
(1983) 07 BOM CK 0002

In the Bombay High Court

Case No : Special Civil Application No. 107/B of 1980

Chondru Gomes

APPELLANT

Vs

Mamlatdar, Tiswadi Taluka and Others

RESPONDENT

Date of Decision : 16-07-1983

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1983) MhLj 972

Hon'ble Judges : A.A. Ginwala, J

Bench : Single Bench

Advocate : V.K. Bodke, for the Appellant;

Final Decision : Dismissed

Judgement

A.A. Ginwala, J.—By this writ petition the petitioner challenges the orders passed by the first three respondents. The facts leading to the present petition briefly stated are as follows:

2. On 5-9-1975 the petitioner made an application to the first respondent for a declaration that he was tenant in respect of a paddy field and for possession of the same from the fourth respondent who is alleged to be landlady of the said field. In this application the petitioner alleged that he has been a tenant of the said field which consists of two portions, for the last 12 years and has been cultivating the same personally and paying the rent in kind to the landlady regularly. He further alleged that the said field was in his possession till May 1975, but the fourth respondent forcibly took possession thereof in May 1975 and started cultivating it herself. It was on these facts that the petitioner moved the first respondent for declaration and possession. In support of his case the petitioner examined five witnesses who generally stated that the petitioner had been cultivating the said land for the last 10 to 12 years. The first respondent by his order passed on 30-9-1976 held that for proving tenancy mere cultivation of the field was not enough and both lease and payment of rent had to be proved. On the evidence he found that the petitioner had failed to prove the lease and

payment of rent which, according to the first respondent, were essential elements for seeking declaration as a tenant. In this view of the matter the first respondent dismissed the petitioner's application. Being aggrieved by this order the petitioner approached the second respondent in appeal who by his order passed on 30-3-1977 dismissed it. Consequently the petitioner moved the third respondent in its revisional jurisdiction but without any result. The petitioner, therefore, has approached this Court invoking its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

3. Mr. Bodke, the learned counsel for the applicant, relying on section 4 of Goa, Daman and Diu Agricultural Tenancy Act, 1964 (hereinafter referred to as "the Act") submitted that the petitioner having proved that he had been cultivating the said land 10 to 12 years prior to the filing of the application, was enough to hold that he was a deemed tenant within the meaning of the said section and if that was so, the first respondent ought to have declared him as such and directed the fourth respondent to deliver possession of the portion of the land of which the petitioner had been deprived of. Mr. Bodke further submitted that the first respondent and for the matter of that the second and the third respondents also erred in expecting the petitioner to prove that he was tenant of the land in dispute. According to Mr. Bodke, if that was so, it will be a contractual tenancy and the petitioner would not get the benefit of deemed tenancy within the meaning of section 4 of the Act.

4. No one has appeared for any of the respondents.

5. Section 4 of the Act, in so far as it is material for our purpose, states that a person lawfully cultivating any land belonging to another person on or after the 1st of July, 1962 but before the commencement of the Act, shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not a member of the owner's family or a servant on wages or a mortgagee in possession. It is obvious that any person who satisfies the conditions of this section is deemed to be a tenant. Now clause (23) of Section 2 defines "tenant" to mean a person who on or after the date of commencement of the Act holds land on lease and cultivates it personally and includes a person who is deemed to be a tenant under the Act. It would, therefore, appear that by virtue of this definition a deemed tenant is for all purposes a tenant within the meaning of the Act and naturally would be entitled to all the benefits thereof. Coming back to Section 4, it would appear that in order to be declared as a deemed tenant a person claiming to be so has to prove that he had been lawfully cultivating any land belonging to another person between 1st July 1962 and the date of commencement of the Act, which I am told is 8-2-1965. In other words, if the person who claims to be a deemed tenant proves that he has been lawfully cultivating the land of another person between 1-7-1962 and 8-2-1965, he would be deemed to be a tenant, irrespective of the fact whether there is contract of lease or not. It must be remembered that the person who is claiming, has to prove that he has been cultivating the land lawfully. The word "lawfully"

occurring in this section has to be given its due weight. In other words, any person who is unlawfully cultivating land of another during the above-said period, would not be entitled to be termed as a deemed tenant. Hence lawful cultivation is sine qua non for being a deemed tenant.

6. In view of what has been said above, a person who comes before the Mamlatdar for a declaration that he is a deemed tenant has, therefore, of necessity to prove that he has been cultivating the land concerned lawfully. It is for him to establish this fact. If he merely comes before the Mamlatdar with a case that he has been cultivating the land, without at the same time showing as to whether his cultivation is lawful or not, the Mamlatdar would be right in not entertaining the claim of such a person. It is in this background that we have to see the facts of the present case.

7. As stated above, in para 3 of the application which the petitioner made to the first respondent he averred that he "has been and is the tenant of the two abovementioned portions for the last over twelve years and has been cultivating the same personally and paying the rent in kind to the landlord regularly". Obviously this averment was made by the petitioner in the application to show that he was lawfully cultivating the land in dispute. It is not necessary that only those persons who cultivate land as tenants would be deemed to be lawfully cultivating the land. A person may cultivate another's land in some other capacity except the three mentioned in the said section, and even then he would be deemed to be a tenant. Now here as can be seen, the petitioner has come forward with a definite case that he has been cultivating the land as a tenant and for establishing that his cultivation was lawful, he had, therefore, to substantiate his allegation in this behalf.

8. As stated above, the petitioner examined three witnesses in support of his contention that he has been cultivating the land as a tenant. The first respondent in his order has held that all these witnesses merely stated that the petitioner has been cultivating the said land for the last 10 to 12 years and has further come to observe that mere cultivation of the land is not enough to prove tenancy and that lease and rent has to be proved. What emerges from this is that the first respondent did not accept the evidence of the petitioner and his three witnesses on the question of the petitioner cultivating the land as a tenant. As a matter of fact, the first respondent has gone on record to hold that the petitioner has not proved the lease and payment of rent. In substance, therefore, on the basis of the evidence which was before him, the first respondent came to the conclusion that this evidence merely established that the petitioner was cultivating the land for 10 to 12 years prior to the filing of the application but at the same time it did not establish that the petitioner was doing so on the basis of any lease and on payment of rent. The question is whether this approach of the first respondent was correct. As stated above, proof of mere cultivation of a land during the abovesaid period would not be enough to clothe a person with deemed tenancy. He must establish that his cultivation is lawful. In the present

case the petitioner came forward with a case that his cultivation was lawful because he was a tenant. Now if that was his case, he had to establish it in order to bring his case within the four corners of Section 4 of the Act. Since the first respondent has not accepted his evidence on this point it follows that the petitioner has not been able to establish the essential ingredient of Section 4, namely that the cultivation was lawful, if that is so, it is difficult to say that the first respondent has fallen into an error in refusing to declare the petitioner as a deemed tenant.

9. Mr. Bodke submitted that since the first respondent has held that the petitioner was cultivating the land for 10 to 12 years prior to filing of the application, he should have held that this cultivation was lawful, in the absence of it being established that it was unlawful or wrongful. It is difficult to agree with Mr. Bodke in this contention. Obviously the burden of proving that the cultivation is lawful is on the person who goes before the Mamlatdar for a declaration in his favour. It is, therefore, for him to establish not only the cultivation but that the cultivation is lawful. Simply because he does not establish this it does not necessarily follow that his cultivation is lawful.

10. Mr. Bodke next contended that the second respondent while disposing of the appeal did not consider the evidence with a view to see if the petitioner had established that he was a tenant in respect of the said land and had dismissed the appeal without any discussion on this point. He submitted that this infirmity in the appellate judgment had been made a ground in the revision application before the third respondent but it also did not consider it. Now the second respondent has confirmed the order of the first respondent agreeing with his findings; It was not, therefore, necessary for him to go into details and discuss the whole evidence again. Apart from this it would appear that though ground to this effect had been raised in the application for revision before the third respondent, it does not seem to have been urged at the time of hearing before it since no mention of it is found in the order passed by the third respondent. Besides this, in the present writ petition the order passed by the second respondent has not been challenged on this ground.

11. The result, therefore, is that I do not find any reasons to interfere with the impugned orders. Consequently the writ petition stands dismissed and the rule discharged, without any order as to costs.