
(2006) 12 GUJ CK 0014

In the Gujarat High Court

Case No : Special Civil Application No. 934 of 1986

Harivadan Bhagwandas and Others

APPELLANT

Vs

Chandaben and Another

RESPONDENT

Date of Decision : 15-12-2006

Acts Referred:

Bombay Tenancy Act, 1939 — Section 2A

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 2, 32G, 4, 88

Citation : (2007) 54 GLH 27 : (2007) 27 GLH 54 : (2007) 3 GLR 2498

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

Bench : Single Bench

Advocate : S.S. Belsare, for Petitioners 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4 - 2, 2.2.1, 2.2.2 and 2.2.3, for the Appellant; D.N. Pandya and M.P. Prajapati for Respondents 1.2.1, 1.2.2, 1.2.3, 1.2.4 and 1.2.5, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Garg, J.—Short facts necessary for disposal of the present writ application are that the land bearing Survey Nos. 854, 855/2 and 855/4, admeasuring 1 Guntha, 16 Gunthas and 33 Gunthas, respectively, belong to the petitioners. On 4/10/1977, The Mamlatdar-cum-A.L.T. issued notices u/s 32(G) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "1948 Act"). Yet another notice to show cause was issued on 10/3/1978 and this notice included Survey Nos. 855/2, 855/4 and 855. The present petitioners appeared before the authority and submitted that the land in dispute was not in lawfully cultivating possession of the tenant (present respondent since deceased) and as he was not a tenant, but a licensee, the land could not be settled in favour of the present respondent nor he could be deemed to be a purchaser under the provisions of the Act. It was also submitted that vide different notifications, the land within the periphery/limits of the Municipal Corporation of Baroda was reserved for non-agricultural/industrial purposes, the provisions of 1948 Act would not apply. The tenant/person in possession also submitted his replies and prayed to the authorities that the absolute ownership be conferred upon him as

he would be a deemed purchaser under the provisions of the law. The parties were allowed to lead their evidence. The alleged tenant stated before the court that since from the time of his father, they were in cultivating possession and were paying Dan (some rent for use and occupation of the agricultural land) to the owner, under the circumstances, they would be deemed purchaser. During the course of the cross-examination, it was admitted by the alleged tenant that though they were paying the rent, but they were not possessing any receipt, the circumstance was, however, explained by submitting that the land owner was not issuing any receipt.

2. The land owner also led evidence. After hearing the parties, the learned Mamlatdar-cum-A.L.T. decided the matter in favour of the alleged tenant holding inter-alia that the alleged tenant was in lawfully cultivating possession, he would be deemed to be a purchaser and the erstwhile owner would be entitled to the price of the land as fixed under the law.

3. Being aggrieved by the said order, the owner preferred an appeal to the Court of the Collector, who allowed the same. Being dissatisfied by the said order, the alleged tenant took up the matter before the Gujarat Revenue Tribunal, which by its order dtd.13/6/1985 allowed the revision application, set aside the order passed by the Collector and held that the alleged tenant would be deemed to be a purchaser under the provisions of law.

4. Being aggrieved by the said order passed by the Gujarat Revenue Tribunal, the owner has filed the present writ application. During the pendency of the writ application, both the petitioners expired and their legal representatives have been substituted. It is also to be noted that the alleged tenant Madhurbhai / Mathurbhai Chhotabhai Vasava also expired during the pendency of the writ application and his legal representatives have also been substituted.

5. Mr. Balsare, learned Counsel for the petitioners submits that in absence of any evidence from the side of the alleged tenant that he was paying Dan to the owner, it could not be held that under the provisions of 1948 Act, the respondent (since deceased) would be a deemed to be a purchaser. He also submitted that in view of the various notifications issued u/s 88 of the Act by the State of Bombay and thereafter by State of Gujarat, the alleged tenant would not become owner of the property. He referred to Section 4 of the Act to contend that unless the case of the alleged tenant falls within the requirement of Section 4, no court would be entitled to hold that the person in possession was a tenant and consequently would be a deemed purchaser.

6. Mr. Mahesh Bhatt, learned Counsel for the respondent No. 1 submits that proper appreciation of Section 4 of the Act would make it clear that a person lawfully cultivating the land would be a tenant, if he is not a member of the family or is not a servant or a hired labourer or any member of the owner's family or a mortgagee in possession. According to him, from the revenue records, it would clearly appear that right from the year 1956, the revenue

entries make it clear that the father of the respondents was in cultivating possession and after his death, the present respondents were tilling the land and were in lawful cultivating possession. For Section 88, it is submitted that the proviso appended to Clause (d) of Sub-section (1) would make it clear that on lapse / withdrawal of such notification by the Government, the property would regain its original character of agricultural land and within a period of one year, the owner would be entitled to terminate the tenancy and even in such eventuality, the tenant would be deemed to be a purchaser and the owner / landlord would be entitled to the purchase price. According to him, present is not a case of no evidence, but is a case where A.L.T. relied upon oral evidence and the revenue entries.

7. Section 4 of 1948 Act reads as under;-

Section 4. Person to be deemed tenants.- A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not-

(a) a member of the owner's family, or

(b) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family, or

(c) a mortgagee in possession.

Explanation [I] A person shall not be deemed to be tenant under this section if such person has been on an application made by the owner of the land as provided u/s 2A of the Bombay Tenancy Act, 1939, declared by a competent authority not to be a tenant.

[Explanation-II.- Where any land is cultivated by a widow or a minor or a person who is subject to physical or mental disability or a serving member of the armed forces through a tenant then notwithstanding anything contained in Explanation 1 to Clause (6) of Section 2, such tenant shall be deemed to be a tenant within the meaning of section.]

8. From a fair and legal understanding of the section, it will be clear that a person who is in lawful cultivating possession would be deemed to be a tenant if the land is not cultivated by the owner and such person in cultivating possession is not, a member of the owner's family or, a servant on wages payable or a hired labourer or any member of the owner's family or a mortgagee in possession. The moment it appears to the court that a person is lawfully cultivating the property and owner fails in proving that the entry of name of such person in revenue records was illegal, then, the presumption would be strengthened and the burden would be extra heavy upon the owner / landlord to prove that the entry was illegal or agricultural activities carried on by such person were unlawful. In the present case, entries made in the revenue records clearly prove that the father of the respondent No. 1 was in cultivating possession and he was recorded as a

tenant either in 1956 and thereafter. The owner / landlord never moved any application to the revenue authority for correction of the records. He accepted the entries as those were. The revenue entries have a presumption of being truthful unless the correctness of the same is rebutted. In the present matter, the case of the present petitioners was that they were cultivating the land through some one else, but beyond that he did not say that how the father of the respondents or the respondents came in possession of the property. u/s 4 of the Act, a person would not be a tenant, where he is a trespasser or is a servant or is a mortgagee. It is not the case of the respondents that the father of the respondents was or the respondents were trespasser. Even otherwise, right from 1956, the petitioners never took any step for dispossession of the father of the respondents or the respondents. He allowed them to cultivate the property, non-action on the part of the petitioners would speak against the petitioners.

9. It is further to be seen that if the entry of a person on the land is valid and he is cultivating, then the court would be justified in presuming that he is lawfully cultivating the land. The presumption can only be displaced if the evidence is produced on the record to prove that the entries were wrong or other important material was not considered before making the entry. Unfortunately, in the present case, the petitioner failed on both the counts.

10. So far as application of Section 88 is concerned, it is to be seen that Section 88 provides that save as otherwise provided in Sub-section (2) nothing in the foregoing provisions of the Act shall apply to lands belonging to or held on lease from the Government, to lands held or leased by the local authority, to any area which the State Government may, from time to time, by notification in the Official Gazette specify as being reserved for non-agricultural or industrial development. In the present matter, the State of Bombay had issued notification No. TNC/5156/81828-M dtd.21/5/1958 declaring that the areas within the limits of Municipal Borough of Baroda, were being reserved for non-agricultural and industrial development. On issuance of such a notification, the provisions contained in 1948 Act were not to apply to the land but a person in possession could not be dispossessed except in accordance with law. Yet another notification was issued by the Government of Gujarat on 17/10/1964 where-under in supersession of the above referred notification, it was observed that the areas within the limits of Municipal Borough of Surat and Baroda as they existed on the 1st February, 1957 and on the 21st May, 1958 respectively were being reserved for non-agricultural and industrial development. Notification dtd.17/10/1964 was not to make any change so far as the land falling within the limits of Municipal Borough of Baroda was concerned. However, vide notification dtd.23/8/1976, earlier notification dtd.17/10/1964 was rescinded by the Government. The effect of rescission of notification would attract the consequence of proviso appended to Clause (d) of Sub-section 1 of Section 88. The said proviso says that with effect from the date on which estate or land is released from such management, the foregoing (earlier) provisions of 1948 Act shall apply thereto and in the case of tenancy, other than a permanent tenancy subsisting on such date in respect of

any land in such estate or such land, landlord shall be entitled to terminate such tenancy u/s 31 within one year from such date and the tenant shall be deemed to have purchased the land u/s 32 on the expiry of the period, during which such landlord is entitled to terminate such tenancy u/s 31. It would be clear from the provisions of law that on lapse / withdrawal of the exemption notification, property would again become agricultural property and would be subject to the provisions of 1948 Act. The moment the said two notifications were withdrawn by the notification dtd.23/8/1976, the land became agricultural land and the provisions of 1948 Act became applicable. If the land became agricultural land and the provisions of 1948 Act became applicable, then there would be no escape from consequences as provided under secs.4, 31 and 32 and other provisions of the Act.

11. The Mamlatdar-cum-ALT had recorded positive findings and the Gujarat Revenue Tribunal, in the opinion of this Court, has appreciated the law in its true spirit.

12. I am unable to hold that the order passed by the Gujarat Revenue Tribunal calls for any interference.

13. The petition deserves to and is accordingly dismissed. Interim relief, if any, stands vacated. No costs.