

SUPREME COURT OF INDIA

Mahadeo Vithoba Nikam

Vs.

Gajanan Pandurang Kulkarni

(K Singh and S S Ahmad JJ.)

22.11.1996

ORDER

1. Special leave granted.

2. This is a tenant's appeal. The appellant's case is that he was in possession of the land for over 50 years. He further states that on the appointed date, i.e., 1-4-1957 he was in possession. He applied for purchase of the land under Section 32-G(3) of the Bombay Tenancy & Agricultural Lands Act, 1948 (for short "the Act"). The application was decided by the Additional Tehsildar & ALT, Karad. The order of the Tehsildar is as under:

"The land bearing S.No. 57/1 measuring A.1 G. 24 assessed at Rs 7-81 now Gat No. 252 and S. No. 56/1 measuring A.2 G.20 Pk. O-30 assessed at Rs 11-06 now numbered as Gat No. 249 are owned by the above landlord. The enquiry was made in this case previously in the year 1980 and it was stayed as civil suit was pending in the Court. Case was again fixed on 10-1-1985. The tenant has given statement that he will produce rent receipts on 21-1-1985. However, the landlord and the advocate on behalf of the tenant gave applications for adjournments from time to time. The last date for hearing was fixed on 18-5-1985. The tenant remained absent on that day. Statement of the peon to that effect recorded is in the case papers. This shows that the tenant is not interested in purchase of these lands. The purchase of land by the tenant is therefore declared ineffective."

3. It is not disputed that on 22-5-1985 when the above quoted order was passed the appellant was not present before the Tehsildar. According to the learned counsel for the appellant, the order was required to be communicated to him under the provisions of Section 32-G(3) of the Act. This was not done. He came to know about the order after a period of about 8 years. He filed appeal against the order of the Tehsildar which was dismissed on the ground of delay. The revision filed by the appellant was also dismissed. The High Court upheld the orders of the courts below.

4. Ordinarily, we would not have interfered in a case like this because the appellant approached the appellate authority after a very long period. But keeping in view the facts and circumstances of the case and particularly the fact that the appellant has been in possession of the land for over five decades and that he was also in possession on the appointed date, we are inclined to interfere. What has weighed with us is that the Additional Tehsildar has not even gone into the merits of the case.

Even if the appellant was not present before him, the Tehsildar should have gone into the merits of the case on the basis of the record and come to the conclusion whether the appellant was entitled to purchase the land or not.

5. We allow the appeal; set aside the order of the Additional Tehsildar dated 22-5-1985 and subsequent orders of the appellate authority; revisional authority and the High Court. We remand the case back to the Additional Tehsildar & ALT, Karad, State of Maharashtra for fresh decision on merits after hearing the parties.

6. In case the Additional Tehsildar comes to the conclusion that the appellant is entitled to purchase the land he should be put into possession of the land immediately. We direct the Tehsildar to complete the proceedings finally within four months.

7. Parties to appear before the Tehsildar on 24-12-1996.

8. No costs.