2024:BHC-AS:12448



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

# WRIT PETITION NO. 2848 OF 2023

Sakhubai Kamlakar Bhokare and Others. ...Petitioners.

***Versus***

State of Maharashtra and Others. ...Respondents.

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*Dr. Virendra Tulzapurkar, Senior Advocate and Mr. P. S. Dani Senior Advocate along with Mr. Mandar Soman, Mr. Onam Hingorani and Jyotitus Suramal for the petitioner.*
*Mr. S. D. Rayrikar, AGP for respondent no. 1.*
*Mr. S. G. Karandikar, for respondent nos. 2 and 3.*

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**Coram : Sharmila U. Deshmukh, J.**
**Date : March 8, 2024.**

**P. C. :**

**1.** By this petition, the challenge is to the impugned order dated 25th March 2021 passed by the Maharashtra Revenue Tribunal (for short "MRT") in Revision Application No.4 of 2011 allowing the revision and setting aside the order of Sub Divisional Officer (SDO) in Tenancy Appeal No. 41 of 2007 and order of Tahsildar and Agricultural Land Tribunal in Case No.32G/Ovala/07/2006 dated 24th July 2007. The revision application was filed by the Respondent No 2-charitable trust challenging the legality and correctness of the order dated 4th October 2008 passed by the SDO in appeal arising out the the order of

Tahsildar dated 24th July, 2007 determining the purchase price of the subject land in proceedings under Section 32G of Bombay Tenancy and Agricultural Lands Act (for short "the BTAL Act").

**2.** Facts briefly stated are that proceedings were initiated by the Petitioners before the Tahsildar and Agricultural Lands Tribunal under Section 32G of the BTAL Act for fixing the purchase price of subject land through their power of attorney holder being Case No 32G/ 7/2006. The application was resisted by the Respondent No.2-Trust contending that the applicants are not the heirs of predecessors of the tenant Shri Rama Sadu Bhokare. It was also contended that no proof of payment of rent was produced and as per Section 88B of BTAL Act, the tenancy laws are not applicable to the lands of Trust. It was further contended that no notice of Mutation Entry No.2608 was given to the Respondent No 2.

**3.** Vide order dated 24th July, 2007 the application was allowed by the Tahsildar holding that the land was agricultural land and in the 7/12 extracts, names of the Petitioners have been mutated as tenants and were therefore entitled to purchase the land. Against the order of 24th July, 2007, an appeal was preferred by Respondent No.2-Trust before the SDO under Section 74 of BTAL Act being Tenancy Application No 41 of 2007. The Sub-Divisional Officer upon perusal of the records observed that in the revenue records of subject property till the year 1951 the name of Rama Sadu was mutated. The contention of Respondent No.2 that there was erasures and interpolation in the name of Ramu Dadu to Rama Sadu was negated. The Sub Divisional Officer held that Respondent No.2-Trust was registered in the year 1958 and the exemption under Section 88B was granted. It held that the predecessors of Applicants were the tenants on 1$^{st}$ April, 1957 and were deemed purchasers and there was no obstacle in fixing the purchase price under Section 32G of BTAL Act and rejected the Appeal vide order dated 4$^{th}$ October, 2008.

**4.** Against the concurrent findings, revision was preferred by the unsuccessful respondent-trust before the Maharashtra Revenue Tribunal (MRT) under Section 76 of BTAl Act. MRT allowed the revision on the ground that tenant had not stepped into the box and had deposed through power of attorney holder and relying upon the decision of the apex court in ***Janaki Bhojwani v. Indus Bank (2004(3) SCC 584),*** MRT held that the power to depose covers only such acts which the power of attorney holder does in pursuance of the powers granted to him and not on the matters on which only the principal has knowledge. The second ground on which MRT held against the Petitioners was that the Tahsildar as well as the SDO had relied upon the mutation entry and no documentary evidence was produced by the respondent in the form of receipt showing the payment of land revenue or *khand* receipts and that the statement of Applicants are not recorded. It was held that it was the duty of trial court to first decide the tenancy claim under Section 70(b) of the BTAL Act after following proper procedure as provided under the Mamlatdar's Courts Act, 1908.

**5.** Heard Dr. Tuljapurkar, learned Senior Advocate appearing for the petitioner and Mr. S. G. Karandikar, learned counsel appearing for respondent nos.2 and 3.

**6.** Dr. Tuljapurkar, learned Senior Advocate appearing for the petitioners would submit that as per Mutation Entry No. 467 Rama Sadu's name was mutated in the revenue record. He would submit that there is no dispute that on tillers' day, that is, on 1st April 1957 said Rama Sadu was cultivating the land and subsequently the name of Petitioners being legal heirs of Rama Sadu came to be entered into the revenue record by virtue of Mutation Entry No.2608. Assailing the findings of MRT, Dr. Tuljapurkar would submit that there is no bar to the filing of an application under section 32G of BTAL Act through a power of attorney holder particularly when the statement given by the constituted attorney was in respect of the mutation entries which are public documents. He would submit that the mutation entry has not been challenged till date. He submits that for the purpose of fixing the purchase price of tenanted land, all that is required to be demonstrated is that on tillers' day the tenant was cultivating the subject land. He submits that statement was not challenged and there was no cross-examination by the respondent trust. He submits that subsequently on 25th October 2010, i.e. after the appeal before Tahsildar was rejected, permission to sell under section 43 of the BTAL Act was granted and sale deed was executed on 20th December 2010. He submits that after a lapse of 2 years, the trust has filed this revision application before MRT. He submits that the impugned order was passed subsequent to the remand order by this Court in Writ Petition No. 5721 of 2018. Pointing out the Mutation Entry No. 467 as well as Mutation Entry No.2608, Dr. Tuljapurkar would submit that no further evidence was required to be produced as the provisions of section 32G of the BTAL Act enjoins upon Mamlatdar to fix the purchase price, which has been done in the present case. He relies upon the decision of Gujarat High Court in ***Chanchalaben Ranchoddas v. Keshavbhai Kalyanbai [R/Special Civil Revision Application No. 2778 of 2008 dtd, 6th April 2018]***.

**7.** *Per contra* Mr. S. G. Karandikar, learned counsel appearing for the respondents would submit that the application could not have been filed by the power of attorney holder in view of the language of section 32G of the BTAL Act which requires the statement of tenant to be recorded. Pointing out to the statement at page no.71, he would submit that fact about the cultivation as on 1st April 1957 could not have been deposed by the power of attorney holder as he had no personal knowledge. He submits that while deciding the Section 32G proceedings, specific issue were framed as to whether the Petitioners are tenants of the subject land and the same has come to be answered without any reasoning. He would further submit that there is no document to show that the Petitioners are the legal heirs of original tenant.

**8.** Considered the submissions and perused the record.

**9.** The proceedings arise out of the order of Tahsildar determining the purchase price of subject land under Section 32G of BTAL Act. Under Section 32 of BTAL Act, every tenant cultivating the land on tiller's day, i.e., 1st April, 1957, is deemed to have purchased from his landlord free of all encumbrances land held by him as tenant. Mutation Entry No. 467 evidences that one Rama Sadu was the tenant in respect of the suit property on 1st April, 1957, which fact has not been disputed. By virtue of the deeming provision of Section 32G of BTAL Act, Rama Sadu became the deemed purchaser of suit property. The statutory scheme casts a duty on the Tribunal to publish a notice within its jurisdiction calling upon the tenants who under section 32G of the BTAL Act are deemed to have purchased the land to appear before it on the dates specified in the notice. The provisions do not mandate the pre-requisite of an application and the purchase price can be fixed *suo motu* or upon the filing of application. The Tribunal is required to record the statement of tenant as regards his willingness to purchase the land held by him as tenant and is required to hold an inquiry after hearing all concerned. After the inquiry, Tribunal is required to determine the purchase price of subject land.

**10.** Reliance is placed by learned counsel for the respondent on subsection (2) of section 32G of the BTAL Act to drive home the point that it is the statement of tenant as to his willingness to purchase the land is to be recorded and the same assumes importance and in the absence of Petitioners stepping into the box, the requirement is not satisfied. The provisions of Section 32G nowhere provides that the personal statement of tenant is required to be recorded. By operation of law, tenant cultivating the land on tillers' day is deemed to have purchased the land and it is only the willingness of tenant which is required to be recorded. The willingness can be recorded either by the tenant himself or through his constituted attorney. The provisions do not place any embargo on the statement being recorded by the tenant through his constituted attorney.

**11.** If the statement of Constituted Attorney annexed at Page 71 is perused, the constituted attorney has produced the mutation entry showing Rama Sadu as the original tenant on tillers' day and the mutation entry certifying the names of Petitioners as the legal heirs of Rama Sadu. He has further deposed about the willingness to deposit the purchase price which will be determined. Perusal of the reply of Respondent No2-trust does not indicate that any objection was taken to the recording of statement of the tenant through his power of attorney holder. The settled position in law is that a power of attorney holder is entitled to depose in respect of the acts which are not personal to the knowledge of principal. Even if the statement deposes about the land being cultivated prior to the year 1957, the deposition is based on the mutation entries on record. Pertinently, the constituted attorney was not cross examined by Respondent No.2-Trust and his statement has gone unchallenged. The only objection raised by Respondent No.2 was in respect of the rights of inheritance as according to Respondent No.2-trust, the Petitioners were not the legal heirs of original tenant.

**12.** By virtue of Mutation Entry No. 467, on tillers' day Rama Sadu became the deemed purchaser of subject land and the relationship of landlord and tenant between Respondent No.2 and Rama Sadu stood extinguished. Subsequently, vide Mutation Entry No. 2608 of the year 2004 the Petitioners were brought on record as the legal heirs of Rama Sadu. Admittedly, Mutation Entry No 2608 is not challenged till today. The mutation entries have a presumptive value under section 157 of the Maharashtra Land Revenue Code, 1966 and reliance was rightly placed by the Tahsildhar and ALT on the mutation entries for the purpose of Section 32G proceedings particularly when it is not disputed that Rama Sadu was the tenant cultivating the land as on tillers' day.

**13.** Reliance is rightly placed by Dr. Tuljapurkar learned Senior Advocate on the decision of Gujarat High Court in the case of ***Chanchalaben Ranchoddas v. Keshavbhai Kalyanbai (supra)*** which is squarely applicable to the facts of present case. In that case, the Gujarat High Court in an identical fact situation held that in the proceedings under section 32G of the BTAL Act, the authorities cannot go into the question of title of tenant as the tenant could be said to be a deemed purchaser on 1st April 1957 and all that is required to be done by Mamlatdar is to fix the price.

**14.** That being the scheme of proceedings under the Tenancy Act, upon the mutation entries showing the name of original tenant cultivating the land as on tillers' date as well as the names of Petitioners as the legal heirs of original tenant being mutated in the revenue record, all that was required to be done was to fix the purchase price. In view of the long standing entries which have not been challenged till date, the observation of MRT that further documents were required to be brought on record is not sustainable. Similarly, considering the statement at page no. 71 by the power of attorney holder, who deposes as regards the mutation entries, it cannot be said that the constituted attorney could not have made such a statement as the same was on the basis of public record. The observation of MRT that the tenancy claim is denied and as such had to be decided under Section 70b of BTAL is unsustainable as the tenancy of Rama Sadu is not denied and what was sought to be disputed was the right of inheritance of Petitioners. Upon plain reading of the provisions of Section 70 of BTAL Act, the Tenancy Court is not clothed with the jurisdiction to go into the issue of succession rights of the Petitioners.

**15.** In the light of above, the judgment and order dated 25$^{th}$ March

2021 passed by the MRT is unsustainable and is hereby quashed and set aside. Consequently the orders of Tahsildar and SDO stand revived. Petition stands allowed.

**16.** In view of the disposal of writ petition, civil/interim application taken out in this petition does not survive and the same is disposed of.

**[Sharmila U. Deshmukh, J.]**