

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 186 OF 2014

Mukund Hari Mhatre (since decd.)
through LRs.

- a) Venubai Mukund Mhatre
- b) Hareshwar Mukund Mhatre
- c) Dnyaneshwar Mukund Mhatre
- d) Ramdas Mukund Mhatre
- e) Ramesh Mukund Mhatre
- f) Hemand Mukund Mhatre
- g) Smt. Shalini Chandrashekar Gawade

... Petitioners

Versus

1. Madhukar Dwarkanath Kadam
2. Sushama Sudhakar Kadam
3. Sudhakar Dwarkanath Kadam
4. Bhavik Guvantral Shah
5. Ashok Navanni
6. M/s. Navani Construction Co. Pvt. Ltd.
7. Munisuvarat Ind. Estate
8. M/s. Amber Erector Pvt. Ltd.

... Respondents

WITH
INTERIM APPLICATION NO. 150 OF 2023
IN

WRIT PETITION NO. 186 OF 2014

Dnyaneshwar Mukund Mhatre

... Applicant

In the matter between

Mukund Hari Mhatre (since decd.)
through LRs.

... Petitioners

Versus

Madhukar Dwarkanath Kadam & Ors.

... Respondents

WITH
INTERIM APPLICATION NO. 149 OF 2023
IN

WRIT PETITION NO. 186 OF 2014

Venubai Mukund Mhatre

... Applicant

In the matter between

Mukund Hari Mhatre (since decd.)
through LRs.

... Petitioners

Versus

Madhukar Dwarkanath Kadam & Ors.

... Respondents

Mr. Siddhesh Pilankar i/b. Uday P. Warunjikar for the petitioners.
Mr. S.G. Karandikar for respondent nos. 4 and 8.

CORAM: G. S. KULKARNI, J.
DATED: 2 February 2023

ORAL JUDGMENT

1. Heard Mr. Pilankar, learned counsel for the petitioner and Mr. Karandikar, learned counsel for respondent nos. 4 and 8.
2. This petition filed under Article 227 of the Constitution challenges an order dated 5 September, 2013 passed by the Maharashtra Revenue Tribunal (for short "**MRT**") whereby a Revision Application as filed by respondent nos. 1 to 8 (for short "**the respondents**") has been allowed, thereby setting aside the order dated 28 December, 2009 passed by the Sub-Divisional Officer in BD/Tenancy Appeal No. 24/2007 and the order dated 13 July, 2007 passed by the Tahsildar & A.L.T. Vasai in Tenancy Case no. 84/1/05 was restored.
3. It is the petitioners case that petitioner no. 1 was the purchaser/owner of agricultural land, bearing Survey no. 91, Hissa no. 1 and Survey no. 91, Hissa No. 2 admeasuring 32670 sq. yards and 2700 sq. mts. respectively, situated at Village Valiv, Taluka Vasai, District Thane. It is stated that the land was purchased under the provisions of Section 32G of the Bombay Tenancy and

Agricultural Land Act, 1948 (for short “**BTAL Act**”). It is the case of the petitioner that after the purchase of the said land, on 27 October, 1986 the petitioner and respondent nos. 1 and 2 entered into an Agreement to Sale, in respect of both the lands under which respondent nos. 1 and 2 paid substantial amounts to the petitioner. However, the sale could not be completed although possession of land was handed over in favour of respondent nos. 1 and 2. On 11 May, 1994, second Agreement to Sale was entered between the petitioner and respondent nos. 1 and 2 and the earlier agreement dated 27 October, 1986 was cancelled. It is the case of the petitioner that again this sale could not be completed, as a final registered sale deed could not be entered between the petitioner and respondent nos. 1 and 2.

4. Without completing the sale in a manner known to law and in the absence of a registered sale deed in favour of respondent nos. 1 and 2, as the lands in question were in possession of respondent nos. 1 and 2, the petitioner filed an application before the Sub-Divisional Officer under section 84 of the BTAL Act. As there is some relevance to the nature of the proceedings as initiated under Section 84 of the BTAL Act, it would be appropriate to note the said provision, which reads thus:

“84. Summary eviction

Any person unauthorizedly occupying or wrongfully in possession of any land -

- a) *the transfer (or acquisition) of which either by the act of parties or by the operation of law is invalid under the provisions of this Act.*
- b) *the management of which has been assumed under the said provisions, or*
- c) *to the use and occupation of which he is not entitled under the said provisions and the said provisions do not provide for the eviction of such persons, may be summarily evicted by the Collector.”*

5. The Sub-Divisional Officer by an order dated 16 February, 2005 directed the Tahsildar, Vasai to conduct a survey of the land and accordingly to take steps under Section 84 of BTAL Act as also granted stay to any further construction on the land. The said order is annexed at Page no. 40 of the Paper book.

6. On receipt of the said order from the Sub-Divisional Officer, the Tahsildar converted the enquiry, as ordered by the Sub-Divisional Officer into Tenancy Case No. 84/1/2005 and by order dated 13 July, 2007 rejected the Section 84 application of the petitioner. The petitioner filed an appeal before the Sub-Divisional Officer challenging the said order passed by the Tahsildar in the Tenancy Appeal. After hearing the parties, the Sub-Divisional Officer by an order dated 28 December, 2009 allowed the appeal filed by the petitioner. The operative part of said order reads thus:

“ORDER

- 1. *Appeal Application of the Applicant (Appellant) is allowed partly.*
- 2. *The impugned order of the Tahsildar is set aside. Action under Section 84-C of the Tenancy Act and against the unauthorized structure should be taken and report should be submitted to this office.*

3. *No Orders as to cost.*
4. *Decision should be intimated to all the parties concerned.”*

7. The respondents being aggrieved by the order passed by the Sub-Divisional Officer approached the Maharashtra Revenue Tribunal by filing Revision, being Revision Application No. TNC/Rev/210/B/2010 under section 76 of the BTAL Act. The MRT by the impugned order dated 5 September, 2013 has allowed the Revision as filed by the respondents. Being aggrieved by the said order, the present petition has been filed.

8. Before the rival contentions on the impugned order are discussed, Mr. Pilankar, on instructions of petitioner no. 1(c)-Dnyaneshwar Mukund Mhatre, who is stated to be present in the Court, states that the petitioners would confine their prayers only in respect of Survey no. 91/1, more particularly, considering the observations as made by MRT in paragraph 3 of the impugned order. Such statement of Mr. Pilankar is accepted.

9. Insofar as the impugned order as passed by MRT is concerned, the MRT has purely proceeded to apply the provisions of Section 84C of the BTAL Act, which in fact pertains to “*Disposal of land, transfer or acquisition of which is invalid*”. It would be appropriate to note the provisions of Section 84C of the BTAL Act, which reads thus:

*“84C. Disposal of land, transfer or acquisition of which is invalid.- (1)
Where in respect of the transfer or acquisition of any land made on or
after the commencement of the Amending Act, 1955, the Mamlatdar*

suo mote or on the application of any person interested in such land has reason to believe that such transfer or acquisition is or becomes invalid under any of the provisions of this Act, the Mamlatdar shall issue a notice and hold an inquiry as provided for in section 84B and decide whether the transfer or acquisition is or is not invalid.

(2) If after holding such inquiry, the Mamlatdar comes to a conclusion, that the transfer or acquisition of land is invalid, he shall make an order declaring the transfer or acquisition to be invalid:

Provided that, where the transfer of land was made by the landlord to the tenant of the land and the area of the land so transferred together with the area of other land, if any, cultivated personally by the tenant did not exceed the ceiling area, the Mamlatdar shall not declare such transfer to be invalid-

- (i) if the amount received by the landlord as the price of the land is equal to or less than the reasonable price determined under section 63A and the transferee pays to the State Government a penalty of one rupee within such period not exceeding three months as the Mamlatdar may fix.*
 - (ii) if the amount received by the landlord as the price of the land is in excess of the reasonable price determined under section 53A and the transferor as well as the transferee pays to the State Government each a penalty equal to one-tenth of the reasonable price within such period as the Mamlatdar may fix.*
- (3) On the declaration made by the Mamlatdar under sub-section (2),-*
- (a) the land shall be deemed to vest in the State Government, free from all encumbrances lawfully subsisting thereon on the date of such vesting, and shall be disposed of in the manner provided in sub-section (4); the encumbrances shall be paid out of the occupancy price in the manner provided in section 32Q for the payment of encumbrances out of the purchase price of the sale of and but the right of the holder of such encumbrances to proceed against the person liable, for the enforcement of his right in any other manner, shall not be affected;*
 - (b) the amount which was received by the transferor as the price of the land shall be deemed to have been forfeited to the State Government and it shall be recoverable as an area of land revenue; and*
 - (c) the Mamlatdar shall, in accordance with the provisions of section 63A determine the reasonable price of the land.*
- (4) After determining the reasonable price, the Mamlatdar shall grant the land on new and impartible tenure and on payment of occupancy price equal to the reasonable price determined under sub-section (3) in the prescribed manner in the following order or priority :-*
- (i) the tenant in actual possession of the land;*

(ii) the persons or bodies in the order given in the priority list:

Provided that, where the transfer of land was made by the landlord to the tenant of the land and the area of the land so transferred together with the area of the land, if any, cultivated personally by the tenant did not exceed the ceiling area then-

(i) if the amount received by the transferor as the price of the land is equal to or less than the reasonable price, the amount forfeited under sub-section (3) shall be returned to the transferor and the land restored to the transferee on payment of a penalty of rupee one in each case; and

(ii) if the amount received by the transferor as the price of the land is in excess of the reasonable price, the Mamlatdar shall grant the land to the transferee on new and impartible tenure and on payment of occupancy price equal to one-tenth of the reasonable price and out of the amount forfeited under sub-section (3), the transferor shall be paid back an amount equal to nine-tenths of the reasonable price.

(5) The amount of the occupancy price realised under sub-section (4) shall, subject to the payment as aforesaid of any encumbrances subsisting on the land, be credited to the State Government:

Provided that where the acquisition of any excess land was on account of a gift or bequest, the amount of the occupancy price realised under sub-section (4) in respect of such land shall, subject to the payment of any encumbrances subsisting thereon, be paid to the donee or legatee in whose possession the land had passed on account of such acquisition.

Explanation.- For the purpose of this section "new and impartible tenure" means the tenure of occupancy which is non-transferable and non-partible without the previous sanction of the Collector.

(6) Notwithstanding anything contained in sub-sections (1) to (5), the transfer or acquisition of any land shall not be declared invalid by the Mamlatdar, if,—

(i) the proceedings under sub-section (1), in respect of transfer or acquisition of such land are initiated after the date of commencement of the Maharashtra Tenancy and Agricultural Lands, the Hyderabad Tenancy and Agricultural Lands and the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) (Second Amendment) Act, 2016 (hereinafter in this sub-section referred to as "the commencement date"), or had been initiated before the commencement date, but no order under sub-section (2) had been made on or before the commencement date ; and

(ii) the area of such land including other land, if any, held by the transferee, who is an agriculturist, is not in excess of the ceiling area permissible under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 ; and

(iii) *the land so transferred or acquired,—*

(a) is being used only for the agricultural purposes and the transferee (other than tenant) pays an amount equal to fifty per cent. of the market value of such land as per the Annual Statement of Rates ; or

(b) is being put to use for any purpose other than agricultural purposes and the transferee pays an amount equal to seventy-five per cent. of the market value of such land as per the Annual Statement of Rates.

Explanation.— For the purposes of this sub-section, the term “Annual Statement of Rates” means the Annual Statement of Rates published under the provisions of the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 or any other Rules for the time being in force in this regard, prevalent in respect of the year in which the transferee pays the amount as per sub-clauses (a) or (b), as the case may be, of this clause.”

10. From the perusal of the record, it clearly appears that the initial application as filed by the petitioner was under the provisions of Section 84 of BTAL Act. The petitioner had chosen remedy under Section 84 to be an appropriate remedy in respect of the land in question. Once the petitioner had invoked a specific remedy under the said provision, it was expected that the authorities apply themselves strictly to the remedy as invoked or the provision which was set into motion by the petitioner/applicant. This more particularly considering the fact that the provisions of Section 84 are completely distinct from the provisions of Section 84C. From a bare perusal of both these provisions as noted above, the ambit and scope of the enquiry is certainly different inasmuch as Section 84 pertains to “*Summary Eviction of any person who is unauthorizedly occupying or wrongfully in possession of any land*” whereas Section 84C categorically deals with “*Disposal of land, transfer or acquisition of which is invalid*”.

11. The petitioner had invoked Section 84 with a specific case that the respondents are unauthorizedly or in wrongful possession of land in question. Thus, the scope of the enquiry was required to be confined only with regard to the provisions of Section 84. In these circumstances, the Sub-Divisional Officer did not have any jurisdiction to suo motu convert the proceedings filed under section 84 to any proceedings under section 84C. This appears to be the basic error which was committed by the Sub-Divisional Officer when he forwarded the application for enquiry to Tahsildar.

12. It may be that the petitioner did not object before the Sub-Divisional Officer remanding the proceedings to Tahsildar for an enquiry under a misapplied provision, i.e., Section 84C, as it is nowhere on record that the petitioner had intended that the proceedings initiated by him under section 84 be converted as an enquiry under section 84C. There was nothing on record to show that the petitioner agreed for any such conversion of his original plea into a plea under section 84C. Thus, there was no warrant for either the Sub-Divisional Officer or even for the MRT to apply the provisions of Section 84C and in allowing the revision as filed by the respondent applying the parameters of limitation which were applicable to proceedings under section 84C. There was no warrant for the MRT in the first place to apply the provisions of Section 84C. This is the fundamental legal error. Once Section 84C itself was not applicable and was not invoked by the petitioner, the law as laid down by the

Supreme Court in the *Mohmed Kavi Mohmed Amin*, (1997) 6 SCC 71 was not applicable so as to throw out the application as filed by the petitioner on the ground of limitation.

13. In these circumstances, it would be required to be held that the order passed by MRT is illegal and contrary to the record insofar as the land Survey No. 91/1 is concerned. In the aforesaid circumstances, the petition would be required to be allowed. Hence, the following order:

- (i) The impugned order passed by MRT is quashed and set aside.
- (ii) The parties are relegated to MRT for adjudication afresh on the revision as filed by the respondents.
- (iii) All contentions of the parties are expressly kept open.
- (iv) As the parties are litigating for quite sometime, it is appropriate that the revision be decided as expeditiously as possible and preferably within a period of eight months from the date the copy of the order is available to the parties.

14. Disposed of in the above terms. No costs.

15. In view of disposal of Writ Petition, Interim Applications do not survive. They are accordingly disposed of.

(G. S. KULKARNI, J)