
(1969) 12 BOM CK 0007
In the Bombay High Court
Case No : Spl. C. Appln No. 502 of 1968

Annapurnabai Joshi

APPELLANT

Vs

Mankarnabai and others

RESPONDENT

Date of Decision : 08-12-1969

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 38(3) (d), 38(7)

Citation : (1971) MhLj 586

Hon'ble Judges : M.N. Chandurkar, J

Bench : Single Bench

Advocate : R.N Deshpande, for the Appellant; M.S. Deshpande, for Respondents Nos. 1 to 5, for the Respondent

Final Decision : Allowed

Judgement

M.N. Chandurkar, J.—This is a petition by the landholder who is the owner of field survey number 33/2, area 20 acres 26 gunthas, of village Rahera, taluq Malkapur, district Buldana, challenging the orders of the Revenue authorities that her claim was hit by sub-sections (3) (d) and (7) of section 38 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, hereafter referred to as the Tenancy Act. It is not disputed that the petitioner purchased this field on 8-2-1958 from one Pandhari. She started proceedings u/s 38 of the Tenancy Act after serving the necessary notice against deceased Angad, who is now represented by the respondents Nos. 1 to 5 who are his legal representatives. The Naib-Tahsildar rejected the application on the ground that the petitioner's application was hit by section 38 (7) of the Tenancy Act.

2. This order was upheld by the Deputy Collector who negated the contention of the petitioner that her answer given in evidence that Angad was a tenant before she purchased the field had resulted from a composite question asked to her in respect of 4 persons against whom she had started similar proceedings. The Deputy Collector also found that the petitioner's claim was not maintainable

in view of the provisions of section 38 (3) (d) of the Tenancy Act.

3. The Revenue Tribunal in revision filed by the petitioner also confirmed the orders passed by the Deputy Collector and the Naib-Tahsildar. The petitioner's revision application was dismissed and a review application filed by her also came to be rejected. The petitioner has now filed this petition challenging the findings given by the Revenue authorities that her claim was hit by the provisions of sections 38 (3) (d) and 38 (7) of the Tenancy Act.

4. The contention of the learned counsel for the petitioner is that there is no material on record to hold that the deceased tenant was a protected lessee before the date of her purchase. It is contended that this defence was never raised by deceased Angad and in the absence of an entry in the record of rights which was on record showing deceased Angad as a protected lessee, the Revenue authorities were not justified in reading the statement made by the petitioner in cross-examination as an admission of the protected status of deceased Angad. In my view, this contention must be accepted.

5. If the claim of the landholder was to be negated on the ground that it was hit by the provisions of section 38 (7) of the Tenancy Act, then the tenant should have put on record positive and conclusive evidence on the basis of which his alleged protected status, which he claimed had accrued to him before the petitioner had purchased the land, could be established. Common evidence was recorded in the two cases filed by the petitioner against her tenants Jagdeo and Angad. There is on record a record of rights in Revenue Case No. 254/59 (8)/1960-61 which shows that mutation was carried out recording the name of the petitioner as owner of survey number 33/2 on 23 3 1960. If Angad was the protected lessee of this field before her purchase, then his name would have been found in this record of rights. The column in which normally the lessee's name is recorded is, however, blank and this record of rights has a presumption of correctness attached to it. Deceased Angad had not raised any defence that he was a protected lessee. The record does not disclose that Angad gave any evidence. On 2-9-1961 the Naib-Tahsildar has recorded in the order-sheet that "the non-applicant does not want to adduce any evidence and has closed his case". The landholder in cross-examination, however, made a statement that Jagdeo, Angad, Ukarda and Desa Dagdu were lessees from before she purchased the land. This statement made by the petitioner has been read as an admission of the protected status of Angad. In my view, this statement is incapable of a construction that the petitioner had admitted that Angad was a protected lessee before the date of her purchase. The difference between an ordinary lessee and the protected lessee is well known and a lessee need not necessarily be a protected lessee, because the statutory status of a protected lessee is available to a lessee only under circumstances provided by the Berar Regulation of Agricultural Leases Act, 1951. At the most this statement may amount an admission to the effect that Angad was a lessee before the petitioner purchased the field, but that cannot be read as an admission of his protected status.

6. Apart from this vague statement, there is other evidence which is of a more substantial character which points to the contrary viz. the record of rights which has been left out of consideration by all the Revenue authorities. It was incumbent on the Revenue authorities to arrive at a conclusion that Angad was a protected lessee on a consideration of the entire evidence on record and not on the basis of this vague solitary statement made by the petitioner in cross-examination. It is, therefore, not possible to sustain the finding given by the Revenue authorities.

7. The Deputy Collector has observed that Pandhari and appellant, that is, the petitioner, have admitted that Angad and Jagdeo were tenants. It is true that there is a reference to Jagdeo giving some crop share to the petitioner in 1957. Then there is a statement that in Angad's field 6 mounds of Juar was grown. If these statements are to be read as indicating the lease money given in 1957 to the petitioner, it is difficult to appreciate how she was entitled to lease money if the field itself was purchased on 8-2-1958. On the basis of this statement, therefore, it cannot be concluded that Angad was a protected lessee before the date of purchase. The tenant should have, therefore, adduced positive evidence to establish his alleged protected status. In this state of evidence, therefore, when there is no positive admission of the protected status of deceased Angad, it is impossible to uphold the finding given by the Revenue authorities that Angad was a protected lessee before 8-2-1958 on which date the petitioner purchased the land in dispute. Her application, therefore, could not be rejected on the ground that it was hit by section 38 (7) of the Tenancy Act. That finding is, therefore, liable to be quashed.

8. The Deputy Collector and the Revenue Tribunal have also taken the view that the petitioner's application was hit by section 38 (3) (d) of the Tenancy Act. According to the learned counsel for the petitioner if deceased Angad was not a tenant or the protected lessee on the date on which she purchased the field and for the first time his tenancy rights came into being after the date of her purchase, then the provisions of section 38 (3) (d) of the Tenancy Act would not be attracted. This contention must also be accepted.

9. Section 38 (3) (d) of the Tenancy Act is in the following words:

38(3) The right of a landlord to terminate a tenancy under sub-section (1) shall be subject to the following conditions namely:

(a).....

(b).....

(c).....

(d) The land leased stands in the record of rights or in any public record or similar revenue record on the 1st day of August 1957 and thereafter during the period between the said date and the date of the commencement of this Act in the name of the landlord himself or any of his ancestors, but not of any other

predecessor-in-title from whom title is derived, whether by assignment or Court sale or otherwise or if the landlord is a member of a joint family, in the name of a member of such family."

This clause prescribes condition to which the right of a land-holder to terminate the tenancy u/s 38 (1) of the Tenancy Act is subject. Under this clause only a landholder in whose name the land leased stands in the record of rights or in any public record or similar revenue record on the 1st day of August 1957 and thereafter during the period between that date and 30-12-1958 or any of his ancestors is entitled to terminate the tenancy. In case the landholder is a member of the joint family if the land leased stands recorded in the name of a member of such family, then also the landholder is entitled to terminate the tenancy. If the landholder derives his title from a predecessor-in-title other than his ancestors, whether by assignment or by Court sale or otherwise, then an order for resumption of land cannot be made in his favour because then he does not satisfy the condition laid down in this clause. The question which, however, falls for decision in this case is whether the condition laid down in clause (3) (d) is attracted in a case where the land is not leased on 1-8-1957 and the lease is created in favour of the tenant whose tenancy is sought to be terminated after that date.

10. The learned counsel appearing on behalf of the tenants in this case contends that the condition laid down in clause (d) of section 38 (3) of the Tenancy Act is required to be satisfied in all cases irrespective of whether the lease is created prior to 1st August 1957 or it is created after the landholder has become owner of that land after that date. In other words, the contention is that if a landholder derives title from a predecessor-in-title who may not be an ancestor and if he creates a tenant after the date of his purchase, even then he cannot exercise his right of resumption u/s 38 (1) of the Tenancy Act because the land will not stand recorded in his name or in the name of any ancestor of his on 1-8-1957 and thereafter during the whole of the period specified therein.

11. I am unable to read clause (d) of section 38 (3) of the Tenancy Act as bar to the termination of a lease by a landholder who has himself acquired title after 1st August 1957 and has created a lease and inducted a tenant on his land after the date of purchase. In my view, the object of clause (d) of section 38 (3) is to protect the rights of tenants who were already tenants on 1-8-1957 and it is in such case that the clause is intended to prevent termination of tenancy by a landholder who did not satisfy the condition stated in the clause, that is, his predecessor-in-title was not an ancestor or that he was not a member of the joint family in whose name the land stood or that he has derived title from a person either by an assignment or Court-sale or otherwise. It is necessary to refer to the state of law as it existed before section 38 (3), the Tenancy Act was put on the Statute book. There were no restrictions on termination of lease in the four districts of the old Central Provinces which are now part of Vidarbha region. There were also no restrictions on transfer of agricultural lands. In the four

districts of Berar, the right of a landholder to terminate the lease of a protected lessee for personal cultivation was governed by section 9 of the Berar Regulation of Agricultural Leases Act, 1951. Sub-section (9) of that section provided that "nothing in this section shall confer on a landholder who acquires any land by transfer after the 1st day of August 1953, a right to terminate the lease of a protected lessee whose right as such had come into existence before the transfer". This provision, therefore, created a bar against termination of a lease of a protected lessee by a transferee who had acquired a land after 1-8-1953 and the rights of the protected lessee came into existence before the transfer. The Leases Act was repealed by the Tenancy Act, 1958. In the original Bill, as it was laid before the Legislature, the date of section 38 (3) (d) was first put as 1st day of January 1953. This date was, however, changed by an amendment which was introduced when the Bill was being adopted on 1st August 1958. The object of clause (d) of section 38 (3) of the Tenancy Act, 1958 appears to be the same as was the object of sub-section (9) of section 9 of the Leases Act, 1951, except that while section 9 (9) of the Leases Act gave protection to the protected lessees only in the four districts of Berar in the case of transfers after 1-8-1953, the protection against termination of tenancies by landholders who may have become owners by virtue of transfers of land after 1-8 1957 was also extended to the tenants in all the districts of Vidarbha region and thus in the Tenancy Act which was a consolidated piece of legislation governing the entire Vidarbha region, clause (d) was introduced in section 38 (3). If it was intended that all persons who acquired rights in land by transfers after 1-8 1957 were to be prohibited from terminating the leases which were created by them after they had become owners of the lands, then the Legislature would have made an express provision to that effect by making the provisions of section 38 (1) inapplicable to them. In the absence of any such express prohibition it is not possible to construe clause (d) of section 38 (3) of the Tenancy Act as bringing about that result indirectly. In the context in which the words "land leased" are used in section 38 (3) (d) and also having regard to the history of the legislation and the earlier provision in section 9 (9) of the Leases Act which stood repealed by the Tenancy Act, it appears to me that the words "land leased" must be read as referring to the land which was leased on 1-8-1957. In my judgment, therefore, section 38 (3) (d) of the Tenancy Act will be attracted only where the land in respect of which a right of resumption is sought to be exercised in already a leased land on 1-8 1957 and is held by the lessee during the time specified therein and the landholder acquires title to it after the lease and therefore does not satisfy the condition in clause (d) of section 38 (3). The petitioner, who had become owner of the fields on 8-2-1958, if she succeeds in establishing that deceased Angad was inducted as a lessee by her after the date of her purchase, then having regard to the view which I have taken the provisions in clause (d) of section 38 (3) of the Tenancy Act will not affect her claim. I am, therefore, unable to uphold the view taken by the Deputy Collector and the Revenue Tribunal that the petitioner's application was hit by section 38 (3) (d) of the Tenancy Act. In the absence of material facts on record therefore, the conclusion

arrived at by the Revenue authorities that the petitioner's application was hit by the provisions of section 38 (3) (d) and section 38 (7) of the Tenancy Act cannot be sustained.

12. As further enquiry in this matter is necessary, the orders passed by the Revenue authorities are quashed and the matter is remanded back to the Naib-Tahsildar for a fresh decision according to law after allowing the parties to adduce such oral and documentary evidence which the parties may choose to adduce. The parties may also be given an opportunity to put on record additional statements if they so like.

13. The petition is allowed. In the circumstances of the case there will be no order as to costs.