

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 6518 OF 2011
(FOR REVIEW)
IN
WRIT PETITION NO. 3305 OF 1991

1. Shri Ramesh Balkrishna Vidwans
Age 63 years, Occu: Agril,
R/o Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar .. Petitioner/
(original
Petitioner)

versus

Ramkrishna Sonu Nagare, deceased,
by legal representatives :-

- 1A Govind Ramkrishna Nagare, since
deceased, by legal representatives :-

1(a) Somnath Govind Nagare

1(b) Rishikesh Govind Nagare

1(c) Shankuntalabai Govind Nagare

All major, R/o Ashok Stampa,
Shivaji Colony, Ananderwalli naka
Gangapur Road, Nashik

- 1B Arvind Ramkrishna Nagare,
Age major, R/o Utkarsh Colony,
Ananderwalli naka, Gangapur Road,
Dist. Nashik

2. Smt. Janakibai Manohar Vidwans,
Age major, R/o Near Gautam Bank,
At Kopargaon, Dist. Ahmednagar,
deceased, through legal representatives:

- (2-a) Govind @ Tushar Charuchandra
Vidhwans, age 34 years,
Occu : Agri.,

2(b) Nikhil @ Shilesh Charuchandra
Vidwans, age 32 years, Occu :
Agri.

Both r/o Ashirwad Building,
Bank Road, Kopargaon,
Dist. Ahmednagar.

.. Respondents

Mr S. D. Kulkarni, Advocate for applicant
Mr Mobin H. Shaikh, Advocate holding for Mr
Vikram R. Dhorde, Advocate for respondents no.
1(a) to 1(d)

CORAM : SUNIL P. DESHMUKH, J.

DATE : 5th October, 2018

ORAL JUDGMENT :

1. Under this application, review of judgment and order dated 18-01-2010 in writ petition bearing no. 3305 of 1991 is sought. Parties are referred to by their status in said writ petition.

2. Writ petition had its genesis in application by landlords under section 43-A of the Bombay Tenancy and Agricultural Lands Act, 1948 (" the BT & AL Act ") for fixation of standard rent. The landlord succeeded up to Maharashtra Revenue Tribunal and challenge to tribunal's decision in aforesaid writ petition had failed.

3. The factual aspects as were before the writ court can be succinctly referred to as, deceased respondent no. 1 had executed lease deed in favour of petitioner's [applicant in review

application] father on 03-07-1958 and advance rent of ₹ 2,000/- had been paid.

It is the case of petitioner, on the next day i.e. 4-7-1958, unregistered agreement of sale had been executed by petitioner's father and advance rent is claimed to be treated as consideration pursuant to agreement of sale, however, sale transaction remained to be completed. Lease period underwent extensions from time to time. It is contended that having regard to advance rent paid, petitioner had been entitled to have registered sale deed executed without any further payment.

4. Under these circumstances, it is contended, application filed by landlord – respondent no. 1 for fixation of standard rent under section 43-A of the BT & AL Act is not tenable. The proceedings as referred to above have culminated into dismissal of claim about untenability of application by landlord.

5. Mr S. D. Kulkarni, learned counsel appearing on behalf of review applicant submits that decisions by the authorities including high court, appear to be rendered being oblivious of notification issued pursuant to section 43-A(3) of the BT & AL Act which provides that lessees would be entitled to purchase land to the extent of four acres and in such a case, according to learned counsel, while rights upon entering into an agreement of

sale have been created, the proceedings under section 43-B of the BT & AL Act would not ensue and would not be maintainable. In the circumstances, the decisions so rendered hitherto including one by high court, are without authority of law and the authorities had no power or jurisdiction to entertain such claims.

6. Mr Kulkarni further purports to submit that while arguments were being advanced in writ petition, unfortunately there appears to be a miss to realize impact of notification issued pursuant to section 43-A (3) of the BT & AL Act. He, therefore, submits that the order passed by high court in writ petition on 18-01-2010 reflects error apparent and urges to review said order and allow present application and writ petition.

7. Countering aforesaid submissions, Mr Mobin H. Shaikh appearing on behalf of respondent no. 1(a) to 1(d) submits that the submissions now being canvassed do not have any foundation in the proceedings hitherto. He submits that entirely a new contention is being raised which neither had been a pleading nor a ground at any time before review application had been filed.

8. He submits, theory of agreement of sale put forth has no basis whatsoever in fact. He submits, civil proceedings initiated

at the instance of petitioner seeking specific performance of alleged agreement has failed all-through. He points out that in the suit specific issue no. 4 reading thus;

" Does plaintiff prove that there was an Agreement in between deceased Balkrishna and Defendant number one about sale of the suit Land on 4th July, 1958 ? " ,

had been framed and the same had been answered in the negative.

9. He further points out that in the appeal as well, point with respect to existence of agreement referred to above had been framed reading, thus ;

" Whether plaintiff – appellant has proved that defendant No. 1 executed agreement to sell of suit land in favour of plaintiff's grand father on 4.7.1958 for consideration of Rs.2,000/- " ,

and the same as well had been answered in the negative. He submits, this is the situation before fact finding courts. The position, he submits, strikes at the root of the matter about there being any agreement of sale at all and much less a valid and enforceable one.

10. Learned counsel, in the circumstances, submits that while the contention now sought to be urged by review applicant had not been raised at all hitherto in the proceedings culminating

into decision in writ petition, can hardly be taken as a ground for review.

11. In present matter, it does not appear that notification now sought to be pressed into service had ever been referred to, relied on and invoked at any point of time before and more prominently for the reason that the agreement on the basis of which the submissions are being advanced, does not appear to have been proved or rather applicant has failed to prove the same before civil court.

12. High court while deciding writ petition had narrated facts as observed in paragraph no.3 reading as under :

" 3. The contention of the petitioner is that due to his agreement of sale dated 04-07-1958, he was no more a tenant of the land in question, but was a prospective purchaser. His legal position had changed due to such subsequent agreement of sale and, therefore, he was not liable to pay any rent under section 43B of the BT&AL Act. He contended that he has filed suit for specific performance of the agreement of sale and that his rights as a tenant had submerged into the ownership rights. He submitted that there was not landlord-tenant relationship as a result of the subsequent agreement of sale. In this view of the matter, he alleged that he was not liable to pay the rent amount as directed by the Tenancy Tribunal and confirmed by the M.R.T. "

13. Section 43-B under chapter III-A of Bombay Tenancy and Agricultural Lands Act, relevant for us, reads thus:

" 43-B. Notwithstanding any agreement, usage, decree or order of a court or any other authority, in the case of any land to which section 43A applies, the rent payable shall be reasonable rent as determined under the following clauses : -

(1) A landlord or a tenant of such land may make an application in writing to the Mamlatdar for the determination of the reasonable rent in respect of such land. "

14. Learned counsel Mr Kulkarni during the course of his submissions has contended that the word ' *agreement* ' appearing in section 43-B concerns rent and it would not embrace any other agreement and much less agreement of sale. He thus submits that the authorities hitherto have been unable to appreciate initiation of proceedings with non-abstante clause and have considered that even other agreements had been covered under said provisions.

15. Having regard to factual position and the aspects as would be relevant in present matter, it may not be necessary to dwell on this aspect of the matter, for, the situation emerges that as of now, the agreement of sale with reference to which the submissions had been canvassed, could not be proved before

civil court by the applicant. It may further have to be adverted to that there had been a round of litigation earlier. In respect of the same, Honourable single judge has observed in paragraph no. 9 of judgment that failure to raise contention in earlier round would amount to estoppel. In the scenario, it is difficult to consider that the contended agreement would form a basis to make a claim for invoking of notification for the first time in review application. It would not be a situation which can be said to have been covered by any of the contingencies on which a review can be entertained. It is well settled that under garb of a review, matter cannot be reopened for reconsideration on merits.

17. As such, this is not a case wherein a review application can be entertained.

18. Review application is dismissed.

SUNIL P. DESHMUKH
JUDGE

pnd/-