

Amrit Bhikaji Kale and Others

Vs

Kashinath Janardhan Trade and Another

Civil Appeal No. 174 of 1981

(D. A. Desai, Ranganath Misra JJ)

11.05.1983

JUDGMENT

DESAI, J.-

1. Land bearing survey No. 1052 admeasuring 16 acres situated within the revenue limits of village Sonai Taluka, Nawasa District, Ahmednagar, belonged to Tarachand Chopra. Janardhan, the father of the respondent was admittedly the tenant of this land on April 1, 1957. Section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948 as amended from time to time provided that on April 1, 1957 styled as the tillers' day every tenant shall subject to other provisions of the section and the provisions other next succeeding sections be deemed to have unchased from his landlord, free from all encumbrances subsisting there on the same date the land held by him as a tenant if other conditions of the section are satisfied. Thus by operation of law, Janardhan, who was the tenant of the land on the tillers' day became the deemed purchaser thereof. Landlord Tarachand died on August 12, 1959. Before his death, landlord Tarachand had executed a will and bequeathed the suit land to Ashoklal Gugale who was petitioner before the High Court. Acting upon the will of Tarachand, Ashoklal got his name mutated in the revenue record in respect of suit land in his favour as owner. On the date of mutation, Ashoklal was a minor. Section 32-G imposes a statutory duty on the Agricultural Lands Tribunal ('Tribunal' for short) to commence enquiry for determining the price of the lands which is the subject-matter of compulsory purchase. The Tribunal is required to issue notice to (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 date specified in the notice. Pursuant to such notice when the parties appeared before the Tribunal it was claimed on behalf of landlord that Ashoklal, the recorded owner was a minor and therefore the sale was postponed under Section 32-F. The Tribunal failed to exercise jurisdiction in not noticing the obvious fact that the relevant date on which compulsory sale takes place is April 1, 1957 and on that date Tarachand Chopra the landlord was the recorded owner and he was under no disability as envisaged by Section 32-F and therefore the sale had become effective and could not be postponed under Section 32-F. However, the Tribunal failed to exercise its jurisdiction by misstating an obvious irrelevant fact that as recorded owner was minor, compulsory sale was postponed as envisaged by Section 32-F. It appears that the Tribunal again commenced proceedings in the year 1967 under Section 32-G and concluded the proceedings by its order dated July 13, 1967 repeating the jurisdictional errors and thereby failed to exercise jurisdiction vested in it. In the meantime, minor landlord through his next friend commenced proceedings in Case No. 36 of 1967 in the court of Tenancy Aval Karkoon having jurisdiction in the area for recovery of possession from tenant Janardhan who had become a deemed purchaser, under Section 14 read with Section 29 of the Tenancy Act. Section 14 enables the landlord to recover possession if tenant commits default in payment of rent for certain number of years. The Tenancy Aval Karkoon entertained the petition

which it had no jurisdiction because there was no subsisting relationship of landlord and tenant between Ashoklal and Janardhan as Janardhan had already become deemed purchaser on April 1, 1957. However, the Tenancy Aval Karkoon taking note of the earlier decisions of the Tribunal holding that the date of compulsory sale was postponed directed possession to be handed over to the landlord holding that the tenant had committed default in payment of rent.

2. Mr Lalit, learned counsel for the appellant at this stage pointed out that in the proceeding under Section 14 read with Section 29 of the Tenancy Act, the tenant Janardhan had made a statement on October 5, 1967 that he had no objection to handing over possession of the land to the landlord as he was old and could not cultivate the land personally. On the same day, surprisingly the Tenancy Aval karkoon also recorded the statement of present respondent though in the lifetime of his father Janardhan, he had no title to the land involved in the dispute. It appears that the Tenancy Aval Karkoon made the order dated October 6, 1967 evicting Janardhan from the land on the footing that he was a tenant liable to pay rent and had committed defaults. This wholly null and void order enabled the minor landlord to sell the land by a registered deed on November 13, 1967 to petitioner 1 and one Haribhav and the latter in turn transferred his interest in favour of other petitioners.

3. Misled by the two orders of the Tribunal holding that the sale was postponed Janardhan served a notice on October 6, 1971 as envisaged by Section 32-F that as the landlord has attained majority he is entitled to purchase the land and that the price of land be determined. Presumably, pursuant to this notice, the Tribunal commenced proceedings under Sections 32-G and 32-F of the Tenancy Act for determining the purchase price. It was contended on behalf of the petitioners transferees from Ashoklal before the Tribunal that as Janardhan has already handed over possession to Ashoklal he had no subsisting interest in the land and therefore he had no right to purchase the land under Section 32-F and that the proceedings be dropped. This contention found favour with the Tribunal which overlooked the legal position that Janardhan had become the deemed leaving respondent his son as the sole heir. After the death of Janardhan an enquiry was commenced to ascertain whether Janardhan the deceased tenant had already become the deemed purchaser on April 1, 1957 and that all the subsequent proceedings were ab initio void. There were some proceedings in between under Section 84 which are hardly relevant. The Tribunal went into the matter in depth, examined all previous orders and finally reached an affirmative conclusion that on April 1, 1957 Tarachand was the recorded landlord and being under no disability and Janardhan being his tenant of the land, by operation of law, Janardhan being his tenant of the land, by operation of law, Janardhan became the deemed purchaser and all subsequent proceedings were null, void and non est. The Tribunal accordingly determined the purchase price. The present petitioners after unsuccessfully appealing to the Assistant Collector and the Maharashtra Revenue Tribunal under Section 76 of the Tenancy Act, reached the High Court under Article 227.

4. A parallel proceeding was initiated by the respondent under Section 84 of the Tenancy Act for recovery of possession which was illegally taken from him. The Assistant Collector held that the occupation of the suit land by the petitioners was contrary to the provisions of law as Janardhan had already become the deemed purchaser and no title could be acquired by the petitioners from the sale by Ashoklal and therefore the respondent is entitled to recover possession. The direction was issued to hand over possession to the respondent. This order was confirmed by the Maharashtra Revenue Tribunal in revision as per its judgment dated July 16, 1973. Two petitions were moved by transferee-petitioners in the High Court of Bombay against two orders one of the Maharashtra Revenue Tribunal, in a proceeding under Section 32-G and another in a proceeding under Section 84 against the present respondent. The learned Single Judge of the High Court by a common judgment dismissed both the petitions of the petitioners holding that as Janardhan had become the

deemed purchaser on the tillers' day i.e. April 1, 1957 all subsequent proceedings under Section 32-F were ab initio void and without jurisdiction and nullity in the eyes of law. The High Court also held that the petitioners acquired no title under the purported sale by Ashoklal because Ashoklal had no title to the land save receiving the purchase price from Janardhan or his heir as determined under Section 32-G. The High Court accordingly dismissed both the petitions with costs. Hence these two appeals by special leave.

5. Mr U. R. Lalit, learned counsel appearing for the appellants strenuously urged that the orders made by the Tribunal under Section 32-F and by the Tenancy Aval Karkoon in a proceeding under Section 14 read with Section 29 of the Tenancy Act and the statement of Janardhan and the respondent would clearly show that these orders were at best erroneous but not void and cannot be ignored as nullity in subsequent proceedings.

6. The Tenancy Act was comprehensively amended by Amending Act 15 of 1957. The amendment brought in a revolutionary measure of agrarian reforms making tiller of the soil the owner of the land. This was done to achieve the object of removing all intermediaries between tillers of the soil and the State. Section 32 provides that by mere operation of law, every tenant of agricultural land situated in the area to which the Act applies shall become by the operation of law, the owner thereof. He is declared to be a deemed purchaser without anything more on his part. A Constitution Bench of this court in *Sri Ram Ram Narain Medhi v. State of Bombay* held that :

The title of the landlord to the land passes immediately to the tenant on the tillers' day and there is a completed purchase or sale thereof as between the landlord and the tenant. The title of the land which was vested originally in the landlord passes to the tenant on the tillers' day and this title is defeasible only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or commit default in payment of the price thereto as determined by the Tribunal.

Therefore, it is unquestionably established that on the tillers' day, the landlord's interest in the land gets extinguished and simultaneously by a statutory sale without anything more by the parties, the extinguished title of the landlord is kindled or created in the tenant. That very moment landlord-tenant relationship as understood in common law or Transfer of Property Act comes to an end. The link and chain is broken. The absent non-cultivating landlord ceases to have that ownership element of the land and the cultivating tenant, the tiller of the soil becomes the owner thereof. This is unquestionable. The landlord from the date of statutory sale is only entitled to receive the purchase price as determined by the Tribunal under Section 32-G. In other words, the landlord ceases to be landlord and the tenant becomes the owner of the land and comes in direct contact with the State. Without any act of transfer inter vivos the title of the landlord is extinguished and is created simultaneously in the tenant making the tenant the deemed purchaser. It is an admitted position that on April 1, 1957 Tarachand was the landlord and Janardhan became deemed purchaser and Mr Lalit could not controvert this position.

7. If Janardhan became the deemed purchaser on tiller's day, the relationship of landlord and tenant between Tarachand and Janardhan came to be extinguished and no right could be claimed either by Tarachand or anyone claiming through him such as Ashoklal or the present purchasers on the footing that they are the owners of the land on or after April 1, 1957. This basic fact is incontrovertible.

8. It may be mentioned that Section 32-F has no application to the facts of this case. Section 32-F

postponed the date of compulsory purchase by the tenant where the landlord is a minor or a widow or a person subject to mental or physical disability on the tillers' day. Section 32-F has an overriding effect over Section 32 as it opens with a non obstante clause. The combined effect of Sections 32-F and 32 would show that where the landlord is under no disability as envisaged by Section 32-F the tenant of such landlord by operation of law would become the deemed purchaser but where the landlord is of a class or category as set out in Section 32-F such as a minor, a widow or a person subject to any mental or physical disability, the date of compulsory sale would be postponed as therein provided. Now, if Tarachand, the landlord was under no disability and he was alive on April 1, 1957 and he was the owner, his tenant Janardhan became the deemed purchaser. This conclusion, in our opinion, is unassailable.

9. If Janardhan became the owner on April 1, 1957 all subsequent proceedings in which the Tribunal held that the date of purchase was postponed because the recorded owner Ashoklal was a minor were without jurisdiction. The Tribunal had absolutely no jurisdiction to proceed on the footing that the date of sale was postponed. It is neither an incorrect order nor an erroneous order as was sought to be made out but Tribunal lacked the jurisdiction to proceed under Section 32-F because when the proceedings under Section 32-F were commenced, Janardhan had long since become the deemed purchaser. Therefore all subsequent proceedings were ab initio void and without jurisdiction and the High Court was right in holding that orders passed therein were nullity.

10. The attempt to overcome this position by urging that the order was erroneous was rightly repelled by the High Court holding that the orders were null and void, proceeding on an erroneous assumption of a jurisdictional fact that the recorded owner was a minor on the tillers' day. When a Tribunal of limited jurisdiction clutches at a jurisdiction by ignoring a statutory provision and its consequences in law on the status of parties or by a decision wholly unwarranted with regard to the jurisdictional fact, its decision is a nullity and can be set up in collateral proceeding. The Tribunal clutched at a jurisdiction not vested in it and in such a situation it cannot be disputed that the Tribunal lacked the jurisdiction to entertain any proceeding purporting to be between landlord and tenant on the erroneous assumption that tenant was still a tenant though he had long since become the deemed purchaser. The tenant has ceased to be a tenant much prior to the orders passed by the Tribunal on April 24, 1961 and July 13, 1967 holding that the date of compulsory purchase was postponed. The compulsory purchase by the operation of law had taken place as early as April 1, 1957 and that legal position cannot be wished away.

11. Mr Lalit, however, contended that the statement of Janardhan in the proceeding under Section 14 read with Section 29 of the Tenancy Act stating that he had become old and was unable to cultivate the land and he is willing to hand over possession would estop the respondent from contending to the contrary. It was further urged that respondent himself was present on the date on which Janardhan gave his statement on October 5, 1967 and he concurred with the statement of Janardhan. We are not unaware of the landed gentry exercising such influence over the tenants that in the absence of legal literacy they may make any statement contrary to their legally protected interest. A measure of agrarian reform cannot be permitted to be defeated by such devious means of the landlords. However apart from ignorance of his position assuming that Janardhan relinquished his right as tenant, landlord Ashoklal was nonetheless not entitled to recover possession because, when Janardhan, the deemed purchaser agreed to hand over possession subject to the provision of Section 15, the land would be at the disposal of Collector under Section 32-P. Landlord even in such a situation is not entitled to be restored to possession without bringing his case under Section 15 which appears not to be the case of landlord. And look at the bona fides of the landlord. Ashoklal, as soon as he managed to obtain wholly void order for possession, managed to transfer the lands to

the petitioners within a span of less than two weeks. It would thus appear that even Ashoklal and his next friend must be presumably aware of the void character of the order and therefore posthaste with a view to thwarting any further legal proceeding and confuse Janardhan, Ashoklal through his next friend managed to transfer the land to the petitioners and let the petitioners fight the deemed purchaser. A measure whereby tenant was to be made the owner of the land cannot be permitted to be defeated by such jugglery of orders by low-level revenue officers who hardly knew what they were doing. Look at the lack of knowledge of law of the Tribunal. While overlooking the relevant and impermissible. Though landlord Tarachand had died much after April 1, 1957 in proceeding under Section 32-G minor Ashoklal whose name was mutated on death of Tarachand, the authority declared the sale having been postponed even though statute had already operated and taken place. Can a statutory tribunal charged with a duty to implement the law betray such total lack of knowledge so as to be counter-productive? Same is the case with the decision of Tenancy Aval Karkoon. A proceeding under Section 14 read with Section 29 of the Tenancy Act, started on the footing that the relationship of landlord and tenant subsisted should have been thrown out as the threshold because a decade back the then tenant Janardhan had become the deemed purchaser. Therefore these orders were wholly null and void and hence non est and cannot thwart subsequent proceedings. The nullity can be set up in subsequent proceedings.

12. Janardhan was deprived of his possession by an order which had no legal sanction. He was deprived of possession on the footing that he was a tenant ignoring and overlooking the statutory event that he had become the owner. Even when the legislature passed such a revolutionary measure its knowledge was not transmitted to the persons for whose benefit the measure was enacted and there was no awakening to one's right. Undoubtedly, a communication gap and for want of legal literacy Janardhan was taken on a joy ride and was illegally made to part with possession. Subsequently, everyone realised the blunder committed by them and therefore when the proceedings started on the notice given by Janardhan, the Tribunal determined the price. Appeal of the petitioners to Assistant Collector failed, revision petition to the Maharashtra Revenue Tribunal at the instance of the petitioners failed so also the writ petition under Article 227 of the petitioners failed. All authorities concurrently held that Janardhan had become the owner and the Tribunal was right in determining the price.

13. The authority under Section 84 held that petitioners were not entitled to retain possession as their occupation was contrary to the provisions of the Tenancy Act and they had acquired no title to the land by the purported sale by Ashoklal. The direction for restoring possession to Janardhan was rightly given. A revision petition and a writ petition to the High Court at the instance of the petitioners failed.

14. We find that the High Court was right in rejecting both the petitions. These were all the contentions in this appeal and as we find no merit in it, the appeal fails and is dismissed with costs.

15. When this court issued notice, appellants were directed to deposits Rs. 1500 for costs of respondent. Respondent came here in rags and urged that he was too poor to engage a counsel. We therefore direct that the amount of Rs. 1500 deposited in this court by appellants be paid to respondent.

16. We record our appreciation assistance to the court by Mr. Jitendra Sharma who appeared amicus curiae at the request made by the court while granting special leave. He should withdraw the amount and take all steps to pay the same to the respondent.

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