

(1968) 02 BOM CK 0035

In the Bombay High Court

Case No : Spl. C. Application No. 1719 of 1966 with Spl. C. Application 1963 of 1967

Nemchand Chunilal Gujar

APPELLANT

Vs

Bhimrao Anna Patil

RESPONDENT

Date of Decision : 23-02-1968

Acts Referred:

Citation : (1968) MhLj 739

Hon'ble Judges : V.S. Deshpande, J

Bench : Single Bench

Advocate : V.G. Madbhavi in Spl. C.A. No. 1719/66 and V.V. Divekar in Spl. C.A. No. 1263/67, for the Appellant; V.G. Madbhavi in Spl. C.A. No. 1263/67 and V.V. Divekar in Spl. C.A. No. 1719/66, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Deshpande, J.—Petitioner No. 1 in Special Civil Application No. 1719 of 1966, Nemchand Chunilal Gujar, is the owner of survey Nos. 296/1, 296/2 and 295 situated at village Jakhale, Taluka Panhala, District Kolhapur. One Anna Patil, the ancestor of respondents Nos. 1 to 4, was the tenant of these lands. Nemchand obtained an order against the original tenant, Anna Patil, for possession u/s 34 read with section 29 of the Bombay Tenancy Act, as it then stood, on September 6, 1954, in Tenancy Case No. 95/1954 and in execution of the said order got possession of these lands on February 15, 1955. For some time Nemchand cultivated these lands personally. However, some time during the year 1962-63 Nemchand leased out the said lands to Dhondiram Akaram, Anna Akaram and Nana Akatam, Petitioners Nos. 2 to 4 in Special Civil Application No. 1719 of 1966, and subsequently sold these lands to them under a registered sale deed on April 5, 1963.

2. The tenant, Anna Patil, died in the meanwhile on October 30, 1960, leaving behind him three sons and a widow, i. e., respondents Nos. 1 to 4 in Special Civil Application No. 1719 of 1966 (hereinafter referred to as heirs of the tenant). The

heirs of the tenant made an application to the Tenancy Aval Karkun, Panhala, on September 27, 1963, for possession of these lands u/s 37 read with section 39 of the Bombay Tenancy Act, 1948, alleging therein that petitioner No. 1, Nemchand, had leased out and then sold these lands in dispute without cultivating the same personally, in contravention of section 37 of the Act and as the tenancy of the lands, on the same terms and conditions on which the lands were held by their ancestor, Anna Patil, was not offered to them, they were entitled to possession of the lands together with compensation for the loss suffered by them on account of eviction.

3. This application by the heirs of the tenant was resisted by the present petitioners, i. e., the original landlord and the present purchasers of the lands on various grounds, one of them being that heirs of the tenant were not entitled to claim back possession under sections 37 and 39 of the Tenancy Act. The case was decided against the petitioners by order dated August 30, 1964 and the Tenancy Aval Karkun allowed the application of respondents Nos. 1 to 4 and directed that they be put in possession of the lands in dispute and that the petitioners should pay Rs. 4,237 as compensation for loss to the heirs of the tenant from the date of eviction, i. e., February 15, 1955. Their appeal to the Special Deputy Collector, Tenancy Appeals, Kolhapur, was dismissed on April 30, 1965. On revision by the present petitioners to the Maharashtra Revenue Tribunal, the order in regard to the delivery of possession was confirmed, but the order in regard to the claim for compensation for the loss suffered by the tenants on account of eviction has been modified. According to the Maharashtra Revenue Tribunal, this compensation is liable to be paid only as a result of the breach committed by the landlord and, therefore, the claim for compensation was restricted only as against petitioner No. 1, i. e., the original landlord, and he was directed to pay compensation only from the year 1962 onwards and not for the period from February 15, 1955. The Maharashtra Revenue Tribunal also made some directions as to how the compensation should be computed and has remanded the case back for determination of the compensation in the light of the observations made in the judgment.

4. The original landlord and the purchasers have preferred Special Civil Application No. 1719 of 1966 complaining against the order for delivery of possession of the lands in favour of the heirs of the tenant. The heirs of the tenant also have preferred Special Civil Application No. 1263 of 1967, urging that they were entitled to compensation, from February 15, 1955, i. e., the date of their ancestor's dispossession, on the proper interpretation of section 37 (3) and section 39 of the Act.

5. The only point that is strenuously urged by Mr. V. G. Madbhavi the learned advocate appearing for the petitioners in Special Civil Application No. 1719 of 1966, is that the obligation on the landlord u/s 37 (1) of the Bombay tenancy Act was only to restore possession of the land to the "tenant" whose tenancy was terminated by him, in the event of the contingencies contemplated under the

earlier part of section 37 (1). According to Mr, Madbhavi, respondents Nos. 1 to 4 were admittedly not the tenants of the lands. They claim to be only the heirs of the tenant. Mr. Madbhavi says that the tenancy in dispute is a statutory tenancy and rights held by a statutory tenant are his personal rights and are not heritable. Mr. Madbhavi's contention is that, firstly, section 40 of the Tenancy Act is not applicable to statutory tenants, and, secondly, even the provisions of section 40 cannot be availed of by the heirs in this case as Anna Patil's tenancy was terminated long before his death and he held no rights in the lands in dispute on the date of his death. Mr. Madbhavi relied on *Bai Jamna v. Bai Dkani* (1) and *Thakorelal v. Gujarat Revenue Tribunal* (2).

6. Mr. V. V. Divekar, the learned advocate appearing for the heirs of the tenant, does not dispute the position that Anna Patil was only a statutory tenant and was not the contractual tenant. He however relies on the provisions of section 40 of the Bombay Tenancy Act as amended and substituted by Act No. XIII of 1956, and says that section 40 has made the tenancy rights conferred under the Bombay Tenancy Act heritable. According to Mr. Divekar, section 40, as amended, is meant only for statutory tenants. According to Mr, Divekar, this provision is consistent with the general object with which the tenancy legislation has been enacted in this State.

7. Section 40 (1) of the Bombay Tenancy Act, as now amended, provides that

Where a 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.

The effect of this provision clearly is that the tenancy is continued even after the death of the tenant and the rights of the tenant are made heritable and have been conferred on the heirs of the deceased tenant.

8. The first contention of Mr, Madbhavi is that section 40 of the Tenancy Act is not applicable to statutory tenants. In my opinion, this contention is devoid of any force. The word "tenant" is defined in section 2 (18) of the Act and the definition is inclusive. A bare perusal of the said definition will at once show that the word "tenant" includes both contractual as well as statutory tenants. Contractual tenancies create interest in the land or the property and such interest or the rights in the land itself constitute a property and normally such contractual tenancies are heritable under the ordinary law of the land, like any other property. Any provision similar to section 40 of the Tenancy Act was not necessary to make contractual tenancies heritable. As against that, it is well settled that statutory tenancy is a personal right of the tenant holding the property. It is not heritable unless the statute so provides. Tenancies under the Tenancy Act are all statutory tenancies and it was with the object of making these statutory tenancies heritable that section 40 seems to have been enacted. It is in keeping with the object of the tenancy legislation. Thus, the tenancy

rights possessed by Anna Patil were heritable in view of the specific provisions of section 40 of the Tenancy Act. The rulings reported in *Bai Jamna v. Bai Dhani* (1958) (1) Bora. L R 419 and *Thakorelal Amratlal Vaidya Vs. Gujarat Revenue Tribunal and Others*, have no application to the legal position that obtains in the present case in view of the facts and the application of section 40 of the Tenancy Act. It is to be noted that when Anna Patil died on October 30, 1960, section 40 of the Act, as amended, was in force.

9. However, the condition precedent for the application of this section is that the tenant should have been "holding the tenancy" at the time of his death. Obviously, if the tenant was not holding the tenancy at the time of his death, he himself did not possess the tenancy rights and the questions of his heirs inheriting such tenancy rights does not at all arise. The question, therefore, that falls for consideration in this case is: Did the deceased tenant Anna Patil "hold the tenancy rights" at the time of his death on October 30, 1960 ? If it is found that Anna Patil did hold the tenancy rights on October 30, 1960, the necessary consequence of this finding will be that his heirs also would inherit the said tenancy rights held by their ancestor "on the same terms and conditions" on which Anna Patil was holding the same at the time of his death.

10. Now, admittedly Anna Patil was not in possession of the land at the time of his death on October 20, 1960. Admittedly, possession of the lands was lost by him on February 15, 1955, pursuant to the order passed against him by the Mahalkari, Panhala, on September 6, 1954 in Tenancy Case No. 95/1954. Mr. Madbhavi says that Anna Patil lost possession in February 16, 1955, because his tenancy was terminated because of the provisions of section 34 of the Bombay Tenancy Act, as it then stood, and if possession was lost by Anna Patil consequent on the termination of his tenancy, the rights of the landlord and the tenant even on the basis of the statute had come to an end and Anna Patil hardly possessed any tenancy rights which his heirs own claim to have inherited u/s 40 of the Act. Mr. Madbhavi says that if the heirs of Anna Patil could not have inherited any tenancy rights alleged to have been held by Anna Patil in the disputed lands and if they cannot get the benefit of the provisions of section 40 of the Act, they cannot be said to be tenants within the meaning of section 37 (1) of the Act and even if the landlord had ceased to cultivate the lands in dispute personally, as required u/s 37 (1), there was still no obligation on the landlord-petitioner No. 1 to "forthwith restore possession of the land to the tenant whose tenancy was terminated by him", nor was there any obligation on him to obtain the refusal of "these heirs" in writing to accept the tenancy on the same terms and conditions or otherwise comply with the requirements of the said section. He says that respondents Nos. 1 to 4 were never the tenants of the lands. The lands had come to their landlord's possession as a result of termination of the tenancy. The tenant from whom the lands were obtained for personal cultivation ceased to be the tenant with effect from February 15, 1955. He did not hold any rights, much less any tenancy rights in the lands at the time when he died on October 30, 1960 and respondents Nos. 1 to 4 cannot claim to

have inherited any rights whatsoever and, therefore, the claim made by them ought to have been rejected by the lower Courts.

11. Now, it is true that the landlord obtained an order in Tenancy Case No. 95/1954 after formally terminating the tenancy and making an application to the tenancy authority. It is also true that subsequent to February 15, 1955, Anna Patil ceased to be in possession of the lands. However, having regard to the rights conferred on Anna Patil under sections 37 and 39 of the Bombay Tenancy Act, his tenancy cannot be said to have been permanently terminated.

The very obligation on the landlord to restore possession of the land to "the tenant" pre-supposes that the person who was tenant on the land till February 15, 1955, had not ceased to be the tenant. In fact, any right conferred by sections 37 and 39 of the Act on Anna Patil or any other tenant in such a situation cannot be conceived except on the basis of his being a tenant entitled to get back possession from the landlord. As a result of the order passed in the proceedings u/s 34 read with section 29 of the Tenancy Act, on the strength of the representation made by the landlord, the tenancy of the tenant cannot be said to have been put to an end completely, but must be deemed to have been suspended at least for twelve years, as contemplated u/s 37 of the Act. Such dispossessed tenant is given the right to claim back possession on any day during the period of twelve years and to get his tenancy revived as soon as the landlord is shown to have committed a breach of the provisions of section 37, which in effect is the breach of the implied undertaking given by him to the tenancy authority when he obtained the order from that authority on the basis of certain representations. Mr. Divekar relies on the judgment of a Division Bench of this Court in a case reported in *Godavaribai Vs. Kashiram Kautik Falak and Others*, . Gajendragadkar J., as he then was, examined the scheme of sections 34, 37 and 39 of the Bombay Tenancy Act and held that "it is because of the provisions contained in sub-section (2) of section 37 that it would be possible to describe the determination of the protected tenancy u/s 34 as amounting to suspension." It is observed further (p. 1113):

It is true that this section refers to the determination of protected tenancy. But the determination of the permanent tenant's rights, for which provision has been made in section 34, sub-section (1), can in one sense be described as a suspension of the tenant's rights. Section 37 provides virtually for the revival of the said rights.

It is further held in the above case that though the effect of the general provisions of the Act is to protect the rights of tenants, Legislature conceded to the landlord in exercise of his superior right as such landlord the right to determine tenancy if the landlord bona fide requires his own agricultural land for cultivating it personally. The landlord is required to start personal cultivation within one year and the tenant is entitled to claim back the possession of land, during the period of twelve years therefrom if he ceases to cultivate the land personally.

12. Having regard to the scheme of sections 37, 39 and 34 of the Bombay Tenancy Act, as it then stood, and having regard to the above observations of the Division Bench of this Court, there remains hardly any doubt as to the truss character of the rights of any tenant who has been dispossessed u/s 34 read with section 29 of the Tenancy Act. Even though such tenant was not in possession of the land and his possession was lost on apparent termination of his tenancy, his tenancy rights were still kept dormant or, to put it differently, the said rights were merely suspended and were capable of being revived during the period of 12 years on any day whenever the landlord committed a breach of his representation and ceased to cultivate the land personally. Notwithstanding this suspension of his tenancy rights, it must follow that he was still holding the tenancy rights in the said land till his rights were not extinguished therein till the passage of 12 years during which time his tenancy rights were kept dormant, and suspended by virtue of sections 34, 39 and 37 of the Act.

If, therefore, Anna Patil was holding the said tenancy in the said lands even after his dispossession on February 15, 1955 and if 12 years" period had not expired till his death on October 30, 1960, it must be held that he was holding the tenancy of the lands till the date on which he died and if that is the true legal position it must also be held that by availing of the provisions of section 40 of the Tenancy Act the heirs of the tenant inherited such rights under the Tenancy Act and continued holding the said tenancy on the same terms and conditions as their ancestor Anna Patil held and possessed at the time of his death. It must, therefore, follow that the word "tenant" referred to in section 37 of the Tenancy Act is not only referable to Anna Patil, from whom the landlord-petitioner No. 1, Nemchand Gujar, obtained possession on February 15, 1955, but it is also referable to the heirs of the said Anna Patil who inherited the same tenancy rights in the lands by virtue of the application of section 40 of the Tenancy Act. If that is so, it must also follow that the landlord was under an obligation to "forthwith restore possession of the lands to the tenant" meaning all the heirs of Anna Patil, as soon as he ceased to cultivate the said lands personally. He was under an obligation to offer the tenancy of the said lands to the said heirs on the same terms and conditions and if they were not ready to continue the said tenancy on the same terms and conditions he was under an obligation to obtain a refusal in writing from them to protect himself from the consequences of non-compliance with the provisions enumerated in the subsequent sub-sections of the Act. This not having been done by the original landlord-petitioner No. 1, the present respondents Nos. 1 to 4, in my opinion, were perfectly justified in claiming back possession of the lands by making an application to the Tenancy Aval Karkun, as they have done. In this view of the matter, the orders passed by the Courts below appear to me to be perfectly justified.

13. The result is that Special Civil Application No. 1719 of 1966 fails and the rule is discharged. There will, however, be no order as to costs. Rule discharged. Special Civil Application No. 1263 of 1967.

14. Coming to Special Civil Application No. 1263 of 1967 preferred by the heirs of the tenant, the sole contention urged by Mr. Divekar before me is that the Mamlatdar and the Deputy Collector were justified in awarding compensation from February 15, 1955, when the tenant Anna Patil was dispossessed and the landlord Nemchand was put in possession. The Maharashtra Revenue Tribunal's view that such compensation is payable only from the date when the breach is alleged to have been committed in the year 1962, according to Mr. Divekar, runs counter to the wording of section 37 (3) of the Tenancy Act, which enables the tenant to claim compensation "for the loss suffered by the tenant on account of eviction". Mr. Divekar also relies on the specific provision of section 39 which directs the Mamlatdar to award compensation "for any loss caused to the tenant (1) by eviction" and (2) "by failure on the part of the landlord to restore or give possession to him as required by section 37". Emphasis is specially laid by the learned advocate on the words "on account of eviction" which, according to the learned advocate indicates the date from which the compensation is to be computed. Emphasis is also laid on the two causes of action for assessing the compensation provided in the latter part of section 39. It is argued that one cause of action is loss caused to the tenant by eviction and the second cause of action is failure on the part of the landlord to restore or give possession to the tenant as required by section 37.

15. In my opinion, this interpretation of section 37 cannot be accepted having regard to the scheme of section 34 read with section 29 and sections 37 and 39 of the Act. The first thing that should strike anyone is that neither sub-section (3) of section 37 nor section 39 of the Act gives directly any indication as to the date from which such compensation is to be computed. Secondly, the cause of action giving rise to the claim for compensation in favour of the tenant is "on account of eviction". Now, section 34, as it then stood, or section 29 do not refer to the word "eviction". As against that, section 84 of the Act providing for summary eviction of any person unauthorisedly occupying or wrongfully in possession of any land, in terms refers to the word "eviction*". The reason for this distinction seems to me not far to seek. When the landlord is enabled to get possession of the land from his tenant for personal cultivation u/s 34 read with section 29, the basis of this possession is lawful. In fact the statute enables the landlord to get possession of the land in view of his superior title to the land as observed in *Godavaribai Jayaram v. Kashiram* (1956) 57 Bom ILR 1111, cited above. This possession of the landlord continues to be legal and legitimate as long as the purpose for which the possession is obtained is being fulfilled. The possession becomes unlawful or illegitimate only when the landlord ceases to cultivate the land personally in breach of the implied undertaking given to the Court at the time of obtaining possession. If, therefore, the landlord could retain the possession lawfully till the breach is committed by him, no cause of action can be said to have accrued to the tenant either to claim back possession or to claim compensation. His possession becomes unlawful only on the date when he ceases to cultivate the land personally. It is on that day that his possession

through somebody else becomes unlawful and h is on that day that the cause of action to claim back possession and also to claim compensation accrues to the tenant. It is really on that day that the tenant gets notionally evicted from the land because the obligation to forthwith restore possession arises on that day. To my mind, the words "loss suffered by the tenant on account of eviction" can only be construed against this background and against this scheme of sections 34 and 37, and if notionally the tenant is evicted on the day on which the landlord ceases to cultivate the land personally, the compensation also must be computed from that date and not from any earlier date. There is nothing either in section 37 or section 34 or for that matter in section 34, as it then stood, which warrants an inference that landlord's possession for the entire period from the date of his getting preparation from the tenant was required to be considered as unlawful or unauthorised, merely because the land, lord committed a breach of the undertaking to cultivate the land personally on some subsequent date. Cases can be conceived where the landlord may cultivate the land personally for six years, eight years or ten years, without any intention to import somebody else on the land, and yet on some subsequent date he may be tempted to bring somebody else on the land in contravention of section 37,. It is not possible to construe this section to characterise the landlord's possession of this entire period as unlawful or unauthorised, even when he had never intended or contemplated to lease out or sell out the land to some third person. That is not the object of section 34 and that is not the scheme of section 37 or section 39.

16. It is again to be noted that the first obligation of the landlord in such a contingency is to restore possession forthwith, as soon as he ceases to cultivate the land personally. If this requirement is complied with, the question of paying compensation to the tenant does not at all arise. The provisions of subsection (3) of section 37 making the landlord liable to pay compensation come into play only when the landlord fails to so restore possession. Thus, this provision is made more or less to penalise the landlord for the breach of the obligation contained in sub-section (1) of section 37. Provisions of any statute seeking to impose penalty must always be construed strictly. Considered from this point of view, the compensation contemplated under sub-section (3) of section 37 can only be intended to have been payable from the date when the landlord failed to restore possession. From this point of view also, the date from which the compensation is required to be computed is the date when the landlord ceased to cultivate the land personally.

17. It is true that section 39 directs the Mamlatdar to assess the compensation as though there are two grounds for awarding the compensation. But can it be said that "loss caused to the tenant by eviction" constitutes any different cause of action from "failure on the part of the landlord to restore possession"? In my opinion, these two cannot be considered to be two separate causes of action by any stretch of imagination. In fact, they are two different aspects of the same cause of action. Looked at from any point of view, the cause of action is the same, namely, that the landlord has failed to restore possession as contemplated

under sub-section (1) of section 37. The loss caused to the tenant is the result of that failure on the part of the landlord. Sub-section (1) of section 37 creates an obligation requiring the landlord to forthwith restore possession of the land to the tenant as soon as he ceases to cultivate the land personally. Sub-section (3) of section 37 casts an obligation on the landlord to pay compensation to the tenant for the loss suffered by him on account of eviction. Section 39 provides for the machinery to enforce these two obligations. In either case, the cause of action is the failure on the part of the landlord to restore possession. The right to possession and the right to claim compensation can, therefore, be only deemed to have arisen on the date when the landlord ceased to cultivate the land personally, and the compensation must also be made payable only from that date and not from any earlier date.

18. The result, therefore, is that the view taken by the Revenue Tribunal on this point is perfectly justified. Special Civil Application No. 1263 of 1967, therefore, fails and the rule stands discharged. In view of the circumstances of this case, there will be no order as to costs in this application also.