Supreme Court of India
Secretary, Devasthan Management ... vs Bhimanna Mallappa Mali & Ors on 28 December, 1998
Author: S Kurdukar
Bench: S.P. Kurdukar, M.Jagannadha Rao.

PETITIONER:
SECRETARY, DEVASTHAN MANAGEMENT COMMITTEE, WESTERNMAHARASHTR

Vs.

RESPONDENT:
BHIMANNA MALLAPPA MALI & ORS.

DATE OF JUDGMENT: 28/12/1998

BENCH:
S.P. KURDUKAR, M.JAGANNADHA RAO.,

ACT:

HEADNOTE:

JUDGMENT:

JUDGMENT

S.P. KURDUKAR, J.

The lands bearing Survey Nos. 200/2 admeasuring 3 acres 2 gunthas and 201/2 admeasuring 12 acres 8 qunthas situate at village Madgyal admittedly belonged to Maruti Deo, a deity, through V.M.Kulkarni. It is also not disputed that the said Deosthan is managed by a Managing Committee which is under the supervision of the Secretary, Deosthan Managing Committee, Western Maharashtra, Kolhapur. It appears that since 1948, these lands were in possession of Bhimanna Mallappa Mali the first respondent as a protected tenant on payment of rent to the Deosthan Managing Committee. The Deosthan Managing Committee found that the income received from the lands was too inadequate to manage Deosthan and, therefore, in a meeting of Deosthan Managing Committee, it was resolved to give these lands on lease for a period of five years. It was further resolved that the Managing Committee should move Tahsildar Jath to hold an auction in respect of

these lands. Accordingly, the Tahsildar Jath held the auction sometime in 1978 and Rachappa Shivrudra Hiremath, the third respondent, being the highest bidder, the lands were allotted to him on lease for a period of five years. Consequently, on June 20, 1979, the tenant was dispossessed and possession of these lands were given to Rachappa. Immediately sometime in July, 1979, the tenant applied to Tahsildar Jath under Section 29 (1) of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short Act) for possession of these lands on the ground that he was illegally dispossessed from the tenanted lands. This petition of the tenant was contested by the appellants as also by the third respondent. The appellant, however, did not file any written statement but the third respondent filed his say. According to him, the Managing Committee was fully authorised to request the Tahsildar to auction these lands and he being the highest bidder is entitled to continue in possession in terms of the auction. He has also no right to claim the possession of these lands under the provisions of the Act. The tenant was not unlawfully dispossessed from the lands. He being the highest bidder in public auction, he cannot be dispossessed from the lands in a proceeding initiated under Section 29 (1) of the Act. The Tahsildar Jath granted the application filed by the tenant holding that he could not be deprived of the possession of these lands being the tenant and accordingly directed that the possession be restored. Being aggrieved by the order passed by the Tahsildar, the appellant and the third respondent filed two separate appeals before the Collector who after hearing the parties by his judgment and order dated 16.8.1979, upheld the direction given by the Tahsildar for restoring the possession of these lands but, however, he held that the tenant's application would more appropriately fall under Section 84 of the Act and not under Section 29. Accordingly, in exercise of his jurisdiction under Section 84 of the Act, he directed that the third respondent be evicted and the tenant be put in possession of these lands. Feeling aggrieved by this order, the respondent No.3 preferred a revision application before the Maharashtra Revenue Tribunal, Kolhapur. Learned Single member of the said Tribunal held that these lands were exempted from the operation of the Act by virtue of Section 88 (1) (a) of the Act. Consistent with this finding, the Tribunal dismissed the application filed by the tenant as not maintainable and consequently, set aside the order passed by the Tahsildar and the Collector. Aggrieved by this judgment and order passed by the Maharashtra Revenue Tribunal, the tenant preferred the Writ Petition under Article 227 of the Constitution of India. The Bombay High Court, after hearing the parties, by its judgment and order dated January 14, 1983, allowed the Writ Petition partly and remanded the matter back to the Tribunal for disposal in accordance with law. The High Court held that the Revenue Tribunal was wrong in allowing a new point to be raised as regards non application of the Act by virtue of Section 88 (1) (a) of the Act. The High Court recorded a specific finding that Section 88 (1) (a) of the Act had no application because the lands neither belong to the government nor the third respondent "held on lease from the government". The High Court, therefore, while setting aside the finding of the Maharashtra Revenue Tribunal, remanded the matter back to the said Tribunal to consider the legality and correctness of the order passed by the Tahsildar and the Collector in accordance with law. It is against this order made by the High Court on January 14, 1983, the Secretary, Deosthan Managing Committee, the appellant has filed a special leave petition in this Court which was beyond a period of limitation by 821 days. This Court, however, condoned the delay and granted special leave out of which Civil Appeal No. 756 of 1991 arises.

Pursuant to the order of remand dated January 14, 1983 passed by the High Court, the Maharashtra revenue Tribunal after hearing the parties by its judgment and order dated April 24, 1985 dismissed

the revision application filed by the Revision Petitioner. Aggrieved by this order passed by the Tribunal, the appellant preferred Writ Petition to the High Court, but the same was dismissed summarily on August 14, 1985. It is against this order the appellant has filed Civil Appeal No. 757 of 1991 after obtaining the special leave.

From the facts narrated above, it would be evident that the Civil Appeal No.756 of 1991 arises out of an order of remand passed by the High Court on January 14, 1983, but neither the appellant non the third respondent moved this Court early and consequently the order or remand was worked out. The Revenue Tribunal by its judgment and order dated April 24, 1985 dismissed the revision application on merits upholding the orders passed by the Tahsildar and the Collector. Since the parties in both these appeals as also the issues involved being common, they are disposed of by this common judgment.

Mr. Khanwilkar, learned counsel appearing in support of this appeal, urged that the order of remand dated January 14, 1983 passed by the High Court was totally erroneous. He urged that Maruti Deosthan being a registered public trust, the properties held by such trust are exempted from the application of the Act. He then urged that under Regulation 9 promulgated by the former ruler of Jath, the lands in dispute must be held to be under the supervision of the Mamlatdar (government) and. therefore, Section 88 (1)(a) of the Act will govern the field. In support of this submission, he drew our attention to Regulation 9 which is set out in the judgment of the Maharashtra Revenue Tribunal. He, therefore, urged that the tenant's application under Section 29 (1) as also under Section 84 of the Act was totally misconceived and not maintainable and consequently the orders passed by the authorities below be set aside and the tenant's application be dismissed. The learned counsel for the tenant, however, supported the impugned judgment. Section 88 (1)(a) of the Act reads thus :-

" Save as otherwise provided in sub-section (2), nothing in the foregoing provisions of this Act shall apply

(a) to lands belonging to, are held no lease from the government.

b)xxxxxxxxxxxxxx

c)xxxxxxxxxxxxx

d)xxxxxxxxxxxxxx It is not disputed by the learned counsel for the appellant that first part of clause (a) would not apply to the present case. The second part which reads: "held on lease from the government" would apply to the facts of the present case.

From the material on record, it is clear that the tenant was in possession of these lands as a tenant since 1948 and for the first time he came to be dispossessed in April, 1979. The tenant was also recorded in the revenue records as a protected tenant. In Kabjedar column, Maruti Deosthan has been recorded as Kabjedar. Regulation 9 indicates that the Deosthan lands could be leased out by auction by the Mamlatdar Jath. In the present case, in fact, the appellant-Managing Committee had

resolved to move the Collector to hold the auction in respect of these lands. It is pursuant to this resolution, the Mamlatdar held the auction of these lands. Now, the question is holding of such auction by the Mamlatdar at the request of the appellant- the Managing Committee would be covered by the expression "held on lease from the government" under clause

(a) of sub-section (1) of Section 88. It is true that the regulation framed by the former ruler of Jath would indicate that the Collector and/or Tahsildar will have a supervisory power over the income and expenditure of the trust property. Assuming that in exercise of such supervision, the Tehsildar/Collector had leased out these lands to respondent No.3 in an auction, it cannot be said that such an action on the part of the Tahsildar and a lease given to the third respondent would be "held on lease from the government". In this view of the matter, the High Court was right in deciding the issue as regards the applicability of Section 88 (1) (a) of the Tenancy Act. For the foregoing conclusions, it must follow that the Civil Appeal No.757 of 1991 filed by the appellant must also fail. As far as the applicability of Section 84 of the Act is concerned, we are of the considered view that having regard to the long possession of the tenant since 1948, the Tahsildar could not have dispossessed him in April, 1979 without determining the rights of the tenant under the Tenancy Act.

It must, however, be made clear that it would be open to the appellant-Deosthan Managing Committee to file appropriate proceedings before appropriate forum for appropriate reliefs against the tenant. If the appellant-Deosthan Managing Committee is of the opinion that the lands in dispute are exempt from the application of the Act because of various provisions contained in the Act as well as under the Trust Act, it would be open to them to adopt appropriate proceedings. It must also be made clear that this judgment does not determine the issue as to whether the provisions of the Act are applicable to the lands in dispute and whether the first respondent could be said to be a tenant under the Act by virtue of the Trust Act. All issues except one under Section 88 (1) (a) of the Act are kept open. In the result, both the appeals filed by the appellant are without any merit and are dismissed. In the circumstances, there will be no order as to costs.