

PETITIONER:
MUGAJI LAXMAN PADULE THROUGH HIS HEIRS

Vs.

RESPONDENT:
TRIMBAK WASUDEO KULKARNI & ORS.

DATE OF JUDGMENT 18/01/1989

BENCH:
SHARMA, L.M. (J)
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SHARMA, L.M. (J)
OJHA, N.D. (J)

CITATION:
1989 AIR 995 1989 SCR (1) 238
1989 SCC Supl. (1) 305 JT 1989 (1) 297
1989 SCALE (1) 186

ACT:

Bombay Tenancy and Agricultural Lands Act, 1948: Sections 32A, 32G, 32P, 63 and 84C--Purchase of land by person who holds land in excess of ceiling area--Validity of such purchase.

HEADNOTE:

The appellants are the heirs of one A who was the tenant of the land in question for about three decades before the Bombay Tenancy and Agricultural Land Act, 1948 was enacted. Though he was entitled to purchase the land on satisfaction of certain conditions, it was admitted before the authorities that he did not satisfy the conditions. The landlords claimed possession of the land. A was already possessed of land beyond the ceiling area prescribed by Sec. 32A of the Act and he, therefore, did not claim to have purchased the land in accordance with the provisions of the Act. Since in such cases, Sec. 32P provides that the former tenant would be summarily evicted and the land would be surrendered to the landlord, the land in question went to the landlords. The appellants claimed that on a partition in the family of the landlords the land in question was allotted to some of the respondents and A purchased the same for Rs. 3000 on 3.6.1960. It was contended that the land-holding of A was within the ceiling area following the partition in 1959 between him and his sons.

Suppressing the sale of the land and without impleading the appellants, the respondents moved the authorities in 1963 for recognising their claim. The Agricultural Land Tribunal and the Additional Mamlatdar upheld the claim of the respondents, relying on an enquiry under Section 32G, wherein the right of A as a tenant was negatived. The appellants filed an appeal before the collector, who remanded the matter to the Mamlatdar. The Additional Mamlatdar observed that since the tenant had purchased the land from the landlords, the proceeding was fit to be dropped and it would be appropriate to deal with the case under Section 84C which provided holding of an enquiry to decide the validity of the transfer. After such enquiry the Agricultural Lands Tribunal held that the purchase made on 3.6.1960 by A was lawful and upheld the claim of the appellants. This was confirmed on

appeal and one of the respondents filed a revision application before the

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Revenue Tribunal. The Tribunal held that the land owned by A did not belong to the joint family and his sons had no share therein and so the alleged partition could not be accepted or recognised. And in 1960, A was possessed of land beyond the ceiling area and was not entitled to purchase further land from respondents. The appellant moved the High Court under Article 227 of the Constitution. The High Court rejected the petition. This appeal, by Special Leave, is against the High Court's Judgment.

Dismissing the appeal,

HELD: The ban on transfers which may affect the ceiling law is more severe under the Bombay Tenancy and Agricultural Lands Act, 1948. Sec. 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 the death of A 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 A himself in 1960. It has to be remembered that, as has been held by the Revenue Tribunal, the other lands exclusively belonged to A and exceeded the ceiling area. The sale on 3.6.1960 must, therefore, be held to be illegal and inoperative. [241G-H; 242A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 950 (N) of 1973.

From the Judgment and Order dated 2.8.1972 of the Bombay High Court in Special Civil Application No. 2826 of 1969.

Pinaki Misra, P.H. Parekh and Ms. Sunita Sharma for the Appellants.

V .N. Ganpule and V.D. Khanna for the Respondents.

The Judgment of the Court was delivered by

SHARMA, J. 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 and Agricultural Land Act, 1948 (hereinafter referred to as the Act) was

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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 Sec. 32G of the Act. It enjoins the Agricultural Land Tribunal constituted under Sec. 67 to publish a public notice calling upon the tenants, the landlords and any other interested person to appear before it on a speci-

fied date. The Tribunal is also required to issue individual notices to the landlords and the tenants, and thereafter to decide the competing cases. Sec. 32A 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 in 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 Sec. 32P, 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. 3,000 from them on 3.6.1960. The appellants alleged that by this date, i.e., 3.6.1960 the land held by Mugaji was within the ceiling area following a partition between him and his sons on 13.10.1959.

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 on 3.6.1960 in favour of Mugaji. The Agricultural Lands Tribunal and Additional Mamlatdar relying on the enquiry under Sec. 32G, wherein the right of Mugaji as a tenant was negatived, upheld the claim of the present respondents by his order dated 28.4.1963. When the appellants learnt about it, they filed an appeal before the Collector. They also challenged the earlier order

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passed against Mugaji under Sec. 32G. The Collector remanded the matter on 25.9.1963. The Additional Mamlatdar by his order dated 8.2.1964 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 Sec. 84C of the Act. Sec. 84C 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 is invalid or not. In 1965 a further order was passed in the case wherein the Agricultural Lands Tribunal held the purchase by Mugaji on 3.6.1960 as lawful and upheld the claim of the appellants. The order was upheld in appeal, and the respondent No. 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 sons in 1959 the area held by him came below the ceiling level and he was, thus, entitled to purchase the land on 3.6.1960. 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 a short judgment passed on 2.8.1972 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 Sec. 32G

of the Act in the capacity of a tenant; and also in relying on Sec. 10 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. The learned counsel appears to be right but for this reason the appellants can not succeed. The ban on transfers which may affect the ceiling law is more severe under the Bombay Tenancy and Agricultural Lands Act, 1948. Sec. 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 the death of 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

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lands exclusively belonged to Mugaji and exceeded the ceiling area. The sale on 3.6.1960 must, therefore, 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.

G.N.

Appeal dis-

missed.

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