
(1983) 09 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition No's. 1376 of 1977 and 1071 of 1978

Vijayakumar and etc.

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 21-09-1983

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 36(1), 49B
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 12, 2(14), 3, 3(1), 8

Citation : AIR 1985 Bom 280

Hon'ble Judges : H.W. Dhabe, J

Bench : Single Bench

Advocate : M.N. Ingly, for the Appellant; M.A. Gurud and Habibuddin Ahamad, Asst. Govt. Pleader, for the Respondent

Judgement

1. This common judgment disposes of writ petition Nos. 1376 of 1977 and 1071 of 1978. The question that arises in these writ petitions is as to whether in view of the order for restoration of land passed after 26th Sept. 1970 in favour of the tenant under S. 49B of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short "the Tenancy Act") the land restored to the tenant should be excluded in computation of the ceiling area of the landholder.

2. Briefly the facts are that the landholder Vijaykumar filed a return under S. 12 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act 1961 (for short "the Ceiling Act") after the commencement date i.e. 2-10-1975. The Surplus Lands Determination Tribunal (For short "the SLDT") determined the total holding of the landholder at 76 acres 38 gunthas out of which 3 acres 38 gunthas were allowed as pot kharab. From the remaining total holding of the landholder he was allowed to retain 54 acres and 19 acres were declared as surplus land by the SLDT by its order dt. 20-10-1976. The Maharashtra Revenue Tribunal (for short "the MRT") confirmed the order of the SLDT in appeal. Hence these two writ petitions, one by the landholder Vijaykumar and another by the tenant Waman.

3. Both these petitions involve the question relating to field survey No. 7 admeasuring 11.26 acres and field survey No. 10 admeasuring 14.01 acres both of village Sakhari. One Woman, the respondent 2 in Writ Petition No. 1376 and the petitioner in writ petition No. 1071 of 1978 claimed that he was in possession of survey Nos. 7 and 10 as a tenant in 1958-59 whereafter he was dispossessed by the said Vijaykumar. On 30-10-1975, Woman filed an application before the Additional Tahshildar, Murtizapur, registered as Revenue Case No. 7/59 (13B)/1975-76 for restoration of possession of survey Nos. 7 and 10 to him under S. 49B of the Tenancy Act. The Additional Tahsildar rejected, the application but in appeal the Sub-Divisional Officer, Murtizapur by his order dt. 11-9-1979 allowed the appeal, set aside the order of the Additional Tahsildar and directed that possession of field survey Nos. 7 and 10 should be restored to Waman. The above order dt. 11-9-1979 was passed by the Sub-Divisional Officer during the pendency of the instant writ petition. As per the above order, according to the petitioner, the tenant Waman was put in possession of the said fields on 27-3-1980.

4. The tenant Waman has filed writ petition No. 1071 of 1978 on the ground that the fields survey No. 7 and 10 are wrongly included in the holding of his erstwhile landlord Vijaykumar, the petitioner in writ petition No. 1376 of 1977. Relying upon the decision in the proceedings under S. 49B of the Tenancy Act, it is the case of Vijaykumar and Waman, the petitioners in both these writ petitions, that the fields survey Nos. 7 and 10 should be included in the holding of the tenant Waman and not in the holding of Vijaykumar.

5. In deciding the question whether the land restored to the tenant under the provisions of S. 49B of the Tenancy Act after 26-9-1970 can after the determination of the ceiling area of the landholder under the provisions of the Ceiling Act, the provisions of S. 3 of the Ceiling Act will have to be looked into. Sub-sec. (1) of S. 3 provides that "no person or family unit shall, after the commencement date, hold land in excess of the ceiling are, as determined in the manner hereinafter provided". The expression "to hold land" in S. 2(14) of the Ceiling Act, is defined to mean "to be lawfully in actual possession of land as owner or as tenant".

6. The next relevant provision is the provision of S. 8 of the Ceiling Act, which prohibits transfers on or after the commencement date. The explanations to S. 8 defines "transfer". S. 10(10)(a) of the Ceiling Act interdicts transfers after 29-9-1970 but before the commencement date i.e. 2-10-1975 by treating them as transfers made to avoid or to defeat the object of the Amending Act, 1972 unless it is proved by the person concerned that they have not so been made. The other relevant provision is the proviso to S. 21(2) of the Ceiling Act, which provides that " if any right of resumption under the relevant tenancy law in respect of, or possession of, or right to possession of, any land delimited as surplus is subject to proceedings, under any other law in any court or tribunal, or before any authority, then so much only of the land as the holder of the surplus

land in such proceedings is finally held, not to be entitled to retain, not to be in possession of, or not to be entitled to possess, may be transferred in pursuance of such proceedings. "The Explanation to this proviso to S. 21(2) of the Ceiling Act is important and according to this Explanation the proceedings referred to in this proviso mean, "proceedings for acquisition of land for a public purpose or for the sale of land for realisation of land revenue or sums recoverable as arrears of land revenue and any other proceedings instituted before the 26th Sept. 1970 and pending on the commencement date in any Court, or tribunal or before any authority".

7. It is not in dispute in this case that the tenant had lost the possession of the land, and had failed to recover the same within the period of three years as provided in S. 36(1) of the Tenancy Act. It is, therefore, clear that the landholder Vijaykumar was in lawful possession of the fields in question on the commencement date, i.e. 2-10-1975 and thereafter till the order was passed under S. 49B of the Tenancy Act restoring possession of the lands to the tenant Waman. The question, however, that is raised in regard to the interpretation of S. 49B of the Tenancy Act is as to whether in view of the legal fiction created in S. 49B of the Tenancy Act is a transfer within the meaning of, or for the purposes of, S. 8 of the Ceiling Act.

8. Considering the first question, namely about the construction of S. 49B of the Tenancy Act, it is clear from the perusal of the said provision that a right to restoration of possession of the land is sought to be conferred upon the tenant, who was in possession of such land as a tenant on the appointed day, i.e. 20th Aug. 1958, but was not in possession of the same on the relevant date, i.e. either 1st April, 1961 or 1st April 1963 being dispossessed not in accordance with S. 36 of the Tenancy Act and whose landlord was in possession of the same on 31-7-1969. The land can be restored to the tenant after enquiry by the Tahsildar either in suo motu proceedings by him or on the application of the tenant. After the land is restored to the tenant, a legal fiction is created by which the provisions Ss. 46 to 49A are made applicable as if the tenant had held the land on the relevant date so that the tenant can be deemed to be the full owner of the land on the date on which the land is restored to him. The right under S. 49B of the Tenancy Act is not an automatic right. It is conferred only by the order of the Tahsildar after due enquiry. It is further clear that the tenant is not in actual possession of the land from the date he is dispossessed till the date the possession is restored to him. Since the requirement of the vesting of ownership under S. 46 or 49 A is that the tenant must be holding the land on the relevant dates mentioned therein, a legal fiction is created with a view to vest the right of ownership in the tenant from the date the land is restored to him. The submission on behalf of the petitioners that there is an automatic right created in S. 49B of the Tenancy Act in the year 1969 when it was inserted by the Amending Act of 1969 is, therefore, not correct and valid.

9. In the light of the interpretation of S. 49B of the Tenancy Act, if we consider

the provisions of S. 3 of the Ceiling Act relating to the determination of the ceiling are, the foremost requirement of S. 3 of the Ceiling Act is that the person or the family unit must hold the land, in regard to which surplus area is being determined. In other words, applying the definition of the expression "to hold land" given in S. 2(14) of the Tenancy Act, it means "that a person or a family unit must be lawfully in actual possession of the land as owner or as tenant" for the purpose of computation of his or its surplus land. Apart from the requirement of being in lawful possession, the other requirement is that the person must be in actual possession of the land. It need not be emphasised that the word "actual" cannot mean or cannot be equated to what is "fictional". In the instant case, on the commencement date the tenant was not in actual possession of the land. He, therefore, cannot be said to be holding the land i.e. the suit fields on the commencement date or the date when the person or the family units were called upon to file their return under S. 12 of the Ceiling Act.

10. It is worthwhile to note at this stage that the tenant in this case filed an application for restoration in this case filed an application for restoration of land in question i.e. survey Nos. 7 and 10 on 30-10-1975, which was rejected by the Additional Tahsildar, but was allowed by the Sub-Divisional Officer, Murtizapur in appeal on 11-9-1979. The possession of filed survey Nos. 7 and 10 is restored to him on 27-3-1980, i.e. much after the impugned order was passed by the Maharashtra Revenue Tribunal on 27-6-1977 in the instant ceiling case of Vijaykumar. It is, therefore, clear that the tenant could not be said to be in actual possession on the commencement date or on the date of the filing of the return by the landholder Vijaykumar under S. 12 of the Ceiling Act.

11. The other question that has to be examined in this regard is whether the landlord is lawfully in actual possession of the land on the date of the filing of the return under the Ceiling Act after the commencement date as contemplated by S. 2(14) of the Ceiling Act. It is not in doubt that he is in actual possession of the land after the tenant is dispossessed without recourse to S. 36(2) of the Tenancy Act. However, the right of possession is lost by the tenant after the expiry of the period of three years as contemplated by S. 36(1) of the Tenancy Act. The possession of the landholder thereafter cannot be said to be unlawful or improper. It has to be seen in this regard that but for this provisions of S. 49B, possession of the landlord would have continued. It is only when recourse is taken to S. 49B of the Act and a proper order after enquiry is passed restoring possession to the tenant that the tenant gets a right as contemplated by S. 49B of the Tenancy Act. The very enactment of S. 49B of the Tenancy Act creating certain rights instead of extending merely the period of limitation under S. 36(2) of the Tenancy Act shows that the possession of the landlord is lawful till the land is restored to the tenant under an order of the Tahsildar passed under S. 49B referred to above. It must, therefore, be held that the landholder Vijaykumar held the land in question in the instant case as commencement date and at the time when he filed the return under S. 12 of the Ceiling Act.

12. The learned counsel for the State has urged before me that the disposition by the order of the court, tribunal or any authority i.e. restoration of possession to the tenant under S. 49B of the Tenancy Act under the order of Tahsildar in the instant case is "transfer" within the meaning of S. 8 of the Ceiling Act which being after the commencement date i.e. 2-10-1975 is prohibited by it. The explanation to S. 8 defines "transfer" for the purposes of S. 8 of the Ceiling Act, and amongst others, it means ".....or any other disposition whether by the act of parties made, inter vivos or by decree or order of a court, tribunal or authority (except where such decree or order is passed in a proceeding which is instituted in such court, tribunal , or before such authority before the 26th Sept. 1970)". This Court in a decision reported in 1976 Mah LJ 727 - Gulabrao v. State of Maharashtra had an occasion to consider the provisions of S. 8 of the Ceiling Act and in para 29 of the report this Court has observed that the expression "any other disposition" is not to be read ejusdem generis in the Explanation to S. 8 of the Ceiling Act. It is further observed that by using this phraseology the Legislature intended "to cover all possible case of dispositions or transfers which are not specifically covered by the definition. This Court also held that the phrase "any other disposition" has been used in the explanation in an all inclusive sense to bar all avenues of escape. The said words, according to the aforesaid judgment, are words extension and are used to exhaust or to cover all possible ways and avenues in which the transfers of land could be made which could result in evasion of the provisions of the Ceiling Act. It is thus clear that this Court has held in the said decision that there is an extended an exhaustive definition of the word "transfer" in the Explanation to S. 8 of the Ceiling Act.

13. So far as the instant case is concerned, the possession is restored by the order of the Sub-Divisional Officer, who is either of a Court, Tribunal or an Authority as contemplated by the Explanation to S. 8 of the Ceiling Act. The aforesaid order restoring possession is passed by him on 11-9-1979 in the proceedings under S. 49B of the Tenancy Act instituted on 30-10-1975 i.e. after 26-9-1970. In other words the restoration of possession to the tenant as per the order of the Sub-Divisional Officer is a transfer from the landlord to the tenant by virtue of the order of the Sub-Divisional Officer. If this is so, then the disposition made by the order of the Sub-Divisional Officer is "transfer" within the definition of "transfer" in the Explanation to S. 8 of the Ceiling Act which is prohibited by it. In other words, it means that the land sought to be transferred under the order of the Sub-Divisional Officer from the landlord will be calculated in his holding for the purposes of determining his ceiling area. From this point of view also, the land comprised in field survey Nos. 7 and 10 has to be included in the holding of the landholder Vijaykumar.

14. At this stage, I may refer to the provisions of the proviso to S. 21(2) of the Ceiling Act. The substantive provisions of sub-section (2) of S. 21 of the Ceiling Act provide that "..... On and after the date of the announcement of the declaration mentioned in the preceding sub-section (i.e. sub-sec (1)) no sale, gift, mortgage, exchange, lease or any other disposition (including any transfer

in execution of a decree or order of a court, tribunal or authority) shall be made of the land which is delimited as surplus land". The proviso to this sub-sec. (2) of S. 21 provides as follows :-

"Provides that, if -

(a) any right of resumption under the relevant tenancy law in respect of, or

(b) possession of, or right to possession of any land delimited as surplus, is subject to proceedings under any other law in any court or tribunal, or before any authority, then so much only of the land as the holder of the surplus land in such proceedings is finally held -

(i) not to be entitled to retain, or

(ii) not to be in possession of, or not to be entitled to possess.

May be transferred in pursuance of such proceedings.

Explanation : For the purposes of this proviso, the proceedings, means proceedings for acquisition of land for a public purpose or for the sale of land for realisation of land revenue or sums recoverable as arrears of land revenue and any other proceedings instituted before the 26th Sept. 1970 and pending on the commencement date in any Court, or tribunal or before any authority. "

The Explanation to this proviso defines what the "proceedings" mean under the above proviso. It is clear from the Explanation that the "proceedings" contemplated by the proviso are the proceedings which are instituted before the 26th Sept. 1970 and which are pending on the commencement date, i.e. 2-10-1975, in any Court, tribunal or other authority. The proviso which preserves certain rights of certain persons in a land delimited as surplus does not protect the rights of tenants who instituted proceedings after 26-9-1970. Admittedly in the instant case, the proceedings under S. 49B of the Tenancy Act were instituted on 30-10-1975. The tenant Waman, therefore, cannot claim any right over the land in question if delimited as surplus for being transferred to him in pursuance of the proceedings under S. 49B of the Tenancy Act.

15. Thus from all these provisions it is clear that there is no illegality committed by the ceiling authorities in including the field survey Nos. 7 and 10 of village Sangvi in the holding of the landholder Vijaykumar.

16. Both these writ petitions, therefore, fail and are dismissed. Rule stands discharged in both these petitions. However, there will be no order as to costs.

17. Petitions dismissed.