

BOMBAY HIGH COURT

Sri Kesheoraj Deo Sansthan

Vs.

Bapurao Deoba

Special Civil Application No. 368 of 1962 with Special Civil Applications Nos. 369 to 373 of 1962

(Abhyankar and Wagle, JJ.)

14.02.1964

JUDGMENT

Abhyankar, J.

1. This order will govern the disposal of all these petitions which raise a common question under the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958, Act No. XCIX of 1958.

2. The petitioner in all these cases is Shri Kesheoraj Deo Sansthan of Karanja. The Sansthan filed an application against several tenants in respect of lands held by them, before the Naib Tahsildar, Murtizapur, claiming possession of the lands under cultivation of the several tenants under Section 36(2), read with Rule 16, of the Bombay Tenancy Act of 1958 and the rules made thereunder applicable in this region. Prior to that the petitioner had issued a notice purporting to be a notice under Section 38 of the new Tenancy Act through their advocate to various tenants. One such notice is to be found at page 16 of the paper book in Special Civil Application No. 368 of 1962. The notice recites that the client on whose behalf the notice is given, is a private Sansthan and that one Kesheorao Amte was its Wahiwatdar. Then the notice proceeds to say that the Sansthan owns property described in the notice and that the Sansthan is entitled to determine the tenancy in respect of the land because the landlord bona fide requires the land for cultivating it personally. Then certain reasons are given as to why the landlord requires resumption of the land; the principal reason is that cultivation of the land is the main source of income of the Sansthan and its establishment and that the land which is yielding income by way of leasing is required to be brought under personal cultivation to increase the return from this property. Similar averments are made in the application filed by the petitioner in the several cases before the Naib Tahsildar. The Naib Tahsildar did not issue notice to any of the tenants. He passed a short order rejecting the petition with the following observation:

"...The landlord in this case, the deity, has applied for personal cultivation under Section 38 of the Bombay Act 99/58 through Manager. As per recent rulings of Bombay Revenue Tribunal, the deity cannot be required (V.O. Sic.) land for personal cultivation, as the agent's requirements cannot be deemed deity's requirement and it cannot be said that the landlord bona fide required the land for personal cultivation vide (*S.V. Mathad v. V.K. Ajjappalawar¹*). Hence the application is rejected."

3. Against this order the petitioner preferred an appeal before the Sub-Divisional Officer. The Sub-Divisional Officer attempted to answer the arguments which were addressed before him on behalf of the petitioner. In repelling the contention of the petitioner, the Sub-Divisional Officer observed as follows:

"It must be seen first whether a deity is capable of cultivating the land personally. To cultivate personally, means to cultivate on one's own account, 1, by one's own labor, or 2. by the labor of any member of one's family, or 3. under the personal supervision of oneself or of any member of one's family by hired labour or by servants on wages payable in cash or kind but not in crop share.

The Clauses 1 and 2 cannot apply in the present case and it could not be said that the manager who could be cultivating the land is a servant on wages payable in cash. Moreover, the personal supervision of the deity or a member of its family is impossible. The deity cannot therefore cultivate the land personally. The Sub-Divisional Officer also rejected the contention of the petitioner that the manager was a legal owner and that he could ask for land for his cultivation on the ground that the land was needed for personal cultivation. The Sub-Divisional Officer observed that in that case the possession will be only that of the manager and he could not be deemed to be landlord of the property, the legal owner of the property being the Deosthan. On these findings he dismissed the appeal.

4. The matter was taken before the Revenue Tribunal and by an elaborate and well-considered order the Tribunal upheld the decisions of the two Courts below. In arriving at their conclusion the Tribunal referred to a statement in para. 3(1)(c) of the application filed before the Tahsildar in which the petitioner has alleged that the income by the cultivation of the land, of which the Sansthan is entitled to take possession, is the principal source for the establishment, upkeep and maintenance of the Sansthan and its wahiwatdar. The Tribunal observed:

"The words underlined by us in the above extract clearly support the argument of Shri Dharmadhikari. That being so, there is no valid basis for the argument advanced by Shri Wadodkar that in the instant case the lands are not required for the maintenance of the Wahiwatdar but for the maintenance of the deity alone."

In this context a reference was also made to a decision of a Division Bench of this Court reported

in *Buvasaheb Tatyasaheb v. Yesu Krishna*² The Tribunal also referred to another decision of the Revenue Tribunal in (*Raghunath v. Gopal*³), and found that the decisions of the two lower authorities were in conformity with that decision.

5. The petitioner has now come to this Court and challenges this view taken before the Revenue Courts declining to give relief to it.

¹ Case No. Ten./1142 of 1955, dated 23-8-553

²(1959) 62 Bom. L.R. 219 : S.C. [1960] N.L.J. 219

³ Revision Application No. 267 of 1961, decided on January 16, 1962

6. We shall first dispose of an alternative contention raised on behalf of the petitioner that in any case an application at the instance of Shri Amte, who claimed to be the manager of the Sansthan, should have been held tenable. According to this contention, the manager was in the position of a trustee of the Sansthan Property, and as such its owner. If one of the trustees of the Sansthan made an application for termination of tenancy on the ground of personal cultivation, such an application ought to be allowed as the trustee could in any case cultivate personally. The short answer to this contention is that it was never the case of the petitioner, and it could not be, in view of the document filed, that either the manager or any trustee was vested with the legal ownership of the property in those fields. The petitioner has not left anyone in doubt as to who is the legal owner of the property, and therefore, the landlord within the meaning of the Tenancy Act. In the notice as well as in the application made by the petitioner, there is a categorical statement that the Sansthan, which is a private one, is the landlord of the property mentioned in the notice and the application, and that Kesheorao Amte is the Wahiwatdar of the Sansthan. It is difficult to imagine how a Wahiwatdar or a manager could claim rights of ownership in the property which is vested in the Sansthan as a result of gift or dedication by the original donor. We must, therefore, rule out the contention as wholly untenable that Shri Amte could at all claim a right to terminate the tenancy on the ground that he required it for his personal cultivation. That contention could not be entertained and has been rightly rejected.

7. However, the principal contention raised on behalf of the petitioner is that the Sansthan or the idol of the Kesheoraj Maharaj is the owner of the property. It is the Sansthan which is the landlord of the lands held by the tenants. The idol is a juridical person in the eye of the law. Under the Tenancy Act both a legal person as well as a natural person are capable of owning property and being landlords. In this connection reference is invited to the provisions of Section 129 of the new Tenancy Act which exempts from the operation of certain provisions of the Act lands held by local authority, universities established by laws in the State, or institutions for public religious worship, or land taken under management by civil, revenue, or criminal Courts etc. A variety of juridical persons or entities are capable of owning property and an idol within the concept of Hindu law and jurisprudence, is capable of being such an owner. Therefore, there is no difficulty so far as claiming the attributes of ownership in the property as a landlord in the idol. But the question that falls for determination in this case is whether an idol or a juridical person is capable of cultivating the land personally. The definition section in its various sub-

clauses has given definitions of many relevant words used in the Act. Under Section 2(11) "to cultivate" means to carry on any agricultural operation. Then follows the definition of "to cultivate personally" in Section 2(12) of the Act. That definition is as follows:

"to cultivate personally' means to cultivate 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 one-self or of any member of one's family by hired labour or by servants on wages payable in cash or kind but not in crop share;

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

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;"

8. As rightly pointed out by the Sub-Divisional Officer, it is not possible for the petitioner to contend that it can cultivate personally within the meaning of the definition "by one's own labour". That is simply not possible. The second method of personal cultivation is by the labour of any member of one's family. That also is not possible in the case of a juridical person such as an idol. The third method of cultivation is under the personal supervision of oneself or of any member of one's family by hired labour or by servants on wages payable in cash and kind but not in crop share. The petitioner's case is that it can in any case cultivate personally according to this third mode of personal cultivation prescribed by the Act. The argument is that the personal supervision which is necessary as an essential element in this type of personal cultivation, is not necessarily the supervision of the person i.e. of the landlord in the physical sense. If this supervision can be delegated lawfully to some other person i.e. some other human being, on behalf of the landlord who is a juristic person, and labourers or workers are engaged for agricultural operations on hire, on payment of wages in cash or kind, it should be possible to hold, the argument runs, that a juridical person can also cultivate personally. Reference is also made to the definition of "person" given in Section 2(21) of the Act which says that 'person' includes joint family. The definition of "person", therefore, is an inclusive definition and should, according to the petitioner, include a juristic person or a legal person.

9. In our opinion, it is not possible either to accept this interpretation of the words "to cultivate personally" or to hold that the scheme of the Act and the particular provisions pertaining to termination of tenancies on the ground of personal cultivation of landlord can admit of the benefit of these provisions to be extended to a juristic person. On a scrutiny of the several instances of personal cultivation which are prescribed and defined in Section 2(12) of the Act it will be clear that the insistence is on the personal element in the process of cultivation. Now, there is no definition of the word "personal" in the Act and it should, therefore, bear the ordinary

meaning. According to Chambers's Twentieth Century Dictionary, "personal" means "belonging to a person, or having the nature or quality of a person or peculiar to a person, or done in person or relating to one's own self." The Shorter Oxford English Dictionary also gives meaning to the word "personal" in the same sense. According to this Dictionary, it means "of, or pertaining to, or concerning or affecting the individual person or self", or it means "done, made, performed, held etc. in person". Thus, it is clear that the dominating idea of anything done personally or in person is that the thing must be done by the person himself and not by or through someone else. The two Explanations added to the definition given in Section 2(12) of the phrase "to cultivate personally" would also emphasize this aspect. The first Explanation excepts and exempts a widow or a minor or a person who has suffered from a physical or mental disability or a serving member of the Armed Forces, who is a landlord, from strict application of the definition. If in the case of her or his land the land is cultivated by her or his servants by hired labour, then the requirement of personal supervision is not an essential attribute in this mode of personal cultivation in the case of a widow, a minor, a person who has suffered from a physical or mental disability, or a member of the Armed Forces. The second Explanation refers to a joint family and the provision is made for any one member of such joint family cultivating the land personally, which would accrue for the benefit of the family as a whole.

10. It should thus appear that the legislative intent clearly is that in order to claim a cultivation as a personal cultivation there must be established a direct nexus between the person who makes such a claim, and the agricultural processes or activities carried on the land. In other words, all the agricultural operations, though allowed to be done through hired labour or workers must be under the direct supervision, control, or management of the landlord. It is in that sense that the words "personal supervision" must be understood. In other words, the requirement of personal supervision under the third, category of personal cultivation provided for in the definition does not admit of an intermediary between the landlord and the labourer, who can act as agent of the landlord for supervising the operations of the agricultural worker. If that is not possible in the case of one landlord, we do not see how it is possible in the case of another landlord merely because the landlord in the latter case is a juristic person. The provision cannot be interpreted to permit the interposition of a third person as a supervisor on behalf of a landlord where the landlord is a juristic person. The provision of such a facility will not be available for the landlord who is a natural person also. The whole emphasis in the Act is on insisting cultivation of land by persons who want to get benefit out of the land. Even in the case of a tenant the same obligation holds good. The moment by force of circumstances the process of cultivation is required to be entrusted to someone else the landlord cannot possibly claim the benefit except under Explanations I and II, by which the landlord is deemed to be cultivating the land personally. Thus, by the very definitions of these words, namely, "to cultivate" and "to cultivate personally" given in the definition clause, the Legislature seems to have made it abundantly clear that so far as cultivation of the land is concerned, it must be by human beings themselves i.e. by natural persons and not by legal persons.

11. In this context, the provisions of Section 129 to which a reference was made on both sides, may throw some light. Under the opening words of that section, nothing in the foregoing provisions of this Act, except Section 2, the provisions of chapter II (excluding Sections 21, 22, 23, 24 and 37) and Section 91 and the provisions of chapters X and XII in so far as the provisions of the said chapters are applicable to any of the matters referred to in sections mentioned above, shall apply to lands held by several authorities or under specified circumstances given later on in the section. Sections 38 and 39, therefore, do not apply to lands held by these specified authorities. Similarly, the provisions of Sections 21 to 24 about the manner of surrender also do not apply. Section 46 is one of the important sections in chapter III which compulsorily transferred ownership of land to tenants on and from what is called 'tiller's day' also does not apply. The provisions regarding transfer of management of lands which would otherwise have applied, have also been excluded. The idea seems to be that in cases of lands held by authorities or under the circumstances given in Section 129, there is no right in the tenants of these lands to acquire ownership to the lands though they may continue to be tenants until the tenancy is capable of termination either by surrender or abandonment, which is to be duly certified, or for nonpayment of rent. On the other hand, land held by other juristic persons such as companies or other legal persons are subject to the same restrictions and limitations as other landlords, like individuals or joint families. Under the Act termination of tenancy is possible only in specified circumstances. A landlord may terminate the tenancy for non-payment of rent under Section 19. A tenant may surrender land by surrendering his interest, in which case the tenancy will terminate. The third category of cases in which tenancy may be terminated is by giving notice either under Section 38 or Section 39. In both of these cases, however, the notice may be given only on the ground that the land is required for personal cultivation. Termination of tenancy by efflux of time in the original contract or agreement of lease, is not possible in the case of tenants who come under the protection of Tenancy Act by virtue of Section 9. These tenancies do not come to an end merely by lapse of time, i.e. at the end of the term fixed under the contract of lease. It is, therefore, clear that the whole object of this legislation is to stabilise the tiller of the soil on the land by giving him as much protection and security of tenure as possible consistent with certain corresponding rights of landlord, such as due payment of rent or the landlord having a right to cultivate land for personal cultivation. In view of the evident object with which the legislation was put on the statute book it cannot be seriously contended that even though the termination of tenancy and recovery of possession may not result in the landlord personally cultivating the land, such a result should be possible by an interpretation of the definition of the words "to cultivate personally" which will obviously run counter to the intent of the Legislature. Unless, therefore, there are compelling words to enable us to come to such a conclusion, the interpretation contended for by the petitioner would lead to a result contrary to the intention of this legislation. We are not satisfied that there is any provision in the Act which would justify such an artificial interpretation being put on the words "to cultivate personally" in the sense that cultivation through an agency on behalf of a juristic person would also come within the meaning of the definition of those words.

12. The learned Counsel for respondent No. 1 has brought to our notice a recent decision of the Maharashtra Revenue Tribunal which is reported in *Shri Kalanka Devi Sansthan, Patur v. Pandu Maroti*⁴ In para. 4 of their order the Tribunal observed:

"...The Deity or Sansthan is, in the nature of things, incapable of cultivating land by personal labour or supervision within the meaning of Section 2(12) of the New Tenancy Act. In Section 38(2)(d) of the Act special provision has been made for landlords who are subject to physical or mental disability but no such provision has been made for juridical persons like a Deity or Sansthan. The entire scheme of termination of tenancy for personal cultivation incorporated in Sections 38 and 39 of the New Tenancy Act centres round a family of person or persons who are capable of acting for themselves and for persons who cannot so act, special provision has been made in Sub-section (2) of Section 38. The fact that no such provision has been made for Deities and Sansthans indicates that such juridical persons are excluded from the scheme of termination of tenancies for personal cultivation."

In our opinion, the Tribunal correctly interprets the provisions of this Act in respect of personal cultivation by the landlord and the necessary conditions which are to be satisfied before land could be claimed for this purpose. We must, therefore, confirm the decision taken by the two Courts below and by the Tribunal, and hold that there is no case for

⁴(1963) Mh. L.J. 249

interference with their decision.

13. The result is that all these petitions fail and are dismissed with costs. One set of costs for all these petitions.

Petitions dismissed.