**SUPREME COURT OF INDIA**

Kisan Yeshwant Dhirade

Vs.

Sonabai Bappu Lohar

(S.M. Quadri and S.N. Variava JJ.)

18.04.2001

**ORDER**

1. The appellant is the dissatisfied tenant who parted with the possession of agricultural land bearing Survey No. 250, measuring acres 13 guntas 5 situated at Belpimpaltaon Taluq, Newasa, Distt. Ahmednagar. He is appeal before us, by special leave, against the judgment and order dated June 23, 1994 of the High Court of Judicature at Bombay in Writ Petition No. 3099 which was initially filed before the Bombay Bench as Writ Petition No. 3742 of 1981 but was later transferred to the Aurangabad Bench and renumbered.

2. The facts relevant for disposal of this appeal may be noted in brief. The respondent is the widow of late Bapu Lohar who was the landlord of the said land. The case of the appellant before the Tenancy Awal Karkun was that the possession of the said land was handed over to the husband of the respondent by him in proceedings initiated under Section 31 of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act') and that before the expiry of the statutory period of twelve years she had leased it out to one Damu Kalu Suryavanshi of March 31. 1969, therefore, he was entitled to restoration of possession. The respondent defended the application on two grounds : first, that she, being a widow, is entitled to cultivate the land personally which includes through a tenant as provided in Section 2(6) of the Act and there is no scope to invoke Section 37 so as to give the appellant right to claim restoration of possession; secondly, it was pleaded that he had surrendered the land under Section 15 of the Act in which case the provisions of Section 37 of the Act would not be attracted and the question of restoration of possession did not arise.

3. The Tenancy Awal Karkun found that the possession of the land was handed over to the husband of the respondent in proceedings initiated by him under Section 31 of the Act as per the order of the Mamlatdar dated May 6, 1957. He also found that in view of subsequent leasing out of the land by the respondent before twelve years from the date of taking possession of the land, the appellant became entitled to resume the land. Appeal against the said order of the Tenancy Awal Karkun before the Sub-Divisional Officer having been unsuccessful, the respondent filed a revision before the Maharashtra Revenue Tribunal. It wad held by the Tribunal : (i) the surrender pleaded under Section 15 was valid surrender, therefore, the appellant was not entitled to get back the possession; (ii) as the respondent was a widow she was entitled to the benefit of cultivating the land through a tenant as provided in

Section 2(6) of the Act and her right to be in possession of the land was not lost. The Tribunal thus allowed the appeal of the respondent of January 31, 1981. That order of the Tribunal was assailed by the appellant in the writ proceedings, referred to above, in the High Court. By the order, impugned in this appeal, the High Court dismissed the writ petition of the appellant which led to filing of this appeal.

4. Ms. Promila. learned counsel for the appellant, contends that in view of the finding of the Tribunals below that there was termination of tenancy under Section 31 and recovery of possession of the land in question by the respondent for personal cultivation which is supported by the order of the Malatdar passed on May 6, 1957 and leasing out the land by her to another tenant within twelve years. Section 37 is attracted and the appellant cannot be denied restoration of possession. therefore, the orders of the Tribunal and the High Court are liable to be set aside.

5. It will be helpful to read Section 37(1) of the Act which is relevant for our purpose:

> "37. Landlord to restore possession if he fails to cultivate within one year - (1) If after the landlord takes possession of the land after the termination of the tenancy [under Section 31], [33 or Section 34 of this Act as it stood immediately before the commencement of the Amending Act, 1956] he fails to use it for any of the purposes specified in the notice given under [Section 31], [33 or Section or Section 34 of this Act as it stood immediately before the commencement of the Amending Act. 1956] within one year from the date on which he took possession or ceases to use it at any time for any of the aforesaid purposes within twelve years from the date on which he took such possession, the landlord shall forthwith restore possession of the land to the tenant whose tenancy was terminated by him, unless he has obtained from the tenant his refusal his refusal in writing to accept the tenancy on the same terms and conditions or has offered in writing to give possession of the land to the tenant on the same terms and conditions and the tenant has failed to accept the offer within three months of the receipt thereof."

6. A plain reading of the provision above-quoted, shows that when a landlord takes possession of land after termination of tenancy under Section 31, 33 or 34 of the Act and fails to make use of it for the purpose specified in the aforesaid section within one year of taking possession of the land or ceases to use for the aforesaid purpose within twelve years from the date on which he took such possession, he is under an obligation to restore possession of the land to the tenant whose tenancy was terminated by him. There are, however, two exceptions to this mandate : (i) refusal of the tenant in writing to accept the tenancy on the same terms and conditions and (ii) failure of the tenant to accept the offer within three months of the receipt of a written offer of the landlord to give possession of the land to the tenant on the same terms and conditions. Here Section 37(1) is invoked on the allegation of ceasing to use the land for personal cultivation for twelve years from the date on which the landlord took possession of the land. The phrase "to cultivate personally" is defined in Section 2(6) of the Act as follows:

"2(6) "to cultivate personally" means to cultivate land on one's own account-

(i) by one's own labour, or

(ii) by the labour of any member of one's family, or

(iii) under the personal supervision of oneself or any member of one's family, by hired labourer by servants on wages payable in cash or kind but not in crop share,
being land, the entire area of which-

(a) is situate within the limits of a single village, or

(b) is so situated that no piece of land is separated from another by distance of more than five miles, or

(c) forms one compact block:

Provided that the restrictions contained in clauses (a), (b) and (c) shall not apply to any land,

(i) which does not exceed twice the ceiling area,

(ii) upto twice the ceiling area, if such land exceeds twice the ceiling area.

Explanation I. - A widow or a minor, or a person who is subject to physical or mental disability, or a serving member of the armed forces shall be deemed to cultivate the land personally if such land is cultivated by servants, or by hired labour, or through tenants.

Explanation II. In the case of a joint family, the land shall be deemed to have been cultivated personally if it is cultivated by any member of such family."

7. A perusal of the definition as elucidated in Explanation I, extracted above, makes it clear that in case of a wide or a minor or a person who is subject to physical or mental disability, or a serving member of the armed forces, cultivation of land on one's own account includes through servants or labourer or through tenants. The respondent is a widow and lost her son also. Even though she gave the land on lease to Damu Kalu Suryavanshi, she will be deemed to be cultivating the land personally within the meaning of the said phrase.

8. However, Ms. Promila contends that in view of Explanation II to Section 4 the appellant will have to be treated as a tenant entitled to restoration of possession of the land in question. The said Explanation is in the following terms:

"Explanation II- Where any land is cultivated by a widow or a minor or a person who is subject to physical or mental disability or a serving member of the armed forces

through a tenant then notwithstanding anything contained in Explanation I to clause (6) of Section 2. such tenant shall be deemed to be a tenant within the meaning of this Section."

9. From the Explanation it is evident that when any land is cultivated by a widow or a minor or a person who is subject to physical or mental disability or a serving member of the armed forces through a tenant then notwithstanding anything contained in Explanation I to Section 2(6) such tenant shall be to be a tenant within the meaning of Section 4 which particularises deemed tenants. Obviousl, the tenant referred to therein is not the tenant who had surrendered the possession of the land under Section 31 of the Act. Therefore, this Explanation will be of no help to the appellant.

10. In any event as the respondent remained and utilised the land for eleven years and abut eleven months, in our view, there is justification in treating that she has committed no violation of twelve years embargo contained in Section 37 of the Act. In this view of the matter, we do not consider it necessary to go into the question of truth or validity of surrender of the said land by the appellant in favour of the husband of the respondent.

11. In the result, we find no illegality in the order of the High Court to warrant our interference therewith. The appeal is accordingly dismissed, but in the circumstances of the case, without costs.