

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2451 OF 1998

1). Shri. Vithal Kashinath Bhor
Age : Major

2). Shri. Balu Kashinath Bhor
Age : Major

Both residents of Awasari Kd.,
Taluka Ambegaon, District-Pune

.....Petitioners

V/s.

Amendment carried out as per Court's
order dtd. 11.3.2016 passed in Civil
Appln.No. 3060 of 2015 in Writ
Petition No. 2451 of 1998

1. Ramchandra Gopala Tembekar
since deceased through his legal
representatives :

1a) Nitin Ramchandra Tembekar,
Age : 52 years, Occ. Retired,
Residing at Survey No.20/1,
Punyainagar, Opposite K.K. Market,
Klashik Vihar, Pune – 411 043.

1b) Sunil Ramchandra Tembekar,
Age : 50 years, Occ. Laundry,
residing at : Awarsari Khurd,
Taluka- Ambegaon, Dist. Pune

1c) Anil Ramchandra Tembekar,
Age : 48 years, Occ. Service,
Residing at Nivrutti Apartment,
Kalanagar, Dhanakwadi,
Pune-411 043.

.....Respondents
Legal heirs of
deceased respondent
no.1.

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Mr. Raju Haridas i/by. Mr. Amol P. Mhatre, Advocate for the
petitioners.

Mr. R.V. Pai a/w. Mr. A.R. Pai i/by. Ms. N.N. Thakkar, Advocate for
respondents no.1A to 1C.

Ms. Vaishali Nimbalkar, AGP for respondent no.2.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 11TH AUGUST, 2016.

JUDGMENT :-

1). This petition takes exception to the order dated 11th November, 1997 passed by the Maharashtra Revenue Tribunal, allowing Revision Application filed by original respondents no.1 and 2. During the pendency of the present proceedings, respondent no.1 died and his heirs have been brought on record.

2). One, Maruti Gopala Tembekar, father of original respondent no.1 was the owner of the land at Survey No. 192/7 of village-Awasari Khed, Taluka-Ambegaon, District-Pune. The uncle of the petitioners, one Shivram Kushaba Bhor was the tenant in respect of that land. On 9th November, 1970 Shivram was declared to be the deemed purchaser and was given certificate under Section 32-M. The certificate specifically carried the condition that the said land shall not be transferred by sale, gift, exchange, mortgage, lease or assignment without previous sanction of the Collector, Pune as required under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 ("the Tenancy Act" for short). By the sale-deed dated 31st October, 1985 Shivram sold the property in question to the petitioners for the consideration of Rs.9,000/- and a mutation entry to that effect was executed in favour of the petitioners on 25th November, 1995 vide mutation entry no.19145. Original respondents no.1 and 2 filed an application under Section 84C of the Tenancy Act for forfeiture of the land from the petitioners alleging that the tenant had contravened the provisions of Section 43 of the Tenancy Act by selling the property to the petitioners. The petitioners contested the application contending that, they and Shivram formed a joint family. They were residing together and held a joint ration card. Shivram had no issues, therefore the petitioners who are his nephew were his heirs and he had also considered the petitioners as his heirs. It was contended that, he executed the sale-deed in favour of the petitioners on wrong legal advice so as to ensure that the petitioners should have no difficulty after his demise regarding the transfer of property to them. The

Tahsildar allowed the application by the order dated 3rd January, 1989 that came to be challenged before the Sub-Divisional Officer, who by the order dated 30th April, 1989 allowed the appeal and remanded the matter to the Tahsildar. After remand, oral evidence was recorded and the Tahsildar by his order dated 31st December, 1990 allowed the application and declared that the petitioners have contravened the provisions of Section 43 of the Bombay Tenancy Act and therefore the land should be given to the Government. Being aggrieved by the order, the petitioners approached the Sub-Divisional Officer, Khed by way of an appeal. By the judgment and order dated 30th November, 1991 the Sub-Divisional Officer allowed the appeal to hold that there was no contravention or violation of the provisions of Section 43 of the Tenancy Act. Being aggrieved by the order, original respondent no.1 preferred Revision Application before the Maharashtra Revenue Tribunal, Pune which passed the impugned order to set aside the order of the Sub-Divisional Officer and confirmed the order of the Tahsildar.

3). Mr. Haridas, the learned Advocate appearing for the petitioners, has advanced four arguments in support of the challenge to the impugned order. The first argument is that, the sale effected by Shivram of the property in question is to not to a third party. The sale keeps the property within the family since the purchasers are two of the nephews of Shivram. The purpose of the Tenancy Act being to protect the interest of the farmers, it cannot be said that there is breach of Section 43 of the Tenancy Act. The second argument is that, in the impugned order the Tribunal has

infact reappreciated the evidence which exercise goes beyond the scope of the Revision Application. The third argument is that, the objection taken by original respondent no.1 and respondent no.2 was not within reasonable time after the transfer. The sale-deeds have been executed in the year 1985 and the proceedings preferred by the respondent were in the year 1989. Therefore, the application ought to have been dismissed. The last argument is that, execution of the sale-deed was a mistake on the part of Shivram and the same is required to be condoned so as to serve the object and purpose of the Tenancy Act.

4). There can be no substance either in the argument, that in the facts of the case, the sale being in favour of the members of the family, it cannot be said to be in breach of Section 43 of the Tenancy Act or in the argument that it was a mistake on the part of Shivram, which mistake deserves to be condoned. Admittedly, the petitioners are not the only persons who would be entitled to succeed to the property in question, on the death of Shivram. The petitioners have two more brothers. Further, Shivram had, one more brother by name, Damodar who is survived by daughters. Since, Shivram had selected only the petitioners for the purpose of sale, it cannot be said that the sale in effect would be of no consequence. The sale denies right of succession of other heirs. Besides, provision of Section 43 which restricts the transfer of the land purchased under the Tenancy Act does not distinguish between transfer of the property to a family member and the transfer to a third party. Section 43 reads as follows :-

“43. Restriction on transfers of land purchased or sold under this Act

(1) No land purchased by a tenant under sections 32, 32F, [32-I], 32-O [33C or 43-1D] or sold to any person under section 32P or 64 shall be transferred by sale, gift, exchange, mortgage, lease or assignment without the previous sanction of the Collector. [Such sanction shall be given by the Collector in such circumstances, and subject to such condition, as may be prescribed by the State Government.

Provided that, no such sanction shall be necessary where the land is to be mortgaged in favour of Government or a society registered or deemed to be registered under the Bombay Co-operative Societies Act, 1925, for raising a loan for effecting any improvement of such land.

[Provided further that, no such previous sanction shall be necessary for the sale, gift, exchange, mortgage, lease or assignment of the land in respect of which ten years have elapsed from the date of purchase or sale of land under the sanctions mentioned in this sub-section, subject to the conditions that, -

- (a) before selling the land, the seller shall pay a *nazarana* equal to forty times the

assessment of the land revenue to the Government;

(b) the purchaser shall be an agriculturist;

(c) the purchaser shall not hold the land in excess of the ceiling area permissible under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961; and

(d) the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 shall be violated.]

(2) Any transfer of land in contravention of sub-section (1) shall be invalid]"

5). Mr. Pai, the learned Senior Counsel appearing for the respondents submits that, the respondents to the petition would be within their right to object to the sale since under Section 32P(2)(b), subject to the provisions of Section 15 of the Tenancy Act, the land can be surrendered to the landlord, Further, if not to the landlord it can be allotted to several needy persons or bodies listed in the priority list. There is undoubtedly substance in the submission of Mr. Pai.

6). As regards the contention that the respondents ought to have

filed application within reasonable time, it has been pointed out by Mr. Pai, that no such contention was raised before any of the authorities. The petitioners have relied upon the decision of the Apex Court in the case of **Mohamad Kavi Mohamad Amin Versus. Fatmabai Ibrahim, reported in (1997) 6 Supreme Court Cases page 71** to submit that, no where time limit is prescribed for exercise of power under the statute, it should be exercised within a reasonable time. The question of bar of limitation is a mixed question of facts and law. Therefore, it must be raised before the authority of the first instance so as to give an opportunity to the other side of leading evidence on the facts required to be established to show that the application had been filed within a reasonable time. In any case, the respondents not being the parties to the agreement cannot be expected to know the fact of transfer immediately. Therefore, their application would be only after deriving the knowledge of the transfer. These facts could have been established by leading appropriate evidence by the respondents. Therefore, the argument of bar of limitation must be rejected.

7). The petitioners seek to justify the order of the Sub-Divisional Officer which has set aside the order of the Tahsildar and dismissed the petitioners' application. The Sub-Divisional Officer, had accepted the petitioners' argument of existence of the joint family on the basis of the ration card and similar documents produced by them. The Tribunal set aside the finding of fact with observation that, that the ration card at the highest would indicate joint residence of the parties, but it cannot establish the status of joint

family. Mr. Haridas, submits that, the Tribunal in its revisional jurisdiction could not have re-appreciated the evidence produced by the petitioners' to arrive at a different finding. Undoubtedly, in the ordinary circumstances, revisional jurisdiction does not involve re-appreciation of the evidence. But, the exceptional circumstance of the finding of fact being perverse would amount to the lower Court having acted in the exercise of its jurisdiction illegally or with material irregularity. In such exceptional circumstance, re-appreciation of evidence by the Tribunal, to arrive at a different finding, would be within its revisional power. Therefore, there is no infirmity in the impugned order. The petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)