
(1999) 04 BOM CK 0079
In the Bombay High Court
Case No : Writ Petition No. 400 of 1985

Syed Samiullah and another	Vs	APPELLANT
The State of Maharashtra and others		RESPONDENT

Date of Decision : 26-04-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 115

Citation : (1999) 4 ALLMR 25 : (2000) 1 BomCR 897 : (1999) 3 MhLj 966

Hon'ble Judges : S.H. Kapadia, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : K.G. Kadar, for the Appellant; R.S. Deshmukh, A.G.P. and A.B. Naik, for the Respondent

Judgement

S.H. Kapadia, J.—By this writ petition, petitioners seek to challenge the judgement and decision of the Collector dated 17-7-1984 in Case No. 83/ Atiyat/ A/I.

2. The facts giving rise to this writ petition, briefly, are as follows :---

3. The forefathers of the petitioners were Inamdars in respect of a Mosque known as Mohammadi Masjid Kinara of Bori, Taluka Tulzapur, District Osmanabad. The land bearing Survey No. 368, admeasuring 23 acres 27 gunthas and Survey No. 369, admeasuring 25 acres and 14 gunthas along with mango and other trees situated at Naldurg, Taluka Tulzapur, was dedicated for the performance of service to the above Mosque. Accordingly, the said lands are service Inam lands. The lands were granted under Muntakhab No. 20 of 1295 Fasli (1887 A.D.). The father of the petitioners died in 1960. On his demise, the present petitioners have been recognised as Inamdars in respect of the above lands. The petitioners presented the suit u/s 28(2) of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter called as the "Hyderabad Tenancy Act") for recovery of an arrears of rent in respect of the above lands. In that

application, the petitioners alleged that one Venkoba Chavan has failed to pay the rent for two years. That Venkoba was a tenant in respect of the above lands. That the suit was filed by the petitioners as landlords against Venkoba as the tenant. On the ground of arrears of rent, petitioners contended that they were entitled to recover possession of the lands. On 26-11-1962, the Naib Tahsildar directed the tenant to deposit Rs. 420.10 Ps. within 90 days and, in failure, the tenancy of Venkoba was liable to be terminated. No appeal was preferred by Venkoba. On 30-6-1964, petitioners filed an application before the Tahsildar stating that Venkoba has failed to deposit the rent and accordingly prayed for possession. On the said application, Naib Tahsildar passed an order on 28-09-1964 and accordingly possession of the land was given to the petitioners. Being aggrieved by the order, Venkoba preferred an appeal before the Deputy Collector which was dismissed. Thereafter, Venkoba preferred revision before MRT. The Tribunal came to the conclusion that the order passed by Naib Tahsildar was bad in law inasmuch as in order to terminate the tenancy of the tenant, the petitioners were required to terminate the tenancy for non-payment of rent giving six months notice in writing u/s 19(2) of the Hyderabad Tenancy Act and since no such notice, admittedly, was given by the petitioners to Venkoba, the order of the Naib Tahsildar came to be cancelled. Being aggrieved by the judgment and Order of MRT, the petitioners preferred writ petition under Article 227 of the Constitution to the High Court, which came to be dismissed by the High Court on 3-12-1969. Having failed to obtain possession from the tenant under the provisions of Hyderabad Tenancy Act, the petitioners adopted proceedings by way of suit under the provisions of Hyderabad Atiyat Inquiries Act, 1952 for a declaration and possession that above lands were service Inam lands. That the above lands were given for cultivation to Venkoba. That the suit lands were in possession of Venkoba due to which the petitioners were unable to perform services to the Mosque. It was urged that Venkoba's claim to tenancy over the service Inam lands was not maintainable as the lands were exempted from the operation of Hyderabad Tenancy Act u/s 102-A(c) of the said Act. In the said suit, Atiyat Deputy Collector, Osmanabad came to the conclusion that the above lands were service Inam lands. That the petitioners were Inamdars. That Venkoba has failed to prove that he was a tenant in respect of the above lands. Being aggrieved by the order of the Deputy Collector, Venkoba preferred an appeal to the Collector who by judgment and Order dated 17-7-1984, being the impugned order, allowed the appeal inter alia by coming to the conclusion that Venkoba was in possession for last 40 years prior to 1983/1984 and in view of the Circular dated 9-8-1955 issued by the Government, Venkoba was entitled to cultivate the land as long as he pays the rent in accordance with the provisions of law. Under the circumstances, appeal came to be allowed and the impugned order came to be set aside. Being aggrieved by the said order, the present writ petition has been filed. During the pendency of the petition, Venkoba Chavan died. Respondent No. 4(i) and respondent No. 4(ii) are the heirs and legal representatives of the deceased Venkoba Chavan.

4. Mr. Kadar, learned Counsel appearing on behalf of the petitioners contended that the present suit has been filed by the Inamdars u/s 3-A of Hyderabad Atiyat Inquiries Act, 1952. He contended that the lands in question were service Inam lands. He contended that the lands in question were covered by Muntakhab No. 20 of 1295 Fasli. He contended that u/s 102-A(c), Hyderabad Tenancy Act was not applicable to service Inam lands. He contended that in view of the terms and conditions of Muntakhab, the lands in question were service Inam lands and Venkoba Chavan was, therefore, not entitled to claim the status of tenant in respect of service Inam lands. He contended that in view of section 102-A of Hyderabad Tenancy Act, exempting service Inam lands from the operation of the said Act, the Circular issued by the Government on 9-8-1955 protecting the rights of the cultivators on payment of rent was contrary to the said section 102-A and, therefore, the Collector erred in allowing the appeal filed by Venkoba. He contended that the Circular cannot override the express provisions of section 102-A of the Act. He relied upon the judgment of the Division Bench of this Court in the case of Basharatulla v. State of Maharashtra and others, reported in 1998, M C R 657.

5. On the other hand, Mr. Naik, learned Counsel appearing for respondent Nos. 4(i) and 4(ii) contended that in the earlier proceedings, the petitioners sought to recover possession on the ground that the petitioners were landlords and Venkoba was the tenant. He contended that on the petitioners failing to secure possession under Hyderabad Tenancy Act, the petitioners have now moved under Hyderabad Atiyat Inquiries Act, 1952 on the ground that the petitioners were Inamdars. He contended that nature of the properties was never agitated by the petitioners. That the petitioners adopted proceedings under the Hyderabad Tenancy Act. He contended that, on the contrary, proceedings were taken, as stated above, u/s 28(2) of the Act on the ground that the petitioners were landlords and Venkoba was the tenant. He contended that in view of Explanation IV to section 11 of the Civil Procedure Code, the present proceedings under Hyderabad Atiyat Inquiries Act were barred by principle of res judicata. He contended that on the recommendations of Marathwada Wakf Board, the above lands were, in fact, transferred to another Mosque on 20-9-1972 by which time the tenancy proceedings came to be initiated by the petitioners and, therefore, it was not open to the petitioners now to challenge the status of Venkoba Chavan as the tenant in the present proceedings under the Hyderabad Atiyat Inquiries Act. It was contended that the said Act does not prohibit creation of tenancy by the Inamdars. It was contended on behalf of respondent Nos. 4(i) and 4(ii) that the word tenant has been defined u/s 2(1)(j) of the Hyderabad Abolition of Inams and Cash Grants Act, 1954 (hereinafter called as the "Hyderabad Abolition of Inams Act"). It was contended that under the said section, definition of the word "tenant" has been bodily lifted and incorporated into the Hyderabad Abolition of Inams Act from section 2(1)(v) of the Hyderabad Tenancy Act. It was urged on behalf of the respondents that even if Hyderabad Tenancy Act is not applicable to service Inam lands, still, by virtue of definition of the word "tenant"

in Hyderabad Abolition of Inams Act, the rights of the tenant under the Hyderabad Abolition of Inams Act to claim the occupancy have not been disturbed. In this connection, learned Counsel for the respondents have placed reliance on the judgment of the Division Bench of this Court in the case of Nagnathappa Tatya Halge v. Shrinivas Badrinarayan Mundada and another, reported in 1976 Mh.L.J 465.

6. We find merit in the contentions advanced on behalf of the above respondents. The petitioners instituted proceedings under the Hyderabad Tenancy Act. The petitioners claimed possession from Venkoba on the ground that the petitioners were landlords and Venkoba was the tenant. The possession was claimed on the ground of failure to pay rent. Having failed to secure possession, petitioners filed the suit under Hyderabad Atiyat Inquiries Act, 1952. In the earlier proceedings, under the Hyderabad Tenancy Act, petitioners did not plead non-applicability of Hyderabad Tenancy Act. In the earlier proceedings, the petitioners did not claim that the above lands were service Inam lands. In the earlier proceedings, petitioners did not plead that Venkoba was not entitled to claim tenancy rights as the lands in question were service Inam lands. In the earlier proceedings Venkoba was admitted to be a tenant. Under the above circumstances, it was not open to the petitioners now to plead that the lands in question were service Inam lands and, therefore, Venkoba was not entitled to the status of being a tenant. The Atiyat Deputy Collector erred, therefore, in coming to the conclusion that Venkoba was not a tenant. The question still remains as to what is the effect of the Circular dated 9-8-1955. In the case of Nagnathappa Tatya Halge v. Shrinivas Badrinarayan Mundada and another, reported in 1976 Mh.L.J 465, the facts were as follows. The Inams were abolished on 1-7-1960 under the Hyderabad Abolition of Inams Act. Before the abolition of Inams, the Inamdar had granted lease for 20 years to Nagnathappa who, in turn, had sublet the plot in 1949 for 18 years to one Shrinivas. After the Hyderabad Abolition of Inams Act came into force, a dispute arose between Shrinivas and Nagnathappa regarding grant of occupancy rights. The District Deputy Collector held that Nagnathappa was entitled to be declared as an occupant u/s 6(1)(a) of the Hyderabad Abolition of Inams Act. Being aggrieved, Shrinivas filed an appeal before the Commissioner, Aurangabad who held that Shrinivas was deemed to be tenant of the Inamdar as he was in actual possession. The matter ultimately came before the High Court. One of the arguments advanced on behalf of Nagnathappa was that the Hyderabad Tenancy Act was not applicable because the suit lands were service Inam lands and, therefore, Shrinivas was not entitled to claim occupancy rights as a tenant. This argument was rejected by the Division Bench which came to the conclusion after examining the above sections of Hyderabad Tenancy Act and the Hyderabad Abolition of Inams Act that although the Hyderabad Tenancy Act was not attracted, in view of the definition of the word "tenant as defined u/s 2(1)(j) of the Hyderabad Abolition of Inams Act, the provisions defining the word "tenant" under Hyderabad Tenancy Act are deemed to have been incorporated under the definition of the word "tenant" under Clause (j) of sub-section (1) of

section 2 of the Hyderabad Abolition of Inams Act. In the said judgment it has been further laid down that notwithstanding the provisions of section 102A(c) of the Hyderabad Tenancy Act, in cases of dispute to the occupancy rights, the Government will have to ascertain as to who was in lawful possession on the material date i.e. 1-7-1960. The Division Bench laid down, inter alia, that even the tenant under Hyderabad Abolition of Inams Act was entitled to claim occupancy rights u/s 6(1)(a) of the Hyderabad Abolition of Inams Act. In other words, the Hyderabad Abolition of Inams Act does not prevent the tenant from claiming occupancy rights. The preamble to the Hyderabad Abolition of Inams Act, 1954 lays down that the Act has been enacted in public interest to provide for the abolition of Inams and for other matters connected therewith. u/s 37 of the Hyderabad Abolition of Inams Act, the Government is given the power to remove difficulties. In the light of section 37 of the Hyderabad Abolition of Inams Act, one has to construe the Circular issued on 9-8-1955 by the Government. This Circular protects the cultivator who is in possession for a long duration from being evicted as long as the cultivator pays rent. This Circular is, therefore, issued to protect the rights of the cultivators of Inam lands. On the other hand, the provisions of Hyderabad Atiyat Inquiries Act, 1952 show that the said Act, 1952 has been enacted only for the purposes of holding inquiries regarding the claims of succession or with regard to right, title or interest in respect of the Atiyat grants. The Hyderabad Atiyat Inquiries Act, 1952 does not seek to protect the rights of the cultivators or the tenants. It is an Act essentially enacted to hold inquiries into the grant, compliance of Muntakhab etc. In the circumstances, on examination of the provisions of the Hyderabad Tenancy Act, the Hyderabad Abolition of Inams Act and Hyderabad Atiyat Inquiries Act, it is clear that there is no bar on creation of tenancy by the Inamdar under the above three enactments. On the contrary, the Hyderabad Tenancy Act divides the tenants into protected tenants and ordinary tenants (See section 2(mm) of the Hyderabad Tenancy Act). Tenants falling under sections 34, 37 or 37-A are protected tenants while others are ordinary tenants. In the circumstances, the Circular dated 9-8-1955 seeks to protect the tenants who are cultivating Inam lands. Hence, although the Circular does not confer status of tenant on a person, still, in cases where the cultivator is in possession for last several years, security of tenor is granted to such cultivator on his payment of rent. In the circumstances, we do not find any merit in the contention advanced on behalf of the petitioners that the Circular overrides section 102-A of the Hyderabad Tenancy Act. Venkoba, as an ordinary tenant, was certainly entitled to be protected from eviction. Hence, in such cases, the Circular is squarely applicable. Now, in the present case, the petitioners claim possession from the tenant under the Hyderabad Atiyat Inquiries Act, 1952 on the ground that the lands are required for the performance of service to the Mosque. As stated hereinabove, the petitioners claim that u/s 102-A of the Hyderabad Tenancy Act, since the lands are service Inam lands, Venkoba or his successors were not entitled to claim tenancy. As stated above, Venkoba was recognised as a tenant by the petitioners themselves when the proceedings were taken to evict him under the Hyderabad Tenancy Act.

Secondly, further, we find that Venkoba was a tenant and in the circumstances the Atiyat Deputy Collector erred in coming to the conclusion that Venkoba was not the tenant. Venkoba has been cultivating the land for 40 years before 1983. In the case of Basharatulla (supra), the petitioner challenged the order dated 26-9-1984 passed by the Additional Commissioner of Aurangabad. In that case, property involved was Inam land granted to Jame Masjid Killa at Beed. In that matter, original Inamdar died in 1964 and the succession inquiry was made in 1970. In that matter, the petitioner succeeded in the succession inquiry. He, thereafter, applied for Laoni amount as the succession was granted in his favour. However, in the meantime, on the basis of the report of the Tahsildar, the suit lands were taken under Government supervision. In that context one of the arguments advanced before the High Court was that since the petitioner was a successor of the original Inamdar, respondent Nos. 2 to 6 cannot be given the status of being a tenant as service Inam lands were not covered by the Hyderabad Tenancy Act. In that matter, the question which arises before this Court was not in issue. As stated above, in the present matter, the Inamdars themselves recognised Venkoba as the tenant when they adopted proceedings under Hyderabad Tenancy Act. On the other hand in the case of Basharatulla (supra), the petitioner had instituted a succession inquiry under the Hyderabad Atiyat Inquiries Act, 1952 and after having succeeded in that inquiry, he applied for possession of the land which is not the case in the present matter. Hence, the judgment of Division Bench in the case of Basharatulla (supra) has no application to the facts of this case. In the circumstances, we do not see any reason to interfere with the impugned Order passed by the Collector.

7. Accordingly, writ petition is dismissed. Rule is discharged with no order as to costs.

8. Writ petition dismissed.