

Dnyaneshwar Bhalchandra Jamdade Vs. Kumar Babu Sonawane and ors.

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Court : Mumbai

Decided On : Dec-19-2008

Reported in : 2009(3)BomCR350; 2009(111)BomLR473; 2009(2)MhLj220

Judge : Nishita Mhatre, J.

Acts : Bombay Tenancy and Agricultural Lands Act - Sections 32(1B) and 32G; [Bombay Inferior Village Watans Abolition Act, 1958](#) - Sections 5; [Bombay Hereditary Offices Act, 1874](#) - Sections 5; Bombay Tenancy and Agricultural Lands (Vidharbha) Act, 1958 - Sections 49B; Mamlatdar Courts Act - Sections 5(3) and 7

Appeal No. : Writ Petition No. 149 of 1993

Appellant : Dnyaneshwar Bhalchandra Jamdade

Respondent : Kumar Babu Sonawane and ors.

Advocate for Def. : S.G. Karandikar, Adv. appointed as Amicus Curiae

Advocate for Pet/Ap. : Rahul S. Kate, Adv.

Disposition : Petition dismissed

Judgement :

Nishita Mhatre, J.

1. The land involved in the present dispute is survey No. 38/3 which admeasures about one acre and 5 gunthas in village Malshiras, District Solapur. Kondi Bapur Mahar, the father of Respondent Nos. 2 and 3 was the landlord of the aforesaid suit land. He sold the land to Respondent No. 4 who in turn sold it to the petitioner. The father of Respondent No. 1 was a tenant on that land from 1951-1952 to 1955-1956. The possession of the land was handed over to the landlord in 1956, according to the petitioner. Thereafter the landlord continued cultivating the land, personally. In 1970-71, the Additional Tehsildar, Malshiras initiated an enquiry Under Section 32(1B) of the Bombay Tenancy & Agricultural Lands Act (for short, 'BT&AL; Act') suo moto. The tenant's statement was recorded and according to the petitioner, he had expressed his inability to purchase the land. A copy of this statement has been annexed to the petition. The statement of the landlord was also recorded by the Tehsildar.

2. The father of Respondent Nos. 2 and 3 i.e. the landlord sold the land to Respondent No. 4 on 12.3.1973. The Tehsildar initiated an enquiry again on an application made by the tenant on 10.4.1973. An order was passed by the Tehsildar on 30.7.1973 restoring the possession of the land to the tenant by withdrawing the same from the landlord and the purchaser.

3. Tenancy Appeal No. 86 of 1973 was filed before the SDO. This appeal was allowed on 7.3.1974 and the matter was remanded to the Tehsildar. The Tehsildar then held an enquiry again and by an order dated 31.12.1979 reiterated his earlier order and directed that the possession of the land should be withdrawn from the landlord and the tenant should be restored the possession of the land. The Tehsildar further directed that the tenant should get the purchase price fixed Under Section 32G of the BT&AL; Act.

4. Tenancy Appeal No. 32/1-B/1 of 1979 was filed by the purchaser of the land i.e. Respondent No. 4 herein. This appeal was dismissed on 19.5.1981. Being aggrieved by the decision in the tenancy appeal, Respondent No. 4 preferred a revision application before the Revenue Tribunal being REV No. MRT SR VII9 of 1981 (TNC B 225/1981. This revision also met with the same fate and was dismissed on 30.4.1983. The petitioner purchased the land from Respondent No.

4 on 3.8.1987. Notice was issued on 3.6.1999 to the landlord, Respondent No. 4 as well as the Petitioner to hand over the possession of the suit land to Respondent No. 1.

5. Mr. Kate, appearing on behalf of the petitioner, contends that the land is an inferior watan land. The watan was abolished and 22.1.1959 in view of the [Bombay Inferior Village Watans Abolition Act, 1958](#) (for short, 'Watan Abolition Act'). It was regranted to the landlord on 23.9.1972. According to the learned advocate, there was no lease subsisting on 22.1.1959 i.e. the appointed date under the Bombay Inferior Village Watans Abolition Act (for short, 'Watan Abolition Act'). He submits that since the lease was not subsisting on that date, the provisions of the BT&AL; Act were not applicable. He has further submitted that the possession of the land was returned to the landlord in 1955-1956 by the tenant who was unwilling to purchase the land. He points out that the application for possession filed Under Section 32(1B) of the BT&AL; Act was filed six months beyond the period of limitation and, therefore, ought not to have been allowed. He further submits that when the tenant had stated before Tehsildar on 14.10.1971 that he did not wish to purchase the land there was no need to hold a fresh enquiry and record the statement of the parties again, only because the tenant made a fresh application for purchasing the land. The learned advocate urges that the tenant had voluntarily handed over possession of the land and therefore, the provisions of Section 32(1B) of the BT&AL; Act were not applicable in the present case. He was not 'dispossessed' before 1.4.1957 but had voluntarily handed over possession of the land, according to the learned advocate. He relies on the judgment in the case of Dhondiram Tatoba Kadam v. Ramchandra Balwantrao Dubal 1994 M.L.J. 1284 in support of this submission.

6. The learned advocate then submits that the Watan Abolition Act is not included in Schedule III of the BT&AL; Act and, therefore, Section 32G would not be applicable to the present case. The learned advocate submits that Under Section 5 of the [Bombay Hereditary Offices Act, 1874](#), watan land could not be alienated or leased by the Watandar i.e. the landlord in the present case, without the sanction of the State Government. He therefore submits that since the landlord had not obtained the sanction of the State Government before creating a tenancy

in favour of the father of Respondent No. 1, the tenancy was invalid.

7. Reliance is placed by the learned advocate for the petitioner on the judgment of this Court in the case of Krishna Tatya v. Shankar Yamaji : AIR1983 Bom52 in support of his submission. He then brings to my notice the judgment of a learned Single Judge of this Court in the case of Balu Shripati Patil and Anr. v. Bandu Tatoba Chinchwade and Anr. 1981 M.L.J. 685 where it has been held that the landlord must not only be in actual possession but must also have a present right to possess the land on 31.7.1969. The learned advocate points out that the land was Watan land and was resumed by the Government under the Watan Abolition Act on the appointed date i.e. 1.8.1960. The learned advocate has also relied on the judgment in the case of Arun s/o. Rambhau Musale and Anr. v. Sambha Soma Gond and Ors. : 1996(5)BomCR600 and Panpoi Dharmal Sansthan Dhotarkherda v. Bhagwant s/o. Maroti Dhakulkar and Ors. 1989 M.L.J.710 to submit that the delay in filing the application Under Section 32(1B) for possession was fatal.

8. Since Respondent No. 1 is not represented, Mr. Karandikar, has been appointed as amicus curiae. He submits that the Maharashtra Revenue Tribunal, Pune has by its order dated 30.4.1983 directed the petitioner to file a civil suit in the present case to establish his title. Therefore, according to the learned advocate, the petitioner does not have any locus standi to file the present petition. He submits that the vendor's challenge i.e. the landlord's challenge was dismissed and a suit has already been filed by the petitioner to establish his right. This fact according to the learned advocate has not been disclosed in the writ petition and the petition should therefore be dismissed. He submits that the petitioner is not a bonafide purchaser and therefore, would not be entitled to any relief in the petition. The learned advocate submits that the tenancy continued till the land was regranted to the landlord and the dispossession was not objected to by the petitioner. He, therefore, submits that the petitioner had no right over the land.

9. It must be noted here that all the authorities below have held that the petitioner is not entitled to possession of the land since the tenant was entitled to purchase the land in view of the provisions of Section 32(1B) of the BT&AL; Act. The petitioner has already filed a civil suit in which he has sought to establish his title.

Therefore, in my opinion, the petitioner does not deserve any relief in the present petition.

10. The judgment in the case of Arun Rambhau Musale and Ors. (supra), does not aid the petitioner in any manner. That was a case where an application had been made for transfer of possession by the tenant Under Section 49B of the Bombay Tenancy and Agricultural Lands (Vidharbha) Act 1958. It was held that because no limitation was prescribed under the BT&AL; Act, the application had been made Under Section 7 of the Mamlatdar Courts Act and, therefore, the limitation prescribed Under Section 5(3) of the Mamlatdar Courts Act would apply. The learned Single Judge in that case has relied on the decision of the Full Bench in the case of Panpoi Dharmal Sansthan Dhotarkherda (supra).

11. In my view, there is no material on record to indicate that the tenancy had been terminated in view of the provisions of Section 5 of the Watan Abolition Act. The tenant was in possession of the lands and continued in possession when he made the application under 32(1B). The authorities below have rightly held that the petitioner is not entitled to the possession of the lands.

12. Assuming the land in question was watan land and could not be alienated or leased without the sanction of the State Government, such a contention was never raised by the erstwhile landlord in any proceeding. The Petitioner therefore cannot raise it for the first time in this Court. Whether a sanction had been obtained or not is a question of fact which should have been established before the Courts below.

13. I must express my gratitude to Mr. Karandikar for having assisted this Court so ably.

14. Writ Petition is dismissed accordingly. Rule discharged. No costs.

15. The learned advocate for the petitioner seeks a stay of this order for eight weeks. Stay granted for eight weeks.