

(1999) 07 BOM CK 0131

In the Bombay High Court

Case No : Writ Petition No. 1925 of 1985

Mohan Pandurang Kashid and others

APPELLANT

Vs

Smt. Anusayabai Mane and others

RESPONDENT

Date of Decision : 30-07-1999

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 29(2), 32

Citation : (2000) 2 BomCR 154 : (2000) 1 BOMLR 729 : (2000) 2 MhLj 532

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : H.D. Gole, for the Appellant; V.A. Thorat, for the Respondent

Judgement

D.G. Deshpande, J.—Heard Advocate Mr. Gole for the petitioners and Advocate Mr. Thorat for the respondents.

2. The petitioners are the landlords and respondents are the tenants. There is a dispute of tenancy in respect of land bearing R.S. No. 120/2, Gat No. 250, O.H. 2/ Rs. situated at village Khubi, Taluka Karad, District Satara. Dhondiba Kashid and Haranabai Tupe were the original landlords. Dhondiba died in 1959 and Haranabai died in 1979. Haranabai had three daughters, Kamalabai, Anjubai and Manjubai. Kamalabai died in 1979 leaving behind her son Rajaram and daughters, Parubai, Laxmibai and Hirabai, Rajaram died in 1979 leaving behind him his widow Anusayabai and his daughter Noushakka as respondent Nos. 1 and 2 respectively.

3. Haranabai claiming to be a owner filed an application u/s 88-C of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Tenancy Act) and an exemption certificate was granted to her. Thereafter on 13-3-1963 Haranabai filed an application for restoration of possession of the suit land along with other lands. The statements of Haranabai and Anusayabai were recorded and Anusayabai stated that she had surrendered the possession of the suit land in favour of Haranabai after the death of her husband, and since then Haranabai

was cultivating the suit land. Anusayabai also stated that on the date of her statement, Haranabai was in actual possession of the suit land. Thereafter Tenancy Aval Karkun, Karad allowed Haranabai to retain her possession by his order dated 3-10-1963. Haranabai died in 1979 and her three daughters sold their share in the suit land to petitioner No. 1 and put him in actual possession by sale deed dated 30-6-1981.

4. After this sale deed Anusayabai for the first time challenging the entry of petitioner's name in the occupancy column of the Record of Rights. This enquiry was done by Additional Tahsildar and A.L.T., Karad who ultimately held that Anusayabai was the tenant of the suit land and was entitled to possess the suit land on payment of statutory price. The petitioner preferred an appeal before the Sub-Divisional Officer who remanded the matter for fresh enquiry. But on remand the Tahsildar and A.L.T. held that its earlier order dated 4-12-1981 was correct. The petitioner, therefore, challenged this order before the Sub-Divisional Officer and when Sub-Divisional Officer dismissed the appeal preferred a revision to the Maharashtra Revenue Tribunal (herein after referred to as the M.R.T.). There also the petitioner lost his case and hence this petition.

5. It was contended by Mr. Gole appearing for the petitioners that the order of the Tenancy Aval Karkun, Karad in I.C. No. 62/1963 dated 3-10-1963, which was passed on the application filed by Haranabai for restoration of possession of the land for her bona fide personal cultivation u/s 29(2) read with section 33-B of the Tenancy Act, was final and Haranabai was in lawful possession of the suit land and this fact was admitted repeatedly by Anusayabai when her statement was recorded in those proceedings. Therefore, according to Mr. Gole, Anusayabai had no right to challenge the sale of property by the heirs of Haranabai to the petitioner. It was also contended by him that Anusayabai was admittedly not in possession of the suit land since 1959 and her name was not shown anywhere in the revenue record as a tenant in possession or as a tenant, and therefore, the proceedings initiated by Anusayabai in 1981 after the sale deed were absolutely illegal and improper and all the courts below erred in upholding the contention of Anusayabai. Mr. Gole further contended that when the Tenancy Aval Karkun passed an order dated 3-10-1963 holding that Haranabai was in possession and he had ascertained from Anusayabai regarding actual possession as to who is in possession and then only has passed an order of conferring formal possession to Haranabai and since this was an order passed by competent Authority after full enquiry and giving all opportunities to Anusayabai, no further verification of surrender was required and insistence could be made on Haranabai to produce Kabje Pawati. Mr. Gole relied upon a judgment of this Court reported in Arun Musale and Another Vs. Sambha Soma Gond (Deleted) and Others, wherein Justice Lodha has held that when a tenant unauthorisedly ousted he is required to make an application for conferral of ownership right and restoration of possession within six months as prescribed by Mamlatdars Courts Act, 1906. Mr. Gole also relied upon a judgment of the Supreme Court reported in Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, wherein the Supreme Court has

held that where no time limit is prescribed for exercise of a power under a statute it should be exercised within reasonable time. According to Mr. Gole even if it is accepted for the sake of argument that no time limit was prescribed by the Tenancy Act for Anusayabai to apply to restoration of possession, she should have applied within reasonable time and her application after 18 years was liable to be rejected as hopelessly barred by limitation.

6. On the other hand Mr. Thorat for the respondents contended that even if the proceedings initiated by the Tenancy Aval Karkun vide I.C. No. 62/1963 are deemed to be the proceedings for surrender, the surrender was not verified as required by the Rules. Haranabai could not produce Kabje Pawati of the land, and therefore, the order of the Tenancy Aval Karkun dated 3-10-1963 was of no consequences. Mr. Thorat also relied upon a judgment of this Court reported in Laxmanrao Anantrao Stardekar and etc. Vs. Satyappa Pawar and etc., , wherein it has been held that till a surrender is verified by the Mamlatdar in the manner provided, there is no surrender of tenancy in the eye of law. Mr. Thorat has also relied upon another judgment of this Court reported in Vithoba Ram Rahane and Another Vs. Bhalchandra Sadashiv Joshi and Others, , wherein this Court has held that no limitation is provided for an application u/s 84 of the Tenancy Act.

7. The Judgment of this Court reported in 1988 Mah.L.J. 359 (supra) relied upon by Mr. Thorat will have no application to the present case because in that case the landlord filed an application before the Mamlatdar on 27th March 1957 for possession of land u/s 29(2) of the Act. This application was accompanied by a deed of surrender of his tenancy by the tenant which was dated 5th March 1957. The Mamlatdar recorded the statement of the tenant to the effect that the tenant desired to surrender his tenancy. Verification was made on October 22, 1957 and on the same day an order accepting the surrender was made and the tenant was directed to hand over possession of the land to the landlord.

8. In the instant case Haranabai filed an application u/s 29(2) read with section 33-B of the Tenancy Act for restoration of possession. Anusayabai was given notice, but she remained absent. Further Haranabai examined Anusayabai as her witness. Prior to filing of this application Haranabai had obtained a certificate u/s 88-C of the Tenancy Act. In her statement Anusayabai admitted that the suit land was in possession of Haranabai since 4-5 years before. On the basis of aforesaid statement and the entries in the record of rights from 1959 onwards the Tenancy Aval Karkun found that Haranabai was entitled for possession. He also found that Haranabai had complied with other requirements of giving notices etc. and notices of the proceedings were also issued to Anusayabai. The Tenancy Aval Karkun also noted that Anusayabai had previously surrendered this land but the surrender was not properly verified in those proceedings. The Tenancy Aval Karkun, therefore, decided to ascertain from Anusayabai whether she was in possession and whether Haranabai had taken forcible possession of the land from her and it is only when Anusayabai admitted that Haranabai had not taken forcible possession, that it was Haranabai who was in possession consequent

upon relinquishment of right by Anusayabai, the Tenancy Aval Karkun passed the order. It will be therefore clear that the present case differs on all the materials from the facts of the aforesaid judgment relied upon by Mr. Thorat, and as such the said judgment cannot be applied to the present case. At any rate it can be said that the object of verifying the surrender is to ascertain whether the surrender is voluntarily, whether it is properly recorded, whether the intention of the tenant giving up of her right over the land was genuine and whether the surrender is effected by the tenant after understanding an implication of the same. In the proceedings initiated by Haranabai, the Tenancy Aval Karkun gave time and opportunities to Anusayabai to consider her rights under the Tenancy Act. It is nobody's case that Anusayabai was influenced or tutored to make such a statement. The record shows that Anusayabai has voluntarily gave her statement.

9. It was strenuously urged by Mr. Thorat that Haranabai had not taken possession of the land pursuant to the Court's order as is contemplated u/s 29, and therefore, according to him, the possession of the land by Haranabai cannot be said to be legal but it has to be regarded as unlawful possession in contravention of the provisions of Tenancy Act.

10. It is pertinent to note that if Haranabai was already in possession of the suit land pursuant to the surrender of the same by Anusayabai 4-5 years before her application in 1963, then it was not at all necessary to move the Tenancy Aval Karkun u/s 29(2) read with section 33-B of the Tenancy Act. She could have contended that it was for Anusayabai to take out or to initiate the proceedings for getting back the possession, if Anusayabai so wanted. However, Haranabai herself filed an application u/s 29(2) along with Anusayabai for restoration of possession. It was an application filed by Haranabai to get an order from the competent Court regarding possession of the land. In that application she had made Anusayabai as a party which shows that Haranabai wanted to give full opportunity to Anusayabai to oppose the application or contest the claim of Haranabai. These facts coupled with the fact that Haranabai and Anusayabai were not stranger to each other and to the contrary Haranabai was the grandmother and Anusayabai was the wife of grandson show that the statement given by Anusayabai before the Tenancy Aval Karkun has to be regarded as voluntary statement coming out of sweet will of Anusayabai with no other factors influencing her mind. The Tenancy Aval Karkun gave full opportunity to Anusayabai to oppose or contest the application. He framed as many as seven issues and gave his findings on each issue on the basis of record available and on the basis of statement made by Anusayabai, and ultimately the Tenancy Aval Karkun ordered that applicant Haranabai has succeeded in proving her case u/s 29(2) read with section 33-B of the Tenancy Act and it is at this stage the Tenancy Aval Karkun ordered that formal possession of the suit land be given to Haranabai as she was found eligible to retain the surrendered land,

11. Even if it is accepted for the time being that verification of surrender is a

mandatory provision as held by this Court in the judgment cited by Mr. Thorat, the proceedings before the Tenancy Aval Karkun were much more wider in their scope than the verification of the surrender proceedings and Tenancy Aval Karkun recorded statement of Anusayabai ascertaining the facts from her and thereafter gave his findings in favour of Haranabai. There is, therefore, a compliance to all the provisions of the Tenancy Act and the order of the Tenancy Aval Karkun cannot be faulted with.

12. It was also urged by Mr. Thorat in this regard that Haranabai was not able to produce any Kabje Pawati in respect of the possession of the suit land taken from Anusayabai. I do not find any basis for this argument. I have already observed that Haranabai could have chosen not to take any steps for confirmation of her possession and in that case Anusayabai could have been required to initiate proceedings for getting back possession. But instead of doing that Haranabai took recourse to the provisions of section 29(2) and 33-B of the Tenancy Act and filed an application for confirmation of possession and it was the Tenancy Aval Karkun who confirmed her possession. In this back ground absence of Kabje Pawati or possession receipt cannot at all be regarded as the circumstances against Haranabai.

13. The most important aspect that goes against Anusayabai is that if at all her statement before the Tenancy Aval Karkun was not voluntary or if she never intended to surrender the land or if she had any grievance of taking of forcible possession of the suit land from her by Haranabai, it was expected from her to move the Tenancy Aval Karkun at the earliest. However, Anusayabai remained silent for about 18 years and this long span is sufficient to conclude that whatever stated by Anusayabai before the Tenancy Aval Karkun was true and Anusayabai had no grievance about the statement made by her before the Tenancy Aval Karkun.

14. Mr. Gole further urged that the application for restoration of possession by Anusayabai in 1981 i.e. after 18 years was hopelessly barred by limitation and this important aspect has not been considered by the lower courts including M.R.T. I find no fault with this submission because the Supreme Court has in Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, , while considering the provisions of section 84-C of the Tenancy Act held that even if section 84-C of the Act does not prescribe any time for initiation of the proceeding, in view of the settled position of several judgments by this Court that wherever a power is vested in a statutory authority without prescribing any time limit, such power should be exercised within a reasonable time. It appears that the mutation entries were made in the name of the appellant in respect of sale deed of 1972 and Mamlatdar started suo moto in 1976 i.e. after four years, and therefore, the Supreme Court has held that the proceedings were not started within reasonable time.

15. As against this Mr. Thorat relied upon a judgment of this Court reported in Vithoba Ram Rahane and Another Vs. Bhalchandra Sadashiv Joshi and Others, ,

wherein Justice Naik held :

"Once it is held that the application is maintainable u/s 84, then no limitation is provided for making an application u/s 84 as held by Chagla C.J., in Special Civil Application No. 764 of 1955 decided on 2-8-1955. Hence, period of limitation is not applicable to proceedings u/s 84 and thus there is no obstacle in the way of the present petitioners in filing the applications."

16. I do not find that the aforesaid ruling is of any help to the respondents in view of the judgment of Supreme Court which is also u/s 84-C and though the same is u/s 84-C the ratio laid down in the judgment of Supreme Court is applicable to the present case because section 84 provides remedy for summary eviction but no limitation is prescribed and section 84-C gives power to the Mamlatdar and to hold enquiry u/s 84-B and to decide whether the transfer or acquisition is or is not invalid. There also no limitation is prescribed. But the Supreme Court has held that where no limitation is prescribed, steps must be taken within reasonable time. In this background, the proceedings initiated at the instance of Anusayabai in 1981 i.e. after 18 years after the order of Tenancy Aval Karkun are required to be treated as hopelessly barred by limitation.

17. It is further pertinent to note that Anusayabai did not apply for getting back the possession of the land, but she merely challenged the entry of the petitioner's name in the occupancy column of record of rights and this application was forwarded to the Tahsildar, Karad for enquiry which was ultimately made by the Additional Tahsildar and A.L.T., Karad. It is therefore clear that today there is no application filed by Anusayabai challenging the order passed by the Tenancy Aval Karkun in 1963, neither there is any application for restoring possession, nor for purchase of the suit land in the capacity as tenant.

18. It appears that this application of Anusayabai was treated to be an application u/s 32-G read with section 70(b) of the Tenancy Act. The Additional Tahsildar and A.L.T., Karad decided this application on 4-12-1981 and his order makes out a picture which is altogether different from the case that is tried to be made out by Anusayabai before this Court. In his order dated 4-12-1981 the Additional Tahsildar and A.L.T. has stated :

"I have also recorded the statement of Shrimati Anusaya w/o Rajaram Mane. She has stated that after death of her husband she was cultivating the land. It was Parubai & others have taken possession forcibly from her. It is thus, clear that after death of Rajaram Mane Sarvashri Parubai & others have taken possession forcibly from Anusaya w/o Rajaram Mane still tenancy right of Anusayabai Rajaram Mane does not extinguish. Her right to purchase the land do remain undisturbed. Had Anusaya surrendered her tenancy right, the matter would be different. But her right to purchase the land remains undisturbed."

If the aforesaid observations of the Additional Tahsildar and A.L.T. are correct and since the same are not disputed by Mr. Thorat, they are required to be held as correct, then it is clear that Anusayabai did not make any grievance of

handing over possession to Haranabai. She also does not appear to have stated before the Additional Tahsildar that Haranabai had taken forcible possession from her in 1959. What she has stated is, Parubai and others viz. Anjubai, Manjubai, Laxmibai and Hirabai had taken possession forcibly. This statement is palpably wrong because as per Tenancy Aval Karkun's order in 1963 Anusayabai had given possession of the suit land to Haranabai. It will be therefore clear that Anusayabai is trying to make out totally false claim for this case. Her statement before the Additional Tahsildar and A.L.T. in one proceeding is totally contrary to her statement before Tenancy Aval Karkun in 1963 and apart from this she did not apply for restoration of land but she only applied for correction of revenue record and lastly she made that application after 18 years of the order of Tenancy Aval Karkun. For these reasons, the case put forth by Anusayabai is required to be rejected out right. Hence the following order :

ORDER

19. The petition is allowed. Rule made absolute.

20. The order of the Maharashtra Revenue Tribunal dated 8-4-1985, the order of the Assistant Collector, Satara dated 10-4-1984 and order of the Tenancy Tahsildar and A.L.T. Karad dated 3-2-1984 are quashed and set aside and the application filed by Anusayabai is dismissed with costs through out.

21. Petition allowed.