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Court : Mumbai

Decided On : Apr-07-1997

Reported in : (1997)99BOMLR274

Judge : P.S. Patankar, J.

Appeal No. : Writ Petition No. 4659 of 1985

Appellant : Khashaba Dadu Borate

Respondent : Yeshwant Dadu Borate and ors.

Judgement :

P.S. Patankar, J.

1. The question involved in this petition is whether the landlady widow Saraswatibai, mother of Respondent No. 3, could initiate proceedings under Section 32G of Bombay Tenancy and Agricultural Lands Act. 1948 (Short for B.T. and A.L. Act) and whether the Petitioner alone or Petitioner and Respondent Nos. 1 and 2 are all tenants of those lands.

2. The Landlady, Saraswatibai initiated proceedings under Section 32G of Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as Bombay Tenancy Act).

The Petitioner claimed to be the exclusive tenant of those lands and entitled to purchase while it was contended on behalf of the Respondent Nos. 1 and 2 that they were also tenants along with the Petitioner and entitled for 1/3rd share. The learned Additional Tahasildar and A.L.T. held that the Petitioner and Respondent Nos. 1 and 2 were tenants and fixed the price by order dated 1.4.1978. The said order came to be challenged on behalf of the Petitioner and in appeal Special Land Acquisition Officer No. 3 held that the Petitioner alone was the tenant. The said order dated 18-9-1978 came to be challenged on behalf of Respondent Nos. 1 and 2 and the learned Member of Maharashtra Revenue Tribunal by order dated 17-11-1983 held that the Proceedings under Section 32G of the Bombay Tenancy Act initiated at the instance of the original landlady a nullity. However, as she died on 25.2.1974 i.e. during the pendency of the proceedings he directed fresh proceedings should be initiated under Section 32F of the Bombay Tenancy Act. The said order dated 8.4.1985 is under challenge in this petition.

3. At the outset it is to be noted that Respondent No. 2 Shankar Dadu compromised with the Petitioner during the pendency of the proceedings before the Maharashtra Revenue Tribunal. A purshis came to be filed on his behalf stating that the settlement has taken place between them and he did not want to prosecute the revision application. The learned Member dismissed the revision filed by Respondent No. 2 by order dated 17.11.1983. Therefore the claim of the Respondent No. 2 does not survive now.

4. The learned Counsel appearing for the Petitioner first submits that learned Member of M.R.T. has committed an error in holding that the application filed on behalf of widow landlady under Section 32G was not maintainable. He submits that landlady widow was having a right to initiate the proceedings under Section 32G and such a right cannot be said to have been taken away by any of the provisions of Bombay Tenancy Act. In support of his contention he has relied upon two judgments of Division Benches of this Court reported in i) Bai Jiviben v. Bombay Revenue Tribunal 61 B.L.R 1475 and ii) Nago Dattu Mahajan v. Smt. Yashudabai 61 B.L.R 475. In the case of Bai Jiviben (cited supra) it came to be held that Sub-section 1 of Section 31 gives a right to every landlord to terminate the tenancy of the land if he requires the same bona fides for personal cultivation.

It was held that there is nothing in this sub-section which states that this right shall not be available to a widow or that it cannot be exercised by her. Section 31(1) gives a similar right to the widow as in the case of any other landlord. Section 31(3) gives right to successor in interest but it does not in any way restrict the rights which the widow herself possesses. In the case of Nago Dutta (Cited supra) the question arose whether both the provision i.e. Section 31(1) and Section 31(iii) can be availed or not. It was held that Section 31(3) is an enabling provision designed for the benefit of disabled landlords such as widows etc. It was further observed as follows.Such landlord thus have a choice to avail of either of these two provisions for resumption, i.e. Section 31(1) of Section 31(3), exercise of which depending on the circumstances in which each of them finds himself. No landlord, however, can avail of both the provisions, Section 31 having been designed to afford only one last opportunity of resumption. Any such landlord thus cannot seek resumption under Section 31(3) again if he or she has availed of the right under Section 31(1).

A widow landlady possesses right which are possessed by any other landlord and they are not taken away by any of the provisions. Expression widow only represents the physical state of landlady. It was nothing to do with her rights which a landlady possesses in respect of the lands. If a landlady became a widow prior to 1.4.1957, then she is a widow for the purpose of Bombay Tenancy Act. There is nothing in the Act which takes away her right to make an application under Section 32G for fixation of price and sell the land under Bombay Tenancy Act to a tenant. Section 31(3) makes a special provision for a disabled landlord like a widow. But other rights as a landlord are preserved. There is no embargo on her right to initiate the proceedings under Section 32G of B.T. and A.L. Act. Therefore, the learned Member was not right in holding that the proceeding under Section 32G were nullity as they were initiated by the widow landlady.

5. Now the second question is whether the Petitioner is exclusive tenant of the lands or even the Petitioner and Respondent No. I can be said to be both the tenants of the same. It is to be noted that division has taken place between the brothers in 1946. The learned Counsel for the Petitioner relied upon the judgement of this Court in Khashaba Dadu Borate v. Shankar Dadu Borate Special Civil

Application No. 364 of 1964 and 2 others with Special Civil Applications No. 363 of 1964, dated 17th/l 8th February 1965. It was between the Petitioner and Respondent No. 2 and relating to another land i.e. Survey No. 39 belonging to the same landlady. In the said case it was the case of the Petitioner that there was a registered lease deed between the original landlord Balla Ganesh Kanhere art one hand and the Petitioner and another person by name Bapu Pandit Nanaware and Khashaba Dadu Mali. It was dated 29.11.1943. Proceedings were initiated by the Petitioner under Section 70(b) of B.T. and A.L. Act for a declaration that he was alone tenant of the suit land covered under the said lease deed. It was contended by Respondents I and 2 that the Petitioner was not the exclusive tenant, but the tenancy right belonged to the Petitioner and Respondent Nos. 1 and 2. This matter came to this Court and the Court extensively dealt with the contentions raised by the parties and came to the conclusion that the Petitioner alone was the tenant of the said land.

6. The learned Counsel for the Petitioner pointed out that the registered lease deed in respect of the lands involved in this petition was also executed on the same day i.e. 29.11.1943. It was also between the original landlord Balla Ganesh Kanhere on the one hand Petitioner and Babu Pandu Nanaware on the other hand. He further pointed out that these lands are adjacent to the lands covered by the registered lease dealt with in the Special Civil Application No. 364 of 1964 and Special Civil Application No. 363 of 1964. He pointed out that these lands are adjoining, but as they are situated in separate village, they are separately numbered and there is separate lease between the same parties. No doubt the reasoning given in Special Civil Application No. 363 of 1964 can very well be adopted in the present case. However, the difficulty is because the Additional Tahasildar and A.L.T. Satara while deciding the application has made reference to 3 aspects viz. i) there was mutation number 2340, 2454in respect of these lands where the names of 3 brothers were shown as having 1/3rd share, ii) the landlady i.e. Saraswatibai accepted that all 3 brothers were tenants and iii) the Petitioner himself in his statement admitted on 2.3.1973 that all 3 brothers having 1/3rd share in the tenancy rights. The Additional Tahasildar and A.L.T. Salary considered these aspects and came to the conclusion that all the brothers were having 1/3rd share in these lands and they are liable to pay 1 /3rd purchase price.

However, the appellate Court has not taken into consideration all these aspect and came to the conclusion that petitioner alone was the tenant, as in the year 1965 he was alone shown as tenant in record of rights. Nothing else was considered. He was a fact finding authority and was expected to consider all the relevant facts i.e. admissions of parties, fact of separation between brothers, the registered lease in favour of Petitioner and the effect of the judgement of this Court between the brothers, cultivation of lands, etc. The reasoning given was obviously no reasoning at all and the finding was perverse. Further when I called upon both the sides to point out the statement of the Petitioner dated 2.3.1972 by which the Petitioner allegedly admitted that the tenancy rights belong to all 3 brothers in 1/3rd share each, they could not point out the said statement.

7. In view of all this, it would be necessary to remand the matter to the Additional Tahasildar and A.L.T. Satara to decide afresh whether the Petitioner alone was the tenant or the Petitioner and Respondent No. 1 both can be said to be tenants of the suit lands and entitled to purchase. The Additional Tahasildar and A.L.T. to decide the same after giving opportunity to both the sides to lead evidence in that respect.

Rule absolute accordingly. No Costs.

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