
(2003) 09 BOM CK 0120
In the Bombay High Court
Case No : Writ Petition No. 4207 of 1990

Nanasaheb Maruti Sawant

APPELLANT

Vs

Shankar Laxman Kalokhe and Others

RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 14, 29(3), 43(1A)
Constitution of India, 1950 — Article 227

Citation : (2003) 09 BOM CK 0120

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : S.M. Mhamane, for the Appellant; P.K. Dhakephalkar, for the Respondent

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J.—This writ petition under Article 227 of the Constitution of India takes exception to the judgment and order passed by Maharashtra Revenue Tribunal, Pune in Revision Application No.MRT/NS/1/5/88 (TNC B.16/88). The said application was directed against the order passed by the Sub-Divisional Officer, Mahableshwar Sub-Division, wai dated 31/10/1987 in Tenancy Case No TNC-Case-3/83.

2. The said application was preferred by the petitioner herein claiming that he was the landlord in respect of land bearing Gat No. 241 (Survey No.12/2) situate at Khanapur, Taluka Wai, District Satara admeasuring 2H and 24Rs. The respondents were inducted as tenants in the suit land by the predecessor in title of the petitioner - Rakhamabai. The said Rakhamabai has left behind a Will dated 22/12/1967 whereby the suit land has been bequeathed to the petitioner. The said Rakhamabai died Sometime in 1972. As a consequence of the said Will, the petitioner has become the owner and landlord in respect of the suit land, which position is not in dispute. At the relevant time, in 1972, the petitioner was a member of the Armed Forces. He retired from Military Service in January, 1982.

Soon thereafter, the petitioner gave a notice on 7/4/1982 and again on 14/8/1982 terminating the tenancy of the respondents and demanded the possession of the suit land (i.e. half share in Gut No.214) for his bonafide cultivation and on the ground of default. On the basis of the said notices, the petitioner instituted an application before the Sub-Divisional Officer for possession of the suit land against respondents purported to be u/s 14 read with Section 29(3) and Section 43(1-A) of the Bombay Tenancy and Agricultural lands Act, 1948. The Sub-Divisional Officer, however, rejected the said application by judgment and order dated 31/10/1987. Against that decision, a Revision Application was filed before the Maharashtra Revenue Tribunal, which was dismissed by the impugned judgment and order dated 29/12/1989 by the Tribunal. The Sub-Divisional Officer held that the application could be considered only on the ground of default and not with reference to the special provisions of Chapter III AA of the Bombay Tenancy and Agricultural Lands Act, 1948. In that backdrop, it was argued before the Tribunal that the notices given by the petitioner were composite notices for possession by invoking Section 43(1-A) of the Act as well as on the ground of default u/s 14 read with Section 29(3) of the Act. In such circumstances, the Sub-Divisional Officer ought to have considered the matter atleast in the context of provisions of Section 43(1-A) of the Act, which was indisputably available to the petitioner, but that adjudication has not been done. The Tribunal has recorded the submissions but eventually negated that stand taken on behalf of the petitioner and dismissed the Revision Application.

3. Having considered the rival submission, to my mind, the appropriate course in such a situation was to refer the case to the Collector, who is the competent authority to decide the application for possession when provisions of Chapter III AA are invoked by the landlords, who are or have been serving members of the Armed Forces. It appears that soon after the petitioner retired from Military Services in January, 1982, notices have been given on 7/4/1982 and 14/8/1982 terminating the tenancy of the respondents and restoration of possession of the suit land. The application, as originally filed, also invokes the provisions of Section 43(1-A) of the Act. Undoubtedly, the application for possession of the suit land by invoking special provisions of Chapter III AA of the Act can be entertained and decided only by the Collector. In such a situation, the Sub-Divisional Officer ought to have relegated the parties before the Collector for adjudication of the matter in the context of the special provisions of Chapter III AA of the Act instead of non suiting the petitioner on a technical ground. Even the Tribunal could have directed the parties by transferring the application which is originally filed, to the Collector to do substantial justice in the matter. In the circumstances, the appropriate course is to relegate the parties before the Collector, Satara by setting aside the impugned order to the extent of observations made with regard to the applicability of special provisions of Chapter III AA of the Act. All questions relating to that aspect shall be considered afresh by the Collector. In the circumstances, the application, as originally filed

by the petitioner, for possession of the suit land will have to be confined to the issues relating to and arising out of the special provisions of Chapter III AA of the Act and the same be considered afresh by the Collector on its own merit and in accordance with law after giving fair opportunity to both sides in that behalf. This course has been adopted in view of the submissions advanced on behalf of the petitioner that the petitioner would confine the application for possession of the suit land only with reference to the provisions of Section 43 (1-A) of the Act on the ground that the petitioner was a member of the Armed Forces.

4. Petition allowed on the above terms. No order as to costs.