

(1972) 04 BOM CK 0017

In the Bombay High Court

Case No : Spl. Civil Application No. 858 of 1968

Kondaji Pundlik Lonare

APPELLANT

Vs

Jaiwantabai Balu Pote

RESPONDENT

Date of Decision : 18-04-1972

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 14, 29, 31, 32, 32(I)
Constitution of India, 1950 — Article 227

Citation : (1973) MhLj 339

Hon'ble Judges : G.N. Vaidya, J

Bench : Single Bench

Advocate : M.G. Chaudhari, for the Appellant; M.V. Sali for Respondents Nos. 1 (1) to 1 (6) and W.J. Kankaria for Respondents No. 2, for the Respondent

Final Decision : Allowed

Judgement

G.N. Vaidya, J.—This petition under Article 227 of the Constitution of India raises a rather interesting question of interpretation of section 32 read with sections 37 and 39 of the Bombay Tenancy and Agricultural Lands Act, 1948.

2. The relevant facts are as follows : The petitioner was a tenant of the lands in dispute namely survey Nos. 804/1 to 8, 808/8-9 and 808/10-11 situated in village Sinnar, Taluka Sinnar. He was cultivating the lands on the tillers" day i. e. on April 1, 1957. He continued to cultivate the lands till 1963 when proceedings u/s 32-G were suo motu instituted by the Additional Mamlatdar and Agricultural Lands Tribunal. Sinnar. On the date of hearing, the tenant was absent. An order was passed on October 28, 1963, declaring the statutory purchase of the tenant to be ineffective. Upon a review application the case was heard afresh, after giving notices to the landlords Devidas Balaji Shimpi and one Jaiwantabai Balu who died during the pendency of the proceedings and whose heirs therefore were brought on record.

3. At the hearing before the Agricultural Lands Tribunal the landlord supported the tenant-petitioner and admitted that he received rent upto 1959-60 and

produced the receipt of Rs. 125. The proceedings were, however, resisted on behalf of the minor heirs of Jaiwantabai. They contended that the tenancy of the petitioner was terminated as the landlord had filed an application u/s 29 read with section 34 as it stood before its amendment by Act 13 of 1956 and also u/s 14 for personal cultivation and on the ground of defaults respectively. An order was passed by the Mamlatdar in those proceedings on July 9, 1956 rejecting the request of the landlord for possession on the ground of non-payment of rent but he granted his application on the ground that he bona fide required the land for personal cultivation. The tenant's appeal before the District Deputy Collector was dismissed on July 23, 1957.

4. It was therefore contended on behalf of minor legal representatives of Jaiwantabai that even though the landlord did not actually recover possession of the land and cultivate the land till the proceedings were started u/s 32-G in 1963, the tenant was not entitled to purchase the land as an order was passed against him terminating his tenancy. The said Jaiwantabai claimed to be the auction purchaser who purchased the land in an auction held in execution of the decree obtained by the tenant against the landlord. It was also argued that the landlord was colluding with the tenant to defeat the right of Jaiwantabai, the auction purchaser, by falsely stating that the tenant continued to be in possession even though an order was passed against him in proceedings u/s 31 read with section 29. The learned Additional Mamlatdar by his order dated January 31, 1966 overruled all these contentions as he found the petitioner to be in actual possession of the land notwithstanding the order of the Mamlatdar in favour of the landlord which remained on paper only and, therefore, declared that the petitioner was entitled to purchase all the suit lands.

5. Feeling aggrieved by the said decision, the heirs of Jaiwantabai who are respondents Nos. 1 (I) to 1 (6) in the above petition, carried an appeal before the Special Deputy Collector, Tenancy Appeals, Nasik. The Deputy Collector set aside the decision of the Mamlatdar holding that the tenancy of the petitioner having been terminated and an order for possession having been passed by the Mamlatdar of Sinnar prior to April 1, 1957, the petitioner cannot claim to be cultivating the lands as a tenant on the tillers' day, observing as follows:

It is admitted that the tenancy was terminated and even the order for possession of the land was to the original landlord was passed by the Mamlatdar of Sinnar before 1-4-1957. The respondent No. 1 had, therefore, ceased to be the tenant on 1-4-57. The fact that the possession continued to remain with him would not give the right of a tenant. As urged by the learned pleader for the appellants the order for possession was to be got executed by the Mamlatdar of Sinnar even without application from the landlord and the respondent No. 1 cannot take advantage of this failure. The respondent No. 1 cannot, therefore, be deemed to be a tenant on 1-4-57 within the meaning of section 4 of the B. T. and A. L. Act, 1948. The conduct of the respondent No. 1 himself after the decision of the case against him by the Mamlatdar of Sinnar is also material. It was he who got the

suit lands attached for amounts which he had to recover from the respondent No. 2. If he had really been a tenant he would not have taken this action as he knew that the Tenancy Act gave him right to purchase the land if he was considered to be a lawful tenant on 1-4-1957. I also do not think that the rent receipt passed by the original landlord on 8-11-58 (Ex. 3-A) deserves any consideration. It seems to us that this receipt has been passed only with a view to jeopardise the interests of the appellants. The respondents Nos. 1 and 2 seem to have made a common cause to the detriment of the appellants. Even if it is held that the rent receipt is valid, then also it will be a case of new tenancy created after 1-4-1957. It is not the contention of the respondent No. 1 that he had exercised his right u/s 32 and therefore even on this ground he is not entitled to purchase the suit lands.

6. The said decision of the Deputy Collector was challenged in a revision application filed by the petitioner before the Maharashtra Revenue Tribunal. The Revenue Tribunal, by his judgment dated September 5, 1967, Confirmed the decision of the Deputy Collector. The decisions of the Deputy Collector and the Revenue Tribunal are challenged in the above special civil application filed under Article 227 of the Constitution of India, on the ground that the said authorities grossly misconstrued the provisions of sections 32, 37 and 39 of the Bombay Tenancy and Agricultural Lands Act, 1948.

7. The effect of the said sections was considered by the Full Bench of this Court in *Vasant Hariba v. Jagannath* 1969 Mh. L J 249-(1968) 71 Bom. LB 12 (F.B7), and at p. 25, it is laid down :

If, as we have shown, the true effect of the exercise of the landlord's right to take his tenant's land for his bona fide need for personal cultivation, is that the tenancy is not terminated in the sense that the relationship of landlord and tenant is put an end to, but the true effect is only that the tenancy is pro tanto suspended and is capable of revival, then it is completely immaterial whether the original application of the landlord was u/s 31 or section 34, because no matter under what section he had applied, upon the landlord ceasing to use the land for the purpose specified in his notice, he must forthwith restore the land to the tenant u/s 37.

It is further laid down at p. 30,

The right which a landlord has to take back the land for personal cultivation u/s 34 (or the new section 31) is a personal right and if one may say in the expression, subject to the conditions of defeasance mentioned in section 37. These conditions require that the landlord, who has obtained possession on grounds stated in his notice u/s 34, must commence using the land for any of the purposes specified in the notice within one year of his obtaining possession and must continue to use it for the said purpose for 12 years, and if default is made in complying with either of these conditions the landlord has to restore possession of the land to the tenant.

8. Therefore, the assumption made by the Deputy Collector and the Revenue

Tribunal that the tenancy of the petitioner had come to an end is contrary to the decision of the Full Bench which laid down that the tenancy is only suspended and held in abeyance during the time the landlord actually cultivated the land. It may be that the contractual or statutory tenancy was terminated in accordance with the statute but that termination had not the effect of completely extinguishing the tenancy or putting an end to the relationship of landlord and tenant for all purposes. The tenancy was capable of automatic revival the moment the landlord failed to comply with the conditions u/s 37; and if the tenant was not restored possession of the land the tenant could make an application for restoration of possession u/s 39 as a tenant. The statute conferred all these rights on the tenants and the mere fact that an order was passed u/s 34 or section 31 would not efface the statutory tenancy which continued to be recognised by the Bombay Tenancy and Agricultural Lands Act, under sections 37 and 39, as interpreted by the Full Bench of this Court. The view taken by the Revenue Tribunal and the Deputy Collector that the petitioner was not cultivating the land as a tenant because of an order passed prior to April 1, 1957 is contrary to the view of the Full Bench and hence the decision of the Deputy Collector and the Revenue Tribunal must be held to be illegal.

9. Mr. Sali, the learned counsel for respondents Nos. 1 (1) to 1 (6) however, strenuously urged firstly, that as there was no period of limitation for execution of the order of the Mamlatdar which was confirmed in appeal by the Deputy Collector in proceedings u/s 34, it was open to the landlord to obtain possession from the Mamlatdar or for the Mamlatdar to restore possession of the land to the landlord at any time even now, and that the mere fact of the tenant continuing to cultivate the land would not confer on him a statutory revival of his tenancy unless he made an application u/s 39 and the landlord had failed to cultivate the land after taking possession u/s 37. In other words, Mr. Sali submitted that the tenant could not revive his tenancy except by making an application u/s 39 and he could not make an application u/s 39 unless the landlord failed to fulfill the conditions of section 37. He argued that as the landlord had never taken possession of the land it could not be contended that he had not fulfilled the conditions of section 37. He also submitted that in any event the proceedings u/s 32G were misconceived in the facts and circumstances of the case, because the tenant could not become a statutory purchaser in a case where an order was passed in favour of the landlord u/s 34 read with section 29 irrespective of whether the landlord obtained possession of the land or not.

10. Although the submissions of Mr. Sali are plausible they must be rejected as without any merit having regard to the scheme of the provisions of the Bombay Tenancy and Agricultural Lands Act relating to the tillers' day and the intention of the Legislature to confer on that day the statutory ownership of the land on the tillers. The entire scheme of the provision has been considered again and again in several decisions and it is unnecessary to repeat the provisions, from section 31 to section 32R. It is enough to say that subject to certain conditions mentioned in sections 32 to 32R, the Legislature intended to confer the right of

ownership on all tenants who were actually cultivating the lands on April 1, 1957. One of these conditions was that if a landlord had applied for possession on the ground of personal cultivation or on the ground of defaults the tillers' day was postponed till his application was rejected. If that condition did not apply the tenant would become the owner on April 1, 1957. Another condition was that if the landlord applied for possession for personal cultivation and obtained the land for personal cultivation and failed to cultivate the land he was bound to restore the land to the tenant u/s 37. If he failed to restore the land the tenant could make an application u/s 39. The effect of these provisions as stated above, was considered by the Full Bench which laid down that even where the landlord applied for possession for personal cultivation till he fulfilled the conditions laid down u/s 37, the tenancy was merely suspended or was held in abeyance. The tenancy was not extinguished.

11. In other words the tenant continued to be a tenant for all purposes of the Bombay Tenancy and Agricultural Lands Act, including the provisions of section 32. Unless there was some other condition which prevented him from becoming the owner as from the tillers' day he would continue to become the owner as from April 1, 1957. The argument of Mr. Sali that he would not become the owner under any provisions of the Act is against the plain terms of section 32 (1) which lays down that subject to the other provisions of section 32 and the provisions of the next succeeding sections, every tenant shall on the first day of April 1957 be deemed to have purchased from his landlord free of all encumbrances subsisting thereon on the said day, the land held by the tenant. There is no provision which takes away this right of the tenant, except section 32 in respect of matters in which the landlord applied for possession and obtained the order for possession. Even there, if the landlord never takes possession of the land, for personal cultivation the restrictions u/s 32 would have no application, and the tenant would become the owner of the land. Once the tenant becomes the owner of the land even when an order for possession might have been passed against the tenant u/s 31, when he was a tenant, the order would cease to be executable against him as he had ceased to be a tenant. That, in my judgment, is the plain scheme of section 32 (1) and the other provisions of the Act relating to the statutory purchase of land by the tenants on the tillers' day. Hence, all the arguments of Mr. Sali on this point must be rejected.

12. Secondly, it was urged by Mr. Sali that having regard to the facts and circumstances of the present case it would be inequitable to interfere with the decision of the Revenue Tribunal and the Deputy Collector. He submitted that the landlord and the tenant had colluded against Jaiwantabai, the auction purchaser to defeat her rights. It is difficult to appreciate this argument because what she purchased was the right title and interest of the landlord. Even if the tenant becomes the purchaser the tenant would be liable to pay the purchase price fixed under the Bombay Tenancy and Agricultural Lands Act. It is well established that equity must follow law. If the provisions of the Bombay Tenancy and Agricultural Lands Act, confer statutory ownership on tenants because they were cultivating

the lands, that legal provision cannot be defeated by (sic) general principles of equity.

13. In the result, the petition must be allowed. The decision of the Revenue Tribunal dated September 5, 1967 and the order of the Deputy Collector dated July 18, 1966 are quashed. The order passed by the Additional Mamlatdar and the Agricultural Lands Tribunal on January 31, 1966 is restored, and the case is remitted to the Mamlatdar for taking further proceedings u/s 32G for fixing the price of the lands and for disposing of the case in accordance with law. Rule made absolute. No order as to costs.