

(1999) 02 BOM CK 0095

Bombay High Court

Case No: Writ Petition No. 1652 with W.P. No. 4788 of 1990

Shri Sopanrao Rama Kaspate

APPELLANT

Vs

Shri Namdeo Rama Kaspate
Since Deceased by his Legal
Heirs and others

RESPONDENT

Date of Decision: Feb. 18, 1999

Acts Referred:

- Bombay Tenancy and Agricultural Lands Act, 1948 - Section 32

Citation: (1999) 3 BomCR 153 : (1999) 2 BOMLR 41 : (1999) 2 MhLj 314

Hon'ble Judges: T.K. Chandrashekhara Das, J

Bench: Single Bench

Advocate: V.M. Kanade, R.V. Govilkar and A.V. Anturkar, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

T.K. Chandrashekhara Das, J.

Facts arise in these writ petitions are common and legal questions posed in the factual context are also similar. Therefore, these two writ petitions are heard together and disposed of together by this common judgment. For the purpose of this judgment, I refer to the records and exhibits in the Writ Petition No. 1652 of 1990.

2. The lands comprising Survey No. 185 in Wakad Village, Tal. Mulshi, admeasuring 13 acres and 32 gunthas and another land comprising Survey No. 264/6, admeasuring 1 acre and 18 gunthas form the subject matter of these writ petitions. The original landlord of these pieces of land was one Ganesh Krishan Kate. After his death in 1924, his wife Saraswatibai succeeds him and mutation of the Revenue Record has been made in her favour. The petitioner, in Writ Petition No. 1652/1990, Sopanrao/Sopana and respondent Namdeo, brother of the petitioner claimed the tenancy right, against the said property. Namdeo died during the pendency of the

writ petitions and his legal heirs were brought on the record. Under Exh. "A" at page 31, an order came to be passed by the Additional Mamlatdar, A.L.T., on 29-6-1962, declaring that since the landlady was a widow, the proceedings u/s 32-G of the B.T. & A.L.T. Act in respect of Survey No. 185 was postponed u/s 32-F. In this order the petitioner in Writ Petition No. 1652/90 Shri Sopanrao Rama Kaspate was shown as a tenant. Similarly on 29-6-1963, the Additional Mamlatdar and Agricultural Lands Tribunal, Mulshi passed an order, declaring that the 32-G proceeding has been postponed in respect of the Survey No. 264/6. In this order Namdeo Rama Kaspate is shown as tenant. The aforesaid Saraswatibai Kate died on 15-11-1963; but no proceedings have been initiated by either of the parties or the authorities in respect of the said lands. On 24-7-1972 the Additional Tahsildar and Agricultural Land Tribunal, Mulshi passed an order in respect of Survey No. 185 in the name of Sopan Rama that the 32-G proceedings, started in favour of the tenant, has become ineffective and that the intimation was to be made in accordance with section 32-P. Similar order has been passed by the Additional Tahsildar and A.L.T. Mulshi in respect of the land in Survey No. 264/6 on 26-7-1972. Shri Namdeo's name was shown as tenant in that order. After this order of 1972 neither the disputants nor the authorities do take any action. Subsequently, both the Sopana and Namdeo made applications before the Additional Tahsildar & A.L.T. who passed an order u/s 32-G on 7th February 1980, after considering the two applications. It was a common order that has been passed in respect of both Sopana and Namdeo. This order takes in both lands, comprising Survey Nos. 185 and 264/6. By this order both Sopana and Namdeo were declared deemed purchaser of those lands and purchase price has been fixed. Against this Order 3 separate appeals were filed by the petitioner Sopana in Writ Petition No. 1652/90. One is with regard to the declaration by the Tribunal in respect of Survey No. 264/6 as Namdeo is the tenant. Second is in respect of giving a portion of land, comprising Survey No. 185 to Namdeo and third one, was with respect of setting aside the orders passed on 24-7-1972 and 26-7-1972, taking proceedings u/s 32-P. These 3 appeals were disposed of by a common order dated 25-9-1987 by the appellate Authority, Sub Divisional Officer, Haveli Sub Division, Pune in I No. TNC. A. 60/81. II) No. TNC/A/67/81, III) No. TNC/A/173/81. By this order the history of the past proceedings have been discussed and the claims of the parties in respect of the lands in question were also examined. The Appellate Authority ultimately found that the matter requires a detailed consideration by the original Authority since so many factual aspects have to be gone into. For this purpose, the matter was remanded back to the original Authority. In this context it is necessary to quote the observations of the Appellate Authority, which clearly identify the purpose for which the matter has been remanded back. The observations are thus:--

"From above factual position and discussion I observe that at lower level case has not been dealt with by care and caution lower Court has not applied his mind, important aspect have not been considered e.g. previous order u/s 32-P so also

Record of Rights as regards name of tenants have not been taken into consideration. I also found much substance in authority quoted by appellant as regards willingness, it is also important to note that implementation orders u/s 32-P has not been done. Lower Court has not discussed the cases properly. I feel for end of justice and to avoid all further complications case needs not be inquired thoroughly in all respect and after offering sufficient opportunity to all parties so far said reasons and purpose I pass the following order."

3. Against this order of remand, the landlord i.e. the petitioners in Writ Petition No. 4788/1990 filed a Revision before the Revisional Authority, namely, the Maharashtra Revenue Tribunal, bearing number as No. MRT/ P/XII/2/87 (TEN.B. 324/87. By order dated 12-12-1988 the said Revisional Authority dismissed the Revision filed on behalf of the landlord. However, while dismissing the Revision filed by the landlord, the Revisional Authority made certain modification in the order passed by the Appellate Authority. The modifications made in the appellate order are to the effect that after remand, the original authority is required only to fix the purchase price and the landlord should not agitate the point that the opponent tenant did not exercise his right to purchase the suit land u/s 32-F (1-A) of the Tenancy Act. The Revisional Authority also made a modification by which the entire land comprising Survey No. 264/6 is shown in the account of the petitioner Sopana thereby the tenancy right of Namdeo, in respect of the Survey No. 264/6 has been taken away. This drastic modification done by the Revisional Authority while dismissing the Review petition is, according to me, illegal and unwarranted. At least Revisional Authority has to observe some sort of discipline in dealing with the matter. The Revisional Authorities, normally gets very limited power to examine the order under Revision. If they are satisfied that no grounds are made out for revising the order, the only course open to the Revisional Authorities is to dismiss the Revision and they -have no power to make any modification in the order under revision. On this ground alone, the orders annexed at page 67 Exh. G. produced in Writ Petition No. 1652/90 and the order Exh. "A" at page 21, produced in Writ Petition No. 4788/1990 are liable to be set aside.

4. The Revisional Authority has also extended certain benefits to the tenants in a revision filed by the landlord, which is also quite illegal. However, against the revisional order, the first respondent Namdeo filed Review of the said order before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal further reviewed the revisional order and again made modifications in the operative part of the order passed by the Appellate Authority. As per this modification, the original authority was directed to consider claim in respect of the land comprising Survey No. 264/6 in the name of Namdeo. The petitioner in Writ Petition No. 1652/ 1990, therefore, challenged this order in his petition. Whereas the petitioners in Writ Petition No. 4788/1990 challenged both the orders i.e. the appellate order as well as revisional order.

5. I have heard the Counsels for the petitioners and the respondents. After hearing the parties and after perusing the record of the case, I think that both the revisional order and the review order are liable to be set aside. I have already stated the grounds on which the revisional order has to be set aside. On the same ground also the order passed under review also has to be set aside. The learned Counsel for the petitioner Shri Anturkar tried to argue that no review will lie against the revisional order. In the facts and circum stances of the case, I need not go into that controversy in this case. As I stated earlier, the revisional authority has exceeded the jurisdiction in passing the revisional order and the same is applicable to the order passed under review also. However, after hearing the parties, I do not think any interference is called for in the appellate order passed in the appeal.

6. In the result, the writ petitions are disposed of. Both the orders at Exhs. G and H. i.e. the revisional order and order of review are hereby quashed. The appellate order is maintained. The original authority has to consider and pass appropriate order afresh according to the law, considering all the contentions of the parties as directed by the appellate authority within 6 months from the date of the receipt of the writ of this judgement.

7. Rule is disposed of as indicated above.

8. Certified copy expedited.

9. Order accordingly.