

(1971) 10 BOM CK 0003

In the Bombay High Court

Case No : Special Civil Application No. 719 of 1970

Pandhari Ramji Timade and Others

APPELLANT

Vs

Jagdamba Devi Deosthan, Nagpur and Another

RESPONDENT

Date of Decision : 12-10-1971

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958
— Section 100(3), 107(1)

Citation : AIR 1972 Bom 123 : (1972) ILR (Bom) 1074 : (1971) MhLj 1045

Hon'ble Judges : Padhye, J

Bench : Single Bench

Advocate : S.N. Kherdekar, for the Appellant; K.G. Chendke, for the Respondent

Judgement

1. This Petition Challenges the order dated 17-6-1970 passed by the Maharashtra Revenue Tribunal in Revenue revision No. Ten-A-478 of 1969. The facts leading to this petition are briefly these: The respondent No. 1 Jagdamba Devi Deosthan is the landholder of field Survey No. 6, area 7.17 acres, assessment Rs. 17/- and Survey No. 1/3, area 1.17 acres, assessment Rs. 3-31, both situated at mouza Kuria, tahsil Hinganghat, district Wardha. the petitioners claim to be the tenants of the aforesaid fields. According to the petitioner, the fields were leased out to the petitioners or their predecessors-in-title in the year 1955-56 and they continued to be in possession of those fields in the year 1956-57 and 1957-58. The respondent No. 1 however, challenged the claim of the petitioners of their being tenants of the said fields. The petitioners, therefore, filed on 3-4-1961 an application purporting to be u/s 100 (2) of the Bombay Tenancy and Agricultural lands (Vidarbha Region) Act, 1958, hereinafter called the Tenancy Act, before the Tahsildar for a declaration that they are the tenants of the aforesaid fields and the name of the respondent No. 2 be deleted from the Khasras. By order dated 16-10-1961 this application was dismissed by the Naib Tahsildar. The Special Deputy Collector, however, set aside that order and allowed the appeal by his order dated 16-7-1962. the matter was further taken to the Revenue Tribunal and by order dated 20-6-1963, the Maharashtra Revenue Tribunal set aside both

these orders and remanded the case to the naib Tahsildar.

2. While the proceedings were pending before the Naib Tahsildar after remand, Section 107 of the Tenancy Act was amended by inserting CI. (a-1) at the top in Section 107 (1) of the Tenancy Act by which in the list of appellate orders, an order u/s 6 was inserted by Maharashtra Act No. 17 of 1966. This amendment came into effect from 2-6-1966.

3. The naib Tahsildar who inquired into the application after remand rejected the application by his order dated 24-1-1967 holding that the petitioners were not the tenants of the fields in question. On appeal by the petitioners, the order of the naib Tahsildar was set aside by the Special Deputy Collector by his order dated 18-2-1969 holding that the petitioners were the tenants. This order was then challenged by the respondent No. 1 before the Maharashtra Revenue Tribunal who by his order dated 17-6-1970 set aside the order of the Deputy Collector holding that the appeal before him was not competent and remanded the case to him with the observation that the order of the naib Tahsildar could be revised u/s 110 of the Tenancy Act and left it to the Special Deputy Collector to consider whether the appeal memorandum could be treated as a revision application and if he should decide to treat the appeal memorandum as a revision petition, then to decide that revision on merits. In the view it took the merits of the case. this order has been challenged by the petitioners who question. It is their contention that in view of the amendment to S. 107 (1) of the Tenancy Act, an appeal against the order of the Naib tahsildar to the Special Deputy Collector was competent since the cause of action for the appeal arose on 24-1-1967 and, therefore, the Revenue Tribunal should have decided the revision application in their favour on merits and ought not to have remanded the same to the deputy Collector for considering whether the appeal memorandum should be treated as a revision application.

4. The Revenue Tribunal took the view that when the original application u/s 100 (2) was filed on 3-4-1961, an order u/s 100 (2) was not made appealable u/s 107 of the Tenancy Act. The Tribunal took the view that the right of appeal was a substantive right and came into existence on the date the litigation was introduced and since at that time no right of appeal was conferred, the appeal against the original order of the Naib Tahsildar before remand and the subsequent order of the naib Tahsildar after remand, was not maintainable. It is contended by Mr. Kherdekar on behalf of the petitioners that a right of appeal would be available to a party against any order which has been passed after the date the right of appeal has been conferred by the Act. It is contended that the right of appeal was conferred with effect from 2-6-1966 whereas the order of the Naib Tahsildar was passed on 24-1-1967, i.e. after this amendment and, therefore, the order of the naib Tahsildar dated 24-1-1967 was appealable before the Special Deputy Collector u/s 107 (1) (a-1) of the Tenancy Act. This Court in Special Civil appln. No. 1096 of 1968 decided on 19-12-1969, Narayan v. M.R.T. (reported in 1970 M LJ 30) took the view that an appeal against an order u der

Section 100 of the Tenancy Act passed after 2-6-1966 on which the CI. (a-1) in Section 107 was introduced by the amendment was maintainable. The Supreme Court in *Moti Ram Vs. Suraj Bhan and Others*, relying on its earlier decision in *Indira Sohanlal Vs. Custodian of Evacuee Property, Delhi and Others*, held that where an amendment affects vested rights, the amendment would operate prospectively unless it is expressly made retrospective or its retrospective operation follows as a matter of necessary implication. Under the East Punjab Urban Rent Registration Act (3 of 1949), by S. 15 (4) finality was given to the appellate decision. By Act No. 29 of 1956, Section 15 was further amended by introducing Section 15 (5) giving a further right of revision against the order of the appellate authority thereby taking away the finality of the appellate decision u/s 15 (4). It was held that where the amending section had come into force at the time when the appellate authority decided the matter and when the appellate order was actually passed, the appellant could not claim the finality under the earlier provision and the revision petition against the order under the amended S. 15(5) was maintainable. It is, therefore, clear that the order dated 24-1-67 which was after the amendment came into effect was an appealable order. We are not in fact concerned with the order dt. 16-7-62 before remand in this case because, rightly or wrongly the matter was still before the Naib Tahsildar on remand when the amendment to Section 107 was effected. Mr. Chendke the learned counsel for respondent No. 1 also did not contest this position for the purposes of this petition and an order passed after the date of the amendment could be appealable if otherwise an appeal is provided against such order.

5. The learned counsel for the respondent, however, contended that even under CI. (1-1) of Section 107 (1) of the Tenancy Act, an order of the kind which has been passed in the present case by the naib Tahsildar was not made appealable and, therefore, the decision of the Maharashtra Revenue Tribunal ought to be upheld. It is contended that what is made appealable by the aforesaid amendment is an order which is made u/s 6 of the Tenancy Act which deals with cases of deemed tenants only. It is urged that an order under S. 100 (2) is not made appealable and, therefore, the appeal is restricted only to a particular class of cases. According to him, this was a case not of a deemed tenant but of a contractual tenancy and against an order based on a case of contractual tenancy no appeal has been provided in Section 107 (1) of the Tenancy Act even by way of an amendment. He then contends that it was the plea of the petitioners themselves that the petitioner No. 1 Pandhari, and earlier his father Ramji who is now dead, had cultivated the fields since 1955-56 continuously on the basis of the lease and further in the year 1959 also a lease deed was Executed by the landlord in favour of the petitioner No. 1 for the joint family and the petitioner No. 1 had cultivated the suit fields on lease basis for the year 1959-60. He again reiterated in his statement dated 21-4-1966 before the Naib Tahsildar that he and his father Ramji were cultivating the suit fields since 1955 to 1960 continuously on lease basis and they were thus occupancy tenants of the suit

fields and as such they were entitled to purchase the rights of the fields on this basis (pages 79 to 81 of the original record), Mr. Chendke contended that a right of appeal is a creature of statute, and, therefore, the provision granting a right of appeal which is a substantive right has to be construed strictly. In the first place, it is alleged that there is no order passed it is alleged tht there is no order passed u/s 6 of the Tenancy Act which only states who would be demand tenants. An order whether a person is a tenant or not is passed only u/s 100 92) of the Tenancy Act by the Tahsildar whose duty it is to deal with that question and decide the dispute raised before him. It may be said that, strictly speaking, the order is not passed u/s 6 of the Tenancy Act, but the order is u/s 100 (2) which has to consider the ingredients of Section 6 for finding out whether a person is a tenant or not or whether a person should be deemed to be a tenant or not. such an order, therefore, is one under S. 100 (2) which has to consider the ingredients of Section 6 By mentioning Section 6 what is intended is to make an order which declares a person to be a tenant or not a tenant appealable. It is however, argued that even though it may be accepted that an order declaring a person to be a tenant or not a tenant could be said to fall u/s 6 of the Tenancy Act, still it is restricted only to those categories who can get a declaration of their being deemed tenants by virtue of their lawfully cultivating a land belonging to another person and could not cover cases where a person does not claim to be a deemed tenant but claims to be a contractual tenant. "Tenant" is defined in S. 2 (32) of the Tenancy Act. "Tenant" means a person who holds land on lease and includes a person who is deemed to be a tenant under Sections 6, 7 and 8. In the first part, a person holding a land on a contract of lease is a tenant in fact and is a contractual lease and to such a person the fiction in Section 6 (1) of the Tenancy Act is not applicable. Besides the contractual lessee, a person who is deemed to be a tenant under Sections 6, 7 or 8 is also included in the definition of the term "tenant." Besides, a person who is a protected lessee or an occupancy tenant is also included in the term "tenant." Thus, there are three categories of tenants u/ s 2 (32) of the Tenancy Act: (1) a contractual lessee. (2) a deemed tenant and (3) a protected lessee or occupancy tenant. It is contended that when a specific reference is made to Section 6 only, a right of appeal is conferred only in cases where the dispute is whether a person is or is not deemed to be a tenant and an order in such a dispute is alone appealable. But where the dispute is whether a person is a tenant by virtue of a contract of lease an order arising out of such question is not made appealable by the aforesaid amendment.

6. This Act has been enacted after the Recorganisation of States making it applicable for the vidarbha Region and bringing it on par with the Tenancy Act which was prevalent in the Western Maharashtra, viz, the Bombay Tenancy and Agricultural Lands Act, 1948. The definition of the word "tenant" in this Act has been taken from the Bombay Tenancy Act of 1948. similarly. Section 6 of the Tenancy Act is also a replica of Section 4 of the Bombay Tenancy Act, 1948. In the Bombay Tenancy Act, 1948, an order u/s 4 there of was made appealable by Section 74 of that Act. Unfortunately, such a provision was not made in the

Tenancy Act (1958) - may be thought some inadvertent omission - though all other similar orders have been made appealable, with the result that all orders which are passed u/s 70 of the Bombay Tenancy Act, 1948, including the order decaying Act, 1948, including the order deciding whether a person is a tenant or noting whether a person is a tenant or not, were made appealable in the Western Maharashtra, whereas a similar order in the Vidarbha Region was not made appealable. This omission came to be appealable. this omission came to be noticed by the Legislature and was keenly felt and with a view to bring the Vidarbha Act on par with the Act prevailing in Western Maharashtra, so far as the rights of appeal are concerned, an amendment to Section 107 (1) of the Tenancy Act was proposed and was subsequently made by maharashtra Act No. 17 of 1966 by adding Clause (1-I) to Section 107 (1) and bringing it into effect from 2-6-1966. The reason for making this amendment has been stated in the statement of objects and reasons in these words:-

"It has been brought to the notice of Government that as Section 107 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 does not provide any appeal against an order of the Tahsildar deciding whether a person is a tenant or not, the affected party is left with no further remedy under the Act. The Bill is intended to provide an appeal to the Collector against such orders."

The question that fails for consideration is whether this right of appeal which has been granted by virtue of this amendment is confined only to the orders arising out of proceedings where only question of deemed tenancies are raised or it also covers all orders where the question of a person being a tenant or not including a deemed tenant, is involved.

7. The provision of CI. (a-i) of Section 107 (1) has to be read not only along with Section 6 but also s. 100 (2) of the Tenancy Act. Whether it is a dispute about the person being a contractual tenant or being a deemed tenant under Sections 6, 7 or 8 or his being a tenant on account of his being a protected leasee or occupancy tenant, such a question is required to be decided by the Tahsildar and Tahsildar alone u/s 100 (2) of the Tenancy Act.

8. Section 100 (2) of the Tenancy Act does not exclude the decisions of contractual tenancies, Previously no order of the Tahsildar under S. 100 (2) was made appealable. this omission was sought to be supplied by the amendment. The Legislature could not have intended that the right of appeal should be given only in cases where the question is about a person being a deemed tenant or a protected lessee or an occupancy tenant and no right should be given where the question is raised about a person being a conation is raised about a person being a contractual tenant or not. The Legislature must have intended to give a right of appeal against all orders passed by the Tahsildar u/s 100 (2) which should also cover cases of contractual tenancies. it may be noted that under the tenancy Act whenever a question is raised in a civil suit, which is required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues, then such issues have to be referred by the civil court to the

competent authority for determination. In a civil suit a question might be raised that a person is either a tenant or not a tenant. such question may relate not only to deemed tenants but also contractual tenants and all those questions are required to be referred for the determination by the Tahsildar which it is the duty of the Tahsildar to decide u/s 100. If on such a reference a decision is given by the Tahsildar, whether it be in respect of a contractual tenancy or a deemed tenancy, an appeal has been provided against that order under C1. (zb) of Section 107 (1) of the tenancy Act. It seems inconceivable that an appeal could be provided in cases arising out of references decided by the same authority involving a question whether a person is a contractual tenant or not but there should be no appeal against an order u/s 100 (2) where a declaration is sought that a person is a tenant or not a tenant. In fact, even on a reference u/s 125 the Tahsildar acts under his powers under S. 100 (2). Both these kinds of order therefore are orders u/s 100 (2) and it could not be contemplated that these orders of a similar nature, though coming through different channels, should be treated differently by providing an appeal in one case and not providing in the order. The provisions should be construed reasonably and due effect to the intent of the Legislature should be given. The background in making the amendment has also to be taken into consideration. An appeal was already provided against an order of the Tahsildar in a proceeding which came to him on a reference from civil court u/s 126; but where proceedings were initiated directly before the Tahsildar u/s 100 (2). no appeal was provided, even though same matters were to be decided by him. A reference u/s 125 comprehended even the case of a contractual tenancy which could also be decided u/s 100 (2). It is but natural that orders under S. 100 (2) on direct application to the Tahsildar should also be made appealable and while making those orders appealable a further distinction could not be between matters arising on a reference u/s 125 and matters directly arising u/s 100. The Legislature could not have intended to make any such distinction for which there was no rhyme or reason. Construed in this light, it would be apparent that by providing an appeal by the newly introduced clause (a-i) appeals against the orders declaring a person to be a tenant or not a tenant, on whatever basis, were made appealable. If any guide is required to ascertain the reasons or the background which induced the Legislature to make this amendment, that could be found in the Statement of Objects and Reasons to the Bill which shows the reason for introducing this amendment. No distinction is made in introducing this amendment between a contractual tenant or a deemed tenant or any other kind of tenant and the right of appeal was given in every case where the question of a person being a tenant or not a tenant was involved. though it may not be permissible to use Statement of Objects and Reasons accompanying the Bill for determining the true meaning and effect of the substantive provisions of the statute, yet they can be used for the limited purpose of understanding the background and antecedent state of affairs leading up to the legislation. It has been so laid down in *State of West Bengal Vs. Union of India*, *S.C. Prashar, Income Tax Officer, Market Ward, Bombay and Another Vs. Vasantsen Dwarkadas and Others*, and several other cases of the Supreme

Court. In interpreting a statute the court. In interpreting a statute the court cannot ignore its aim and object. It appears to me, therefore, that though the amendment is not very happily worded, it also embraces the right of appeal in a case where the question relates to a person being or not being a contractual tenant also as contemplated by the principal part of S. 2 (32).

9. In my view, even on the interpretation of the new C1. (a-i) of Section 107 (1) an appeal against the order of the Naib Tahsildar in this case was competent and the Special Deputy Collector rightly entertained and decided the appeal. It was, therefore, not necessary for the Maharashtra Revenue Tribunal to set aside the order of the Special Deputy collector on the ground that the appeal was not competent and to remand the matter to him for considering whether the appeal could be treated as a revision application u/s 110. since the apeal before the Special Deputy Collector was competent, the Revenue Tribunal had to decide the revision application before it on merits which it refrained from doing in the view it took. Since I hold that the appeal before the Special Deputy Collector was competent the revision application before the Maharashtra Revenue Tribunal has to be heard and decided on merits. The order of the Maharashtra Revenue Tribunal remanding the case to the Special Deputy Collector is, therefore, set aside and the case is remanded to the Maharashtra Revenue Tribunal who shall now hear the parties and decide the revision application in accordance with law.

10. The petition, therefore, succeeds and is allowed, but in the circumstances, I make no order as to costs.

11. Petition allowed.