Shri Shamgonda Jinagonda Patil Vs Smt. Chandrabai Kapase

Court: Bombay High Court

Date of Decision: June 13, 2002

Acts Referred: Bombay Tenancy and Agricultural Lands Act, 1948 â€" 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 is 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.