
(1958) 11 BOM CK 0026

In the Bombay High Court

Case No : Special Civil Application No. 244 of 1958

Mohanlal Chandulal Agarwal

APPELLANT

Vs

Janu Dasraji

RESPONDENT

Date of Decision : 18-11-1958

Acts Referred:

Berar Regulation of Agricultural Leases Act, 1951 — Section 23

Citation : (1959) 61 BOMLR 633

Hon'ble Judges : Tarkunde, J; Tambe, J

Bench : Division Bench

Judgement

Tarkunde, J.—The petitioner is a landholder of two agricultural lands. In the year 1951-52, during which the Berar Regulation of Agricultural Leases Act, 1951 (XXIV of 1951) came into force, the two lands were in the possession of respondent No. 1 as a tenant. The rent agreed for the year was Rs. 150. By virtue of Section 3 of that Act, respondent No. 1 became a protected lessee. Another result of that section was that his lease was deemed to be for a period of five years from the year 1951-52 and by a subsequent amendment that period was extended to seven years. In the year 1954 the petitioner applied u/s 10(2) of the Act to the Sub-Divisional Officer for the determination of reasonable lease-money for the lands, alleging that the agreed rent was very low and that there was an understanding between him and the tenant that the rent was to be increased as the lands improved during the course of tillage. The Sub-Divisional Officer heard the parties and fixed the reasonable lease-money at Rs. 262-8-0 per year. On an appeal taken by respondent No. 1, the Additional Deputy Commissioner confirmed the decision of the Sub-Divisional Officer. Respondent No. 1 went in second appeal to the Bombay Revenue Tribunal, and the Bombay Revenue Tribunal allowed the appeal and set aside the orders of the Courts below. The decision of the Bombay Revenue Tribunal is challenged before us. The Tribunal held that Section 10(2) of the Act did not entitle the petitioner to apply for enhancement of lease-money and that the petitioner's application was not tenable in law. In coming to that conclusion, the Tribunal relied on their earlier

Full Bench decision in Imamkhan v. Sheikh Gulam [1958] N.L.J. 227.

2. Sub-section (1) of Section 10 of the Act, in so far as it is relevant, provides that

the lease-money payable by a protected lessee shall be the lease-money agreed upon between such lessee and his landholder, or where there is no agreement or either party to the agreement considers the agreed lease-money as unreasonable, such reasonable lease-money as may be fixed by the Revenue Officer.

This is followed by Sub-section (2) which is in the following terms:

For the determination of reasonable lease-money under Sub-section (1), either the lessee or the landholder may apply in the prescribed form to a Revenue Officer within whose jurisdiction the land is situated.

Thus, by the express terms of Sub-sections (1) and (2) of Section 10, both the lessee and the landholder have been given the right of getting the reasonable lease-money determined by a Revenue Officer if either of them considers that the agreed lease-money is unreasonable. Despite this, the aforesaid Full Bench of the Bombay Revenue Tribunal held that a landholder cannot apply for enhancement of the lease-money which was agreed upon at the time of the lease; and in coming to this conclusion the Full Bench relied upon the terms of Section 23 of the Act. Section 23 says:

Save as otherwise provided in Sub-section (1) of Section 7, no other provision contained in this Act shall be construed to limit or abridge the rights or privileges of any lessee under any usage or law for the time being in force or arising out of any contract; grant, decree or order of a Court or otherwise howsoever.

The Full Bench of the Tribunal held that u/s 3 of the Act the contractual lease between the parties is deemed to be for a period of seven years; that the lease must be deemed to have continued with all the terms and conditions thereof including the term with regard to the lease-money; and that the right so given to the tenant by Section 3 cannot be limited or abridged by anything contained in Section 10, because Section 23 expressly bars any such construction being placed on Section 10.

3. We are, with respect, unable to accept this view. We agree that Section 3 of the Act creates a legal fiction, and the effect of the legal fiction is that the lease is deemed to be for a period of seven years from 1951-52 with its original terms and conditions. But the rights which are thus granted to the protected lessee by Section 3 of the Act are subject to certain limitations placed by the Act itself; and Section 23 cannot be so construed as to place those rights above the said limitations. For instance, Section 8 of the Act enables a landholder to apply to the Revenue Officer for terminating the lease of a protected lessee on various grounds, such as, that the lessee has failed to pay the lease-money on or before a particular date. Section 9 enables a landholder in certain circumstances to

terminate the lease if he requires the land for personal cultivation. These and similar rights granted to the landholder operate as limitations on the security of tenure given to the tenant by Section 3 of the Act, and there is no reason why the right granted to the landholder by Section 10 of the Act of getting reasonable lease-money determined by a Revenue Officer should not have the same effect. Section 3 must be read along with other sections of the Act, and not so that its provisions override other provisions of the Act. If the view of the Revenue Tribunal were accepted, a part of Section 10 would be rendered wholly nugatory, because in no circumstances would a landholder be able to get reasonable lease-money determined by a Revenue Officer, although such a right has been expressly granted to him by that section.

4. In our view, the purpose of Section 23 of the Act is altogether different. Its purpose is to provide that if a lessee possesses any rights independently of the Act, those rights are not limited or abridged by any of the provisions of the Act except the provision contained in Sub-section (1) of Section 7. Section 7(1) prohibits a protected lessee from transferring his right in the land; so that the effect of this provision read with Section 23 is that even where a protected lessee had the right, independently of the Act, of transferring his leasehold interest, that right is no longer available to him. Subject to this exception, the rights of a lessee are safeguarded by Section 23. But the rights so safeguarded are the rights which the lessee has acquired independently of the Act and not the rights which are granted to the lessee by the Act itself. In the present case, the right of respondent No. 1, the lessee, to remain in possession of the lands on payment of the annual lease-money of Rs. 150 in and after 1952-53 was wholly the creation of Section 3 of the Act; and Section 23 cannot be so construed as to safeguard that right against the other provisions of the Act.

5. In support of their conclusion, the Pull Bench of the Bombay Revenue Tribunal relied on the decision of Chagla C.J. in *Dullab Ganpat v. Vallab Oanpat*. (1953) 56 Bom. L.B. 219. That case arose under the Bombay Tenancy Act, 1939; and construing the provisions of that Act corresponding to the provisions of Sections 3, 10 and 23 of the Berar Regulation of Agricultural Leases Act, the learned Chief Justice held that the landlord had no right to get the agreed rent enhanced by applying for the determination of reasonable rent. In that case, however, the contractual lease was for a period of ten years, independently of the legal fiction created by one of the sections of the Bombay Tenancy Act, 1939, and it was during the pendency of this contractual lease that the landlord had applied for determination of reasonable rent by the Mamlatdar. The learned Chief Justice held that the contractual right of the tenant could not be abridged or limited by recourse to the provision in the Act which enabled the Mamlatdar to fix reasonable rent. In a subsequent case *Sitaram Vithal Chitnis v. Shri Gundu Satyappa Dhade* (1956) Special Civil Application No. 1695 of 1955, decided by Chagla C.J. and Dixit J., on November 1, 1955 (Unrep.), the learned Chief Justice, delivering the judgment of a Division Bench consisting of himself and Dixit J., had occasion to refer to the judgment delivered by him in *Dullab Oanpat*

v. Vallab Ganpat. Referring to his decision in the earlier case, the learned Chief Justice observed:

I construed the Act as giving special rights to the tenant, and one further special right was that if he had any right aliunde the Act, that right was safeguarded and that right could not be taken away under the Tenancy Act. But the particular facts I was dealing with in that case were that there was a subsisting lease under which the tenant was liable to pay a certain amount as rent, the landlord applied for the fixation of reasonable rent, and the Mamlatdar fixed the reasonable rent at a higher amount than the contractual rent, and what I held was that as the tenant had a right under the contract to pay a certain rent, that right could not be taken away by the provision of the Act by which the reasonable rent was fixed at a higher amount.

It is thus clear that our view with regard to the scope and construction of Section 23 of the Berar Regulation of Agricultural Leases Act is in no way different from the view taken by the learned Chief Justice about the corresponding provision of the Bombay Tenancy Act.

6. On behalf of respondent No. 1 Mr. Abhyankar argued before us that Section 23 of the Act safeguards the right of a lessee "arising out of any contract"; that section provides by a legal fiction that the right of respondent No. 1 in this case to pay Rs. 150 as lease-money is a right arising out of a contract; and that the legal fiction must be given full effect by placing that contractual right beyond the limitation comprised in Section 10. Alternatively, Mr. Abhyankar argued that if the said right of respondent No. 1 cannot be regarded as a right arising out of a contract, it was a right "arising...otherwise howsoever", and in that event also, it should receive the protection of Section 23. We are unable to accept either of these arguments. In either case, the right claimed by respondent No. 1 arises by virtue of the provisions of Section 3, and cannot stand independently of it. Section 23 does not safeguard any right derived from the provisions of the Act, whether that right is granted by creating a legal fiction or otherwise.

7. In the result, we hold that the application of the petitioner for the determination of reasonable lease-money u/s 10(2) of the Act is maintainable, and set aside the decision of the Bombay Revenue Tribunal. As the Bombay Revenue Tribunal have not dealt with the merits of the appeal before them, the appeal is restored with a direction that the Tribunal will deal with the same according to law. In the circumstances of the case, there will be no order as to costs.