

(2003) 01 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 4694 of 1987

Smt. Chhabubai Shankar Bhande, since deceased by her
heirs: Nivrutti Shankar Bhande, Dattatraya Shankar Bhande,
Mahadeo Shankar Bhande, Sambhaji Shankar Bhande and
Mrs. Shalan Eknath Thopte

APPELLANT

Vs

Shri Ramchandra Bhau Bhando, Shri Pandurang Balwant
Bhutkar, Shri Gajanan Balwant Bhutkar and Smt.
Bhagirathibai Balwant Bhutkar, deceased by her heirs - Shri
Pandurang Balwant Bhutkar and Shri Gajanan Balwant
Bhutkar

RESPONDENT

Date of Decision : 14-01-2003

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 29, 31, 33B, 34, 37

Citation : (2003) 2 ALLMR 235 : (2003) 2 BomCR 475 : (2003) 2 MhLj 925

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : B.P. Abhale, for the Appellant; S.P. Thorat, for the Respondent

Judgement

S.A. Bobde, J.—This petition is by the heirs of the original tenant Chhabubai Shankar Bhande. They have challenged the order of the Maharashtra Revenue Tribunal by which the Tribunal has held that the transfer of the land in question, by the original landlord i.e. original respondent No. 2 Pandurang Balwant Bhutkar is not in contravention of Section 37 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Act"). The Maharashtra Revenue Tribunal has held that the landlord has ceased to use the land for the purpose for which he had obtained possession within a period of 12 years from the date on which he took possession.

2. The petitioner Chhabubai Bhande now deceased is the wife of the former tenant of agricultural land bearing survey No. 80/2-A/1, admeasuring 2 acres 20 gunthas, situate at village Bhongali, taluka Bhor, dist. Pune. The possession of the land was resumed by the former landlord Balu Pandharinath u/s 31 read with

Section 29 of the Act for bona fide personal cultivation on 20.6.1959. On 26.5.1971 his legal heir Pandurang Balwant Bhutkar transferred the suit land by executing a registered sale deed of the date. On the same day, he executed a document on stamp paper stating that he has to go to Mumbai and, therefore, would hand over possession of the land later on. Eventually, the possession was handed over on 1.8.1971 on which date the purchaser Ramchandra Bhau Bhande (respondent No. 1) executed a receipt to the effect that he had obtained possession of the land.

3. Chhabubai filed an application on 2.3.1978 alleging that the landlord has sold the said suit on 26.5.1971 to Ramchandra Bhande by registered sale deed. She sought a declaration that the sale deed be declared invalid u/s 84-C of the Act by reason of contravention of Section 37 of the Act. Section 37 requires the landlord to use the land for the purpose for which he has obtained possession for a period of 12 years from the date on which he took such possession. If the landlord fails to use the land for the said purpose, the section casts a duty on the landlord to restore possession of the land to the tenant whose tenancy was terminated by him unless he obtains from the tenant his refusal in writing to accept the tenancy on the same terms and conditions.

4. The Tenancy A.K. who heard the application held that the transfer of the suit land in favour of respondent No. 1 was invalid. The said Court believed the document dated 26.5.1971 executed simultaneously with the sale deed in which the landlord has stated that he would hand over possession of the land later. Reading the said document with the possession receipt of 1.8.1971 the Tenancy A.K. held that the landlord cannot be said to have ceased to use the land within a period of 12 years of obtaining possession, taking the starting point as 20.6.1959 the date on which the landlord obtained possession and the terminal point as 1.8.1971, the date on which the purchaser received possession and execution of possession receipt. The Tenancy A.K. noted that Chhabubai had not challenged the genuineness of the document by which the landlord has stated that he is unable to give actual possession on 26.5.1971 and would give it later on.

5. Chhabubai carried the matter in appeal before the S.D.O. The S.D.O. dismissed the appeal and maintained the order of the Tenancy A.K. Chhabubai, therefore, filed a Revision Application before the M.R.T. The M.R.T. by its order dated 23.3.1983 remanded the matter to the S.D.O. for a further inquiry in accordance with Section 37 of the Act. The M.R.T. followed the decision of this Court in Narayan Ganpat Raut Vs. Smt. Habiba Yusuf Landye, in which this Court observed that creation of a title in favour of a third person does not attract the applicability of Section 37 unless the landlord has ceased to use the land as contemplated by that section. The M.R.T., therefore, directed an inquiry as to the cessation of user by the landlord.

6. After the remand on 19.8.1986, the S.D.O. held that the landlord, having executed a sale deed on 26.5.1971, had contravened Section 37. According to the S.D.O., the execution of the sale deed was after a completion of 11 years 11

months and eight days i.e. within a period of 12 years. Relying on the recital in the registered sale deed that possession as handed over, the S.D.O. held that the statement in the registered sale deed is sufficient to show that the landlord has ceased to cultivate the land personally for a period of 12 years as contemplated by Section 37(1). The S.D.O. seems to have disregarded the document executed simultaneously with the sale deed on the ground that it carries no legal weightage. The S.D.O. also did not pay any heed to the possession receipt dated 1.8.1971.

7. The respondent No. 1 Ramchandra Bhande filed a revision before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal upon an application of Section 37(1) of the Act held that the execution of the sale deed dated 26.5.1971 was not determinative of the fact that the landlord had ceased to use the land for the purpose for which he had obtained possession. Taking into account the possession receipt dated 1.8.1971 which shows that the possession of the land was handed over to respondent No. 1 on 1.8.1971 i.e. subsequent to the expiry of 12 years, the M.R.T. has held that the landlord cannot be said to have contravened Section 37. It is this order which is challenged before this Court.

8. Section 37 of the Act reads as follows:-

"37.(1) If after the landlord takes possession of the land after the termination of the tenancy u/s 31, 33B or Section 34 of this Act as it stood immediately before the commencement of the Amending Act, 1956 he fails to use it for any of the purposes specified in the notice given u/s 31, 33B or Section 34 of this Act as it stood immediately before this commencement of the Amending Act, 1956 within one year from the date on which he took possession or ceases to use it at any time for any of the aforesaid purposes within twelve years from the date on which he took such possession, the landlord shall forthwith restore possession of the land to the tenant whose tenancy was terminated by him, unless he has obtained from the tenant his refusal in writing to accept the tenancy on the same terms and conditions or has offered in writing to give possession of the land to the tenant on the same terms and conditions and the tenant has failed to accept the offer within three months of the receipt thereof.

(2) After the tenant has recovered possession under Sub-section (1) he shall, subject to the provisions of this Act, hold such land on the same terms and conditions on which he held it at the time his tenancy was terminated.

(3) If the landlord has failed to restore possession of the land to the tenant as provided in Sub-section (1) he shall be liable to any such compensation to the tenant as may be determined by the Mamlatdar for the loss suffered by the tenant on account of eviction.

(4) The provisions of this section shall not apply to a landlord who becomes a serving member of the armed forces; and on that account, fails to use the land, or ceases to use it, for any of the purposes specified in the notice referred to in

Sub-section (1) and within the period specified in that sub-section."

It is clear that Section 37 prohibits cessation of user of the land for the purposes for which the landlord had obtained possession of the land. In the present case, that purpose was for bona fide personal cultivation. This section has been interpreted by this Court in Narayan Ganpat Raut's case (supra). This Court has observed as follows:-

"The provisions of Section 37 are restrictive of the common law rights and the ordinary rights of a lessor. Section 37, therefore, has to be given a very strict interpretation. It cannot be allowed to travel beyond its text to matters, which do not come within its ambit. The section places no restriction of whatsoever kind or nature upon the owner's or ex-landlord's title, status and character vis-a-vis the land in question. The only liability or duty under the provisions of the Act is that he must not fail to use the land within a period of one year from the date of taking possession for the purpose for which he has obtained possession, and must continue to use it for the said purpose for a period of twelve years. If he continues to use it and if he does not fail to use it for the purpose for which he has obtained the possession, the even if he has ceased to be an owner, or the content of ownership does not continue to remain with him, he cannot be said to have infringed the provisions of Section 37. If the object of the section and the Act is to insist on the land being used by the person for the same purpose for which it has been obtained, then the insistence is upon the actual use and the character of that use and not in the capacity in which the said use is being made."

The M.R.T., therefore, rightly observed that the document executed on the same day, though not registered, cannot be ignored and must be taken into account. The S.D.O. seems to have disbelieved the document only on the ground that it was not registered. Moreover, the S.D.O. had not taken into account the possession receipt dated 1.8.1971, which the M.R.T. took into account and, in my view, rightly. It is also clear that the S.D.O. had not after remand applied its mind to the earlier order of remand by the M.R.T. by which the M.R.T. had directed the S.D.O. to make a specified inquiry as to the factors that must be taken into account u/s 37 of the Act, in particular the cessation of user of the land. The M.R.T., therefore, has rightly interfered with the order of the S.D.O. and decided the case, in accordance with law.

9. In the circumstances, I see no reason to interfere with the impugned order. The rule is, therefore, discharged. There shall be no order as to costs.

10. P.S. to give ordinary copy of this judgment to the parties concerned.