

(1985) 04 BOM CK 0002

In the Bombay High Court

Case No : Civil Renn. Application No. 266 of 1978

Abdul Aziz

APPELLANT

Vs

Syed Zulfikar Husan

RESPONDENT

Date of Decision : 26-04-1985

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) (Amendment) Act, 1961 — Section 128, 128

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 2(32)

Citation : AIR 1986 Bom 220 : (1985) 2 BomCR 576 : (1985) MhLj 655

Hon'ble Judges : V.A. Mohta, J;M.S. Deshpande, J

Bench : Division Bench

Advocate : V.G. Palshikar, for the Appellant; S.R. Deshpande, for the Respondent

Judgement

V.A. Mohta, J.—A Court Receiver filed a Civil Suit for possession and mesne profits of an agricultural land. The defendant therein raised several questions including that he was a tenant as defined under S. 2(32) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (the Bombay Act). Inter alia, following two issues were framed:

(2) Whether the defendant is a tenant of the suit field?

(3) Whether issue No. 2 should be referred to the Tenancy Tahsildar for a finding?

Following the decision in Civil Revn. Applns. Nos. 120 and 122 of 1975 decided on 12th Aug. 1977 (Ramrao v. Kashirao) 1977 MahLJ 78, Civil Court held that a person inducted by a Receiver appointed by Court cannot claim the status of a tenant and hence refused to refer the issue about tenancy to the Tenancy Tahsildar under S. 125 of the Bombay Act. In this revision, the said order of the Civil Court was challenged. The learned judge, who heard this revision, was of the opinion that the view taken in Ramrao requires reconsideration. This is how this matter is before us on a reference.

2. First the factual setting, Field Survey No. 193 admeasuring 8 acres and 10

gundthas of village Yewada in District Amravati is a subject-matter of a partition suit instituted in the year 1943 in which preliminary decree for partition was passed some time in Aug. 1953. There was an appeal. Litigation ended in a compromise some time in 1959 whereby the shares were determined and the agricultural lands were directed to be partitioned by the Collector. One Shri Chitale was appointed as the Receiver first and in 1967 non-appointed Syed Zulfikar Hussain succeeded him as such and continued to be so, the partition as directed having not been effected yet. The applicant Abdul Aziz is in occupation of the property and claims to be in possession of the property since 1954-55 as a lessee. In a proceeding under S. 48 of the Bombay Act initiated to determine the extent of land statutory transferred to the tenant and the purchase price thereof, it was held that applicant Abdul Aziz had become a statutory owner. This order was maintained up to the stage of Revenue Tribunal. High Court, however, held that applicant did not acquire any right to purchase the land, set aside the orders declaring him as the statutory owner but kept open the question of tenancy rights (Special Civil Application No. 101 of 1972 decided on 14-10-1974). Thereafter, the non-applicant, as a Court Receiver, filed the present suit in 1977 alleging that the letter was not a tenant and was not entitled to remain in possession. The Receiver claimed a decree inter alia on the ground that there was no agreement of tenancy. The defendant asserted his right as a tenant and contended that the property was leased to him in the year 1954-55 by Shri Syed Zulfikar Hussain as one of the co-owners and Manager of other co-owners. He had acquired the status of a protected lessee under the Berar Regulations of Agricultural Leases Act, 1951 (the Berar Act) and had become a deemed tenant under S. 6 of the Bombay Act. Before this, his father was a tenants. Suit for possession and mesne profits at a rate higher than statutorily prescribed is not maintainable and the issue about their relationship ought to be referred for determination under S. 125 of the Bombay Act.

3. The trial Court merely relying on Ramrao held that Abdul Aziz could not acquire the status of a "tenant" as it was a lease created by a Court Receiver. refused to make a reference and ordered the suit to proceed to trial.

4. Now, we find from the pleading that even the creation of lease is disputed by the Receiver. It appears to us that this aspect of the matter has been completely lost sight of, What is again lost sight of is defence that the lease was created in the year 1954-55 by Syed Zulfikar Hussain in his capacity as one of the co-owners and Manager of other co-owners. These two points need determination and it seems to us that those questions are required to be settled, decided or dealt with by the Tahsildar in terms of S. 100, sub-sec. (2). The learned Civil Judge has proceeded on the assumption that creation of lease rights and that too for the first time by the Receiver is undisputed. He merely recorded a finding on a question of law that a person inducted by Court Receiver cannot be a tenant and hence found the exercise of reference unnecessary. It is clear that the two factual assumptions are plainly erroneous and issue No. 2 ought to have been referred to the Tahsildar.

5. This takes us to the question referred in this Revision by the learned single Judge. It does appear that a person holding land on lease from a Court Receiver can become a tenant under the Bombay Act, though he does not get all rights as a tenant. Therefore the view that such a person does not become a tenant even for limited purposes as held in Ramrao is, with respect, erroneous. Let us examine the scheme of the Bombay Act. S. 2 deals with definitions. S. 6 dealing with deemed tenancy, S. 9 saying that no tenancy shall be terminated merely on the ground of expiry of time, S. 10 restoration of possession to tenants dispossessed after 1st Jan. 1953 in certain circumstances, S. 11 dealing with the ceiling on rent and S. 19 dealing with termination of tenancy etc. are all contained in Chap. II. S. 129, after its amendment by Maharashtra Act 5 of 1961, reads thus :

"129. Nothing in the foregoing provisions except S. 2, the provision of Chap. II (excluding Ss. 21, 22, 23, 24 and 37) and S. 91 and the provisions of Chapters X and XII in so far as the provisions of the said Chapters are applicable to any of the matters referred to in sections mentioned above shall apply -

(a) to lands held or leased by a local authority, or university established by law in the State.

(b) to lands which are the property of a trust for an educational purpose, hospital, Panjarpole, Gaushala, or an institution for public religious worship, provided the entire income of such lands is appropriated for the purpose of such trust; and

(c) to lands assigned or donated by any person before the commencement of this Act for the purpose of rendering any of the following services useful to the community, namely:-

maintenance of water works, lighting or filling of water through for cattle;

(d) to any land taken under management by a civil, revenue or criminal court :

Provided that, from the date on which the land referred to in cl. (d) is released from such management, all the provisions of this Act shall apply thereto, but subject to the following modifications, that is to say, -

(i) in the application of S. 38 to such land, for the time mentioned in sub-sec. (1) thereof for giving notice to the tenant and making an application for possession, there shall be substituted a period of one year from the date of the release of land from such management, and the said section shall not apply so as to entitle a landlord to terminate a tenancy of a tenant (or his successor-in-title) in respect of whom he had an opportunity to terminate under S. 38;

(ii) if on the date on which the land was taken under management, the landlord was personally cultivating the land then on the release of the land from management the tenancy of any person subsisting at the date of the release shall be restored to the possession of the landlord;

(iii) the right of the tenant to purchase the land under the relevant provisions relating thereto shall be exercised within one year from the expiry of the period during which the landlord is entitled to terminate the tenancy as provided in cl. (I).

Explanation. - For the purpose of cl. (b), a certificate granted by the Collector after holding an inquiry, that the conditions mentioned in the said clause are satisfied by the trust shall be the conclusive evidence in that behalf."

It is clear that by virtue of S. 129(d), the provisions of Ss. 2(32), 6, 9, 10, 11 and 19 apply to any land taken under management by a civil, revenue or criminal court. Indeed the whole Chap. II, excluding Ss. 21 to 24 and 37, applies. Chap. II, excluding Ss. 21 to 24 and 37, applies. Chap. III and Chap. VII do not apply. Only S. 91 from Chap. VIII applies. Chap. IX stands deleted by Act No. 41 of 1966. Chap. X dealing with procedure and jurisdiction of Tribunal, Tahsildar and Collector; Appeals and Revision and Chap. XII dealing with Miscellaneous matters right from Ss. 118 to 133 are applicable in so far as those chapters are applicable to any of the matters referred to sections mentioned in S. 129 . Chap. XI does not apply. It is thus clear that the definition cl. (32) of S. 2, Ss. 6, 124, 125, etc. would also apply.

6. S. 2(32) reads thus :

"2(32). "tenant" means a person who holds land on lease and includes -

(a) a person who is deemed to be a tenant under Ss. 6, 7 or 8.

(b) a person who is a protected lessee or occupancy tenant and the word "Landlord" shall be construed accordingly;"

It is apparent that Chapter III dealing with termination of tenancy by landlords and special rights of tenants such as compulsory transfer of ownership, Chap. III-A dealing with special landlords who are or have been serving members of the Armed Forces, Chap. IV dealing with special provisions for lands held on lease by Industrial or commercial undertaking and by certain persons for the cultivation of sugarcane and other notified agricultural produce, Chap. V dealing with special provisions in respect of areas within the limits of the Municipality, Chap. VI dealing with management of holdings held by landholders, Chap. VII dealing with assumption of management of surplus lands, Chap. XI dealing with offences and penalties do not apply. If that be the position, it is not possible to hold that the lessee of a Receiver does not get the status of a tenant under the Bombay Act, though it is clear that he does not get all privileges conferred on a tenant.

7. Discussion on the issue cannot be complete with reference to s. 128 refers to the categories of lands and areas to which the Bombay Act does not apply. S. 128(e), as it stands after amendment by Mah. Act 5 of 1961, refers "to a holding taken under the management of the Court of Wards or of a Government Officer appointed in his official capacity as a guardian under the Guardians and Wards Act, 1890". By the amendment, portion beginning with "or to the lands taken

10. Our attention was also invited to the decision in Sampat v. Pralhad (Spl. Civil Appln. No. 934 of 1974 decided on 9-10-1979). That decision arose out of a case in which us moth proceedings under S. 49A of the Bombay Act in respect of a land leased by the Receiver were dropped and the matter was concluded. That was also a case of a lease initially granted under the Berar Act. It was held that various provisions of the Bombay Act do not apply to land taken under management by civil, revenue or criminal Court. Various points that are urged before us were neither urged nor decided in the said decision. We may at the stage also refer to a decision of other learned single Judge of this Court in Radheshaym Mohanlal Kaitan Vs. The Maharashtra Revenue Tribunal Nagpur and Others, in which it was held that application under S. 36 dealing with procedure for taking possession is not prohibited in respect of agricultural fields enumerated in S. 129.

11. Thus our answer to the reference is that even a lessee from a Court Receiver can get the status of a tenant under S. 2(32), though he is entitled to only limited and not all rights and privileges of such a tenant under the Bombay Act.

12. Conclusion : Revision allowed. The impugned order passed by the Civil Court holding that applicant Abdul Aziz has not acquired the status of a tenant and consequently refusing Issue No. 2 is ordered to be referred to the Tahsildar. No order as to costs.

13. Order accordingly.