
(2011) 11 BOM CK 0083

In the Bombay High Court

Case No : Writ Petition No. 2770 of 2011

Vaishali Abhay Mandle and Others

APPELLANT

Vs

Sakharam Vithal Mandle and Others

RESPONDENT

Date of Decision : 17-11-2011

Acts Referred:

Bombay Agricultural Debtors Relief Act, 1947 — Section 24

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 63, 84CC, 85A

Citation : (2012) 2 ALLMR 228 : (2012) 2 BomCR 121 : (2012) 2 MhLj 956

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : Vishal S. Badakh, for the Appellant; Parikshit P. Dawalkar, Advocate for respondent No.5. and Respondent Nos.1 to 4 and 6 served, for the Respondent

Final Decision : Allowed

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. Brief facts as disclosed in the writ petition are as under :

Petitioner No. 1 is wife and petitioner No.2 is son of respondent No.2. Petitioner Nos. 3 and 4 are wife and son of respondent No.3. Petitioner Nos. 5 and 6 are wife and son of respondent No.4. Respondent Nos. 5 and 6 have purchased the suit property from respondent Nos. 1 to 4. It is the case of the petitioners that, respondent Nos. 1 to 4 sold out the suit property to respondent No.5, who is not agriculturist. Said property is sold on 19-12-1995 and 15-11-1997.

3. The petitioners herein instituted Special Civil Suit No.97 of 2008 before the Civil Judge, Senior Division, Ahmednagar against the respondents for partition, separate possession and declaration that the sale deeds dated 19-12-1995 and 15-11-1997 executed by respondent Nos. 1 to 4 in favour of respondent Nos. 5 and 6 are null, void and not binding upon the share of the plaintiffs petitioners

with further relief of injunction against respondent Nos. 5 and 6.

In response to the suit summons, defendants appeared in the matter and filed Written Statement denying claim/contentions of the plaintiffs petitioners and accordingly, issues came to be framed at Exhibit 22.

4. On 08/12/2010 the petitioners herein filed application at Exhibit-47 praying therein to refer the matter to competent authority to decide the issue as to "whether respondent No.5 is agriculturist or not?" contending that respondent No.5 is not agriculturist in view of Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "said Act") and respondent No. 5 cannot purchase the agricultural land and therefore u/s 85A of the said Act, issue has to be referred to the competent authority to decide the same.

Respondent No. 5 filed his Say to the said application. On 14/12/2010 learned Civil Judge, Senior Division, Ahmednagar was pleased to reject the said application. Hence this writ petition.

5. Learned Counsel appearing for the petitioners invited my attention to the provisions of Section 63 and also Section 85A of the Bombay Tenancy and Agricultural Lands Act, 1948 and submitted that, in the light of averments in para 5 of the plaint, it was incumbent upon the concerned Court to frame issue with respect to "whether respondent No.5 is an agriculturist or not?" and further to refer the said issue to the Revenue Authority i.e. Tahsildar for inquiry. However, the mandate of provisions of Section 63 and 85A of the said Act has not been followed by the concerned Court. Therefore, the Counsel for petitioners would submit that, this writ petition may be allowed.

6. On the other hand, learned Counsel appearing for the respondents submits that, the proviso to Section 63 of the said Act enables the purchaser to seek permission from the competent officer and then enter into the transaction. However, the Counsel for the respondents is not able to inform this Court that whether such permission has been obtained by respondent No.5 before entering into transaction. Learned Counsel further submits that, this Court may not interfere in the impugned order.

7. I have given due consideration to the rival submissions. At the outset, it would be relevant to reproduce hereinbelow the provisions of Section 63 and 85A of the said Act.

63. Transfers to non-agriculturists barred.(1) Save as provided in this Act

(a) no sale (including sales in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee,

shall be valid in favour of person who is not an agriculturist (or who being an

agriculturist (will after such sale, gift, exchange, lease or mortgage, hold land [exceeding the ceiling area⁰ determined under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 such permission shall not be granted, where land is being sold to a person who is not an agriculturist for agricultural purposes, if the annual income of such person from other sources is Rs.12,000 or more) or who is not an agricultural labourer;

Provided that the Collector or an officer authorised by the (State) Government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage, on such conditions as may be prescribed.

(Explanation. For the purpose of this subsection the expression "agriculturist" includes any person who as a result of the acquisition of his land for any public purpose has been rendered landless for a period not exceeding ten years from the date of possession of his land is taken for such acquisition).

(1A) Where any condition subject to which permission to transfer was granted is contravened then the land in respect of which such permission was granted shall be liable to be forfeited in accordance with the provisions of section 84CC.

(1B) Where permission is granted to any transfer to land under subsection

(1) any subsequent transfer of such land shall also be subject to the provisions of subsection (1)]

(2) Nothing in this section shall be deemed to prohibit the sale, gift, exchange or lease of a dwelling house or the site thereof or any land appurtenant to it in favour of an agricultural labourer or an artisan [or a person carrying on any allied pursuit.]

[(3) Nothing in this section shall apply or be deemed to have supplied to a mortgage of any land or interest therein effected in favour of a cooperative society as security for the loan advanced by such society [or any transfer declared to be a mortgage by a Court u/s 24 of the Bombay Agricultural Debtors' Relief Act, 1947.]]

[(4) Nothing in section 63A shall apply to any sale made under subsection (1).]

85A. Suits involving issues required to be decided under this Act.(1) If any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act (hereinafter referred to as the "competent authority") the Civil Court shall stay the suit and refer such issues to such competent authority for determination.

(2) On receipt of such reference from the Civil Court, the competent authority shall deal with and decide such issue in accordance with the provisions of this Act and shall communicate its decision to the Civil Court and such Court shall thereupon dispose of the suit in accordance with the procedure applicable thereto.

Explanation. For the purpose of this section a Civil Court shall include a Mamlatdar's Court constituted under the Mamlatdar's Courts Act,1906.]

8. A bare perusal of Section 63 of the said Act would make it abundantly clear that, buyer should be an agriculturist. Therefore, in the light of averments in Para5 of the plaint, in all fairness, the application of the petitioners should have been allowed by the trial Court. The point raised by the petitioners goes to the root of the matter and therefore, such issue become important in the facts and circumstances of this case.

9. In the light of what is stated hereinabove, Writ Petition deserves to be allowed. Accordingly, impugned order is set aside. 2nd Joint Civil Judge, Senior Division, Ahmednagar is directed to frame the issue in respect of "whether respondent No.5 is an agriculturist or not?" and after hearing the respondents will consider the prayer of the petitioners to refer it to the Tahsildar for inquiry as provided u/s 85A of the said Act. Writ Petition is allowed to the above extent and stands disposed of. Rule made absolute as indicated above.