
(1991) 01 BOM CK 0018
In the Bombay High Court
Case No : Writ Petition No. 597 of 1986

Bansi Kalge (Koli)

APPELLANT

Vs

Ramkrishna Joshi and Others

RESPONDENT

Date of Decision : 28-01-1991

Acts Referred:

Citation : (1992) 1 BomCR 240

Hon'ble Judges : N.P. Chapalgaonker, J

Bench : Single Bench

Advocate : V.D. Salunke, for the Appellant; L.R. Pathak, for the respondent No. 2, for the Respondent

Judgement

N.P. Chapalgaonker, J.—Vithal s/o Laxmanrao and Ramkrishan s/o Laxmanrao, both landlords, filed two separate applications u/s 44 of the Hyderabad Tenancy and Agricultural Lands Act, 1950, and in both these filed bearing No. TNC/AR/105/59 and TNC/AR/51/59, the then Naib Tahsildar, Bhoom was pleased to allow the applications and passed an order on 16-3-1959, that each of the landlords be put in possession of 9 acres 38 Gunthas of Survey No. 236, situated at village Pargaon. It is contended that out of this land, half of the land belonging to Vithal s/o Laxman was given in possession of the landlord by dispossessing the tenant, but the possession of rest of the half land belonging to Ramkrishna was not given to the landlord by the revenue authorities. It is the contention of the petitioners herein that the possession of this half land was taken by the landlord forcibly approximately in the year 1974.

2. Alleging these facts, the petitioner herein filed an application before the Tahsildar, Bhoom on 13-8-1979. He further alleged that thereafter in the year 1978-79, respondents Nos. 1 and 2 (landlords) have given this land for five years on rent basis to the respondent Nos. 3 and 4 Trimbak and Waman, and therefore, since there is a contravention of the provisions of section 45 of the Hyderabad Tenancy Act, applicant petitioner has sustained a loss of Rs.10,000/- and he is entitled for restoration of possession of the land. A written statement was filed

by the respondents Nos. 1 and 2 contending therein that they are in possession of the land in question, since 1960, therefore, the application is not maintainable. They further denied to have given this land on rent basis to respondents Nos. 3 and 4 in the year 1978-79.

3. It appears from the Tahsil file that on 30th September, 1980, a speaking order was passed by the Tahsildar, Bhoom pointing out that entries in the 7/12 extracts signify that the landlord was in possession till 1978-79 and, therefore, directed that further evidence in respect of the possession be given. After this order was passed, the only evidence given was that of the petitioner and one Shri Vasudeo Akhade. Respondents did not produce any evidence and the Additional Tahsildar was pleased to pass an order on 25-7-1983 that the lands be restored to tenant from the possession of the defendant-respondent No. 2. Aggrieved by this judgement and order passed by the Additional Tahsildar, Osmanabad in File No. 79/TNC/0/80 on 25-7-1983, an appeal was preferred. This appeal bearing No. 83/TNC/A/15 was heard and decided by the Deputy Collector, Land Reforms, Osmanabad, who was pleased to allow the appeal by an order dated 31-1-1985. After going through the oral and documentary evidence, he was pleased to come to the conclusion that there is no evidence to support the contention of the tenant that the land-holders have leased out the land to the respondents Nos. 3 and 4 and that the land-holders have not contravened the condition to cultivate the land personally for at least ten years from the date of the resumption of the land. Aggrieved by this judgment and order of the learned Deputy Collector, Land Reforms, Osmanabad dated 31-1-1985, revision application was preferred by the tenant-petitioner to the Maharashtra Revenue Tribunal, and this Revision Petition No. 38/B/1985/Osmanabad was dismissed by the learned Member of the Maharashtra Revenue Tribunal, Aurangabad by the order dated 6-2-1986. This order has been challenged in this writ petition by the tenant-petitioner.

4. Shri V.D. Salunke, the learned Counsel for the petitioner submitted that since one of the landlords-respondent No. 1, did not obtain the possession through Tahsildar, and did not resume the land for personal cultivation by taking its actual possession within a period of one year as is contemplated u/s 45 (1) (a) of the Hyderabad Tenancy Act, he has contravened one of the essential conditions attached to the right given to the landlord u/s 44 and, therefore, the tenant should have been put back in possession. He further submitted that since it has been alleged by the tenant that before five years of the filing of the application the landlord has obtained the possession and just within a span of four years he has put the respondents Nos. 3 and 4 in possession on rent basis, the landlord has contravened the provisions of section 45 (1) (b). Having discontinued the personal cultivation within a period of ten years, on this count also, the tenant is entitled to be put back in possession. Shri Salunke, further invited my attention to the opening words of section 46, which run as "if any time the tenant makes an application", to submit that the observations of the Deputy Collector and the Member, Maharashtra Revenue Tribunal run contrary to the specific provision u/s 46, which is an exception to the general rule of limitation prescribed in section

32, and both of them should have interpreted that if the contravention of any of the conditions laid down u/s 44 is proved by the tenant, then such an application is maintainable at any time. He further submitted that the evidence has not been properly appreciated and the Deputy collector and the Member, Maharashtra Revenue Tribunal should have discarded the entries made in the revenue record and should have relied on the oral evidence submitted by the petitioner.

5. Shri L.R. Pathak, the learned Counsel for the respondent submitted that the finding of fact was recorded by the Deputy Collector, which is the last Court so far as question of appreciation of evidence is concerned and it was held that the landlord is in possession since 1960 onwards and the landlord has not contravened any conditions laid down in section 45 and, therefore, the application of the tenant for restoration of the land u/s 46 is not maintainable. He further submitted that even the Maharashtra Revenue Tribunal has confirmed this finding and has observed that the landlord is in possession since 1960 and, therefore, the application is not within limitation.

6. It appears that during the litigation, the respondent No. 1 expired and respondent No. 2 is his sole heir.

7. So far as the northern share of 9 Acre and 38 Gunthas which belong to Vithal is concerned admittedly the possession of this land is taken by the landlord on 7-8-1960 as per the plaint itself and it is not the allegation of the tenant that personal cultivation of this land was not resumed within a period of one year from the date of the order or personal cultivation was discontinued within a period of ten years from such resumption. Therefore, so far as this portion is concerned, the tenant has absolutely no right to get the land back by an application u/s 46 on the count that the conditions imposed in section 45 have been contravened by the landlord. So far as the rest of the land i.e., the southern half portion of Survey No. 256 (block No. 200) is concerned. It is the case of the petitioner that the land was resumed forcibly about five years before, whereas the respondents have contended that the land was resumed for personal cultivation in the year 1960 itself. 7/12 extracts for the year 1961-62 to 1977-78 and 1980-81 are on record. In all these 7/12 extracts, the names of Ramkrishna and Vithal, original landlord, have been entered as actually in possession of the land. Such entries were made in the year 1961-62 and are continued thereafter. If these entries were not correct, then certainly some objection would have been taken by the tenant. These long standing entries go to show that land was resumed for personal cultivation by the landlord in the year immediately following the order passed by the Tahsildar, and if, since 1961-62 the landlords were in possession, then the only question remains that whether they have discontinued the personal cultivation within ten years from such day, meaning thereby the date on which they have resumed personal cultivation. On appreciating this documentary evidence and preferring the documentary evidence to the oral one, the Deputy Collector and Member, Maharashtra Revenue Tribunal, both have held that landlords are in possession since 1960 and

have also discarded that allegation of the petitioner that the land is given to the respondents Nos. 3 and 4 during the year 1978-79 and assuming that, that allegation is true, it would not have entitled the tenant to ask the possession of the disputed land back, since that would be clearly after the lapse of ten years period, in which the landlord must cultivate the land personally, if he resume it u/s 44

8. Shri Salunke, the learned Counsel for the petitioner, submitted that since no possession was handed over by the revenue authorities to the landlord in pursuance of an order passed in favour of the respondent No. 1, it cannot be assumed that he has resumed the land for personal cultivation. In support of his contention, Shri Salunke, placed reliance on a Full Bench judgment of this Court in *Madhao v. Mah. Revenue Tribunal* 1970 Mh. L.J. 991. In a case u/s 20 read with section 36 (2) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, the question was whether the tenant who has surrendered his tenancy u/s 20 and his surrender has been verified by the Tahsildar, but when the landlord has not been ordered to be put in possession by an order u/s 36 (2) of the said Act, whether the tenancy stands terminated merely because of the verification of the surrender by Tahsildar, or the rights of the tenant would come to an end only if the possession is ordered in favour of the landlord. In that case on 30-4-1962, the tenant made a statement before the Naib Tahsildar, that he did not wish to proceed with the case and he has surrendered the land. Surrender by the tenant was accepted on the strength of this statement and Naib Tahsildar, ordered the proceedings initiated by tenant to be closed. Only four days thereafter i.e., on 3-5-1962, the tenant again applied for possession to the Naib Tahsildar alleging that the surrender deed has been obtained by fraud and the landlord has sold the suit land to some other person. Full Bench concluded that section 26 (2) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 is plenary and controls section 20 and thus, without an order of the Tahsildar, for possession a tenant does not cease to be a tenant even though he has handed over possession of the land he held as a tenant and even though the surrender is verified under the provision to section 20 read with Rule 11. Relying on this judgment, Shri Salunke submits that unless the possession is actually taken through the revenue authorities, the tenancy does not come to an end. Section 44 is one of the provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950, providing for the termination of tenancy. Which is the point of time at which such tenancy stands terminated will have to be interpreted looking to the provisions of this section read with the rules framed under this Act. Sub-section (10) of section 44 authorises the State Government to provide by rules for, amongst other things, "the time when the termination of tenancy will take effect." Sub Rule (5) of the Rule 28 of the Hyderabad Tenancy and Agricultural Lands Rules, 1958 provide that if the Tahsildar, grants the application (under section 44 read with section 32), the termination of tenancy of the land in respect of which the application is granted, shall take effect from the commencement of the year following year in which the application is granted.

Therefore, tenancy would stand terminated when the order is made. Neither in the Rules nor in the section 44 itself, there is any provision laying down that the tenancy would stand terminated only when the possession is actually taken in furtherance of an order made. The principle appears to be that there must be a formal declaration by the tenancy authorities that the landlord has become entitled for the possession and he be put in possession.

9. The contention raised by Shri Salunke, that the opening words of section 46 "if at any time the tenant makes an application" would indicate that it is an exception to the general rule of limitation provided in section 32 will have to be rejected. The opening words of section 46 will have to be read along and in consonance of the provisions of section 32. The words "if at any time" would only mean that if the landlord has contravened the provisions of section 45, then such a contravention can be pointed out by him and he can make an application to the Tahsildar, then at that time the tenant shall be entitled on a direction by the Tahsildar, to obtain immediate possession of the land. It has nothing to do with the limitation prescribed. The limitation of two years prescribed u/s 32 is also applicable to an application u/s 46, but the starting point of the limitation is the day on which the landlord has contravened the provisions of section 45 (1) (b). It cannot be interpreted that if there is a breach of any of the conditions in section 45, the tenant would be entitled to file an application several years thereafter, over-looking the provisions of section 32. The whole Chapter IV (b) of the Hyderabad Tenancy Act will have to be read as a whole. Even right to resume land for personal cultivation u/s 44 is to be exercised by application u/s 32 as is provided under sub-section (2) of section 44. If the fact that the land was leased out to respondents Nos. 3 to 4 would have been proved and if it would have been further proved that this letting out to the respondents Nos. 3 and 4 in the year 1978-79 was within a period of ten days from the resumption of the land for personal cultivation, then the application would not have been barred by time. In the instant case, it is proved that in the year 1960-61, at least the landlord came in possession and was cultivating the same and the tenant has failed to prove that the land was resumed for personal cultivation just five years before his application. Therefore, there is no question of any contravention of section 45 of the Hyderabad Tenancy Act. Therefore, the contention raised by Shri Salunke, will have to be rejected in respect of the half portion of the land also. In the result, the writ petition stands rejected. Rule stands discharged. However, there be no order as to the costs.