
**Kagal Education Society Ltd. Vs Shrimant Ajitsinhrao Yeshwantrao
Ghatge and Others**

Special Civil Application No. 1412 of 1977

Court: Bombay High Court

Date of Decision: Dec. 12, 1980

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 – Section 32, 32G, 32M, 32P, 43

Citation: AIR 1982 Bom 206 : (1981) MhLj 665

Hon'ble Judges: Kanade, J

Bench: Single Bench

Advocate: S.M. Mhamane, W.N. Yande, Addt. Govt. Pleader, for the Appellant; N.D. Hombalkar and R.V. Naik, for Y.R. Naik, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. A short question involved in this Special Civil Application filed by the petitioner under Art, 227 of the Constitution of India is as to whether the

provisions of Sec 43 r/w Sec 34C of Sec. 32 of the Bombay Tenancy and Agricultural Lands Act, 1948 thereafter referred to as the "Bombay

Tenancy Act") would apply to the facts of the present case.

2. Undisputed facts of this case are that the land R. S. No 95/1 admeasuring 13 acres 33 gunthas situated at village Kagal, District Kothapur was

owned by respondents Nos. 1 to 4 and the same was in possession of one Gopal Krishna Jadhav as a tenant in the proceeding started u/s. 32G

of the B. T. A. L. Act, Gopal Krishna Jadhav was declared as deemed purchaser and the price of the land was fixed at Rs. 2000/- It was directed

that the said amount should be deposited by the tenant in 26 installments. It appears that the tenant paid only five installments and ceased to make

any further deposits thereafter.

3. The said tenant Gopal krishna Jadhav since deceased transferred the land in favour of respondent No. 5 under a registered gift-deed, dt. Nov.,

29 1965, It is, therefore, respondents Nos., 1 to 4 - original owners, who filed Tenancy Case No. 80 of 1968 in the Court of the Tahsildar, Kagal

challenging the validity of the said transfer of the land under the gift-deed. The learned Tahsildar, Kagal started inquiry on the basis of the

application made by respondents Nos. 1 to 4 on consideration of the evidence on record held that the transfer effected by the deceased tenant

Gopal Krishna Jadhav was in contravention of the provisions of Sec. 43 of the Bombay Tenancy Act, and therefore the said transaction was

declared invalid in terms of Sec. 84C of the said Act. The learned Tahsildar by the judgment and order dt. April, 29, 1986 declared that the

transfer of the suit land by gift-deed was invalid and the suit land should be vested in the State Government. He further directed that the disposal of

the suit land should be made in accordance with the provisions of sub-sec. (4) of Sec. 84-C of the Tenancy Act. From the record of this case, it

appears that appeal was filed by the widow of the deceased Gopal Krishna Jadhav, but the said appeal was dismissed. The transferee respondent

No. 5 did not file any appeal. Similarly, the original owners respondents Nos. 1 to 4 made a representation to the District Collector, Kolhapur that

the land in dispute should be transferred to them as they are agriculturists. By a letter, dt. Feb 14, 1976, the District Collector's office informed

respondents Nos. 1 to 4 that their application is disposed of and filed and they expressed their regret that the land cannot be restored to the

original owners. The original owners respondents Nos. 1 to 4 feeling aggrieved by the decision of the District Collector submitted Revision

Application to the Maharashtra Revenue Tribunal being No. MRT KP. 95/76. The said representation made by the original owners was treated as

an appeal by the learned Member of the Tribunal without expressing any opinion as to whether the said representation was in the nature of an

appeal or otherwise and proceeded with the revision application. Respondents Nos. 1 to 4 in the said revision application inter alia contended that

the tenant who was deemed purchaser had not paid the entire purchase price of the land and therefore the sale in favour of the land and therefore

the sale in favour of the tenant must be restored to them under the provisions of Sec. 32P of the Tenancy Act. The landlord's contention seems to

have been accepted by the learned Member of the Tribunal. It is observed in the judgment of the Maharashtra Revenue Tribunal that:

Now, it is not disputed before me that the proceedings started u/s/ 32-G had not been finally concluded. In that the entire price was not recovered

with the result the certification u/s/ 32-M remained to be granted. Thereafter the suit land cannot be said to have been purchased by the tenant

within the meaning of Sec 42 of the Tenancy Act".

It is further observed that:

It is again not disputed that the proceedings u/s 84-C were started on an assumption that the suit land was purchased by the tenant but as we have

seen, this was not the case and therefore there was no warrant for taking proceeding u/s 84-C In that view of the matter. I hold that the

proceedings u/s 84-C were incompetent and the orders whatever might have come to be passed in the regard are a nullity".

4. In the subsequent para of the judgment the learned Member of the Maharashtra Revenue Tribunal further observed that:

Evidently, the revision application sought an entirely different redress when they complained against the transfer effected by the tenant. The

purport of their complaint obviously was the either the price should be recovered and paid to them failing which action to dispose of the land in

accordance with the provisions of Sec. 32-P should be taken, Unfortunately this aspect of the matter was lost sight of I am therefore constrained

to remit the matter to the trial Court for taking suitable action in terms of Sec. 32-K to start with and dispose of the matter according to law".

While making the said observations, the Tribunal was pleased to allow revision application and remitted the case to the trial Court for fresh

disposal according to law in the light of the observations made in the judgments of Sec. 32K. 32M. And 32P of the Act. This order of remand is

challenged by the petitioner in this Special Civil Application under Art. 227 of the Constn.

5. It is necessary to mention here that the petitioner is a society by name ""Kagal Education Society Ltd"" at Kagal to whom the disputed land is

allotted, while disposing the same under the provisions of S. 84-C of the Bombay Tenancy Act. The petitioner has constructed some structures on

the said land and the society is in actual possession thereof. It is, therefore, the petitioner has challenged the order of rented by the learned

Member of the Maharashtra Revenue Tribunal.

6. A short question involved in this Special Civil Application is an to whether the provisions of Sec Sec 13 of the bombay Tenancy Act would

apply to the admitted facts of this and consequently the provisions of Sec 84-C would be attracted for disposal of the land. Sec 43 lays down as

under :-

43. (1) No land purchased by a tenant under Sec 32, 32F, 32I, 32O, 32C or 43-ID or sold to any person u/s 32P or 64 shall be transferred by

sale gift, exchange, mortgage lease or assignment or partitioned without the previous sanction of the Collector Such sanction shall be of the 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 he mortgage in favour of Government of 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 or partition of land in contravention of sub-sec (1) shall be invalid.

The said section would attract a case where a tenant has purchased the land under the said provisions mentioned in the section. In the instant case,

it is not in dispute that Gopal Krishna Jadhav was in actual possession of the disputed land on the Tills day i.e. on April. 1, 1957 and he became

deemed purchaser of the said land on the Tills day free of all encumbrances subsisting thereof under the provisions of Sec. 32 of the Tenancy Act.

Sec. 32 of the Tenancy Act introduced a legal fiction that if the tenant on the land is in possession on Apr., 1, 1957, he will be deemed to be the

purchaser or the ownership of the land would stand transferred in favour of the tenant, Subsequent provisions of the Tenancy Act such as Sec. 32-

G empower the authorities to make an inquiry after due notice to both the landlord and tenant and person interested. Under sub-sec (3) of Sec.

32-G where any tenant fails to appear or makes a statement 1982 Bom/14 V G -14 that he is not willing to purchase the land, the Tribunal shall by

an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective. If the purchase is declared

ineffective as provided by Sec. 32-G (2), the authority under the Act is to start the proceeding u/s 32-P of the Tenancy Act proceeding pose of

the land as provided therein.

7. The provisions of Sec. 32-K. Of the Tenancy Act further provide that on the determination of the purchase price payable u/s 32-H the tenant

purchaser has to deposit the said price in lump sum of such annual installments not exceeding with simple interest at the rate of 4 1/2 per cent per

annum on or before such dates as may be fixed by the Tribunal and if a tenant-purchase price in accordance with the order of the Tribunal then

certain concessions are provided S. 32-K (3) provides that if a tenant purchase, fails to pay the entire amount of the purchase price within the

period fixed under the provisions of this section or is in arrears or four instalments where the number of instalments fixed is four or more, and all the

instalments in any other case, the amount of the purchase price remaining unpaid and the amount of interest thereon at the rate of 4 1/2 per cent per

annum, If any, shall be recoverable by the Tribunal as an arrear of land revenue.

8. Lastly, the provisions of Sec. 32-M of the Tenancy Act provides that the Tribunal shall issue a certificate on depositing the purchase price in

lump sum of the last installment of such price to the tenant in respect of the land and such certificate shall be conclusive evidence of purchase. In

any event. If a tenant-purchaser fails to pay the purchase price to be ineffective and the land shall be disposed of by the Tribunal as provided u/s 32-P of

the Act and the amount, If any, deposited by the tenant-purchaser in towards the purchase price of the land, shall be refunded to him.

9. The scheme under the Tenancy Act to make the tenant purchaser of the land has been stated in the provisions of Secs. 32 to 32R. The question

in this, case is as to whether the tenant becomes the purchaser on the Tills day or he becomes the purchaser when he deposits the entire purchase

price of the land or when he obtains certificate u/s. 32-M of the Tenancy Act.

10. Mr. N. D. Hombalkar, the learned Counsel appearing on behalf of Respondents Nos. 1 to 4 contended that unless the entire purchase price is

paid by the tenant-purchaser, he cannot be said to have become the purchaser of the land and therefore the portions of Sec 43 of the Tenancy Act

would not apply. The submission of Mr. Homalkar cannot be accepted in view of the clear intent of Sec. 43 of the Tenancy Act Sec 43 in terms

lays down that no land purchased by a tenant u/s/ 32 shall be transferred by a sate. Gift, exchange, mortgage, lease or assignment or partitioned

without the previous sanction of the Collector, of the Legislature has intended to make the tenant absolute owner only on the payment of entire

purchase price and obtaining certificate u/s/ 32-M then the language of sec. 49 would have been quite different, the words as found in Sec. 32M

would have been inserted. As stated above, a legal fiction has been introduced u/s/ 32 itself that a tenant in possession of the land becomes

deemed purchaser of that land with all the rights of owner of the land and further provided that the price of such land so determined under the Act

be recovered as land revenue.

11 Section 43 prohibits a transfer of such a land of which the tenant has become purchaser u/s 32. The purpose and intention of the Legislature as

disclosed by Sec. 32 is to transfer the ownership of the land to the tenant on the ""tillers" day and the he should personally cultivate the land and

benefit himself by the produce from the said land. Therefore, a restriction has been imposed not to transfer the said land and if such land is

transferred and the provisions of Sec. 43 are contravened, then all his rights are defeated and the land is to be taken back from him and the same is

to be disposed of in accordance with the provisions of S. 84-C of the Act.

12. What the learned Member of the Maharashtra Revenue Tribunal has held is that the tenant does not become a Purchaser till he deposits the

entire purchase price. That observation is obviously an error apparent on the face of record having regard to the contents of the provisions of Sec

32 of the Act, This very legal fiction introduced u/s/ 32 will be defeated if it is held that a tenant becomes purchaser on payment of the entire price

and obtaining certificate thereafter u/s 32-M of the Act.

13. Section 43 of the Tenancy Act shall come into play only in a case where a tenant becomes purchaser of the land u/ss. 32, 32-F, It means after

April 1. 1957 i.e., on the ""Tillers day, of on postponed date of purchaser of the land u/s 32-F, where the tenant had exercised his right of

purchase, so provided u/s. 32-F.

14, In the instant case, the deceased Gopal Krishna Jadhav became deemed purchaser on April 1 1957, and on Nov., 29, 1965 after the payment

of only five instilments, he gifted away the land in favour of one Maruti Rama Malt and thus the land was transferred by the deemed purchaser. The

said transfer was informed by the landlords themselves to the learned Tahsildar, Kagal, who started inquiry u/s/ 43 r. W. Sec. 84-C of the

Tenancy Act. It is found by the Tahsildar that the said transfer was invalid and final orders was passed that the transfer of the said land was invalid

and the land should be vested in the Government and the same should be disposed of the by the authorities concerned to the petitioner as provided

u/s/. 64-C of the Act.

15. In the facts and circumstances of the case I am unable to appreciate as to what purpose the order of remand was passed by the learned

Member of the Maharashtra Revenue Tribunal. It is an admitted fact that the purchase of the tenant was not declared ineffective either u/s. 32G or

u/s. 32M of the Tenancy Act. If the purchase is not declared ineffective, the provisions of Sec. 32P would not be a person entitled to claim

restoration of possession of the said. As a matter of fact and law. Respondents Nos. 1 to 4 are only entitled to claim the purchase price because all

the rights in respect of the and in dispute are defeated or transferred in favour of the tenant. They cannot claim any right whatsoever in respect of

the land except the price thereof. If the entire price is not paid by the tenant and the transfer has been declared ineffective u/s. 43, the land vests in

the Government under sub-s (3) of Sec. 34-C of the Act and under sub-sec. (4) of S. 84-C 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-sec (3) or Sec 84-C in the prescribed

manner so mentioned in the order of priority sub sec (3) of Sec 84-C in the prescribed manner so mentioned in the order of priority sub-sec 84-C

in the prescribed manner so mentioned in the order of priority sub-sec (3) of sec 84-C also provides that the land shall be deemed to vest in the

State Government free from all encumbrances lawfully subsisting on the date of such vesting, and it shall be disposed of in the manner provided in

sub-sec (4) of S. 84-C the encumbrances shall be paid out of the occupancy price to the manner provided by S. 32Q for the payment of

encumbrances our 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. Having regard to the provision of sub-sec (3) of S. 84C it is clear that

the right of these landlords are safeguarded and they can recovered their encumbrances in the matter provided by sub-sec (3) of S. 84-C The

landlords have only a right to recover the balance of purchase price and they could not claim any right to restoration of possession of the land

because the purchase in favour of the tenant u/s. 32 was never made ineffective u/s 32 was never made ineffective u/s. 32G or S. 32M of the

Tenancy Act. The view taken by the learned Member of the Maharashtra Revenue Tribunal does not appear to be consistent with the scheme of

the Tenancy Act. There was no question of recovery of remaining installments from the tenant, because he lost all his rights due to illegal transfer of

the land in favour of one Maruti Rama Mali.

16. Mr. S. M. Mhmane, the learned Counsel appearing on behalf of the petitioner, submitted that the purchase price has been fixed and the

petitioner had deposited the purchase price. COURT of the said purchase price, the Mamlatdar is supposed to pay to the original owners

respondents Nos. 1 to 4 as provided under sub-sec (3) of S. 84-C of the Tenancy Act. The landlords cannot claim in the facts and circumstances

of the case any right except the right to recover the balance of the purchase price, Thus, the learned Member of the Maharashtra Revenue Tribunal

committed an error apparent on the fact of record in remanding the matter to make fresh inquiry u/ss. 32K. 32M and S. 32-P of the Tenancy Act.

Therefore the same order deserves to be quashed.

17. In the result, the order passed by the learned Member of the Maharashtra Revenue Tribunal, dated mar 31, 1917 in Tenancy Revision No.

MRT. KP. 95/76 is set aside and that of the Tahsildar kagal, dated April 29, 1969 is restored. Thus the rule is made absolute with costs,

Respondents Nos, 1 to 4 to pay the costs of the petitioner.

18. Ordered accordingly.