
(1969) 09 BOM CK 0001

In the Bombay High Court

Case No : Sp. C Application No. 989 of 1967

Daulat Maroti Belsare

APPELLANT

Vs

Rajaram Kisan Kale and another

RESPONDENT

Date of Decision : 25-09-1969

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 39

Citation : (1970) MhLj 724

Hon'ble Judges : M. N. Chandurkar, J

Bench : Single Bench

Advocate : V. R. Padhye, for the Appellant; C. P. Kalele, For Respondent No. 1, Respondent No. 2 was not represented, for the Respondent

Final Decision : Allowed

Judgement

M. N. Chandurkar, J.—This petition arises out of a proceeding u/s 39-A of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, hereafter referred to as the Tenancy Act, initially started by one Dhrupadabai, who was the owner of survey number 30/1, area 13 acres, 34 gunthas of mouza Gavhan, tahsil Khamgaon, district Buldana. The petitioner Daulat is Dhrupadabai's sister's son. Dhrupadabai's husband was Kisan, who died on 19-9-61 and Dhrupadabai died on 12-9-1963 after an order rejecting her application was passed by the Tahsildar. On 5-3-1963 she had filed an application u/s 39-A of the Tenancy Act alleging that she had served the necessary notice on respondent Rajaram on 12-2-1963 terminating his tenancy in exercise of her right u/s 39A of the Tenancy Act. Sue alleged that agriculture was her only source of income. The respondent contested the application and the claim of Dhrupadabai was rejected by the Naib-Tahsildar on 13-7-1963. Dhrupadabai did not file any appeal against this order, and according to the respondent, the present petitioner filed a revision application before the Deputy Collector u/s 110 of the Tenancy Act on 6-7-1964. The Deputy Collector took the view that the order passed by the Naib-Tahsildar ignored the decision of this Court in Sarjabai v. Hona Nina 1961 N L J 615 in

which it was held that the husband's income could not be taken into consideration in an application filed by the wife for resumption of the land of which she was a tenure-holder. The Special Deputy Collector, therefore, set aside the order of the Naib Tahasildar and remanded the case for a decision on merits. After remand, the Naib-Tahasildar found that the petitioner was the legal heir of Dhrupadabai, that the notice u/s 39-A was valid and that the petitioner was in possession of less than one-third of the family holding. In view of these findings the application initially filed by Dhrupadabai was allowed. It may be stated that when initially the application was considered by the Naib-Tahsildar, Dhrupadabai's evidence was already recorded.

2. The respondent filed an appeal against this order and it was contended before the appellate authority that the petitioner was not the legal representative of Dhiupadabai, but that contention was rejected. The Sub-Divisional Officer found that Dhrupadabai had got the disputed land from her father and that the land had not come to her from her husband's side. On a consideration of the evidence of Dhrupadabai the Sub-Divisional Officer found that the respondent-tenant could not prove either by oral or documentary proof that Dhrupadabai acquired any land of her husband and a finding was given on a consideration of evidence that the disputed land was the only land owned by Dhrupadabai. It appears that it was contended before the Sub-Divisional Officer that 3 fields admeasuring 7 acres, 33 gunthas which were owned by Dhrupadabai's husband Kisan must be taken to have been inherited by her from her husband, but the statement of Dhrupadabai that the land held by her husband was cultivated by him as a tenant and that she had relinquished the land in favour of the owner of the fields was accepted. The appeal, therefore, came to be rejected.

3. Against the appellate order the tenant filed a revision application before the Maharashtra Revenue Tribunal and the Maharashtra Revenue Tribunal referred in its order to a statement made before the Naib-Tahsildar by Dhrupadabai in which she had admitted she owned in all about 10 acres and 35 gunthas since 1962. On the basis of this statement the learned Member of the Tribunal found that Dhrupadabai held 10 acres, 35 gunthas land which was in excess of one-third family holding on the date on which she served a notice u/s 39A on the tenant and when she initiated resumption proceedings. The learned Member also took the view that the intention of section 39A of the Tenancy Act was to provide relief to only those landlords who on the date of the application u/s 39A held land one-third of a family holding or less and who satisfied all other conditions referred to in that section. The contention advanced before the Tribunal that in view of subsequent acquisition of land from the husband's side the application made by Dhrupadabai that initially she owned less than one-third of a family holding was not maintainable was accepted. Thus the revision application was allowed and the application for resumption was rejected. The petitioner has now filed this petition challenging this order of the Tribunal.

4. The learned counsel appearing on behalf of the petitioner contends that the

Tribunal was not justified in rejecting the application initially made by Dhrupadabai on the ground that subsequently her holding has increased to one in excess of one-third of the family holding. According to the learned counsel, the crucial date for determining the holding for the purposes of an application u/s 39-A of the Tenancy Act is 15th Day of February 1961 and that it is with reference to this date that it must be determined whether the landholder was entitled to apply u/s 39-A of the Tenancy Act. In other words, the contention is that once the landholder is shown to have held before 15-2-1961 as tenure-holder land not exceeding one-third of a family holding and it is further shown that the landholder earns his livelihood principally by agriculture or by agricultural labour, the application filed must be decided in favour of the landholder. In order to decide this contention it is necessary to refer to the relevant provisions of section 39-A. The provisions material for the decision of this case are as follows :

"39A. (1) Notwithstanding anything contained in section 3, 19, 38 or 39, but subject to the provisions of this section, a landlord who before the 15th day of February 1961 held as tenure-holder land not exceeding one-third of a family holding and who earns his livelihood principally by agriculture or by agricultural labour may terminate the tenancy of his tenant sot being an occupancy tenant if the landlord bona fide requires the land for cultivating it personally.

(2) The landlord shall, for terminating the tenancy, give such tenant notice in writing within one year from tho date of the commencement of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) (Amendment) Act, 1961, and make an application for possession as provided in sub-section (2) of section 38 before the 1st day of April, 1963, notwithstanding that in respect of the same tenancy an application of the landlord made in accordance with sub-section (3) of section 38 or of section 39.

(i) is pending before the Tahsildar or in appeal before the Collector, or in revision before the Maharashtra Revenue Tribunal on the date of the commencement of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) (Amendment) Act, 1961 hereinafter referred to in this section as "the commencement date", or

(ii) has been rejected by any authority before the commencement date.

(3)... ..

"(4) The right of a landlord to terminate the tenancy under sub-section (1) shall be subject to the conditions contained in clause (d) of sub section (3) of section 38 and clauses (a) and (b) of sub-section (2) of section 39.

(5) The provisions of sub-sections (4), (5), (6) and (7) of section 39 shall apply to termination of tenancy under this section, as they apply for termination of tenancy under that section."

Under section 39-A of the Tenancy Act which was introduced by Maharashtra Act No 2 of 1962 which came into force on 1-3-1962 a landholder, if he held as

tenure-holder land not exceeding one-third of a family holding before 15-2-1961 and if he earns his livelihood principally by agriculture or by agricultural labour, is given a right to terminate the tenancy of the tenant if he bona fide require the land for cultivating personally. By sub-section (2) of section 39A the period within which the notice was required to be given was specified as a period of one year from the date of commencement of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) (Amendment) Act, 1961, which came into force on 28-1-61 and the application u/s 36(2) was required to be made before 1-4-1963. It must also be noticed that this right could be exercised by the landholder notwithstanding the fact that in respect of the same tenancy an application was made by him in accordance with section 38 (1) or section 39 and the said proceeding was pending at any stage on 1-3-1962 and notwithstanding further that this application was rejected by any authority before 1-3-1962 which is referred to as the commencement date in section 39-A (2). Then the right of the landholder is subjected to certain other requirements which are specified in subsections (4) and (5) of section 39A, So far as the present petition is concerned reference is necessary only to the requirement which is specified in section 39 (2) (b). Under the provisions of section 39 (2) (b) if the land cultivated by a landlord is less than a family holding, the landlord is stated to be entitled to take possession of so much area of the land leased as will be sufficient to make the area in his possession equal to a family holding. Clauses (a) and (b) of section 39 (2) are as follows :

"39 (2) (a) If the landlord at the date on which the application for possession is made by him has no other land of his ova or has not been cultivating personally any other land he shall be entitled to take possession of the land leased to the extent of a family holding.

(b) If the land cultivated by him personally is less than a family holding, the landlord shall be entitled to take possession of so much area of the land leased as will be sufficient to make the area in his possession equal to a family holding."

The right given to the landlord u/s 39A (1) is by virtue of subsection (4) made subject to the satisfaction of these conditions. The object of making the right u/s 39A (1) subject to the conditions laid down in clauses (a) and (b) of section 39 (2) appears to be that in no case the total land in the possession of the landlord who exercises his right u/s 39A (1) should exceed an area equal to a family holding. Thus though for the purpose of exercising the right u/s 39 A (1) It may be enough to show that the landholder held before 15th February 1961 as tenure-holder land not exceeding one-third of a family holding, the question whether he is entitled to the possession of the entire land has to be decided with reference to clauses (a) and (b) of section 39 (2) which by reference are made applicable to a case u/s 39A. Thus in a given case though the landholder may satisfy the condition of holding land not in excess of one-third family holding on 15th February 1961, he may not necessarily be entitled to the possession of the entire area in the possession of the tenant, if in the meantime he has come in

possession of other land, which together with the land in possession of the tenant, exceeds a family holding. In such a case so far as the tenant against whom steps are taken u/s 39A (1) is concerned, the land-holder will be entitled to possession only to the extent that is necessary to make the total area in his possession equal to one family holding. It is clear that the point of time which is contemplated by clauses (a) and (b) of section 39 (2) is the date on which the application for possession is made. This is specifically so stated in clause (a), but having regard to the scheme of both these clauses even for the purposes of clause (b) it is the date of the application u/s 39A (1) with reference to which it must be ascertained whether the land in the possession of the landholder would exceed one family holding if he is allowed to take possession of the entire land leased to the tenant. If the total land does not so exceed a family holding then the landholder would be entitled to resume only so much of the area as will be sufficient to make the area in his possession equal to a family holding.

5. It is in the light of these provisions that it will have to be found out whether the Tribunal was justified in reversing the orders passed by the Revenue authorities holding that the application initially made by Dhrupadabai should be granted or not. Even assuming, as found by the Tribunal, that the three fields admeasuring 7 acres, 33 gunthas which Dhrupadabai admitted to have been owned by her were in her possession, that did not affect her claim u/s 39A (1) so far as the present respondent-tenant is concerned. Admittedly on 15th February 1961 Dhrupadabai's husband Kisan was alive. There fore, she had no title to land admeasuring 7 acres 33 gunthas and it cannot be disputed that on the material date, that is, 15th February 1961, she was a tenure-holder only in respect of survey number 30/1. Now assuming that she has come in possession of additional land, it is obvious that the tenanted land together with the additional land of 7 acres, 33 gunthas does not exceed one family holding. Thus even assuming that area of 7 acres, 33 gunthas was in her possession on the date of the application before which date her husband Kisan had died, then under clause (b) she would still be entitled to take possession of so much of the land as would be sufficient to make the area in her possession equal to one family holding. The total holding of Dhrupadabai herself was much less than a family holding. Therefore, her possession or ownership in respect of 7 acres and 33 gunthas did not in any way affect her claim so far as the tenant-respondent was concerned. It appears that these provisions were not brought to the notice of the Tribunal and therefore the Tribunal took the view that throughout the time during which the proceedings continued the landholder is not entitled to possession of anything in excess of one-third of a family holding. Since the order passed by the Tribunal is patently contrary to the provisions of section 39 A of the Tenancy Act that order will have to be quashed and set aside.

6. The learned counsel appearing on behalf of the tenant then contended that the matter should be remanded back to the Tribunal for a decision of his second contention which he had raised, but which was not decided by the Tribunal. The contention, according to the learned counsel for the respondent, was that the

revision application filed by the present petitioner against the first order passed by the Additional Tahsildar on 13-7-1963 was decided without jurisdiction. The ground on which this order was challenged was that the Deputy Collector who decided revision application No. 13/68-(8) /1964-65 on 24-9-1964 had ignored the provisions of section 110 of the Tenancy Act which do not permit the revising authority to send for the record after the expiry of one year from the date of the impugned order. Apparently the order passed by the Tribunal makes no reference to this contention. This objection does not seem to have been taken even before the Deputy Collector, who passed the order on 24-9-1964. There is no reference to such a contention in that order. If the point which is now sought to be raised was such a patent one and apparent on the face of the record, it is not possible to say that that point would not have been taken. By this order the earlier order passed by the Naib-Tahsildar rejecting Dhruvadabai's application was set aside. It was open to the tenant to file a revision application against this order u/s 111 of the Tenancy Act, The learned counsel further contends that the Tribunal would not have interfered with the remand order passed by the Deputy Collector, and therefore, failure to file a revision application against the remand order should not affect the merits of his contention. It is not possible to accept this contention. It cannot be said as a rule that the Tribunal has no jurisdiction to interfere with a remand order, and if according to the learned counsel the order was so patently erroneous and without jurisdiction, then it is not possible to accept the contention now that the Tribunal would not have interfered with such an order. Apart from the fact as already stated no objection to the jurisdiction of the Special Deputy Collector was taken, even now as that record is not before me it is not possible to ascertain whether the records were sent for within a year of 13-7-1963 or not. After the remand order a further enquiry came to be made, parties have fought out this litigation, which is pending since 1963 on merits and I am not inclined to entertain this argument at this stage of writ petition. The contention that the matter should be remanded back to the Tribunal cannot therefore, be accepted.

7. It is then contended that the earlier order passed in proceeding u/s 38 of the Tenancy Act was res judicata. This contention also has no substance because there is no material on record on the basis of which this contention can be decided. Even copies of the records of the earlier proceedings u/s 38 of the Tenancy Act have not been made available by the tenant. Apart from everything else, the provisions of section 39A themselves provide that an application u/s 39A (1) is maintainable notwithstanding the rejection of the earlier application. It was for the tenant to file documents to show that the application u/s 38 was rejected after the "commencement date" and not before that date. This the tenant has failed to show and his contention that the application u/s 39A was not maintainable because an application u/s 38 made by the landholder was rejected cannot therefore be entertained.

8. In the view which I have taken, it must be held that the order passed by the Tribunal is vitiated and is liable to be quashed and set aside. It is, therefore,

quashed and the orders passed by the Naib-Tahsildar and the Sub-Divisional Officer are restored. The petition is thus allowed with costs.