
(2003) 01 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition No. 2888 of 1984

Narendra Jagannath Joshi

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-01-2003

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G, 85(2)
Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 3, 4, 7

Citation : (2003) 1 ALLMR 803 : (2003) 3 BomCR 54 : (2003) 2 MhLj 168

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : V.Z. Kankaria and Arvind J. Joshi, for the Appellant; Rajesh Shah,
For respondent No. 3a and 3b, for the Respondent

Final Decision : Allowed

Judgement

S.A. Bobde, J.—This petition is by the owners of agricultural land in question. They challenge the order of the Additional Commissioner under the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 i.e. Act No. 14 of 1975 by which the Additional Commissioner has rendered a finding contrary to the findings rendered under the Bombay Tenancy and Agricultural Lands Act in an order from which no appeal is filed and which has become final.

2. The petitioner is the landlord, being owner of agricultural land bearing Survey No. 60/4 of Village Bavade, Tal. Dahanu. Apparently the lands were in possession of one Jivan Vithu Habali, the predecessor in interest of the respondent Nos. 2 to 4. The said Jivan died in the year 1968. Since record of rights in form VII-XII showed him as a tenant for the period from 1959-60 to 1974-75 proceedings u/s 32-G of the Bombay Tenancy and Agricultural Lands Act, the "Bombay Tenancy Act" for short were commenced. On 5th December, 1979 those proceedings were dropped by the Agricultural Lands Tribunal, Dahanu who observed that the said Jivan is reported to be dead. The Agricultural Lands Tribunal also relied on a no karnama executed by the said Jivan in favour of the landlord, and on the

statement of Mangalya Gangya Govari who stated on oath that said Jivan Vithu Habali died about 7 years ago leaving behind no heir, and that he, Mangalya, was cultivating the suit land as a servant of the landlord.

3. This order has not been challenged by any of the heirs of the said Jivan Vithu Habali and has attained finality. The learned Counsel for the respondents has not been able to show anything to the contrary.

4. Thereafter proceedings were commenced under the Act No. 14 of 1975 for restoration of land to Jivan Vithu Habali who was said to be a tribal. The restoration was claimed by one Balu Vithu Habali, who claimed to be his brother. The Additional Tahsildar, however, relied on the decision of the Tahsildar dropping proceedings u/s 32 of the Bombay Tenancy Act on the ground that the Jivan Vithu Habali was not a tenant. Therefore, the Additional Tahsildar accepted and proceeded on the basis that Jivan was not a tenant and was wrongly shown as such, as found by the Agricultural Lands Tribunal while dropping proceedings u/s 32 of the Act.

5. However, on 31st December, 1983 the Additional Commissioner, Konkan Division in exercise of his powers u/s 7 of the Act 14 of 1975 came to the conclusion that the Additional Tahsildar could not have dropped the proceedings under the Act 14 of 1975. While doing so, the Additional Commissioner has gone to the extent of holding that the order of the Additional Tahsildar, Dahanu dated 5th December, 1979 u/s 32G of the Bombay Tenancy Act, holding that Jivan was not a tenant, is invalid in view of Sections 3 and 4 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. The Additional Commissioner has in fact come to a finding completely contrary to the findings of the Additional Tahsildar u/s 32G of the Bombay Tenancy Act and held that the said Jivan was cultivating the land as a tenant. It is this order which is challenged before this Court.

6. Mr. Kankaria, the learned Counsel for the petitioner submitted that the additional Commissioner had no jurisdiction to decide the question of Tenancy and reverse the finding on the question of Tenancy recorded by the Additional Tahsildar. This contention deserves to be accepted.

7. The Bombay Tenancy Act was enacted by the State Legislature to amend the law which governs the relation of landlord and tenant of agricultural lands, the provisions of the Act shows that it is a self contained code on the subject of agricultural Tenancy. Section 70(b) of Bombay Tenancy Act reads as follows :--

"70(b) to decide whether a person is, or was at any time in the past, a tenant or a protected tenant or a permanent tenant."

The above section confers the jurisdiction to decide the question whether a person is, or was at any time in the past was a tenant or a protected tenant on the Mamlatdar. Section 85 of the Bombay Tenancy Act excludes the jurisdiction of Civil Court to deal with the aforesaid question. Section 85 of the Bombay Tenancy Act reads as follows :--

"85(1) No Civil Court shall have jurisdiction to settle, decide or deal with any question (including a question whether a person is or was at any time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord the land held by him) which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector or the Maharashtra Revenue Tribunal in appeal or revision or the State Government in exercise of their powers of control.

(2) No order of the Mamlatdar, the Tribunal, the Collector or the Maharashtra Revenue Tribunal or the State Government made under this Act shall be questioned in any Civil or Criminal Court."

It is clear from Sub-section (2) above that the order of the Mamlatdar is immune from challenge before any Civil Court. Section 74 of the Bombay Tenancy Act provides for an appeal against an order u/s 32G of the Bombay Tenancy Act. Section 76 of the Bombay Tenancy Act provides for revision to the Maharashtra Revenue Tribunal on the grounds enumerated therein. In short, it is clear that it cannot be challenged before or set aside by any authority exercising powers under any other Act or even a Civil Court. Much less can it be set aside by an authority exercising powers under the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 but can only be challenged under the provisions of the Bombay Tenancy Act.

8. In the circumstances, it is clear that the impugned order passed by the Additional Commissioner, Konkan Division is without jurisdiction in that the Authority has held that Jivan Vithu Habali was a tenant inspite of a clear finding by the Additional Tahsildar under the Bombay Tenancy Act by his order dated 5th December, 1979 that he was not a tenant. Therefore, the findings of the Additional Commissioner that Jivan Vithu Habali was a tenant in possession is liable to be set aside. The findings as regards possession seems to be unsustainable in view of the finding of the Additional Tahsildar under the Bombay Tenancy Act where Additional Tahsildar accepted the case of the petitioner that the petitioner was cultivating the land through Jivan Vithu Habali who was engaged as a servant to cultivate on his behalf.

9. In the result, the writ petition is allowed. Rule is made absolute in terms of prayer Clause (b) of the writ petition. The order of the Additional Commissioner dated 31st December, 1983 is hereby quashed and set aside. In the circumstances of the case, however, there shall be no order as to costs.

P. A. to give ordinary copy of this order to the parties concerned.

All Authorities concerned to act on an ordinary copy of this order duly authenticated as true copy by the Sheristedar of this Court.