Jaiwant Narayan Maind Vs Dattatraya Jagannath Lale

Court: Bombay High Court

Date of Decision: Jan. 18, 1989

Acts Referred: Bombay Tenancy and Agricultural Lands Act, 1948 â€" Section 32G
Bombay Tenancy and Agricultural Lands Rules, 1956 â€" Rule 17(2)

Citation: (1990) 1 BomCR 252

Hon'ble Judges: Sharad Manohar, J

Bench: Single Bench

Advocate: S.S. Ninave and M.V. Sali, for the Appellant; R.G. Ketkar and R.N. Dhorde, for the Respondent

Judgement

Sharad Manohar, J

1. This petition arises out of the proceedings held by the Tenancy Court u/s 32-G (as also u/s 32-P) of the Bombay Tenancy and Agricultural

Lands Act, 1948.

2. The land in question is Survey No. 148/8A admeasuring 1 Acre, 26.5 Gunthas (pot kharaba 1/2 guntha), situate in village Kilkvi, Taluka Bhor,

District : Pune. There is no dispute that the present petitioner admittedly being a tenant in respect of the suit land has been cultivating the land as

such from the year 1940 or there about. There is further no dispute that on 1-4-1957 he was a tenant cultivating the land and as such became the

owner of the same. The proceedings u/s 32-G were held by the Agricultural Lands Tribunal (hereinafter, the A.L.T.) and notices were issued to

the parties. The order in that behalf was passed by the A.L.T. on 24-09-1960. Before passing the order, a statement made by the tenant appears

to have been recorded. The original statement is before me. It shows that the statement was not recorded on oath. I am referring to this fact

because this entire statement and the order passed thereon is surrounded and clouded in great haze and mystery. Rule 17(2) makes a mandatory

provision that the statement of the tenant has got to be recorded to oath. The original statement, which forms part of the record and which is

produced before me, shows that it was not recorded on oath. The statement is mysterious in another way as well. In the statement the tenant has

categorically stated that he has been cultivating the land for the last 20 years (meaning thereby, from the year 1940 or thereabout). He further

states as follows :---

I can purchase this land and can pay price into 12 installments.

But what is attributed to him as having been stated by him further is that he was not willing to purchase the land and that he did not care as to what

happened to the suit land. It is further stated in the statement that the statement, was read to him and was explained to him. Below the statement his

thumb-impression is taken. The order was passed by the Mamlatdar on the same date, 24-09-1960, in which he observed that the tenant was

unwilling to purchase the land. He has not referred to the earlier part of his statement, which states that he was cultivating the land for the last 20

years, that he could purchase the land and that he could pay the price into 12 installments, which part is reconcilable with the latter portion of the

statement that he was not willing to purchase the land. The earlier portion is not referred to by the Mamlatdar. He has referred only to the latter

portion in which the tenant is alleged to have stated that he was not willing to purchase the land. Making this observation, the A.L.T. has stated that

the purchase has become ineffective and has ordered that an order in Form XXVI should be issued and the proceeding should be closed.

The order issued in Form XXVI is part of the record, which is produced before me. All that it showed is that as per the order a copy of the order

was to be sent to the tenant and the other to the landlord. There is nothing on record to show that the order, meaning thereby the intimation of the

order, was actually given to the tenant, far less that it was received by the tenant. If it was sent, it would have been sent by Registered Post and

Postal acknowledgment would have been received. There is no such postal acknowledgment on record. The tenant has been crying from the

house-top that he has never received the order nor has any intimation of the order. As will be presently pointed out, the entire subsequent conduct

of the parties shows that what the tenant is asserting today may be quite true viz, that he may never have received the intimation of the order. I will

presently examine that question.

3. What happened thereafter is of the most crucial character.

For the full period of 20 years the respondent/landlord (initially his father, the original landlord, and after his death, his son, the present

landlord/respondent) did not move his small finger to get possession of the land by making an application u/s 32-P of the Tenancy Act. Not only

this, but the point is that he has gone on receiving rent from the tenant. I do not wish to express any opinion at this stage on the question as to what

is the result of the fact that the rent was received by the landlord. Fact is that he went on receiving rents and there are rent receipts on record

produced by the tenant at least till the year 1967. He has also produced assessment receipts till the year 1976. There is no dispute that he

continued in possession right till 1980 and he continues to be in possession even till this date. Contention of the present respondents is that right

from the date of the order passed in September 1960, the present petitioner became a rank trespasser on the land. He has further filed an Affidavit

in this Court that no rent was received by the landlord from the tenant at any time after the passing of the order dated 24th September, 1960.

Evidently, this is a blatantly false statement made by this respondent on oath. Mr. Ketkar, appearing for the respondent, who argued the case of

the respondent very strenuously, was unable to disagree with the Court when it observed that this is a false plea. He was unable to state that the

rent receipts which are very much there on record were not the receipts for rent received from the tenant. In spite of this position, statement is

made that no rent is received. As stated above, as to what is the effect of the fact that the rent was in fact received by a person who on the

landlord"s own showing, was a rank trespasser on that date is a different story. Fact remains that such a false statement is made by the landlord

knowing the same to be false. I make it clear that I do not want to decide this question on the basis or by virtue of the influence of the fact that such

a false statement is made. Point is that the tenant has gone on paying rent and both parties have conducted themselves vis-a-vis the land in such a

manner as in the order dated 24th September, 1960 did not ever exist and this position continued right till the year 1980.

4. On 15-10-1980 a Notice was received by the petitioner/tenant from the A.L.T. for proceedings u/s 32-P for restoration of the land to the

landlord. On 27-11-1980 the present petitioner/tenant filed an Appeal to the Addl. Collector making a grievance that the order dated 24-09-1960

was never intimated to him. He stated that he did not want to make such a statement at all viz. that he was unwilling to purchase. This contention

was accepted by the Addl. Collector, but while allowing the appeal he observed that the intimation of the order dated 24-9-1960 was issued to

the present petitioner/tenant. But even the Addl. Collector has not stated that the intimation was ever received by the tenant. The appeal was

allowed by him and he passed the order remanding the matter to the A.L.T. for fresh inquiry.

5. Against this order, Revision Application was filed by the respondent to the Maharashtra Revenue Tribunal (hereafter, the M.R.T.) and the

M.R.T. has allowed this Revision Application has set aside the order of the Addl. Collector and has restored the order of the A.L.T. dated 24-9-

1960.

The present petition is filed by the petitioner/tenant against the said order of M.R.T.

6. In the meantime, the A.L.T. has done something further which appears to be further strange, at least prima facie. As stated above, Notice was

sent to the tenant by the A.L.T. on 15-10-1980 for proceedings u/s 32-P and the tenant has filed an Appeal against the original order u/s 32-G

(dt. 24-9-1960) to the Addl. Collector on 27-11-1980. In spite of the pendency of this appeal, the A.L.T. proceeded to continue with the 32-G

proceedings and in those proceedings the protestations of the tenant were disregarded. The tenant stated that the landlord has deceived him and

has obtained his statement which was relied upon by the Tribunal by fraud. This contention was overlooked by the A.L.T. Even the fact that the

Appeal u/s 32-G proceedings was pending was ignored by it. So much of the period as of 20 years, 1960 to 1980, has elapsed during which the

A.L.T. has not moved its small finger to institute proceedings u/s 32-P. But when the Appeal was filed against that order, the A.L.T. hurried to

pass the order dated 22-10-1981 ignoring that the Appeal was pending against that order. It may be true that no formal order of stay was passed

by the Addl. Collector; at least no such order is to be found from the record. But it is not disputed that normally when an Appeal is filed, the

authorities such as the Tahsildar do not proceed with the matter until the Appeal is disposed of. At least they give time to the party concerned to

obtain stay from the appellate authority. In this case the Appeal was very much pending. The A.L.T. had waited for a sizable period of 20 years,

but once the appeal was filed it refused to wait even for a few months more and on 22-10-1981 order was passed by the Tribunal that the

possession of the land should be taken from the tenant and should be handed over to the respondent/landlord.

7. In the context of the above facts, Mrs. Ninave, the learned Advocate for the petitioner, argued that---

(a) in the instant case, the view of the Tribunal that the Appeal to the Addl. Collector was barred by time is unsustainable. According to her, the

intimation of the A.L.T."s order dated 24-9-1960 was never received by the tenant and hence, it was impossible for him to file an Appeal against

that order. The fact that it was an appealable order was not disputed;

(b) the entire subsequent conduct of the parties, of the landlord and of the tenant alike, cries hoarse that the tenant must not have been aware of

that order at all. The tenant continued paying rent, the landlord contained accepting the rent. He even went on issuing rent receipts stating that it

was the rent received from the tenant. The land revenue is paid by the tenant and the receipts till the year 1967 are produced by him. Normally

such a thing would not have happened if both the parties knew that the tenant was not entitled to continue in possession of the land;

(c) the impugned statement of the tenant was recorded by the A.L.T. in a thoroughly illegal manner.

In this connection, she invited my attention to Rule 17(2) of the Tenancy Rules, which provision unequivocally mandates that the tenant''s statement

must be recorded by the A.L.T. on oath. Even a cursory glance at the statement, the original of which is there before me, shows that it was not

recorded on oath. Moreover, she contends, there is inherent inconsistency in the statement. As stated above, the earlier portion of the statement

show that there was not any earthly reason why the tenant should not have been willing to purchase the land. He states that he has monies to

purchase the land in 12 installments. He states that he is cultivating the land for the last 20 years and in spite of this, the last portion of the statement

goes to show that he is unwilling to purchase the land, come what may;

(d) the tenant was present on the date in question 24-9-1960, when his statement was recorded by the Tahsildar in his own way. But there is

nothing on record to show that the order which appears to be dated 24-9-1960 was passed in his presence.

(e) Having regard to this entire position, it is her argument, that it was incumbent upon the Tahsildar to give intimation to the tenant about the

passing of the order and if he gave the intimation, the factum of the receipt of the intimation must be established from the material on record. In the

present case the tenant has been stating that he never received the intimation. There is nothing on record to show that any intimation was in fact

sent. All that we find from the record is that the A.L.T. directed the intimation to be sent to---

(i) the tenant;

(ii) the landlord.

Whether the intimation was in fact sent or not is anybody''s guess. The only way in which the fact of service of intimation could be proved was by

production of postal acknowledgement. Not only that no such postal acknowledgement is any where on record, but even the Register of the

Tahsildar showing that any such intimation was sent by post is not on record. While referring to the arguments of Mr. Ketkar, I have referred to the

provision of section 114 of the Evidence Act which was invoked by the learned Counsel. But I may state at this stage itself that there is no

foundation for the plea based upon the presumption u/s 114 of the Evidence Act, because the very factum of sending intimation by post is not

proved at all nor is the factum that any employee of the A.L.T. carried out the order of the A.L.T. is on record.

(f) According to Mrs. Ninave, even in the case when the tenant is present, intimation is necessary. That is because the very Form XXVI, which is

referred to by the Tahsildar postulates that intimation of the order should be sent----

(i) to the tenant;

(ii) to the landlord.

The Form constitutes part of the Rule and the Rule constitutes part of the statute. This means that is the statutory requirement that the intimation of

the order should be sent to the tenant, whether he is present or not. According to Mrs. Ninave, the judgment of a learned Single Judge takes the

same view. I will presently examine the said judgment.

In short, the submission are that---

(a) no valid lawful statement of the tenant has been recorded by the A.L.T. on 24-9-1960 and hence the order passed on the basis of the nature of

the statement recorded by the A.L.T. is an illegal order;

(b) the appeal was not barred by time at all because the period of limitation will start from the date of the receipt of intimation and since the

intimation is not received at all, there could exist no bar of limitation;

(c) in any event, this was a fit case for condonation of delay, because use the order is shrouded in culpably suspicious surroundings.

8. Mr. Ketkar, appearing for the respondent, on the other hand contends :-

(a) that both the courts, Additional Collector as well as the M.R.T. have found that intimation was ordered to be issued and hence, there must arise

a presumption u/s 114 of the Evidence Act that it was issued by the office of the A.L.T. and that it was received by the tenant;

(b) that intimation was not necessary at all, because intimation is necessary only when the tenant makes default in making appearance before the

Authority and the order against him is passed in his absence. He relied upon the unreported judgment of Palekar, J, where according to him it was

held that intimation was not necessary in such cases :

(c) that in this view of the matter, the petitioner"s Appeal to the Addl. Collector was very much barred by limitation. According to him, there exist

no circumstance for condonation of delay and hence the order passed by the M.R.T. was a perfectly valid order.

I cannot accept Mr. Ketkar contention. In my opinion, the three arguments of Mrs. Ninave summarised above must be accepted and hence, the

order passed by the M.R.T. cannot be sustained.

9. In the first place, it is a mandatory provision contained in Rule 17(2) of the Tenancy Rules that when the A.L.T. records the statement or the

tenant about his willingness to purchase the land, the statement must be one recorded on oath. It is un-understandable as to why the statement is

not so recorded. The order based upon such a statement can be described as a nullity. The order passed by the Addl. Collector is therefore, quite

a correct order at least so far as the ultimate conclusion is concerned.

The present writ petition deserves to be allowed on this short ground itself.

10. But even the other grounds urged by Mrs. Ninave has got to be accepted. It cannot be said in the instant case that the limitation for filing the

Appeal even started in the context of the facts in the instant case. The judgment of Palekar, J., the substance of which is reported in 1967 15 TLR

34 (taken from the judgment in Spl. C. A. 1101 of 1965, decided on 17-1-1966) Ganu Laxman Hebbalkar v. Shankar Virupaksha, does not help

Mr. Ketkar at all. That was not a case where no intimation of the order of the A.L.T. was received by the tenant and where still, the Appeal was

held to be barred by limitation. That was a case where the tenant admittedly made a statement about his unwillingness to purchase. Pursuant to that

statement an order was passed. The tenant never complained that no intimation of the order was received by him. In fact the judgment states that in

pursuance of the statement even an order u/s 32-P of the Tenancy Act was passed by the A.L.T. evicting the tenant summarily. Even this order

was intimated to the tenant. No Appeals though provided, was preferred from that order. The landlord was even put in possession of the land in

question. It was only thereafter that the tenant filed an application to the Collector for recovery of the possession back to him. The Collector

treated that application as a Revision Application and set aside that order u/s 32-P holding that the order passed against the tenant u/s 32-G was

not communicated to the petitioner and further, that the description of the land in the order was wrong. The M.R.T. set aside the order of the

Collector holding that the petitioner''s application to the Collector was barred by limitation and hence the Collector''s Order was set aside by the

M.R.T. The judgment was delivered by this Court dismissing the Special Civil Application. Neither the Certified Copy of the judgment nor the full

text of the judgment reported in authorised Law Reports is produced in this Court. But I am prepared to assume the correctness of the substance

of the judgment given in the above mentioned issue of the Tenancy Law Reporter. This Court held in that case that no Appeal was filed by the

tenant at all against the order u/s 32-G. This Court further held that if the application was to be treated as a Revision Application, the revisional

powers could not be exercised by the Collector after the lapse of one year. That was the case where the period of one year had already elapsed.

This Court, therefore, held that order u/s 32-G could not be revised u/s 76-A of the Tenancy Act at all.

Further, in reply to the argument that intimation of the order u/s 32-G was necessary before the limitation started running, this Court held that the

tenants had appeared in response to the Notice u/s 32-G and that their statements were recorded. No doubt this Court observed that there is no

provision in the Act that the intimation of the order holding the purchase to be ineffective has to be sent to the parties. But while making this

observation, the Court has specifically observed as follows :-

Perhaps, where the order is passed behind the back of the parties as in the present case, an intimation may be necessary to be sent to the parties

because an appeal is provided from the order u/s 32-G. But the mere fact that the intimation has not been sent will not invalidate the order which

has already been passed. In the present case, even if no written intimation might have been sent to the petitioners they must have come to know of

the order, at least when they lost possession. They could file an appeal within 60 days of their dispossession. That was not done. therefore the

Collector had no jurisdiction to interfere at a later stage.

The above observation would clearly show that if the tenant was not aware of the order. Limitation would not start running at all.

11. What is more important is that the existence of Form XXVI, which contemplates giving of intimation both to the landlord and the tenant, does

not appeal to have been brought to the notice of the Court in that case. The entire section 32-G read with the Rules and Form XXVI leaves no

room for doubt :-

(a) that the statement of the tenant must be recorded on oath :

(b) that the order passed pursuant to the statement must be communicated to both the parties.

Moreover, Mrs. Ninave was very much right in relying upon the judgment (Spl. C.A. No. 229 of 1969, decided on 7th August, 1972)2, of

another Single Judge of this Court (Vaidya, J.).

I have gone through the original judgment. It is useful setting out the following observation of this Court made in the said judgment :-

It has been repeatedly pointed out by this Court that the Mamlatdars or other authority who is called upon to make a quasi judicial decision, must

communicate his decision to the parties before the decision can be said to have been made. The Depute Collector was, therefore, clearly in error in

dismissing respondent No. 1''s appeal as time-barred in the facts and circumstances of the case.

No doubt the judgment probably did not relate to the proceedings u/s 32-G. But the principle is the same. It is repeatedly observed by this Court

that in the case in which the Tribunals or the courts under the Tenancy Act pass orders, the limitation for filing Appeal against the order could start

only from the date when the exact order becomes known to the parties. As observed above, there is no material on record to show that the order

was passed by the A.L.T. in the presence of the tenant or that it was intimated to the tenant. In fact, the entire subsequent conduct of the parties

shows that at least, according to the tenant, the judgment did not even exist. (identical is the conduct of the landlord as well). The appeal was

immediately filed by the tenant when notice was received by him for proceedings u/s 32-P of the Act. In my opinion, the latter judgment of Vaidya,

J., really holds the field in this case and not the one delivered by Palekar, J., which emanated from an entirely different set of facts and was given

under circumstances which show that the provisions of Form XXVI were not brought to the notice of this Court.

12. Even on facts, this case appears to be of an extremely suspicious character. As stated above, for reasons which are thoroughly unintelligible,

statement of the tenant was recorded without administering oath to him. The statement is intrinsically inconsistent having regard to the two portions

thereof. The landlord has gone on accepting rent from the tenant in spite of the so-called order u/s 32-G which was bound to result into the tenant

being dispossessed of the land. He did not move the A.L.T. for order u/s 32-P at any time whatsoever. If the order u/s 32-P was passed by the

A.L.T. sou motu, it can perhaps be said that the order was not barred by limitation. But if it was in pursuance of any application made by the

landlord, it will be difficult to hold that the application was within limitation. The position must result from the provisions of section 29(2) of the

Limitation Act read with the provisions of the Mamlatdar"s Courts Act. If an application was to be filed by the landlord u/s 32-P for recovery of

possession from the tenant, then that application will have to made as provided by the Limitation Act for suits and applications, because no period

of limitation is fixed by the Tenancy Act and hence, the provisions of section 3 as well as section 4 to 24 will apply.

But I must hasten to add that this would be the position only if the A.L.T. was not exercising its suo motu jurisdiction and neither of the learned

Advocates could make a positive statement on the question whether the present proceedings u/s 32-P came to be started by the A.L.T. suo motu

or in pursuance of any application made by the respondent.

13. Having regard to the above mentioned facts and circumstances, the petition succeeds. The order passed by the M.R.T. is set aside and the one

passed by the Addl. Collector is restored. The matter shall stand remanded to the A.L.T. The A.L.T. shall record the statement of the tenant on

oath so as to ascertain whether he is willing to purchase the land or not. The very fact that the petitioner/tenant has filed this writ petition shows that

he is very much willing to purchase the land. But as the procedure requires, it is probably necessary that the fact should be verified by the A.L.T.

from the statement to be made by the tenant on oath before himself. If the A.L.T. finds that the tenant is willing to purchase the land, appropriate

orders as regards the payment of compensation u/s 32-G shall be passed by the A.L.T. In the absence of the statement of the tenant about his

willingness to purchase, the law will take its own course.

However, in the circumstances of the case, there shall be no order as to costs.