BOMBAY HIGH COURT

Trambaklal Harinarayan Jani

Vs

Shankarbhai Bhaijibhai Vagri

(Shelat and Patwardhan, JJ.)

09.12.1959

JUDGMENT

Shelat, J.

1. This Special Civil Application raises an interesting question as to the interpretation of Section 84B of the Bombay Tenancy and Agricultural Lands Act, 1948.

2. The petitioner is the owner of Survey No. 181/1-2 situate at Sardarpura in the Taluka of Anand. Prior to 1949, respondent No. 1 was the owner of this survey number. It appears that in 1949 the petitioner lent and advanced a sum of Rs. 2,000 to respondent No. 1 and thereupon respondent No. 1 executed in favour of the petitioner a deed of conditional sale. Respondent No. 1 continued to be in possession of the survey number inspite of that conditional sale though as a tenant of the petitioner. The case of respondent No. 1 was that during the monsoon of the year 1955-56 the petitioner threatened him not to go to the land in question telling him that if he entered the land he would see that he was sent to jail. It was also the case of respondent No. 1 that the petitioner obtained possession of the land in question from him by means of these threats. As against this case of respondent No. 1, the petitioner's case was that he was personally cultivating these lands and was in possession thereof since 1953.

3. On July 2, 1958, respondent No. 1 made an oral statement before the Aval Karkun, Taluka Anand, to the effect that the petitioner had taken away from him possession of the suit lands during the monsoon of 1955-56 by giving him threats. That statement was recorded by the Aval Karkun. Thereafter the Mamlatdar, Anand, issued a show cause notice against the petitioner to ex plain why possession of the said lands taken by him from respondent No. 1 should not be declared disapproved. The Mamlatdar held an enquiry under Section 84B of the Act. The petitioner's case before the Mamlatdar was that he was in possession since 1953 and he denied that he had forcibly taken possession from respondent No. 1 during the year 1955-56. The Mamlatdar rejected the petitioner's version and found that the petitioner had taken possession from respondent No. 1 sometime between June 15, 1955 and August 1, 1956. He held that

respondent No. 1 had been dispossessed by the petitioner un-authorisedly and disapproving the possession of the petitioner ordered its restoration to respondent No. 1. Aggrieved by this order the petitioner filed an appeal before the District Deputy Collector, Anand, being Tenancy Appeal No. 209 of 1958. The learned Deputy Collector found that respondent No. 1 was originally the owner of the land in question and that the same had been sold to the petitioner on condition that respondent No. 1 should continue to cultivate the land on crop share basis as a tenant. He also found that since the date of the conditional sale, respondent No. 1 was cultivating the land as a tenant on crop share basis. The learned Deputy Collector held that the suit lands had been taken possession of by the petitioner without a proper order of the Tenancy Court as required by Section 29 of the Act. On these findings, the learned Deputy Collector ordered restoration of possession of the suit land to respondent No. 1 under the provisions of Section 84B(2) and confirmed the order of the Mamlatdar. The petitioner challenged the orders of the Mamlatdar and the Deputy Collector before the Bombay Revenue Tribunal by his revision application. The Tribunal by its order dated March 30, 1959, dismissed the petitioner's revision application confirming the order passed by the Deputy Collector.

4. The question that was agitated before the Tribunal was whether Section 84B applied to the case before them. Section 84B(7) provides:Where in respect of a transfer or acquisition of any land made on or after the 15th day of June 1955 and before the commencement of the Amending Act, 1955, the Mamlatdar, suo motu or on the application of any person interested in such land, has reason to believe that such transfer or acquisition-

(a.) was in contravention of Section 63 or 64 as it stood before the commencement of the Amending Act, 1955, or

(b) is inconsistent with any of the provisions of this Act as amended by the Amending Act, 1955, the Mamlatdar shall issue a notice in the prescribed form to the transferor, the transferee or the person acquiring such land, as the case may be, to show cause as to why the transfer or acquisition should not be declared to be invalid and shall hold an inquiry and decide whether the transfer or acquisition is or is not invalid." Sub-section (2) of Section 84B then provides that if on holding such an inquiry the Mamlatdar were to declare the transfer or acquisition to be invalid, he should direct that the land shall be restored to the person from whom its was acquired, and that the amount of consideration paid, if any, shall be recovered as arrears of land revenue from the transferor and paid to the transferee and until the amount is So fully paid, the said amount shall be a charge on the land.

5. It was contended before the Tribunal that Section 84B would not apply to a case where the landlord has taken possession of the land as a result of a surrender having been made by the tenant. The learned Tribunal after considering that contention and certain observations to be

found in Sir Dinsha Mulla's commentary on the Transfer of Property Act, 4th edn., p. 682, as also Section 34(5) of the Tenancy Act, repelled that contention and held that such a case of surrender would mean acquisition as mentioned in Section 84B (1). It is against this order that this Special Civil Application has been filed.

6. Mr. Shah, who appears for the petitioner, contended that taking over of possession, either as a result of threats by the petitioner or as a result of relinquishment of possession by respondent No. 1, would not amount to surrender within the meaning of either s. III of the Transfer of Property Act or Section 15 of the Tenancy Act. Under s. III of the Transfer of Property Act a surrender can be either express or implied. In both the cases, a surrender takes effect like any other contract by mutual consent of the parties on the lessor's acceptance of the act of relinquishment by the lessee. No particular form of words is necessary and such a surrender need not be in writing. Such a surrender would be good if the tenant relinquishes his tenancy rights and that relinquishment is accompanied by delivery of possession. Implied surrender, on the other hand, takes place by the creation of a new relationship between the parties or by relinquishment of possession. Whether the surrender is express or implied, the consequence in both the cases is the same, viz., that the tenant no longer retains any tenancy rights in the leased premises and the relationship between the parties as landlord and tenant comes to an end.

7. Under Section 15 of the Tenancy Act, a valid surrender has to be in writing and must be verified before the Mamlatdar. Sub-secetion {2A) of Section 15 requires the Mamlatdar after such verification to hold an inquiry and decide whether the landlord is entitled under Sub-section (2) thereof to retain the whole or any portion of the land so surrendered, and specify the extent and particulars in that behalf. Under Section 1.5 of the Tenancy Act also where there is a valid surrender duly verified and recognised by the Mamlatdar under the provisions of Section 15, the relationship between the parties as a landlord and a tenant must come to an end, and the tenant's rights in the leased lands must upon such surrender terminate. The tenant then would lose all his rights and obligations as a tenant in respect of the leased land and that would be so whether the tenancy is contractual or statutory.

8. In the case before us, the taking over of possession by the petitioner in 1955-56 of the land in question from respondent No. 1 cannot, in our view, amount to surrender under s. III of the Transfer of Property Act, as according to the very case of respondent No. 1, the alleged surrender was not by mutual consent of the parties but his possession was taken from him by the petitioner under coercion and threats. It was in fact the case of respondent No. 1 before the revenue authorities that he never meant to relinquish his tenancy rights in the leased land. The case also would not amount to surrender as contemplated by Section 15 of the Tenancy Act as the formalities prescribed thereunder were never carried out. Section 15 in any event does not recognise a forcible or an involuntary relinquishment. Taking of possession by the petitioner

from respondent No. 1 would not be recognised as valid as the petitioner would not be authorised to take possession unless he had recourse first to Section 15 and thereafter to Section 29(2) of the Act. Under Sub-section (4) of Section 29 of the Act, any person taking possession of any land except in accordance with the provisions of Sub-section (7) or (2) of Section 29, as the case may be, is made liable to forfeiture of crops, if any, grown in the land in addition to payment of costs as may be directed by the Mamlatdar or by the Collector and also to a penalty prescribed in Section 81 of the Act. Taking over possession, therefore, by a landlord from a tenant even where there is relinquishment of possession by the tenant without recourse to Section 29(2) is a penal offence. Furthermore, under Section 29(1), a tenant from whom surrender is obtained by a landlord, if that surrender is not verified under Section 15 and recognised by the Mamlatadar after an inquiry and the landlord has not taken possession of sueh land as prescribed by Section 29(2), can still apply for possession under Section 29(1). A proceeding under Section 29(1) for restoration of possession by a tenant means that such surrender or relinquishment has not resulted in the loss of tenancy rights by the tenant. Such a proceeding also implies that the tenant retains his tenancy rights in the leased land until the surrender is verified and recognised under Section 15 by the Mamlatdar and possession of the land is obtained by the landlord under Section 29(2) of the Act.

9. Thus, the taking over of possession by the petitioner cannot amount to surrender either under the Transfer of Property Act or the Tenancy Act. It is true, as the Tribunal says, that Section 34(5) talks about a landlord acquiring land by surrender from his tenant. But as we have said, if the surrender is not legal and one under the provisions of the Act, there can be no acquiring of land as stated in Section 34(5) through surrender. The Tribunal, in our view, therefore, was not correct when it decided that there was either a transfer of the land in favour of the petitioner or an acquisition of the land by him merely because the tenant had relinquished possession of the land and the petitioner had taken over that possession. In order that there may be a transfer or acquisition through surrender, such surrender must be a lawful one, made in accordance with the provisions of the Tenancy Act and one whose effect would be the total cessation of the tenancy rights of the tenant either under a contract of tenancy or under a statutory tenancy. So long as surrender is not verified and recognised under Section 15 and so long as a tenant still retains the right to restoration of possession under Section 29(7), there would be no cessation of tenancy rights and therefore no acquisition or transfer of land by the landlord. In our view, Section 84B, therefore, cannot apply at any rate to cases to which Section 29(7) applies. The proper remedy of respondent No. 1 was to make an application to the Mamlatdar for the restoration of possession under Section 29(7) of the Act.

10. It would appear that Section 84B is directed against transfer or acquisition of lands in contravention of Sections 63 and 64 and the other provisions of the Act which has taken place

between June 15, 1955, and August 1, 1956. Section 63 bars such a transfer to non-agriculturists and to persons, who, though agriculturists, cultivate personally not less than the ceiling area whether as owners or tenants. Section 63A places certain restrictions on transfers even where they are allowable under Section 63. Section 64 provides that such a sale can be to particular persons only as are described in Sub-section (2) thereof. The contravention of Sections 63 and 64 referred to in Section 84B relates to sales or transfers made otherwise than permitted in and prohibited by Section 63 and Section 64. It seems to us that the scheme of the Act is that no person shall hold land on and after the coming into force of the Amendment Act of 1955 to the extent of more than the ceiling area. Section 34 provides that it would not be lawful with effect from the appointed day (June 15, 1955) for any person to hold, whether as an owner or a tenant, land in excess of the ceiling area. Sub-section (3) of that section provides that if a landlord has, during the period commencing on the first day of January, 1952 and ending on the date of the commencement of the Amending Act, 1955, acquired any land by surrender from his tenant, then, if the land which he held as an owner immediately preceding the first day of January, 1952 was equal to or in excess of twice the ceiling area, the whole of the land so surrendered shall be at the disposal of the Collector. But if the land so held on the aforesaid date was less than twice the ceiling area, so much of the land surrendered as would make the land held by him as an owner equal to twice the ceiling area, shall be retained with the landlord, and the rest of the land shall, be at the disposal of the Collector under Section 32P. Section 35 then lays down that where on account of gift, purchase, assignment, lease, surrender or any other kind of transfer inter vivos or by bequest except in favour of recognised heirs, any land comes into the possession of any person and in consequence thereof, the total land held by such person exceeds the area, which he is authorised to hold under Section 34, the acquisition of such excess land shall he invalid. A land thus transferred to or acquired by a person in a manner inconsistent with the provisions of the Act, such as sis. 34 and 35, would fall within the scope of Section 84B. In such an event, the Mamlatdar, on coming to know of such transfer or acquisition, has been given the power to move suo motu and hold an inquiry. It is clear, however, that a case where a tenant has a remedy under Section 29(1) to have the restoration of possession of lands in which he still retains tenancy rights cannot possibly attract the provisions of Section 84B. In our view, the learned Tribunal was in error when it construed Section 84B and held that that section was applicable to the present case.

11. The result, therefore, is that we set aside the order passed by the Mamlatdar, the Deputy Collector and the Tribunal. Rule is made absolute. No order as to costs.