**SUPREME COURT OF INDIA**

Sau. Saraswatibai Trimbak Gaikwad

Vs.

Damodhar D. Motiwale

C.A.No.6434 of 1999

(Syed Shah Mohammed Quadri and S.N. Variava JJ.)

22.3.2002

**JUDGMENT**

**S.N. Variava, J.**

1. This appeal is against the judgment of the Bombay High Court dated 23rd August, 1999.
2. Briefly stated the facts are as follows:

> One Narayan Motiwale was the owner of certain pieces of land. He had a son named Dattatraya and a daughter named Tarabai. On the death of Narayan Motiwale, Dattatraya became the owner of the properties. By a registered Settlement Deed dated 12th January, 1927, Dattatraya gave Survey Nos. 21/3, 20 and 20/1 to his sister Tarabai as she was poor and unable to maintain herself. The said deed of Settlement, *inter alia*, provided as follows:-
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> "Land bearing No. 21 and the well in the same is given to along with trees and things thereon has been given to your possession for maintenance until life. Therefore you may cultivate the said land by paying the Government assessment for maintenance. After your lifetime the land shall again come to me or to my heirs."

2. Pursuant to the Deed of Settlement the name of Tarabai was entered in the revenue records as a Kabjedar.

3. Tarabai leased out one piece of land to a tenant in 1968. Dattatraya filed suit No. 362 of 1969 against Tarabai for a declaration that he was the owner of the land in question and that Tarabai had only a limited interest and therefore, could not lease out the land. In the meantime the tenant to whom the Tarabai had leased out the land applied for tenancy rights under the provisions of the *Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter called the said Act).*

4. The suit filed by Dattatraya was dismissed. Thereafter Dattatraya filed Appeal No. 450 of 1970. In that Appeal a consent decree was passed on 7th October, 1971. Under the consent Decree Tarabai agreed that she will not lease out any piece of land.

5. In the tenancy proceedings initiated by the lessee, by order dated on 13th March, 1971 it was held that the lessee was a deemed tenant under Section 4 of the said Act. The Land Tribunal fixed a price under Section 32G of the said Act. The price was paid by the lessee and that lessee became the statutory owner of the property. Dattatraya was a party to those proceedings. He never challenged the order of the Land Tribunal. That order became final in respect of that lessee.

6. In 1973 Tarabai filed suit No. 73 of 1973 against Dattatraya claiming that, after coming into force of Hindu Succession Act, 1956, the limited rights vested in her had matured into an absolute right. That suit was dismissed in view of the consent decree passed in Appeal No. 450 of 1970.

7. On 19th January, 1977 Dattatraya expired. On 6th September, 1980 Tarabai executed a lease deed in favour of the appellants. On 7th December, 1980 the appellants gave notice under Section 32-O of the said Act to Tarabai and the Land Tribunal. By this notice the appellant indicated her intention to purchase the suit land.

8. Respondents 1 and 2 then filed suit No. 472 of 1981 against Tarabai and the applicants for a declaration that Tarabai had no authority to lease or create any incumberance on the suit land. They prayed for recovery of possession. Tarabai expired on 5th March, 1982. Thereafter the suit had proceeded only against the appellants. On 19th February, 1986, the trial Court decreed the suit holding, on the basis of the earlier consent decree, that Tarabai had on authority to lease out the suit land. It was held that the lease in favour of the appellant was not binding on respondents 1 and 2. It was held that the appellant was a trespasser.

9. The appellant preferred an appeal. This appeal was allowed on 16th September, 1989. Respondents 1 and 2 filed a Second Appeal, which was allowed by the High Court on 27th June, 1997.

10. On 18th August, 1981, the appellants filed a case under Section 32-O of the said Act. Respondents 1 and 2 opposed this application. On 22nd April, 1988 the Land Tribunal fixed the purchase price under Section 32-G. The appellants deposited the purchase price immediately. Respondents 1 and 2 filed an appeal, against the order dated 22nd April, 1988. That appeal was dismissed on 23rd November, 2000. A certificate of ownership has been issued to the appellants on 4th December, 2000. We are informed that respondents No. 1 and 2 have preferred a revision against the order dated 23rd November, 2000 and that revision is pending.

11. In the meantime respondents 1 and 2 applied for execution of the decree passed in their favour. The appellant filed an application, in the executing court, under Order 21 Rule 97 contending that they had already become owners by virtue of the purchase price having been

fixed in their favour. The appellants contended that the decree could not now be executed against them. Their application was rejected on 12th February, 1999. It was held that the executing Court was bound to execute the decree obtained by respondents 1 and 2 in their Civil Suit.

12. The appellant filed an appeal. That appeal came to be dismissed on 28th June, 1999. The appellant preferred a Writ Petition in the High Court. The High Court has dismissed the writ petition by the impugned judgment dated 23rd August, 1999.

13. The question for consideration is whether a decree passed by a Civil Court can be executed if a Certificate of Ownership has been granted under the provisions of the said Act.

14. We have heard counsel for the parties at length. The relevant provisions of the said Act may now be seen. A `tenant', as defined in Section 2(18) of the said Act, includes a person who is "deemed to be a tenant under Section 4". The relevant portion of Section 4 of the said Act reads as follows:-

> "4. *Persons to be deemed tenants. –*
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> (1) A person lawfully cultivating any land belonging to another persons shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not –
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> (a) a member of the owner's family; or
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> (b) a servant or wages payable in cash or kind but not in crop share or hired labourer cultivating the land under the personal supervision of the owner of any member of the owner's family; or
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> (c) a mortgage in possession.
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> *Explanation (I).* - A person shall not be deemed to be tenant under this section if such person has been on an application made by the owner of the land as provided under Section 2A of the *Bombay Tenancy Act, 1939,* decided by a competent authority not to be a tenant.
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> *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."
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> Thus a person lawfully cultivating any land belonging to another person is deemed to be a tenant.

The relevant portion of Section 32-O reads as follows :-

"32-O. *Right of tenant whose tenancy is created after Tillers' day to purchase land.* - (1) In respect of any tenancy created after the Tillers' day by a landlord (not being a serving member of the armed force) notwithstanding any agreement or usage to the contrary, a tenant cultivating personally shall be entitled within one year from the commencement of such tenancy to purchase from the landlord the land held by him or such part thereof as will raise the holding of the tenant to the ceiling area.

(1A) A tenant desirous of exercising the right conferred on him under sub-section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section."

To be remembered that on 7th December, 1980 the appellant had given notice under Section 32-O.

15. Section 32(G)(4) of the said Act provides that if the tenant is willing to purchase, the Tribunal after giving an opportunity to the tenant and landlord and all other persons interested in such land hold an inquiry and determine the purchase price of such land in accordance with the provisions of Section 32-H and Section 63-A(3). Under Section 32-M on deposit of the purchase price the Tribunal is to issue a certificate of purchase to the tenant purchaser in respect of such land. Such a certificate is to be conclusive proof of purchase.

16. As stated above after considering the objections of respondents 1 and 2 the Tribunal has fixed the purchase price on 22nd April, 1998. The appellant has deposited the purchase price and a certificate has been issued to him on 4th December, 2000. Such a certificate is conclusive evidence of purchase unless it is set aside in the Revision, which is filed by the respondents 1 and 2.

17. One other provision which requires to be noted in Section 85. It reads as follows :-

"85. *Bar of jurisdiction.* - (1) No Civil Court shall have jurisdiction to settle, decide or deal with any question (including a question whether a person is or was at any time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord the land held by him) which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector or the Maharashtra Revenue Tribunal in appeal or revision or the State Government in exercise of their powers of control.

(2) No order of the Mamlatdar, the Tribunal, the Collector or the Maharashtra Revenue Tribunal or the State Government made under this Act shall be questioned in any Civil or Criminal Court.

*Explanation.* - For the purposes of this section a Civil Court shall include a Mamlatdar's Court constituted under the *Mamlatdars' Courts Act, 1906*."

> Thus it is to be seen that a Civil Court does not have jurisdiction to decide matters which are required to be dealt with by the Tribunal under the said Act. Thus it is only the Tribunal which can decide whether a person is deemed to be a tenant and whether he is entitled to purchase the land held by him. The civil Court has no jurisdiction to decide such a question. Even if such a question was to be raised in a proceeding before it, the civil Court would have to refer the issue to the authority under the said Act. The suit would then have to be disposed of in accordance with the decision of the authority. Thus if the Tribunal fixes a purchase price and issues a certificate then that certificate would be conclusive proof of purchase. The civil Court would then be bound to give effect to the certificate and cannot ignore it.

18. Mr. Lalit submitted that Tarabai had no power or authority to lease the suit land. He submitted that the consent decree dated 7th October, 1971 provides that Tarabai had no authority to lease out any piece of land. He submitted that thereafter the suit filed by Tarabai had been dismissed on 25th June, 1976. He submitted that there were thus two decrees of competent Court against Tarabai. He submitted that both these decrees provided that Tarabai had no right to lease out any piece of land. He submitted that the lease created in favour of the appellants on 6th September, 1980 was illegal and could not be enforced against respondents 1 and 2. He submitted that in view of the decrees of the court it could not be said that the appellant was lawfully cultivating the suit land. He submitted that as the appellant was not lawfully cultivating the suit land she could not be deemed to be a tenant under Section 4. He submitted that the appellant was merely a trespasser. He submitted that a suit for possession against a trespasser lay in a civil Court. He submitted that respondents 1 and 2 had filed such a suit and they had succeeded in that suit. He submitted that once the civil Court held that the appellant was a trespasser, the appellant could not take advantage of the proceedings adopted by her under the said Act. He submitted that the executing Court, the appellate Court and the High Court had rightly rejected the claim of the appellant.

19. Mr. Lalit strongly relied on the case of *Latchaiah v. Subramaniam, reported in*[1]. In this case the respondent (therein) had obtained a decree in his favour declaring that he was the owner of the land and that the wife of his adoptive father had no title to the suit land. During pendency of the suit the widow was in possession of the land. After the decree was passed she executed a lease in favour of the appellant (therein). The question was whether the appellant could be said to be lawfully cultivating the land. This Court held that after the decree the widow was trespasser and thus could not create any right in the land in favour of anybody. Mr. Lalit submitted that the ratio laid down in this case fully applies to the facts of our case. We are unable to agree. In our case there is no decree holding that Tarabai had no right or title to the suit land. Tarabai admittedly had a limited interest and was recorded as a Kabjedar. The relevant term of the Deed of Settlement, set out hereinabove, shows that Tarabai had during her lifetime a right to be in possession and to cultivate the suit land. The consent decree did not take way that right. Tarabai was not a trespasser on the suit land.

20. Mr. Lalit also relied on the case of *Gopala Genu Wagale v. Nageshwardeo, reported in*[2]. In this case the question was whether a sub-tenant can be deemed to be a tenant under

Section 4 of the said Act. This Court held that creation of a sub-tenancy was prohibited by Section 27 of the said Act and that Section 14(1)(a)(iii) provided that the tenancy could be terminated if the tenant had sublet. This Court held that as subletting was not lawful, a sub-tenant could not claim to be a deemed tenant. In our view this authority is based on the provisions of the said Act which expressly provide that sub-letting shall not be valid. In the said Act there is no provision that a person with a limited interest cannot permit somebody else to cultivate the land.

21. On the other hand, Mr. Bhasme has relied on a Constitution Bench judgment of this Court in the case of *Ram Autar v. State of U.P., reported in*[3]. In this case the question was whether a tenant of the mortgagee could be evicted by the mortgagor after the property was redeemed. With reference to Section 4 of the said Act it was held as follows:-

> "The Act 1948, it is undisputed, seeks to encompass within its beneficent provisions not only tenants who held land for purpose of cultivation under contracts from the land owners but persons who are deemed to be the tenants also. The point in controversy is whether a person claiming the status of a deemed tenant must have been cultivating land with the consent or under the authority of the owner. Counsel for the appellants submitted that tenancy postulates a relation based on contract between the owner of land, and the person in occupation of the land, and there can be no tenancy without the consent or authority of the owner to the occupation of that land. But the Act has by Section 2(18) devised a special definition of tenant and included therein persons who are not contractual tenants. It would therefore be difficult to assume in construing Section 4 that the person who claims the status of a deemed tenant must be cultivating land with the consent or authority of the owner. The relevant conditions imposed by the statute is only that the person claiming the statues of a deemed tenant must be cultivating land "lawfully" : it is not the condition that he must cultivate land with the consent of or under authority derived directly from the owner. To import such a condition it is to rewrite the section, and destroy its practical utility. A person who derives his right to cultivate land from the owners would normally be a contractual tenant and he will obviously not be a "deemed tenant". Persons such as licensees from the owner may certainly be regarded as falling within the class of persons lawfully cultivating land belonging to others, but it cannot be assumed therefrom that they are the only persons who are covered by the section. The Act affords protection to all persons who hold agricultural land as contractual tenants and subject to the exceptions specified all persons lawfully cultivating lands belonging to others, and it would be unduly restricting the intention of the Legislature to limit the benefit of its provisions to persons who derive their authority from the owner, either under a contract of tenancy, or otherwise. In our view, all persons other than those mentioned in clauses (2), (b) and (c) of Section 4 who lawfully cultivate land belonging to other persons whether or not their authority is derived directly from the owner of the land must be deemed tenants of the land."

22. Mr. Bhasme has also relied on the case of *Rukhamanbai v. Shivram, reported in*[4]. In this case the facts were almost identical. The question was whether a lessee of a person with a

limited estate acquired the status of deemed tenant under Section 4. A three-Judge Bench held that the lessee acquired the status of a deemed tenant and the Tribunal was justified in determining the purchase price under Section 32-G.

23. Faced with this position Mr. Lalit submitted that in this case there was a decree, after contest, between the appellant and respondents 1 and 2. He submits that that decree is binding on the appellant and can be executed against the appellant. We have read the decrees/orders of the civil Court. In passing the decree and holding the appellant to be a trespasser the civil Court has not considered the provisions of the said Act. The conclusion that the appellant is a trespasser is dehors rights of the appellant under the said Act. Mr. Lalit submitted that the appellant never claimed, before the civil Court that she was a deemed tenant. He submitted that appellants could have contended before the civil Court that she was a deemed tenant under the said Act. He submitted that as the appellant has not taken this contention before the Civil Court she is now debarred from raising a claim under the said Act. We see no substance in this submission. The appellant had already made an application under Section 32-O before the suit was filed by the respondents 1 and 2. Respondents 1 and 2 were aware that the appellant had made such an application. The appellant was pursuing her remedy under the said Act before the appellate authority. Respondents 1 and 2 were also parties to those proceedings and were contesting those proceedings. These are not questions which could be raised before a civil Court. Therefore, rightly neither respondents 1 and 2 nor the appellant took up this question before the civil Court. Even if the question had been raised the civil Court could not have decided it. The civil Court would have had to refer the issue to the appropriate authority and then abide by its decision. A decree passed without the consideration of the provisions of the said Act must be subject to orders of the appropriate authority in proceedings under the said Act.

24. Thus so long as the certificate stands the decree cannot be executed against the appellant. It is only if respondents 1 and 2 succeed in getting the certificate set aside, in their pending revision, that they can execute the decree. It would be open for respondents 1 and 2 to pursue the revision filed by them against the order dated 23rd November, 2000. We realise that a revision is on limited grounds. We have noticed that the Appellate Authority dismissed the appeal of respondents 1 and 2 merely on the ground that this Court had stayed the operation of the decree passed by the civil Court. If the revisional authority so desires it may remit the matter back to the Appellate Authority for a decision on merits in accordance with law. We, however, clarify that the decision of the Revisional Authority or the Appellate Authority must be based only on the provisions of the said Act. Findings given by the Civil Court, dehors the provisions of the said Act, and any observation made by us on that question cannot be taken into consideration in deciding whether appellant is a deemed tenant.

25. For the aforesaid reasons this appeal is allowed. The impugned judgment dated 23rd August, 1999, as well as the order passed by the Appellate Authority on 28th June, 1999 and the other passed by the Executing Court on 12th February, 1999 are set aside. We hold that so long as the Certificate stands the decree, obtained by respondents 1 and 2, cannot be executed against the appellant. We clarify that if respondents 1 and 2 succeed in the revision

filed by them, then they would be at liberty to apply for execution of the decree obtained by them.

26. The appeals stand disposed of accordingly. There will no order as to costs.

Appeals disposed of.

[1]*1967(3) SCR 712*
[2]*1978(2) SCC 47*
[3]*1963(3) SCR 1*
[4]*1981(4) SCC 262*