# Mohd. Illahamuddin And Ors. vs Bhivasan And Anr. on 16 March, 1970

## Equivalent citations: AIR1973SC599, (1971)3SCC962, AIR 1973 SUPREME COURT 599, 1971 2 SCC 962, 1972 MAH LJ 690, 1970 SCD 703

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## Bench: A.N. Grover, J.C. Shah, K.S. Hegde

JUDGMENT

K.S. Hegde, J.

1. This appeal by special leave arises from the decision of the Bombay High Court in an application under Article 227 of the Constitution. Therein the High Court reversed the judgment of the Revenue Tribunal holding that the application of the respondents {who will be hereinafter referred to as tenants) under Section 32 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (to be hereinafter referred to as the Act) is barred by limitation and therefore their application for possession of the properties concerned is not maintainable. The High Court allowed the application of the tenants and directed delivery of possession of the lands in dispute.

2. The first appellant (to be here in after referred to as the land-holder) was the owner of the properties with which we are concerned in this appeal. He had leased out those properties to the tenants. In 1952 the land-holder terminated the tenancy of the tenants and thereafter moved the tenancy court for possession of the leased lands. During the pendency of the said proceedings, the parties entered into a compromise in pursuance of which the lands in question were delivered to the landholder. Under Clause (5) of the compromise the parties agreed that after obtaining the possession of the lands, the landholder should cultivate the lands personally and further that if he failed to cultivate them personally, he shall not lease them out to anyone save the respondents. But it appears that in the year 1962, the landholder put those lands in the possession of appellants Nos. 2 to 5 under agreement to sell the same to them. Thereafter the tenants moved the aforementioned application under Section 32 for possession of those lands on the ground that the landholder had contravened the terms of the compromise. The Tehsildar dismissed the said application on the ground that the same having been made more than two years after the possession was delivered by the landholder, it is barred. His decision was reversed by the Deputy Collector in appeal but the same was restored by the Revenue Tribunal. As mentioned earlier, the High Court reversed the order of the Tribunal.

3. The Tehsildar, the Deputy Collector, the Tribunal as well as the High Court have concurrently

come to the conclusion that if the tenants' application for possession is held to have been made under Section 32, the same is bar red by limitation. That conclusion was not challenged before us. As mentioned earlier, the tenants' application purports to be one under Section 32. but vet the High Court opined that in effect it is an application under Section 46 and consequently, it is not barred by limitation. The application for possession made by the landholder is not on record. Hence we do not know the exact ground urged in support of the relief prayed for therein. The learned Judge of the High Court who decided the case, has mentioned in the order under appeal that it was an application under Section 19 on the ground that the tenants had committed default in the payment of the rent. This conclusion of his conflicts with his latter finding that the landholder's application must have been one under Section 46(44?). From the order, it is not possible to find out the basis on which the learned Judge came to the conclusion that the application made by the landholder must have, been one under Section 46. It appears from the order of the Revenue Tribunal that it was conceded before it by the learned Counsel for the tenants that Section 46 of the Act in terms does not apply to the present proceedings. But yet, for reasons not stated in his order, the learned Judge of the High Court came to the conclusion that it must have been an application under) Section 46. A somewhat similar conclusion had been arrived at by the Deputy Collector.

4. Section 44 empowers a land holder to terminate a protected tenancy under certain circumstances; one of the circumstances under which he could have terminated the tenancy is that he required the land in the possession of the tenants for personal cultivation for which purpose he could have resumed a maximum of three family holdings (Section 44(1)). Section 45 provides that if on the termination of the tenancy under Section 44, the landholder does not within one year from the date on which he resumed possession of the land cultivate the same personally or having commenced such cultivation, discontinues the same within 10 years of the said date, he 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 in writing to accept the tenancy on the terms and conditions prevailing before the termination of the tenancy or has offered in writing to give possession of the land to the tenant on the said terms and conditions and the tenant has failed to accept the offer within three months of the receipt thereof.

5. The tenants did not mention in their petition that the landholder had terminated their tenancy under Section 44, nor did they plead therein that they were entitled to the possession of the proper ties on the ground that the landholder had contravened Section 45. Their application not only does not refer to Sections 44 to 48, the facts stated therein do not bring the case within the scope of those provisions. It is a bald petition. The only ground on which the possession was asked for was that the landholder had failed to comply with Clause (5) of the compromise though no doubt in the rejoinder they stated that the landholder had applied for possession on the ground that he required the land for personal cultivation.

6. We do not know the basis on which the Dy. Collector and the learned Single Judge of the High Court came to the conclusion that there was a termination of the tenancy under Section 44. From the mere fact that the landholder had agreed under the compromise petition to lease out the lands to the tenants in the event of his failing to cultivate them personally, they could not have drawn the conclusion that the application made by the landholder was one under Section 44. If the High Court

wanted to satisfy itself as to the true nature of the proceedings initiated by the landholder, it should have called for the application made by him and found out whether there was any termination of the tenancy under Section 44. If there was no termination of the tenancy on the ground that the lands in question were required for personal cultivation, the tenants' application could not have been made under Section 46.

7. For the reasons mentioned above, we are of the opinion that the finding of the High Court that the action taken by the landholder was under Section 44 is clearly without basis. It may be that on a perusal of the application in question it will be found that the same was one based on the termination of the tenancy under Section 44 but such a conclusion is not possible on the material before us. But if all that is established is that there was a contravention of one of the terms of the compromise, no aid from Section 46 could be taken by the tenants.

8. In the result this appeal is al lowed, the order of the High Court is set aside and the case is remitted to the Revenue Tribunal for disposal according to law, in the light of the observations made above. It is open to the tribunal to send for the application made by the landholder for possession of the proper ties to find out the true nature of the proceedings taken by him. There will be no order as to costs in this appeal.