
(2000) 07 BOM CK 0109

In the Bombay High Court

Case No : Writ Petition No. 3525 of 1987

Vithal Ganpat Paraneekar and Another

APPELLANT

Vs

Bijubai Gangaram Malpute

RESPONDENT

Date of Decision : 11-07-2000

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32
Constitution of India, 1950 — Article 227

Citation : (2001) 2 ALLMR 460 : (2001) 4 BOMLR 588

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : Avinash Shivade, for the Appellant; Deepak R. More, for the Respondent

Final Decision : Partly Allowed

Judgement

A.M. Khanwilkar. J.

1. This Writ Petition under Article 227 of the Constitution of India is directed against the judgment and order passed by the Maharashtra Revenue Tribunal, Pune dated 10th February, 1987 in TEN B4/82 and TEN B5/82.

2. The petitioner No. 1 claims to have purchased the suit lands from the wife of the original owner (petitioner No. 2 herein) in the year 1977. The suit lands are situated at Survey No. 178/2, at Village Nandgaon, Taluka Mulshi, having area of 38 Are, which were originally owned by Shri Chindu Dhondu Fale, predecessor of the petitioner No. 2. The suit land was originally numbered as 178/5. The land was in possession of deceased Shankar Savala Fale, the predecessor of the respondents herein, as tenant from the year 1953 to 1959. It appears that Section 32-G proceedings were initiated, when the original tenant deceased Shankar Savala Fale made a statement that he was not willing to purchase the suit land. Pursuant to the said statement recorded by the authorities, the purchase was declared to have become ineffective and possession of the land was also allegedly made over to the landlord in the year 1966-67. The original

tenant Shankar Savala Fale is said to have died in the year 1968 while the original landlord died in the year 1975. The suit land was purchased by the petitioner No. 1 from petitioner No. 2 in the year 1977, It is, thereafter, on 9th July, 1979, the respondent instituted application u/s 84-C of the Bombay Tenancy and Agricultural Lands Act, claiming possession of suit land. Later on, the respondents moved an application for initiating proceedings u/s 32-G of the Act for declaring that she has become deemed purchaser. The Trial Court was pleased to allow the application u/s 84-C for possession made by the respondent by holding that the respondent was unlawfully dispossessed from the suit property. Insofar as the proceedings u/s 32-G is concerned. The Trial Court held that in view of the earlier proceedings have attained finality, this proceedings cannot be used to reopen the same. Against the abovesaid decision, the petitioner went in appeal challenging the order of possession u/s 84-C. Respondents also preferred an appeal challenging the order passed with regard to proceedings u/s 32-G of the Act. Both the appeals were heard and decided by the Appellate Authority by common order. The Appellate Court allowed the appeal preferred by the petitioner on the ground that the sale had become ineffective as the respondent did not exercise right to purchase the suit land within the specified period. The appeal preferred by the petitioner was allowed and that of the respondent was dismissed and order of possession u/s 84-C came to be set aside. The respondent therefore took the matter by way of Revision before the Tribunal by filing two separate Revisions Applications. The Tribunal has decided the matter by common judgment and order dated 10.2.1987, which is the subject matter of challenge in this petition.

3. Insofar as the proceedings u/s 84-C is concerned, it will have to be observed that the application preferred by the respondent u/s 84-C ought to have been dismissed at the threshold by the authorities since the same was filed after almost 13 years from dispossession of the original tenant and two years after the petitioner No. 1 purchased the suit land from petitioner No. 2. The law" in support of this proposition is no more res-Integra inasmuch as the Apex Court in the case of Mohamed Kavi Mohamed Amin v. Fatmabai Ibrahim, has held that proceedings u/s 84-C ought to be initiated within a reasonable time from the date of dispossession. On this count alone, the application u/s 84-C preferred by the respondent deserves to be dismissed and the writ petition should succeed to that extent.

4. Now, coming to the second contention raised by the petitioner in this matter viz. whether the order of remand passed by the Tribunal for conducting proceedings u/s 32-G of the Act should be interfered with, I am of the view that the Tribunal, in paragraph 6 of its Judgment has recorded a clear finding that there is no document on record to show that the suit land was taken possession pursuant to any order passed u/s 32--B of the Act. In other words, since there was no order u/s 32-P of the Act, it cannot be said that the purchase had become ineffective so as to disentitle the respondent tenant to purchase the suit land. No doubt, the respondent may not be in possession of the suit land, nevertheless,

the fact remains that the tillers day, i.e., on 1.4.1957 the respondent was in possession of the suit land as tenant on account of which he became deemed purchaser on that day by operation of law. The only step which is now required to be taken, in such a situation, is to fix the purchase price to enable the tenant who has become deemed purchaser in respect of the suit land. The law casts duty on the authorities to take steps to fix the purchase price in respect of land where the tenant was in possession on the tillers day. However, from the record of this case, it does not appear that such a step was taken by the authorities at all nor there is any record to show that any application was made by either party on that the authorities have adjudicated the issue u/s 32-G of the Act or have declared that the sale has become ineffective within the meaning of Section 32-P of the Act. In the circumstances, to take the matter to its logical end, it would be appropriate that purchase price in respect of the suit land is determined as per the provisions of Section 32-G of the Act. I find no reason to interfere with the remand order passed by the Tribunal since it has been conclusively held that there was no document to show that the respondent was dispossessed from the suit land in view of action u/s 32-P of the Act. Even during the hearing before this Court, the learned Counsel for the petitioner has not been able to show any order u/s 32-P or for that matter proceedings regarding Section 32-G of the Act in respect of the suit land, having been passed at any point of time. Furthermore, I have perused the original record from which it transpires that 32-P proceedings were initiated in respect of land bearing Survey No. 178/6 not in respect of suit land which were originally numbered as Survey No. 178/5, now numbered as Survey No. 178/2. As such, reference made to the entries regarding Section 32-P proceedings in relation to Survey No. 178/6 can be of no avail to the petitioners. For the aforesaid reason, no interference is warranted in respect of order of remand passed by the Tribunal for inquiry u/s 32-G of the Act in relation to the suit land. To that extent, this writ petition will have to be dismissed.

5. In the circumstances, writ petition is partly allowed as aforesaid with no order as to cost. Rule made partly absolute.

The order of Tribunal dated 10.2.1987, is set aside to the extent of Revision Application No. 5/82 with regard to prayer for possession u/s 84-C of the Act only.

Parties to act on an ordinary copy of this order duly authenticated by the Sheristadar of this Court.

6. Certified copy expedited.