Supreme Court of India
Vijatabai & Ors vs Shriram Tukaram & Ors on 20 November, 1998
Author: Misra
Bench: Sujata V. Manohar., A.P. Misra.

PETITIONER:
VIJATABAI & ORS.

Vs.

RESPONDENT:
SHRIRAM TUKARAM & ORS.

DATE OF JUDGMENT: 20/11/1998

BENCH:
SUJATA V. MANOHAR., & A.P. MISRA.

ACT:

HEADNOTE:

JUDGMENT:

JUDGMENT MISRA, J.

The short question raised in the appeal is whether on the facts and circumstances of this case when in a proceeding under Section 8 of the Bombay Tenancy and Agriculture Lands (Vidarbha Region) Act, 1958, the respondent No. 1 in terms of the compromise declared himself not be be the tenant of the disputed land and in pursuance thereof his name being the deleted by the Tahsildar under Section 8(3) could the Tahsildar in exercise of his suo motu power under Section 49B after lapse of about 11 years declare respondent No. 1 to be tenant under the said Act?

In the present appeal respondent No.1 claims to be tenant of the suit land of which appellants and respondent No. 2 claim to be the landlord/owner. To appreciate the controversy it is necessary to give certain facts. On 20th March 1959 appellants' predecessors filed an application before the Tenancy Tahsildar for deleting the name of respondent No. 1 from the list of tenants to correct the records prepared under Section 8(1) of the 1958 Act. According to the said application the suit land is owned and possessed by the applicants and they have been cultivating it personally by engaging Saldar and worked as a Saldar in the field of the applicants for nearly 20 years. The respondent No. 1

was also engaged as such along with his father. The applicants also entrusted their bullocks and implement to the custody of their Saldars since the beginning. It was specifically averred in the said application that the Patwari of the village Dongarkhadala and Kherdi in collusion with the non-applicant had entered the name of the respondent No. 1 in the list of tenants prepared and published under Section 8. Hence a prayer was made for deleting the said name which was wrongly recorded therein. During the pendency of the said procceding it is not in dispute a compromise was arrived at between the appellants and respondent No. 1 on 21th December 1960. In paragraph (8) of the said compromise respondent No. 1 admitted that he was never tenant of the appellants over the disputed land. The said compromise also spelt out other conditions. It seems that respondent No. 1 even prior to this compromise on 3rd December 1960 made an application in the said proceeding that his name be deleted from the list of tenants. This was done as earlier the parties seem to have arrived at a compromise which ultimately was only signed later. In pursuance to this on 30th December 1960 the Tahsildar ordered the deletion of name of respondent No. 1 in exercise of his power under Section 8(3) read with Section 100(2) of the said Act. This fact was also recorded by the Tahsildar in his order. It is significant to record here that none of the parties filed appeal against this order and this became final.

In fact, after this order in pursuance of the compromise as aforesaid, 10 access 38 gunathas of land situated at Mouza Kherdi was purchased by respondent No. 1 from the appellants for a consideration of Rs. 7000/-. Hence not only the name of respondent No. 1 was deleted but the compromise was acted upon by respondent No. 1 by taking the aforesaid land from appellants under the said compromise. After lapse of about 11 years in 1971 the Tehsildar initiated proceeding suo motu under Section 49B of the said Act. In pursuance to this notice the appellant (landlord) filed the written statement and stated that the land in suit belongs to his family since 1940 and it was cultivated personally by the family by engaging Saldars. It was never leased out to anybody at any time. It was further stated that respondent No. 1 was also one of the Saldars (servant) who had been cultivating land as such. Respondent No. 1 filed reply by stating that he and his father cultivated the suit land as tenant. Respondent No. 1, however, admitted to have purchased the suit land of an area of 10 acres 38 guathas from the appellants no 11th March 1961. The Tehsildar by means of order dated 2nd February 1971 with due consideration of the earlier order of Tahsildar passed under Section 8(3) read with Section 100 (2) of the aforesaid Act also with due reference to the aforesaid compromise, held that respondent No. 1 had not cultivated the suit land as tenant during the year 1958-59 and hence he is not entitled for restoration of the suit land. Hence he dropped the proceedings under Sec. 49 B. Aggrieved by this respondent No. 1 preferred an appeal before Special Deputy Collector (Land Reforms) who allowed the appeal by holding the compromise was brouth upon under pressure and allurement, hence could not be acted upon thus in view of evidence on record held respondent No. 1 to be the tenant of the suit land primarily on the basis of sole entry recorded under Section 8 of the said Act published on 1th April 1959. The appellants challenged this order before Maharashtra Revenue Tribunal in revision which was dismissed. Thereafter a writ petition was filed in the High Court which was dismissed and finally the letters patent appeal in the High Court was also dismissed. The learned Senior Counsel for the appellants Shri Mohta submits once in the proceeding under Section 8 of the aforesaid Act, between the appellants and the respondent, the question was determined by holding respondent not to be the tenant of the appellants and that order having become final since no appeal was preferred, he is stopped from

raising a contradictory plea in subsequent proceeding initiated by Tahsildar under Section 49B, in respect of the same land. He submits only foundation for the claim of the respondent to be the tenant is the said entry, only for one year, i.e. 1958-59 and that entry having been deleted there was no foundation even for the Tahsildar to initiate suo motu proceedings. Further respondent and his father were Saldar (servant) of the appellants and the said entry was obtained by them in collusion with the Patwari of the concerned village and for that he would have no sustainable claim for adjudication. Thus the findings recorded by the authority/Court as aforesaid contrary to this are liable to be set aside.

On the other hand, Shri Deshpande, learned counsel for the respondent supported the decision that respondent is a tenant of the disputed land and proceeding under section 49B was rightly initiated by Tahsildar suo motu. Further, there being no termination of his tenancy under Section 19 of the aforesaid Act and in any case, unless an order is passed by the Tahsildar under Section 36(2) the landlord cannot obtain possession of the suit land. The submission is that as he was a tenant on appointed day, namely, 28th August 1958 as also recorded and hence by virtue of Section 46 and 49A is entitled to become statutory owner. Before we proceed to decide the controversy it is necessary to record certain admitted facts. On 20th March 1959 the appellants filed application before Tenancy Tahsildar under Section 8(3) for deletion of the name of respondent No. 1 from the list of tenants pertaining to the suit land as prepared under Section 8(I). That entry in favour of respondent No. 1 as tenant was recorded for only one year namely in the records of 1958-59 which was actually prepared under Section 8(1) as aforesaid. Thus in this proceeding question which arose was, whether respondent No. 1 is a tenant of the suit land of the appellants or not? A compromise was arrived at which led respondent No. 1 to file an application dated 3rd December 1960 before the Tahsildar in the said proceeding for deleting his name from the list of tenants and withdrawing allegation, if any, to the contrary in his written statement. This was followed by a written compromise dated 21st December 1960. Under that respondent No. 1 admitted that he was never the tenant of the appellants of the land in suit. The said compromise contemplated that 10 acres 38 gunthas of land out of the suit land, appellants would sell to respondent No. 1 for a consideration of Rs. 7000/- and the said consideration was actually paid on the date of this compromise in pursuance thereof the respondent No. 1 purchased the said land for the said consideration. For 11 years thereafter no proceeding or action was initiated by respondent No. 1 over the suit land and parties continued to enjoy the suit land in terms of the said compromise and as a consequence of the order passed under section 8 (3) recording in favour of the appellant by deleting the name of respondent. It is only on 2nd February 1971 i.e., after 11 years, suo motu proceeding was initiated by Tahsildar under Section 49B. It is on these admitted acts and the aforesaid facts, the controversy is to be adjudicated.

In the second round of proceeding under Section 49B Tahsildar upheld the contention of the appellants on the basis of the compromise as aforesaid but in appeal the Collector negatived the contention holding in favour of the respondent. Similarly, the revision was also dismissed by the Tribual. Both the appeal and the revision were dismissed primarily by holding that the compromise was arrived under pressure and allurement and that he was recorded as tenant in the year 1958-59. The writ petition and letters patent appeal filed by the appellants were also dismissed. The High Court upheld the order of the courts below and further recorded that without an order of the

Tahsildar under Section 36(2), which is not in the present case, the appellants cannot obtain possession of the suit land. Thus the Court held respondent No. 1 to be the tenant primarily based on the said one entry of 1958-59 and on the oral evidence.

Normally this Court would not interfere with any such finding of fact recorded but where the conclusions are arrived at by misconstruing the provisions of an Act and without appreciating the principle of estoppel, including adjudicating of such right in early proceeding under the same Act between the same party this Court would not hesitate to reconsider such adjudication of facts. The facts are very clear in the present case. the question, whether respondent No. 1 was a tenant of appellants of the suit land came up for consideration under this very Act and the Tahsildar in a proceeding initiated under Section 8(3) passed an order deleting the name of respondent as tenant. The question, whether respondent No. 1 was tenant of appellants or not was directly in issue in this proceeding which was finally adjudicated by the competent Authority, holding against the respondent Section 49B refers to transfer of possession and ownership of lands to certain dispossessed tenant. This section is applicable only where a tenant referred to in section 46 or 49A was in possession of the land on the appointed day but was dispossessed before the relevant date. Thus before a power could be exercised under it there has to be a tenant of the suit land, who is dispossessed on the relevant date. But this fact was no more res integra between the appellants and respondent No. 1 on the date suo motu notice was issued by the Tahsildar. As aforesaid, dispute if any regarding tenancy between respondent No. 1 and appellants of the suit land stood concluded in the proceedings under section 8. The said order passed under section 8 is appealable but no appeal was preferred. Thus so far the appellants and respondent are concerned, inter se between them, as they were parties therein, this issue became final. In other words, on the date when Tahsildar exercised his suo motu power of initiating proceeding under section 49B there was no material on the record of the Tahsildar to proceed under it, the only record of an entry of 1958-59 stood creased when name of respondent No. 1 was deleted by the competent authority under this very Act.

Tahsildar while exercising his suo motu power under Section 49B has to initiate on the basis of materials before him not arbitrarily. Every exercise of suo motu power explicitly or implicitly reveals to correct an error crept in under a statue, what ought to have been done was not done or which escaped the attention of any statutory authority, or error or deliberate omission or commission by the subject concerned requires correction, of course, within the limitation of any... such statute. This has to be based on some relevant material on record, it is not an omnipower to be exercised on the likes and dislikes of such an authority. Though such a power is a wide power but has to be exercised with circumspection within the limitations of such statute. Wider the power the greater circumspection has to be exercised.

Returning to the present case it has to be seen what on the records of the Tahsildar when he initiated proceeding under Section 49B. Admittedly the only documentary evidence on records was the sole entry of 1958-59 which stood deleted by an order of the competent authority, viz. Tahsildar himself in accordance with law under this very same statute. Question is, has the Tahsildar any power under Section 49B to set aside an order passed under Section 8? Section 49B does not contain words, "Notwithstanding any thing in this statute" orders passed by Tahsildar both under Section 8 order is not subject to Section 49B. This apart, what is primarily required for exercise of

such power is that there has to be a tenant and he is dispossessed on the relevant date. So there has to be a tenant first, a tenant referred under Section 46 and 49A. To appreciate the controversy Section 8 and 49B are quoted hereunder:

"Section 8 - Record of rights of ordinary tenants (1) As soon as may be after this Act comes into force the Tahsildar shall cause a list of persons, other than occupancy tenants, and protected lessees, who are deemed to be tenants under sub-section (1) of Section 6 to be prepared for entry in the Record of Rights in accordance with the provisions of Chapter IX of the Code.

(2) After such list is prepared it shall be published in the prescribed manner and if no application is made by the landlord or the tenant or any other person interested within a period of six months of the date of such publication disputing the correctness or omission of any entry, such list shall be final.

(3) If an application is made to the Tahsildar by the landlord or the tenant or any other person interest in the prescribed manner within the aforesaid period, disputing the correctness or omission of such entry, the Tahsildar shall decide thee dispute in accordance with the provisions of sub-section (2) of section 100 of this Act and such decision subject to appeal or revision under this Act shall, notwithstanding section 106 of the code, be final.

(4) In deciding the question referred to in sub-section (3) the Tahsildar shall, notwithstanding anything contained in Section 92 of the Indian Evidence Act, 1872, or in Section 49 of the Indian Registration Act, 1908, or in any other law for the time being in force, have power to inquire into and determine the real nature of the transaction and shall be at liberty, notwithstanding anything contained in any law as aforesaid, to admit evidence of any oral agreement or a statement or unregistered document with a view to such determination." "Section 49B - Transfer of possession and ownership of lands to certain dispossessed tenants - Where a tenant referred to in Section 46 or Section 49A was in session on the appointed day but is not in possession of the land held by him on the relevant date on account of his being dispossessed before that date, otherwise than in the manner and by an order of the Tahsildar as bravados in Section 36 and the land is in the possession of the landlord or his sucessor-in-interest on the 31st day of July, 1969 and is not put to a non-agricultural use on or before the last mentioned date; the Tahsildar shall, notwithstanding anything contained in section 36, either suo motu or on the application of the tenant hold an inquiry, and direct that such land shall be taken from the possession of the landlord, or as the case may be, his successor-in-interest and shall be restored to the tenant and the provisions of Sections 46 to 49A shall, in so far as they may be applicable apply thereto, as if the tenant had held the land on the relevant date subject to the modification that the ownership of land shall stand transferred to and vest in the tenant, and such tenant shall be deemed to be the full owner of the land, on the date on which the land is restored to him.

Provided that, the tenant shall be entitled to restoration of the land under this section only if he undertakes to cultivate the land personally, and of so much thereof as together with the other land held by him as owner or tenant shall not exceed three family holdings."

Section 49B stipulates enquiry where a tenant under Section 46 or Section 49A was in possession on the appointed date but was disposed on the relevant date to transfer back such land to such tenant and confer ownership on him. So far initiating proceeding there has to be something on record to show that one is a tenant of the suit land. It is significant both Section 46 and Section 49A open; with the words "Notwithstanding anything in this chapter.....". Thus notwithstanding confines to the Sections of the chapter in which these sections 46 and 49A are placed viz. Chapter III. We find Section 8 is in Chapter II. So orders passed under Section 8 would have its full effect. Section 46 and Section 49A confer right of ownership of the land on a tenant from the specified date. Thus Sections 49B, 49A and 46 refer to a tenant. Tenant is defined under Section 2(32) to mean;

"Section 2(32) - tenant means a person who holds land on lease and includes -

(a) a person who is deemed to be tenant under Section 6, 7, and 8

(b) a person who is Protected lessee or occupancy tenant, and the word 'landlord' shall be construed accordingly."

It means a person holding land on lease and further he is deemed to be a tenant under Section 6, 7 and 8. A person lawfully cultivating any land of other person who is not cultivating such land personally or through other member of his family or servant then such a person would be deemed to be a tenant under Section 6. This question was up for consideration in a proceeding; under Section 8. Then Section 7 also refers to a person holding alienated land, trust etc. on a condition specified therein to be a deem tenant. However, we are not concerned under it. Finally adjudication is made under Section 8, as to who is tenant, in case any objection is raised either by tenant landlord or any other person. When objection is raised under Sub-section (2) of Section 8 disputing correctness of any entry, which is raised inthis case, regarding 1958-59 entry, the Tahsildar decides the dispute in accordance with sub-section (2) of Section 100 of this Act, which is final, subject to appeal or revision. For deciding this Tahsildar is empowered to enquire to determine the real nature of the transaction between the parties, by taking such evidence as he deems fit by virtue of sub-section (4) of Section 8. We find in the present case Tahsildar reopened the very question which finally stood concluded, viz. whether respondent No. 1 was or was not the tenant of suit land? He further errocously entered into a new promise of reopening the question of validity of the compromise which could have been in issue if at all in appeal or revision by holding that compromise was arrived at under pressure and allurement. How this question be up for determination when this became final under this very same statute. This is also not a case that respondent No. 1 made any application even under Section 46(1A)(a) for getting back the possession from the appellants or any application under Section 49B. So no the relevant date there did not exist any record for the Tahsildar to initiate proceedings suo motu except the record of 1958-59 entry which stood deleted. This apart, finding of pressure and allurement recorded was not even pleaded. No pleading has been placed before us which shows such a pleading though it was brought in by oral evidence. On the other hand, we find the compromise was acted upon as respondent No. 1 purchased part of the same suit land of an area of 10 acres 38 gunthas for the consideration of Rs. 7000/-. In other words, the compromise was acted upon under which respondent gained part of the same property. On the facts of this case and further when respondent did not raise any such issue for 11 years, we find exercise of power by

Tahsildar suo motu under Section 49B to be without jurisdiction and unsustainable in law.

It would be impermissible to permit any party to raise an issue inter se where such an issue under the very Act has been decided in an early proceeding. Even if res judicata in its strict sense may not apply but its principle would be applicable. Parties who are disputing now, if they were parties in an early proceeding under this very Act raising the same issue, would be stopped from raising such an issue both on the principle of estoppel and constructive res judicata. The finding recorded even by the High Court that possession by the landlord could only be by an order under Section 36(2) is also not sustainable as that only conceived of the case where tenant is dispossessed and landlord is seeking to get back possession of the suit land from such tenant. In the present case there was no such question. For this respondent No. 1 has to be at least a tenant and whether he is a tenant stood concluded, as aforesaid earlier, hence initiation of proceeding under Section 49B cannot be sustained in law.

Learned counsel for the respondent faintly referred to Section 6 of the Act to contend that respondent No. 1 would be deemed tenant. As aforesaid, Section 6 refers to a person lawfully cultivating any land belonging to another person to be held to be deemed tenant in case such land is not cultivated personally by the owner. In the earlier proceeding when application is made by the appellants under Section 8(3) of the Act it was specifically stated that appellants were cultivating the suit land personally and through respondent's father and later respondent No. 1 as their Saldar (Servant) and this question having been specifically pleaded order was passed under Section 8(3) holding respondent No. 1 not to be the tenant. In other words, respondent No. 1 could not be said to be the lawfully cultivating the land of another person, as appellants (owner) were personally cultivating the land themselves or through their Saldars, hence Section 6 would not confer any benefit to the respondent. Section 6 excludes a person to be deemed tenant in case the owner is cultivating the land personally.

In view of the aforesaid findings we hold that the decision by the Appellate and the Revisional Authority in the proceedings under Section 49B and the High Court in the writ petition and finally under letters patent appeal contrary to what we have recorded above cannot be sustained. thee authorities and the Court misdirected itself to conclude in favour of respondent by not properly construing the provisions off the Act and the power of Tahsildar to exercise under Section 49B of the Act. The said decision to the contrary is hereby set aside.

Accordingly, the appeal is allowed and the findings recorded against the appellants in the proceedings under Section 49B of the Act are hereby quashed. Cost on the parties.