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Court : Mumbai

Decided On : Jun-25-1997

Reported in : 1998(1)ALLMR306; 1998(2)BomCR39; 1998(1)MhLj360

Judge : V.R. Datar, J.

Acts : Bombay Tenancy and Agricultural Lands Act, 1948 - Sections 14, 25, 29, 32-G and 43-A; Constitution of India - Article 227

Appeal No. : Writ Petition No. 764 of 1983

Appellant : Smt. Parvatibai Trimbak Deshpande Since Deceased by Her Heirs and Legal Representatives

Respondent : Vilasrao Bajirao Patil Since Deceased by His Heirs and Legal Representatives

Advocate for Pet/Ap. : V.M. Kanade, Adv.

Judgement :
ORDER

V.R. Datar, J.

1. The landlady Parvatibai has filed this writ petition challenging the decision of the Maharashtra Revenue Tribunal, Pune (herein after referred to as the Tribunal) dated 12th April 1982 in Revision Application No. M.RT.P./VIII.9/1979 (TNC.B.232/79) thereby upsetting the decisions of Tahsildar in Tenancy Case No. WS 615 and that of Leave Reserve Deputy Collector, Pune in Tenancy Appeal No. 8 of 1977 which was passed in her favour. The petitioner Parvatibai died during the pendency of this petition and her legal representatives have come on record and have continued this petition; so also respondent, Vilasrao Bajirao Patil died during the pendency of this petition and his legal representatives are brought on record.

2. The necessary facts to understand the point in controversy are as follows:

The suit land Survey No. 704/2 admeasuring 18 acres and 9 gunthas from village Bawda, Taluka Pandharpur, District Sholapur originally belonged to one, Namdeo Sagaji Mali. Parvatibai purchased this land from this Namdeo in the year 1945. Before that. Namdeo had leased out this land to Bajirao Keshavrao Patil, the father of original respondent for a period of 13 years. Bajirao died in the year 1970. Parvatibai filed an application on 3rd December 1971 in the Court of Tahsildar at Indapur for possession of this land on the ground of three defaults in payment of rent by the tenant and to that application all the heirs of Bajirao were added as party defendants. Only Vilasrao appeared before Tahsildar and stated that all other heirs of Bajirao have left their rights in his favour and therefore, he atone was in possession of the land. He contested that application. Tahsildar by his judgment and order dated 19th November 1976 on the evidence found that in earlier proceedings under section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Tenancy Act) the proceedings for fixation of price were dropped and the land was found given for cultivation of sugar cane and, as such, the provisions of section 32 to 32-R were not applicable as provided in section 43-A of the Tenancy Act. It was then found that the tenant committed default in payment of rent for the years 1967-68, 1968-69, 1969-70 and 1970-71. Intimations/notices in respect of each of the defaults was given to the

tenant and was received by him on 13-7-1968, 30-8-1969,12-6-1970 and 1-7-1971. There were certain other grounds set up for claiming possession but those were held not proved. Thus on the ground of default under section 14 read with sections 25 and 29 of the Tenancy Act, the tenant rendered himself liable to be evicted and therefore, Tahsildar directed delivery of the possession of the suit land to the landlady, Parvatibai.

3. This decision of Tahsildar was challenged by Vilas Bajirao Patil by preferring Tenancy Appeal No. 8 of 1977 before Leave Reserve Deputy Collector, Pune. The learned Leave Reserve Deputy Collector confirmed the findings recorded by the Tahsildar and dismissed the appeal.

4. Then Vilas Bajirao Patil filed revision application before the Tribunal. The learned member of the Tribunal surprisingly considered the question whether the land was given for cultivation of sugar cane and therefore attracted provisions of section 43-A of the Tenancy Act and found on the evidence that the land was initially Jirayat land and the lease did not mention about the cultivation of sugar cane and, therefore, merely because the tenant subsequently grew sugar cane, it did not mean that the lease was given for the purpose of cultivation of sugar cane. As such, the provisions of section 43-A of the Tenancy Act were not attracted. Accordingly, the land was not exempt from the provisions of section 32 to 32-R of the Tenancy Act and the tenant became purchaser on the tillers' day. There was, therefore, no question of payment of rent subsequent to 1-4-1957. The question of default did not, therefore, arise. In the alternative, the Tribunal observed that even if the provisions of section 43-A of the Tenancy Act were applicable, amongst other sections the provisions of section 14 of the Act were also not applicable and in any view of the matter, the landlady was not entitled to possession. The Tribunal, therefore, allowed the revision application and set aside the orders of the courts below. It is this order which is challenged in this writ petition.

5. Mr. Kanade, for the petitioner, submitted that the Tribunal has exceeded its jurisdiction inasmuch the orders regarding dropping of proceedings under section 32-G of the Act on finding regarding the land being given for sugar cane cultivation, were in earlier proceedings and had become final since the tenant

never challenged those orders. It was, therefore, not open to the Tribunal, Pune, to go behind those orders and hold that the lease was not for the purpose of sugar cane cultivation and that the provisions of section 43-A of the Tenancy Act were not attracted. Thus, according to Mr. Kanade, the Tribunal has exercised jurisdiction which was not vested by law. So also, the alternative view taken by the Tribunal that even if the provisions of section 43-A of the Act were applicable, application of section 14 of the Tenancy Act was excluded by the same is also erroneous in view of the Notification issued by the Government under the powers vested in it by sub-section (3) of section 43-A of the Tenancy Act. Thus, according to Mr. Kanade, this is a fit case where the powers of superintendence under Article 227 of the Constitution of India are required to be exercised to correct the decision of the Tribunal.

None has appeared on behalf of the respondents.

6. After going through the judgment of the Tribunal and considering the submissions of Mr. Kanade, I find considerable force in the said submissions.

7. It would be seen from the judgment of Tahsildar, Indapur that he has given the past history of the case wherefrom it is apparent that when the land was purchased by the landlady, the rent agreed to be paid was Rs. 60/- per year. The landlady thereafter filed application before Tahsildar for fixation of reasonable rent. Taking into consideration the fact that the land was leased for sugar cane cultivation the rent wasenhanced to Rs. 333/- per year. That order appears to have been challenged in appeal before the Sub Divisional Officer, Baramati but no evidence was produced in regard to that. It also appears that proceedings under the Ceiling Act were held and the tenant, Bajirao Keshavrao, was directed to restore 12 acres of land to the landlady. A copy of the decision passed by the District Deputy Collector, Baramati Division on 30-10-1965 in that behalf was produced but no evidence regarding further disposal of the surplus land was produced. That is how, it was found that the land was used for sugar cane cultivation and was exempt from provisions of section 32 to section 32-R of the Tenancy Act. As such, the tenant was found liable to pay the rent and having committed three defaults in payment of rent, the Tahsildar directed delivery of

possession.

8. In Tenancy Appeal No. 8 of 1997 the Leave Reserve Deputy Collector confirmed this decision of the Tahsildar.

9. However, the Tribunal in its judgment on this aspect observed:--

'It is also seen as per the statement of the landlady herself that the suit land was initially Jirayat land and subsequently the tenant grew sugar cane thereon which categorically meant that the suit land was not at all given for sugar cane cultivation which is a condition precedent to the attraction of section 43-A of the Tenancy Act.'

However, the Tribunal accepted that there were defaults in payment of rent and intimations/notices were given on commission of each default.

The ultimate conclusion of the Maharashtra Revenue Tribunal can be stated in its own words:--

'Now it is clear that the case of the opponent landlady is not based on the notification issued in 1958. In other words the applicability of section 43-A of the Tenancy Act to the suit land would not arise in the present case-Her case is simply based on the fact that the suit land is a Jirayat land and the applicant has failed to pay the rent for the years mentioned in the notice and so she requires ..... possession of the same owing to the failure on the part of the tenant to pay rent within the prescribed period, for those years. Now, as already discussed above, and as could be seen from the papers available among the case papers, it is crystal clear that the applicant tenant has not paid any rent as he has not produced any receipts evidencing the payment of the same. Similarly, he has not produced any money order receipts ..... All this clearly goes to indicate that he has not paid any rent nor has he attempted to pay the same'.

The Tribunal further observed:---

'In the alternative it is urged by the learned Advocate for the applicant that if section 43-A is held to be attracted to the suit land then section 14 will not be applicable to the present suit land as clearly mentioned in section 43-A(1)(b). It is

true that section 14 is not applicable to the lands which are governed by section 43-A(1)(b) of the Tenancy Act. In this connection, it is observed by the lower Court in its judgment that the Maharashtra Revenue Tribunal has held the suit land to be sugarcane land while remanding the case for fixation of reasonable rent to the trial Court and directing it to fix the rent accordingly, but as already observed above there is no record or document which could give any indication regarding the observations made by the Maharashtra Revenue Tribunal. In order toverify the correctness of the observations of the Maharashtra Revenue Tribunal, it will be necessary to remand the case again to the trial Court for getting evidence on this point from the concerned parties. In case it is proved that the land was leased out for sugarcane cultivation or it was a sugarcane land then in that case section 14 will not be applicable and so the question of termination of tenancy under that section is not at all legal and valid and on that count also the application must fail. In view of this matter, there is no point to remand the case again to the trial Court as the application of the landlady must fail as observed above.'

10. The Tribunal thus observing allowed the revision application setting aside the orders of the courts below.

11. In order to appreciate the contentions of Mr. Kanade, it would be necessary to refer to certain provisions of the Tenancy Act. Section 14 of the Tenancy Act to the extent relevant reads as follows:---

'Section 14 (1) Notwithstanding any law, agreement or usage, or the decree or order of a Court, the tenancy of any land shall not be terminated---

(a) unless the tenant---

(i) has failed to pay the rent for any revenue year, before the 31st day of May thereof:.....

(b) unless the landlord has given three month's notice in writing to tenant of his decision to terminate the tenancy and the ground for such termination, and within that period the tenant has failed to remedy the breach for which the tenancy is liable to be terminated.'

Sub-section (2) is not material.

Then section 25, to the extent material, reads as follows:---

'Section 25.

(1) .....

(2) Nothing in this section shall apply to any tenant whose tenancy is terminated for non-payment of rent if he has failed for any three years to pay rent and the landlord has given intimation to the tenant to that effect within a period of three months on each default.

Section 43-A, to the extent relevant, reads as follows:--

'Section 43-A(1) The provisions of sections 4-B, 8, 9, 9-A, 9-B, 9-C, 10, 10-A, 14, 16, 17, 17-A, 17-B, 18, 27, 31 to 31-D (both inclusive), 32 to 32-R (both inclusive), 33-A, 33-B, 33-C, 43, 63, 63-A, 64 and 65, shall not apply to-...

(b) leases of land granted to any bodies or persons other than those mentioned in Clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of livestock;

(2) The Stale Government may by notification in the Official Gazette in this behalf direct that the provisions of the said sections shall not apply to a lease of land obtained by any person for growing any other class of agricultural produce to which it is satisfied that it will not be expedient in the public interest to apply the said provisions. Before the issue of such notification, the State Government shall direct an inquiry to be made by an officer authorized in this behalf by the State Government and shallgive all persons who are likely to be affected by such notification, an opportunity to submit their objections.

(3) Notwithstanding anything contained in sub-sections (1) and (2), it shall be lawful for the State Government to direct, by notification in the Official Gazette, that the leases of lands, as the case may be, to which the provisions of sub-sections (1) and (2) apply, shall be subject to such conditions as may be specified in the notification, in respect of-

(a) the duration of the lease;

(b) the improvements to be made on the land and the formation of cooperative farming societies for that purpose and financial assistance to such societies;

(c) the payment of land revenue, irrigation cess, local fund cess and any other charges payable to the State Government or any local authority; or

(d) any other matter referred to in sections mentioned in sub-section (1).'

Mr. Kanade has brought to my notice the notification issued by the State Government in exercise of powers conferred upon it by sub-section (3) of section 43-A, the relevant portion of which reads as follows:---

'In exercise of the powers conferred by sub-section (3) of section 43-A, of the B.T. and A.L. Act, 1948, the Government of Bombay hereby directs thatthe leases of land referred to in Clause (b) of sub-section (1) of the saidsection 43-A and to which the provisions of sub-section (1) of saidsection 43-A apply shall be subject to the following conditions namely:-

Conditions as to the duration and termination of lease.

1. .....

2. .....

3. If a lessee commits any of the defaults mentioned in Clause (a) of subsection (1) of section 14 in relation to such lease of land, the lease may be terminated by the lessor by giving the lessee three months' notice in writing stating therein the reasons for such termination....'

Reliance is also placed upon the decision of Division Bench of this Court in the case of Motital Ramchandra Vora v. State of Maharashtra, : (1990)92BOMLR452 . After going through the said judgment, it would, however, be found that the point involved in that case was altogether different and the question raised in that petition was whether the State Government exceeded its powers under subsection (3) of section 43-A of the Act in issuing notification and the Division Bench came to

the conclusion that the notification is within the power of the State Government and was a valid notification. The validity of the notification reproduced above is not challenged in this petition nor the Revenue-Tribunal has adverted to that position.

12. After going through the judgments of the Tahsildar, Indapur and the Leave Reserve Deputy Collector, it would be apparent that in earlier proceedings when the fixation of purchase price was started by issuing notice, it was found that the lands were leased out for the purpose of growing sugarcane and, therefore, the proceedings came to be dropped. Not only that, the proceedings for fixation of reasonable rent were also held between the parties and the agreed rent of Rs. 60/- was enhanced to Rs. 330/-, which was fixed to be the reasonable rent. It would then be seen that in earlier proceedings the questions whether the land was given for the purpose ofgrowing sugarcane and whether the tenant was entitled to purchase the same were considered and the proceedings came to be dropped. As such, the Tahsildar Indapur as well as the Deputy Collector in appeal proceeded on the footing that the tenant had not purchased the land. In other words, the relationship of landlord and tenant still continued and, therefore, the tenant was liable to pay the rent. The Tribunal, however, entered into the question of legality or otherwise of the said decisions when it had really no jurisdiction to do so. Furthermore, the findings of fact recorded by the courts below were binding upon the Tribunal. It is not understood how the Tribunal could reopen those questions which were decided in earlier proceedings and hold that the land was not given for the purpose of growing sugarcane and, therefore, the tenant had become deemed purchaser. It was not open to the Tribunal to go behind those decisions in revision application preferred against the order of eviction passed on the ground of defaults in payment of rent by the tenant. It thus clearly appears that the Tribunal has exceeded its jurisdiction in entering into this question and coming to the conclusion that the tenant had become deemed purchaser and as such there was no question of payment of rent and default in that behalf. I, therefore, find that this action of the Revenue Tribunal going beyond its jurisdiction will have to be corrected by exercising the powers of superintendence vested in this Court under Article 227 of the Constitution of India.

13. The Tribunal has further held in the alternative that even if the land was leased out for the purpose of growing sugarcane and provisions of section 43-A of the Tenancy Act applied yet that provision excludes application of section 14 regarding the defaults committed by the tenant in payment of rent and in either view of the matter the order of eviction was not maintainable.

14. It appears that the aforesaid notification issued by the then Government of Bombay which clearly provides application of section 14 as a condition of the tenancy was not brought to the notice of the Revenue Tribunal. Furthermore, the observations of the Tribunal that the case of the landlady was not made out in regard to this notification appears to be unwarranted.

15. Thus having regard to the aforesaid notification and the application of section 14 of the Tenancy Act which is deleted in section 43-A but has been reinserted by the notification in question, the landlady as such was entitled to claim possession of the land on the ground mentioned in section 14 read with section 25 of the Tenancy Act.

16. In view of the aforesaid position, it is clear that the decision of the Tribunal is liable to be quashed and set aside and those of the authorities below will have to be restored.

17. Accordingly, this application is allowed. The order of the Tribunal impugned in this petition is quashed and set aside and that of the Leave Reserve Deputy Collector and Tahsildar Indapur are restored.

18. Rule is made absolute accordingly.

19. No order as to costs.

20. Application allowed.

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