
Sawalaram Mothe Vs Ratnamalabai Joshi and Others

Writ Petition No"s. 1205 of 1987 and 812 of 1988

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Aug. 28, 2003

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 â€” Section 41, 43, 44, 50

Citation: (2004) 1 ALLMR 477 : (2004) 1 MhLj 311

Hon'ble Judges: S.A. Bobde, J

Bench: Single Bench

Advocate: A. M. Gordey and R.L. Khapre, for the Appellant; R.L. Khapre, in Writ Petition No. 812 of 1988 and A.M. Gordey, for the Respondent

Final Decision: Dismissed

Judgement

S.A. Bobde, J.

These two cross writ petitions are taken up for disposal by a common judgment, the relevant facts in brief are as follows.

2. One Sawalaram claimed to be tenant of Survey No. 31/3 new Gat No. 187, admeasuring 6 acres 20 gunthas. He claims a lease in his favour by

one Ratnamalabai and her daughter Alka. According to him, they leased the land to him in April, 1978 and put him in possession. They are then

said to have sold the land by a registered Sale Deed dated 31st October, 1978 to one Ukanda, the Respondent No. 3 herein. Claiming that he

was put in possession of the land as a tenant in April, 1978, Sawalaram made an offer within one year, on 28th December, 1978 to Ratnamalabai

and Kumari Alka for purchase of the land. On this date admittedly the land had been sold by Ratnamalabai and Alka to Ukanda by a registered

Sale Deed dated 31st October, 1978.

3. Apparently, Ratnamalabai and Alka turned down Sawalaram's offer for purchase of the land. Therefore, on 25th January, 1979 he made an

application u/s 50 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 for short "the Tenancy Act", for purchase of the

land. The Tahsildar by his order dated 31st March, 1981 held that Sawalaram was a tenant with effect from 1st April, 1978 and therefore, entitled

to purchase the land.

4. Ratnamalabai and Alka did not challenge this order, since apparently by then they had sold the land to Ukanda. However, Ukanda challenged

the order in appeal. On 18th March, 1986 the Sub-Divisional Officer quashed and set aside the order of the Tahsildar, The Sub-Divisional Officer

held that Sawalaram had not proved the tenancy and therefore he is not entitled to purchase the land u/s 50 of the Tenancy Act.

5. Sawalaram, therefore, carried the matter in revision before the Maharashtra Revenue Tribunal. On 13th January, 1987 the Maharashtra

Revenue Tribunal held that the Sawalaram was a tenant. The Maharashtra Revenue Tribunal, however, held that he is not entitled to purchase land

since his application for purchase is made before the period of three months contemplated by Section 43(2) of the Tenancy Act expired.

6. This order is challenged by both the sides. In Writ Petition No. 1205 of 1987 Sawalaram has challenged the order of the Maharashtra Revenue

Tribunal to the extent that it is held that his application for possession u/s 50 of the Tenancy Act is premature and therefore liable to be rejected. In

Writ Petition No. 812 of 1988 Ukanda has challenged the finding of the Maharashtra Revenue Tribunal that Sawalaram is a tenant. According to

Ukanda, Sawalaram is not a tenant at all and therefore there is no question of his application for purchase being premature. To appreciate the

controversy, it is necessary to consider the provisions under which Sawalaram applied for purchase of the land of which he claims to be a tenant,

Section 50 of the Tenancy Act reads as follows :--

50. Where a tenancy is restored under Sections 7, 10, 21, 52 or 128A or is created by a landlord not being a landlord within the meaning of

Chapter III-A in any area, after the date specified in Sub-section (1) of Section 49A, every tenant holding land under such tenancy and cultivating

it personally shall be entitled to purchase within one year from the commencement or as the case may be, the restoration of the tenancy so much of

such land as he may be entitled to purchase u/s 41 and the provisions of Sections 41 to 44 (both inclusive) shall mutatis mutandis apply to such

purchase.

Section 43 under which Sawalaram made an offer to purchase the land, to the extent that it is relevant reads as follows :--:

43. (1)(a) A tenant who desires to exercise the right conferred by Section 41 shall make an offer to the landlord stating the price at which he is

prepared to purchase the land, such price not exceeding twelve times the rent payable by him and the depreciated value of any structures, wells

and embankments constructed and permanent fixtures made and the value of any trees planted on the land by the landlord after the period of the

last Settlement or where no such settlement is made during the period of thirty years before the commencement of this Act and the amount of the

arrears of rent, if any, lawfully due on the day on which the offer is made.

(b) Where the tenant is entitled to purchase a part of the land held by him as tenant, he shall, subject to the rules made by the State Government in

this behalf, choose the area and location of the land to be purchased from the landlord and state in the offer the part which he has so chosen for

being purchased :

Provided that the land so chosen shall not, as far as may be practicable, be other than a survey number or a sub-division of a survey number.

(2) If the landlord refuses or fails to accept the offer and to execute the sale deed within three months from the date of the offer, the tenant may

apply to the Tribunal for the determination of the reasonable price of the land.

7. Now it is obvious that Section 50 of the Tenancy Act confers a right on a tenant to purchase land within one year of the commencement of the

tenancy. This section, however, further provides that the provisions of Sections 41 to 44 (both inclusive) of the Tenancy Act shall mutatis mutandis

apply to such purchase which means that these provisions will apply with the necessary changes. Now one thing is clear, Sawalaram claims to be a

tenant under a tenancy created in April, 1978. He made an offer to purchase the land in question on 28th December, 1978 to Ratnamalabai and

Alka. They having refused to sell the land, he made an application for purchase on 25th January, 1979 u/s 50 of the Tenancy Act in exercise of his

rights to purchase the land. A plain reading of Section 50 read with Section 43(1) and (2) of the Tenancy Act makes it clear that Section 50

confers a right on a tenant to purchase the land in accordance with the provisions of Sections 41 to 44 of the Tenancy Act which apply mutatis

mutandis to such purchase. The statutory scheme is thus that the right to purchase must be exercised in accordance with Sections 41 to 44 of the

Tenancy Act. Therefore, when Section 50 is read with Section 43(2), it is clear that the tenant who is entitled to purchase a part of the land is first

required to make an offer to the landlord stating the price at which he is prepared to purchase the land and if the landlord refuses or fail to accept

the offer and to execute the sale deed within three months, the tenant may apply to the Tribunal for the determination of the reasonable price of the

land.

8. It was argued on behalf of Sawalaram that Section 50 of the Tenancy Act provides that a tenant is entitled to purchase a land within one year

from the commencement of the tenancy. Therefore, the reverse limitation provided by Section 43(2) of the Tenancy Act which requires the tenant

to wait for a period of three months before making an application to the Tribunal for determination of the reasonable price of the land is not

applicable at all. According to Mr. Gordey, the learned Counsel for Sawalaram, a tenant like Sawalaram is not required to wait for a period of

three months at all and therefore Sawalaram's application could not have been treated as premature by the Maharashtra Revenue Tribunal. The

argument of the learned Counsel is that Section 50 of the Tenancy Act applies the provisions of Sections 41 to 44 mutatis mutandis and therefore it

is not necessary for a tenant to make an offer to purchase land and wait for three months for the landlord to respond. According to the learned

Counsel, Section 50 of the Tenancy Act provides that the application for purchase should be made within one year and since the application was

made by Sawalaram within a period of one year it must be held to have been properly made and could not have been made premature. According

to the learned Counsel, if Sawalaram would have to wait for three months after he made the offer, then his application would have in fact gone

beyond the period of one year prescribed by Section 50 of the Tenancy Act. In any case, according to him it could not be held to be premature.

9. This contention is based on the assumption that when Section 50 of the Tenancy Act which makes the provisions of Sections 41 to 44 of the

Tenancy Act applicable to such a purchase mutatis mutandis, it has the effect of eliminating the requirement of the tenant to make an offer to

purchase to the landlord and to wait for a period of three months before he makes an application to the Tribunal. However, according to the

learned Counsel even if it is held that the requirement to make offer is not dispensed with the requirement to wait for a period of three months from

the date of the offer is dispensed with. I am of view that this contention is not tenable because the requirement of Section 43 of the Tenancy Act

that a tenant should first make an offer and wait for the landlord to refuse the offer before applying to the Tribunal for determination of the

reasonable price of the land is internally connected with the three months for which the tenant would have to wait. A truncated reading of such a

provision is not permissible. If the contention is accepted it would mean that the law requires the tenant to make an offer but does not prescribe

any period for which the tenant must wait for the landlord to respond, when in fact it does provide for a period.

10. Mr. Gordey, the learned Counsel for Sawalaram, relied on a decision of this Court in Radhikabai w/o Laxmanrao Wanjari and Anr. v. Janba

Kisan Gowari 1985 M.L.J. 664, where this Court held that Section 43(2) of the Tenancy Act which postpones the right of a tenant to purchase

the land of a landlord belonging to disabled category has no application to Section 50 of the Tenancy Act. I am of view that this decision has no

application to the point involved in the present case, since in that case the Court, upon a perusal of the scheme of the Tenancy Act, came to the

conclusion that wherever the legislature intended to exclude the land belonging to certain categories of landlord from the operation of the Tenancy

Act, it expressed its intention to do so. Since no such intention was expressed in Section 50, it was held that Section 41(2) was not to apply to

tenancies covered by Section 50 of the Tenancy Act. In fact, this Court took the view that if Section 41(2) of the Tenancy Act was held to apply

to Section 50 of the Tenancy Act, then it would negate the substantive right conferred by Section 50 on the tenant for purchase within one year. In

that context the Court held that word ""mutatis mutandis"" cannot be held to apply for purchase of any such land where it would negate the right

conferred by Section 50 of the Tenancy Act. The situation here is entirely different. Section 50 of the Tenancy Act expressly makes Sections 41 to

44, including Section 43(2) of the Tenancy Act applicable. In fact, Section 50 of the Tenancy Act says that these provisions ""shall apply to such

purchase"". In Bouvier's Law Dictionary (3rd Revision, Vol. II), the term ""mutatis mutandis"" has been defined as ""The necessary changes. This is a

phrase of frequent practical occurrence, meaning that matters or things are generally the same, but to be altered when necessary, as to names,

offices, and the like"". I am of view that having regard to the statutory scheme, it is not necessary to alter the procedure prescribed by Section 43(1)

of the Tenancy Act for this purpose. Hence, I am of view that the requirement of the tenant to wait for a period of three months before he makes

an application for determination of the purchase price cannot be dispensed with because of the phrase mutatis mutandis in Section 50 of the

Tenancy Act. The submission by Mr. Gordey, the learned Counsel for Sawalaram, that it would have the effect of a procedural provision altering

or negating the substantive right is not tenable and is therefore rejected.

11. On a true interpretation of the statutory scheme of Section 50 read with Section 43 of the Tenancy Act, it is clear that Section 50 confers a

substantive right of purchase and provides that the purchase shall be in accordance with Sections 41 to 44, which includes Section 43, which

requires the tenant to make an offer to the landlord and wait for a period of three months and then approach the Tribunal only if the landlord

refuses the offer.

12. Mr. Gordey, the learned Counsel for Sawalaram, has further contended that if a tenant has not waited for a period of three months, it would

amount to a mere irregularity and would not affect the legality of the proceedings initiated. This submission is not tenable. On a true construction of

Section 50 of the Tenancy Act, it mandatorily requires a tenant to first make an offer to the landlord and wait for a period of three months to refuse

his offer before approaching the Tribunal. It must be noted that this provision also stipulates a condition precedent for approaching the Tribunal the

condition being the making of an offer. It need hardly be stated that in a given case the landlord could simply agree to sell the land to the tenant

according to the tenant's offer, in which case, it would not be necessary for the tenant to approach the Tribunal for determination of the purchase

price at all. In my view, therefore, the requirement of making an offer and waiting for a period of three months is mandatory and its non-application

cannot be said to be a mere irregularity.

13. I am, therefore, of view that the order of the Maharashtra Revenue Tribunal to the extent that it holds that Sawalaram's application is

premature is liable to be upheld.

14. However, there is another point here which goes to the root of the matter. The Sub-Divisional Officer, which is the last Court of fact finding, on

appreciation of evidence found that Ratnamalabai and Alka did not create any tenancy in favour of Sawalaram. The Sub-Divisional Officer found

that witness Dagadu Petkar, who was said to be present at the time of the alleged contract of tenancy, was not examined before the lower Court at

all and declined to consider the deposition of the other witness Bhagwan Pundlik since he was not present at the time of the contract. Having

further regard to the fact that there is no written contract, the Sub-Divisional Officer found that there was no tenancy in favour of Sawalaram, The

Maharashtra Revenue Tribunal apparently took up on itself the exercise of entering into an area of reappreciation of evidence and held that Dagadu

Petkar and Bhagwan Pundlik were witnesses to the contract of tenancy. The Maharashtra Revenue Tribunal has held that Bhagwan Pundlik was

examined before the Tahsildar and he supported the statement of Sawalaram. The Maharashtra Revenue Tribunal has given no reason for ignoring

the finding of the learned Sub-Divisional Officer that Bhagwan Pundlik was not present when the contract of tenancy allegedly took place. The

Maharashtra Revenue Tribunal further held that Sawalaram was found to be in possession in proceeding for correction of a crop statement for the

year 1978-79 and that the said crop statement described him as a tenant. There is no dispute about the fact that the then landlady did not appeal

against this decision because obviously she had sold her interest in the property to Ukanda. In any case, it is settled law that entries in the crop

statement are relevant mainly to the question of possession and are not relevant or conclusive for determining the legal character of the possessor.

In any case, I am of view that Maharashtra Revenue Tribunal exceeded its revisional jurisdiction in intervening with the findings of fact arrived at by

the Sub-Divisional Officer to the effect that Sawalaram was not a tenant. The Maharashtra Revenue Tribunal has gone to the extent of holding that

because the landlady was not a resident of the village where the land is situated she could not have cultivated the land on her own accord. This is

patently unsustainable. I am, therefore, of view that the Maharashtra Revenue Tribunal has achieved in reversing the findings of fact by the Sub-

Divisional Officer that Sawalaram is a tenant.

15. In the circumstances, the order of the Maharashtra Revenue Tribunal dated 13th January, 1987 in Revision Application No. Ten-A-55 of

1986 to the extent that Sawalaram is a tenant is quashed and set aside. The Writ Petition No. 812 of 1988 is allowed to that extent. Rule made

absolute accordingly.

16. The Writ Petition No. 1205 of 1987 is rejected. Rule discharged.

17. In the circumstances of the case, however, there shall be no order as to costs.