
(2002) 09 BOM CK 0100
In the Bombay High Court
Case No : Writ Petition No. 422 of 1989

Vithal Malhar Kulkarni

APPELLANT

Vs

Tarabai Anna Patil and Another

RESPONDENT

Date of Decision : 24-09-2002

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43

Citation : (2003) 1 ALLMR 36 : (2003) 2 BomCR 282 : (2003) 1 MhLj 342

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : G.R. Rege, for the Appellant; N.J. Patil, for the Respondent

Final Decision : Dismissed

Judgement

S.A. Bobde, J.—This petition is directed against the order passed by the Maharashtra Revenue Tribunal dated 8th June, 1988 dismissing the petitioner's revision and holding that the petitioner is not entitled to object to the permission sought by the respondent to sell the property in question.

2. The dispute centers around the property admeasuring about 1.57 Hectare from Gat No. 534 at Village Chinchawad, Taluka Karvir. The undisputed facts are that the petitioner, Vithal Malhar Kulkarni is the successor in title of Yamunabai who was the original land owner. The land in question was transferred under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as "the Act", in favour of the respondent Tarabai Anna Patil, who was the protected tenant. The certificate of purchase under the provisions of the Act was issued to the respondent and she became absolute owner of the lands in question.

3. The respondent Tarabai entered into an Agreement to Sale the land in question on 21st August, 1980 to Prakash Kolgonda Patil and Jambu Ramgonda Patil. As is required by Section 43 of the Act, she applied for permission to sell the suit land. Section 43 of the Act reads as follows :--

"43(1). No land purchased by a tenant u/s 32, 32F, 321, 320, 33C or 43-1D, or sold to any person u/s 32P or 64 shall be transferred by sale, gift, exchange, mortgage, lease or assignment * * * * without the previous sanction of the Collector, such sanction shall be given by the Collector in such circumstances, and subject to such conditions, as may be prescribed by the State Government.

Provided that, no such sanction shall be necessary where the land is to be mortgaged in favour of Government or a Society registered or deemed to be registered under the Bombay Co-operative Societies Act, 1925 for raising a loan for effecting any improvement of such land.

(2) Any transfer ***** of land in contravention of Sub-section (1) shall be invalid."

The specific reason she gave for selling the land was that she is unable to cultivate the land and has decided to give up the profession of agriculture. The Collector, Kolhapur who considered the application granted sanction u/s 43 on the ground stated by Tarabai. Admittedly, the Collector did not give any notice to the petitioner, the original owner of the suit land or to the other co-tenants.

4. Aggrieved by the permission, inter alia on the ground that the petitioner ought to have been given a notice, a revision was filed before the Maharashtra Revenue Tribunal. That Tribunal by the impugned order has dismissed the revision on the ground that the petitioner has no locus standi to object to the grant of permission in view of the fact that the petitioner has lost all right, title and interest in the land in view of the compulsory transfer of the land.

5. Thus the only question before me is whether, after the lands are transferred by the landlord to a protected tenant under the provisions of the Act and the tenant has acquired land after payment of purchase price and a certificate to that effect has been issued to the tenant, the former landlord has any subsisting interest in the land such as to require the Authority to issue a notice to him before granting permission to the tenant for transferring the land under the provisions of the Act. It is not necessary to go over the provisions in great detail. Suffice it to say that the relevant provisions which confer a right on tenant to purchase the land are contained in Chapter III sub-Chapter II which deals with purchase of land by tenant and regulate the said purchase. The right to purchase flows from Section 32. The relevant extract of which reads as follows :--

"32(1). On the first day of April 1957 (hereinafter referred to as "the tillers day") every tenant shall, subject to the other provisions of this section and the provisions of the next succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant, if,--

(a) such tenant is a permanent tenant thereof and cultivates land personally;

(b) such tenant is not a permanent tenant but cultivates the land leased personally; and

- (i) the landlord has not given notice of termination of his tenancy u/s 31; or
- (ii) notice has been given u/s 31, but the landlord has not applied to the Mamlatdar on or before the 31st day of March, 1957 u/s 29 for obtaining possession of the land; or
- (iii) the landlord has not terminated this tenancy on any of the grounds specified in Section 14, or has so terminated the tenancy but has not applied to the Mamlatdar on or before the 31st day of March, 1957 u/s 29 for obtaining possession of the lands :

Provided that if an application made by the landlord u/s 29 for obtaining possession of the land has been rejected by the Mamlatdar or by the Collector in appeal or in revision by the Maharashtra Revenue Tribunal under the provisions of this Act, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. The date on which the final order of rejection is passed is hereinafter referred to as "the postponed date";

Provided further that the tenant of a landlord who is entitled to the benefit of the proviso to Sub-section (3) of Section 31 shall be deemed to have purchased the land on the 1st day of April, 1958, if no separation of his share has been effected before the date mentioned in that proviso."

If the procedure prescribed thereof is complied with it culminates in the issuance of the certificate u/s 32M. The relevant extract of which reads as follows:--

"32M. (1) On the deposit of the price in lump sum or of the last installment of such price the Tribunal shall issue a certificate of purchase in the prescribed form to the tenant-purchaser in respect of the land. Such certificate shall be conclusive evidence of purchase. In the event of failure of recovery of purchase price as arrears of land revenue under Sub-section (3) of Section 32K, the purchase shall be ineffective and the land shall be at the disposal of the Tribunal u/s 32P and any amount deposited by such tenant purchaser towards the price of the land shall be refunded to him."

6. It is clear that on issue of the certificate the tenant becomes owner of the land and the certificate is treated as a conclusive evidence of purchase. Section 32P provides for the powers of the Tribunal to assume and dispose of lands not purchased by tenant. Substantively the present case does not fall u/s 32P.

7. Mr. Rege, learned Counsel for the petitioner contended that the petitioner is the successor in title of the former landlord from whom the respondent Tarabai who acquired the land in question not entitled to be granted permission to sell the land so acquired under the provisions of the Act. In any case according to the learned Counsel, the former landlord was entitled to be heard before permission was granted to Tarabai, the statutory purchaser. In order to appreciate this contention, it is necessary to recall the provisions of Section 43, reproduced supra, which provides that a land purchased by a tenant cannot be transferred except by the previous sanction of the Collector. That section further provides

that any transfer of land without such permission shall be invalid.

8. According to Mr. Rege, the learned Counsel for the petitioner, the former landlord is entitled to be heard and object to the grant of permission by reason of Section 84C which reads as follows :--

84C. (1) Where in respect of the transfer or acquisition of any land made on or after the commencement of the Amending Act, 1955, the Mamlatdar suo motu or on the application of any person interested in such land has reason to believe that such transfer or acquisition is or becomes invalid under any of the provisions of this Act, the Mamlatdar shall issue a notice and hold an inquiry as provided for in Section 84B and decide whether the transfer or acquisition is or is not invalid. (2) If after holding such inquiry, the Mamlatdar comes to a conclusion that the transfer or acquisition of land is invalid, he shall make an order declaring the transfer or acquisition to be invalid :

Provided that, where the transfer of land was made by the landlord to the tenant of the land and the area of the land so transferred together with the area of other land, if any, cultivated personally by the tenant did not exceed the ceiling area, the Mamlatdar shall not declare such transfer to be invalid--

(i) if the amount received by the landlord as the price of the land is equal to or less than the reasonable price determined u/s 63A and the transferee pays to the State Government a penalty of one rupee within such period not exceeding three months as the Mamlatdar may fix :

(ii) if the amount received by the landlord as the price of the land is in excess of the reasonable price determined u/s 63A and the transferor as well as the transferee pays to the State Government each a penalty equal to one-tenth of the reasonable price within such period as the Mamlatdar may fix.

(3) On the declaration made by the Mamlatdar under Sub-section (2),--

(a) the land shall be deemed to vest in the State Government, free from all encumbrances lawfully subsisting thereon on the date of such vesting, and shall be disposed of in the manner provided in Sub-section (4); the encumbrances shall be paid out of the occupancy price in the manner provided in Section 32Q for the payment of encumbrances out of the purchase price of the sale of land but the right of the holder of such encumbrances to proceed against the person liable, for the enforcement of his right in any other manner, shall not be affected.

(b) the amount which was received by the transferor as the price of the land shall be deemed to have been forfeited to the State Government and it shall be recoverable as an arrear of land revenue; and

(c) the Mamlatdar shall, in accordance with the provisions of Section 63 A determine the reasonable price of the land.

(4) After determining the reasonable price, the Mamlatdar shall grant the land on new and impartible tenure and on payment of occupancy price equal to the

reasonable price determined under Sub-section (3) in the prescribed manner in the following order of priority :--

- (i) the tenant in actual possession of the land;
- (ii) the persons or bodies in the order given in the priority list;

Provided that, where the transfer of land was made by the landlord to the tenant of the land and the area of the land so transferred together with the area of the land, if any, cultivated personally by the tenant did not exceed the ceiling area then--

(i) if the amount received by the transferor as the price of the land is, equal to or less than the reasonable price, the amount forfeited under Sub-section (3) shall be returned to the transferor and the land restored to the transferee on payment of penalty of rupee one in each case; and

(ii) if the amount received by the transferor as the price of the land is in excess of the reasonable price, the Mamlatdar shall grant the land to the transferee on new and impartible tenure and on payment of occupancy price equal to one-tenth of the reasonable price and out of the amount forfeited under Sub-section (3), the transferor shall be paid back an amount equal to nine-tenth of the reasonable price.

(5) The amount of the occupancy price realised under Sub-section (4) shall, subject to the payment as aforesaid of any encumbrances subsisting on the land, be credited to the State Government:

Provided that where the acquisition of any excess land was on account of a gift or bequest, the amount of the occupancy price realised under subsection (4) in respect of such land shall, subject to the payment of any encumbrances subsisting thereon, be paid to the donee or legatee in whose possession the land had passed on account of such acquisition."

9. In the submission of the learned Counsel, Section 84C provides that upon invalidation of the transfer the land in respect of which the transfer is invalidated is liable to be granted in accordance with Sub-section (4)(ii) firstly, to the tenant in actual possession of the land and secondly, to the persons or bodies in the order given in the priority list. The priority list is the list referred to in Sub-section (c) of Section 32P(2). Sub-section (c) of Section 32P(2) reads as follows :--

"(c) that if the entire land or any portion thereof cannot be surrendered in accordance with the provisions of Section 15, the entire land or such portion thereof, as the case may be, notwithstanding that it is a fragment, shall be disposed of by sale to any person in the following order of priority (hereinafter called "the priority list") :--

- (i) a co-operative farming society, the members of which are agricultural labourers, landless persons or small holders or a combination of such persons;

- (ii) agricultural labourers;
- (iii) landless persons;
- (iv) small holders;
- (v) a co-operative farming society of agriculturists (other than small holders) who hold either as owner or tenant or partly as owner and partly as tenant, landless in area than an economic holding and who are artisans;
- (vi) an agriculturist (other than a small holder) who holds either as owner or tenant or partly as owner and partly as tenant, landless in area than an economic holding and who is an artisan;
- (vii) any other co-operative farming society;
- (viii) any agriculturist who holds either as owner or tenant or partly as owner and partly as tenant land larger in area than an economic holding but less in area than the ceiling area;
- (ix) any person, not being an agriculturist, who intends to take to the profession of agriculture.

Provided that the State Government may, by notification in the Official Gazette, give, in relation to such local areas as it may specify, such priority in the above order as it thinks fit to any class or persons who, by reason of the acquisition of their land for any development project approved for the purpose by the State Government, have been displaced, and require to be re-settled."

Having considered the legal provisions, I am of view that the landlord is not entitled to be heard upon a combined reading of Section 84C read with section 32P, since those sections deal with a case where the Mamlatdar entertains proceedings for invalidating the transfer or acquisition of any land made after the commencement of the Amending Act. In other words, where a transfer or acquisition of land made after the commencement of the amending Act is invalidated by the Mamlatdar, u/s 84C(1), Sub-section (4) provides what has to be done to such land. As seen above, it provides that the land is required to be granted to the tenant in actual possession of the land or the persons or the bodies in the order given in the priority list.

10. It is not possible to accept the contention of the learned Counsel for the petitioner in this case because in the first place Section 84C has no application, since no proceedings admittedly for invalidation of any transfer or acquisition of any land have been initiated by any party. Moreover, even if, Section 84C is taken to be applicable, which it is not, the landlord is not a person who appears in the order given in the priority list provided by Sub-section 2(c) of Section 32P of the Act.

11. In the present case, it is clear that the respondent has sought permission to sell the land on the ground that she is permanently leaving the profession of

agriculture. The certificate issued by the Collector dated 21st January, 1984 specifically states so- I am of the view that this is a matter entirely between the respondent and the Authority under the Act. It is not open for a former landlord who has no subsisting interest in the property upon the statutory purchase of the land by his tenant to intervene in the matter to oppose the grant of permission u/s 43. In the circumstances, I am of view that the Maharashtra Revenue Tribunal has committed no error in taking the view that has taken and not considering the objection raised on behalf of the petitioner that the respondent Tarabai cannot be said to have permanently given up the profession of agriculture.

12. In the result, I see no error of jurisdiction or infirmity in the order of the Maharashtra Revenue Tribunal neither can the order be said to be vitiated by any perversity. I, therefore, hold that the former landlord has no locus standi to object to the grant of permission when such permission is sought by the statutory purchaser-tenant u/s 43 of the Act.

13. In the result, the writ petition is dismissed. Rule discharged. No order as to costs.

P. A. to give ordinary copy of this order to the parties concerned.