SUPREME COURT OF INDIA

Ramesh Ramnarayan Dangare

Vs.

Vithabai

C.A.No.58 of 1999

(Shivraj V.Patil and B.N.Srikrishna JJ.)

17.09.2004

JUDGMENT

Shivaraj V. Patil, J.

1. One Bala Laxman Landge was the land owner of survey nos. 36/8, 36/9, 27/5 and 47/2 situated at village Induri in Ahmednagar District. He sold the land survey no. 47/2 in favour of the appellant under registered sale deed dated 27.11.1970. Proceedings were started by the land owner under Section 84-C of the *Bombay Tenancy and Agricultural Lands Act, 1948* (for short 'the Act') before the tenancy authority contending that the sale deed pertaining to land survey no. 47/2 was invalid as the appellant was not an agriculturist. The authority, after hearing the parties by its order dated 30.8.1971 on the basis of evidence available, concluded that appellant was an agriculturist. In that view, the proceedings were dropped. This order attained finality as its validity was not challenged in any further proceedings.

2. Two lease deeds were executed by the land owner in favour of the appellant on 7.3.1969 for lease period of 10 years in respect of survey nos. 36/8 and 36/9. Subsequently these lands were purchased by the appellant under registered sale deeds dated 9.6.1976. A lease deed was executed by land owner Balaji in favour of the appellant on 7.3.1975 for a period of 99 years in respect of the land bearing survey no. 27/5. The original land owner Balaji died on 29.8.1980. Immediately after his death, the respondents claiming to be his legal heirs, filed three tenancy cases challenging the validity of sale deeds in respect of survey no. 36/8 and 36/9 and lease deed relating to survey no. 27/5. Additional Tehsildar, Akola, dismissed all the three applications made by the respondents. Aggrieved by the said order, the respondents filed three appeals before the Sub-Divisional Officer, questioning the validity and correctness of the order passed by the Tehsildar. The Sub- Divisional Officer (SDO), by a detailed order, dismissed the appeals concurring with the findings recorded by the Tehsildar.

3. Thereafter, the respondents filed revision petitions before the Maharashtra Revenue Tribunal, Pune. By a common order, the said Tribunal allowed the revision petitions and set aside the order of SDO in respect of survey nos. 36/8 and 36/9 and remanded the case in respect of survey no. 27/5 for holding inquiry under Section 32-P of the Act. The appellant

filed the writ petitions before the High Court questioning the validity and correctness of the common order passed by the Tribunal. The High Court dismissed the writ petitions affirming the order of the Tribunal.

4. Hence, these appeals.

5. The learned senior counsel for the appellant urged that (1) the Tribunal and the High Court committed an error in rejecting the case of the appellant when his status as an agriculturist had been declared by the competent authority in earlier proceeding in relation to survey no. 47/2 by the order of the competent authority dated 30.8.1971 which order remained unchallenged; (2) the Tribunal exceeded its jurisdiction while exercising revisional power under Section 76 of the Act and has acted as an appellate authority by re-appreciating the evidence in reversing the order of the appellate authority.

6. In opposition, the learned counsel for the respondents made submissions in support of the impugned order stating that the Tribunal on proper appreciati0n of respective contentions in the light of the material on record passed the order which was rightly affirmed by the High Court in the writ petitions.

7. On the earlier occasion in the proceedings initiated under Section 84-C of the Act in respect of survey no. 47/2 between the same parties, the competent authority recorded a finding in its order dated 30.8.1971 that the appellant was an agriculturist.

8. This order attained finality as it was not challenged any further. In that case also, it was contended that survey no. 47/2 was sold to the appellant by the original owner on 27.11.1970 under registered sale deed; since the appellant was not an agriculturist, the sale transaction being in contravention of Section 63/64 of the Act was invalid. There also, a specific issue was raised as to whether the appellant was an agriculturist and the same was answered in favour of the appellant holding that he was an agriculturist by the order dated 30.8.1971 referred to above. The Additional Tehsildar, Akola, referred to the deposition of the appellant and the documentary evidence produced by him to show that the appellant's family paid land revenue to Government and that the land revenue receipts proved that there were agricultural lands in the name of the father of the appellant. It was also noticed that the appellant had produced extract of village form No. VII-XII in respect of survey no. 11/1 of Thugaon Khurd indicating that the said land was standing in the name of the appellant. In the order of the Tehsildar, it was also noticed that the appellant had produced documentary evidence in tenancy case No. 14/1981 pertaining to survey no. 36/9. The Tehsildar's order also refers to the order made by the competent authority on 30.8.1971 concluding that the appellant was an agriculturist while dealing with the case relating to survey no. 47/2 on identical facts. It was also pointed out that the said decision has been recorded in the village records vide M.E. No. 2503 of village Induri. Thus, the Tehsildar after elaborately considering the evidence, recorded the findings that the land owners failed to prove their case that the appellant was an unauthorized holder of the lands and that he was not an agriculturist during the relevant period. Consequently, he dismissed the applications filed by the land owners. The Sub-Divisional Officer in the appeals filed by the land owners challenging the correctness and

legality of the order of the Tehsildar, on re-appreciation of the entire evidence, the pleadings and the contentions urged on behalf of the parties, by a detailed and considered order, dismissed the appeals. In the said order, it is stated that the learned Advocate for the land owners raised only one point as to whether the appellant was an agriculturist. Dealing with the said point, the SDO took note of the fact that the appellant was already held to be an agriculturist in the case pertaining to survey no. 47/2 decided by the competent authority on 30.8.1971. He also observed that the land owners did not establish that the appellant was not an agriculturist by adducing documentary evidence. He was of the view that once appellant had been declared as an agriculturist in one case at the relevant period, that finding when remained unchallenged, was binding on the parties. The argument that the suit lands in previous case and the present cases were different and the parties were also not same, was rejected holding that the parties in the cases were not different but the land owners came up as successors-in-interest. It may be stated here itself that the original owner did not challenge the transaction of sale and lease of lands during his life time. The SDO also found that the appeals filed by the land owners were time-barred and that the land owners did not put forth any grounds for condonation of delay. Thus, having regard to all aspects, the SDO agreeing with the findings recorded by Tehsildar, dismissed the appeals. The Maharashtra Revenue Tribunal in the revisions filed by the land owners exercising revisional power set aside the orders of the SDO as regards survey no. 36/8 and 36/9. However, the case as regards suit land in survey no. 27/5 was concerned, the application filed by the land owners was remanded to make enquiry under Section 32-P within one year. The Tribunal decided the revision petitions on a wrong footing that there was admission of the appellant that at the time of first transaction of lease of the lands in survey nos. 36/8 and 36/9 on 7.3.1969, he had no land of his own or of his family for cultivation; he and his father were pursuing business other than agriculture. Having seen the statement of the appellant, we do not find any such clear and unambiguous admission that he was not an agriculturist on 7.3.1969. Assuming that he and his father were doing business, that did not necessarily lead to the conclusion that the appellant was not an agriculturist. Between the same parties when there was a categorical finding and decision that the appellant was an agriculturist, as is evident from the order dated 30.8.1971 made by the competent authority, the Tribunal committed a serious error in not considering the effect of this order. The reversal of concurrent findings of fact recorded by the Tehsildar and SDO without dislodging the reasons given by them for conclusion that the appellant was an agriculturist, cannot be sustained. Having regard to scope of revisional power under Section 76 of the Act in terms of Section 76(1)(a), (b) and (c), in our view, the Tribunal exceeded its jurisdiction in reversing the concurrent findings of fact. The Tribunal simply proceeded on the ground that when the lands were leased to the appellant in 1969, he was not an agriculturist and subsequently the sale deeds made in favour of the appellant were invalid, that too after accepting the status of the appellant as an agriculturist while dealing with case as regards the land survey no. 27/5. The finding of the Tribunal is opposed to the documentary evidence as well as a binding decision that the appellant was an agriculturist at the relevant period. As regards the lands in survey no. 27/5, the Tribunal taking note of the fact that the status of the appellant was declared as agriculturist in tenancy case No. 84-C/29/70 decided on 30.8.1971 and that the lease deed was executed on 7.3.1975 for a period of 99 years, it was held that the transaction was valid but, however, in regard to this survey no. 27/5, the Tribunal has observed that the lease for a period of 99 years was made on

7.3.1975 after tiller's day i.e. 1.4.1957, so provisions of Section 32-O of the Act are applicable and the tenant i.e. the appellant was under obligation to give intimation of his willingness to purchase the suit land within one year from taking of lease; whether such intimation was given or not was required to be enquired into by the Tehsildar. In that view, the Tribunal remitted the case to the Tehsildar for holding enquiry under Section 32-P of the Act only so far related to survey no. 27/5.

9. Unfortunately, the High Court in the impugned order committed the same error of proceeding on the basis of the so-called admission alleged to have been made by the appellant. The High Court simply agreed with the finding recorded by the Tribunal on the basis of admission. The High Court also did not consider the effective and valid finding recorded in the earlier proceedings between the same parties in respect of survey no. 47/2 that the appellant was an agriculturist. In other words, the High Court has affirmed the decision of the Tribunal without correctly examining the contentions and the legal position applicable to them. We are of the view that the impugned judgment cannot be upheld except to the extent affirming the order of the Tribunal remanding the case to the Tehsildar for holding enquiry under Section 32-P of the Act.

10. In view of what is stated above, the impugned judgment is set aside except to the extent of upholding the order of Tribunal in remitting the case to the Tehsildar for holding enquiry under Section 32-P of the Act so far it related only to survey no. 27/5, keeping all the contentions of the parties open to be urged before the Tehsildar. The appeals are allowed accordingly. No costs.