

(1996) 07 BOM CK 0068

In the Bombay High Court

Case No : Writ Petition No. 304 of 1991 (Aurangabad) with Writ Petition No. 937 of 1984 (Bombay)

Jankibai Balwant Rajhans since deceased by her legal heirs APPELLANT

Vs

Suryabhan Damodar Thorat and Another RESPONDENT

Date of Decision : 26-07-1996

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 15, 27, 37

Citation : (1997) 3 BomCR 543

Hon'ble Judges : R.G. Deshpande, J

Bench : Single Bench

Advocate : C.F. Deshmukh, for R.N. Dhorde, for the Appellant; C.K. Shinde, for the Respondent

Final Decision : Dismissed

Judgement

R.G. Deshpande, J.—The land Survey No. 600 situated at village Sonai (Taluka : Newasa, District : Ahmednagar), having area of 5 Hectares .05 Ares is the subject matter of the present petition. The said land is ordered to be restored to the respondent No. 1 - tenant by the Tahsildar, Newasa, by his judgment and order dated 23rd November 1977 vide Tenancy Case No. 8/77 which is confirmed by the Assistant Collector, Rahuri Division, Ahmednagar, in Tenancy Appeal No. 1/78 and Tenancy Appeal No. 4/78, decided on 31st March 1979.

2. In nutshell the facts are. Proceedings were initiated on receipt of application of tenant Suryabhan - respondent No. 1, u/s 37 of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as " the Act" for the purposes of brevity). After issuance of necessary notices to the parties concerned, statements of both the parties i.e. of the petitioner and the respondent - tenant were recorded and necessary witnesses also have been examined. From the record, it is clear that the said Survey No. 600 is having total area of 20 Acres 11 Gunthas and there were two tenants. Father of the present respondent No. 1 was the tenant on 10 Acres 5 Gunthas of the northern

side of the field. Whereas one Tukaram Kurkute was the tenant of the southern portion. There is no dispute as regards the tenancies of these two persons and necessary revenue record indicated entries to that effect.

3. So far as Tukaram Kurkute is concerned, he had already, sometime in the year 1966 surrendered his 10 Acres and some Gunthas land which was with him as a tenant in favour of the present petitioner - landlady. However, in the present petition, this Court is not concerned with the said transaction of 10 Acres. The matter which needs decision in the present case is only with regard to the portion of the field which was in possession of the father of the present respondent No. 1 as a tenant thereon.

4. On 21st July 1972, respondent No. 1 applied to the Tenancy Court stating that he was willing to surrender half of the land out of 10 Acres 5 Gunthas in favour of the landlady and that the said application was verified by the Tenancy Awal Karkun and necessary statements in support of the transaction have been recorded on 5th August 1972. This application which is on record at page 53 clearly indicates that the intention of the applicant was to surrender the land in favour of the landlady so as to enable the landlady to cultivate the land personally and to enable her to maintain the family thereon. From the record, it is clear that on the same day, the landlady did apply to the revenue authority requesting that 5 Acres of land which was being surrendered by the tenant be put in possession of the petitioner landlady as she needed the land for her maintenance, as according to her, the land which she had already with her was not adequate for her maintenance. This application of the landlady is also of the same date i.e. 21st July 1972. In the present petition it is to be found out whether the surrender executed by respondent No. 1 - tenant was a conditional one or not. As pointed out above, necessary statements in support of these two applications were recorded so as to get the surrender duly verified and the same is accordingly verified. In his statement, the tenant has specifically mentioned, that he surrendered the land in favour of the landlady u/s 15 read with section 29 of the Act and on the basis of the statements, the Tenancy Awal Karkun passed order u/s 15 read with section 29 of the Act in Tenancy Case No. 5/72, dated 23-8-1972, that the area of 5 Acres 3 Gunthas out of Survey No. 600 should be handed over to the landlady for bona fide personal cultivation. The two applications and the statements on record in unequivocal terms indicate that he surrender was intended so as to enable the landlady to cultivate personally and to maintain her family. Even the order on record, without any ambiguity, indicate that the surrender was a conditional one i.e. the landlady to cultivate the land personally.

5. Having once got surrendered the disputed area in her favour, the petitioner landlady intended to sell the land to one Ramkisan Lande, respondent No. 2 and it has come on the record that she had executed a registered Sathe Khat which is, I am told, is synonym to agreement of sale. This was for Rs. 40, 000/- and out of which the landlady had received Rs. 35,000/- from the purchaser and also

is alleged to have parted with the possession in favour of Shri Lande. Since the landlady intended to sell the land, it was clear that she was not to cultivate it personally and naturally the present respondent No. 1 - tenant made an application for restoration of the same in pursuance of the provisions of the Tenancy Act as, according to him, the landlady failed to cultivate the land personally i.e. it was in breach of condition of the surrender. One Dattatraya Murlidhar Bide who happened to be power of attorney holder on behalf of Jankabai - petitioner, stated that on Field Survey No. 600, initially there were two tenants i.e. Tukaram Kurkute and the father of the present respondent No. 1, both of them were cultivating half portion each of the said Field Survey No. 600. He has pointed out that Tukaram Kurkute was cultivating southern portion and the father of the present respondent No. 1 was cultivating northern portion. According to him, this Tukaram Kurkute had surrendered the land in the year 1966 and since then the land was in cultivation of the landlady which she was cultivating personally. He has also further specifically stated that out of 10 Acres and some Gunthas with the respondent No. 1, half of the land out of that 10 acres was surrendered by the respondent No. 1 in favour of the landlady. Thus, at the relevant time, there were 5 Acres and some Gunthas land remained with the present respondent No. 1 as a tenant. The Mukhtyar had no doubt to admit that the landlady had executed Sathe Khat of 5 Acres out of 10 Acres from Survey No. 600 from southern side. According to him, the northern portion was not forming part of the alleged transaction of sale. The learned Tahsildar after having read the evidence on record, reached to the conclusion that the respondent No. 1 did surrender his tenancy in favour of the landlady so as to enable the landlady to cultivate the land personally. The learned Tahsildar after having gone through the order passed by Awal Karkun as regards surrender, reached to the correct conclusion that the surrender was specifically for the purposes of enabling the landlady to cultivate the land personally. He, therefore, rightly observed that the surrender was a conditional surrender and since the landlady committed a breach of condition therein, necessary action u/s 37 of the Act was the only course open in the matter. He observed that the provisions of section 37 were no doubt attracted in the same.

6. It would be necessary at this point only to refer to one important aspect that the respondent No. 1 - tenant put a case saying that he was a tenant on the complete Field Survey No. 600 and therefore wanted to get restored 15 Acres and not only 5 Acres. However, this plea of the respondent -tenant was completely negatived by all the revenue authorities below and the present respondent - tenant has not in any manner challenged the same any further. Shri Shinde, learned Counsel appearing on behalf of respondent No. 1, fairly conceded that but for 5 Acres, rest of the claim he does not want to agitate any further. The learned Tahsildar, Newasa, has ordered that the land be restored to the applicant on the same terms and conditions on which he held this land prior to surrender as tenant thereon.

7. Appeals were preferred by both the parties which were registered as Tenancy

Appeal No. 1/78 and Tenancy Appeal No. 4/78 by Jankibai and Suryabhan, on the file of Assistant Collector, Rahuri Division, Ahmednagar. The claim of the tenant for restoration of 15 Acres, as stated above, is rejected by the Assistant Collector who confirmed the order of the first Tenancy authority. The dispute now relates to 5 Acres of land which was surrendered u/s 15 by the respondent No. 1. The material questions for decision in the present case are as to whether the surrender was voluntary or not and as to whether the provisions of section 37 of the Tenancy Act are invoked or not.

8. Mrs. C.F. Deshmukh, the learned Counsel appearing on behalf of the petitioners, strenuously argued that it was incorrect on the part of the revenue authorities to hold that the surrender was a conditional one. According to Mrs. Deshmukh, from evidence, the surrender could not be termed as a conditional one and much less with the condition of cultivation by the landlady personally. Mrs. Deshmukh further tried to argue that in case of surrender u/s 15, the provisions of section 37 could not be invoked and, therefore, according to her, the orders of the revenue authorities below deserved to be quashed and set aside at the hands of this Court. According to Mrs. Deshmukh, the record in no way indicate that the surrender was a conditional one and, therefore, she argued that the evidence which is weighed by the revenue authorities below was not correct. According to her, the evidence was not read in proper perspective. Shri C.K. Shinde, the learned Counsel appearing on behalf of respondent No. 1, on the other hand, pointed out that right from the application, it is clear that the surrender was with an intention to enable the landlady to cultivate the land personally at home. Shri Shinde further pointed out that the evidence on record clearly suggested that the respondent Suryabhan did surrender the land with an intention to enable the landlady to maintain herself and her family as, according to the tenant, the land which she had, could not be said to be sufficient to fulfil her needs. Both the learned Counsel, to appeal to this Court to accept their contentions took me through the record of the case and particularly the statements recorded therein. I have minutely read the statement of Suryabhan - respondent No. 1 and I am of the clear opinion that the revenue authorities below did commit no mistake in reaching to the conclusion that the surrender was a conditional one, and the landlady to cultivate the land personally. A specific statement is made by Suryabhan wherein he says, " The land is being surrendered for cultivating the same at home." This statement which was recorded at the time of verification of surrender i.e. on 5th of August 1972, on the same day, the statement of the present petitioner - landlady was also recorded and this statement itself has totally demolished the argument which Mrs. Deshmukh made before this Court. In her statement, Jankibai has specifically stated, " I have all the implements of agricultural operations. I have also bullock with me and I will personally cultivate the land at home. ", which in Marathi say, "eh izkekf.kdi.ks "ksrh ?kjh djhu." In view of the statement of both the parties, it is clear that though as alleged by the petitioner that the surrender was in pursuance of the compromise, does not bring it out of the mischief of its

being a conditional one. Mr. Deshmukh vehemently argued that whether it is conditional one or not but since the surrender was u/s 15 of the Act, according to her, section 37 could not have been invoked. In support of her contention, Mrs. Deshmukh heavily relied upon the judgment of Division Bench of this Court in the case of Vithal Ranganath Gaikwad and Others Vs. Murlidhar Vaman Dhavale and Another, . Mrs. Deshmukh pointed out that, according to this decision, when it is an application u/s 15, provisions of section 37 could not be invoked. Mrs. Deshmukh urged that if it would have been an action u/s 31 or section 33-B, landlord had taken possession of the land after surrender of tenancy under those sections or under old section 34 of the Act and if he fails to use the land for any of the purposes specified in the notice under sections 31, 33-B or old section 34, then only in that case, section 37 could be invoked and not in a case where surrender is u/s 15 of the Act.

9. I have gone through the judgment of Division Bench of this Court referred to above and there cannot be any second opinion as regards the observations of Their Lordships. However, it appears that the petitioner has lost sight of the fact that Their Lordships have carved out an exception which is clear from the contents of para 8 of the judgment. Their Lordships have specifically observed :

" In other words, the two modes of termination of tenancy are different, the two procedures are different and even the consequences flowing therefrom including ultimate results are different, and, therefore, it would be difficult to ascribe any intention to the Legislature that even to cases falling u/s 15 of the Act, the provisions of section 37 were to be applied, especially when section 37 in terms merely refers to termination of the tenancy by the landlord under sections 31, 33-B or the old section 34. For the reasons indicated above, we are clearly of the view that section 37 of the Act is not attracted to a case falling u/s 15 of the Act unless of course in a given case on facts it is found that the surrender itself was conditional and the order passed by the Mamlatdar u/s 15 directed delivery of possession upon condition that the landlord shall cultivate the land personally or make use of it for his own non-agricultural purposes as was the case in Special Civil Application No. 548 of 1962 (Bom.)."

10. From the aforesaid observations of the Division Bench, it is absolutely clear that in a case where it is found that the surrender itself was a conditional one and where the order passed by the Mamlatdar u/s 15 refers to the said conditions of surrender, then even according to this judgment, in such a case, the provisions of section 37 would be attracted. Mrs. Deshmukh heavily relied on the sentence in the aforesaid judgment, "For the reasons indicated above, we are clearly of the view that section 37 of the Act is not attracted to a case falling u/s 15 of the Act." I have already pointed out above, that the exception to the same is carved out in paragraph 8 of the said judgment which I have already quoted above.

11. Shri Shinde, the learned Counsel appearing on behalf of respondent No. 1, also argued that the judgment in the case of Vithal v. Murlidhar, (cited supra)

also indicates that in a case where surrender is conditional one and in case of the breach there of, the provisions of section 37 are attracted and, in fact, according to Shri Shinde, there is no other provision which could be taken help of by the tenant who had surrendered the tenancy on certain conditions and where there is a breach by the landlord of the said conditions.

12. A copy of the judgment dated 17th November 1962, in Special Civil Application No. 548/1962 is obtained since the said judgment is not reported anywhere. After going through the said judgment carefully, it is clear that it leaves no doubt that where a surrender is u/s 15 and if the landlord commits breach of the conditions therein, the recourse is only to section 37. A pointed question was put to Mrs. Deshmukh, the learned Counsel appearing on behalf of the petitioners, as to whether if section 37 is not to be applied, then what would be the provision under which it would be possible for the tenant to get restored the land. Mr. Deshmukh fairly conceded that there is no other provision through which he could have obtained the possession.

13. Mrs. Deshmukh, the learned Counsel for the petitioner, further faintly argued that the area which was alleged to have been contracted to sell to Shri Ramkrishna Lande was not the area which was got surrendered from the present respondent No. 1 but some other portion of the land was thought of being sold. This argument of Mrs. Deshmukh is of no use, particularly when the suit portion forms part and parcel of the same field only and that shows that the landlord while cultivating, surrendered portion from the respondent No. 1, tried to sell the other portion. If it is true, in such a case, the landlord would definitely deserve no relief as is asked for in the present petition.

14. In the instant matter, as observed above earlier, the documents and evidence on record lead only to the conclusion that the surrender was conditional one, the order of the Mamlatdar also refers to the same and that the landlady committed a breach thereof. I have, therefore, no hesitation to hold that the orders passed by the revenue authorities below are absolutely correct and do not call for any interference through this petition.

15. In the circumstances, the petition fails. The same is accordingly dismissed. Rule is discharged.

16. Mrs. Deshmukh, the learned Counsel appearing on behalf of the petitioners, at this stage, has requested for two months time to handover the possession of the field in question in favour of the tenant. The petitioner is granted time of two months on her undertaking that the petitioners shall not create any encumbrance on the suit land and shall also not come up with any other reason or excuse for not delivering the possession. Only on this condition, the stay is extended upto 30th September 1996 where after no excuse whatsoever will be entertained at the instance of the petitioner.