

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1889 OF 1994

Shri Shrimant Ajitsingrao Fattesingrao
Bhosale, since deceased, through
his legal representative
Shri Raghuji rate Ajitsingh Bhosale ..Petitioner
vs.
Shri Nivrutti Balwant Bhoite
since deceased through his L.Rs.
Smt. Kamal Nivrutti Bhoite & Ors. ..Respondents

Mr. Prathamesh Bhargude i/b. Mr. S. B. Deshmukh for Petitioner.
Mr. P. B. Shah for Respondents.

CORAM : M. S. SONAK, J.
DATE: 21 SEPTEMBER 2017

ORAL JUDGMENT :

- 1] Heard learned counsel for the parties.
- 2] This petition takes exception to the judgment and order dated 6th October 1993 made by the Maharashtra Revenue Tribunal (MRT), allowing revision application No. MIT. MS. VI/92 (CN C.J. 72/92) instituted by the respondents, setting aside the judgment and order dated 4th June 1992 made by the Sub Divisional Officer and restoring the judgment and order dated 31st October 1991 made by the Tahsildar and ALT determining the purchase price in terms of Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (Tenancy Act).

3] These proceedings concern property bearing Survey No. 61, Area 0-21, Asst. 22.50, Survey No. 63, Area 2-00, Asst. 15.94, Survey No. 64, Area 0-10, Asst. 71-90, Gat No. 230, Assess 212.00 and Survey No. 65, Area 22-17, Asst 102-25 situated at Village Deur, Taluka Koregaon, District Satara, Area of Gat No. 238 is H 16-15 R. (suit property). There is no dispute that the petitioner, was the owner of the suit property. However, some time in the year 1925, the suit property was brought under the management of Court of Wards and the Collector of Nagpur, was appointed as the Manager to manage the suit property.

4] On 3rd April 1946, the Collector of Nagpur, in his capacity as the Manager, executed a lease in respect of the suit property. The term of this lease was indicated as 11 years. This lease was never extended or renewed. However, there is no serious dispute that from 3rd April 1946, the respondent, who was inducted in possession of the suit property has continued in possession (presently through his legal representatives).

5] Some time in 1979's, the Court of Wards, which was in the management of the suit property, issued a notice seeking to terminate whatever rights the respondent may have had in the suit

property and demanded restoration of possession. The respondent contested the notice and refused to deliver possession. Therefore, on 6th April 1973, the Court of Wards, instituted Special Civil Suit No. 21 of 1973 and Special Civil Suit No. 22 of 1973 alleging that the respondent is a trespasser and seeking restoration of possession.

6] The aforesaid suits were decreed on 29th August 1975 and the respondent was directed to deliver suit possession and pay mesne profits and costs. The appeal against the said decree was also dismissed. However, there is no dispute that the decree was never executed by the Court of Wards. On 23rd September 1982 and 18th February 1985 certain agreements were entered into between the petitioner and the respondents concerning the suit property. Similarly, yet another agreement was entered into on 5th February 1986, again, concerning the suit property. The scope and import of these agreements will be discussed later in the course of this judgment and order.

7] On 29th July 1985, the suit property, amongst several other properties, came to be released in favour of the petitioner by the Court of Wards.

8] On 23rd October 1992, the respondent applied to Tahsildar and ALT for determination of purchase price in terms of Section 32G of the Tenancy Act. Necessary notice was served upon the petitioner. The returnable date i.e. 31st October 1991, the petitioner was represented by his constituted attorney, who, incidentally happened to be uncle of the respondent.

9] Mr. Bhargude points out that in pursuance of the notice from the Tahsildar, the petitioner had in fact addressed a letter seeking for adjournment on ground of inability to attend the proceedings on the returnable date i.e. 31st October 1991. However, on 31st October 1991, the statements of the respondent as well as the attorney for the petitioner came to be recorded. On the same date, the Tahsildar allowed the petitioner's application under Section 32G and determined the purchase price by judgment and order dated 31st October 1991.

10] The petitioner, aggrieved by the judgment and order dated 31st October 1991 appealed to the SDO. Before the SDO one of the contentions concern the authority of the power of the attorney to represent the petitioner. The other contention raised in appeal was that the respondent was required to institute proceedings before the civil court in order to enforce the agreements dated 23rd September

1982, 18th February 1985 and 5th February 1986 and the Tahsildar was not entitled to take cognizance of the said agreements and on the said basis, determine the purchase price. The SDO, by judgment and order dated 4th June 1992 allowed the appeal instituted by the petitioner.

11] The respondent, aggrieved by the SDO's judgment and order dated 4th June 1992 instituted revision petition No. 5 of 1992 before the MRT. The MRT, vide the impugned judgment and order dated 6th October 1993 has allowed the revision, set aside SDO's order and restored the Tahsildar's order dated 31st October 1991. Hence, the present petition.

12] Mr. Bhargude, learned counsel for the petitioner has made the submissions in support of this petition:-

(A) That the Court of Wards either had no authority to create a tenancy in favour of the respondent or in any case, the tenancy created by the Court of Wards on 3rd April 1946 for a period of 11 months, could not have survived beyond the said period of 11 months, or in any case beyond the tenure of the Court of Wards itself. In support of this proposition, Mr. Bhargude relies upon the decision in the case of **Musamia**

***Imam Haider Bax Razvi vs. Rabari Govindbhai Ratnabhai
& Ors.***¹

(B) In any case, the Court of Wards, had secured a decree of eviction against the respondent. This decree had attained finality on account of dismissal of the appeal against the same. The decree, was *inter se* binding between the Court of Wards and the respondent. Upon the Court of Wards restoring the possession of suit property to the petitioner, the petitioner, is also entitled to the benefit of such decree. The decree declares that the respondent was a trespasser in respect of the suit property. In these circumstances, there was no question of the Tahsildar entertaining the respondents application under Section 32G of the Tenancy Act. The very entertaining of such application under Section 32G of the Tenancy Act was an act without jurisdiction. Mr. Bhargude submits that unless and until a party takes out appropriate proceedings before the appropriate forum, within the appropriate period to set aside a judgment or decree, the said judgment or decree binds the parties *inter se* and its effect cannot be avoided by merely styling the same as nullity.

(C) The Tahsildar and MRT have grossly erred in relying

1 AIR 1969 SC 439

upon the three agreements of 1982, 1985 and 1986. The agreements of 1982 and 1985 cannot bind the petitioner because the date when the same were executed the suit property was being managed by the Court of Wards. The possession of the suit property was restored to the petitioner only on 29th July 1985. In any case, Mr. Bhargude submits that the Tahsildar has no jurisdiction to enforce agreements between parties. If, any party seeks enforcement of agreements, then, appropriate proceedings are required to be instituted before the civil courts. The orders made by the Tahsildar and now restored by MRT are orders without jurisdiction. Mr. Bhargude submits that the SDO has appreciated the issue in its proper perspective and MRT exceeded jurisdiction in interfering with the well reasoned decision of the SDO.

(D) Assuming that the provisions of Section 88 (1)(c) and the proviso thereto became applicable to the present case and the provisions of Section 32 to Section 32R became applicable to the suit property on 29th July 1985, which is the date on which the property was released by the Court of Ward in favour of the petitioner, then, the respondents had to exercise their right to purchase the suit property on or before

29th July 1987, i.e., within two years from the date of applicability of the said provisions. In this case, admittedly, application under Section 32G was made on 19th October 1990, which is much beyond the period of limitation prescribed under Section 88(1)(c) and the proviso thereto. On this ground also application made by the respondents under Section 32G was required to be dismissed.

13] Mr. Shah, learned counsel for the respondents, submits that he does not join in any issue with the propositions urged by Mr. Bhargude that the Court Wards was not entitled to create any tenancy in respect of the suit property, beyond the term of Court of Wards. He submits that in the present case, that the tenancy of the respondents stands admitted in terms, in the agreements of 1982, 1985 and 1986, the execution of which, is never denied by the petitioner. He submits that the agreements make reference to the rates prescribed under the Tenancy Act as also the government orders in this regard. He submits that the petitioners have received the entire consideration towards purchase price and the attempt to deny benefits to the respondents is *mala fide*. He submits that writ jurisdiction should not be exercised to assist the petitioner to renege upon the solemn assurance in the agreements of 1982, 1985 and 1986. He submits that even the Appeal Court has

recorded that the Power of Attorney Holder was authorised to make the statement which he made in the proceedings before the Tahsildar. The Power of Attorney Holder has clearly admitted to the factum of tenancy and the factum of execution of agreements. For all these reasons, Mr. Shah submits that this petition may be dismissed with costs.

14] In this case, there is no dispute that the petitioner was served with the summons in proceedings under Section 32 G of the Tenancy Act. The petitioner appeared on the returnable date, i.e., 31st October 1991 through his Constituted Attorney Bapusaheb Bhoite. Although, vague contention was raised before the Appeal Court to the effect that granted to the Attorney had already been revoked or cancelled, the same was never substantiated and the same was not even accepted by the Appeal Court. Even the Appeal Court, which has, otherwise held in favour of the petitioner, has observed that there was no reason to challenge the authority of the Attorney or the statements made by the Attorney before the Tahsildar. In this regard, even the appeal court, has observed thus :

"In the present case the power of attorney of the appellant has given an application to allow him to join as a third party and advocate for him has also appeared before me but did not give the argument, On perusal of the application it is seen that the contention of him is regards to his status as power of attorney and its validity. I do not want to challenge the authority of the power of attorney and what ever he has stated before the Lower Court, inspite of that an going though the

casepapers and the argument put forth before this court my observation and findings are as under -.....”

15] Now, the Power of Attorney of the petitioner has clearly deposed that the respondents were the tenants in respect of the suit property. He has also deposed that the agreements of 1982, 1985 and 1986 were indeed executed and entered into by and between the parties. In fact, even the petitioner, does not dispute the execution. The contention is that 1982 and 1985 agreements were executed when the property was in the management of the Court of Wards and therefore, the said agreements are not binding upon the petitioners. Such a contention, cannot be entertained in a writ petition. In exercise of writ jurisdiction, the parties, cannot be permitted to renege upon solemn commitments, even assuming that such commitments may have been contractual.

16] In any case, 1986 agreement substantially reiterates the position borne out by 1982 and 1985 agreements. Admittedly, on 29th July 1985, the suit property was released in favour of the petitioner by the Court of Wards. The petitioner, therefore, cannot renege upon the commitments in the agreement dated 5th February 1986. In fact, the petitioner, has acted on the basis of agreement dated 5th February 1986. The petitioner has also received consideration on the basis of these agreements. These agreements, are in the nature of admission as regards the tenancy status of the

respondents. These agreements are in the context of payment of purchase price, which again, determined in terms of provisions of Tenancy Act.

17] There is also no merit in the contention of Mr. Bhargude based upon the Civil Court decree. The decree was made in a suit instituted in the Court of Wards on the basis that the provisions of Tenancy Act do not apply to properties in the management of Court of Wards. It is in this context that it was held that the respondents are trespassers. However, the evidence on record establishes that the respondents have been in possession of the suit property right from the year 1946. The revenue records supports this position, which is even otherwise, undisputed. No sooner, the provisions of Tenancy Act became applicable to the suit property consequent upon its release by the Court of Wards, the petitioner took no steps to terminate the tenancy but rather, entered into agreements with the respondents, confirming and ratifying earlier agreements of 1982 and 1985. Even the Court of Wards, chose not to execute the decree obtained by it and the respondents continued in the possession of the suit property uninterruptedly from the year 1946. In such circumstances, including in particular, the execution of agreements of 1982, 1985 and 1986, it is not open for the petitioner to fall back upon the decree which may have been obtained by the

Court of Wards. The circumstances, both in terms of law as well as fact have undergone a sea change since the release of the property by the Court of Wards in favour of the petitioner. In these circumstances, it is not possible to turn the clock back and at this belated stage and to permit the petitioner to place reliance upon the decree obtained by the Court of Wards, which again, the Court of Wards chose never to execute.

18] The contention based upon limitation was never raised by the petitioner either before the Tahsildar, Sub-Divisional Officer (SDO) or the MRT. The contention, is not a pure question of law. In any case, the petitioner has also not taken any steps to terminate any tenancy within a period of one year from the date of restoration of possession by the Court of Wards. In these circumstances, it really cannot be said that the application under Section 32G of the Tenancy Act made by the respondents was barred by limitation. Besides, in the present case, within less than a year from the date of release of the property by the Court of Wards in favour of the petitioner, the petitioner, himself chose to execute an agreement dated 5th February 1986, in which, he confirmed the purchase price and made a commitment to complete the sale.

19] The application under Section 32G of the Tenancy Act came

to be filed because the petitioner, in breach of the commitments undertaken and despite the receipt of entire consideration failed to complete the procedural formalities. The Appeal Court in such circumstances, was not justified in non-suiting the respondents as if, the respondents were seeking some specific performance of the agreements 1982, 1985 and 1986. The respondents were relying upon the said agreements as evidence as to the admission of their status of tenancy. The respondents were relying upon the said agreements as admission, in the context of determination of purchase price.

20] Even before this Court, the petitioner has not disputed the execution of the 1982, 1985 and 1986 agreements. The only contention is that the respondents should have instituted civil suit before the civil courts for enforcement of the said agreements. It is not possible to entertain such a plea in the exercise of writ jurisdiction and to non-suit the respondents, who are admittedly, in possession of the suit property, since the year 1946 and who have, consistent with the agreements of 1982, 1985 and 1986 paid the entire consideration to the petitioner.

21] The jurisdiction under Articles 226 and 227 of the Constitution of India is discretionary and in the facts and circumstances of the present case, there is no case made out for exercise of such

discretion in favour of the petitioner, even assuming that some technical point may benefit the petitioner in the facts and circumstances of the present case. This jurisdiction cannot be exercised to assist the petitioner to renege upon the solemn agreements of 1982, 1985 and 1986. This jurisdiction also cannot be exercised to disturb the possession of respondent from the year 1946 in a situation where it is not even disputed that the respondent has complied with its part of the bargain under 1982, 1985 and 1986 agreements. This jurisdiction is to promote justice and if justice is the by-product of even some erroneous interpretation by the MRT (which, in present case, it is not) there is no reason to interfere, if the consequent possession would be grossly unjust.

22] Therefore, upon cumulative consideration of all such factors, there is no case made out to interfere with the orders made by the Tahsildar and the MRT in favour of the respondents.

23] The petition is therefore, dismissed. There shall however, be no order as to costs. The interim order, if any, stands vacated.

(M. S. SONAK, J.)