

(2000) 01 BOM CK 0067

Bombay High Court

Case No: Writ Petition No. 742 of 1986

Shri Maruti Krishna Matale and
Another

APPELLANT

Vs

Shri Mohan Keshav Deshpande
and Others

RESPONDENT

Date of Decision: Jan. 14, 2000

Acts Referred:

- Constitution of India, 1950 - Article 227
- Maharashtra Tenancy and Agricultural Lands Act, 1948 - Section 29, 31, 32

Citation: (2000) 2 ALLMR 277 : (2000) 2 BomCR 515

Hon'ble Judges: D.K. Trivedi, J

Bench: Single Bench

Advocate: A.V. Sali, for the Appellant; Mrs. Anita Agarwal and V.D. Raut, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

D.K. Trivedi, J.

In this petition, the heirs of tenant have challenged the judgment and order passed by the Maharashtra Revenue Tribunal, Pune dated 29th October 1985 wherein the tribunal has rejected the Revision Application of the petitioners and confirmed the order passed by the learned Assistant Collector, Haveli Sub-Division, Pune, dated 7th February 1983 in an appeal filed by the tenant being TNC Appeal No. 140 of 1981 and inturn, even the learned Assistant Collector has also while dealing with the appeal of the tenant, while dismissing the appeal, confirmed the order of A.L.T. and Additional Tahsildar Haveli dated 18th October 1975 passed in Tenancy Case No. 173 filed by the respondent-tenant while deciding the application made by the respondent-Landlord under sections 29 and 31 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "said Act"), wherein the

Revenue Authority has granted possession of the land in favour of landlord out of Survey No. 141/1 of village Gorhe Khurd.

2. During the hearing, the learned Advocate appearing on behalf of the petitioners Mr. Sali, took me through the order passed by the authorities in a proceedings initiated by the landlord initially and order passed in the Appeal and the Revision Application moved at the instance of the tenant in respect of the granting possession of the land in favour of respondent-landlord while granting the application of the landlord under the Act. He also while arguing the matter, has taken me through the registered Partition Deed dated 28th March, 1958 in respect of allotment of the land in favour of respondent No. 1 landlord who was at the relevant time minor. He has also raised legal contention that on examining the order passed by the Revenue Authority, the Revenue Authority has not followed requirement of law which is must while considering the request for taking possession of the land from the tenant. It is not in dispute that the original opponent is a tenant over the suit land as described from the order passed by the Revenue Authority and that the agricultural lands in dispute situated at village Gorhe Khurd, Tal. Haveli, Dist. Pune is occupied by the petitioner (tenant) since many years. These agricultural lands being Survey Nos. 41/12 admeasuring 0 acres 13 gunthas, Survey No. 62/7 0 acres 8 gunthas, Survey No. 67/11 1/4th gunthas (10 areas) and Survey No. 14/11 acre 34 gunthas.

3. The learned Counsel appearing on behalf of the appellants has vehemently urged and raised a question of law that while deciding the proceedings initiated at the instance of the respondent landlord when the landlord had approached the Revenue Authority after giving notice to the tenant terminating his tenancy after he became major, he has sought for possession of the land for his bona fide and personal cultivation. According to the learned Counsel Mr. Sali, if we examine the record it will be clear that there cannot be any partition in favour of minor son viz. the respondent No. 1 during the lifetime of the father where his father was joined with his grand-father and the suit lands were standing at the relevant time, in the name of grandfather of the respondent No. 1. As per the case made out by the respondent-landlord that there was a registered partition deed in respect of the property dated 18th March 1958 and as per the said partition deed, the suit lands which are tenanted land, came to be allotted to the share of respondent No. 1 who was at the relevant time, minor aged about 4 years who was unable to cultivate the said land and accordingly, the said partition was effected to defeat the provisions of law and adversely affect the petitioner who was cultivating the said land as a tenant. On the tillers day, all the tenants were entitled to become owners of the suit land. It is only because of the partition deed, the said date was extended as the lands in question were allotted in the share of respondent No. 1 who was minor at the relevant time and that as affected adversely to the interest of the petitioner. According to Mr. Sali, even such partition is invalid and contrary to the provisions of section 31(3) and section 32(F) as well as section 32(F)(1) of the proviso of the said

Act and the share of such person namely as per the partition Deed, said survey numbers were allotted to respondent No. 1 in joint family and has not been separated by metes and bounds and it is the duty of Tahsildar to make proper inquiry and to reach his satisfaction that share of such minor in the land is separated having regard to the area, assessment, classification and value of the land in proportion as the share of that person in the entire joint family property and not in a larger proportion.

On the other hand, Mrs. Agarwal the learned Advocate appearing on behalf of the respondent No. 1- landlord, has supported the judgment of all the authorities and she submitted that once the tenant has accepted the respondent No. 1 as a landlord and further all the revenue entries in respect of suit lands, clearly show that by virtue of the registered partition-deed in respect of property dated 28th March 1958, the land in question occupied by the petitioner-tenant wherein the respondent has become the owner and if the tenant has not objected and accepted him as a landlord, all the authorities were justified in entertaining the application when the application under sections 29 and 31 was moved when the landlord has become major and admittedly the said proceedings were initiated after serving the notice to the tenant and accordingly, the Revenue Authority below on examining the application and evidence and more particularly the registered partition deed dated 20th March 1958, has rightly granted the said application by granting possession of the land Survey No. 14/1 as per the law and accordingly, she submitted that when all the authorities upto the Revenue Tribunal has not accepted the case of the petitioners-tenant and confirmed the order of granting the land this Court is not required to interfere in writ petition filed under Article 227 of the Constitution of India and accordingly, she submitted that the writ petition deserves to be dismissed.

4. On considering the submission made before me and on examining the provisions, it is necessary for me to refer to the relevant provisions viz. section 32-F(1)(a) of the Act which reads as under :

"32-F. (1) Notwithstanding anything contained in the preceding sections,--

(a) where the landlord is a minor, or a widow, or a person subject to any mental or physical disability, the tenant shall have the right to purchase such land u/s 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31 (and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31):

(Provided that where a person of such category is a member of joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this subsection unless before the 31st day of March 1958 the share of such person in the joint family has been separated

by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person the entire joint family property and not in a large proportion.)"

As per the proviso, it is statutory duty of the Mamlatdar to inquire and to satisfy himself that the share of such person in the land is separate in respect of the area, assessment, classification and value of the land in the same proportion as the share of that person in the entire joint family property and not in larger proportion. It is also equally necessary for me to examine the provisions made for termination of tenancy and the right of landlord to terminate the tenancy for the personal cultivation and non-agricultural purpose as found in Chapter 3 of the Act. Section 31 deals with regarding the landlords right of terminating the tenancy for personal cultivation and for non-agricultural purpose and section 31-A (a) deals with conditions of termination of tenancy, which reads as under :

"31-A. The right of a landlord to terminate a tenancy for cultivating the land personally u/s 31 shall be subject to the following conditions -

(a) If the landlord at the date on which the notice is given and on the date on which it expires has no other land of his own or has not been cultivating personally any other land, he shall be entitled to take possession of the land lease to the extent of ceiling area."

One of the conditions as per Clause (1) is income by cultivation of the land of which he is entitled to take possession is the principle source of income for his maintenance.

In the present case, as per the partition deed dated 28th March 1958 only four survey numbers which are in possession of the tenant are allotted in the share of respondent No. 1 who was minor at that time viz. 4 years and the total area in all the four survey numbers is hardly about 3.2-1/4 gunthas which is in possession of the petitioner-tenant. It is an admitted fact that while deciding the application made by the landlord relying upon the registered partition deed dated 20th March 1958, all the authorities below have not actually considered the other land wherein the respondent has also his share. As demonstrated by Mr. Sail, over and above four survey numbers which are subject matter of this petition, admittedly there are other four survey numbers where the respondent-land lord has 1/3rd share. On going through the partition deed, these survey numbers are Survey Nos. 184 admeasuring 11 acres 18 gunthas, Survey No. 185, 17 acres and 34 gunthas, Survey No. 188 area 11 acres of 2-1/2 gunthas and Survey No. 22, area 11 acres. Over and above, these agricultural land, there is a house property which is kept jointly. In these survey numbers, the respondent-landlord has 1/3rd share and if we calculate the total area covered in these four survey numbers, admittedly, the respondent-landlord has even further more land to the extent of 15 acres. I am referring this because it is

found from the registered partition deed which is on the record. Admittedly, it has not been considered by the authorities even when the revision application is filed by the petitioner-tenant before the Revenue Tribunal.

5. Mr. Sali, the learned Counsel appearing for the petitioner has also heavily placed reliance upon certain decisions of this Court as well as of the Apex Court. I was also taken through these decision and as found in unreported judgment of this Court dated 30th July 1969 in the matter of Vedu Sampat Patil v. Mansukhlal Ratanlal and another, in Special Civil Application No. 699 of 1969, the High Court has considered the provisions of sections 31, 32(F)(a), 32(G) and others and observations made by Justice Deshpande as he then was, on page 7 are reproduced below:

"I find considerable substance in the second and the third contentions raised before me by the learned Advocate. Such equitable division and partition thereof cannot be said to have been ruled out by this proviso, provided of course, it complies with other conditions laid down in the said proviso. One such other condition is that such share in the landed property as also other properties of the joint family should be separated by metes and bounds. The second condition laid down in the proviso is that Mamlatdar on inquiry should be satisfied, that the extent of land allotted to the share of such disabled person is in proportion to his share in the joint family property, particularly, the land of the joint family "having regard to the area, assessment, classification and value of the land. The third condition which is a corollary to the second condition, is that the land in larger proportion should not be allotted to the share of such disabled landlord."

6. Mr. Sali has also next relied upon the decision in the matter of [Balkrishna Somnath Vs. Sadu Devram Koli and Another](#), . Head Note (1) of the said ruling reflects that :

"Tenant"s right to purchase land kept in abeyance in case of disabled land lords-Protection under the proviso is not available when the separation of widow or minor is restricted to agricultural lands.

The proviso clearly states that the disabled person"s share in the joint family must have been separated by metes and bounds. Separation from the. joint family means separation from all the joint family assets. Notional division or division in status may not be enough because the act insists on separation by metes and bounds are appropriate to real property, meaning as the phrase does, the boundary lines of land, with their terminal points and angles. In the context, the thrust of the expression is that the division must be more than notional but actual, concrete, clearly demarcated. The ineptness and involved structure and some ambiguity notwithstanding the sense of the sentence is clear.

...It really means his share in the entire joint family property. Moreover, the statutory exercise expected of the Mamlatdar by the proviso involves an enquiry into the share of the disabled person in the land, and its value, the share of the

person in the entire joint family property, the proportion that the allotment of the land bears to his share in the entire joint family property with a view to see that there is no unfair manoeuvre to defeat the scheme of the "Act."

It is further found from the observations made in paragraph No. 13 of the said judgment, which is reproduced below:

"Thus it is reasonable to hold that when the expression used is the share of such person in the joint family, it is not confined to the share in the land only. It really means his share in the entire joint family property. Moreover, the statutory exercise expected of the Mamlatdar by the proviso involves an enquiry into the share of the disabled person in the land, and its value the share of that person in the entire family property, the proportion that the allotment of the land bears to his share in the entire joint family property with a view to see that there is no unfair manoeuvre to defeat the scheme of the Act".

7. He has also cited several judgments even of this Court, however, for the purposes of considering the contentions raised before me and applying the ratio of these judgments, as found in the present case, the respondent-landlord was minor at the relevant time when the lands in question were given to his shares and after terminating the tenancy of the respondent by giving notice, he has moved A.L.T. and Additional Tahsildar by filing application under sections 29 and 31 of the Act for getting possession of the land. On going through the order, though the revenue authority has raised 11 issues and one of the issues viz. issue No. 8 reads thus: whether the share of the landlord was considered before 31st March 1958 and whether he got an equal share in the partition?. As found from the answer given on issues and more particularly on issue No. 8, the Revenue Authority has held it in the affirmative and held that the landlord was separated and got his share in the partition. It is further found from the reasonings of the Additional Tahsildar that he considered the registered document of partition deed dated 20th March 1958 and further the record of rights in respect of suit lands which show that the lands were standing in the name of predecessors in title of the applicant-landlord in January 1952 and thereafter these lands came to his share. The learned authority has also while considering the case put forward by the landlord for seeking possession on the ground of bona fide personal cultivation, has also while referring in brief, has observed that tenant has not been able to prove that the applicant's father is getting an income of Rs. 1000/- to Rs. 1200/- per month. It is further found that the applicant-landlord could not prosecute his study due to mental deficiencies and Revenue Authority has held that there is no reason to suspect that the applicant will not cultivate the land personally. In my view, the Revenue Authority has ignored the requirement of law as contemplated u/s 32-F proviso. No inquiry is made for his satisfaction regarding the share of a person in the land which has to be determined as per the proviso to section 32-F of the said Act, which I have already reproduced hereinabove. In my view, the A.L.T. and Additional Tahsildar has not looked into this

aspect while deciding the application of the landlord and admittedly even the partition deed which the landlord has relied upon clearly indicates that there are other lands where the landlords has 1/3rd share. Even there is nothing to indicate that what is the income available from these remaining lands. In my view, even no proper inquiry is made as contemplated under the Act which is must and even thereafter when the said order of the Tahsildar is challenged at the instance of the petitioner-tenant by taking the matter before the Appellate Court, it is found that the Assistant Collector has mechanically dismissed the appeal and confirmed the order of the lower authority. It is also very surprising that when the matter has been reached and taken by the tenant before the Revenue Tribunal, even, in my view, the Revenue Tribunal has also not gone into deep into the matter for which, the authority is supposed to examine closely on the point of application made by the landlord from seeking possession of the land from tenant and I have to observe that even revisional authority has also mechanically examined the matter and mechanically disposed of the revision of the tenant by confirming the order of the appellate authority.

8. In my view, basic requirement as per the Statute has not gone into and even if the authority on perusing the registered partition deed, and even though the tenant has accepted the respondent as a landlord, but the revenue authority cannot ignore the provisions of law and even by reading this deed, it is amply clear that there are other lands wherein the others have interest considering 1/3rd share of the landlord in these lands. Accordingly, in the fitness of things and in the interest of justice, matter requires consideration at the hands of lower authority for which the lower authority has to examine and give exact findings on the points raised.

9. Accordingly, the order of the Revenue Tribunal in revision application by the tenant being Revision Application No. MRT-P-III-14/83 (TEN-B-76/ 83) Pune dated 29th October 1985 is set aside and in turn all the orders passed by the Assistant Collector, Haveli and the order passed by the A.L.T. and Additional Tahsildar, Haveli, are set aside and matter is remanded back to the A.L.T. and Additional Tahsildar, Haveli with direction to decide the application of the respondent in accordance with law after giving an opportunity to the parties in the light of the above judgment.

10. Accordingly, this writ petition is allowed. As the Tenancy Case is of the year 1975, A.L.T. and Additional Tahsildaris directed to decide the same as expeditiously as possible, in accordance with law.

By virtue of the interim relief granted in favour of petitioner, the land is with the petitioner. Accordingly, rule is made absolute by confirming the interim relief. However, there will be no order as to costs.

11. Petition allowed.