

(1991) 09 BOM CK 0021
In the Bombay High Court
Case No : Second Appeal No. 656 of 1979

Thakubai Maruti Tupe and Others	Vs	APPELLANT
Ankush Hiranman Magar and Others		RESPONDENT

Date of Decision : 05-09-1991

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G, 68, 85

Citation : (1991) 3 BomCR 602 : (1991) MhLj 1465

Hon'ble Judges : B.V. Chavan, J

Bench : Single Bench

Advocate : R.G. Kelkar, for the Appellant; B.P. Apte, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Chavan, J.—A short question that arises in this second appeal is whether the decision of an Agricultural Lands Tribunal in proceedings u/s 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Tenancy Act") holding that the inclusion of the Tenancy Act, though not correct in accordance with law, is binding on the Civil Court in a subsequent civil suit filed by the landlord on the footing that the tenant is not entitled to the protection of the Tenancy Act.

2. The relevant facts giving rise to the present second appeal are these.

Land Survey No. 103, Hissa No. 17, admeasuring 1 acre and three gunthas situated at Hadapsar, District Pune, belongs to the respondents, the original plaintiffs. It was leased to one Maruti Narayan Tupe who is the husband of appellant No. 1 and father of appellant Nos. 2 to 6. On March 3, 1962, the suit land came to be included within the Municipal limits of Municipal Corporation of Pune. It seems that since Maruti was in possession of the land as a tenant on the Tiller's day i.e. April 1, 1957, proceedings were started u/s 32-G of the Tenancy Act. On January 17, 1970, Agricultural Lands Tribunal, Haveli, held that inasmuch as the suit land was included within the corporation area, the tenant was not

entitled to the protection of the provisions of the Tenancy Act and as such he was not entitled to purchase the land as a deemed purchaser. The tenant filed an appeal against the said decision but it was dismissed. There is no dispute that the tenant did not carry the matter further and the decision given by the Agricultural Lands Tribunal, Haveli, as confirmed in appeal, became final.

3. On June, 13, 1971, the respondent issued a notice of termination asking possession by the end of July 31, 1972. Since the tenant failed to deliver the possession the respondents filed Regular Civil Suit No. 533 of 1975 against the appellants for possession of the suit land. The trial Court decreed the said suit. The appellants filed an appeal bearing No. Civil Appeal No. 435 of 1978. However, the appeal was also dismissed on November 30, 1978.

4. Feeling aggrieved by the dismissal of the appeal the appellants, the original defendants, have filed the present second appeal.

5. Mr. Ketkar, the learned advocate for the appellants, urged that it was now a well settled position that a tenant who was in lawful possession of an agricultural land on April 1, 1957, had a vested right to purchase the said land and the said right could be defeated only in the contingencies provided in the relevant subsequent provisions, which relate to the compulsory purchase under the Tenancy Act. He contended that it is also clearly laid down by the precedents including that of the Supreme Court that the subsequent inclusion of an agricultural land within the municipal limits of either a Corporation or Municipality vested right of the tenant to purchase a land is not defeated. Mr. Ketkar, relied on an unreported decision of Madon, J., (as he then was) dated February 25, 1980, in Second Appeal No. 1296 of 1973, arising between the same parties and urged that it is clearly held by this Court that during the pendency and final disposal of an application for exemption u/s 88(c) of the Tenancy Act, if the land is incorporated within the limits of a Municipal Corporation the tenant does not lose the benefit of compulsory purchase u/s 32 of the Tenancy Act which has already vested in him, merely because of such land being incorporated in the Municipal Corporation limits. Mr. Ketkar also relied upon a decision of the Division Bench of this Court in Special Civil Application No. 1023 of 1970, dated September 2/3 1974, where similar view has been taken.

6. Now, the real question that requires consideration is whether the decision of the Agricultural Lands Tribunal dated January 17, 1970, as confirmed in appeal therefrom, holding that the tenant is not entitled to the protection of the Tenancy Act, is a decision binding on the Civil Court or whether it is a decision which can be said to be given without jurisdiction. In this context it will be worthwhile to refer to the relevant provisions of the Tenancy Act which provide for the duties of the Tribunal and the bar of jurisdiction of the Civil Court to entertain certain questions. Section 68 is as under :

"It shall be the duty of the Tribunal---

(a) to determine the value of the site of a dwelling house u/s 17;

- (b) to determine the purchase price of land under sections 32-G, 63-A or 64;
- (c) to decide any dispute under sections 32 to 32-R (both inclusive);
- ((cc) to dispose of land u/s 32-P;)
- (d) to perform such other functions in carrying out the provisions of this Act, as may be prescribed or as may be directed by the State Government."

Similarly, section 85 is as follows :

"85(1) No Civil Court shall have jurisdiction to settle, decide or deal with any question including a question whether a person is or was at any time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord the land held by him which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector or the Maharashtra Revenue Tribunal in appeal or revision or the State Government in exercise of their powers of control.

(2) No order of the Mamlatdar, the Tribunal, the Collector or the Maharashtra Revenue Tribunal or the State Government made under this Act shall be questioned in any Civil Court or Criminal Court."

Reading these provisions together it is clear that an agricultural land tribunal is competent to decide any dispute under sections 32 to 32-R as provided by section 68(c). Section 85(1) provides that no Civil Court shall have jurisdiction to settle, decide or deal with any question including a question whether a person is or was at any time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord the land held by him, which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal or Collector or the Maharashtra Revenue Tribunal in appeal or revision or the State Government in exercise of their powers of control. Sub-section (2) of section 85 provides that no order of the Mamlatdar, the Tribunal, the Collector or the Maharashtra Revenue Tribunal or the State government made under this Act shall be questioned in any Civil or Criminal Court. Having regard to these provisions of section 68(c) and section 85, it is clear that the question whether a tenant should be deemed to have purchased from his landlord a land held by him u/s 32-G of the Tenancy Act is question which clearly falls within the jurisdiction of the Agricultural Lands Tribunal and Civil Court while dealing with a civil suit cannot adjudicate such question. The Agricultural Lands Tribunal while giving its decision on January 17, 1970, was deciding a dispute between a tenant and the landlord and while deciding such dispute it came to the conclusion, though wrongly as I will point out hereafter, that on account of the incorporation of the suit land within the limits of the Municipal Corporation of Pune, the tenant was not entitled to the protection of the Tenancy Act. Now, this decision, though a wrong one, was within the competence of the Agricultural Lands Tribunal as well as the appellate authority to which an appeal lay from its decision. That being so, the said decision could not be called in question in the present civil suit on the

ground that it was palpably a wrong decision and against the established position of law laid down by several decisions right upto the Supreme Court. There is no doubt about the legal position and to which reference has been made, both in Second Appeal No. 1296 of 1973 decided on February 25, 1980 and in Special Civil Application No. 1023 of 1970 decided by the division Bench of this Court on September 2/3, 1974, that if a tenant has become a deemed purchaser of a land on the Tiller's day, the subsequent inclusion of that land within the Municipal limits does not deprive him of a right to get a statutory price fixed by the Agricultural Lands Tribunal u/s 32-G of the Tenancy Act. It is held by the Division Bench that it is not necessary for a tenant u/s 32 to do any overt act such as appear before the Agricultural Lands Tribunal and express his willingness to purchase the land u/s 32-G before the right of purchase could vest in him.

7. Now, in the present case, if there had been no adjudication on this point earlier by the Agricultural Lands Tribunal on January 17, 1970, perhaps it would have been open to the appellants to raise the contention that although the price has not been fixed by the Tenancy Authorities under the provisions of the Tenancy Act yet, by virtue of the statutory provisions they have become compulsory statutory purchasers on the Tiller's day i.e. April 1, 1957. However, the Agricultural Lands Tribunal, Haveli, having once adjudicated on this point, though wrongly, that the tenants were not entitled to the protection of the Tenancy Act including the provisions of compulsory purchase on account of the inclusion of the land within the limits of the Municipal Corporation of Pune. Now, it is not open to the Civil Court and also this Court in second appeal to ignore that adjudication on the ground that it was not in accordance with the legal position. It is well established that a Tribunal of competent jurisdiction can decide a matter rightly or wrongly and, therefore, merely because the decision given by such a Tribunal of limited jurisdiction is not in accordance with law, parties thereto are not entitled to ignore it. In fact, I tried to see whether any assistance could be derived from the two decisions cited by Mr. Ketkar, but I find in both the decisions there was no such prior adjudication as in the present case. Therefore, in spite of a desire to assist the appellants the hands of this Court are tied on account of the legal position.

8. Mr. Ketkar also tried to contend that since admittedly Maruti was a tenant of an agricultural land on April 1, 1957, the Civil Court had no jurisdiction to pass a decree for possession which was barred u/s 85 of the Tenancy Act. Now, having regard to the earlier adjudication by the Agricultural Lands Tribunal in the year 1970, it cannot now lie in the mouth of Mr. Ketkar to contend that because Maruti was a tenant of the agricultural land, the Civil Court had no jurisdiction to pass a decree for possession. The simple answer to this is that once it has been held that on account of inclusion of the land in question within the Municipal limits of Pune Corporation, the provisions of the Tenancy Act cease to apply, automatically the bar of jurisdiction imposed by section 85 of the Tenancy Act must also go. Consequently, the Civil Court had jurisdiction to pass a decree for possession of an agricultural land to which it has been held that the provisions of the Tenancy

Act do not apply.

9. It was also sought to be argued that in that event the trial Court ought to have referred the issue for decision of the authority under the Tenancy Act if it had no jurisdiction to decide the same. But again, the simple answer to this is that there is already an adjudication on the point that Maruti was not entitled to become a tenant - purchaser on the Tiller's day on account of the inclusion of the land within the limits of Municipal Corporation of Pune and this decision is binding on the Civil Court and both the courts below have rightly taken the view that as the matter is already decided by the Tenancy Court it cannot be adjudicated all over again.

10. I am, therefore, of the view, though with a bit of reluctance, that the decree passed by the trial Court and confirmed in the appeal by the appellate Court cannot be disturbed in the present second appeal.

The net result is that this second appeal stands dismissed with no order as to costs.