Wamanrao Trimbakrao Vs Bhaurao Mahadu

Court: Bombay High Court

Date of Decision: Jan. 7, 1960

Citation: (1960) 62 BOMLR 587 : (1960) NLJ 477

Hon'ble Judges: Mudholkar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Mudholkar, J.
This is an application for revision u/s 91 of the Hyderabad Tenancy and Agricultural Lands Act, 1950. The relevant facts

are as follows: The petitioner before me is admittedly the landholder of survey Nos. 34 and 36 in Khuldabad taluqa of Aurangabad district having,

according to the tribunal below, a total area of 46 acres and 39 gunthas. In addition to this, the petitioner is the landholder of survey Nos. 9/1,

18/1, 16/1 and 119/1 and 32 situate in Kannad taluqa having a total area of 56 acres and 5 gunthas. The opponent is a protected tenant of survey

No. 34 having an area of 22 acres 37 gunthas situate in Khuldabad taluqa. Section 38-E of the Act provides that the ownership of lands held by

protected tenants on the notified date, and which they are entitled to purchase from their landholders, should stand transferred to them. It is

common ground that January 26, 1956, was the date notified under this section. This section, however, provides that the provisions thereof will be

subject to those of Section 38, Sub-section (7), of the Act. The Tehsildar granted a declaration to the opponent that he had become the owner of

survey No. 34 on January 26, 1956, under the provisions of the Act. The petitioner preferred an objection in which she con-tended that the

opponent was not entitled to such a declaration on the ground that the petitioner did not own more than two family holdings in Khuldabad taluqa.

Now, it may be mentioned that Clause (c) of Sub-section (7) of Section 38 provides that the rights of a protected tenant to purchase the land from

his landholder would not be exercisable if the extent of the land remaining with the landholder after the purchase of the land by the protected tenant

would be less than two times the area of the family holding for the local area concerned. It is not disputed before me that Khuldabad taluqa has

been constituted a local area u/s 3 of the Act and u/s 4 the size of the family holding therein has been fixed at 36 acres. The petitioner''s contention

is that since his total holdings in Khuldabad taluqa are less than 72 acres, i.e., double the family holding fixed for that taluqa, the opponent had no

right to purchase survey No. 34/1 and consequently he is not entitled to foe declared its owner u/s 38-E of the Act.

2. On behalf of the opponent Mr. Kanade contends that we cannot ignore the extent of land which the petitioner owns in Kannad taluqa in

considering the question whether the tenant, i.e., the opponent, has a right to purchase survey No. 34. Looking, however, to the relevant

provisions of the law. I have no doubt whatsoever that this contention is wholly untenable. Sub-section (7) of Section 38 confers a right upon a

protected tenant to purchase land from a landholder. Sub-section (7), however, expressly provides that the right given to the protected tenant shall

be subject to the conditions laid down in that Sub-section. Three conditions are laid down therein and one of those is that the extent of the land

remaining with the landholder after the purchase of the land by the protected tenant shall not be less than two times the area of the family holding

for the local area concerned. It follows from this that a protected tenant has a right to purchase the land which is in his possession provided that it is

in excess of the land which the law permits the landholder to retain with him as owner in the particular local area, In other words, what a protected

tenant is entitled to purchase is the land which is in excess of double the family holding fixed for the particular local area and not that which is in

excess of the total holdings of the landholder in the area to which the Act applies, that is in Marathwada. Here, the total holding of the landholder in

Khuldabad local area is less than two times the area of a family holding. Therefore, the opponent has no right whatsoever to purchase the holding

in his possession. Since he has no right to purchase the holding he is not entitled to be declared u/s 38-E an owner thereof. The reason why the

lands belonging to the landholder in other local areas cannot be taken into account is that Clause (c) of Section 38(7) clearly indicates that regard

must be had only to the extent of the landholder''s holding in a particular local area and not to the totality of his holdings in other parts of the

territory to which the Act applies. That being the position I hold that the declaration that was granted to the opponent cannot be allowed to stand.

Accordingly, I revoke it, allow the application for revision and make the rule absolute. Costs of the proceedings will be borne by the opponent.