

(2002) 10 BOM CK 0113

In the Bombay High Court

Case No : Writ Petition No. 1731 of 1985

Keshav Ganesh Bedekar, since deceased through his legal heirs

APPELLANT

Vs

Gopinath Krishna Salunke, since deceased through his legal heirs

RESPONDENT

Date of Decision : 01-10-2002

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 15, 32G
Bombay Tenancy and Agricultural Lands Rules, 1956 — Rule 9

Citation : (2003) 3 ALLMR 585 : (2003) 1 BomCR 3

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : C.S. Sargule, for the Appellant; S.G. Karandikar and V.B. Rajure for respondent Nos. 1 to 5, for the Respondent

Final Decision : Dismissed

Judgement

S.A. Bobde, J.—This petition is directed against the order of the Maharashtra Revenue Tribunal upholding the concurrent findings of both the courts below viz. the finding of the Additional Tahsildar as well as the Sub-Divisional Officer. The authorities below have found that the alleged surrender of the lands by the respondent in favour of the landlord i.e. petitioners' predecessor-in-interest is not in accordance with law.

2. The present proceedings were commenced by the respondent i.e. by the original respondent Gopinath Krishna Salunke now represented by his legal heirs u/s 32-G of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as the "Tenancy Act") sometime in the year 1982. The said respondent claimed that he was entitled for determination of purchase price, having become a deemed purchaser on 1-4-1957. He claimed that he was tenant and in possession of the land on that day and was, therefore, entitled u/s 32 to purchase the said land.

3. The landlord Keshav Ganesh Bedekar, now represented by his legal heirs, the petitioners herein claimed that the tenant Gopinath Salunke had surrendered the land under a document dated 1st June, 1956. The document inter alia recites that the respondent has handed over possession of the land and that he surrenders his tenancy rights therein. The document (hereinafter referred to as the "surrender deed") further states that the landlord would be entitled to make consequential changes in the record.

4. This document was followed by an application preferred by the original petitioner Keshav Ganesh Bedekar for possession. A copy of the surrender deed was annexed to the said application. On that application, the E.A.K. empowered to pass an order for possession, recorded an order. In that order, the statements of both the parties which were recorded are referred to. The E.A.K. has further recorded that possession is already surrendered to the landlord and that it is proved that surrender is purely voluntary and no influence or coercion in this respect is permissible. While passing this order on the application for possession, the E.A.K. accepted the surrender and noted that possession has already been mutually taken over by the landlord and that lands are in his possession and therefore, necessary changes should be made in the record of rights.

5. In the present proceedings the 1st Court held that there was an obvious inconsistency between the petitioner's application dated 25th August, 1956 and the earlier surrender deed dated 1-6-1956 as regards the possession. The earlier deed stated that the respondent had already surrendered possession and the subsequent application dated 25th August, 1956 made a prayer for possession. Besides this, upon a perusal of the crops statements on record the Additional Tahsildar took the view that there has been a complete misreading of the crop-statements. He observed that an earlier entry on the basis of which, the lands were shown to be cultivated by the petitioner himself, in a subsequent entry, had been cancelled. Thus, there was no basis for the subsequent entry which showed that the lands had been cultivated by the petitioners. The Additional Tahsildar therefore took the view that the names of tenants could not have been removed and they had been unauthorisedly removed from the other rights column.

6. Even on the issue of surrender, the Additional Tahsildar took the view that it was not a valid surrender u/s 15 read with Rule 9. He held that the Mamlatdar had not satisfied himself that, firstly, the tenant understands the nature and consequences of surrender and secondly that it is voluntary. He further showed that in accordance with law, the Mamlatdar must endorse his finding as to such satisfaction upon the instrument of surrender itself and not on subsequent order. In the result, the Additional Tahsildar held that the respondent is holding the suit lands as a lawful tenant and that his possession i.e. possession of Gopinath Krishna Salunke was never disturbed and that the landlord Bedekar was never in possession of the suit land. He therefore, determined the purchase price.

7. The Sub-Divisional Officer confirmed the findings of the Additional Tahsildar and made a pertinent observation that the order of the Mamlatdar on the

application for possession filed by the petitioner and holding that the possession has already been handed over, was passed on 30th March, 1957 i.e. just one day before the tillers day which is 1-4-1957. The learned Sub-Divisional Officer observed that passing of the order just one day before the tillers day creates a serious doubt.

8. It is against this concurrent findings of fact that the Maharashtra Revenue Tribunal has dismissed the revision application preferred by the petitioner. That order is impugned in this writ petition on behalf of the landlord.

9. Mr. Sargule the learned Counsel for the petitioner submitted that in the first place the respondent was not entitled to apply u/s 32-G in view of the fact that the respondent had surrendered his tenancy on 1-6-1956 and order had been passed on 25-8-1956 holding that the surrender is voluntary and that possession has already been mutually taken over by the landlord. According to the learned Counsel for the petitioners an application for determination of purchase price made u/s 32-G is not tenable in the year 1982. This point has been raised and already considered by a learned Single Judge of this Court in L.J. Kriplani since deceased by his legal heirs Vs. Manik Aditwar Patil and others, relying on the judgment of the Supreme Court in the case of Uttam Namdeo Mahale Vs. Vithal Deo and others, . Learned Single Judge has concluded that section 32-G of the Tenancy Act casts a duty on the authority to initiate proceedings for determination of purchase price. The status of deemed purchaser is conferred on a tenant with effect from 1-4-1957 itself and therefore, the landlord cannot raise the plea of limitation. I am in agreement with the view of the learned Single Judge.

10. The second contention urged on behalf of the petitioners is that surrender must be taken to be voluntary and in accordance with section 15 of the Tenancy Act. The relevant portion of section 15 of the Tenancy Act reads as under:

"15(1). A tenant may terminate the tenancy in respect of any land at any time by surrendering his interest therein in favour of the landlords; Provided that such surrender shall be in writing and verified before the Mamlatdar in the prescribed manner."

Rule 9 of the Bombay Tenancy and Agricultural Lands Rules, 1956, framed in exercise by powers conferred by Act 82 of 1984 which provides for the manner in which the surrender of tenancy should be verified. That Rule reads as follows:

"The Mamlatdar, when verifying the surrender of a tenancy by a tenant in favour of the landlord u/s 15 shall satisfy himself, after such enquiry as he thinks fit, that the tenant understands, the nature and consequences of the surrender and also that it is voluntary, and shall endorse his findings in that behalf upon the instrument of surrender."

11. On a plain reading of Rule 9, it is obvious that Mamlatdar must satisfy himself after such enquiry as he thinks fit that (a) the tenant understands the

nature of consequences of the surrender and (b) that it is voluntary. The Rule further requires the Mamlatdar to endorse his finding in that behalf upon the instrument of surrender itself.

12. Earlier, under the Bombay Tenancy and Agricultural Lands Rules, 1949, the manner of verifying surrender of tenancy was provided by Rule 2-A which reads as follows:

"(2-A) Manner of verifying surrender of tenancy.-The Mamlatdar when verifying a surrender of a tenancy by a tenant in favour of the landlord under Clause (b) of sub-section (3) of section 5, shall satisfy himself, after such enquiry as he thinks fit, that the tenant understands the nature and consequences of the surrender and also that it is voluntary, and shall endorse his findings in that behalf upon the document of surrender.)"

13. The Supreme Court considered the requirements of aforesaid Rule 2-A, which is in pari materia with the present Rule 9, in the case of Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, , and came to the conclusion that the language of the legislative scheme is impetrative .In paragraph 12, Their Lordships have observed as follows:

"It will be seen from a combined reading of these provisions that a surrender of tenancy by a tenant in order to be valid and effective must fulfil these requirements: (1) It must be in writing, (2) It must be verified before the Mamlatdar, (3) While making such verification the Mamlatdar must satisfy himself in regard to two things, namely, (a) that the tenant understands the nature and consequences of the surrender, and (b) that it is voluntary, (4) The Mamlatdar must endorse his findings as to such satisfaction upon the document of surrender."

14. It is obvious from the facts of the present case that the surrender was not in accordance with law. There is no verification in accordance with Rule 9. There is nothing to show that tenant understood the nature and consequences of the surrender. The Mamlatdar has not endorsed his findings on the deed of surrender, that he is satisfied that the surrender is voluntary and that the tenant understands the nature and consequences of the surrender upon the document of surrender at all. In fact, it is only in a subsequent application for possession that the Mamlatdar has held, just a day before tillers day that the surrender is voluntary that is not permissible by law. Having regard to the fact that the surrender itself is not in accordance with law, it is not necessary for me to consider that next question whether, the petitioners were entitled to make a prayer for possession. Indeed, this prayer is made on the assumption that respondent has voluntarily surrendered the land. That itself having been found to be invalid, the petitioners are not entitled to possession at all.

15. The last contention raised on behalf of the petitioners is that respondent has ancestral landed property which he was not able to cultivate. It is not possible to see the relevance of this aspect on the validity of the surrender. Moreover, this

point does not seem to have been raised before any of the courts below. The learned Counsel, however submitted that the respondent has after paying the purchase price and obtaining certificate u/s 32-M, has sold the part of his ancestral land to some third party. I do not find this fact recorded in the orders of any of the courts below. The learned Counsel for the petitioners has not been able to point out any provisions of law which disentitles the respondent to sell the land as long as he complies with the provisions of the Bombay Tenancy Act.

16. In the result, I see no merit in the petition and the same is dismissed.

There shall be no order as to costs.