
(2019) 11 BOM CK 0116
In the Bombay High Court
Case No : Writ Petition No. 1638 Of 1998

Yashwant Pandharinath Bagal

APPELLANT

Vs

Waman Taghunath Inamdar

RESPONDENT

Date of Decision : 20-11-2019

Acts Referred:

Maharashtra Tenancy And Agricultural Lands Act, 1948 — Section 5, 6A, 32(a), 32(g), 32(m), 88(c)
Code Of Civil Procedure, 1908 — Section 11

Citation : (2019) 11 BOM CK 0116

Hon'ble Judges : Dama Seshadri Naidu, J

Bench : Single Bench

Advocate : S.G. Karandikar, Abhijeet R. Kulkarni, Yuvraj Narvankar, Damini Thaker

Final Decision : Allowed

Judgement

Facts:

1. The petitioner's forefather was the tenant of agricultural lands in Survey No.319/46 and 355/2 in village Khatau, Tal. Khatau of Satara district. His tenancy was subsisting by 1st April 1957; that is, the Tiller's day. In March 1962, the predecessor of the respondent-landlord secured a certificate under Section 88C of the Maharashtra Tenancy and Agricultural Lands Act ('the Act'). Later, the tenant applied for its revocation. Then, in July 1969, the Additional Commissioner, Revenue, revoked the certificate.

2. Aggrieved, the landlord filed a Special Civil Application before this Court but could not succeed. In August 1972, it was dismissed. Eventually, the tenant invoked Section 32 G, claiming to be a deemed purchaser. Yet the Tehsildar, the primary authority, in 1978, declared his suit ineffective. Then, the tenant appealed; the Assistant Collector allowed the appeal in January 1980. So the landlord carried the matter in revision before the Maharashtra Revenue Tribunal ('the Tribunal'). In March 1981, the Tribunal allowed the revision.

3. Eventually, the tenant filed Writ Petition No.2474 of 1981. This Court allowed it in November 1991. The landlord's efforts in SLP before the Supreme Court bore no fruit, for the Supreme Court refused to interfere. As the record reveals, this Court remanded the matter to the primary authority only for fixing the purchase price.

4. After taking evidence on either side and after considering the landlord's objections, the Tehsildar fixed the purchase price, which the tenant paid and secured a Section 32M certificate. Unrelenting, the landlord appealed against the Tehsildar's order before the SDO, who dismissed it in March 1993. Eventually, the landlord filed a revision before the Tribunal. And the Tribunal allowed it on 31st December 1997. Assailing that order, the tenant, that is the successor tenant, filed this writ petition.

Submissions:

Petitioner:

5. Shri S.G. Karandikar, the tenant's counsel, has submitted, first, that the Tribunal has revisited the issues which this Court had already decided. Such a course of adjudication is impermissible because the Tribunal cannot sit in appeal over the High Court's judgment. He has contended, second, that the issue of the tenant's landholding was never raised before any other forum until the matter reached the Tribunal, in revision. So an issue raised for the first time at the revisional level ought not to have been entertained by the Tribunal. Shri Karandikar has, finally, submitted that even on facts, the revisional order could not be sustained.

6. To elaborate, Shri Karandikar has argued that the tenant is said to own only 30 acres, when the ceiling stands fixed at 48 acres. Unless, according to him, the entire land is wet, a tenant's holding 30 acres could not be treated as his having the agricultural land over the ceiling limit. In this context, Shri Karandikar stresses that the Tribunal has concluded-with no basis, at that-the tenant's holding exceeded the ceiling. That conclusion, he points out, is against the record. So he urges this Court to allow the writ petition.

Respondents:

7. But Shri Yuvraj Narvankar, the respondent-landlord's counsel, has submitted that the landlord did raise the issue of the ceiling before the other quasi-judicial authorities, including the SDO. But both the primary and the appellate authorities have given a short shift to the landlord's contention. Drawing my attention to Section 32A of the Act, Shri Narvankar has contended that the authorities, at any stage of adjudication, must examine the vital issue of holding-that is, whether the tenant holds land exceeding the ceiling. To support his contentions, Shri Narvankar has relied on *Balkrishna Dinkar Gondhalekar v Kashiram Sonu Karabele*[2005(1) All MR 693]and *Dattatraya Anant Wakade v Rangrao Sultanji Ghorpade*[2003 (2) MhLJ 462].

8. Shri Narvankar has also taken pains to impress upon the Court that the tenant does hold land beyond the ceiling and that the Tribunal has correctly determined that issue. Finally, on the question whether the Tribunal could have revisited the issue supposedly concluded by this Court, Shri Narvankar has drawn my attention to *Ambadas Sitaram More v Murlidhar Digamber*[(2005) 5 Supreme Court Cases 357] and insisted there can be no estoppel against the statute. Thus, according to Shri Narvankar, the Tribunal's impugned order is unassailable, and the writ petition deserves to be dismissed.

Discussion:

9. I need to adjudicate three issues:

(i) Has the Tribunal got the jurisdiction to reopen and re-examine the issue concluded or deemed to have been concluded by a superior judicial forum?

(ii) Has the landlord raised before any other forum than the Tribunal the issue whether the tenant has held land beyond the ceiling limit?

(iii) Has the Tribunal correctly held that the petitioner-tenant holds land over the ceiling?

10. The first issue considered, the remaining two, I reckon, need no answer. So let us begin with that issue, first.

Issue No.(i):

11. The tenant's very entitlement to be a deemed purchaser depends on his landholding in terms of Section 32(a). In other words, the extent of the tenant's landholding is the fulcrum of the entire dispute. We are in the second round of litigation.

12. In the first round, this Court rejected the landlord's objections and contentions on all counts and directed the Primary Authority to fix the purchase price. And for that purpose alone, the Court sent the matter back to the Primary Authority. So the question of the tenant's entitlement or disentitlement to purchase the property depended on his holding land within or beyond the ceiling. And that should have been the focal point of adjudication, in the proceedings the tenant initiated under Section 32(G) of the Act.

13. It is too late in the day, I reckon, to re-visit that issue. When the matter reached this Court, it rendered a comprehensive judgment in WP No.2474 of 1981. By way of merger, the orders of the primary and revisional authorities stood merged with this Court's judgment, dated 27.11.1991.

14. When the matter reached the Tehsildar for his determining the purchase price, the landlord once again raised many objections on the tenant's entitlement to the land, even though the scope of the inquiry was limited. He led evidence, too. As seen from the record, the Tehsildar allowed the parties to lead oral evidence; he examined the documentary evidence, too, before his fixing the

purchase price. The purchase price fixed, aggrieved, the landlord appealed but could not succeed. Eventually, the Tribunal, in revision, reversed all the findings on the premise that the tenant holds excess land. Interestingly, the Tribunal extensively refers to the findings of the Primary Authority and the Appellate Authority in the earlier round.

15. I am afraid, for the tribunal to re-examine, there remained no orders rendered by the lower authorities. Once the matter reached this Court and this Court rendered the judgment in Writ Petition No.2474 of 1981, all the earlier findings stood merged with those of the High Court. In other words, the Tribunal sat in appeal over this Court's judgment, so to say. And that is impermissible.

16. Correctness is a desirable, but mostly unattainable, judicial virtue. For the law-at least its interpretation-is subjective. What is vital, certain, and attainable is another virtue: certainty. The certainty of judicial outcome. Post-litigation, the law applied, the courts determine the consequences the parties to the litigation should face; pre-litigation, the courts, precedentially, guide the people about the consequences their actions entail them-based on the same law. And that guidance demands certainty. Perhaps, correctness is divine, and certainty human.

17. A decision between the parties binds them at all stages. This stands enshrined in Section 11 of CPC, which codifies, among other things, the common-law doctrine of res judicata. And the res judicata applies at different stages of the same proceedings. In *Y. B. Patil v. Y. L. Patil*[AIR 1977 SC 3921], the Supreme Court has held:

"[T]he principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding."

18. Here, the landlord, however, suffers the consequences of estoppel, of which res judicata is a facet. True, res judicata results from a decision of the court, but estoppel from the acts of parties. Indeed, res judicata bars multiplicity of judicial proceedings; estoppel multiplicity of representations or actions. And here, to be more precise, the landlord takes the consequences of constructive res judicata.

19. There can be no repeated adjudication, especially piecemeal. An issue raised, parties are expected to put forward all their objections and contentions that affect the issue. If an assertion or plea is an essential component of a dispute, but it has not been raised, that estops the party from raising the plea, anew. That is, that plea is deemed to have been raised and rejected. In *Workmen of Cochin Port Trust v. Board of Trustees of the Cochin Port Trust*[AIR 1978 SC 1283], the Supreme Court has held:

7. It is well-known that the doctrine of res judicata is codified in Section 11 of the CPC but it is not exhaustive. Section 11 generally comes into play in relation to civil suits. But apart from the codified law the doctrine of res judicata or the

principle of res judicata has been applied since long in various other kinds of proceedings and situations by Courts in England, India and other countries. The rule of constructive res judicata is engrafted in Explanation IV of Section 11 of the CPC and in many other situations also principles not only of direct res judicata but of constructive res judicata are also applied. If by any judgment or order any matter in issue has been directly and explicitly decided the decision operates as res judicata and bars the trial of an identical issue in a subsequent proceeding between the same parties. The principle of res judicata also comes into play when by the judgment and order a decision of a particular issue is implicit in it, that is, it must be deemed to have been necessarily decided by implication; then also the principle of res judicata on that issue is directly applicable. When any matter which might and ought to have been made a ground of defence or attack in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in it is deemed to have been constructively in issue and, therefore, is taken as decided."

(italics supplied)

20. At the cost of repetition, I may observe that the issue of the tenant's landholding was the bedrock for the adjudication under Section 32G. And that adjudication has attained finality with this Court's direction for the fixation of the purchase price. In the 2nd round of litigation, if the landlord had any grievance, it ought to have been about only the purchase price. Nothing beyond.

21. Now, we will examine the precedents the landlord has relied on. This Court in Balkrishna's case has held that notwithstanding a compromise between the parties, once the tenant fails to answer the requirements under Section 32A, he could not be a deemed purchaser.

In fact, the learned Single Judge of this Court has observed:

"4. Having considered the rival submissions, I have no hesitation in taking the view that the approach of the authorities below is manifestly wrong. Indeed, the parties arrived at compromise before this Court as is correctly noted by the authorities below. Nonetheless, when the question of deciding the issue of the tenants having become deemed purchasers in respect of the portion of the suit land arose, it was obligatory on the part of the authorities to ascertain whether the land held by the tenants was or was not in excess of the ceiling area and conform to the requirements of Section 32A of the Act. It is only to the extent of the permissible ceiling area the tenants would be entitled to purchase the suit lands as deemed purchasers by virtue of that provision, compromise decree or order of a court of competent jurisdiction inter se the parties notwithstanding. The ceiling area is prescribed in Section 5 of the Act. This inquiry has not been undertaken by the authorities below, for which reason the appropriate course is to set aside all the orders, which are subject matter of challenge in this petition and to relegate the parties before the Tahsildar, who, in turn, shall examine the

issue in the context of the requirement of Section 32A read with Section 5 of the Act. . ."

(italics supplied)

22. In the above extract, the Court has observed that "compromise decree or order of a court of competent jurisdiction", there ought to be adjudication under Section 32A of the Act. The facts reveal that the dispute proceeded on the premise that parties compromised the matter. But Balkrishna holds that despite the compromise, the tenant must have also been legally entitled to claim the property under Section 32A of the Act. To that extent, the judgment has precedential value and binds me. The 2nd part of Balkrishna that the test of entitlement should be despite an "order of a court of competent jurisdiction" is obiter. I am afraid that part does not bind.

23. In Wakade, the landlord has contended that by the Tiller's day, the tenants possessed lands over the ceiling limit, so they could not purchase the land. The Additional Tahsildar accepted that contention. In Appeal, S.D.O., reversed; in revision, the appellate order was sustained. Then this Court has held that the "tenants would be entitled to purchase the tenanted land only up to the ceiling area after calculating holding of the tenant of other land owned by him." So it remanded the matter. Here, that stage was over. In fact, this Court held in the tenant's favour. A revisit, at this stage, then, is impermissible.

Issue No.(ii):

(ii) Has the landlord raised before any other forum than the Tribunal the issue whether the tenant has held land beyond the ceiling limit?

24. On the question whether the landlord has raised the issue of tenant's landholding earlier, the landlord did raise that issue in passing. And that was in the second round. That is, when this Court remanded the matter to the primary authority for fixing the purchase price, in those proceedings, the landlord has raised that objection. But the scope of that adjudication was limited; it concerned only the purchase price. It is not a full-fledged adjudication on the tenant's entitlement. That stage was over. Besides, the respondent's counsel has drawn my attention to the appellate authority's observation in the order. In my view, the appellate authority has rightly held that he could not revisit that issue as it stood determined by this Court.

Issue No.(iii):

(iii) Has the Tribunal correctly held that the petitioner-tenant holds land over the ceiling?

25. Even if we revisit the merits, on the question whether the tenant held land over the ceiling, the record reveals that the tenant holds 30 acres of land, having succeeded to his father's estate, along with his mother and brothers. In the cross-examination before the Tehsildar in the proceedings for fixing the purchase

price, the tenant asserted that it was dry land. But, for the first time, the Tribunal jumped to the conclusion that it is a wetland.

26. First, the landlord introduced no evidence to contradict the tenant's assertion in the cross-examination that it is dry land. Second, nor has the Tribunal examined any revenue record to conclude that it is a wetland. In this context, the landlord's counsel submits that as the tenant has been raising sugarcane crops, the land ought to be a wetland. I am afraid that plea is specious. The nature of the crop is no sure guide to determine the nature of the land. It is a matter of survey and settlement-a matter not of conjecture, but of record.

27. As to the nature of the land, Section 6A of the Act defines "irrigated land", that is wetland. According to it, (a) "irrigated land, whether perennially or seasonally irrigated, shall not include land irrigated by sources other than canals or bundharas within the meaning of the Bombay Irrigation Act, 1879, or lift irrigation system constructed or maintained by the State Government; (b) seasonally irrigated land shall include alluvial land and land situated in the bed of a river and seasonally flooded by the water of such river."

28. In the absence of any cogent material for the Tribunal, it ought not to have concluded that the petitioner-tenant owns wetland. Such a conjectural conclusion fails in the face of the tenant's assertion on oath.

29. The landlord's counsel has referred to the doctrine of estoppel. He has contended that there can be no estoppel against a statute. No quarrel with it. Here it is not a case of estoppel; it is a case of res judicata. The parties agitated the issue about the tenant's entitlement to be a deemed purchaser, and that stood determined by this Court's judgment, dt. 27/11/1991. That judgment, in fact, was challenged in the Supreme Court, but without success. Once that issue has attained finality, it is inadvisable for the Tribunal to examine the correctness of the findings rendered by the superior courts. It is trite to observe that the principle of res judicata applies even at the different stage of the same proceedings.

I, therefore, allow the writ petition. As a result, the impugned order dt.31.12.1997 stands set aside.