

(2008) 10 BOM CK 0073
In the Bombay High Court
Case No : Writ Petition No. 2265 of 1993

Shri Uday Narayan Apate and Another	APPELLANT
Vs	
Shri Shankar Ragho, Bhadavankar and Others	RESPONDENT

Date of Decision : 20-10-2008

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 2(32)
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G, 4, 70

Citation : (2008) 6 ALLMR 814 : (2009) 1 MhLj 377

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : S.M. Mhamane, for the Appellant; S.V. Sadavarte, for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—The petition challenges the order of the Maharashtra Revenue Tribunal in Case No. MRT/KP/31/91 in which the Tribunal has set aside the order passed by the Assistant Collector, Gadinglaj in Tenancy Appeal No. 42 of 1990. The facts giving rise to the present petition are as follows:

One Laxmibai was the owner of Gat No. 437 and 450. She died without leaving behind any issue. Heirship proceedings were initiated before the District Court, Kolhapur under the Bombay Regulation Act in respect of her property. In these proceedings, Narayan Apte was declared the heir of Laxmibai. While the heirship proceedings were pending, the management of the property was taken over by the Nazir of the District Court who was appointed as the Court Receiver. Narayan Apte the father of Petitioner No. 1 was put in possession and a Kabje Patti or possession receipt was executed on 31.5.1959 and the relevant mutation entries were made in the record of rights. The names of Narayan Apte and the Petitioners were entered as owners and possessors of the lands, bearing Gat No. 437 and 450 which are situated at village Dewarde in Ajara Taluka, Kolhapur district. While the lands were under the management of the Court Receiver the Respondents 1, 2 and 3 were appointed to cultivate the lands. On this basis, the

respondents claimed that they were tenants of the land. Applications No. 1 of 1990 and No. 2 of 1990 were filed by Respondents in respect of Gat Nos. 437 and 450 respectively u/s 70(b) for a declaration that they were tenants of the lands before 10.4.1957 i.e. the tillers day and that their names should be entered in the record of rights. These applications were allowed by an order dated 30.6.990 by the Awwal Karkun, Ajara. It was held that the respondents were in possession of the land and that they were put in possession by the Court Receiver who was managing those lands. The authority observed that besides the oral evidence of the respondents and two other witnesses, there was no documentary evidence to prove that they were tenants of the land. It was also observed that for about 30 to 35 years, the Court Receiver was managing the lands and that the petitioners had not taken possession of the lands from the respondents in accordance with law.

2. Being aggrieved by the decision of the Awwal Karkun, the petitioners preferred Tenancy Appeal No. 42 of 1990. The Assistant Collector, Gadhinglaj decided the Appeal on 21.1.1991 and held that the respondents had no evidence to prove their tenancy rights and, therefore, the applications filed by them were dismissed while allowing the appeal. The Assistant Collector concluded from the order of Mahalkari, Ajara dated 21.10.1959, that the physical possession of the lands was handed over to the petitioners in view of the proceedings u/s 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, hereinafter referred to as the ?BT&AL Act?). The Assistant Collector also observed that the name of the tenants were deleted under mutation entries dated 4.8.1971 and 5.8.1971 vide orders of the Tenancy Courts. These mutation entries in the records were never challenged by the respondents and, therefore, the Assistant Collector held that those entries bind the parties. He has further held that the respondents had not proved that they were tenants and that the application u/s 70(b) was filed after an inordinate delay of 30 years. By relying on the judgment of this Court, the Assistant Collector held that the tenancy must be proved with convincing evidence and that the status of a tenant cannot be conferred on a party on the basis of imaginary grounds. The Assistant Collector has noted that the judgment of Nagpur Bench of this Court in the case of Abdul Aziz Abdul Habib v. Syed Zulfikar Husan 1985 M.L.J. 655 relied on by Awwal Karkun was applicable only to the lands in Vidharbha in view of the Bombay Tenancy Agricultural Lands (Vidharbha Region) Act. The Assistant Collector then relied on the judgment of this Court in Special C.A. No. 4517 of 1976 dated 11.11.1980 (M.B. Tiwari v. S.B.Shinde) where it was held that if a person is inducted on a land during the management by the State he does not acquire tenancy rights. It has been observed that the moment the land reverts back to the landholder it no longer remains under the management of the State. The Court has held further than any person who continues to be in possession because he was inducted by the State, would be in unlawful possession and cannot claim the status of a deemed tenant. This order of the Assistant Collector has been reversed by the Maharashtra Revenue Tribunal on 28.9.1992. The MRT has relied on the

judgment of this Court in the case of Abdul Aziz Abdul Habib (supra) and has restored the findings of the Awwal Karkun. The Tribunal while rejecting the submissions on behalf of the petitioners has held that the petitioners had not obtained possession of the disputed lands in accordance with the BT&AL Act and therefore, it could not be said that they were in possession of the land on the date when the respondents filed application u/s 70(b) of the BT&AL Act.

3. Mr. Mhamane, appearing for the petitioners, submits that the petitioners were in settled possession as landholders of Gat No. 437 and 450 and that they had acquired the land from their predecessor in title. According to him, the father of the respondent had given up his claim to the land in 1959 itself. He relies on Kabje Patti Panchanama (the possession receipt) which was drawn by the Nazir of the District Court, Kolhapur in favour of the Petitioners. The learned advocate points out that for well over 30 years, the respondents did not bother to stake their claim to the land. He submits that in any event the respondents had no right in the land once their predecessor in title Ragho Bhadavankar i.e. the father of Respondent No. 1 had given up his right to the land. The learned advocate draws my attention to the judgment of the Nagpur Bench of this Court in the case of Abdul Aziz Abdul Habib (supra) which has been relied on by the Awwal Karkun and the Revenue Tribunal. He points out that this judgment is in respect of Section 2(32) of the Bombay Tenancy and Agricultural Lands (Vidharbha Region) Act 1958 which in terms is different from the BT&AL Act, 1948. He then places reliance on the judgment of the Supreme Court in the case of Dhondur Choudhary Vs. Ganpat Lal Shankar Lal Agarwal, in support of his submission that the respondents had no right in the land.

4. The learned advocate for the respondents submits that although the respondents had no documentary evidence to prove their tenancy rights, the oral evidence led before the Awwal Karkun which sufficiently established that they were cultivating the lands and were in possession of the lands as tenants. He submits that the respondents were cultivating the lands even prior to 1957 and, therefore, under the provisions of the BT&AL Act, they were deemed tenants. According to him, the mere fact that the respondents were in possession of the lands and were cultivating them for such a long period of time would indicate that they were tenants of the land. He submits that the Revenue Tribunal has not committed any error while passing the impugned order and therefore, there is no need for this Court to interfere in its writ jurisdiction by setting aside the order.

5. It is common ground that the respondents were cultivating the land after the Court Receiver put them in possession of the same while the land was under his management. Undisputedly, the management of the land from the Court Receiver was withdrawn and the lands were handed back to the rightful landholders i.e. the petitioners herein. The Kabje Patti Panchanama which has been drawn up when the lands were handed over to the petitioners on 31.5.1959 indicates that Ragho Ganu Bhadavankar who was present and cultivating the land and was asked whether he had any objection to handing over possession of

the land to the petitioners. He has consented to the handing over of the land bearing gat No. 437 and 450 to the Petitioners. Once Ragho had no objection to the land being given to the Petitioners, Respondent No. 1 who is the son of Ragho and who derives his rights from Ragho would have no claim over the land.

6. There is no documentary evidence on record to indicate that the respondents were ever the tenants of the land. The mere fact that they were cultivating the land prior to 1957 would not lead to the inference that they were deemed tenants because there was no lease in favour of the respondents. The respondents could not claim the status of a deemed tenant by holding over the land. The Supreme Court in Dhondu Undru Choudhary's case (supra) has held that the BT&AL Act does not envisage the government as a landholder but only as a manager. While delivering the land back to the possession of the rightful landholder the land could not be burdened with any tenancy created or resulting while under the management of the government. The Supreme Court has observed that there could be no privity of contract between the landlord and the erstwhile occupant under the government. These observations of the Supreme Court would apply squarely to the facts in the present case. The respondents were put in possession by the Court Receiver and with the termination of the management of the land by the Court Receiver, the respondents could not continue in possession of the land as tenants. The respondents, by continuing to remain on the land, after the Court Receiver had handed over possession of the lands to the petitioners, are mere trespassers and not deemed tenants u/s 4 of the Act.

7. The reliance placed by the Revenue Tribunal on the judgment in the case of Abdul Aziz Abdul Habib's case (supra) is unwarranted. That judgment dealt with the provisions of the Bombay Tenancy and Agricultural Lands (Vidharbha Region) Act, 1958. Section 2(32) of that Act which was relied on by the Revenue Tribunal does not find place in the BT&AL Act. Therefore, in my opinion, the judgment of the Revenue Tribunal must be set aside as it is erroneous and contrary to the provisions of law.

8. The impugned order is therefore quashed and set aside. The Petition is allowed. Rule made absolute accordingly. No costs.

9. At the request of Mr. Sadavarte, the possession of the respondents shall not be disturbed for a period of eight weeks.