

(1980) 01 BOM CK 0017

In the Bombay High Court

Case No : Special Civil Application No. 2675 of 1974

Bayaji Chandru Patil

APPELLANT

Vs

Sadashiv Dattatraya Kulkarni

RESPONDENT

Date of Decision : 16-01-1980

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 33B, 88C

Citation : (1980) 01 BOM CK 0017

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Advocate : M.A. Rane, for the Appellant; H.D. Hombalkar, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pratap, J.—Though in this petition under Article 227 of the Constitution there can be said to be a point of law arising for my determination, I am of the view, after hearing the submissions of the respective Advocates on the merits, that this is not a fit case for my interference in my discretionary jurisdiction under the said Article, my reasons in that behalf being as under :---

2. In respect of two agricultural lands survey No. 1089/C admeasuring 0 acre 32 gunthas and survey no. 117/C admeasuring 1 acre 7 gunthas originally owned by one Narayan Kulkarni, the said Narayan applied for and ultimately obtained as long back as in July 1959 an exemption certificate u/s 88-C of the Bombay Tenancy and Agricultural Lands Act. It may be relevant to note that one of the conditions for such a certificate is that the landlord's annual income must be less than Rs. 1,500/- and another condition is that his holding must be less than an economic holding. Narayan having fulfilled these conditions, exemption certificate was awarded to him in respect of the two lands aforesaid. However and unfortunately, as destiny would have it, within almost a month of obtaining such a certificate, Narayan expired. But prior to his demise, Narayan had executed a will in favour of his own brother's son Sadashiv, the present respondent. It may also be mentioned that in the absence of any heir Narayan, Sadashiv, apart from

being a legatee, could also be an heir or at least one of the heirs of Narayan, as he was, as indicated, Narayan's brother's son. Sadashiv terminated the petitioner's tenancy u/s 33-B of the Tenancy Act. This was followed by an application u/s 33-B of the Tenancy Act for possession. In 1964, the trial authority dismissed the said application. Sadashiv's appeal against the same failed. The Revenue Tribunal, however, allowed Sadashiv's revision application therefrom, held the application u/s 33-B maintainable and remanded the matter to the trial Court for hearing on merits. After remand, the trial Court went into the merits of the claim, found Sadashiv's claim to be reasonable and bona fide, also found that Sadashiv fulfilled the requisites for possession and consequently his claim was decreed to the extent of only half share which came to approximately 39 1/2 gunthas. This was as long back as in the year 1971. The petitioner-tenant's appeal against the said decision was allowed on the ground that Sadashiv being a legatee, had no right to apply u/s 33-B of the Tenancy Act. The Appellate Court, however, held that Sadashiv did establish that he bona fide required the land for personal cultivation and that he has no means of income except the rent of the leased lands. This Appellate decision was challenged by Sadashiv before the Revenue Tribunal. The Revenue Tribunal came to the conclusion that it already having once decided that Sadashiv's application was maintainable and having remanded the matter for decision on the merits of the said application and the said remand order not having been challenged by the petitioner-tenant, it was not now open to the petitioner-tenant to go behind the remand order, re-open the question once decided and seek to have Sadashiv's application dismissed on the ground that it was not maintainable. On the merits the Tribunal held that both the trial Court as also the Appellate Court had come to a concurrent finding to the effect that Sadashiv had established his bona fides and that he was entitled to be restored possession of the land as ordered by the trial Court. It is against this decision of the Tribunal that the present petition has been filed.

3. The petitioner is represented by his learned Advocate Mr. M.A. Rane. The respondent is represented by his learned Advocate Mr. N.D. Homabalkar. It was contended by Mr. Rane, the learned Advocate for the petitioner, that the Tribunal was wrong in law in coming to the conclusion that the earlier order of remand passed by it prevented the Tribunal from once again going into the question of maintainability of Sadashiv's application u/s 33-B of the Tenancy Act. He contended that conflict on the aforesaid question has now stood resolved by virtue of a Division Bench ruling of this Court in the case of Ratanlal v. Bajirao Ganpat, 1975 Maharashtra Law Journal 65. Mr. Homabalkar, the learned Advocate for the respondent, however, contended that though the view taken by the Tribunal may not be in accord with the ratio of the aforesaid Division Bench ruling, the view taken by the Tribunal was nevertheless at the time when it was taken a possible view of the matter and if the Tribunal has, at that stage, taken one of the possible views of the matter, there cannot be said to be an error of law apparent on the face of the record so as to justify interference.

4. Mr. Hombalkar also invited my attention to certain salient features of this case. Certificate u/s 88-C had been obtained more than twenty years ago. The litigation for possession has been pending before the various courts and Tribunals since then. Though the original landlord Narayan had established that he was a small land-holder having an income of less than Rs. 1,500/- per annum and a holding much less than economic holding, it is unfortunate that benefit of the said certificate could not go to him in view of his tragic demise. He further invited my attention to the fact that the respondent Sadashiv was not a stranger to Narayan. He was one of his Narayan's close relations. He was Narayan's brother's son and in the absence of any other heir of Narayan, the respondent Sadashiv was also entitled to be an heir of Narayan. He also invited my attention to the fact that all the three authorities below have come to a concurrent finding and conclusion that Sadashiv's claim for possession was reasonable and bona fide. Here is a case where whereas the petitioner-tenant holds as many as 18 acres of agricultural land, Sadashiv has no land at all in his possession and all that he would get by virtue of the order in these proceedings would be only 39 1/2 gunthas. The Appellate Court has also observed that Sadashiv has no means of income except rent of the agricultural lands. The Appellate Authority has further observed that Sadashiv does not even have a house of his own and still further that he has yet to repay the loan taken by him at the time of his marriage. This thus is the position of the respondent Sadashiv who has been fighting this litigation for the last nearly twenty years. If after twenty years all that he is awarded is possession of 39 1/2 gunthas with the petitioner-tenant continuing to be in possession of as much as 18 acres of land, can this be said to be a case where justice requires interference by this Court with the decision of the Revenue Tribunal which decision also at the time when it was taken was based on a possible view of the legal position of the matter ?

5. In my view, justice does not require interference. At the time of the Revenue Tribunal's judgment, the legal position of an order of remand such as the one in the instant case was in a stage of conflict. As observed in Ratanlal's case itself supra, on which Mr. Rane relies :

"....the High Court and the Tribunal is faced with a vexed question as to its competency to ignore its remand order based on Salubai's case, (1966) Mh.L.J. 289, to give effect to the law laid down in Radhabai's case, 1969 Mh.L.J. 933. There has been no unanimity in finding out an answer to the same. In the case of Shenphad Sadashiv v. Maharashtra Revenue Tribunal, 1970 Mh.L.J. 541, Chandurkar, J. held that such remand order operated as res judicata and precluded the Tribunal and also the high Court from following the dicta in Radhabai's case. This view was followed by him in his unreported judgment dated 2-8-1982 in Special Civil Application No. 156 of 1970 between Gowardhandes v. Amjadbet, and also in his judgment dated 4-2-1971 in Special Civil Application No. 867 of 1968 Laxman v. Sk. Munir, in a slightly different context holding that remand order based on the earlier High Court view as to the applicability of section 38 to the leases already terminated u/s 8 of the Berar Regulation of

Agricultural Leases Act of 1961 precluded the Revenue Tribunal from following Supreme Court, overruling the same, at subsequent stage after remand. Masodkar, J. on the other hand, in the case of Pandurang v. Maharashtra Revenue Tribunal, 1973 Mh.L.J. 792, held that such remand order of the High Court based on Salubai's case cannot preclude it from giving effect to the dicta in Radhabai's case if the matter comes before it again after the remand. This conflict necessitated reference of these cases to this Bench."

6. The aforesaid observations were made in the Division Bench ruling supra delivered on 23rd October, 1974, more than eight months after the decision of the Revenue Tribunal herein. Clear position, therefore, is that at the time when the Revenue Tribunal delivered its own judgment on 8th February, 1974, there was a conflicting legal position on the nature and character of a remand order as in the instant case. It is in this conflicting situation when two views of the matter were possible and were being in fact taken, how is it possible to conclude that the Revenue Tribunal's decision based on one view of the matter can constitute an error of law apparent on the face of the record? As observed by the Supreme Court in *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale*, .

"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such as error cannot be cured by a writ of certiorari according to the rule governing the powers of superior Court to issue such a writ."

It was held by the Supreme Court in the aforesaid ruling that the alleged error in the judgment of the Revenue Tribunal that an order for possession should not be made unless a previous notice required by section 14 of the Tenancy Act has been given was not an error apparent on the face of the record so as to be capable of being corrected by writ of certiorari. As further observed by the Supreme Court in the aforesaid ruling, merely because a decision is erroneous which error; not being apparent on the face of the record, it is not permissible for the High Court to correct the same. When on the legal nature and character of a remand order there was a conflict of views in Court at the time when the Tribunal delivered its impugned order, the Tribunal's decision based on one view of the matter cannot, as indicated, be said to constitute an error of law apparent on the face of the record.

7. This being the position, I am not bound to interfere with the impugned decision of the Revenue Tribunal. It was a possible view which the Tribunal took at the relevant time. The said view does not result in any injustice of the petitioner-tenant. He continues to be in possession of extensive area of agricultural land compared to the respondent Sadashiv who, as a result of the Tribunal's decision, got only 39 1/2 gunthas. Sadashiv has succeeded on bona fides and also on holdings. Indeed, his position appears to be, as reflected by the

decision of the Appellate Authority, of a precarious nature. He hardly has any means of livelihood. His bona fides are writ large on the record. He was unable to pay even the loan taken at the time of his marriage. This being the state of position emerging from the record, even interests of justice require that I should not interfere with the Tribunal's impugned order.

8. In the result, this petition fails and the same is dismissed. Rule earlier issued thereon is discharged but with no order as to costs.