

(2009) 10 BOM CK 0046

In the Bombay High Court

Case No : Writ Petition No. 1802 of 2002

Dattatrays Jagtap, Sou. Sumanbai Sadashivrao Kate, Sou.
Leelabai Shinde and Sudhir Shinde through Bajirao Ramdas
Wakte

APPELLANT

Vs

Atmaram Jagtap and Others

RESPONDENT

Date of Decision : 16-10-2009

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 14, 15, 15(2), 20, 25

Citation : (2010) 1 BomCR 896

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : R.N. Dhorde and V.S. Bedre, for the Appellant; S.D. Kulkarni, for Respondent Nos. 1 and 2 in Writ Petition No. 1802 of 2002 and Writ Petition No. 1800 of 2002 and Civil Application No. 2048 of 2004, Public Prosecutor More, AGP for Respondent Nos. 5 and 6 in Writ Petition No. 1802 of 2002, P.S. Pawar, for Respondent Nos. 3 and 4 and P.P. More, AGP for Respondent Nos. 7 and 8 in Writ Petition No. 1800 of 2002 and Civil Application No. 2048 of 2004, for the Respondent

Judgement

S.S. Shinde, J.

1 These writ petitions are filed challenging the order passed by the Designated Member, Maharashtra Revenue Tribunal, (hereinafter for the sake of brevity referred to as the MRT") Nashik in case No. 109 of 2001 on 24.4.2002.

2 The background facts of the case are as under:

The dispute in the matter is about agricultural land bearing Gat No. 90 admeasuring 8 H 54 R situated at Jeur Kumbhari, Tq. Kopargaon, district Ahmednagar. In the suit land Krishnarao Jagtap was tenant since long. he died on 6.8.1985 leaving behind three sons and one daughter. Accordingly necessary mutation entry 2575 was effected in the revenue record.

After death of Krishnarao, his sons partition of the suit land was took place

amongst his sons. The said division was reduced in writing by way of agreement and accordingly necessary mutation entry No. 2732 was effected and since 10.6.1987 they started cultivating the land independently and in the crop inspection column the necessary entires have been separately taken by the revenue authorities.

On 21.12.2000 the petitioner Nos. 1 and 2 have submitted application u/s 25 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter for the sake of brevity referred to as the "Tenancy Act") requesting for surrender of the suit land to the extent of their share as they were not in position to cultivate the suit land.

The Tahsildar/Tenancy Awal Karkun recorded the statement of the respective parties and also given reasonable time to the parties and also held necessary enquiry. On 29.12.2000 the Tenancy Awwal Karkoon verified the surrender and passed the necessary order on 29.12.2000.

On 5.2.2001, respondent No. 1 filed R.C.S. No. 55 of 2001 challenging the orders passed by the Tenancy Awwal Karkoon and also sought injunction against the petitioners and others. On 7.2.2001 respondent No. 1 requested for temporary injunction against the petitioners and others in R.C.S. No. 55 of 2001, however, no prohibitory orders were passed against the petitioners and others and the matter is pending before the Civil Court.

On 9.2.2001, the respondent No. 1 filed Tenancy appeal No. 2 of 2001 before the Sub Divisional Officer, Sangamner. On 28.8.2001, the S.D.O. After hearing the matter on merits pleased to dismiss the appeal filed by the respondent No. 1. Being aggrieved, respondent No. 1 preferred revision before the MRT i.e Revision No. 109 of 2001 on 3.9.2001, on various grounds. On 24.4.2002, the Member MRT after hearing the matter on merits allowed the revision filed by respondent No. 1 and set aside the orders passed by the authorities below. Hence, this writ petition filed by the petitioners.

3. Learned Counsel appearing for the petitioners invited my attention to the fact that the land in dispute Gat No. 90 is admeasuring 21 Acre which is situated at village Jeur Kumbhari, Tq. Kopargaon, District Ahmednagar. Krishnarao Jagtap was the tenant of the said land. He had four issued viz. i) Atmaram, ii) Jagannath, iii) Dattatraya and iv) Sumanbai. After death of said Krishnarao Jagtap. Sons original tenant divided the suit land in three equal shares actually by metes and bounds as evidence from Exh. A page 15 of the compilation. It is further submitted that respondent No. 1 who is brother of the petitioner Dattatraya has no right to challenge the said surrender, as he has no share or interest in the said property, as the property was already partitioned and he has not challenged the partition. Therefore, according to the learned Counsel, respondent No. 1 who was not party to the surrender and who had no interest or share in the 7 acres land which was fallen to the share of petitioner Dattatraya. According to the learned Counsel the appeal filed before the MRT is not

maintainable as respondent No. 1 was not party to the proceedings before the Tahsildar.

Learned Counsel further submitted that respondent No.1 has no locus standi to challenge the decision of surrender taken by the petitioner since respondent No. 1 has received the property already partitioned and each party has been cultivating its share separately. According to the learned Counsel respondent No. 1 has no interest or share in the said seven acres of land which is fallen to the share of the petitioner Dattatraya. According to the learned Counsel, even assuming without admitting that the share of tenant has not been separated still one tenant can surrender his share. In support of his contention learned Counsel relied on reported judgment of this Court in the case of Devu Subhana Chamber v. Badruddin Hussain Marwadi reported in 1959 B.L.R. 192 and therefore, in view of the judgment of the Division Bench of this Court, respondent No. 1 has no locus standi to challenge the said surrender. Similarly Section 27 has no application in the facts of the present case in view of the judgment mentioned above.

Learned Counsel further submitted that surrender is valid because application has been made by the tenant Dattatraya and his sister Sumanbai on 21.12.2000 which is at Exh.B page 17 of the compilation of writ petition. Learned Counsel submitted that in the said application tenant Dattatraya has stated that he want to surrender the land in favour of the landlord. Thereafter, the authorities have verified the surrender by recording the statement that surrender is valid by recording the statement of tenant Dattatraya, his sister Sumanbai as well as statement of landlord, which is at Exh. B (Collectively), annexed to the petition. According to the learned Counsel, the application was filed by the Tenant and the landlord on 21.12.2000 and thereafter the statement has been recorded by the Tahsildar in detailed on 29.12.2000 and thereafter the order has been passed and land has been surrendered, therefore, respondent No. 1 has no locus standi to challenge the surrender on any ground as being invalid or otherwise when tenant Dattatraya himself has filed writ petition in this Hon'ble Court supporting the surrender. According to the learned Counsel, surrender is made u/s 15 and therefore, it is held by the authorities below that surrender is valid in favour of the landlord. According to the learned Counsel, the provisions of Section 37 are not attracted in the instant case because the order has been approving surrender conditions raised in Section 31A are not applicable, therefore, the contentions raised by respondent No. 1 about Section 31A r.w. Section 29 are devoid of any substance. The surrender is voluntarily act by the tenant and made in favour of the landlord, therefore, u/s 31A has no application to the facts of the present case as contended by respondent No. 1 I is further submitted that in the judgment rendered by the Division Bench of this Court reported in AIR 1975 Bombay 358, it has been clearly mentioned that the order passed u/s 15 is not u/s 31 and therefore, relying on para No. 7 of the said judgment. Learned Counsel has further submitted that the judgment reported in 2006 (1) Mh.L.J. 776 has no application in the present case. Learned Counsel submitted that Awwal Karkoon

has in fact passed an order on 29.12.2000 after recording the statement of tenant. The tenant has voluntarily surrendered the land and he has accordingly given application and considering this, the Tahsildar was satisfied that the tenant has voluntarily shown his willingness to surrender the land and therefore, he has allowed the application. The authority has recorded the satisfaction, copy of the order is at page 23 of the compilation and therefore, according to the learned Counsel the judgment reported in 2006 (1) Mh.L.J. 776 has no application in the facts of this case.

It is further submitted that though reliance is placed by respondent No. 1 on reported judgment reported in 2003 AIR SCW 6923 in support of his contention that even if there is valid surrender, the possession must be taken in accordance with Section 29 of the Tenancy Act. Counsel for the petitioner submitted that the said judgment has been considered in the subsequent judgments under Tenancy Act reported in Dayandeo Ganpat Jadhav Vs. Madhav Vithal Bhaskar and Others, , and the Apex Court has held in para 31, 32 and 33 that the possession which was given to the landlord is valid. Learned Counsel further invited my attention to the reported judgment of the Supreme court in the case of Bhagwant Pundalik and Another Vs. Kishan Ganpat Bharaskal and Others, . The said judgment which is relied upon by the respondent No. 1 was under Vidharbha Region Act which is not applicable in the instant case. According to the learned Counsel, the tenant himself has come before this Court by filing writ petition and in the writ petition he has contended that he himself has surrendered tenancy and therefore, the same cannot be challenged by the respondent No. 1, as he has no locus standi. According to the learned court, MRT has exceeded revisional jurisdiction by entering into the findings of facts and more particularly when tenant Dattatrayas statement is recorded, Tahsildar has recorded the findings and satisfaction, the Appellate authority has confirmed it, therefore, the MRT has no jurisdiction to enter into the findings of facts whether the surrender is valid or otherwise? Or whether the notice was issued backdated when neither respondent No. 1 was present before the authority, nor for the same there is any basis. Therefore, according to the learned Counsel MRT has exceeded its jurisdiction and has allowed the revision. Learned Counsel in support of his contention relied on the reported judgment of the Supreme court in the case of Maruti Bala Raut Vs. Dashrath Babu Wathare and Others, . Therefore, learned Counsel would submit that the writ petitions deserve to be allowed.

4. Learned Counsel appearing for the respondent Nos. 1 and 2 in writ petition No. 1802 of 2002 submitted that surrender effected by one of the co-tenant i.e. Dattatraya Jagtap is not verified as required u/s 15 of the Tenancy Act and while recording the said surrender, the necessary notice as required u/s 14 of the Mamlatdars Court Act are not issued. Though the present respondents are co-tenants and there is no partition by metes and bounds they are not issued any notices while recording surrender and as the said order is passed without following the principles of natural justice, it is void and non est. While recording the surrender u/s 15 of the Tenancy Act it is necessary to ascertain what is the

holding of the landlord and how much land he is entitled to resume and also it is necessary to ascertain whether the landlord satisfies the requirements of Section 31, 31A and 31B as contemplated u/s 15(2) of the Tenancy Act. It is further submitted that the judgment of the Full Bench of this Court in the case of *Madhava v. Maharashtra Revenue Tribunal, Nagpur* and Ors. reported in 1970 Mh.L.J. 991, it is specifically observed in para 24 to 28 of the judgment that unless and until there is order of Tahsildar for possession, a tenant does not cease to be a tenant even though he has handed over possession of the land to the landlord and hence the order for possession is a mandatory requirement while recording surrender. It was further held that consent or willingness of the tenant to surrender is irrelevant and does not affect the operation of the law. Learned Counsel further placed reliance on the reported judgment of the Supreme Court in the case of *Bhagwant Pundalik and Another Vs. Kishan Ganpat Bharaskal and Others*, that where a landlord obtains possession of the land from the tenant representing that he desires to cultivate the land personally without complying with the provisions of Section 20 and 26 of the Tenancy Act, Vidharbha Region which are analogues to Section 15 and 29 of the Tenancy Act, the possession without complying with the provisions of the statute is non-lawful. It is further submitted that even in the reported judgment of *Babu Parasu v. Babu Deceased through L.Rs.* reported in 2004 (3) Bom .C.R. 350, it is observed by the Hon'ble Supreme Court that the procedure prescribed for termination and surrender of tenancy is mandatory and the possession obtained by landlord in violation of such mandatory provisions would be illegal. Although, landlord takes physical possession of the land, the right to possess the same remained with the tenant.

It is further submitted that out of total land measuring 8 Hectare 54 Are from Gat No. 90, which is now demarcated and there is sugarcane block to the said portion and after surrender, the said land is already transferred in favour of the petitioner in writ petition No. 1800 of 2002 and hence, the present respondents are deprived of the water to their land though the disputed land is irrigated. It is further submitted that in view of the transfer the claim of the landlord that he needs land for bonafide personal cultivation was not honest and only with a view to deprive the rights of the present respondents, one of the co-tenant in collusion with the landlord has surrendered the land with a view to sale it to the third party, which is clearly contrary to the object of Tenancy Act, which is a beneficial legislation for the benefit of the tenant. Learned Counsel further submitted that the judgment relied upon by the counsel for the petitioner in the case of *Devu Subhana v. Badurddin* (supra) will not be applicable in this case because yet there is no partition by metes and bounds and share of each of the brothers is not ascertained, however, only for convenience of cultivation by way of family arrangement, it was agreed how three brothers will cultivate the land. It is further submitted that there 4 acre 3 gunthas of joint families land at Saswad and that is still joint.. Even in the document at Exh. A dated 10.6.1987, it is specifically stated that from 1988 rent was to be paid by all brothers jointly. This

itself would show that there is no partition by metes and bounds. Even the order passed by the learned Tenancy Awal Karkoon only states that the name of Dattatraya as a tenant for 2 H 85 R should be deleted. But no boundaries or specific portion is mentioned in the order. The adjustment made by the parties for the purpose of cultivation cannot be construed as partition. It is further submitted that the MRT has allowed the revision only on question of law and not on factual aspects involved in the matter, hence, submission of the petitioner that MRT cannot disturb the findings of fact is misconceived. According to the learned Counsel MRT has allowed revision because the courts below have not follow the mandatory provisions of Section 15, 29 and 31 of the Tenancy Act and has also not issued notice u/s 14 of the Mamlatdars Courts Act to all interested parties specifically to the present respondents who are co tenants and have never consented for surrender. It is further submitted that Dattatraya has already transferred the land to the third party, who are petitioners in writ petition No. 1800 of 2002. Learned Counsel further submitted that the special Government Pleader appearing for the Collector before the MRT has contended that both the parties have committed error and illegality and revision has merit and it deserves to be considered in the light of the rulings produced by the Tenant. Therefore, learned Counsel would submit that the judgment and order impugned in this petition deserves to be confirmed. Learned Counsel also invited my attention to the affidavit in reply filed by said respondents.

5. I have heard learned Counsel appearing for the petitioners and respondents concerned. I have carefully perusal the pleading in the petition, grounds therein and the annexures thereto. On perusal of the document at page 15 of the compilation, which is at Exh. A, it is clearly mentioned that the total land from survey No. 90 is to the extent of 21 acre 14 gunthas and the same land is being cultivated as tenant. It is further mentioned that all three brothers have decided unanimously and with consent to divide the land in equal shares i.e. seven acres to each brother. It is further stated in the said document that there are three shares of Sanjivani Sahakari Sakhar Karkhana which are transferred in the name of three brothers one share to each of them. It clearly appears from the said document that the tenanted land got divided into three brothers in equal share and they started cultivating the said land. On careful reading of the said document itself would reveal that all three brothers together have decided and divided the total land between themselves. Therefore, said partition, copy of which is placed at Exh. A is clear evidence of seven acres land fallen to the share of petitioner Dattatraya. The said seven acres land which fallen to the share of Dattatraya is the subject matter of the petitions. Said Dattatraya has surrendered the said land to the land lord. Therefore, the land to the extent of seven acres which came to the share of Dattatraya is his exclusive share. Other two brothers viz. Atmaram and Jagannath have got their shares to the extent of seven acres each. Therefore, to the extent of seven acres of land of Dattatraya it cannot be said that Atmaram has share or interest in the said property. In this background it is to be held that respondent Atmaram had no locus standi to

challenge the surrender of land by Dattatraya, of his share in favour of the landlord.

6. The Apex Court in the case of Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, has held that the surrender of tenancy by a tenant in order to be valid and effective must fulfill the following requirements;

i) It must be in writing,

ii) It must be verified before the Mamlatdar;

iii) While making such verification the Mamlatdar must satisfy himself in regard to two things viz.

a) that tenant understands the nature and consequences of the surrender, and

b) that it is voluntary.

iv) Mamlatdar must endorse his findings as to such satisfaction upon the document of surrender.

In the present case on careful perusal of the documents placed on record it clearly reveals that all requirements have been fulfilled while surrender of the land by the tenant Dattatraya in favour of landlord. Therefore, since all requirements are fulfilled it has to be held that the surrender was valid surrender. Two authorities have concurrently held that all requirements have been fulfilled.

7. Though learned Counsel for the respondent No. 1 has submitted that there was no partition by metes and bounds in view of the pronouncements by this Court in the case of Smt. Krishnabai Anaji Ghule and Others Vs. Nivrutti Ramchandra Raykar and Another, , it has to be held that question of bonafides of partition could not be reopened. If the respondent No. 1 is aggrieved by the act of partition, it is open for him to challenge the same in the Civil Court. There is no reason to disbelieve Exh. A i.e. partition deed between three brothers. The Awwal Karkoon as well as the Sub Divisional Officer have approved the said documents. Therefore, there is no reason to question authenticity of the said document. Therefore, there is no substance in the contention of respondent No. 1 that there is no partition by metes and bounds.

The petitioner Dattatraya has surrendered his land which was fallen to his share and in the said land, it cannot be said that the other two brothers have share or interest, they have also got equal portion of land. This Court in the case of Devu Subhana Chamber v. Badruddin Hussain Marwadi reported in Vol. LIX B.L.R. 1959 page 192, has held that one of the joint tenants can surrender his interest in favour of the landlord. Therefore, surrender of land by the petitioner Dattatraya in favour of the landlord cannot be questioned and same cannot be challenged by the respondent No. 1 since seven acres of land is exclusively fallen to the share of petitioner Dattatraya.

8. This Court in the case of Vithal Ranganath Gaikwad and Others Vs. Murlidhar Vaman Dhavale and Another, held as under:

It is true that Sub-section (2) makes a reference to Ss. 31 and 31-A, but the mere reference to Sections 31 and 31A or the further fact the landlords right to retain land has been subjected to certain restrictions mentioned therein. Viz. He can retain the land subject to the like purposes or the like extent or the like conditions as are mentioned in Sections 31 and 31-A cannot convert an order passed u/s 15 into an order passed u/s 31 of the Act. In our view, all that Sub-section (2) of Section 15 does is to incorporate by reference the conditions of termination of tenancy embodied in Sections 31 and 31-A of the Act, but because of that the order u/s 15 cannot be regarded as one having been passed u/s 31 or Section 31-A of the Act. The provision in terms speaks of termination of tenancy brought about by surrender and not by a notice by a landlord as required by Section 31. It is only the consequences of a surrender of tenancy made by a tenant that are enjoined to be worked out having regard to such of the conditions as may be applicable as mentioned in Sections 31 and 31-A. That is the only effect of Sub-section (2) making a reference to Sections 31 and 31-A. The view expressed in Sarubais case therefore, cannot be regarded as correct.

Therefore, the arguments advanced by the counsel for respondent No. 1 so far applicability of provisions of Section 31 and 31 A and Section 15 of the Tenancy Act are answered in the aforesaid pronouncement of this Court.

9. The Hon'ble Supreme court in the case of Dayandeo Ganpat Jadhav Vs. Madhav Vithal Bhaskar and Others, has held thus;

In our opinion, however, from the statement of Ganpat recorded on November, 15, 1959, of Vitthal recorded on the same day and the order passed by the Mamlatdar and Agricultural Lands Tribunal, it was clear that the requisites procedure had been followed. The tenant was told about his right and the effect and consequences of his unwillingness to purchase the land and surrender of tenancy. Thereafter an order was passed by the authority on November 16, 1959. It is also clear that even in 1962, when the possession was handed over to the landlord, again statement of the tenant was recorded and he reiterated what he had stated in 1959. he had stated that on second thought also, he was not willing to purchase the land.

On careful reading the observations made in para 33, as reproduced herein above, in the facts of that case the court was satisfied that the proper procedure was followed and after following proper procedure, the tenant surrendered his tenancy rights and the Mamlatdar and the Agricultural Land Tribunal after following the procedure have allowed the tenant to surrender the land in favour of the landlord. In the instant case also, as stated in earlier para of this judgement, the proper procedure is followed by the Mamlatdar as well as the by the Tahsildar, which is required to be followed u/s 15 and other relevant provisions of the said Act and thereafter, the petitioner tenant was allowed to

surrender his land to the landlord. Since the other two brothers have got their share in the land, there is no question of issuing any notice to them as co tenant. Since three brothers were in possession of seven acres of land each which was equally divided, there was no question of issuing them notices. Therefore, Awwal Karkoon has rightly concluded the proceedings which were approved by the superior officers. The Awwal Karkoon as well as Sub Divisional Officer have concurrently held in favour of the petitioner.

10. The MRT has to some extent entered into the appreciation and reappraisal of the facts. So far as the findings recorded by the MRT that application of respondent Nos. 1 and 2 in the revision dated 21.12.2000 appears to have been accepted in back date by putting the date of 15.12.2000, is the finding recorded by the MRT by entering into the appreciation of facts of the case which is not permissible in the revisional jurisdiction. There is no basis for the findings recorded by the MRT. So far another finding recorded by the MRT i.e. no reasonable time was given to the tenant for reflection and consequences of surrender is concerned, if the statement of tenant Dattatraya and his sister is perused carefully, it seems that there is no room to suspect that it was necessary to grant further time for reflection and consequences of surrender. In fact the SDO has recorded the findings on this point and any comments on this issue by the MRT were wholly unwarranted. Further the findings recorded by the MRT that identification of the application not made through the advocate or application has not been verified by the Tahsildar himself, was not any body's case and there was no necessity to record the findings on the said issue. The further findings of the MRT that it was necessary to grant opportunity to the co-tenant is not sustainable since each of the brother has got their independent share of seven acres of land and they were cultivating the land fallen to their share and therefore, there was no question of issuing notice to the co-tenant. The possession of the share fallen to each of the brother was independent and independently three brothers were cultivating the land fallen to their share. The findings of the MRT that proper verification before the Mamlatdar is not done is also falsified by the document placed on record by the petitioner. It clearly appears that there was proper verification and authority has recorded the statement of the tenants as well as the landlord. The findings recorded by the MRT that the land is not divided by metes and bounds which is wholly unwarranted in view of the document which is placed on record at Exh. A page 15 of the compilation of the writ petition. As already stated the partition cannot be reopened in tenancy proceedings and if the respondent No. 1 is aggrieved then the remedy lies somewhere else. In fact the land is surrendered and possession is also given to the landlord and during pendency of this writ petition this Court granted interim orders in favour of the petitioner. For the aforesaid reasons writ petition deserved to be allowed.

11. Since already I have taken a view that the respondent No. 1 has no locus standi to challenge the act of the petitioner in surrendering the land fallen to his share to the landlord, in view of the fact that seven acres of land was fallen to

the share of the petitioner Dattatraya and its exclusive possession was also with him and he was cultivating the land and other two brothers have also got their respective shares of the land and they are also in possession of seven acres land each, therefore, other two brothers have no share or interest in the land in question. Therefore, all other arguments and points raised by respondent No. 1 are not necessary to be gone into.

Therefore, for all these reasons, stated herein above and in view of the various pronouncements by this Court as well as the Hon'ble Apex Court on the point involved in the matters, the judgment and order passed by the MRT is not sustainable. To some extent the MRT while exercising revisional jurisdiction has entered into the appreciation/reappreciation of the evidence by upsetting the concurrent findings of facts, which is not permissible in the revisional jurisdiction. Therefore, the impugned judgment and order of the MRT is quashed and set aside. The judgment and order passed by the Awwal Karkoon and Sub Divisional Officer, Sangamner is confirmed. Both the writ petitions are allowed. Rule made absolute in terms of prayer clause B in both the petitions. The order of interim relief stand merged in this final judgment and order.

12. Civil application No. 2048 of 2004 pending in writ petition No. 1800 of 2002, stands disposed of in view of the disposal of main writ petition.