

(1975) 03 BOM CK 0018

Bombay High Court (Nagpur Bench)

Case No: Special Civil Application No. 619 of 1969

Vinayakrao

APPELLANT

Vs

The State of Maharashtra
thorough its Secretary, Revenue
Department, Sachiwalaya,
Bombay

RESPONDENT

Date of Decision: March 19, 1975

Acts Referred:

- Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 - Section 31, 9, 9(1)
- Bombay Prevention of Fragmentation and Consolidation of Holdings Rules, 1959 - Rule 27

Citation: AIR 1976 Bom 10 : (1975) MH LJ 566

Hon'ble Judges: Shimpi, J; Deshmukh, J

Bench: Division Bench

Advocate: N.S. Munshi and V.G. Senad, for the Appellant; M.M. Qazi, A.G.P., for the Respondent

Judgement

Shimpi, J.

Petitioner by this special Civil application prays that the order dated 27-1-1969 passed by the Commissioner, Nagpur Division, Nagpur, in a revision application filed by the petitioner dismissing his petition whereby he confirmed the order of the Collector under which the petitioner was fined Rs. 200/- and he was not granted permission to sell his agricultural lands, be quashed. The fact in brief, are as under ;--

Petitioner held agricultural lands situate at village Mohadara. Tahsil Umrer. The old Survey Nos. being 61/1 admeasuring 65 acres and 65 decimals and 45/2, 45/4 and 46 admeasuring 15.22 assessed at Rs. 21. 37 . In the year 1966 under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act

1947, consolidation of agricultural holdings took place at the said village and old Survey No. 61/1 was given a new number being Unit No. 97 while the other three lands Nos. 45/2, 45/4 and 46 were given a new number as Unit No. 50.

2. After the consolidation of holdings took place, the petitioner entered into an agreement to sell these lands sometime on 23-5-1936 in favour of certain persons mentioned in the order of the Collector which is Annexure-2 to the petition. He has sold Unit No. 97 admeasuring 65.66 to 7 persons. The total transferred land came to 61.40 acres and 4.25 acres of this Unit remained with him. Though the agreement of sale, is not produced along with the petition, it is an admitted fact that the agreement of sale mentions that this Unit was sold to these 7 persons by dividing the holding in between these 7 persons. The total price agreed to be received by the petitioner on the date on which he executed the agreement of sale and on the very day he transferred possession of the land to these transferees. Similarly Unit No. 50 admeasuring 15.22 acres was agreed to be sold to one Raghoba son of Maroti for be sold to one Raghoba son of Maroti for Rs. 22, 830/- In his case also an agreement of sale was executed between the parties under which petitioner received the whole consideration of Rs. 22,830/- the whole consideration of Rs. 22830/- . and delivered possession of the holding to the transferee, namely, Raghoba s/o Maroti. At the hearing of this petition, the agreement of sale was perused by us and one of the terms which was relied upon the learned Advocate for the petitioner was that these sales were subject to the permission of the Collector for which an application would be made to the Collector and if permission was refused, then the transferees were to deliver possession of the holding to the petitioner and the petitioner was to return the amount to them. Pursuant to this agreement, the transferees entered into possession and were in possession of the various portions when an application was made to the Collector on hearing the parties came to be conclusion that the petitioner received the full consideration of the lands in question and he has already transferred his holding to the transferee. Therefore, such a transfer of land was void u/s 9 /91) of the Bombay prevention of Fragmentation and Consolidation of Holdings Act, 1947, hereinafter would be referred to as the Act. The Collector therefore, rejected the application for the grant of permission made by the petitioner under Rule 27 of the said Act and fined the petitioner to pay Rs. 200/- as stated above.

3. Aggrieved by this order, revision application was filed. For the same reasons the order of the Collector was upheld by the Commissioner. The Commissioner further observed that there was lacuna in the order of the Collector in so far as there was no clarification whether the transferees should be evicted from the holdings or not u/s 9(3) of the Act. The Commissioner's order gave direction to the Collector, Nagpur, to pass proper orders in the said matter u/s 9(3) of the Act. Aggrieved by this order, the present application is filed.

4. Shri Munshi who appears for the petitioner submitted that both the Collector and the Commissioner were in error in holding that this was a transaction akin to sell. It was submitted that though possession was given to the respective transferees it was by way of an arrangement but subject to the permission of the Collector. It was bona fide transaction entered into by the petitioner. It is therefore, urged that after quashing these orders, permission as required under Rule 27 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Rules, 1959, should be granted to the petitioner to execute valid title deeds in favour of the intending purchasers.

5. In order to appreciate the submission of Shri. Munshi. It is necessary to refer to the provisions of the Act specially Section 9 and Section 31 and Rule 27. Section 9 of the Act reads as under:--

"1. The transfer or partition of any land contrary to the provisions of this Act shall be void".

The further sub-sections are not necessary to be considered. Section 31 of the Act runs as under :--

31. Notwithstanding anything contained in any law for the time being in force, no holding allotted under this Act, nor any part, thereof, shall be---

(a) transferred whether by way of sale (including sale in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue) or by way of gift, exchange, or lease, or otherwise, except in accordance with such conditions as may be prescribed:--

Rule 27 of the Bombay prevention of Fragmentation and Consolidation of Holdings Rules, 1959 runs as under :--

"27. Application for permission for transfer for consolidated holding or any part thereof and conditions for such transfer

(1) Any person desiring to transfer or interested in the transfer of any holding allotted under the Act or any part thereof, as provided by clause (a) of Section 31 (transfer not being a mortgage in favour of a co-operative land development bank, a primary land development bank or a primary land development bank or a primary co-operative society) may make an application to the Collector in that behalf.

(2) On receipt of an application under Sub-rule (1), the Collector may, subject to the provisions of the relevant tenancy law and the provisions of the Maharashtra's Agricultural Lands (Ceiling on Holdings Act, 1961) in so far as such provisions relate to restriction on the transfer of agricultural land) permit the transfer of the holding or as the case may be, the part thereof."

There after the various conditions are stated in the rule , sub-clause (f) of Rule 27 of the said Rules, is material which runs as under ;--

" If the entire land allotted under the Act is to be transferred to an agriculturist or an agricultural labour".

At the hearing of the petition when it was pointed out that sub-division of a holding is not permitted u/s 31 without the permission in writing of the Commissioner (Collector?) subject to the general orders of the State Government, the case in respect of Unit No. 97 which was a transfer in favour of 7 transferees was not pressed by the petitioner. The petitioner mainly pressed his case in respect in Unit No. 0 which he had agreed to sell to one transferor, namely, Raghoba and there was no dispute that he was an agriculturist. Reading Rule 27 of the said Rules, the Collector can grant permission to any person desiring to transfer any holding as provided by clause (a) of Section 31. Therefore, it is necessary to consider the provision of Section 31 of the Act which we have already reproduced. Section 31 clearly lays down that no holding allotted under this Act or any part thereof shall be transferred whether by way of sale or by way of gift, exchange or lease or otherwise except in accordance with such condition as may be prescribed. It was contended that the agreement of sale which was entered into by the petitioner was neither a sale nor a gift, exchange or lease and, therefore, provisions of Section 31 are not attracted. It was also contended that the word "otherwise" should be interpreted as a transaction of like nature. On that basis it was urged that agreement of sale, even though in the instant case possession was given to the transferee, was not a transaction of a like nature like a sale or by way of gift exchange or lease. We are unable to accept the submission urged on behalf of the petitioner. The opening part of Section 31 states "Notwithstanding anything contained in any law for the time being in force, no holding allotted under this Act nor any part thereof. shall be transferred". The instances of transfer are stated in Section 31 of the Act. However, they are not exhaustive and for showing that there may be some other transfers besides the instances of transfers stated, in our opinion. the word "otherwise " has been used.

6. Section 9 , sub-clause (1) of the Act which we have reproduced shows that the transfer or partition of any land contrary to the provisions of this Act shall be void. Reading these provisions, it appears to us that once a holding is allotted to an agriculturist after following the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, then that holding cannot be transferred except in accordance with such conditions as may be prescribed in the act. In the instant case, it is seen that the petitioner transferred possession of Unit No. 50 to the transferee on the date of the agreement of sale entered into between him and the transferee. On that day, the transferor i.e., the petitioner received the whole consideration from , the transferee, namely Rs. 22380/- What was left to be done was only to execute a document of sale in favour of the transferee by the petitioner. This kind of transaction is covered u/s 31 of the Act which prohibits transfers and which is, of otherwise in our opinion. has been given an extended meaning to include the above mentioned transaction and other transaction which

are not covered by either sale, mortgage, lease, gift, exchange but in which there is a transfer of the holding.

7. The word, "otherwise" has been interpreted by the Supreme Court while construing the provisions of Section 5 and 6 of the Bombay Land Requisition Act, 1948, in a case reported in [Lilavati Bai Vs. The State of Bombay](#). The facts of that case show that petitioner Shrimati Lilavatibai is the widow of Dharmdas who was a tenant of the premises in question. Dharamdas died in November 1953 leaving behind him surviving his widow and daughter. The petitioner alleged that she had been occupying the premises in question as a member of her husband's family since 1938 and that the tenant aforesaid had at no material date ceased to occupy the premises. She also alleged that one Narottamdas. Dharamsay Patel was a mere lodger who was occupying a portion of the premises by leave and license of her husband and in fact Narottamdas had vacated the portion in his occupation some time in the year 1953. On behalf of the State it was alleged that Dharamdas had vacated the premises in October, 1952 and had handed over the possession of the premises to the said Narottamdas Patel. It was denied that petitioner was residing in the premises at the time of her husband's death in November 1953. On 27th January 1954, an order was passed u/s 6 sub-section (4). Clauses (a) of the Bombay Land Requisition Act, "948 , by the Government of Bombay to requisition the said premises for a public purpose, because on enquiry it was found that the premises had become vacant in the month of October 1952. The petitioner challenged the validity of the order of requisition stated above. The High Court of Bombay dismissed her petition. The petitioner moved the Supreme Court challenging the vires of the Act as also the legal efficacy of the order impugned.

8. The Supreme Court considered the contention raised on behalf of the petitioner how the word " otherwise" used in Explanation (a) to Section 6 should be construed. It was observed on page 528 Para 11 as follows:--

" It was contended on behalf of the petitioner that Explanation (a) to Section 6 quoted above contemplates a vacancy when a tenant (omitting other words not necessary) ceases to be in occupation upon termination of his tenancy, eviction, or assignment or transfer in any other manner. The argument proceeds further to the effect that in the instant case admittedly there was no termination, eviction, assignment or transfer and that the words " or otherwise" must be construed as ejusdem generis with the words immediately preceding them; and that therefore on the facts as admitted even in the affidavit filed on behalf of the Government there was in law no vacancy. In the first place, as already indicated, we cannot go behind the declaration made by the Government that there was a vacancy. In the second place, the rule of ejusdem generis sought to be pressed in aid of the petitioner can possibly have no application. The legislature has been cautious and thorough -going enough to bar all avenue to escape by using the words of limitation but of extension so as to cover all possible ways in which a vacancy may occur. Generally speaking, a

tenant's occupation of his premises ceases when his tenancy is terminated by acts of parties or by operation of law or by eviction by the landlord or by assignment or transfer of the tenant's interest. But the Legislature , when it used the words " or otherwise " apparently intended to cover other cases which it used the word " or otherwise" apparently intended to cover other cases which may not come within the meaning of the preceding clauses, for example, a case where the tenant's occupation has ceased as a result of trespass by a third party. The Legislature , in our opinion, intended to cover all possible cases of vacancy occurring due to any reasons whatsoever. Hence far from using those words *eiusdem generis* with the preceding clauses of the explanation the Legislature used those words in an all inclusive sense".

In our opinion, this interpretation of the word " otherwise is amply applicable while interpreting Section 31 of the Act, We are, therefore, unable to accept the submissions urged on behalf of the petitioner, We feel that the order passed by the Collector as confirmed by the Commissioner does not require any interference at our hands. In the result, rule discharged with costs.

9. Application dismissed.