

Shree Vyankatesh Collector Staff Co-operative Housing Society Ltd. Vs Ramchand Bapurao Gulhane and others

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Nov. 5, 1985

Acts Referred: Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 " Section 57

Citation: (1986) MhLj 421

Hon'ble Judges: H.D. Patel, J

Bench: Single Bench

Advocate: S.V. Manohar, for the Appellant; A.M. Bapat for Respondents Nos. 4 to 6 and A.A Desai, Asst. Govt. Pleader, for the Respondent

Final Decision: Allowed

Judgement

H.D. Patel, J.

Bapurao Laxman Gulhane. predecessor-in-title of respondents Nos. 1 to 3 was a tenant of field survey No. 62/ 1

admeasuring 3 hectares and 84 Rs. of Yavatmal. The owner of the said field was Narottamdas Suchak.

Predecessor-in-title of respondents Nos.

4 to 6.

2. In Revenue Case No. 10/59113)/63-64 of Yavatmal the said Bapurao was declared as statutory owner of the said field survey No. 62/1 and

the purchase price of the said field was determined at Rs. 1,851.03 which is said to have been credited by Bapurao in the Government Treasury

and a sale certificate was issued in his favour on 23-7-1967. Thus the said Bapurao Gulhane became the absolute owner of the field survey No.

62/1 of Yavatmal.

3. The Petitioner, is a co-operative society duly registered under the Maharashtra Co-operative Societies Act, 1960 and incorporated with the

object of constructing houses for its members who were mostly Government servants of middle income group. The Petitioner society with the

object of acquiring the land for its members entered into an agreement in the year 1981 with respondents Nos. 1 to 3 for purchase of 3 acres and

20 gunthas of land out of survey No. 62/1 of Yavatmal, and in pursuance of the said agreement respondents Nos. 1 to 3 filed an application on

14-1-1981 under the provisions of section 57 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act. 1958 (hereinafter referred

to for the sake of brevity as ""the Act"" before the Sub-Divisional Officer. Yavatmal, seeking permission to transfer 3 acres and 20 gunthas of land

in favour of the petitioner.

4. The petitioner society through its President also filed an application on 14-1-1981 before the Sub-Divisional Officer. Yavatmal seeking

permission u/s 89 of the Act for disposal of 3 acres and 20 gunthas from survey No. 62/1 at the rate of Rs. 30,(XX)/- per acre for the purpose of

constructing houses for its members i.e. for non-agricultural use. The application was duly supported by affidavit as well.

5. The proceedings were registered as Revenue Case No. 62/59(23)/80-81 before the Sub-Divisional Officer, Yavatmal. After due inquiry, which

included the objections raised by respondents Nos. 4 to 6 he passed an order on 30-11-1981 according permission to respondents Nos. 1 to 3 to

transfer 3 acres and 20 gunthas of land from survey No. 62/1 in favour of the petitioner society for non-agricultural purpose. As a consequence of

the permission granted to respondents Nos. 1 to 3 to transfer the land to the petitioner society, after necessary compliance of the order, the land in

question came to be transferred.

6. Respondents Nos. 4 to 6 feeling aggrieved by the order according permission to respondents Nos. 1 to 3 for transfer of the land to the

petitioner society filed Revision Application No. Ten. A.(19)/1982 before the Maharashtra Revenue Tribunal at Nagpur. By the order dated 26-

11-1982 the learned Member of Revenue Tribunal set aside the order passed by the Sub-Divisional Officer. Yavatmal on the sole ground that the

permission accorded was contrary to rule 31-A of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Rules, 1959 (hereinafter

referred to for the sake of brevity as ""the Rules""). Accordingly the revision came to be allowed. The petitioner society has challenged the order of

the Maharashtra Revenue Tribunal in this petition.

7. The first question raised on behalf of the petitioner was regarding the locus standi of respondents Nos. 4 to 6 to file revision application before

the Maharashtra Revenue Tribunal. It was urged that these respondents had no interest left in the property in their capacity as successor-in-interest

of Narottamdas Suchak after Bapurao had become the owner of the field survey No. 62/1 of Yavatmal. Such persons cannot have any right, much

less the locus standi to interfere with the property that passed on to Bapurao and thereafter to respondents Nos. 1 to 3. On the other hand, it was

very vehemently contended on behalf of respdts. Nos. 4 to 6 that though these respondents have cost the interest in the property, they can still

have a right to raise objection on the ground of public interest. In this connection reliance was also placed on behalf of the respondents on a

decision of this Court in Ganpatlal v. Purshottam (1985 MhLJ 123).

8. In the aforesaid case the statutory owner mortgaged the land by simple mortgage on 24-4-1970 with the Land Development Bank, continuing

the possession of land with the mortgagor. An application was moved by the ex-landlord that there was a breach committed by the tenant of

section 57 of the Act, since he had mortgaged the land without the previous sanction of the Collector. The application was rejected by the

Additional Tahsildar and the appeal was also dismissed by the Sub-Divisional Officer. The Maharashtra Revenue Tribunal allowed the revision,

which order was impugned in this Court. It was held that the original landlord was entitled to file an application u/s 122 of the Act. The expression

any person interested in such land"" was interpreted to include persons who had interest in the land.

9. The aforesaid case can have no application to the facts involved in the present case. In Ganpatlats case (cited supra) the power to file an

application through an interested person flowed from section 122 of the Act. No such provision is pointed out, by which the ex-landlord could

raise objection being interested in the property. Merely stating that respondents Nos. 4 to 6 could intervene on the ground of public interest is by

which the ex-landlord could raise objection being interested in the property. Merely stating that respondents Nos. 4 to 6 could intervene on the

ground of public interest is not enough. Even looking to the object of the Act, the land which was purchased by the tenant should not be allowed to

be alienated to defeat the purpose of the Act or the land should not be allowed to be lost knowingly or unknowingly and, therefore, such alienation

or loss is made subject to the provisions of section 57(1) of the Act. No doubt the power of the Collector to accord the sanction is limited and

confined to such conditions as may be prescribed by the Rules. Nonetheless the power can be exercised in bona fide and genuine cases, and the

concerned authority has power to sanction the intended transaction. In such circumstances, I do not see how other persons having no interest left

in the property could, on the ground of public interest, have a right of interference. In my opinion, respondents Nos. 4 to 6 have no locus-standi to

intervene in the matter and create impediment in the affairs of the property in the hands of respondents Nos. 1 to 3, and which property was lost to

respondents Nos. 3 to 6 years back. Consequently respondents Nos. 4 to 6 had no right to file the objection before the Sub-Divisional Officer,

Yavatmal or even to prefer the revision application before the Maharashtra Revenue Tribunal at Nagpur.

10. Even presuming for the time being that respondents Nos. 4 to 6 are the interested persons having the right to object, was it proper for the

Maharashtra Revenue Tribunal to have rejected the permission sought by respondents Nos. 1 to 3. The fact remains that respondents Nos. 1 to 3

had agreed to sell the land to the extent of 3 acres and 20 Gunthas for non-agricultural use to the petitioner society with the object of constructing

houses for their members, who were Government Officials prior to the filing of the application seeking permission to effect the transfer. As is

apparent from the order passed by the Sub-Divisional Officer, Yavatmal, an inquiry as envisaged was held in the matter and on being satisfied, the

permission was accorded as prayed for. In pursuance of the permission, the property was also transferred to the petitioner society.

11. The respondents Nos. 1 to 3 have in their application specifically stated that the petitioner society has agreed to purchase the said land for

non-agricultural purpose. It was also mentioned in the application and particularly that respondents Nos. 1 to 3 were indebted and also with a view

to discharge the debt they have agreed to dispose of the property. The petitioner society though its President also moved an application seeking

permission for transferring the property in their favour specifically pointing out that they were purchasing the land for constructing houses for their

members and thereby putting the land to non-agricultural use. Upon registration of the proceedings, it appears that reports from various agencies

were called and the authority on being satisfied that the land was being sold bona fide for non-agricultural purpose, the permission was granted by

the Sub-Divisional Officer, Yavatmal. It is too late in the day for the respondents Nos. 4 to 6 to urge that no inquiry worth the name was held

before the permission was granted.

12. This finding of the Sub-Divisional Officer, Yavatmal was assailed by (he Maharashtra Revenue Tribunal on the sole ground that the land was

being transferred to pay the debts and the rules do not provide for transferring the land on that count. In my opinion, the Maharashtra Revenue

Tribunal was swayed away by the bona fide disclosure by respondents Nos. 1 to 3 that they were indebted to the extent of Rs. 14000/- . In any

eventuality what is required to be seen is whether the condition laid down for permitting the transfer of land as provided in Rule 31-A is satisfied.

The said rule provides for circumstances and conditions subject to which sanction can be accorded u/s 57 of the Act for transfer of the land. Rule

31-A(1)(e) reads as under:

31-A. The circumstances in which and conditions subject to which sanction shall be given by the Collector u/s 57 for transfer- (1) u/s 57, the

Collector may give sanction for transfer of land in any of the following circumstances, namely : -

(a) XXXX

(b) XXXX

(c) XXXX

(d) XXXX

(e) that the land is being sold bona fide for any non-agricultural purpose;

The only requirement to be established before the transfer can be permitted is the satisfaction of the authority that the land is being sold bona fide

for non-agricultural purpose. If this condition is satisfied, there can be no impediment in permitting the sale, though it may simultaneously also serve

some other purpose not stipulated in rule 31-A. In the instant case the sale was agreed upon between respondents Nos. 1 to 3 on one hand and

the petitioner society on the other for using the land for non-agricultural purpose i.e. for construction of tenements for their members who are

government officials. This is the only reason for the petitioner society to purchase the land. May be that the would be seller may also achieve other

object thereby. However only because the intended seller could also simultaneously be able to wipe out the debts is no ground to reject the

application. The Sub-Divisional Officer, Yavatmal has found as a fact that the land is being sold for being used for non-agricultural purpose, and 1

see no reason why that order should not be upheld. In fact the Maharashtra Revenue Tribunal was not right in setting aside the order passed by the

Sub-Divisional Officer, Yavatmal. If according to the reasoning adopted by the Maharashtra Revenue Tribunal the land was being sold with

solitary intention of clearing the loan, then it was not necessary for the respondents Nos. 1 to 3 to dispose of 3 acres and 20 gunthas of land to pay

a small debt of Rs. 14,000/- only. The sale of small portion of land would have sufficed. Since I am disagreeing with the view taken by the

Maharashtra Revenue Tribunal, I have no option, but to quash its order dated 27-9-1982.

13. In the result, the petition is allowed. The order passed by the Maharashtra Revenue Tribunal in Revision Application No. Ten. A(19)/82 on

26-11-1982 is hereby quashed. In the circumstances of the case, the parties are directed to bear the costs as incurred.