

LAXMI BAI SADASHIV DATE

v.

ANNAPPA SIDAPPA NARGUDE & ORS.

OCTOBER 12, 1993

[M.M. PUNCHHI AND N.P. SINGH, JJ.]

Bombay Tenancy and Agricultural Land Act, 1948:

Sections 30, 32, 32-G, 43-A and 43-B—Determination of reasonable rent—Invokable by and beneficial to either party—Tenants—Whether become owners on Tiller's day—Matter remitted to High Court.

The appellant-landlady initiated proceedings against the Respondent-tenants for determination of reasonable rent under Section 43-B of Bombay Tenancy and Agricultural Land Act, 1948. The Respondents claimed that they became absolute owners of the land on the tiller's day i.e. on 1.4.1957 by virtue of Sections 32 and 32-G of the Act. The proceedings ended in favour of the Respondents. On appeal by the appellant, Deputy Collector remitted the matter back to the first Court for determining the quantum of reasonable rent. The Respondents approached the Revenue Tribunal by way of revision, but were unsuccessful. Hence they approached the High Court by filing a Writ Petition. The High Court found that the two provisions viz. Sections 30 and 43-B were conflicting and an application under Section 43-B did not lie in the face of the provisions of S.30. Against the High Court's order, the landlady preferred the present appeal.

Allowing the appeal, this Court

HELD: 1. The provisions of Section 43-B of the Bombay Tenancy and Agricultural Land Act, 1948 start with a non obstante clause and are dependent on section 43-A. As is plain from its language in clause (1), the landlord as well as the tenant can apply in the manner provided in the section for having reasonable rent determined. Significantly, in order to determine the reasonable rent the Mamlatdar to whom an application is required to be made, is to have due regard to factors mentioned in clause (4). Clause (4) further provides that the reasonable rent determined by the Mamlatdar under clause (2) shall be payable w.e.f. the date specified by

A the Mamlatdar in that behalf and that shall be deemed to be the rent fixed under the lease in lieu of the rent, if any, agreed between the parties. It is thus obvious that section 43-B is an on-going provision and not damp squib. The object of the provision is to substitute reasonable rent in place of the contractual rent, should there be any. It is invokable both by the landlord as well as by the tenant. It would not be wrong to say that the provision is beneficial to either party. Thus the High Court was in error in shadowing section 43-B with the provisions of section 30. [219-B-E]

C 2. The matter is remitted back to the High Court for decision on the other two questions left undecided. It is left to the High Court to decide whether it would like to await the decision of the Aval Karkun on the question of reasonable rent and then decided the matter before it or shall it go ahead with the decision of the petition by itself letting the question of reasonableness of the rent to take its own course. In either situation the High Court has the discretion but somewhere it has to have a confluencing point. [219-F-H; 220-A-B]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 848 of 1973.

E From the Judgment and order dated 27th June, 1972 of the Bombay High Court in Special Civil Application No.1804 of 1968.

V.N. Ganpule, Mrs. Punam Kumari and J.S. Wad for the Appellant.

P.H. Parekh for the Respondents.

F The following Order of the Court was delivered :

This is an appeal against the judgment and order of the High Court of Bombay dated 27th June, 1972 passed in special civil application No. 1804 of 1968.

G The appellant herein has claimed herself to be the landlady of a parcel of land in a village in District Kolhapur, Maharashtra, details of which are available in the Judgment under appeal. The respondents are tenants thereon under a very old document of lease. Proceedings started between the two, in the first instance in the Court of Awal Karkun, the appellant herein claiming that the contractual rent was inadequate and that reasonable rent be determined under section 43-B of Bombay Tenancy

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and Agricultural Land Act, 1948. The claim was asserted on the foundational fact that the lease granted in favour of the respondent was for cultivation of sugarcane or for growing of fruits and flowers as covered under clause (b) of sub-section (1) of section 43-A of the said Act. The respondents resisted the proceedings claiming inter alia that they had become the owners of the land on the tiller's day i.e. on 1.4.1957 by virtue of sections 32 and 32-G of the said Act. The first Court of Awal Karkun decided in favour of the respondents and dismissed the petition holding that the respondents have become owners of the land on the Tiller's day. The Appellate Court of the Dy. Collector however held otherwise on appeal by the appellant and remitted the matter back to the Awal Karkun for determining the quantum of reasonable rent in accordance with the provisions of section 43-B of the Act. Now, it was the turn of the respondents to take up the matter before the revising authority, that is the Maharashtra Revenue Tribunal, who did not interfere in the views of the Dy. Collector. This gave cause to the respondents to approach the High Court under Article 227 of the Constitution whereat three points were raised which may be enumerated as follows:

"(1) The Dy. Collector of the Tribunal erred in law in holding that although the land was in fact the 'jirayat land on the tiller's day, the tenants did not become owners on the tiller's day.

(2) The Dy. Collector and the Maharashtra Revenue Tribunal erred in law holding that the land was for the purpose of sugarcane cultivation within the meaning of section 43-A (i) (b) of the Bombay Tenancy and Agricultural Land Act; and

(3) That even if section 43-A applied to the land, the landlord could not apply for fixing the reasonable land under section 43-B so as to enhance the rent which was fixed under original Mirashi Patra."

The High Court ruled in favour of the respondents only the third contention viewing that decision on the other contentions was unnecessary. In order to upset the views of the Dy. Collector and the Tribunal on the third contention, stress was laid by the High Court on section 30 of the Act which provides as follows:

"Save as provided in this Act, the rights or privileges of any tenant

A under usage or law for the time being in force or arising out of any contract, grant, decree or Order of a Court or otherwise howsoever shall not be limited or abridged."

Section 43-B reads as follows:

B "Notwithstanding any agreement, usage, decree or order of a court or any other authority, in the case of any land to which Section 43-A applies, the rent payable shall be reasonable rent as determined under the following clauses :-

C (1) A landlord or a tenant of such land may take an application in writing to the Mamlatdar for determination of the reasonable rent in respect of such land.

D (2) On receipt of such application, the Mamlatdar shall give notice thereof to the other party to the lease and after holding an inquiry shall determine the reasonable rent.

(3) In determining the reasonable rent regard shall be had to the following factors.

(a) profits of agriculture of similar lands in the locality.

E (b) prices in the locality of the particular crop for the growing of which the land is leased.

(c) the improvements made in the land by the lessee or the landlord.

F (d) the assessment payable in respect of land.

(e) the profits realised by the lessee on account of the lease of the land.

G (f) profits earned by an industrial or commercial undertaking by the manufacture or sale of articles made out of the produce of the land leased.

(g) such other factors as may be prescribed.

H (4) The reasonable rent determined by the Mamlatdar under

clause (2) shall, with effect from, 1 (the date specified by the Mamlatdar) in that behalf, be deemed to be the rent fixed under the lease in lieu of the rent, if any, agreed between the parties".

The High Court found the two provisions to be conflicting and viewed that an application under section 43-B did not lie in face of the provisions of section 30. We, on our part, can hardly see any justification for such a view when the provisions of section 43-B start with a non obstante clause and are dependent on section 43-A. As is plain from its language in clause (1), both the landlord as well as the tenant can apply in the manner provided for having reasonable rent determined. Significantly, in order to determine the reasonable rent the Mamlatdar to whom an application is required to be made, is to have due regard to factors mentioned in clause (4). Clause (4) further provides that the reasonable rent determined by the Mamlatdar under clause (2) shall be payable w.e.f. the date specified by the Mamlatdar in that behalf and that shall be deemed to be the rent fixed under the lease in lieu of the rent, if any, agreed between the parties. It is thus obvious that section 43-B is an on-going provision and not a damp squib. The object of the provision is to substitute reasonable rent in place of the contractual rent, should there be any. It is invokable both by the landlord as well as by the tenant. It would not be wrong to say that the provision is beneficial to either party. Thus it seems to us that the High Court was in error in shadowing section 43-B with the provisions of section 30. The provisions of section 43-B start with a non obstante clause and of section 30 barely with a saving clause. The former provision obviously has an element of predominancy. Therefore on coming to the view that the High Court was in error in upholding the third objection raised before it, we upset its judgment and order and remit the matter back to it for decision on the other two questions, left undecided.

As is evident from the fact narration there has been a split in some ways but the twain must meet. As per the decision of the Tribunal and the Deputy Collector and matter stands remitted back to the Awal Karkun for deciding the quantum of reasonable rent on the basis that the respondents have not become owners of the land on the tiller's day and the tenancy was subsisting in terms of clause (b) of sub-section (1) of section 43-A. These are the two subjects on which objection was raised before the High Court. It is thus left to the High Court to decide whether it would like to await the decision of the Awal Karkun on the question of reasonable rent and

A then decide the matter before it or shall it go ahead with the decision of the petition by itself letting the question of reasonableness of the rent to take its own course. In either situation the High Court has the discretion but as said earlier somewhere it has to have a confluencing point.

B Having observed so we allow this appeal on the above terms but without any order as to costs.

G.N.

Appeal allowed.