

(1973) 07 BOM CK 0008

In the Bombay High Court

Case No : Special Civil Application No. 1221 of 1969

Sakhubai and Others

APPELLANT

Vs

Onkarlal Dulichand Agarwal

RESPONDENT

Date of Decision : 09-07-1973

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 38, 39, 39

Citation : AIR 1974 Bom 122 : (1974) MhLj 257

Hon'ble Judges : Masodkar, J

Bench : Single Bench

Advocate : J.N. Chandurkar, for the Appellant; P.G. Palshikar; Advocate, for the Respondent

Judgement

1. The present petition has been filed by the legal representatives of Bhagwan Punaji Bari, a tenant upon survey No.701, area 3.31 acres of Rtamtakpura, Akot, district Akola. it is no more in dispute that said Bhagwan was the tenant and that these petitioners are his legal representatives. it is further not in dispute that the field is situated in Akot town and it is within the muncipal limits.

2. With respect to this field, the respondent-landlord Onkarlal filed an application purporting to be u/s 58 (93) (c) read with Section 36 (92) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, here-in-after called the Act, after giving a notice that he wanted this land for personal agricultural cultivation. it was further stated in the body of the petition that the land in question is a horticultural one and had been left out for tha purpose and the rights of the parties are governed by Section 58 only.

3. It may be mentioned that it is not disputed that the land in question has been leased for growing betal leaves and is thus a lease within the meaning of Section 58 (1) (c) of the Act. The right the respondent claimed was because of a notification No.5159/12604/M of the State Government published in the Gazette of September 22, 1960. By that notification, the landholder was permitted if he

bona fide needed land leased by him for cultivating the same personally, to terminate the lease. it is further laid down that this termination shall be subject to the provisions of sub-sections (2) to (7) of Section 38 of the Act.

4. The revenue authorities who tried the claim of the landlord found him entitled to resume the land for personal bona fide cultivation. Though the question was raised even in the trial court as to the application of the provisions of Section 58 to the present controversy, that was negatived, firstly by tenancy Naib Tahsildar, Akot, and thereafter by the appellant authority, i.e. the Special Deputy Collector, Akola, in Revenue Appeal No.2/1967-68. When the matter came before the Maharashtra Revenue Tribunal applying the provisions of Section 38 (4) (a), proviso 1, the finding of the lower authorities were maintained and the tenant's revisions was dismissed.

5. Thus the authorities have permitted the landlord to resume land for bona fide personal cultivation with reference to the right created by Section 38 of the Act.

6. In this Court, therefore the only question that is urged is that this being a land located within the municipal limits of Akot town, Section 38 was not at all attracted and the landlord had no right as such and the entire proceeding u/s 38 is without jurisdiction. It is submitted that only because the land is leased for the purpose mentioned in Section 58 (1) (c), the supervening provisions of Section 60 are not excluded and the rights of the parties must still be governed by Section 60 alone. Mr. Chandurkar submitted that Section 60 opens with words which exclude certain other provisions of the Act and Section 61 provides termination of tenancy only if the landlord needed the land bona fide for non-agricultural purpose. The scheme of this section, according to the learned counsel, is self-contained and clear. There is no ambiguity and it is not permissible therefore to import the provisions of Section 58 into this scheme only because the land is leased for a purpose mentioned in that section. He has pointed out to the two decisions, one being *Bakulabai v. Ukarda Mahadu* 1929 65 Mah LJ 112 and another of the Revenue Tribunal reported in 1966 Mah LJ 60 *Motiramji v. Dr. Ramesh shrouti*.

7. As against this, Mr. Palshikar, the learned counsel appearing for the landholder submitted that such a construction would defeat the very purpose of Section 58. he contends that the provisions of Chapter V and Chapter IV are different in object and purpose. wherever the provisions of Chapter IV hold the filed, they cannot be excluded because of Chapter V. He contends that Chapter V is in the general nature, while Chapter IV is a special one and the latter must prevail while considering the rights between the parties. If this is so construed, the learned counsel maintains that the provisions of Section 38 are very much applicable and the notification issued by the State must hold the filed.

8. Upon these rival contentions, an important question arises, both of the right of the landlords as well as the tenants who hold the lands on else which are located within municipal limits. It is a sound rule of construction that all parts of the

statute must be given its fullest effect and in a case of conflict harmony should be aimed at. it must also be the aim of construction that it should further the object and purpose of the statute uniformly and to reach set of circumstances without any inequities.

9. Keeping in view this principle, it is necessary to scrutinise what is exactly the scheme of Chapter IV and Chapter V. In the earlier Chapters the legislature has provided for several matters which include general provisions regarding tenancies (Chapter II), termination of tenancies by landlords and special rights of tenant (Chapter III) in which is also included the right of tenant to purchase land and compulsory transfers of ownership in favour of the tenants and other rights and liabilities of tenants and landlords. Chapter III-A begins with special provisos for termination of tenancy with respect to certain landlords and is really an appendage to Chapter III itself. Having laid down this general scheme which was to govern the relationship of the agricultural tenant and landlord, certain specific scheme is indicated with respect to certain types of tenancies. That is the purpose of Chapter IV. It is enacted for the purpose of creating special provisions for land held on lease by industrial or commercial undertakings and by other persons for the cultivation of sugarcane and other notified agricultural product. With this object, Section 58 (1) opens by saying that the earlier provisions from the earlier scheme laid down shall be excluded and it also refers to the further provisions which are mainly parts of chapter VII and Chapter VIII relating to assumption of management of surplus lands and restrictions on transfers of agricultural lands and acquisition of holdings and lands. It enumerates exhaustively the lands to which these special provisions shall apply. Section 58 (1) thus excepts certain types of lands leased to certain special types of personal corporations from the operation of certain section of the Act and then makes a different scheme permitting State Government to lay down conditions of such leases in the manner laid down by Section 58 (3). Section 59 deals with reasonable rent of land to which Section 58 applies. This part is as far as the legislative purpose of Chapter IV is concerned. Distinctively, therefore, Chapter IV was making special provisions for special types of lease and that is how the entire scheme of that Chapter is worded and as far as possible it is made self-contained. Chapter V is yet another special Chapter having reference to lands located in specified areas.

10. After noticing this outlay of the legislative provisions, the relevant provisions upon which the controversies centre may now be extracted. Section 58 (1) (2) and (3) read as under : -

"58. (1) The provisions of Section 9, 10, 11, 12, 13, 19, 22, 23, 24, 33, 38, 39, 39-A, 40, 41 to 50 (both inclusive), 57, 81 to 88 (both inclusive), 89, 90, 91 and 92 shall not apply to -

(a) lands leased to or held by any industrial or commercial undertaking (other than a co-operative society) which in the opinion of the State Government bona fide carries on any industrial or commercial operations and which is approved by

the State Government;

(b) land leased to held by bodies or persons for coffee plantation approved by the State Government.

(c) lease of land granted to any bodies or persons other than those mentioned in clause (a) or (b) for the cultivation of sugarcane or the growing of fruit trees or fruit or flowers or vegetables or betal leaves or for the breeding of livestock;

(d) lands held or leased by such co-operative societies as are approved in the prescribed manner by the State Government which have for their objects the improvement of the economic and social conditions of peasants or ensuring the full and efficient use of land for agriculture and allied pursuits.

(2) The State Government may by notification in the Official Gazette in this behalf direct that the provisions of the said sections shall not apply to lease of land obtained by any persons for growing any other class of agricultural produce to which it is satisfied that it will not be expedient in the public interest to apply the said provisions. Before the issue of such notification, the State Government shall direct an enquiry to be made by an officer authorised in this behalf by the State Government and shall give all persons who are likely to be affected by such notification, an opportunity to submit their objections.

(3) Notwithstanding anything contained in sub-sections (1) and (2), it shall be lawful for the State Government to direct, by notification in the Official Gazette that the lease or lands, as the case may be, to which the provisions of subsections (1) and (2) apply, shall be subject to such conditions as may be specified in the notification, in respect of -

(a) the duration of the lease;

(b) the improvements to be made on the land and the formation of co-operative farming societies for that purpose and financial assistance to such societies;

(c) the payment of land revenue, canal revenue, local fund cess and any other charges payable to State Government or any local authority: of

(d) any other matter referred to in Sections mentioned in sub-section (1)."

Sections 60 and 61 may also be extracted : -

"60. Nothing in Sections 38, 39 and 39-A and Sections 40 to 44 (both inclusive), 46 to 50 (both inclusive) and section 57 shall apply to lands in the areas within the limits of a municipality constituted under the Central provinces and Berar Municipalities Act, 1922, and within the limits of the city of Nagpur Corporation Act, 1948 excluding the areas of the village specified in Schedule IV.

Provided that if any person has acquired any right under the Berar Regulations of Agricultural leases Act, 1951, the said right shall not be deemed to have been affected by this section save as provided in Section 61".

"61. (1) In the area specified in Section 60 notwithstanding anything contained in Section 38, 39 or 39-A a landlord may terminate the tenancy of a tenant other than an occupancy tenant in respect of any land with effect from 31st day of May of any year by giving the tenant three months notice in writing if the landlord bona fide requires the land for any non-agricultural purposes:

Provided that the three months period of such notices shall expire before the 31st day of May of such year.

(2) The provisions of Section 36 and 52 shall mutatis mutandis apply to the termination of the tenancy of a tenant in respect of any land under sub-section (1):

Provided that the tenant shall be entitled to get from the landlord a solatium equal to the difference between the market value of the land for agricultural purpose as may be determined by the Tahsildar having regard to the provisions of the Land Acquisition Act. 1894, and the reasonable price of the land as may be determined by him u/s 90".

11. It will be plain that both Section 58 and Section 60 begin by excluding the provisions of the earlier provisions of the enactment and make certain special provisions with respect to lease or the lands dealt with by those provisions. To the effect that the provisions of Section 9 (non-terminations of tenancy by efflux of time), Section 10 (restoration of possession), Section 11 (maximum rent), Section 12 (the rent), Section 13 (computation of rent), Section 19 (termination of tenancy), Section 22 (bar to eviction from dwelling house), Section 23 (tenant's option to purchase site), Section 24 (remedy provided for the rights under Sections 22 and 23), Section 33 (sub-division, subletting and assignment prohibited), Section 38 (termination of tenancy for cultivating land personally), Section 39 (rights of certain landlords to terminate tenancy for personal cultivation), Section 39-A (special rights of certain landlords to terminate the tenancy for that purpose,) \section 40 (provisions of Section 38 not to affect right of tenant to purchase land) and Sections 41 to 50 (right of tenant to purchase land and compulsory transfer of ownership of land to tenant), Section 57 (restrictions on transfer of agricultural lands and acquisition of holdings and lands), are not applicable. In other words, these leases are freed from the fetters of these provisions. By sub-section 92) of Section 58 power is conferred upon the State Government to exclude the operation of these sections with respect to leases for growing any other class of agricultural produce. By drawing upon this power thus the State Government is authorised to add to the list of purposes which are mentioned in the body of sub-section 91) itself. This is still in the realm of taking away the fetters upon the leases.

12. Sub-section 93) of Section 58 however enables the State Government to issue notifications with respect to leases and lands which are covered by sub-sections (1) and (20 and to lay down conditions how those leases and lands are

to be enjoyed and held. These conditions may indicate the duration of the lease, the improvements to be made on land and the formation of co-operative farming societies for that purpose, financial assistance to such societies, the payment of land revenue, canal revenue, local fund cess and any other charges payable to the State Government or any local authority, or any other matters referred to in sections mentioned in that sub-section. The matters which are referred to in sub-section (1) are the exclusions of the provisions of certain sections of the Act itself which deal with certain topics as indicated earlier, including right of a landlord to resume for personal cultivation the land leased as well the right of a tenant to purchase the land and become its statutory owner. There are other usual rights and obligations of payment of rent, termination of tenancy etc. so it is left entirely to the satisfaction of the State Government to lay down the conditions of these leases mentioned in sub-sections (1) and (2). It is not laid down by the statute; but as a matter of policy, legislature in its own wisdom left the things as if it were to the decisions of the State Government.

13. As stated earlier, State Government has exercised power under Sub-section 93). It has amongst other things provided for resumption of land for personal cultivation and applied the provisions of Section 38 to the land held by a lessee for the purpose like the present one, i.e., growing of betel leaves.

14. Section 60 which I have extracted in its complete form would be very much germane and applicable to the present lease for the land is situated within the municipal limits. It is clear that by enacting Section 60 and 61, Legislature has laid down its own policy with respect to that land which is located within the municipal areas. No power is left with the State Government in that regard. As indicated earlier, sub-section (2) of Section 58 enabled the State Government to add to the list provided by sub-section (1) of Section 58, so as to exclude the other provisions of the Act with reference to a lease of land obtained by any person for growing any other class of agricultural product. Such an exercise of power is not available under Chapter Amarendra's case itself. Therefore, when one is asked to construe the provisions of Chapter V, the clear intention of the legislature can not be lost sight of. There is as indicated earlier a policy both in Chapter IV and Chapter Amarendra's case to exclude the legislative fetters of the earlier provisions with certain types of lease of lands either with reference to its use or purpose or with reference to its location. Chapter IV deals with the former; Chapter V with the latter. Looked from this angle, it is clear that legislature itself has excluded the operation of Section 38, 39 or 39-A and Section 40 to 44, 46 to 50, as well Section 57, with respect to all lands if those are situated in the municipal limits constituted under the provisions of the C.P. & Berar Municipalities Act and also City of Nagpur Corporation Act. 1948.

15. The provisions of Section 60 in terms do not enable a landlord to terminate the tenancy for cultivating the land personally taking steps u/s 38, 39 or 39-A on the one hand, and take away the rights of the tenant which he is clothed with u/s 40 to 44, 46 to 50 and it also removes because of necessity the restrictions on

transfer of land purchased or sold under the Act as contemplated by Section 57. having done this, Section 61 specifically enacts an enabling provisions. A landlord being subject to the other provisions of the Act, can further seek the termination of the tenancy by resorting to section 61 for bona fide requirement of the land for any non agricultural purpose. again there in section 61 the scheme is completely indicated and is a self-contained one. It is therefore ample to say that the provisions of Sections 60 and 61 apply to lands which are located within the municipal limits, and then the exclusion of the provisions of other parts of the Act has to be to the extent expressly indicated by Section 60 thereof . Logically all such leases will be governed by other provisions of the Act subject to what is contained in chapter V of the Act.

16. Indeed, provisions of Section 58 are not excluded by Section 60, though the list of exclusion has reached Section 57. The omission must be given its own effect. It cannot be said that section 58 was excluded only because it dealt with other special types of sections should be excluded and if that be the scheme, it is clear that u/s 60 the entire scheme of Section 60 the entire scheme of section 58 is not intended in be excluded. Once that scheme is read follows that with respect to the leases which are exhaustively dealt with by Section 58 (1) (a), (b), (c) abd (d) or which may be added because of the power conferred under sub-section (2), the state Government can patently lay down conditions as required by sub-section (3) of section 58. In other words, both section 58 and section 60 will have to be read together harmoniously and reasonably. Whenever u/s 58 any provision is made that would operate only subject to the provisions of Section 60. To the leases, therefore, which are within the municipal limits and which are also held for the purposes indicated by section 58 (1), (a), (b), (c) and (d) it is clear that the provisions of Section 60 would very well apply and merely because any notification is issued u/s 58 (3) that would not affect its operation.

17. That is how the mechanics of both these sections can be construed and reasonably applied. The question still remains whether to the leases of these types where Section 38 has been excepted bodily along with Section 39 and Section 39-A by legislative enactment, only because a notification is issued under sub-section (3) of Section 58 the said sections were intended to made applicable? As indicated earlier, the notification u/s 58 (3) in the present case in terms makes the provisions of section 38 operative to the extent it permits a landlord to resume the land for bona fide personal cultivation subject to his satisfying the provisions of sub-sections (2) to (7) of section 38. such a position raises an obvious conflict.

18. The only way to resolve the same is reasonably to read the notification subject to the other provisions of the Act, if to the lands which are located in a particular area, certain provisions are not made applicable by the statute itself, then the legislative intention is clear in that those provisions will not be available as fas as those lands are concerned. In other words, the power conferred to issue a notification cannot over ride this legislative policy and intention. The

purpose of notification under sub-section (3), as indicated earlier, is a general one with reference to special types of leases. It lays down conditions and these conditions become the terms of leases. Necessarily therefore such terms cannot be available if the parent state Government to make a notification with respect to the leases mentioned in section 58 (1), it is clear that because such land happens to be located in the areas as contemplated by Section 60 of the Act, to that extent that notification will not apply to such leases. In other words, though the land may be of the kind mentioned in clauses (a), (b), (c) or (d) of sub-section (1) of section 58 and to which generally by notifications the provisions of section 38, 39, or 39-A have been made applicable, still because of section 60 those provisions will not be available, once the lands are within the limits of a municipality or the corporation as indicated by Section 60.

19. After indicating the nature of exclusions in sub-section (1) of section 58 and nature of exclusion in section 60 too, it appears that there is a definite policy and interpretation should follow that that will clearly further that policy. section 60 excluded only certain types of rights and obligations earlier carved out, while section 58 (1) excluded several more rights and obligations. The terms of section 60 do not provide for any machinery like sub-section (3) of Section 58 nor leave any matter to be determined by the State Government as is done by sub-section (2) of section 58, Therefore though the land may answer the requirements of section 58 it can still be governed by the provisions of the provisions of section 61 only with a view to indicate that in place of a right to terminate the tenancy for agricultural purposes, different right is expressly created. Section 61 speaks of termination of tenancy and opens by saying "notwithstanding anything contained in Ss. 38,39, or 39-A". In other words, the right of a landlord to terminate tenancy for agricultural purposes, i.e., for his personal cultivation, is in terms excluded and in its stead a right if he requires the land bona fide for any non-agricultural purpose is substituted. This is an inherent evidence to indicate that to the leases governed by section 60, provisions of Section 38, 39 or 39-A are not intended to be made applicable.

20 That being the position, any notification u/s 58 of the Act will have to be read only subject to sections 60 and 61 wherever these sections apply.

21. The landlord therefore had no right to seek to resume the land as is done with reference to his need for bona fide personal cultivation and the notification did not help him.

22. No doubt, as I have already indicated earlier, the provisions of section 58 (3) are applicable to the leases or lands of the nature and kind mentioned in sub-section (1) (a), (b), (c) and (d) of section 58 though the same maybe situated in municipal limits and therefore power of issuance of notification is very much available to the state government even with respect to those leases, but such power will have to be read subject to the provisions of Section 60. In other words, wherever there is a conflict between the notification and the right emanating from the notification, the notification will have to yield to the super-

imposition of the legislative enactment as indicated earlier. In other words, though the notification may say that to the leases u/s 58, sections 38, 39 or 39-A, 40 to 44 46 to 50 may apply, still if it is a lease of the land which is located within the municipal limits as indicated by section 60, those provisions of the notification will not be available.

23. In the decision cited by the learned counsel for the petitioner reported in 1965 Mah LJ 112 some what similar view appears to have been taken though the question of Section 58 was not in issue expressly in that case, and the same does not cover the present controversy.

24. That being the position therefore, the respondent-landlord was not entitled to make an application and the orders by the authorities are thus entirely without jurisdiction. The same will stand set aside.

25. The present petition, therefore, succeeds, but under the circumstances, there will be no order as to costs.

26. Petition allowed.