

(1980) 02 BOM CK 0041

In the Bombay High Court

Case No : Special Civil Application No. 1028 of 1975

Sakharam Bhiva Patil

APPELLANT

Vs

Ramchandra Balwant Methe and Others

RESPONDENT

Date of Decision : 28-02-1980

Acts Referred:

Bombay Agricultural Debtors Relief Act, 1947 — Section 32
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 29, 32, 32(1B), 32A
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 35(1), Order 21 Rule 35(2)

Citation : (1980) 02 BOM CK 0041

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Advocate : M.A. Rane and A.Y. Sakhare, for the Appellant; Bhimrao N. Naik, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pratap, J.—Brief facts and circumstances leading to this petition under Article 227 of the Constitution are as follows :---

2. The lands in dispute are two viz., survey No. 220 admeasuring 23 acres 32 gunthas and survey No. 223/3 admeasuring 7 acres 15 gunthas, both situated at village Washi, Taluka Karvir, District Kolhapur (hereinafter referred to as the suit lands). Petitioner herein Sakharam Bhiva Patil was the original owner of the suit lands. Sometime prior to 1948, the suit lands were mortgaged by Sakharam to one Vinayak Vasudeo Kulkarni. The mortgagee Kulkarni leased the suit lands to the respondents herein Ramchandra Balwant Methe and Dattatraya Babaji Chavan. Sakharam, the owner, instituted proceedings under the B.A.D.R. Act and obtained an award thereunder on 23rd September, 1955. The tenants were not parties to the said award proceedings. After obtaining the award, Sakharam took out proceedings in execution of the said award. These proceedings were numbered as B.A.D.R. Darkhast No. 235 of 1955 of the Court of the Civil Judge, Senior Division, Kolhapur. Prayer inter alias in the said execution proceedings

was that there were tenants on the suit lands, but since the right, title and interest of the mortgagee had come to an end, actual possession of the suit lands should be awarded to the owner Sakharam without paying any head to the objections of the tenants. The Executing Court called upon the Darkhastdar owner to show how he was entitled to warrant for actual possession under Order 21, Rule 35(1) of the CPC when, on his own case on affidavit, the suit lands were leased to tenants. Record here does not indicate as to what exactly was the say of the owner in that behalf. But the certified copy of the order of the Executing Court shows that ultimately on 25th October, 1955 the Executing Court issued warrant not for actual possession under Order 21, Rule 35(1) of the CPC but issued a warrant only under Order 21, Rule 35(2) of the said Code. Though there was no order for actual possession, the owner darkhastdar dispossessed the tenants respondents herein from the suit lands and took actual possession thereof on 8th November 1955. Sometime thereafter in July 1956, the tenants made an application, being Tenancy Case No. 124 of 1955-56 u/s 29 of the Bombay Tenancy and Agricultural Lands Act (hereinafter the Tenancy Act) for possession of the suit lands. In the said proceedings, Dattatraya Babaji Chavan, one out of the two tenants and the owner Sakharam Bhiva Patil filed a joint purshis on 23rd February ,1960 to the effect that settlement having taken place between the parties, the said proceedings may be disposed of. It was also stated that the applicant gave up his claim for possession. On the same day, the Mamlatdar disposed of the application as withdrawn. On the record we have an undated typed receipt exhibit 37 signed by Dattatraya Babaji Chavan, one out of the two tenants, which recites that claim for possession has been given up and that Rs. 400/- have been received as the price or the value of the crops in the suit lands and the expenses incurred in the tenancy proceedings. It may be stated that the other tenant Ramchandra Balwant Methe is not a party to this receipt or purshis.

3. In the year 1969, the State Legislature, by Maharashtra Act No. 49 of 1969, introduced in the Bombay Tenancy and Agricultural Lands Act, 1948, sub-section 1-B to section 32 of the said Act. Under this provision, where a tenant who was in possession on the appointed day (15th June 1955) and who on account of his being dispossessed before the first day of April 1957 otherwise than in the manner and by an order of the Tahsildar as provided in section 29 , is not in possession of the land on the said date and the land is in the possession of the landlord or his successor-in-interest on the thirty-first day of July 1969 and the land is not put to a non-agricultural use on or before the last mentioned date, then, the Tahsildar shall, notwithstanding anything contained in the said section 29, either suo motu or on the application of the tenant, hold an inquiry and direct that such land 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. The said provision further lays down that thereafter, the provisions of section 32 as also sections 32-A to 32-R (both inclusive shall, in so far as they may be applicable, apply thereto, subject to the modification that the tenant shall be

deemed to have purchased the land on the date on which the land is restored to him. Under the provision to the said provision, the tenant shall be entitled to restoration of the land only if he undertakes to cultivate the same personally and of so much thereof as together with the other land held by him as tenant shall not exceed the ceiling area. After the enactment aforesaid, the Tahsildar commenced in this case suo motu proceedings u/s 32(1-B) of the Tenancy Act in respect of the suit lands and qua the owner and the tenants thereof. The Tahsildar held that the tenants were in lawful possession of the suit lands on the appointed date 15th June, 1955 but had been dispossessed therefrom before the first day of April, 1957 otherwise than in the manner and by an order of the Tahsildar as provided in section 29 of the Tenancy Act. It was further held that the suit lands were in possession of the landlord on 31st July, 1969. In spite of these findings, the Tahsildar, however, came to the conclusion that since the tenants had made an application u/s 29 of the Tenancy Act and had withdrawn the same, they were not entitled to relief in the instant proceedings under the provisions of section 32(1-B) of the said Act. The proceedings were consequently dropped by order dated 20th May, 1972. Appeal against the said order was dismissed on 12th March, 1973. Tenants's revision to the Maharashtra Revenue Tribunal succeeded. The Revenue Tribunal came to the conclusion that the view taken by the two authorities below was not correct; that mere making of an application u/s 29 and its subsequent withdrawal cannot deprive the tenants of their rights u/s 32(1-B) of the Tenancy Act; and that the tenants being undisputedly dispossessed after the appointed day and before 1st April, 1957, would be entitled to possession of the suit lands. Consistent with these findings, the Revenue Tribunal allowed the revision application, set aside the orders passed by the authorities below and directed possession of the suit lands to be restored to the tenants. It is against this order of the Revenue Tribunal that the owner Sakharam has filed the present petition under Article 227 of the Constitution.

4. The petitioner is represented by his learned Counsel Mr. M.A. Rane who appeared in the matter instructed by the learned Advocate Mr. A.Y. Sakhare. The respondents tenants are represented by their learned Advocate Mr. Bhimrao N. Naik. Considering the rival submissions of the respective Advocates and going through the judgments of the authorities below and also considering the relevant provisions of the Tenancy Act, I am of the view that the decision and conclusion of the Revenue Tribunal is correct and is in accordance with law and does not require any interference at the hands of this Court in a petition under Article 227 of the Constitution. In my view, the facts found by the authorities below clearly attract the provisions of section 32(1-B) of the Tenancy Act. The excuse set up by the owner Sakharam to get out of the said provision cannot succeed and has been rightly not accepted by the Revenue Tribunal. To accept the contention of the owner Sakharam would be akin to defeating the benevolent object of section 32(1-B) as also the object of the Tenancy Act itself. Undisputed position is that the respondents Ramchandra and Dattatraya were the tenants of the suit lands

being inducted thereon by the original mortgagee Kulkarni. There is also no dispute that mortgagee's tenants are protected under the Bombay Tenancy Act. There is also no dispute that to the B.A.D.R. proceedings the tenants were not parties nor is there any dispute that even to the execution proceedings in pursuance of the award under the B.A.D.R. Act the tenants were not parties. Indeed, the record shows that in the execution application itself the owner-darkhastdar specifically mentioned that there were tenants on the land, but he prayed for the relief that their objections should not be considered or heeded and actual possession should be awarded in spite of the tenants being there on the land. This relief was, however, refused to him by the Executing Court. Though warrant for actual possession was asked for under Order 21, Rule 35(1) of the Code of Civil Procedure, the Executing Court did not grant or issue the said warrant but instead issued warrant under Order 21, Rule 35(2) of the Code of Civil Procedure. In spite of actual possession having been refused, the owner Sakharam nevertheless actually dispossessed the tenants from the suit lands and this dispossession admittedly took place on 8th November, 1955 which, obviously, is the date falling during the relevant period viz. period between the appointed day 15th June, 1955 and the first day of April 1957. In the face of these facts and circumstances, this is a clear case where tenants in possession on the appointed day were dispossessed before the first day of April, 1957 otherwise than in the manner and by an order of the Tahsildar as provided in section 29. Dispossession thus was in clear violation of the conditions and the mandate laid down under 32(1-B) of the Tenancy Act. Before going to the further developments and stopping here for a moment, can it be at all successfully contended under these facts and circumstances that the tenants were not entitled to any relief u/s 32(1-B) ? Answer, in my opinion, is an emphatic no indeed, on these facts, irresistible conclusion is in favour of the tenants which consequently must lead irresistibly to an order in their favour for restoration of possession of the suit lands by virtue of the provisions of section 32(1-B) of the Tenancy Act.

5. Mr. M.A. Rane, the learned Counsel, however, laid considerable emphasis on the subsequent development. According to him, the filing of an application u/s 29 by the tenants in July 1950 and the withdrawal or dismissal of the said application extinguished the rights of the tenants and debarred them from claiming any relief u/s 32(1-B) of the Tenancy Act. I am afraid, it is not possible to accept this contention. As indicated in the narration of facts and circumstances, all that had happened qua application u/s 29 was that it was filed and in view of some settlement outside the Court, the application was withdrawn or dismissed. Can mere such fact be said to defeat the rights of the tenants u/s 32(1-B) or the Tenancy Act. Answer again is an emphatic no. Mere filling of an application u/s 29 and its later withdrawal or dismissal constitute, in my view, an innocuous event having no adverse effect whatsoever on the rights of the tenants claiming relief u/s 32(1-B) . What would have been the position if, in the proceedings u/s 29, settlement had been arrived at before the Court and an

order in terms of the said settlement had actually been passed in the said proceedings does not arise for consideration because here no such thing happened. It is best to decide the instant case in the light of the facts herein. It is safer not to introduce any hypothetical situations while deciding a particular petition. Facts herein indicate the mere filing of an application and its mere withdrawal or dismissal. The said event or the said fact can, I must reiterate, have no effect whatsoever on the tenant's rights u/s 32(1-B).

6. Mr. Rane, the learned Counsel, however, contended that making of the application supra u/s 29 and its withdrawal or dismissal constitute an estoppel creating an insurmountable hurdle in the way of the tenants claiming any relief u/s 32(1-B). I see no force in this contention. There cannot be any estoppel against a statute, not even against a statute acting retrospectively. Moreover, there are no such facts here which even otherwise can be said to constitute a good foundation for building up an estoppel against the tenants. As indicated, mere filing of an application and its mere subsequent withdrawal is a circumstance totally innocuous. To read estoppel into such an innocuous circumstance would be misconstruing the very doctrine of estoppel. Moreover, there is nothing to indicate as to how and in what manner the owner changed his position as a result thereof. The argument based on estoppel fails.

7. Mr. Rane contended that, apart from estoppel, a private settlement which is legal and valid even otherwise debars the tenants from claiming relief u/s 32(1-B). Even this contention must fail. The scheme of the Tenancy Act is clear. Even a private settlement must be one which must be in accord with the provisions of the said Act. A private settlement not in accord with the Tenancy Act will not be enforceable. In this context, Mr. Naik invited my attention to section 23 of the Contract Act and contended that even a private settlement, if it is of such a nature that if permitted it would defeat the provisions of any law, would be consequently a settlement unenforceable. That apart, the plain words of section 32(1-B) have to be given effect to, notwithstanding any private settlement such as the one sought to be relied upon in this case by the owner. Section 32(1-B) does not carve out any exception qua a private settlement. Few indeed are the conditions for the application of the said benevolent provision and object thereof cannot be defeated by a party setting up a private settlement de hors the provisions of the tenancy Act.

8. It is also not the contention of the learned Counsel Mr. Rane that dispossession in the instant case was in pursuance of any such private settlement. Indeed, he conceded that dispossession in the instant case had taken place otherwise than in the manner and by an order of the Tahsildar as provided in section 29 of the Tenancy Act. Clear implication thus was that dispossession was in breach of the condition laid down in section 32(1-B). If this is the position, then a subsequent private settlement de hors the Tenancy Act cannot defeat the right of the tenants to claim relief u/s 32(1-B) of the said Act. Even otherwise, when one goes to the said private settlement, what does one find? When an

application u/s 29 was filed and proceedings in that behalf were pending, all of a sudden another application is filed stating that the tenants have given up their claim to possession and the proceedings may, therefore, be disposed of and the proceedings are consequently disposed of. Neither this application nor any order in the said proceedings result in a conclusion that tenancy rights are given up. Tenancy rights and possession are not synonymous. Person out of possession may still claim to be a tenant. Giving up claim to possession will not always mean the same as giving up one's tenancy rights themselves. If the owner contends that it is this application and the order thereunder which suffices to defeat the tenant's rights u/s 32(1-B), then the said application and the order thereunder will certainly have to be carefully considered to find out their effect and consequence. Taking this application, the words therein and the order thereunder, I am of the view that this does not, in any manner, lead to the only conclusion that tenancy rights were given up. At the highest, it would mean that a tenant dispossessed from agricultural lands and claiming possession thereof did not proceed further with his claim for possession. This certainly would not be such a circumstance as to defeat an extinguish tenancy of the tenant u/s 32(1-B).

9. Even about the settlement so strongly harped upon by the owner, less said the better. I have already indicated that the application for withdrawal was not made by both the tenants but by only one of them. Still further, the record shows that outside the Court an amount of Rs. 400/- appears to have been paid also to only one of the tenants Dattatraya Babaji. And what does this amount represent? As the receipt exhibit 37 itself indicates, it is supposed to represent the crops in the suit lands admeasuring more than thirty acres as also the expenses incurred by the tenants in the proceedings throughout till that time. Even to this receipt the other tenant Ramchandra Balwant is not a party. Agricultural lands admeasuring more than thirty acres and in lawful possession and cultivation, at all relevant times, of two tenants whose rights and interests were duly protected by the provisions of the Tenancy Act were all sought to be bargained off for a mere sum of Rs. 400/- and that too representing not the price of the lands but of the crops and that too not only the crops but also inclusive of all the expenses incurred by the tenants till that stage including also the expenses of the litigation. It is precisely to discourage such so-called settlements and it is precisely to prevent owners from depriving tenants of their valuable rights in such manner that the Tenancy Act itself has been enacted and it is with this general object of protecting the rights and interests of the tenants that the provision of section 32(1-B) has also been enacted. As observed by the Division Bench in *Pandharinath Sakharam Chavan v. Bhagwan Ramu Kate and others*, 1979 Maharashtra Law Journal 337:

".....It was precisely with a view to benefit such class of ignorant, docile, gullible and unfortunate tenants that, sub-section (1-B) was enacted and special care was taken to empower the Tahsildar to act under the sub-section either sou motu or on the application of the tenant by Maharashtra Act No. 49 of 1969. While effectuating such an intention, the Legislature had to provide for (1) restoration

of possession of the land to such tenants, (2) removal of the hurdle of limitation created by section 29 of the Act, (3) removal of the legal effect of inaction of tenant in claiming such restoration for a period of more than twelve years,...".

10. Mr. Rane next contended that the non obstante clause in the latter part of section 32(1-B) of the Tenancy Act debars proceedings as of the instant nature and relief being granted therein to the tenants. This would not be a correct reading of the said non obstante clause. The non obstante clause in this section operates not against the tenants but rather in their favour. The said clause does not in any manner help the owner but rather goes against him. Correct reading of the said non obstante clause would be that if the tenants are found to have established the conditions laid down in section 32(1-B). itself for restoration of possession, then they shall be entitled to the said restoration, notwithstanding anything in section 29. The hurdle which would otherwise have come across the relief to be granted to such tenants by virtue of section 29 of the Tenancy Act is thus removed by virtue of the said non obstante clause. Effect of the said non obstante clause as also section 32(1-B). itself have been considered by the Division Bench of this Court in Pandharinath's case supra. Referring to the non obstante clause, the Division Bench observed as follows:---

"This non obstante clause has two-fold plain implications. In the first place, it makes section 29 inapplicable to the claim of the class of the tenants covered under this sub-section and removes the hurdle of limitation from the way of such restoration of the land to them. In the second place, it also consequently wipes out the effect of the inaction of the tenants in not seeking possession within the period of two years prescribed thereunder. This indeed must follow, once section 29 ceases to have any application to them retrospectively. The legislative fiction of the continued subsistence of tenancy adverted to earlier, thus appears to have been based on this non obstante clause also."

Far, therefore, from supporting the contention of Mr. Rane, the non obstante clause supports the case of the tenants and counters the claim set up by the owner to defeat the right of these tenants.

11. Mr. Bhimrao Naik is right in his contention that even taking the application for withdrawal of section 29 proceedings as also the receipt Exhibit 37 at their face value, the same does not, in any manner, bind the right, title and interest of the other tenant Ramchandra Balwant Methe who admittedly was not a party to either the said application or the said receipt exhibit 37. Though Ramchandra Balwant Methe was a natural son of the other tenant Dattatraya, there is no dispute that he had gone in adoption and consequently belonged to an altogether different family. His tenancy rights, therefore, cannot be defeated by any step adverse thereto by the other tenant Dattatraya. In any event, therefore, Ramchandra was entitled to succeed in claiming relief of restoration of possession under the provisions of section 32(1-D), notwithstanding the alleged settlement between the owner and the other tenant Dattatraya Babaji. This I hold in addition to upholding the claim even of Dattatraya Babaji to restoration of

possession u/s 32(1-B). of the Tenancy Act.

12. Mr. Rane lastly contended that apart from the respondents herein, there were also two other persons Babu Sakhoba Cheshar and Manku Yasba Kamble who were also tenants of the suit lands as could be seen from the entry of their names in the record of rights in respect of the suit lands for the years 1954-55 and 1955-56. Based on this, he further contended that the respondents herein alone were, therefore, not entitled to restoration of possession in the absence of the aforesaid two other persons and, in any event, the respondents herein could not claim possession of the entire suit lands in the absence of these other persons. I find no merit in this contention. The very extract of record of rights sought to be relied upon by the learned Counsel Mr. Rane shows the recital at the bottom that note has been taken of the decision and order in Tenancy Case No. 2 of 1955-56 to the effect that the aforesaid two persons are not the tenants of the suit lands. Mr. Bhimrao Naik has also relied upon the judgment dated 5th March, 1956 in Tenancy Suit No. 2 of 1955-56 filed by the present respondents Ramchandra Balwant and Dattatraya Babaji against the aforesaid two persons Babu Sakhoba and Manku Yasba u/s 70(b) read with section 4 of the Bombay Tenancy Act for a declaration that the aforesaid two persons were not the tenants of the suit lands. The said judgment clearly declares that the said two persons Babu Sakhoba and Manku Yasba are not the tenants of the suit lands. Effect to the said judgment has also been given as indicated in the revenue records relating to the suit lands. In these circumstances, it is clear that the said two persons were not the tenants of the suit lands. In these circumstances, reliance placed on prior entries in the record of rights is misconceived. It is indeed precisely because of these entries that the tenancy suit aforesaid had to be instituted. The said suit succeeded and declaration against the aforesaid two persons was granted to the respondents herein. Undisputedly, there was no other tenant on the suit lands. The order for restoration of possession passed by the Revenue Tribunal in favour of the respondents herein alone is, therefore, correct.

13. In all these circumstances, the suo motu proceedings commenced by the Mamlatdar u/s 32(1-B) of the Tenancy Act have been rightly decided by the Revenue Tribunal in favour of the respondents-tenants herein giving due and proper effect to the facts and circumstances of the case as also to the provisions of law and the legal consequences flowing therefrom. I see no error of law nor any error apparent on the face of the record.

14. In the result, this petition fails and the same is dismissed. Rule will stand discharged but, in the circumstances, with no order as to costs.