

(2002) 10 BOM CK 0074

In the Bombay High Court

Case No : Writ Petition No. 3202 of 1985

Dattatraya Narayan Gupte since deceased through his legal heirs Ashok Dattatraya Gupte and Others APPELLANT

Vs

Pandurang Dagadu Mandhare since deceased through his legal heirs Smt. Parvati Pandurang Mandhare and Others RESPONDENT

Date of Decision : 01-10-2002

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 15, 29, 32(1B)

Citation : (2003) 1 ALLMR 457 : (2003) 1 BomCR 7 : (2003) 2 BOMLR 79 : (2003) 1 MhLj 441

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : A.A. Agarwal, for the Appellant; B.P. Abhale, for respondent Nos. 1, 2 and 5, for the Respondent

Judgement

S.A. Bobde, J.—This petition is directed against the order of the Maharashtra Revenue Tribunal dated 21st January 1985 by which the Maharashtra Revenue Tribunal has reversed the findings of the learned Additional Collector who held that the respondent has surrendered the tenancy in respect of the agricultural land in question in petitioner's favour and that the respondents are therefore, not in possession of the land as tenants.

2. The predecessor of the petitioners i.e. the original petitioner Dattatraya Narayan Gupte was landlord of Survey No. 7/5 admeasuring 1 acre 10 gunthas situated in village Bamanghar Taluka Bhor. Alleging that the original tenant Dagdu Mandhare has surrendered the tenancy in his favour, Dattatraya Gupte filed a suit in the Court of Civil Judge J. D. Bhor for an injunction restraining the respondent from disturbing his cultivation of the land in question. The defendants to the suit and the present respondents are admittedly the heirs of the original tenant Dagdu Pandu Mandhare.

3. The Civil Court referred the following question u/s 85A of the Bombay Tenancy

and Agricultural Lands Act:

"Do the Defendants prove that defendant No. 1 is in possession of the suit land as a tenant since lifetime of his father Dagdu?"

4. The Court of first instance i.e. Additional Tahsildar Bhore referred to the order of the E.A.K. Bhore in Tenancy Suit No. 29 of 1956 dated 21st June 1956, which clearly showed that Dagdu Mandhare had voluntarily surrendered the suit land in favour of landlord and the possession of the suit land was ordered to be handed over to the landlord. However, the Additional Tahsildar Bhore found that Pandurang Mandhare the heir of Dagdu Mandhare was in cultivating possession and that the landlord has not obtained possession of the land in accordance with law. He therefore, concluded that Pandurang Mandhare is cultivating the suit land as a tenant.

5. In an appeal carried to the Additional Collector by Dattatraya Narayan Gupte the landlord, the appellate authority held that it was clear from the evidence on record that the predecessor of respondents one Dagdu Pandurang Mandhare surrendered his tenancy on 21st July 1956. The surrender had been accepted as a voluntary by the Tenancy Aval Karkun who had issued an order directing handing over the possession land in question to the landlord and effecting change in the record of rights. In fact, the appellate authority further found from the revenue record that Dattatraya Narayan Gupte is shown as cultivating the land personally since 1956-57. The appellate authority held that Section 15 of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as the "Tenancy Act") does not make the handing over of the possession, a condition precedent before the surrender can be said to be legal. However, as regards the actual possession, the appellate authority rendered an ambiguous finding as regards actual possession and held that presuming that Mandhare is in possession of the land, it cannot be said that he is in possession as a tenant because no fresh tenancy has been created in his favour by the appellant-landlord. In any case, the appellate authority took the view that Mandhare cannot be said to be in possession as a tenant in view of the surrender dated 21st July 1956 and the fact that there is no proof of creation of fresh tenancy.

6. Pandurang Mandhare carried the matter to the Maharashtra Revenue Tribunal by way of revision. The Maharashtra Revenue Tribunal embarked on full scale reappraisal of evidence, as is apparent from its order, and thereupon came to the conclusion that Dattatraya Narayan Gupte the landlord is residing in Bombay and cannot be said to be cultivating the land personally and that Mandhare has clearly expressed his intention to be in possession. In fact, the Maharashtra Revenue Tribunal has come to the conclusion that Mandhare has been on the land from 1956 till 1971 for 15 years and therefore, interfered with the findings of the Additional Collector that Mandhare is not in possession as a tenant.

7. In the present case, it appears that Maharashtra Revenue Tribunal missed the main aspect of the question referred to the revenue authorities for

determination. The question is reproduced above. What was required to be determined by the Revenue Authorities is whether, Mandhare is in possession of the suit land as a tenant. Thus, it is the nature of Mandhare's possession which had to be determined. It was therefore, wholly unnecessary for the Maharashtra Revenue Tribunal to have rested content with reversing the order of the appellate authority taking the view that Mandhare has been in possession. It had to consider the question whether he was a tenant in possession, which it did not.

8. Mrs. Agarwal, the learned counsel appearing for the petitioners has submitted, and in my view rightly, that the question of possession is distinct from the question of surrender of tenancy.

9. The learned counsel submitted that the tenant may surrender his interest in favour of landlord and it would result in terminating the tenancy. As regards the question of possession the learned counsel fairly accepted the position that the procedure for taking possession prescribed by Section 29 of the Act, may not have been resorted to by the petitioners. In any case, the learned counsel was not in a position to demonstrate from the record that original petitioner took possession in pursuance of Section 29 of the Tenancy Act.

10. Mr. Abhale, the learned counsel for the respondents submitted that even if tenant surrenders his interest, as long as he remains in possession, he is entitled to the protection u/s 32(1B) of the Tenancy Act. In order to appreciate the rival contentions, the relevant provisions may be set out. Section 15 of the Tenancy Act, provides for surrender which reads as follows :

"15. (1) A tenant may terminate the tenancy in respect of any land at any time by surrendering his interest therein in favour of the landlords:

Provided that such surrender shall be in writing and verified before the Mamlatdar in the prescribed manner.

(2) Where a tenant surrenders his tenancy, the landlord shall be entitled to retain the land so surrendered for the like purposes, and to the like extent, and insofar as the conditions are applicable subject to the like conditions as are provided in Sections 31 and 31A for the termination of tenancies.

[(2A) The Mamlatdar shall, in respect of the surrender verified under Sub-section (1), hold an inquiry and decide whether the landlord is entitled under Sub-section (2), to retain the whole or any portion of the land so surrendered and specify the extent and particulars in that behalf.

(3) The land, or any portion thereof, which the landlord is not entitled to retain under Sub-section (2), shall be liable to be disposed of in the manner provided under Clause (c) of Sub-section (2) of Section 32-P]".

11. On a plain reading of the aforesaid provisions, it is clear that when tenant surrenders his interest in the land in favour of landlord, it terminates tenancy in respect of such land. Undoubtedly, the surrender is required to be verified before

the Mamlatdar. In the present case, there is no dispute that the surrender was verified before the Mamlatdar in the prescribed manner. In the facts, that therefore, clearly discloses that the tenancy of the respondent stood terminated upon the surrender of his interest by Dagdu Mandhare in favour of landlord on 21st July 1956 and an order for possession having been passed in favour of the landlord.

12. The question as to the point of time when tenant ceased to be a tenant, has been considered in *Madhao v. Maharashtra Revenue Tribunal Nagpur* and Ors. reported in 1970 Mh.LJ. 991 by a Full Bench of this Court. In paragraph 15, the Full Bench in the context of Bombay Tenancy and Agricultural Lands (Vidarbha region) Act, 1958 observed thus as follows:

"Whether or not the tenancy is terminated as laid down by Section 20, the tenant's right does not end unless an order of possession is passed in favour of the landlord. In other words, though his tenancy may be terminated by a valid surrender, he does not become an ex-tenant unless an order u/s 36 is passed".

In that decision, see paragraph 24, the Full Bench dealt with earlier decision of this Court under the Bombay Tenancy Act and observed thus as follows :

"An earlier decision of this Court in *Trambaklall v. Shankarbhai* throws a flood of light upon the provisions with which we are concerned. After considering the provisions of Section 15(1) read with Section 29(2) of the Bombay Act of 1948, which are substantially the same as Section 20 and Section 36(2) of the Vidarbha Act, the Division Bench held in that case (see page 264):

A proceeding u/s 29(2) for restoration of possession by a tenant means that such surrender or relinquishment has not resulted in the loss of tenancy rights by the tenant. Such a proceeding also implies that the tenant retains his tenancy rights in the leased land until the surrender is verified and recognised u/s 15 by the Mamlatdar and possession of the land is obtained by the landlord u/s 29(2) of the Act".

"So long as surrender is not verified and recognised u/s 15 and so long as a tenant still retains the right to restoration of possession u/s 29(1), there would be no cessation of tenancy rights and therefore no acquisition or transfer of land by the landlord."

"With respect, the decision taken in that case was the correct decision, though as we have shown, we would prefer to express it somewhat differently. When Section 20 speaks of the termination of the tenancy by a tenant surrendering his interest, it seems to us that it would be difficult to hold on the basis of Section 36(1) and (2) that the tenancy still subsists. That would be doing some violence to the language of Section 20. We would rather say therefore that though the tenancy is terminated by surrender u/s 20, the tenant still continues as a tenant and an order for possession in favour of the landlord would be necessary before he ceases to be a tenant".

It is therefore, clear that in the present case, Maridhare's rights in the tenancy came to an end by virtue of the surrender. When the Tenancy Aval Karkun passed the order dated 21st June 1956 in Tenancy Suit No. 29 of 1956 holding that Dagdu Mandhare has surrendered the suit land in favour of the landlord and accepting the said surrender as voluntary and directing that possession of the suit land be handed over to the landlord and further directing that changes be made in the record of rights.

Mr. Abhale, the learned counsel appearing for the respondents relied upon the decision of this Court in the case of Trambaklal Harinarayan Jani v. Shankarbhai Bhaljibhai Vagri reported in 7962 B.L.R. 261 wherein this Court has observed as follows :

"In order that there may be a transfer or acquisition through surrender, such surrender must be a lawful one, made in accordance with the provisions of the tenancy Act and one whose effect would be the total cessation of the tenancy rights of the tenant, either under a contract of tenancy or under a statutory tenancy. So long as surrender is not verified and recognised u/s 15 of the Act and so long as a tenant still retains the right to restoration of possession u/s 29(1) of the Act, there would be no cessation of tenancy rights and, therefore, no acquisition or transfer of land by the landlord".

13. Having regard to the facts in the present case, admittedly as the verification has taken place and an order for possession has been made in favour of the landlord, the aforesaid decision would have no application.

14. The question that remains to be answered is, whether, the respondent Mandhare is entitled to the protection of Section 32(1B) of the Tenancy Act. In my view, he is not. Section 32(1B) of the Tenancy Act reads as follows :

"32(1B). Where a tenant who was in possession on the appointed day and who on account of his being dispossessed before the 1st day of April 1957 otherwise than in the manner and by an order of the Tahsildar as provided in Section 29, is not in possession of the land on the said date and the land is in the possession of the landlord or his successor-in-interest on the 31st day of July 1969 and the land is not put to a non-agricultural use on or before the last mentioned date, then, the Tahsildar shall, notwithstanding anything contained in the said Section 29, either suo motu or on the application of the tenant, hold an inquiry and direct that such land shall be taken from the possession of the landlord or, as the case may be, his successor-in-interest, and shall be restored to the tenant; and thereafter, the provisions of this section and sections 32A to 32R (both inclusive) shall, insofar as they may be applicable, apply thereto, subject to the modification that the tenant shall be deemed to have purchased the land on the date on which the land is restored to him :

Provided that, the tenant shall be entitled to restoration of the land under this sub-section only if he undertakes to cultivate the land personally and of so much thereof as together with the other land by him as owner or tenant shall not

exceed the ceiling area.

Explanation.--In this sub-section "successor-in-interest" means a person who acquires the interest by testamentary disposition or devolution on death."

15. It is obvious on reading the aforesaid provisions that person becomes entitled to restoration of the possession, the person must be a "tenant who was in possession of the land on the appointed day and who on account of being dispossessed before the 1st day of April 1957 otherwise than in the manner and by an order of Tahsildar as provided in Section 29". Obviously, sub-section has no application to the present case since the respondents predecessor was not a tenant who was in possession and who has been dispossessed otherwise than in accordance with the procedure prescribed by Section 29 of the Tenancy Act. The respondents predecessor was a tenant who surrendered his tenancy and is therefore, ceased to be a tenant. In the circumstances of the case, the position that emerges is as follows :

16. The respondent Mandhare has been found to be in possession of the land. However, it is not possible to disturb that finding of fact. However, it is equally clear that possession cannot be described as the possession of the lands by a tenant in view of the surrender of the tenancy. In the circumstances, the question referred to the authorities and reproduced earlier is liable to be answered in the negative.

17. In the result, rule is made absolute in the above terms. No order as to costs.