

(1979) 04 BOM CK 0015

In the Bombay High Court

Case No : Spl. Civil Application No. 1391 of 1975

Shaniwar Dhondu Dharnekar

APPELLANT

Vs

Prabhavati Chandrakant Patange and Another

RESPONDENT

Date of Decision : 18-04-1979

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 14, 25(1), 25(2)
Constitution of India, 1950 — Article 227

Citation : AIR 1980 Bom 276 : (1980) 82 BOMLR 104 : (1979) MhLj 836

Hon'ble Judges : Kanade, J

Bench : Single Bench

Advocate : G.V. Limaye, for the Appellant; D.M. Parulekar, for the Respondent

Judgement

1. Respondent No. 1 is the landlady of Survey No. 47 admeasuring 22 acres and 2 gunthas plus 2 acres Pot Kharab and survey No. 17 admeasuring 33 gunthas situated at village Akorli in Panvel taluka of Kolaba district The petitioner is admittedly a tenant on the said lands. Respondent landlady filed an application for possession of the lands in dispute under the provisions of Section 14 read with Section 25 (2) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Bombay Tenancy Act"). It is contended by the landlady that the tenant had made defaults for three years from 1969-70 to 1971-72 and intimations have been given on each default and ultimately the tenancy was terminated and thereafter the present application u/s 14 read with Section 25 (2) of the Bombay Tenancy Act is filed.

2. The Additional Awal Karkun, Panvel who made enquiry in respect of the said application framed necessary issues and recorded evidence of the parties and on consideration of evidence on record, Additional Awal Karkun came to the conclusion that the tenant-petitioner has committed three defaults and an intimation accordingly was given for each default Accordingly by the judgment and order, dated June 30, 1974, the application of the landlady was allowed and order for restoration of possession of the suit lands was granted. Against the said

judgment and order, the tenant preferred an appeal to the Assistant Collector, Panvel being Tenancy Appeal No. 44 of 1974. That appeal on appreciation of evidence also came to be dismissed, by the judgment and order, dated Oct. 14, 1974. Thereafter the tenant filed revision application before the Maharashtra Revenue Tribunal. The said revision application also came to be dismissed on Apr. 19, 1975. Against the said judgment and order of the Maharashtra Revenue Tribunal, the present special civil application has been filed by the tenant-petitioner under Article 227 of the Constitution of India.

3. This special civil application was placed before Hajarnavis, J. for admission and at the admission stage, the same was dismissed on June 25, 1975. Against the said dismissal order the petitioner approached the Supreme Court by way of Civil Appeal No. 787 of 1976. Before the Supreme Court it was contended by the petitioner that the intimation contemplated by the provisions of Sub-section (2) of Section 25 of the Bombay Tenancy Act must not only be given by the landlord within a period of three months on each default, but the intimation must be served on the tenant within the period of three months on each default. It was also urged by the petitioner before the Supreme Court that there was no notice of termination as contemplated by the provisions of Section 14 of the Bombay Tenancy Act. The Supreme Court while remanding the matter held that the questions raised by the petitioner in the Supreme Court are important both from the point of view of landlords and tenants and it is necessary that the speaking order should be passed in that regard. Thus the matter is placed before me to dispose of this special civil application in accordance with law.

4. Mr. G. V. Limaye, the learned counsel appearing on behalf of the tenant-petitioner, submitted that the first intimation given by the respondent-landlady was dated Aug. 3, 1970 and was served on the petitioner on Sept. 26, 1970. The second intimation was issued on Aug. 23, 1971 and the same was served on the petitioner on Sept. 4, 1971 and the third intimation was issued on July 10, 1972 and the same was served on the petitioner on July 19, 1972. The only last intimation was served on the petitioner within the period of three months from the date of the default, whereas the earlier two intimations were served on the petitioner after expiry of three months" period from the date of default. According to Mr. Limaye, the intimations of defaults given by the landlady must be served on the petitioner within a period of three months from the date of each default, and as admittedly the intimation has not been served on the petitioner within three months and therefore, a compliance of the provisions of Section 25 (2) of the Bombay Tenancy Act has not been made and consequently the orders passed by all the authorities below deserve to be set aside. It is also contended by Mr. Limaye that there must be an independent notice terminating the tenancy of the tenant as contemplated by Section 14 (b) of the Bombay Tenancy Act. It is pointed out by Mr. Limaye that the last intimation given by the landlady is identical with the previous two intimations. Although the said intimation refers to the termination of the tenancy of the petitioner on the ground of default for three years, it must be construed as an intimation only of default and not as a notice

terminating the tenancy of the petitioner and in the absence of a specific notice u/s 14 (b) of the Bombay Tenancy Act, the proceedings initiated by the landlady u/s 14 read with Section 25 (2) of the Bombay Tenancy Act must be dismissed. Mr. Limaye has not cited any reported or unreported judgment of this court before me with regard to his submission raised u/s 25 (2) of the Bombay Tenancy Act.

5. Mr. D. M. Parulekar, the learned counsel appearing on behalf of the landlady-respondent, submitted that the tenant has not paid the rent or compensation of the lands in dispute right from the year 1969 to 1978 till recovery of possession by the landlady. He has further argued that all the three courts have held that there was an intimation as contemplated by Sub-section (2) of Section 25 and termination of the tenancy of the petitioner u/s 14 of the Bombay Tenancy Act and this court while entertaining an application under Article 227 of the Constitution of India, in the interest of justice, should not interfere with the said finding. Mr. Parulekar cited authority of the Division Bench of this Court reported in Smt. Josephine Mathew Concessio Vs. Sowr Langdya Kini, The Division Bench held that the words "to that effect" in Section 25 (2) of the Bombay Tenancy and Agricultural Lands Act, 1948 mean "to the effect that the tenant has failed to pay rent". Therefore, it is sufficient if the intimation given to the tenant u/s 25 (2) of the Act only refers to his failure to pay the rent and it is not obligatory on the landlord to state in the intimation that he intended to or had decided to terminate the tenancy. Besides this authority, Mr. Parulekar is not able to find out any unreported judgment directly interpreting the provisions of Sub-section (2) of Section 25.

6. Having heard the counsel on both the sides, it must be held that having regard to the conduct of the petitioner in committing successive defaults, no relief should be granted to him in this application under Article 227 of the Constitution of India. This Court is not bound to interfere with the findings recorded by the authorities below. Even if the lower court has committed an error of law, every error need not be interfered with under Article 227 of the Constitution of India unless it appears that there is a failure of justice at the hands of the lower courts. The extraordinary but limited power of the High Court under Article 227 of the Constitution of India is to see that the lower authorities worked within the bounds of law or give fair opportunity to the parties to lead evidence in support of their rival contentions. Even if there is an error in respect of interpretation of a particular section of the Act, this court is not bound to interfere with the said finding or judgment, while entertaining an application under Article 227. The tenant continued to be in possession of the two lands which are more than 22 acres for nearly 10 years without payment of rent. The landlady is a widow and it appears that those lands are the main source of income for her maintenance. In the said circumstances I will be justified in law not to interfere with the findings of fact recorded by the authorities below. The Supreme Court, however, directed this court to decide two important points raised by the petitioner viz. as to whether the intimation as contemplated under Sub-section (2) of Section 23 of the Bombay Tenancy Act should be served on

the tenant within the period of three months and as to whether there should be a separate notice terminating the tenancy of the tenant as contemplated by Section 14 (b) of the Bombay Tenancy Act. Section 25 (1) empowers the authority to grant a relief against the forfeiture if it is found that the tenancy of the tenant has been terminated for non-payment of rent and the landlord has filed the proceedings to eject the tenant, the Mamlatdar shall call upon the tenant to tender to the landlord the rent in arrears together with the cost of the proceeding within three months from the date of order, and if the tenant complies with such order, the Mamlatdar shall, in lieu of making an order for ejectment, pass an order directing that the tenancy, had not been terminated and thereupon the tenant shall hold the land as if the tenancy had not been terminated. So far as Sub-section (2) of Section 25 is concerned, the right to give relief against the forfeiture to the tenant is taken away, if the tenancy of the tenant is terminated for non-payment of rent if he has failed for any three years to pay rent and the landlord has given intimation to the tenant to that effect within a period of three months on each default. There are two requirements of the provisions of Sub-section (2) of Section 25, (a) that the tenant must be in arrears of rent for the period of three years and (b) that the landlord must give an intimation to the tenant within a period of three months on each default. In the present case there is no dispute that there is concurrent finding of fact that the tenant has committed defaults for the period of three years. The tenant should have paid the rent of the lands in dispute on or before every revenue year i. e. 31st May and within three months thereafter means 31st Aug. Admittedly the intimations have been given before the end of August for each default, but the intimations have not been served on the petitioner before 31st Aug. of the year on each default. The language used in Sub-section (2) of Section 25 is "if the landlord has given intimation to the tenant to that effect within a period of three months on each default." It is nowhere stated that the intimation is to be served within the period of three months. What is contemplated by Sub-section (2) of Section 25 is that it is obligatory on the part of the landlord to give intimation to the tenant of his default within the period of three months on each default. The dictionary meaning of the word "intimation" is "to make known, announce, notify by legal process, to make known or communicate by any means however indirect, to signify, to indicate, to imply, to suggest, to hint at". From this dictionary meaning, it does not appear that the service is necessary of such intimation on the person concerned. By the legislature, the landlord is directed to signify, to notify, to announce that the tenant has committed defaults in payment of rent or compensation. The fact that the defaults have been committed is best known to the tenant. However, the legislature intended that an opportunity should be given to the tenant to pay the rent if possible after the intimations are given by the landlord. If the legislature intended that the intimation contemplated by Sub-section (2) of Section 25 is to be served on the tenant within the period of three months, the language employed in section would have been quite different. Instead of the language employed in Sub-section (2) of Section 25 "that if the landlord has given intimation to the tenant", the language

would have been in the said sub-section "that if the landlord serves the intimation to the tenant within three months". Having regard to the scheme of Section 25, as a whole, It appears that every year the landlord is called upon to give intimation with regard to default made by the tenant. In case two defaults are made, under Sub-section (1) of Section 25 the Mamlatdar is empowered to give relief against forfeiture directing the tenant to deposit the amount of rent. In case of third default, an intimation to the tenant to that effect would fall within the penalty of law resulting into an order of eviction of the tenant from the land. The words "within the period of three months on each default" must be referable to landlord giving intimation. The law makes it obligatory on the landlord to intimate, to announce, to make known to the tenant that the default has been committed by him. Now such intimation may reach to the tenant after expiry of the period of three months. Take a case that the first notice is served on the tenant after the period of three months on default, second intimation is within period of three months and the third intimation is also within the period of three months, will be the tenant in the said circumstances entitled to relief against the forfeiture? Having regard to the language employed in Sub-section (2) of Section 25, it does not appear that the legislature intended to give relief to a chronic defaulter. A leniency is shown by Sub-section (1) of Section 25, whereas the law has become harsh on the tenant by Sub-section (2) of Section 25 in case he makes continuous defaults for three years. In this view of the matter, I hold that intimation need not be served within the period of three months, but it is sufficient if the intimation is given by the landlord oral or in writing to the tenant which amounted to a communication by the landlord to the tenant that the tenant has failed to pay rent of a particular year. The purpose of intimation is to bring the fact to the notice of the tenant of his failure to pay the rent.

7. Mr. Limaye's second contention also deserves to be rejected. There may be a composite notice of termination of the tenancy and also an intimation u/s 25 (2). As stated above, the purpose of intimation is to bring the fact to the notice of the tenant of his failure to pay the rent. Such an intimation may also contain that the tenancy of the tenant is terminated in regard to the provisions of Section 14 (b). What is required under the law is that the contractual tenancy of the tenant has got to be terminated by a quit notice. There is no prescribed form of such notice, neither there is any prescribed form of giving intimation to the tenant of his failure to pay rent. If the landlord gives a composite notice of his intention and decision to terminate the tenancy of the tenant or to communicate or to intimate of his failure of payment of rent, I do not find any illegality or any irregularity if a notice contains a combined operation of provisions of Section 14 (b) and Sub-section (2) of Section 25.

8. Mr. Limaye brought to my notice unreported judgment of this court rendered by Malvankar, J. in Spl. Civil Appln. No. 322 of 1968 decided on Feb. 15, 1972, It is observed by Malvankar, J.:

"The provisions which require the landlord to terminate the tenancy are

contained in Section 14 of the Act. Obviously, therefore, in addition to the intimation required to be given u/s 25 (2), the landlord is also required to terminate the tenancy u/s 14 of the Act."

It is further observed:

"In the instant case, there is nothing to distinguish between the last intimation which, according to the petitioner, is a notice u/s 14 of the Act, and the first intimation when respondent No. 1 committed the first default, in which also there is a recital regarding the termination of tenancy. In these circumstances, it is extremely difficult in this case to hold that when the petitioner gave the last intimation, he really intended to terminate the tenancy by giving a notice u/s 14 of the Act."

Having regard to the facts of that case, Malvankar, J. held that there was no termination of tenancy u/s 14 of the Bombay Tenancy Act. Here in this case the facts are different. The petitioner accepted the last intimation as a notice terminating tenancy required to be given u/s 14 of the Bombay Tenancy Act. I do not find that this point was seriously challenged or agitated before the Maharashtra Revenue Tribunal. It must be construed that the petitioner accepted the last intimation as that the landlady has lawfully terminated his tenancy and thereafter the proceedings were initiated u/s 14 read with Section 25 (2) of the Bombay Tenancy Act. No other point is raised before me except the points dealt with by me hereinabove.

9. In the result, the application fails. The rule is discharged with costs.

10. Rule discharged.