

Mugaji Laxman Padule Through his Heirs

Vs

Trimbak Wasdeo Kulkarni and Others

Civil Appeal No. 950 (N) of 1973

(L. M. Sharma, N. D. Ojha JJ)

18.01.1989

JUDGMENT

SHARMA, J. –

1. The subject matter of this appeal is 13.30 acres of land in Sholapur District, within the State of Maharashtra. The appellants are the heirs of one Mugaji Laxman Padule, who was the tenant of the land for about 3 decades before the Bombay Tenancy tenant and Agricultural Land Act, 1948 (hereinafter referred to as 'the Act') was enacted. Under the provisions of the Act, Mugaji was entitled to purchase the land on satisfaction of certain conditions. Admittedly he did not satisfy these conditions and said so before the authorities concerned. The landlords who are now represented by the respondents, were claiming possession of the area under the Act. Mugaji, subsequently, made a claim to the land on another basis. On his death in 1962, his heirs the appellants were substituted. The matter was considered by several authorities under the Act, who ultimately rejected the appellants case. The appellants, thereafter moved the Bombay High Court by an application under Article 227 of the Constitution of India, which was rejected by the impugned judgment.

2. The procedure for the tenant to purchase the land is laid down in Section 32-G of the Act. It enjoins the Agricultural Lands Tribunal constituted under Section 67 to publish a public notice calling upon the tenants, the landlords and any other interested person to appear before it on a specified date. The Tribunal is also required to issue individual notices to the landlords and the tenants, and thereafter to decide the competing cases. Section 32-A limits the right of a tenant holding other lands to such area only which will raise his holding to the extent of the ceiling area. Admittedly Mugaji was already possessed of lands beyond the ceiling area and he, therefore, did not claim to have purchased the land accordance with the provisions of the Act. In a situation where a tenant is not able to successfully claim the land, it has to be disposed of in the manner provided in Section 32-P, which states that the former tenant would be summarily evicted and the land would be surrendered to the landlord. In the present case the land in question, thus, went to the landlords. According to the case of the appellants, on a partition in the family of the landlords the disputed land was allotted to the share of the respondents 2 to 4 and Mugaji purchased the same for a sum of Rs. 3000 from them on June 3, 1960. The appellants alleged that by this date, i. e. June 3, 1960 the land held by Mugaji was within the ceiling area following a partition between him and his sons on October 13, 1959.

3. The respondents moved the authorities under the Act in 1963 for recognising their claim. They did not implead the appellants and suppressed the fact of the sale of June 3, 1960 in favour of Mugaji. The Agricultural Lands Tribunal and Additional Mamlatdar relying on the enquiry under Section 32-G, wherein the right of Mugaji as a tenant was negated, upheld the claim of the present

respondents by his order dated April 28, 1963. When the appellants learnt about it, they filed an appeal before the Collector. They also challenged the earlier order passed against Mugaji under Section 32-G. The Collector remanded the matter on September 25, 1963. The Additional Mamlatdar by his order dated February 8, 1964 observed that since the tenant had purchased the suit land from the landlords, the proceeding was fit to be dropped and it was appropriate to deal with the case under Section 84-C of the Act. Section 84-C states that in respect of a transfer of any land made after 1955 if the Mamlatdar has reason to believe that the transfer was invalid on account of any of the provisions of the Act, he would issue notice and hold an enquiry and decide whether the transfer was invalid or not. In 1965 a further order was passed in the case wherein the Agricultural Lands Tribunal held the purchase by Mugaji on June 3, 1960 as lawful and upheld the claim of the appellants. The order was upheld in appeal, and respondent 3 filed a revision application before the Revenue Tribunal. It was contended on behalf of the present appellants that after the partition between Mugaji and his son in 1959 the area held by him came below the ceiling level and he was, thus, entitled to purchase the land on June 3, 1960. The Maharashtra Revenue Tribunal held that the land owned by Mugaji did not belong to the joint family and his sons had no share therein, and the alleged partition, therefore, could not be accepted or recognised. The result is that even in 1960, Mugaji was possessed of land beyond the ceiling area and he was not entitled to purchase further land from the respondents 2 to 4. Thus, having lost the case, the appellants moved the Bombay High Court, and their application was rejected by short judgment passed on August 2, 1972 which is under challenge in this appeal by special leave.

4. The learned counsel for appellants contended that the High Court was in error in assuming that the claim of the appellants was based on the right of Mugaji under Section 32-G of the Act in the capacity of tenant; and also in relying on Section 10 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. The learned counsel appears to be right but for this reason the appellants cannot succeed. The ban on transfers which may affect the ceiling law is more severe under the Bombay Tenancy and Agricultural Lands Act, 1948. Section 63 directs that no sale of land shall be valid in favour of a person who will after such sale hold land exceeding two thirds of the ceiling area determined under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. The fact that on Mugaji in 1962 his earlier holdings were inherited by his heirs and the respective holdings, therefore, came below the ceiling area is immaterial, because the disputed land was purchased by Mugaji himself in 1960. It has to be remembered that, as has been held by the Revenue Tribunal, the other lands exclusively belonged to Mugaji and exceeded, be held to be illegal and inoperative. Consequently, the appellants must lose although for slightly different reasons than those given by the High Court. The appeal is accordingly dismissed but in the circumstances without costs.

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