Shri Ramakant Wamanrao Deshpande and others Vs The State of Maharashtra and others

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Aug. 21, 1996

Acts Referred: Bombay Tenancy and Agricultural Lands Act, 1948 â€" Section 20, 36, 49
Constitution of India, 1950 â€" Article 226, 227
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 â€" Section 10, 12, 2(14), 3, 33

Citation: (1998) 3 BomCR 29 : (1996) 98 BOMLR 896 : (1997) 2 MhLj 839

Hon'ble Judges: V.S. Sirpurkar, J

Bench: Single Bench

Advocate: A.M. Bapat, for the Appellant; R.R. Deshpande, A.G.P., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V.S. Sirpurkar, J.
The question in this writ petition pertains to the provisions of the unamended Ceiling Act as unfortunately those

proceedings themselves have not reached the completion. Wamanrao was the original land holder and was having extensive lands. He did not file

the return as is required u/s 12 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter to be called as "Ceiling Act" for

short). An inquiry was therefore held and the Sub-Divisional Officer (Land Reforms), Yavatmal by his order dated 15-1-1973 directed the land

holder to file return while imposing fine of Rs. 100/-. A preliminary finding was reached therein that the land holder appeared to have possessed

more than what was permitted by the Ceiling Act. The land-lord admittedly filed the return and an inquiry was held and the Sub-Divisional Officer,

Wani, by his order dated 31-7-1975 came to the conclusion that the land-lord was possessing surplus land of 142 acres and 25 gunthas and after

deducting 7 acres 16 gunthas from holding being pot Kharab land, he came to the conclusion that 135 acres and 9 gunthas of land was liable to be

determined as surplus land. There was an appeal u/s 33 against this order and the Maharashtra Revenue Tribunal confirmed the Sub-Divisional

Officer"s order by its order dated 20-7-1976. This appellate order of Maharashtra Revenue Tribunal was challenged by way of writ petition which

was allowed and the Maharashtra Revenue Tribunal was directed to reconsider the appeal. On remand the Maharashtra Revenue Tribunal passed

the impugned order dated 7-8-1984, The Maharashtra Revenue Tribunal has again confirmed the order in respect of the fields Survey Nos. 9 and

23 of village Tembhi, 9 of village Kundi and S. Nos. 28, 45 and 47 of village Rajni and has held these fields within the ceiling area of the petitioner.

In respect of the contention of the petitioner regarding potkharab land the tribunal held that potkharab land was not properly worked out by the

Sub-Divisional Officer and fresh inquiry was liable to be held. The Tribunal therefore remanded the appeal to the Sub-Divisional Officer only for

the consideration of the potkharab area. However, since the order of the Sub-Divisional Officer in respect of the fields referred to above was

confirmed, the petitioner has come up in the present writ petition and therefore the only question which is to be decided in the writ petition is as to

whether the fields mentioned above have been rightly included in the holdings of the present petitioner.

2. Shri Bapat, the learned Counsel appearing on behalf of the petitioner very strenuously argued that all these fields were tenanted fields and they

were not in possession of the petitioner on 4-8-1959 which was the relevant date. His further case is that thereafter the fields never came in

possession of the land holder. In as much as the land holder sold the fields even prior to the appointed day i.e. 26-1-1962. He contended that it

was the case of the land holder that though these fields were in possession of the tenants, the tenants themselves have created sub-tenants and

those sub-tenants were assented to by the landlord and it was precisely in favour of those sub-tenants, the sale deeds were effected. According to

Shri Bapat, the fields never came in possession of the petitioner though the original tenants had snapped their rights with the fields in question.

3. Shri Deshpande, the learned A.G.P. pointed out that there was specific evidence recorded of the tenants wherein those tenants had specifically

stated that they were ousted from their land by the land holder either directly or through his Diwanji and after they were ousted from the lands, the

possession went in favour of the land holder. Shri Deshpande also drew my attention towards the crop statements and pointed out that there was

no explanation as to why the crop statements atleast for one year price to the sales were suggesting the possession of the land holder. In paras 4,

5, 6, 7, 8 and 9 the tribunal has considered the possession regarding each fields separately and has found that in respect of the fields S. No. 9 of

village Tembhi which was sold to one Gangaram by a sale deed dated 19-4-1961, there was evidence on record of Bajirao the original tenant who

deposed before the Sub-Divisional Officer that he lost his possession to the land-holder as the landlord did not lease out and took forcible

possession from him. Shri Deshpande pointed out that the tribunal has relied upon the evidence of Bajirao as also on the crops statement to

suggest that the landlord had been in actual possession. In respect of S. No. 23 on which the original tenant was POCHIBAI, the crop statement

suggested that the field was cultivated by Pochibai from 1951-52 to 1959-60 as a protected lessee and thereafter the land was sold to one Rama

Nathu. The tribunal has relied upon the evidence of Pochibai to hold that Pochibai had never, sub-let this land in favour of Rama Nathu, she was in

fact dispossessed by the land holder. Her evidence has been relied upon by the Maharashtra Revenue Tribunal as also by the Sub-Divisional

Officer. Similar is the case in respect of S. No. 9 of Kundi which was in possession of a protected lesses Aaiya Butte Kolam from 1954-55 to

1958-59. The crop statement entries of this field show that in the year 1959-60 and 1960-61 the field was fallow. The crop statement suggests the

possession of the land holder. This field was sold to one Nagamma. The Tribunal has repudiated the claim that it was the Nagamma who was in

possession of the field from the year 1958-59 and 1960-61 onwards. The tribunal has relied upon the evidence of Aaiya Butte who claimed that

he was dis-possessed and also reiterated that he had never sub-let the field to said Nagamma and therefore there was no question of said

Nagamma being a tenant thereof. Even the situation is not different in case of S. Nos. 28, 45 and 47 of village Rajni. The field S. No. 28 was

tenanted to one Rama Supare and on the date of commencement of the Act it was being cultivated by Fulya as per Kabulayat dated 15-3-1958.

The crop statement also shows in respect of the field mat it was fallow and it was the landlord who was in possession. The crop statement entries

in respect of the other fields S. Nos. 45 and 47 also went on to show that the field was in possession of the landlord himself. All these fields came

to be sold to Fulya, Laxman and Goma Hiraman respectively and all these sale deeds are prior to 26-1-1962. On the basis of this evidence the

tribunal came to the conclusion that the petitioner was in actual possession of these fields after 4-8-1959, but before 21-6-1962, he had disposed

of all these fields by sale deeds and therefore this was the case where the lands were held by the landlord after 4-8-1959 and he has sold it in

contemplation of the coming legislation and therefore the transactions were covered by section 10. It was because of this reason that both the

authorities, viz. the Sub-Divisional Officer and Maharashtra Revenue Tribunal held all these lands in the ceiling area of the petitioner. The

Maharashtra Revenue Tribunal has graphically considered the evidence on record as also the documents. It cannot therefore be said that the

finding regarding the actual possession of these fields, after their surrender from the tenants but before the sales were executed, was in any manner

wrong. Shri Bapat drew my attention towards the Kabulayat dated 15-3-1958 in respect of S. No. 28, Kabulayat dated 15-3-1959 in respect of

S. No. 45 and Kabulayat dated 17-3-1959 in respect of S. No. 47. I find that the contentions raised have been considered by the Tribunal in

paras 7, 8 and 9. The Tribunal has correctly held thai these fields had been in actual possession before their sale. The first contention raised by Shri

Bapat that the fields never came in possession of the landlord and therefore they could not be said to have been held by the landlord has to be

rejected. The tribunal has given a cogent reasoning and it shows that it was alive to the evidence led on record to which a reference has already

been made. It will, have therefore, to be held that the fields had come in possession of the landlord after 4-6-1959 but the landlord had sold all

these fields, which is an admitted position, before 26-1-1962. The controversy, however, does not end there.

4. Shri Bapat pointed out that the authorities below could not have relied upon section 10 because the petitioner was not lawfully in possession of

these fields. Shri Bapat argues that even if it is held that the landlord was in actual possession, that would not be sufficient because in order to

return the finding that the petitioner held these lands it will have to be found and established that the landlord was in lawful possession of these

lands. Shri Bapat points out that if, as has been accepted by the authorities below, the landlord forcibly ousted the tenants from these fields, the

possession of the landlord would not be lawful and therefore these fields could not be said to have been held by the landlord. In short, the

contention of Shri Bapat is that in order to find that petitioner was in possession of these lands, it was necessary to find that the possession of the

petitioner over these lands was lawful. Shri Bapat relies upon the authorities to suggest that where the landlord comes into possession of the

tenanted land by the surrender, which is not fortified u/s 20 of the Bombay Tenancy and Agricultural Lands Act, the tenants still retain their right to

walk back into the land. He also takes recourse to section 57 and 91 of the said Act to suggest that in the event of sale of tenanted land the tenant

would still have cause of action against his landlord and he would still be in possession to occupy the land. He, therefore, suggests that even if the

landlord has. got actual possession by a forcible entry into these lands, atleast in so far as Bombay Tenancy and Agricultural Lands Act is

concerned, the possession could not be said to be a lawful possession and it could not be said that the landlord was lawfully in actual possession of

the land. He, therefore, states that section 10 would then not apply. The argument at the first blush is undoubtedly attractive but if without

substance.

5. Shri Deshpande opposes the argument on the ground that in this case no tenant has made any application whatsoever under the Tenancy Act,

asking for the recovery of the possession u/s 56 or otherwise. He points out that it is an admitted position that the tenants have remained quiet

without having moved to any authority. Shri Deshpande''s contention is that unless there is a specific order prohibiting the landlord to be in

possession of the land, the landlord would be always held ""to be lawfully in actual possession of the land"".

6. It will have to be therefore seen as to what is the correct interpretation of the term ""to be lawfully in actual possession of the land"" which is

covered u/s 2{14) though in different context. This Court has considered this question in a reported decision in the case of Vijayakumar and etc.

Vs. State of Maharashtra and Others, . This is also a case where the tenant was ousted from the land and the land remained in actual possession of

the landlord on the relevant date i.e. on 2-10-1975. It was thereafter that the tenant applied u/s 49-B of the Tenancy Act and actually got the

order of restoration. The question therefore was as to whether the landlord could be held ""to be lawfully in actual possession of the land"" on 2-10-

1975. Dhabe, J., went on to hold that it was an admitted position that no application was made by the tenant for 3 years and it was only by the

crutches of section 49-B that he made the subsequent application. Dhabe, J., went on to hold that therefore till such time the land is restored to the

tenant under order of the Tahsildar u/s 49-B, it is to be held that on the relevant day i.e. 2-10-1975 the landlord was lawfully in actual possession

of the land. Similar is the observation in para 11 which is quoted as under :

The other question that has to be examined in this regard is whether the landlord is lawfully in actual possession of the land on the date of the filing

of the return under the Ceiling Act after the commencement date as contemplated by section 2(14) of the Ceiling Act. It is not in doubt that he is in

actual possession of the land after the tenant is dispossessed without recourse to section 36(2) of the Tenancy Act. However, the right of

possession is lost by the tenant after the expiry of a period of three years as contemplated by section 36(1) of the Tenancy Act. The possession of

the landholder thereafter cannot be said to be unlawful or improper. It has to be seen in this regard that but for the provisions of section 49-B

possession of the landlord would have continued. It is only when recourse is taken to section 49-B of the Act and a proper order after enquiry is

passed restoring possession to the tenant that the tenant gets a right as contemplated by section 49-B of the Tenancy Act. The very enactment of

section 49-B of the Tenancy Act creating certain rights instead of extending merely the period of limitation u/s 36(2) of the Tenancy Act shows that

the possession of the landlord is lawful till the land is restored to the tenant under an order of the Tahsildar passed u/s 49-B referred to above. It

must, therefore, be held that the landholder Vijaykumar held the land in question in the instant case as contemplated by section 3 of the Ceiling Act

on the commencement date and at the time when he filed the return u/s 12 of the Ceiling Act.

7. The position is not different here, and though the relevant provisions are different, the principle is common. In this case, the return was filed

obviously after the first order dated 15-1-1973 was passed. It is an admitted position that till that day also, the erstwhile tenants had not asserted

their rights. Here is the case where the tenant has lost his possession and even before he had moved the application, the landlord had sold all the

fields to some other persons. The distinction was tried to be made by Shri Bapat that the case is essentially different on facts as there were

intervening sales. Now really speaking the intervening sales would be of no consequence because even in respect of these sales the tenant indeed

could have taken some action. The fact remains that even till the return was filed, the tenant had not taken any action and therefore landlord''s

possession nor the subsequent action thereafter was questioned by the tenants. No order was passed in favour of the tenants invalidating the

possession of the sales thereafter by the landlords. The possession remained with landlord till it was passed over to the subsequent purchasers and

the sale deeds would themselves show that the possession was thereafter parted by the landlord in favour of the subsequent transferors. Thus, this

was the case where the landholder had been in possession of the land after 4-8-1959 and his land holding had exceeded the ceiling area. In the

wake of this, he transferred the land before 26-1-1962. Thus, the transfers were completely covered by section 10 of the unamended Act. Let us

imagine the situation that the lands were not sold and remained in possession of the landlord. The landlord in the facts of this case would have still

continued the possession even till the date of filing of the return as admittedly no action has been taken by any tenant against the landlord

questioning his action.

8. Shri Bapat relied upon the authorities, Madhao v. Maharashtra Revenue Tribunal, Nagpur & others, reported in 1970 M.L.J. P 991, and (2)

Gajanan and another v. State of Maharashtra and another, reported in 1971 M.L.J. P 193. I am afraid, both the authorities are not applicable for

the simple reason that those authorities only spell out the rights of the tenants and not the nature of the possession of the landlord. The authorities

no where say that the possession becomes tainted. They are wholly different on facts. Shri Bapat further relied upon a Supreme Court decision in

the case of Bhagwant Pundalik and Another Vs. Kishan Ganpat Bharaskal and Others, and some particular observations made therein to the

following effect :

Where a landlord obtained possession of the lands from tenant representing that he desired to cultivate the lands personally, but without complying

with the provisions of section 20 and 36(2) then even assuming that the tenant delivered possession voluntarily the landlord''s possession was not

lawful.

I am afraid, the observations have been read out of the context. In that case the question was as to whether if the tenant voluntarily surrenders the

possession, he could file an application u/s 36. It was in that context that the above observations are made by the Apex Court while deciding the

rights of the tenants.

9. There would be still another reason as to why the petition could not succeed. If the landlord claims that he forcibly dispossessed the tenant and

remained in forcible possession or unlawful possession of the land and therefore he was out of the clutches of the Ceiling Act, it would be

permitting the landlord to take advantage of his own wrong. Even accepting the contention of Shri Bapat that the landlord could have been dealt

with under the relevant law for his illegal act of dispossession, however, the effect of landlord''s action would be that he would be benefited

because of his forcible dispossession of the tenants. That apart, in fact as has already been shown the tenants have nowhere questioned the action

on the part of the landlord and nowhere complained about it. Therefore, the tenants had not complained that the lands remained in possession of

the landlord illegally and the landlord would still have continued right till 15-1-1973 which was the date prior to which the tenants had lost their

rights permanently of questioning the action on the part of the landlord, because of the bar of limitation as provided in section 36 of the Bombay

Tenancy and Agricultural Lands Act. It will, therefore, be clear that for whatever period he was in possession of the lands in question, he continued

to be lawfully in actual possession of the land and therefore the sales would be directly coverable u/s 10 of the Old Act.

10. It will have to be seen that the phrase used is ""to be lawfully in possession'' and not"" to be in lawful possession of the land"". In the later phrase

the word ''lawful'' qualifies the ''noun'' possession. There the stress would be on the word ''possession'' which will have to be a "legal'' (in

contradistinction to illegal) possession. In the phrase ""to be lawfully in possession"", the word ""lawfully"" is an adverb and not an adjective. It qualifies

the verb ''be''. The phrase would suggest that the person concerned remains in possession in a legal manner. In the present case the tenants not

having challenged the act of dispossession in time it will have to be held that the landlord remained lawfully in possession. The contention, therefore,

is not right that the possession of landlord was not lawful, and therefore the said lands were not in his holding as contemplated by section 2(14) of

the Act.

11. In that view of the matter, the petition has no merit. The tribunal and the authorities concerned were right in their findings. The matter will not go

back to the Sub-Divisional Officer for ascertaining the Potkharab land as per the order of the Tribunal. However, it is directed, that after the

record is reached to the Sub-Divisional Officer, the Sub-Divisional Officer shall dispose of the matter within 3 months thereafter positively. The

time schedule fixed by the Court should be scrupulously followed. The petition is dismissed with costs.

12. Petition dismissed.