

(2005) 12 BOM CK 0088
In the Bombay High Court
Case No : Writ Petition No. 2899 of 1991

Dattu Gundu Parit

APPELLANT

Vs

Javahar Nanchand Shah

RESPONDENT

Date of Decision : 01-12-2005

Acts Referred:

Bombay Tenancy and Agricultural Lands (Amendment) Act, 1956 — Section 15
Bombay Tenancy and Agricultural Lands (Amendment) Rules, 1956 — Rule 9
Bombay Tenancy and Agricultural Lands Act, 1939 — Section 15, 29, 29(3), 32G, 32P
Bombay Tenancy and Agricultural Lands Rules, 1949 — Rule 2A

Citation : (2006) 1 ALLMR 106 : (2006) 1 BomCR 17 : (2006) 1 MhLj 776

Hon'ble Judges : Mohite R.S., J

Bench : Single Bench

Advocate : S.V. Sadavarte, for the Appellant; Alpa Jhaveri, instructed by A.B. Naik, for the Respondent

Judgement

Mohite R.S., J.—This writ petition impugns a judgment and order dated 21.7.1989 passed by the Maharashtra Revenue Tribunal, Pune Camp at Kolhapur on 20.12.1990 in Revision Application No.MRT-KP-124 of 1989 whereby, the Designated Member of the Maharashtra Revenue Tribunal allowed the revision application and set aside an order dated 21.7.1989 passed by the Sub-Divisional Officer Gadhinglaj Division, Gadhinglaj in Tenancy Appeal No. 16/1985. The S.D.O. Gadhinglaj had earlier partly allowed the appeal and set aside the judgment and order passed by the A.L.T. Bhudargad in Tenancy Case No. 32-G Gargoti 342 on 31.5.1985 and had remanded the matter for fresh enquiry u/s 32-G of the Bombay Tenancy & Agricultural Lands Act, 1939 (hereinafter referred to as "the said Act").

2. The brief facts of the case are as follows:

a) That Survey No. 40/2 of Village Gargoti admeasured 1-Acre 13-Gunthas. The said land originally belonged to one Nanchand Shah. In the year 1948, one Gundu who was the father of the present petitioner is said to have taken the

aforesaid land from Nanchand Shah for the purpose of cultivation as a tenant. The said Gundu original tenant died in the year 1952 and the land was thereafter being jointly cultivated by the petitioner and one Kondiba Gopal Desai.

b) On 22.6.1956. Kondiba Gopal Desai and the petitioner are said to have executed a document in which it was stated that they were voluntarily surrendering their tenancy rights. The said document mentioned that they would not claim any tenancy right in future and that they had surrendered the possession of the land to the landlord. A certified true copy of this document which does not bear the actual signatures of the petitioner and Kondiba Desai or the witnesses has been produced on record in 32-G proceeding (at Page 95 of the trial court's file). Based on this document, the landlord Nanchand initiated Tenancy Case No. 239/1956 before the Tahsildar, Bhudargad for recovery of possession u/s 29 of the said Act. In this tenancy proceeding, on 23.8.1956, a joint statement of the petitioner and Mr. Kondiba Gopal Desai came to be recorded copy on record without their actual signatures and without the actual signature of the Tahsildar Bhudargad (at Page 97 of the file). On 23.8.1956, Mamlatdar, Bhudargad is said to have passed a final order in Tenancy Case No. 239/1956 directing that on verification of the deed he found that the tenants had surrendered the possession voluntarily and therefore, ordering that the possession of the land be restored to the landlord u/s 29(3) of the said Act. Subsequently, in the year 1974, 32-G proceedings were initiated in respect of the said land. Initially by an order dated 3.4.1974, the Additional Tahasildar, Bhudargad recorded a finding that the tenant had appeared before him on his own accord and made a statement that he did not wish to purchase the land and therefore, the purchase was being declared ineffective and the proceedings u/s 32-P of the said Act were directed to be taken. This order was confirmed by the Sub-Divisional Officer on 3.4.1980 but set aside the order passed by the M.R.T. on 18.9.1981. The M.R.T. remanded the matter for fresh enquiry u/s 32-G.

c) After remand the A.L.T. redecided the matter on 31.5.1985 holding that the petitioner was not a tenant of the suit land and hence, he was not entitled to purchase it u/s 32-G. The appeal against this order was partly allowed by the Sub-Divisional Officer by his judgment and order dated 21.7.1989 and remanded the matter. The M.R.T. allowed the revision vide its judgment and order dated 4.2.1991 and set aside the order of remand dated 21.7.1989. It is in this situation, writ petition came to be filed in this Court.

3. I have heard the learned Counsel for the parties. In my view the writ petition needs to be partly allowed on a legal point which is well settled. A perusal of the record, it appears that a proceeding for surrender of tenancy and restoration of possession to the landlord in Tenancy case No. 239/1956-57 was decided by the Mamlatdar on 23.8.1956. On this date, by Bombay Act 13/ 1956 (brought into effect from 1.8.1956) section 15 which related to surrender of right by a tenant had been introduced into the said Act. Under the newly introduced section 15 of the said Act, the surrender by a tenant of his tenancy was required to be hand

written and verified before the Mamlatdar in the prescribed manner. The prescribed procedure to be followed by the Mamlatdar was laid down in Rule 2-A of the B.T.A.L. Rules, 1949. The said Rule 2-A was in the following terms:

The Mamlatdar when verifying a surrender of a tenancy by a tenant in favour of the landlord under Clause (b) of sub-section (3) of section 5, shall satisfy himself, after such enquiry as he thinks fit, that the tenant understands the nature and consequences of the surrender and also that it is voluntary and shall endorse his findings in that behalf upon the document of surrender.

4. The requirement of Rule 2-A of 1949 Rules was *pari materia* with the requirement of Rule 9 of the B.T.A.L. Rules, 1956 (which was brought into force on 18.12.1956 in suppression of the B.T.A.L. Rules, 1949). Similarly Section 5(3) (b) of the Act was also *para materia* with Section 15 introduced by Bombay Act 13/1956 with effect from 1.8.1956.

5. The Apex Court in the case of *Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others*, held that a Combined reading of section 5(3)(b) with Rule-2A which prescribes the manner of verification of a surrender shows that a surrender of tenancy by a tenant in order to be valid and effective must fulfil the following requirements : (1) It must be in writing, (2) It must be verified before the Mamlatdar, (3) While making such verification the Mamlatdar must satisfy himself in regard to two things namely, (a) that the tenant understands the nature and consequences of the surrender, and (b) that it is voluntary. (4) The Mamlatdar must endorse his finding as to such satisfaction upon the document of surrender.

The Apex Court also held that the aforesaid requirements as prescribed in Rule 2-A were mandatory and non performance of any of these requirements would vitiate the surrender and renders it non est. The law as laid down by the Apex Court has stood the test of time and has been reaffirmed in two subsequent judgments of the Apex Court reported in the case of *(Babu Parasu Kaikadi (deceased) by L.Rs. v. Babu (deceased) through L.Rs.)* reported in 2004(3) Bom.C.R. 350 and more recently in the case of *Dayandeo Ganpat Jadhav Vs. Madhav Vithal Bhaskar and Others*, .

6. A Full Bench of our Court in the case of *Laxmanrao Anantrao Stardekar and etc. Vs. Satyappa Pawar and etc.*, held that the language of section 5(3) (b) of the said Act (prior to introduction of Section 15) as well as Rule 2-A is *pan materia* with amended section 15 of the said Act and Rule 9 of 1956 Rules framed thereunder.

7. In the present case, it can be seen from the record that while effecting the verification, the Mamlatdar did not endorse his finding, relating to his satisfaction that the tenant had understood the nature and consequences of the surrender and that the surrender was found by him to be voluntarily, upon the document of surrender.

8. In this view of the matter, the so called surrender of the tenancy right said to be made by the petitioner and Kondiba Gopal Desai and the order of the A.L.T. dated 23.8.1956 are non est in the eyes of law. I also find that there are no 7/12 extracts on record to show as to who was cultivating the land on 1.4.1957. This vital piece of evidence is missing from the record. In the circumstances, the question as to whether the petitioner and Kondiba Gopal Desai were deemed purchases on the Tiller's date will have to be gone into afresh. I am informed that Mr. Kondiba Gopal Desai had expired in the year 1970. His heirs may have to be heard in the matter as they may claim interest through him. In the circumstances, petition is allowed and the matter is remanded to A.L.T. Bhudargad for a fresh decision u/s 32-G of the said Act. He will decide the matter after giving fresh notices to the parties and giving them further opportunity of leading evidence. Needless to say that order u/s 32-P which was consequential will also have to be and is set aside. This matter is of the year 1974 and it is unfortunate that the point of law involved was completely missed though the matter was remanded earlier. In the circumstances, it would be desirable that enquiry be completed by A.L.T. Bhudargad as expeditiously as possible and in any case before 31.12.2006. Record and proceeding be sent back to the A.L.T. Bhudargad immediately.