
(1955) 09 BOM CK 0077

In the Bombay High Court

Case No : Special Civil Application No. 1382 of 1955

Godavaribai

APPELLANT

Vs

Kashiram Kautik Falak and Others

RESPONDENT

Date of Decision : 06-09-1955

Acts Referred:

Bombay Tenancy And Agricultural Lands Act, 1948 — Section 25, 34, 34(1), 37, 37(1), 37(2), 37(3), 39, 63, 84, 85
Constitution Of India, 1950 — Article 227

Citation : AIR 1956 Bom 752 : (1955) 57 BOMLR 1111 : (1956) ILR (Bom) 148

Hon'ble Judges : Gokhale, J;Gajendragadkar, J

Bench : Division Bench

Advocate : R.B. Kotwal, for the Appellant; G.S. Raisinghani, for the Respondent

Judgement

Gajendragadkar, J.—This is an application for the issue of a writ under Article 227 of the Constitution of India and it raises an interesting question as to the effect of the provisions contained in Section 37, Bombay Tenancy and Agricultural Lands Act, 1948. The land in question is survey No. 332/1. It originally belonged to Shankar Bhavsar. Shankar Bhavsar gave notice to his tenant u/s 34 of the Act.

Subsequent to the notice he obtained possession of the land from the tenant on the ground that he required the said land bona fide for his personal cultivation. The order in favour of the landlord was passed on 30-7-1951. Thereafter the landlord exchanged this land for another land.

Godavaribai w/o Jayaram Zope gave a land of her own to the landlord and obtained the present land in lien of it for herself The tenant then moved the Mamlatdar u/s 37 of the Act. He alleged that since the landlord had ceased to cultivate the land personally an order should be passed against the landlord directing him to restore possession of the land to the tenant. This application was made u/s 39 of the Act.

The Mamlatdar did not accept the contention of the tenant and dismissed his

application. On appeal the tenant's plea prevailed. The District Deputy Collector held that the landlord had failed to comply with his undertaking that he wanted to cultivate the land personally and that Section 37 could, therefore, be invoked by the tenant.

On this view an order was passed for the restoration of the land to the tenant. This order was challenged by Godavaribai by preferring a revisional application to the Revenue Tribunal. The Revenue Tribunal, however, concurred with the view taken by the appellate authority and dismissed the revisional application. It is against this order that the present application has been filed by Mr. Kotwal.

2. The material facts are not in dispute. It is common ground that the land originally belonged to Shankar Bhavsar and that he obtained possession of the land u/s 34 of the Act on the ground that he bona fide wanted to cultivate the land personally. It is also common ground that within about a year after the landlord obtained possession of the land he exchanged this land with Godavaribai.

It is not disputed that Godavaribai is personally cultivating the land herself. On these facts the question which has been raised by Mr. Kotwal for our decision in the present application is, whether the Revenue Tribunal was justified in allowing the tenant to invoke the provisions of Section 37 Sub-section (1) of the Act in his favour.

Mr. Kotwal contends that his client, being a transferee from the original landlord, has no doubt stepped into his shoe and he concedes that if it was shown that his client herself was not cultivating the land personally it would be open to the tenant to invoke the provisions of Section 37 of the Act. So long as the original landlord or his successor-in-interest is cultivating the land personally, the provisions of Section 37 Sub-section (1) cannot be availed of by the tenant.

In support of his argument Mr. Kotwal has relied upon the provisions of Section 63 of the Act and , he contends that there is nothing in the provisions of Section 63 which imposes upon the" landlord any disability in the matter of soiling, gifting, exchanging or leasing the land in question.

3. In assessing the value of these contentions it would be material to examine the scheme of the material provisions of the Act. The rights of protected tenants in respect of agricultural lands have been safeguarded by the Act in several particulars. Section 34, however, provides for the determination of a protected tenancy. Under this section it is open to the landlord to determine the protected tenancy of his tenant by giving him one year's notice in writing stating therein the reasons for such determination.

Section 34, Sub-section (1) authorises the landlord to determine the tenancy of the protected tenant for two reasons. He may determine the tenancy if he bona fide requires the land for cultivating personally. He may likewise determine the said tenancy if he bona fide requires the land for any non-agricultural use for his own purpose.

There Is a further provision contained in this section which must be considered. The right given to the landlord to determine the protected tenancy cannot be exercised by him if at the date on which the notice is given or at the date on which the notice expires the landlord has been cultivating personally other land's, admeasuring _ 50 acres or more in area.

In other words, if the landlord is cultivating personally agricultural lands admeasuring 50 acres or more, he cannot avail himself of the right given to landlords in general for determining the protected tenancy u/s 34, Sub-section (1). It would be noticed that the landlord has to satisfy the Revenue Court that he does not cultivate personally other lands admeasuring 50 acres or more, and that he wants the land for either of the two purposes mentioned in Section 34, Sub-section (1).

It is only when the Revenue Court is satisfied that he is otherwise not in possession of lands admeasuring 50 acres or more for personal cultivation that the protected tenant's rights are allowed to be determined. It is true that this section refers to the determination of protected tenancy. But| the determination of the permanent tenant's rights, for which provision has been made in Section 34, Sub-section (1) can in one sense be described as a suspension of the tenant's rights.

Section 37 provides virtually for the revival of the said rights. If it appears that after obtaining possession of the land from the protected tenant the landlord fails to use the land for any of the purposes specified in the notice given by the landlord under Sub-section (1) of Section 34 within one year from the date on which he took possession of the land or that the landlord has ceased to use it at any time for any of the aforesaid purposes within 12 years from the said date, then the landlord is required forthwith to restore possession of the land to the tenant whose tenancy had been determined by him. This provision indicates that when the landlord re-presents to the Revenue Court that he wants possession of his agricultural land from his protected tenant on the ground that he bona fide needs the said land for personal cultivation, it is required of him that he must begin to use the land for personal cultivation within one year from the date of dispossession of the tenant and he must continue to use the said land for personal cultivation, for 12 years thereafter.

Failure to comply with either of these two conditions entitles the tenant to claim back possession of the land. It is true that S- 37 provides that it is open to the tenant to give up this right. If for instance the tenant refuses in writing to accept the tenancy on the same terms and conditions it would be open to the landlord to continue in possession of the said land, despite the fact that he may have ceased to use the land for any of the purposes mentioned by him in his notice given u/s 34 Sub-section (1).

Sub-section (2) of Section 37 provides that when possession of the land is restored to the tenant under Sub-section (1) of Section 37, he shall subject to

the provisions of this Act, hold such land on the same terms and conditions on which he held it at the time his tenancy was terminated. It is because of the provisions contained in Sub-section (2) of Section 37 that it would be possible to describe the determination of the protected tenancy u/s 34 as amounting to suspension.

Sub-section (3) of Section 37 lays down, that if the landlord fails to restore possession of the land as provided in Sub-section (1) he shall be liable to pay such compensation to the tenant as may be determined by the Mamlatdar for the loss suffered by the tenant on account of eviction. Section 39 provides for an application which can be made by the tenant for restoration of possession of the land under the provisions of Section 37 of the Act.

Now, if one reads Sections 34 and 37 together, there appears to be no doubt as to what the object of the Legislature was in enacting these provisions. Though the effect of the general provisions of the Act is to protect the rights of protected tenants. Legislature conceded to the landlord the right to determine protected tenancy in two specified cases, subject to the proviso which I have already indicated. Legislature appears to have taken the view that if the landlord bona fide requires his own agricultural land for cultivating it personally or for any non-agricultural use for his own purpose, his superior right as landlord should be allowed to be effective, and the protected tenant's rights must submit to the said superior right of the landlord.

But the determination of the protected tenant's rights is allowed to be brought about on the assumption, that the requirement set out by the landlord in his notice is bona fide, and that postulates that the landlord honestly and in truth wants to cultivate the land, personally. Legislature has therefore provided an additional safeguard in the interests of the protected tenant by requiring the landlord to begin using the land for the purpose mentioned by him in his notice within one year from the date when he obtained possession and to continue to use the land for the said purpose for as many as 12 years.

So long as the 12 years mentioned in Section 37, Sub-section (1) have not expired, the tenant is entitled to require the landlord to carry out the representation made by him in his notice, and if it appears that the landlord is not carrying out the object mentioned by him in his notice the tenant is given the right to claim back possession of the land. It is thus the representation made by the landlord that he wants the land bona fide for his own personal purpose, which is the sole basis for determining the protected tenancy.

4. If that is the true position then it would be difficult to press into service Section 63 of the Act in the manner suggested by Mr. Kotwal, it is true that Section 63 purports to bar transfers to non-agriculturists. But the section begins with the clause, which cannot be ignored, viz. "save as provided in this Act." The section says

"Save as provided in this Act, (a) no sale gift, exchange or lease of any land

or interest therein, or (b) no mortgage, of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee, shall be void in favour of a person who is not an agriculturists".

The prohibition is against the transfer of agricultural lands in favour of a non-agriculturist.

But the prohibition is without prejudice to the other provisions contained in the Act itself. If the effect of the provisions contained in Section 37 is to require the landlord to cultivate the land personally for 12 years, after the date on which he obtains possession, then it would be difficult to accept the argument that the landlord can immediately after obtaining possession gift the land to somebody or exchange the land with the land of somebody else or even lease it to a new tenant.

According to Mr. Kotwal, it would be competent to the landlord who has obtained possession of the land u/s 34 to lease, the land to some other tenant straightaway. Mr. Kotwal concedes that if the transfer in question is fraudulent, it may be a different matter. But on his argument, if the landlord feels that he cannot personally cultivate the land any longer he may lease out the- land to some other tenant.

The case of a lease emphasises effectively how the provisions of Section 37 would be completely frustrated if Mr. Kotwal's argument u/s 63 were to prevail. A landlord can obtain possession of his land from a protected tenant on the representation that he wants to cultivate the land personally and then he may proceed to lease it out to some other tenant. In our opinion this cannot be the true position u/s 63 of the Act. What is true of the lease is equally true of the gift.

If the landlord represents to the tenant in his notice that he bona fide needs the land for either of the two purposes personally, Section 37 binds him to that representation and requires him to remain faithful to that representation and carry it out for the 12 years prescribed u/s 37 Sub-section (1).

5. There is another point which is relevant in this connection. In the present case, the landlord obtained possession of the land because he satisfied the Revenue Court that he wanted the land for personal cultivation and that he was not in possession of other agricultural lands which were under his cultivation and which admeasured 50 acres or more.

It is not unlikely that the transferee may not satisfy either or both of these conditions. If the transferee is already in possession of more than 60 acres of land and is cultivating them personally on Mr. Kotwal's argument he would be entitled to remain in possession of the additional land purchased by him or obtained by him in exchange or gift, even though one of the requirements of Section 25 cannot be said to be true about him.

In other words, if the contention raised by Mr. Kotwal is accepted, it would easily lead to the circumvention of the beneficial and important provisions of Section

25. Mr. Kotwal has argued that if the word "landlord" is not construed as including his successor-in-interest, it may lead to the anomaly that if the landlord dies his sons or his other heirs may be called upon to give back possession of the land to the original protected tenant.

We are not impressed by this argument. Section 38 of the Act seems to provide for circumstances in which the heirs of the deceased landlord can be said to be in personal cultivation. Besides, the definition of the expression to cultivate personally" includes cultivation by the labour of any member of one's family.

If a landlord obtains possession of agricultural land from his protected tenant on the ground that he needs it bona fide for his personal cultivation and he dies thereafter, it would not be difficult to hold that the heir of the landlord steps into the shoes of the original landlord and if he is personally cultivating the land he could not be called upon to deliver the land back to the tenant on the ground that the original landlord who obtained an order for possession has died.

In our opinion, it would not be difficult to draw a distinction between titles which devolve by succession and titles which devolve by transfers as contemplated by B. 63 of the Act. We must, therefore, hold that the Tribunal was right in coming to the conclusion that the tenant was entitled to an order for possession of the land u/s 37 of the Act.

6. Mr. Kotwal has, however, urged another argument in support of his contention that the order of the Tribunal should be revised by us under Article 227 of the Constitution of India. Mr. Kotwal contends that the transfer by which the present petitioner has come into possession of the land is Invalid, the transferee cannot be said to have stepped Into the shoes of the transferor and would be regarded as a trespasser. This point was not raised before the Tribunal and even if there was any substance in the point, that itself would not justify in our issuing a writ as claimed by Mr. Kotwal.

But apart from this consideration, the answer to Mr. Kotwal's plea is to be found in the provisions contained in Sections 84 and 85 of the Act. u/s 84, any person unauthorisedly occupying or wrongfully in possession of any land can be subjected to the process of summary eviction. This section deals with three classes of cases and it authorises the Collector to summarily evict persons falling in the said three classes of cases. Therefore in our opinion, on the last contention raised by Mr. Kotwal it cannot be held that the order passed by the Revenue Tribunal suffers from a patent infirmity on the question of jurisdiction.

7. The result is the application fails and the rule is discharged with costs.

8. Rule discharged.