

IX

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6727-6728 OF 2001

AMBADAS SITARAM MORE

Appellant

(s)

VERSUS

MURLIDHAR DIGAMBER AND ANR.

Respondent

(s)

(With office report )

Date: 07/04/2005 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE S.B. SINHA

For Appellant(s) Mr. Bhimrao N. Naik, Sr.Adv.

Mr. A.S. Bhasme, Adv.

Mr. Sanjay Dubey, Adv.

For Respondent(s) Mr. Makarand D.Adkar, Adv.  
Mr. Vijay Kumar, Adv.  
Mr. Vishwajit Singh,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeals are dismissed in terms of the signed judgment.

(SUKHBIR PAUL KAUR)

(VIJAY DHAWAN)

COURT MASTER

COURT MASTER

(Signed Non-Reportable Judgment is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6727-6728 OF 2001

AMBADAS SITARAM MORE

.....APPELLANT(S)

VERSUS

MURLIDHAR DIGAMBER AND ANR.

.....RESPONDENT(S)

J U D G M E N T

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.

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

...2/-

-2-

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.

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.

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

...3/-

-3-

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.

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

...4/-

-4-

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.

Mr. Bhimrao N. Naik, learned senior counsel appearing on behalf of the appellant submitted that this was a case in which the Tribunal ought not to have set aside the concurrent findings of the authorities under the Act, and at 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 and pursuant thereto the surplus lands 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

...5/-

-5-

entitled to retain to the extent of 48 acres, and at best he could be deprived of 6 acres of land.

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.

...6/-

-6-

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.

The appeals are accordingly dismissed.

.....J.

(B.P.SINGH)

.....J.

(S.B.SINHA)

NEW DELHI;

APRIL 7, 2005