

(2010) 06 BOM CK 0070

In the Bombay High Court

Case No : Writ Petition No. 246 of 1993 and Civil Application No. 2784 of 2008
in Writ Petition 246 of 1993

Malhari Surnar (deceased through Legal heirs Haribai Malhari
Surnar and Others)

APPELLANT

Vs

Ranganath Amruta Kachave (died through legal heirs
Rajaram Kachave and Others) and The Deputy Collector, Land
Reforms

RESPONDENT

Date of Decision : 23-06-2010

Acts Referred:

Citation : (2011) 1 BomCR 795 : (2010) 112 BOMLR 2882

Hon'ble Judges : V.R. Kingaonkar, J

Bench : Single Bench

Advocate : M.V. Deshpande, holding for . C.K. Shinde, for the Appellant; A.S. Deshmukh, for Respondent Nos. 1(A) to 1(G) and D.R. Korde, AGP for Respondent No. 2-State, for the Respondent

Final Decision : Allowed

Judgement

V.R. Kingaonkar, J.—Challenge in this Petition is to judgment and order dated 17.7.1992 rendered by learned Member of the Maharashtra Revenue Tribunal, Aurnagabad, in Revision Petition No. 106-B-91-P and to the judgment and order dated 27.6.1991 passed by the Deputy Collector, Land Reforms, Parbhani in Tenancy Appeal No. 1981/TNC/A/48.

2. There is a checkered history to the tenancy litigation between the parties to the Petition. The period of litigation looms over a period of about 40 years. The petitioners are legal representatives of deceased Malhari Amruta Surnar. He was admittedly declared as a protected tenant of agricultural land bearing survey No. 22, to the extent of 21 acres area, situated at village Makni under Gangakhed Tehsils as per provision of Section 38-E of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (For short "H.T. and A.L. Act"). Originally, land survey No. 22 was owned by one Rajaram S/o Niloba from whom deceased

respondent No. 1 Rangnath Amruta Kachave claimed the ownership rights. Said respondent No. 1 Rangnath died during the pendency of the Petition and his legal representatives i.e. Rajaram and others are taken on record. They will be referred hereinafter as "the landlords" whereas the petitioners will be referred hereinafter as "the tenants". Consequent upon declaration of the status as protected tenant u/s 38-E of the H.T. and A.L. Act in favour of deceased Malhari (original tenant) on 25.5.1957, the Tahsildar, Gangakhed passed order dated 16.8.1962 (exhibit A) to the Petition. By that order, the tenanted land bearing survey No. 22/59 was directed to be restored to deceased Malhari, the original protected tenant, since it was noticed that the original landlord i.e. Ramrao S/o Niloba had dis-possessed the protected tenant in the meanwhile. The said order of Tahsildar was challenged by deceased respondent No. 1 Rangnath by filing appeal No. 81/TNC/A/48 before the Deputy Collector, Land Reforms, Parbhani. The learned Deputy Collector, dismissed the appeal. In the meanwhile, the land holder i.e. owner Rangnath was held as surplus land holder under the Maharashtra Agricultural Lands (Ceiling of Holdings) Act, 1961 which had come into force. The land in question was also declared as surplus alongwith the other lands. Out of that land, certain fragments were distributed amongst landless persons including allotment of a fragment consisting of 4A21G to deceased protected tenant Malhari. The land survey No. 22 was considered as holding of deceased landlord Rangnath as per the information furnished by him in the Returns submitted to the Surplus Land Determination Tribunal (S.L.D.T.). It was perhaps done on the basis of inference that declaration of protected tenant in favour of deceased tenant Malhari had become ineffective because he had not been put in possession of the said land.

3. It appears that the learned Deputy Collector dismissed the appeal preferred by deceased landlord Rangnath and simultaneously upheld validity of declaration made u/s 38-E of the "H.T. and A.L. Act" in favour of deceased tenant Malhari. The Deputy Collector, therefore directed the Tahsildar to refer the case of wrong determination of distribution of the land survey No. 22 and to request the S.L.D.T. to take action u/s 46 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act. The said order rendered by the Deputy Collector, Land Reforms, on 31.12.1980 was challenged by deceased landlord Rangnath by filing Revision Petition. The revisional Tribunal i.e. Maharashtra Revenue Tribunal (M.R.T.), however, dismissed the Revision Petition on the ground that it was barred by limitation. The dismissal order was passed by the M.R.T. on 29.11.1983. Aggrieved by the orders of the M.R.T. and the Deputy Collector, deceased landlord Rangnath filed a Writ Petition in this Court. His Writ Petition No. 753 of 1983 was partly allowed by the learned Single Bench of this Court on 4.6.1990. The learned Single Judge of this Court directed the Deputy Collector to decide the appeal de-novo having regard to explanation appended to Section 38E(1) of the H.T. and A.L. Act. The learned Single Judge observed that the Deputy Collector also shall consider the circumstance that an area of 4A and 21G was allotted to the original tenant i.e. Malhari as landless person under the provisions

of Maharashtra Agricultural Lands (Ceiling on Holdings Act).

4. The remand of the matter to the Deputy Collector, Land Reforms, Parbhani was the starting point of the next round of tenancy litigation. The learned Deputy Collector thereafter de-novo heard the appeal which was restored as per directions of the learned Single Judge of this Court. The learned Deputy Collector, held that inspite of order of possession, passed in favour of original tenant Malhari, the latter had refused to receive possession of the tenanted land, and, therefore, the order of restoration was liable to be set aside. Another ground considered by the Deputy Collector was that a compromise pursis was filed by the two legal representatives of deceased tenant-Malhari and they had admitted the fact that the original tenant-Malhari could not be declared as protected tenant because no tenancy rights were created in his favour. On the basis of such intervening developments, the learned Deputy Collector allowed the appeal of deceased respondent No. 1 landlord Rangnath and hence the declaration u/s 38-E of the H.T. and A.L. Act granted in favour of Malhari was set aside. The petitioners challenged the said order of the learned Deputy Collector, Land Reforms by filing Revision Petition. By the impugned judgment and order, the M.R.T. dismissed the Revision Petition. Hence, the present Petition.

5. Heard learned Counsel for the parties. I have carefully gone through the record and proceedings which were called. It need not be reiterated that in the earlier round of litigation, the restoration of the tenanted land was directed in favour of protected tenant Malhari and throughout his contention was appreciated by the Tahsildar, Deputy Collector, Land Reforms (L.R.) and the M.R.T. It was only after remand of the matter to the Deputy Collector (L.R.) as per the judgment of this Court in Writ Petition No. 753 of 1983 that the learned Deputy Collector (L.R.) and the M.R.T., took a different view. The statutory ownership certificate was issued in favour of deceased tenant Malhari on 24.6.1982.

6. Questions involved in this Petition are:

A- Can it be said that the statutory ownership granted in favour of deceased protected tenant Malhari u/s 38-E of the H.T. and A.L. Act had become ineffective on account of his alleged refusal to take possession of the tenanted land?

B- Whether there was valid surrender of the tenancy rights by the protected tenant, namely, Malhari S/o Amruta Surnar?

C- What is legal impact of the declaration of the land in question as surplus land and distribution thereof amongst the eligible persons including deceased tenant Malhari, by the Surplus Land Determination Tribunal (S.L.D.T.) under the provisions of the Maharashtra Agricultural Lands (Ceiling of Holdings Act), 1961.

7. Before I proceed to consider the rival submissions, it is important to notice that the statutory ownership certificate (Exh. E to the Petition) was issued in favour of deceased tenant Malhari S/o Amruta Surnar by the competent

authority. He had deposited the price amount which was determined under provisions of the H.T. and A.L. Act. He had become statutory owner as provided u/s 38-E(1) of the H.T. and A.L. Act. The entire edifice of the impugned judgment rendered by the learned Deputy Collector (L.R.) is on two grounds: (i) The alleged surrender by deceased tenant Malhari on account of his refusal to take possession of the said land as per the statement recorded by the Deputy Collector had made the purchase ineffective, and (ii) The compromise pursis filed by two of the legal representatives of the deceased tenant also made it ineffective. It is important to note that name of deceased Malhari was recorded in the register of protected tenants and such declaration of his protected tenancy u/s 38-E was made on 25.5.1957. The declaration was never challenged by the landlord. The protected tenant was out of actual possession when the Tahsildar made enquiry and therefore, by order dated 16.8.1962 restoration of his possession was directed. It is important to note that subsequently, on 20.6.1980, application filed by deceased protected tenant-Malhari for restoration of possession was dismissed because previously, the tenant had refused to take back possession. As per order dated 20.6.1980 rendered by the Naib Tahsildar (exhibit B to the Petition), the proceedings were dropped in pursuance to the directions of the Collector.

8. Perusal of the record would show that the only legal provision for determination of tenancy is to be found in Section 19 of the H.T. and A.L. Act. The land holder may terminate the tenancy only on the ground stated in Sub-clause (2) of Section 19. The tenancy rights of a protected tenant cannot be abrogated without satisfaction of the competent Tenancy Tribunal about valid surrender of such rights. The surrender of tenancy rights cannot be lightly inferred. The tenancy Act is a social legislation. The tenancy law contemplates recourse to a specific provision as contemplated u/s 32(2) of the H.T. and A.L. Act, which provides procedure of taking possession. Section 32(2), (3) and (3A) read as follows:-

32. Procedure of taking possession:

...

(2) Save as otherwise provided in Sub-section (3A) no land holder shall obtain possession of any land or dwelling house held by a tenant except under an order of the Tahsildar, for which he shall apply in the prescribed form within a period of two years from the date of the commencement of the Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1957, or the date on which the right to such possession accrued to him whichever is later.

(3) On receipt of an application under Sub-section (1) or Sub-section (2), the Tahsildar shall, after holding an enquiry, pass such order thereon as he deems fit.

(3A) Where a land holder proceeds for termination of the tenancy under Sub-section (1) of Section 46B, then notwithstanding anything contained in this Act, the application for possession of the land shall be made to the Collector who

shall, after holding an enquiry, in the prescribed manner, pass such order thereon as he deems fit.

The legal formalities of surrender are required to be followed in *stricto sensu*. One cannot be oblivious of the intention of the Legislature which is manifested from the opening words as used in Sub-section (2) of Section 32. The expression "Save as otherwise provided in Sub-section (3A) no land holder shall obtain possession" clearly mandate that the landlord cannot receive possession of the tenanted land without following due procedure. The surrender of the tenancy rights must be effected in legal manner prior to restoration of possession in favour of the landlord. In the present case, the tenant was ousted from the tenanted land though he was declared as the protected tenant. The so-called statement of the tenant was recorded afterwards and particularly after the initial action taken by the Tahsilder to restore the possession in his favour.

9. In "Trambaklal Harinarayan Jani v. Shankarbhai Bhajibhai Vagri 1959 62 Bom. L.R. 261" the Division Bench of this Court observed:

Taking over possession, therefore, by a land-lord from a tenant even where there is relinquishment of possession by the tenant without recourse to Section 29(2) is a penal offence. Furthermore, u/s 29(1), a tenant from whom surrender is obtained by a landlord, if that surrender is not verified u/s 15 and recognised by the Mamlatdar after an inquiry and the landlord has not taken possession of such land as prescribed by Section 29(2), can still apply for possession u/s 29(1). A proceeding u/s 29(1) for restoration of possession by a tenant means that such surrender or relinquishment has not resulted in the loss of tenancy rights by the tenant. Such a proceeding also implies that the tenant retains his tenancy rights in the leased land until the surrender is verified and recognised u/s 15 by the Mamlatdar and possession of the land is obtained by the landlord u/s 29(2) of the Act. Thus, the taking over of possession by the petitioner cannot amount to surrender either under the Transfer of Property Act or the Tenancy Act. It is true, as the Tribunal says, that Section 34(3) talks about a landlord acquiring land by surrender from his tenant. But as we have said, if the surrender is not legal and one under the provisions of the Act, there can be no acquiring of land as stated in Section 34(3) through surrender. The Tribunal, in our view, therefore, was not correct when it decided that there was either a transfer of the land in favour of the petitioner or an acquisition of the land by him merely because the tenant had relinquished possession of the land and the petitioner had taken over that possession.

10. The M.R.T. and the learned Deputy Collector (L.R.) failed to notice that on 24.6.1982 the statutory ownership certificate was issued in favour of deceased tenant Malhari. Said Malhari had deposited the price which was determined in accordance with the relevant provisions of the tenancy Act. The statutory ownership certificate was never challenged and had become final. The tenancy rights had therefore transformed into the ownership rights. The sale had never become ineffective. In Ganpat Deshmukh Vs. Yeshwant Deshmukh, a Division

Bench of this Court held that the protected tenant's certificate would not become ineffective merely because he could not pay the price within the time inspite of notices served on him. The Hon''ble Division Bench held that Section 38 and 38E are required to be read independently. Some of the observations of the Hon''ble Division Bench may be usefully quoted as follows:-

7. Section 38-E is applicable only to a protected tenant and not an ordinary tenant and it is not by way of any voluntary act. As soon as the notified date is declared in respect of any area, a protected tenant becomes owner of the land he was cultivating the land as a tenant and the only relief available to the landlord is to apply within 90 days from such a date before the tribunal for the determination of the reasonable price of his interest in the land which has been transferred to the ownership of a protected tenant.

In Kishan Muley deceased LRs. Indrabai Muley and Others Vs. Abdul Razak and Others, a Single Bench of this Court held that declaration u/s 38E of the H.T. and A.L. Act is not appellable. It is further held that relevant date for granting declaration u/s 38-E is the date when the provisional list of tenants is published under the Rules. In the case in hand, such list was published in 1957 and was not challenged by the landlord. However, the Single Bench also held that there was no necessity to serve individual notices to the parties concerned after publishing list of the protected tenants. The status of a protected tenant materially differs from that of an ordinary tenant. The tenancy law itself provides for umbrella of protection to the tenant who is entitled to be declared as a protected tenant in view of his possession as on the tillar''s day. These material aspects, including the absence of challenge to the list of the protected tenants and the certificate of statutory ownership, would go to show that the rights of the protected tenant remained un-impeached notwithstanding his refusal to take back possession.

11. Mr. Deshmukh learned Counsel appearing for the contesting respondents would submit that explanation appended to Section 38-E is required to be considered. The explanation added to Section 38-E was inserted by Maharashtra Act No. 45 of 1961 and reads as follows:-

38-E

...

Explanation - If a protected tenant, on account of his being dispossessed otherwise than in the manner and by order of the Tahsildar as provided in Section 32 is not in possession of the land on the date of the notification issued hereunder then for the purpose of the sub-section, such protected tenant, shall notwithstanding any judgment, decree or order of any court, or the order of a Revenue Board of Revenue Tribunal or other authority, be deemed to have been holding the land on the date of the notification; and accordingly, the Tahsildar shall notwithstanding anything contained in the said Section 32, either suo motu or on the applications of the protected tenant hold summary enquiry and direct

that such land in possession of the land holder or any person claiming through or under him in that area, shall be taken from the possession of the land holder or such person, as the case may be, and shall be restored to the protected tenant and the provisions of this section shall apply thereto in every respect as if the protected tenant had held the land on the date of such notification with the modification that in Sub-section (8), for the words, figures and brackets "Within 90 days from the date specified in the notification under Sub-section (1)" the words, figures and brackets "Within 90 days from the date of restoration of the possession under the Explanation to Sub-section (1)" shall be substituted.

Perusal of the above explanation would show that even though, there is any judgment or decree or order of any Court or the Revenue Board or Tribunal yet the Tahsildar is required to direct restoration of possession of the tenant within 90 days period. In my opinion, the explanation does not obliterate and wipe out the tenancy rights of a protected tenant in any manner.

12. Mr. Deshmukh further contended that there was delay of 13 years in making application for restoration of possession and therefore it was rightly turned down by the Tenancy Tribunal. It appears that deceased statutory tenant Malhari had filed application for restoration of the tenanted land somewhere in 1977 and therefore the proceedings in file No. 77/TMC/220 had been commenced. The contention was rejected by the Naib Tahsildar on 20.6.1980. It is pertinent to notice that the application of the deceased tenant was rejected by the Naib-Tahsildar because the Collector had directed to drop the proceedings in view of the explanation appended to Section 38-E(1). There was no objection raised as regards limitation. It need not be reiterated that the Tahsildar had suo-motu directed restoration of the possession to the protected tenant by order dated 16.8.1962 in accordance with the provisions of the H.T. and A.L. Act. It is the duty of the Tahsildar to restore possession in favour of the protected tenant when it is noticed that such a tenant is out of possession of the land of which he is declared as a protected tenant. Obviously, such ground of limitation cannot be considered in the second round of litigation, when the landlord had nowhere agitated such ground in the earlier proceedings. Mr. Deshmukh seeks to rely on certain observations in "Ibrahimpattam Taluk Vyavasaya Collie Sangham v. K. Suresh Reddy and Ors. 2003 AIR SCW 4084". The Apex Court held that powers required to be exercised u/s 50(B)(4) of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, though could be exercised at any time as provided in sub-section (4) yet such powers has to be exercised within a reasonable period. The fact situation in the given case is on different footings. The exercise of "suo motu revisional powers" is contemplated to be done within a reasonable time frame depending on facts and circumstances of each case. Ordinarily, three years period would be a reasonable period. It is held by the Apex Court that the order cancelling the tenancy certificate by the Joint Collector after 13-15 years was not rendered within a reasonable period and therefore, could not be sustained. In the present case, the authorities have not exercised any suo motu powers and the statutory ownership certificate granted in favour of

the protected tenant is not cancelled. Mr. Deshmukh further seeks to rely on "Dnyanoba Deorao Ugale and others v. Shaikh Hussain deceased through his LRs. and Ors. 1999 MCR 363". Single Bench of this Court held that where earlier proceedings u/s 98 of the H.T. and A.L. Act had ended in the compromise then the subsequent proceedings are not maintainable as a compromise would operate as res-judicata between the original tenant and the landlords. In the present case, the so-called compromise pursis was filed only by two of the legal representatives of the deceased protected tenant-Malhari, namely, Datta and Tukaram. The proceedings before the learned Deputy Collector would show that in all there were 6 legal representatives of deceased Malhari. There is absolutely nothing on record to show that two legal representatives i.e. Datta and Tukaram were authorised by the other legal representatives to enter into the compromise. The terms of the compromise would show that it was only collusive. For, said Datta and Tukaram went to the extent of admitting that deceased Malhari was never tenant of the land in question but was a supervisor appointed by the landlord for a period of 1 year. No issue was tried in the context of so called compromise and therefore, the compromise pursis entered into between the landlord and only two of the legal representatives of the tenant cannot be regarded as bar to the relief of restoration of the possession. With due respect, I find it difficult to countenance the observations made by the Single Bench in Dnyanoba Devrao Ugale and Ors. (supra) and it is difficult to cull out any ratio from the said authority. Needless to say reliance placed by Mr. Deshmukh on case of Dnyanoba Devrao Ugale (supra) is rather mis-placed. Mr. Deshmukh has also invited my attention to certain observations in case of Radhu Gokul Gawali, died, through LRs., Shamlal Gokul Gawali, died, through LRs., Shankar Gokul Gawali died, through LRs. and Babulal Gukul Gawali died, through LRs. Vs. Mohan Kishan Gawali, died through LRs., Bajrang Kishan Gawli, Kishor Someshwar Varma and The Maharashtra Revenue Tribunal, Aurangabad, . A Single Bench of this Court held that even though no limitation is provided u/s 98, it has to be expected to be a reasonable time either for the authority initiating suo motu action or the party concerned, seeking restoration of the land. The present matter does not come within the ambit of Section 98 of the H.T. and A.L. Act which provides for eviction of a person who is found in unauthorised possession of the tenanted land.

13. Taking overall view of the matter, I am inclined to hold that the rights of the protected tenant-Malhari remained un-affected inspite of the so-called statement arbitrarily recorded by the Deputy Collector about his refusal to get back possession of the tenanted land and the alleged compromise pursis between the landlord and two of the legal representatives of deceased Malhari. The questions mentioned earlier (para 6) are thus answered as below:

A - No.

B - No.

C - No legal impact.

It follows therefore that both the impugned judgments are un-sustainable in the eye of law. Hence, the Petition is allowed. The impugned judgments and orders are set aside. The previous judgment rendered by the Deputy Collector (L.R.) and that of the M.R.T. rendered on 31.12.1980 and 29.11.1983, respectively, are restored. The Tahsildar to take appropriate action in pursuance to the judgment and order dated 31.12.1980 rendered by the Deputy Collector (L.R.) without any further delay. The Petition is accordingly disposed of. Civil Application No. 2784 of 2008 also stands disposed of. No costs.