

(1972) 10 BOM CK 0021

In the Bombay High Court

Case No : Special Civil Application No. 1255 of 1967

Jaichand Housilal Gujarathi

APPELLANT

Vs

Ananda Tanji Patil and Others

RESPONDENT

Date of Decision : 27-10-1972

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 111, 6(1)

Citation : AIR 1973 Bom 165 : (1973) MhLj 272

Hon'ble Judges : Masodkar, J

Bench : Single Bench

Advocate : V.S. Sohoni, for the Appellant; C.P. Kalele, for the Respondent

Judgement

1. These proceedings have been filed against the order made by the Maharashtra Revenue Tribunal allowing the revision u/s 111 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as "the Tenancy Act").

2. Two issues were referred by the Civil Court in Civil Suit No. 288 of 1961 and issue No.5 was to the following effect:-

Whether the defendants have become tenants of the suit land as alleged by them?

When the matter went before the tenancy Court, parties filed their statements and pleaded their respective cases. By a written statement dated 6-6-1963 the purported tenant stated that they were on the land under an agreement of lease. They also gave the details thereof. Further they pleaded that because they became the owners on 1-4-1961 under the Act being contractual lessees, the earnest note for the sale of the said land was invalid.

3. The landlords filed their statement saving that they were upon the land inducted because of the agreement of sale and as the prospective purchasers. Evidence was led by both the parties on these pleadings. Shamrao who is one of

the claimants as tenant took oath alleging that he was the lessee from the year 1957-58; that he had executed the lease-deed and was in possession of the land as lessee since then. Anandrao who was examined on behalf of the tenant tried to support that plea that they had taken the lease since 1957-58 upon annual lease of Rs. 150/- for a year. Some other evidence was also led to support the contractual tenancy.

4. Thus, the controversy between the parties as understood by them was plainly whether these two persons who were defendants in the suit were inducted on the land under a contract of lease or whether as the plaintiff was claiming they were upon the land being the prospective purchasers. The first part of the issue was only within the jurisdiction of the revenue authorities.

5. Both the Courts of fact under the Tenancy Act, considered the evidence on record and held that these persons were not on the land under the alleged contract of lease. The appellate Court which is the first Court of fact u/s 107 of the Tenancy Act, appears to have considered the pleadings and found that by written statement the plea is raised that the land was leased out to these persons in 1958-59 and after considering the evidence and circumstances available, it reached to the finding of fact that the lease has not been established. It concluded that as no lease is proved and since the appellants have entered into an agreement to purchase the field and took possession, it is clear that they were in possession of the land not as tenants but as prospective purchasers which also excluded the operation of Section 6 of the Act. The matter went before the Maharashtra Revenue Tribunal and surprisingly without noticing the plea on record, the Tribunal held that these persons should be treated as deemed tenants u/s 6 (1) of the Tenancy Act. The Tribunal has recorded that the applicants and non-applicant No.2 were admittedly in possession of the suit field as a result of the Issar Chitti and both the Courts below have also held so and treating the induction under the Issar Chitti as lawful, it applied the provisions of Section 6 of the Tenancy Act and treated them as the tenants.

6. This disposal of the matter by the Maharashtra Revenue Tribunal in this manner is under challenge.

7. Clearly, the applicants before the Maharashtra Revenue Tribunal had not claimed by their plea that they were lawfully on land belonging to third person and that u/s 6 inquiry should be made. All along their case had been that they were contractual lessees. That case was only investigated and in fact and in law was capable of being investigated upon the plea of the parties. There being no plea definitely taken as to the application of the provisions of Section 6 (1) of the Tenancy Act, no finding was called for under that provision. Both the parties led the evidence in this case on the footing that the point in issue was the contractual lease. The Courts of facts had every jurisdiction to scan the evidence and come to the conclusion that the contract as set up was not established. That being the position when the matter came before the Maharashtra Revenue Tribunal, it was not open to the Tribunal to allow the revision on the footing that

Section 6 (1) of the Tenancy Act was attracted or that the applicants before the Tribunal could be deemed to be the tenants. That finding would be clearly beyond pleadings and not within the scope of issues upon which the parties went to trial. That being the position, the present order passed by the Tribunal is required to be set aside.

8. Mr. Kalele argues that Section 6 (1) of the Tenancy Act and application thereof is purely a question of law and could be raised at any time. If the provisions of the Tenancy Act are carefully seen, such a proposition cannot be sustained. All the facts which can make a particular provision applicable to a case must be pleaded and the parties must have full notice at the stage of the trial of such a plea. Section 6 (1) of the Tenancy Act is not only an application of law which makes a particular person a deemed tenant. Certain basic facts call for enquiry and findings are to be reached on the basis of plea and evidence. In this case, as has been pointed out earlier only two rival contentions came for consideration (1) the contractual lease pleaded by the tenants under a contract of 57-58 and (2) the possession referable to agreement of sale. Thus, there was no third plea available and I cannot accept the arguments of the learned counsel that it is purely a question of law and, therefore, the order of the Tribunal has been properly made.

9. Accordingly, the impugned order is set aside. The orders passed by the Naib Tahsildar, Khamgaon, and Special Deputy Collector of Tenancy Appeals, being proper are restored. Rule made absolute. The petitioner to get his costs from respondents.

10. Petition allowed.