

(1972) 07 BOM CK 0010

In the Bombay High Court

Case No : Special Civil Application No. 791 of 1969

Keshav Vithal Mhatre

APPELLANT

Vs

Arvind Ranchhod Parekh and Another

RESPONDENT

Date of Decision : 27-07-1972

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 83

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 4, 61, 88(1), 90

Citation : AIR 1974 Bom 94 : (1973) 75 BOMLR 694 : (1974) ILR (Bom) 114 : (1973) MhLj 958

Hon'ble Judges : Vaidya, J

Bench : Single Bench

Advocate : D.M. Parulekar and B.M. Purandare, for the Appellant; K.A. Shah, for N.A. Shah, for the Respondent

Judgement

1. The petitioner in the above Special Civil Application became the tenant of the lands in dispute under a lease for ten years granted by the Manager appointed u/s 65 of the Bombay Tenancy and Agricultural Lands Act, 1948, under a Kabulayat dated October 12, 1953. On an application made by the landlord-respondent No.1 on September 25, 1967, the management was terminated with effect from December 28, 1967. The Deputy Collector further ordered the petitioner to deliver possession of the lands to the landlord u/s 61 of the Bombay Tenancy and Agricultural Lands Act, 1948. The said order was challenged by the tenant in a revision application. The Revenue Tribunal rejected the revision application on January 30, 1969 on the ground that once the management was terminated, the petitioner could not claim the status of a tenant under the contractual lease given by the Manager or u/s 4 of the Bombay Tenancy and Agricultural Lands Act.

2. The said decisions are challenged in the above petition. Mr. Parulekar, learned counsel for the petitioner submitted, firstly, that the tenant was protected by the provisions of Section 88 (1) (d), proviso, There is no substance in this contention, because it cannot be said that the lease granted by the Manager to the petitioner was subsisting on the date, the management came to an end

within the meaning of proviso to Section 88 (1) (d), Section 47 of the Bombay Tenancy and Agricultural Lands Act gives to the Manager power to lease only "during the management of the estate", Section 61 casts a duty on the Government "on termination of the management" to restore possession of the land taken under management to the land-holder. The manager cannot grant u/s 47 a lease lasting beyond the period of management. It would have been a different matter if Section 58 was applicable or if there was a lease or statutory tenancy subsisting before the management was taken u/s 65. Where the lease was granted during the management, the lease must come to an end with the termination of management. The tenant continues as a tenant only during the management of the estate. Thereafter if he remains on the land, he is cultivating it only as a trespasser. Thereafter if he remains on the land, he is cultivating it only as a trespasser. The agent of the State like the Manager had no power to grant lease or permit any cultivation by anybody in violation of the mandatory statutory duty of the State u/s 61 to restore the land to the holder on termination of management." It must, therefore, be held that Section 88 (1) (d) cannot be invoked by the petitioner. In fact even his lease of ten years had expired during the period of management. When the management ended there could not be any lawful lease or tenancy in his favour which could outlive the termination of the management.

3. The second ground urged by Mr. Parulekar in support of the petition is that as the petitioner was allowed to continue the cultivation of the land after the ten years' period was over, it cannot be said that he was unlawfully cultivating the land. He submits that the petitioner's cultivation was lawful as the State had not called upon him to deliver possession of the land and hence the decision of the Supreme court in Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim, , would assist the petitioner in claiming to be the deemed tenant u/s 4 of the Bombay Tenancy and Agricultural Lands Act, That section will apply only if it is established that the person claiming the status of deemed tenant is lawfully cultivating the land in the facts and circumstances and subject to the exemptions mentioned in that section. As stated above, once the management comes to an end, he becomes a trespasser. Thereafter the duty of the State is to restore the land to the holder. The petitioner who claims the right from the manager appointed by the State, cannot get a right higher than what the State itself can create or convey. He must be deemed to be a trespasser, In law he cannot be considered to be lawfully cultivating the land once the management comes to an end and the law required that the land should be restored to the holder or his heir. Hence Section 4 and the aforesaid decision of the Supreme Court are not attracted. His possession is not lawful as it is possession retained in contravention of Section 61.

4. Lastly, Mr. Parulekar argued that after the tenancy granted by the manager came to an end, the petitioner must be considered to be an annual tenant. There could not be an annual tenancy unless it was granted by the Manager. When none had granted him annual tenancy, it is difficult to see how the tenant can

claim the status of an annual tenant. Moreover the provisions of Section 83 of the Bombay Land Revenue Code, 1875, which recognized irrespective of contract an annual tenancy in view of Section 90 and Schedule II of the Bombay Tenancy and Agricultural Lands Act, 1948. the plea of annual tenancy is, therefore, however, submitted that the decision of Bhasme. J.D/-3-8-1971 in Special Civil Appln. No. 1769 of 1967 (Bom) supports his argument. I find nothing in the said judgment which helps the petitioner. In the first place, observations which he relies upon with respect to interpretation of Section 88 (1) (d) are all obiter as Bhasme, J. himself pointed out that the point did not arise in the matter for determination. The only observation on which Mr. Parulekar relied upon was as follows: -

"In some cases there will be conflict between the former statutory tenants, and the contractual tenants who came on the land only during the period of the management. In the case of any such conflict, the former statutory tenants will have to be preferred to the contractual tenants. In the absence of any such conflict, the contractual tenants inducted on the land by the managing authority and whose tenancy is subsisting on the date of the termination of the management will be entitled to the protection of the Tenancy Act. In the present case there is no such conflict but it is just to consider the point fully that I have expressed my views".

With respect, these observations were made on certain postulates and were guardedly made. They are applicable only where there was contractual tenancy subsisting on the date when the management ceased. That is possible, as stated above, only when the tenancy existed before the management commenced or the lease was granted by the Manager in exercise of his powers u/s 58 of the Bombay Tenancy and Agricultural Lands Act. Such contractual tenancy cannot subsist where the manager granted a lease in exercise of his powers u/s 47 of the Bombay Tenancy and Agricultural Lands Act, as in the present case.

5. In the result, none of the grounds urged in support of the petition can be accepted. The petition fails, rule discharged with costs.

6. Rule discharged.