
(1987) 09 BOM CK 0022
In the Bombay High Court
Case No : Writ Petition No. 367 of 1982

Bapurao Jatale

APPELLANT

Vs

Mahadeo Mali and Others

RESPONDENT

Date of Decision : 23-09-1987

Acts Referred:

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

Citation : (1988) 3 BomCR 52

Hon'ble Judges : V.A. Mohta, J;G.G. Loney, J

Bench : Division Bench

Advocate : A.M. Bapat, for the Appellant; R.N. Despande and S.R. Deshpande for respondents 1 to 5, for the Respondent

Final Decision : Allowed

Judgement

V.A. Mohta, J.—Widow Bainabai, by a Will, dated 29th August, 1968, bequeathed her agricultural land to her brother's sons. She died on 10th February, 1974. Bapurao Jatale (the petitioner) was in occupation of the field as a tenant since 1959-60. After the death of a testator, the legatees Mahadeo Mali and three others (the respondents) applied for resumption of land for their personal cultivation u/s 38, read with section 36(2) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (the Act of 1958). All the revenue authorities allowed the application. Objection of the tenant, that the legatees being transferees after 1st August, 1957, could not resume land in view of restrictions imposed u/s 38(3)(d), was over-ruled, holding that those restrictions were not attracted as land was not leased to the tenant on 1st August, 1957. Such a view was taken on the basis of a Single Judge decision of this Court in the case of Annapurnabai wd/o Digambar Joshi v. Mankarnabai wd/o Angad of Rahera 1971 Mh.L.J. 586. Tenant Bapurao filed this writ petition impugning the said decision. The learned Single Judge, who heard the matter, found it difficult to accord his approval to the impugned view and referred the question to a larger Bench. This is how the matter has come before us.

2. The crux of the matter is-is requirement of section 38(3)(d) of the Act of 1958 to be satisfied only in respect of lands already leased on 1-8-1957 and not in respect of lands leased thereafter. Considering the somewhat unclear language used in section 38(3)(d), we are little surprised that difference of opinion between the two learned Judges has arisen on the point. Section reads thus :

"38(3) The right of a landlord to terminate a tenant 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, where by assignment or Court sale or otherwise or if the landlord is a joint family, in the name of a member of such family"

It is clear that the section does not specifically say that the restrictions imposed therein apply only to lands already leased on 1st August, 1957. Despite this, such a requirement in the Clause is read in Annapurnabai (supra) for the following reasons :

Object of section 38(3)(d) is to protect only those tenants who were already on land on 1-8-1957 :

(b) In the Central Provinces area, there was no restriction whatsoever upon transfer of lands before the Act of 1958 applied to the area, and restriction existed only in Berar area wherein the Berar Regulation of Agricultural Leases Act, 1951 (the Act of 1951) was in force. It had provided for termination of lease of a protected lessee on the ground of personal cultivation and sub-section (9) of section 9 created a bar against termination of a lease of the protected lessee who was on land before 1st August, 1953 by a transferee who acquired the title to the land after that date. In the original Bill, which was made into the Act of 1958, the date 1-8-1953 was mentioned in place of date 1-8-1957 in section 38(3)(d) and hence the legislative intent of section 31(3)(d) and section 9(9) was similar, viz., to put restrictions on transferee-landlord's right to resume land for personal cultivation only in respect of leases created on or after specified dates mentioned in the sections.

(c) If the legislative intention was to prohibit termination of leases created by transferees acquiring title subsequent to 1st August, 1957, then express provision to that effect by making section 38(1) in-applicable to them would have been made;

(d) Therefore, the words "land leased" in section 38(3)(d) mean lands already leased on 1st August, 1957.

3. We find several difficulties in the way of endorsing the above lines of reasoning. Now, the object of the Act of 1958 is too well-known to be elaborately noticed. Shortly stated, protecting the right of the tillers of the soil, prohibiting their eviction only because the period of lease has expired, conferring right of ownership on them, restricting the transfers of land in possession of a tiller; are some of those objects. There are exceptions to this general scheme of protection to tenants from eviction. Requirements of land for bona fide personal cultivation of landlord is one such exception. Section 38 of the Act of 1958 deals with that subject. Section 38(1) provides for the manner of termination. Notice of termination has to be given on or before 15-2-1961 and application for possession has to be filed thereafter on or before 31-3-1961. Section 38(2) deals with additional and special rights of disabled landlords. Section 38(3) lays down general restrictions on the right of the landlord to resume land for personal cultivation. Clauses (a) and (b) of section 38(3) specify the extent to which the land can be resumed. Clause (c) deals with the subject of dependency of the landlord upon the land sought to be resumed. Clause (d) deals with the restrictive conditions imposed upon certain categories of landlords. Clause (e) deals with the subject of priority to be maintained, in the matter of termination of lease based on its duration. Section 38(7) makes a general exception in favour of a protected lessee who is in occupation of land since before 1-8-1953; such a lease cannot be terminated for any reason whatsoever by a transferee subsequent to that date. Thus, it will be seen that section 38 deals with the special and restrictive rights of a landlord to resume land for personal cultivation. Keeping these basic facts in view, we proceed to first examine the question, whether the term "land leased" used in section 38(3)(d) of the Act of 1958 means land already leased on 1-8-1957, or the words merely mean the tenanted land of which lease is sought to be terminated.

4. On behalf of the respondents-landlords, it is contended that if basically section 38 of the Act of 1958 deals with only leased lands, why the words "land leased" are used and not merely the word "land". It is argued that the use of the word "leased" after the word "land" is not an exercise in redundancy and is with a definite object. That object, the arguments proceeds, is to include without the sweep of the restriction only the land already leased on 1-8-1957 and to exclude lands leased thereafter. In our view, the answer to the submission lies in section 38 itself. The terminology "land leased" is used not only in sub-clause (d), but also in sub-clauses (a) and (b) of section 38(3), sub-sections (4) and (6) of section 38. It cannot be assumed that a particular term used in different parts of the same section is intended to convey different meanings. General context of section 38 indicates that the term "land leased" seems to have been used to highlight and emphasise the feature that the provisions are meant for the leased land in question of which resumption is sought and nothing beyond that. Obviously, the term "land leased" used in other sub-clauses and sub-sections of

section 38 cannot be read as meaning "land lease on 1-8-1957". What then warrants given a different meaning to the term only in section 38(3)(d) ? If legislative intention was to limit the limitations imposed by sub-Clause (d) upon the rights of the transferee landlords only to the lands leased on or before 1-8-1957, nothing prevented the Legislature from saying so specifically. We see no justification whatsoever either from the language used or the legislative intent to read words in the section which legislature has chosen not to put.

5. Giving natural and plain meaning to section (38)(3)(d) of the Act of 1968, it seems to us that it deals only with the right of the landlord and the classification made thereunder is with reference to the category of landlords and not with reference to the category of leases or lessees. Whenever the Legislature intended to deal with the category of landlords as well as the lessees, it has clearly said so. Take for example section 38(7), which is intended to protect only the right of a protected lessee already on land on 1-8-1953 by prohibiting termination of his lease by a land -holder who has acquired the land subsequent to that date. It may be mentioned that section 38(7) and section 9(9) of the Act of 1951 are provisions in *pari materia*. The provisions of section 38(3)(d) and 38(7) thus operate upon different fields and have entirely different objects to achieve. There is no justification whatsoever to resort to one provision to interpret the other. Indeed comparison of the language used in the two indicates that whenever date of creation of lease is relevant, it is specifically said so in the very section 38.

6. Thus, in our view the only requirement of section 38(3)(d) of the Act of 1958 is that the land of which the resumption is claimed must stand in the name of the landlord, or any of his ancestors on 1-8-1957. The date of creating the lease is not a relevant factor there. In this connection., legislative history of section 38(3) (d), which is noticed in the referring judgment, is relevant. The Bombay Tenancy and Agricultural Lands Act, 1948 (the Act of 1948) was already in force in the other parts of the State. The Act of 1958 is on the lines with the Act of 1948 Section 31-A of the Act of 1948 and section 38 of the Act of 1958 are analogous provisions. This Court in *Waman Ganesh Joshi v. Ganu Guna Khapre*, 1959 Bom Lr 1267 held that the term "landlord" in section 31-A of the Act of 1948 includes all those who derive title from the landlord. Realising that the interpretation put by the High Court was against what was intended by the Legislature, Amendment Act No. IV of 1960 was passed, by which the Clause "but not of any other predecessor-in-title from whom title is derived, where by assignment or Court sale or otherwise" was introduced in section 38(3)(d) of the Act of 1958, and that too with retrospective effect. The object of the amendment can be gathered from the following speech of the mover of Bill No. LXX of 1959 :

"Sir the House may be aware that we have incorporated condition (d) in sub-section (3) of section 38 of the Act in order to restrict the right of the resumption of land for personal cultivation only to those landlords whose name have been standing in the Record of Rights or in any public record or similar revenue record

continuously during the period from 1st August, 1957 to the date of coming into force of this Act and to the successors by inheritance of such landlords. The intention behind this Clause was that persons to whom lands have been transferred after 1st August, 1957 otherwise than by inheritance should not have any right to resume land from the tenants. Recently however the High Court has interpreted a similar provision contained in the Bombay Tenancy Act to the effect that the above condition would be satisfied even by a person who has acquired land after 1st August, 1957 by sale or other mode of transfer. The House will realise that this interpretation is at variance with the purpose which this House had in view in incorporating this condition. We have, therefore, proposed to amend this condition under Clause 6 of the Bill".

Bombay Legislative Assembly

Debates-

Vol. IX, Part-II, page 63.

It is too late unto the day to doubt the legal position that such speech provides extrinsic aid to gather the legislative intention, in case the language used in the provision presents any difficulty. The legislative intention behind section 38(3)(d) has thus always been, as is clear also from the above speech, that transferees (other than by inheritance) subsequent to 1-8-1957 should not be permitted to resume lands for personal cultivation from the tenants, irrespective of the date of lease.

7. To adopt the interpretation put in Annapurnabai, would permit even such transferee-landlord to resume the land much against the intention of the Legislature. Only because lease is created subsequent to 1-8-1957, the other requirements of section 38(3)(d) cannot be done away with. If this was the legislative intention, there was no necessity to make express provision to make section 38(1) inapplicable to leases created by transferees subsequent to 1-8-1957. In our view, therefore, with respect, Annapurnabai has not correctly interpreted section 38(3)(d). The landlords-respondents were transferees subsequently to 1-8-1957, they were neither the members of the joint family of Bainabai nor did they acquire the title by inheritance and bar of section 38(3)(d) applied notwithstanding the creation of lease after 1-8-1957.

8. Under the circumstances, the impugned orders of delivery of possession are quashed and set aside, Petition allowed. Rule made absolute but with no order as to costs.