(1999) 03 BOM CK 0095

Bombay High Court (Goa Bench)

Case No: Writ Petition No. 245 of 1992

Shri Sukdo Ladko Naik since deceased through his heirs		APPELLANT
	Vs	
Shri Navso Bombdo Gawde and others		RESPONDENT

Date of Decision: March 22, 1999

Acts Referred:

- Bombay Tenancy and Agricultural Lands Act, 1948 - Section 70
- Constitution of India, 1950 - Article 13(2), 31
- Goa, Daman and Diu Agricultural Tenancy Act, 1964 - Section 7

Citation: (2000) 1 BomCR 866 : (2000) 2 MhLj 57

Hon'ble Judges: R.M.S. Khandeparkar, J

Bench: Single Bench

Advocate: S.D. Lotlikar, for the Appellant; N.K. Sawaikar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.M.S. Khandeparkar, J.

By the present petition, the petitioners seek to challenge the proceedings initiated by the respondent No. 1 under Goa, Daman and Diu Agricultural Tenancy Act, 1964, hereinafter called as "the said Act" seeking declaration of tenancy rights under the said Act on the ground that at the relevant time, the authorities acting under the said Act had no jurisdiction to decide whether the petitioner "was" a tenant. It is the contention of the petitioner that considering the fact that the respondent No. 1 had been claiming to be a tenant since forty years prior to the filing of the application and that the persons who were tenants prior to the appointed day had ceased to be the tenants consequent to they being declared as the deemed purchasers under Vth Amendment to the said Act, the judgments of the respondent Nos. 3 to 5 in respect

of declaration of tenancy rights of the respondent No. 1 are illegal and bad in law.

2. The facts in brief are that the respondent No. 1 filed an application on 8th July, 1985 before the respondent No. 3 claiming to be the tenant for a period of forty years in respect of the suit property bearing Survey No. 112/ 1 of village of Honda, and complaining that the name of the husband/father/ father-in-law of the petitioners, hereinafter called as the original petitioner was wrongly entered into the tenant''s column in the record of rights in respect of the suit property and, that, therefore, prayed that the respondent No. 1 be declared as the tenant of the suit property and the name of the original petitioner be ordered to be deleted and the name of the respondent No. 1 be ordered to be inserted in the column relating to tenancy rights in the record of rights. The application was contested by the original petitioner denying the claim of tenancy by the respondent No. 1 and contending that the original petitioner was the tenant in respect of the suit paddy field for the last more than forty years and that his name was correctly entered in the record of rights. They also sought to claim the benefit of presumptive value of the entry in favour of the original petitioner in terms of section 105 of the Land Revenue Code.

3. The respondent No. 3 by its order dated 22nd July, 1988 allowed the said application and declared the respondent No. 1 to be deemed tenant of the suit property and further ordered deletion of the name of the original petitioner from the tenants column in the record of rights. The appeal preferred by the original petitioner before the respondent No. 4 was dismissed by order dated 20th April, 1990. The Tenancy Revision Application No. 11/ 90 before the Administrative Tribunal was also dismissed by order dated 31st January, 1992.

4. Shri S.D. Lotlikar, learned Advocate appearing for the petitioner submitted that the claim of the respondent No. 1 was that he "was" a tenant for a period over forty years on the day of filing of the application and, therefore, it was apparent on the face of the application that the claim of respondent No. 1 was that on the appointed day in terms of Vth Amendment to the said Act i.e. on 20th April, 1976, the respondent No. 1 was the tenant. By virtue of the provisions of Vth Amendment to the said Act every tenant being declared as the deemed purchaser, in view of the stand taken in the application, the respondent No. 1 was claiming before the Mamlatdar that he should be declared that he "was" a tenant prior to the appointed day. At the relevant time, there was no provision in the said Act empowering the Mamlatdar to entertain any such application or to decide the issue as to whether a person "was" a tenant. The respondent No. 3, therefore, had no jurisdiction to entertain the said application under the said Act and, therefore, the entire proceedings conducted before the respondent No. 3 and thereafter before the other respondents are bad in law and, therefore, are liable to be quashed and set aside. While assailing the finding of the Tribunal regarding the Vth Amendment to the said Act being not in force at the relevant time, the learned Advocate submitted that the same are based on mere assumptions and surmises and, therefore, patently wrong

inasmuch as although the Vth Amendment to the Act was struck down by the Judicial Commissioner in the year 1979, the said Act was entered in the IXth Schedule of the Constitution of India and on such inclusion received assent of the President on 26th August, 1984 and consequently the decision striking down of the Vth Amendment was rendered ineffective apart from the fact that the Apex Court had set aside the decision striking down of the Vth Amendment and, therefore, for all purposes, the Vth Amendment was in force since the day it was brought into force i.e. from 20th April, 1976. The conclusion arrived at by the Tribunal that Mamlatdar had jurisdiction to entertain the application for declaration of tenancy rights filed by the respondent No. 1 in the year 1985 in the manner it was filed is, therefore, based on basic misconception of the law applicable to the matter in question and, therefore, the same clearly vitiates the judgment of the Tribunal rendering it bad in law. He further submitted that considering the clear averment in the application of the respondent No. 1 that he was claiming to be tenant for forty years before filing of the application in 1985, it was apparent that the relief which was sought by the respondent No. 1 was in relation to his tenancy rights in the past i.e. prior to the appointed day. This is also clear from the fact that from the time of implementation of the Vth Amendment to the said Act, the persons who were the tenants of the agricultural properties were declared to be the deemed purchasers in respect of the respective properties. Those persons who were the tenants of the agricultural properties on or prior to 20th April, 1976, had assumed the character of the deemed purchaser by legal fiction brought about by the Vth Amendment to the said Act. Considering this aspect, the relief that was claimed by the respondent No. 1 was regarding his past tenancy rights and the Mamlatdar at the relevant time had no jurisdiction to decide any such issue. In support of his contention, he sought to rely upon the judgment of the Apex Court in the matter of Sri Ram Ram Narain Medhi Vs. The State of Bombay, , Musamia Imam Haider Bax Razvi Vs. Rabari Govindbhai Ratnabhai and Others, and Jagannath Vs. The Authorised Officer, Land Reforms and Ors, . He further submitted that the Tribunal failed to exercise its jurisdiction inasmuch as the Tribunal illegally refused to consider whether the decisions of the tower courts were in accordance with the law and whether the approach of those courts in the matter of analysis of evidence was just and fair and not arbitrary and whether the findings were borne out from the record. Referring to the judgments of the respondent Nos. 2 and 3, the learned Advocate submitted that both the courts erred in casting the burden wrongly upon the petitioners by totally ignoring the documents in the form of record of rights which carry presumptive value.

5. Shri N.K. Sawaikar, learned Advocate appearing for respondent No. 1 on the other hand submitted that it is a matter of record that the Vth Amendment to the said Act was struck down by the Court of Judicial Commissioner by judgment and order dated 4th April, 1979 and till about 19th February, 1990 i.e. till the date the Apex Court set aside the judgment of the Judicial Commissioner, the Vth Amendment to

the said Act was not in force and considering this fact, no fault can be found with the proceedings initiated before the Mamlatdar by the respondent No. 1 in the year 1985. Since, at the relevant time the provisions contained in the Vth Amendment to the said Act were not in force, the respondent No. 1 was within his right to seek declaration in the nature it was sought for and the Mamlatdar had necessary jurisdiction to declare that the respondent No. 1 was the tenant in respect of the suit field. He further submitted that whatever lacuna was found in the said Act as regards the jurisdiction of the Mamlatdar to decide whether a person was or not a tenant in the past was done away with by the Goa Agricultural Tenancy Amendment Act, 1991 and taking into consideration the intention of the Legislature to empower the Mamlatdar to decide the issue relating to the claim of tenancy in the past, it cannot be said that the Mamlatdar lacked jurisdiction to grant the relief prayed for by the respondent No. 1. The learned Advocate also submitted that the petitioner is not entitled to raise the point of jurisdiction to entertain the application filed by the respondent No. 1 since no such point was raised before the Mamlatdar or before the Appellate Authority and it is too late for the petitioner to raise any such issue. He sought to rely upon the judgment of the Apex Court in the matter of Sohan Singh and Others Vs. General Manager, Ordnance Factory, Khamaria, Jabalpur and Others, . He further submitted that the Tribunal was justified in the facts and circumstances of the case to hold that when the respondent had applied for declaration and when such declaration was granted, the Vth Amendment had been struck down and as such, there was no question of the respondent No. 1 being the deemed purchaser and, therefore, a person could claim only to be as "tenant" and not as "deemed purchaser". Referring to a copy of the application for declaration which was filed before the Mamlatdar, the learned Advocate submitted that the relief prayed therein was not in the nature of tenancy rights of the respondent No. 1 in past but the relief was for declaration of the respondent No. 1 as the tenant. Even assuming that Mamlatdar had no jurisdiction at the relevant time to declare that a person "was" a tenant, considering the pleadings of the respondent No. 1 and the relief for declaration therein, the Mamlatdar had ample jurisdiction to entertain the said application u/s 7 of the said Act and, therefore, it cannot be said that the Mamlatdar had no jurisdiction to entertain the application. He then submitted that the Tribunal has clearly held that both the courts below have carefully considered the evidence produced by both the parties on the point of tenancy and have given concurrent findings thereby accepting the case of the respondent No. 1 as the tenant. Since the Tribunal was considering the matter in revisional jurisdiction and the Tribunal having found the findings arrived at by the courts below being borne out from record, no fault can be found with the impugned order. These observations of the Tribunal are apparently made on careful consideration of the orders of the lowers courts. It cannot be said that the Tribunal has acted illegally or has failed to exercise jurisdiction.

6. It is a matter of record that the Vth Amendment to the said Act was struck down by the Judicial Commissioner by its judgment and order dated 4th April, 1979 and only in the year 1990 by judgment dated 23rd July, 1990 in the matter of Union Territory of Goa, Daman and Diu and another Vs. Lakshmibai Narayan Patil etc. etc., , the Apex Court set aside the said judgment of the Judicial Commissioner and held that the Vth Amendment was perfectly valid and lawful. The said Act along with the Vth Amendment was included in the IXth Schedule of the Constitution of India on the assent of the President having received on 26th August, 1984. The effect of setting aside the judgment of the Judicial Commissioner as well as inclusion of the said Act in the IXth Schedule is that the Vth Amendment stood restored as it was from the date it came into force i.e. from 20th April, 1976. Indeed, the learned Advocate for the petitioner is justified in relying upon the judgment of the Apex Court in L. Jaganath etc. v. The Authorised Officer, Land Reforms, Madhurai and another (supra) in that regard. The Apex Court therein was considering the matter relating to the challenge and validity of Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961 as well as the effect of striking down of the said Act by the Madras High Court and inclusion of the said Act in the IXth Schedule of the Constitution of India. It was observed therein by the Apex Court thus:-

"Apart from the question as to whether fundamental rights originally enshrined in the Constitution were subject to the amendatory process of Article 368 it must now be held that Article 31-B and the Ninth Schedule have cured the defect, if any, in the various Acts mentioned in the said Schedule as regards any unconstitutionality alleged on the ground of infringement of fundamental rights and by the express words of Article 31-B such curing of the defect took place with retrospective operation from the dates on which the Acts were put on the statute book. These Acts even if void or inoperative at the time when they were enacted by reason of infringement of Article 13(2) of the Constitution, assumed full force and vigour from the respective dates of their enactment after their inclusion in the Ninth Schedule read with Article 31-B of the Constitution. The States could not, at any time, cure any defect arising from the violation of the provisions of Part III of the Constitution and therefore the objection that the Madras Ceilings Act should have been re-enacted by the Madras Legislature after the Seventeenth Constitutional Amendment came into force cannot be accepted".

7. The decision of the Apex Court in the case of L. Jagannath is clear to the effect that all the defects get cured once an Act is included in the IXth Schedule of the Constitution of India and such curing of the defect takes place with retrospective effect from the date the Act was put in force. Considering the said decision of the Apex Court and applying the test laid down therein to the matter in issue, it is evident that even though the Vth Amendment was struck down by the Judicial Commissioner by judgment dated 4th April, 1979, in view of the decision of the Apex Court in the matter of Union Territory of Goa, Daman and Diu and another Vs. Lakshmibai Narayan Patil etc. etc., as also pursuant to the inclusion of the said Act in

the IXth Schedule with due assent by the President of India on 26th August, 1984, the Vth Amendment to the said Act stood restored and all the defects stood cured w.e.f. 20th April, 1976 and the same has been in full force from that day including the period when the application was filed by the respondent No. 1 before respondent No. 3 and disposed of by the Mamlatdar as well as by the Additional Deputy Collector.

8. If one peruses the application filed by the respondent No. 1 before respondent No. 3 for declaration of tenancy rights, it is apparent that the claim of the respondent No. 1 was that the suit paddy field had been on tenancy basis with the respondent No. 1 since the time of his father for over forty years. The specific averment in that regard in para 2 of the application states that the suit paddy field belonged to respondent No. 2 herein and the same is on tenancy basis with the respondent No. 1 since the time of his father for over forty years. It is further stated in the said application that respondent No. 1 had been in possession and enjoyment of the paddy field continuously for over forty years as the tenant of the same. In other words, it was the specific plea of the respondent No. 1 before the Mamlatdar when he filed an application for declaration that he had been the tenant in respect of the suit field for over forty years on the day the application was filed i.e. on 8th July, 1985. The period of forty years prior to 8th July, 1985 certainly included the appointed day i.e. 20th April, 1976. In other words, on his own statement in the application, the respondent No. 1 "was" a tenant prior to 20th April, 1976.

9. By virtue of Vth Amendment to the said Act, all the persons who were tenants of the agricultural properties within the meaning of the said terms under the Agricultural Tenancy Act on 20th April, 1976 were declared as the deemed purchasers. Consequently the persons who were claiming to be tenants prior to the appointed day could no more claim to be the tenants from the appointed day as, by legal fiction, they could only claim to be the deemed purchasers under Vth Amendment to the said Act.

10. Section 7 of the Act as it stood at the relevant time provided that if any question arises as to whether any person is a tenant or should be deemed to be a tenant under the said Act, then the Mamlatdar shall after holding enquiry decide such question. The provisions contained in the said section, therefore, empowered the Mamlatdar at the relevant time to decide whether a person is a tenant in respect of the field or not. The jurisdiction of the Mamlatdar did not extend to decide the issue as to whether a person "was" a tenant in respect of the field or not. In other words, the Mamlatdar was empowered under the provisions contained in section 7 of the said Act to decide the status of the applicant as that of a tenant or not but the Mamalatdar was not empowered to decide whether a person prior to 20th April, 1976 "was" a tenant or not. In this regard, the Apex Court in the matter of Musamia Imam Haider Bax Razvi v. Rubari Govindbhai Ratnabhai and others (supra) while considering the scope of section 70(b) or Bombay Tenancy and Agricultural Lands

Act, 1948, which provisions at the relevant time were in para materia with the provisions contained in section 7 of the said Act, held thus:-

"Section 70(b) of the Act imposes a duty on the Mamlatdar to decide whether a person is a tenant, but the sub-section does not cast a duty upon him to decide whether a person was or was not a tenant in the past whether recent or remote. The main question in the present case was the claim of the defendants that they had become statutory owners of the disputed lands because they were tenants either on the ''tillers'' day'' or on the date of the release of the management by the Court of Wards. In either case, the question for decision will be not whether the defendants were tenants on the date of the suit but the question would be whether they were or were not tenants in the past. The question whether the defendants were tenants on July 28, 1958 or on May 11, 1968 was not an independent question but it was put forward by the defendants as a reason for substantiating their plea of statutory ownership. In other words, the plea of tenancy on the two past dates was a subsidiary plea and the main plea was of statutory ownership and the jurisdiction of the Civil Court cannot therefore be held to be barred in this case by virtue of the provisions of section 70 of the Act read with the provisions of section 85 of the Act".

The Apex Court thereby clearly held that in the absence of specific provision empowering the Mamlatdar to decide as to whether a person "was or was not" a tenant in respect of a paddy field in the past, Mamlatdar is not empowered to entertain the application to decide the claim of an applicant that he "was" a tenant in the past.

11. As already seen above, the claim of the respondent No. 1 in the application dated 8th July, 1985 was that he "was" a tenant of the suit field over forty years i.e. prior to the appointed day. In other words, the claim was that respondent No. 1 "was" the tenant in respect of the suit field prior to the appointed day. Applying the test laid down by the Apex Court in the matter of Musamia Imam Haider Bax Razvi v. Rubari Govindbhai Ratnabhai and others (supra) and considering the provisions contained in section 7 of the said Act, it is apparent that the Mamlatdar had no jurisdiction to entertain the application dated 8th July, 1985.

12. The Apex Court in the matter of Sri Ram Ram Narain v. State of Bombay (supra) has held that the title of a landlord to the land passes immediately to the tenant on the tiller''s day and there is a completed purchase or sale thereof between the landlord and the tenant. The tenant gets a vested interest in the land defeasible only in certain enumerated cases and it cannot therefore be said that the title of landlord to the land is suspended for a period definite or indefinite. Therefore, it is clear that by virtue of the provisions contained in the Vth Amendment to the said Act, the tenants were declared to be deemed purchasers. Considering the same, the respondent No. 1 could not be claimed to be the tenant after 20th April, 1976 on account of his own plea in the application that he was the tenant prior to 20th April, 1976. The status which the respondent No. 1 could have claimed from 20th April,

1976 in view of his own pleading in the application was that of a deemed purchaser and not of a tenant as on the day of the filing of the application.

13. In these circumstances, therefore, the Mamlatdar had no jurisdiction to entertain the application filed by the petitioner. As regards the submission on the part of the learned Advocate for the respondent No. 1 that the petitioner is not entitled to raise the point of lack of jurisdiction at this stage having not raised before the Mamlatdar or Appellate Court and reliance in that regard in the judgment of the Apex Court in the matter of Sohan Singh and others v. The General Manager, Ordinance Factory, Khamaria, Jabalpur and others (supra) it is to be seen that objection which has been raised by the petitioner as regards lack of jurisdiction goes to the root of the case. The jurisdiction of the authority to entertain the application filed by the respondent No. 1 itself has been challenged. If, the authority under the Act had no jurisdiction to entertain the application of respondent No. 1, no amount of consent of the parties would give jurisdiction to the authority to entertain such application. The decision of the Apex Court in the matter of Sohan Singh and others v. The General Manager, Ordinance Factory, Khamaria, Jabalpur and others (supra) is of no assistance in the case in hand. That was a case where the Apex Court has held that the Labour Court had entertained the matter on merits without any objection being raised by any of the parties and it was only before the High Court an objection in that regard was sought to be raised and was entertained by the High Court. The Apex Court has held that the High Court seems to have taken the view that the trial of an issue before the Labour Court was beyond the competence of the Labour Court but it has been rightly pointed out that instead of challenging the competence of the Labour Court to try the said issue, the respondents went to trial and when the decision was given against them by the Labour Court they, for the first time challenged the jurisdiction to try that issue in the High Court. It was observed "on the facts of the case, therefore, we are satisfied that the High Court ought not to have entertained the point of jurisdiction urged on behalf of the respondents and set aside the order of the Labour Court on that ground alone". It is apparent, therefore, that the decision therein was on the facts of that case.

14. In view of the fact that the entire proceedings were initiated without jurisdiction, it is not necessary to go into the other issues sought to be raised. Suffice to say that it is not enough for a Revisional Court to say that the fact-finding authority has carefully considered the evidence produced by the parties and there is no illegality or impropriety with regard to the appreciation of the evidence by the fact-finding authority. The Revisional Court while arriving at such finding has to analyse the judgment passed by the fact-finding authority. Mere conclusion does not disclose an application of mind by the authority deciding a matter. The conclusion should be preceded by a proper reasoning and analysis of the materials on record. It should disclose the application of mind.

15. In the result, therefore, the petition succeeds. Rule is made absolute in terms of prayer Clause (a). In the facts and circumstances of the case, no order as to costs.

16. Petition succeed.