

(1998) 09 BOM CK 0055

In the Bombay High Court

Case No : Writ Petition No. 4454 of 1984

Shri Kashinath Damu Gavate and others

APPELLANT

Vs

Damu Bala Kapase

RESPONDENT

Date of Decision : 02-09-1998

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 14, 15, 21, 29, 30
Constitution of India, 1950 — Article 227

Citation : (1998) 4 ALLMR 419 : (1999) 1 BomCR 148

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : G.B. Karandikar, for the Appellant; R.M. Purandare, for the Respondent

Judgement

R.M. Lodha, J.—This writ petition filed under Article 227 of the Constitution of India is directed against the order passed by Maharashtra Revenue Tribunal on 31-7-1984 whereby the Tribunal set aside the order of the Assistant Collector, Niphad Division, Nasik dated 8-9-1981.

2. The short controversy involved in the writ petition is whether the Tribunal was justified in setting aside the order of Assistant Collector dated 8-9-1981 in Appeal filed u/s 74 of the Bombay Tenancy and Agricultural Lands Act, 1948 (Tenancy Act) whereby the Assistant Collector dismissed the appeal challenging the order dated 15-7-1957 on the ground that appeal was preferred after 24 years. The facts on summation are : One Damu Sakharam Gavate was the owner of the agricultural land bearing Survey No. 316/2, admeasuring 6 Acres, 12 gunthas situated at village Niphad, in Nasik District. The said Damu Gavate died on 19-11-1954 leaving behind the present petitioners as owners of the said agricultural land (hereinafter for brevity referred to as the landlords). One Damu Bala Kapase (hereinafter referred to as the tenant) was the tenant in the said land and after his death is represented by the present respondent. The landlord made an application against the tenant on 25-3-1957 before the Tenancy Mahalkari u/s

31 read with section 29 of the Tenancy Act for possession of the said land. It was the case of the landlords that they have no other land and were not cultivating any other land either as owner or tenant. The tenant appeared before the Tenancy Mahalkari and made statement that since the landlords were not having any land and desired to cultivate the land personally, he was willing to surrender the said land in favour of the landlords. The tenant in his statement also said that the landlords should not sell or lease out the said land to anyone and if they desired then he (tenant) should be given preference. In view of the statement made by the tenant, the Tenancy Mahalkari by an order dated 15-7-1957 ordered the possession of the said land to be handed over by the tenant to the landlords. The landlords were actually put in possession on 14-3-1958 pursuant to the order passed by the Tenancy Mahalkari on 15-7-1957. It transpires from the record that proceedings u/s 32-G of the Tenancy Act were also initiated and in the said proceedings the tenant made the statement that possession of the land in question has been handed over to the landlords u/s 31 read with section 29 of the Tenancy Act. After the lapse of about 24 years of the passing of the order dated 15-7-1957, the tenant challenged the said order in appeal u/s 74 of the Tenancy Act. The Assistant Collector dismissed the appeal vide its order dated 8-9-1981. The present respondent who is legal heir of the original tenant, filed Revision before the Maharashtra Revenue Tribunal successfully and by the order dated 31-7-1984 the Maharashtra Revenue Tribunal set aside the order passed by the Assistant Collector, Niphad Division, Nasik dated 8-9-1981 and the order passed by the Tenancy Mahalkari dated 15-7-1957.

3. Mr. Karandikar, the learned Counsel appearing for the landlords-petitioners argued that the tribunal was not justified in holding that the order passed by the Tenancy Mahalkari dated 15-7-1957 was nullity and, therefore, law of limitation for challenging the said order in appeal did not arise and such null and void order could be challenged even after many years. According to Mr. Karandikar, the order dated 15-7-1957 was a consent order and even if is assumed to be erroneous it could have only been challenged in appeal within limitation. According to him, the said order was challenged in appeal after limitation and the appeal could have only been entertained after sufficient cause was shown for not filing the appeal in time. The learned Counsel for the landlords submitted that the order dated 15-7-1957 was challenged in appeal after about 24 years which was rightly dismissed by the Appeal Court in the absence of any explanation and such order could not have been set aside by the Maharashtra Revenue Tribunal. In support of his contention, he relied upon *Madhavdas Damodardas Gujar and Others Vs. Mahadu Keru Raut*, and *State of Punjab and Others Vs. Gurdev Singh*, . Contending contrary, Mr. Purandare, the learned Counsel for the respondent submitted that the surrender of the tenancy could have only been in accordance with section 15 of the Tenancy Act and in terms of the said section, the landlord was only entitled to half of the tenanted agricultural land but since the Tenancy Mahalkari, Niphad, ordered the tenant to surrender possession of the entire tenanted agricultural land which was not permissible under law, the

said order was nullity. He urged that the order dated 15-7-1957 being nullity was not even required to be challenged and if challenged could be entertained at any time without constraints of Limitation Act. In support of his contention Mr. Purandare relied upon a decision of this Court reported in Husein Miya Dosumiya v. Chandubhai Jethabhai Desai, LV Bombay Law Reporter, page 946.

4. On facts there is no dispute and rather it is admitted position that the landlords made an application before the Tenancy Mahalkari for possession of the land in question against the tenant on 25-3-1957 u/s 31 read with section 29 of the Tenancy Act. There is also no dispute that in the said proceedings before the Tenancy Mahalkari the tenant admitted in his deposition that he was not interested in contesting the suit and desired to vacate the possession of the disputed agricultural land in favour of the landlord since they wanted to cultivate the land personally. The order dated 15-7-1957 passed by the Tenancy Mahalkari is, therefore, broadly an order on the concession made by the tenant to vacate the tenanted agricultural land. Section 15 of the Tenancy Act provides for termination of tenancy by surrender. Section 15 reads thus :--

"15. (1) A tenant may terminate the tenancy in respect of any land at any time by surrendering his interest therein in favour of the landlords.

Provided that such surrender shall be in writing, and verified before the Mamlatdar in the prescribed manner.

(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.

(2-A) The Mamlatdar shall, in respect of the surrender verified under sub-section (1), hold an inquiry and decide whether the landlord is entitled under sub-section (2) to retain the whole or any portion of the land so surrendered and specify the extent and particulars in that behalf.

(3) The land, or any portion thereof, which the landlord is not entitled to retain under sub-section (2), shall be liable to be disposed of in the manner provided under Clause (c) of sub-section (2) of section 32-P."

5. It would be noticed from perusal of section 15 that it only applies where the tenant intends to terminate the tenancy in respect of land which is in his possession as tenant. It provides mode and manner of surrender of interest by the tenant in favour of landlords which results in termination of tenancy by the tenant. Section 15 has no application where the landlord makes an application for termination of tenancy for personal cultivation of non-agricultural use u/s 31 of Tenancy Act. Section 31 reads thus:

"31. (1) Notwithstanding anything contained in sections 14 and 30 but subject to sections 31-A to 31-D (both inclusive), a landlord (not being a landlord within the meaning of Chapter III-AA) may, after giving notice and making an application

for possession as provided in sub-section (2), terminate the tenancy of any land (except a permanent tenancy), if the landlord bona fide requires the land for any of the following purposes:-

- (a) for cultivating personally, or
- (b) for any non-agricultural purpose.

(2) The notice required to be given under sub-section (1) shall be in writing, shall state the purpose for which the landlord requires the land and shall be served on the tenant on or before the 31st day of December 1956. A copy of such notice shall, at the same time, be sent to the Mamlatdar. An application for possession u/s 29 shall be made to the Mamlatdar on or before the 31st day of March 1957.

(3) Where a landlord is a minor, or a widow, or a person subject to mental or physical disability * * * * then such notice may be given and an application for possession u/s 29 may be made,--

- (i) by a minor within one year from the date on which attains majority;
- (ii) by the successor-in-title of a widow within one year from the date on which her interest in the land ceased to exist;
- (iii) within one year from the date on which mental or physical disability ceases to exist; and

* * * * *

Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry, is satisfied that the share of such person in the land is separated having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion."

6. Sections 15 and 31 relate to different situations. Section 15 relates to termination of tenancy by tenant and surrender thereof while section 31 relates to termination of tenancy by landlord for personal cultivation and non-agricultural use. The contention raised by the learned Counsel for the tenant that since the surrender by the tenant was not in accordance with section 15, the order dated 15-7-1957 passed by the Tenancy Mahalkari was nullity, is misconceived and without any basis. Section 15 by no stretch of imagination can be applied in a fact situation where the landlord makes an application for termination of tenancy of the tenant for personal cultivation and non-agricultural use. The order dated 15-7-1957 came to be passed in the proceedings initiated by the landlords u/s 31 read with section 29 of Tenancy Act to which section 15 has no application.

The legality of the order dated 15-7-1957 could not be tested by applying section 15. Therefore it could not have been held by the Tribunal that order dated 15-7-1957 was nullity or null or void. The order dated 15-7-1957 is surely not ultra vires. Even if it be assumed that order dated 15-7-1957 suffered from any infirmity or was erroneous, obviously such an order could only have been challenged in an appeal within limitation and if the appeal was filed after limitation, the same could have only been entertained after showing sufficient cause. In the present case the order dated 15-7-1957 which had attained finality was sought to be challenged by the tenant after a lapse of almost 24 years in the year 1991 without showing any cause, good, bad or indifferent, much less sufficient cause, and therefore, appeal was hopelessly time barred and was liable to be rejected and rightly rejected by the Assistant Collector and there was no justifiable reason for the Tribunal to set aside the order of Assistant Collector which was just and proper order. The order passed by the Tribunal, therefore, is grossly erroneous and cannot be sustained.

7. The writ petition is, accordingly, allowed. The order passed by the Maharashtra Revenue Tribunal on 31-7-1984 is quashed and set aside. Rule is made absolute in aforesaid terms. No costs.

8. Writ petition allowed.