

(1971) 04 BOM CK 0013

In the Bombay High Court

Case No : Special Civil Application No. 557 of 1966

Sarubai

APPELLANT

Vs

Vinayak Govind Chandrate and Others

RESPONDENT

Date of Decision : 28-04-1971

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 15(2)

Citation : AIR 1973 Bom 71 : (1972) MhLj 563

Hon'ble Judges : Vaidya, J

Bench : Single Bench

Advocate : V.N. Chhatrapati and S.L. Kamble, for the Appellant; S.C. Pratap, Asst. Govt. Pleader, K.Y. Mandlik and C.R. Dalvi, for the Respondent

Judgement

1. The above petition is filed by a tenant against whom his landlord, respondent No.1, had filed an application u/s 33-B read with Section 29 (2) of the Bombay Tenancy and Agricultural Lands Act, 1948, after obtaining a certificate u/s 88-C. The application was resisted by the petitioner on the ground that the landlord had already obtained from him half the land originally leased to him for personal cultivation upon a surrender u/s 15 of the Bombay Tenancy Act, and hence in view of the provisions of Section 33-B(5)(a) of the Bombay Tenancy Act, the landlord was not entitled to recover possession of the remaining half of the land, which is the subject-matter of the dispute between him and the landlord now. The Tenancy Ayal Karkun, Dinfori, who heard the application not only against the petitioner but also against the other tenants, while granting an order in favour of the landlord against other tenants, did not restore possession of half land out of the present land in dispute, S. No. 105 of Mulane with the petitioner.

2. The landlord carried an appeal before the Deputy Collector, who set aside the order of the Tenancy Ayal Karkun and granted possession of half the land with the petitioner as he was of the view that half the land was surrendered to the landlord u/s 15 and not u/s 31 as required by Section 33-B (5) (a). The said decision was confirmed by the Maharashtra Revenue Tribunal in revision

application filed by the petitioner-tenant. The petitioner has, therefore, filed the above petition under Article 227 of the Constitution challenging the validity of the orders.

3. Mr.Chatrapati, learned Counsel for the petitioner, contended that the view taken by the Deputy Collector and the Tribunal that an order u/s 15 is not an order u/s 31 was contrary to the plain terms of Section 15 (2), which runs as follows :

"15 (2). Where a tenant surrenders his tenancy, the landlord shall be entitled to retain the land so surrendered for the like purposes, and to the like extent, and in so far as the conditions are applicable subject to the like conditions, as are provided in Sections 31 and 31-A for the termination of tenancies."

This contention must be upheld because if the landlord is entitled to retain possession of the land subject to like conditions mentioned in Section 31 as well as for the like purpose and to the like extent, it means that for all practical purposes an order u/s 15 must be considered as an order u/s 31. I am therefore of the opinion that even for the purposes of Section 33-B (5) (a) the order u/s 15 must be construed as an order u/s 31 for all purposes.

4. The judgment of the Tribunal and the Deputy Collector, are, therefore contrary to the plain meaning of Section 15 (2) and must be quashed. The order passed by the Tenancy Aval Karkun shall stand restored and the application made by the landlord against the petitioner shall be rejected.

5. Rule absolute. In the circumstances of the case, no order as to costs.

6. Petition allowed.