

(1979) 10 BOM CK 0011

In the Bombay High Court

Case No : Spl. Civil Application No. 778 of 1974

Vinayak Ramchandra Chatre and others

APPELLANT

Vs

Pandurang Ganaji Khatkar and another

RESPONDENT

Date of Decision : 02-10-1979

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 36, 38

Citation : (1980) MhLj 365

Hon'ble Judges : V. Mohta, J

Bench : Single Bench

Advocate : R.N. Deshpande and S.R. Deshpande, for the Appellant; J.N. Chandurkar, for the Respondent

Final Decision : Dismissed

Judgement

V. Mohta, J.—Field Survey No. 20, measuring 18 acres 37 gunthas of mouza Borgaon Mohana in district Amravati, at one time, belonged to one Ramchandra alias Namdeo, who was a lunatic. On his behalf on 15-3-1961, a notice terminating the tenancy for bona fide cultivation was issued and on that basis, sometime before end of March 1961, application for possession u/s 36 read with section 38 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as "the Act") was filed.

2. During the pendency of those proceedings, Ramchandra died as a result, his legal representatives who are his widow and two minor sons, were brought on record. The present petition is at the instance of these persons. It appears that the proceedings for personal cultivation terminated throughout in favour of the petitioners and order for resumption of half of the land finally came to be passed by the Maharashtra Revenue Tribunal on 17-8-1970. It further appears that the respondents did not pay lease money from the year 1964-65 till the year 1968-69 and they were served with notices for termination by the landholders. On 12-1-1970, an application came to be filed at the behest of the landholders under sections 19 and 30 of the Act for eviction on the ground of non-payment of

lease money. The Tahsildar, Achalpur ordered the respondents u/s 30 (1) of the Act to tender a total sum of Rs. 765 within three months from the date of the order failing which the tenant was ordered to be evicted. Admitted position is that the amount was not paid. The respondents challenged the order before the Sub Divisional Officer, who was pleased to maintain the order. Maharashtra Revenue Tribunal, however, reversed these orders holding that under the circumstances second application for termination of tenancy was not maintainable under any of the provisions of the Act. Consequently, the application u/s 30 dated 12-1-1970, referred to above, was dismissed. The present writ petition is directed against that decision.

3. It has been contended on behalf of the petitioners that in terms of section 49 A or in terms of any other provisions of the Act, there is no bar to the maintainability of such an application at the instance of the landholder, who is either minor or a widow or serving member of the Armed Forces or a person subject to any physical or menial disability, as the ownership of the lands held by tenants from persons of either of such category is not transferred on the tillers day as is the case with the lands owned by other landholders. The main contention is that section 49 A (1) of the Act does not apply to the landlords of the categories specified in section 38 (2; of the Act. There is no manner of doubt that the present landlords fall within that category. Section 49-A of the Act reads as under:

49A. (1) Notwithstanding anything contained in section 41 or 46, or any custom, usage, decree, contract or grant to the contrary but subject to the provisions of this section, on and from the first day of April 1963 the ownership of all land held by a tenant (being land which is not transferred to the tenant u/s 46 or which is not purchased by him u/s 41 or (50) shall stand transferred to and vest in, such tenant who shall, from the date aforesaid, be deemed to be the full owner of such land, if such land is cultivated by him personally, and

(i) the landlord has not given notice of the termination of tenancy in accordance with the provisions of sub-section (1) of section 38 or section 39 or sub-section (2) of section 39A; or

(ii) the landlord has given such notice but has not made an application thereafter u/s 36 for possession as required by those sections; or

(iii) the landlord being a landlord not belonging to any of the categories specified in sub-section (2) of section 38 has not terminated the tenancy on any of the grounds specified in section 19 or has so terminated the tenancy but has not applied to the Tahsildar on or before the 31st day of March 1963 u/s 36 for possession of the land;

Provided that, where the landlord has made such application for possession then the tenant shall, on the date on which the application is finally decided, be deemed to be the full owner of the land which he is entitled to retain in possession after such decision.

(2) (a) Where a tenant, who is evicted from the land before the 1st day of April 1963, and is not in possession thereof on that date, has made or makes an application for possession of the land within the period specified in sub-section (I) of section 36 then, if the application is allowed by the Tahsildar or in appeal by the Collector or, as the case may be, in revision by the Maharashtra Revenue Tribunal, he shall be deemed to be the full owner of the land on the date on which the final order allowing the application is made.

(b) Where such tenant has not made the application within the aforesaid period or any application made by him is finally rejected under this Act and the land is held by any other person as: tenant on the date of expiry of the said period or on the date of final rejection of the application then, such other person shall be deemed to be the full owner of the land on the date of expiry of the period, or as the case may be, on the date of the final rejection of the application.

(3) Where the landlord, belonging to any of the categories specified in sub-section (2) of section 38, has not given notice of termination of tenancy in accordance with the said sub-section (2) or sub-section (3) of section 39- A or has given such notice but has not made an application thereafter u/s 36 for possession, such tenant shall be deemed to be the full owner of land held by him in the expiry of the period specified in sub-section (3) of section 39-A.

Provided that, where the tenancy is terminated and application for possession is made in accordance with the provisions of sub-section (2) of section 3S or sub-section (3) of section 39-A, the tenant shall, on the date on which such application is finally decided, be deemed to be the full owner of the land which he is entitled to retain in possession after such decision.

4. Reference to section 38 of the Act in this case is also relevant. u/s 38, before 15th of February 1961, any landlord could give a notice terminating the tenancy and made an application for possession before 31st March 1961 on the ground that the land was required for bona fide cultivation. This is in terms of section 38 (I) of the Act. In case of minors, widows and persons subjected to any physical or mental disability, it is provided that if they have not given notice as provided in sub-section (I), such a notice can be given and an application can be made within one year from the date on which either the minor attains majority, and persons with mental or physical disability cease to have such disability. In case of widow successor in title has been permitted to have resort to sub-section (2) of section 38 of the Act, within one year after her death.

5. From the scheme of section 33, it appears that even the landlords of this category can choose to give notice u/s 38 (1) and the time to give notice afterwards u/s 38 (2) is extended only if the right u/s 38 (1) is not exercised. Section 38 (5) further provides that the tenancy of any land left with the tenant after the termination of the tenancy shall not at any time afterwards be liable to termination again on the ground of bona fide requirement.

6. It may be mentioned that section 49A has been inserted by Maharashtra Act

No. 2 of 1962. Section 19 and section 30 cover cases of termination of tenancy on the ground of failure to pay the lease money every year. By virtue of operation of section 46, the ownership of a land held by the tenant on 1st April 1961, who is entitled to purchase from the landholder under any of the provisions in Chapter 111, stands transferred to and vests, in such tenant and the tenant becomes the full owner from that day. This is subject to certain provisos. If a tenant is of the special category referred to above, the vesting of ownership in the tenant is postponed till happening of specified events and even some time thereafter. However, if in respect of any such land, proceedings under sections 19 to 21 or 36 or 38 are pending on the dates specified in sub-section (1) of section 46, the transfer of ownership is postponed till the date of final decision of those proceedings. Thus, by virtue of combined operation of the provisos, vesting of ownership is deferred as stated above and during the intervening period, the relationship of a lessor and lessee does not cease.

7. It is in this background of the statutory position that various provisions of section 49A fall for consideration. A scrutiny of this provision will show that there is a reference to the "land held by a tenant" and this land means the land which is not transferred by virtue of operation of sections 41, 46 or 50 of the Act. No doubt satisfaction of the conditions of a section 49(i), (ii) and (iii) are necessary. If these conditions are fulfilled on 1st April, 1963, there is no doubt that the tenant becomes owner of the land held by him. Then, there is a reference to "such application" in proviso to section 49(1). Inasmuch as this provision falls after all the sub-sections (i), (ii) and (iii), there cannot be any manner of doubt that it is referable to all proceedings capable of being taken for resumption under either of these clauses and cannot be considered to be confined only to sub-section (iii). There is a reference to non-obstante clause, reading of which will show that it takes away the operation of sections 41 and 46 of the Act and so also of any custom, usage, decree, contract etc. Such rights in the scheme of the Act are not protected at all. It will be necessary to proceed on that basis only as otherwise any other interpretation will lead to serious conflict between various clauses harmonization of which is always necessary in first principles of interpretation of the Statute.

8. The word "landlord" and "tenant" has been used in this provision and no distinction has been drawn between different categories of landlords and tenants and therefore, prima facie, one would have to proceed on the basis that section 49A covers all categories of landlords and tenants. The operation of the non-obstante clause is subject to provisions of this section. Then, there is a reference to the qualified conditions which are created in the section itself which may become effective afterwards. Those conditions can be found in sub-sections (2) and (3) of section 49-A, and to some extent also in section 49B. Section 49A (3) contemplates a case of only one right. It is worthwhile noticing provisions of section 38 (6) of the Act, which provides that if in consequence of the termination of the tenancy under that section, any part of the land leased is left with the tenant, the rent shall be apportioned in the prescribed manner in

proportion to the area of the land left out. Thus, it will be seen that creation of almost new tenancy is also contemplated. The date of statutory ownership is deferred only when no proceedings are taken for termination of tenancy for bona fide cultivation. Proviso to section 49A (3) deals with the landlord who has taken to this remedy. If the tenancy is terminated fully, the provision does not operate and if it is terminated partially, it operates to the extent of termination. As far as ownership of the balance left with tenant, is concerned, it vests in him. This appears to be the scheme of the various provisions of the Act.

9. It seems that in the case of *Woman Dkulaji Rajput v. Umabai* 1970 Mh. L J 211, this facet of the question did fall for consideration before the Supreme Court. During the course of the hearing, there was some debate as to whether Umabai, respondent in the case (cited supra), was a widow or not and whether her case as a widow was considered or not. In the opening paragraph itself, there is a reference to the serving of a notice u/s 38 (2) of the Act, which applies only to widow and therefore, there does not seem to be any doubt that Supreme Court was dealing with the rights of a widow. Shri Chandurkar, the learned Advocate for the respondent has placed before me, the original papers of those proceedings in High Court from which also it is clear that Umabai was a widow and had given notice u/s 38 (2) in that capacity. In that case, while the proceedings for termination on the ground of bona fide cultivation were pending, the widow applied on 27-3-1963 for an order of eviction on the ground that the tenant had committed default for payment of rent in the years 1959-60 to 1961-63. The application u/s 30 of the Act was preceded by a notice u/s 19 (2) of the Act. The tenant had pleaded that he had acquired ownership of the land u/s 46 as from 1st April 1963 and therefore, the application was not maintainable. In this case, the Supreme Court observed as under:

In the present case on April 1, 1961, a proceeding for an order in ejectment on the ground of personal cultivation by the plaintiff was pending and until that proceeding was disposed of, the relation of landlord and tenant subsisted. Before the proceeding was disposed of, the plaintiff commenced a proceeding for an order in ejectment u/s 36 read with section 30 of the Act, relying upon the notices served in accordance with the provisions of section 19. Section 49 (1) expressly operates notwithstanding anything contained in section 41 or section 46 or any other custom, usage, decree, contract or grant. It clearly implies that so long as the proceeding pending on April 1, 1961 is not disposed of, the landlord may commence till April 1, 1963, but not thereafter a proceeding for termination of tenancy, relying upon a ground on which the tenancy may be terminated under the Act. The proviso to section 49A (1) clearly enacts that there the landlord has made such application for possession, the tenant shall, on the date on which the application is finally decided, be deemed to be the full owner of the land which he is entitled to retain in possession after such decision. It is clear that if a proceeding u/s 36 has been commenced on any of the grounds mentioned in sections 38, 39 or 39a (2) for termination of tenancy u/s 19 before March 31, 1963, the right of tenant does not arise until the proceeding

is determined in favour of the tenant. The clearest implication of clauses (i), (ii) and (iii) of section 49A (1) is that if such an application is pending the right of the tenant does not arise and that is further clarified by the proviso. If the right of the tenant to hold the land is negated in a proceeding which is pending, evidently he cannot acquire title to the land.

10. This Court had also an occasion to deal with at least some of the questions raised before me on more than one occasion, in the case of *Jankibai v. Ramu* 1971 Mh. L J 447, in the last analysis it has been held as under:

Section 49A thus is an overruling provision dealing with lands in respect of which section 46 did not operate or in respect of which a tenant had not exercised his right of purchase u/s 41 or section 46 and subject to the provisions contained in section 38 (1) would be entitled to a statutory transfer of ownership u/s 49A in respect of the land which has remained with him after the final decision of the application for resumption of land u/s 38 (I) filed by the widow.

11. In the final analysis it was held that in that case as the proceeding for personal cultivation were terminated on 5-3-1965 during the lifetime of widow and as the same was pending on 1-4-1963, the ownership of the remainder land stood transferred to the tenant, since the widow had chosen to apply for possession u/s 38 (1) and thereby creating an embargo on the right of her successor-in-title from availing any right u/s 38 (2). Useful reference may also be made in this connection to the case of *Namdeo v. Kesharbai* 1974 Mh. L J 291. In this case, the Supreme Court decision in *Wamans* case (died supra), has been referred to and it has been held that Supreme Court was dealing with the case of a widow. The conclusion to which this Court arrived was that date of compulsory ownership is deferred only in case notice for resuming the land for personal cultivation has either not been given or after giving such notice, no proceedings were commenced. Once this is done, the question of ownership of landholders even of such categories is referable only to the date on which the proceedings were finally terminated and thus, the ownership of the remaining land, if any, after termination, also vests with the tenant even during their lifetime and before happening of specified events.

12. My attention was also invited to the Division Bench decision of this Court given in Special Civil Application No. 658/72 and 659/72 decided on 16-3-1978. These petitions were referred by the Single Bench of this Court to the Division Bench, as it involved some controversy on point of importance. Before the Division Bench also, it was urged that in case of a widow, the ownership of the land would stand transferred only after expiry of one year of her death and that in terms of section 46, the land would continue to belong to the widow not only during her lifetime, but also thereafter for a further period of one year. Division Bench has negated this contention keeping in view the letter and spirit of section 49A of the Act and has held that the relationship of the landlord and tenant vis a vis a widow comes to an end on the date on which application for bona fide cultivation has finally decided. In terms, it has been held that section

4JA applies to the pending proceedings of all landholders including a widow and other expected category.

13. Shri. Deshpande, the learned counsel for the petitioners, has seriously urged firstly that the Supreme Court in Waman's case (cited supra), was not dealing with the case of a widow and that this interpretation would create many difficulties is not in consonance with the scheme and purpose with which section 49A was brought into force. Relying chiefly and independently on clause 49A (1) (i), it was urged that it will not be proper to assume that the word "landlord" included all landlords and the word "tenant" included all the tenants. It was also urged that reference to this type of landlords in sub section (3) of section 49A is with relation only to the category and not to their entitlement. It is also urged that no previous decision has considered subsection (3) of section 49A. Having heard Shri Deshpande on somewhat details and examined these decisions, it does not appear to me that this particular sub-clause was not before the Supreme Court and this Court at the time of passing judgment on the scheme and purpose of section 49A. All these decisions are binding on me.

14. I may also make a passing reference to the case Vikram v. Hanumant Special Civil Application No. 886 of 1971 decided on 12-1-1977 (1977 Mh. L J Note 49). In that case the landholder had applied for possession on 17-9-1964 u/s 19 read with section 30 of the Act and on that day, the proceedings for termination of tenancy u/s 38 were pending and were not even finally decided. It was held that such an application was not maintainable after 1st April 1963.

15. Thus, applying the ratio of the decisions given in the aforesaid cases, it appears to me that ultimate conclusion of the Maharashtra Revenue Tribunal holding that the application for termination of tenancy u/s 19 read with section 30 of the Act filed on 12-1-1970, under the circumstances, was plainly not maintainable, is correct.

16. In the result, the petition is dismissed; but under the circumstances with no order as to costs.