
(1959) 09 BOM CK 0012

In the Bombay High Court

Case No : Special Civil Application No. 17 of 1959

Vijaykumar Juglal

APPELLANT

Vs

The Bombay Revenue Tribunal

RESPONDENT

Date of Decision : 11-09-1959

Acts Referred:

Berar Regulation of Agricultural Leases Act, 1951 — Section 9(1)

Citation : (1960) 62 BOMLR 122

Hon'ble Judges : Kotval, J;Gokhale, J

Bench : Division Bench

Judgement

Gokhale, J.—The question raised in this special civil application falls within a narrow compass and that question is whether a notice given by a landholder u/s 9(1) of the Berar Regulation of Agricultural Leases Act, 1951, which will be hereafter referred to as the Act, will enure for the benefit of his legal representatives. This question has arisen in these circumstances. One Juglal Mannalal Gujarathi was the holder of survey No. 101 admeasuring 36 acres situated at mouza Manarkhed, tahsil Balapur, district Akola. It is common; ground now that this field was purchased by Juglal and during his lifetime was his self-acquired property. He himself was recorded as the occupant of this field. The present opponent Abdul Raheman was the protected lessee of this field. In December 1954 Juglal gave a notice u/s 9(7) of the Act terminating the lease of the opponent on the ground that he required the land for his personal cultivation. This was a three months" notice as required by Section 9(1). The protected lessee objected to this notice and filed an application u/s 9(3) of the Act, and one of the grounds of the objection appears to be that Juglal had under his personal cultivation more than 50 acres of land. This application was filed by the opponent on January 5, 1955. On August 9, 1955, the Sub-Divisional Officer Balapur, rejected the opponent's application and the lessee went in appeal, and it appears that the appellate Court remanded the case on January 9, 1956. On March 28, 1956, the opponent was allowed to amend his application and on July 12, 1956, Juglal filed a written statement to the application as amended. On

November 13, 1956,. Juglal died and the opponent Abdul Raheman brought the present petitioners, namely, Juglal's son Vijaykumar and Juglal's wife Mirabai, on the record as his legal representatives. This was done on February 22, 1957, by the Sub-Divisional Officer to whom the case was remanded. On May 3, 1957, the Sub-Divisional Officer rejected the opponent-lessee's plea that the petitioners had more than 50 acres under personal cultivation. The result was that the application of the lessee u/s 9(3) of the Act was rejected. It appears that there was an appeal filed by Abdul Raheman against the decision of the Sub-Divisional Officer but the same came to be dismissed by the Additional Deputy Commissioner, Akola, on September 24, 1957.

2. On April 18, 1957, the present petitioners filed an application u/s 8(1)(g) of the Act praying that the Sub-divisional Officer should terminate the lease of the opponent with regard to survey No. 101. In this application it was stated that the field was purchased by Juglal and was during his lifetime his self-acquired property and Juglal was himself the recorded occupant of the field. As the Sub-Divisional Officer's order in the earlier proceedings came to be passed on May 3, 1957, as already stated, reference was made in this application to these pending proceedings also and it was stated that as legal representatives of the deceased Juglal, the applicants were making an application u/s 8(1)(g) of the Act for getting an order of termination-of the lease from the year 1955. This application was resisted by the opponent-lessee and he contended that the field survey No. 101 was not owned by the family of Juglal but admitted in his written statement that this field was purchased by Juglal and was his self-acquired property as stated in the application. He denied that the applicants were the legal representatives of the-deceased Juglal and as such could file an application u/s 8(1)(g) forgetting an order of termination of the lease in respect of that field. He further contended that the right to get the lease terminated did not survive to the applicants as a notice u/s 9(1) of the Act was not served on the opponent by them and they had, therefore, no right to apply for termination. It was further stated that the land held by and available to the applicants for personal cultivation was more than 50 acres and consequently the application for termination was liable to be dismissed. It was also urged that the applicants were not the recorded occupants of the field in question and hence they were not entitled to apply for termination of the lease u/s 8(1)(g) of the Act. This written statement was filed by the opponent on June 20, 1957, that is to say, after the order of the Sub-Divisional Officer in the earlier proceedings was passed on May 3, 1957. On July 16, 1957, the Sub-Divisional Officer dismissed the petitioner's application on the ground that the applicants were not landholders as they were not recorded as occupants of the field in question and that they themselves had not served a notice on the lessee. He further held that Juglal was the recorded occupant and he died on November 13, 1956, and unless his legal heirs got themselves recorded as occupants and gave a fresh notice to the lessee, their application could not be entertained. In coming to this decision, the Sub-Divisional Officer appears to have followed a decision of the Board of Revenue

that only the landholder could serve a notice u/s 9(1) of the Act. As already indicated, it was after this decision that on September 24, 1957, the appeal filed by the opponent-lessee in the earlier proceedings was dismissed by the Additional Deputy Commissioner, Akola.

3. The petitioners filed a revenue appeal against the dismissal of their application by the Sub-Divisional Officer and that appeal was allowed by the Additional Deputy Commissioner, Akola. He came to the conclusion that the notice given by Juglal was for the benefit of the landlord's family and, therefore, it would enure for the appellants also who were the legal representatives of Juglal, and he gave his opinion that it was not necessary for the appellants to give a fresh notice before being entitled to apply for termination of the lease u/s 8(1)(g) of the Act. On these grounds he reversed the decision of the Sub-Divisional Officer and ordered the termination of the lease in respect of field No. 101 as prayed for. Against this decision of the Additional Deputy Commissioner, the protected lessee filed a revision petition to the Bombay Revenue Tribunal at Nagpur. The Tribunal reversed the decision of the appellate authority and restored that of the Sub-Divisional Officer on the ground that it would not be correct to say that the petitioners intended to cultivate personally the field involved in these proceedings because they had made no such statement in their application that they required the land for personal cultivation. The Tribunal, therefore, was inclined to take the view that it was open to the petitioners to serve the lessee with a fresh notice and follow it up with an application u/s 8(1)(g) of the Act. It is against this order of the Tribunal that the petitioners have come to this Court by way of a special civil application.

4. Mr. Kalele, learned advocate appearing on behalf of the petitioners, has not disputed the position that in these proceedings it was common ground that the field was purchased by Juglal and was held by him during his lifetime as his self-acquired property. Though Juglal would be the head of the joint family consisting of himself and the petitioners it is not the contention of the petitioners in this application that the property purchased by Juglal, namely, survey No. 101, became joint family property. It was common ground, as already stated, in these proceedings that Juglal held the property as his self-acquired property. Juglal died on November 13, 1956, and the opponent himself brought the present petitioners on record as the legal representatives of Juglal. The proceedings u/s 9(3) of the Act continued and no objection was raised on behalf of the opponent to the continuance of these proceedings which terminated in a decision in favour of the present petitioners by the Sub-Divisional Officer on May 3, 1957, which decision was affirmed by the dismissal of the appeal filed by the present opponent, by the Additional Deputy Commissioner, Akola, on September 24, 1957. Mr. Kalele, therefore, contends that as a result of these proceedings, the notice issued by Juglal u/s 9(2) which was upheld by the competent revenue authorities had the result of terminating the lease of the opponent and that order was passed in favour of the present petitioners and the petitioners, therefore, were competent u/s 8(1)(g) of the Act to file the present application for an order

at the hands of the Sub-Divisional Officer formally terminating the opponent's lease. That, in short, is the argument of Mr. Kalele.

5. Mr. Qazi, learned advocate appearing on behalf of the opponent, on the other hand, contends that the notice given by Juglal u/s 9(1) could not enure for the benefit of the present petitioners, though he does not dispute the fact that his own client brought the petitioners on the record in the earlier proceedings. Now, this objection on the part of the opponent cannot be accepted. Juglal was the landlord in respect of survey No. 101 and that was his self-acquired property. After his death, his son and his widow, the present petitioners, would inherit that property and that would mean that they would inherit all the rights that Juglal had in that property. Prior to his death, Juglal had given in 1954 a notice to the protected lessee u/s 9(2) of the Act claiming possession of the land for his personal cultivation. That notice was objected to and proceedings were started by the lessee u/s 9(3) on the ground that Juglal had more than 50 acres in his possession for his personal cultivation.

6. After Juglal's death, the petitioners were brought on the record as his legal representatives and the proceedings u/s 9(3) terminated in favour of the present petitioners. u/s 8(1)(g) of the Act a lease of any land held by a protected lessee is liable to be terminated under orders of a Revenue Officer if he has been served with a notice by the landholder as provided in Section 9. Such a notice was given by Juglal, the original landholder. If that be the true position, it is difficult to see why the benefit of the notice given by Juglal could, not enure in favour of the present petitioners provided their own holding available for personal cultivation is below 50 acres as required u/s 9(2).

7. In support of his argument that the petitioners cannot take advantage of the earlier proceedings, Mr. Qazi has relied upon a decision of the Bombay Revenue Tribunal in *Gopikisan v. Gendya* [1958] N.L.J. 180. In that case the landholder had served a notice against the protected lessee u/s 9(1) and proceedings were started by the lessee u/s 9(3) of the Act for declaring the notice served by the landlord as not bona fide. The landholder died and his legal representative was brought on record and he sought to continue the proceedings; and it was held by the Tribunal that the notice served by the deceased landholder automatically lapsed on his death and the successor-in-title could not continue the proceedings and no cause of action was left to the protected lessee to pursue the remedy u/s 9(3) of the Act. It was further held that it was open to the successor-in-title to start a fresh proceeding if he wished to cultivate the land personally. Now, in the present case the facts are somewhat different. As we have already indicated, the proceedings u/s 9(3) were continued by the present petitioners and were allowed to be continued despite the fact that the landholder Juglal had died during the pendency of the proceedings. Apart from this distinction, the Revenue Tribunal appears to have followed an earlier decision of its own that the action taken by a landholder u/s 9(1) of the Act cannot enure for the benefit of his successor-in-title. That decision is *Sampat v. Mainabai* [1957] N.L.J. 622. But that was a case

which is distinguishable on facts because in that case the landholder had started proceedings after serving a notice u/s 9(1) of the Act and they were sought to be continued by a pre-emptor who became the owner of the field during the pendency of the proceedings. As in the present case the earlier proceedings u/s 9(3) were in fact allowed to be continued by the present petitioners and terminated in their favour, it is not necessary to examine the correctness of the Tribunal's decision in *Gopikisan v. Gendya*, though as we have already indicated, in our view, the order passed in the proceedings u/s 9(3) of the Act which upheld the notice issued by the landholder Juglal would enure for the benefit of his successors-in-title.

8. In the present case, the Revenue Tribunal undoubtedly referred to its earlier decision, but it seems to have been influenced by the consideration that it was in the interests of the successor in title themselves that they should be permitted to assess the situation as regards personal cultivation after the death of their predecessor in title by formally expressing such a decision in the form of a fresh notice. We do not think that this view is sound. In the earlier proceedings the petitioners were brought on record as the legal representatives of Juglal by the opponent himself. The Sub-Divisional Officer passed an order in their favour holding that the non-applicant Juglal did not hold more than 50 acres for his personal cultivation. That order was confirmed by the Additional Deputy Commissioner, Akola, and was not challenged by the opponent in any further proceedings. In our view, therefore, the present petitioners were entitled to file an application u/s 8(1)(g) of the Act to get a formal order from the Sub-Divisional Officer of termination of the tenancy with a view to getting possession of the land for personal cultivation and the benefit of the notice u/s 9(1) issued by Juglal must enure to them.

9. Unfortunately, the Bombay Revenue Tribunal did not go into the other questions raised by the lessee in his written statement. As already stated, the present application by the petitioners u/s 8(1)(g) of the Act was resisted by the opponent on the ground that they had in their possession more than 50 acres of land for personal cultivation. Mr. Kalele has contended that in that respect a decision was already recorded by the Sub-Divisional Officer in the earlier proceedings in favour of the petitioners and that, therefore, it was not necessary in the present proceedings for the competent authorities to go into that question again. Now, the application filed by the protected lessee u/s 9(3) is not before us, and we do not know what contentions were raised in these proceedings except to the extent that the Sub-Divisional Officer in his order dated May 3, 1957, went into the evidence then produced before him and rejected the plea taken by the opponent that the non-applicant, namely, Juglal, had more than 50 acres of land for personal cultivation. In the present proceedings in paras. 4 and 5 of his written statement, it is stated by the opponent that survey No. 96/4 of mouza Manarkhed is available to the petitioners for cultivating personally, and a field measuring about 10 acres situated at mouza Shelod has also come into the possession of the applicants on the termination of the lease in favour of one

Shamrao. That, is why, according to the opponent, the land held by the applicants and available to them for personal cultivation would be more than 50 acres and consequently the application u/s 8(1)(g) of the Act will have to be dismissed. This plea does not appear to have been gone into by any of the competent authorities and that, in our opinion, will have to be decided by the revenue authorities after allowing both the parties to lead necessary evidence.

10. The result is that the rule will be made absolute. The decision of the Bombay Revenue Tribunal setting aside the order of the Additional Deputy Commissioner and restoring that of the Sub-Divisional Officer will be set aside and the matter will be remanded to the Sub-Divisional Officer with a direction that he will allow the petitioners to reply to the allegations in paras. 4 and 5 of the written statement of the opponent and also allow both the parties to lead evidence in support of their respective cases and dispose of the application in accordance with law. As the present application was filed in April 1957, we trust that the proceedings will be conducted as expeditiously as possible. There will be no order as to costs.