
(1983) 10 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 1592 of 1979

Laxman Govindrao and others

APPELLANT

Vs

Bapurao Punyaji

RESPONDENT

Date of Decision : 20-10-1983

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 36, 39

Citation : (1984) MhLj 435

Hon'ble Judges : H.W. Dhabe, J

Bench : Single Bench

Advocate : N.S. Kherdekar, for the Appellant; V.D. Chahande and D.N. Karkare, for the Respondent

Final Decision : Dismissed

Judgement

H.W. Dhabe, J.—This is a writ petition arising out of the proceedings under the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958.

2. The dispute is about Tenancy in respect of field survey No. 85 admeasuring 16.40 acres of village Yeranwadi, Tahsil Hinganghat, District Wardha. One Govinda was the original landlord of the aforesaid field. He leased out the same to the respondent who admittedly was the tenant at the time of commencement of the Tenancy Act. The original Landlord filed an application u/s 39 read with section 36 of the Tenancy Act for resumption of the suit held. The said case was registered as Rev. Case No. 63/59(10-G)/61-62 of Yeranwadi. The said application of the original petitioner for resumption of the suit field was allowed by the Tenancy Tahsildar by his order dated 12-10-1962. No appeal or revision was filed against the said order and the said order, therefore, became final and binding between the parties.

3. Although the order of the Tenancy Tahsildar was delivered on 12-10-1962 the original landlord Govinda could not take any steps for executing the said order or for taking possession in pursuance of the said order for a long time. In the

meanwhile he died some time in 1965. The petitioners who are the legal representatives of the landlord Govinda filed an application u/s 106 (2) of the Tenancy Act for executing the order dated 12101962 in the aforesaid Revenue Case. The application was filed on 21-1-1965 and was registered as Rev. Case No. 28/59-A/64-65. The Tenancy Tahsildar allowed the said application by his order dated 21-8-1967. An appeal filed against the aforesaid order of the Tenancy Tahsildar dated 21-8-1967 registered as Revenue Appeal No. S/59-A/69-70 was dismissed by the Appellate Court by its order dated 29-11-1969. A revision registered as Revision Application No. 10-A-232/70 before the Maharashtra Revenue Tribunal was also dismissed on 19-11-1971. It is, however, pertinent to note at this stage that besides dismissing the revision on merits the M.R.T. also held that the revision is not maintainable. The petitioners are placed in possession of the suit field on 29-4-1972.

4. At this stage it is necessary to notice another set of proceedings which are material for the purposes of this petition. The Additional Tahsildar and Agricultural Lands Tribunal started suo mom proceedings under sections 46, 49-A and 48 of the Tenancy Act for transferring the ownership of the said field in a case registered as Rev. Case No. 1002/59(13)/63-64 of village Yeranwadi. The Additional Tahsildar and Agricultural Lands Tribunal held in these proceedings that the respondent was not a tenant. He, therefore, dropped the proceedings. An appeal was preferred to the Sub-Divisional Officer against the aforesaid order of the Additional Tahsildar and the Agricultural Lands Tribunal. The respondent tenant for the first time raised the plea of fresh lease before the Sub-Divisional Officer after the resumption of suit field was allowed by the Tenancy Tahsildar in the proceedings in Revenue Case No. 63/59(10-G)/61-62 of the village Yeranwadi. The sub-Divisional Officer remanded the proceedings to the trial Court for an enquiry into this question of fresh lease. After remand the trial Court again held that the respondent is not a tenant and dropped the proceedings by the order dated 29-9-1973. The Sub-Divisional Officer in appeal confirmed the said order by his order dated 31-3-1975. A revision was preferred to the Maharashtra Revenue Tribunal in which the learned Member of the Maharashtra Revenue Tribunal by his order dated 19-1-1979 held that both the tenancy Courts below did not give any finding on the question of fresh leave although the Sub-Divisional Officer in his original order dated 30-3-1966 had remanded the case for decision on the question of fresh lease. The M.R.T., therefore, remanded the case to the trial Court for enquiry and decision on the question of fresh case as alleged by the tenant. It is this order of the M.R.T. which is impugned in this petition.

5. The learned counsel for the petitioners has urged before me that it was not necessary for the M.R.T. to remand the case for decision on the question of fresh lease because the said question is concluded by its order dated 19-11-1971 passed in the execution proceedings referred to above. According to him the said finding of the M.R.T. in the execution proceedings would be binding upon the parties and would operate as res judicata in the proceedings for transfer of

ownership under sections 46, 49-A and 48 of the Tenancy Act. As regards the finding of the M.R.T. in its aforesaid order dated 19-11-1971 the M.R.T. itself has held that the revision is not maintainable against the order passed u/s 106 of the Tenancy Act. The M.R.T., therefore, had no jurisdiction to give any finding on merits and the finding given by it on the question of fresh lease would not operate as res judicata because it is without jurisdiction.

6. The learned counsel for the petitioner has further urged that even the trial Court and the Sub-Divisional Officer in appeal have also rendered the findings that the tenant has failed to prove the fresh lease after the order of resumption of suit field. However, the learned counsel has not placed before me the orders of the trial Court and the Sub-Divisional Officer in the execution proceedings so as to determine whether they have rendered the findings on this issue of fresh lease. As regards the finding of the Sub-Divisional Officer in appeal on the question of fresh lease, the said finding if rendered, would be without jurisdiction and hence not res judicata because no appeal lies against the order of Tenancy Naib Tahsildar passed u/s 106(2) of the Tenancy Act. I have already taken a view in Writ Petition No. 1666 of 1977 decided on 14-10-1983 (Digambar v. Vishnu and another) that an appeal does not lie against the order of the Tenancy Tahsildar u/s 106 (2) of the Tenancy Act.

7. The provisions of section 106 (3) are relied upon to show that there is an appeal provided against the order of Tenancy Tahsildar u/s 106(2). It is not in dispute that under the scheme of the Tenancy Act appeals are provided u/s 107 of the said Act. In section 107 or anywhere else in the Tenancy Act no appeal is expressly provided against the order u/s 106 (2) of the said Act. A reading of section 106 (3) without doing any harm to the language used therein shows that the order u/s 106 (3) is final subject to appeal (if any). In the first place section 106 (3) is dealing with the question of finality to the order. It is not a provision made to provide for any appeal. This is clear from the use of expression, "if any" after the word "appeal", which itself shows that the appeal has to be provided elsewhere than under sub-section (3) of section 106. The learned counsel for the petitioners urged that, "if any" means "if any filed". The expression "if any" can only mean "if any provided under the Act" and not "if any filed". Even assuming that "if any" means "if any filed", it still cannot mean that section 106 (3) itself is providing for an appeal against the order u/s 106 (2). The expression "if any filed" presupposes the existence of the provision for an appeal but a provision for appeal cannot be read by mere implication but must be specifically provided for. In the absence of an express provision in the Tenancy Act, providing for an appeal against the order u/s 106 (2) of the said Act, I am of the view that no appeal is provided against the order u/s 106 (2) of the Tenancy Act. The finding, if any, rendered by the Sub-Divisional Officer on the question of a fresh lease is thus without jurisdiction because an appeal itself was not maintainable against the original order u/s 106 (2) of the Tenancy Act.

8. The only question then remains is whether the trial Court has rendered a

finding on this issue of fresh lease. If such a finding is rendered the other question would be whether the trial Court had jurisdiction to go into this question in its limited jurisdiction for an executing Court u/s 106(2) of the Tenancy Act. Since the decision of the Trial Court itself is not available on record, I am keeping this question open for the petitioners to urge before the tenancy authorities.

9. In the view I am taking I do not find anything wrong with the impugned order of the M.R.T. remanding the case to the Tenancy Tahsildar and Agricultural Lands Tribunal for a decision on the issue of a fresh lease raised in this case.

10. In the result the writ petition is dismissed with the slight modification that the Additional Tahsildar and the Agricultural Lands Tribunal will also consider whether there is a finding rendered by the Additional Tahsildar in execution proceedings on the question of fresh lease and if rendered whether it is with or without jurisdiction and can operate as res judicata in these proceedings. No order as to costs.