

(1983) 02 BOM CK 0012

In the Bombay High Court

Case No : F.A. No. 514 of 1972 with cross objections (Bom.)

Balu Ibrahim Mulani

APPELLANT

Vs

Mahadev Pandurang Mahadik

RESPONDENT

Date of Decision : 14-02-1983

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 37(3)

Citation : (1983) 85 BOMLR 190 : (1983) MhLj 376

Hon'ble Judges : Masodkar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Masodkar, J.—The present appeal along with the cross-objections can be disposed of by common judgment. The appeal arises out of a suit filed by the present appellants for the recovery of the amount of Rs. 12,000 and interest thereon on the basis that the defendants, who were the purchasers of the agricultural lands in suit, were unauthorisedly in occupation and the plaintiffs being the tenants were entitled to the mesne profits or damages from the defendants.

2. The trial Court held that such a suit was not tenable nor has the civil Court jurisdiction to award such mesne profits. Holding so, the suit is dismissed.

3. Mr. Gupte in this Court argued that Section 37(3) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter called as "the Act"), used the word "landlord" and, therefore, the remedy before the Mamlatdar as is provided by that section is against the landlord and not against the transferees from the landlord. In the submission of the learned Counsel, under the general law, the plaintiffs-tenants, being entitled to the restoration of possession of the suit lands, would be entitled to maintain such an action against the transferees and the civil Court will have to make a decree against the transferees who are the strangers and who are not landlords. Reliance is placed on the decision of this Court in the

case of Vasant Hariba v. Jagannath (1968)71 Bom. L.R. 12.

4. It is indeed difficult to find force in this submission. As far as the ratio of the Full Bench case, i.e. the decision in Vasant Hariba v. Jagannath (*supra*) is concerned, that ratio is to be gathered in the context of the controversy and is of a limited application. The judgment laid down that notwithstanding the transfer in favour of the third person of the land resumed by the landlord, the entitlement of the tenant u/s 37 of the Act to the restoration of possession continues and will have to be worked out by restoring the possession to the tenant. A voluntary transfer by such a landlord who resumed the land for personal cultivation was itself explicit evidence of the breach of the statutory conditions. Once the breach was so made out, restoration of possession had to follow notwithstanding that the transferee was inducted on the land. The decision is not an authority, therefore, for the proposition that the transferee is liable to pay the compensation in a civil action. The present is the case of that kind where the suit is filed by the tenant who has been restored possession u/s 37(1) of the Act for recovery of compensation or mesne profits from the transferee.

5. Now, as the provisions of Section 37 of the Act stand, those are by themselves a complete answer to such an action. Sub-sections (1) and (2) of Section 37 of the Act provide for a relief of repossession while Sub-section (3) of Section 37 of the Act provides a relief of compensation as against the landlord. If, therefore, the person seeking re-possession seeks relief of compensation, it is clear that he has the only remedy u/s 37(3) of the Act and the exclusive jurisdiction is conferred upon the Mamlatdar to determine the compensation payable to the tenant in cases where the landlord had failed to restore possession as is provided for in Sub-section (1) of Section 37 of the Act. There being thus a special and exclusive jurisdiction enacted in the matters of the wrong complained of, it would follow that the civil Court's jurisdiction will not be available for the purpose of working out the relief of compensation arising out of the restoration of possession u/s 37 of the Act. The principle directly attracted is the one which excludes the civil Court's jurisdiction when a special tribunal is indicated by the statute and it is clothed with the jurisdiction to decide all the questions that are necessary for the purpose of giving or refusing the concerned relief, (See *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, and *Shree Raja Kandregula Srinivasa Jagannatha Rao Pantulu Bahadur Garu Vs. State of Andhra Pradesh*, This principle, if applied to the provisions of Section 37 of the Act, would by itself bar jurisdiction of the civil Court.

6. Furthermore, Section 85 of the Act is enacted to bar the jurisdiction of the civil Court with regard to the matters required to be dealt with under the provisions of the Act by the Mamlatdar and the orders made by the Mamlatdar are not questionable in any civil Court. Reading the provisions of Section 37(3) of the Act along with Section 85 of the same Act it should be impermissible to invoke the jurisdiction of the civil Court for the purpose of adjudication as to the quantum of compensation payable to the tenant with regard to the land of which possession

is restored by the tenancy authorities u/s 37 of the Act.

7. The submission of the learned Counsel that Sub-section (3) of Section 37 of the Act only applies to landlord and not to the transferee, overlooks the fact that the provisions of Section 37 by themselves lay down a complete scheme with regard to the restoration of possession and entitlement to compensation. Though it is not necessary for the purpose of the present appeal to determine whether the word "landlord" in Sub-section (3) of Section 37 of the Act would include the transferee from the landlord or a person actually on the land, the matter is plain enough. In a given case the statutory entitlement to the compensation may be restricted only against the person like "the landlord" who had failed to restore possession and in the legislative wisdom the transferee for value may not be liable for such compensational claims. Advisedly, the relief of compensation as it arises because of the failure of the landlord is provided against the landlord and not against any third party. That does not, however, mean that the third party can be proceeded against by filing a civil suit. The provisions both with regard to the restoration of possession and for the liability of compensation are special statutory provisions. They relate to the right and entitlement of the tenant and the liability of the landlord arising therefrom. By reason of that, no further entitlement can be claimed against the strangers unless it is the part of the statute. A transferee entering upon the land under an ostensible sale is not the trespasser nor his transfer could ipso jure be treated as void against the persons who are because of law entitled to possession. The case of the transferee cannot be equated with that of the trespasser. Failing the action u/s 37 of the Act not only he will be entitled to stand by the transfer but also would be entitled to continue in possession of the property. He can only be dispossessed by reason of an order that could be made u/s 37(1) of the Act. Such eventual dispossession does not appear to lead to further consequences of raising a liability to pay the compensation. It appears implicit in Sub-section (3) of Section 37 of the Act that such liability should be against the landlord who had failed to restore possession as is provided for in Sub-section (1) of Section 37 of the Act. Thus, the plaintiff of the present kind not only would not be entitled to file a suit in a civil Court but would not be entitled to a decree for mesne profits.

8. It is evident, therefore, that the present suit was entirely misconceived. The judgment under appeal does not require any interference. The appeal fails and is dismissed with costs.

9. In view of the dismissal of the appeal, Mr. Limaye withdraws the cross-objections, No order as to costs in the cross-objections.