

Smt. Krishnabai Anaji Ghule and Others

Vs

Nivrutti Ramchandra Raykar and Another

Civil Appeal No. 2896 of 1977

(D. A. Desai, R. B. Mirsa JJ)

05.09.1983

JUDGMENT

DESAI, J. -

1. Two decades have elapsed since the commencement of the proceedings involving a simple issue whether the first respondent designated as certificated landlord is entitled to recover possession of land bearing Survey No. 14/A/2 admeasuring 7 acres and 13 gunthas situated at Village Manjari Badruk Taluka Haveli Distt. Poona in Maharashtra State from the appellants 1 to 3 who are heirs of excluded tenant Shri Ghule and appellant 4 who is also an excluded tenant.
2. A brief resume of the various proceedings landing to the present appeal may shed some light on a simple issue involved in this appeal.
3. One Ramchandra Gopal Raykar, father of the first respondent landlord leased land included in Survey No. 14/A/2 to two different persons. Land admeasuring 4 acres out of total area of 7 acres and 13 gunthas was leased to Shri Anaji Maruti Ghule. Appellants 1 to 3 are the heirs and legal representatives of Shri Ghule. The remaining 3 acres and 13 gunthas of land was leased to Vishnu Maruti Tileker appellant 4 in this appeal.
4. After a partition in the family of the landlord, the land involved in this appeal fell to the share of the first respondent landlord. He moved an application under Section 88-C of the Bombay Tenancy and Agricultural Lands Act, 1948 ('Tenancy Act' for short) praying for a certificate therein envisaged on the allegation that his holding does not exceed the economic holding and total annual income of the landlord including the rent of such land does not exceed Rs. 1500. After an enquiry made by the Mamlatdar as contemplated by Section 88-C(iii) and (iv) an exemption certificate was granted to the landlord. The order of the Mamlatdar was challenged by the tenants upto the High Court of Judicature at Bombay, but the order of Mamlatdar granting exemption certificate withstood the challenge. And that order has become final. The effect of the granting of an exemption certificate is that, amongst others, provisions contained in Sections 32 of 32-R shall not apply to the land leased by such certificated landlord. In other words, the excluded tenants of such certificated landlord shall not become the owners of the land on the Tillers' day i.e. April 1, 1957.
5. Section 33-B confers a right on the certificated landlord to terminate the tenancy of the land in respect of which exemption certificate is granted, and to make an application to the Mamlatdar for obtaining possession if such certificated landlord bona fide requires such land for cultivating it personally. Accordingly the respondent landlord made an application on March 29, 1962 to the Mamlatdar having jurisdiction in the area praying for an order for possession of the land in respect

of which certificate was granted. This application was resisted by both the tenants raising various contentions, one such worth noticing being that appellants 1 to 3 were not served with the statutory notice as required by Section 33-B. In the mean time, it appears that the land bearing Survey No. 14/A/2 was put to auction to recover arrears of irrigation dues and the same was purchased for a consideration of Re 1 by the Government. Taking note of this fact, the Mamlatdar rejected the application of the landlord observing that he had no title to the land. In an appeal by the landlord, the order the Mamlatdar was set aside and the matter was remanded to the Mamlatdar for disposal according to law. A revision petition by the appellants was dismissed by the Maharashtra Revenue Tribunal. Mamlatdar designated as Tehsildar, on remand held an enquiry, recorded a finding that notice terminating the tenancy was served on present appellant 4, but it was not served on appellants 1 to 3, the heirs of Anaji Ghule. He accordingly allowed the application of the landlord for possession against appellant 4 Tileker but dismissed the same against appellant 1 to 3, the heirs of Ghule.

6. Four separate appeal came to be filed against the decision of the Tehsildar, two by two sons of Anaji, appellants 2 and 3 herein, one by the landlord against the dismissal of his application against the heirs of Shri Ghule and one by Shri Tileker against the part of the order by which he was directed to hand over possession of the land to the landlord. All the four appeals were disposed of by the Sub-Divisional Officer with appellate powers by a common judgment. He held that there was effective service of notice on the heirs of Shri Anaji Ghule. All other contentions of tenants were rejected with the result that appeal by the respondent landlord was allowed and appeal by tenant Tileker was dismissed. As a result, an order was made directing both the tenants to hand over possession of land comprised in Survey No. 14/A/2.

7. Four separate revision applications were filed against the order of the Sub-Divisional Officer before the Maharashtra Revenue Tribunal. By a common judgment, a learned member of the Tribunal held that the Sub-Divisional Officer, while disposing of the appeals wrongly declined to admit an important piece of evidence which was sought to be produced before him by the tenants and that piece of evidence has a direct bearing on the bona fides of the landlord and therefore, the appellate court was not justified in shutting out the evidence. In accordance with this finding, the Maharashtra revenue Tribunal allowed the two revision applications filed by the tenants and set aside the order of the Sub-Divisional Officer as well as of the Tehsildar and remanded the matter to the Tehsildar for decision afresh. This judgment of the Maharashtra Revenue Tribunal was challenged by the landlord in a petition under Article 227 of the Constitution being Special Civil Application No. 1794 of 1975.

8. A learned single Judge of the Bombay High Court, who heard the petition was of the opinion that the partition in the joint family of the landlord had taken place before March 30, 1960 and the bona fides of the partition having been agitated inter parties in the proceedings under Section 88-C initiated by the landlord for obtaining exemption certificate upto the High Court and decided in favour of the landlord, the same cannot be reopened and reconsidered in a subsequent proceeding under Section 33-B under which a certificated landlord may sue for obligation possession from the excluded tenant, the land in respect of which certificate is granted. Having reached this conclusion and after examining other contentions, it was held that the Maharashtra Revenue Tribunal was in error in holding that the Sub-Divisional Officer hearing the appeal committed error in not allowing fresh evidence to be led at the appellate stage because a party has no right to adduce additional evidence in an appeal and there was no discretion in the appellate authority either to accept or reject the additional evidence. The learned Judge also observed that the Sub-Divisional Officer has given reasons for rejecting the evidence. Approaching the matter from this angle, the learned Judge held

that the Maharashtra Revenue Tribunal had no justification to remand the matter for a further fresh enquiry when the parties had already taken opportunity to make out their respective cases. Accordingly, the High Court set aside the decision of the Maharashtra Revenue Tribunal remanding the matter to the Tehsildar and directed the Tribunal to decide the revision applications filed by the tenants in accordance with law.

9. Pursuant to this direction, the matter went back to the Maharashtra Revenue Tribunal. It was heard by a learned member of the Revenue Tribunal. The learned member formulated the point for decision : as to whether the certificated landlord has been able to establish that he bona fide requires the land for personal cultivation. While examining this contention, the Tribunal observed that bona fide requirement for personal cultivation as contemplated by Section 33-B envisages both the compelling need to cultivate personally as well as genuine intention to do so. The learned member took note of the fact that the certificated landlord had sold the land under sugarcane crop admeasuring 20 gunthas on August 11, 1960 to Bhiru Bahu Ghule and that the sale was effected 1 1/2 years before the certificated landlord approached the Tehsildar for obtaining possession of the land from the excluded tenant. This sale, according to the learned member, raised considerable doubt about the bona fides of the landlord because if he had a compelling necessity or need to cultivate the land personally, he at least would not have sold the land which was in his actual possession. The learned member took note of the fact that landlord owns a house property in Poona City and that once upon a time, the family was the owner of extensive land holding. For these reasons, the learned member held that he was not satisfied that the certificated landlord bona fide required the land involved in the dispute for personal cultivation. He accordingly allowed the revision applications of the tenants and dismissed the application of the landlord for obtaining possession of the land.

10. The certificated landlord moved Special Civil Application No. 107 of 1977 in the Bombay High Court under Article 227 of the Constitution questioning the correctness of the decision of the Maharashtra Revenue Tribunal. A learned single Judge of the High Court, who heard the petition held that there was an error apparent on the face of the record when the learned member of the Tribunal held that in order to obtain possession of land by a certificated landlord from an excluded tenant under Section 33-B, it is obligatory upon such landlord to prove the compelling necessity to cultivate the land. It was observe that that element may be relevant and valid in an application under Section 31 of the Tenancy Act, wherein the landlord has to prove that the land of which he seeks possession is the principal source of income for his maintenance. The learned Judge was of the view that the sale of the land admeasuring 20 gunthas prior to the commencement of the present proceedings was for a small price and cannot have an adverse impact on the bona fides of the landlord. Accordingly the learned Judge allowed the application of the landlord and set aside the decision of the Maharashtra Revenue Tribunal and restored the decision of the Sub-Divisional Officer directing handing over of possession of the land to the landlord. It is this decision of the High Court which is questioned in this appeal.

11. Section 32 of the Tenancy Act ushered in an era of revolutionary change in the life of the tiller of the soil. It provided that every tenant of agricultural land shall be deemed to have purchased from his landlord on the Tillers' day, the land held by him as tenant free from all encumbrances subsisting on the said day subject to the various conditions therein provided which we consider unnecessary to refer here. The far-reaching change introduced by Section 32 was noticed by a Constitution Bench of this court in Sri Ram Narain Medhi v. State of Bombay (1959 Supp 1 SCR 489, 518 : AIR 1959 SC 459) wherein it was held that the title of the landlord to the land passes immediately to the tenant on the Tillers' day and there is a complete purchase or sale thereby as between the landlord

and the tenant. But the Legislature was aware that there was a class of landlords who if, by the operation of law, were deprived of the ownership of land would be worse off than the tillers for whose benefit the provision was made. With a view to saving such petty landlords Part II-A was introduced in Chapter III of the Tenancy Act in 1961. Simultaneously, Section 88-C was amended by introducing a non obstante clause which would have the effect of excluding the land of such petty landlords who would be covered by Part II-A from the operation of Section 32 providing for compulsory purchase of land by the tenant. Section 88-C provides that save as provided by Sections 33-A, 33-B and 33-C nothing in Sections 32 to 32-R (both inclusive) shall apply to lands leased by any person if such land does not exceed an economic holding and the total annual income of such person including the rent of such land does not exceed Rs. 1500. In other words, petty or small landlords whose holding does not exceed an economic holding as specified in Section 6 and whose total annual income does not exceed Rs. 1500 were sought to be exempted from the operation of Section 32. Such petty or small landlords in order to save their land from becoming subject-matter of compulsory sale by the operation of law were required to obtain a certificate from the Mamlatdar as envisaged in section 88-C. In order to obtain the exemption certificate the landlord had to make an application to the Mamlatdar and the mamlatdar after holding an enquiry after giving notice to the tenant had to decide whether (1) the holding of such landlord did not exceed economic holding; and (2) his total annual income including the rent of such land did not exceed Rs. 1500. If both the conditions were cumulatively satisfied, the Mamlatdar had to give a certificate in the prescribed form showing that the land of such landlord is exempt from the operation of Section 32. The effect would be that a tenant of such landlord would not become a deemed purchaser on the Tillers' day. Section 33-A provides that such landlords is to be designated as certificated landlord and the tenant of such land exempted from the operation of section 32 was to be designated as excluded tenant. Section 33-B conferred a special right on the certificated landlord to terminate the tenancy of the excluded tenant in respect of the exempted land and obtain possession if landlord bona fide required the possession of such land for cultivating it personally.

12. Respondent landlord is a certificated landlord. The tenants-appellants had challenged the proceedings initiated by the respondent-landlord for obtaining exemption certificate under Section 88-C inter alia contending that the partition in the family of the landlord was not bona fide and that it was so contrived that the landlord may obtain advantage of Section 88-C. This contention was negated by the Mamlatdar hearing the application under Section 88-C and the appeal against the decision by the tenants to the Collector and a revision petition to the Maharashtra Revenue Tribunal and a petition under Article 227 of the Constitution to the Bombay High Court at the instance of tenants successively filed, all failed. The net outcome is that the petition was held to be bona fide and genuine. The proceedings between the landlord and the tenant for exemption certificate under Section 88-C came to an end with the decision of the High Court and the grant of the certificate became final and not questionable in the present proceedings which could have been commenced only by a landlord who has obtained a certificate of exemption.

13. The first contention raised on behalf of the appellants-tenants was that the partition in the family of the landlord was neither honest nor bona fide nor genuine but it was contrived with a view to obtaining an unfair advantage by the respondent-landlord by so allocating the share that he can get benefit of the provision of Section 88-C.

14. The High Court declined to entertain this contention presumably on the ground that this very contention has been negated by all courts in the earlier round of proceeding under Section 88-C and it cannot be the subject-matter of a collateral attack in the present proceedings which can only be commenced after proceedings under Section 88-C are finally concluded between the parties. No

serious exception can be taken to this view of the High Court. But it was urged that even if the Court may not re-examine the validity or bona fides of the partition, the question can still be gone into to ascertain the bona fides of the landlord when he moves an application under Section 33-B seeking eviction for personal cultivation. It is undoubtedly true that a certificated landlord is not entitled to recover possession from the excluded tenant merely for asking. He can only obtain the direction for possession if he bona fide requires such land meaning thereby the land exempted from the operation of Section 32 for cultivating it personally. When it is said that the landlord bona fide requires possession of the land, it would be necessary for him to prove that he is acting honestly and that the application for possession is not a device to dispossess the tenant and that he requires in the sense needs possession of the land for personal cultivation. In other words, personal cultivation is necessary to obtain the yield of the land for himself. Some element of requirement would inhere the requirement for maintenance by undertaking the avocation of personal cultivation. It is not for a moment suggested that the landlord even if he has sufficient source, of maintenance, he can seek possession merely because he wants to pursue the avocation of cultivating the land personally but this aspect hardly ever arises in an application under Section 33-B because such an application can only be made by a certificated landlord and none else and the certificated landlord is one whose holding does not exceed an economic holding and whose income from all sources including the rent of the land does not exceed Rs. 1500 per annum. It is such a small or petty landlord whose requirement for personal cultivation has to be examined under Section 33-B. It may be that while examining the bona fides of the requirement of the certificated landlord, the Court may take into account how the landlord became the owner of the land and if it is by partition, the bona fide of the partition may be examined. The view taken by the Bombay High Court in *Arwindlal Bhukandas v. Khandu* ((1961) 63 Bom LR 929) that if a partition is made in an usual manner it may have a bearing on the question of bona fides commends to us with this specific reservation that the proceedings in that case arose under Section 32 and not under Section 33-B as in the present case. Having said this, let it be remembered that the appellants-tenants contested the proceeding initiated by the landlord for certificate of exemption under Section 88-C at all levels and on all available contentions the principal being the nature and character of the partition. That having been concurrently negated, we are not disposed to reopen that question which even the High Court declined to examine. Till the certificate of exemption under Section 88-C subsists, two inferences flow therefrom, that the landlord is a petty or small landholder and his annual income from all sources including rent of land does not exceed Rs. 1500. It is the bona fide requirement for personal cultivation of such landlord that the Court is called upon to examine.

15. After the remand, the Tehsildar on the question of bona fide requirement recorded a finding as under :

In my opinion the deposition of the applicant in regard to his requirement and income is substantially correct and the opponents have not led sufficient and satisfactory evidence to displace the conclusions arising from the reading of his deposition as a whole..... Having given anxious thoughts to the evidence on record, I am satisfied that the applicant requires the land bona fide for personal cultivation.

This finding was confirmed by the first appellate court which is the last fact-finding court. The Maharashtra Revenue Tribunal interfered with this finding and remanded the case to the Tehsildar on the ground that some important piece of evidence was overlooked. This order of remand has been set aside by the High Court on an earlier occasion. In this background, it would be too late in the day to reopen this finding, at this stage on the short submission that the Court declined to examine the genuineness or validity or bona fides of the partition, and we are not disposed to reopen

this question more particularly for the reason that this very question in the earlier round of proceeding upto the High Court was concurrent held in favour of the landlord and by authorities in the present round of proceedings.

16. It was next contended that the High Court was in error in interfering with the order of remand made by the Maharashtra Revenue Tribunal. The Tribunal set aside the concurrent findings on the question of bona fide requirement of the landlord by observing that the appellate court erroneously rejected a piece of evidence which the tenants sought to produce at the appellate stage. The Tribunal observed that the delay in producing this evidence having been satisfactorily explained, the tenants ought to have been allowed to produce the evidence which has some bearing in the issues arising in the matter. The piece of evidence sought to be produced at the appellate stage by the tenants was bearing on the question of bona fide of the partition. It is the same contention differently clothed. In this connection, the Tribunal observed that despite the proceedings under Section 88-C having finally concluded between the parties "it was still open to the tenants to show that the manner in which the partition was effected and the time chosen therefor and particularly the fact that the entire tenanted land was allotted to the share of one coparcener to the exclusion of others has an important bearing on the question of bona fides." This view was sought to be supported by relying upon *Arwindlal Bhukandas v. Khandu* ((1961) 63 Bom LR 929). The High Court in a petition under Article 227 while setting aside the order of remand observed that the delay in producing additional evidence was unexplained looking to the protracted proceedings commencing from 1962 and the bona fide of the partition was not questioned, except at the revisional stage.

17. Mr. Tarkunde, learned counsel for respondents took serious exception to the second observation and pointed out that it is contrary to record. In this connection, he drew our attention to Point No. 5 framed by the Tehsildar while holding the enquiry after the remand which was as under :

(5) Whether the partition made by the landlord is valid. And whether it can be challenged in these proceedings ?

He recorded a finding that there was a partition in the landlord's family in 1959 and the same cannot be challenged in the present proceedings. In the appeal by the tenants, the appellate court disposed of the contention on the bona fides of the a partition by observing that he was in agreement with the reasoning of the Tehsildar. The Maharashtra Revenue Tribunal in the revision petition by the tenants held that once a certificate is granted to a landlord under Section 88-C on the basis that he is the exclusive owner of the land it is not open to the tenant in an enquiry under Section 33-B to challenge the partition under it. In support of this view, the Tribunal relied upon two unreported decisions of the Bombay High Court and finally observed that it is futile to challenge the validity of the partition. It thus appears that High Court committed an error apparent on record while observing that the validity of partition was questioned for the first time at the revisional stage. But having said this it must also be pointed out that the contention raised by the tenant about the bona fides of partition in the proceedings under Section 33-B has been rightly negated on the short ground that the bona fides, genuineness and validity of the partition was directly and substantially in issue in the proceedings under Section 88-C and concurrently held in favour of the landlord upto the High Court and the sale must be held to be concluded between the parties and on this short ground, the decision of the High Court setting aside the order of remand can be confirmed.

18. In the view that we take in the circumstances herein discussed, the bona fides of the partition cannot be put in issue; the contention raised by Mr. Tarkunde becomes a non-issue and it will also dispose of this supplementary contention that the Sub-Divisional Officer hearing the appeal was in

error in declining to give an opportunity to the tenants to produce additional evidence which was primarily for the purpose of showing that the partition was neither genuine nor bona fide. And in our opinion in the facts of this case it is no more relevant.

19. Incidentally it was urged that the landlord is staying at Poona and that he is a florist and the land involved in dispute is at Village Manjari and therefore it is not possible to believe that the landlord would be able to personally cultivate the land or that he can undertake the avocation of cultivation of land by investing funds when the area available is less than an economic holding. These are pure questions of facts concurrently held in favour of the landlord and we are not disposed to re-examine them at this stage and at this distance of time.

20. One aspect which, frankly has dominated our thinking is the relative economic position of tenants and landlord in this case. Anaji Ghule was a tenant of 4 acres out of 7 acres and 13 gunthas of land comprising in Survey No. 14/A/2. Tileker was a tenant of the remaining 3 acres and 13 gunthas. Anaji Ghule died leaving behind him two sons and a widow, who are appellants 1 to 3. Appellant Krishnabai a widow holds excluding the leased land 16 acres and 17 gunthas of land; first son Shivaji 8 acres and 9 gunthas, and Bala the second son 8 acres and 10 gunthas of land. Presumably all the three inherited the land from Shri Ghule and therefore the total holding would be 32 acres and 36 gunthas of land. And it is interesting to note some features of the partition effected by tenants' heirs amongst themselves. The widow is allotted double the share of each son. There is nothing to show that the mother and two sons have separated. And their total holding is 32 acres and 36 gunthas. As against the holding of first set of tenants of 32 acres and 36 gunthas, the landlord seeks possession of 4 acres of land. In the case of Tileker he holds 8 acres and 4 gunthas and the landlords 3 acres and 13 gunthas. Would it be fair to deny this very reasonable request in appeal under Article 136 when all authorities including High Court have held in favour of this petty small landlord. We decline to interfere.

21. Accordingly this appeal fails and is dismissed with no order as to costs.

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