

PETITIONER:
BHAGWANT PUNDALIK & ANR.

Vs.

RESPONDENT:
KISHAN GANPAT BHARASKAL & ORS.

DATE OF JUDGMENT:
19/10/1970

BENCH:
SHAH, J.C.
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SHAH, J.C.
HEGDE, K.S.
GROVER, A.N.

CITATION:
1971 AIR 435 1971 SCR (2) 657
1971 SCC (1) 15

ACT:
Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act
1958, ss. 20 and 36-Surrender of land by tenant-Neither
written nor verified before Tehsildar-Validity.

HEADNOTE:

The respondents obtained a lease for cultivation of land. On the landlord's desire to cultivate the land personally, the respondents surrendered the lands to the landlord. The surrender was not in writing nor was there verification of the surrender by the Tehsildar. The landlord cultivated the land for a few years, and thereafter granted a lease to the appellant. The respondents applied under s. 36 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, for restoration of possession to them. On the question whether the eviction of respondent was legal, this Court, HELD : Possession obtained by the landlord was not lawful for, he obtained possession of the lands from the tenants without complying with the requirements of s. 20 and sub-s. (2) of s. 36. Sub-section (2) of s. 36 prohibits the landlord from obtaining possession of any land held by a tenant except under an order of Tahsildar. Delivery of possession voluntarily by the respondents did not render possession of the landlord valid. Under s.36(1), a tenant who has been evicted in contravention of sub-s. (2) may apply in writing to the Tahsildar for such possession. [1659 E]

By s. 20 of the Act which deals with surrender it is expressly provided that surrender shall be in writing and shall be verified in the prescribed manner. Surrender of tenancy which does not comply with the requirements of s. 20 is ineffective. Again the terms of sub-s. (2) of s. 36 are explicit; they are not subject to any implication that possession obtained with the consent of the tenant, but without an order of the Tahsildar is valid. [659 H]

In the present case there is no surrender of tenancy in writing and no verification of surrender by the Tahsildar. Madho S/o Tatyra Sonar v. Maharashtra Revenue Tribunal & Ors. Special Civil Application No. 206/1967 dt. 11-12-1969, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1409 and 1721 of 1966.

Appeals by special leave from the judgment and order dated November 15, 1965 of the Bombay High Court, Nagpur Bench in Special Civil Application Nos. 746 and 747 of 1964.

S. K. Mehta and K. L. Mehta. for the appellants (in both the appeals).

M. S. Gupta, for respondents Nos. 1 and 2 (in C.A. No. 1409 of 1966).

S. S. Khanduja, for respondent No. 3 (in both the appeals).
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The Judgment of the Court was delivered by Shah, J.-Badridas son of Ramgopal was the owner of fields Survey Nos. 2 and 9/2 of village Bhamberi, taluq Akot, District Akola. On February 26, 1958, Badridas granted a lease for cultivation of the lands to two brothers Kishan and Manik. At the end of the agricultural year 1958-59 Badridas' took possession of the lands from Kishan and Manik representing that he desired to cultivate the lands personally. Badridas cultivated the lands during the agricultural years 1959-60 and 1960-61, and thereafter on January 18, 1961 he granted a lease of the lands for four years to Bhagwant son of Pundalik Kishan and Manik then applied on June 30, 1961 under S. 36(1) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, for an order restored them to possession alleging that their eviction from the lands was illegal. The Additional Tahsildar dismissed the application, but in appeal the order was reversed. In the view of the appellate authority Kishan and Manik were in 1958-59 tenants of the lands and they were evicted otherwise than in accordance with the law, and that they were entitled to be restored to possession under S. 36(1) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. In a petition by Bhagwant the Revenue Tribunal reversed the order of the appellate authority. The Tribunal held that since Kishan and Manik had given up possession of the lands voluntarily and had allowed Badridas to cultivate the lands for the following two years, they had no right to be reinstated into possession of the lands, especially after the lands were let out by Badridas to Bhagwant. Kishan and Manik then moved in the High Court of Bombay at Nagpur, two Special Civil Applications Nos. 746 and 747 of 1964 in respect of the two fields Survey Nos. 2 and 9/2 separately. The High Court set aside the order of the Revenue Tribunal and directed that an order for possession be made in favour of Kishan and Manik in respect of the two lands. With special leave, these appeals have been preferred by Bhagwant.

The Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, was brought into force on December 30, 1958. Section 20 provides :

"A tenant may terminate the tenancy at any time by surrendering his interest of a tenant in favour of the landlord.

Provided that such surrender shall be in writing and shall be verified before the Tahsildar in the prescribed manner."

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Section 36 of the Act provides :

(1) A tenant entitled to possession of any land . under any of the

provisions of this Act or as a result of eviction in contravention of sub-section (2) may apply in writing for each. possession to the Tahsildar.

(2) No landlord shall obtain possession of any land, held by a tenant except under an order of the Tahsildar. For obtaining such order he shall make an application in the prescribed form and within a period of two years from the date on which the right to obtain possession of the land, is deemed to have accrued to him:

For the agricultural year 1958-59 Kishan and Manik were tenants in respect of two lands in question. Badridas took possession of the lands at the end of that year. Granting that Kishan and Manik delivered the lands voluntarily, there could not under S-20 of the Act be a valid surrender, unless the surrender was in writing and verified before the Tahsildar and in the prescribed manner. Possession obtained by Badridas was not lawful, for Badridas obtained possession of the land from the tenants without complying with the requirements of s. 20 and of sub-s. (2) of s. 36. Sub-section (2) of s. 36 prohibits the landlord from obtaining possession of any land held by a tenant except under an order of the Tahsildar. Delivery of possession voluntarily by Kishan and Manik did not render the possession of Badridas valid. Under s. 36(1) a tenant who has been evicted in contravention of sub-s. (2) may apply in writing to the Tahsildar for such possession.

Counsel for the appellant contended that s. 36(2) does not commence with the expression "Notwithstanding any agreement, usage, decree or order of a court of law" as s. 19 of the Act does, and on that account it may reasonably be inferred that the Legislature intended that only those tenants shall be deemed entitled to possession within the meaning of s. 36(1) who were dispossessed by fraud, coercion or misrepresentation, and not tenant who had voluntarily parted with possession of the lands. We are unable to agree with that contention. Section 19 provides that notwithstanding any agreement, usage, decree or order of a court of law tenancy of any land held by a tenant shall not be terminated except in the cases specified therein. Thereby it was intended to make the provisions of s. 19 paramount. In s. 20 of the Act which deals with surrender it is expressly enacted that surrender shall be in writing and shall be verified in the prescribed manner. Surrender of tenancy which does not comply with the requirements of s. 20, 660

is ineffective. Again, sub-s. (2) of S. 36 imposes a disability upon the landlord from obtaining possession of any land occupied by a tenant except under an order of the Tahsildar. The terms of subs. (2) of S. 36 are explicit : they are not subject to any implication that possession obtained with the consent of the tenant, but without an order of the Tahsildar is valid

In a recent judgment *Madhao s/o Tatyia Sonar v. The Maharashtra Revenue Tribunal and ors.* (1) the High Court of Bombay held that S. 36(2) is plenary and controls S. 20 of the Act. In the present case- there is no surrender of tenancy in writing and no verification of surrender by the Tahsildar. We need express no opinion on the question whether mere verification by the Tahsildar without an order of the Tahsildar authorising the landlord to obtain possession disentitles the tenant to claim possession under

S. 36(1).

The appeals fail and are dismissed. Having regard to all the circumstances, however, we think, there should be no order as to costs in this Court.

Counsel for the appellant Bhagwant submitted that there are crops standing on the lands, and prayed that the appellant may be allowed to reap them. One month's time from the date of this judgment is given to the appellant to deliver possession of the lands.

Y.P. Appeals dismissed.

(1) Special Civil Application No. 206 of 1967
decided on September 11/12 1969.

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