
(2013) 01 BOM CK 0281

In the Bombay High Court

Case No : Writ Petition No. 6165 of 2001

Shri Jagannath Vithu Jadhav

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 2, 2(18), 32, 32G, 32O
Evidence Act, 1872 — Section 91
Registration Act, 1908 — Section 17, 49

Citation : (2013) 3 ABR 1263 : (2013) 3 BomCR 439 : (2013) 2 MhLj 285

Hon'ble Judges : B.R. Gavai, J

Bench : Single Bench

Advocate : Divesh Chamboowala, for the Appellant; S.D. Rayrikar for Respondent No. 1 and B.G. Vaidya, for the Respondent

Final Decision : Allowed

Judgement

B.R. Gavai, J.—The petition challenges the order passed by learned Maharashtra Revenue Tribunal ("MRT" for short) dated 10th October 2001 allowing revision application filed by respondent No. 2 and thereby setting aside the concurrent orders i.e. order dated 31st March 1993 passed by learned Sub-Divisional Officer, Karad ("SDO" for short) confirming the order dated 12th August 1991 passed by Tenancy Awal Karkun thereby holding the predecessor of the present petitioners to be a tenant of the suit land. The facts, in brief, giving rise to the present petition are as under:

That respondent No. 2 filed a suit before the learned Civil Judge, Junior Division, Karad claiming therein that he was the owner of suit land. It was contended that the predecessor in title of the petitioners namely Vithu Sakharam Jadhav was an intelligent person and that in connivance with the revenue authorities he had made certain entries in the 7/12 extract and shown himself to be a tenant of the suit land. It was further contended that the said Vithu taking undue advantage of revenue entries was trying to obstruct possession of the respondent No. 2 herein

though he had no right to do so.

2. It was, therefore, prayed for declaration that said Vithu was not a tenant of the suit land and for order of injunction restraining the said Vithu from obstructing the possession of the plaintiff/ respondent No. 2 in suit land.

3. The suit was resisted by said Vithu, the predecessor of the present petitioners. It was contended by the said defendant that he and his predecessor were cultivating the suit land since long and had become deemed purchaser on 1st April 1957 i.e. tillers" day. It was specifically contended that neither the plaintiff nor his predecessor had cultivated the land any time but it was cultivated by the predecessor of the defendant. In view of the rival pleadings, the learned Civil Judge found that issue of tenancy was raised in the proceedings and, as such, referred the said issue to the competent authority i.e. tenancy court. The tenancy court, vide order dated 12th August 1991, on the basis of evidence placed on record held that said Vithu Sakharam Jadhav was cultivating the suit land from 1959-60. Being aggrieved thereby, an appeal was preferred by respondent No. 2 before learned SDO. The learned SDO vide order dated 31st March 1993 dismissed the said appeal. Being aggrieved thereby a revision was preferred by respondent No. 2. The said revision is allowed and, hence, the present petition.

4. Shri Chamboowala, learned counsel appearing for the petitioners submits that learned MRT has grossly erred in allowing the revision. He, firstly, contended that in view of concurrent findings of fact it was not permissible for the revisional court to enter into concurrent findings and reappraise the evidence once again and come to a different finding. Learned counsel, therefore, submits that learned MRT has travelled beyond the scope of revision and, as such, on this ground alone petition deserves to be allowed.

5. Shri Chamboowala further submits that the finding recorded by MRT that in absence of lease-deed or rent receipts the tenancy cannot be established is totally perverse. Learned counsel further submits that for establishing that a person is a tenant it is sufficient if the person comes within the scope of "deemed tenant" as defined in section 4 of the Bombay Tenancy and Agricultural Lands Act, 1948 ("said Act" for short). Learned counsel submits that by a judicial pronouncement it has been held that except three categories, which are carved out u/s 4, all other persons who are in lawful cultivation of land are entitled to be "deemed tenant" and, as such, tenant within the scope of said Act. Learned counsel further submits that in view of the evidence placed on record, the finding that the petitioner was a tenant of the suit land from 1959-60 could not have been interfered by learned MRT. Learned counsel, therefore, submits that the order passed by MRT is liable to be quashed and set aside. Learned counsel further submits that the question of exercising right u/s 32 would arise only after there is final adjudication regarding claim of the petitioner's status as a tenant. It is submitted that since the issue regarding petitioner's claim as a tenant is still pending, there is no question of right being exercised by the petitioner u/s 32G

of the said Act. Learned counsel relies on the judgments of single Judge of this Court in the case of Bhila Keshav Patil and Another Vs. Ganpati Chunilal Kabre and Another, ; Dhondu Bapu Survey v. Aniruddh Yeshwant Vaidya (Spl. C.A. No. 479/1972 dated 20th November 1975); Laxman Dhondi Zurale, since deceased by his legal heirs and Another Vs. Yashodabai Sripatrao Shinde, ; and Shri Gulabrao Sahebrao Shinde Vs. Shri Sayaji Shankar Shinde, .

6. Shri Vaidya, learned counsel appearing for respondent No. 2, on the contrary, submits that learned MRT has rightly come to the finding that there was no material placed on record by the petitioner to establish his tenancy. Learned counsel submits that the petitioner, having not exercised his right u/s 32G on the tillers" day, cannot be considered to be a deemed tenant. It is submitted that had the petitioner being really cultivating the land from 1942-43, nothing prevented him or his predecessor from exercising right on the tillers day. Learned counsel relies on the judgment of the Constitution Bench of the Apex Court in the case of R.L. Arora Vs. State of Uttar Pradesh and Others, .

7. With the assistance of learned counsel for the parties, I have gone through the material placed on record.

8. For appreciating rival controversy, it will be necessary to refer to sub-section 18 of section 2; sub-section (1) of section 4; and section 32O of the said Act.

2. Definitions.

In this Act, unless there is anything repugnant in the subject or context,-

(1) to (17)

(18) "tenant" means a person who holds land on lease and include,-

(a) a person who is deemed to be a tenant u/s 4;

(b) a person who is protected tenant; and

(c) a person who is permanent tenant;

and the word "landlord" shall be construed accordingly;

(19) to (21)..... ..

4. Persons to be deemed tenants

(1) A person lawfully cultivating any land belonging to another persons shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not,-

(a) a member of the owner"s family, or

(b) a servant on wages payable in cash or kind but not crop share or hired labourer cultivating the land under the personal supervision of the owner of any member of the owner"s family, or

(c) a mortgagee in possession.

Explanation [I]. - A person shall not be deemed to be tenant under this section if such person has been on an application made by the owner of the land as provided u/s 2A of the Bombay Tenancy Act, 1939, decided by a competent authority not to be a tenant.

Explanation II.- Where any land is cultivated by a widow or a minor or a person who is subject to physical or mental disability or a serving member of the armed forces through a tenant then notwithstanding anything contained in Explanation I to clause (6) of section 2, such tenant shall be deemed to be a tenant within the meaning of this section.

32-O. Right of tenant whose tenancy is created after tillers" day to purchase land

(1) In respect of any tenancy created after the tillers" day by a landlord (not being a serving member of the armed forces)] notwithstanding any agreement or usage to the contrary, a tenant cultivating personally shall be entitled within one year from the commencement of such tenancy to purchase from the landlord the land held by him or such part thereof as will raise the holding of the tenant to the ceiling area.

(1A) A tenant desirous of exercising the right conferred on him under sub-section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section.

(2) The provisions of sections 32 to 32N (both inclusive) and of sections 32P, 32Q and 32R in so far as they may be applicable shall apply to the purchase of the land by a tenant under sub-section (1).

9. The question as to whether a person claiming status of deemed tenant must have been cultivating the land with the consent or under the authority of the owner fell for consideration before the Constitution Bench of the Apex Court in the case of Dahya Lal v. Rasul Mahomed Abdul Rahim (supra). The Constitution Bench of the Apex Court, in unequivocal terms, has observed as under:

6. The Act 1948, it is undisputed, seeks to encompass within its beneficent provisions not only tenants who held land for purpose of cultivation under contracts from the land owners but persons who are deemed to be tenants also. The point in controversy is whether a person claiming the status of a deemed tenant must have been cultivating land with the consent or under the authority of the owner. Counsel for the appellants submits that tenancy postulates a relation based on contract between the owner of land, and the person in occupation of the land, and there can be no tenancy without the consent or authority of the owner to the occupation of that land. But the Act has by s. 2(18) devised a special definition of tenant and included therein persons who are not contractual tenants. It would therefore be difficult to assume in construing s. 4 that the person who claims the status of a deemed tenant must be cultivating land with the consent or authority of the owner. The relevant condition imposed

by the statute is only that the person claiming the status of a deemed tenant must be cultivating land "lawfully": it is not the condition that he must cultivate land with the consent of or under authority derived directly from the owner. To import such a condition it is to rewrite the section, and destroy its practical utility. A person who derives his right to cultivate land from the owners would normally be a contractual tenant and he will obviously not be a "deemed tenant". Persons such as licencees from the owner may certainly be regarded as falling within the class of persons lawfully cultivating land belonging to others, but it cannot be assumed therefrom that they are the only persons who are covered by the section. The Act affords protection to all persons who hold agricultural land as contractual tenants and subject to the exceptions specified all persons lawfully cultivating lands belonging to others, and it would be unduly restricting the intention of the Legislature to limit the benefit of its provisions to persons who derive their authority from the owner, either under a contract of tenancy, or otherwise. In our view, all persons other than those mentioned in cls. (a), (b) and (c) of s. 4 who lawfully cultivate land belonging to other persons whether or not their authority is derived directly from the owner of the land must be deemed tenants of the lands.

It can, thus, clearly be seen that the Apex Court in clear terms has held that all persons other than those mentioned in clauses (a), (b) and (c) of section 4, who lawfully cultivate land belonging to other persons whether or not their authority is derived directly from the owner of the land, must be deemed tenants of the lands. Undisputedly, the present petitioners are neither from the owners family nor the servants nor the mortgagees in possession. As such, the cultivation by the petitioners would not fall in any of the exempted categories and in view of law laid down by the Apex Court they would be deemed to be a tenant in cultivation.

10. In that view of the matter, the judgment of Constitution Bench of the Apex which is relied upon by learned counsel for respondent No. 2, in fact, supports the case of the petitioners than the case of the respondents.

11. Both the tenancy Court as well as SDO on the basis of evidence, which is placed on record by both petitioner as well as respondent No. 2, have come to the positive finding that the petitioner is in cultivation of land from 1959-60. It is to be noted that 7/12 extract from 1959-60 onwards show the cultivation of said Vithu who is predecessor in title of the petitioners. The respondent No. 2, for the first time, in the year 1983 i.e. almost after a period of 23 years has filed a suit contending therein that said Vithu, who was supposedly an intelligent person, in collusion with revenue authorities got revenue entries recorded showing him to be a tenant. If respondent No. 2 was really cultivating the land, it is difficult to believe that he would sit silent from 1960 to 1983. In any case, both the authorities on the basis of material placed on record have held that the predecessor in title of the petitioners was in cultivation of land since 1959-60.

12. In so far as the finding of learned MRT that the petitioner has failed to

produce any lease-deed or rent receipts on record and, therefore, he has not established his tenancy is concerned, in my considered view, the said finding is contrary to the constant view taken by this Court. As long back as in the year 1975, in Special Civil Application No. 475/1975, this Court has held thus:

The Maharashtra Revenue Tribunal has refused to interfere with the finding on the wrong basis that the finding recorded by the Dy. Collector was a finding of fact; & that because there was no entry in the tenancy column, no rent note to support the petitioner's case, he could not be held to be a tenant as found by the Tahsildar. The reasoning of the Tribunal is against the provisions of s. 4 of the Tenancy Act, which does not require an entry in the tenancy column or a rent note or a rent receipt to support the claim of a tenant to statutory tenancy under that section.

All that is required under that section is "lawful" cultivation by a person other than the member of the family of the landlord subject to other conditions laid down in s. 4. It is not open to the Revenue Tribunal to read into that section only fashioned notion of the law of landlord and tenant, which required the entries in the tenancy column, rent note or rent receipt to support the case of tenancy. The Legislature knowing all these old requirements has adopted a definition of "statutory tenancy" irrespective of such things.

The T.A.K. correctly applied the law in the light of the evidence before him and held that the petitioner was a tenant. The finding could not be set aside by the Deputy Collector on the basis of his total misconception and confused notions of what he called "documentary and circumstantial evidence". The Revenue Tribunal also failed to exercise its jurisdiction as a result of its misconception of law or reading unnecessary things into s. 4 founded on the antiquated notions of law relating to the law of landlord and tenant of agricultural lands.

Learned single Judge in *Gulabrao Sahebrao v. Sayaji Shankar* (supra) following the above view of this Court and the view taken by the Constitution Bench of the Apex Court has observed thus:

6. According to the Respondent, the disputed document was not registered and therefore, inadmissible in evidence. Indeed, the decision of the Full Bench of the Patna High Court in *Ram Nath Mandal's* case (supra) would support the argument canvassed on behalf of the Respondent that when the transaction is reduced into writing, then, in the case of a Lease from year to year or any term exceeding a year would be required to be registered u/s 17 of the Registration Act, and if unregistered, the Lease will be inadmissible in evidence u/s 49 of the Registration Act, and other evidence of its term, will be precluded u/s 91 of the Evidence Act. Even accepting this argument canvassed on behalf of the Respondent to be correct, that would be of no avail to the Respondent. Although, the disputed Lease Deed is unregistered document, the same would be inadmissible to the extent the Petitioner seeks to rely on the same for establishing his title, but that document can nevertheless be pressed into service

for collateral purpose. In any case, it is well settled that the question as to whether a person is a tenant, will have to be decided by essentially taking into account three facts. The Supreme Court in the case of Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim, has observed that the person who is deemed to be a tenant by virtue of Section 4, is manifestly in a class apart from the tenant who holds lands on lease from the owner. Such a person would be invested with the status of a tenant if three conditions are fulfilled. (a) that he is cultivating the land lawfully; (b) that the land belongs to another person, and (c) that he is not within the excepted categories. In the present case, the two authorities below have answered all the three factors in favour of the Petitioner and those finding of facts cannot be discarded at all. This Court in the case of Dhondu Bapu Save vs. Anirudha reported in Volume 77 (Vol. XXV-No. 1) Tenancy Law Reporter 6 in Spl.C.A. 479 of 1972 decided on 20-11-1975, has held that because there is no entry in the tenancy column, no rent note to support the Applicant's case, it cannot be said that he is not a tenant. In the said decision, this Court went on to observe that Section 4 of the Tenancy Act does not require an entry in the tenancy column or a rent note or rent receipt in support of statutory tenancy under that Section. All that is required under that Section is "lawful" cultivation by a person other than the member of the family of the landlord, subject to other conditions laid down in Section 4. As mentioned earlier, two authorities below addressed themselves to all the relevant matters to find that the Petitioner was put in lawful cultivation of the suit land belonging to Housabai and did not come under the excepted category. This is the finding of fact, which cannot be overturned and will have to be affirmed and respected. Understood thus, the impugned Judgment of the Tribunal cannot be sustained.

13. It can, thus, clearly be seen that this Court has taken a consistent view that it is not necessary to have an entry in the tenancy column or rent note or rent receipt to support the claim of the tenant of statutory tenancy. It has further been held that all that is required u/s 4 of the said Act is lawful cultivation by a person other than the member of the family of the landlord, subject to the other conditions laid down in section 4. As such, the finding of learned MRT that in the absence of rent receipts and lease-deed the case of the petitioner that he is tenant cannot be accepted is nothing but perverse. When the authorities below on appreciation of evidence have found that the petitioner has established to be a tenant from 1959-60 there is no reason for the learned MRT to upset the concurrent findings of fact and come to the finding that the findings recorded by the authorities below are perverse.

14. In so far as the contention of respondent No. 2 that had the petitioner or his predecessor really been tenant from 1942-43, he would have exercised his right on the tillers" day u/s 32G is concerned, merely because the petitioner failed to establish that he was not tenant on the tillers" day, he cannot be denied the benefit of section 32-O of the said Act, if it is found that the tenancy has been created after the tillers" day. Section 32-O of the said Act specifically creates right in favour of the tenant after the tillers" day to purchase the land held by

him from the landlord. However, this is subject to limitation of one year. It is tried to be contended that the said right has not been exercised within a period of one year and, as such, the present petitioners have not case.

15. In this respect, it would be relevant to refer to the judgment of this Court in the case of Bhila Keshav Patil v. Ganpati Chunilal Kabre (supra). It would be relevant to refer to the following observations of this Court

The said decisions of the revenue Tribunal and the Deputy Collector are challenged in the above petition. Mr. Samant, the learned counsel for the petitioners-tenants the learned counsel for the petitioners-tenants contended that the period of the one year u/s 32-0 is to be calculated from the date of the commencement of the tenancy; and the tenancy referred to in Section 32-0(1) is a tenancy "created after the tillers" day by a landlord" and not a tenancy recognized and declared by the tenancy authorities de hors the landlord. The contention must be upheld. If the tenancy was "created" by law only and not by the landlord, it cannot be said that it was "created" by the landlord, until the landlord accepts the statutory tenancy or until his contentions denying the tenancy are finally and conclusively overruled.

The finding in the earlier proceeding that the tenants were cultivating since 1959-60 was a finding which was arrived at after rejecting the contention of the Landlord that the petitioners were merely labourers working on the land. The landlord never accepted the petitioners' tenancy till the decision of the Revenue Tribunal on the reference by the civil court which became binding on the landlord, it can be said that he created the tenancy within the meaning of section 32-0. The Tahsildar, in the present case held that the petitioners had made an application and given an intimation u/s 32-0 of the act within one year from the date of the mutation entry showing them as the tenants, section 32-0 was complied with. Before even the Deputy Collector and the revenue tribunal decided that they were the tenants in the year 1967-68 it could not be said that there was any delay in giving intimation on their part to the landlord as required u/s 32-0 the intimation given by the tenants and the application made by them were therefore, within the period prescribed u/s 32-0 (1) and (1A).

The aforesaid view has been followed by another single Judge of the Court in Laxman Dhondi v. Yashodabai (supra); wherein this Court has observed thus:

3..... Merely because no intimation has been given by the petitioners tenants within the specified time does not mean that they were not tenants as such. However, in that situation, the consequence u/s 32-O of the Act would follow, which would result in resumption of the land by the authority. In the present case, however, that question will not arise, because the claim of tenancy is disputed and, therefore, it is only after the final adjudication of the issue of tenancy that the tenants would become entitled to send intimation to the landlord to exercise the right to purchase the suit land u/s 32-O of the Act. This legal position is no more res integra. In the Bhila Keshav Patil and Another Vs.

Ganpati Chunilal Kabre and Another, . [Also see recent decision in Shri Gulabrao Sahebrao Shinde Vs. Shri Sayaji Shankar Shinde,]. In view of the exposition in this decision, until the landlord accepts the statutory tenancy or until his contention denying the tenancy is finally and conclusively overruled, the period of one year provided for sending intimation u/s 32-O will not commence. By the disposal of this petition, the issue of tenancy would finally and conclusively stand disposed of. It is only thereafter the tenants would become entitled to send intimation, so as to exercise right of purchase in relation to the suit land in terms of Section 32-O of the Act.....

16. It can, thus, be seen that a consistent view has been taken by this Court that until the landlord accepts the statutory tenancy or until his contention denying the tenancy is finally and conclusively overruled, the period of one year provided for sending intimation u/s 32-O will not commence. The law laid down by the aforesaid two judgments would be squarely applicable to the facts of the present case. In the present case also, the tenancy of the petitioners was disputed by respondent No. 2 landlord. The tenancy of the petitioner has been accepted by Tenancy Awal Karkun and SDO. However, said decision has been reversed by the MRT. Since I am of the considered view that learned MRT has erred in allowing revision, the orders passed by Tenancy Awal Karkun and SDO are liable to be upheld. As such, after delivery of this judgment and if it is not appealed before the higher forum, the issue of petitioners being tenant would be finally decided and only therefrom the period of one year as prescribed by section 32-O of the said Act would commence. In that view of the matter, I find that the order passed by learned MRT is liable to be quashed and set aside.

17. In so far as judgment of the Apex Court in the case of Hanmanta Daulappa Nimbale since deceased by his Heirs and LRs. Vs. Babasaheb Dajisaheb Londhe, relied upon by learned MRT is concerned, the said judgment would not be applicable to the facts of the present case inasmuch as in the said case the oral lease was only for a period of one year i.e. from 1969 and the entries in the revenue record were only for that particular period. However, in the present case, undisputedly, from 1959-60 till the date of filing of the suit, the revenue entries were continuously showing cultivation of the petitioner. In the result, petition is allowed. The impugned order passed by learned MRT is hereby quashed and set aside. The orders passed by Tenancy Awal Karkun and learned SDO are maintained. Rule is made absolute in terms of this order.