

Shaikh Rasheed Shaikh Imam and Others Vs. Saheb Begum Gulam Mohamed Deshmukh, Through Her Constituted Attorney and Agent Mukhtyar Abdul Mannan Gulam Mohamed Deshmukh and Others

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Court : Mumbai

Decided On : Dec-23-1999

Reported in : 2000(2)ALLMR298; 2000(4)BomCR190; 2000(4)MhLj177

Judge : B.H. Marlapalle, J.

Acts : [Bombay Tenancy and Agricultural Lands Act, 1948](#) - Sections 32 and 64(7)

Appeal No. : Writ Petition No. 3034 of 1986 (Old W.P. Petition No. 1037 of 1981), W.P. No. 3052 of 1989 (Old W.P.

Appellant : Shaikh Rasheed Shaikh Imam and Others

Respondent : Saheb Begum Gulam Mohamed Deshmukh, Through Her Constituted Attorney and Agent Mukhtyar Abdul Manna

Advocate for Pet/Ap. : A.B. Naik, ;K.C. Sant for ;A.H. Kapadia, Advs.

Judgement :

ORDER

B.H. Marlapalle, J.

1. Both these petitioners challenge a common order and hence are being disposed of by a common judgment. Smt. Saheb Begum Gulam Mohammad Deshmukh, the petitioners in Writ Petition No. 3052 of 1989, was the owner of agricultural land, admeasuring 17 acres in Survey No. 519 of Village Shendurni. Taluka Jamner, District Jalgaon and she was a widow on the Tiller's day i.e. on 1st April, 1957. One Shaikh Hussain Shaikh Imam (deceased) was a tenant on the said land before the landlady became a widow and on the tiller's day the statutory right accrued to the tenant under section 32 of the Bombay Tenancy 8s Agricultural Lands Act, 1948 (for short, Bombay Tenancy Act).

2. On 8th December, 1961 the landlady submitted an application before the Agricultural Land Tribunal and Mamlatdar (A.L.T. for short) at Jamner, stating therein that she was the landlady of the agricultural land in Survey No. 519, admeasuring 17 acres and Survey No. 482, admeasuring 18 acres 20 Gunthas and one Shaikh Hussain Shaikh Imam of Shendurni and Sitaram Kishan Teli, resident of the same village were tenants on both these lands respectively and their right to become a deemed owner under section 32 of the Bombay Tenancy Act was postponed on 1st April, 1957 because she was a widow. She further stated in the said application that she wanted to dispose of both the agricultural lands and hence she wanted the Tribunal to determine the price of the lands. She, therefore, prayed for treating her application under section 64(7) of the Bombay Tenancy Act.

3. The application filed by the landlady was decided by the A.L.T. on 18th February, 1962 and the price of the agricultural land, in Survey No. 519 was determined at Rs. 4,210/-. The said price was directed to be paid in six equal instalments of Rs. 702/- each and the last instalment was due and payable on 12th January, 1968. The tenant paid the first instalment and failed to pay the remaining five instalments. The landlady, therefore, made an application to the A.L.T. on 9th August, 1971 for possession of the suit land on the ground that the tenant had failed to deposit the amount of price as determined. This application was allowed by an order dated 1st July, 1973. Being aggrieved by the said order, the tenant preferred an appeal before the Sub-Divisional Officer, Chalisgaon on 13th April, 1973 and by order dated 30th August, 1973 the appeal was decided by modifying

the order passed by the A.L.T. inasmuch as it was directed that the landlady be put in possession of the suit land to the extent of ceiling limit and the remaining order passed by the A.L.T. was maintained. The tenant moved the Maharashtra Revenue Tribunal in Revision No. TEN/A/495/73. By an order dated 17th October, 1974 the learned Member of the Maharashtra Revenue Tribunal (M.R.T.) was pleased to allow the revision application and to quash and set aside the order passed by the A.L.T. The M.R.T. further gave one years time to the tenant to make the payment of the remaining instalments of the purchase price fixed by A.L.T. originally and on the failure of which the purchase price was directed to be recovered by way of land revenue.

4. The order passed by the M.R.T. came to be challenged before this Court in a Special Civil Application No. 836 of 1975 and it came to be withdrawn on 24th April, 1979. Immediately, on the next day i.e. on 25th April, 1979 the landlady approached the M.R.T. and filed a Review Application No. TEN/C/13/79. This review application came to be partly allowed by the Tribunal on 19th August, 1980 and it held that the grant of extension of period for payment of the purchase price was illegal and to that extent the order was recalled. The remaining part of the earlier order passed by the Tribunal was confirmed i.e. restoration of the possession of the subject lands to the landlady was declined. Being aggrieved by the order passed by the Tribunal in the review application, both the landlady as well as the tenant, have approached this Court in the instant petitions.

5. Shri Sant, the learned Counsel appearing for the landlady contended that not only the landlady but the tenants had also agreed that the application moved by the landlady before the A.L.T. on 8th April, 1961 was under section 64(7) and once that application was decided by fixing the purchase price to be paid in six equal instalments, further consequences of section 64 of the Bombay Tenancy Act must flow meaning thereby that the landlady was entitled to restoration of possession of the subject land and there was no case for the tenant to remain in possession of the subject land.

6. Shri Naik, learned Counsel for the tenant, on the other hand, has urged that the order passed by the A.L.T. on the application filed by the landlady was on its

misconceptions and the A.L.T. failed to apply its mind to the facts of the case and fell in error in treating the application filed by the landlady under section 64(7) of the Bombay Tenancy Act. The learned Counsel for the landlady has referred to a judgment of this Court (Division Bench), in the case of Balkrishna Sakham Naik v. Siddappa Vithoba Gangade : (1957)59BOMLR54 , and another judgment in the case of Ramrao Ganpat Patil and others v. Sau. Nandini Bhalchandra Kulkarni and others 1991(1) Mh.L.R. 923. In the case of Balkrishna Naik (supra) the petitioner/owner wanted to sell some of the lands in possession of the protected tenant in 1952 and, therefore, he applied to the Mamlatdar under section 64 of the Bombay Tenancy Act for determination of reasonable price of the lands without impleading the tenant as a party to the proceedings. On 24th July, 1952 the Mamlatdar fixed the total price of these lands at Rs. 24,500/- and, thereafter, the tenant was called upon to purchase the land at the said price. The tenant, in his reply dated 24th September, 1952, intimated to the landlady that he was notwilling to purchase the land at the price mentioned in the opponent's notice but he was willing to do so at a price to be fixed by the Mamlatdar under section 32 of the Act. On 24th December, 1952 the landlady agreed to sell these lands to one Gangawwa for Rs. 22,000/- and in the meantime the tenant applied to the Mamlatdar under section 32(3) of the Bombay Tenancy Act for determination of the reasonable price. The High Court held that the tenant was offered to purchase the land at a price determined by the Mamlatdar and if he had any grievance regarding the said price he was at liberty to file an appeal against that order before the Deputy Collector rather than declining to purchase the land and it was under these circumstances that this Court held that the tenant's application under section 32(3) of the Bombay Tenancy Act was not tenable. It must also be noted that these proceedings were before the Tiller's date i.e. 1st April, 1957. In the case of Ramrao Patil (supra) the protected tenant failed to take out proceedings within a period of two years after the death of the widowed landlady and, therefore, it was held that right to purchase the landlady's share was lost. Both these judgments are not applicable to the facts of these petitions.

7. The landlady was aware (as is reflected in her application) regarding the right of the tenants to become the deemed owners of the subject land under the scheme of section 32 of the Bombay Tenancy Act and such a right was only postponed

because she was a widow on 1st April, 1957. She mentioned this fact in her application before the A.L.T. and stated that inspite of these disabilities she wanted to sell the said land and, therefore, requested for determination of the reasonable price. Once, the widowed landlady made an application before the A.L.T. against the protected tenants who were otherwise having the right of becoming the deemed owners under section 32 of the Bombay Tenancy Act, the application ought to have been treated as an application under section 32-G read with section 32-H of the Bombay Tenancy Act notwithstanding the fact that the landlady specifically stated to determine the price under section 64(3) of the said Act. Once the landlady expressed her desire to sell the agricultural land in possession of the protected tenant, who was entitled for the benefit under section 32 of the Bombay Tenancy Act, the disability against him to become an owner must get lifted and, therefore, the A.L.T. ought to have determined the price of the land by treating the landlady's application under section 32-G of the Bombay Tenancy Act and the consequences of section 32(k) may follow on failure to pay the price. On the other hand, if such an application is treated to be under section 64 and the tenant fails to pay the price determined (as has happened in the instant case), the consequences of sub-section (9) of section 64 follow and the land owner will be entitled for repossession of the land. This course of action would defeat, undoubtedly, the purpose of introduction of section 32 which is a part of the agrarian reforms.

8. By way of a civil application, the learned Counsel for the tenant has brought on record a certificate issued in Form IX in favour of the tenant on payment of the entire amount of price fixed for the said land and it is clear that the deemed ownership certificate has been issued in favour of the tenant. By the impugned order passed by the Tribunal, the Tribunal, in its firstpart of the order, had stated that there was no power to extend the time to deposit the instalments fixed by the A.L.T. for payment of the price and in the second part it was held that the landlady was not entitled for repossession of the land. The later part of the impugned order does not suffer from any errors and the first part of the order is unsustainable inasmuch as if the tenant fails to pay the price the only course available is to take out proceedings under section 32-K of the Bombay Tenancy Act for recovery of part or full amount of price by way of land revenue in such cases.

9. In the result, Writ Petition No. 3034 of 1989 stands allowed and the order passed by the Sub Divisional Officer is confirmed. Rule is made absolute accordingly. Writ Petition No. 3052 of 1989 is dismissed. Rule discharged. No order as to costs.

10. Order accordingly.

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