GOVINDA BALA PATIL (D) BY LRS. A

v.

GANPATI RAMCHANDRA NAIKWADE (D) BY LRS.

(Civil Appeal No. 1675 of 2004)

JULY 29, 2013 B

[CHANDRAMAULI KR. PRASAD AND V. GOPALA GOWDA, JJ.]

Bombay Tenancy and Agricultural Lands Act, 1948: C

s.32G – Proceedings under – Initiated by tenant – Rejected by Additional Tehsildar holding that the land was leased out for growing sugarcane – Appellate-authority set it aside holding that landlord failed to prove the specific purpose of the lease – Revisional Court gave its finding in favour of landlord, and held that the land was leased out for growing sugarcane – High Court, in writ petition set aside the order of revisional court – Held: The order of the authority was perverse as its conclusion was without reference to the evidence – Therefore, High Court erred in setting aside the order of revisional court. D E

s. 43A – Applicability of – Whether applicable to single person – High Court in view of plural expressions in the provision held that the provision covers only those cases in which lease is given to more than one person – Held: In view of s.13 of Bombay General Clauses Act which provides that singular shall include the plural and vice versa, *plural expression will include singular – Thus, s.43A would be applicable to single person – Bombay General ClausesAct, 1904 – s.13.* F G

Revision – Jurisdiction of revisional court – Scope of – Held: Revisional court ordinarily does not reappraise the evidence – But where finding recorded by appellate authority is perverse, it can upset the finding of appellate authority.

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A *Evidence – Nature of evidence – In agricultural tenancy case – Held: Such cases are decided on the preponderance of probability – Principle of proof beyond reasonable doubt does not apply in such proceedings.*

B **The respondent-tenant initiated proceedings u/s. 32G of Bombay Tenancy and Agricultural Lands Act, 1948 for determination of price of the land on the pela that he shall be deemed to have purchased the land. The Additional Tehsildar held that the land in question was leased out by the appellant land-holder for growing sugarcane and** C **accordingly dropped the proceedings. Appellate authority allowed the appeal of the tenant on giving finding that the landlord failed to prove the specific purpose of the lease. Landlord filed revision petition, which was allowed by Maharashtra Revenue Tribunal setting aside the order of** D **the appellate authority and restoring the order of the Additional Tehsildar. Tenant's writ petition was allowed by High Court setting aside the order of the Tribunal. It was held that the land was not leased out for cultivation of sugarcane and further held that s.43A of the Act would** E **not govern the field as the lease in question was not given to more than one person. Hence the present appeal by the landlord.**

Allowing the appeal, the Court

F **HELD: 1.1. The revisional court ordinarily does not reappraise the evidence, but in case it is found that the finding recorded by the appellate authority is perverse, nothing prevents it from upsetting the finding of the appellate authority. If the appellate authority records a** G **finding without consideration of the relevant material or on consideration of irrelevant material or the finding arrived at is such that no person duly instructed in law can reach at that finding, such finding in law is called perverse and in such a contingency, it is within the** H **jurisdiction of the revisional court to set aside the said**

finding. [Para 6] [467-F-H] A

1.2. In the present case, the finding recorded by the Sub-Divisional Officer (appellate authority) is patently perverse. The Sub-Divisional Officer has referred to the statement of the landlord and his witnesses that the land was leased out for growing sugarcane but rejected the evidence on the ground that the "landlord and his witnesses have not been able to prove the purpose of lease beyond reasonable doubt" and ultimately held that "the landlord has failed to prove the specific purpose of the lease." While doing so, the Sub-Divisional Officer has lost sight of the basic principle that the nature of the proceeding is decided on the preponderance of probability and the principle of proof beyond reasonable doubt does not apply in such proceeding. Further, appellate-authority, without assigning any reason, has rejected the evidence of the landlord and his witnesses and jumped to a conclusion without reference to the evidence. The Tribunal (the revisional court) has recorded the finding that it was leased out for the purpose of growing sugarcane. The Tribunal has referred to the evidence of the landlord and his witnesses and further to the record of rights and from that it has come to the aforesaid conclusion. Thus the Tribunal was well within its right in setting aside the finding of the appellate-authority and holding that the land was leased out for the purpose of growing sugarcane. That being so, the High Court erred in setting aside the finding of the Tribunal. Accordingly, the finding of the Additional Tahsildar as affirmed by the Tribunal is restored and held that the land was leased out for cultivation of sugarcane. [Paras 7 and 8] [468-A-G] B C D E F G

2. Section 43A excludes the application of various provisions of the Act including 33C in respect of "leases" granted to "any bodies or persons" inter alia for the H

purpose of cultivation of sugarcane. However, in view of the plural expression "any bodies" or "persons", the High Court has come to the conclusion that it shall cover only those cases in which lease has been given to more than one person and not singular person. Section 13 of the Bombay General Clauses Act, 1904 *inter alia* provides that words in the singular shall include the plural and *vice versa*. In the plural word "persons", there is nothing repugnant in the subject or context so that it may not be read as singular. Sub-section (b) of Section 43A(1) of the Act has also used the plural expression "leases" and if the reasoning of the High Court is accepted, the aforesaid provision shall cover only such cases where there is more than one lease. This will defeat the very purpose of the Act. [Paras 10 and 11] [469-G-H; 470-A, E-F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1675 of 2004.

From the Judgment and Order dated 08.01.2002 of the High Court of Judicature at Bombay in Writ Petition No. 3807 of 1988.

Dr. Rajeev B. Masodkar, Anil Kumar Jha, for the Appellants.

Kailash Pandey, Ranjeet Singh, K. V. Sreekumar, for the Respondents.

The Judgment of the Court was delivered by

CHANDRAMAULI KR. PRASAD, J. 1. This appeal arises out of a proceeding under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948. One Govinda Bala Patil, since deceased, the predecessor-in-interest of the appellants, hereinafter referred to as "the landlord", owned land being R.S. No. 51 admeasuring 35 gunthas at Village Pandewadi within Taluka Radhanagari in the District of

Kolhapur. A proceeding under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as "the Act", was initiated by one Rama Dattu Naikwade, predecessor-in-interest of the respondents, for determination of price of the land on the plea that he shall be deemed to have purchased the land. The Additional Tahsildar & ALT, Radhanagari, at the first instance, held that the land in question was leased out for growing sugarcane and, accordingly, dropped the proceeding. However, in appeal, the said order was set aside and the matter ultimately remitted back to him to hold fresh inquiry. Accordingly, the Additional Tahsildar held fresh inquiry and again by its order dated 10th of December, 1981 reiterated its earlier finding and held that the land was leased out for growing sugarcane and the proceeding was dropped. The tenant thereafter preferred appeal which was heard by the Sub-Divisional Officer, Shahuwadi Division, Kolhapur who allowed the appeal and set aside the order of the Additional Tahsildar on its finding that the landlord has failed to prove the specific purpose of the lease. The landlord then preferred revision before the Maharashtra Revenue Tribunal, Kolhapur, hereinafter referred to as "the Tribunal", which set aside the order of the Sub-Divisional Officer and restored that of the Additional Tahsildar. While doing so, the Tribunal held as follows:

> "In the instant case as I have stated earlier there is sufficient evidence on record to show on the basis of entries in the "E" Patrak that suit land was continuously growing sugarcane crop from the year 1946 and this particular fact is also corroborated to some extent by two independent witnesses examined by the applicant-landlords. So in this case it cannot be said that no agreement of lease was established between the parties and in as much as sugarcane crop was grown in the suit land since the year 1946, there are reasons to believe that the main purpose of lease was for growing sugarcane crop."

A 2. The tenant assailed the aforesaid order before the High Court in a writ petition. The High Court by the impugned order set aside the order of the Tribunal and held that the Tribunal erred in setting aside the finding of the Sub-Divisional Officer that the land in question was not leased out for sugarcane
B cultivation. The High Court, in this connection, has observed as follows:

> "12. While toppling the judgment and order passed by the Sub-Divisional Officer, Shahuwadi, the learned Member of M.R.T. has dislodged the findings of facts recorded by the
C said authority. After examining the judgment and order passed by the S.D.O. Shahuwadi, this Court comes to the conclusion that the findings recorded by the S.D.O. Shahuwadi were consistent with the evidence on record. The approach adopted by him was correct, proper and
D legal. When that was so, it was beyond the jurisdiction of the learned Member of M.R.T. to dislodge it in the revision. The findings of facts consistent with evidence and law cannot be dislodged by revisional authority."

E 3. The High Court has further held that Section 43A of the Act will not govern the field as the lease in question was not given to more than one person. At this juncture, we consider it appropriate to reproduce the reasoning of the High Court in this regard:

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> "11. Section 43A of the Bombay Tenancy Act was exempting certain categories of the cultivation of the land and the persons cultivating it for growing sugarcane, for making improvement in the financial and social status of the peasants using the land for growing sugarcane, fruits
G or flowers or for the breeding of livestock. The words which are used in sub-clause (b) of Section 43A(1) clearly provide that such exemption was available to the leases of land granted by "any bodies" or "persons" other than those mentioned in clause (a) for cultivation of sugarcane
H or the growing of fruits or flowers or for breeding of

livestock. The words used in sub-clause (b) "any bodies" or "persons" cannot be made applicable to a single person. Such an attempt would be throttling the spirit of enacting Section 43A of the Bombay Tenancy Act....."

4. We have heard Dr. Rajeev B. Masodkar, learned counsel for the appellants whereas respondents are represented by Mr. Kailash Pandey, Advocate.

5. Dr. Masodkar contends that the finding recorded by the Tribunal that the lease was for cultivation of sugarcane has been set aside by the High Court without assigning any reason and it merely stated "that the finding recorded by the SDO Shahuwadi is consistent with the evidence on record" and "the approach adopted by him was correct, proper and legal" and in such circumstances "it was beyond the jurisdiction" of the Tribunal "to dislodge it in the revision". He points out that the Sub-Divisional Officer had jumped to a finding without assigning any reason and hence it was open for the Tribunal to upset the same and record its own finding. Mr. Pandey, however, submits that the Tribunal, which is a court of revision, cannot act as a court of appeal and, hence, the High Court was right in setting aside its finding.

6. We have considered the rival submission and we find substance in the submission of Dr. Masodkar. True it is that the revisional court ordinarily does not reappraise the evidence but in case it is found that the finding recorded by the appellate authority is perverse, nothing prevents it from upsetting the finding of the appellate authority. If the appellate authority records a finding without consideration of the relevant material or on consideration of irrelevant material or the finding arrived at is such that no person duly instructed in law can reach at that finding, such finding in law is called perverse and in such a contingency, in our opinion, it is within the jurisdiction of the revisional court to set aside the said finding.

A 7. Bearing in mind the principles aforesaid, when we consider the facts of the present case we are of the opinion that the finding recorded by the Sub-Divisional Officer is patently perverse. The Sub-Divisional Officer has referred to the statement of the landlord and his witnesses that the land was B leased out for growing sugarcane but rejected the evidence on the ground that the "landlord and his witnesses have not been able to prove the purpose of lease beyond reasonable doubt" and ultimately held that "the landlord has failed to prove the specific purpose of the lease." While doing so, the Sub-C Divisional Officer, in our opinion, has lost sight of the basic principle that the nature of the proceeding is decided on the preponderance of probability and the principle of proof beyond reasonable doubt does not apply in such proceeding. Further, the Sub-Divisional Officer, without assigning any reason, has D rejected the evidence of the landlord and his witnesses and jumped to a conclusion without reference to the evidence. We have quoted the observations of the Tribunal which has recorded the finding that it was leased out for the purpose of growing sugarcane. The Tribunal has referred to the evidence of the landlord and his witnesses and further to the record of E rights and from that it has come to the aforesaid conclusion.

8. In the face of what we have observed above, the Tribunal was well within its right in setting aside the finding of the Sub-Divisional Officer and holding that the land was leased F out for the purpose of growing sugarcane. That being so, we are of the opinion that the High Court erred in setting aside the finding of the Tribunal. Accordingly, we restore the finding of the Additional Tahsildar as affirmed by the Tribunal and hold that the land was leased out for cultivation of sugarcane.

G 9. Dr. Masodkar, then submits that the High Court committed a grave error in coming to the conclusion that Section 43A of the Act would not govern the field and cannot be made applicable to a single person. He submits that in law, the plural covers the singular also. Mr. Pandey, however, H

submits that the High Court is right in holding that in view of the use of the expression "any bodies or persons" in sub clause (b) of Section 43A(1) of the Act, the same cannot be made applicable to a single person. He points out that in the present case, it is an admitted position that the land in question was given on lease to a single person. In order to appreciate the rival submissions, we deem it expedient to reproduce Section 43A(1)(b) of the Act:

> "43A.Some of the provisions not to apply to leases of land obtained by industrial or commercial undertakings, certain co-operative societies or for cultivation of sugarcane or fruits or flowers
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> (1) The provision of sections 4B, 8, 9, 9A, 9B, 9C, 10, 10A, 14, 16, 17A, 17B, 18, 27, 31 to 31D (both inclusive), 32 to 32R (both inclusive), 33A, 33B, 33C, 43, 63, 63A, 64 and 65, shall not apply to-
>
> (a) xxx xxx xxx
>
> (b) leases of land granted to any bodies or persons other than those mentioned in clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of livestock;
>
> (c) xxx xxx xxx"

10. Section 43A excludes the application of various provisions of the Act including 33C in respect of "leases" granted to "any bodies or persons" inter alia for the purpose of cultivation of sugarcane. However, in view of the plural expression "any bodies" or "persons", the High Court has come to the conclusion that it shall cover only those cases in which lease has been given to more than one person and not singular person. It seems that the attention of the Court was not drawn to Section 13 of the Bombay General Clauses Act, 1904 which inter alia provides that words in the singular shall include the

A plural and vice versa. Section 13 of the aforesaid Act reads as follows:

"Section 13 - Gender and number.

In all Bombay Acts or Maharashtra Acts, unless there is
B anything repugnant in the subject or context, -

(a) words importing the masculine gender shall be taken to include females; and

(b) words in the singular shall include the plural, and vice
C versa."

11. It is relevant here to state that the High Court has not come to the conclusion that there is anything repugnant in the subject or context so as to come to the conclusion that the plural
D will not include the singular. We have examined the use of the plural word "persons" from that angle and we do not find that there is anything repugnant in the subject or context so that it may not be read as singular. It is worth mentioning here that sub-section (b) of Section 43A(1) of the Act has also used the
E plural expression "leases" and if we accept the reasoning of the High Court, the aforesaid provision shall cover only such cases where there is more than one lease. This, in our opinion, will defeat the very purpose of the Act.

F 12. Thus, the impugned judgment of the High Court is vulnerable on both the counts and, hence, cannot be sustained.

13. In the result, the appeal is allowed, impugned judgment of the High Court is set aside and that of the Tribunal is restored. In the facts and circumstances of the case, there shall
G be no order as to costs.

K.K.T. Appeal allowed.