

(1979) 12 BOM CK 0015

In the Bombay High Court

Case No : Spl. Civil Application No. 1882 of 1978

Dagadu

APPELLANT

Vs

Ramji and Others

RESPONDENT

Date of Decision : 06-12-1979

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 23, 41, 43, 46, 48
Constitution of India, 1950 — Article 227

Citation : AIR 1981 Bom 323 : (1980) MhLj 472

Hon'ble Judges : Jamdar, J

Bench : Single Bench

Advocate : N.S. Munshi, for the Appellant; M.N. Ingely, A.R. Ingely and N.G. Solao, for the Respondent

Judgement

1. The material question that arises for consideration in this petition is whether the Agricultural Lands Tribunal while exercising the powers conferred upon it by Section 98 of the (hereinafter referred to as the Vidarbha Tenancy Act) can make a reference u/s 125 to the Tahsildar for deciding the issue of Tenancy.

2. The petitioner claims to be the tenant of the lands bearing S. Nos. 72/1, 74/1 and 74/4 situate at to be, a village in Washim tahsil of Akoaia District. These lands admittedly belong to respondent No. 1. Suo motu proceedings were commenced u/s 48 of the Vidarbha Tenancy Act for transferring ownership of above mentioned lands in favour of the petitioner. Respondent No. 1 disputed petitioner's claim that he is a tenant of the lands in question. According to respondent No. 1, the petitioner is his partner in cultivation of the lands. The Agricultural Lands Tribunal, presumably on the assumption that it had no jurisdiction to decide the question about tenancy, made a reference u/s 125 of the Vidarbha Tenancy Act to the Tenancy Naib Tahsildar, Washim for decision of the following issues:--

(1) Whether the recorded tenant Da-gadu s/o Konduji of Toe, Tahsil Washim,

District Akola is a tenant of field S. Nos. 71/1 and 74/1 area 5 acres 4 gunthas and 0 acres 35 gunthas 74/4 area 20 acres of village to be shown as owned by Raoji Saturaji of village Adoli.

(2) If so since when?

(3) Whether he was in possession of the field in question on 1-4-1961 or 1-4-1963 as a tenant?

(4) Whether still he is in possession of the land in question?

(5) How much total land is held by the alleged tenant?

3. The reference was heard by the Additional Tahsildar, Washim. He held that the petitioner is not the tenant of the lands in question, that he was not tenant of the lands on 1-4-1961 and 1-4-1963 and that he was not in exclusive possession of the lands on these material dates. This order was confirmed by the Special Deputy Collector in the appeal preferred by the petitioner. The revision application preferred by the petitioner to the Maharashtra Revenue Tribunal was also dismissed. The petitioner, therefore, moved the High Court by an application under Article 227 of the Constitution for quashing the orders passed against him by the Tenancy Authorities in the suo motu proceedings. The petition was allowed by the High Court on the ground that the matter involved in the petition called for reconsideration of the entire controversy between the parties. The matter, therefore, was remanded back to the Appellate Court for hearing the appeal afresh according to law. After remand, the appeal was decided by the Special Deputy Collector on the basis of the evidence already on record, as agreed to by the parties, and confirmed his original finding that the petitioner is not the tenant of the lands in question. The petitioner, being aggrieved by this order, preferred Revision Application No. Ten-A-58/76 to the Maharashtra Revenue Tribunal. At the hearing of this revision application, it was contended for the first time that the Agricultural Lands Tribunal was not competent to make a reference u/s 125 of the Vidarbha Tenancy Act, that the Additional Tahsildar therefore, had no jurisdiction to decide the reference and hence all the proceedings, which arose out of this reference were bad in law and must be quashed. The Revenue Tribunal rejected the contention holding that the material question was not whether the Agricultural Lands Tribunal was competent to make reference but the material and decisive fact was whether the authority receiving the reference was competent to decide the issues. The Tribunal also held that the objection about jurisdiction was never raised before by the petitioner who had subjected himself to the jurisdiction of the Additional Tahsildar and hence the contention in that behalf is barred by constructive res judicata. Being aggrieved by this decision, the petitioner has again approached this Court under Article 227 of the Constitution of India.

4. Mr. Munshi for the petitioner did not challenge the concurrent findings given twice by the courts below that the petitioner is not the tenant of the lands. He, however, emphatically urged that as the reference itself was bad, all subsequent

proceedings are vitiated. In support of this contention, Mr. Munshi placed reliance on the decision of Chandurkar, J. in Spl. Civil Appln. No. 345 of 1970 decided on 11-8-1971 *Kisan Dhawaji v. Saraswatibai*. In that case also the issue of tenancy, which arose in a proceedings for statutory transfer of ownership u/s 48 of the Vidarbha Tenancy Act, was referred by the Agricultural Lands Tribunal to the Tahsildar. It was held that Section 125 of the Vidarbha Tenancy Act could not be invoked by the Agricultural Lands Tribunal as it dealt only with the bar against the Civil Court. It was further held that Section 97 does not empower the Agricultural Lands Tribunal to make any reference. The learned Judge further held that when a Tahsildar is appointed as the Agricultural Lands Tribunal and he exercises the powers and performs the duties and functions of the Agricultural Lands Tribunal, he does not cease to be a Tahsildar and even while functioning as the Tribunal he is competent to decide whether a person is a tenant or not. The learned Judge also held that in the absence of any provision empowering the Lands Tribunal to make a reference to the Tahsildar, the Tribunal has no jurisdiction to make a reference and the Additional Tahsildar has no jurisdiction to deal with the question which it is for the Lands Tribunal to decide.

5. The above referred decision mainly proceeded on two assumptions. First that Section 125 of the Vidarbha Tenancy Act could not be invoked by the Agricultural Lands Tribunal and second that in the absence of any provision in the Vidarbha Tenancy Act to that effect, the Agricultural Lands Tribunal cannot make such a reference and that when an officer not being of the rank of Tahsildar is appointed as the Agricultural Lands Tribunal, he will be competent, even while functioning as the Agricultural Lands Tribunal, to decide the issue about tenancy. It, however, appears that the provisions contained in the explanation to Section 125 and in Section 102 were not brought to the notice of the learned Judge. Section 125, which provides for a reference by the Civil Court to the Tenancy Authorities, of issues, which under the provisions of the Vidarbha Tenancy Act are required to be settled, by the said authorities reads as follows:

"(1) If any suit instituted in any Civil Court, involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act (hereinafter referred to as the competent authority) the Civil Court shall stay the suit and refer such issues to such competent authority for determination.

(2) On receipt of such reference from the Civil Court, the competent authority shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court and such court shall thereupon dispose of the suit in accordance with the procedure applicable thereto.

Explanation: For the purpose of this section a Civil Court shall include a Mamlatdar's Court constituted under the Mamlatdar's Courts Act, 1906."

6. Section 102 lays down the procedure expected to be followed by the Tahsildar and the Tribunal. It reads as follows:--

"In all inquiries and proceedings commenced on the presentation of applications u/s 101, the Tahsildar or the Tribunal shall exercise the same powers as the Mamlatdar's Courts under the Mamlatdars' Courts Act, 1906, and shall, save as provided in Section 36, follow the provisions of the said Act, as if the Tahsildar or the Tribunal were a Mamlatdar's Court under the said Act and the application presented was a plaint presented u/s 7 of the said Act. In regard to matters which are not provided for in the said Act, the Tahsildar or the Tribunal shall follow such procedure as may be prescribed by the State Government. Every decision of the Tahsildar or the Tribunal shall be recorded in the form of an order which shall state the reasons for such decision."

It is, therefore, clear that the Agricultural Lands Tribunal is a Civil Court for the purposes of Section 125 and is quite competent to make a reference.

7. Admittedly the Agricultural Lands Tribunal has no jurisdiction to decide the issues about tenancy. The duties of the Agricultural Lands Tribunal as stated in Section 98 are as follows:--

- (a) to determine the value of the site of a dwelling house u/s 23;
- (aa) to decide any dispute whether the ownership of any land is transferred to, and vests in, a tenant u/s 46, Section 49-A or Section 49-B;
- (b) to decide any, dispute as to the particular area of land to be purchased under Sections 41 (46 and 49-A);
- (c) to determine the reasonable price of the land u/s 43 and Section 91;
- (d) to determine in the prescribed manner dispute regarding --
 - (i) the priority or any other right in relation to the purchase of land u/s 41 among tenants inter se or between the tenant and the landlord,
 - (ii) the kind, extent or location or any particular area of land to be purchased or the amount of the price or any installment thereof to be deposited;

These duties and functions do not include the function to decide whether the person is, or was at any time in the past, a tenant. This function is specifically included in the duties and functions to be performed by the Tahsildar by virtue of Clause (2) of Section 100 of the Vidarbha Tenancy Act.

8. It is true that only a person of the rank of Tahsildar and above can be appointed as one man Agricultural Lands Tribunal as contemplated by Subsection (2) of Section 97. Such person would be competent to decide the issue about tenancy. But it cannot be forgotten that the Agricultural Lands Tribunal and the Tahsildar are the distinct legal functionaries having separate duties and functions under the Vidarbha Tenancy Act. Cases may arise in which the Tribunal may be constituted by more than one person and some of the members of the Tribunal may not be competent to exercise the powers conferred on the Tahsildar by Section 100. As provided in the proviso to Sub-section (2) of Section 97, the

State Government may for any area constitute a Tribunal consisting of not less than three members. The Tribunal so constituted can exercise the powers and perform the duties and functions of the Agricultural Lands Tribunal under the Act. Obviously such a Tribunal would not be competent to decide the issue about tenancy even if one of its members happens to be an officer, not below the rank of a Tahsildar. If a dispute about tenancy is raised before such a Tribunal, it has to make a reference to the competent authority viz., the Tahsildar for decision of the said issue. It appears that this aspect of the matter was not placed before the learned Judge in the above referred case.

9. It may be that the Tahsildar appointed as one man Agricultural Lands Tribunal, may, if he so chooses, himself decide the issue about tenancy in any of the proceedings enumerated in Section 97. But that does not mean that while acting as an Agricultural Lands Tribunal he is not competent to make a reference to the Tahsildar i.e. either to himself or to any other Tahsildar, having jurisdiction in the matter. Cases may also arise in which a Tahsildar, who is designated as an Agricultural Lands Tribunal may not be simultaneously posted and designated as a Tahsildar. It may also be that the officer appointed as Agricultural Lands Tribunal may not be a Tahsildar but some Officer of the rank above the Tahsildar. Sub-section (2) of Section 97 visualises such a possibility. Such an officer would not be competent to decide the question about tenancy which in the first instance must be decided u/s 100 (2) by the Tahsildar. It is, therefore, difficult to accept the submission that the reference made by the Agricultural Lands Tribunal in this case was not competent and therefore, the Additional Tahsildar, who decided the issue about petitioner's tenancy had no jurisdiction to do so.

10. There is one more aspect of the matter, which assumes some significance in this case. The competency of the reference was challenged for the first time before the Revenue Tribunal at the hearing of the second revision application filed by the petitioner. That was the fifth proceeding between the parties. It is also significant to note that this objection was not taken in earlier writ petition (Special Civil Application No. 650/1967) filed by the petitioner challenging the order of the Maharashtra Revenue Tribunal at the end of the first round. The objection raised, therefore, deserves to be ignored even on that ground. The petition, therefore, fails. It is dismissed with costs. Rule accordingly.

11. Petition dismissed.