

(1958) 07 BOM CK 0027

In the Bombay High Court

Case No : Special Civil Application No. 81 of 1958

Shiosingh Daulatsing Rajput

APPELLANT

Vs

The Bombay Revenue Tribunal

RESPONDENT

Date of Decision : 03-07-1958

Acts Referred:

Berar Regulation of Agricultural Leases Act, 1951 — Section 19(2), 3

Citation : (1959) 61 BOMLR 210

Hon'ble Judges : Mudholkar, J;Kotval, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kotval J.

1. This petition arises out of an application made by the petitioner Shiosingh for his reinstatement in possession of a field u/s 19(2) of the Berar Regulation of Agricultural Leases Act, 1951.

2. The circumstances under which the petitioner preferred that application before the revenue authorities are as follows: On April 26, 1954, respondent No. 4 Bhikanrao purchased the field, survey No. 56, from respondent No. 5, Chandansingh, by a registered sale-deed. Shiosingh is the brother of Chandansingh. Shiosingh filed his application u/s 19(2) of the Act on November 8, 1954, alleging that he had cultivated the field in the year 1953-54, that he was a protected lessee of the said field; that he had been forcibly dispossessed by Bhikanrao; and that, therefore, he should be reinstated in possession.

3. Respondent No. 4 Bhikanrao pleaded in reply to this application, that he had purchased the field for a sum of Rs. 4,000 from Chandansingh, that the two brothers in collusion were playing a trick on him—one brother selling it to him and the other claiming it back on the ground that he was a protected lessee. In any case, Bhikanrao pleaded that Shiosingh had more than 50 acres of land in his possession as he was cultivating survey Nos. 63, 64/2 B, 3, and 64/3, situate at

mouza Wadi, admeasuring in all 55 acres; that he had not made any selection as required by Section 4(2) or Section 4-A of the Act and, therefore, he had no right to claim as a protected lessee.

4. The Sub-Divisional Officer before whom the application came held that Shiosingh had more than 50 acres and since he had not made a selection, the petitioner was not a protected lessee and, therefore, he was not entitled to ask for any redress u/s 19(2) of the Act. In appeal, however, the Deputy Commissioner, Buldana, held that Shiosingh did not hold more than 50 acres since the perepatrak entries were unreliable. He held that respondent No. 4 had admitted that the petitioner had cultivated Survey No. 56 in the year 1953-54 and was, therefore, deemed to be a protected lessee of that field. In Second Appeal before the Bombay Revenue Tribunal, the decision of the Deputy Commissioner was set aside and the petitioner's original application u/s 19(2) was dismissed. The Tribunal held that the petitioner had failed to prove that he was a protected lessee of the suit land and, therefore, he had no locus standi to make an application u/s 19(2). It also held that since the petitioner was holding more than 50 acres of land, it was incumbent on him to have made a selection as to which 50 acres he desired to continue to hold and since he had failed to make such a selection within the time allowed u/s 4(3) read with Sub-section (2) thereof, he cannot claim to be a protected lessee. Both these conclusions of the Revenue Tribunal are challenged in this petition.

5. Now, it is not in dispute before us that the petitioner had held more than 50 acres of land prior to the date of his application u/s 19(2). He had held four survey numbers as was found by the Sub-Divisional Officer, viz. Nos. 63, 64/3, 3 and 64/2-B, having a total acreage of 51.24 acres. Therefore, he was, even apart from the field in dispute, in possession of more than 50 acres of land.

6. Section 3 of the Berar Regulation of Agricultural Leases Act, 1951, defines who is a protected lessee. It divides protected lessees into three classes: (1) those who had been holding land in the agricultural year 1951-52, (2) those holding leases from landholders after 1951-52, and (3) "Every person who holds land from a landholder on a lease for a term of eight years or more...." The first two classes were "deemed to be" leases for a period of eight years (it was five years before amendment) whatever may be the agreed duration of the lease. All the above three classes viz. those "deemed to be" for eight years and those leases actually for eight years or more are deemed to be protected lessees. Then there follow certain exceptions, in Sub-sections (4) and (5) of Section 3. With these exceptions we are not here concerned.

7. Having defined who is a protected lessee, Section 4 places what are termed restrictions, on protected lessees. For the purposes of the present case, Section 4, Sub-sections (1) and (2) are important. They run as follows:?

4. (1) No person shall, at any time, be deemed to be a protected lessee in respect of any area in excess of fifty acres.

(2) If the area in which a lessee is entitled u/s 3 to be deemed to be a protected lessee at any time together with any other area, if any, held by him as protected lessee, exceeds fifty acres, he shall select so much only of the first mentioned area as would make the total area to be held by him as protected lessee equal to fifty acres, and he shall give an intimation in writing to the landholder or landholders, as the case may be, and to the Revenue Officer and thereupon he shall be deemed to be a protected lessee of the area so selected.

8. Having regard to the provisions of Sub-section (1) of Section 4, it is clear that no person claiming to be a protected lessee can be in possession of any area in excess of fifty acres, and this rule is by virtue of the words in Sub-section (1) "at any time" clearly applicable whenever the question falls to be determined. In Sub-section (2) a protected lessee who holds land in excess of fifty acres has been given the right to select such area as is equal to fifty acres within a certain time i.e. within two months before the commencement of the agricultural year. The time for the first selection was by the addition of Section 4-A, included by the amending Act of 1953, extended up to February 1, 1954.

9. Reading these provisions together, it appears to us clear that if at any time the area in the possession of a person claiming to be a protected lessee exceeds fifty acres, it is incumbent on him to make a selection of an area upto 50 acres and give intimation to the landholder and Revenue Officers as required by Section 4(2). If he does not do so, he cannot be deemed to be a protected lessee at all, in respect of any area in his possession. The moment a protected lessee becomes entitled to hold land in excess of 50 acres, he must make a selection; otherwise he ceases to be a protected lessee altogether. That, in our opinion, is the proper construction to be placed on the provisions of Section 4(1).

10. Mr. R.K. Thakur on behalf of the appellant has urged that if the area already in possession of the protected lessee has once vested in the lessee in the right of a protected lessee prior to 1951-52, then he cannot be divested of that right and cannot cease to be a protected lessee at least in respect of that area. Mr. Thakur derived support for his argument from the decision of a Member (Mr. M.W. Pradhan) of the Bombay Revenue Tribunal in *Narayan v. Bhal-chandra* [1958] N.L.J. 269. In the first place, the view expressed by the Member (Mr. M.W. Pradhan) was really an opinion in that case because under the rules of the Tribunal, the operative order was that of the Member designated to try the case (Mr. P.D. Deshmukh) who took a contrary view. The argument, plausible as it may seem, in our opinion, ignores the provisions of Sub-section (1) of Section 4, and particularly the words "at any time". The same words are repeated in Sub-section (2) and, therefore, even if the protected lessee holds land as a protected lessee, if he ever comes to hold more than fifty acres and fails to make a selection required of him under Sub-section (2), Sub-section (1) states that he shall not be deemed to be a protected lessee because he holds an area in excess of fifty acres. We endorse the view expressed by Mr. Deshmukh in *Narayan v. Bhalchandra*.

11. In the present case it is also not in dispute that the petitioner, who was already holding more than fifty acres, failed to make at any time the selection required of him under Sub-section (2) of Section 4. No notice was ever given by him as required by Section 4(2) or Section 4-A of the Act. Therefore, he cannot be deemed to be a protected lessee in respect of the area in dispute, because that area, coupled with the area which he already held, was certainly in excess of fifty acres.

12. The view we have taken above, though not directly taken, was adverted to by us in *Buckingham Court Ltd. v. Narayan Gangaram* (1957) Miscellaneous Petition No. 428 of 1956, decided on September 10, 1957 where we held that the failure to give notice within the time prescribed by Section 4A would have this effect to the Section We find that the protected lessee would cease to hold the land as a protected lessee if the area in his possession is in excess of fifty acres. Having heard counsel in the present case, we see no reason to modify the view we had taken in that case.

13. For these reasons, we are of opinion that the order impugned before us took the correct view in law of Sections 3 and 4 of the Berar Regulation of Agricultural Leases Act and correctly decided the matter in controversy in the present petition. Upon the view we have taken, we need not decide the other point raised. The petition is dismissed with costs.