

(1971) 08 BOM CK 0015

Bombay High Court

Case No: Special Civil Application No. 2817 of 1967

Bhikubai Bhima
Gaidhane and
Another

APPELLANT

Vs

Khandu Daji Pagar
and Another

RESPONDENT

Date of Decision: Aug. 27, 1971

Acts Referred:

- Bombay Tenancy and Agricultural Lands Act, 1948 - Section 15, 29, 32

Citation: AIR 1973 Bom 101 : (1972) 74 BOMLR 698

Hon'ble Judges: Bhole, J

Bench: Single Bench

Advocate: K.Y. Mandlik and P.B. Sawant, for the Appellant; V.M. Limaye, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Bhole, J.

The petitioner-landlord is the owner of S. No. 270/1-A-1-B admeasuring 30 gunthas assessed at 12 paise. The lands are situate in village Palse in district Nasik. The proceedings under Section 32-G of the Bombay Tenancy and Agricultural Lands Act (hereinafter called "the Tenancy Act") were instituted in the year 1960. The Agricultural Lands Tribunal wanted to determine the price of land to be paid by the respondent. The respondent in those proceedings gave a statement stating that he was not in possession of the land on 1-4-1957 and that he was also not a tenant of the said land at that time. In consequence of that statement the Mamlatdar by his order dated 27-10-1960 dropped the proceedings. Later on the respondent filed an appeal against this order stating that there was some misunderstanding on his part while giving the statement. While the appeal was pending before the Deputy Collector the respondent is alleged to have taken forcible possession of the suit land

in the year 1961-62. The Deputy Collector confirmed the order of the Mamlatdar on 27-11-1963 and dismissed the appeal.

2. The Mamlatdar also started proceedings in 1964 u/s 32-B of the Tenancy Act and awarded possession to the petitioner on 1-10-1964. The respondent filed an appeal against this order before the Collector, but the Collector held that this appeal was not competent because he was not a tenant of the land. The petitioner now says that the respondent is in unauthorised possession of the land.

3. As the respondent was in unauthorised possession of the land the petitioner instituted the proceedings u/s 84 of the Tenancy Act for summary eviction and for possession of the land, before the Collector. The Collector ordered eviction of the respondent in view of the decision in the proceedings under Sections 32-G and 32-B of the Tenancy Act, which had taken place before. The respondent filed a revision application before the Revenue Tribunal. The Tribunal held that the summary eviction of the respondent was unjustified as he was a tenant of the land and he had a right to re-enter the land. This order of revision is now sought to be set aside by the petitioner.

4. It is contended on behalf of the petitioner by Mr.Mandalik that the respondent cannot have any right of re-entry because he had given a statement before the Tribunal in S. 32-G proceedings that he was not in possession of the land on 1-4-1957 the tillers" day; nor was he a tenant of the same. According to him the Agricultural Lands Tribunal had dropped the proceedings stating that he was not a tenant because of his statement before the Tribunal. It is, therefore, argued that when the proceedings u/s 32-G were dropped and the respondent was held not to be a tenant, the respondent cannot turn round and challenge the order of eviction because he was occupying the lands unauthorisedly. The order according to Mr.Mandalik, the learned advocate for the petitioner of the Deputy Collector u/s 84 was therefore proper. The observation of the Revenue Tribunal according to Mr.Mandalik, that the respondent was a tenant in the record of rights and that he had a right of re-entry is not based on any law.

5. Now Section 32 of the Tenancy Act declares the tenant as a deemed purchaser of the land, which he holds as a tenant on 1st April 1957, the tillers" day. Every tenant is deemed to have purchased from his landlord on 1st of April, 1957 the land free of all encumbrances subsisting thereon on that day. The person who becomes a deemed purchaser should be a permanent tenant and should cultivate the land personally and if he is not a permanent tenant he should be the person who cultivates the land. Now we have other sections relating to the deemed purchase. u/s 32-G after the tillers" day the Tribunal shall publish a public notice in the prescribed form in each village calling upon the tenants, who u/s 32 are deemed to have purchased land and landlords of such lands and all other persons interested therein, to appear before it on the dates specified in the notice. The tribunal shall issue a notice individually to each such tenant, landlord and other person. Under

sub-clause (2) the Tribunal shall record in the prescribed manner statement of the tenant, ascertaining whether he is or is not willing to purchase land held by him as a tenant. If he does not appear then the Tribunal can declare that such tenant is not willing to purchase and that the purchase is ineffective. If the tenant is willing to purchase then every other step will have to be followed. Now there were proceedings u/s 32-G in respect of the land held by the respondent as a tenant. Because the respondent is said to have made a statement before the Agricultural Lands Tribunal, that he was neither in possession of the land on 1-4-1957, nor was he a tenant, the proceedings were dropped. Although there is no order of the Agricultural Lands Tribunal on record it is said that the said Tribunal also passed the order that the respondent was not a tenant and not in possession of the land, and that therefore, the proceedings u/s 32-G were ordered to be dropped.

6. An interesting point that is raised now is that as soon as the respondent-tenant had stated that he was not in possession and was not a tenant of the land, it should be taken for granted that he was neither in possession nor a tenant of the same. If, therefore, he was found to be in possession later on he should be declared to be in unauthorised possession. If he is occupying the land unauthorisedly, he can be evicted u/s 84 of the Tenancy Act. The question is whether this contention is tenable.

7. The Tenancy Act is brought into operation on account of disputes between landholders and tenants and also for ensuring full and efficient use of lands for agriculture; and to see that landlords do not use devices to evict tenants for some reason or the other. The provision of this Act therefore is to further the interests of tenants who may be ousted by landlords in their own interest. We may have therefore to refer to Section 15 to judge the plea of the landlord who says that the statement of the respondent-tenant that he was not a tenant and that he was not in possession of the land should be taken into consideration to decide that he was no more a tenant. u/s 15 a tenant may terminate the tenancy in respect of any land at any time by surrendering his interest therein in favour of the landlord. Such surrender shall be in writing and verified before the Mamlatdar in a prescribed manner, where a tenant surrenders his tenancy the landlord shall be entitled to retain the land so surrendered. Mamlatdar also in this connection shall hold an inquiry and decide whether the landlord is entitled to retain the whole or any portion of the land so surrendered and specify the extent and price in that behalf. The landlord also should get an order for getting possession u/s 29(2). The landlord shall obtain possession of any land held by a tenant only under an order of the Mamlatdar. For obtaining such an order he shall make an application in the prescribed form and within a period of two years from the date on which he becomes entitled to obtain possession of the land. Now, the legislature by enacting these provisions has safeguarded the interest of the tenants who may be ousted by an unscrupulous landlord. But the landlord in the instant case says that because the tenant has made a statement before the Agricultural Lands Tribunal that he was no more a tenant and that he was no more in possession, it should be treated as good

as his giving up his tenant's rights. That certainly cannot be accepted.

8. Undoubtedly the record shows that the respondent was tenant of the land from the years 1952-53 to 1964-65. No wonder therefore that the Agricultural Lands Tribunal had started proceedings u/s 32-G. Because of the statement of the respondent-tenant the Agricultural Lands Tribunal dropped the proceedings. Now the statement of the respondent merely shows that he had surrendered his tenancy and that he has given up his possession. However, his statement will not stop the operation of a social legislation which is for the benefit of tenants and which is to safeguard their interests. Even if, therefore the respondent-tenant says that he had surrendered his possession, things ought to have taken place according to law. Termination of tenancy by virtue of surrender should be in accordance with Section 15. Possession by a landlord should be in accordance with Section 29. It cannot be in any other way. It cannot certainly be merely as a result of the statement of a tenant in S. 32-G proceedings. It, therefore, cannot be said that the alleged statement of the tenant in the instant case leads only to one inference and that is that he ceased to be a tenant and that he ceased to be in possession of the land.

9. Moreover, the Agricultural Lands Tribunal has no power to declare that the respondent was not a tenant. u/s 68 of the Tenancy Act power of the Agricultural Lands Tribunal are provided. In this connection it shall be the duty of the Tribunal to determine the value of a site or land under Sections 32-G, 63-A or 64 and to decide any dispute under Sections 32 to 32R or to dispose of the land u/s 32-B or to perform such other functions for carrying out the provisions of the Tenancy Act in the manner as may be prescribed or as may be directed by the State Government. It is no part of the duty of the Agricultural Lands Tribunal to say that respondent was or was not a tenant. It is only the duty of the Mamlatdar u/s 70 of the Tenancy Act to decide whether a person is a tenant or is not a tenant. It does not, therefore, appear to me that even if the Agricultural Lands Tribunal had held that the respondent is not a tenant and is not in possession simply because he had stated so, the tenant will cease to be in possession or that he will cease to be a tenant. It appears to me, therefore that this petition has no substance.

10. Petition is dismissed. Rule discharged with costs.

11. Petition dismissed.