
(2002) 04 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No's. 168 of 1989, 641 of 1990 and 4958 of 1996

Vivek Laxman Kulkarni since deceased through his heirs and
legal representatives and Others

APPELLANT

Vs

Namdeo Girdhar Wani and Others

RESPONDENT

Date of Decision : 01-04-2002

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43, 43A, 43B

Citation : (2002) 3 ALLMR 855 : (2002) 5 BomCR 119

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : V.J. Dixit, for the Appellant; R.P. Phatake, for the Respondent

Final Decision : Dismissed

Judgement

D.G. Karnik, J.—The land involved in these writ petitions is the same namely, land bearing Gat No. 178 admeasuring 8 acres 29 gunthas situated at village Rotwad, Taluka Erandol, District Jalgaon (hereinafter referred to as the "said land"). The said land originally belonged to Ramchandra Kulkarni. His son Laxman is the petitioner in Writ Petition No. 641/90 Vivek-son of Laxman Ramchandra Kulkarni is the writ petitioner in Writ Petition No. 168/89. Laxman Ramchandra Kulkarni is also the petitioner in Writ Petition No. 4958/96. Writ Petition No. 168/89 arises out of an application made u/s 43-B of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act") by Vivek through his Attorney & Father Laxman for fixation of rent of the said land. Apprehending that Vivek may not be held to be the landlord, his father Laxman Ramchandra Kulkarni also filed another application u/s 43-B of the Act. Writ Petition No. 641/90 arises out of this application made by Laxman. The heirs of Giridhar Wani, who was the tenant, had filed an application u/s 32-G of the Act for fixation of price of the said land. Writ Petition No. 4958/96 arises out of the said application made by the heirs of Giridhar Wani.

2. It was alleged that there was a partition in the family and in the said partition,

the said land bearing Gat No. 178 was allotted to the share of Vivek, who was a minor on 1-4-1957. It was, therefore, alleged that the tiller's day was postponed. In the collateral proceedings, which were fought upto the High Court, it was held by this Court in Special Civil Application No. 167/69 that the alleged partition effected by Ramchandra Kulkarni allotting the said land to Vivek was not valid and was not in accordance with the provisions of the Act.

3. The application made by Vivek u/s 43-B of the Act was allowed by the Tahsildar. However, in the appeal against the said order of the Tahsildar, the Sub-Divisional Officer relying upon the judgment of this Court in Special Civil Application No. 167/69, held that Vivek was not the landlord. The said finding was confirmed by the Maharashtra Revenue Tribunal (for short M.R.T.) and the order of the "M.R.T." is challenged in Writ Petition No. 168/89. In the application u/s 43-B of the Act, made by Laxman, who had anticipated that the application made by his son Vivek could be dismissed on the ground that Vivek is not the landlord, he alleged that the suit land was let out for "Bagayat" purposes meaning that the land was let out for the purpose of taking "irrigated crops". Laxman further alleged that the land was actually used for the purpose of taking Banana crop; 7/12 extracts show that on the major portion of the land banana crop was taken. Laxman contended that the land was covered by Clause (b) of section 43-A of the Act; the Tahsildar could, therefore, fix the rent u/s 43-B of the Act. This application was heard by the Tahsildar, who held that though it was proved that banana crop was taken on the said land, it was not proved that the said land was let out for the purpose of growing of fruits. In view of this, the Tahsildar came to the conclusion that the case was not covered under Clause (b) of section 43-A and, therefore, section 43-B was not applicable. This decision was confirmed by the Sub-Divisional Officer on appeal and the M.R.T. dismissed the revision. This judgment of the M.R.T. is challenged in Writ Petition No. 641/90.

4. Section 43-A of the Act lays down that certain provisions of the Act would not be applicable to:

"(a)

(b) leases of land granted to any bodies or persons other than those mentioned in Clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of livestock."

5. It was not specifically alleged by the petitioner Laxman that the land was let out for the purpose of growing of fruits. The mere fact that banana crop (which is a fruit) was taken from the land, does not prove that the purpose of letting the land was for growing of fruits. The petitioner has stated that the lease was granted orally in the year 1940-41 for Bagayat purpose. Bagayat purpose means that the land was given for taking the irrigated crops. Any Bagayat crop (irrigated crop) including "banana" crop could be grown in the land. Thus, it is not proved that the land was let out for the purpose of growing of "fruits". This

finding of fact was concurrently reached by all the courts below. It is not shown that this finding is perverse. On the other hand, in the application u/s 43-B itself, the petitioner has not specifically alleged that the land was let out only for the purpose of growing of fruits. In view of this, section 43-A was not applicable. As section 43-A was not applicable, application u/s 43-B was not maintainable, neither by Laxman nor by Vivek.

6. Writ Petition No. 4958/96, as stated earlier, arises out of the orders passed by the Tenancy Authorities fixing the price of the deemed purchase of the land by the heirs of Giridhar Wani. This fixation of price was consequential to the finding that the provisions of section 43-A are not applicable.

7. In the circumstances, there is no merit in any of the three petitions. All the three petitions are, therefore, dismissed. Rule discharged. No order as to costs.