

SUPREME COURT OF INDIA

Ambadas Sitaram More

Vs.

Murlidhar Digamber

C.A.Nos.6727-6728 of 2001

(B.P.Singh and S.B.Sinha JJ.)

07.04.2005

ORDER

1. In these appeals by special leave the appellant claiming to be a tenant under the Bombay Tenancy Act has impugned the judgment and order of the High Court of Judicature at Bombay in Writ Petition No. 568 of 2000 whereby the High Court affirmed the revisional order passed by the Member, Maharashtra Revenue Tribunal dated 26.11.1999 whereby he had allowed the Revision Petition filed by the respondent landlord.

2. It appears from the record placed before us that an application was filed by the appellant herein under Section 32G of the *Bombay Tenancy & Agricultural Lands Act, 1948* for fixation of the price of the lands which the appellant tenant was entitled to purchase. The Additional Tahsildar by his Order dated 10th June, 1991 allowed the application and fixed the price of the lands in question which measured 7 hectares and 71 ares.

3. The respondent landlord preferred an appeal which came to be disposed of by the Sub-Divisional Officer, the appellate authority, in Tenancy Appeal No. 46 of 1991 by Order dated 22nd May, 1995. The Appellate Authority concurring with the finding recorded by the Tehsildar dismissed the appeal.

4. The landlords then preferred a revision before the Maharashtra Revenue Tribunal, Pune on 31.7.1995 and the said Revision Petition was allowed. The Tribunal recorded two main findings. It held that the partition effected in the family of the tenant in the year 1956 was effected only to defraud and defeat the provisions of the Tenancy Act as well as the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. It also held that Sitaram More, the original tenant who was the landholder, and on whose behalf a return was filed in the year 1975, had shown 102 acres of lands in his possession. The Tribunal held that the Tehsildar as well as the Appellate Authority did not carefully peruse the record of proceedings and having over looked them recorded findings which could not be sustained. Since the ceiling area under the Tenancy Act was only 48 acres and under the Maharashtra Ceiling Act as 54 acres, on the basis of the return filed by the tenant it could not be disputed that he possessed lands which were far in excess of the ceiling area under either of the two

Acts. He, therefore, set aside the order of the Tehsildar as well as the Appellate Authority and declared that the tenant was not entitled to purchase the lands in question.

5. The appellant challenged the order of the Tribunal before the High Court. It appears from the order of the High Court that an argument was advanced before the High Court that the partition could not be held to be a mere device to defraud the provisions of the Tenancy Act and the authorities had not considered the circumstances in which such a partition was effected as early as in the year 1956. It was contended before the High Court that in the exercise of its revisional jurisdiction the Tribunal ought not to have set aside the findings of the authorities under the Act and dismiss the application for purchase of the lands in question. From the judgment of the High Court it does not appear that any argument was advanced before the High Court that the finding of the Tribunal that the tenant held land in excess of the ceiling area, and that on his showing he held land to the extent of 102 acres, was erroneous.

6. Mr. Bhimrao N. Naik, learned senior counsel appearing on behalf of the appellant submitted that this was a case in which the Tribunal ought to have set aside the concurrent findings of the authorities under the Act, and at the best it could have remanded the matter for a clear finding on the question as to what was the holding of the tenant on the postponed date, namely 7th January, 1970. He also submitted that in the proceedings under the Ceiling Act it was held that the tenant held lands in excess to the extent of 15 hectares 43 ares = 38 acres 23 guntas were in fact surrendered to the landlords. Therefore, what remained in possession of the tenant was only 54 acres of land. Under the Tenancy Act he was entitled to retain to the extent of 48 acres, and at best he could be deprived of 6 acres of land.

7. Mr. Makarand D. Adkar, counsel appearing on behalf of the respondent landlord submitted that the finding recorded under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 was immaterial. The findings in those proceedings were recorded on 29th March, 1976, and subsequently the appellant may have surrendered lands in favour of the landlord. The question which arose for consideration in the instant matter was as to the holding of the land-holder on dated 7th January, 1970. In view of the fact that a return was filed showing 102 acres in his possession in the year 1975 established the fact that he held lands in excess of the ceiling area. The Tribunal was therefore, justified in allowing the revision petition. He further submitted that it appears from the order of the High Court, and even from the Writ Petition filed before the High Court that the appellant had never challenged the finding of the Tribunal that he held lands in excess of the ceiling area, namely he had lands to the extent of 102 acres as evident from the return filed on his behalf in the year 1975.

8. We have considered the submissions urged on behalf of the parties and perused the orders of the authorities under the Act as well as by the High Court. While it is true that the finding that the partition was effected to defeat the provisions of the Tenancy Act is not based on any evidence on record, at least none is disclosed in the order of the Tribunal, the other finding namely that the tenant was in possession of lands far in excess of the ceiling area is based on evidence which cannot be challenged, namely the admission of the tenant himself in his

return filed in the year 1975 that he held 102 acres of land. Such being the factual position, we find no reason to interfere with the order of the High Court.

9. The appeals are accordingly dismissed.