
(1982) 10 BOM CK 0020

In the Bombay High Court

Case No : Spl. Civil Application No. 271 of 1978

Champatrao Giridharrao Shrikant

APPELLANT

Vs

Govinda Krishna Mali and another

RESPONDENT

Date of Decision : 20-10-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 45, 45(2)

Citation : (1983) MhLj 261

Hon'ble Judges : D.B. Deshpande, J

Bench : Single Bench

Advocate : P.M. Bakshi, for the Appellant; S.M. Siddiqui, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Deshpande, J.—This special civil application is filed by the original landlord against the order of Maharashtra Revenue Tribunal setting aside the order of the Collector dated 26-4-1977 as well as the order of the Additional Tahsildar Kannad dated 31-10-1972 and remanding the matter back to the Additional Tahsildar for appreciation of the matter on the points as indicated by the Maharashtra Revenue Tribunal in its judgment and for giving findings after perusing the records and it arises out of the following facts.

2. This litigation has a little chequered career and the dispute relates to a portion of 10 acres of land out of survey No. 10 which is numbered as Survey No. 10/1. It appears that the petitioner is the landlord and the respondent No. 1 was a tenant. The land is situated in village Rithi in Kannad Taluka of Aurangabad district. The landlord the present petitioner (hereinafter referred to as Landlord) filed an application alleging that the tenant did not pay the rent for the years 1967-68, 1968-69 and 1969-70 and therefore, he filed suits in the Court of competent authority in that behalf and the said authority passed a decree in favour of the landlord. According to the landlord even after the decree was passed the rent was not paid. The landlord further alleged that for the year

1970-71 also the tenant did not pay rent but according to the tenant he sent a money order, which was refused by the landlord.

3. On 21-7-1971, a notice was given by the landlord to the tenant u/s 19 (2) of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as the Tenancy Act) and it was six month's notice terminating the tenancy of the tenant for failure to pay the agreed rent. This notice was admittedly served upon the tenant on 27-7-1971.

4. On 30-3-1972, the landlord started action against the tenant u/s 19(2) read with sections 28 and 32 of the Tenancy Act before the Tahsildar for possession of the land on the ground that the tenant was a defaulter. The landlord further averred in this behalf that he had given intimation of default each year in the month of Vaisakh to the tenant.

5. The tenant appeared and resisted the claim of the landlord. He denied that any rent was due from him to the landlord and he denied also that intimation of each default was given to him by the landlord as stated in clause 5 of his application.

6. Evidence was led before the learned Additional Tahsildar but the tenant himself did not step in the witness box. He examined a post-man to prove the refusal of the money order. The learned Additional Tahsildar on 31-10-1972 disbelieved the evidence led by the tenant and held that the tenant was a habitual defaulter and he passed an order directing delivery of possession by the tenant to the landlord. A true copy of the judgment of the learned Additional Tahsildar, Kannad is produced as Annexure-A to this writ petition. On going through this judgment, it is apparent that the learned Additional Tahsildar has not given any finding whatsoever on the question whether the landlord gave intimation to the tenant of the default within a period of six months of each default. Even without giving this finding, he passed an order in favour of the landlord.

7. It appears that on 22-12-1972, the tenant gave an application for certified copy of this judgment and the copy was furnished to him on 1-1-1973, On 18-4-1973, the tenant filed an appeal against the aforesaid order of the Additional Tahsildar before the Deputy Collector Land Reforms at Aurangabad but the learned Deputy Collector dismissed the appeal as barred by limitation. No further step was taken by the tenant in respect of this decision dated 5-6-1973 and therefore, this order became final.

8. It appears that on 17-6-1973, the tenant gave an application for the certified copy of the order passed by the Deputy Collector and on 22-6-1973 that copy was furnished to him. On 31-8-1973, the tenant gave an application to the Divisional Commissioner at Aurangabad and requested him to refer the matter to the Collector for exercising revisional powers u/s 90B of the Tenancy Act. A similar application was given by the tenant to the Deputy Collector also. On 12-9-1973, the Commissioner wrote to the Collector to exercise revisional

powers u/s 90B of the Tenancy Act and the Collector forwarded that letter and application of the tenant to the Deputy Collector. The matter, therefore, went back to the Deputy Collector and on 30-6-1974, the learned Deputy Collector dismissed this revision. Against this order, the tenant went in revision to the Maharashtra Revenue Tribunal, Aurangabad. On 28-11-1974, the Maharashtra Revenue Tribunal remanded the matter to the Deputy Collector by setting aside the order of dismissal and asked the Deputy Collector to decide the revision on merits. It appears that thereafter the matter was partly heard by the Deputy Collector and it was thereafter placed before the Collector for decision. On 26-4-1977, the Collector used revisional jurisdiction and dismissed the application filed by the landlord. Against this order, the landlord filed a revision application before the Maharashtra Revenue Tribunal on 6-5-1975. On 17-9-1977, the Maharashtra Revenue Tribunal set aside the orders of the Collector dated 26-4-1977 and of the Additional Tahsildar dated 31-10-1972 and restored the case to the file of the Tahsildar for appreciation of the matter on the points as stated in his judgment, which are as under:

Under the circumstances of the case the following points are liable to be considered.

1. Whether the landholder has proved that the tenancy is terminated for non-payment of rent for 3 years to pay rent within the period specified in sub-clause 1 of Clause (A) of sub-section 2 of section 19.
2. Whether the landholder has proved that he has terminated the tenancy by giving 6 months notice in writing intimating his decision to terminate the tenancy on the ground for such termination as it is required under the proviso of sub-section 2 of section 19 of the Hyderabad Tenancy and Agricultural Lands Act, 1950.
3. Whether the landholder has proved that he has given intimation to the tenant of the default within a period of 6 months of each default.
4. Whether the landholder entitled for possession under sub-section 2 of section 32 of the Tenancy Act.

It is against this order, the landlord has come to this Court under Article 227 of the Constitution of India.

9. Mr. P. M. Bakshi appearing on behalf of the petitioner urged before me that when once appellate jurisdiction was exercised by the Deputy Collector and when the appeal filed by the tenant was once dismissed by the Deputy Collector, the revisional jurisdiction could not be invoked either by the Deputy Collector or by the Collector u/s 90B of the Tenancy Act. There is no doubt that two remedies are provided to the tenant. One is by way of appeal u/s 90 and the other is by way of revisional powers of Collector u/s 90B of the Tenancy Act. Now it is an admitted fact that the tenant who had filed appeal before the Deputy Collector failed in that appeal because the learned Deputy Collector held that the appeal

filed by the tenant was barred by limitation. It is obvious that the appeal was filed by the tenant beyond the period of limitation. It appears that this question was pressed before the Courts below but relying upon a decision of this Court in *Rambhau v. State of Maharashtra* 1976 Mah. L J 443, it was held that as the appeal was filed beyond the period of limitation, the remedy of revision was open and the revisional jurisdiction could be exercised because the appeal itself was filed beyond the period of limitation. Now the relevant portion from section 90B of the Tenancy Act runs as follows:

Where no appeal has been filed within the period provided for it, the Collector may, suo motu or on a reference made in this respect by the Commissioner or the State Government at any time.....

Mr. Siddiqui appearing on behalf of the tenant respondent urged before me that the appeal filed by the tenant was beyond the period of limitation and therefore, the provisions of section 90B of the Tenancy Act were not a bar for exercising revisional jurisdiction by the revisional authority. According to Mr. Siddiqui filing of appeal within the period of limitation was a sine qua non to act as a bar to exercise revisional jurisdiction and according to him in the instant case, appeal having been filed beyond limitation there was no bar at all. Mr. Siddiqui also has placed strong reliance upon a decision of Division Bench of this Court on the aforesaid ruling of *Rambhau*. It is true that this is a ruling u/s 45 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act (hereinafter referred to as Ceiling Act). If we compare the provisions of section 45 of the Ceiling Act with the provisions of section 90B of the Tenancy Act, we find that the provisions are similar and the Division Bench has observed as follows:--"It is only when an appeal is filed within limitation that the case would be covered by the proviso to sub-section (2) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. Mere filing of an appeal would not attract the proviso as to bar a revision. An application for revision cannot be rejected on the ground that an appeal was preferred beyond time and the same was rejected summarily on that ground. The words "within the period provided for it" in the proviso to section 45 (2), Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 cannot be ignored." According to Mr. Bakshi that is a revision under the Ceiling Act and therefore, its guidance cannot be taken for interpreting the provisions of the Tenancy Act. Mr. Bakshi tried to distinguish the provisions. He contended that under the Tenancy Act, both the appellate as well as revisional jurisdiction is vested in the Collector or Deputy Collector himself, whereas under the Ceiling Act, Maharashtra Revenue Tribunal was the appellate authority while the revisional jurisdiction vested with the State Government. The second submission of Mr. Bakshi was that a revision lies to the Maharashtra Revenue Tribunal against every order of the Collector whereas there is no such provision made against the order of Maharashtra Revenue Tribunal in the Ceiling Act. He then urged that in the Tenancy Act, the personal rights of the party are affected, whereas under the Ceiling Act personal rights of the party are not affected. There is absolutely no force in this contention. Even under the Ceiling Act, personal

rights of the party are positively affected. If a person is declared a surplus holder and his land is acquired as surplus, it is as clear as anything that his rights are affected. I do not find any distinction as urged by Mr. Bakshi and when similar words are used in two different Legislations it will be legitimate to draw guidance from the reported rulings in this behalf.

10. Then Mr. Bakshi contended that when Deputy Collector dismisses the appeal as barred by limitation, it must be taken that he refuses to exercise revisional jurisdiction also I am unable to appreciate this argument. In the instant case it is quite clear that the revisional jurisdiction was exercised because of a reference made to the Deputy Collector by the Commissioner through the Collector, and this is permissible u/s 90B of the Tenancy Act. Then Mr. Bakshi urged that the revisional jurisdiction must be exercised judiciously. There can hardly be any quarrel with this proposition put forth by Mr. Bakshi. He urged further that simply because the Commissioner sent the matter back to the Deputy Collector, he should not have exercised revisional jurisdiction in this behalf. I find from the record that the Collector who exercised revisional jurisdiction has not exercised it simply because the Commissioner had forwarded this matter to him. He has applied his mind and has come to conclusion. It was then urged by Mr. Bakshi that no revision was filed against the order dated 5-6-1973 by which the Deputy Collector dismissed the, appeal as barred by limitation and therefore, according to him revisional jurisdiction could not be exercised by the Collector or by the Deputy Collector. At the fault of repetition I may point out that this revisional jurisdiction is exercised because the matter was referred to that authority by the Commissioner and therefore, it is clearly permissible to exercise revisional jurisdiction.

11. Mr. Bakshi then placed reliance upon some rulings. One is an authority of the Supreme Court in Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, . It is apparent from the facts of this reported ruling that against an order passed under the Bombay Rent Act, a revision was filed, in the High Court at Bombay and the High Court dismissed the revision application on merits after hearing both the parties. It appears that after dismissal of this revision, the aggrieved party challenged the order of the Appellate Court and not of the High Court in petition by starting proceeding under Articles 226 and 227 of the Constitution of India and it is in this background, the Supreme Court has held that the High Court could not exercise jurisdiction under Articles 226 and 227 of the Constitution of India, inasmuch as the order of the Appellate Court under the Bombay Rent Act had merged in the order of the High Court passed in its revisional jurisdiction. Mr. Bakshi placed strong reliance on the following observations in Para 8:

If there are two modes of invoking the jurisdiction of the High Court and one of those modes has been chosen and exhausted it would not be a proper and sound exercise of discretion to grant relief in the other set of proceedings in respect of the same order of the Subordinate Court. The refusal to grant relief in such

circumstances would be in consonance with the anxiety of the Court to prevent abuse of process as also to respect and accord finality to its own decisions.

I do not think that these observations apply to the facts of the instant case.

The second ruling on which, he has placed reliance is also an authority of the Supreme Court in *Nathia Agarwalla v. Jahanara Begam* A I R 1961 S C 92 Head Note B. It has hardly any relevance to the facts of the present case. The last authority on which he placed reliance is of AIR 1932 165 (Privy Council) Head Note A. In that ruling before the Privy Council, the question for consideration was what is the definition of the word, "Appeal". I do not think that it has anything to do with the facts of the present case. I am, therefore, satisfied that the revisional jurisdiction could be exercised in the instant case because of the reference made to the Collector by the Commissioner as required by Section 90B of the Tenancy Act.

12. I, therefore, do not find any merit in this special civil application.

13. Even otherwise, after going through the judgment of the Additional Tahsildar, I have pointed out earlier that the learned Additional Tahsildar did not give any finding regarding the actual intimation to be given by the landlord to the tenant of the default within a period of six months of each default. For this purpose we have to turn to Section 28 sub-section (1) and its proviso and they run as under:

"(1) Where a tenancy of any land held by a tenant is terminated for " non-payment of rent and the landholder files any proceeding to reject the tenant, the Tahsildar shall call upon the tenant to tender to the landholder the rent in arrears together with the cost of proceeding, within (ninety) days from the date of the order, and if the tenant complies with such order, the Tahsildar shall, in lieu of making an order of ejectment pass an order directing that the tenancy has not been terminated and thereupon the tenant shall hold the land as if the tenancy had not been terminated:

Provided that nothing in this section shall apply to any tenant whose tenancy is terminated for non-payment of rent if he has failed for any three years to pay rent within the period specified in sub-clause (i) of clause (a) of sub-section (2) of section 19 and the landholder has given intimation to the tenant of the default within a period of six months of each default.

Now it is apparent that the landlord started proceedings against the tenant for ejectment on the ground that the tenant was a wilful defaulter. Sub-section (1) provides that a period of 90 days is required to be given by the Tenancy Authorities to the tenant to pay the arrears of rent, and this period is not required to be granted for the reasons stated in the proviso to this section. Hence it was necessary for the landlord to show that his case fell within the ambit of the proviso to Section 28 of the Tenancy Act and for this purpose the landlord must prove that he gave intimation to the tenant of the default within a period of six months of each default and as already stated, the learned Additional

Tahsildar has not given any finding whatsoever on this aspect of the matter and therefore, the order of the learned Additional Tahsildar is vitiated and it can not stand.

14. I have proceeded to discuss this aspect assuming for a moment that certain illegality is committed by the Collector or by the Maharashtra Revenue Tribunal in reassessing the said matter but I find from the record that real justice is being done by sending the matter back to the Additional Tahsildar because the Additional Tahsildar has failed in his duty to observe the provisions of law while deciding the matter and hence even if it is assumed for a moment that some sort of illegality is committed by the superior authority, this Court will not interfere with the same under its extra ordinary jurisdiction when it is apparent from the facts of the case that real justice is being done ultimately. In view of these facts, I do not find any merit whatsoever in this Special Civil Application and it is dismissed accordingly. Rule discharged but in the circumstances of the case, no order as to costs.