
(2002) 10 BOM CK 0058

In the Bombay High Court

Case No : Writ Petition No. 3319 of 1991

Makbul Rasul alias Babalal

APPELLANT

Vs

Dastagir Dada Jamdar

RESPONDENT

Date of Decision : 05-10-2002

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 4, 4(1)

Citation : (2003) 1 ALLMR 193 : (2003) 2 BomCR 595 : (2003) 1 MhLj 353

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : N.J. Patil, for the Appellant; S.V. Sadavarte, for the Respondent

Judgement

S.A. Bobde, J.—This petition is directed against the judgment and order of the Maharashtra Revenue Tribunal dated 29th November 1990 holding that the petitioner is not tenant of the respondent but was supervising the land on behalf of the respondent. The petitioner Maqbool Jamdar's name was entered as a tenant of the lands in question i.e. land bearing survey No. 29/3 admeasuring 1 Acre 4 Gunthas land and survey No. 30/3 admeasuring 4 Gunthas situated at Mangaon Taluka Hatkangale. The proceedings u/s 32 were started which ended in declaring the purchase ineffective. Thereafter, the proceedings u/s 32G of the Act were started and possession of the land was awarded to the landlady. The petitioner being aggrieved by the order u/s 32G of the Act, preferred an appeal against both the orders and the appeals came to be dismissed. The petitioner preferred revision before the Maharashtra Revenue Tribunal. The Tribunal on 27th April 1979 set aside the orders of both the Courts below and remanded the matter back for fresh enquiry u/s 32. While remanding the matter, the Tribunal permitted the landlady to challenge the petitioner's tenancy before the trial Court. The landlady challenged the order by way of writ petition before this Court. That writ petition was withdrawn since the Tribunal had given liberty to the landlady i.e. Madinabai to challenge the petitioner's tenancy.

2. Thereafter, fresh notices were issued to both the parties by the Additional

Tahsildar and A.L.T. Hatkangale. On perusal of entire evidence, the learned Additional Tahsildar came to the conclusion that the petitioner is not a tenant. The Tahsildar found that the petitioner has not produced any lease deed and rent receipts. He infact failed to produce land revenue receipts which he should have if he was a person primarily responsible for payment of the land revenue. The Tahsildar did not give weight to the revenue entries which showed the petitioner's name as an ordinary tenant. Moreover, Tahsildar relied on the contradictory statement made by the petitioner that he has not claimed tenancy and that he has no lease deed or oral agreement in that regard with the landlady. There are no rent receipts. However, he pays Rs. 100/- to the landlady as agreed. However, he has no receipts of that also.

3. In fact, the Tahsildar gave weight to the fact that the deceased landlord Dastagir had made a statement which was recorded on 15th December 1961 where he had stated that since he was in Government service during the period of his service he had asked his cousin brother Maqbul, the petitioner, to look after the suit lands. The petitioner had not denied his relationship with the deceased Dastgir. Therefore, the A.L.T. came to the conclusion that the petitioner took undue advantage of the opportunity and arranged to get his name entered in 7 x 12 extracts of the suit lands as a tenant. While considering the arguments made by the petitioner that he had at one stage, agreed to purchase the lands in question, the Additional Tahsildar perused the agreement to sell and found that the recitals go against the petitioner because throughout in the recitals, there is no mention that the petitioner is already a tenant of the lands in question. The Tahsildar, therefore, held that there is no relationship of landlord and tenant and proceedings u/s 32P of the Act should be started.

4. The petitioner carried the matter in appeal to the Sub-Divisional Officer who by his order dated 14-10-1988 held that since the petitioner's name was entered in the record of rights, he was a tenant. It seems that Sub-Divisional Officer merely accepted the petitioner's arguments that how the respondent is not in a position to explain how the petitioner entered into the land he must be taken to be a tenant. Moreover, the learned Sub-Divisional Officer took the view that the mere mention of the term "tenant" and initiation of suo motu proceedings u/s 32G of the Act, was sufficient to hold that the petitioner was a tenant. Relating to the earlier order of the Maharashtra Revenue Tribunal permitting the Tahsildar to initiate proceedings u/s 32G, the Sub-Divisional Officer took the view that merely because such an order was made, the petitioner must be held to be a tenant. The Sub-Divisional Officer seems to have ignored the fact that the Maharashtra Revenue Tribunal granted permission to the respondent to challenge the petitioner's status as a tenant in the proceedings u/s 32G. In fact, the respondent who had challenged the order of remand before the Sub-Divisional Officer, had withdrawn the writ petition before this Court. There is no dispute before me as to the last mentioned fact. The Sub-Divisional Officer held that the petitioner is a tenant.

5. The respondent carried the matter in revision before the Maharashtra Revenue Tribunal which considered the legality and propriety of the order of the Sub-Divisional Officer. The Revenue Tribunal observed that after 1959-60 the revenue record shows that lands have been cultivated by the landlord himself i.e. respondent. The main question that appears to have been argued before the Maharashtra Revenue Tribunal is whether, the petitioner can be taken to be a deemed tenant in view of Section 4 of the Tenancy Act. That section reads as follows:

"4. (1) A person cultivating any land belonging to another persons shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not-

(a) a member of the owner's family, or

(b) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family, or

(c) a mortgagee in possession.

Explanation.--"(1) A person shall not be deemed to be a tenant under this section if such person has been on an application made by the owner of the land as provided u/s 2-A of the Bombay Tenancy Act, 1939, declared by a competent authority not to be a tenant." "Explanation II--Where any land is cultivated by a widow or a minor or a person who is subject to physical or mental disability or a serving member of the armed forces through a tenant then notwithstanding anything contained in Explanation I to Clause (6) of Section 2, such tenant shall be deemed to be a tenant within the meaning of this section."

(2) Notwithstanding anything contained in Sub-section (1), where any land in the Ratnagiri and Sindhudurg districts is being cultivated by a person (other than the person who, according to the Records of Rights, has right to cultivate), for not less than 12 years, such person shall be deemed to be a tenant for the purposes of this section if there is circumstantial evidence that he has been uninterruptedly cultivating the land personally, and the Sarpanch, Police Patil the cultivator of the adjoining land and any other respectable person from the village state on affidavit that, the said land is in the possession of, and is being cultivated by, such person, uninterruptedly for not less than 12 years, accompanied by a resolution to that effect passed by the Village Panchayat in whose jurisdiction the land is situated.

Explanation I.--For the purpose of this sub-section, the expression "land" includes the "warkas land."

Explanation II--For the purpose of this sub-section, the expression "circumstantial evidence" includes extract of voters list, ration card, electricity bill or house assessment receipt from the same village or any receipt in respect of sales of agricultural producer or any document regarding permission of felling of

trees or excavation of minor mineral or any such permission granted with respect to such land.

(3) Notwithstanding anything contained in Sub-clause (a) of Clause (ii) of Sub-section (1) of Section 32H, the purchase price in such cases shall be 200 times the assessment".

6. The Maharashtra Revenue Tribunal took the view that the petitioner is not entitled to be treated as a deemed tenant in view of the fact that he was member of the respondent's family since he has himself admitted the relationship viz. that of cousin brother. The Tribunal took the view that a cousin brother is a member of the family and if landlord requests a cousin brother to cultivate his lands, it amounts to personal cultivation of the landlord. The Revenue Tribunal took note of the fact that the deceased landlord Dastgir was in Government service and from the evidence on record, the petitioner admittedly is cousin brother of the respondent, therefore, it was being held that the lands were being cultivated by the deceased Dastgir personally through cousin brother. In the result, the Revenue Tribunal took the view that the petitioner was not holding the land as a deemed tenant but merely supervising the land on behalf of the landlord. The Tribunal therefore, dismissed the petition.

7. Mr. Patil the learned counsel for the petitioner submitted that u/s 4 of the Tenancy Act, the petitioner who was cousin brother, cannot be taken to be a member of the respondent's family and therefore, he should be considered as a deemed tenant u/s 4 of the Act.

8. On a plain reading of Section 4, it is clear that the question of considering whether the person who claims to be a tenant is or is not a member of owner's family, arises if the land is found not to be cultivated personally by the owner. In the present case, the Maharashtra Revenue Tribunal has found that the lands were indeed cultivated personally by the respondent and since he was in Government service he was cultivating the land by requesting the petitioner, who was admittedly his cousin brother, to supervise the same. Therefore, since the first condition provided in Section 4 for declaring a person to be a deemed tenant is itself not satisfied in the present case, it would really not be necessary to see that if the person claiming to be a tenant, is a member of owner's family or not. Moreover, even if we take that into account, it would be difficult to hold that the petitioner is not a member of the owner's family. The word "family" has not been defined in the Act. Mr. Patil learned counsel for the petitioner submitted that amongst Mohammedans, there is no concept of joint family in the sense that expression used in the Hindu Law. He relied on Section 57 of Mulla's Principles of Mohammedan Law, which reads as under :

"57. Joint family and joint family business.--(1) When the members of a Mohammedan family live in commensality, they do not form a joint family in the sense in which that expression is used in the Hindu Law (z). Further, in the Mohammedan law, there is not, as in the Hindu Law, any presumption that the

acquisitions of the several members of a family living and messing together are for the benefit of the family (a). But if during the continuance of the family properties are acquired in the name of the managing member of the family, and it is proved that they are possessed by all the members jointly, the presumption is that they are the properties of the family, and not the separate properties of the member in whose name they stand (b),

(2) If after the death of a Mohammedan his adult sons continue their father's business, and retain his assets in the business, they will be deemed to stand in fiduciary relation to the other heirs of the deceased, and liable to account as such for the profit made by them in the business (c). If after the death of the sons the business is continued by their sons or by other heirs, they also will be liable to account on the same footing (d).

(3) Members of a Mohammedan family carrying on business jointly do not constitute a joint family firm in the sense in which that expression is used in the Hindu law so as to attract the legal incidents of such a firm (e). Sons assisting a father in business are presumably his agents and not his partners unless an agreement of partnership is proved (f). A minor may be entitled to a benefit in the business, but this will not make him liable on a mortgage executed by him along with his adult brothers in the course of the business carried on by the latter. The managers of such a business in a Mohammadan family have no right to impose any liability on the minor members of the family (g)".

It is not possible for me to infer from the aforesaid section that a cousin brother cannot be considered as part of the family.

9. In this connection, Mr. Sadavarte the learned counsel for the respondent relied upon the judgment of this Court in Nilavabai Sida Khajure v. Chanamalappa Bassappa Khajure and Ors. reported in 1977 Mh.L.J. 443 where this Court while considering the legislative scheme under the Hyderabad Tenancy and Agricultural Lands Act, which is in pari materia with the scheme of Bombay Tenancy and Agricultural Lands Act for the purposes of this case, came to the conclusion that family relations do not come to an end by partition or separation which merely severs the legal status of joint family, therefore, cultivation by such a person would amount to personal cultivation by the land holder. The learned Single Judge observed as follows:

"The mere fact, therefore, that the relations like the respondent, in the present case, who are related very closely to the petitioner, share the crop or have entered into a written agreement for sharing the crop, cannot be considered as members of the family, or sufficient to end their blood relations as provided in Section 5(a) of the Act. They can never be described as tenants. In the present case, there are no lease deeds. The Batai Patrak cannot by itself be considered as a lease deed, having regard to the blood relations and family relations between the petitioner and the respondents. Family relations do not come to an end for general purposes of blood relations by partition or separation which only

severs the legal status as a joint family".

The above decision follows a decision of the Supreme Court in S.N. Sundalaimuthu Chettiar Vs. Palaniyandavan, where the question whether the tenant was carrying on personal cultivation within the meaning of Clause (e) of the Madras Legislation was considered. Their Lordships made the following observations before remanding the matter back for fresh decision to the authorities below :

"Mr. S.C. Agarwal, appearing for the respondent, said that a son-in-law can be regarded as a member of the family because the word "family" is not to be construed in a narrow sense or meaning only a member of a Hindu joint family. He is quite right there because the Act applies to all tenants irrespective of the personal laws which govern them. In Webster's New Word Dictionary one of the meanings of family is ""a group of people related by blood or marriage, relatives". A person, can therefore, be properly regarded as being the member of his wife's family" and not merely of his father's family".

10. Mr. Patil the learned counsel for the petitioner submitted that the decision of the learned Single Judge in Khajure's case (supra) has been considered by the Division Bench of this Court in Gnyandeo Pirange Vs. Pandurang Jyoti Pirange, .

I find from the judgment that the decision was indeed considered but distinguished. In the case before the Division Bench, there was a lease executed by the landlord in favour of the family member and that was the point of distinction. As observed earlier, in the present case, there is no lease by the original landlord Dastgir in favour of the petitioner who, as has been found, was asked to supervise the cultivation of the lands in question because Dastgir was in Government service.

11. Moreover, in the present case, it is obvious that the Revenue Tribunal has found that lands were being cultivated by the deceased Dastgir himself through the supervision of the petitioner who was cousin brother. The Maharashtra Revenue Tribunal has rightly come to the conclusion that the petitioner has taken advantage of the fact that his cousin brother i.e. the original owner i.e. Dastgir was in Government service and taking advantage of the fact, got his name mutated in the entries.

12. In the result, there is no merit in the petition. However, the contention on behalf of the petitioner that if as a result of the dismissal of this petition, the order of the Tahsildar holding that there is no relationship of landlord and tenant is upheld, it would not be permissible to initiate proceedings u/s 32P of the Bombay Tenancy and Agricultural Lands Act is liable to be upheld. In the result, the impugned order is upheld subject, however to the modification that 32P proceedings cannot be initiated in view of the findings that there is no relationship of the landlord and tenant between the parties. This shall be without prejudice to the rights of the respondent to initiate such proceedings for recovery of possession of the lands in question as may be advised.