

(2008) 06 BOM CK 0132

In the Bombay High Court

Case No : Writ Petition No. 2392 of 1996

Suhasini Gopinath Dadkar (since deceased through L.Rs.
Gopinath Ganesh Dadkar and Others)

APPELLANT

Vs

Rabhaji Gangaram Naikwadi and Shri Digamber Mahadev
Kamble

RESPONDENT

Date of Decision : 30-06-2008

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 29, 31(1), 32G, 32P, 43(1B)

Citation : (2008) 6 BomCR 85 : (2009) 1 MhLj 339

Hon'ble Judges : P.R. Borkar, J

Bench : Single Bench

Advocate : S.D. Kulkarni, for the Appellant; D.N. Suryawanshi and P.D. Suryawanshi, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Borkar, J.—This is a writ petition filed by the heirs of Dattatraya Mahadeo Kamble, who along with respondent No. 2 was the original landlord of Survey No. 41 admeasuring 10 acres 24 gunthas land, situated at village Kauthe Malkapur, Taluka Sangamner. Respondent No. 1 Rabhaji Gangaram Naikwadi is the tenant of the suit property. The original landlord Dattatraya Mahadeo Kamble expired. Original petitioner Suhasini Gopinath Dadkar was his daughter who is also now deceased and represented by her legal representatives.

2. The petitioners challenge the order passed by the Designated Member, Maharashtra Revenue Tribunal, Pune-1 in Case No. MAT.AH.XII.5/90(TNC.B.358/90) Pune-1, decided on 6.3.1995; whereby he confirmed the order passed by the Additional Tahsildar and A.L.T. Sangamner in Tenancy Case No. 32-G/10/81 decided on 30.3.1983, as confirmed in Tenancy Appeal No. 23/83 decided by the Sub-Divisional Officer, Sangamner Division, Sangamner on 30.7.1990; whereby it is declared that respondent No. 1 is tenant-

purchaser of the suit property under provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as, "the Tenancy

3. In this case, Shri S.D.Kulkarni, advocate appearing on behalf of the petitioners stated that there was surrender of land and possession was taken over by the landlords. He referred to R.T.S. proceedings bearing R.T.S. Appeal No. 21A/81, copy of which is produced on record as Exh.C with the petition. It is stated regarding surrender that there was mutation entry No. 711 dated 31.11.1960. So one thing is very clear that the so called surrender was subsequent to the Tillers day i.e. 1.4.1957. Learned advocate Shri Kulkarni stated that the surrender was in about 1959.

4. Shri Kulkarni, advocate relied upon several authorities. The first one is Smt. Radhabai Balkrishna Deshpande and Another Vs. Shri Babu Dhondu Shewale, deceased, by his heirs and Others, . In that case the Mamlatdar and Tenancy Awal Karkun had suo motu initiated proceedings u/s 84C of the Tenancy Act. The facts of that case, particularly discussion in para 12, show that in that case tenant not only appeared before the Tenancy Authorities in proceedings u/s 32G of the Tenancy Act and made voluntary statement that he was not interested in purchasing the suit land, but also voluntarily handed over physical possession of the suit land in the proceedings taken out u/s 32P of the Tenancy Act. In substance, the tenant surrendered his tenancy rights in respect of the suit lands and also handed over possession thereof to the petitioner No. 1-landlady. After the possession was acquired the petitioner-landlady entered into a transaction to sell the suit land in favour of petitioner No. 2. At no time tenant ever challenged the surrender or proposed sale. Suo motu proceeding was initiated and in the facts of that case it was held that the tenant cannot any more challenge correctness and validity of proceedings under Sections 32G and 32P of the Tenancy Act by way of the writ petition.

5. The second case cited is V.S. Charati v. Hussain Nhanu Jamadar 1999 (1) Mh.L.J.782. In that case an application filed by a minor landlord u/s 31(1) r/w Section 29 of the Tenancy Act was rejected. The proceedings u/s 32G of the Tenancy Act were dropped on the ground of minority of landlord. Subsequently the landlord became Member of the Armed Forces and made an application for resuming land u/s 43-1B of the Tenancy Act. It was held that order u/s 32G having become final, the entitlement of landlord to resume the land was upheld. It may be noted that in that case the rights of tenant as a purchaser had not been crystalised. The landlord could claim benefit of the provisions of Chapter III-AA. Section 43-1B overrides the preceding provisions of the Act. As the proceedings u/s 32G were dropped, the tenant remained only a deemed purchaser and he could not be called a purchaser as contemplated u/s 43-1E. So the question that arose in the said case is entirely different.

6. The next case cited is Mohan Pandurang Kashid and others Vs. Smt. Anusayabai Mane and others, . In that case the owner of the suit land had filed application u/s 29(2) r/w Section 33B of the Tenancy Act for restoration of

possession. He had also obtained certificate 88C of the Tenancy Act. In that case, tenant was made party. He was given notice. The tenant stated that she surrendered the possession of the suit land in favour of the applicant and the latter was in possession of the land in question. The landlady died in 1978 and her 3 daughters put purchaser into possession of the land by sale deed dated 30.6.1981. After 18 years, tenant for the first time challenged the entry in the names of the petitioner in occupancy column. It was held that the proceedings were hopelessly barred by limitation and steps should be taken within reasonable time. It is argued that in this case the steps were not taken by the Tahsildar for long time after surrender was certified and so there could not be statutory sale in favour of the tenant.

7. The last case cited by Shri Kulkarni, advocate is Dhondiram Tatoba Kadam v. Ramchandra Balwantrao Dubal 1994 (2) Mh. L.J.1284. In that case, it is held that voluntary giving up of possession does not amount to dispossession which is statutory requirement u/s 32(1-B) of the Tenancy Act. The tenant was not entitled to become purchaser as it was held that he voluntarily given up possession.

8. In the present case it was held concurrently by the Tahsildar and the Sub-Divisional Officer that the tenant had been in possession of the property throughout and that is a finding of fact recorded by both the courts below. There is discussion regarding the same in paragraph 5 of the judgment of the Maharashtra Revenue Tribunal.

9. On the other hand, learned advocate Shri Suryawanshi, appearing for the respondent No. 1 relied upon several authorities to show that there could not be surrender after Tillers day. The first case cited is Ukunda Deoba Korpe v. Rama Sabla Dhangar 1980 (1) Mh. L.J. 254. In that case it is observed in paras 15 and 16 that though there is no limitation prescribed for filing application for verification of a surrender still such an application cannot be filed after the tillers day. Such an application cannot be filed on the ceasing of relationship of landlord and tenant. Therefore filing of an application before the tillers day is a condition precedent to the maintainability of such an application. An application made long afterwards is not maintainable.

10. The second case cited is Vasu Dhondi Sutar v. Ganapati Dhondi Sutar 1992 (1) Mh.L.J. 730. In that case also it is observed that it is well settled that there can be no surrender of tenancy after 1st April 1957 where the tenant was lawfully cultivating the land on the date immediately preceding the tillers day. On 1st April 1957, the relationship of landlord and tenant came to an end by operation of law, as the tenant became automatic purchaser of the lands in question. In that case it is laid down that surrender deed dated 31.3.1957 (Sunday) was verified by concerned Authority on 1.9.1957. It was held to be voluntary. On 1.11.1957 the tenant executed Kabje-pavti though possession was not actually delivered. Proceedings u/s 32G were culminated in favour of tenant. The orders passed by the Tahsildar, Appellate Authority and M.R.T. were set aside

holding that the petitioner was tenant. Purported surrender and the kabje-pavti based thereon were held to be non est.

11. The next case cited is Dadu Bhagoji Patil v. Ramakant Dattatraya Deshpande 1998 (1) Mh. L.J.715. In that case it is laid down that there is inalienable and unfettered right conferred by Bombay Tenancy and Agricultural Lands Act u/s 32G in favour of tenant in possession of tenanted land on tillers day i.e. 1.4.1957. Merely because, the tenant was dispossessed even by a Court of competent jurisdiction, that has to be ignored for the purpose of Section 32G if the tenant was found to be in possession on 1.4.1957.

12. So in view of settled position of law, there cannot be any surrender after 1.4.1957 which is Tillers day. In this case the tenant was in actual possession of the property on Tillers day and alleged surrender was subsequent to 1.4.1957. In these circumstances no interference can be made with the orders under challenge. In the result, the Writ Petition is dismissed. Rule discharged. No costs.