
(1959) 11 BOM CK 0014

In the Bombay High Court

Case No : Special Civil Application No. 563 of 1959

Buvasaheb Tatyasaheb Mathakari

APPELLANT

Vs

Yesu Krishna Kadam

RESPONDENT

Date of Decision : 05-11-1959

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 19

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 34

Citation : (1960) 62 BOMLR 219 : (1960) NLJ 19

Hon'ble Judges : V.S. Desai, J;Shelat, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shelat, J.—This Special Civil Application raises a point of interest on the construction of Section 34 of the Bombay Tenancy and Agricultural Lands Act, 1948.

2. The land in dispute is survey No. 43 situated in the village Kameri in Walwa taluka and which was at all material times leased out to opponent No. 1 and was cultivated by him as a tenant. The petitioner contended that the land was his private personal property held in personal Inam. On March 26, 1953, he, therefore, served opponent No. 1 with a notice terminating his tenancy. On June 4, 1954, he filed the present application u/s 34 read with Section 29 of the Bombay Tenancy and Agricultural Lands Act, 1948, as it stood then, on the ground that the land was bona fide required by him for personal cultivation. Opponent No. 1, while admitting that he had taken the lease from the petitioner, contended that the land was Devasthan Inam land held by a shrine known as Shri Shambhu Appa Dev. The Mamlatdar, however, allowed the application and directed opponent No. 1 to hand over the possession of the land to the petitioner. Opponent No. 1 thereupon went in appeal before the Prant Officer, who set aside the order passed by the Mamlatdar and dismissed the petitioner's application on the ground that he was merely a Vahiwardar or a manager of the land in suit,

that the legal ownership of the land vested in the Shrine of Shri Shambhu Appa Dev and, therefore, the petitioner was not entitled to recover possession u/s 34 of the Act and dismissed the application of the petitioner. The petitioner thereafter went in revision before the Bombay Revenue Tribunal who upheld the decision of the Prant Officer and dismissed the petitioner's revision application. It is against this order of the Revenue Tribunal that the petitioner has presented this Special Civil Application.

3. Mr. Jahagirdar, who appears for the petitioner, stated to us that in an enquiry held u/s 19 of the Bombay Public Trusts Act, 1950, the Assistant Charity Commissioner has held that the shrine is a public trust and that the land in dispute is the property of the shrine. This decision has also been confirmed in appeal u/s 70 of the Act by the Charity Commissioner and the decision of the Charity Commissioner has again been confirmed by the District Court in an application u/s 72 of the Act. An appeal against that decision has been filed in this Court and that appeal is still pending. Mr. Jahagirdar, however, stated that although that appeal is pending, he is prepared to argue this application on the basis that the land in dispute is the Devasthan property belonging to the Shrine and that the present petitioner is the Vahiwardar or the Manager of that property. The contention of Mr. Jahagirdar is that even on the basis of the land in suit being Devasthan property and the petitioner being only the Vahiwardar or the Manager thereof, the petitioner would still be entitled to maintain his application u/s 34 of the Bombay Tenancy and Agricultural Lands Act, 1948, and that if the petitioner were to establish that he requires the land bona fide and for personal cultivation, he would be entitled to recover the possession of the land in question from opponent No. 1.

4. The question that arises for our determination is whether by reason of the language used in Section 34 and the definition of the words "personal cultivation" in Section 2(6) of the Act, a Manager or a Shebait of Devasthan property is entitled to maintain an application for recovering possession of the land cultivated by a tenant on the ground of personal cultivation. Now, there can be no dispute that a Shebait is, by virtue of his office, merely an administrator of the property attached to the temple of which he is the Shebait. Where property is devoted to religious purposes, the possession and management of the property belong, in the case of a Devasthan or a temple to its manager. The property, however, belongs to the idol, though in an ideal sense, but the possession and management of it must, in the nature of things, be entrusted to some person such as a Shebait or a Manager. The idol, however, is a juridical person with the power of suing and being sued. The Hindu law, like the Roman Law, recognises not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also juridical persons such as an idol. There can, therefore, be no doubt that the legal ownership of the property such as the property in question vests in the idol and the Manager or the Vahiwardar of that property is no more than an administrator of that property managing that property for and on behalf of the idol.

5. Mr. Jahagirdar urged that in the case of Devasthan property, the Manager of such a property is in the same position as a trustee under the Bombay Public Trusts Act, 1950. u/s 2(18) of that Act, a trustee has been defined as meaning a person in whom either alone or in association with other persons, the trust property is vested and includes, a manager. Mr. Jahagirdar has, therefore, urged that under this definition, the legal ownership of the property would vest in the petitioner, who is a trustee within the meaning of Section 2(18) of the Bombay Public Trusts Act, 1950. But what Mr. Jahagirdar forgets is that though the word "trustee" has been defined so as to include a manager, the Bombay Public Trusts Act, 1950, gives a separate definition of the word "manager". Therefore, although a trustee would include a manager, the term manager does not include a trustee. As defined in Section 2(8) of the Act, a manager means a person other than a trustee, who for the time being either alone or in association with some other person or persons, administers the trust property of any public trust. The property of which a person is a manager does not vest in a manager as it would, if he were a trustee thereof. The position of the present petitioner is clearly that of a manager as conceded by Mr. Jahagirdar for the purposes of this Application and not that of a trustee as defined in Section 2(18) of the Bombay Public Trusts Act, 1950. The suit property being the property belonging to the deity, the legal ownership clearly vests in the deity to whom the property belongs and not to the petitioner as the manager of that property. The property, therefore, cannot be said to have vested in him in the sense in which the definition of the word "trustee" in Section 2(18) contemplates.

6. The next question, therefore, would be, whether the petitioner as such a manager is entitled to maintain an application u/s 34 of the Bombay Tenancy and Agricultural Lands Act. Section 34 provides that notwithstanding anything contained in Section 14, a landlord may terminate the tenancy of a protected tenant by giving him one year's notice in writing, stating therein the reasons for such termination, if the landlord bona fide requires the land for any of the following purposes namely, for cultivating personally, etc. The question then would be two-fold: whether the petitioner can be said to be a landlord within the meaning of Section 34 and whether he can be said to be bona fide requiring the land in question for personal cultivation. Now, there is no definition of the word "landlord" in the Act, but the Act has defined the word "tenant" in Section 2. Under that definition a tenant means an agriculturist, who holds land on lease and includes a person who is deemed to be a tenant under the provisions of the Act. That Sub-section also provides that the word "landlord" shall be construed accordingly. Thus, there is no separate definition of the word "landlord" in the Act. Mr. Jahagirdar urged that though the petitioner is only a Vahiwardar or a Manager of the land in suit and the legal ownership of the land is vested in the idol, the idol cannot act except through the Vahiwardar or the Manager and that, therefore, the petitioner, though a mere Vahiwardar, should be regarded as the landlord of opponent No. 1 in respect of the land in suit. Mr. Jahagirdar also relied upon a statement made by opponent No. 1 before the Mamlatdar to the

effect that he had taken the lease of the land in suit from the petitioner. On both these grounds, Mr. Jahagirdar argued that the petitioner is and must be deemed to be a landlord of the land in suit. Once, however, the position is admitted that the legal ownership of the land vests in the idol and, therefore, the land in question belongs to that idol, the contention that the petitioner is the landlord cannot be sustained. His position in law being that of a mere Vahiwardar or a manager, all rights as to possession and management of the property, no doubt, lie in such a manager; nonetheless he cannot be deemed to be the landlord of the property. As regards the admission made by opponent No. 1 that he had obtained the lease from the petitioner, that admission must be restricted to the fact in respect of which it is an admission, namely, that he had obtained the lease in respect of the land in suit from the petitioner, as the manager or Vahiwardar of the idol. That being so, that admission cannot be treated as one rendering the petitioner as the landlord of opponent No. 1 or as an estoppel against opponent No. 1 precluding him from denying that the petitioner is the landlord of the land in suit.

7. The next difficulty that comes in the way of Mr. Jahagirdar is the definition of the words "to cultivate personally" given in Section 2(6) of the Act. The question would be whether as a manager of the property in suit, the petitioner can be said to be a person entitled to the possession of the land in suit on the ground of bona fide requirement for personal cultivation. Section 2(6) provides that "to cultivate personally" means to cultivate land on one's own account by one's own labour, or by the labour of any member of one's family, or under the personal supervision of oneself or any member of one's family by hired labour or by servants on wages payable in cash or kind, etc. It is impossible to say that a manager can maintain an application on the ground of personal cultivation when the legal ownership of the land does not vest in him but vests in another juridical person, namely, an idol or a shrine. As the definition stands, it is only the person in whom the legal ownership of the land vests, who can be regarded as a landlord and who alone can maintain an application u/s 34 on the ground that he requires the land bona fide for personal cultivation. As Section 2(6) stands, it is impossible to say that a person other than the person in whom the legal ownership of the property in question vests can maintain that he requires the land on behalf of such a person for personal cultivation.

8. Mr. Jahagirdar, however, drew our attention to Section 88B of the Bombay Tenancy and Agricultural Lands Act, 1948, as amended in 1956. That section lays down an exemption from certain provisions for lands belonging to certain public bodies and trusts, and provides that:

Nothing in the foregoing provisions except Sections 3, 4B, 8, 9, 9A, 9E, 10, 10A, 11, 13 and 27 and the provisions of Chapters VI and VIII in so far as the provisions of the said Chapters are applicable to any of the matters referred to in the sections mentioned above, shall apply... to lands, which are, inter alia, the property of a trust for an educational purpose, or an institution for public

religious worship;

Relying upon Section 88B of the amended Act, Mr. Jahagirdar argued that since the Legislature has made clear by Section 88B that the provisions of the Bombay Tenancy and Agricultural Lands Act as amended in 1956 were not to apply to lands belonging to institutions for public religious worship, impliedly it meant that Section 34 of the Act as it stood prior to this amendment did apply to the land in suit. Nobody disputes the fact that there is nothing in Section 34 of the Act, which shows that the provisions of that section did not apply to the land in suit. But the question is that although Section 34 would apply to such lands, whether the petitioner in his capacity as the manager of the suit land can maintain an application for recovering possession of the land in suit on the ground that he requires it for his personal cultivation. As we have already stated, the definition contained in Section 2(6) of the words "to cultivate personally" clearly debars the petitioner from maintaining such an application.

9. The result, therefore, is that the application fails and is dismissed. The view of the fact that the property belongs to the Devasthan, we do not make any order as to costs.