Maruti Bala Raut

Vs

Dashrath Babu Wathare and Others

Civil Appeals Nos. 1941 and 1942 of 1967

(P. Jagmohan Reddy, M. H. Beg, A. Alagiriswami JJ)

27.08.1974

JUDGMENT

ALAGIRISWAMI, J -

1. In the year 1932 one Shantappa Wathare, father of Respondents Nos. 1 and 2 in C.A. 1924, executed a document (we are using the word 'document' because the character of the document was the subject - matter of subsequent litigation) in respect of the western one - third share of Survey No. 99 measuring seven acres and 30 gunthas in the village of Bamani in the state of Miraj in favour of Nabisha Pirjade of Miraj. In 1936 he executed a similar document in respect of middle one-third and in 1941 Dashrath and Bhima, belonging to another branch of the family, executed a similar document in respect of the eastern one - third portion of the land in favour of the said Nabisha Pirjade. On August 11, 1948 Miraj State merged in the then Bombay Province and from that date the Bombay Tenancy Act, 1939 became applicable to the lands in question. On September 15, 1948 the Bombay Agricultural Debtors Relief Act, 1947 became applicable to the areas of the former Miraj State and on December 28, 1948 the Bombay Tenancy and Agricultural Lands Act, 1948 Came into force in the same area. In 1949 the two branches of Wathares started two separate sets of proceedings under the Bombay Agricultural Debtors Relief Act contending that the documents of 1932, 1936 and 1941 were mortgages and they were entitled to redeem them. They succeeded in their contention. To these proceedings the appellant Maruti Bala Raut was not a party. The appellant obstructed their attempt to take possessions on the ground that he was a tenant of these land even before the Bombay Tenancy Act, 1939 became applicable to them and was thus a protected tenant. There is no dispute that if one August 11, 1948 the appellant had been a tenant of these lands he was entitled to succeed.

2. As a result of the obstruction there were numerous proceedings between Yeshwant and Jinappa, sons of Shantappa Wathare, on the one hand and the appellant on the other, as also another set of proceedings between Bhimarao and Dashrath Wathare on the hand and the appellant on the other, appellant claiming that he was a tenant entitled to the benefits of Tenancy Act and the two sets of respondents contending that he was not. In the proceedings by Yeshwant and Jinappa the questions whether the appellant was a tenant was referred to the Mamlatdar under Section 70 - B of the Bombay Tenancy Act. There was a similar order in the proceedings between the appellant and Bhimarao and Dashrath. In the proceedings by Bhimarao and Dashrath the Prant Officer (Deputy Collector) held that the appellant was a tenant possession on August 11, 1948. The Mamlatdar in the proceedings initiated by Yeshwant and Jinappa also came to a similar conclusion. Against the Mamlatdar's order Yeshwant and Jinappa field an appeal before the Special Deputy Collector and succeeded. There were two Revision Applications to the Maharashtra Revenue Tribunal, one by the appellant who had failed before the Special Deputy Collector and the other by Bhimarao and

Dashrath who had failed before the Prant Officer. Both these application field by the appellant and set aside the order of the Special Deputy Collector holding that the appellant was a tenant on the land on August 11, 1948, There were two petitions under Article 227 of the Constitution against the order of the Revenue Tribunal by the two unsuccessful parties. They were heard together and all allowed by a learned Single Judge of the Bombay High Court. The learned Judge held that there was no justification for the Tribunal to interfere with the finding of fact recorded by the special Deputy collector. He also allowed the petition field by Bhimarao and Dashrath. These two appeals have been field by special leave granted by this Court against the orders in the two petitions.

3. At an earlier stage of the proceedings one question loomed large before the Courts below and that was whether a tenant who had been let into procession by a mortgagee in possession was entitled to continue in occupation under the Bombay Tenancy and Agricultural Lands Act. This controversy has now been set at rest by the decision of this Court in Dahya Lal v. Rasul Mohammed Abdul Rahim ((1963) 3 SCR 1 : AIR 1964 SC 1320 : (1963) 2 SCJ 450). The only questions for decisions therefore was weather the appellant was in possession on August 11, 1948.

4. Let us first deal with the order of the Maharashtra Revenue Tribunal. The Tribunal's powers are found in section 76 of the Bombay Tenancy and Agricultural lands Act which reads as follows :

> 76. (1) Notwithstanding anything contained in the Revenue Tribunal Act, 1939, an application for revision may be made to the Maharashtra Revenue tribunal constituted under the said Act against any order of the Collector on the following grounds only :
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> (a) that the order of the Collector was contrary to law;
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> (b) that the Collector failed to determine some material issue of law; or
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> (c) that there was a substantial defect in following the procedure provided by this Act, which has resulted in the miscarriage of justice.
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> (2) In deciding applications under this section the Maharashtra Revenue Tribunal shall follow the procedure which may be prescribed by rules made under this Act after consultation with the Maharashtra Revenue Tribunal.

There is no dispute that in these two cases the Prant Officer ((Deputy collector) as well as the special Deputy Collector is a Collector as defined in Clause (2E) of section 2 of the Act. We have carefully gone through the order of the Maharashtra Revenue Tribunal and are option that in so far as it reversed the order of the special Deputy Collector the Tribunal clearly exceeded its powers. The order of the Tribunal is a very clear and concise one and if it were an original order or an order passed in exercise of appellate powers there is no doubt it would be a proper order. The Tribunal clearly acted in complete disregard of its power and proceeded as though it were either dealing with the matter as a court of first instance or as an appellate court. It first set out the main points which arose for decision in the two cases before it, then examined the evidence relied upon by the Prant Officer and the Mamlatdar and stated that it agreed with the view taken by both of them. If the Revision Petitions before the Tribunal were against the decision of the Prant Officer and the Mamlatdar there have been no need to say anything more and the decision of the Tribunal would have been right. But the Tribunal and before if the order of the Prant officer and the order of the Special Deputy Collector on appeal against the order of the Mamlatdar. Therefore, the Tribunal had

to deal with the order of the order of the special Deputy Collector. After mentioning that special Deputy Collector had held that the appellant was not a tenant in possession under the Bombay Tenancy Act. 1939, it went on to state that special Deputy Collector relied mainly upon the decision of the Assistant Judge in the appeal under the Bombay Agricultural Debtors Relief Act proceedings to hold that the appellant was not a tenant. On the ground that the civil courts had no jurisdiction to decide questions of tenancy and therefore the Assistant Judge's decision was a nullity, it held that it was unnecessary to discuss the grounds for that decision on which the Special Deputy collector's decision was based. The tribunal then went on to discuss the evidence and held that it supports the case of the appellant that he was all along in possession under the Bombay Tenancy Act, 1939. The Tribunal remarked that the special Deputy Collector merely followed the view of the Civil Court and held that Kabulayats passed by the mortgagors were nominal without considering the attestation of one of the respondents herein. It then says that the Special Deputy Collector relied mainly on three documents and states that all these three documents have been considered by the Mamlatdar and as pointed out by him they do show that they relate to the lands in suit. It further remarks that the conclusion of the Special Deputy Collector that the Kabulayats and Records of Right entries are false is not correct. It does not say why and then proceeds to say that the conclusions arrived at by the Special Deputy Collector are not correct and cannot be accepted.

5. Before us also on behalf of the appellant it was urged that what the Special Deputy Collector had done was to incorporate the reasoning of the Assistant Judge and that he had not applied his mind, and therefore the Revenue Tribunal was justified in setting aside his order. But the Special Deputy Collector had pointed out that prior to the appellant the land was with Bala Satu Nahar and Khandu Maruti Koli, that in the notice issued by the Village Officers the entry of Survey No. 99 did not appear to be genuine and that a similar notice was produced by Yeshwant and Jinappa which shows the name of Shantappa Raghu Wathare as a protected tenant. He has also pointed out that the notice issued by the Talathi to the landlord Ahmedsha did not show S. No. 99 in the possession of the appellant. He also pointed to the receipt dated May 23, 1974, passed by the landlord Usmansha Ahmedsha Inamdar in favour of Yeshwant Shantappa Wathare on account of rent and also that the letter dated May 1, 1949 from Ahmedsha Nabisha makes it quite clear that it was a demand for rent. It is further shown that in the record of right entry the name of the appellant has been shown as protected tenant whereas the certified copy of Mutation entry shows the appellant as protected tenant of R.S. Nos. 2/1 and 51/4 and not of the suit land. He has, therefore, come to the conclusion that the entry in the other rights column of the suit land that appellant is the protected tenant appears to be wrong and incorrect. In the face of this elaborate discussion the rather infelicitous choice of words by the Special Deputy Collector calling calling it the inventory of the documentary evidence cannot take away the importance of the fact the he has in fact discussed the evidence. It is thereafter that he refers to the Assistant Judge's conclusion. Even then the Special Deputy Collector goes on to state that the entries in the record of right do not prove the tenancy, that there was a plan to create false record and to usurp the respondents of their legal rights, that the nominal rent notes and bogus entries in record of right have been made with ulterior motive, that the receipt and the letter dated May 1, 1949 clearly establish that the suit land was with the respondents for cultivation, and that all these circumstances go to prove that the rent note dated May 23, 1947 was bogus and the possession in fact was with the respondent. We are, therefore, of opinion that the Tribunal exceeded its powers in setting aside the order of the Special Deputy Collector.

6. It is not merely the Tribunal that has been in error in exceeding its jurisdiction. The High Court has similarly ignored the limitations within which it has to act while exercising its powers under Article 227 of the Constitution. It is unnecessary to discuss the reasons which weighed with the High Court for setting aside the order of the Tribunal in so far as the order of the Special Deputy

Collector is concerned as we have also come to the same conclusion. But in so far as the High Court interfered with the judgment of the Tribunal which merely upheld the Prant Officer's order, it was plainly in error. After the High Court, for the purpose of setting aside the order of the Tribunal in so far as the Special Deputy Collector's orders were concerned, had elaborately discussed the evidence in the case and come to the conclusion that the Tribunal was wrong and the Special Deputy Collector was right, it would up its discussion by saying that there was no justification whatsoever for the Tribunal to interfere with the finding of fact recorded by the Special Deputy Collector and even if the Tribunal's judgment was to be considered on merits it was wholly unsupportable. If it had been content with holding that there was no justification for the Tribunal to interfere with the finding of fact recorded by the Special Deputy Collector there would have been nothing more to say but it discussed the whole evidence for coming to that conclusion and also for saying that even if the Tribunal's judgment was to be considered on merits it was wholly unsupportable. Even so, the High Court's judgment has got to be sustained in regard to the order of the Tribunal in respect of the Special Deputy Collector's order which, as we have shown earlier, suffers from the defect that the Tribunal overstepped its jurisdiction.

7. But in dealing with the application filled by Bhimarao and Dashrath against the Tribunal's order in so far as it upheld the order of the Prant Officer the High Court has merely relied upon its discussion in the earlier part of its judgment and has remarked that as it was now held that Maruti Bala (appellant) was not the tenant of the petitioner the petitioners would be entitled to possession. It was not for the High Court to discuss the evidence and come to the conclusion as to whether the appellant was or was not the tenant on August 11, 1948. That was a matter for the Prant Officer, whose judgment has been upheld by the Tribunal. The High Court while exercising its power under Article 227 was not entitled to discuss the evidence and come to its own conclusion on the evidence as to who was in possession of the land. That was a matter for the revenue authorised and only within the scope of Article 227 could the High Court interfere. What we have to discussed earlier would show that the High Court has plainly overstepped the limits of its powers under Article 227. Its judgment in so far as this order is concerned cannot be supported.

8. The result would be that the judgment of the High Court as far as the order of the Prant Officer is concerned would have to be set aside because the Tribunal merely upheld his order. Civil Appeal No. 1941 of 1967 is therefore allowed. Even as the order of the Special Deputy Collector is concerned, the judgment of the High Court as well as the Tribunal would have to be set aside leaving it open to the Tribunal to decide the question afresh. As the High Court has taken a similar view of the Tribunal's order as we consider that no useful purpose would be served by directing the Tribunal to deal with the matter afresh. In the view we have taken of the Special Deputy Collector's order it does not admit of being dealt with under Section 76 of the Bombay Tenancy and Agricultural Lands Act. We, therefore, consider that it would be a useless formality to send the matter back to the Tribunal and it would be only prolonging the agony as far as the parties are concerned. Therefore, Civil Appeal No. 1942 of 1967 is dismissed.

9. The result is no doubt rather curious. In respect of the possession over different parts of the same land the Mamlatdar and the Prant Officer came to the same conclusion. The Mamlatdar's order was, however, set aside by the Special Deputy Collector with the result that there were two conflicting judgments in respect of different parts of the same land While the Special Deputy Collector dealt with the Mamlatdar's order as an appellate authority and was, therefore, entitled to appreciate the evidence and come to his own conclusion, the Tribunal while exercising its powers under Section 76 of the Bombay Tenancy and Agricultural Lands Act had no such power. In dealing with the order of the Prant Officer and upholding it the Tribunal had not overstepped the limits of its powers. But in

allowing the appeal against the Special Deputy Collector's order the Tribunal seems to have been influenced by the feeling that there were two conflicting orders before it and that it was its duty to reconcile them, if possible. This it proceeded to by dealing with the question before it as though it were the appellate authority, which it was not. The High Court was, therefore, right in setting aside the Tribunal's order in so far as the Special Deputy Collector's order is concerned.

10. But the High Court fell into the same error as the Tribunal while dealing with the order of the Prant Officer. It relied upon its discussion of the evidence in the other case for holding that the appellant was not the tenant. That again was beyond the powers of the High Court under Article 227. The conflict is inherent in the situation and unfortunately neither the Tribunal nor the High Court had the power to resolve it. But they have proceeded to do so by setting themselves up, so to say, as appellate authorities. There will be no orders as to costs.

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