

PETITIONER:
DHONDU UNDRU CHUDHARY

Vs.

RESPONDENT:
GANPAT LAL SHANKAR LAL AGARWAL

DATE OF JUDGMENT 18/01/1991

BENCH:
SAIKIA, K.N. (J)
BENCH:
SAIKIA, K.N. (J)
OJHA, N.D. (J)

CITATION:
1991 AIR 1037 1991 SCR (1) 81
1991 SCC Supl. (1) 513 JT 1991 (1) 145
1991 SCALE (1) 43

ACT:

Bombay Tenancy and Agricultural Lands Act, 1948-Sections 45, 47, 61, 65, 87 and 88-Mamlatdar appointed to manage suit land-Lease of land for 10 years-Payment of rent to Mamlatdar even after expiry of lease period-Whether lease continues.

Bombay Tenancy and Agricultural Lands Act, 1948-Sections 61, 4, 4-B-Mamlatdar appointed to manage suit land-Granting of lease by him-Expiry of lease-Subsequent termination of management- Sections 4, 4-B not applicable.

HEADNOTE:

The suit land was taken under Government management as it was lying fallow for two consecutive years. The Mamlatdar, appointed as a Manager thereof under Section 45, of the Bombay Tenancy and Agricultural Lands Act, 1948, after assuming management, leased out the said land to the appellant for a period of 10 years by an agreement of lease dated 7.12.1951. The period of lease expired on 6.12.1961. However, the management of the land was terminated by Government by the Assistant Collector's order dated 27.7.63 and possession thereof was ordered to be restored to the respondent-landlord.

The appellant filed a Civil Suit against the respondent contending that he was paying rent to the Mamlatdar during the period 7.12.1961 to 27.7.1963 and thus continued to be a tenant in respect of the land.

The Civil Judge made a reference to the Mamlatdar, who held that the appellant continued to be tenant.

The respondent's appeal to the Assistant Collector having failed, a revision application was moved before the Revenue Tribunal wherein the question arose whether the appellant's tenancy was subsisting on 27.7.1963, the date of termination of the management.

The Tribunal held that the appellant could not continue as tenant on the termination of the management, since the land was taken under the Government management under Section 88(1) of the Act.

82

The High Court in the Application under Article 227 of the Constitution of India having upheld this finding of the Tribunal, the appellant filed Special Leave petition to this

Court.

The appellant contended that having continued payment of rent to the Mamlatdar even after expiry of the lease till the termination of management, he continued to be a tenant which the landlord could not avoid on resumption of the land, while the respondent submitted that the appellant could by no means continue to be a tenant after the expiry of lease, and that no fresh lease was granted to him after the management was terminated.

Dismissing the appeal, this Court,

HELD: 1. On the finding of the courts below that after the expiry of the lease, no fresh lease was granted by the Manager, the appellant's claim to have continued as the tenant even after expiry of the lease on 6.12.1961 and till 27.7.1963, the date of termination, by paying rent for the period to the Mamlatdar would be of no avail, in the absence of fresh lease after expiry of the 10 years lease on 6.12.1961. This would be so because the Act does not envisage the Government as a landholder but only as Manager. While delivering back the land into the possession of the landholder, it could not be burdened with any tenancy created or resulting while under management. Besides, there could be no privacy between the landlord and the erstwhile tenant under Government in the matter of tenancy. Between the appellant and the respondent landlord, therefore, no question of the former continuing as tenant of the latter could arise after the land was reverted to the landholder. [86B-D]

2. The appellant could not have been a deemed tenant either under Section 4 or 4B of the Act inasmuch as Section 88 of the Act grants exemption inter alia to lands held on lease from the Government. [86E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 936 of 1977.

From the Judgement and Order dated 16.9.1976 of the Bombay High Court in S.C.A. No. 2741 of 1971.

Shishir Sharma and P.H. Parekh for the Appellant.

Dr. N.M. Ghatate, S.V. Deshpande for the Respondent.

83

The Judgement of the Court was delivered by K.N. SAIKIA, J. This appeal by Special Leave is from the Judgement of the High Court of Bombay, dated 16th September, 1976, in Special Civil Application N. 2741 of 1971 upholding the Judgement of the Maharashtra Revenue Tribunal.

The suit land bearing Survey No. 182, owned by Shankarlal Kunjilal, was taken under Government management as per order of the Assistant Collector, Jalgaon bearing No. TEN. WS-946 dated 14.12.1950 as the land was lying fallow for two consecutive years. The Mamlatdar, Raver was appointed as a Manager thereof under Section 45 of the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as "the Act." After assuming the management the land was leased out to the appellant Dhondu Choudhary by the Mamlatdar for a period of 10 years by an agreement of lease dated 7.12.1951. The period of lease accordingly expired on 6.12.1961. The period of lease accordingly expired on 6.12.1961. However, the management of the land was terminated by the Government by the Assistant Collector's order dated 27.7.1963, and the possession thereof was ordered to be restored to the respondent landlord. There

was nothing on the record to show that the lease which expired on 6.12.1961 was extended by the Manager thereafter till the termination of management by order dated 27.7.1963.

The appellant claimed that he was paying rent to the Mamlatdar during the period of 7.12.1961 to 27.7.1963 and thus continued to be a tenant in respect of the land. He filed a Civil Suit against the respondent in the Court of Civil Judge, Raver, who made a reference to the Mamlatdar, Raver who held that the appellant continued to be tenant. The respondent's appeal to the Assistant Collector having failed, he moved a revision application before the Maharashtra Revenue Tribunal, hereinafter referred to as 'the Tribunal' wherein the question arose whether the appellant's tenancy was subsisting on 27.7.1963, and whether he had become the tenant in respect of the land since that date under the Act.

Relying on a bench decision of the Bombay High Court in Special Civil Application No. 1077 of 1961 Ghambhir Lal Laxman Das v. Collector of Jalgaon, (decided on 20.12.1962) wherein it was held that the person to whom lease was granted by the Manager of the land which was taken under Government management, could not continue to be the tenant after the expiry of the period of 10 years without a fresh lease, and that after the management was terminated by the

84

Government on expiration of the lease, the tenancy under the lease could not be said to be subsisting on the date on which the management was terminated. The Tribunal held that the appellant could not continue as tenant since termination of the lease on 27.7.1963. The Tribunal further held that since the land was taken under the Government management by the order of the Assistant Collector under Section 88(1) of the Act the provisions of Sections 1 to 87 were not applicable and the appellant, therefore, could not continue to be tenant after expiration of the period of lease on 6.12.1961. The High Court in the Special Application under Article 227 of the Constitution of India having upheld the above finding of the Tribunal, the appellant obtained Special Leave.

The only submission of the learned counsel for the appellant Mr. Shishir Sharma is that the appellant having continued payment of rent to Mamlatdar even after expiry of lease till the termination of management, he continued to be a tenant which the landlord could not avoid on resumption of the land. Dr. N.M. Ghatate, the learned counsel for the respondent, submits that the appellant could by no means continue to be a tenant after his lease expired and no fresh lease was granted to him and more so after the management was terminated on 27.7.1963.

We find force in Dr. Ghatate's submission. Admittedly the management of the land was assumed by the State Government under Section 65 of the Act. Section 65 deals with assumption of management of lands which remained uncultivated, and says:

"65. (1) If it appears to the State Government that for any two consecutive years, any land has remained uncultivated or the full and efficient use of the land has not been made for the purpose of agriculture, through the default of the holder or any other cause whatsoever not beyond his control the State Government may, after making such inquiry as it thinks fit, declare that the management of such land shall be assumed. The declaration so made shall be conclusive.

(2) On the assumption of the management, such

land shall vest in the State Government during the continuance of the management and the provision of Chapter IV shall mutatis mutandis apply to the said land:

85

Provided that the manager may in suitable cases give such land on lease at rent even equal to the amount of its assessment:

Provided further that, if the management of the land has been assumed under sub-section (1) on account of the default of the tenant, such tenant shall cease to have any right or privilege under Chapter II or III, as the case may be, in respect of such land, with effect from the date on and from which such management has been assumed."

Admittedly, the Manager was appointed under Section 45 of the Act, Section 45 deals with vesting of estate in management, and says:

"45. (1) On the publication of the notification under section 44, estate the in respect of which the notification has been published shall, so long as the management continues, vest in the State Government. Such management shall be deemed to commence from the date on which the notification is published and the State Government shall appoint a Manager to be in charge of such estate.

(2) Notwithstanding the vesting of the estate in the State Government under sub-section (1), the tenant holding the lands on lease comprised in the estate shall, save as otherwise provided in this Chapter, continue to have the same right and shall be subject to the same obligations, as they have or are subject under the proceeding Chapters in respect of the lands held by them on lease."

Section 61 deals with termination of management, and says:

"61. The State Government, when it is of opinion that it is not necessary to continue the management of the estate, by order published in the Official Gazette, direct that the said management shall be terminated. On the termination of the said management, the estate shall be delivered into the possession of the holder, or, if he is dead, of any person entitled to the said estate together with any balances which may be due to the credit of the said holder. All acts done or purporting to be done by the Manager during the continuance of the management of the estate shall be binding on the holder or to any person to whom the possession of the estate has been delivered."

86

Thus on termination of the management the suit land in the instant case was to be delivered into the possession of the respondent holder and all acts done or purporting to be done by the Manager during the continuance of the management of the estate should be binding on the holder or on any person to whom the possession of the estate had been delivered. In the instant case the finding of the Courts below is that after expiry of the lease no fresh lease was granted by the Manager. In view of this finding, the appellant's claim to have continued as the tenant even after expiry of the lease on 6.12.1961 and till 27.7.1963, the date of termination, by paying rent for the period to the Mamlatdar would be of no avail, in the absence of fresh lease after expiry of the 10 years lease on 6.12.1961. The

Tribunal followed the binding decision of the Bombay High Court holding that there was no lease in favour of the appellant and that by mere holding over he could not have continued the status of a tenant. This would be so because the Act does not envisage the Government as a landholder but only as Manager. While delivering back the land into the possession of the landholder, it could not be burdened with any tenancy created or resulting while under management. Besides, there could be no privacy between the landlord and the erstwhile tenant under Government in the matter of tenancy. Between the appellant and the respondent landlord, therefore, no question of the former continuing as tenant of the latter could arise after the land was reverted to the landholder.

Mr. Sharma's submission that the appellant was a deemed tenant is also not tenable. The appellant could not have been a deemed tenant under Section 4 or 4B of the Act inasmuch as Section 88 of the Act grants exemption inter alia to lands held on lease from the Government. It says:

"88. (1) Save as otherwise provided in sub-section(2), nothing in the foregoing provisions of this Act shall apply-

(a) to lands belonging to, or held on lease from, the Government;

xxx xxx xxx xxx xxx xxx xxx xxx

(d) to an estate or land taken under management by the State Government under Chapter IV or section 65 except as provided in the said Chapter IV or section 65, as the case may be, and in sections 66, 80A, 82, 83, 84, 85, 86 and 87:

87

Provided that from the date on which the land is released from management, all the foregoing provisions of this Act shall apply thereto; but subject to the modification that in the case of a tenancy, not being a permanent tenancy, which on that date subsists in the land.....

xxx xxx xxx xxx xxx xxx xxx xxx xxx"

In Keshav Vithal Mahatre v. Arbid Ranchhod Parekh, [1973] Bom. L.R. LXXXV 694, a learned Single Judge has held that a lease of land granted by a Manager under s. 47 of the Bombay Tenancy and Agricultural Lands Act, 1948, comes to an end with the termination of the management of the land by virtue of s. 61 of the Act. If the tenant continues to remain on the land thereafter, he would be cultivating it unlawfully as a trespasser and he cannot, therefore, claim to be a deemed tenant under s. 4 of the Act. This is consistent with the decision in Ghambhir Lal's case(supra) relied on by the Tribunal.

Thus, Sections 4 and 4B were not applicable during the period from expiry of the lease to the termination of management.

In the result, we find no merit in this appeal and it is dismissed, but without any order as to costs.

V.P.R

Appeal dismissed.

88