for respondent Nos. 2 and 3 supports the impugned order. He contends that the provisions of Section 29(1)(a) all kinds of transfers and are wide enough and the words "otherwise" appearing at the end of Section 29(1)(a) needs to be interpreted widely so as to advance the purpose of said enactment and the not in a manner to curtail its sweep or to create any lacuna in it. He further contends that Section 29(3) does not contemplate grant of second opportunity and states that the opportunity as contemplated has already given to the petitioner as also to the respondent No. 1. He therefore, contends that there is no scope for interference in the matter in writ petition.

4. Adv. Mrs. Thakare appearing for respondent No. 1 adopts arguments advanced by the learned A.G.P.

5. Perusal of Section 29(1)(a) reveals that the said provision prohibits all transfers, whether by way of sale or by way of gift, mortgage, exchange, lease or otherwise in relation to lands granted u/s 27 of Ceiling Act without previous sanction of the Collector. Even the sales in execution of decree of Civil Court or in execution of award or order of any competent Authority are not permitted by the said provision. The purpose of the said provision is thus, apparent. The person who has been allotted land by the State Government after it is vested in it as it was found surplus with the original owner under the provisions of Ceiling Act must continue to cultivate the land personally. The provisions of Ceiling Act

prescribes elaborate procedure for selection of such allottee and therefore, care has been taken to see that recipient of such beneficial measures are not deprived thereof in any manner. Such provision will therefore, be required to be interpreted in widest possible manner so as to advance its purpose or to suppress the mischief sought to be prohibited by it. If it is held that any agreement by which possession of land is transferred to another person by such allottee is not covered u/s 29(1)(a) it would frustrate the very purpose of enacting such clause. The clause will have to be interpreted in the manner so as not to leave any lacuna in it. In this case, the respondent No. 1 is admittedly an allottee u/s 27 of the Ceiling Act and further the land has been transferred by him and is in possession of the present petitioner under some arrangement between the parties (alleged to be Bataipatra) without previous sanction of the Collector. The arguments" of learned counsel for the petitioner that such transfer by way of Bataipatra cannot be included under such clause, is therefore, misconceived and cannot be sustained.

6. The learned counsel for the petitioner has placed reliance upon judgment of this Court reported in 1962 N.L.J. 166 (supra) to contend that terms and conditions of the Bataipatra are always relevant. He contends that in the facts and circumstances of the present case Bataipatra is partnership between respondent No. 1 and petitioner. He contends that respondent No. 1 has therefore not transferred the land as contemplated by Section 29(1)(a) of Ceiling Act and the said respondent No. 1 is jointly in possession with him. However, such story and plea has not been taken before the lower authority at any time by the petitioner. The petitioner has not pointed out that on account of partnership with respondent No. 1 it cannot be presumed that both are in joint possession even in present writ petition. The argument sought to be advanced is clearly by way of afterthought and cannot be accepted. Same is the case in relation to argument about non-production of alleged Bataipatra on record before the Sub-Divisional Officer or Tahsildar. The learned advocate for the petitioner contends that the respondent No. 1 ought to have produced the said Bataipatra on record and as the said Bataipatra has not been produced its terms and conditions are not available for perusal and without perusing it the authorities below could not have been held it as transfer by respondent No. 1 in favour of the petitioner. Again learned S.D.O. has given opportunity to the petitioner before passing impugned order and no such grievance is made by the petitioner either before S.D.O. or before this Court. While filing the petition he has not annexed copy of the Bataipatra to plead his case in relation to the terms and conditions thereof or in order to substantiate the case regarding partnership between respondent and the petitioner. In absence of such efforts by the petitioner, it is apparent that the argument being advanced is argument of desperation and cannot be accepted. The learned counsel for the petitioner has lastly contended that the learned S.D.O. while passing impugned order has directly forfeited the land in favour of the State Government and has also directed the Tahsildar to distribute the lands as per procedure as contemplated, by Section 27 of the Ceiling Act. He contends

that opportunity of hearing as required by Section 29(3) before passing order of forfeiture has not been granted under the provisions of Section 29(3). The relevant section reads as under :

"29(3): Any transfer or division of land, and any acquisition thereof, in contravention of Sub-section (1) or Sub-section (2) shall be invalid; and as a penalty therefor, any right, title and interest of the transferor and transferee in or in relation to such land shall, after giving him an opportunity to show cause, be forfeited by the Collector and shall without further assurance vest in the State Government. "

It is thus clear that first part the statute mandates that any transfer or division of land in contravention of Sub-section (1) or Sub-section (2) of section 29 is invalid. Thereafter in Sub-section (3) consequences of such invalid transfer are prescribed i.e. in the shape of penalty any right, title and interest of the transferor and transferee in relation to such land has been forfeited by the Collector and vest in State Government. However, before ordering such penalty opportunity to show cause is required to be given to the transferor and also to the transferee. Perusal of Section 29 clearly shows that no piecemeal orders are required to be passed under that section. The argument of learned counsel for the petitioner that, first order declaring transfer to be invalid is required to be passed and thereafter second order declaring that land as vested to the Government is required to be passed u/s 29, is not supported by the scheme of the said section. Only one order and one inquiry is contemplated and that inquiry has been done in the present matter by the S.D.O. It is not in dispute that before passing impugned order dated 1st April, 1991 the S.D.O. has given opportunity of hearing to respondent No. 1 as also to the petitioner. It is to be noticed that after transfer is found to be invalid nothing remains to be done in the matter and the land is forfeited in favour of the State Government. In such circumstances, it cannot be presumed that the provisions of Section 29(3) require grant of second opportunity to the petitioner which will be almost an empty formality. It is further to be noticed in this matter that the allottee of the land viz. respondent No. 1, has not challenged the order of S.D.O. in writ petition. Hence, the grievance made by the petitioner in this respect is misconceived and unsustainable.

7. Under these circumstances, no case is made out for interference in the writ jurisdiction. The writ petition fails and accordingly dismissed. No order as to costs.