

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10100/2015

Vitthal Shankar Pote

... Petitioner

V/s.

State of Maharashtra & Ors.

... Respondents

Mr. Rahul S. Kadam for the petitioner

Mrs. M. S. Bane, AGP for the Respondent Nos.1 to 3.

CORAM: K.K. TATED, J.

DATED : AUGUST 18, 2016

PC. :

1. Heard the learned counsel for the parties. By this petition under Article 227 of the Constitution of India, the Petitioner original applicant challenges the order dated 26.08.2014 passed by the learned Member, Maharashtra Revenue Tribunal, Pune in TNC/REV/36/B/2002/P and judgment and order dated 11.12.2001 passed by the SDO, Baramati Division, Baramati in Tenancy Appeal No.22/2000.

2. It is the case of the petitioner that respondent No.4 Imam Gafur Mulani purchased the suit property i.e. 41Rs and 0.05H Potkharaba land from Gut No.27 by sale deed dated 27.03.1987. Hence, the petitioner made an application u/s.43A of the Bombay Tenancy and Agricultural Lands Act, 1948 (said Act) for forfeiting the suit land to the Government and to dispose of as per the provisions contained u/s.32P(2) of the said Act on the ground that at the time of purchasing

the suit property the respondent No.4 failed to take permission from competent authority being a tenancy land. That application was allowed by the Additional Tahasildar and Agricultural Lands Tribunal, Indapur by order dated 30.09.2000. The operative part of the said order reads thus:

“In view of these facts and considering the contentions of both the parties, the application is allowed, sale transaction of the suit land dated 27.03.1987 executed by the opponent No.1 in favour of the opponent No.3 is declared void and illegal under section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948.”

3. Being aggrieved by the said order, respondent No.4 purchaser preferred Tenancy Appeal No.22/2000 before the SDO, Baramati. The learned SDO, by order dated 11.12.2001 allowed the tenancy appeal holding that the petitioner original applicant challenged the sale deed earlier by tenancy case No.84-C/gotondi/14/2000 before the Tahasildar and Agricultural Lands Tribunal. The said Tribunal, by order dated 31.12.1988 held that the transaction, by sale deed dated 27.03.1987 between respondent No.4 and respondent Nos.5 and 6 was according to law. That order was not challenged by the petitioner applicant before the Higher Authority and in spite of having knowledge about the said transaction dated 27.03.1987, the petitioner applicant made a fresh application being tenancy case No.84-c/gotondi/14/2000 u/s.43A of the said Act after more than 13 years. Hence, the SDO, Baramati set aside the order dated 30.09.2000 passed by the Additional Tahasildar and Agricultural Lands Tribunal, Indapur.

4. Being aggrieved by the said order of SDO dated 11.12.2001, the petitioner made revision application u/s.76 of the said Act before the

Maharashtra Revenue Tribunal, Pune being revision application No.TNC/REV/36/B/2002/P. The Revenue Tribunal dismissed the revision preferred by the petitioner on two grounds. First; that the same transaction i.e. sale deed dated 27.03.1987 was challenged by the petitioner u/s.43A of the said Act and same was rejected by the Tahasildar by order dated 31.12.1988 holding that M.E. No.1025 as legal. Second ground was about limitation. The Revenue Tribunal held that earlier order passed by the Tahasildar dated 31.12.1988 holding the transaction of M.E.No.1025 as legal was not challenged by the petitioner before the Higher Authority. Hence, subsequent proceedings for the same cause of action was not maintainable.

5. The Tribunal also held that though the petitioner had knowledge about the sale deed dated 27.03.1987 between respondent Nos.4, 5 and 6, the petitioner filed application u/s.43A of the said Act in 2000 i.e. after more than 13 years. Relying on the judgments in *Mohamad Kavi Mohamad Amin Vs. Fatima Ibrahim* (97) 6 SCC 71, *Morarbhai Solanki Vs. State of Gujarat* 35(1) 1994 (1) GLR 822, *Waman Atmaram lavand and Krishnabai Atmaram Lavand Vs. Dattatraya Dattu Baba Lavand* 2009(111) Bom L.R.3431, the Tribunal held that the application made by the petitioner after more than 13 years was barred by law of limitation. Hence, the Writ Petition.

6. The learned counsel for the petitioner submits that the orders passed by the learned SDO as well as the Tribunal is against justice, equity and good conscience and same is liable to be set aside. He submits that the learned SDO and the Maharashtra Revenue Tribunal

totally erred in holding that the application made by the applicant for enquiry u/s.84C and thereby getting the land u/s.32P of the said Act was barred by law of limitation and it is contrary to the law. He submits that both the authorities below ought to have decided his application on its own merits. He further submits that there is no question of applicability of principle of *res judicata* in the present proceedings. Hence, this Hon'ble Court be pleased to allow the Writ Petition by setting aside the orders passed by the learned SDO and the Tribunal. He submits that if the petition is not allowed, irreparable loss will be caused to the petitioner.

7. The learned AGP for the State submits that the learned SDO and the Tribunal decided the matter on its own merits. She submits that the SDO and the Tribunal have rightly held that the same issue was decided by the Tahasildar by order dated 31.12.1988. That was not challenged by the petitioner before the Higher Authority. Not only that, the petitioner had knowledge about the sale deed dated 27.03.1987 in the year 1988 itself. He filed tenancy case before the Additional Tahasildar and Agricultural Lands Tribunal, Baramati in the year 2000 i.e. after more than 30 years. She submits that though there was no limitation for challenging the said order, the Tribunal held relying on various judgments, that the same was barred by limitation. Hence, there is no substance in the Writ Petition. Same is liable to be dismissed with costs.

8. Heard both sides at length. There is no dispute in the present matter that the respondent No.4 purchased the suit property from

respondent Nos.5 and 6 by sale deed dated 27.03.1987. Thereafter the Revenue Authority shown the name of respondent No.4 in revenue record by M.E. No.1025. That M.E. as well as the sale deed dated 27.03.1987 was challenged by the petitioner by filing tenancy application before the Tahasildar in the year 1988. In that application the Tahasildar upheld the validity of the sale deed dated 27.03.1987 as well as the M.E.No.1025. That order was not challenged by the petitioner before the Authority. After 14 years, the petitioner filed the present tenancy case u/s.43A of the said Act. In that case itself, the same was barred by law of limitation as held by various High Courts and this court as recorded by the Tribunal in its order on page 42.

9. Considering the fact that the petitioner had knowledge about the sale deed dated 27.03.1987 and M.E.No.1025 in the year 1988, the earlier order dated 31.12.1988 passed by the learned Tahasildar, I am of the opinion that the petitioner has not made out case u/s.227 of the Constitution of India to interfere with the well reasoned order passed by both the authorities below.

10. Hence, the Writ Petition stands dismissed. No order as to costs.

(K.K. TATED, J.)