

Magathane Samyukta Sahakari Sheti Sanstha

Vs

Trustees of Seth Mulraj Khatau Trust Settlement and Others

Civil Appeals Nos. 825 to 832 of 1966

(V. Bhargava, I. D. Dua JJ)

16.03.197

JUDGMENT

DUA, J. -

1. These eight appeals (C.A. Nos. 825 to 832 of 1966) by special leave directed against the common order of the Maharashtra Agricultural Lands Tribunal, dated February 25, 1965 raise common questions of fact and law and are, therefore, being disposed of by one common judgment.
2. The main question on which the fate of all these appeals depends lies in a very narrow compass and facts relevant for understanding the controversy requiring determination by this Court may be briefly stated. It may be noted that parties figuring as respondent No. 3 in all the special leave applications were tenants of respondents Nos. 1 and 2. According to Section 32, Sub-section (1) of the Bombay Tenancy and Agricultural lands Act 67 of 1948 (hereinafter called the Tenancy), on April 1, 1957 described in the Tenancy Act as "the tillers' day" every tenant subject to the provisions of the other sub-sections of Section 32 and to the provisions of the next succeeding sections of the Tenancy Act was to be deemed to have purchased from him land lord free of all subsisting encumbrances on that day, the land held by him as a tenant. In 1960 proceedings were started under Section 32-G of the Tenancy Act for the purpose of determining the price of the various pieces of lands to be paid by the tenants who were deemed to be the statutory purchasers thereof. The lands were held by the Tribunal to be outside the limits of the municipality of Borivali with the result that the tenants were considered entitled to be the purchasers of and to purchase those lands. The Tribunal fixed the price at the rate of Rs. 800 per acre. The order was appealed against but the District Deputy Collector, disallowing all other attacks against the order except the one in regard to valuation, and following the appeals, sent the cases back for fresh decision on the point of valuation. On April 18, 1962 the Tribunal issued notices to the parties for re-hearing. On May 11, 1962 the tenants appeared before the Tribunal and stated that they were not willing to purchase the lands. Apparently this change in the attitude of the tenants was the result of a settlement or compromise between them and landlords. The tenants had agreed to resell the lands to the landlords on payment of Rs. 3,000 per acre. On May 21, 1962 the tenants appeared before the Tribunal and reiterated their unwillingness to purchase the land stating that they had received the sums for the development expenses and for the value of their dwelling and farm houses, etc., and had given receipts for the same. On June 4, 1962 the Mamlatdar and Agricultural Lands Tribunal passed an order directing the possession of lands to be handed over to the landlords. The Circle Inspector accordingly handed over possession of the lands to the landlords on June 6, 1962. In the meantime, it appears that on January 10, 1962, Magathane Co-operative Society (appellant in this Court) was registered as the Joint framing society. On June 4, 1962 the Society, of which the tenants were the members, wrote a letter to the Mamlatdar that the lands had been handed over to the Society by the tenants. On June

11, 1962 the Mamlatdar informed the Society that there was no evidence to show that the Society had become the owners of the lands and since the purchase by the tenants had become ineffective, an order had been made to hand over the land to the landlords. This order was apparently not appealed against by the Society which elected to institute a civil suit in the Bombay City Court for injunction restraining the landlords from interfering with the possession of the Society. A temporary injunction was initially granted but was later vacated by the Principle Judge of the City Civil Court on the ground that the Society had not obtained possession of the land. An appeal was preferred against this order in the High Court but the same was rejected on December 2, 1964. In the meanwhile under directions from the Commissioner, Bombay Division, the Additional Collector, Bombay Suburban District called for the record of the proceedings under Section 76-A of the Tenancy Act. After going through the record the Additional Collector held that the Mamlatdar had come to the correct conclusion that the sale in favour of the tenants had become ineffective on account of their unwillingness to purchase the land. It was, however, added that the Mamlatdar had not made proper inquires into the question of the bona fides of the landlords with respect to their requirements of the land as provided by Section 32-P, read with Section 15 of the Tenancy Act. It was further observed that the Mamlatdar had been hasty in directing possession of the lands to be handed over to the landlords without holding enquiries in a proper manner and before the expiry of the period for preferring appeal. The case was thus remanded back to the Mamlatdar with a direction "to hold a proper enquiry and take a decision regarding the disposal of the surrendered lands in accordance with the provisions of Sections 32-P, read with Section 15 of the B.T. and A.L. Act and dispose of the case within two months. This order was made on October 5, 1963. On October 26, 1963 the landlords handed over possession of the lands to the Mamlatdar. On November 18, 1963 the Mamlatdar re-heard the cases and came to the conclusion that the landlords had established that they required the lands bona fide. There was no appeal against this order of the Mamlatdar. As already noticed, the appellant (The Magathane Co-operative Society) also had not filed any appeal against the order of the Mamlatdar, dated June 11, 1963 passed on the Society's letter, dated June 4, 1962 wherein it was held that the Society had no interest in the lands. The Collector, Bombay Suburban District, again called for the record and proceedings of the case from the Mamlatdar and On March 31, 1964 set aside the various orders of the Mamlatdar and modified the order of the Additional Collector. It was directed that fresh enquiry, as to valuation only, be held and purchase price be fixed after hearing both the parties and the Magathane Samyukta Sahakari Sheti Sanstha (appellant) in all the eight cases. Possession of the land in question was directed to be handed over to the respective tenants. Against this order revisions were presented to the Maharashtra Revenue Tribunal in April, 1964 which were admitted and interim stay granted which a direction that possession of the lands should be kept with the Mamlatdar pending their disposal. A special civil application filed in the High Court against that order was rejected. By an interim order, dated October 10, 1964 notice of hearing of the revisions was also given to the appellant Society. This was done in view of the observations made by the Collector in his order. By an interim order, dated November 28, 1964, the Tribunal directed the Society to produce the applications made by the tenants for membership and the order passed by the Society on those applications. The Society was further directed to produce a copy of its bye-laws and rules. There is recital in this order to the effect that on the previous date of hearing the parties had been directed to produce the proceeding of the Mamlatdar relating to the letters sent by the Society to the Mamlatdar and orders passed thereon and the Society had been directed to produce its bye-laws, but this direction had not been complied with. In fact adjournment of the cases was necessitated because the Tribunal felt handicapped in finally deciding them without the material directed to be produced. The revision petitions were allowed on February 25, 1965 by a very detailed order containing an exhaustive discussion of all the relevant aspects canvassed. The order of the Collector made under Section 76-A of the Tenancy Act

was set aside and it was held that the landlords were entitled to the restoration of the lands in question. The order of the Mamlatdar under Section 32-P of the Tenancy Act handing over possession of the lands to the landlords was upheld. The interim order directing possession to remain with the Mamlatdar was vacated and the Mamlatdar was directed to hand over possession of the land to the landlords. So far as the claim of the appellant society is concerned, after a thorough discussion of all the relevant circumstances the final conclusion was expressed in these words :

"We therefore hold that it is not proved that the society had obtained possession of the lands or any interest therein."

Earlier, in the course of the discussion, it was observed that out of 8 tenants only 5 had joined in the application for the registration of the Society and the pooling agreements which members of joint farming society had to sign were not produced in this case.

3. In this Court Shri Patel, the learned Counsel for the appellant Society strongly argued that on the "tillers' day" i.e., April 1, 1957, as prescribed by Section 32 of the Tenancy Act, every tenant must be deemed to have purchased from his landlord free of all encumbrances, the land held by him as a tenant. This deeming provision must, according to the Counsel, be taken to its logical end with the result that once the tenants in the present case had by fiction become the purchasers of the land there was no question of the tenants later expressing their unwillingness to purchase the same. We are unable to agree with this submission. Section 32(1) of the Tenancy Act on which reliance is placed for this argument itself states in express terms that this fiction is subject to the other provisions of Section 32 and to the provisions of the next succeeding sections of the Act. So far as the present case is concerned we need only refer to Section 32-G which requires the Tribunal soon after the tillers' day to publish or cause to be published a public notice in the prescribed form in each village within its jurisdiction calling upon : (a) all tenants who under Section 32 are deemed to have purchased the lands, (b) all landlords of such lands, and (c) all other persons interested therein, to appear before it on the specified date. Notices are also required to be issued individually to each such tenant and landlord and, as far as possible, to other persons to appear before it on such date. The Tribunal is then required to record in the prescribed manner the statement of the tenant whether or not he is willing to purchase the land held by him as a tenant. When a tenant fails to appear or makes a statement that he is not willing to purchase the land the tribunal is enjoined to declare by a written order that such tenant is not willing to purchase the land and that the purchase is ineffective. These provisions which are contained in sub-sections (1) to (3) of Section 32-G furnish a complete answer to the appellant's contention. It is particularly noteworthy that where a tenant fails to appear, even in that event the Tribunal has to declare by a written order that the purchase is ineffective.

4. When confronted with this position the appellant's learned Counsel submitted that the appellant Society had stepped into the shoes of the tenants and it was this Society which was entitled to claim the right to purchase the land. According to the arguments it was the Society which should have been called by means of a notice under Section 32-G(1) and asked whether it was willing to purchase the land. The tenants, Shri Patel contended, could not deprive the Society of this right. This submission is equally untenable. As observed by the Tribunal in the impugned order the Society had neither obtained possession of the land nor had it acquired any interest therein. In face of this conclusion it is not possible to hold that the Society had a right to purchase the land. This conclusion was arrived at after going through all the relevant evidence on the record and other material circumstances. Every aspect of the controversy appears to have been taken into consideration by the Tribunal. No error of law in the impugned order while dealing with this aspect was pointed out on behalf of the appellant and we are unable to find any cogent ground for

interfering with this conclusion on appeal under Article 136 of the Constitution.

5. As last resort Shri Patel submitted that the original pooling agreements by means of which the land in question was passed on to the Society were actually produced on the record of this case and they were either clandestinely removed by some one from the record or otherwise lost. He attempted to substantiate this submission by pointing out that in this Court the State, as a respondent, had intimated to the office to print the pooling agreements. In the list of documents to be printed on behalf of the State the agreements are entered at serial No. 70. It was further pointed out that the office of this Court had sought the state Counsel Shri Dhebar's assistance in tracing those documents from the record. We are unable to hold on the basis of this entry in the list that the original pooling agreements had in fact been produced in the record. The finding of the Tribunal that the pooling agreements had not been produced is certainly indicative at least of the fact that they had not been brought to its notice during the arguments. It is not the appellant's case before us that the Tribunal's attention was in fact drawn to these agreements and the Tribunal was in error in not considering them on the erroneous assumption that they had not been produced. This aspect also militates against the appellant's suggestion that the documents had actually been produced. But assuming they were, as observed by the Tribunal, that too would not show that the Society had acquired any interest in the land in question. Our attention was not drawn to any provision of the statute according to which the Society in the circumstances of the present case could be considered to have become a tenant so as to (1) be deemed to have purchased the land on the "tiller's day" and (2) to be entitled to notice under Section 32-G for the purpose of claiming title as purchaser to the land in question. On the view that we have taken it is unnecessary to go into the submission urged by Shri Patel that an enquiry should now be held by this Court or on remand by the Tribunal into the question whether or not the original pooling agreements were actually produced on the record and that they disappeared thereafter. The conclusions of Tribunal appear to us to be binding and not open to any valid criticism. The appeals accordingly fail and are dismissed with costs. One hearing fee only.

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