

(1979) 11 BOM CK 0016

In the Bombay High Court

Case No : Spl. C. Application No. 23 of 1974

Ambadas Krishnarao Deshmukh

APPELLANT

Vs

Govind Jairam Dakhode and another

RESPONDENT

Date of Decision : 14-11-1979

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 3(b), 5
Constitution of India, 1950 — Article 227

Citation : (1980) MhLj 298

Hon'ble Judges : M.S. Jamdar, J

Bench : Single Bench

Advocate : G.G. Loney, for the Appellant; P.Y. Deshpande, for the Respondent

Final Decision : Allowed

Judgement

M.S. Jamdar, J.—Petitioner Ambadas who claims to be the sole tenant of the land survey No. 86/7 situated at village Takalkheda has preferred this petition under Article 227 of the Constitution of India for quashing the order dated 12-11-1973 passed by the Maharashtra Revenue Tribunal, Nagpur, in Revision Application No. Tenancy-A-127 of 1972.

2. The land in question admittedly belongs to respondent No. 2 Gopikisan Bajaj. Gopikisan leased out this land in the year 1951-52 jointly to Ambadas and deceased Jairam Dakhode, father of present respondent No. 1. Jairam died in August 1963. In the year 1964-65 suo-motu proceedings bearing Revenue Case No. 1513/59(13)/64-65 were commenced in respect of the above mentioned land u/s 46 read with section 48 of Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as the Tenancy Act). To this proceeding respondent No. 1 was not a party. The Agricultural Lands Tribunal after necessary inquiry held that Ambadas was entitled to get the right of ownership transferred in his favour. By its order dated 29-1-1963 the Tribunal declared Ambadas to be the owner of the field and fixed the purchase price thereof at Rs. 1980. The landlord preferred an appeal against this decision, but

restricted it to the price of mango trees, He did not challenge the finding that the ownership of the land was transferred to the petitioner. Respondent No. 1 Govind though not a party to the suo motu proceedings preferred an appeal against the order of the Agricultural Lands Tribunal. This appeal was allowed and the matter was remanded to the Agricultural Lands Tribunal. After remand, the matter was heard by the Additional Tahsildar and Agricultural Lands Tribunal, Amravati, who held that the respondent No. 1 Govind is entitled to the statutory purchase of the land along with the petitioner. The Additional Tahsildar by the same order dated 12-10-1970 fixed the purchase price of the land at Rs. 2836 and directed petitioner Ambadas and respondent No. 1 Govind to pay Rs. 1418 each in three equal installments. He further directed that respondent No 1 Govind be given possession of half the land u/s 49-B of the Tenancy Act. Being aggrieved by this decision, the petitioner preferred Revenue Appeal No. 17-59(13)/70-7I. The Special Deputy Collector, Land Reforms, Amravati, who heard the appeal, allowed the appeal, set aside the order of the Additional Tahsildar passed in favour of respondent No. 1 and remanded the case back for fixing the purchase price of the land to be paid by the petitioner alone in respect of the entire land. Respondent No. 1, therefore, preferred revision application bearing No. Tenancy-A 27 of 1972 to the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal allowed the revision application, set aside the order of the Special Deputy Collector and restored the order passed by the Additional Tahsildar and Agricultural Lands Tribunal.

3. It is an admitted position that the land in question was jointly leased out to the petitioner and deceased Jairam in the year 1950-51. It was the case of the petitioner that by registered document dated 21-6-1954 Jairam surrendered his tenancy and since that date, he (petitioner) alone is in cultivating possession of the land as a tenant. The Additional Tahsildar held that the surrender deed was not valid as it was not executed thirty days before the end of the agricultural year. He further held that on the basis of oral evidence led by Govind that in spite of the surrender Jairam and Ambadas cultivated the land till Jairam's death in the year 1963. The Special Deputy Collector held that the surrender deed, which is a registered document, was a valid deed of surrender as per the law prevailing then, and has to be acted upon. He further held that the surrender deed took away Jairam's right as protected lessee with effect from 21-6-1954. He further held that if Jairam was aggrieved by the surrender deed, he should have applied for taking possession under the provisions of Berar Regulation of Agricultural Leases Act. He also held that the rent receipts and crop statement clearly show that Ambadas alone is the tenant of the land and that in view of the documentary evidence, the oral evidence led by respondent No. I Govind cannot be believed. He thus found that the order passed by the Additional Tahsildar on the strength of oral evidence, ignoring the important documents, is absolutely illegal and liable to be set aside. The learned Member of Maharashtra Revenue Tribunal, who allowed the revision application filed by respondent No. 1, incorporated in his order and stated in extenso the arguments advanced by both

the parties and gave only the following reasoning for setting aside the order of the Special Deputy Collector.

It is on record that both Ambadas and Jairam were recorded tenants till the year 1963. Therefore, the surrender alleged to have been executed by Jairam in favour of Gopikisan obviously was not acted upon. Being in possession till the year 1963 Jairam had become entitled to purchase the field statutorily and, therefore, after him his son Govind would be entitled to purchase it. That the oral evidence could not be looked into, to see if the registered document was acted upon or not, was not correct. Therefore, the order of the Sub-Divisional Officer suffers from this illegality. From the oral evidence it is seen that Jairam remained in possession of the field along with Ambadas till the year 1963 in which year he died. That being the case, the surrender of 1954 would not affect Jairam's right and would give right to Govind to statutorily purchase the field along with Ambadas.

It is pertinent to note that the Special Deputy Collector, Land Reforms, Amravati, discussed the documentary and oral evidence led by the parties to establish their rival contentions and gave a finding of fact that after the surrender the petitioner alone cultivated the land as a tenant. The learned Member of the Maharashtra Revenue Tribunal sought to interfere with this order on the ground that the order of the Special Deputy Collector suffers from an illegality. According to him the observation of the Special Deputy Collector that the oral evidence cannot be worked in to see if the registered document was acted upon or not, was incorrect. It will, however, be seen from the order passed by the Special Deputy Collector that he made no such observation. What he observed was that the- oral evidence led by Govind to show that he cultivated the land along with Ambadas cannot be believed because the documentary evidence consisting of rent receipts, crop statements and surrender deed have more importance. The learned Member of the Maharashtra Revenue Tribunal completely ignored the documentary evidence placed on record by the petitioner and arrived at the conclusion on the basis (if oral evidence led by Govind. In the absence of anything to show that the order passed by the Special Deputy Collector was perverse, the Revenue Tribunal had no jurisdiction to go into the question of fact and to give a different conclusion on the basis of the oral evidence. Moreover the learned Member of the Revenue Tribunal has not given any cogent reasons for interfering with the finding of fact given by the Special Deputy Collector on the point of actual possession of the land after Jairam executed the surrender deed. The finding of the learned Member of the Revenue Tribunal that the surrender deed was not acted upon has absolutely no basis apart from the fact that no such case was ever made out by respondent No. 1.

4. The surrender deed is a registered document. It will be seen from the certified copy of the document filed on record that this deed was presented for registration by respondent No. 2 landlord. By this deed Jairam surrendered his tenancy right with effect from 21-6-1954. Sbri P. Y. Deshpande, the learned

counsel for respondent No. 1 contended that this surrender deed is null and void as it was not executed less than 30 days before the commencement of the agricultural year. It is true that the document was not delivered by Jairam to respondent No. 2 not less than 30 days before 1-4-1954 as required by section 6 of Berar Regulation of Agricultural Leases Act, 1951 as it stood on 21-6-1954 but that would not invalidate the document and the only effect would be that the tenant will be deemed to have surrendered the land with effect from 1955-56 and not forthwith after the execution of the document as stated therein. It is also pertinent to note that before the Bombay Vidarbha Region Agricultural Tenants (Protection from Eviction and Amendment of Tenancy Laws) Ordinance was promulgated, there was no provision in the Berar Regulation of Agricultural Leases Act, 1951, requiring that the surrender must be verified by some tenancy authorities. Section 6 of the said enactment as it stood then provided that "'a protected lessee may, by delivering to the land-holder, not less man 30 days before the date of the commencement of the agricultural year, a registered document executed in favour of the land-holder surrender has rights and thereupon he shall cease to be a lessee from the agricultural year next following such date.'" There was then no question of verification of the surrender and it was not necessary that the handing over of the deed of surrender should be accompanied by delivery of possession of the land, nor any order of the tenancy authorities directing delivery of possession was contemplated. It was only after the Ordinance came into force and was subsequently replaced by Act No. IX of 1958 (Bombay Vidarbha Region Agricultural Tenants (Protection from Eviction and Amendment of Tenancy Laws Act, that the procedure for holding an inquiry by the Revenue Officer for satisfying that the surrender has been voluntarily made, became necessary.

5. Shri Deshpande tried to urge that as the tenancy was a joint tenancy, Jairam alone would not have surrendered it. According to him, as the petitioner did not surrender his tenancy rights along with Jairam, there was no valid surrender in favour of the landlord, in support of this proposition, Shri Deshpande placed reliance on the decision of Madras High Court in the case of Gopaldas Family Trust Estate v. Michaelswami I L R 1964 I Mad. 443. It was held in that case that the surrender of the property by the first defendant, one of the lessees, alone was inoperative to put an end to the lease, as it was not a valid surrender in the eye of law. It was further held that where there is a plurality of leases and the lease is an indivisible one, a right to enjoy the property has been created in favour of the lessees jointly and a surrender by one of them cannot affect or alter the rights of the other or others. The question in this case is not whether the lease is put to an end to by the surrender executed by Jairam, nor it is disputed that the surrender executed by Jairam did not affect or alter the rights of the petitioner. The question for consideration in this matter is, what was the effect of the surrender deed on the tenancy rights of deceased Jairam.

6. The question whether one of the co-tenants can surrender his tenancy rights was considered by a Division Bench of this Court in the case of Dent Subhan v.

Badrudin Hussain I L R 1957 Bom. 371. In that case the question for consideration was whether one of the two or more co-tenants can surrender his interest to the extent of his share to the landlord, it was held in that case that in view of the wording of sub-section 3 (b) of the Bombay Tenancy and Agricultural Lands Act, 1948 a tenant can terminate the tenancy at any time by surrendering his interest as a tenant in favour of the landlord, and the word "interest" indicates that one of several tenants may surrender his share to the landlord. Sub-section (3) of section 5 of Bombay Tenancy and Agricultural Lands Act, 1948, as it then stood, provided that a tenant may terminate the tenancy at any time by surrendering his interest as a tenant it, favour of the landlord. The provisions of section 6 of Berar Regulation of Agricultural Leases Act as it stood in 1954 cannot be said to be materially different. Instead of the word "Interest" the word "Rights" has been used in section 6. The principle enunciated in the above mentioned decision of the Division Bench is applicable to a case u/s 6 of Berar Regulation of Agricultural Leases Act, 1951.

7. In the case of AIR 1931 159 (Nagpur) , the same view of the matter was taken. It was a case u/s 89 of C. P. Tenancy Act and it was held that one of two or more co-tenants is at liberty to transfer to the landlord the rights which he holds in the land against the landlord. It was further held that no one but the parties to the transaction has interest in the matter and there is no reason why one should not surrender his rights to the other. In that case the ruling in AIR 1925 124 (Nagpur) , was approved. It is, therefore, clear that even though the surrender deed executed by Jairam did not put an end to the lease, the lease deed has the effect of extinguishing the tenancy rights held by Jairam and that Jairam ceased to be a tenant of the land with effect from the tenancy year 1955-56, There is one more aspect of the matter which is also decisive. Section 10 (1) of the Tenancy Act, 1955 provides that:

A person who or whose predecessor in-title held land as tenant or protected lessee on the first day of January 1953 or thereafter who has subsequently been dispossessed by a surrender of tenancy before the date of the commencement of this Act may within a period of one year from the date of commencement of Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) (Amendment) Act, 1960, apply to the Tahsildar for the restoration of his tenancy on the same terms and conditions on which he held the land before such surrender unless the land has been put to a non agricultural use on or before the appointed day.

The Amending Act, 1960 came into force on 28-1-1961. Admittedly, Jairam did not file any application u/s 10(1) for restoration of his tenancy. Consequently, Jairam's tenancy which was extinguished with effect from 1-4-1955 by virtue of the surrender deed was not revived and therefore he was not a tenant of the land in question on the appointed day i.e. 20-8-1958. As observed by me above, the Special Deputy Collector had rightly held that Jairam was not in possession of the land since 21-6-1954 i.e. the date on which he executed the surrender deed.

This finding is completely supported by the rent receipts, land revenue receipts and crop statements for the years 1956-57 to 1962-63 and there was absolutely no justification for the Revenue Tribunal to interfere with this finding of fact. It is also pertinent to note that the land was not in possession of the landlord or his successor-in-interest on 31-7-1969. In view of this position, section 49-B has no application to the case and respondent No. 1 cannot claim restoration of the land under that provision. In the result, the order passed by the Revenue Tribunal deserves to be quashed.

8. The petition is allowed with costs. The order of the Revenue Tribunal is quashed and the order passed by the Special Deputy Collector, Land Reforms, Amravati, is restored. Rule accordingly.