Kanhu

Vs

Pushpawati and Another

Civil Appeal No. 1429 of 1984

(S. B. Majmudar, M. Jagannadhar Rao, S. M. Quadri, G. N. Ray JJ)

04.02.1998

ORDER

1. The appellant before us has felt aggrieved by the decision rendered by the High Court of Bombay dismissing his writ petition under Article 227 of the Constitution of India. That writ petition was directed against the order of the learned Single Member of the Maharashtra Revenue Tribunal exercising jurisdiction under Section Ill of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. Section 111 of the Act reads as under :

> "111. (1) Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1957, an application for revision may be made in the Maharashtra Revenue Tribunal constituted under the said Act against any order of the Collector on the following grounds only -
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> (a) that the order of the Collector was contrary to law; or
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> (b) that the Collector failed to determine some material issue of law; or
>
> (c) that there was a substantial defect in following the procedure prescribed by this Act, which has resulted in the miscarriage of justice.
>
> (2) In deciding applications under this section the Maharashtra Revenue Tribunal shall follow the procedure which may be prescribed by rules made under this Act after consultation with the Maharashtra Revenue Tribunal."

2. It is therefore, obvious that the Tribunal could interfere with the orders of the authorities below if there is any error of law and could not re-examine the pure questions of fact.

3. The appellant's case before the tenancy authority under the Act was that on the appointed date i.e. 1-4-1961 he was the sitting tenant of the lands bearing Survey Nos. 226 and 227 situated in Village Mungla in Akola District, Maharashtra State. He was entitled to be the deemed purchaser thereof. His case before the tenancy authority in the first instance was that he was inducted as a tenant by one Jaisingrao in 1951-52 by an oral lease on payment of Rs 300 rental per year. At the stage of evidence he took a somersault and came forward with a case that he was a tenant inducted by the landlady Pushpawati Bai and he was paying half crop share to her through her servant. The tenancy authority i.e. the Tehsildar accepted the appellant's version that he was a tenant of the lands on the appointed day and he was therefore, entitled to be the deemed purchaser. The appellate authority i.e. the Sub-Divisional Officer confirmed the decision of the Tehsildar. The heirs of the landlady

preferred revision before the Tribunal. The Tribunal rightly posed the question whether the appellant had discharged the burden of proof in establishing his case of oral tenancy vis-a-vis rightful owner of the land. It is pertinent to note that neither the first authority nor the appellate court had considered this aspect. The Tribunal in that connection addressed itself to the moot question whether the appellant had established his case of oral tenancy from the rightful owner. Taking the appellant's case at the highest that he was inducted by Jaisingrao it was found that Jaisingrao was not the owner of the land and as there was no finding to the effect that the landlady Pushpawati Bai had ever inducted the appellate as tenant, the Tribunal allowed the revision of the respondents. The appellant's writ petition under Article 227 of the Constitution was dismissed by the High Court agreeing with the approach of the Tribunal which had noted that the decisions rendered by the courts below were erroneous in law. In our view, no fault can be found with the decision of the High Court. It is not a case in which the Tribunal simply reappreciated the evidence and thereafter set aside the entire finding of fact. On the contrary, it is a case in which the authorities below had not addressed themselves on the real question as to whether there was any lawful tenancy between the appellant on the one hand and the real owner of the land on the other band. In absence of such finding of fact, the appellant could not be given the benefit of deemed purchase in his favour. As that error of law was committed by the authorities below, the Tribunal was justified in reconsidering this aspect from that limited angle. In the result, therefore, this appeal fails and is dismissed. Ad interim relief granted on 2-3-1984 vacated. No costs.