

(1957) 08 BOM CK 0018

In the Bombay High Court

Case No : Special Civil Application No. 26 of 1957

Mangilal Narsingdas

APPELLANT

Vs

Suryabhan Ragho Sawadkar

RESPONDENT

Date of Decision : 02-08-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1958) 60 BOMLR 75

Hon'ble Judges : Mudholkar, J;Badkas, J

Bench : Division Bench

Judgement

Badkas, J.—Respondent No. 1 Suryabhan had taken lease of survey No. 136, area 30 acres 1 guntha, for the year 1951-52 from the petitioner Mangilal. Similarly, respondent No. 1 Suryabhan had also taken lease of survey No. 7, area 32 acres 23 gunthas, and survey No. 10, area 31 acres 39 gunthas, from one Ghanashyamdas Balkisan. Survey No. 136 is situated at village Janephall while the other two survey numbers are situated in village Ghat Nandra. Suryabhan thus held 93 acres 62 gunthas of land under lease in the year 1951-52. After the expiry of the lease i.e. by March 31, 1952, the landholder Mangilal, the petitioner, entered into possession of his field survey No. 136. Thereafter on July 8, 1952, the lessee Suryabhan, respondent No. 1, applied to the Sub-Divisional Officer u/s 19(2) of the Berar Regulation of Agricultural Leases Act, 1951 (XXIV of 1951), hereinafter called the Act, for being placed in possession of survey No. 136 on the ground that he had been dispossessed of his land by the landholder which was not in accordance with the provisions of the Act. Respondent No. 1 claimed to be a protected lessee and contended that the landholder could not so take possession on the expiry of the period of lease. This application was enquired into by the Sub-Divisional Officer, respondent No. 4, and was rejected by him by his order dated December 17, 1952, on the ground that respondent No. 1 was not a protected lessee and as such he was not entitled to the relief u/s 19(2) of the Act. The Sub-Divisional Officer held that respondent No. 1 had not acquired the status of a protected lessee as he had held more than 50 acres of

land under the lease during the year 1951-52 and as he had failed to give intimation in writing to the landholders as required by Section 4 of the Act. Respondent No. 1 thereupon filed an appeal before the Deputy Commissioner, and the latter by his order dated March 9, 1953, remanded the case back to the Sub-Divisional Officer holding that it was not for the respondent lessee to give intimation about the selection of the land which he preferred to hold as a protected lessee and that the matter should have been enquired into and selection should have been made by the revenue officer concerned. The petitioner-landholder appealed against the order of the Deputy Commissioner to the Board of Revenue. The Board of Revenue by its order dated December 17, 1953, held that respondent No. 1 had not acquired the status of a protected lessee because of non-compliance with Section 4 of the Act, and confirmed the order of the Sub-Divisional Officer dated December 17, 1952. However, during the pendency of the appeal before the Board of Revenue, the Sub-Divisional Officer held an enquiry as per order of remand passed by the Deputy Commissioner and selected survey No. 136 belonging to the petitioner as the land of which respondent No. 1 was declared to have obtained the status of a protected lessee. The Sub-Divisional Officer also placed respondent No. 1 in possession of survey No. 136 on April 19, 1953. In fact, as held by the order passed by the Board of Revenue confirming the order of the Sub-Divisional Officer dated December 17, 1952, the application of respondent No. 1 u/s 19(2) of the Act was rejected and the petitioner was held, in effect, as entitled to retain possession of survey No. 136 inasmuch as respondent No. 1 had not obtained the status of a protected lessee in respect of survey No. 136.

2. After the order of the Board of Revenue, dated December 17, 1953, the lessee again made an application to the Sub-Divisional Officer on December 19, 1953, intimating that he was selecting survey No. 136 as the land of which he should be declared a protected lessee. Respondent No. 1 also served a copy of this intimation to the petitioner who replied that respondent No. 1 had no right of selection at that stage and that he could not be declared as a protected lessee of survey No. 136.

3. The petitioner applied to the revenue officer concerned for restitution of the possession of survey No. 136 of which possession was delivered to respondent No. 1 by the Sub-Divisional Officer in pursuance of the remand order of the Deputy Commissioner. As a result of the order of the Board of Revenue the petitioner was entitled to claim restitution as the order of the Deputy Commissioner was set aside in appeal and respondent No. 1 had obtained possession by virtue of such order which no more existed. Respondent No. 1, however, applied to the Sub-Divisional Officer for stay of delivery of possession of the field to the petitioner until the proceedings which were started in pursuance of his second selection were finally decided. The Sub-Divisional Officer stayed delivery of possession of the field to the petitioner and passed an order allowing respondent No. 1 to make the selection, and on such selection being made declared him to be a protected lessee and as a person entitled to protection

under the Act. The petitioner filed an appeal to the Deputy Commissioner which was rejected. The petitioner thereupon filed an appeal to the Board of Revenue against the order of the Deputy Commissioner, and this appeal was also rejected. The petitioner has now come up before this Court under Article 226 of the Constitution praying for quashing the order of the Sub-Divisional Officer passed in proceedings started on the application of respondent No. 1 by which he was allowed to make a second selection, and the orders of the Deputy Commissioner and the Board of Revenue by which the order of the Sub-Divisional Officer was confirmed.

4. The petitioner's contention is that Suryabhan, the lessee, had not obtained the status of a protected lessee any time under the Act. According to the petitioner, whenever a lessee is holding more than 50 acres of land under lease, he cannot be declared a protected lessee unless he selects so much of the land as would make the total area to be held by him as a protected lessee equal to 50 acres and gives an intimation in writing to the landholder or landholders as the case may be and to the revenue officer, and it is only on such intimation being given that the lessee can be declared a protected lessee. It is further contended that such intimation has to be given not less than two months before the commencement of the agricultural year next following i.e. in the instant case such intimation should have been given two months before April 1, 1952. Admittedly in this case no such intimation was ever given by respondent No. 1, and in the absence of compliance with Section 4 of the Act, respondent No. 1 could not become a protected lessee. The Sub-Divisional Officer and the Deputy Commissioner had granted the prayer of respondent No. 1 holding that such intimation could be given any time, and the fact that he had not given intimation two months before the expiry of the period of lease did not come in his way. The total area of the land held by respondent No. 1 undoubtedly was 93 acres 63 gunthas out of which 30 acres 1 guntha belonged to the petitioner and the rest was held by Ghanashyamdas Balkisan of Ghat Nandra. The Board of Revenue, however, while confirming the orders of the Sub-Divisional Officer and the Deputy Commissioner, took help of the Berar Regulation of Agricultural Leases (Amendment) Act, 1953 (XXII of 1953), hereinafter called the Amending Act, It will be useful to reproduce the relevant provisions of the main Act and the Amending Act. Sub-section (3) of Section 4 of the Act No. XXIV of 1951 provides:

Such intimation shall contain a full description of the land selected by the lessee and shall be given not less than two months before the commencement of the agricultural year next following.

The Amending Act No. XXII of 1953 came into force on December 28, 1953, when it was published in the Gazette. It was assented to on December 23, 1953, by the President. Section 4-A introduced by the Amending Act provides:

Notwithstanding anything to the contrary in Section 4, every person who, in consequence of his failure to give intimation regarding the land selected by him in accordance with the provisions of Section 4, has failed to acquire rights of a

protected lessee in such land shall, if he is in possession of such land on the 1st day of August 1953 and gives intimation as required by Section 4 before the 1st day of February 1954, be deemed to be a protected lessee of the land described in the intimation with effect from the date on which but for such failure he would have acquired the rights of a protected lessee, any decree or order of the Civil Court to the contrary notwithstanding.

(Italics are ours).

5. The first important fact which was not observed by the Board of Revenue is that respondent No. 1 gave intimation about the second selection on December 19, 1953, when the Amending Act had not come into force. On reading Section 4-A introduced by the Amending Act, one finds that this new provision made it possible for a lessee to acquire a right of a protected lessee by giving an intimation as required by Section 4 before February 1, 1954, provided he was in possession of such land on the first day of August, 1953.

6. Respondent No. 1, when he applied on December 19, 1953, for making selection of survey No. 136, could not be said to be acting under the provisions of the new enactment which had not then come into force. However, the Board of Revenue regarded this intimation as being given u/s 4-A introduced by the Amending Act. The Board of Revenue, however, held that respondent No. 1 had at least given intimation as required by Section 4-A. Regarding the objection in respect of absence of possession with the lessee, the Board of Revenue observed that Section 4-A nowhere lays down that the possession of the person claiming a protected status should be continuous as in the case of the person claiming the benefit of Section 3(5) of the Act. The Board of Revenue has overlooked the contention that respondent No. 1, the lessee, had not given intimation to both the landholders from whom he had taken the lease of the land during the year 1951-52.

7. The question before us is whether the order of the Board of Revenue confirming the orders of the subordinate revenue officers and declaring respondent No. 1 as being entitled to the status of a protected lessee should be quashed.

8. It is obvious that the second intimation given by the lessee, that is respondent No. 1, was not u/s 4-A introduced by the Amending Act, as at that time this Act had not come into force. Even if we treat the second intimation as having been given under the amended Section 4-A, even then it has to be considered whether the requirements of Section 4-A, were complied with. The paramount requirement for giving second intimation under Sections 4 and 4-A is that the lessee should be in possession of the land which he selects on August 1, 1953, and that the lessee should have given intimation before February 1, 1954. The petitioner contended that respondent No. 1 could not avail of the benefit of Section 4-A for the reasons that he failed to give intimation to both the landholders and that the lessee was not in possession of the land selected on

August 1, 1953. He further contended that the possession obtained by respondent No. 1 by virtue of the order of the Deputy Commissioner dated March 9, 1953, could not be considered or availed of for purposes of Section 4-A as the order of the Deputy Commissioner was later set aside by the Board of Revenue and the possession obtained under such wrong order could not be construed as possession contemplated by or within the meaning of Section 4-A.

9. We agree with the second of these contentions of the petitioner and hold that Section 4-A required that the lessee should have been in possession of the land which he selected u/s 4-A on August 1, 1953, and should have given intimation under the said section. Admittedly respondent No. 1 had lost possession of the survey number in question and on that account he had applied u/s 19(2) of the Act for being placed in possession alleging that he had the status of a protected lessee. The Board of Revenue by its order dated December 17, 1953, had held that the lessee, respondent No. 1, was not entitled to be placed in possession u/s 19(2) of the Act. This order of the Board of Revenue even now stands good and has not been set aside by any competent authority. The controversy between the parties was finally concluded by this order of the Board of Revenue which had the effect of declaring the possession of the petitioner landlord as good and valid against respondent No. 1, and respondent No. 1 could not claim back possession from him under the provisions of the Act. The Deputy Commissioner by his order dated March 9, 1953, remanded the case and the lessee obtained possession in pursuance of the wrong order. The petitioner was entitled to the restitution of possession as the order of the Deputy Commissioner was set aside by the Board of Revenue. As observed in Mulla's Civil Procedure Code, 12th edn., at page 451:

The principle of the doctrine of restitution is that on the reversal of a decree in appeal the law imposes an obligation on the party to the suit who received the benefit of the erroneous decree to make restitution to the other party for what he has lost. It arises automatically on the reversal or modification and necessarily carries with it the right to restitution of all that has been done under the erroneous decree; and the Court in making restitution is bound to restore the parties, so far as they can be restored, to the same position they were in at the time when the Court by its erroneous action had displaced them from it.

The Board of Revenue and the subordinate authorities were not justified in law in construing the possession of respondent No. 1 which he had obtained under the wrong order of the Deputy Commissioner as the possession contemplated by Section 4-A. During this period i.e. from April 19, 1953, to December 17, 1953, it was only a possession granted to him provisionally pending the final decision in the proceedings by the final revenue authority and was subject to the order which would be finally passed in those proceedings. Section 4-A does not contemplate possession of this kind for entitling a lessee to give intimation under this amended provision introduced by the Amending Act. This section requires that the lessee should have continued in possession of the land which he once held under a lease and wanted to hold the same as a protected lessee. It thus

requires continuous possession. On behalf of respondent No. 1 it was contended that the petitioner-landlord had dispossessed him and, therefore, he had lost the land and, therefore, it should be held that he continued to be in possession of the land even though, as a fact, he was not in such possession. It is difficult to accept this contention for the reason that after the expiry of the lease it was obligatory on the lessee to put his landlord in possession of the land. Here the landlord had actually entered on the land after the expiry of such lease. If the landlord enters and takes possession of such land peacefully, there can be no objection to such entry and the possession cannot be termed wrongful or unlawful. The lessee had not given intimation two months prior to the expiry of the lease as required by Section 4 of the Act, and, therefore, he was not a protected lessee. The landlord was, therefore, entitled to enter on the land as the lease had expired. Reliance was placed by Shri Abhyankar for respondent No. 1 on Section 5 of the Act and it was contended that as the lessee had not surrendered the lease by executing a registered document, the landlord's entry at the termination of the lease was not lawful. That provision, however, applies only to a protected lessee. As respondent No. 1 had not made his election by the date of the termination of the lease, he was not and cannot be regarded to be a protected lessee at all.

10. The Board of Revenue and the subordinate revenue authorities have committed a patent error of law in applying Section 4-A to the facts of the case and holding¹ that respondent No. 1 had obtained the status of a protected lessee. The rights obtained by the petitioner landlord by virtue of the decision of the Board of Revenue in Revenue Appeal No. 48/51-B of 1953, dated December 17, 1953, cannot be unsettled. For these reasons, the orders complained against deserve to be quashed as being patently erroneous in law.

11. We, therefore, quash the orders passed by respondents Nos. 2 to 4 as prayed for in the application. Costs of the petition shall be borne by respondent No. 1.