

(1997) 09 BOM CK 0065
In the Bombay High Court
Case No : Writ Petition No. 4360 of 1984

Vishnu Sitaram Patil

APPELLANT

Vs

Gopal Avaba Asurlekar, since deceased by his heirs and others

RESPONDENT

Date of Decision : 23-09-1997

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 15, 29, 32
Constitution of India, 1950 — Article 227

Citation : (1998) 2 ALLMR 587 : (1998) 2 BomCR 635 : (1998) 1 MhLj 49

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : N.V. Bandivadekar, for the Appellant;

Judgement

S.S. Nijjar, J.—This petition under Article 227 of the Constitution of India has been filed with the prayer for quashing and setting aside the order passed by the Maharashtra Revenue Tribunal, hereinafter referred to as "the M.R.T.", in Revision Application No. M.R.T.- K.P. 66 of 1983 dated 17th August, 1984 wherein the M.R.T. has confirmed the judgement and order dated 13th December, 1982 passed by the Sub-Divisional Officer, Karveer Division, Kolhapur, in Tenancy Case No. 7 of 1976. The only controversy involved in this case is as to whether the Collector has jurisdiction to entertain an application u/s 84 of the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as "the Act" when at the same time the remedy u/s 29 of the said Act is available to the applicant. This controversy arises from the few admitted facts.

2. The petitioner is the owner of the suit lands being agricultural lands at village Mane, Tal. Karveer, Dist. Kolhapur comprised in Survey No. 41 gat No. 73 admeasuring 2.05 hectares and Survey No. 38/2 gat No. 77 admeasuring 5.16 hectares. These lands were In possession of the respondent as tenant on the Tillers day. Consequently proceedings were started u/s 32-G of the Act by the Tahsildar. Notice was given to the tenant to remain present on 25th November,

1959. He, however, did not remain present. His name was called thrice during the day but neither he nor his Counsel were found to be present. Statement was recorded of the Peon as also of the petitioner on the basis of which the purchase was declared to be ineffective. The petitioner was said to be in cultivating possession since 1959. Further proceedings u/s 32-P of the Act were taken in view of the order u/s 32-G of the Act. Again notice was issued to the respondent to remain present on 15th June, 1962. Again the respondent was not present. After enquiring into the matter the IInd Additional Mamlatdar and A.L.T. No. III on 15th June, 1962 passed an order u/s 32-P holding that the petitioner is entitled to an order of summary eviction of the respondent from the suit land. Findings of fact were also returned by that Court to the effect that inspite of notice respondent had remained absent in proceedings u/s 32-G of the Act. He had not applied for review of the said order. It was also held that the petitioner had no other means and he needed the suit lands for his bona fide personal cultivation. It was also held that the respondent had given up the possession of the suit land four years back and the petitioner is cultivating the suit lands. On the basis of the aforesaid orders, the petitioner applied to the village authorities to delete the name of the respondent from the revenue records. Consequently the name of the petitioner was entered into the revenue records by mutation Entry No. 145. The aforesaid entry was certified after observing the procedure under Maharashtra Land Revenue Code. The respondent was all along aware of the proceedings u/s 32-G and 32-P of the Act. He was also aware about the mutation entry. The petitioner and the respondent both belong to the same village. Having lost the possession in 1959 the respondent seems to have done nothing till 6th December, 1962. On that day he filed an application u/s 84(c) of the Act before the Sub-Divisional Officer, Karveer Division, Kolhapur being Tenancy Case No. 7 of 1976. It was contended that since last several years he is cultivating the suit lands as a tenant but in April, 1975 petitioner unauthorisedly entered into the lands and started cultivating the same. It was further contended that in October, 1976 he secured 7/12 extracts of the lands and, therefrom came to know that the petitioner has managed to get the name entered for several years. Therefore, he sought summary eviction of the petitioner from the suit lands. In December, 1976 Sub-Divisional Officer passed an order directing the Tenancy Aval Karkun, Karveer to record the evidence of both parties and submit report. Evidence was recorded on 18th June, 1977 and a report was made by the Tenancy Aval Karkun, Karveer. The matter was, however, remanded back to the Tenancy Aval Karkun for a fresh report. On 13th April, 1981 the Tenancy Aval Karkun resubmitted the report and stated that the respondent had cultivated the lands till 1972-73. It was also reported that orders under sections 32-G and 32-P of the Act had not been executed finally and that the respondent had been dispossessed by the petitioner from the suit lands otherwise than by due process of law. Relying on the report of the Tenancy Aval Karkun Sub-Divisional Officer allowed the application of the respondent filed u/s 84(c) of the Act. It was held that respondent was a tenant in the suit land and was in possession till 1973-74. Petitioner was held to be in wrongful possession of the lands and was ordered to

be summarily evicted. The Sub-Divisional Officer also held that the petitioner failed to prove service of notices upon respondent in proceedings under sections 32-G and 32-P of the Ad. Thus it was held that the respondent was dispossessed by the petitioner otherwise than by due process of law. The contention raised by the petitioner that the remedy u/s 84(c) of the Act was not open to the respondent was rejected. The petitioner filed revision before the M.R.T. This revision was rejected by an order dated 17th August, 1984. The only submission made by the Counsel for the petitioner is that the order of the M.R.T. confirming the earlier order of the Sub-Divisional Officer is against the provisions of sections 29 and 84(c) of the Act.

3. I have perused the orders of the Sub-Divisional Officer and also the order of the M.R.T. A perusal of the order of the Sub-Divisional Officer shows that he has upset the findings of fact given in the earlier proceedings u/s 32-G and 32-P of the Act and held that the notices were not properly served on the respondent. It is also observed that the petitioner has not obtained legal possession of the suit lands by executing the orders passed by the Additional Mamlatdar u/s 32-P of the Act. Thereafter the submission made by the petitioner with regard to the applicability of section 84 of the Act is considered. The judgement of the Supreme Court in the case of Vallabbhai Nathabhai Vs. Bai jivi and Others, was cited before the Sub-Divisional Officer. This authority was, however, distinguished on the spacious ground that in the present case the respondent was claiming possession as a tenant of the suit land. A perusal of the judgement of the Supreme Court would clearly show that a surrender by a tenant can only be valid and binding on him if it was in writing and was verified by the Mamlatdar whose duty it is to ascertain whether the surrender was voluntary and was not under pressure or undue influence of the landlord. But once the surrender satisfies these two conditions it has the same effect as the termination of tenancy; and the landlord becomes entitled to retain the land of which possession is delivered to him by the tenant. In cases, however, where the surrender has not satisfied the two conditions, even if it is voluntary, it is no surrender and, therefore, there is no termination of relationship of a landlord and tenant, and the tenancy still continues and the tenant is entitled to retain possession and therefore to its restoration. It is held by the Supreme Court that whereas sub-section (2) of section 29 is confined to an application by a landlord for possession from his tenant, sub-section (2) is not so confined and therefore a tenant can apply for possession against any one including the landlord. But for such an application the condition is that he must be one who is "entitled to possession" of the land in question under any of the provisions of this Act. Thus it is held that in all cases where a tenant is entitled to possession of land under any of the provisions of the Act, he has a right u/s 29(1) to apply to the Mamlatdar for restoration of possession against any one including the landlord and it is the duty of the Mamlatdar, if satisfied that the tenant is entitled to such possession under any of the provisions of the Act, to restore possession to him. The Supreme Court further went on to hold as follows:

The words "any person unauthorisedly occupying or wrongfully in possession of any land" in section 84, no doubt, are words of wide import and would include a landlord who is in unauthorised occupation or is wrongfully in possession. A landlord who under an invalid surrender is in possession of the land is no doubt a person in unauthorised occupation or is wrongfully in possession. But then section 84 in express terms limits its application to three types of cases only, namely where (a) the transfer or acquisition of the land etc. is invalid under the Act, or (b) the management of which has been assumed under the Act, or (c) to the use and occupation of which he is not entitled under the provisions of the Act and the said provisions do not provide for the eviction of such person. The case where the surrender of lease is invalid for want of writing and verification u/s 15 would fall only under Clause (c). This condition shows that while giving drastic powers of summary eviction to an administrative officer the legislature was careful to restrict his power firstly because the result otherwise would be to deprive the person evicted u/s 84 of his remedy of appeal before the Collector which he would have if the order were to be passed u/s 29(1) and secondly because it would enable a tenant to by-pass a judicial inquiry by the Mamlatdar u/s 29(1) by directly applying to the Collector u/s 84. Such a result could not have been intended by the legislature. Therefore, the contention that sections 29(1) and 64 provide alternative remedies and a choice to the tenant cannot possibly be correct."

In spite of the clear enunciation of law by the Supreme Court the Sub-Divisional Officer held that the ratio of the aforesaid judgement is not applicable to the facts of the present case. The same submission was made before the M.R.T. The M.R.T. has held that the landlord had not obtained possession under the orders of the Court. Thus without touching the merits and demerits of those orders it has been held that if the tenant challenge the position of the landlord on the ground that the landlord had obtained forcible possession, in such circumstances the tenant's application u/s 84 of the Act would be maintainable. It is further held that where there are no orders of the competent Court about handing over possession to the landlord on the basis of the termination of the tenancy by the tenant then he would be a deemed purchaser and in that case the ruling cited by the petitioner could not be made applicable to the facts of the present case. It is held that if the tenant becomes deemed purchaser and possession is lost, might be taken by third party or might be taken by the former landlord, the settled law is that after the tillers' day there is no relationship of landlord and tenant and if the possession is taken by the former landlord that former landlord becomes trespasser and as such u/s 84 of the Act the application of a deemed purchaser tenant even against the former landlord is maintainable. The aforesaid observations are clearly against the law laid down by the Supreme Court. In the present case it has clearly been held by the Competent Court that the purchase by the respondent is ineffective. If that is so, without upsetting the aforesaid orders it could not be held that the respondent has become a deemed purchaser. In the impugned order the M.R.T. has clearly held that it is not going into the

merits or demerits of the orders passed in proceedings under sections 32-GP and 32-P of the Act. The Sub-Divisional Officer has declared the petitioner to be in unauthorised possession merely on the ground that the possession has not been taken in execution of the orders passed u/s 32-P of the Act. None has cared to examine the case of the petitioner that he has been in possession of the suit lands since 1959. Nobody has also cared to take note of the fact that in the mutation entry the name of respondent has been deleted and that of the petitioner has been recorded. This mutation entry has been certified as required under the Maharashtra Land Revenue Code. The M.R.T. has also erred in not paying any heed to a Division Bench judgement of this Court in the case of Durgaben Manibhai Makanji v. Moria Bavla, 1955 58 BLR 451 wherein it is clearly held as follows.

"A landlord obtained an order from the Mamlatdar u/s 29(2) of the Bombay Tenancy and Agricultural Lands Act, 1948, for possession against his tenant on the allegation that the tenant had surrendered his lease. The tenant thereafter applied to the Collector u/s 84 of the Act for summary eviction of the landlord alleging that notwithstanding the order of the Mamlatdar, he, in fact, had continued to be in possession but that he was dispossessed by the landlord. The Collector passed an order u/s 84 of the Act summarily evicting the landlord.

This Court held that the Collector had no jurisdiction to proceed u/s 84 of the Act and that if the tenant had any grievance against the landlord, he should approach the Mamlatdar u/s 29(1) of the Act.

It is only in the absence of a provision in the Bombay Tenancy and Agricultural Lands Act, 1948, for the eviction of an unauthorised person that the Collector has the jurisdiction and the power to order summary eviction u/s 84 of the Act."

In view of the above I find that the orders passed by both the Sub-Divisional Officer and the M.R.T. are against the provisions of the Act. The remedy, if any, of the respondent was to make an application u/s 29 of the Act. He obviously could not make the said application as the limitation provided u/s 29 is two years from the date of dispossession. It has nowhere been proved by the respondent that he was dispossessed on a particular date. On the other hand it is the claim of the petitioner that possession was handed over by the respondent to the petitioner way back in 1959. In order to avoid being thrown out by the Court on the ground of limitation only the respondent has misused the remedy u/s 84(c).

4. In view of the above the writ petition is allowed. Rule is made absolute in terms of prayer Clause 19(iii) with no order as to costs.

5. Petition allowed.