Trimbak Gangadhar Telang And Anr. vs Ramchandra Ganesh Bhide And Ors. on 19 January, 1977

Equivalent citations: AIR1977SC1222, (1977)2SCC437, 1977(9)UJ167(SC), AIR 1977 SUPREME COURT 1222, 1977 2 SCC 437, 1977 U J (SC) 167, 1977 (1) SCJ 525 (2)

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Bench: Jaswant Singh, M.H. Beg

JUDGMENT

Jaswant Singh, J.

1. These appeals by special leave are directed against the judgment and order dated September 15, 1967/September 19, 1967 of the High Court of Judicature at Bombay whereby Special Civil Application Nos. 1304 to 1306 of 1965 filed by the appellants under Article 227 of the Constitution were dismissed by the said High Court.

2. The facts leading to these appeals are: In 1938, Vasudeo Balwant Telang, since deceased, who was petitioner No. 1 in the aforesaid Special Civil Applications leased out agricultural land in dispute comprised in a portion of R. Survey No. 25/1 and the whole of the Survey No. 26 admeasuring 4 acres and 8 gunthas and 16 acres and 36 gunghas respectively situate in the outskirt of village Haripur in Miraj Taluka of Sangli District of the erstwhile Miraj State (Junior) to Ganesh Bhikaji Bhide, father of Ramchandra Ganesh Bhide, respondent No. 1 herein, on an annual rent of Rs. 320/-. On March 23,1948, the said Vasudeo Balwant Telang gave notice to respondent No. 1 's father intimating the latter that the land taken by him under a kabulayat for cultivation up to April 10, 1948 would not be given to him for the next year. As there was no provision in the tenancy law then in force in the State of Mirj under which respondent No. 1's father could seek protection against his threatened eviction, respondent No. 1 executed a fresh deed of kabulayat on July 14, 1948, in favour of Vasudeo Balwant Telang for a period of one year agreeing to pay Rs. 700/- as rent for that period to the latter. On the merger of the Miraj State in the then province of Bombay, the Bombay Tenancy and Agricultural Lands Act, 1939 (hereinafter referred to as 'the 1939 Act') was extended to Miraj State on August, 13, 1948. Prior to the extension of 1939 Act to the Miraj area, respondent No. 1 had sublet some portions out of the aforesaid leased Survey Nos. in his occupation to respondents Nos. 2 and 3. On June 30, 1948, a notice was issued by the revenue authority to Vasudeo Balwant Telang informing him that respondent Nos. 2 and 3 who had to be deemed to be protected tenants had been recorded as such in respect of areas in their separate possession under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (herein after referred to as the 1948 Act') and that if he

had any objection with regard thereto, he was at liberty to obtain a declaration against the same from the Mamlatdar by August 11, 1949 under Section 4 of the Act. Though Vasudeo Balwant Telang contested the notice, the objections preferred by him were overruled and respondents Nos. 1 to 3 were recorded as protected tenants in the record of rights in respect of the areas in their possession. At or about this time, an entry was also made in the record of rights showing Rs. 20/ per bigha as the rent payable by each of the aforesaid three respondents. The total rent of Rs. 320/- per year computed at the said rate of Rs. 20/- per bigha per annum was apportioned between respondents Nos. 1, 2 and 3 at Rs. 200/- Rs. 80/- and Rs. 40/- respectively. After their recognition as protected tenants in the record of rights, though respondents Nos. 1 to 3 started paying their share of the rent separately to Vasudeo Balwant Telang, the latter credited the payment only to the account of respondent No. 1. On February 21, 1953, Vasudeo Balwant Telang served separate notices under Section 31 of the 1948 Act on respondent Nos. 1 to 3 terminating their tenancies with respect to the parcels of land in their respective possession on the ground that he required the same for his personal cultivation. Pursuant to the said notices, Vasudeo Balwant Telant filed an application on September 29, 1954 against respondents Nos. 1 to 3 for possession of the parcels of land in their cultivation on the ground that he bonafide required them for his personal cultivation. Before filing the aforesaid application for possession, Vasudeo Balwant Telang gave another notice on June 7, 1951 to respondent No. 1 under Section 14 of the 1948 Act purporting to terminate his tenancy with respect to all the parcels of land in dispute some of which were manifestly not in his possession on the ground that the latter had committed defaults in payment of rent for the years 1919-50 to 1953-54. Pursuant to this notice, copies whereof he sent to respondents Nos. 2 and 3, Vasudeo Balwnat Telang, filed another application against respondents Nos. 1 to 3 for possession of the aforesaid parcels of land on the ground that respondent No. 1 had made default in payment of rent for the aforesaid years. While contesting the application for possession, respondents Nos. 1 to 3 contended that they were recognised by Vasudeo Bilwant Telang as separate tenants of the portions of land in their possession; that the notice of termination of the tenancy issued by Vasudeo Balwant Telang to respondent No. 1 alone was invalid and that no default in payment of rent was made by them. They further pleaded that the agreed rent payable by them was Rs. 200/- Rs. 80/- and Rs. 40/- per year respectively. The Extra Awal Karkun, Miraj dismissed the application for possession of all the aforesaid parcels of land observing that respondents Nos. 1 to 3 being separate and independent tenants of the plots in their possession, the aforesaid notice of termination of the tenancy given by Vasudeo Balwant Telang to respondent No. 1 alone was invalid. The decision of the Extra Awal Karkun, Miraj was confirmed in appeal by the Special Deputy Collector, Tenancy Appeal, Sangli. On the matter being taken in revision, the Bombay Revenue Tribunal relying on a decision of the Bombay High Court set aside the orders of the Extra Awal Karkun, Miraj Taluka, and Special Deputy Collector, Tenancy Appeal, Sangli, and remanded the case for fresh trial and disposal observing that the contractual tenancy of respondent No. 1 in all the parcels of land in dispute would continue even after respondents Nos. 2 and 3 were recognised as protected tenants of parts of the land in their possession unless the sub-tenancy of respondents 2 and 3 were recognised by Vasudeo Balwant Telang and the sub-tenants became directly responsible for payment of rent of the areas of land in their separate possession. The Bombay Revenue Tribunal further observed that the Extra Awal Karkun, Miraj and the Special Deputy Collector, Tenancy Appeal, Sangli had failed to deal with the question as to whether the sub-tenancy of respondents Nos. 2 and 3 was recognised by Vasudeo Balwant Telang and whether respondents 2 and 3 became directly responsible for the payment of

rent to Vasudeo Balwant Telang. By the time, this decision came to be rendered by the Bombay Revenue Tribunal, two other proceedings had been commenced by Vasudeo Balwant Telam inasmuch as in 1956, he filed an application for a declaration that respondents Nos. 1 to 3 were joint tenants of the land and were jointly and severally responsible for payment of the rent, and about the same time a suit in the Civil Court for the recovery of reasonable rent for the years 1949-50 to 1953-54 wherein a reference was made by the Court to the Mamlatdar, Miraj Taluka for determination of the reasonable rent. While disposing of the revision application which arose out of Vasudeo Balwant Telang's application for possession on the ground of default in payment of rent, the Revenue Tribunal directed the Mamlatdar, Miraj Taluka at the request of the parties to try & dispose of together all the three matters viz. the remanded application for possession on the ground of default in payment of rent, the application of Vasudeo Balwant Telang for declaration that the respondents Nos. 1 to 3 were joint tenants of the lands and the reference regarding the determination of reasonable rent for the years 1949-50 to 1953-54.Accordingly, the Mamlatdar, Miraj Taluka, recorded further evidence adduced by the parties and on a consideration thereof, he held that respondents Nos. 2 & 3 were recognised by Vasudeo Balwant Telang as independent tenants and as such the notice of termination of the tenancy given by Vasudeo Balwant Telang to respondent No. 1 alone was invalid. The Mamlatdar also held that the agreed rent during the years in question at the rate of Rs. 20/- per bigha was Rs. 320/- per year which was payable by the three tenants (respondents); that as the reasonable rent could not be in excess of the agreed rent and the respondents had not claimed that the agreed rent was in excess of the reasonable rent, the agreed rent was the reasonable rent. Proceeding on the abases that the agreed and reasonable rent was Rs. 320/- per year, the Mamlatdar found that far from committing default in the payment of rent the respondent had made over payment to the extent of Rs. 100/ . The Mamlatdar further held that respondents 1 to 3 were independent and not joint tenants of the aforesaid three parcels of land. On these findings, he dismissed Vasudeo Balwant Telang's application for possession of the three parcles of land in dispute as also his application for declaration that respondents Nos. 1 to 3 were joint tenants of the said plots of land and declared that the reasonable rent of the entire land was Rs. 320/- per year. Aggrieved by the decision of the Mamlatdar, Miraj Taluka, Vasudeo Balwant Telang filed three separate appeals before the Special Deputy Collector, Tenancy Appeal, Sangli, who allowed the same holding that respondents 2 and 3 continued to be the sub-tenants of respondent No. 1 even after they were declared to be protected tenants and that the notice of termination of the tenancy served by Vasudeo Balwant Telang on respondent No. 1 was valid. The special Deputy Collector further held that it had not been proved that the agreed rent was Rs. 320/- per year. The Special Deputy Collector further held that the tenancy created vide kabulayat dated July 14, 1948 executed by respondent No. 1 was to last for a period of ten years in accordance with Section 5 of the 1948 Act as it originally stood but the term regarding the payment of Rs. 700/- acre nt could not, as a result of that section, extend beyond the period specified in the rent note. The Special Deputy Collector concluded by observing that there was no agreed rent in respect of the years in question. On these findings, the Special Deputy Collector remanded the aforesaid application for possession as well as the reference for determination of reasonable rent to the Mamlatdar, Miraj Taluka, directing the latter to determine afresh the question of reasonable rent under Section 12 of the 1948 Act and also to decide whether respondent No. 1 had committed default in payment of rent and was liable to be dispossessed of all the plots of land in dispute. The matter was then taken in revision by both the parties to the Bombay Revenue Tribunal which set aside the order of the Special Deputy

Collector and restored that of the Mamlatdar in all the three proceedings holding that respondents Nos. 1 to 3 were separate tenants of Vasudeo Balwant Telang in respect of the areas of the land in their separate possession and the notice terminating the tenancy was invalid. The Revenue Tribunal also held that the reasonable rent of the land was rightly fixed by the Mamlatdar at Rs. 320/- per year. Aggrieved by this decision of the Revenue Tribunal, the appellants filed the aforesaid Special Civil Applications in the High Court of Judicature at Bombay which, as already stated, dismissed the same by its judgment and order dated September 15, 1967/September 19, 1967. It is against this judgment and order that the present appeals have been preferred.

3. As would be apparent from the above narrative, the instant case does not involve any substantial question of a law of general or public importance. Although counsel for the appellants has strenuously assailed the correctness of the findings of the Revenue Tribunal and of the High Court, we are unable to accede to his contention. We have not, despite careful consideration of the judgments and objections submitted to us, been able to discern any legal infirmity or error either in the decision of the Revenue Tribunal or of the High Court. It is a well settled rule of practice of this Court not to interfere with the exercise of discretionary power under Articles 226 and 227 of the Constitution merely because two views are possible on the facts of a case. It is also well established that it is only when an order of a Tribunal is violative of the fundamental basic principles of justice and fair play or where a patent or flagrant error in procedure or law has crept or where the order passed results in manifest injustice, that a court can justifiably intervene under Article 227 of the Constitution. In the instant case, we have not been able to find any such flaw. The finding of the Revenue Tribunal that the respondents were independent tenants of separate parts of the land in dispute under Vasudeo Balwant Telang, the predecessor-in-interest of the appellants, which has been affirmed by the High Court, appears to be well founded in view of the following proved facts and circumstances:

1. The entry made in the record of rights after due enquiry according to law about the status of the respondents Nos. 2 and 3 as protected tenants in respect of the portions of the land in dispute in their possession.

2. Separate payment of the rent by the respondents and acceptance thereof by Vasudeo Balwant Telang.

3. Application by Vasudeo Balwant Telang for declaration that respondents were jointly and severally responsible for payment of rent of the land in dispute.

4. Notices by Vasudeo Balwant Telang to the respondents terminating their tenancies on the ground that he required the portions of the land in their respective possession for personal cultivation.

5. Application filed by Vasudeo Balwant Telang against the respondents under Section 31 of the 1918 Act averring that he bonafide required the land for his personal cultivation.

4. In view of the foregoing, there is hardly any justification to interfere with the impugned judgment and order. In the result the appeals fail and are hereby dismissed but without any order as to costs.