

(1962) 01 BOM CK 0014

In the Bombay High Court

Case No : Special Civil Application No. 82 of 1961

Mohanlal Chandanmal Surana

APPELLANT

Vs

Maharashtra Revenue Tribunal

RESPONDENT

Date of Decision : 16-01-1962

Acts Referred:

Berar Regulation of Agricultural Leases Act, 1951 — Section 4(2)
Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958
— Section 125

Citation : (1962) 64 BOMLR 485

Hon'ble Judges : Kotval, J;Abhyankar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kotval, J.—This special civil application arises out of an order dated November 20, 1960, passed by the Maharashtra Revenue Tribunal at Nagpur. By that; order the Tribunal purported to dispose of two revision applications, Nos. 49 and 51/TEN of 1960 pending before them. Those two revision applications .arose out of two revenue cases, Nos. 6 and 93/59(9) of 1959-60. Revenue Case No. 6 of 1959-60 arose upon a reference made u/s 125 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region & Kuteh Area) Act, 1958 (No. XCIX of 1958) by the Civil Judge, Junior Division, Kelapur, in a civil suit pending before him. In that suit the right to field No. 7/1 of mouza Region in taluq Kelapur was in question.

2. The field originally belonged to the petitioner Mohanlal and lie had leased it out to respondent No. 4 Rajeshwar in the agricultural year 1951-52. Then by virtue of the Berar Regulation of Agricultural. Leases Act, 1951, Rajeshwar remained in possession and cultivated the field till the year 1957-58. By this date, it is not in dispute, Rajeshwar had under his cultivation a total area of more than 50 acres and, therefore, u/s 4(2) of the Berar Regulation of Agricultural Leases Act, he had to select out of the land in his possession "so much area as

would make the total area to be held by him as a protected lessee equal to 50 acres". By virtue of that section he was to make this selection two months prior to the commencement of the next agricultural year, that is to say, by February 1, 1957 (the agricultural year commencing on April 1, 1957). Rajeshwar, however, made no such selection and, therefore, it is not in dispute, he lost his protected status.

3. On May 25, 1957, he executed two documents in respect of the field in dispute, namely, field No. 7/1. The first was a surrender deed and the other was a "batai pat/ret. By virtue of this batai pat ret he continued in possession of the field. While this was the position between the parties as to the disputed field No. 7/1, there came into force on December 30, 1958, the Bombay Act No. XCIX of 1958.

4. Before we proceed to consider the points arising in the petition, it is necessary to state the further history of the litigation between the parties. In the year 1957-58 there were three proceedings commenced by the respondent Rajeshwar against the petitioner and one Ramchandra. These proceedings were u/s 4(2) of the Berar Regulation of Agricultural Leases Act and Sections .1.0 and 11 thereof for determination and commutation of reasonable lease-money of survey Nos. 7/1 and 33. Those proceedings went through the various stages of appeal and ultimately on July 15, 1959, the proceedings were finally adjudicated by the revenue authorities by order of the Bombay Revenue Tribunal in Revenue Appeal No. 2/51-B of 1959. The Tribunal confirmed the dismissal of all the three applications of the respondent Rajeshwar. Thereafter the suit came to be filed and the reference as stated above was made by the Civil Judge, Junior Division, Kelapur.

5. One of the points urged by Mr. Mandlekar on behalf of the petitioner before us has been that in view of the order of the Bombay Revenue Tribunal dated July 15, 1959, the civil Court had no jurisdiction to make a reference at all u/s 125 of the Bombay Act No. XCIX of 1958. Mr. Mandlekar urged that the civil Court ought to have accepted the order of the Bombay Revenue Tribunal dated July 15, 1959. The point) was not raised on behalf of the petitioner hi any of the Revenue Courts below except the Revenue Tribunal. But, apart from this, even considering the question on merits,, we think that the proper remedy of the petitioner was not to have complained to the Revenue Authorities that the civil Court had no jurisdiction to make the reference. What the petitioner should have done was to have moved against the order of the civil Court itself by way of revision which was not done. So far as the Revenue Authorities are concerned, they are authorities created under a special statute intended for special purposes and their jurisdiction is necessarily limited. The jurisdiction is vested in them by virtue of Section 125 of the Bombay Act No. XCIX of 1958 and Sub-section (2) of that section says:

On receipt of such reference from the Civil Court, the competent authority shall deal with arid decide such issues in accordance with the provisions of this Act

and shall communicate its decision to the Civil Court and such court shall thereupon dispose of the suit in accordance with the procedure applicable thereto.

Therefore, apart from the fact that normally Revenue Courts cannot question the decision of the civil Court, here there is a specific provision limiting the authority of Revenue Courts to deal with and decide the issues referred. If the Legislature had intended that the Revenue Authorities could dispute the jurisdiction of the civil Court to make a reference u/s 125, it would have said so. We think that in the instant case the decision reached by the Maharashtra Revenue Tribunal that the Revenue Courts cannot question the making of the reference was in the circumstances correct.

6. The other contentions raised in this petition relate to the merits of the decision of the Tribunal. The Tribunal held that the respondent Rajeshwar was a person lawfully cultivating within the meaning of Section 6(1) of the Bombay Act No. XCIX of 1958, on the date on which that Act came into force and, therefore, he should be deemed to be a tenant under that Act. Mr. Mandlekar has urged that the respondent Rajeshwar admittedly failed to exercise his option of selection u/s 4(2) of the Berar Regulation of Agricultural Leases Act and, therefore, he ceased to have any status as a protected lessee and, therefore, as from February 1, 1957, he ceased to be a tenant at all and nothing that is contained in the Acts which subsequently came into force can revive his tenancy rights. We do not think that the failure of the respondent Rajeshwar to exercise his option of selection u/s 4(2) has that effect for which Mr. Mandlekar contends. The consequence of the non-exercise of the option would be as follows:-Under Section 4(1) no person shall at any time be deemed to be a protected lessee in respect of any area in excess of 50 acres. Therefore, in the absence of selection u/s 4(2) the only consequence that would follow would be that Rajeshwar would not be deemed to be a protected lessee in respect of any area in excess of 50 acres. A protected lessee as defined in Section 2(h) is a protected lessee within the meaning of Section 3 and the protection that he gets is indicated in Sub-sections (1) and (2) thereof. It does not, however, follow that though a tenant may lose his status as a protected lessee he would thereby cease to be a tenant. None of the provisions of Section 4 indicate that that would be the result. On the other hand, the provisions of Sections 8 and 9 indicate that for the termination of a lease there must be further steps before the lease can be terminated. The position, therefore, appears to us to be that even assuming that Rajeshwar may have lost his status as a protected lessee on February 1, 1957, his continued possession of the field was not unlawful but was tenuous colour of right and at least excusable. It must be held, therefore, that he would fall within the meaning of the words "a person lawfully cultivating any land belonging to another person".

7. Reference was also made to the provisions of Section 166 and the proviso to Section 167 of the Madhya Pradesh Land Revenue Code (No. II of 1955) and particularly to Explanation (ii) contained in Section 166. That explanation runs as follows:

Explanation.-For the purposes of this section-...

(ii) any person who cultivates land in partnership with the tenure-holder shall not be deemed to hold such land;...

This is an Explanation added to the definition of ordinary tenant in Section 166. Mr. Mandlekar urged that in view of the fact that the respondent Rajeshwar executed a batai patra on May 25, 1957, by virtue of this Explanation he must be held to be cultivating land in partnership with the petitioner and, therefore, he could not have even the status of an ordinary tenant because of the provisions of the Madhya Pradesh Land Revenue Code. The "batai patra does not necessarily import in every case a document of partnership or an agreement to cultivate land in partnership with the tenure-holder. It will all depend upon what are the terms agreed upon in each individual case. In the present case, the batai patra as such has not been produced before us, nor are its terms set forth. Moreover, the finding given by the Revenue Authorities on this question is, in our opinion, a pure finding of fact that even after the batai patra was executed the respondent Rajeshwar was a lawful tenant of the field during the year 1958-59. We also think that that construction of the terms of the document as discussed by the Revenue Authorities below was correct.

8. In the result, the petition fails and is dismissed with costs.