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(1994) 06 BOM CK 0067

In the Bombay High Court

Case No : Writ Petition No. 3742 of 1981 and 3099 of 1989

Kisan Yeshwant Dhirade — APPELLANT

Vs

Sonabai Bappu Lohar since deceased through legal heirs and Others — RESPONDENT

Date of Decision : 23-06-1994

Acts Referred:
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 29(2), 29(3), 31, 37(1)

Citation : (1995) 2 BomCR 172 : (1995) 1 MhLj 884

Hon'ble Judges : M.S. Vaidya, J

Bench : Single Bench

Advocate : C.K. Shinde, for the Appellant; V.D. Hon, for Kishore M. Gadhve Patil and D.R. Jaibhar, Assistant Public Prosecutor for the respondent Nos. 2 and 3, for the Respondent

Judgement

M.S. Vaidya, J.—Heard Mr. C.K. Shinde, learned Counsel for the petitioner, Mr. V.D. Hon, for respondent Nos. 1(a) and 1(b). Mr. D.R. Jaibhar, learned Counsel for respondent Nos. 2 and 3 absent.

2. This writ petition is directed against an order dated 31st March, 1981 passed by the Maharashtra Revenue Tribunal, Pune, in Tenancy Revision Application No. 2 of 1979. The petitioner and the respondent Nos. 2 and 3, being the sons of one Yeshwant Dhirade, are brothers. Yeshwant Dhirade was, admittedly, a tenant in Consolidated Survey No. 250 of village Belpimpalgaon Tq. Newasa. The land admeasured 13 acres and 5 gunthas. Sobanai (respondent No. 1) was the landlady of that land and, under a notice dated 12-1-1956 issued before the tillers'' day, she had terminated the tenancy of Yeshwant Dhirade u/s 31 of the BT & AL Act, on the ground that she required the suit land bona fide for her personal cultivation. Sonabai was not a widow, as such, at that time, therefore, there was no question of postponement of date of deemed purchase on that count. Her husband is said to have died later on, sometime in the year 1962. Deceased - Sonabai instituted Tenancy Case No. 1193 of 1957, which was an

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application u/s 29 for possession of the land in pursuance of the terminated tenancy. During the pendency of that application, the tenant appeared before the Court and as stated in the certified copy of the judgment delivered in the aforesaid tenancy case, he had made an application that he had surrendered the possession of the whole of the land. The judgment, further, stated that the application was verified as required by law and the whole proceeding was treated as a proceeding for surrender. The points for determination were framed in that matter. The first point for determination was, whether the tenant had surrendered the land voluntarily. There were three other points for determination. The learned Mamlatdar, Newasa, recorded an affirmative finding on the first point and, finally, ordered u/s 29(3) of the Bombay Tenancy and Agricultural Lands Act, 1948, that the possession of the said land should be handed over to the applicant landlady and the name of the tenant be deleted from the records pertaining to the said lands. This certified copy as well as the certified copy of the statement of Yeshwant Dhirade dated 6-5-1957, were produced in the Tenancy Appeal which arose in the present matter. The tenant made no grievance about the possession of the land for several years thereafter, though the aforesaid order was passed on 8-5-1957. Under a registered lease-deed dated 21-3-1969, the landlady leased the land to one Damu Kalu Suryawanshi and, thereafter, the present petitioner started the dispute.

3. The present petitioner, then, applied for restoration of possession of land u/s 27 of the Bombay Tenancy and Agricultural Lands Act, 1948, on the ground that though under the law, the landlady was bound to cultivate the land provisionally for 12 years she had leased out the land on 21-3-1969. At the time of execution of this registered lease deed in 1969, as stated above, Sonabai was a widow. u/s 2(6) of the BT & AL Act, 1948, in the context of a widow, the cultivation of the land held by widow through a tenant, is deemed to be a personal cultivation of the land. Despite that fact, the tenant filed Tenancy Case No. 5 of 1970 before the Agricultural Lands Tribunal, Newasa, for restoration of possession of the land and the Agricultural Lands Tribunal ordered the land to be delivered back to the tenant under its orders dated 24-3-1972. Appeal No. 8 of 1977 preferred before the Sub-Divisional Officer came to be dismissed on 13-7-1977. But, in Revision Application No. 2 of 1979 before the Maharashtra Revenue Tribunal, Pune the landlady succeeded and the order of restoration of possession was cancelled. The tenant has, therefore, filed this writ petition.

4. The first contention of Shri Shinde, in this respect, was that there was no surrender at all in the present case as required by section 15. He submitted that the original papers of surrender were not available in the entire proceeding and they should be called at this stage in the writ petition, for perusal. This request was rejected for the obvious reasons, namely, that when a certified copy of the judgment delivered in that matter itself indicated that there did exist an application by the tenant for surrender, that the contents of the said application were verified by the Tahsildar and, further, that he was satisfied that the surrender was genuine, there was no reason for us to look upon the aforesaid

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statements in the judgment with suspicion. This is particularly so because, since the delivery of possession of the entire land in 1957, neither Yeshwant nor any of his sons had ever raised any grievance to the effect that there was no legal surrender and that the landlady was wrongly put in possession of the whole of the land, when u/s 31 of the BT & AL Act, she was never entitled to more than half of the land. This conduct of the tenant and his sons itself makes it clear, that the tenant had wilfully and voluntarily surrendered the land and that there was no reason, at this stage, to entertain any doubt on that point.

5. The next point urged by Mr. Shinde, the learned Counsel for the petitioner, was that in a proceeding initiated by the landlady u/s 29 of the BT & AL Act, in pursuance of termination of tenancy u/s 31 of that Act, such a surrender could not have been legally recorded because it was not in the prescribed form. It is amply clear from the copy of the judgment that is on record, that on receipt of the application from the tenant, the entire proceeding was treated as proceeding for surrender and that the orders passed in that proceeding were passed, only after full satisfaction of the officer, regarding voluntariness of the surrender of the entire land. No provision was shown to us to indicate that there was any bar to the tenant surrendering the possession of the land of which the tenancy has been terminated by the landlady u/s 31 of the BT & AL Act, and that too, in a proceeding u/s 29 initiated by the landlady. It cannot, therefore, be said, particularly so many years after the date of the decision of Case No. 1193 of 1957, that the orders passed in that case were of no legal consequence. At the cost of repetition, it may be stated that the said order was acted upon by the tenant by delivering to the landlady the possession of the entire land and by permitting her to cultivate the land thereafter till the trouble was brewed by initiating Tenancy Case No. 5 of 1970.

6. The third contention urged by Mr. Shinde, was that after the tillers'' day there could be no surrender of land. In support of this proposition, he relied upon the ruling in Mahadeo Sitaram v. Ramchandra S. Yadav, Spcl. C.A. No. 1458 of 1969 decided on 17-8-1972 (coram : G.N. Vaidya, J.) 1973 T.L.R 79. The basis of the decision in that case was that, after the tillers'' day the landlord ceased to be the landlord and the tenant ceased to be the tenant when there was a deemed purchase and, therefore, there was no question in law of surrender of tenancy because the tenancy itself did not exist. The aforesaid ruling is not applicable to the facts of the present case because, in the present case, not only that the tenancy of Yeshwant was terminated by the landlady validly prior to tillers'' day, but a proceeding for possession u/s 29 of the BT &AL Act was filed in Tenancy Case No. 1193 of 1957. True it is that u/s 32(1)(b) a tenant who was not a permanent tenant and who cultivated the land personally, was deemed to be the owner in case where the landlord has given a notice u/s 31, but the landlord has not applied to the Mamlatdar on or after 31st day of March, 1957 u/s 29 for obtaining the possession of the land. The proviso to the clause lays down, further, that an application was made by the landlady u/s 29 for obtaining the possession of the land and the same was rejected by the Mamlatdar or by the

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Collector in Appeal or in Revision by the Member, Maharashtra Revenue Tribunal under the provisions of the Act, the tenant would be deemed to have purchased that land on the date on which the final order of rejection was passed. In this eventuality, the date on which the final order of rejection was passed was to be the postponed date of the deemed purchase. In the present case, the landlady had terminated the tenancy legitimately and filed a proceeding u/s 29 read with section 31 of the BT & AL Act and on the date of the surrender, that proceeding was pending. It cannot, therefore, be said that the tenant must be considered to be a deemed purchaser as on 1-4-1957 under the proviso the date of deemed purchaser would stand postponed.

7. The view taken in Mahadeo Sitaram v. Ramchandra (supra) is, again, confirmed by the Supreme Court in Balu Tukaram Thorat v. Shankar Laxman, Spl. C.As. 1379 of 1971 with 2330 of 1973 dated 13-3-1975 (coram : Rege, J.) reported in 1976 T.L.R 19. In that case also, the surrender was not made during the pendency of any validly instituted proceeding by the landlord u/s 29 read with section 31 for the possession of the land. Therefore, that ruling also will have no application to the facts of the present case.

8. In the present case, the decision of the Maharashtra Revenue Tribunal, Pune in the Revision Application No. 2 of 1979, is founded on two circumstances. In the first place, it is noted that there was a voluntary surrender of the land, and therefore, there was no question of breach of any condition imposed by section 37 of the BT & AL Act. The second reason was that the landlady had cultivated the land almost for 12 years (i.e. only one-and-a-half month less than 12 years) and had, thus, substantially complied with the condition. One need not dwell on the second reason that was assigned by the Maharashtra Revenue Tribunal. But, as regards the first reason it was the contention of Mr. Shinde, that section 37 of the BT & AL Act had not exempted the surrender of possession of land by tenant from its operation. On perusal of section 37(1) of the BT & AL Act itself, it is clear that the provisions of the section would be attracted if after the landlord had taken the possession of the land on termination of tenancy u/s 31 and some other sections and had ceased to use it any time for the purpose for which the land was taken in possession during the period of 12 years from the date on which he took the possession. The landlord was then bound to restore the possession of the land to the tenant. In the present case, the order for delivery of possession to the landlady was not passed u/s 31 because, as is clear from the judgment itself, the proceeding was treated as one of surrender of the land and the orders were passed only u/s 29(2) after making necessary inquiry as was deemed fit by the Mamlatdar. Secondly, Sonabai was a widow when she had leased the land to Damu Suryawanshi, and as already pointed out above leasing of such a land by widow to a tenant was also personal cultivation of the land within the meaning of section 2. The contention of Mr. Shinde that such leasing of the land was not a bona fide personal cultivation within the meaning of section 31 can hardly be sustained for a moment because, in the present case, the possession was not obtained by the landlady by virtue of section 31 of the BT &

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AL Act. She had obtained the possession on account of the voluntary surrender of the land by the tenant.

9. Under such circumstances, we find no substance in the present writ petition. The same is, therefore, dismissed. The interim relief granted in this matter shall stand vacated. Rule discharged.

10. Mr. D.R. Jaibhar, the learned Counsel for the respondent Nos. 2 and 3, appeared after the dictation of this judgment in open Court and he supported the petitioner. His contentions were only similar to the contentions raised by Mr. Shinde. As all those contentions are already considered in the judgment, nothing further need be added.

Rule discharged.

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