

(2011) 4 ALLMR 285 : (2011) 3 BomCR 109 : (2011) 2 MhLj 874

Bombay High Court

Case No: Writ Petition No. 485 of 1988

Dhanappa Balappa
Sawale (deceased)
through Legal Heirs
(Murgendra Dhanappa
Sawale and Others)

APPELLANT

Vs

Gurulingeshwar
Devasthan Gurulinga
Swami and Devru
Swami, Hire Math

RESPONDENT

Date of Decision: Jan. 17, 2011

Acts Referred:

Bombay Public Trusts Act, 1950 " Section 22A, 72#Bombay Tenancy and Agricultural Lands Act, 1948 " Section 32G, 32R, 88B#Constitution of India, 1950 " Article 227

Citation: (2011) 4 ALLMR 285 : (2011) 3 BomCR 109 : (2011) 2 MhLj 874

Hon'ble Judges: V.M. Kanade, J

Bench: Single Bench

Advocate: A.S. Khandeparkar, instructed by Shahank Borade, for the Appellant; Kishore S. Patil, for the Respondent

Final Decision: Dismissed

Judgement

V.M. Kanade, J.

Heard the learned Counsel for the Petitioner and the learned Counsel for Respondent.

2. Petitioners are challenging the judgment and order passed by the Maharashtra Revenue Tribunal dated 26/3/1987. By the said order, the

revision application was dismissed and the order passed by the said Sub-Divisional Officer, Miraj Division was confirmed.

3. Brief facts are that the Petitioner claimed to be tenant in respect of the land bearing Survey Nos. 292 and 293 admeasuring 19 Acres 9 Gunthas

and 23 Acres 11 Gunthas. Petitioner initiated proceedings u/s 32G before the Agricultural Land Tribunal in 1964. However, the Tribunal, after

inquiry was made, came to the conclusion that the lands in question were Deosthan Inam lands and, therefore, by order dated 10/02/1964

dismissed the said application and dropped the proceedings u/s 32G. Thereafter, it appears that these lands were re-granted in favour of the

Respondent and, therefore, again, proceedings u/s 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (For short ""BT & AL Act)

were initiated. The Additional Tahasildar & Agricultural Lands Tribunal was pleased to allow the application and came to the conclusion that the

Petitioner was entitled to exercise his right of purchase since the Deosthan lands were re-granted to the landlord. He, therefore fixed the purchase

price of the said lands. He further observed that after the lands were re-granted to the landlord, he neither obtained necessary certificate u/s 88B of

the BT & AL Act nor started any proceedings for taking over possession from him and, therefore, tenant was entitled to exercise his right of

purchase u/s 32G. Thereafter, appeal was preferred by the Respondent. The appeal was allowed and the order of ALT was set aside. The Sub-

Divisional Officer held that since the proceedings u/s 32G were initially concluded in the year 1964 on the ground that the said lands were

Deosthan lands and also a trust property and the provisions of Sections 32 to 32R of BT & AL Act were not applicable to the said lands, the said

proceedings were dropped and that the proceedings which were again initiated by the tenant after 16 years were barred by the principle of

resjudicata. He also held that in 7 x 12 extract of the suit lands the suit lands are shown to be Deosthan lands and, therefore, proceedings u/s 32G

were not maintainable. He also held from the evidence on record that the suit lands were public trust property and on that ground also the

provisions of Sections 32 to 32R of the BT & AL Act were not applicable. Revision Application was preferred by the tenant - Petitioner herein

before the Maharashtra Revenue Tribunal, Pune Bench at Kolhapur. The MRT also came to the conclusion that the second proceedings which

were initiated u/s 32G were barred by principle of resjudicata and it further held that since there was documentary evidence on record to show that

it was a trust property, in view of provisions of Section 88B the provisions of Section 32 to 32R were not applicable.

4. Shri Khandeparkar, the learned Counsel appearing on behalf of the Petitioner submitted that finding recorded by both the courts below that

proceedings were barred by principle of resjudicata were patently bad in law. He submitted that after the proceedings were initially dropped in

1964, the lands were re-granted in favour of the Petitioner in 1973 and, therefore, proceedings u/s 32G were revived.

5. In my view, there is much substance in the said submission made by the learned Counsel appearing on behalf of the Petitioner. Both the Courts

below clearly erred in holding that proceedings which were re-initiated in 1981 after the re-grant of the lands were barred by principle of

resjudicata since it is an admitted position that, initially, lands were Deosthan lands and by order passed in 1965 the State Government had stated

that upon the amount being paid, the landlord could continue as a licensee. In 1973, order of re-grant was made in favour of the landlord.

6. The learned Counsel appearing on behalf of the Petitioner then submitted that so far as finding recorded by both the courts below that the said

property was a trust property is concerned, the said finding is incorrect. He invited my attention to the provisions of Section 88B. He submitted

that under the said provision, such property had to be a property of trust or institution for public religious worship and that entire income of such

lands is appropriated for the purposes of such trust. It is submitted that, therefore, the landlord had not complied with the conditions provided in

Section 88B(b) proviso (i) and (ii). He submitted that the MRT has also observed that since the original documents pertaining to the said Trust

were not available, the said Trust was deemed to be a public trust.

7. On the other hand, the learned Counsel appearing on behalf of the Respondent submitted that the Sub-Divisional Officer as also the MRT had

taken into consideration the evidence which was brought on record and held that the said property was a trust property and, therefore, the

provisions of Sections 32 to 32R were not applicable.

8. There is much substance in the submission made by the learned Counsel for the Respondent. The order of Sub Divisional Officer clearly shows

that he has stated that there is evidence on record which shows that the property is a public trust property and finding to that effect has been

recorded. Similarly, the MRT also has observed in para 11 of its order as under:

11. ...It is also clear from the record that the suit property is held to be trust property and in this respect useful reference can be made to the

proceedings before the Assistant Charity Commissioner, Kolhapur (vide application No. 79 of 63) which is at page 45 in Tenancy Appeal No. 43

of 1983. In this application the order was passed by the Assistant Charity Commissioner on 5-12-63 and the applicant Gurulingeswar Swami was

directed to make an application u/s 22A of the Bombay Public Trust Act for registration of the Trust after due inquiry. Under the provisions of

Section an inquiry for the purpose of registration can be made by the Deputy or Assistant Charity Commissioner and necessary entires can be

made by them after such inquiry. This particular order is dated 5-12-63 and it was subject matter of an appeal u/s 72 of the Bombay Public Trust

Act before the District Judge at Sangli. The District Judge passed this order on 22-7-75 and came to the conclusion that all the necessary

documents in this case showed that the deity was the owner of the property and therefore, there was nothing wrong if this property was held to be

the trust property. So the character of the suit property was already finally decided and therefore, u/s 88B of the Tenancy Act certain provisions

would not be applicable to the property in question and such a trust regarding which the original documents are not coming forth but in respect of

which the character of the property has been finally decided, then such a trust would be deemed to be registered under the Bombay Public Trust

Act and such trust property would not come under the purview of Section 32 to 32R of the Tenancy Act.

In view of the clear observation and finding of both the courts below based on documentary evidence which is produced on record, it has to be

held that the said property is a trust property and the provisions of Section 88B are applicable and, therefore, the tenant - Petitioner could not

purchase the property since the provisions of Sections 32 to 32R are not applicable in this case. Hence, submission made by the learned Counsel

appearing on behalf of the Petitioner that the suit property is not a trust property, cannot be accepted.

9. The Apex Court in *Surya Dev Rai Vs. Ram Chander Rai and Others*, has held that power of the High Court under Article 227 of the

Constitution of superintendence over the subordinate courts including the Tribunal is very limited. This Court cannot re-appreciate the evidence on

record and come to a different conclusion by substituting its own view to the view which is taken by the lower courts or authorities. The Apex

Court in the said judgment in para 12 and para 38 has observed as under:

12. In the exercise of certiorari jurisdiction the High Court proceeds on an assumption that a Court which has jurisdiction over a subject-matter has

the jurisdiction to decide wrongly as well as rightly. The High Court would not, therefore, for the purpose of certiorari assign to itself the role of an

Appellate Court and step into re-appreciating or evaluating the evidence and substitute its own findings in place of those arrived at by the inferior

court.

... 38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state

the same as hereunder:

(1) ...

...

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following

requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter

disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated

argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one

view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the

judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and

circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or

proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings

in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would

obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as,

if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice

or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or

evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

10. From the said observation in para 12 of the said Apex Court judgment, it is clear that, in a given case, even if the finding given by the lower

court is wrong but if it has correctly exercised its jurisdiction even then this Court is not expected to interfere with the said order while exercising

writ jurisdiction under Article 227 of the Constitution of India, unless it is shown that the said error is an error of law apparent on the face of record

or the order is so perverse as it would shock the conscience of the court. In this case, it is an admitted position that the Respondent is in

possession of the property and is cultivating the suit lands.

11. Taking into consideration the aforesaid facts, no case is made out for interfering with the order passed by both the courts below. Petition, is,

therefore, dismissed. Rule is discharged. Under the facts and circumstances of the case, there shall be no order as to costs.