

(1982) 01 BOM CK 0041

In the Bombay High Court

Case No : Special Civil Application No. 126 of 1978

Samarth Ramdas Math(Shri) Vithal Rakhumai Mandir Trust
Awass

APPELLANT

Vs

Atmaram Damu Rane and Others

RESPONDENT

Date of Decision : 12-01-1982

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 37, 37(1), 39

Citation : (1983) 1 BomCR 333

Hon'ble Judges : R.A. Jahagirdar, J

Bench : Single Bench

Advocate : G.B. Karandikar, for the Appellant; G.V. Limaye, for the Respondent

Judgement

R.A. Jahagirdar, J.—This petition raises a short question about the interpretation of sections 37 and 39 of the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as "the Bombay Tenancy Act". The facts are very few and may straightaway be mentioned. The land involved in this litigation is Survey No. 385/4-B measuring 5 Gunthas 2 Annas and situated at village Awass in Alibag Taluka of Raigad District. The said land originally belonged to respondent No. 2, but was tenanted by the first respondent. The possession of the land had been obtained by the second respondent pursuant to an order passed u/s 33-B of the Bombay Tenancy Act on 25th October, 1962. It may be mentioned that the possession itself had been actually obtained on 20th of March, 1963.

2. Thereafter the second respondent apparently cultivated the land personally for some time, but on 6th of August, 1965 the second respondent executed a registered sale deed in favour of the petitioner of the said land and gave possession of the same to the petitioner. Thereafter on 15th of April, 1976 the first respondent made an application u/s 39 r/w section 37 of the Bombay Tenancy Act for possession of the land on the ground that the landlord had contravened the provisions of section 37 and has also failed to comply within reasonable time with the provisions of the said section. The application was

resisted on behalf of the petitioner on the ground that it is not made within the period of limitation and secondly that the application could not lie against the petitioner who was not the landlord of the first respondent. The Tahsildar of Alibag heard the said applications as Tenancy Case No. 18 of 1976 and by his judgment and order dated 30th of August, 1976 allowed the said application. This order has been confirmed by the Sub-Divisional Officer of Alibag by his order dated 31st May 1977 in Tenancy Appeal No. 20 of 1976. It may be mentioned that the first respondent, namely the tenant, also preferred an appeal, being Tenancy Appeal No. 22 of 1976, for compensation which had not been awarded by the Tahildar. The Sub-Divisional Officer allowing Tenancy Appeal No. 22 of 1976 remitted the case to the Court of first instance for determining the amount of compensation. The petitioner preferred a revision application, being Tenancy Application No. 232 of 1977, which was heard and dismissed by the Maharashtra Revenue Tribunal at Bombay by its judgment and order dated 22nd September, 1977, which is the subject matter of challenges in this petition under Article 226 of the Constitution.

3. The facts have already been enumerated above and do not require any repetition for appreciating the points of law raised by Mr. Karandikar, the learned Advocate appearing in support of this petition. In the first place Mr. Karandikar contended that after the expiry of a period of 12 years from the date on which possession has been obtained by the landlord, the relationship between the erstwhile landlord and tenant comes to an end and an application u/s 39 of the Bombay Tenancy Act does not lie by the erstwhile tenant either against the erstwhile landlord or against the transferee from the said landlord. Mr. Karandikar has so contended by relying upon the provisions of section 37(1) of the Bombay Tenancy Act wherein it is provided that if the landlord after taking possession of the land under among other section, section 31 fails to use it for the purpose for which the possession is taken within one year from the date on which he took possession or ceases to use it for the aforesaid purpose within 12 years from the date on which he took possession, the landlord is required to forthwith restore possession of the land to the tenant. From this Mr. Karandikar wants me to infer that after the expiry of the period of 12 years from the date on which the possession was taken by the landlord, the landlord is free to do anything with the land, possession of which has been obtained by him. It is only upto the end of 12 years from the date on which the possession has been obtained by the landlord that the right of the tenant to require the landlord to restore possession to him subsists; thereafter it comes to an end.

4. It is impossible to accept this interpretation put by Mr. Karandikar upon section 37(1) of the Act. It must be noted that the Act which gives cause of action to the tenant to apply for restoration of possession u/s 39 is to take place within 12 years from the date on which possession has been obtained by the landlord. That is the clear language of section 37(1) while laying emphasis on the period of 12 years. Mr. Karandikar ignored the fact that even earlier the tenant could ask for possession and that earlier point of time is the expiry of one year

from the date on which the landlord has taken possession if the landlord has failed to use the land for the purpose for which the possession was obtained. If Mr. Karandikar's argument is to be accepted, in a given case where the landlord has failed to use the land for the purpose for which possession thereof was obtained within one year from the date on which possession was obtained, then after the expiry of one year also the tenant could not apply for restoration of the possession of the land of which he was earlier the tenant. It must also be mentioned that Mr. Karandikar sought support from certain observations which are to be found in a judgment of the Full Bench of this Court in Vasant Hariba v. Jagannath 71 Bom.L.R. 12. The observations on which reliance was placed by Mr. Karandikar are to be found on page 28 of the report which are in the following terms:

"In section 39 advisedly there is no period of limitation laid down because section 39 is complementary to section 37 and the tenant's right to have the possession restored to him of the land taken by the landlord for personal cultivation continues at least for 12 years after possession has been taken by the landlord. Because of that provision, advisedly no provisions of limitation were laid down."

I do not think that the aforesaid observations can be of any help to Mr. Karandikar. On the other hand, they are destructive, to some extent, of the argument which is being advanced by him. Moreover, one must also note that the Full Bench has only said the tenant's right to have the possession restored to him continues at least for 12 years after possession has been taken. It does not say that it continues only for 12 years.

5. The period of limitation cannot be imagined. It is to be found, if at all, in the provisions of a statute itself. Section 39 of the Bombay Tenancy Act, as has been pointed out by the Full Bench, itself does not provide for any period of limitation. If this is so, then in my opinion, one cannot import any period of limitation in section 39. The cause of action which gives right to a tenant to apply for restoration of the possession u/s 39 has to arise within one year from the date on which the landlord has taken possession or within 12 years from the said date on which the landlord has taken possession or within 12 years from the date on which the landlord has taken possession or within 12 years from the said date depending upon the failure to use the land or the cessation of the personal cultivation of the land, as the case may be, as mentioned in section 37(1). If, however, the landlord fails to use land for the purpose for which the possession of the same was obtained after the expiry of the period of 12 years from the date on which he took possession, then the tenant may be debarred from making an application u/s 39. But if the cause of action itself arises within one year, or 12 years, as the case may be, then the period during which the tenant can apply for restoration of possession has not been provided for in section 39 or in any other provisions of the Bombay Tenancy Act. One cannot read into a provision in any Act a period of limitation if the said period has not been specifically provided for. The argument based upon the bar of limitation must, therefore, be rejected.

6. It was then contended by Mr. Karandikar that section 39 of the Bombay Tenancy Act does not enable the tenant to make an application against the transferee from a landlord who has failed to comply with the provision of section 37. He invited my attention to the provision of section 37 and, in particular, to sub-sections (2), (3) and (4) of the said section for the purpose of supporting his argument that an application u/s 39 can be made only against the erstwhile landlord and not against a person to whom the landlord has handed over the possession of the land. At first glance this argument appears to be attractive, but a proper reading of section 39 should leave one in no doubt that the application which is to be made by the tenant can be made against anyone who is in possession of the land of which he was originally the tenant. The relief which the tenant is claiming u/s 39 is on a cause of action provided by the default of the landlord is the obtaining of the possession of the land. If the possession of the land is with a person other than the landlord then that other person has also to be evicted pursuant to an order made on an application u/s 39. The legislature has not thought it fit to mention in section 39 that the application is to be made only against the landlord and that the possession of the land has to be obtained only from the landlord. If this is so, it is not permissible for a Court to read into a section words which have not been apparently advisably, used by the legislature.

7. Mr. Karandikar relied upon a judgment of the Supreme Court in *Dindayal and Another Vs. Rajaram*, for the purpose of contending that the application against third party cannot be made under the provisions of the Tenancy Act especially u/s 39 of the Act. I have with his assistance gone through the aforesaid judgment in great details but find myself unable to find any relevance of that judgment to the fact of this case. In *Dindayal's* case, a suit had been filed by persons who were at one time the tenants of the land in question, but the suit itself had been brought not as tenants of that holding but on the strength of their title the nearest reversioners to the owner of the land. Section 104(1) of the C.P. Tenancy Act provided that a suit for possession of a holding by a person claiming to be a tenant from which he has been dispossessed should be filed within three years from the date of dispossession. An argument had been advanced before the Supreme Court that the suit not having been filed within three years from the period of dispossession, the same ought to be dismissed. In view of the fact that the suit had been filed on the basis of the title and not on the basis of the tenancy, the argument was easily rejected. The further argument that after the expiry of the period of three years the trespasser had become owner of the land by the adverse possession was also rejected because the C.P. Tenancy Act did not provide for adverse possession, but the Limitation Act of 1908 did. Looking to the provision of Article 144 of the Limitation Act of 1908, it was easily seen that the suit was not barred by limitation. I have summarised the facts and the propositions in *Dindayal's* case sufficiently to indicate that the said judgment is of no relevance at all to the proposition propounded by Mr. Karandikar in this case.

In the result, this petition must fail. Rule is accordingly discharged with costs.