

(2009) 12 BOM CK 0022

In the Bombay High Court

Case No : Writ Petition No. 1158 of 1997

Smt. Gangabai Itankar

APPELLANT

Vs

Shri Buzurkar Ram Nandir Trust, Nagar Vikas Cooperative
Housing Society Ltd. and The Presiding Officer, Maharashtra
Revenue Tribunal

RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 129,
19, 20, 54, 54(1)

Maharashtra (Vidarbha Region) Agricultural Debtors Relief Act, 1969 — Section 20, 54

Citation : (2010) 1 BomCR 43 : (2011) 5 RCR(Civil) 82

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

**Advocate : Sumeet Joshi and Anil Mardikar, for the Appellant; I.L. Bodade, AGP,
for the Respondent**

Final Decision : Dismissed

Judgement

C.L. Pangarkar, J.—This writ petition challenges the order passed by the Maharashtra Revenue Tribunal, Nagpur Bench, Nagpur in revision Tenancy Case No. A75 of 1995.

2. The facts giving rise to this writ petition are as follows

There is a trust known as Buzurkar Ram Mandir Trust. It owned field Survey No. 54/2, admeasuring area of 31.91 acres at Mauza Somalwada. One Pandurang Balpande was the tenant of the said field. Pandurang died. His son Kawadu inherited the said tenancy right after the death of father. The said trust filed an application before the Tahsildar u/s 20 of the Bombay Tenancy and Agricultural Lands Act (Vidarbha Region) Act (B.T.A.L. Act) for confirmation of surrender of tenancy by Kawadu Balpande and members of the joint family. Notices were issued to Kawadu Balpande and others. They appeared before the Tahsildar. Present petitioner, who is one of the heirs of the original tenant Pandurang

objected to the surrender. She contended that since her father had expired, she has inherited the right of tenancy and therefore, all tenants together must surrender and since she objects, the application for surrender should be rejected. She did not consent to the surrender even though other heirs of Pandurang had consented. The tahsildar found that there was no legal and valid surrender of tenancy rights and therefore, rejected the application filed by the said trust, which is respondent No. 1 herein. The said trust i.e. respondent No. 1, therefore, preferred an appeal before the Additional Collector. The Additional Collector heard the appeal and set aside the order passed by the Tahsildar and accepted the surrender. Feeling aggrieved, the present petitioner preferred a revision before the Maharashtra Revenue Tribunal (MRT). The MRT confirmed the order passed by the Additional Collector. Hence, this writ petition.

3. I have heard the learned Counsel for the petitioner as well as the respondent.

4. Following are the few undisputed facts.

Respondent No. 1 is a public trust and was the owner of the agricultural land in question. One Pandurang Balpande was the tenant of the said land. The trust had obtained a certificate of exemption u/s 129 of the B.T.A.L. Act. He has also obtained a sanction from Charity Commissioner to sell the land. The original tenant Pandurang Balpande is dead. The trust applied u/s 20 of the Act to verify the surrender of land by the widow and sons of Pandurang. They made a positive statement before Tahsildar that they have surrendered the tenancy rights. The petitioner is one of the daughters of said Pandurang and she opposed the surrender and she was not a consenting party.

5. This takes me to consider the argument as advanced on behalf of the petitioner.

6. Shri Mardikar, learned Counsel for the petitioner, vehemently submits that both the courts below have wrongly held that the surrender by a few heirs could be valid. He submits that surrender could be said to be valid only when all heirs together agreed to such surrender. The Tribunal has considered the provisions of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act and Hyderabad Tenancy Act. He finds that in Hyderabad Tenancy Act, there is a specific provision in form of Section 19, which says that if the land is cultivated by joint family, each member of joint family should join the act of surrender and if any one of them does not, such surrender shall be ineffective. Section reads as follows

19(1) Notwithstanding any agreement or usage or any decree or order of a court of law [no tenancy shall be terminated] otherwise than

[(a) by the tenant by surrender of his rights to the landholder at least a month before the commencement of the year:

Provided that such surrender is made by the tenant in writing and is admitted by him before and is made in good faith to the satisfaction of the Tahsildar : or

Provided further that where the land is cultivated jointly by joint tenants or members of an undivided Hindu family, unless the surrender is made by all of them it shall be ineffective in respect of such joint tenants as have not joined in the application for surrender, irrespective of the fact that the names of all the joint tenants are not mentioned in the certificate]

The Section itself is very clear. The surrender becomes ineffective if one of the members of the joint family does not consent to such surrender. However, Legislature has not introduced such a proviso in Section 20 of the Vidarbha Region Act in its wisdom. The fact that such proviso was not introduced in Vidarbha Region Act clearly suggests that it is not so necessary in Vidarbha region. A surrender of tenancy rights by a few shall be valid. The learned Member of the Tribunal has rightly interpreted the Section. In any case the petitioner could not claim herself to be member of the joint family in 1991 at the time of surrender as she was already married. Section 54 of the Vidarbha Region Act says that if tenant was member of joint Hindu Family, the tenancy right would devolve upon surviving members of the family. As observed, until 1994 amendment to Hindu Succession Act, a daughter could not be treated as member of the joint family, much less a married daughter. Hence, the tenancy right could not at all devolve upon her when Pandurang died prior to 1991. She had, therefore, not inherited any right in the property in question upon death of her father Pandurang.

7. We have already seen that the trust has already obtained certificate of exemption u/s 129(b) of the Tenancy Act. It would, therefore, be necessary to find out what is the effect of such exemption bearing in mind the provisions of Section 54 of the Act. The Supreme Court has held in a decision reported in 1999(1) Mh.L.J. 321 (Shriram Mandir Sansthan @ Shri Ram Sansthan Pusda v. Vatsalabai and Ors.) as under

In the case of lands belonging to a trust or an educational institution falling within Section 129(b) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, the tenancy is not heritable on the death of the tenant. Section 54(1)(a) of the Act cannot be read differently from Section 54(1)(b) or Section 54(3). The entire section must be read harmoniously. The legislative intention as seen from the scheme of Section 54 is, that heritability of any tenancy falling within the definition of that term under the Tenancy Act of 1958 is governed exclusively by Section 54. Where Section 54 is made expressly non applicable under the Tenancy Act of 1958, the tenancy is not heritable at all. An express provision in the Act which excludes the operation of certain provisions, cannot be made nugatory by resorting to general law.

It is thus clear that by virtue of Section 129 of the Act, the tenancy rights are not at all heritable where the landlord is trust. In view of this decision too, the petitioner could not be said to have inherited any tenancy right upon death of her father Pandurang. In the circumstances, I find no substance in the petition. The same is liable to be dismissed and it is accordingly dismissed. Rule discharged.

Costs quantified at Rs. 2000/.