

(1974) 09 BOM CK 0018

Bombay High Court (Nagpur Bench)

Case No: Second Appeal No. 199 of 1968

Shri Gajanan Maharaj Sansthan,
Shegaon

APPELLANT

Vs

Kisan Vithuji Lokhande

RESPONDENT

Date of Decision: Sept. 20, 1974

Acts Referred:

- Bombay Tenancy and Agricultural Lands Act, 1948 - Section 11, 11, 11, 12, 12, 12

Citation: (1975) MhLj 754

Hon'ble Judges: C. S. Dharmadhikari, J

Bench: Single Bench

Advocate: J.N. Chandurkar, for the Appellant; V. M. Kulkarni, for the Respondent

Final Decision: Dismissed

Judgement

C. S. Dharmadhikari, J.

The original plaintiff filed a suit against the appellant-defendant for refund of excess lease-money paid by him amounting to Rs. 760 89p. The suit lands were leased out to the plaintiff since long and the agreed rent was Rs. 581 per year. The plaintiff paid the rent for the years 1961-62 and 62-63. Thus the total recovery made by the defendant for these two years are Rs. 1162. It was contended by the plaintiff in the plaint that the defendant was not entitled to recover more than three times the land-revenue as lease money in view of the provisions of section 11 of the Bombay Tenancy and Agricultural Lands Act. Therefore, after calculating the lease money accordingly, he claimed refund of the excess amount paid by him.

2. The defendant-trust resisted the suit contending that the provisions of sections 11 to 14 of the Act were not applicable to the lands in dispute it being the property belonging to the trust. A question of jurisdiction was also raised contending that the civil Court had no jurisdiction to entertain the suit nor it had jurisdiction to consider the claim for refund.

3. The learned Judge of the Trial Court held that the defendant-trust was not exempted from the operation of sections 11 to 15 of the Act and, therefore, it was not entitled to recover more than three times the land-revenue by way of rent for the suit field. The learned Judge further found that the civil Court had jurisdiction to entertain the suit. Consequently a decree in favour of the plaintiff for the amount of Rs. 760.29 p. with proportionate costs was passed by the civil Judge, Senior Division, Khamgaon.

4. Being aggrieved by this judgment and decree the defendant-trust filed an appeal which was heard and decided by the Assistant Judge, Khamgaon. The learned Assistant Judge, Khamgaon by his judgment D/- 9th January 1965 dismissed the appeal filed by the defendant. Against these judgments and decrees the present second appeal has been filed by the original defendant.

5. Shri Chandurkar, the learned counsel for the appellant, contended before me that in the present case the plaintiff has paid the amount of rent voluntarily. No proceedings were taken by the defendant-trust for recovery of the said rent or lease-money. Therefore, according to Shri Chandurkar, the plaintiff is not entitled to claim refund of the amount paid by him voluntarily even if the amount paid was more than the maximum rent payable u/s 11 of the Bombay Tenancy and Agricultural Lands Act. This was the only point argued before me in this second appeal.

6. It is not possible for me to accept this contention of Shri Chandurkar. Section II of the Tenancy Act lays down maximum limit regarding the rent payable by a tenant. Then section 15 of the Act makes a provision for refund of the rent recovered by the landlord in contravention of the provisions of the Act. Section 15 of the Act reads as under:

"15. If any landlord or any person on his behalf recovers rent from any tenant in contravention of the provisions of sections 11, 12, 13 or 14 the landlord shall forthwith refund the excess amount recovered to the tenant and shall be liable to pay such compensation to the tenant as may be determined by the Tahsildar in this behalf and shall also be liable to such penalty as may be prescribed by rules made under this Act."

7. From the bare reading of this section, therefore, it is quite clear that section 15 of the Act creates a liability for refund of the amount recovered by the landlord in excess of the maximum rent payable u/s 11 of the Act. Not only this, it is the mandate of the section that the landlord is liable to refund the said excess amount forthwith. The whole argument of Shri Chandurkar is based on the phraseology used in the section, viz. "The amount recovered by the landlord". It is contended by Shri Chandurkar that if the word "recovered" is read in contra-distinction with the phraseology used in section 14(3) of the Act, it is quite clear that unless the amount is recovered by coercive process the question of refund will not arise. On the basis

of phraseology, used it is further contended by him that wherever the Legislature wanted that even the receiving of rent by landlord is also to be prohibited, the words used are "recover or received". In section 15 the word used is "recover" and not "receive". Therefore, according to the learned counsel, unless, the amount is recovered by the landlord by some coercive process, the tenant is not entitled to refund of the excess amount. The payment made by the tenant voluntarily cannot be termed to be as "amount recovered by the landlord". Therefore the present suit, which is based on a right conferred upon the tenant u/s 15 of the Act, is not maintainable.

8. In my opinion, the interpretation put forward by the learned counsel for the appellant on the phraseology used in the various sections is not correct. The word "recover" is defined by the Chamber's Twentieth Century Dictionary to mean "to get". Section 11 of the Act lays down the maximum rent payable by the tenant and then section 15 contemplates refund of the amount paid in excess of the maximum rent payable u/s 11. A tenant can seek refund u/s 15 of the Act, where the payment of the rent is in excess of what is legally payable u/s 11 of the Act. The word "recover" has been used by the legislation in its general sense, which all include receiving of amount in excess of the maximum rent payable u/s 11 of the Act. In this sense the word "recover" will include even the voluntary payment made by the tenant towards the rent. The word "recover" in the section has reference not only to the rent recovered by the landlord by exercise of force or pressure but it will also include the rent which is received by the landlord or paid by the tenant even without there being any such coercion. In this view of the matter, in my opinion, the rent paid by the tenant in excess of the maximum limit prescribed by section 11 of the Act is liable to be refunded to him in view of the provisions of section 15 of the said Act.

9. It is not disputed before me that the amount which was paid by the respondent-tenant was towards the rent of the fields in question. It was also not disputed before me that the amount paid by him was in excess to the maximum rent payable by him u/s 11 of the Act. In my opinion, the Courts below were right in passing a decree in favour of the tenant for refund of the excess amount paid by him towards the rent. In the result, therefore, the appeal fails and is dismissed. However, in the circumstances of the case there will be no order as to costs throughout.