

(2002) 06 BOM CK 0124

Bombay High Court

Case No: Writ Petition No. 4716 of 1988

Shri Shamgonda
Jinagonda Patil

APPELLANT

Vs

Smt. Chandrabai
Kapase

RESPONDENT

Date of Decision: June 13, 2002

Acts Referred:

- Bombay Tenancy and Agricultural Lands Act, 1948 - Section 32O, 64, 84, 84C

Hon'ble Judges: A.M. Khanwilkar, J

Bench: Single Bench

Advocate: N.J. Patil, for the Appellant; K.V. Saste and A.V. Bandiwadekar, for the Respondent

Final Decision: Dismissed

Judgement

A.M. Khanwilkar, J.

This Writ Petition under Article 227 of the Constitution of India takes exception to the order passed by the Maharashtra Revenue Tribunal camp at Kolhapur dated 5th February, 1988 in revision application No. MRT-KP-57/85. The land situated at Survey No. R.S.No.322/B admeasuring 1.31 Hectare at village Chokak, Taluka Hatkangale, District Kolhapur was originally owned by Ananda Appa Sangave. It is not in dispute that the said land was leased out to the Petitioner some time in 1962-63 i.e. after the tillers day the 1st of April, 1957. According to the Petitioner, the subject land lease was for sugarcane cultivation. It is not in dispute that the lease was only for 20 years. According to the Petitioner, an agreement was arrived at between the said Ananda Appa Sangave the landlord and the Petitioner that half portion of the said land be sold to the Petitioner. Accordingly, an application was made to the competent authority for permission to enter into the said transaction, as required u/s 64 of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as "the Act"). That permission was granted on 8th March, 1972. Undisputedly, that

permission is only in respect of the half portion of the suit land. Record also indicates that pursuant to the said permission, sale deed came to be executed between the Petitioner and said Ananda Sangave in respect of half portion of the abovesaid land. Pursuant to the sale deed, name of the Petitioner was entered in the village records by effecting Mutation Entry No. 133 on 17th June 1972. Much thereafter the Respondent filed an application u/s 84 of the Act for possession of the suit land which, however, came to be rejected by the tenancy authority on 11th January, 1978. The tenancy authority held that in view of the permission already granted and pursuant to which sale deed has been effected between the parties transferring the title in respect of half portion of the above land, no proceedings u/s 84C could be continued - for the Petitioner cannot be said to be a trespasser. Besides the tenancy authority held that no enquiry was held for which reason Section 84C cannot be invoked. This decision has attained finality after the same has been confirmed by the Maharashtra Revenue Tribunal on 26th September, 1980. Presumably, taking cue from the observations in the above proceedings, the Respondent moved an application u/s 32-O of the Act on 30th April, 1981 before the tenancy authority claiming that purchase has become ineffective and for restoration of possession of the entire suit land. The tenancy authority after considering the rival contentions by order dated 29th August, 1981 rejected that application and dropped the proceedings u/s 32-O. The Tahsildar has held that the Petitioner was in possession of the suit land as owner and therefore, the application preferred by the Respondent u/s 32-O claiming to be the legal heir of Ananda Sangave, on the ground that the purchase between Ananda Sangave and the Petitioner was illegal, was not tenable. The Tahsildar further opined that the Respondent could get such declaration only in proceedings u/s 84-C of the Act and since her application has already been dismissed and which order has become final, no interference was warranted u/s 32-O. The Tahsildar has further adverted to the fact that the other legal heirs of the deceased Ananda Sangave were disputing that the Respondent was the legal heir of the deceased Ananda Sangave. The Tahsildar also found that the R 1985 was pleased to allow the appeal and remanded the case to the lower Court for decision u/s 32- O. The appellate authority made the following observations :

"My finding is that since the tenant has been inducted after the tillers day will u/s 320 apply in the case. The tenant has failed to give notice u/s. 320 to the landlady and the Act of Hatkanangale. As such the tenant has no lawful possession of the suit land. This possession is not that of a landful tenant purchaser section 320 is a mandatory provision in the B.T. & A.L. Act and in the present circumstances 320 is naturally applicable. The lower Court has not considered this point rightly. I hold that since the Tenancy is created after the tillers day action can be taken u/s. 320 only. I therefore pass the following order."

2. Against this decision, the matter was taken in revision by the Petitioner before the Maharashtra Revenue Tribunal at camp Kolhapur, being MRT-KP-57/85. The Tribunal

has dismissed the revision application. According to the Tribunal, the Petitioner has taken inconsistent stand in the two proceedings taken out by the Respondent. In as much as, when application u/s 84 was filed, it was contended that the same was not the appropriate remedy and, when present application is filed u/s 32-O, it is contended that the appropriate remedy was u/s 84-C of the Act and limitation therefore has elapsed. The Tribunal further noted that since suit land was leased out to the Petitioner in 1962-63 i.e. after the tillers day the 1st of April 1957, the only remedy available is one u/s 32-O of the Act. The Tribunal has also adverted to the plea that dispute is raised regarding the relationship of the Respondent with deceased Ananda Sangave and finding on that issue will have direct bearing on the question of locus standi of the Respondent. The Tribunal however, finds in para 9 that since the Petitioner was inducted after 1.4.1957, the provision of Section 32-O would apply and the first authority had completely glossed over this crucial aspect for which further enquiry will be necessary. Perhaps, the Tribunal intended to keep the question of locus of the Respondent open in the remand proceedings. However, the specific plea raised by the Petitioner that the subject land was originally leased out for sugar cane purpose and obviously for which reason provisions of Section 32-O will have no application, the Tribunal has expressly dealt with the same in para 10 of its order and rejected the same on the premise that there was no positive evidence on record to hold that the original lease was for sugarcane purposes. According to the Tribunal, therefore, the Appellate Authority was right in remanding the case for fresh enquiry.

3. The present petition accordingly takes exception to the order passed by the Tribunal, Pune dismissing the revision application. According to the Petitioner, no proceedings u/s 32-O can be pursued in respect of the suit land since the suit land was leased out to the Petitioner for sugarcane purpose. The second contention raised by the Petitioner is that in any case the Respondent has no locus to pursue the matter since she is not the heir of the original landlord and her relationship with Ananda Sangave is in serious dispute. It is further contended that it is evident from the record that the Petitioner has purchased half portion of the land out of the suit land survey 332 pursuant to the permission granted by the Collector and in respect of which registered sale deed has also been executed. It is, therefore, contended that after the Petitioner has become owner of that portion of the land, no proceedings under the Tenancy Act much less u/s 32-O can be continued. Accordingly, the Petitioner contends that there was no occasion either for the appellate Court or for the Tribunal to take the view that the matter requires further investigation. On the other hand, counsel for the Respondent has supported the view taken by the Appellate Court as also the Tribunal. He submits that in so far as the first contention is concerned, the same is not available as finding of fact has been recorded by the Tribunal that there was nothing on record to even suggest that the original lease in respect of the suit land was for the purpose of sugarcane purpose and, if that be so, the provisions of Section 32-O of the Act will inevitably

apply to the suit land. It is further contended by the Respondent that the main grievance of the Petitioner before the Revisional Court was that the Appellate Authority did not appreciate the evidence on record in its proper perspective and that the Respondent had no locus to file the application. However, now the Petitioner wants to enlarge the scope of the proceedings by raising new contentions. Even the other contention put forth by the Petitioner has been countered by the counsel for the respondent contending that the same is without substance.

4. Having considered the rival submissions, I have no hesitation in observing that the present petition is wholly devoid of merits. The first grievance of the petitioner that the land was originally leased out for sugarcane purpose, the same is devoid of merit. This contention was specifically raised before the Tribunal and the Tribunal after examining the record has taken the view that there was absolutely no positive proof on record that the original lease was for sugarcane purpose. This finding of fact cannot be reappreciated and in any case no attempt has been made even before this Court to place on record any document which would even remotely suggest that the original lease granted in favour of the Petitioner in respect of the suit land was for sugarcane purpose as alleged. Accordingly, there is no merit in the first contention raised by the Petitioner and as a consequence of which no fault can be found with the authorities for having ordered further enquiry u/s 32-O of the Act in respect of the suit lands.

5. In so far as the second contention raised by the Petitioner that the Respondent had no locus standi to maintain the application u/s 32-O as she was not the heir of the original landlord deceased Ananda Sangave, to my mind it is not necessary to examine this contention in detail for the simple reason that even the tribunal has adverted to this contention but has not recorded any positive finding thereon. It has only observed that the respondent will have to get a declaration about her heirship with the original landlord. If this be so, that question will have to be considered by the authority while proceeding with the present proceedings on remand as ordered by the Appellate Authority. In the circumstances, I do not think it necessary to examine this question of fact for the first time in the writ jurisdiction. As is evident from the observation of the Tribunal, the same will have to be considered by the competent Authority.

6. The next contention of the Petitioner that the Petitioner has already purchased half portion from the suit land pursuant to the permission granted by the Collector and by registered sale deed on account of which he has become owner thereof and for which reason no proceedings under the Tenancy Act in respect of that portion can be entertained and continued, to my mind, even the Tribunal has noted this aspect of the matter. No doubt the Tenancy Authority kept this aspect in mind while rejecting the application preferred by the Respondent but, the fact remains that the Petitioner claims to have become the owner only in respect of half portion of the

suit land. If that be so, then the proceedings u/s 32-O of the Act can be legitimately continued in respect of the other half portion of which he is in possession only as a tenant. The authorities have consistently observed that the land was leased out to the Petitioner in the year 1962-63 which is after the tillers day the 1st of April 1957. Once this position is undisputed, then it necessarily follows that with regard to that portion of the land which is held by the Petitioner as tenant only, provisions of Section 32-O shall have application. In other words, the remand ordered by the appellate court for further enquiry will in any case be relevant in respect of half portion of the land possessed by the Petitioner as tenant and, the lease having been created after the tillers day, the efficacy of provisions of section 32-O will have to be examined.

7. For the aforesaid reasons, I find no fault with the approach of the Tribunal in rejecting the revision application preferred by the Petitioner and confirming the view taken by the Appellate Authority that the matter requires further investigation. Needless to mention that in the remand inquiry all questions will have to be gone into on its own merits on the basis of record before the authority in accordance with law.

8. Accordingly, I see no merit in this writ petition and the same is therefore dismissed with costs.