Supreme Court of India
Balu Laxman Khatik (Dead) Through ... vs Biru Ramchandra Kotmire on 23 November, 1998
Author: S.P.Kurdukar
Bench: G.T.Nanavati, S.P.Kurdukar.

PETITIONER:
BALU LAXMAN KHATIK (DEAD) THROUGH LRS. & ORS.

Vs.

RESPONDENT:
BIRU RAMCHANDRA KOTMIRE

DATE OF JUDGMENT: 23/11/1998

BENCH:
G.T.Nanavati, S.P.Kurdukar.

JUDGMENT:

S.P.KURDUKAR, J.

The dispute in this appeal relates to agricultural lands bearing Survey Nos. 159/2, 161/2 and 189/7 situate at village Are Taluka Karvir, Distt, Kolhapur. It is not disputed that Baluz ïlLaxman Khatik was the tenant of these lands. He died during the pendency of this appeal. The present appellants are the heirs and legal representatives of the said tenant. The respondent is the landlord. It is also not disputed that these lands Agricultural Lands Act, 1948 (for short The Act.)

2. Some time in 1957, the respondent Landlord (for short landlord) made an application to the tenancy authority under Section 88-C of the Act for issuance of an exemption certificate and such a certificate was in fact issued on 1.4.1962. The landlord thereafter applied for possession of these lands on 7.6.1962 for bona fide personal cultivation under Section 32 of the Act, such of the tenants who were cultivating the land on Ist April, 1957 would be entitled to purchase the said land and they shall be deemed to be the purchasers from the said date provided no proceedings at the instance of the landlord for possession under the Act were pending at that time. Since the landlord had applied for exemption certificate under Section 88-C prior to 1.4.1957 and since he had applied, after obtaining such certificate, for possession on 7.6.1962 under Section 33-B of the Act, the tiller's day stood postponed until the disposal of these proceedings. During the pendency of these two proceedings, 32-G proceedings under the Act were initiated but, however, these proceedings came to be drooped on 13.6.1963 as the tenant declined to purchase the lands under Section 32-G of the Act. The order of dropping the proceedings was made on the basis of the joint statement recorded by the tenancy authority of the landlord and the tenant. This statement of the tenant declining to purchase the land under Section 32-G of the Act was sought to be used by the landlord as an admission. The tenant had alleged to have made a statement that these lands were leased out to him for growing sugar cane. The significance of this statement is that if the lands were leased out for growing sugar

cane. Under Section 43-A (1)(b) then the provisions of Section 32 of the Act are not applicable. In the meantime, the application of the landlord under Section 33-B of the Tenancy Act was heard by the tenancy authorities and the final order in these proceedings was rendered by the Bombay High Court on 16.4.1977 by which the said application filed by the landlord stood rejected. It may also be noted that the landlord had filed a civil suit for recovery of the rent/damages against the tenant but the said suit was dismissed by the civil courts. On 31-10-1969, the tenant applied to the tenancy authorities for foxing the price of these lands under Section 33-C of the Tenancy Act. The Tehsildar after notice to the parties by his judgment holding that the tenant is entitled to purchase the land on the postponed date under Section 33-C of the Act and accordingly fixed the price of the lands. The appeal filed by the landlord came to be dismissed. The landlord's revision to the Maharashtra Revenue Tribunal was also dismissed. However, the High Court in Special Civil Application No. 2583 of 1974 (with Second Appeal No. 702 of 1975) by its judgment and order dated 14.2.1978 partly allowed the Social Civil Application filed by the landlord and remanded the matter back to the Sub-Divisional Officer for disposal in the light of the directions contained therein. The High Court was of the opinion that the appellate authority as well as the Revenue Tribunal did not consider the admission of the tenant and the other evidence on record properly. The High Court also found that the contention of the tenant as regards the issue of re-judicata was also not deal with by these authorities since these issues were vital in deciding the rights of the parties. The High Court while remanding the matter observed as under :-

"For such a contention to be upheld, it would be necessary to work out interaction between the provisions of Section 43A, 88C and 33B of the Tenancy Act. Such a discussion is not to be found in the judgments of the Courts below because apparently a pint to that effect was not taken by either of the parties. This being a question of law, it may be raised for the first time before the Court of the Special Deputy Collector to whom I an now remanding this case with a direction that in view of the decision of this court in Dattatraya Shripati Mohite's case he, as a final court of facts, is bound to consider the evidentiary value of the admissions made by the respondent in the previous proceedings which were apparently in respect of the same subject matter. The petition therefore will have to be allowed and is hereby allowed.

The High Court then directed :-

"The Social Deputy Collector is also directed to rehear the said appeal in the first place considering of the entire evidence on record and in particular the evidentiary value of the admissions made by the respondent in the previous proceedings and the explanation if any given by him in the present proceedings.

Secondly, he will also consider the legal effect of the order passed by the Maharashtra Revenue Tribunal on 10th September 1969 to which I have already made a reference above."

After remand the Deputy Collector heard both the parties and by his judgment and order dated 31.3.1979 dismissed the appeal holding that unless these admissions are supported by cogent documentary and other evidence the admissions cannot be held as a conclusive proof. The Deputy Collector also found from the record that the lands were not leased out for growing sugar cane

inasmuch as the landlord had admitted that he was in possession of the lease deed in question but did not produce the same on record. He further held that the landlord's application under Section 88-C of the Act was on the footing that the lands were Zirayat lands and therefore his plea that the lands were leased out for growing sugar cane could not be accepted. The Deputy Collector then held that the revenue record did not support the plea of the landlord that the sugar cane was grown on these land continuously for all these years. Consistent with these findings the Deputy Collector dismissed the appeal filed by the landlord. The landlord aggrieved by the said order preferred the revision application to the Maharashtra Revenue Tribunal and the said Tribunal by its judgment and order dated 12.2.1980 dismissed the recision application. It may be stated that both these authorities have considered the evidence on record minutely and very carefully and thereupon held that the alleged admission of the tenant is not sufficient to reject his claim as a statutory purchaser under Section 33-C of the Act. There are several other circumstances on record to indicate that the landlord treated these lands as Zirayat lands and therefore it could not be held that these lands were leased out for growing sugar cane.

3. The landlord aggrieved by the above decisions of the Deputy Collector and the Maharashtra Tribunal preferred Writ Petition No. 2170 of 1980 to the High Court. The said Writ Petition was heard by the same learned Single Judge who by his judgment and order dated June 19, 1990 set aside the concurrent findings recorded by the three tenancy authorities and held that the admission made by the tenant is binding upon him and in the light thereof it must be held that the lands were leased out for growing sugar cane and therefore Section 43 A (1)(b) of the Act applies. In this view of the matter, the tenant is not entitled to purchase the land under Section 32-C of the Act. The learned Single Judge accordingly allowed the Writ Petition filed by the landlord and set aside the orders passed by the Revenue Authorities and dismissed the application filed by the tenant on 13.1.1969 for fixing the purchase price under Section 33-C of the Act. The tenant aggrieved by this order of the High Court filed this appeal after obtaining the special leave.

4. Mr. Mohta, the learned senior counsel appearing for the appellants-tenants urged that the High Court had exceeded its jurisdiction while interfering with the findings of fact recorded by all the three tenancy authorities. He urged that the learned judge of the High Court has overlooked the other relevant evidence, namely, the conduct of the landlord and his admission in the application filed under Section 88-C of the Act. He then urged that in the face of so many proceedings taken up by the landlord against the tenant it would be highly imorobable that the tenant would give an admission in favour of the landlord saying that the lands were leased out to him for growing sugar cane. It was then contended that the landlord had admitted in his evidence that he is in possession of the lease deed showing that the lands were leased out for growing sugar can e but failed to produce the same and this fact itself is sufficient to draw an adverse inference against him that in the event if such lease deed was produced it would prove otherwise. The revenue record filed on record also did not show that either the sugar cane was grown on all these lands continuously or natural grass was grown on Survey No. 161/2. Counsel, however, fairly stated that sugar cane was grown in Survey No. 159/2 for some years but that would not lead to an inference that these lands were leased out for growing sugar cane. It was therefore urged that the impugned order of the High Court is unsustainable and the same should be set aside and the order passed by the tenancy authorities be restored.

5. Mr. Ganpule, learned senior counsel appearing for the landlord supported the impugned judgment and urged that the High Court was fully justified in holding that the tenant had failed to given any explanation as regards his admission. The admission is a very vital place of evidence and in the absence of any satisfactory explanation by the tenant it must be held that the lands were leased out for growing sugar cane. Counsel submitted that there is no error in the impugned judgment and therefore appeal be dismissed.

6. We were taken through the judgments of the tenancy authorities as well as the High Court. We have perused the record producer before us and in our considered view the impugned judgment of the High Court is unsutainable. The High Court while remanding the matter by its judgment and order dated 14.2.1978, directed the Sub-Divisional Officer to consider not only the so called admission of the tenant in 32 (G) proceedings but also other evidence on record. The Sub-Divisional Officer as well as the Revenue Tribunal did consider the entire evidence led by the parties on record, and thereafter held that the tenant is entitled to purchase the land under Section 33-C on the postponed date and accordingly the application made by him on 31.10.1969 for fixing the purchase price under Section 33-C of the Act was maintainable and accordingly the price was fixed by the Tahsildar and upheld by the Dy. Collector and Maharastra Revenue Tribunal. In the face of these findings based on appreciation of oral and documentary evidence on record. In our opinion, the High Court was not justified in interfering with the finding of fact recorded by the tenancy authorities. A glaring mistake that appears to have been committed by the High Court is that while considering the so called admission of the tenant in 32-G proceedings, it has overlooked the very admission of the landlord in his application under Section 88-C of the Act wherein he described the lands as Zirayat lands. The conduct of the landlord unmistakably indicates that he wanted to take advantage of the certificate obtained by him under Section 88-C of the Act by treating these lands as Zirayat lands and accordingly applied for possession under Section 33-B of the Act. After failing in these proceedings, in our opinion, it would not lie in the mouth of the landlord to say that the lands were given to the tenant for growing sugar cane and therefore covered by Section 43-A(1)(b) of the Act and therefore exempted from the operation of Section 32-G as well as 33-C of the Act. Annexure R-I is the order passed by the Second Additional Member and A.L.T on 13.5.1963 in which the alleged admission of the tenant came to be recorded. The order reads as under :-

"Both parties present. They state that land S.No 189/7 of village Are is leased to the tenant for cultivation of sugar cane and that sugar cane and paddy are grown by rotation. The entries in VF.

VII-A x XII support their contention. In view of this the proceedings under Section 32(G) are dropped."

7. It is not clear form this order as to whether any separate statement of the tenant was recorded at all in the said proceeding. All that the order recited is that "both parties present. They state that land S.No.189/7 of village Are is leased to the tenant for cultivation of sugar cane and that sugar cane and paddy are grown by rotation. The entries in VF. VII-A x XII support their contention. In view of this the proceedings under Section 32 G are dropped." This, in our opinion, could not be said to be and admission of the tenant which could be said to be a conclusive proof against him. The tenant was an illiterate person. He did not seem to have been represented by an Advocate before the said tenancy

authority. Moreover, why such proceedings were required to be initiated is also a mystery because at that time admittedly the landlord's application under Section 33-B of the Act after obtaining the certificate under Section 88-C of the Act was pending. The landlord in his statement has nowhere given any explanation whatsoever in this behalf. The landlord in his statement recorded in the present proceeding, did not give any explanation as to how he described these lands in his 88-C application as Zirayat lands. In the absence of any explanation from the landlord, we are of the opinion that this admission is also binding upon him. Assuming therefore, that the tenant he made an admission in favour of the landlord that the lands were leased out to him for growing sugar cane but at the same time the landlord has also made an admission that the lands were Zirayat while making an application under Section 88-C of the Act. In this view of the matter, instead of laying much emphasis on the admissions given by the respective parties, we prefer to accept the revenue record which was not disputed by either parties in the courts below. The revenue record did not disclose except for two or three years that one of these lands was under the cultivation of sugar cane. On the contrary, Zirayat crops were grown continuously on these lands. The landlord had also not produced any rent receipt given by the tenant indicating that the rent was paid on the basis that sugar cane was grown. No evidence was also produced by the landlord to indicate that sugar cane was grown on these lands and it was sold to any sugar factory. These are the vital circumstances on which the landlord ought to have led evidence to non suit the tenant from his rights under Section 33-C of the Act. In our opinion, the High Court has failed to consider all these circumstances and eventually committed an error while upsetting the findings recorded by all the tenancy authorities including the Maharastra Revenue Tribunal. The imougned judgment, therefore, cannot be sustained.

8. In the result, the appeal is allowed. The judgment of the High Court dated 19.6.1990 passed in Writ Petition No. 2170 of 1980 is quashed and set aside and consequently the said Writ Petition would stand dismissed. The judgment and order dated 12.2.1980 passed by the Maharashtra Tribunal, Kolhaour is confirmed. In the circumstances, there will be no order as to costs.