BOMBAY HIGH COURT

Shri Usaf Usman Mujawar

Vs.

Shrimant Yeshwantrao Appasaheb Ghatage

Special Civil Application No. 715 of 1961 (with Special Civil Application Nos. 716 and 717 of 1961)

(Kantawala and Tambe, JJ.)

27.02.1962

JUDGMENT

Tambe, J.

1. It would he convenient to dispose of all the three applications by one judgment as the major contentions raised in these three applications are common. All the three applications arise out of the applications made by the respective landlords against their respective tenants for fixation of reasonable rent under Section 43B of the Tenancy Act, and the contentions raised on behalf of the tenants before us relate to the applicability of Sections 43A and 43B of the Act to the facts of this case. It is not necessary to state the facts in each and every case. But to appreciate the contentions, it is sufficient to refer to the facts in one case, and we would state facts in Spl. C. A. No. 715 of 1961. Respondent No. 1 Sri Ghatage at the material time was the landlord of Section No. 93/1 admeasuring 7 acres and 14 gunthas, situate within the limits of Kagal, district Kolhapur. The yearly assessment on the land is ₹ 41-1-0. Respondent No. 1 leased this field to the petitioner before us in the year 1947 as per the terms of a Kabulayat exh. 2 on record. It was for a period of three years and the agreed rent was ₹ 1,305 per year. It is not in dispute that though the period of three years has expired, till the date of the application the petitioner had been in possession of this field as the lessee of respondent No. 1, and their relationship was governed as per the terms of exh. 2. On November 9, 1957, respondent No. 1 filed an application before the Mamlatdar for fixation of fair rent under Section 43B of the Act. The petitioner raised various contentions, inter alia, that Sections 43A and 43B had no application to the facts of the present case, and therefore the Mamlatdar had no jurisdiction to determine the reasonable rent as asked for by respondent No. 1. The application was allowed by the Mamlatdar, and he fixed the reasonable rent at the same figure i.e. ₹ 1,300 per year. The appeal of the petitioner before the Collector failed. The petitioner then filed a revision before the Tribunal, and again reiterated the

same contentions. But they were also rejected by the Tribunal. The Tribunal, however, came to the conclusion that in fixing the rent, the revenue authorities below had not properly taken into consideration the requirements of law. The Tribunal, therefore, laying down certain principles in the matter of fixing reasonable rent, have remanded the case to the Mamlatdar only for the purpose of fixing the amount of reasonable rent, and it is against this order that the petitioner has approached this Court. Out of the five points urged before the Tribunal, Mr. Bhasme who appears before us on behalf of the petitioner, has pressed only four of them.

2. Before we proceed to deal with the contentions raised by Mr. Bhasme, it would be convenient to state in brief the legislative history relating to the introduction of Sections 43A and 43B on the statute book. It is well-known that since about the year 1939, the State Legislature has been enacting tenancy laws to provide for the protection of tenants of agricultural lands in this State, and the manner in which, protection was granted chiefly consisted of keeping the tillers of the soil on the land and regulating the rent payable, by them irrespective of contracts between the tenants and landlords. The first tenancy legislation in this behalf was enacted in the year 1939 (Bombay Tenancy Act XXIX of 1939). This Act, barring certain sections, was repealed by Bombay Tenancy and Agricultural Lands Act (Act LXVII of 1948). This Act of 1948 was radically amended by Act) XIII of 1956, and. the amendments came into force on August 1, 1956. Now prior to the amendment of 1948 Act by Act XIII of 1956, the rent payable by a tenant to the landlord was determined in accordance with the provisions of Section 12 of the Act. By Act XIII of 1950, a radical change, material for the purpose of this case, was introduced; a legal fiction was created by which the tenants were deemed to be purchasers of the land leased to them by the landlords as and on the appointed date, viz., April 1, 1957, commonly known as tillers day. The Legislature, however, intended to exclude certain tenancies from the operation of Section 32, which created the aforesaid legal fiction, and for that purpose, certain provisions were introduced in the statute by this Amending Act. Section 43A relates to the tenancies excluded from the operation of Section 32 amongst other sections. Section 43B relates to the determination of the reasonable rent payable by the tenants whose tenancies are excluded from the operation of Section 32 under the provisions of Section 43A. At this stage, it would be convenient to set out the material portion of Section 43A to appreciate some of the contentions raised by Mr. Bhasme.

> "43A. (1) The provisions of Sections32 to 32Rshall not apply to
> (a) land leased to or held by any industrial or commercial undertaking (other than a Co-operative Society) which in the opinion of the State Government bona fide carries on any industrial or commercial operations and which is approved by the State Government;
> (b) leases of land granted to any bodies or persons other than those mentioned in Clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of live stock;
> (c) to lands held or leased by such co-operative societies as are approved in the prescribed manner by the State Government which have for their objects the improvement of the

economic and social conditions of peasants or ensuring the full and efficient use of land for agriculture and allied pursuits.

(2) The State Government may by notification in the Official Gazette in this behalf direct that the provisions of the said sections shall not apply to a lease of land obtained by any person for growing any other class of agricultural produce to which it is satisfied that it will not be expedient in the public interest to apply the said provisions. Before the issue of such notification, the State Government shall direct an inquiry to be made by an officer authorised in this behalf by the State Government and shall give all persons who are likely to be affected by such notification, an opportunity to submit their objections.

Now, it has been held by the revenue authorities as well as by the Tribunal that the cases fall under Clause (b) of Sub-section Section 43A. The first contention raised by Mr. Bhasme is that Section 43A(1(b) of the Act does not apply to cases in which land is held on lease by an individual person. His argument is that the in-tendment of the Legislature is to exclude only the industrial and commercial undertakings or co-operative societies from the operation of certain sections of the Act. If the Government issues a notification, then these commercial or industrial undertakings are excluded from the operation of those sections irrespective of the purpose for which the lease is taken by them. But, in the event Government does not issue a notification as contemplated by Clause (a) of Sub-section (1) of Section 43A then the tenancies of industrial and commercial undertakings are excluded from the operation of those sections if the purpose of the tenancy is either the cultivation of sugarcane or growing of fruit and flowers or for the breeding of livestock. In support of the argument advanced, reliance is placed on the plurality of the expression "bodies or persons". We find it difficult to accept the argument of Mr. Bhasme on the language of the various clauses in Sub-section (1) of Section 43A. Heading Sub-section (1) in its entirety, it appears that nothing turns on whether the lease is in favour of an individual or body of individuals or an incorporated company or a company registered under the Indian Companies Act. On the other hand, the guiding factor in Clauses (a) and (c) is who the lessee is; while the guiding factor in Clause (b) is for what purpose the lease is. If the lease is by a commercial or industrial undertaking then the purpose for which lease is taken has no relevance in considering whether Clause (a) applies to it or not. In that event, what determines the issue is whether in the opinion of the State Government the industrial or commercial undertaking is, bona fide, carrying on an industrial or commercial operation or not, and whether the industrial or commercial operation bona fide carried on by it is approved by the State Government to which exemption should be granted. If these two factors are present, then the lands held on lease by the industrial or commercial undertakings can be excluded from the operation of the sections mentioned therein. Similarly, in Clause (c) the determining factor is whether the lease is held by a co-operative society. If they are so held by a co-operative society, then the next thing that has to be considered is whether the co-operative society has for its objects the improvement of the economic and social conditions of the peasants, and ensuring the full and efficient use of the land for agricultural or allied pursuit, and also whether the co-operative society is one of the co-operative societies approved by the State Government a stated in Clause (c) or not. If these

factors are established, then all the lands leased by such co-operative societies get excluded from the operation of those sections. On the other hand, the determining factor in considering whether Clause (b) is applicable or not is the purpose of the lease. If the purpose of the lease is for cultivation of sugarcane or growing of fruits or flowers or for the breeding of livestock, then it gets excluded from the operation of those sections, whether the lessee is a body of per-son or persons. It is indeed true that the expression "body and person" is used in their plurality "bodies or persons". But then that use can hardly be of any assistance to the petitioner because the clause starts with plurality of expression "leases". In other words, the clause speaks of "leases of land" and not "tease of land". That being the position, naturally the lessees would be bodies or persons. In our opinion, therefore;-' on the language of the various clauses themselves, it is not possible to accept the contention of Mr. Bhasme.

3. We find support to the conclusion reached by us even in Sub-section (2) of Section 43A. That sub-section confers a further power on the State Government to direct by notification in the official gazette, that sections mentioned in the preamble of Section 43 A shall not apply to leases of land obtained by any person for growing any other class of agricultural produce to which it is satisfied that it will not be expedient in the public interest to apply the said provisions. Reading the entire section as a whole, it appears that the intendment of the Legislature is to exclude lands taken on lease by certain persons for certain purposes from the operation of certain sections, and nothing turns on whether the lease is taken by individual or group of persons or an association or a company incorporated under the Companies Act. A further support also is found in the language of Section 43B. The section empowers the revenue officer to determine the reasonable rent payable by the tenant of any land to which Section 43A applies. Sub-section (1) of Section 43B confers a right on a tenant of such land to make an application. If the intendment of the Legislature was to exclude individual lessees from the operation of this sub-section, the expression would not have been "a tenant" in Sub-section (1) of Section 43B of the Act. Lastly, the view taken by us also finds support in the ratio of the decision in *Dinkar Bandu Pachpande v. Janmahomed Pirmahomed*[1] Herein the contention raised was to claim protection under Clause (b) of Sub-section (1) of Section 43A it must be established that the lessee was an industrial or commercial undertaking. This contention was negatived by the learned Chief Justice in following words:

> "It will be seen that only Clause (a) applies to lands held by industrial and commercial undertakings. Clause (b) is independent and is not governed by Clause (a). It will therefore apply to all lands granted for the growing of fruits, even if they are not leased to any industrial or commercial undertaking.

4. The next contention raised by Mr. Bhasme is that even assuming that Clause (b) is applicable to eases where the lessee is an individual, the clause has application only where the period of the lease originally granted by the landlord had not expired. According to Mr. Bhasme, Clause (b) has no application where the original period of lease has expired and the land is held by a tenant

by virtue of the protection granted to him under the Act. The argument is founded on the clause "leases of land granted" occurring in Clause (b) and definition of 'tenant' in Section 2(18) of the Act. That definition reads:

> "tenant means a person who holds lands on lease and includes
> (a) a person who is deemed to be a tenant under section 4;
> (b) a person who is a protected tenant; and
> (c) a person who is a permanent tenant;

and the word 'landlord' shall be construed accordingly;
According to Mr. Bhasme, a person who is a deemed tenant, a person-who is a protected tenant, and a person who is a permanent tenant, is not a person who holds land on lease from the landlord. Clause (b) speaks only of persons who hold land on lease from the landlord. It is difficult to accept the argument of Mr. Bhasme that a person who is deemed to be a tenant, or a protected tenant or a permanent tenant, is not a person holding land

[1](1960) Special Civil Application No. 276 of 260

from the landlord. A tenancy by its very nature must originate in a contract between the landlord and a tenant, regarding the holding of the land. After the contract comes into being, no doubt the Act has granted protection as against termination and the quantum of rent, but the Act nowhere provides for formation of a tenancy otherwise than a tenant holding the land from his landlord. Further, in Sub-section (1) of Section 43B, the right conferred is on a tenant to make an application for determination of reasonable rent, There is HO reservation in this sub-section excluding a protected tenant, or a permanent tenant, or a person deemed to be a tenant.

5. It is next contended that for attracting the provisions of Section 43A, it must be proved by the landlord that the agreement specifically provides that the lease was for cultivation of the sugarcane or for the growing of fruits or flowers or for breeding of livestock, and further it must also be established that the agreement was to grow sugarcane etc. in the entire land leased out and not in part thereof. It is indeed true that on the language of Clause (b), it has to be established that the lease granted was for cultivation of sugarcane or for growing fruits and flowers etc. But it nowhere specifically mentions that the purpose of lease must be specifically mentioned either in the instrument of lease or that the lease must be for cultivation of sugarcane etc. in the entire field. On the other hand, in our opinion, what is required to be established on material evidence is whether there was a lease; and whether the lease was for cultivation of sugarcane or growing of fruits or flowers. In each case, it would depend on the evidence, whether the lease has been for cultivation of sugarcane or growing of fruits or flowers etc., and that would depend on the nature of cultivation. We are informed that the cultivation of sugarcane can never be in the entire field, but cultivation of sugarcane is always carried on by rotation in parts of the field. It would, therefore, depend on the facts of each case, and it would be for the Courts of fact to reach a conclusion on the evidence available to it whether the lease has been for cultivation of any particular crop or not. Nothing would turn on whether the agreement was to grow that crop in the

entire field or not. The analogy of the decision in *Vinayak Gopal v. Laxman Kashinath*[2], affords an answer to the other argument of Mr. Bhasme that the agreement of lease must be expressly in terms that the lease was for cultivation of sugarcane etc. One of the questions that arose for consideration in that case was whether the lease in question attracted the provisions of Section 6(1) of the Rent Act. That section applied to premises let for residence, education, business, trade or storage. In the instrument of lease, the purpose was not expressly mentioned, and the contention raised was that it was not open to establish by other evidence the purpose of lease. In other words, the contention raised was that to claim protection of Section 6(1) of the Rent Act, it must be established that the instrument of lease expressly provided the purpose of the lease as one falling under various items mentioned in Sub-section (1) of Section 6. Repelling the contention, it was observed (pp. 594, 505).

> "Normally the purpose of the lease can be determined from the terms of the document itself. If the instrument of tenancy specifically and clearly declares the purpose of the lease, there can be no difficulty in deciding whether the lease falls under Section 6(1) or not. If the instrument of lease is silent as to the purpose, then it would be permissible to allow evidence aliunde in regard to the said purpose and the purpose can be determined in the light of such evidence. In such cases, it would be permissible and legitimate for the Court to look at evidence

[2](1956) 58 Bom. L.R. 592

> concerning the user of the premises by the tenant in order to determine the purpose of the lease.

The aforesaid principle laid down in *Vinayak Gopal v Laxman Kashinath*, in our opinion, is equally applicable to the facts of the present case, and is a complete answer to the contention raised by Mr. Bhasme, Mr. Bhasme also argued that on the construction of the instrument of lease filed in this case, it cannot be said that the lease was for cultivation of sugarcane. In our opinion, it would not be open to the petitioner to raise this contention in this petition. Whether the lease is for cultivation of sugarcane or not is purely a question of fact, and it is for the Courts of facts to consider that question. Heading the leases also, it is not possible to hold that the conclusions to which the revenue Courts of facts have reached are not warranted or wholly unjustifiable.

6. To appreciate the last contention, few more facts need be stated. It appears that the reasonable rent had been fixed in all these cases under Section 12 of the Tenancy Act as it then stood. The orders fixing the reasonable rent were made sometime in the year 1952-53. Sub-section (5) of Section 12 provided that the reasonable rent fixed under Section 12 would hold good for a period of five years, and would not be called in question during that period. It appears that the applications made by the landlord under Section 43B of the Act for fixation of reasonable rent were filed before the expiry of the said period of five years. On these facts, Mr. Bhasme contends that these petitions would not be tenable because Sub-section (5) of Section 12 provided that the

orders made under this section were good for a period of five years. The opening clause in the preamble to Section 43B, in our opinion, is a complete answer to this contention. The right conferred on the landlord as well as on the tenant to make an application under Section 43B is "notwithstanding any agreement, usage, decree or order of a Court or any other authority", and that being the position, the order made by the revenue authorities under Section 12 would not come in the way of the landlords to make an application under Section 43B. These are all the contentions raised by Mr. Bhasme, and for the reasons stated above, in our opinion, we find it difficult to accept any of them. The applications are liable to be dismissed.

7. In the result, the rules in all these petitions are discharged. We however make an order of only one set of costs, for respondents only. Mr. Rane, who appeared for the intervener-State Government and had supported the respondents-landlords, has not pressed for his costs.

Applications dismissed : rule discharged.