
(1982) 01 BOM CK 0028
In the Bombay High Court
Case No : Writ Petition No. 98 of 1980

Vithal Shankar Dokhe

APPELLANT

Vs

Bhavdu Sakharam Dokhe (deceased) and Another

RESPONDENT

Date of Decision : 11-01-1982

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32F(1A), 32G, 78, 85A(2)

Citation : (1983) 1 BomCR 27

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

Bench : Single Bench

Advocate : V.M. Limaye, for the Appellant; G.S. Bhatt, for respondent Nos. 1, 2 and 5, for the Respondent

Judgement

S.J. Deshpande, J.—This is the petition under Article 227 of the Constitution of India by the landlord challenging the decision of the Maharashtra Revenue Tribunal, dated September 15, 1979. Detailed facts are not necessary to be stated because at the time of admission a limited rule was granted by this Court.

2. On reference by Civil Court two issues were referred to the Tenancy Court. They are :---

(A) Whether the defendant proves that he has become a tenant purchaser of the suit land?

(B) Whether the further proves that he is a tenant of the suit land?

3. The Tahsildar answered both these issues in the negative and held that the respondents are not the tenant-purchasers and are not the tenants of the suit land. On appeal, the Assistant Collector reversed the findings recorded by the Tenancy Court and held that the present respondents have become tenant-purchasers and they are the tenants of the suit land and thus answered the reference in the affirmative by his judgment and order, dated May 23, 1978.

4. Being aggrieved by this order, the landlord filed revision application before the

Maharashtra Revenue Tribunal and the Tribunal has upheld the finding of the Appellate Court holding that the respondents are only tenants, however, on issue No. 1, while passing the order it has substituted the following directions:

"As it is finally held today that opponents are the tenants of the suit lands they will give an intimation to the landlord and the Tribunal in the prescribed manner as laid down in section 32-F(1-A) of the Tenancy Act, within one year from to day in order to enable them to exercise their right of purchase of the suit lands u/s 32-G of the Tenancy Act."

This order was passed on September 15, 1979. The landlord being dissatisfied with this order of the Maharashtra Revenue Tribunal has approached this Court under Article 227 of the Constitution of India.

5. Mr. V.M. Limaye, the learned Counsel appearing for the petitioner has urged two points before me. His first contention was that the Tribunal has no jurisdiction to go beyond the scope of reference as provided by the provisions of section 85-A(2) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Bombay Tenancy Act") . His contention is that the Maharashtra Revenue Tribunal could have only answered the issues and should not have further extended the benefit, which was neither asked for by the tenants nor was there any case before the Tribunal in regard to exercise of their right to purchase of the suit lands and therefore, the direction given in the order the Maharashtra Revenue Tribunal is clearly without jurisdiction and the Tribunal has no jurisdiction to pass such an order. Mr. Limaye's contention is that u/s 85-A(2) of the Tenancy Act when the reference case is before the tenancy Court, the tenancy Court cannot travel beyond the limited issues which are referred to it. I am afraid, I am unable to accept this contention, but I am not, at present as advised, deciding this matter on that point, because in my opinion, the powers of the Tribunal to pass orders are not at all circumscribed in view of the provisions of section 78 of the Bombay Tenancy Act. The Tribunal can certainly pass such orders which are not only consistent but legal and just according to the provisions of the Act. Therefore, in a given case, if the Tribunal passes some orders which were consistent with the provisions of the Act, cannot be said that it has no jurisdiction and the same is hampered by a reason of reference made u/s 85-A of the Bombay Tenancy Act. But it is not necessary for me to dilate on this point further because I am accepting the second point, which was raised by Mr. Limaye, that in the application before the Revenue Tribunal the order which the Tribunal should have been passed should have been consistent with the grievance made by the petitioner in the revision and no relief should have been granted to the respondents especially when in the Appellate Court or in the Revision Court they had not raised any objection to the orders passed by the courts below. The order of the Tribunal granting one year's time prima facie is a just order. But I find from the record that the orders passed on September 15, 1979 and the time of one year was granted from that date. I asked the learned Advocate for the respondents, whether any such intimation is given to the

landlord till the expiry of the said period of one year or till this date by his client as directed by the Tribunal. The learned Advocate for the respondents was unable to give any answer without any instructions. I am told that the tenants have not complied with the direction of that order. In any event, in my opinion, in an application filed by the landlord it was not permissible to the Court to modify the orders in a way detrimental to the landlord , and with this limited grievance, I set aside, that part of the order because I am satisfied that the Tribunal should not have passed such an order in favour of the respondents in a proceeding filed by the landlord which is not in accordance with the procedure, and , therefore, the Tribunal has committed substantial error of law in passing partially favourable order in favour of respondents. Therefore, the order to that extent containing directions will have to be set aside and the rest of the order will have to be retained.

6. In the result, the rule is partly made absolute with costs and the respondents are held to be the tenants-purchasers and they are the tenants of the suit lands.