(1959) 04 BOM CK 0023

Bombay High Court (Nagpur Bench)

Case No: Special Civil Application No. 359 of 1958

Vishwanath Rupchand Patil		APPELLANT
	Vs	
The Bombay Revenue Tribunal		RESPONDENT

Date of Decision: April 1, 1959

Acts Referred:

- Berar Regulation of Agricultural Leases Act, 1951 - Section 14

Citation: (1959) 61 BOMLR 1285

Hon'ble Judges: Naik, J; Mudholkar, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Mudholkar, J.
This petition raises some interesting questions arising: under the Berar Regulation of Agricultural Leases Act, 1951.

2. The petitioner before us is a tenant of field survey No. 7 of mouza Ratir tahsil Khamgaon, district Buldana, and respondent No. 4 is the landlord thereof. Sometime in December 1956 this respondent gave a notice to the petitioner u/s 9(1) of the Act, terminating the tenancy on the ground: that the respondent required the land for cultivating it personally. It may be mentioned that under the lease the petitioner was liable to pay to the respondent half share in the crops and was also liable to pay the land revenue of Rs. 51 assessed on the field. Early in January the petitioner delivered some grain to the respondent which according to the petitioner represented'' respondent No. 4''s half share in the grain. According to the petitioner he subsequently delivered half share in the kadba, kutar etc., but according to the respondent he did not receive anything beyond his half share in the grain harvested from the field.

3. After the petitioner received a notice terminating the tenancy, he made an application to the Sub-Divisional Officer, Khamgaon, under Sub-section (3) of Section

9 for a declaration that the notice given by the respondent shall have no effect. He also made two applications before the Sub-Divisional Officer, one u/s 11 of the Act for commutation of the lease money into cash and the other u/s 14 for the recovery of the excess lease money, which according to him he had paid to the respondent during the years 1953-54 to 1956-57. The applications were opposed by the respondent. Those u/s 9(3) and Section 14 were dismissed but that u/s 11 was granted and the lease money was commuted'' to Rs. 255 which represented five times the land revenue payable on the land.

4. The petitioner preferred an appeal before the Revenue Tribunal which it dismissed. He has, therefore, come up to this Court.

5. Now, in dismissing the appeal the Revenue Tribunal has come to the conclusion that Section 14 of the Act does not apply to a case where the lease money is payable otherwise than in cash. Mr. Kalele who appears for the petitioner challenges the correctness of this view. He points out that the word "lease-money" has been defined in Section 2(1) of the Act to mean anything that is payable to a landholder in money or kind by a lessee for the right to use the land, and that, therefore, that is the meaning which should be accorded to the word'' as used in Section 14 of the Act. Section 14 runs thus:

If any landholder receives by way of lease-money any amount in excess of ther lease-money payable under this Act he shall on the application of such protected lessee, be liable by an order of a Revenue Officer, to refund the excess amount recovered and to pay, as penalty, a sum not exceeding two hundred rupees, or, if double the amount of the total lease-money recovered exceeds two hundred rupees, not exceeding double such amount and such Revenue Officer may direct that the whole or part of such sum shall be paid as compensation to the protected lessee.

6. It has to be borne in mind that this section provides for the refund of excess; lease-money paid to the landholder. It uses the expression "any amount in excess of the lease money" which, in our opinion, is indicative of a payment in cash rather than in kind. The word "amount" is used more commonly in connection with cash or specie, and in the particular context it does not appear to have been used in any other sense than cash. Then the section provides for the refund of the amount. The meanings of the word "refund" are given in the Shorter Oxford Dictionary as follows:

1. trans. To pour back, pour in or out again. Now rare or Obs.

b. To give back, restore. Also absol. late ME.

2. To make return or restitution of (a sum received or taken); to hand back,, repay, restore 1553.

3. To reimburse, repay (a person) 1736.

4. absol. To make repayment 1655.

It would appear that the third and the fourth meanings are the current ones. This will be clear from the abbreviation "absol." which stands for "absolutely" used in the fourth meaning. No doubt a similar abbreviation is used in the meaning 1.b., but that is further limited by the words "late ME" i.e. late Middle English. In other words, that was the meaning which was in absolute use during that period but not so now.

7. For these reasons we agree with the Revenue Tribunal and hold that Section 14 applied only where the lease money is payable in cash and not where it is payable in kind.

8. It is true that the definition contained in Section 2(i) is wide enough to include lease-money payable in kind, but that meaning i.e. the wide meaning, is not to be accorded to the word if there is something repugnant in the context. Here by the fact that the words "amount" and "refund", which, in our opinion, refer to cash only, are used in Section 14, a repugnancy would be created if a wider meaning was given to the word "lease-money".

9. Then Mr. Kalele points out that the lease-money in terms of half share has actually been commuted into cash by the Sub-Divisional Officer by his order dated April 6, 1957, and that, therefore, the petitioner is entitled to the benefit of the provisions of Section 14. Now, the commutation made u/s 11(1) is necessarily regarding the prospective liability of the lessee, or at any rate, of the liability of a lessee which is yet to be discharged. In the instant case the liability has been completely discharged with respect to the years 1953-54, 1954-55 and 1955-56. As regards the year 1956-57, it is the petitioner''s own case that that liability has been discharged in full though according to the respondent that liability is partially discharged. Now the petitioner himself accepts the position that the liability has been discharged. Thus the mere fact of commutation would not entitle him to the benefit of the provisions of Section 14. The reason for this is that the commutation made by the Revenue Officer will only apply with respect to the undischarged liability of the lessee. Mr. Kalele, however, said that he (the petitioner) had actually made the application for commutation of the rent before the end of the agricultural1 year 1956-57, and, therefore, he should be allowed to get, the benefit of the commutation with respect to that year even though the commutation was made after the end of the year. As we have already said, the very idea of commutation was to convert one kind of liability into another, and, therefore, that conversion can be effective with respect to the undischarged liability only and not with respect to the liability which was completely discharged. The petitioner, having made an application u/s 11 to the Sub-Divisional Officer for commutation of rent, was not bound to give to the respondent his share of the crops for the year 1956-57 till the decision of the Sub-Divisional Officer. If he had not delivered the respondent''s half share before the commutation was made, he would certainly have got the benefit of that order with respect to that year.

10. For these reasons we are of opinion that the Revenue Tribunal was right in rejecting1 the petitioner''s appeal. Accordingly we dismiss this petition and discharge the rule. Costs of this petition will be borne by the petitioner.