
(1962) 01 BOM CK 0011

In the Bombay High Court

Case No : Special Civil Application No. 102 of 1961

Lalji Harbaji Kokate

APPELLANT

Vs

The Maharashtra Revenue Tribunal

RESPONDENT

Date of Decision : 18-01-1962

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1962) 64 BOMLR 437

Hon'ble Judges : Kotval, J;Abhyankar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Abhyankar, J.—This petition under Article 227 of the Constitution is filed by Lalji son of Harbaji. He claims to be a tenant of S. No. 18/2 of mauza Wardhapur in Arvi tahsil of Wardha district. Respondent No. 4 Bapurao is the tenure holder of that field. The "petitioner"s case was that he cultivated the land as a Lessee in the year 1958-59. He was, therefore, recorded as a tenant in the Record of Rights prepared u/s 8(1) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958, Respondent No. 4, the landlord, being aggrieved by this entry made an application to the Tahsildar u/s 8(3) of the new Tenancy Act for the correction of the entry. The contention of respondent No. 4 was that the petitioner was not a tenant and that he cultivated the land in 1958-59 not as tenant but in partnership with him. The agreement was that each of them should provide a pair of bullocks. In addition respondent No. 4 kept a servant of his own for agricultural operations and incurred expenditure. The produce was to be divided, after paying 3/5th share on account of ownership of the land, half and half in respect of the remaining 2/5th. On the other hand, the petitioner"s case was that he had taken the field on lease on Panchayat during 1958-59 and that the petitioner was to give 3/5th of the produce to respondent No. 4 and the petitioner was to retain 2/5th of the remaining share. All the expenditure, according to the petitioner, was to be incurred by him. He,

therefore, claimed the status of a tenant. The Tahsildar who heard the evidence came to the conclusion that the petitioner had failed to prove that he had entered into a contract of lease and upheld the contention of respondent No. 4 that both petitioner and respondent No. 4 had cultivated the land in partnership of which terms were- as alleged by respondent No. 4.

2. The petitioner challenged the order in appeal before the Deputy Collector. The Deputy Collector after considering the respective contentions affirmed the finding of the Tahsildar that the petitioner was a partner in cultivation and that in that capacity he cultivated the land along with respondent No. 4. He, therefore, dismissed the appeal.

3. The matter was taken in revision by the petitioner" before the Revenue Tribunal. The Tribunal stated in para. 2 of its order that the question whether the cultivation of the land was carried on on the basis of part nor ship or as a, lessee was a pure question of fact and the concurrent findings of the two authorities below were not open to challenge on any ground permissible in law. The Tribunal affirmed the finding of the Courts below that the land was cultivated in partnership and not as lessee. The petitioner took an alternative submission before this Tribunal based on the contention that he must be deemed to be a tenant u/s 6 of the new Tenancy Act because he was the person lawfully cultivating the land belonging to another person and that the land was not cultivated personally by the owner. This contention was also negated by the Tribunal because the Tribunal held that it was clear from the record that respondent No. 4 had engaged a servant, that he contributed a pair of bullocks for the purpose of cultivation and that he had occasionally visited the land and supervised the work which was carried on by his servant under his directions. According to the Tribunal it was not necessary for the owner in order that he should be held to cultivate personally that he should go day to day in the field for the purpose of supervision. The revision was, therefore, rejected.

4. In support of this petition, it is contended that the authorities below have not strictly constructed the provisions of Section 6 of the new Tenancy Act and according to the petitioner, respondent No. 4 cannot be held to be cultivating the land personally by strict interpretation of the phrase "to cultivate personally" as given in Section 2(12) of the new Tenancy Act. Now, under the definition "to cultivate personally" means to cultivate on one's own account (i) by one's own labour, or (ii) by the labour of any member of one's family, or (iii) under the personal supervision of ones-elf or of any member of one's family by hired labour or by servants on wages payable in, cash or kind but not in crop share.

5. According to the petitioner, what respondent No. 4 did was merely to provide a pair of bullocks and services of a servant. Even 011 the finding recorded by the Courts below it cannot be said, according- to the petitioner, that respondent No. 4 did personal supervision. Now, it has been found by the Courts below and also by the Tribunal in para. 3 of its order that it was enough if respondent No. 4 visited the land and his servant worked under his directions and supervision. It is

not disputed that the contention that a pair of bullocks was lent by respondent No. 4 or the services of the servant were lent, as at one time suggested by the petitioner, is not correct. It is respondent No. 4 who had control and dominion over the work of agricultural operations done by his servant. We, therefore, fail to see why it cannot be said that respondent No. 4 did personal supervision by himself and thus cultivated the land personally. He had also employed a servant who was acting under the control and directions of the master i.e. respondent No. 4 and that would also constitute the act of personal cultivation as defined in the Act.

6. The petitioner wants the fictional definition of tenant as given in Sub-section (1) of Section 6 to be construed strictly. We do not see why such strict construction should be put in the absence of any indication to that effect. On a reasonable construction of the fictional definition of tenant given in Sub-section (1) of Section 6 it would appear that the petitioner who was no doubt cultivating the land must establish two facts, (i) that he was lawfully cultivating and (ii) that the land which he was cultivating" was not cultivated personally by the owner. Now, so far as the first condition that has to be satisfied by the petitioner is concerned, the petitioner had to establish what right he had to go on the land and do the agriculture operations which is the meaning attributed to the word "cultivate". A person would not have the right to go to the land of another to do any agricultural operation or "cultivate" unless such person has established the right to do this thing. Now, according to the petitioner, he claimed this right as a lessee under the contract of lease. On the other hand, according to respondent No. 4, the petitioner had the right to cultivate his land because he was taken as a partner in cultivation. On the rival contentions as to the source of the right of the petitioner to go on the land, three authorities below have found that there was no lease and the right of the petitioner to go on the land was only as partner in cultivation. Therefore, even though the petitioner was cultivating lawfully in the sense that he had the right to go on the land that right accrued because he was held to be a partner in cultivation. But the other condition that has to be satisfied by the petitioner is that such land is not cultivated personally by the owner. Now, here the contention of the petitioner is that if such land is jointly cultivated by the owner along with the partner it could not be said that the land is still cultivated personally by the owner. According to the petitioner, unless the land is exclusively cultivated personally by the owner there cannot be any impediment to his being considered a fictional tenant u/s 6. In our opinion, this construction put on the phrase "such land is not cultivated personally by the owner" in Sub-section (1) of Section 6 "of the Act is not well-founded. There is no doubt in our mind that respondent No. 4, when he took the petitioner as a partner in cultivation for the relevant year and cultivated the land personally within the meaning of Section 2(72) of the Act, was not required exclusively to cultivate the land. If he were to do so, there is no question of any other person acquiring that right. On the other hand, if the petitioner were to exclusively cultivate the land, there is no question of the owner cultivating the land either. Therefore, it is

precisely in these circumstances, where two persons have the right to cultivate the land that the question would arise whether the owner is cultivating the land and at the same time some other person is also lawfully cultivating the land. One person can have the right to cultivate the land either because he is a lessee or because he is the owner or partner in cultivation or has some other legal right which gives him that right. In this case, the fact that the petitioner is established to have entered into partnership for the cultivation of the land has been fully proved. According to the petitioner, on proper interpretation of the new Tenancy Act, there is no scope for the contention that a partner in cultivation is not a tenant or a lessee within the meaning of Section 6. We fail to see that there is any such exclusion. The very definition in Sub-section (1) which creates a deemed tenant itself postulates that the owner must not be on the land cultivating personally. If in given circumstances like the contract of partnership for cultivation the owner is entitled to be on the land and do the cultivation personally, in those circumstances a partner cannot claim the status of a deemed tenant u/s 6.

7. In our opinion, therefore, the findings of the Courts below are not vitiated by any error either of law or jurisdiction. No other point was argued. The result is that the petition fails and is dismissed with costs.