

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3381 OF 1996

1. Kacharu B. Ambekar
2. Dattu B. Ambekar
3. Vimal Popat Ambekar
4. Smt. Sonabai Baban Ambekar
All r/o village Vinchur Dalvi,
Tal. Sinnar, Dist. Nashik

...Petitioners

1. Suryabhan Bahiru Shelke
r/o village Cinchur Dalvi, Tal. Sinnar,
Dist. Nashik
2. Sou. Laxmibai Damu Pawar
r/o Sonambe Tal. Sinnar, Dist. Nashik
3. Sou. Dimakhabai Bhika Gaikwad
r/o. Village Vinchur Dalvi, Tal. Sinnar,
Dist. Nashik
4. Sou. Chandrabhagabai Vishnu Muthal
r/o Vadgaon Pingale, Tal. Sinnar,
Dist. Nashik
5. Sou. Bijalabai Kachru Muthal
r/o Vadgaon Pingale, Tal. Sinnar,
Dist. Nashik
6. Sou. Saushabai Ambadas Kasar
r/o Shevage Darne, Tal. Nashik
Dist. Nashik

...Respondents

Ms. R. M. Khairnar, I/b P. N. Joshi, for the Petitioners.
None for the Respondents.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 5th APRIL, 2019

PRONOUNCED ON : 23rd AUGUST, 2019

JUDGMENT:-

1. This petition under Article 227 of the Constitution of India
takes exception to the judgment and order passed by the

Maharashtra Revenue Tribunal, Bombay, ("MRT") in Revision Application No. Tenancy A.70/1994, dated 24th November, 1995, whereby the revision came to be allowed and the order dated 30th November, 1993, passed by the Sub Divisional Officer, Niphad Division, ("SDO"), in an application under Section 84 of the Bombay Tenancy and Agricultural Lands Act, 1948 ("the Act, 1948", for short), rejecting the prayer of the respondents for restoration of possession of agricultural lands, came to be set aside.

2. The controversy giving rise to the instant petition lies in a narrow compass and arises in the backdrop of following facts:

(a) The agricultural lands bearing Gat No.333 admeasuring 47 Ares and Gat No. 323 admeasuring 70 Ares ("the suit lands", for short) situated at village Vinchur Dalvi, Taluka Sinnar, District Nashik, were owned by the predecessor in title of the petitioners, (hereinafter referred to as the landlord, which term denotes the original landlord as well as the successors in interest). Late Bhairu Tukaram Shelke, the predecessor in title of the respondents, (hereinafter referred to as the tenant, which term denotes the original tenant as well as the successors in interest) was the tenant on the suit lands. The original tenant was in cultivation of the suit lands since the year 1953-1954.

As the status of the original tenant was contested, an application was filed by the tenant under Section 70(b) of the Act, 1948. The Agricultural Land Tribunal by order dated 30th November, 1966 made a declaration in favour of the tenant. The said finding attained finality with the decision of MRT in Tenancy No.A.708/1967, dated 29th February, 1968.

(b) In the backdrop of aforesaid proceedings, in the year 1984 the tenant filed an application, purportedly under Section 84 of the Act, 1948, asserting that the landlord, taking undue advantage of the illness and immobility of the tenant, had unlawfully obtained the possession of the suit lands prior to 9 to 10 years. The tenant was in cultivation of the suit lands on the Tiller's day i.e. 1st April, 1957. Thus, the landlord could not have taken possession of the suit lands otherwise than in accordance with the provisions contained in the Act, 1948. As the landlord has forcibly and unlawfully dispossessed the tenant, a prayer was made for restoration of the possession to the tenant.

(c) The SDO called for a report from the concerned Tahsildar. After appraisal of the material on record, including the report of the Tahsildar, the SDO recorded that the tenant was in cultivation and possession of the suit lands up to the year

1974-1975; as from the said year the name of the landlord has been shown in the cultivator's column of the record of rights of the suit lands. It was further noted that the tenant was in cultivation of the suit lands since 1953-1954 and the status of the tenant was confirmed by the tenancy authorities, up to the Revenue Tribunal. The SDO, however, declined to restore the possession of the suit land on the premise that the tenant ought to have filed an application within two years of dispossession, in accordance with the provisions contained in Section 29(1) of the Act 1948. Since the dispossession was prior to 10 years, the application was held to be untenable. This finding was recorded on the premise that as the dispossession was by the landlord and not a third party, the provisions under Section 84 of the Act were not attracted and the proper remedy was under the provisions of Section 29(1) of the Act, 1948. In short, despite having found that the tenant was unlawfully dispossessed of the suit lands, the SDO was not persuaded to restore the possession of the suit lands to the tenant for the reason that the application under Section 84 was not tenable.

(d) Being aggrieved by and dissatisfied with the aforesaid determination, the tenant preferred revision application before

the MRT. After hearing the parties, the MRT was persuaded to overturn the finding of SDO. It was, in terms, observed that the view of the SDO that an application for restoration of possession under Section 84 of the Act was not tenable, when the dispossession at the hands of the landlord, was incorrect and contrary to the settled legal position. The learned President, MRT, further observed that Section 29 of the Act, 1948 would not apply to a case where the erstwhile tenant, who was in possession and cultivation of the suit land on the Tiller's day, became a deemed purchaser. Thus, the order passed by the SDO was set aside.

3. Being aggrieved by and dissatisfied with the aforesaid order of MRT, the landlord – petitioners have invoked the writ jurisdiction of this Court.

4. I have heard Ms. Khairnar, the learned Counsel for the petitioners at some length. None appeared for the respondents – tenants despite service of notice.

5. Ms. Khairnar strenuously urged that the learned President, MRT, committed a grave error in interfering with the well reasoned judgment and order passed by the SDO. It was urged that the view of SDO that a tenant, who alleges dispossession at the hands of the landlord, cannot invoke the

provisions contained in Section 84 of the Act, 1948 is legally impeccable. On the contrary, the MRT had fallen into an error in observing that the tenant, in such a case, can invoke the provisions contained in Section 84 of the Act 1948. Ms. Khairnar further submitted that as the dispossession was alleged prior to 10 years, in any event, the application for restoration of possession ought to have been made within a reasonable period, even if it is held that an application under Section 84 was tenable. Ms. Khairnar, thus, submitted that the impugned order being in dissonance with the settled legal position, is liable to be quashed and set aside and that of the SDO deserves to be restored.

6. Before advertng to deal with the aforesaid submissions, it would be apposite to note the following incontestible facts. It is incontrovertible that the original tenant had been in cultivation of the suit lands since 1953-1954. Indisputably, when the status of the original tenant was sought to be disputed by the landlord, the tenant initiated the proceedings under Section 70(b) of the Act, 1948, and it was found therein that the tenant was in cultivation of the suit lands on the Tiller's day. There is no qualm over the fact that the findings of the tenancy authorities about the tenancy of the original tenant attained

finality up to the Revenue Tribunal. It is indisputable that the tenant was in possession and cultivation of the suit lands up to the year 1974-1975; whence the tenant suffered dispossession. It is not the case of the landlord that the landlord took possession of the suit lands in conformity with the provisions of the Act, 1948.

7. In the aforesaid factual backdrop the claim of the tenant was negated by the SDO only on the count that the tenant did not seek restoration of possession within the stipulated period of two years prescribed in Section 29(1) of the Act, 1948 and thus application for restoration of possession under Section 84 of the Act 1948, which provides for summary eviction of any person unauthorisedly occupying or wrongfully in possession of the agricultural land, was not tenable. The learned President, MRT, found the aforesaid view of SDO legally unsustainable.

8. In this setting of the matter, the only question that crops up for consideration is whether an erstwhile tenant, who is unlawfully dispossessed by the landlord, can seek restoration of possession by invoking the provisions contained in Section 84 of the Act, 1948 or the tenant's only remedy is to seek restoration of possession under Section 29(1), within the period stipulated therein?

9. The controversy sought to be raised on behalf of the petitioners, on the premise that an application for restoration of possession, where the dispossession is at the instance of the landlord, cannot be made under Section 84 of the Act, 1948, is no longer *res integra*. A three Judge Bench of the supreme Court in the case of ***Vallabhbhai Nathabhai vs. Bai Jivi and others***¹ considered the inter-play between the provisions contained in Section 29(1) and Section 84 of the Act, 1948, and thereafter expounded the scope of Section 84 of the Act. In the said case, the tenant had voluntarily surrendered possession of the agricultural land to the landlord on 15th May, 1956. However, the surrender was not in accordance with the provisions contained in Section 15 of the Act and, therefore, was not valid and binding upon the tenant. The High Court of Gujrat had held that in the aforesaid backdrop Section 84 would not apply and the order of the Tribunal holding that the case was covered by Section 84 was set aside.

10. The Supreme court after referring to the provisions contained in Sections 29 and 84, expounded legal position, especially the scope of Section 84, are as under:

“**6.** The question then is whether a tenant who has a remedy under S. 29(1) can still apply to the Collector under

1 AIR 1969 Supreme Court 1190.

Section 84. In other words, whether the Legislature has provided, alternative remedies under both the sections to such a tenant? The words "any person unauthorisedly occupying or wrongfully in possession of any land" in Section 84, no doubt, are words of wide import and would include a landlord who is in unauthorised occupation or is wrongfully in possession. A landlord who under an invalid surrender is in possession of the land is, no doubt, a person in unauthorised occupation or is wrongfully in possession. But, then Section 84 in express terms limits, its application to three types of cases only, namely of a person unauthorisedly occupying or wrongfully in possession of the land (a) the transfer or acquisition of which etc. is invalid under the Act, or (b) the management of which has been assumed under the Act, or (c) to the use and occupation of which he is not entitled under the provisions of the Act and the said provisions do not provide for the eviction of such person.

7.Clause (a) therefore, applies to transfers or acquisitions which are in breach of the provisions of Ch. V and possession or Occupation whereof has been obtained under such invalid transfers or acquisitions. That being the position, the instant case would fall only under Clause (c) and not under Clause (a) as contended by Mr. Bhandare, and therefore the condition that S. 84 would only apply to cases for which there is no other remedy under any of the Provisions of the Act must apply to the present case. This condition shows that while giving drastic powers of summary eviction to an administrative officer the legislature was careful to restrict this power firstly because the result otherwise would be to deprive the person evicted under Section 84 of his remedy of Appeal before the Collector which he would have if the order were to be passed under Section 29(1) and secondly, because it would enable a tenant to bypass a judicial inquiry by the Mamlatdar under Sec. 29(1) by directly applying to the Collector under Section 84. Such a result could not have been intended by the legislature. Therefore, the contention that Ss. 29(1) and 84 provide alternative remedies and a choice to the tenant cannot possibly be correct."

(emphasis supplied)

11. The aforesaid pronouncement of the Supreme Court is a complete answer to the submission on behalf of the petitioners that the provisions contained in Section 84 cannot be resorted to seek restoration of possession, when the dispossession is alleged at the hands of the landlord. The Supreme Court has,

in terms, observed that the words, “any person unauthorisedly occupying or wrongfully in possession of any land” in Section 84, are words of wide import and would include a landlord who is in unauthorised occupation or is wrongfully in possession. The issue which, however, needs determination is, whether such claim for restoration falls within any of the three types of cases, covered by Clauses (a), (b) or (c) of Section 84.

12. The aforesaid pronouncement of the Supreme Court was further explained by this Court in the case of ***Vithoba Ram Rahane and another vs. Bhalchandra Sadashiv Joshi (deceased) by heir and others***², wherein after referring to the judgment in the case of ***Vallabhbbhai*** (supra), the following observations were made:

“13. As has been held by the supreme court in the case of Vallabhbbhai Nathabbhai (supra), if an application is maintainable under section 29 then one cannot resort to section 84. To be very precise, it is pointed out that section 84 does not provide for a remedy alternative to that of section 29(1). Section 84 does not provide for a judicial inquiry or an appeal. Clause (c) of section 84 applies only when there is no other remedy under the provisions of the Act. Since the petitioners were on the land on 1-4-1957, after 1-4-1957 they ceased to be the tenants because on 1-4-1957 the landlord's title got extinguished and a new title in favour of the tenant is created. Thus the tenancy also stands determined or terminated. If that be so, after 1-4-1957 the present petitioners could not have filed any application under section 29. Because section 29 applies only to a case where on the date of application the petitioners still continue to be the tenants. Since on 1-4-1957 the petitioners ceased to be the tenants, the question of their filing any application under

section 29 will not arise, because that is not a remedy which is available to them. Thus the only remedy available being under section 84 their application under the said section on the same reasoning and on the same law as laid down by the Supreme Court in *Valabhbhai's* case (supra) is maintainable. Therefore, the two authorities below were wrong when they say that the proper remedy for the petitioners was to file an application under section 29. Once it is held that the application is maintainable under section 84 then no limitation is provided for making an application under section 84 as held by Chagla C. J. in *Special Application No.764 of 1962* decided on 2-8-1964. Hence the period of limitation is not applicable to proceedings under section 84 and thus there is no obstacle in the way of the present petitioners in filing the application. Once the application is held to be maintainable, then there is no dispute of facts because the occupation of the respondents-landlords was unauthorised occupation, not permissible under the Act and therefore the tenants were entitled to get the possession."

(emphasis supplied)

13. The correctness of the aforesaid construction put on the judgment of ***Vallabhbhai*** (supra), in the case of ***Vithoba*** (supra), by this Court, was reiterated in another judgment of this Court in the case of ***Shankar Savala Gurav vs. Bala Govind Patil***³. The observations in paragraphs 6 and 7 are relevant and thus extracted below:

"6. Having considered the rival submissions, I have no hesitation in accepting the argument advanced on behalf of the respondent. The argument advanced is squarely covered by the decision of this Court in the case of *Vithoba Ram Rahane* (supra), which decision has been affirmed by the Supreme Court in the case of *Rangnath Vishnu Mulluck* (supra). In that case, the question was squarely answered by this Court that once the tenant was found to be in lawful cultivation of the agricultural land on the tillers day i.e. 1-4-1957, he would become deemed purchaser thereof by operation of law and on that day, the relationship between the parties i.e. landlord and tenant would cease to operate and, as a consequence of which, the only remedy available to such a tenant is to invoke section 84 of the Act whereas,

section 29 of the Act is unavailable to such tenants. Even in the present case, the situation is same as in the above noted case. Therefore, I have no hesitation in following the decision in *Rahane's case* as affirmed by the Apex Court in *Rangnath Vishnu Mulluck's case* (supra) and to uphold the view taken by the two courts below in this behalf.

7. Learned Counsel for the petitioner, however, had placed emphasis on the decision of the Apex Court in *Vallabhbhai Nathabhai's case* (supra). That decision has been considered by this Court in *Vithoba Ram Rahane's case* (supra) and distinguished. It is seen that in *Vallabhbhai's case*, which was before the Apex Court, the tenant's case was that the tenant had voluntarily handed over the possession of the land on 15-5-1956 which is prior to the tiller's day. If that is so, then, obviously the ratio of the decision in *Vithoba Rahane's case* and of *Rangnath Vishnu Mulluck's case* (supra) would govern the field and will have to be applied to the present case. The view expressed by the two courts below in granting the application preferred by the respondent-tenant and rejecting the objection taken on behalf of the petitioner landlord about non-maintainability of that application will have to be affirmed. Understood thus, this writ petition will fail and the same is, therefore, dismissed with no order as to costs."

(emphasis supplied)

14. A profitable reference can also be made to another judgment in the case of ***Maruti Ramji Patil vs. Babu Dhondi Mohite & ors.***⁴, wherein also an objection, like the one in the case at hand, as to the maintainability of claim under Section 84 of the Act and the bar of limitation to seek restoration of possession was raised. The learned Single Judge had negated the objection by observing, *inter alia*, as under:

"7. Lastly, the learned Counsel for the petitioners reiterated the issue of tenability of the application under Section 84 of the Act and as per him the tenants, who have filed the application under Section 29 instead of Section 84 of the Act. If the application was filed under Section 29 it would be obviously hit by the limitation. Even otherwise the

4 2006(4) Bom.C.R. 498.

Revenue Tribunal has dealt with this issue as well and held that the application was rightly filed for summary eviction under Section 84 of the Act as the tenant was forcibly dispossessed of the suit land sometimes in the year 1958-59. The learned Counsel for the petitioners relied upon the decision in the case of (Vallabbhai Nathabhai v. Bai Jivi and Ors.)¹, A.I.R. 1969 S.C. 1190. The law laid down by the Apex Court in Vallabbhai's case supports the impugned order. An application under Section 29 is required to be filed in the cases where the inquiries under sub-sections (2) to (4) therein are required to be made or where the tenant had purportedly surrendered the land voluntarily. The case of the tenants before the Tahasildar originally was that Dhondi was dispossessed forcibly and at no point of time he had surrendered the land or the tenancy was terminated by the order of the Mamlatdar. The application was for summary eviction and it was rightly entertained under Section 84 of the Act.

8. The learned Counsel for the petitioners then claimed that the application filed as on 19-7-1976 under Section 84 of the Act was hit by limitation or it was so belatedly filed that it could not have been entertained. Section 84 of the Act does not prescribe any period of limitation. It is a fact that during the life time of Dhondi such an application was not filed but that does not mean that the Tahsildar or the Assistant Collector committed an illegality in entertaining such an application. By the operation of Section 32 of the Act, Dhondi had become the deemed purchaser of the suit land as he was in actual possession and cultivation of the same land as on 1-4-1957 and he was illegally dispossessed. In such a situation the restoration application, even though was not made by Dhondi, it cannot be said that his LRs could not have submitted such an application on 19-7-1976 i.e. after about one and half years of their fathers demise. Thus on all counts the impugned orders do not suffer from any error apparent on the face of the record and, therefore, there is no case made out to interfere in the same under Article 227 of the Constitution."

(emphasis supplied)

15. In the backdrop of the aforesaid exposition of the legal position and the incontrovertible fact that on 1st April, 1957, the original tenant was in cultivation of the suit lands in the capacity of a tenant, and the said status of the original tenant had been confirmed and upheld in the tenancy proceedings, up

to the Maharashtra Revenue Tribunal, it is too late in the day to urge that the tenant could not have preferred an application under Section 84 of the Act.

16. The learned Counsel for the petitioners attempted to salvage the position by advancing an alternative submission that in the event the application under Section 84 was held to be tenable, it ought to have been made within reasonable period. To bolster up this submission, the learned Counsel for the petitioners placed reliance upon the judgments of the Supreme Court in the case of ***Mohamad Kavi Mohamad Amin vs. Fatmabai Ibrahim***⁵ and of this Court in the case of ***Waman Atmaram Lavand and another vs. Dattatraya @ Dattu Baba Lavand and others***⁶.

17. I have perused the aforesaid judgments. They pertain to the exercise of the powers under Section 84C of the Act, 1948. In view of the categorical and unequivocal exposition of law that for summary eviction of a person, who has unlawfully dispossessed the tenant, under Section 84 of the Act, 1948, there is no prescription of limitation and, consequently, the bar of limitation does not operate, the submission based on the

5 (1997) 6 Supreme Court Cases 71.

6 2009(5) Mh.L.J. 442.

judgments in the context of a distinct provision under Section 84C of the Act, 1948, does not deserve to be countenanced. The matter needs to be appreciated through the prism of the object of the Act, 1948. A landlord is not authorised to take possession of the agricultural land otherwise than in accordance with the provisions of the Act, 1948. Even the voluntary surrender of the land by the tenant has to be in conformity with the provisions of the Act. A wrongful dispossession of the erstwhile tenant cannot be placed on a higher pedestal so as to put premium on the unlawful act of the landlord.

18. From this standpoint and in view of the consistent legal position, the learned President, MRT, was within his rights in correcting the error committed by SDO in non-suiting the tenant on the misconceived notion that the application under Section 84 was not maintainable. Resultantly, in my considered view, no interference is warranted in the impugned order passed by MRT, in exercise of writ jurisdiction.

19. For the forgoing reasons, the petition deserves to be dismissed. Thus, the petition stand dismissed.

Rule stands discharged. No costs.

[N. J. JAMADAR, J.]