

(1958) 07 BOM CK 0002

In the Bombay High Court

Case No : Special Civil Application No. 800 of 1958

Vishnu Kondiba Sapte

APPELLANT

Vs

Nathu Mahadev Pradhan

RESPONDENT

Date of Decision : 11-07-1958

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1958) 60 BOMLR 1146

Hon'ble Judges : V.S. Desai, J;Datar, J

Bench : Division Bench

Judgement

Datar, J.—Survey Nos. 14/1 and 14/2 of Pisavare, Taluk Bhor, originally belonged to Shripati Buvaji Khopade and Sadu Shripati Khopade. Vishnu Kondiba Sapte was at the material time the protected tenant, having been upon the said lands for over 20 years. On August 16, 1949, the original owners and the landlords? Khopades, executed a sale-deed in respect of the said lands in favour of Nathu Mahadev Pradhan and others for a consideration of Rs. 5,000. After taking the aforesaid sale-deed, Nathu Mahadev Pradhan and others (who will be hereafter called purchasers) attempted to take possession of the lands from the protected tenant, Vishnu Kondiba Sapte. The protected tenant, however, resisted their attempts and filed a wahiwati suit being wahiwati suit No. 6/1949 for an injunction restraining the purchasers from causing obstruction to his enjoyment and possession. The injunction asked for by him was granted to him under the Mamlatdars Courts Act. The order of the Mamlatdar was confirmed by the Prant Officer in revision. Thereafter on January 19, 1951, the purchasers gave a notice to the protected tenant terminating his protected tenancy and calling upon him not to cultivate the lands from April 1, 1952. Two suits were then filed by the purchasers for possession of the lands, but they came to be dismissed on the ground that the sale-deed taken by them was invalid.

2. When the Amending Act, 1956, introduced Section 84A in the Bombay Tenancy and Agricultural Lands Act, 1948, the purchasers made an application to

the Mamlatdar of Bhore under the said section stating that they were willing to pay a penalty of Rs. 100 and prayed that the Mamlatdar be pleased to issue a certificate that their transfer of September 16, 1949, was not invalid.

3. The Mamlatdar was of the view that from the evidence on record both oral and documentary, it was abundantly clear that the purchasers had made several attempts to secure possession of the lands from the protected tenant. He was also of the view that it was certain that the purchasers would give a notice to the protected tenant u/s 31 of the Bombay Tenancy and Agricultural Lands Act before December 31, 1956, and would apply for possession before March 31, 1957. He, therefore, held that the validation of the sale-deed would certainly result in the eviction of the tenant in actual possession. Accordingly, he dismissed the application on November 19, 1956.

4. Thereafter, the purchasers preferred Tenancy Appeal No. 53/56-57. The District Deputy Collector, before whom the appeal came on for hearing, held that the transfer in favour of the purchasers did not result in the actual eviction of the tenant and that, therefore, the purchasers were entitled to the certificate under Sub-section (2) of Section 84A. Accordingly, he allowed the appeal on December 28, 1956.

5. The protected tenant, thereafter, approached the Bombay Revenue Tribunal in its revisional jurisdiction. The Tribunal confirmed the order of the District Deputy Collector and dismissed the revisional application on January 27, 1957.

6. The protected tenant has now filed the present Special Civil Application under Article 227 of the Constitution.

7. It is not disputed that the sale-deed of August 16, 1949, contravened the provisions of Section 64 as it then stood, and was, therefore, void under Sub-section (5) of the said section. The sub-section at the date of the sale-deed read as "Any sale made in contravention of this Section (64) shall be void." The whole of Section 64 was amended by the Amending Act, 1956, and what was Sub-section (3) in the old Section 64 is now Sub-section (8) with some difference in the wording. The new sub-section reads as "Any sale made in contravention of this section shall be invalid." Section 84A was introduced by the Amending Act with the object of validating certain transfers which were invalid, as they contravened either Section 63 or 64 of the Act. u/s 64, a sale was invalid if, for instance, reasonable price had not been got determined, even though such sale might have been effected in favour of the tenant in actual possession thereof. Section 84A(i) validated such sale and it stated that such sale shall not be declared to be invalid merely on the ground that such transfer was made in contravention of Section 64 if the transferee paid to the State Government a penalty as stated in the said section read with the first proviso. The second proviso, however, covers a case when the transfer was made by the landlord in favour of any person other than the tenant in actual possession. The sale-deed dated August 16, 1949, in the present case, is such a transfer. But for this

proviso, such a transfer also would have been covered by the main Section 84A(1) and could not have been declared to be invalid merely on the ground that such transfer was made in contravention of Section 64. The proviso, however, acts as an exception and the transfers covered by the proviso will not be deemed to be validated, notwithstanding what is contained in the main section. It was contended that the words "shall not be deemed to be validated" created a fiction. But the fiction, such as it is, is created by the main Section 84A(1) itself. Section 64 stated that a transfer in contravention of its provisions was invalid. The employment of a fiction was found necessary when the Legislature subsequently thought of validating certain invalid transfers. The object of validating such transfer was expressed in a negative form presumably in answer to a claim for a declaration that might have been otherwise made on the ground that the transfer was invalid. What the Legislature really intended to mean by the expression "shall not be declared to be invalid" was that such transfers shall be deemed to be validated if the transferee paid to the State Government a penalty as stated in the section.

8. In the present case, the transfer of August 16, 1949, is admittedly made in favour of persons (purchasers) other than the protected tenant who is in actual possession of the lands in question. Therefore, the first part of the proviso is fulfilled. But it must also be further shown that such transfer results in the eviction of the protected tenant in actual possession before he can say that such transfer shall not be deemed to be validated.

9. The Mamlatdar referred to the several attempts made by the purchasers to take possession of the lands from the protected tenant. He held that the validation of the sale deed would result in the eviction of the tenant in actual possession. We asked the learned advocate for the applicant to file a certified copy of the sale deed in the present proceedings. The same has been now produced before us. From the recitals in the sale deed, it is clear that it was settled between the vendors and the purchasers that the purchasers should take possession of the lands after the crops then standing were removed from them. It is true that the sale deed mentions one Dagadu Kondu Shelar as the tenant who has taken the lands for cultivation from the vendors. But this is not a true statement as it has been now held that the applicant has been upon the lands as a protected tenant for the last several years. What is however to be noted is that under the sale deed it was expressly stated that purchasers should take possession of the lands after the agricultural season was over. Thus it is clear that the purchasers want to take possession of the lands after obtaining the Mamlatdar's certificate that their transfer is not invalid. Their transfer, therefore, can be regarded as resulting in the eviction of the protected tenant in actual possession.

10. From the wording of the proviso, it seems that transfers in derogation of the rights of the tenants in actual possession are not to be validated. Even a tenant, though not in actual possession before or at the date of transfer, is not to be

affected by such transfer, if it is proved that he has been unlawfully evicted from the land and if he has applied for possession thereof under Sub-section (1) of Section 29 within two years from the date of his eviction from the land. Such a tenant is regarded as one in actual possession for the purpose of the proviso, and a transfer made to a person other than such tenant though not in actual possession cannot be validated.

11. Mr. Patwardhan argues that, so far, the transfer has not resulted in the eviction of the tenant in actual possession, and therefore the purchasers at any rate for the present are entitled to the certificate under the main Section 84A(1) read with Sub-section (2). He says that if after obtaining the certificate the purchasers apply to evict the tenant and obtain an order for eviction, their transfer may then be hit by the proviso and therefore should not be deemed to be validated. We do not think that the proviso bears out such a construction. It is true that the words in the proviso are "if any such transfer. results in the eviction of the tenant." But no transfer by itself results in the eviction. The eviction would be the result of proceedings taken on the strength of such transfer. In our view, the words "results in the eviction" must, in the context in which they appear, mean "may or is likely to result in the eviction."

12. In the present case there cannot be any doubt about the intentions of the purchasers in taking the sale deed from the original owners. It is obvious that they want to take proceedings for evicting the protected tenant after obtaining the necessary certificate. It is in this sense that their sale deed may be regarded as resulting in the eviction of the tenant. If a sale deed taken after the unlawful eviction of a tenant shall not be deemed to be validated, because, he is still deemed to be in actual possession, it is equally clear that a sale deed taken for the purpose of evicting a tenant, who is already in actual possession, shall also not be deemed to be validated. The object of the two clauses : "either after the unlawful eviction of such tenant or "results in the eviction of the tenant" seems to be that the possession of the tenant is of paramount consideration, and his rights are not to be affected at all by any transfer not made in his favour.

13. We, accordingly, make the rule absolute, set aside the orders of the Tribunal and the District Deputy Collector and restore that of the Mamlatdar with costs throughout.