
(1970) 06 BOM CK 0003

In the Bombay High Court

Case No : Special Civil Application No. 492 of 1969

Gajanan Mahadeo Yerekar and Another

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 18-06-1970

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 122, 122(3), 122(4), 19, 20

Citation : AIR 1971 Bom 357 : (1971) ILR (Bom) 964 : (1971) MhLj 193

Hon'ble Judges : Gatne, J;Deshmukh, J

Bench : Division Bench

Advocate : C.G. Madkholkar, for the Appellant; M.M. Qazi, Asstt. Govt. Pleader, for the Respondent

Judgement

Gatne, J.—The question which has been referred to us in this proceeding is whether a landlord who has dispossessed the tenant otherwise than in accordance with the provisions of the Tenancy Act and where the right of a tenant to restoration of tenancy is subsisting on the date of sale, a sale by a landlord to a stranger is not in violation of the provisions of Section 91 of the Tenancy Act. The circumstances leading to this reference are briefly these:--

2. Survey No. 63/2 of mouza Kharwad, Tahsil Warora, District Chanda originally belonged to one Mukund Vithoba. On 17-8-1963 he sold the same to one Mahadeo Yerekar for a price of Rs. 700/-. On 4-5-1967 Mahadeo died leaving behind his son Gajanan, wife Shanti and father Ghularam. When this sale was effected the lease of this land granted in favour of one Nathu Narayan had not been validly terminated in accordance with the provisions of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as "the Tenancy Act") although the tenant had left the land some time at the end of March 1963. Therefore, in May 1966 the village Patwari made a report to the Naib Tahsildar of Warora that the sale of this land effected on 17-8-1963 was effected in respect of a land leased out to a tenant. That naturally led to a

proceeding u/s 122 of the Tenancy Act. In that proceeding statements of purchaser Mahadeo and tenant Nathu Narayan. were recorded. The statement of vendor Mukund Vithoba was also recorded and on 28-6-1966, the Naib Tahsildar passed an order declaring the sale of 17-8-1963 to be invalid as being in contravention of the provisions of Section 91 of the Tenancy Act, Mahadeo tried to challenge that decision before the Sub-Divisional Officer but before that appeal was decided he died and the Sub-Divisional Officer passed his order on 9-5-1967, confirming the order of the Naib Tahsildar. Two of Mahadeo's heirs (son and father) made a further attempt to challenge the decision of the Sub-Divisional Officer before the Revenue Tribunal but the Revenue Tribunal by its order dated 7-3-1969 dismissed the revision application. The heirs of Mahadeo thereafter came up to this Court in Special Civil Application No. 492 of 1969. This Special Civil Application came up for hearing before Chandurkar J. At the hearing, an earlier decision of Padhye J. in Spl. Civil Appln. No. 253 of 1965 (Bom), Tulsabai v. State of Maharashtra was then relied upon on behalf of the heirs of Mahadeo. The argument based on that decision was that because tenant Nathu Narayan had already left and was not actually on the land on 17-8-1963 when the sale was effected, the provisions of Section 91 of the Tenancy Act were not applicable to the sale and the tenancy authorities were consequently in error in declaring the sale to be invalid. Although this argument was in keeping with the earlier decision of Padhye J., Chandurkar J. felt that the view taken in the earlier special civil application was required to be reconsidered and therefore this reference has been made to us.

3. Mr. Madkholkar, appearing on behalf of the petitioners (heirs of purchaser Mahadeo) was at pains to urge that the earlier view taken by Padhye J. in Special Civil Application No. 253 of 1965 was the right view and it was not necessary to reconsider the same as suggested in the referring judgment of Chandurkar J. While considering his submissions it is in the first place, necessary to examine the provisions of Section 91 of the Tenancy Act. That section provides:

"91. (1) Where a landlord intends to sell any land, leased to tenant, he shall apply to the Tribunal for determining the reasonable price thereof. The Tribunal shall thereupon determine the reasonable price of the land in accordance with the provisions of Section 90. The Tribunal shall also direct that the price shall be payable either in lump sum, or in annual installments not exceeding six carrying simple interest at 4 1/2 per cent per annum.

(2) After the Tribunal has determined the reasonable price, the landlord shall simultaneously in the prescribed " manner make an offer-

(a) in the case of agricultural land to-

(i) the tenant In actual possession of the land, and

(ii) all persons and bodies mentioned in the priority list in Section 84:

(b) in the case of a dwelling house, or a site of a dwelling house or land

appurtenant to such house when such dwelling house, site or land is not used or is not necessary to carry on agricultural operations in the adjoining lands-

(i) to the tenant thereof, and

(ii) to the person residing in the village who is not in possession of dwelling house;

Provided that if there are more than one such person the offer shall be made to such person or persons and in such order of priority as the Collector may determine in this behalf having regard to the needs of the following persons, namely:--

(i) an agricultural labourer,

(ii) an artisan.

(iii) a person carrying on an allied pursuit,

(iv) any other person in the village.

(3) The persons to whom such offers are made shall intimate to the landlord within one month from the date of receipt of the offer whether they are willing to purchase the land at the price fixed by the Tribunal.

(4) (a) If only one person intimates to the landlord under Sub-section (3) his willingness to accept the offer made to him by the landlord under Sub-section (2) the landlord shall call upon such person by a notice in writing in the prescribed form to pay him the amount of the reasonable price determined by the Tribunal or to deposit the same with the Tribunal within one month or such further period as the land lord may consider reasonable from the date of the notice by such person.

(b) If more than one person intimate to the landlord under Sub-section (3) their willingness to accept the offers made to them by the landlord under Sub-section (2), the landlord shall, by a notice in writing in the prescribed form, call upon the person having the highest priority in the order of priority given in Sub-section (2) to pay him the amount of the reasonable price determined by the Tribunal or to deposit the same with the Tribunal within one month or such further period as the landlord may consider reasonable from the date of receipt of the notice by such person."

From the provisions of this section it is clear that this section applies to a case of sale of a land leased out to a tenant. In such a case, the landlord has to apply to the Tribunal for determining the reasonable price thereof and after that price is determined in accordance with the provisions of Section 90, the Tribunal directs the purchaser to pay the same in prescribed installments not exceeding six. After the price is thus determined and the installments also are fixed, Sub-section (2) of Section 91 casts an obligation on the landlord to make an offer of the land, in the first place, to a tenant in actual possession of the land and thereafter to all

persons and bodies mentioned in the priority list in Section 84. This admittedly was not done in the present case. Owner Mukund Vithoba straightway sold the land to Mahadeo without any reference to the Tribunal and without making any offer either to the tenant or to the persons and the bodies mentioned in Section 84.

4. The argument of Mr. Madkholkar at the bar was that it was not necessary to follow this procedure in this case because the tenant was not actually on the land and as the tenant was not actually on the land and the land was actually held by the owner himself, he was not under any obligation to follow the procedure laid down in Section 91. We have carefully considered this submission and it seems to us that it is plainly opposed to the wording of Section 91 (1). As we have already pointed out, Section 91 (1) applies to the sale of any land leased out to a tenant. In the present case, it is not in dispute that in 1962-63 this land was leased out to a tenant named Nathu Narayan and he actually cultivated the same during the year 1962-63. Once this position is realised it must follow that the lease thus granted to Nathu Narayan and enjoyed by him in 1962-63 could not come to an end except in accordance with the provisions of the Tenancy Act. Section 19 of the Tenancy Act makes a provision for termination of such a tenancy. Section 20 contemplates termination of tenancy by surrender of the land by a tenant, but care has been taken to provide that such surrender shall be in writing and shall be verified before the Tahsildar in the prescribed manner. It is not, therefore possible for a landlord to say that a lease has been surrendered merely because the tenant has left the land. Section 36 of the Tenancy Act lays down the procedure for taking possession while Sub-section (2) prescribes the procedure to be followed by the landlord. Subsection (1) refers to the procedure which a tenant has to follow. That sub-section says:

"A tenant..... entitled to possession of any land..... under any of the provisions of this Act or as a result of eviction in contravention of Sub-section (2) may apply in writing for such possession to the Tahsildar. The application shall be made in such form as may be prescribed and within a period of three years from the date on which the right to obtain possession of the land, dwelling house or site is deemed to have accrued to the tenant....."

So far as the facts of this case are concerned, there was no compliance with the procedure prescribed in Section 19 and there was no valid surrender as prescribed in Section 20. The eviction of the tenant was, therefore, clearly in contravention of law and the tenant could claim back the land under the provisions of Section 36 (1) by making the prescribed application within three years. Those three years had admittedly not expired when the sale in dispute took place.

5. The position, therefore, is that when the sale in this case was effected, the tenancy in favour of Nathu Narayan was still subsisting. The land in question must under the circumstances be regarded as a land leased out to a tenant. Once this position is realised it follows that the provisions of Section 91 (1) must

apply to the sale effected on 17-8-1963.

6. The next argument of Mr. Madkholkar at the bar was that Sub-section (2) of Section 91 requires that after the reasonable price is determined by the Tribunal, the landlord is supposed to offer the land to the tenant in actual possession of the land and since the tenant in this case was not in actual possession it was not possible to make any offer to him. In any case, no such offer was required under Sub-section (2) (a) (i) and this being the position we should hold that Section 91 (1) is applicable only to the sale of a land held by a tenant. It is not possible for us to accept this submission because the words used in Sub-section (1) of section 91 are "where a landlord intends to sell any land, leased out to a tenant". It does not say "where a landlord intends to sell any land held by a tenant". Therefore, merely because the tenant was actually not on the land the land cannot possibly cease to be a land leased out to a tenant.

7. Mr. Madkholkar next invited our attention to the provisions of Section 122 of the Tenancy Act. That section provides:--

"122. (1) Where in respect of the transfer or acquisition of any land made on or after the commencement of this Act the Tahsildar suo motu or on the application of any person interested in such land has reason to believe that such transfer or acquisition is or becomes invalid under any of the provisions of this Act, the Tahsildar shall issue a notice in the prescribed form to the transferor, the transferee or the person acquiring such land, as the case may be, to show cause as to why the transfer or acquisition should not be declared to be invalid and shall hold an inquiry and decide whether the transfer or acquisition is or is not invalid.

(2) If after holding such inquiry, the Tahsildar comes to a conclusion that the transfer or acquisition of land is invalid, he shall make an order declaring the transfer or acquisition to be invalid; provided that where the transfer of land was made by the landlord to the tenant in possession of the land and the area of the land so transferred together with the area of other land, if any, cultivated personally by the tenant did not exceed three family holdings the Tahsildar shall not declare such transfer to be invalid if-

(i) the price of the land received by the landlord does not exceed the reasonable price thereof u/s 90 and the transferee pays to the State Government a penalty of one rupee within such period not exceeding three months as the Tahsildar may fix, or

(ii) the price of the land received by the landlord exceeds the reasonable price thereof u/s 90 and the transferor as well as the transferee pays to the State Government each a penalty equal to one-tenth of the reasonable price within such period as the Tahsildar may fix.

(3) On the declaration made by the Tahsildar under Sub-section (2),--

(a) the land shall be deemed to vest in the State Government, free from all

encumbrances lawfully subsisting thereon on the date of such vesting, and shall be disposed of in the manner provided in Sub-section (4); the encumbrances shall be paid out of the occupancy price in the manner provided in Section 44 for the payment of incumbrances out of the purchase price of the sale of land, but the right of the holder of such encumbrances to proceed against the person liable for the enforcement of his right in any other manner shall not be affected.

(b) the amount which was received by the transferor as the price of the land shall be deemed to have been forfeited to the State Government and it shall be recoverable as an arrear of land revenue;

(c) the Tahsildar shall, in accordance with the provisions of Section 90, determine the reasonable price of the land.

(4) After determining the reasonable price, the Tahsildar shall dispose of the land by sale at price equal to be reasonable price determined under Sub-section (3) In the prescribed manner in the following order of priority:--

(i) the tenant in actual possession of the land.

(ii) the persons or bodies in the order Riven in Section 84;

Provided that where the transfer of land was made by the landlord to the tenant in possession of the land and the area of the land so transferred together with the area of other land, if any, cultivated personally by the tenant did not exceed three family holdings, then-

(a) if the price of the land received by the transferor does not exceed the reasonable price the amount forfeited under Sub-section (3) shall be returned to the transferor and the land restored to the transferee on payment to the State Government of a penalty of one rupee; and

(b) if the price of the land received by the transferor exceeds the reasonable price, the Tahsildar shall grant the land to the transferee on payment of price equal to one-tenth of the reasonable price and out of the amount forfeited under Sub-section (3), the transferor shall be paid back an amount equal to nine-tenths of the reasonable price.

(5) The amount of the price realized under Sub-section (4) shall, subject to the payment as aforesaid of any encumbrances subsisting on the land, be credited to the State Government:

Provided that where the acquisition of any excess land was on account of a gift or bequest, the amount of the price realised under Sub-section (4) in respect of such land, shall subject to the payment of any encumbrances subsisting thereon, be paid to the donees or legatee in whose possession the land had passed on account of such acquisition."

The argument founded on these provisions was that once a transfer is declared to be invalid as being in contravention of Section 91, the effects contemplated in

Sub-section (3) of Section 122 follow with the result that the land has to be deemed to vest in the State Government, free from all encumbrances lawfully subsisting thereon on the date of such vesting and the same has to be disposed of in the manner provided in Sub-section (4), and if this is the result, the lease granted in favour of the tenant Nathu Narayan necessarily comes to an end and there could be no possibility of the tenant being in a position to reclaim the land. Here again it was emphasised that under Sub-section (4) of Section 122, the land is to be disposed of by sale and the first person entitled to get it is the tenant in actual possession and thereafter the persons or bodies in the order given in Section 84. The submission therefore was that there was no occasion to sell the land to a tenant who was out of possession. But if a tenant is out of possession, the persons or bodies in the order given in Section 84 still remain and there is no reason why the land could not be offered to them in the absence of tenant in actual possession. The argument that the land the sale of which is declared to be invalid would vest in the State Government and the rights of the tenant under the lease would consequently come to an end is also in our view not correct. The word "encumbrances" does not seem to have been used to include a lease in favour of a tenant. That is made clear by the provision that the encumbrances lawfully subsisting on the land shall be paid out of the occupancy price in the manner provided in Section 44. It therefore seems to us that the expression, "encumbrances" is used, only to indicate those encumbrances which are in the nature of money claims and are capable of being satisfied out of the occupancy price in the manner provided in Section 44. It dose not, therefore, appear that the lease in favour of a tenant would ipso facto come to an end.

8. It may be mentioned that so far as this particular case is concerned, the tenant left the land by the end of April 1963 and no application u/s 36 (1) seems to have been made by him till May 1966 when the suo motu proceedings u/s 122 were initiated. It, therefore, appears that he is not keen on getting back the land but it cannot possibly make any difference to the legal position which we have been called upon to decide on this reference. What we have to consider is the position that prevailed on 17-8-1963 when the sale in dispute was effected. On that date, at any rate, the lease did subsist and the land was a land leased out to a tenant. That being so, Chandurkar J. was, in our view, right in taking the view that the sale did come within the mischief of section 91 (1). We would accordingly answer the question referred to us by saying that the sale in this case does come within the mischief of Section 91 of the Tenancy Act. The matter shall now go back to the learned Judge for further disposal.

9. Reference answered in negative.