

(1981) 12 BOM CK 0026

In the Bombay High Court

Case No : Special Civil Application No. 1363 of 1978

Dattatraya Balwantrao, since deceased, by his heirs and legal representatives APPELLANT

Vs

Shankar Kondia and Another RESPONDENT

Date of Decision : 01-12-1981

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 33B

Citation : (1982) 2 BomCR 114

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

Bench : Single Bench

Advocate : A.H. Vaishnav, for the Appellant; A.M. Dabir, for the Respondent

Final Decision : Allowed

Judgement

D.B. Deshpande, J.—This special civil application is directed against the order of the Maharashtra Revenue Tribunal (hereinafter referred to as "the M.R.T.") allowing a revision application and thereby reversing the order of the Deputy Collector and restoring that of the Tahsildar in a proceeding started by the landlord against the tenant for recovery of the possession of the disputed lands for bona fide personal cultivation and it arises out of the following facts.

2. It may be mentioned here that original petition was filed by the original landlord Dattatraya Balwantrao, who died during the pendency of this petition. Original petitioner having died, his heirs and legal representatives are brought on record and they are pursuing this petition. I have specially mentioned this fact as it has a lot of bearing on the merits of the case as they stand today.

3. Original landlord Dattatraya Balwantrao filed an application in the trial Court u/s 44 read with section 32(2) of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as "the Hyderabad Tenancy Act") for possession of three lands Survey Nos. 36, 121/1 and 130 of village Paradh for bona fide personal cultivation. The tenant, who is respondent No. 1 in this

petition, resisted this petition. Now, I will narrate the chequered career of this litigation.

4. On 28th March, 1959, this application was filed by Dattatraya. On 20-8-1961 this application was allowed by the Tahsildar of Bhokardan. The tenant carried an appeal and the appeal was dismissed by the Deputy Collector on 26th March, 1962. The tenant carried a revision application to the M.R.T. and on 28th February, 1963, the revision application was partly allowed by the M.R.T. and the matter was remanded back to the trial Court for fresh enquiry and decision.

5. After the remand, the Tahsildar made an enquiry and again on 30th September, 1964 the Tahsildar allowed the application of the landlord. The tenant again carried an appeal and in appeal the Deputy Collector on 25th May, 1965 partly allowed the appeal and remanded the matter mainly for considering two grounds, one, service of notice on the tenant, and, two, bona fide requirement of the landlord. The original landlord Dattatraya filed a revision application before the M.R.T. but the same was dismissed by the M.R.T. That is how the matter went back to the Tahsildar for fresh enquiry again and this is now the third round of litigation.

6. On 7-4-1971, the Tahsildar rejected the landlord's application holding that there was no proper service of notice and holding further that the landlord failed to prove that he bona fide required the tenanted lands for personal cultivation. Now it was the turn of the landlord to go in appeal and accordingly the landlord went in appeal against this decision. The Deputy Collector, Land Reforms, Aurangabad, on 30th April, 1975 allowed the appeal filed by the landlord and he reversed the findings of the Tahsildar on both points. The learned Deputy Collector held that notice was properly served and he further held that the landlord proved his bona fide requirement for personal cultivation. That is why, he allowed the appeal and directed that the possession of the lands be handed over to the landlord after the specific period was over. Now the tenant carried a revision application to the M.R.T. The learned Single Member of the M.R.T. reversed the findings of the Deputy Collector. He held that there was no proper service of notice and he also held that the landlord failed to prove that he required the lands for bona fide cultivation. He, therefore, allowed the revision application and reversed the order passed by the Deputy Collector and restored that of the Tahsildar. Feeling aggrieved by this order, the original landlord filed this special civil application and he having died during the pendency of this writ petition, his heirs and legal representatives are prosecuting this petition.

7. Shri A.H. Vaishnav appearing on behalf of the petitioners, urged that the M.R.T. exceeded its jurisdiction in appreciating the evidence on record. According to Shri Vaishnav, the M.R.T. went into the arena of appreciating the evidence on the lone ground that the judgments of the authorities below were conflicting. It appears that M.R.T. has observed that because of the conflicting decisions of the authorities below, the M.R.T. was considering the evidence on record. This is not a correct position of law. It is time and again laid down by this Court as well as

by the Supreme Court that the Revenue Tribunal cannot reappreciate the evidence and the findings of fact of the Appellate Court are final and are binding on the Revenue Tribunal. If, of course, the authorities commit error of law, the Revenue Tribunal can interfere with the orders of the authorities below. Shri Vaishnav invited my attention to section 91 of the Hyderabad Tenancy Act and it runs as follows :---

"91. Revision.---(1) Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1939, an application for revision may be made to the Bombay Revenue Tribunal constituted under the said Act, against any order passed on appeal or u/s 90-B by the Collector on the following grounds only :---

- (a) that the order of the Collector was contrary to law;
- (b) that the Collector failed to determine some material issue of law; or
- (c) that there was a substantial defect in following the procedure provide by this Act, which has resulted in the miscarriage of justice.

(2) In deciding applications under this section the Bombay Revenue Tribunal shall follow the procedure which may be prescribed by rules made by the State Government under this Act after consultation with the Bombay Revenue Tribunal."

It is clear that only in the circumstances mentioned in the section, the Revenue Tribunal can interfere with the findings of the authorities below. Hence, Shri Vaishnav is right so far as the proposition of law if concerned. Now, we shall have to see whether the M.R.T. has really exceeded its jurisdiction and has entered into the arena of appreciation of evidence contrary to the established principles of law.

8. Now, only two points are involved in this petition. One is about the service of notice and the other is about the bona fide requirement of the landlord. First of all, I shall deal with the aspect of service of notice. I shall turn to the order passed by the Deputy Collector to see on what grounds he has held that the notice is properly served upon the tenant. That a notice is required to be served upon the tenant is not disputed. The learned Deputy Collector held that there was proper service of notice on the tenant. It appears from the judgment of the learned Deputy Collector that original postal receipt No. 58 of 1-12-1965 addressed to Shankar Kondiba, that is, respondent No. 1, and the Tahsildar respectively were produced on record. The landlord also produced postal acknowledgement receipts by both, that is, respondent No. 1 and the Tahsildar, and these postal acknowledgement receipts reveal that the notices were served on the respective persons on 3-12-1958. He further found that the copy of the notice, which was sent to the Tahsildar, Bhokardan by post, was also on record. The then learned Deputy Collector referred to the fact that the contention of the tenant that he has received the notice is clearly an afterthought because in the written statement filed by the tenant on 13-6-1960, nothing has been mentioned about the service of notice. He further found that as a matter of fact the tenant

should have given reply to this point also as the same was specifically mentioned in paragraph 9 of the plaint. It will, therefore, be seen that the learned Deputy Collector laid stress on the fact that although there was an averment in the application of the landlord that the requisite notice was served upon the tenant, there was no denial on the part of tenant that no such notice was served upon him. In this context, in my opinion, the learned Deputy Collector, who remanded the matter on 20-2-1965 for deciding the question of service of notice, was wrong in remanding it for this purpose. The learned Deputy Collector further observed that it may be presumed that the postal authorities had in their normal course of business delivered the notice to the proper person and on these grounds, and also on the ground that the tenant had the audacity of denying his own thumb mark affixed by himself on the Vakalatnama of his own Advocate, the learned Deputy Collector held that the notice was served upon the tenant. If we turn to the reasoning of the M.R.T., we find that the M.R.T. was more guided by the fact that the matter was remanded by the learned Deputy Collector back for ascertaining the question of service of notice and thereafter the landlord did not step in the witness box whereas the tenant stepped in the witness box to deny the receipt of notice by him. I do not think that this would be a ground to consider that the notice was not served. A fact can be said to be proved or disproved on the strength of the evidence on record. It is not the contention of Shri Dabir, appearing on behalf of the respondent-tenant, that at or about the time, that is, on or about 3-12-1961, he was not staying in the village. I have already pointed out that it is not denied in the written statement that the tenant received any such notice and this is sufficient to hold that the notice was served upon him. Shri Dabir placed reliance upon a ruling of the Delhi High Court in Jagat Ram Khullar and Another Vs. Battu Mal, . He placed reliance on head note C. Therein it is pointed out that bare statement on oath by addressed denying the tender and refusal to accept delivery is sufficient to rebut the presumption. This ruling is not applicable to the facts of the instant case at all. These observations are made by the Delhi High Court in the case of a refusal to accept delivery and these observations are made in that background. Reference is made to two decisions of this Court in this very ruling and they are Appabhai Motibhai Vs. Laxmichand Zaverchand and Co., and Meghji Kanji Patel Vs. Kundanman Chamanlal Mehtani, . Both these rulings are also on the point of refusal to accept delivery. The present case before me is not of refusal to accept the registered article but, in the instant case, according to the landlord, the tenant has actually accepted the notice and has affixed his thumb mark on the postal acknowledgement intended for that purpose. Shri Dabir urged that the tenant denied that the thumb mark is his. But I do not find any force in this denial. I have already pointed out that there is no denial in the written statement filed by the tenant of the averments in the application of the landlord that the landlord has served the tenant with the requisite notice and this is sufficient to conclude this question. I am, therefore, satisfied that the M.R.T. was wrong in interfering with the finding of the learned Deputy Collector in this respect. The M.R.T. went to the length of observing that the landlord should have sent the postal

acknowledgement to an expert. I am unable to agree with this reasoning also. Shri Dabir urged that the landlord had not stepped in the witness box after the remand and, therefore, there was nothing to show that the postman who served the registered letter on the tenant is dead. In fact, this is not necessary at all. The Delhi ruling on which Shri Dabir placed reliance itself goes to show that presumption arises in this case. I am satisfied that as observed by the learned Deputy Collector this contention of the tenant is merely an afterthought and, therefore, I hold that the notice is properly served upon the tenant.

9. The only other question is about the bona fide requirement. I have pointed out that the position has now changed in view of the death of the original landlord during the pendency of this special application in this Court. Shri Vaishnav, appearing for the petitioners, was himself fair in bringing to the notice of this Court a decision of this Court in *Hariba Keshav Barbole and Others Vs. Motibai Deepchand Singh and Others*, . That is a ruling arising out of the Bombay Tenancy and Agricultural Lands Act, 1948, and in that ruling also, the landlord had applied for possession of the land u/s 33-B. The provisions of this section of the Bombay Tenancy and Agricultural Lands Act are similar in material particulars to the provisions of section 44 of the Hyderabad Tenancy Act under which this application is made. A Division Bench of this Court made following observations in this judgment.

".....We, therefore, hold that the legal heir who is brought on record during the pendency of the proceedings, must establish his own bona fide requirement as on the date he comes on record, as that would be the date for him for all practical purposes to establish his case to recover possession."

These observations are made on the basis of the principle that the date that is material for ascertaining the need of the landlord is the date on which the order is being passed under the Act. Now, the order is being passed by this Court under the Hyderabad Tenancy Act today and hence the observations made by the Division Bench in this ruling clearly apply to the facts of the instant case and the crucial date would be the date on which the heirs and legal representatives are brought on record. Now, admittedly, the heirs and legal representatives had no opportunity to make out any such case as they are brought on record in this Court only and hence, in view of the aforesaid ruling in *Hariba's* case, the matter deserves to be remanded to the trial Court for affording a chance to the heirs and legal representatives of the original landlord to prove their case u/s 44 of the Hyderabad Tenancy Act. Accordingly, both sides will be at liberty to lead such evidence as they like.

10. In the result, this special civil application deserves to be allowed and it is accordingly allowed. The decision of the Maharashtra Revenue Tribunal dated 8th August, 1977 is hereby quashed and set aside and the matter is remanded to the Tahsildar of Bhokardan for disposal of the case in accordance with law and in the light of the observations made in this judgment. The question of service of notice need not be reopened at all. The Tahsildar is further directed to dispose of this

case as far as possible within six months from the date of receipt of record and proceedings by him. The rule is made absolute, but there will be no order as to the costs in the circumstances of the case.