

(1977) 11 BOM CK 0045
In the Bombay High Court
Case No : Spl. C.A. No. 2559 of 1971

Vithal Babaji Patil

APPELLANT

Vs

Bholanath S. Navalkar, since deceased by his heirs Shrinath
S. Navalkar and others

RESPONDENT

Date of Decision : 30-11-1977

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 27, 70(b), 88, 88(2)
Constitution of India, 1950 — Article 227

Citation : (1979) MhLj 122

Hon'ble Judges : S.B. Bhasme, J

Bench : Single Bench

Advocate : G.R. Rege for M/s. R.G. Samant and Co, for the Appellant; H.B. Shah for respondents 1-A to 1-C, 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

S.B. Bhasme, J.—This is a dispute between the parties u/s 70 (b) of the Bombay Tenancy and Agricultural Lands Act. The petitioner made an application for a declaration that he was the lawful sub-tenant of the Respondents. The Tahsildar granted the application and made a declaration in his favour. The order was confirmed by the Appeal Court. However, when the respondents approached the Maharashtra Revenue Tribunal, the learned Member of the Tribunal took a different view. He came to the conclusion that the petitioner was personally cultivating the lands as alleged by him for the last several Years. But his long cultivation will not give him any right to protection of the Bombay Tenancy Act. The revisional application filed by the respondents was allowed and the declaration about sub-tenancy was set aside.

2 Mr. Rege, who appears for the petitioner, submitted that the case involves an interpretation of the relevant provisions of the Bombay Tenancy and Agricultural Lands Act and the Tribunal has committed an error of law while construing section 88 (2) of the Tenancy Act.

3 Mr. Shah for the respondents submitted that the view taken by the Tribunal about the meaning and scope of the relevant section is correct and may be confirmed.

4. For appreciating these rival contentions, it is necessary to state a few more facts.

5. It appears that the predecessors-in-title of the respondents were the original lessees who claimed some 600 acres and 27 gunthas of land from villages Mira and Bhaindar in Thana District by virtue of a lease deed executed between them and the Secretary of State on behalf of the Government. Under the terms of the lease deed dated 9-2-1905 and effective from 12-2-1889 the lessees were to hold the lands for a period of 999 years. It is not necessary to consider the other terms and conditions of the lease deed.

6. According to the Tribunal the petitioner by virtue of the sub-tenancy will not get any protection of the Tenancy Act because the sub-tenancy is not authorised in accordance with the terms of the lease. As this essential requirement u/s 88 (2) is wanting in the present case, the petitioner, as a sub-lessee, has no rights under the Tenancy Act.

7. Before amendment of section 88 by Maharashtra Act 9 of 1961 under the unamended provision contained in section 88, the provisions contained in the Tenancy Act did not apply to lands belonging to or held on lease from Government. Under the amended provision contained in section 88 certain provisions of the Tenancy Act save as otherwise provided in sub-section (2) did apply to lands belonging to or held on lease from the Government. At this stage it will be desirable to reproduce section 88 (2) of the Tenancy Act in its entirety :

"Sec. 88 (2). If any land held on lease from Government or any part thereof:

(i) is held at the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1960, by a person under a sub-lease from the lessee and is cultivated personally by such person, or

(ii) is sub-let after the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1960, by the lessee to any person for cultivation, and such sub-letting of the land or part thereof is authorised in accordance with the terms of the lease, then all the provisions of this Act except sections 32 to 32 R (both inclusive) and section 43 shall, notwithstanding any thing contained in such lease, apply to the land, or as the case may be, the part thereof, held under such sub-lease, as if the person holding it under such sub-lease were a tenant within the meaning of section 4 of this Act and the lessee were the landlord :

According to the learned Member of the Tribunal, the words "and such subletting of the land or part thereof is authorised in accordance with the terms of the lease" govern both the sub-clauses of sub-section (2) i. e. sub-clauses (i) and (ii). As the lease deed in question does not contain any authorisation about creation of sub-tenancy, the Tribunal came to the conclusion that the provisions

of the Tenancy Act will not confer any rights on the sub-tenant.

8. A careful reading of sub-section (2) sub-clauses (i) and (ii) will make it clear that the above mentioned words govern only sub-section (2) (ii) and not sub-clause (i). In sub-section (2) (i) the important words are "the land is held by a person under a sub-lease from the lessee and is cultivated personally by such person". The important words in sub clause (ii) are : "the land is sublet after the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1960 by the lessee to any person for cultivation" and the relevant words "and such sub-letting of the land, etc." must go with the words "any land is sub-let" appearing in sub-section (2) (ii). What follows thereafter will certainly be applicable to both the clauses.

9. The intention of the Legislature is clear as to why a distinction is made between the class of sub-tenants who were on the land before the date of the amendment and the class of sub tenants who came on the land for the first time after the amendment. The old section 88 excluded Government lands from the purview of the Act. The new provision extends the Tenancy Act to Government lands held on lease by others except sections 32 to 32R, The sub tenancy created after the date of the amendment was valid only if there was express authorisation to the Lease Deed. The Legislature did not want to penalise the sub tenants, who were on the land before the date of the amendment although there was no authorisation in the Lease Deed authorising the lessee to create the sub-tenancy

10. Mr. Shah, who appears for the respondents, submitted that the policy of the Tenancy Act as is clear from section 27 of the Tenancy Act was to prohibit sub-tenancy and, therefore, while interpreting sub section (2) of section 88 that fact must be borne in mind. But it cannot be forgotten that on 28-12-1948 when the new Tenancy Act was enacted, the prohibition against sub-tenancy was incorporated for the first time. Under the Bombay Tenancy Act of 1939 there was no such prohibition. Sub-tenants may have been on the land personally cultivating for several years before the introduction of tenancy enactments. It is for these reasons that the Legislature may have made a distinction between the two classes of tenants.

11. Lastly Mr. Shah submitted that the sub-tenant in the present case may have come on the land only during the last 8 or 9 years and his sub-tenancy will, therefore, be invalid u/s 27 of the Bombay Tenancy and Agricultural Lands Act, 1948.

12. According to Mr. Rege, the petitioner as the sub-tenant has cultivated the land for about 40 years. It appears that in the lower Courts the parties were not concentrating their attention on the period of time during which the sub-tenant cultivated the land. Mr. Shah wanted me to remand the proceedings for a fresh finding. I do not think that such a request can be granted at this late stage. The only ground on which the petitioner was denied the relief by the Maharashtra

Revenue Tribunal was the incorrect interpretation of the relevant provisions contained in section 88 of the Tenancy Act. All other findings are recorded in favour of the petitioner. Once the error is corrected, then the order passed by the Tahsildar and the Appellate Court will have to be restored.

13. Mr. Shah also argued that this is not a fit case for interference under Article 227 of the Constitution of India.

14. Once there is an error of law apparent on the face of the record and injustice is shown to be done to the petitioner, this Court will have to exercise its powers under the Constitution and do justice.

15. In the result the application succeeds and the order passed by the Tribunal is set aside and the orders passed by the Tahsildar and Appellate Court are restored. Rule is made absolute with no order as to costs.