
(1975) 12 BOM CK 0025

In the Bombay High Court

Case No : Spl. C. A. No. 1782 of 1972 with Spl. C. A. No. 345 of 1972

Hiralal Vithaldas Gujarathi and others

APPELLANT

Vs

Kondaji Keru Girme and others

RESPONDENT

Date of Decision : 14-12-1975

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 14, 14(1), 14(1)(a), 25, 25(1)

Constitution of India, 1950 — Article 227

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 17(1)

Citation : (1977) MhLj 768

Hon'ble Judges : G.N. Vaidya, J

Bench : Single Bench

Advocate : M.A. Rane with L.V. Talaulikar, for the Appellant; A.P. Vaze, for opponents 1 and 2 in Spl. C. A. No. 345/1972 and for Nos. 2, 4 and 5 in Spl. C A. No. 1782/1972, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Vaidya, J.—These two Special Civil Applications under Article 227 of the Constitution of India are between the same parties and involve the same question of facts and law.

2. Special Civil Application No. 345 of 1972 arises out of a Reference u/s 85A of the Bombay Tenancy and Agricultural Lands Act, 1948, in a suit filed by the petitioner-landlords against Respondents Nos. 1 and 2 tenants, who may be respectively described as "Gujarat his" and "Girmes" for convenience. The issue which was referred was whether defendant No. 2 Rajaram Keru Girme proved himself to be a tenant of the land measuring 2 acres 20 gunthas in that suit. The Additional Tahsildar, Kopergaon, by his judgment and order dated April 24, 1969; the Special Deputy Collector, Tenancy Appeals, Ahmednagar, by his order dated October 13, 1970, and the Maharashtra Revenue Tribunal by its order dated September 21, 1971, held that the said area of land was separately cultivated by opponent No. 2 and opponent No. 2 was a separate holder of the land in dispute.

3. Special Civil Application No. 1782 of 1972 arises out of an application filed by the Gujarat his against the Girmes. In the notice of termination, the ground mentioned was non-payment of rent. In the application for possession made u/s 29 read with section 14 (1) (a), possession was claimed on the ground that the tenant had sub-divided the land and further made partial default for the year 1962-63 and full default in the years 1963-64 and 1964-65. The application was originally filed by the predecessor-in-title of the Gujarat his. He died on June 20, 1967, and is now represented by his heirs.

4. The land in dispute is survey No. 210 measuring 9 acres 27 gunthas assessed at Rs. 15.25 Ps. in the application u/s 14 (1) (a) read with section 29 and in the reference by the Civil Court, 2 acres 2 gunthas thereof.

5. The Additional Tahsildar, Kopargaon, by his judgment and order dated April 24, 1969, considered the oral and documentary evidence produced by the parties; and held that there was no breach of section 27 by sub-division; that the matter of recovery of arrears of rent was pending in the civil Court; and ordered the tenant to deposit the arrears u/s 25 (1). In the Reference by the civil Court, he held that Rajaram Girme, the brother of Respondent No. 1, Kondaji Girme, was the lawful tenant of 2 acres 20 gunthas out of survey No. 210 which he was separately cultivating in his individual capacity.

6. The Gujarat his carried appeals against the said orders of the Additional Tahsildar in the two proceedings and the Special Deputy Collector, Tenancy Appeals, Ahmednagar, having regard to the judgment, dated June 29, 1967, in the ceiling case, to which the Girraes were parties and which was pronounced after the landlords Gujarathis were served notices u/s 17 (1) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, and after recording the statements of the landlords, by a common Judgment and order dated October 30, 1970, held that Respondent No. 2-Rajaram Girme was in possession of 2 acres 20 gunthas already for the purposes of the Ceiling Act; and, therefore, the Gujarathis could not reagitate the question of the holding of Rajaram Girme. The Deputy Collector further held that the order was properly passed by the Tahsildar u/s 25 (1); and he concurred with the finding of the Tahsildar that there was no sub-division.

7. The concurrent findings in the two cases were challenged by the Gujarathis by filing Revision Applications before the Maharashtra Revenue Tribunal. In the Gujarathis' application u/s 29 read with sections 14 and 25, the Revenue Tribunal held; (1) that a proper order should be passed u/s 25 (1) and for this purpose the case was sent down; (2) that as the land was leased for cultivation of sugarcane, the application was maintainable, but it was barred by time as the sub-letting and sub-division was alleged to have taken place as long back as in 1959; and the application filed in 1966 was, therefore, clearly barred by time u/s 29 (2); and (3) that the application was also not maintainable, because contravention of section 27 could not be a ground for termination of tenancy of lands leased for sugarcane cultivation as section 27 did not apply to sugarcane

lands u/s 47A.

8. In the reference case, the Tribunal held agreeing with the two lower authorities that Rajaram Girme was cultivating separately and was a separate tenant of 2 acres 20 gunthas out of survey No. 210. The Girmes have not challenged the order of the Revenue Tribunal directing the trial Court to pass a proper order u/s 25 (1). The Gujarathis have filed the Special Civil Applications challenging the validity and propriety of the order passed by the Tenancy Authorities in the two proceedings.

9. The first ground urged in support of the Special Civil Applications by Mr. Rane, the learned counsel appearing for the Gujarathis was that under the "Notification No. TNC 5157/173483/M dated 14-2-1958 issued by the Government of Bombay u/s 43A (3) of the Bombay Tenancy and Agricultural Lands Act, 1948, in respect of sugarcane lands covered by section 43A (1) (b), one of the conditions as to the duration and termination of the lease was as follows:

If the lessee commits any of the defaults mentioned in clause (a) of sub-section (1) of section 14 in relation to such lease of land, the lease may be terminated by the lessor by giving the lessee three months' notice in writing stating therein the reasons for such termination.

10. Mr. Rane submitted that as section 14 (1) (a) has five sub-clauses including sub-clause (iii) relating to sub-division, sub-letting or assignment in contravention of section 27, section 27 must be deemed to have been applied to sugarcane lands by incorporation of the provisions thereof in section 14 (1) (a). Mr. Rane, therefore, submitted that the view taken by the Revenue Tribunal that the Gujarathis were not entitled to terminate the tenancy for contravention of section 27 is patently illegal.

11. Although this argument appears to be attractive, it is without any substance. Firstly the two lower Tenancy Authorities have found as a fact that there was no sub-division at all. The Deputy Collector, who is the final fact finding authority under the Bombay Tenancy and Agricultural Lands Act has observed in page 31:

As regards sub-division, it appears quite clear from the contention of the respondents that there is chart by which the two pieces have been separated. It is therefore, convenient for both of them to undertake separate cultivation without making any sub-division or sub-dividing the land. The landlords have not adduced any evidence and shown otherwise to disprove the theory of the respondents except in saying that the same is man-made. If at all the land is sub-divided i.e. man-made the landlord could have proved it safely and conveniently by adducing evidence beyond any doubt and with success. It therefore, appears quite clear that the landlords hence failed to make out their case.

The finding, in my opinion, is a finding of fact; and the reasoning of the Tribunal, in so far as it proceeds on an assumption that there was sub-division was unnecessary for confirming the decisions of the lower authorities.

12. Secondly the notification itself recites:

The Government of Bombay hereby directs that the leases of land referred to in clause (b) of sub-section (1) of the said section 43A and to which the provisions of sub-section (1) of the said following 43A apply shall be subject to the following conditions viz.

1. No such lease of land shall be liable to be terminated on the ground that the period fixed by agreement or usage for its duration has expired.

2. If a lessor bona fide requires any land so leased by him for cultivating it personally or for any non-agricultural use, such lease, may, subject to the conditions mentioned in sections 31A, 31B, 31C and 31D be terminated by the lessor by giving the lessee one year's notice in writing stating therein the reasons for the termination of the lease.

3. If a lessee commits any of the defaults mentioned in clause (a) of sub-section (1) of section 14 in relation to such lease of land the lease may be terminated by the lessor by giving the lessee three months' notice in writing stating therein the reasons for such termination.

13. Section 43A (3) confers the power to issue Notifications on the Government as follows :

Section 43A (3) :-Notwithstanding anything contained in sub-sections (1) and (2), it shall be lawful for the State Government to direct, by notification in the Official Gazette, that the leases of lands, as the case may be, to which the provisions of sub-sections (1) and (2) apply, shall be subject to such conditions as may be specified in the notification, in respect of-

(a) the duration of the lease;

(b) the improvement to be made on the land and the formation of co-operative farming societies for that purpose and financial assistance to such societies;

(c) the payment of land revenue, irrigation cess, local fund cess and any other charges payable to the State Government "or any local authority;" or (d) any other matter referred to in sections mentioned in sub-section (1).

It is, therefore, clear that whatever is not specified in the Notification cannot be considered to be incorporated by implication.

14. Section 43A (1) excludes from the operation of section 27 the sugarcane lands under clause b. If the Government wanted to include them for the purposes of section 27, it should have specifically said so as required by subsection (3) (d). In the absence of such specific reference to section 27 in the Notification, stating that, that section applied to sugarcane lands, it will not be proper for the Court to apply section 27 to sugarcane lands just because the Government has referred to section 14 (1) (a).

15. It is true that section 14 (1) (a) refers to contravention of section 27, even

though u/s 43A(1), section 27 is not applicable to sugarcane lands. We have to read the Notification subject to the law and not the other way. The law excludes section 27. The Notification refers to the exclusion. The law further requires the Government to specify the section which applies to agricultural lands. Section 27 is one of those sections.

16. If the Government wanted to apply section 27 to sugarcane lands, it should have done so by specifically stating so in the Notification. The Revenue Tribunal was, therefore, quite right in holding that Gujarathis could not terminate the tenancy on the ground of sub-division or sub-letting or assignment in contravention of section 27.

17. Mr. Rane, the learned counsel for the petitioners challenged the order u/s 25 (1) on the ground that there were wilful defaults and intimations were given as required by law; and section 25 (2) applied to this case. The three Tenancy authorities have concurrently found on appreciation of oral and documentary evidence on the record that the defaults were not wilful and the case was governed by section 25 (1). Having regard to the principles laid down by the Supreme Court in AIR 1975 1297 (SC) , it is not possible for this Court to interfere with the concurrent findings and order passed u/s 25 (1).

18. In view of the above conclusions, it is unnecessary to consider whether the Revenue Tribunal was right in holding that the application made by the Gujarathis u/s 14 (1) (a) read with sections 25 and 29 of the Bombay Tenancy and Agricultural Lands Act was barred by time. Mr. Rane was right in his contention that the view taken by the Revenue Tribunal was inconsistent with the view of the Supreme Court in Venkatesh Narahar Katti Vs. Haji Saheb Khadir Saheb Mulla and Another, .

19. Lastly Mr. Rane argued that apart from section 14 (1) (a), the Gujarathis were entitled to terminate the tenancy of the Girme under the terms of the rent note dated 28th December 1956. The contention ignores section 14 (1), which beings with the following words :

Notwithstanding any law, agreement or usage, or the decree or order of Court, the tenancy of any land shall not be terminated-

(a) unless the tenant etc; x x x x.

Whatever the terms of the agreement between the parties, once the Government applies section 14 (1) (a) to the sugarcane lands, the tenancy of such lands could not be terminated except on the grounds permissible u/s 14 (1) (a). The terms and conditions in the lease-deed become irrelevant. The Revenue Tribunal was also right in its conclusion that in the absence of any forfeiture clause in respect of the terms of the lease-deed, the Girme"s tenancy was not entitled to be terminated.

20. Mr. Rane lastly urged that the Revenue Tribunal and the Deputy Collector urged in relying on the Judgment in the Ceiling case, to which the Gujarathis

were not parties. This contention ignores section 17 (1) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, under which individual notice was given to the landlord, the landlord was present at the enquiry made by the Ceiling Officers and the ceiling was determined. It cannot be, therefore, said that the finding in the Ceiling proceedings is not binding on the Gujarathis.

21. Before parting with the case, it is necessary to record that Mr. Vaze appearing for the Girmes applied for time to bring the Official Receiver of the properties and assets of Kondaji Girme in Special Civil Application No. 345 of 1972. As these matters are of 1972 and no orders are being passed against Kondaji Girme or against his properties or assets, his application for adjournment was rejected.

22. In the result, both the petitions fail. Rule discharged with costs.