
(1978) 09 BOM CK 0003

In the Bombay High Court

Case No : Special Civil Application No. 2267 of 1974

Saheblal Chandbhai

APPELLANT

Vs

Chandanmal Kundanmal

RESPONDENT

Date of Decision : 11-09-1978

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 31, 31D, 32R, 33A, 33B

Citation : AIR 1979 Bom 295

Hon'ble Judges : S.K. Desai, J

Bench : Single Bench

Advocate : B.P. Apte, for the Appellant; Jayant R. Lalit, for the Respondent

Judgement

1. This special civil application is preferred against the order of the Maharashtra Revenue Tribunal dated 24th June 1974 in Revision Application No. MRT. AH. XL 19/73 (TEN. Ap. 490/73). That was a decision given from the decision of the Additional Collector, Ahmednagar, in Tenancy Appeal No. 41 of 1973. The appeal was from the decision of the Agricultural Lands Tribunal, Ahmednagar, in Tenancy Case No. 32 (G) Shendi F/3/73. In the tenancy case the Agricultural Lands Tribunal had started a suo motu inquiry u/s 32G of the Bombay Tenancy and Agricultural Lands Act, 1948. In the said inquiry the lands concerned were Survey No. 1 and Survey No. 406 of village Shendi, originally belonging to one Kundanmal Jawaharmal Bhandari. The land had been kept fallow for two consecutive years. The Prant Officer, Nagar Division, therefore, assumed management of these two Lands on 20th July 1956. With effect from 14th Oct. 1956 the Lands were leased to one Sheikh Chandbhai for a period of ten years. Under the orders of the Civil Court in Regular Civil Suit No. 401 of 1963, to which the Government was a party, the petitioner before me was permitted to continue cultivation of the lands. On 17th Feb. 1965 i. e. before the expiry of the period of ten years from the date on which the lease was to commence, the Prant Officer passed an order under No. WS/II/165 whereby the management of the lands u/s 65 was terminated. The Agricultural Lands Tribunal in the suo motu inquiry and

subsequently the Maharashtra Revenue Tribunal have taken the view that as the lessee was inducted on the lands while the lands were under the management of the State Government, he would have no right of statutory purchase. It is the correctness of this view that is impugned principally in this special civil application.

2. My attention was drawn to a number of decisions of this Court dealing with similar situations. One of these was the decision given by a Division Bench of this Court consisting of Chainani C. J. and K. K. Desai J. in Special Civil Appln. No. 1077 of 1961 --Gambhirmal Laxmandas v. Collector of Jalgaon (decided on 20th Dec. 1962) reported in (1966) 14 Tenancy LR 10. In that decision, on the facts set out in the report it would seem to appear that on the date on which the management had been terminated, the tenancy of the lessees inducted during the period of management was not subsisting. The argument, that as the two persons inducted as lessees had been allowed to continue in possession of the land after the period of lease was over, should be regarded as tenants holding over, was negatived. This was in view of the provisions of Section 58. It was on these facts that it was held that there was no tenancy subsisting on the date on which the land was released from management.

3. Mr. Lalit relied very strongly on the judgment of Deshpande J, given in Spl. Civil Appln. No. 1185 of 1969 (decided on 19th Nov. 1969). Going through the judgment I do not find any discussion of the position under the Section 88 with which we are concerned and, therefore, the observations to be found therein would have only an indirect bearing on the issue.

4. It is clear that in this case we are concerned with the provisions contained in Section 88 (1) and in particular with the proviso thereunder. The relevant statutory provisions are as under:--

"88. Exemption To Government Lands and Certain Other Lands -- (1) Save as otherwise provided in sub-sec. (2), nothing in the foregoing provisions of this Act shall apply-

(a) to lands belonging to, or held on lease from, the Government:

xxxx xxxx xxxx Provided that from the date on which the land is released from management, all the foregoing provisions of this Act apply thereto; but subject to the modification that in the case of a tenancy, not being a permanent tenancy, which on that date subsists in the land-

(a) the landlord shall be entitled to terminate the tenancy u/s 31 (or u/s 33B in the case of a certificated landlord) within one year from such date; andp2 (b) within one year from the expiry of the period during which the landlord or certificated landlord is entitled to terminate the tenancy as aforesaid, the tenant shall have the right to purchase the land u/s 32 (or u/s 33C in the case of an excluded tenant); and

(c) the provisions of Sections 31 to 31D both inclusive (or Sections 33A and 33B

in the case of a certificated landlord) and Sections 32 to 32B, both inclusive (or Sections 33A and 33C in the case of an excluded tenant) shall, so far as may be applicable, apply to the termination of a tenancy or the right to purchase the lands, as aforesaid;

Provided further

5. The question which is required to be considered is what meaning is to be given to the expression "a tenancy, not being a permanent tenancy, which on that date subsists in the land" to be found in the proviso. We are concerned with the tenancy subsisting in the land on the date on which the land is released from management Does the proviso refer to a tenancy which was in existence prior to the date on which management was taken over by the Government or to a tenancy created during this period? The issue came up squarely for decision before Bhasme J. Spl. Civil Appln. No. 1769 of. 1967 with Spl. Civil Appln. No. 1770 of 1967, decided on 3rd Aug. 1971. In the case of the petitioners before Bhasme J. they were cultivating the lands from after the date on which management was taken over and on the date on which the management was ended the tenancy had not been terminated and was subsisting. The learned Judge considered the changes made in Section 88 from time to time. It was submitted before him that the words "tenancy subsisting" cannot refer to a tenant who is inducted on the land by the managing authority and his tenancy must be deemed not to subsist on the date on which the management came to an end. It was held "Considering the provisions of the Tenancy Act and the various amendments made from time to time in Section 88 of the Act, it is clear that the Legislature wanted to withdraw the application of the Tenancy Act only during the period that the land or estate was under the managing authority. It is also clear from the wording of Section 88 and the relevant proviso that on termination of the management, the Tenancy Act was made applicable to all such lands. In the absence of any express provisions it will be unfair to exclude the contractual tenancies or tenants from the benefit of the Tenancy Act only on the ground that they are inducted by the managing authority. The learned Judge then proceeded to consider a case where there could have been a contractual tenant on the land existing at the time when the management was taken over. He expressed the opinion that in the case of any such conflict the former tenant (existing on the date on which the management was taken over) would have to be preferred over the tenant subsequently inducted by the managing authority during the period of management. Accordingly, disagreeing with the view taken by the Special Deputy Collector and the Revenue Tribunal, the Rule in the said special civil application was made absolute.

6. This judgment of Bhasme J. came to be cited before and considered by another single Judge of this Court in Keshav Vithal Mhatre Vs. Arvind Ranchhod Parekh and Another, , where the decision of Bhasme J. was relied on. It was held that the observations with respect to the interpretation of Section 88 were obiter. Now, in Keshav Vithal Mhatre's case the facts were that the lease of ten years

granted to the tenant during the period of management had expired during the period of management. Accordingly at the time when the management came to an end there could have been no tenancy subsisting in the land, which was the view that the Division Bench had taken in *Gambhirmal Laxmandas*" case, (1966) 14 Ten LR 10. On the facts it was unnecessary to go into the position of the tenant whose lease had not determined and was subsisting on the date on which the management came to an end. Actually, therefore, it would seem that the remaining observations pertaining to the position of such a tenant after the termination of the management would be obiter. With respect, it is difficult also to follow the discussion in *Keshav Vithal*'s case pertaining to the allegedly obiter element in *Bhasme J.*'s decision. A careful and close perusal of the judgment of *Bhasme J.* would indicate that *Bhasme J.* was directly deciding the question as to the position of a tenant inducted during the period of management, whose lease is subsisting on the date on which the management ends, and the observations were directly in point necessary for the decision and, therefore, would constitute the ratio of the case and by no stretch of imagination could be regarded as or considered to be obiter.

7. With respect, it would appear that the attention of the learned single Judge in *Keshav Vithal Mhatre Vs. Arvind Ranchhod Parekh and Another*, had not been drawn to the proper passages in *Bhasme J.*'s decision. It is undoubtedly true that the view expressed by *Bhasme J.* as to what would happen in case of a conflict between an earlier tenant existing prior to the period of management and a tenant inducted during the period of management, concerned an issue which did not come up directly for decision. His conclusion, that in such a case the previous tenant i.e. the tenant whose tenancy subsisted prior to the period of management would have to be preferred, can perhaps be considered to be obiter as the learned Judge was giving his views on a possible conflict which may arise in a hypothetical case. Such views would have only persuasive and not a binding authority as a dicta of the High Court. This, however, would not make the earlier observations obiter. Where there is no such conflict, *Bhasme J.* has clearly decided that the benefits of the Tenancy Act would be available to a tenant inducted on the land by the managing authority during the period of management. The only requirement was that such tenancy must be subsisting on the date the management came to an end. It is clear, therefore, that the direct binding authority which concludes, in my opinion, the point under consideration by me is that of *Bhasme J.* in Special Civil Application No. 1769 of 1967. Judicial discipline requires me to follow that decision unless it is submitted and there has been no such submission before me -- that it is per incuriam i. e. given without considering a binding decision either of the Supreme Court or of a High Court or a statutory provision. I have not been able to discover any such lacuna in the decision of *Bhasme J.* which will permit me to differ therefrom and decide contrary thereto. In my view, the learned single Judge in *Keshav Vithal Mhatre*'s case was in error in holding that the observations of *Bhasme J.* were obiter. He was in further error in observing that they were not binding on him and

discussing the position of such tenant as if the question was res integra. The point was not res integra; it was concluded by the decision of Bhasme J. In any case, on the facts the learned single Judge in Keshav Vithal Mhatre's case was really not called upon to decide the point as in his case the tenancy of the person inducted during the period of management had come to an end before the end of such management.

8. In the result, it must be held that the view taken by the three authorities below was not based on the correct legal position and the orders of the authorities below will stand quashed and the matter will stand remanded back to the Agricultural Lands Tribunal, Ahmednagar, for giving its decision afresh.

9. As indicated above, I have to give my decision only on the short point of law which had been concluded by the Maharashtra Revenue Tribunal, and the Agricultural Lands Tribunal, Ahmednagar, will take proper decision in the suo motu inquiry considering various other provisions of the Tenancy Act which have not been considered by it and which would have a bearing on the rights of such a tenant vis-a-vis the landlord.

10. The parties will bear their own costs of the special civil application.

11. Order accordingly.