

(1973) 04 BOM CK 0015

In the Bombay High Court

Case No : Special Civil Application No. 690 of 1969

Jairam Kissan

APPELLANT

Vs

Chandrakaladevi and Others

RESPONDENT

Date of Decision : 23-04-1973

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 36(2), 38(3), 38(4)
Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 227

Citation : AIR 1974 Bom 49 : (1973) MhLj 971

Hon'ble Judges : Dharmadhikari, J

Bench : Single Bench

Advocate : W.G. Somalwar, for the Appellant; V.M.Kulkarni and A.S. Deshpande, for the Respondent

Judgement

1. This writ petition is filed by the tenant against an order of the Maharashtra Revenue Tribunal dated 20.2.1969 in Revision Application No.Ten-A-655 of 1967.

2. Respondent No.1 landlady Chandrakaladevi had applied u/s 8(1)(g) of the Berar Regulation of Agricultural Leases Act, hereinafter referred to as the Leases Act, for terminating the tenancy of petitioner Jairam and also for possession of the land survey number 197/I, area 7.22 gunthas, of village Jirayat Patur, taluq Balapur, district Akola. By an order dated 23-5-1957 the Sub-Divisional Officer terminated the tenancy of the petitioner. The said order was confirmed in appeal on 22-11-1957 in Revenue Appeal No. 107/59 of 1956-57. However, by virtue of the Ordinance No. 4 of 1957 the possession of the field was not delivered to the landlady.

3. It seems that thereafter in view of the coming into force of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, hereinafter referred to as the Act, the Sub-Divisional Officer forwarded the case to the Tahsildar, Balapur, for disposal of the case u/s 132 (3) of the Tenancy Act. The Tahsildar by

his order dated 15-10-1960 dismissed the case on the ground that no notice as contemplated by Section 38 was served on the tenant. An appeal filed against the said order of the Tahsildar was also dismissed. In Revision Application No. 412 of 1962 the Maharashtra Revenue Tribunal by its order dated 21-6-1963 remanded the case holding that no notice u/s 38 was necessary and further directed that the lower Court should proceed with the case and make an enquiry as contemplated u/s 38 of the Tenancy Act.

4. After remand, the tenancy Naib Tahsildar, Balapur, by his order dated 14-12-1966 ordered that the landlady be put in possession of the suit field. The tenancy Naib Tahsildar took the view that in view of the decision of the Supreme Court in Ramchandra Vs. Tukaram and Others, the provisions of Section 38 of the Tenancy Act. In this view of the matter, therefore, he allowed the application filed by the landlady.

5. An appeal was filed against the said order by the tenant which was dismissed by the Special Deputy Collector by his order dated 26-8-1967. Against the appellate order a revision application was filed before the Maharashtra Revenue Tribunal which was also dismissed by the Revenue Tribunal by its order dated 20-2-1969. Hence this writ petition has been filed by the tenant.

6. Shri Somalwar, who appears for the petitioner-tenant before me, contended that the order passed by the Maharashtra Revenue Tribunal on 29-3-1965 in Revision Application No. Ten-A/2099 of 1964 was binding upon the parties, and therefore, operated as *res judicata*. It was further contended by Shri Somalwar that in view of the said order passed by the Maharashtra Revenue Tribunal it was not open for the Tenancy Naib Tahsildar or the Special Deputy Collector to go behind the directions issued by the Revenue Tribunal, nor it was open for the Revenue Tribunal itself to go behind its own order dt. 29-3-1965. The said order passed by the Maharashtra Revenue Tribunal on 29-3-1965 was not challenged by any of the parties, and therefore, it became final and conclusive. In any case it was binding upon the parties in the same proceedings and it was not open for any of the parties to challenge the same at a subsequent stage. For this proposition Shri Somalwar has relied upon two decisions of this Court, namely *Shenafad v. Maharashtra Revenue Tribunal* 1970 Mah LJ 541 and *Gowardhandas v. Amjadhev* 1972 Mah LJ 37.

7. On the other hand, it is contended by Shri A.S.Deshpande, who appears for the respondent No. 1 landlady before me, that the Maharashtra Revenue Tribunal in Revision Application No. Ten-A/2099 of 1964 decided on 29-3-1965 has not decided anything so far as the controversy involved in this writ petition is concerned. It has not been decided by the Revenue Tribunal in the said decision that the new Tenancy Act applied to the pending proceedings and it was necessary for the landlady to satisfy the requirements of Section 38 of the Tenancy Act. The matter was remanded back by the Maharashtra Revenue Tribunal without deciding anything and as the Maharashtra Revenue Tribunal has not decided finally the controversy involved between the parties by the said

decision, it can not be said that either it is binding upon the parties or operates as res judicata. It was further contended by Shri Deshpande that the subsequent decision of the Supreme Court in Ramchandra Vs. Tukaram and Others, is binding upon all Courts and Tribunals in India in view of the provisions incorporated in Article 141 of the Constitution of India. It being the law of the authorities to ignore the said decision. Therefore, the authorities below were right in following the said decision of the Supreme Court and thereby allowing the application filed by the landlady without any further enquiry as contemplated by Section 38 of the Tenancy Act. In any case, it was contended by Shri Deshpande, that this was not a fit case wherein this Court should exercise its extra-ordinary jurisdiction under Article 227 of the Constitution.

8. Now, it cannot be disputed that in view of the decision of the Supreme Court in Ramchandra Vs. Tukaram and Others, when an order was already passed terminating the tenancy of the tenant, the only enquiry contemplated to be made on an application u/s 19 of the Leases Act was the summary enquiry before an order for possession is made. At this stage there was no scope for application of the conditions and restrictions prescribed by sub-sections (3) and (4) of Section 38 of the Act, and those provisions do not apply to the proceedings to enforce rights acquired by the parties when the Leases Act was in operation. Therefore, it cannot now be disputed nor it is disputed before me that in view of the said decision of the Supreme Court the orders passed by the Revenue authorities, including the Maharashtra Revenue Tribunal, are correct and are not open for challenge on the merits of the matter.

9. However, it is strenuously contended by Shri Somalwar that in view of the well recognized principles of res judicata when the landlady has not chosen to challenge the previous order passed by the Maharashtra Revenue Tribunal dated 29-3-1965 it is not now open for her to indirectly challenge the said order at a subsequent stage, nor it was open for the Revenue authorities, namely, the Tenancy Naib Tahsildar or the Special Deputy Collector, to ignore the said order of the Maharashtra Revenue Tribunal or the directions issued therein by the Revenue Tribunal. According to Shri Somalwar, the law laid down by this Court in 1970 Mah LJ 541 and 1972 Mah LJ 37 (cit. supra) will apply to the facts and the circumstances of the present case. It is not possible for me to accept this contention of Shri Somalwar.

10. It is quite clear from the order passed by the Maharashtra Revenue Tribunal date 29-3-1965 that the Tribunal has not finally decided the controversy involved in the proceedings between the parties. It was not decided by the Revenue Tribunal as to whether the provisions of the new Tenancy Act and particularly Section 38 thereof will apply to the present proceedings or not. Without deciding the said question the matter was only remanded back by the Revenue Tribunal. Therefore at the stage when the order was passed by the Revenue Tribunal in 1965 there was no binding order which could bind the parties or could operate as res judicata. As a matter of fact the issue relating to the applicability decided by

the Revenue Tribunal. The case was only remanded back to the lower Court and the is between the parties was not finally decided by the Tribunal.

11. After the matter was remanded back to the Tenancy Naib Tahsildar in the meantime the controversy involved in these proceedings was finally decided by the Supreme Court in Ramchandra Vs. Tukaram and Others, . In view of this decision of the Supreme Court, in my opinion, the authorities below were right in coming to the conclusion that no further enquiry was necessary in the case as the conditions and restrictions prescribed by sub-sections (3) and (4) of Section 38 of the Tenancy Act were not applicable to the proceedings which were in the nature of enforcement of the right of the landlady acquired by her when the Leases Act was in operation.

12. The law declared by the Supreme Court of India is binding on all Courts and Tribunals in India under Article 141 of the Constitution. The law declared by Supreme Court binds not only the parties but all the Courts in India. The authoritative pronouncement given by the Supreme Court must be accepted as the law of the land and it is that law which must be applied to all the litigation"s which are being decided by the Courts and Tribunals in India subsequent to the declaration of the law by the Supreme Court. Therefore, in view of the provisions of Article 141 of the Constitution of India, in my opinion, the authorities below were right in deciding the matter in conformity with the said decision of the Supreme Court and it cannot be said that the authorities have committed any error of jurisdiction which is required to be corrected under Article 227 of the Constitution.

13. There is one more aspect of this matter. This Court in Madhav v. Shripat (Special Civil Appln. No. 929 of 1965 decided on 20-9-1966 = 1967 Revenue Rulings Note (D) 15) has observed as under :

"Where no application was made while the Berar Leases Act was in force, still an application for possession following an order of termination of tenancy could be made under the Vidarbha Tenancy Act and on only a summary enquiry possession could be delivered to the land-holder in whose favour order was already passed. If the proceedings for possession were pending at the date when the Vidarbha Tenancy Act came into force, those proceedings for possession will be continued under the corresponding provision of the said Tenancy Act which would be Section 36 (2). Such proceedings for possession have to be continued u/s 36 (2) before the corresponding authority which is the Tahsildar. The Tahsildar before whom the proceedings for possession are to be continued has no authority to go again into the question as to whether the need of the land-holder was bona fide or whether he has satisfied the requirements of Section 38 (3) (c) of the Vidarbha Tenancy Act. The only jurisdiction the Tahsildar under the Tenancy Act has is to give possession to the land-holder on the basis of the order which had already been passed under the Berar Leases Act and the Revenue authorities who deal with the proceedings under the Bombay Tenancy Act, act in excess of their jurisdiction if they require the land-holder to satisfy the

requirements of the provisions of Section 38 (3) (c) and (4) of the Vidarbha Tenancy Act."

Therefore, in my opinion, the controversy involved in the present proceedings relates to the jurisdiction of the Court to proceed with the matter. As the question involved relates to the jurisdiction of the Tribunal, in my opinion, the prior decision given by the Tribunal which was unrelated to the issue relating to the applicability of the new Act cannot be treated as *res judicata*. More so when the issue relating to the applicability of the new Tenancy Act was not specifically decided by the Maharashtra Revenue Tribunal. I am fortified in this view by a decision of the Supreme Court in *Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy*,

14. Moreover, in my opinion, this is not a fit case wherein this Court should exercise its extraordinary jurisdiction under Article 227 of the Constitution, more so when the orders passed by the authorities below are in conformity with the law laid down by the Supreme Court. The powers under Article 227 of the Constitution of India are intended to be used only in appropriate cases for the purpose of keeping the Subordinate Courts and Tribunals within the bounds of their authority and not for merely correcting the errors. This matter has come to this Court for the first time in this writ petition. In my opinion as the final order passed by the Maharashtra Revenue Tribunal is in conformity with the law laid down by the Supreme Court, this is not a fit case where this Court should exercise its extraordinary jurisdiction under Article 227 of the Constitution.

15. The result, therefore, is the petition fails and is dismissed. However, in the circumstances of the case there will be no order as to costs.

16. Petition dismissed.