

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4770 OF 1998

Shri. Vasant H. Mang (Bhosale) & anr. .. Petitioners

vs.

Shri. Arjun B. Belvekar
(since deceased by heirs
a. Shamrao A. Belvekar and ors.)

.. Respondent

Mr. S.G. Karandikar for the Petitioners.

Mr. Sushil A. Inamdar a/w. Mr. Sudhir Sadavarte for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 06 MAY 2016.

P.C. :-

1] The challenge in this petition is to the judgment and order dated 6 November 1997 made by the Maharashtra Revenue Tribunal (MRT).

2] The petitioners are the landlords in respect of the suit property, of which, the respondents are the tenants. In the year 1944 or thereabouts, the petitioners mortgaged their 2/3rd share in the suit property in favour of one Nimbalkar. The said Nimbalkar expired before 1 April 1957, which is the tillers' day for the purposes of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (Tenancy Act).

3] In 1962, the Agricultural Lands Tribunal (ALT) initiated proceedings under Section 32G of the Tenancy Act for determination of the purchase price. However, such proceedings were dropped, *inter alia*, on the ground that Nimbalkar had expired before 1 April 1957 and his widow was therefore, a disabled landlady, in terms of the provisions contained in Tenancy Act.

4] In the year 1986, the respondents applied for determination of purchase price. The ALT by judgment and order dated 30 July 1988 determined the purchase price, *inter alia*, holding that the case is covered by the provisions contained in Section 32F of the Tenancy Act.

5] The petitioners appealed to the Sub-Divisional Officer (SDO), which appeal was transferred to Assistant Collector. This appeal was partly allowed, by judgment and order dated 31 December 1990. The ALT's order dated 30 July 1988 was set aside and the matter was remanded to the ALT for fresh decision.

6] The respondents-tenants then preferred a revision application bearing Revision Application 33 of 1991 before the MRT, which has

by the impugned judgment and order dated 6 November 1997, allowed the revision application; set aside the Collector's order dated 31 December 1990 and restored the ALT's order dated 30 July 1988, determining the purchase price. Hence, the present petition.

7] Mr. Karandikar, learned counsel for the petitioners, has submitted that the ALT's order dropping Section 32G proceedings in the year 1962 was never challenged by the respondents-tenants and the same has therefore attained the finality. There is no material on record that the respondents-tenants, in compliance with the provisions contained in Section 32F, have issued the necessary intimation within prescribed period. Accordingly, this is a case where the right to purchase has been rendered ineffective and the MRT has exceeded the jurisdiction in restoring the ALT's order dated 30 July 1988, ordering the determination of the purchase price under Section 32M of the Tenancy Act.

8] Mr. Sushil Inamdar, learned counsel for the respondents, has submitted that in the present case, even though a portion of suit property may have been mortgaged in favour of Nimbalkar, the petitioners-landlords, continued to remain as owners of the suit

property and therefore, the landlords of suit property. Such landlords were not only living on 1 April 1957, but further, it is not even their case that they were in any manner disabled landlords. In such circumstances, Mr. Inamdar submitted that the respondents-tenants became deemed purchasers on the tillers' day itself and the ALT was therefore, right in ordering the determination of the purchase price. There is no error, much less, the error on jurisdiction in impugned order.

9] The rival contentions now fall for determination.

10] The facts as borne from the record, very clearly establish that the petitioners were the landlords in respect of suit property. By mortgaging a portion of their share in the suit property to Nimbalkar, neither were the petitioners divested of their ownership to the suit property nor did Nimbalkar become the landlord in respect of suit property. The ALT in 1962, had merely dropped the proceedings. Even dropping of such proceedings was really unnecessary and in any case, a clear nullity. The order dropping such proceedings, obviously does not constitute any *res-judicata* in a matter of this nature.

11] Accordingly, in the year 1986, the ALT was justified in entertaining the respondents' application for determination of purchase price. The ALT, quite unnecessarily adverted to the aspect of Section 32F of the Tenancy Act. The ALT could have based its conclusion simply on the basis that the petitioners were landlords of the suit property and further, they were not disabled landlords as on tillers' day, i.e., 1 April 1957. Accordingly, the respondents became a deemed purchasers of the suit property on the tillers' day i.e., 1 April 1957. Considering the undisputed facts on record, there was no justification on the part of the Assistant Collector to have interfered with the conclusion recorded by the ALT in order dated 30 July 1988 and remanded the matter for fresh consideration.

12] The MRT very rightly interfered with the Assistant Collector's order dated 31 December 1990 and restored the conclusion recorded by the ALT in order dated 30 July 1988. There is no error, much less any jurisdictional error on the part of the MRT in making the impugned judgment and order dated 6 November 1997. There is accordingly, no case made out by the petitioners to interfere with the impugned order in exercise of jurisdiction under Article 227 of the Constitution of India.

13] For all the aforesaid reasons, this petition is dismissed. The interim order, if any, stand vacated. There shall be no order as to costs.

(M. S. SONAK, J.)

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