

(1988) 01 BOM CK 0037

In the Bombay High Court

Case No : Spl. Civil Application No. 1318 of 1979 and Writ Petition No's. 1282 of 1983 and 5175 of 1984

Laxmanrao Anantrao Stardekar and etc.

APPELLANT

Vs

Satyappa Pawar and etc.

RESPONDENT

Date of Decision : 25-01-1988

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 20
Bombay Tenancy and Agricultural Lands (Vidarbha Region) Rules, 1959 — Rule 11
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 15, 15(1), 29(2), 32G
Bombay Tenancy and Agricultural Lands Rules, 1956 — Rule 2A, 9

Citation : AIR 1988 Bom 244 : (1988) 2 BomCR 259 : (1988) 90 BOMLR 176 : (1988) MhLj 359

Hon'ble Judges : Sawant, J;Kolse-Patil, J;Guttal, J

Bench : Full Bench

Advocate : V.M. Limaye, N.D. Hombalkar, A.V. Bandivadekar, S.K. Shinde, Sulbha Dhonde and A.Y. Sakhare, for the Appellant; N.G. Patil, for Bhimrao N. Naik, for the Respondent

Judgement

Sawant, J.—The question of law, which has been referred to us for decision, arises u/s 15 of the Bombay Tenancy and Agricultural Lands Act, 1948 thereafter called "the Act") read with Rule 9 of the Bombay Tenancy and Agricultural Lands Rules, 1956 (hereinafter called "the Rules"). The question is whether the surrender of his tenancy by the tenant becomes effective from the date of endorsement of the surrender by the Mamlatdar or from the date of verification by him of the surrender or from the date of the tenant's application for surrender of his tenancy.

2. The few facts, necessary to appreciate the point, are as follows : --

The landlord filed an application before the Mamlatdar on 27th March 1957 for possession of the land u/s 29(2) of the Act., The application was accompanied by a deed of surrender of his tenancy by the tenant, which was dated 5th March 1957. On 27th August 1957, the Mamlatdar recorded the first statement of the

tenant u/s 15 of the Act, read with Rule 9 of the said Rules to the effect that the tenant desired to surrender his tenancy. His further statement to the same effect was recorded on 24th September 1957, and the verification of the tenant's desire to surrender the tenancy was made by him on October 22, 1957. On the same day, an order accepting or endorsing the surrender was also made and the tenant was directed to hand over possession of the land to the landlord. Pursuant to this order, on 30th January 1958, the possession of the land was handed over to the landlord.

Thereafter in January 1974, the tenant got a pencil entry made in his favour as a tenant in respect of the land, and on January 26, 1974, statutory price in the proceedings, already commenced u/s 32G, was fixed. The tenant, thereafter, started obstructing possession of the land. Hence, the landlord filed a Civil Suit for permanent injunction restraining the tenant from obstructing his possession. The trial Court, in the beginning, granted ex parte ad interim injunction which was vacated later on. Against the order vacating the injunction, the landlord preferred an appeal to the District Court, which was allowed. The tenant's Revision against the appellate order was dismissed by this Court.

In the meanwhile, the landlord had also preferred appeal against the order fixing statutory price in the proceedings u/s 32G of the Act. The Appeal was allowed by the District Deputy Collector; Against the appellate order, the tenant preferred a revision before the Maharashtra Revenue Tribunal, which was allowed. Against the decision of the Revenue Tribunal, the landlord has filed the present Writ Petition and it is in this petition that the above question was framed by a learned single Judge and referred to the Division Bench. The Division Bench in its turn has forwarded the question for decision to the Full Bench.

3. The relevant provisions of Section 15(1) read thus : --

15(1) "A tenant may terminate the tenancy in respect of any land at any time by surrendering his interest therein in favour of the landlord :

Provided that such surrender shall be in writing and verified before the Mamlatdar in the prescribed manner."

Rule 9 of the Rules lays down the manner in which the verification of the surrender of the tenancy has to be made by the Mamlatdar u/s 15 and the Rule reads as follows: --

Rule 9 :-- Manner of verifying surrender of tenancy :--

"The Mamlatdar, when verifying the surrender of a tenancy by a tenant in favour of the landlord u/s 15 shall satisfy himself, after such enquiry as he thinks fit, that the tenant understands, the nature and consequences of the surrender and also that it is voluntary, and shall endorse his findings in that behalf upon the instrument of surrender."

4. In the Tenancy Act of 1939, which was the predecessor Act of the present

enactment, the relevant provisions with regard to the surrender of his tenancy by the tenant were contained in section 5, and they read as follows: --

Section 5(1) "No tenancy of any land shall be for a period of less than ten years."

(2) Notwithstanding any agreement, usage or law to the contrary, no tenancy shall be terminated before the expiry of a period of ten years, except on the grounds mentioned in section 14;

Provided that any tenancy may be terminated by a tenant before the expiry of a period of ten years by surrendering his interest as a tenant in favour of the landlord."

There was no provision for verification by the Mamlatdar of the surrender of the tenancy. This led to much abuse of the provision by the landlords and the tenants, who were mostly illiterate and ignorant, were duped and defrauded of their lands either by misrepresentation, coercion or falsification. When, therefore, the present Act was placed on the statute book, the relevant provisions regarding surrender of the tenancy contained in Section 5(3)(b) of the Act provided safeguards, and they read as follows : --

"A tenant may terminate the tenancy at any time by surrendering his interest as a tenant in favour of landlord. Provided that such surrender shall be in writing and shall be verified before the Mamlatdar in the manner prescribed."

The manner of verification of the surrender was laid down by Rule 2A of the then Rules made under the Act, which Rule read as follows : --

"The Mamlatdar, when verifying a surrender of a tenancy by a tenant in favour of the landlord under Clause(b) of Sub-section (3) of Section 5, shall satisfy himself after such enquiry, as he thinks fit, that the tenant understands the nature and consequences of the surrender and also that it is voluntary and shall endorse his findings in that behalf upon the document of surrender."

The present provisions in Section 15(1) were inserted by the Amending Act No. XIII of 1956. Rule 9 of the Rules made under the Amended Act came into force thereafter. The language of the present Section 15 (1) and of Rule 9 is *pari materia* with earlier Section 5(3)(b) and Rule 2A.

5. Section 5(3)(b) of the unamended Act and Rule 2 A of the old Rules had come up for consideration before the Supreme Court in a decision reported in the case of Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, . We can do no better than quote what the Supreme Court had to observe in that behalf : --

".....It will be seen from a combined reading of these provisions that a surrender of tenancy by a tenant in order to be valid and effective, must fulfil these requirements : (1) It must be in writing; (2) It must be verified before the Mamlatdar. (3) While making, such verification, the Mamlatdar must satisfy himself in regard to two things, namely (a) that the tenant understands the

nature and consequences of the surrender, and (b) that it is voluntary. (4) The Mamlatdar must endorse his findings as to such satisfaction upon the document of surrender...

... Thus, the first point to be considered is whether the requirements of these provisions are mandatory or directory. "No universal rule", said Lord Campbell, *Liverpool Borough Bank v. Turner* (1861)30 LJ Ch 379 ; *Craies on Statute Law*, 7th Edn. p. 262, "can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope." Such intention of the legislature is, therefore, to be ascertained upon a review of the language, subject-matter and importance of the provision in relation to the general object intended to be secured, the mischief, if any, to be prevented and the remedy to be promoted by the Act...

... In its unguarded form, the provision was inadequate and vulnerable. It was susceptible to abuse. Under its cloak scheming landlords could squeeze out tenants, or induce them by questionable means to leave the protective umbrella of the Act. The Bombay (Amendment) Act 33 of 1952, which came into force on 12-1-1953, recast this provision and hedged round the surrender with effective safeguards. It substituted Sub-section (3)(b) -- as reproduced by us earlier in this judgment -- for the old Proviso in Section 5.

. . . The language of Section 5(3)(b) and Rule 2-A is absolute, explicit and peremptory. The words "Provided that" read with the words "shall be", repeatedly used in Section 5(3)(b), make the termination of tenancy by surrender entirely subject to the imperative conditions laid down in the Proviso. This Proviso throws a benevolent ring of protection, around tenants. It is designed to protect a tenant on two fronts against two types of dangers -- one against possible coercion, undue influence and trickery proceeding from the landlord and the other against the tenant's own ignorance, improvidence and attitude of helpless self-resignation stemming from his weaker position in the tenant-landlord relationship. .

. . . Thus, the imperative language, the beneficent purpose and importance of these provisions for efficacious implementation of the general scheme of the Act all unerringly lead to the conclusion that they were intended to be mandatory. Neglect of any of these statutory requisites would be fatal. Disobedience of even one of these mandates would render the surrender invalid and ineffectual...

. . . Having seen the requirements of Section 5(3)(b) and Rule 2-A are obligatory, and not directory, it remains to be considered whether these imperatives have been substantially complied with in the manner prescribed and if not, what is the consequence of non-compliance?

. . . Verification of the surrender implies that the authority was satisfied as to the statutory requirement after due enquiry. Such satisfaction of the authority was

the essence of the whole thing. In other words, this requirement as to the recording of its satisfaction by the authority in the manner prescribed by the Rule, was the substance of the matter and not an empty formality. In the absence of the requisite endorsement, therefore, it cannot be said that there has been even a substantial compliance with the statutory requirement..."

6. The Supreme Court has also referred with approval to the decision in *Taylor v. Taylor* (1875) 1 Ch D 426, where Jessel M.R. had observed that where power is given to do certain thing in a certain way, the thing must be done in that way or not at all, and that other methods of performance are necessarily forbidden. Referring to this Rule, the Court observed that this Rule will be attracted with full force in the present case, because, non-verification of the surrender in the requisite manner would frustrate the very purpose of the provisions. The intention of the Legislature to prohibit verification of the surrender in a manner other than the one prescribed is implied in the provisions. The failure to comply with these mandatory provisions, therefore, vitiates the surrender and renders it non est.

7. Since the language of Section 5(3)(b), as well as of Rule 2A, which fell for consideration before the Supreme Court, is *pari materia* with the present Section 15(1) and Rule 9, the above observations of the Supreme Court will apply with equal vigour to the surrender of tenancy under the present provisions.

8. In . view of the provisions of Section 15(1) and Rule 9 and in the light of the decision of the Supreme Court, the position of law which emerges is that till the surrender is verified by the Mamlatdar in the manner laid down by the provisions, there is no surrender in the eye of law. Any act done prior to verification of the surrender does not amount to surrender. The surrender starts taking effect only from the date it is verified and not from any time there before. That being the case, there is no question of surrender of tenancy taking effect from any date prior to the date of its verification by the Mamlatdar.

9. The next question that arises is whether the surrender can be said to have effect only from the date the Mamlatdar endorses his finding that it is voluntary. The language of Section 15(1) and of Rule 9 requires that, ordinarily, the Mamlatdar should endorse his finding that the surrender is voluntary at the time of verification of the surrender itself. Cases may, however, arise where the Mamlatdar, for one reason or the other, defers his endorsement or is impelled to do so by exigencies of circumstances. When he rejects the surrender as involuntary and the order of rejection is passed at a date later than that of verification, nothing of consequence will follow from whether it is related back to the date of verification or not. However, when he endorses the surrender as voluntary at a date later than the date of verification, the question referred to us, does and will arise, viz. whether the surrender should be effective from the date of his endorsement or from the date of verification. According to us, what is material for the purpose of Section 15 and Rule 9 is the verification by the Mamlatdar of the tenant's willingness to surrender. The findings which he

records are pursuant to such verification. The nature of surrender viz. whether it is voluntary or involuntary, does not change with the date of endorsement. When the endorsement of the surrender is deferred for one reason or the other, all that happens is that the ministerial act of recording his findings is put off by the Mamlatdar. That act of the Mamlatdar does not either add to or detract from the character of the surrender. The endorsement merely records the nature of surrender which has already been effected. In the circumstances, there should be no difficulty in holding that although an endorsement of the surrender is of later date, it should relate back to the date of its verification.

10. None, of the decisions, to which our attention was invited, have taken a view contrary to the view which we are taking. On the other hand, the decision of the Division Bench, consisting of Mudholkar and Patel, JJ. in Special Civil Applications Nos. 3262 of 1958 and 369 of 1958, decided on 6th February 1959, and two decisions of two learned single Judges, one of Vaidya, J. in Special Civil Application No. 1458 of 1960, decided on 17th August 1972 and of Justice Rege in Special Civil Applications Nos. 1739 of 1971 and 2330 of 1973, decided on 13th March 1975, support the view which we are taking here. It also appears that the learned single Judge, Justice Mohta, while considering similar provisions contained in Section 20 of the Bombay Tenancy and Agricultural Lands (Vidharbha Region) Act, 1958 and Rule 11 of the Bombay Tenancy and Agricultural Lands (Vidharbha Region) Rules, 1958 made there under, has taken a similar view. Hence, our answers to the questions referred to us are as follows : --

The surrender of tenancy will be effective only from the date of its verification by the Mamlatdar u/s 15(1) of the Act read with Rule 9 of the Rules. The surrender will be effective from that date, notwithstanding that the endorsement on it is made at a later date. The endorsement will relate back to the date of surrender. The surrender will, however, not be effective from any date prior to the date of its verification.

In view of our answer as above to the questions referred to us, all the petitions will go back to the learned single Judge for decision on merits.