
(1979) 09 BOM CK 0034

In the Bombay High Court

Case No : Spl. Civil Application No. 161 of 1974

Janrao Jairamji Vidhale

APPELLANT

Vs

Devidas Deorao Vyavhare and others

RESPONDENT

Date of Decision : 05-09-1979

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 14, 19, 29, 31, 32(F)

Citation : (1980) MhLj 699

Hon'ble Judges : V. Mohta, J

Bench : Single Bench

Advocate : R.N. Deshpande and R.R. Deshpande, for the Appellant; J.N. Chandurkar for respondent Nos. 2 and 4, for the Respondent

Final Decision : Dismissed

Judgement

V. Mohta, J.—This is a land-holder's petition challenging findings recorded by revenue authorities to the effect that landlord's application for possession of land was not maintainable.

2. The petitioner is a managing trustee of one trust known as "Shri Datta Sansthan, Belaj, Taluqa Achalpur, District Amravati". The allegation is that though it is contended that it is a duly registered trust, nowhere there is even a whisper as to for what purpose the trust has been created and how the income of the land is appropriated for the purpose of the trust. On behalf of this Trust, a notice dated 21-9-1968 was given under the provisions of section 38 (3) (d) of the Bombay Tenancy and Agricultural Lands (Vadarbha Region) Act, 1958 (hereinafter referred to as the Act) which has been admittedly received by the tenant on 25-9-1968. On that basis, on 27-5-1969, an application u/s 36 of the Act was filed at the behest of the land-holder claiming possession of the property.

3. It may be mentioned at this very stage that in the application, the purpose or the consideration for which the land was leased, how the property came to be in possession of the trust and for what purpose is not mentioned.

4. The case of the tenant Deorao (since deceased) the original respondent in this petition is that he is on the land as a lessee since last 40 years of the joint family of one Motilal of village Belaj, that he has been cultivating the land as tenant since then, and that the Trust has nothing to do with the property.

5. Some documents are produced on record from which it appears that before 20th December 1952, the property belonged to the family of Motilal and on that day there was a partition under which the property came to be recorded in the name of Motilal. The name of Deorao is shown as a tenant and this entry has been recorded on 28-11-1958. It is clearly mentioned that the tenancy is on the basis of the lease money as per law. The other document, entry in which seems to have been made on 28-1-1967, makes a mention that said Shri Motilal had orally gifted the property in favour of the Trust for the purposes of filling of water troughs for cattle. It is also recorded that Deorao was a tenant and the only consideration for the lease was filling the troughs and to pay the land revenue. Apart from the fact that even as per this entry, it is a case of transfer on the basis of oral gift which is not recognised in law, there is no mention as to when such an alleged oral gift took place and how the change in the consideration of lease took place. Anyway, as per the documents on record, the entry has been made on 18-1-1967, i.e. after the commencement of the Act. On behalf of the land-holder, petitioner Janrao only entered into the witness-box and the so called donor was not examined and this is in the face of the clear denial by the tenant even in a reply to the notice that the Trust had nothing to do with the property and that real owner was Shri Motilal. Even in his deposition, there is no mention about the period and purpose for which the so called gift had taken place nor there is a mention that doing this service was the consideration of the lease vis-a-vis the tenant. The list of the property of the Trust which has to be mandatorily maintained even in terms of the Bombay Public Trust Act is also not filed on record.

6. It appears that as regards ownership, some litigation was pending. It is in the cross-examination that even though he has come up with a story that the oral gift took place as far back as in the year 1936 no efforts were made to record the field property in Government papers as the property of the Trust. There is a reference to the lease money which would also falsify the story about the consideration of the lease not being money. It is admitted that Trust was never in cultivating possession of the property.

7. The Tenancy Naib Tahsildar, Achalpur, rejected the application holding that the ownership of the applicant was not finally decided as the matter was pending and further that as the notice u/s 38 of the Act was given after the period as mentioned in the section, the application was not maintainable. It was held that the notice did not satisfy the condition mentioned in section 38 (3) (d) of the Act. One of the consideration that weighed with the Court was also the fact that the dispute about compulsory transfer of the property was pending in the High Court, a fact which seems to have been admitted by Janrao in his deposition. Another

finding is that the need of the landholder for personal cultivation was not bona fide. The appeal was preferred before the Sub-Divisional Officer, who was pleased to confirm the order passed by the trial Court mainly holding that the notice was beyond the prescribed time and therefore, there was no substance in the appeal. Maharashtra Revenue Tribunal no doubt confirmed the ultimate result passed by both the Courts, but the reasoning seems to be somewhat different. This is what the Maharashtra Revenue Tribunal observed:

Under the Tenancy Act, the tenancy of a tenant could be terminated u/s 19, section 20 or section 38. Admittedly, it is not a case to which section 19 or section 20 applied. Assuming that the land belonged to the trust, section 38 also had no application. Since section 38 had no application, it was not necessary for the applicant to give notice within the time limit prescribed by it. He could terminate the tenancy of the tenant since relationship of landlord and tenant existed between the parties on the date of notice under general law. He could not give notice under the Tenancy Act and apply thereafter under that Act for resumption of the land. Not being entitled to give notice under Tenancy Act, he could not make any application for resumption under that Act. The application made by the Sansthan was rightly rejected. The orders of the two Courts below are upheld and this revision petition is dismissed.

8. Being aggrieved by these orders, the Trust has filed the present writ petition. Before proceeding with the merits of the matter, it would be necessary to dispose of one application dated 4-9-1979 filed by the petitioner after commencement of the hearing, seeking permission to admit uncertified copy of one High Court judgment dated 18-2-1971 in Special Civil Application No. 1012 of 1969. This application mentions that the accompanying copy is a certified copy, though it is not. No affidavit in support of the application is also filed. On behalf of the respondent, objection has been raised to take this document on record and also to consider it for the first time. On the basis of certain observations in the judgment, certain questions which depend upon facts, were attempted to be raised. I do not think, it will be proper to allow the petitioner to file such type of document in this manner and hence, I am herewith rejecting the said application.

9. Shri R. N. Deshpande, the learned Advocate for the petitioner, has raised a contention that the land in question was covered by section 129 (c) of the Act and on that basis, an argument was built that it is exempted from, the operation of some of the provisions of the Act, as mentioned in the said provision and therefore, the tenancy could be terminated even in terms of the provisions of Transfer of Property Act.

10. In my view, in the first place, there is absolutely no foundation for making a claim that the land in question is exempted land, as contemplated u/s 129 of the Act, which reads as under:

129. Nothing in the foregoing provisions except section 2, the provisions of Chapter II (excluding sections 21, 22, 23, 24 and 37) and section 91 and the

provisions of Chapters X and XII in so far as the provisions of the said Chapters are applicable to any of the matters referred to in sections mentioned above, shall apply:

(a) to lands held or leased by a local authority, or university established by law in the State;

(b) to lands which are the property of a trust for an educational purpose, hospital, Panjarpole, Gaushala, or an institution for public religious worship, provided the entire income of such lands is appropriated for the purposes of such trust; and

(c) to lands assigned or donated by any person before the commencement of this Act for the purpose of rendering any of the following services useful to the community, Namely:- maintenance of water works, lighting or filling of water troughs for cattle;

(d) to any land taken under management by a civil, revenue or criminal Court".

11. In the first place, it will be seen, as observed above, that no material has been placed on record to consider the claim on the basis of the section. Whatever is available on record is clearly against the petitioner. It will be seen that the first requirement for applicability of sub-section (c) is that the land in question shall be assigned or donated by any person before the commencement of the Act and the purpose of donation or assignment must be rendering in all the services useful to the community, such as maintenance of water works, lighting or filling of water troughs for cattle.

12. Admittedly, the property belonged at one time to one Shri Motilal and the transfer is said to have been taken place on the basis of oral gift. Firstly, this is not possible in law. Secondly, the entry of the alleged gift has been made for the first time in January 1967. Shri Motilal has not been examined to prove the date of the so called oral gift and so also its purpose. The record shows the possession of Motilal over the property upto the year 1956 minimum, though the story is of the gift which has taken place as far back in the year 1932-33. The register of the property of the Trust had not been produced nor the account books from which the possession of the Trust over the property could be spelt out. It is elementary that those who want to claim exemption from the operation of any enactment have to prove the existence of all the conditions and requirement on the basis of which such exemption can be claimed. Mere evidence of Janrao which is replete with contradiction cannot, therefore, be accepted to record a finding that this is a land to which provisions of section 129 (c) of the Act can apply.

13. Assuming for a moment that section 129(c) of the Act applies, let us see how the rights of the petitioner can be worked out. Shri Deshpande's argument is that inasmuch as by virtue of the provisions of section 129, the provisions of section 38 and some other sections of the Act do not apply and therefore, to that

extent, the provisions of Transfer of Property Act will apply in terms of section 5 of the Act on the theory of "unoccupied field". Section 5 of the Act reads as under:

""The provisions of Chapter V of the Transfer of Property Act, 1882., shall in so far as they are not inconsistent with the provisions of this Act apply to the tenancies and leases of lands to which this Act applies.

14. There is no manner of doubt that Chapter V of the Transfer of Property Act has been made applicable to the leases under the Act in so far as they are not inconsistent with the provision of the Act. It is, therefore, necessary to examine as to whether the Act has occupied the field in this matter or not.

15. Sections 19, 20, 38, 39 and 39 A of the Act are the only sections which deal with the question of termination of tenancy under the Act. Whereas u/s 129 of the Act, provisions of section 58 do not apply to such lands, there is no manner of doubt that the other sections, viz.: sections 19 and 20 of the Act do apply. Section 19 mentions that notwithstanding any agreement, usage, decree or order of a Court of law, the tenancy of any land held by a tenant to be terminated excepting under certain specified circumstances mentioned therein. Section 20 clothes a tenant a right to terminate the tenancy by surrendering the interest; but for that also, it is provided that it shall be in writing it has to be verified before the Tahsildar in the prescribed manner. Section 19 of the Act is equivalent to section 14 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Bombay Act") which has been operative since 1948 in areas other than Vidarbha region to which the Act has been made applicable with effect from 31-12-1958.

16. Shri Deshpande, on the basis of comparative scrutiny of these provisions, contended that the word "Law" which is mentioned in section 14 of the Bombay Act is conspicuously absent in section 19 of the Act and therefore, section 14 may be operating notwithstanding any law including the Transfer of Property Act, but this could not be the case with section 19. There is no manner of doubt that the word ""Law" is missing in section 19 of "the Act".

17. In order to interpret any law, mere presence or absence of any particular word will not be the decisive factor though certainly it would be a relevant factor. For interpreting any provision, whole Act, its scheme, its object, its preamble etc. has to be seen and no section or word can be considered in isolation. In the first place, it would be necessary to see the relevant part of preamble of "the Act" which reads as under :

""Whereas it is expedient to amend the law which governs the relations of landlords and tenants of agricultural lands and sites used for allied pursuits in the Vidarbha Region of the State of Maharashtra with a view to bringing the status and rights of tenants as far as possible in the line with those prevailing in certain other parts of the State.

18. Before Vidarbha region came to be amalgamated with the State of

Maharashtra, the Berar Agricultural Leases Act, 1951, was holding the field in that region and after reorganisation of States, it was thought necessary that the status and rights of the tenant in the entire State of Maharashtra should be in one line as far as possible. Thus, the sole object of this enactment is to apply as far as possible the provisions of the Bombay Act and the principles underlying its provisions to the rights of the tenants in Vidarbha region. It is no longer debatable that if any doubt creeps in as regards the purpose of any provision, preamble can be looked into, for the light and guidance. Indeed it has been held to be the key to open the minds of the framers of "the Act".

19. A statute consists of two parts and is like a body and a soul. The letter is the body of the law and the sense and the reason is its soul. The maxim "qua ratio legis est aniwa legis" is well-known. No doubt if the words are clear and are capable of only one interpretation, literal and plain meaning has to be attached to the same. If it goes against the object of the statute, one can say that the statute has misfired. But, in case, any provision is capable of two interpretations, certainly one which is in tune with the object of the Act, has to be preferred. The object of "the Act", if clear, cannot be allowed to be defeated or reduced to nullity only because draftsman has been unskilful or imperfect and has not used proper words to bring home the object of the Statute. In this connection, the following two passages from Maxwell's Interpretation of Statute (12th Edition) may be quoted with advantage:

Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.

But it is well known that occasionally draftsmen use different words to indicate the same idea for the purpose of elegance or what is called "the grace of style" or their wish to avoid the same word, or sometimes by the circumstance that the Act has been compiled from different sources and sometimes by alteration and addition from a various hands which the Acts undergo in their progress in Parliament.

20. Applying these tests and the basic principles of interpretation of statute, it will be seen that section 14 of the "Bombay Act" is *pari materia* with section 19 of "the Act", as many other similar provisions are and both the sections aim at the same result. Mere absence of the word "law" in section 19 is not sufficient to hold that the purpose of meaning of section 19 of "the Act" is any way different and that both were not intended to cover similar situations.

21. In case the provisions of Chapter V of the Transfer of Property Act were intended to be made applicable for termination of tenancy to lands covered by section 129 of "the Act", there was no sense in not exempting these lands from the operation of section 19 and some other provisions of "the Act". This clinching

circumstance coupled with the whole object and the scheme of "the Act" will show that Chapter V of the Transfer of Property Act does not freely operate upon such lands. As rightly pointed out by Shri Chandurkar for the respondent, section 19, therefore, creates an embargo on such type of lands and the tenancies created with relation to them, as a result tenancy is terminable only in terms of "the Act" and not in terms of Transfer of Property Act.

22. When this aspect was confronted to the petitioner's counsel, his only answer was a decision of this Court reported in the case of Nagarbai v. Gahirinath 1964 Mh. L J Note 57 followed by another decision of this Court in Telsing v. Shamsunissa 1971 Mh. L J Note 38 in which it has been held that wherever there is no inconsistent provision to the contrary in "the Act", Chapter V of the Transfer of Property Act will operate and that notice in such cases will have to be in terms of the Transfer of Property Act. On closer scrutiny of these authorities, I find nothing to hold that to such tenancies, the provisions of the Act do not apply at all. The facts of that case and principles laid down are entirely different. The case of Nagarbai (cited supra) was about a notice dated 5-4-1957 given by a widow on the ground of personal cultivation to a tenant. In that case application u/s 31 of the "Bombay Act" (equivalent to section 38 of the Act) came to be filed on 19-10-1957. Section 31 of the "Bombay Act" makes a mention that notice as contemplated under "the Act" has to be given before 1st of December 1956 and the application has to be tiled before 31st day of March 1957. In respect of a minor or a widow or any other person under disability "it" is mentioned that "such" notice may be given and an application for Possession u/s 29 of the "Bombay Act" (equivalent to section 36 of "the Act") could be made on that basis within one year either from the date of minor attaining majority or cessation of the interest of the widow by successors in title or from cessation of mental or physical disability. It was held that provisions of section 32 (F) of the "Bombay Act" (equivalent to section 46 of "the Act") did not obviously apply to such tenancies as in the year 1957 right of ownership is not conferred and the same is postponed at a future date. Thus, the relationship of a landholder and a tenant in such cases continue to subsist even after the tillers day and on that basis it was held that in such cases, a landlord should be held to have been conferred with the right to terminate the tenancy even after the period mentioned in section 31 of the "Bombay Act" as need of a person for personal cultivation is a changing factor and can arise even after the tillers day. Inasmuch as there is no provision in "the Act" as to what type of "such" a notice which can be given even subsequently should be, it was held that it has to be in accordance with the Transfer of Property Act. The present case does not face any such situation. There is a specific section 19 of "the Act" which is contrary to the provision of the Transfer of Property Act and therefore the ratio of these cases does not support the petitioner at all. There is one more difficulty in the way of the petitioner. Merely giving of the valid notice is not enough for terminating the tenancy as is the case with the ordinary tenancies governed by the Transfer of Property Act. In order that the right for personal cultivation can mature not only a valid notice

has to be even but requirement for bona fide cultivation has also to be established before competent authority. Even after all this termination permitted is to the extent of only half of the area. Incidentally it may also be mentioned that even in Nagarbai's case landholder was permitted termination of only one-half of the area.

23. It cannot even be imagined, considering the various provisions of "the Act" and its object, that the tenancies in respect of lands exempted u/s 129 of "the Act", can be terminated only in terms of provisions of the Transfer of Property Act. If this is permitted, it would defeat the very purpose of "the Act" and the principles underlying its various provisions and the application of section 19 to such tenancies will be redundant. It is not without reason that while these lands are exempted from the provisions of section 38 of "the Act" no such exemption is granted vis-a-vis section 19, which clearly bars termination of tenancy except as provided thereunder. Perusal of section 20 from which also there is no exemption will demonstrate that in the whole scheme of Act even voluntary surrender in terms of Transfer of Property Act is not permissible and has to be in writing and is required to be verified before Tahsildar.

24. Thus, considering the letter as well as spirit of "the Act", it is clear that Chapter V of the Transfer of Property Act has no scope to freely govern termination of such leases.

25. In the result, the petition is dismissed. No order as to costs.