
(1973) 08 BOM CK 0006

In the Bombay High Court

Case No : Special Civil Application No. 1118 of 1969

Tanbaji Madhoji Chagre and Another

APPELLANT

Vs

Nathoba Janbaji Dongre and Others

RESPONDENT

Date of Decision : 09-08-1973

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 100(2), 6

Citation : AIR 1974 Bom 238 : (1974) MhLj 484

Hon'ble Judges : Masodkar, J

Bench : Single Bench

Advocate : G.D. Patil, for the Appellant; J.N. Chandurkar, for the Respondent

Judgement

1. The petitioners claiming to be the deemed tenants of several field slumbering seven, being fields Nos. 85, 89/2, 86, 97, 84/3, 92 and 95, all situated at mouza Thanegaon, in district Wardha, question the validity of the order made by the Maharashtra Revenue Tribunal on July 9, 1969 by which that Tribunal found that these petitioners had not made out any case for a declaration that they were the deemed tenants under the provisions of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter called the Act).

2. As far as this case is concerned it appears, the ownership of lands is not in dispute and it is stated in the application filed by these persons that respondent No. 2 Nathoba is the Karta of the Hindu joint family consisting of the other members. It does appear that these respondents filed Civil Suit No. 98 of 1965 in the Court of Civil Judge, Junior Division, Arvi, wherein the present petitioners raised a plea of tenancy and the matter was referred u/s 125 of the Act. On June 23, 1967, these petitioners filed an application before the Additional Tahsildar (Tenancy) in the very same proceedings claiming a declaration u/s 100 (2) in the terms that they are deemed tenants of the land u/s 6 of the Act. That was also the issue referred for decision to the tenancy authorities by the Civil Court.

3. It may be briefly noted that the case of the petitioners had been that all these

lands were leased out to them initially in the month of June, 1966 upon payment of Rs. 200 in advance as lease-money. After about some time the respondents approached them and entered into an agreement of sale for the total sum of Rs. 4,000/- and Rs. 200/- were adjusted. It is specifically averred in the application produced at Annexure 1 that the applicants cultivated the land accordingly in 1964-65 and took all the crop. This cultivation is after the agreement of sale between the parties and after adjustment of Rs. 200/- as is pleaded by the present petitioners. To this the plea of the respondent as can be gathered from Annexure D. i.e. the written statement filed in these proceedings, was that for the year 1964-65 the land was cultivated by the applicants and non-applicant in partnership and the non-applicants had actually incurred the expenditure in half and half ratio for the cultivation of the fields right from summer operation till the harvesting of the crop. Time and again, non-applicant No. 2 had advanced amounts for the purpose of cultivation; Radhabai, the mother of the non-applicants used to stay at Thanegaon for the supervision of the cultivation on behalf of the non-applicants. It is further pleaded that afterwards the possession of the applicants was that of rank trespassers, for they high-handedly and wrongfully usurped the same in the month of July, 1965. Substantially, therefore, the pleas were that after 1964-65 the petitioners were rank trespassers with respect to the land. For the year 1964-65 there had been sharing of expenditure and profits in cultivation and the parties had agreed to cultivate the same as partners.

4. Upon these respective cases, evidence was led by the parties. The first court of fact, i.e. the Additional Tahsildar (Tenancy) found that there was no contract of sale nor the possession was delivered under any agreement of sale or purchase to the petitioners. Thus the legal source of lawful cultivation pleaded by these petitioners was found against them and it was held that the petitioners were not entitled to any declaration with reference to Section 6 of the Act, for they had not discharged the burden of proof. When the matter went up in appeal before the Sub-Divisional Officer, Arvi at the behest of the petitioners, that authority thought that the letter which is also exhibited in this court as Exh. B of October 16, 1964, written by respondent No. 1 Nathoba to petitioner No. 2 Fekirchand, was reasonably referable to an agreement of sale between the parties. As the possession was thus lawfully traceable to the agreement of sale, the appellate authority concluded that the petitioners were entitled to the status of deemed tenants u/s 6 of the Act. While considering that aspect he came to find that tenure-holder's claim that they were advancing money to the appellants and crops were shared by them was not enough to prove a partnership in cultivation and that that was nothing but a lease. If on those terms shown by the landholders the appellants were inducted on land, the appellate authority thought that the appellants were in lawful possession of the land and thus entitled to claim deemed tenancy u/s 6 of the Act. By the impugned order the Tribunal found that such a reasoning was not available to the appellate Court and the error of law was very much apparent. It referred to the decision of this Court in Spl.

Civil Appln.. No. 1071 of 1966 decided on 8.8.1968 (Bom), Balkrushna v. M.R.T. Nagpur and found that a person inducted as a prospective purchaser under the contract of sale is not entitled to claim the status of a deemed tenant. It was further held by that Tribunal and rightly that the burden of proving the tenancy lay upon the applicant-tenants and, therefore, from that angle the evidence caught to have been considered. While considering the allegations and statements available on record, the learned Tribunal found that the letter produced at Ex. B in this petition was of little assistance to infer any contract of lease or contract of sale. It thought therefore that no interference was called for by the appellate Court in the present matter and giving that finding it restored the order made by the Additional Tahsildar.

5. In this Court, the learned counsel appearing for the petitioners Mr. Patil has complained that the Tribunal ought not to have merely restored the order but ought to have remanded the case to the appellate authority for re-hearing. It is further contended that even upon the footing that there was a partnership-in-cultivation between the petitioners and the respondents, these petitioners were entitled to the declaration of deemed tenants and reliance was placed on the Division Bench ruling of this Court reported in *The Godavari Sugar Mills Ltd. and Others Vs. S. Ramamurthy and Others*, Thirdly the learned counsel submitted, at any rate, the plea of partnership was incapable of being considered upon the principles enunciated by Supreme Court in the decision reported in *Srinivas Ram Kumar Vs. Mahabir Prasad and Others*, and taking into account what is pleaded by the land-holders, it should be found out that this is a batai lease, and that there is ample evidence to infer such a lease, Lastly it was said that, at any rate, as the pleas of the land-holders have not been properly considered and its effect, the matters should be sent back for rehearing to the Tribunal.

6. None of these submissions can be accepted.

7. It is patent from the order of the Tribunal that it is made with full jurisdiction, for the appellate Court had proceeded on the basis that a person claiming upon an agreement of sale could still be a deemed tenant. There was an ample authority for the Tribunal to apply the decision reported in *Gulabrao N. Wani Vs. Hemakashiram Gajare and Others*, and also the decisions of this Court in *Balkrushna's case*, Spl. C.A. No. 1071 of 1966, D/- 8.8.1968 (Bom.) (supra). Once having found the error in the approach of the appellate authority, the approach of the appellate authority, the learned Member of the Tribunal was entitled to take into account whether the burden that is cast upon the tenant has been properly discharged and whether the burden that is cast upon the tenant has been properly discharged and whether the order under revision could at all be sustained. In such process it is not always necessary that the matter must be remanded to the appellate authority for rehearing or re-writing the judgment.

8. The decision relied on by the learned counsel for this Court reported in *The Godavari Sugar Mills Ltd. and Others Vs. S. Ramamurthy and Others*, requires

some close consideration to find out what is the ratio that is laid down by the Division Bench of this Court. It appears that the Court was dealing with the petition filed by the Company and other petitioners in the matter arising out of the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. By the impugned order the Tribunal under that Act had found agreeing with the Collector that the partnership firm of six petitioners "M/s. Somaiya Firm" was entitled to retain the land to the extent of one ceiling area and the total area of land which was in excess of the ceiling area was 812 acres and 32 3/4 gunthas equivalent to dry-crop area 1321 acres and 12 gunthas. There the submission was made that the first petitioner Company held this land which was the subject-matter of an agreement of partnership by the six petitioners, including the owning company. The petitioners Nos. 2 to 6 were working partners with a right of remuneration of Rs. 175/-. The main contention that fell for consideration, therefore, was what is the true extent and scope of Section 2 (14) of the Ceiling Act which defined the phrase "to hold land". Before the Division Bench, therefore, with respect to this controversy the provisions of the Ceiling Act and also the provisions of Section 4 of the Bombay Tenancy and Agricultural Land Act 1948, which is identical in terms to Section 6 of the present Act, were pressed in service along with the decision of the Supreme Court reported in *Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim*, . On the basis of that decision and the defining clause available in Section 2 (14) of the Ceiling Act, a contention appears to have been raised that *Dahya Lal's* case ruled that excepting the persons other than those mentioned in clauses 9a), (b) and (c) of Section 4 of the Bombay Tenancy and Agricultural Lands Act, 1948, all other persons lawfully cultivating the land belonging to the other persons must be deemed to be the tenants of the land u/s 4 of the Act. Even a submission was made that a decision in *Gulabrao N. Wani Vs. Hemakashiram Gajare and Others*, has been impliedly overruled.

9. Now, it is no doubt true that the learned counsel appearing for the petitioners is very much entitled to rely upon this decision in *The Godavari Sugar Mills Ltd. and Others Vs. S. Ramamurthy and Others*, to point out to certain observations which appear to take a view upon the decision of *Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim*, that excepting the persons mentioned in clauses (a), (b) and (c) of Section 4 of the Bombay Tenancy & Agricultural Lands Act, 1948, all other persons who are lawfully cultivating the land belonging to others must be deemed tenants for the purpose of the Act. The learned counsel rightly relied, therefore, on the observations made in the body of his judgment in *Godavari Sugar Mills Ltd's* case by this Court which are to the following effect:-

"..... The policy of law disclosed by the above definitions was to provide that wherever a landlord was not in actual possession of lands of his ownership and other cultivated such lands lawfully (whilst the owner was not cultivating the same personally) they must be held to be "deemed tenants" and as such entitled to continue in possession of lands to the extent of the ceiling area fixed under the Ceiling Act".

Again in the same paragraph it has been observed:

"..... In this connection it is important to notice that admittedly the first petitioners Company itself is a party to the cultivation of the land. Since it is an incorporated company it is party to the cultivation of the land through its agents. Even so, it must be held to have continued to cultivate the land even after the date from which the partnership carried on the business. Now, it is true that petitioners nos. 2 to 6 by themselves and through their agents and labourers are also taking part in the cultivation of the land. They cannot be held to be doing so unlawfully. To this extent they fall within the category of the "deemed tenants" u/s 4 of the Tenancy Act"

Then again in paragraph 9 of the judgment the Division Bench observed:

"In arriving at the above finding, we have given due and proper attention to the observations of the Supreme Court in the case of Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim, ".

10. Relying on these observations the learned counsel submitted that the decision of this Court in Gulabrao N. Wani Vs. Hemakashiram Gajare and Others, has not been followed and it must be found that the submission made at Bar that that decision had been impliedly overruled by Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim, was accepted by the Division Bench.

11. Really it appears that the controversy that way being settled and adjudicated upon by the Division Bench concentrated itself upon the terms of Section 2 (14) of the Ceiling Act and a submission was made that as the other petitioners were deemed tenants along with the company the holding must be construed as that of comprising and referable to tenancy rights. If a closer look is taken to the result that is declared by the Division Bench, it is clear that the Company has been found to hold land as the owner and not on the footing of any deemed or otherwise tenancy, though that was the actual case pleaded for the company and other partners. In fact, the case of the company and the other partners has been expressly negatived and there are observations in the body of the judgment itself which go to show that the Division Bench did not accept the proposition that the Company and all other persons could be governed by the terms "deemed tenants". It is observed in the same said paragraph which was relied on by the learned counsel:

"..... In connection with the question of finding out the ceiling area that an owner of lands in actual possession thereof should be allowed to continue to hold and delimiting the surplus area in his possession the owner cannot be entitled to argue that other persons cultivating his land were tenants and holders of the lands. Similarly, for ascertaining whether the "tenant" or the "deemed tenant" is holder of land under the Ceiling Act, the true test to be applied must be the fact of actual possession of the land in question by the "tenant" or the "deemed tenant" himself. In cases in which in spite of the cultivation of the land in question by others it is ascertained that the landlord was in actual possession

tehref, the tenant could not be held to hold the land in question....."

It was stated that in this connection extreme importance must be given to the phrase "actual possession" as contained in sub-section (14) of Section 2 of the Ceiling Act. Thus it does not appear that any pronouncement was made as to the true scope and reach of the term "deemed tenant" as is found in the Tenancy Act, though, no doubt, reference was made to the decision of the Supreme Court in Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim, The decision of the Division Bench of this Court, therefore, is of little assistance to the learned counsel, for it really decides that for the purpose of the Ceiling Act what has to be shown is the actual possession of the holder with reference to the definition contained in Section 2 (14) of the Ceiling Act. That was only enough to negative the claim of the petitioners in that petition which has been so ultimately negated.

12. It is also well settled rule of precedents that mere logical extensions from the observations available in a judgment do not form the ratio. That being the position, the learned counsel is not entitled to rely on this decision to say that the authority of Gulabrao N. Wani Vs. Hemakashiram Gajare and Others, has been in any manner shaken.

13. The decision of the Supreme Court in Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim, was extensively considered and its ratio found in the decision of this Court in Spe. C.A. No. 1071 of 1966 decided on 8.8.1968 (Bom.) After quoting from that judgment and also referring to the ratio of Gulabrao N. Wani Vs. Hemakashiram Gajare and Others, , this Court explained the ratio of that judgment and found that the observations in paragraph 6 of Dahya Lal's case were to be understood in the context of the facts giving rise to that judgment. The present case. i.e. Balkrushna's case therefore is an ample authority to indicate that where there exists a direct relationship under some legal contract between the tenure-holder and a person allowed to cultivate, no other rights in property are intended to be created and a person holding the land under an agreement of sale would not be clothed with the right of tenant u/s 6 of the present Act. The view expressed in the decision of Gulabrao Wani's case was in express terms found to be the good law. It does not appear from the judgment of the Division Bench relied on by the learned counsel that any reference was made to this decision of this Court. It may also be mentioned that one of the learned Judges (i.e. Vaidya J.) who constituted the same said Division Bench considered the case of a partner-in-cultivation in Spl. Civil Appln. No. 2518 of 1968 decided on 6.4.1972; K.S. Shetye v. V.D. Gaekwad (reported in 1972 Ten LR 199 and took the view that partner in cultivation could not be the tenant. The decision given in Spl. Civil Appln. No. 170 of 1966 decided on 14.10.1967. Gokuldas v. Jagan, provide also some illustration as laying down the scope of the provisions of Section 6 providing for "deemed tenancy". A Division Bench of this Court Considered the matter u/s 6 itself with reference to the cultivation in partnership in the decision given in Lalji Harbaji Kokate Vs. The

Maharashtra Revenue Tribunal, and found that "where under a contract of partnership for cultivation of land the owner of the land is entitled to be on the land and do the cultivation personally his partner who has entered into partnership for cultivation of the land cannot claim the status of a deemed tenant u/s 6 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act. 1958". This dicta of the Division bench ruling was very much available when the decision in *The Godavari Sugar Mills Ltd. and Others Vs. S. Ramamurthy and Others*, (supra) was rendered and had that decision sought to take any different view, the matter would have been expressly considered and nothing would have been left to mere logical inference to be drawn from such observations. It has, therefore, to be found that as far as this Court is concerned there is a binding decision given in *Lalji Harbaji's case* (supra) holding that a contract of partnership which entitles the owner to cultivate the land does not clothe that nay other partner with a right u/s 6 of the Tenancy Act.

14. The learned counsel, however, argued that the material words of Section 6 still require a re-consideration by this Court. He relies on the definitions of the terms "to cultivate" and "to cultivate personally" and a decision rendered by this Court in *Shri Kesheoraj Deo Sansthan, Karanja v. Bapurao* 1964 Mah LJ 589 where the scope of the terms "to cultivate personally" has been found to mean as a personal cultivation with reference to the agricultural processes and activities carried on the land; all the agricultural operations, though allowed to be done through hired labour or workers must be under the direct supervision, control, or management of the landlord. It is in that sense that the words "personal cultivation; must be understood. If a look is taken to that decision it is clear that the controversy was raised by a wahiwardar of a deity and it was found that the deity being a juristic person, cultivation through the agency would not be within the term "to cultivate personally" in section 2 (12) of the Act. To find out that relationship for the purpose of determining the right u/s 38, all these observations were made. Taking clue from these observations a submission was put forth in the present petition by the learned counsel that once it is shown that by any device including the device like that of partnership, the land owner leaves the land and cultivation and other persons are inducted for the purpose of cultivating the land, then it must be held that those persons are really the deemed tenants.

15. To accept any such submission on the footing of the partnership in cultivation will really undo the very concept of the partnership. In law it is well settled that a partnership is not a juristic person but connotes the relation between persons who have agreed to share the profit of business carried on by all or any of them acting for all. While finding out partnership it is a settled rule of law between the parties as shown by all the relevant facts taken together. The elements upon which the concept of partnership is juristically understood are that it is the outcome of an agreement entered into by all the persons concerned with others sharing all profits of the business is carried on, on the basis of mutual agency, in that it can be carried on by all or any of the persons concerned acting for all.

Once these tests are applied, a land-holder taking any person as a partner neither loses the personal cultivation nor creates any other right in favour of the other person. By the partner he can cultivate the land personally, for he is also the party to such cultivation. Granting the premise that then exists a partnership, it is patent that the legislature would never have intended to confer a statutes of deemed tenancy on the body of persons which come together under a hand of partnership or a firm; otherwise, there would be automatic process of surrendering the rights in ownership which are held by the land-holder carrying on cultivation in partnership is a known and legal device. It does not result in relationship akin to tenancy. Landholder partner remains ever party to such cultivation and possession and shares all profits and losses.

16. A plain reading of section 6 of the Act, shows that it applies to a person lawfully cultivating any land belonging to another person to the latter's exclusion. If partnership is cultivating such a land it cannot be treated as "aperson" cultivating land of other person. It is not possible to accept that partnership is a juristic person for the purpose of the present enactment though the term "person" has been defined in an inclusive manner in section 2 (21) of the Act. As indicated earlier, partnership is a relation between parties or the persons and it is excluded by necessary implication from the terms of Section 6 itself; for there not only the owner is absent from cultivation but a stranger who is lawfully on the land is cultivating and as such is clothed with the right of deemed tenancy. It is not necessary in th is case to find out to what particular types of cases of lawful cultivation the terms of Section 6 would reach; but it is patent that by the very concept of a cultivating partnership by the landholder and other persons the rearms of section 6 are not answered.

17. The learned counsel then submitted in the third alternate phase of his submission that principles of batai lease were attracted because of the case pleaded by the landlords themselves. He relied on the decision of this court in Mohanlal Chandanmal V. Maharashtra Revenue Tribunal, Nagpur 1962 Nag LJ 166 . For this purpose he pointed out that the plea and the proof in this case tendered by the landholders cannot be overlooked and the principles enunciated by the Supreme Court in Srinivas Ram Kumar Vs. Mahabir Prasad and Others, should be attracted and taking all the evidence of the landholders together, it must be found that upon the terms spoken to by the witnesses of the landholders, a batai lease has been properly established.

18. In the decision before the Supreme Court their Lordship were concerned with a relief which flowed from the pleadings of the defendant in a suit for specific performance. It was pointed out that plaintiff may rely upon different rights alternatively and there is nothing in the CPC to prevent a party from making two or more inconsistent sets of allegations and claiming relief thereunder in the alternative, and when the alternative case, which the plaintiff could have made, was not only made but admitted by the defendant in the written statement as an answer to the claim of the plaintiff, there was nothing improper in giving to the

plaintiff a decree upon the case which the defendant himself makes. In that case the defendants had denied the suit claim for specific performance of a contract and pleaded that the money taken by them represented a loan. Upon this latter plea the Supreme Court observed that a decree for recovery of a loan in favour of the plaintiff could be made.

19. Now this principle is not at all attracted nor available to the present petitioners. They came to the Court claiming a deemed tenancy. That was based firstly on the initial so-called agreement of lease whereunder Rs. 200 were alleged to have been paid and later on under an agreement of purchase of the same property. It was to negative this claim, the landholders came out with a case of partnership in cultivation. Such a claim was stoutly denied at the time of evidence by the petitioners and on oath. Therefore, there is no possibility of applying the first principle that these petitioners could have raised such a plea for the purpose of claiming relief. Even if they were in cultivating partnership with the landholder, they were not entitled to a declaration of deemed tenancy because the partner in cultivation along with the owner is not a deemed tenant. The case cited by the learned counsel, therefore, is of no assistance in the present controversy.

20. The decision in Mohanlal Chandanmal's case, 1962 Nag LJ 166 (supra) is clearly distinguishable. There the plea was actually of a lease and the document, i.e. bataipatra was being considered. It was observed that the bataipatra does not necessarily import in every case a document of partnership or an agreement to cultivate land in partnership with the tenure-holder and that it will depend upon what are the terms agreed upon in each individual case.

21. In the present case, as the case has been made by the landholders, they were pleading that the cultivation for the year 1964-65 was under a partnership agreement entered into by the parties orally, in that the expenses were to be shared half and half and so also the profits. Thus the main ingredients of partnership in cultivation were properly pleaded and only because it has not been further shown that the landholders participated in actual cultivation, no negative inference can be drawn. The partner it is well settled may carry on the business on the basis of mutual agency in that though there may be a property of some partners and others may cultivate for the all, such cultivation is in law and in substance the cultivation of all, merely because therefore the landholders were not shown to have given instructions as to how the crops are to be sown or harvested would not mean that initial partnership was turned into lease. A person who actually carries on the cultivation still had been upon land under a valid agreement of partnership which enjoined sharing of expenses as well as sharing of profits which are the basic elements of such a relationship. Some evidence was led to point out that at best the landholders had proved that they advanced some monies during the course of the agricultural year. It was further said that the material witness like Radhabai had not been examined and an adverse inference ought to have been drawn. All these submissions have really

little merits once it can be accepted that the relationship under which the present petitioners entered upon the land was that of the partner in cultivation. Their conduct after the initial relationship and agreement is of little assistance though in a given case that may throw light on the initial agreement itself. Under such circumstances, it is hardly possible for the petitioners to contend that any batai lease has been established taking into account the terms of partnership pleaded by the landholders.

22. It has therefore to be concluded that there is no error either apparent by the Tribunal or even otherwise available in the present disposal of the matter by that Tribunal. Thus the petition must fail and is dismissed but under the circumstance there will be no order as to costs.

23. Petition dismissed.