
(1961) 03 BOM CK 0010

In the Bombay High Court

Case No : Special Civil Application No. 1008 of 1960

Narayan Dagadu Mane

APPELLANT

Vs

Bapu Maruti Neel

RESPONDENT

Date of Decision : 08-03-1961

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 84C

Citation : (1962) 64 BOMLR 665

Hon'ble Judges : H.K. Chainani, C.J.;Gokhale, J

Bench : Division Bench

Judgement

H.K. Chainani, C.J.—The petitioners are the landlords of three lands, which were held by opponent No. 1, hereinafter referred to as "the opponent", as a tenant. From the statements recorded by the Mamlatdar it appears that the opponent surrendered his tenancy rights some time before Gudi Padva Day in 1957 and handed over possession on the Padva Day. The Padva Day in 1957 was April 1, 1957. In December 1958, the Mamlatdar held an enquiry u/s 84C of the Bombay Tenancy and Agricultural Lands Act. He came to the conclusion that as the petitioners had obtained possession of lands without the orders of the Mamlatdar, as required by Section 29, they had acquired lands in contravention of the provisions of the Act and that consequently the acquisition of the lands by them was invalid. He, therefore, made an order under Sub-section (3) of Section 84C that the lands would vest in the State Government free from all encumbrances lawfully subsisting thereon. The petitioners appealed against this order to the Deputy Collector, but their appeal was dismissed. The Revenue Tribunal also confirmed the order made by the Mamlatdar. Thereafter the present Special Civil Application was filed.

2. Sub-section (1) of Section 84C provides that where in respect of the transfer or acquisition of any land made on or after the commencement of the Amending Act, 1955 (August 1, 1956), the Mamlatdar suo motu or on the application of any person interested in such land has reason to believe that such transfer or

acquisition is or becomes invalid under any of the provisions of this Act, the Mamlatdar shall issue a notice and hold an inquiry as provided for in Section 84B and decide whether the transfer or acquisition is or is not invalid. Sub-section (2) of Section 84C empowers the Mamlatdar to declare the transfer or acquisition of land to be invalid. Sub-section (3) empowers him to make a declaration that the land shall vest in the State Government free from all encumbrances lawfully subsisting thereon. This section, therefore, applies in the case of a transfer or acquisition of any land, which is invalid under the provisions of the Act. The question for consideration is whether an invalid surrender or obtaining possession of the land by the landlord in pursuance of such surrender can be said to be a transfer or acquisition of land, within the meaning of this section. A surrender is not a transfer within the meaning of the Transfer of Property Act: see Mulla's Transfer of Property Act, 1956 edn. at p. 47. The word "transfer" is not defined in the Tenancy Act. Unless there is anything repugnant in the subject or context, it shall, therefore, have the same meaning in the Tenancy Act as is assigned to it in the Transfer of Property Act; see Clause (21) in Section 2 of the Tenancy Act. There is nothing in Section 84C to indicate that the word "transfer" as used in the section is intended to have a meaning different from that given to it in the Transfer of Property Act. A surrender, which is only the falling of a lesser estate into a larger one, cannot, therefore, be said to be a transfer within the meaning of this section. In this connection, it is necessary to refer to Sections 63 and 64. Sub-section (1) of Section 63 provides that no sale, gift, exchange or lease of any land or interest therein, and no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee, shall be valid in favour of a person who is not an agriculturist or who, being an agriculturist, cultivates personally land not less than the ceiling area or who is not an agricultural labourer. Section 64 lays down the procedure, which a landlord is required to follow, if he wants to sell his land. Sub-section (8) of this section states that any sale made in contravention of this section shall be invalid. It, therefore, appears that what the Legislature wanted to make penal by Section 84C was a transfer of the kind referred to in Sections 63 and 64. The word "acquisition" must be read ejusdem generis with the word "transfer" and cannot, therefore, cover cases, in which a person merely obtains possession of the land belonging to him unlawfully.

3. In this connection, it is also necessary to consider the consequences of an invalid surrender made prior to April 1, 1957. Sub-section (1) of Section 15 provides that every surrender shall be in writing and verified before the Mamlatdar in the prescribed manner. If the surrender is not made as mentioned in this sub-section, it is invalid, and the tenant will have a right to get back possession of the land by making an application to the Maralatdar. This right of the tenant to get back possession of the land will be lost, if we were to accept the interpretation placed on Section 84C of the Act by the Tenancy Courts and the Revenue Tribunal that this section also applies in the case of invalid surrenders. We do not think that this could have been intended by the

Legislature....

4. We are, therefore, of the opinion that action u/s 84C of the Act cannot be taken in the case of an invalid surrender made before April 1, 1957. We, therefore, set aside the orders made by the Mamlatdar, the Deputy Collector and the Revenue Tribunal. No order as to costs.