

(1980) 07 BOM CK 0009

In the Bombay High Court

Case No : Special Civil Application No's. 5437, 5438 and 5439 of 1976

Dagadu Yadaora Damdhare and Others and Parbhu Sakhamam Dorge APPELLANT

Vs

Shankar Vithoba Dhavale and Others RESPONDENT

Date of Decision : 17-07-1980

Acts Referred:

Bombay Inferior Villages Watan Abolition Act, 1958 — Section 5(1), 9
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 4
Maharashtra Land Revenue Code, 1966 — Section 149

Citation : (1980) 07 BOM CK 0009

Hon'ble Judges : R.S. Bhonsale, J; M.N. Chandurkar, J

Bench : Division Bench

Advocate : C.R. Dalvi, for the Appellant; K.J. Abhyankar, for the Respondent

Judgement

M.N. Chandurkar, J.—This Judgment will dispose of Special Civil Application Nos. 5437, 5438 and 5439 of 1976, because the facts relevant for the disposal of these three petitions are the same.

2. Field Survey No. 290, area 51 and 21 gunthas of village Talegaon Dhamdhare were admittedly Ramoshi Watan lands. Field Survey No. 290 was cultivated by Dhamdhare who are petitioners in Special Civil Application No. 5437 and 5439 of 1976. Ramoshi Watan came to be abolished by the Bombay Inferior Village Watan Abolition Act, 1958 (hereinafter referred to as "the Watan Abolition Act"). There does not to be any dispute that these fields were cultivated by Dhamdhare and Dorges, respectively, in 1935 though to one stage as the Watandar did not render service and both the fields were resumed by the State in 1946. Later on the resumption order was withdrawn. On coming into force of the Abolition Act, both these fields were regranted to Kisan Janglu Dhamdhare, subject to certain conditions. Kisan Janglu is respondent No. 5 in all the petitions.

3. It appears that Kisan Janglu sought eviction of the petitioners Dhamdhare and Dorges and, therefore, the petitioners filed two separate applications for a

declaration that they were tenants of these fields. These applications were originally rejected by the Mamlatdar holding that the lease in favour of the petitioners was unauthorised. These orders were confirmed in appeal, but the Maharashtra Revenue Tribunal in revision Applications field by the petitioners set aside both the orders and held that the petitioners were tenants.

4. These orders of the Maharashtra Revenue Tribunal were challenged by Kisan Janglu in Special Civil Application Nos. 1182 and 1183 of 1964. While holding that the petitioners were in unauthorised occupation prior to rights column till such time as they were not declared as purchasers and the date of the regrant in favour of Kisan Janglu, this Court directed that the status of the petitioners after the regrant of the land in favour of Kisan Janglu should be determined. The matter was, therefore, remanded to the Mamlatdar. After remand the Mamlatdar held that the petitioners were tenants of the fields. That order was, however, set aside by the Prant Officer, but finally the order of the Mamlatdar was restored by the Maharashtra Revenue Tribunal at the instance of the present petitioners. It does not appear that order holding that the petitioners were tenants u/s 4 of the Bombay Tenancy Act, 1948, was challenged further. In any case, that is the operative order today.

5. Present respondents Nos. 1 to 4 who belonged to Dorges" family and probably to the original family of Watandar claimed that they were entitled to the apportionment of the compensation which was to be paid to Kisan Janglu and, therefore, approached the Assistant Collector for apportionment of compensation. In that proceeding Kisan Janglu seems to have remand absent and the Assistant Collector by his order dated 14th January, 1971 seems to have accepted the ex parte evidence of Kashinath Shivram Dhavale and the genealogy produced by him to show that they were also the Watandars of the fields. It was found that one Tulsabai Taba was the original Watandar having 16 annas share in the Ramoshi Watan and on her death, Shivram Krishna, Janglu Rangu and Mahadu Rama were shown as heirs of the deceased Watandar. Respondent Nos. 1 to 4 were thus declared to be the watandars of "the above Ramoshi family of village Talegaon Dhamdhere".

6. Basing their claim that their names should be entered as Kabjedars of the fields in question on this order respondent Nos. 1 to 4 made an application to the Talathi. This application was granted. The Dhamdhere and Dorges field two separate appeals challenging these entries before the Prant Officer who confirmed the entries and held that the present petitioners were unauthorised holders.

7. The petitioners took the matter in appeal further to the Additional Collector who allowed both the appeals. The Additional Collector observed that the Sub-Divisional Officer did not apply his mind to the question that by merely giving the right of compensation of abolished Watan, no proprietary rights were conferred on the present respondents Nos. 1 to 4. According to the Additional Collector, there was, therefore, no question of taking any mutation entry u/s 149 of the

Maharashtra Land Revenue Code. The Additional Collector pointed out that the action of the Talathi and the Circle Officer had given rise to unnecessary litigation. While allowing the appeals filed by the present petitioners, the Additional Collector directed that the fields would continue to be in the name of respondent No. 2 before him, namely Kisan Janglu i.e. the person in whose favour the fields were regranted, but that names of tenants would continue to be in the other certificates were not issued to them under the Bombay Tenancy Act. A common order was thus passed in two appeals filed by the two tenants. Against this common order the present respondents Nos. 1 to 4 filed a revision application before the Additional Commissioner.

8. The second round of litigation which also gave rise to the present petition was commenced at the instance of respondent Nos. 1 to 4 for summary eviction of the petitioners u/s 9 of the Watan Abolition Act. That application came to be rejected by the Sub-Divisional Officer, Junnar, holding that the present respondents Nos. 1 to 4 who were the applicants before the Sub-Divisional Officer were not the Watandars and they had, therefore, no locus standi to file an application in respect of the watan lands. This order of the Sub-Divisional Officer rejecting the application for summary eviction was challenged by respondents Nos. 1 to 4 by an appeal before the Additional Commissioner.

9. The revision application arising out of the mutation proceedings and the appeal arising out of the proceedings for summary eviction, both of which were filed by respondents Nos. 1 to 4, were disposed of by a common order by the Additional Commissioner. The Additional Commissioner took the view that as the present petitioners were in possession of the lands, those lands were not available for regrant to the Watandars u/s 5(1) of the Watan Abolition Act and, therefore, the order of regrant in favour of Kisan Janglu was bad in law and ought to have been set aside. He further held that respondents Nos. 1 to 4 had been declared to be watandars by the order of the Sub-Divisional Officer on 14th January, 1971 and no appeal having been filed against that order, that decision has become final. The Additional Commissioner, therefore, held that as long as the order of 14th January, 1971 remained to be effective, the Additional Commissioner could not cancel the mutation entry. The Additional Commissioner went on further to make an operative order that the order of regrant was set aside and that the High Court had already taken the view that the lands could not be regarded as having been lawfully leased to the present petitioners and, therefore, the Additional Commissioner proceeded to hold that the present petitioners were unauthorised holders. He further directed that proceedings u/s 9 of the Watan Abolition Act should be started. This common order is now challenged by the petitioners in these three petitions.

10. Special Civil Application No. 5437 of 1976 is directed against the order in the proceedings commenced with the application for summary eviction of the petitioners. The other two petitions are filed to challenge the order of the Additional Commissioner in the mutation entry proceedings.

11. Mr. Dalvi, the learned Counsel appearing on behalf of the petitioners, has contended that the Additional Commissioner fell in a serious error when he proceeded to cancel the order of regrant made in favour of Kisan Janglu and further proceeded to hold that the petitioners were in unauthorised occupation. The learned Counsel contended that in a proceedings for correcting mutation entry, the Additional Commissioner could not set at naught the order of regrant made in favour of Kisan Janglu and, according to the learned Counsel, as long as the order of regrant stood in favour of Kisan Janglu, the petitioners who had already been declared tenants of the lands, could in no way said to be an unauthorised possession.

12. Mr. Abhyankar appearing on behalf of the respondents Nos. 1 to 4 has contended that the order of the Maharashtra Revenue Tribunal holding that the present petitioners are tenants would not bind respondents Nos. 1 to 4 because they were not party to the said proceedings. It is contended that even if the order of regrant is in favour of Kisan Janglu, respondents Nos. 1 to 4 being held to be the watandars, they must also be deemed to be the owners of the fields and their names were, therefore, bound to be mutated as Kabjedars of the field in questions.

13. Now, we have to see the manner in which the Additional Commissioner has proceeded to set at naught the order of regrant in favour of Kisan Janglu even though that order of regrant was not expressly challenged in other proceedings. The Additional Commissioner seems to have taken the view that at the time when the regrant was made, the petitioners were in possession of the lands and, therefore, the fields could not have been regranted to Kisan Janglu. Having gone through the provision of the Watan Abolition Act, there does not appear to be any bar in either section 4 or section 6 of the Watan Abolition Act to make an order of regrant in favour of the watandars when the lands are in possession of an authorised holder. Indeed, the indication is to the contrary. There is clear provision in section 9 of the Watan Abolition Act for eviction of unauthorised holder when any land is resumed u/s 4. The only ground on which the Additional Commissioner proceeded to find fault with the legality of the order of regrant was that the petitioners were in possession at the time of regrant and, as already pointed out, that could not create any infirmity in the order of regrant.

14. It is also difficult for us to see how the Additional Commissioner call in question the validity of the order of regrant in a proceedings for correction of the mutation entries. Admittedly, the watandar at the material time was Kisan Janglu and it was he who had been granted the lands. No doubt, subsequently respondents Nos. 1 to 4 have been held entitled to a share in the compensation, but it is difficult for us to see how that by itself would enable respondents Nos. 1 to 4 to contend that they were also entitled to regrant of the lands. If respondents Nos. 1 to 4 had any valid claim to have the land regranted to them jointly with Kisan Janglu, they could have agitated their rights in a proper manner and in a proper forum and in a proper proceedings. The order of regrant

in favour of Kisan Janglu has not been challenged by respondents Nos. 1 to 4 in the appropriate manner. That could not be said to be an order which was wholly without jurisdiction and it was not open to the revenue authorities to ignore that order of regrant. The Additional Commissioner was, therefore in error in setting aside the order of regrant.

15. Now, so far as the status of the present petitioners is concerned, there is no discussion in the order of the Additional Commissioner about the effect of the revenue tribunal's order that the petitioners being in lawful cultivation after the date of regrant, they were entitled to the status of deemed tenants. It is rather surprising that while the learned Additional Commissioner found it necessary to refer to the earlier history of the proceedings arising out of the application filed by the petitioners for a declaration that they were tenants and a reference was made to the order of the High Court holding that the petitioners were in authorised occupation, the Additional Commissioner did not think it worth while to refer to the other operative part of the order of the High Court by which the matter was remanded in order to enable the Tahsildar to decide whether the petitioners were entitled to the status of a tenant after the date of regrant. The State of affairs as it existed on the date of the order of the Additional Commissioner was that there was clear adjudication of the status of the present petitioners by a competent authority under the Tenancy Act which had exclusive jurisdiction to decide the question relating to tenancy. If those orders have not in any way been set aside, it was not open to the Additional Commissioner to come to the conclusion that the petitioners were in unauthorised occupation.

16. On both these issues, therefore, the Additional Commissioner had fallen in a serious error and the order of the Additional Commissioner was, therefore, wholly unsupportable.

17. In the view which we have taken, the orders of the Additional Commissioner holding that the petitioners were in unauthorised occupation and further holding that the order of regrant made in favour of Kisan Janglu was bad in law are set aside. The Additional Collector, in our view was clearly right when he held that merely because respondent Nos. 1 to 4 were held to have share in compensation, they could not be said to be the Kabjedars after the regrant of the land in favour of Kisan Janglu. The orders of the Additional Commissioner are thus quashed. Rule absolute in all the three petitions. Respondents Nos. 1 to 4 to pay the costs in Special Civil Application No. 5437 of 1976. No order as to costs in other two petitions.