(1979) 03 GUJ CK 0002

In the Gujarat High Court

Nathubhai Gandabhai APPELLANT

Vs

Bhagubhai Ichubhai RESPONDENT

Date of Decision : 07-03-1979

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32(1B), 74, 74

Citation : (1980) 21 GLR 366

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—This is a petition by a citizen challenging the order of the Gujarat Revenue Tribunal in the Revision Application No. TEN B.S. 113/74 decided on 29-1-76, which is Annexure C to the petition. The Tribunal confirmed the order of the Deputy Collector, in an appeal u/s 74 of the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as the ''Act''. The Deputy Collector''s order is at Annexure B to the petition. The Deputy Collector in his turn reversed the judgment of the Mamlatdar, Mahuwa in Surat District in the tenancy case No. 5 of 1973 on his file.

2. A few facts need to be stated. There are two agricultural pieces of land S. No. 1573 and 1586/part situated in the sim of village Karchalia, Tal. Mahuva in Surat District. The present petitioner in the High Court had mortgaged these two fields with the Punamchand Talkaji by way of usufructory mortgage in the year 1940. Said Punamchand had inducted one Ichubhai Bhimbbai, the father of the present respondent, as a tenant on the land. In the year 1956, the present petitioner filed the civil suit No. 417 of 1956 for redemption of the mortgage, impleading the mortgagee Puriamchand as well as the respondent''s father Ichubhai as party respondents. A decree had come to be passed in favour of the petitioner and in execution of the said decree, the petitioner had procured possession of the fields from the mortgagee as well as his tenant Ichubhai. This had taken place in the year 1958. The time then went on passing and the petitioner went on cultivating the land. Said Ichubhai thereafter died. In the year 1973, with effect from

3-3-73, the Gujarat Legislature amended the Bombay Tenancy Act and introduced Section 32(1B) making a special provision for restoration of possession to the tenants, who were on the agricultural lands on the specified date, namely, 15-6-55, but who were evicted on or before the appointed day, namely 3-3-73, otherwise than in accordance with the provisions of the Act. Ichubhai''s son, the present respondent, who is one of the four heirs of Ichubhai, thereafter made an application to the Mamlatdar, Mahuwa u/s 32(1B) of the Act for possession, alleging that his father was in possession of the lands on the specified day and that he was dispossessed before the appointed day "otherwise than in the manner provided u/s 29 or any other provision of this Act" and that he being the heir, who had inherited the rights of the father u/s 40 of the Act, was entitled to be put into possession.

3. The Mamlatdar by his order, Annexure A, held that the mortgagee''s tenant Ichubhai and after his demise his son, the respondent, could not claim to be the status of a tenant and that the application being misconceived was liable to be dismissed. The present respondent, therefore, filed the appeal be fore the Deputy Collector, Vyara, who allowed the appeal on the ground that dispossession of a tenant even pursuant to the decree of a civil court would not be dispossession "under Section 29 of the Act or any other provisions of that Act" and consequently Section 32(1B) was attracted. The order for possession in favour of the respondent had come to be passed by the Deputy Collector. The present petitioner, therefore, moved the Gujarat Revenue Tribunal where its learned member one Mr. Patel confirmed the order of the Deputy Collector. A specific contention was raised before the Tribunal that the respondent could not claim benefit of Section 40 of the Act and that even u/s 32(1B) he was not entitled to possession. Both these specific contentions were turned down by the Tribunal. Being aggrieved by the said order of dispossession, the present petitioner has moved this Court by invoking its writ jurisdiction.

4. Mr. Mehta, the learned advocate for the petitioner has raised the following three points of law before me:

(1) Section 32(1B)of the Act applies only to the tenant himself and its benign benefit could not be extended to his heir in terms of the specific language of the section;

(2) Section 40 of the Act has no application so as to make the heir of a dispossessed tenant and the heir is not entitled to the right reserved for the original tenant u/s 42(1B) because Section 40 contemplates that the tenant concerned must be in possession and cultivation of the land at the time of his demise; and

(3) All the heirs having not made a joint application, the proceedings were untenable.

5. It is to be noted at the outset that in view of the judgment of the Supreme Court in the case of Daya Lala v. Result Mohmed 65 B.L.R. 328 and in view of the

judgment of the Division Bench of this Court in the case of Bahadnrbhai v. Ambulal 4 G.L.R. 681, Mr. Mehta for the petitioner did not contend that the respondent''s father was evicted in pursuance of Section 29 or other provisions of the Bombay Tenancy Act.

6. Section 32(1B) of the Act is reproduced below and so is quoted Section 40 of the Act.

32(IB). Where a tenant who was in possession of the land on the appointed day and who, on account of his being dispossessed of such land or any part thereof by the landlord at any time before the (sic) date otherwise than in the manner provided in Section (2) or any other provisions of the Act, is not in possession of such land or any part thereof and such land or part thereof is in the possession of the landlord or his successor in interest on the said date and such land or part thereof is not pat to a non-agricultural use on or before the said date, then the Mamlatdar shall, notwithstanding anything contained in the said Section 29 or any other provision of this Act either suo motuox on an application of the tenant made within the prescribed period, hold an inquiry and direct that such land or, as the case may be, part thereof shall be taken from the possession of the landlord or, as the case may be his successor in interest and shall be restored to the tenant: and thereafter; the provisions of this Section and Sections 32A to 32R (both inclusive) shall, so far as they may be applicable, apply thereto, subject to the modification that the tenant shall be (sic) to have purchased such land or part thereof on the date on which such land, or as the case may be, part thereof is restored to him,....

xxx xxx xxx xxx xxx 40.(1) Where a tenant (other than a permanent tenant) dies, the landlord shall be deemed to have continued the tenancy on the same terms and conditions on which such tenant was holding it at the time of his death, to such heir or heirs of the deceased tenant as may be willing to continue the tenancy. (2) Where the tenancy is inherited by heirs other than the widow of the deceased tenant, such widow shall have a charge for maintenance on the profits of such land.

Both these Sections are quoted because the points Nos. 1 and 2 raised by Mr. Mehta-veered round them. I, however, think that Mr. Mehta''s point No. 2 holds good and it is therefore, not necessary for me to elaborate the first contention raised by Mr. Mehta.

7. Section 40 was inducted on the statute book in the year 1956. Even a casual glance at the text of that Section shows that the Legislature intended to extend the benefit of continued possession of a tenant to his heirs on the demise of the tenant. The significant words are "which such tenant was holding it at the time of his death." "To hold the land" is defined in Section 2(6C) of the Act is as follows:

To hold land as an owner or tenant shall, for the purposes of Clause (2D) of this Section and Sections 32A, 32B, 3t and 35 mean to be lawfully in actual possession of land as an owner or tenant, as the case may be.

The definition in Clause (6C) of Section 2 of the interpretation Clause is, therefore, confined to certain specified sections, but Section 40 is net one of the Sections enumerated there. As per Clause (21) of Section 2 of the Act, the words and expressions used in this Act, but not defined shall have the meaning assigned to them in the Bombay Land Revenue Code, 1879 and the Transfer of Property Act, 1882, as the case may be. As the word "to hold land" in Section 40 has not been defined, we have to advert for the definition of the word to the provisions of the Land Revenue Code. Clause (ii) of Section 3 of the Land Revenue Code defines the phrase as under

To hold land", or to be a land holder or "holder" of land means to be lawfully in possession of land, whether such possession is actual or not.

The definition means that in order to call himself a holder of land, the land must be either in actual possession or must be constructively in his possession. The land can be said to be in constructive possession only when somebody claiming through him is in possession. In the latter case, the man can very well claim to be in possession through his agent or assignee or transferee. When Ichubhai was evicted under the decree of the court and he lost his possession, the possession of the present petitioner was not through Ichubhai. Ichubhai could not be said to be a superior holder with respect to the petitioner. In above view of the matter, Section 40 is not at all attracted. Mr. Trajkar, the learned advocate for the respondent, very vehemently contended that the paramount idea of the Legislature in enacting Section 40 is to make the benefit enure for the good of the heirs. It is the settled principle of law of interpretation that intention of the Legislature is to be gathered from the text and if the text is clear, no process of such ratiocination or conjectures is permissible. At the time when Section 40 was introduced, the artificial situation introduced by the Legislature in terms of Section 32(1B) was not in the remotest contemplation. At that time the Legislature was seized with only one kind of problem, namely, the tenant dying with possession at the time of his death and in order to remedy the possible mischief that might be wrecked on the heirs, this particularly limited provisions was made at that time. Unfortunately for the heirs of persons like Ichubhai, no provision was made by the Legislature and no suitable amendment was made when Section 32(1B) came to be enacted. It is, therefore, difficult to say that what is provided for in Section 32(1B) with respect to a tenant must necessarily encure for the benefit of his legal heirs. Section 40, therefore, is limited in its scope and cannot enlarge the fortune of the respondent.

8. Mr. Trajkar in this connection invited my attention to certain observations of my Brother Thakkar J. in the Special Civil Application No. 1460 of 1976 decided on 18-10-1976. In that case u/s 32(1B) a contention similar to the one raised by Mr. Mehta in this case was raised and it came to be disposed of by the learned Judge as follows:

The learned Counsel for the respondent then contended that the petitioner was the son of the deceased tenant and that under the circumstances, he was not entitled to claim the benefit of Section 31(1B). Now, no such contention was raised either before the Mamlatdar or before the Deputy Collector or before the Gujarat Revenue Tribunal. It is, therefore, not open to the respondent-landlord to raise such a contention for the first time in this Court, which is exercising powers under Article 227 of the Constitution of India. Assuming however, that it was so open, the expression "tenant" must be construed as being applicable to the original tenant as also tc Tiis successor-in-interest.

Mr. Trajkar placed very heavy reliance on the last sentence of the above-quoted paragraph and urged that this Court had construed Section 40 by necessary implication and had held that the benefit of provisions of Section 32(1B) could be had even by successor-in-interest. With respect, I say that the learned Judge had made that observation only obiter. Neither the provisions of Section 40 nor the scheme of the Act has been referred to by him. The first and foremost ground that made the learned Judge brush aside the contention was the raising of the contention for the first time, before this High Court. Passingly the learned Judge made that observation, which was not necessary to be made for the disposal of that contention. In my humble view, the above-stated cursory statement by the learned Judge was clearly obiter and it has no binding effect as a precedent. I have examined the scheme of Section 40 in the context of the time when it was enacted and also in the light of the definition of the term "to hold and" and have concluded that Section 40 is limited to the case of a tenant I dying in harness and the benefit accruing to his successors-in-interest. In the case on hand, a specific contention was raised before the Revenue Tribunal with reference to Section 40 of the Act and, therefore, the question was required to be gone into in all its amplitude. On close scrutiny of Section 40 in the light of all attendant circumstances, find it inevitable to hold that for the purposes of Section 32(1B), a tenant''s successor-in-interest cannot have recourse to Section 40 for the purpose of reaping that benign provisions.

9. Section 32(1B), which is quoted above also leads to the same inference. In that section, there is reference to a tenant and landlord. While speaking of the landlord in possession of the land, a specific reference is made by the Legislature that the possession is to be taken away from the landlord or his successor-in-interest. If the Legislature wanted to confer a benefit on the tenant or his heirs, it was normally and naturally expected that wherever the word ''tenant'' occurred, it would have been mentioned along with the tenant ''or his successor-in-interest or heirs'' also simultaneously. That having not been done, it is enacting Section 32(1B), the Legislature had before its eyes only the original tenant and not his successor-in-interest. If it be argued that because of Section 40 it was not necessary to add the words "or his successor-in-interest" after the word ''tenant'' wherever it occurred in Section 31(1B), the above interpretation of Section 40 negatives that claim.

10. In above view of the matter, the first two contentions raised by Mr. Mehta are upheld and it is, therefore, not necessary to deal with the third contention put

forth by Mr. Mehta for the petitioner.

In above view of the matter, the orders Annexures B & C, passed respectively by the Deputy Collector and the Gujarat Revenue Tribunal, are set aside and the order passed by the Mamlatdar is restored. Rule is accordingly made absolute with no order as to costs.