

(2011) 01 BOM CK 0115

In the Bombay High Court

Case No : Writ Petition No. 5199 of 1993

Nanasaheb @ Shankarrao Balasaheb Bhosale

APPELLANT

Vs

Vinayak Aba Jagatap (since deceased represented through
LRs.) Smt. Kisabai Vinayak Jagtap and Others

RESPONDENT

Date of Decision : 13-01-2011

Acts Referred:

Constitution of India, 1950 — Article 227

Tenancy and Agricultural Lands Laws (Amendment) Act, 1964 — Section 29, 31, 33B,
43, 73A

Citation : (2011) 4 ALLMR 280 : (2011) 3 BomCR 76 : (2011) 2 MhLj 746

Hon'ble Judges : V.M. Kanade, J

Bench : Single Bench

Advocate : Prafulla Shah, for the Appellant; R.S. Kate, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Kanade, J.—Heard the learned Counsel appearing on behalf of the Petitioner and the Respondents. The Petitioner is aggrieved by the judgment and order passed by the Additional Commissioner Pune. By the said order, the Additional Commissioner Pune was pleased to dismiss the revision application, filed by the Petitioner herein, and also the revision application, filed by the Respondents herein.

2. Brief facts are that the Petitioner herein is a landlord in respect of the suit premises. He along with his mother filed an application in the year 1957 u/s 29 read with 31 of the Bombay Tenancy & Agricultural Lands Act 1948 (hereinafter referred to as the "Act") for recovery certain lands for cultivation. The said application was allowed by the Mamlatdar. Against the said order, Respondent preferred an appeal. The appeal was also dismissed and the order of Mamlatdar was confirmed in favour of the Petitioner. Against the said order, Respondent/tenant filed a revision application before the Maharashtra Revenue Tribunal. Thereafter the intimation was sent that in view of the provisions of Section 43(1)

(b) of the Act that the order had to be complied with. In view of this, both the Petitioner as well as Respondent, filed revision application before the Sub Divisional Officer and the Sub Divisional Officer allowed the revision application filed by the Respondent/tenant and dismissed the revision application filed by the Petitioner herein.

3. The learned Counsel appearing on behalf of the Petitioner submitted that in view of the concurrent findings given by the Courts below, the Sub-Divisional Officer erred in passing the impugned order. He submitted that when the application was filed, the Petitioner was serving as a Member of the Arm Forces and therefore, the provisions of Section 43(1)(b) of the Act was not attracted. It was submitted that the Sub Divisional Officer, therefore, erred in applying the provisions of Section 43(1)(b) of the Act to the said proceedings. The learned Counsel invited my attention to Section 31 and 43(1)(b) of the said Act. He has taken me through the judgment and order passed by the Sub Divisional Officer and also the orders passed by the authorities below.

4. On the other hand, learned Counsel appearing on behalf of Respondents submitted that in view of amendment to Section 43 by Virtue of Amendment Act 1964, all pending cases were transferred to the higher authorities under the provisions of Section 43(1)(c). He, therefore, submitted that though initially the application was filed u/s 31 of the said Act, since the proceedings were pending when the Amendment Act of 1964 was passed, the amended provisions u/s 43 of the Act, became applicable, even to the pending proceedings.

5. In my view, there is substance in the submissions made by the learned Counsel for the Respondent. It would be relevant to take into consideration the provisions of Section 43(1)(b) and Section 43(1)(c) of the Act, which reads as under -

43 I B. Right to landlord to terminate the tenancy -

(1) Notwithstanding anything contained in the foregoing provisions of this Act, but subject to the provisions of this section, it shall be lawful to a landlord at any time after the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act, 1964, to terminate the tenancy of any land and obtain possession thereof, but

(b) where the landlord is a member of a joint family, only to the extent of his share in the land (not exceeding the ceiling area) held by the joint family, provided that, the Mamlatdar on inquiry is satisfied that such share has (regard being had to the area, assessment, classification and value of land), been separated by metes and bounds in the same proportion as his share in the entire joint family property and not in a larger proportion.

(2) No tenancy of any land shall be terminated under Sub-section(1), unless a notice in writing is given to the tenant, and an application for possession under Sub-section (3A) of Section 29 is made to the Collector:

Provided that in the case of a landlord who has ceased to be a serving member of the armed forces, such notice shall be given and application made within two years from the date of such cesser; and if he dies before the expiry of these two years without giving such notice or making such application, then within two years from the date of his death.

(3) Nothing in this Chapter shall -

(a) apply to a tenancy of land created (after obtaining possession thereof under the provisions of this Chapter) by a landlord who has ceased to be a serving member of the armed forces; but the provisions of Section 320 shall apply to such tenancy as they apply in relation to a tenancy created after the Tillers" day;

(b) entitle a landlord who has ceased to be a serving member of the armed forces (as a result of his being duly dismissed or discharged after a Court martial or on account of bad character or as a result of discretion) or who has not been attested, to terminate the tenancy of his land under this section.

(4) Nothing in the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, shall affect the termination of any tenancy under this Chapter.

43 1 C. Transfer of pending proceeding to Collector and State Government -All proceedings for recovery or restoration of possession of land filed u/s 31 or 33B by a landlord pending immediately before the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act, 1964, before a Mamlatdar shall (subject to any rules made as respects such transfer or any matter incidental thereto) on such commencement, stand transferred to the Collector, and all such proceedings pending in appeal before the Collector or in revision before the Maharashtra Revenue Tribunal shall likewise stand transferred to the State Government; and such proceedings shall be deemed to have been instituted for restoration of the land before the Collector u/s 43-1B, or as the case may be, pending in revision before the State Government u/s 73A and be disposed of accordingly.

6. Perusal of the aforesaid provision clearly reveals that as per Section 43-1C, all pending proceedings for recovery and restoration of possession of land, filed u/s 31 or Section 33B shall stand transferred to the Collector. In view of this, therefore, proceedings filed by the Petitioner though it was initially u/s 31 of the Act, said transfer is in view of the said provision, as the provisions of Section 43-1B would be squarely applicable to the Petitioner, who was a member of Armed Forces. Section 43-1B and 43-1C clearly envisages that so long as a separate share of the landlord is not earmarked, he is not entitled to seek possession. In the present case, a finding has been recorded by the lower Court that no partition had taken place. Even in paragraph 2 of the petition, there is a specific averment that the Petitioner along with his other family members owns the agricultural land. This being the admitted position, the provisions of Section 43-1B are squarely attracted to the facts of the present case. Hence, the Sub-

Divisional Officer was justified in rejecting the application, filed by the Petitioner herein. Secondly, though initially application u/s 29 read with Section 31 was filed by the Petitioner and his mother, the present petition has been filed only by the Petitioner. Under these circumstances, therefore, no case is made out for interfering with the impugned order, while exercising writ jurisdiction under Article 227 of the Constitution of India. Writ petition is, therefore, dismissed.