(2013) 03 BOM CK 0254

Bombay High Court

Case No: Writ Petition No. 1051 of 1991

Shri Rajaram Tukaram Pawar and Others		APPELLANT
	Vs	
Smt. Muktabai Narayan Salunkhe and Others		RESPONDENT

Date of Decision: March 19, 2013

Citation: (2013) 5 ABR 445 : (2013) 4 ALLMR 271 : (2013) 3 MhLj 690

Hon'ble Judges: N.M. Jamdar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

N.M. Jamdar, J.

By this petition, the petitioner challenges the order passed by Maharashtra Revenue Tribunal Pune, dated 3 September 1990 in Revision application No. MRT/MS/XI/5/89. The impugned order declares the respondent No. 1 as a tenant of the land. The petitioner is aggrieved by this declaration since the petitioner is a purchaser of the land from the original landlord. Dispute relates to Survey No. 173 (Gat No. 213) situated at village Pachwad, taluka Wai, district Satara. The original landlord of the land was one Vasudev Kale. The husband of the respondent ie Narayan, and his brother-Hari, were tenants of the land from the year 1932 onwards. After the death of Narayan, Muktabai-the respondent, became the tenant of the land.

2. Before the impugned order was passed, some proceedings were undertaken in respect the land. The first proceeding took place in the year 1964 when the Tahsildar and the Agricultural Land Tribunal Wai (the Tahsildar) conducted proceeding u/s 32(G) of the Bombay Tenancy and Agricultural Lands Act 1948, (Tenancy Act) for determination of purchase price of the land. In the said proceedings, the tenant did not remain present, and by order dated 26 November 1964 the Tahsildar declared the purchase of the land as ineffective. The order declaring the sale as ineffective was not communicated to the tenant.

3. Thereafter one of the landlord, Vasant Shankar Kale, made an application to the Tahsildar for determination of purchase price u/s 32(G) of the Tenancy Act in respect of the entire land i.e. Gat No. 173 (1003). The Tahsildar issued notices to the parties and fixed the enquiry on 13 December 1982. The parties remained present on that date and their statements were recorded. It transpired during the enquiry that the landlord- Sakharam Shankar Kale had expired on 22 March 1959 and that the tenant- Narayan had expired in the year 1976 and heirs of both landlord and tenant were not brought on record. The Tahsildar accordingly by his order dated 13 December 1982 stayed the proceedings until the legal heirs were brought on record.

4. Thereafter, the Tahsildar instituted suo motu inquiry in respect of Survey No. 173, now Gat No. 213 (Part) in respect of 8 hectares and 61 Ares. The notices were issued in the suo motu inquiry and date of inquiry was fixed for 28 August 1986. The Tahsildar conducted the inquiry, recorded the statements of representative of the tenant and village officer, Pachwad. Notices were again issued for inquiry on 6 February 1987 to the landlord and landlord attended the proceedings. The Tahsildar took note of the earlier proceedings i.e. of the year 1964 and 1982. The Tahsildar held that in view of the provisions of sub-section 3 of section 32(G) of the Tenancy Act if the order is passed in default of the tenant then the order would have to be communicated to the tenant. He held that since the order was not communicated to the tenant, the order passed on 26 November 1964 would not be a bar to proceed with the suo motu proceedings. The Tahsildar considered the entries in the extracts and found that the name of the tenant appears from the year 1940-41 and 1941-42 and therefore, the respondent was held to be as a protected tenant having been in cultivating possession as on 1 April 1957, the Tiller''s day. Since the suo motu inquiry was instituted for part of the land i.e. 8 H and 61 Ares, declaration was given in favour of respondent for the 8 H and 61 Ares. No party challenged the declaration of the Tahsildar in favour of the respondent in respect of part of Gat No. 213 i.e. admeasuring 8 H and 61 Ares.

5. On 28 December 1987, the respondent tenant through her representative presented an application to the Tahsildar u/s 32(G) of the Act in respect of the remaining 2 H and 60 Ares of Gat No. 213/1. Notices were issued by the Tahsildar. The petitioner appeared in the enquiry. The petitioner contended that he had purchased the land in question i.e. 2 H and 60 Ares of Gat No. 213/1. The petitioner contended that proceedings taken u/s 32(G) in the year 1964 were declared ineffective, and that the proceedings taken in the year 1982 were stayed, therefore, there was no warrant to reopen the proceedings u/s 32(G) in respect of the land in question. The petitioner set up his claim in dual capacity; firstly, as a tenant of the land and secondly, as a purchaser from the original landlord. The Tahsildar considered the material produced on record and the relevant extracts and came to the conclusion that the respondent was cultivating the land as tenant as on 1 April 1957 and therefore the respondent was a deemed purchaser of the land. The

Tahsildar held that the petitioner had not shown any right. Furthermore since the respondent was a statutory tenant of the land there was no question of petitioner having any right in the land as a tenant. The Tahsildar accordingly by his order dated 12 May 1998 declared that the respondent a deemed purchaser of 2 H 60 Ares of Gat No. 213/1 and fixed the purchase price in favour of the respondent.

6. The petitioner challenged the order passed by the Tahsildar by filing a Tenancy Appeal No. 8 of 1988 before Sub-Divisional Officer Mahabaleshwar, Wai. The Sub-Divisional Officer heard the petitioner as well as the representative of the respondent and concluded that since the respondent was declared as tenant of only 8 H and 61 Ares, it showed that respondent was not tenant of the remaining land. The Sub-Divisional Officer held that if the respondent was tenant of the remaining land, she would have been declared tenant of remaining land as well. The Sub-Divisional Officer considered the entries in favour of the petitioner that the petitioner was shown to be cultivating the land in the year 1975-76. The Sub-Divisional Officer accordingly concluded that the decision given by the Tahsildar on the application filed by the respondent was not correct and legal. The Sub-Divisional Officer accordingly had allowed the Tenancy Appeal by order dated 8 September 1989 and passed an order in favor of the petitioner.

7. The respondent thereafter filed a Revision application before the Maharashtra Revenue Tribunal, Pune challenging the order passed by the Sub-Divisional officer. The respondent contended before the Tribunal that the name of the name of the tenant was shown in the extracts from the year 1940-41 and respondent/tenant had become deemed purchaser as on 1 April 1957. The respondent contended that the orders passed in the year 1964 and 1982 were not an impediment in the way of the suo motu inquiry and the subsequent applications filed by the respondent u/s 32(G) of the Act. The respondent contended that since the respondent was a statutory tenant, sale deed in favour of petitioner could not have been affected and no rights could be claimed there from. Respondents also sought to produce certain orders passed subsequent to the orders passed in the appeal and revenue record of the year 1930-31. The petitioner supported the order passed in appeal and reiterated his contentions that the proceedings having declared ineffective and the respondent having accepted herself as a tenant of only part of the land, the impugned order passed by the appellate authority was correct.

8. The Tribunal after considering the material on record and the arguments concluded that the respondent was statutory tenant of the land and deemed purchaser as on 1 April 1957. The Tribunal held that in proceedings conducted in the year 1964 cannot be termed as res-judicata for the subsequent institution of proceeding u/s 32(G) of the Act, as the declaration of the sale being ineffective, was not valid in law. The Tribunal held that because the declaration earlier was for part of the land that by itself will not disentitle the respondent from seeking declaration for the remaining land. The Tribunal also held that the sale deed executed by the

landlord in favour of the petitioner cannot be termed as valid and the revenue entries in favour of the petitioner were only from the year 1974-75. Accordingly, the Tribunal found that the exercise of powers by the Tahsildar u/s 32(G) of the Act to determine the purchase price in favour of the respondent was just and proper. Accordingly, by its order dated 3 September 1990 the Revenue Tribunal allowed Revision application filed by the respondent. The petitioner has challenged the said order by way of this petition.

9. I have heard Mr. Ravi Kadam, the learned counsel for the petitioner and Mr. S.G. Karandikar, the learned counsel for the respondents.

10. The learned counsel for the petitioner advanced following submissions.

a) Proceedings u/s 32(G) were instituted in the year 1964 and by order dated 26 November 1964 the Tahsildar had declared the purchase of the land as ineffective. The respondent did not challenge this order and it attained finality. Once the order attained finality, there was no question of reopening the proceedings u/s 32(G) of the Act.

b) Since the proceedings declaring that the purchase of land is ineffective and consequently that tenant was not entitled to it, the sale deed executed in his favour cannot be considered as bad in law.

c) Proceedings instituted in the year 1982 also did not conclude and therefore, in view of the order passed in those proceedings on 8 November 1982, the proceedings instituted by the respondent in the year 1988 could not have been instituted.

d) In the suo motu proceedings, the respondent was declared, as a tenant only of 8 H and 60 Ares and not of the remaining land. The respondent did not challenge this order. Respondent having not challenged this order, she deemed to have accepted the same. It is after this order was passed wherein the respondent tenant accepted that she is tenant of only 8 H and 60 Ares sale deed was executed in petitioner''s favour and therefore, no fault could have been found in the sale deed.

e) Apart from the sale deed, the petitioner was also tenant of the land as was evident from the revenue records of the year 1974-75 and since the purchase in favor of respondent was held to be ineffective the petitioner had become tenant of the land and was rightly declared so by the appellate authority.

f) The Tribunal in spite of the opposition of the petitioner allowed certain new material on record and relied upon the same, causing prejudice to the petitioner. The exercise of suo motu powers after 23 years was not warranted.

g) Reliance is placed on the decisions - Raghunath Narayan Bokil Vs. Vithal Sawala Limbhore through his LRs. Maruti (Baban) Vitthal Limbhore and Others, ; Jagu Tukaram Waghamale Vs. Dnyandeo Bala Waghmale and another, ; Smt. Radhabai

Balkrishna Deshpande and Another Vs. Shri Babu Dhondu Shewale, deceased, by his heirs and Others, ; Chandrakant Raghunath Parab, Kunjavihari Krishnaji Parab and Prabhakar Krishnaji Parab Vs. State of Maharashtra and Others, and Bhanu Kumar Jain Vs. Archana Kumar and Another, .

11. The learned counsel for the respondent on the other hand submitted

a) Section 32(G) 3 of the Tenancy Act provides that if the sale is declared ineffective in absence of the tenant, then such order has to be communicated to the tenant, and if such order is not communicated the declaration that tenant is not interested in purchasing the land will not come into effect. It is an admitted position on record that no such communication was given to the tenant. Therefore, the proceedings and declaration were not proceedings in the eyes of law at all. The institution of suo motu proceedings albeit, after 23 years, was therefore not barred by any provision of law.

b) The name of the tenant appeared in the extract from 1940-41 at least and therefore, the respondent was deemed purchaser and once the respondent was the statutory tenant of the land, no sale deed in favour of the petitioner in contravention of section 64 of the Tenancy Act could have been executed.

c) Once the respondent was statutory tenant unless her tenancy was validly surrendered, there is no question of any other tenant replacing her.

d) The authorities were right in coming to the conclusion that the respondent is entitled to be declared a statutory tenant of 2 H and 60 Ares of Gat No. 213/1 as well as there is cogent and satisfactory material available and there is no dispute regarding the same.

e) The decisions relied upon by the petitioner are distinguishable on facts and in those cases there was express surrender of tenancy by the tenant which is not the case in the present matter.

12. Before the contentions of the learned counsel are adverted to, basic uncontroverted position needs to be noticed. It is not controverted that the name of the respondent/tenant appears in the extracts from 1940-41 onwards at least and that as on the relevant date of 1 April 1957, the respondent tenant was cultivating in the capacity of a tenant. What is contested is the effect of subsequent events on the rights of the parties.

13. The first question is regarding the effect of the order passed by the Tahsildar on 26 November 1964 declaring the purchase of land as ineffective. In this context Section 32(G) and Sub-section 3 of the Bombay Tenancy Act, needs to be noticed-

Section 32G- Tribunal to issue notices and determine price of land to be paid by tenants

(1) As soon as may be after the tillers'' day the Tribunal shall publish or cause to be published a public notice in the prescribed form in each village within its jurisdiction calling upon--

(a) all tenants who u/s 32 are deemed to have purchased the lands,

(b) all landlords of such lands, and

(c) all other persons interested therein,

to appear before it on the date specified in the notice. The Tribunal shall issue a notice individually to each such tenant, landlord and also, as far as practicable, other persons calling upon each of them to appear before it on the date specified in the public notice.

(2) The Tribunal shall record in the prescribed manner the statement of the tenant whether he is or is not willing to purchase the land held by him as a tenant.

(3) Where any tenant fails to appear or makes a statement that he is not willing to purchase the land, the Tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective: Provided that if such order is passed in default of the appearance of any party, the Tribunal shall communicate such order to the parties and any party on whose default the order was passed may within 60 days from the date on which the order was communicated to him apply for the review of the same.

(4) If a tenant is willing to purchase, the Tribunal shall, after giving an opportunity to the tenant and landlord and all other persons interested in such land to be heard and after holding an inquiry, determine the purchase price of such land in accordance with the provisions of section 32H and of sub-section (3) of section 63A:

1[Provided that where the purchase price in accordance with the provisions of section 32H is mutually agreed upon by the landlord and the tenant, the Tribunal after satisfying itself in such manner as may be prescribed that the tenant''s consent to the agreement is voluntary may make an order determining the purchase price and providing for its payment in accordance with such agreement.]

(5) In the case of a tenant who is deemed to have purchased the land on the postponed date the Tribunal shall, as soon as may be, after such date determine the price of the land.

(6) If any land which, by or under the provisions of any of the Land Tenures Abolition Acts referred to in Schedule III to this Act, is regranted to the holder thereof on condition that it was not transferable, such condition shall not be deemed to affect the right of any person holding such land on lease created before the regnant and such person shall as a tenant be deemed to have purchased the land under this section, as if the condition that it was not transferable was not the condition of regrant.

14. Section 32(G) of the Tenancy Act lays down a procedure for determination of purchase price. Sub-section 3, which is relevant for the purpose of this petition, states that if any tenant fails to appear on the date specified in the notice the Tribunal/Tahsildar shall by order in writing, declare that such person is not willing to purchase the land. The proviso to sub-section 3 however lays down that if such declaration is passed due to absence of the tenant, the Tribunal/Tahsildar shall communicate the decision to the tenant for whose absence the order was passed. The tenant can then apply for review of the order within 60 days.

15. Question is the effect of the declaration when the order passed in absence, is not communicated to the tenant. While interpreting sub section 3, the object of the legislation in enacting section 32(G) needs to be kept in mind. The Act is a beneficial legislation enacted to invest the tillers of the land with certain rights of ownership. The Act fixes 1 April 1957 as the relevant date and those who were tilling the land on that date were deemed to have become purchasers, subject to conditions laid down in the Act. This creation of rights in favour of the tillers of the land was one of the avowed purposes of this beneficial legislation. The sub-section 3 of section 32(G) draws a presumption that if the tenant fails to appear, the tenant is not willing to purchase the land, and based on this presumption the authority declares the sale as ineffective. Considering the ground realities and the social backwardness of the tillers of the land, the legislation added an additional safeguard by way of the proviso to the section. As per the proviso if order passed for absence of a tenant, it should be communicated to the tenant, who will then have a right of review. Thus before a declaration that the tenant is not willing to purchase the land, is proclaimed, it is obligatory on the authority to inform the absentee tenant and give him one more opportunity of filing a review within 60 days. Thus, the tenant after being served with such order does not even file a review then the presumption becomes complete. The scheme of subsection (3) provides a double safeguard before the presumption that the tenant is not interested in purchasing the land becomes effective.

16. In the present case, it is an admitted position that no such communication was issued and in absence of the tenant that he was not interested in purchasing the land was declared. Considering the scheme of sub-section 3, it cannot be held that the declaration that the tenant was not willing to purchase the land and that the purchase was ineffective had come into effect. Once this conclusion is reached then the submission of the learned counsel for the petitioner that the proceedings could not have been reopened since they were concluded on 26 November 1964 itself cannot be accepted.

17. As far the second proceedings dated 8 November 1982 is concerned, an application was made by one of the landlords for determination of purchase price of the land u/s 32(G). These proceedings also did not conclude on merits as the Tahsildar found that both the landlord as well tenant had expired. The proceedings

were therefore stayed by the Tahsildar by order dated 13 December 1982. Since these proceedings were not concluded, the order passed on 13 December 1982 staying the proceedings until the heirs were brought on record cannot be an impediment in the way of subsequent proceedings.

18. Next is the effect of the order passed by the Tahsildar on 28 May 1987 declaring the respondent as tenant for the area of 8 gunthas and 68 Ares. The learned counsel for the Petitioner submitted that if the respondent was declared tenant only of part of the land then the respondent ought to have challenged the order dated 28 May 1987 and having not challenged the same, she was precluding from making another application for the remaining land. The learned counsel relied on the decisions of this court mentioned earlier in furtherance of his submission that the respondent accordingly relinquished her claim as far as the remaining land.

19. There is no merit in the submission. The authorities below recorded a finding of fact that the respondent was cultivating the land on 1 April 1957. Once the respondent was found to be cultivating the land as on 1 April 1957, under the provisions of the Act the respondent becomes a deemed purchaser unless the right was expressly surrendered by the respondent, it cannot be inferred. Even if it is assumed that such surrender is permissible in law it will have to be strictly proved, and cannot be put forth by implication. The decisions relied upon by the learned counsel for the petitioner are of the cases where the tenant, by a written document, in the Court proceedings, made his intention expressly clear that he was not claiming tenancy in respect of the land. It is upon such express act on behalf of the tenant that the Court concluded that the tenant would not be permitted to go back on his word. Such is not the present case. There is absolutely no document or any overt act on the part of the tenant showing her intention of relinquishing her claim.

20. Even otherwise, the proceedings that were initiated in respect of the 8 H and 61 Ares, were initiated by the Tahsildar, on 28 May 1987, under its suo motu powers. Neither the landlord nor the tenant had approached the Tahsildar for determining the purchase price in respect of only 8 H & 61 Ares. The Tahsildar on inquiry fixed the purchase price in favor of the respondent in respect of 8 H and 61 Ares. In the decision of Tahsildar, there is no finding that the respondent was not entitled to the remaining land of 2 H and 60 Ares. Thus, the neither respondent-tenant instituted the proceedings for only 8H and 61 Ares nor there was a finding that the respondent was entitled to only 8 H and 61 Ares. In the circumstances, the finding of the Sub-Divisional Officer that since the respondent was declared tenant for the one part of the land, it is presumed that she was not tenant for the remaining land, and could not have instituted proceedings was rightly set aside by the tribunal.

21. The Judgment of the Apex Court in the case of Bhanu Kumar Jain (supra) cited by the learned counsel for the petitioner expounds principles as regards issue-estoppel. The judgment however, does not apply to the facts of the present case, where the tenancy Act lays down modality by which a right accrued to a tenant

is relinquished or lost. There is no dispute that no such steps were taken neither there was express intention to surrender the claim of tenancy.

22. As regards the merits of the order passed on 12 May 1988 by the Tahsildar, upheld by the Tribunal, fixing the purchase price for remaining area of 2 H and 60 Ares is concerned, no fault can be found as regards the same. The revenue entries in respect of this portion of the land also show that the respondent was cultivating as a tenant as on 1 April 1957 and therefore, the respondent was a deemed purchaser. The learned counsel for the petitioner made grievance that the Tribunal considered the revenue record in favour of the respondent of the year 1932-33 onwards even though they were not part of the records in the Courts below. Even assuming this was not to be done; it will not alter the result as regards the cultivation of the respondent on the tiller''s day i.e. on 1 April 1957, as extracts from 1941 onwards were already part of the record.

23. It also needs to be kept in mind that the petition is not filed by the landlord. The petitioner did not make the landlord as a party respondent in the proceedings in the appeal and in this petition. The landlord had supported the case of the respondent and had given a statement that the respondent/tenant was cultivating the land as on the tiller''s day.

24. Turning to the merits of the petitioners claim, the petitioner has based his claim on two counts, firstly that the petitioner is a tenant since the year 1974-75 and second, the petitioner has purchased the land from the landlord by sale deed dated 11 December 1987. As far as the claim of petitioner as regards tenant is concerned, admittedly there are no entries prior to the year 1974 - 1975 in favour of the petitioner. Once the findings of fact that the respondent was a deemed purchaser having found in cultivating possession as on 1 April 1957, is established then the respondent cannot be declared as a tenant of the land. Once the respondent continues as a tenant of the land, there was no question of petitioner also being a tenant of the land. The petitioner has not made any application for getting himself declared as a tenant. The Tahsildar and the Tribunal considered the entries in favor of the respondent and petitioner and concluded that the petitioner cannot be termed as a tenant of the land. The respondent was in cultivating possession as on 1-4-57 and entries in favour of the petitioner were only of 1974-75. There is no perversity in the findings of the Tribunal on facts and on law, as regards this aspect.

25. Second claim of the petitioner is based on the sale deed. It is the submission of the learned counsel for the petitioner that after the sale was declared ineffective, the petitioner had purchased the property before an application was made by the respondent for fixing purchase price of 2 H and 60 Ares. I have already held that the declaration that sale has become ineffective had not come into operation. The name of the respondent continued to be shown in the revenue record as of 1 April 1957. The landlord himself admitted that the respondent was tenant of the land. In view of this position, it was obligatory on the landlord to apply to the authorities, when the

landlord intended to sell the land in favour of the petitioner. Section 64 of the Tenancy Act lays down that when a landlord intends to sell any agricultural land he shall apply to the Tribunal for determining reasonable price thereof. The Tribunal after fixing the reasonable price shall give an offer to the tenant for purchase. Section 64(8) states that any sale made in contravention of section 64 is deemed to be invalid.

26. Section 64 lays down a methodology for sale of such lands and sub-section 8 thereof states that in sale made in contravention of the section shall be invalid. Admittedly, the landlord while executing the sale in favor of the petitioner did not follow the procedure u/s 64 of the Act. In view of the express provision of section 64 and the fact that the respondent was deemed purchaser of the land in question the landlord could not have executed a sale deed in favour of the petitioner. More-so when the landlord himself had acknowledged that the respondent was a tenant of the land. Therefore, the Tribunal has rightly rejected the claim of the petitioner based on such an invalid sale deed.

27. As regards the delay in instituting the proceedings for remaining land is concerned, it has to be noted that the starting point is taken by the petitioner is the declaration dated 26 November 1964 by the Tahsildar that the purchase was ineffective. Once the conclusion is reached that the said declaration had not come into force, then the exercise of suo motu powers by the Tahsildar to fix the purchase price cannot be termed as belated or barred by or grossly delayed, and nor the application made by the tenant thereafter. An attempt was made by the Tahsildar to fix the purchase price but that could not proceed as both landlord and tenant had expired. Thereafter the purchase price was fixed firstly for part of the land by Tahsildar under the suo motu powers and remaining on the application of the respondent thereafter. In the circumstances, the finding of the Tribunal that the respondent is the tenant of the land cannot be set aside on the ground of delay in instituting the proceedings before the Tahsildar, under the writ jurisdiction of this Court.

28. So far as the argument regarding allowing to produce documents on record in revision is concerned, the Tribunal permitted the respondent to produce extracts of the year 1933-34 onwards. The extracts are public documents and they simply state position as of the dates mentioned in them. In any case what was material was the cultivating possession of the respondent as on 1 April 1957 and the extracts from 1940-41 were already on record. Furthermore, the landlord himself had admitted that the respondent was the tenant of the land and therefore, by allowing producing the revenue records of the year 1933-34 did not alter the outcome of the case. The other document that was allowed to be produced was an order setting aside an order relied upon by the Petitioner before the Sub-Divisional Officer. The document was a judicial order passed in the connected proceeding passed during the pendency of the present proceeding. No substantial prejudice was caused by

allowing production of these documents in the revision.

29. The position thus emerges is that authorities recorded a finding of fact that the respondent was in cultivating possession of the land on 1 April 1957 and had become deemed purchaser. The declaration that the sale as ineffective was not valid. The petitioner was not found in possession on the Tiller''s day and the sale deed in his favour was not valid having been executed in breach of provisions of the Act. The order passed by the Revenue Tribunal based on this legal and factual backdrop cannot be termed as perverse. The order of the Revenue Tribunal upholding the order of Tahsildar declaring the respondent as tenant cannot be interfered with in the writ jurisdiction.

30. The petition therefore fails and is dismissed. Rule is discharged. At this stage, Mr. Ravi P. Kadam the learned counsel for the petitioner prays that the interim order passed in this petition be continued for some time. The interim order operating in this petition is continued for a period of eight weeks from today.