BABU PARASU KAIKADI (DEAD) BY LRS. A

v.

BABU (DEAD) THROUGH LRS.

OCTOBER 29, 2003

[V.N. KHARE, CJ., S.B. SINHA AND B
DR. AR. LAKSHMANAN, JJ.]

Bombay Tenancy and Agricultural Lands Act, 1948 :

Ss. 15, 29 and 32(1B)—Restoration of possession of land to tenant— C *Tenant in possession of land on 15.6.1955—Possession surrendered to landlord dehors the procedure prescribed under the Act—Tehsildar starting suo motu proceedings for restoration of possession of land to tenant—High Court relying on the decision in* **Dhondiram Totaba Kadam*** *rejected claim of tenant but, noticing earlier decision, granted certificate to file* D *appeal—Held, surrender by tenant for being legal must be in conformity with the provisions contained in ss. 15 and 29 of the Act—Provisions of ss. 15 and 29 are mandatory and possession obtained by landlord in violation of such mandatory provisions would be illegal—Termination of tenancy could take place as provided for in s.15 in terms whereof, inter* E *alia, surrender of tenancy becomes legal one only when such surrender is in writing and verified before the Mamlatdar in prescribed manner—s. 29 postulates taking over of possession by landlord from tenant only in accordance with procedure prescribed therefor—The purported surrender made by the tenant in favour of landlord was although considered to be valuntary, did not satisfy the very legal requirement contained in s. 15 and* F *consequently the possession of the land obtained by the landlord is also invalid—In such an event although the landlord takes physical possession of the land, the right to possess the same remains with the tenant, who could recover possession in accordance with law—Protection given to tenant in terms of the Act must be given full effect—So construed, the expression* G *'possession' would also include right of possession—The land was mortgaged with the right of reconveyance—Mortgagee was in possession of the land on behalf of the landlord and as such, the land could have been restored in favour of the tenant—***Decision in Dhondhiram Totaba Kadam*** *having not noticed the earlier binding precedent of the co-* H

A *ordinate Bench and having not considered the mandatory provisions as contained in ss. 15 and 29 had been rendered per incuriam, and, therefore, does not constitute a binding precedent—Judgment of High Court having been rested soleiy thereon cannot be sustained and is accordingly set aside.*

B *S.32(1B)—Salient features—Discussed.*

Precedent—Decision in **Dhondiram Totaba Kadam*** *having been rendered per incuriam, does not constitute a binding precedent.*

Dhondiram Tatoba Kadam* v. *Ramchandra Balwantrao Quabal* C *(since deceased) by his Lrs. & Anr.,* **[1994] 3 SCC 366, held per incuriam.

Ramchandra Kesha Adke (dead) by Lrs. & Ors. **v.** *Govind Joti Chavare & Ors.,* **[1975] 1 SCC 559;** *Bhagwant Pundalik & Anr.* **v.** *Kishan Ganpat Bharaskal & Ors.,* **[1971] 1 SCC 15 and** *Abdul Ajij Snaikh Jumma* D *& Anr.* **v.** *Dashrath Indas Nhavi & Ors.,* **AIR (1987) SC 1626, relied on.**

State of U.P. and Anr. **v.** *Synthetics and Chemicals Ltd. & Anr.,* **[1991] 4 SCC 139 and** *Govt. of Andhra Pradesh and Anr.* **v.** *B. Satyanarayana Rao (dead) by Lrs.,* **[2000] 4 SCC 262, referred to.**

E *Halsbury Laws of England,* **4th Edition Volume 26, referred to.**

Words and phrases :

Expression "possession"—Connotation of in the context of Bombay F *Tenancy and Agricultural Lands Act, 1948.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7149 of 1997.

From the Judgment and Order dated 17/23.7.97 of the Bombay High G Court in W.P. No. 3186 of 1988.

Makrand D. Adkar and Vishwajit Singh, S.D. Singh, Vijay Kumar, Anurag Kishore for the Appellants.

H M.S. Nargolkar, D.M. Nargolkar for the Respondents.

The Order of the Court was delivered : A

Short question that arises for consideration in this appeal requires interpretation of Section 32(1B) which was inserted by amending Act 49/ 69 in Bombay Tenancy and Agricultural Lands Act, 1948 (for short 'the Act'). The aforesaid question arises in the context of dispossession of the B appellant who was a tenant of land in dispute. It is not disputed that the appellant was a tenant in respect of suit land since 1948-49. In the year 1956, the appellant lost possession of the disputed land otherwise than the procedure prescribed under the Act. It is alleged that on 6.1.1967, the respondent-landlord mortgaged the land to one Bajrang Maruti Kanse. In C the year 1969, Maharashtra State Legislature amended that Act by amending Act 49 of 69 whereby Section 32 (1B) was inserted in the Act. Thereafter, in view of the insertion of section 32(1B) in the Act, the Tahsildar in the year 1971 started *suo motu* proceedings for restoration of possession of land to the appellant. However, on 1.3.1972 the Tahsildar dropped the proceedings holding that the landlord was not in possession D of land on 31.7.1969. Although, the Tahsildar held that appellant was in possession of the land on 15.6.1955. The appellant preferred an apeal before the Sub-Divisional Officer which was allowed and the case was remanded back to the Tahsildar. On remand, the Tahsildar again dropped the proceedings. Aggrieved the appellant preferred an appeal befoe the Sub E Divisional Officer who by order dated 16.11.1987 allowed the appeal and directed restoration of possession to the appellant. The respondent-landlord thereafter preferred a revision petition before the Maharashtra Revenue Tribunal, Pune (for short 'the Tribunal'). The Tribunal by its order dated 15.6.1988 allowed the revision application and the order of the Sub F Divisional Officer was set aside. The appellant thereafter preferred a petition under Article 227 of the Constitution before the Bombay High Court. The Bombay High Court in view of the judgment of this Court in *Dhondiram Tatoba Kadam* v. *Ramchandra Balwantrao Dubal (Since deceased) by His Lrs. & Anr.*, [1994] 3 SCC 366, dismissed the writ petition observing thus :- G

> "However, considering the fact that the Apex Court in the case of *Ramchandra Keshav Adke* (supra) has held that surrender of tenancy which does not comply with the requirement of the provisions of the Act is non est and considering the judgment of H

A the Apex Court in the case of Bhagwant Pundlik, etc., where on the strength of a similar language of the Bombay Tenancy & Agricultural Lands (Vidarbha Region) Act, a Bench of three Judges had negatived a similar contention in the matter of interpretation of Section 36 that such injunction should be restricted to only those cases of fraud, coercion and misrepresentation, this would be a fit and proper case where Special Leave should be granted to the petitioners."

However, High Court granted a certificate holding that it was a fit case for appeal to Supreme Court. It is in this manner, the matter has come up before us.

It is not disputed that the predecessors of the appellant were tenant on the relevant date. It is also not disputed that the respondent herein is the landlord of the land in question. It is further not disputed that the appellant herein voluntarily surrendered the land to the landlord. It also stands admitted that the aforesaid surrender was not in terms of Sections 15 and 29 of the Act. The question which, therefore, arises for our consideration is whether the voluntary surrender which is not in terms of Sections 15 and 29 is a valid one.

The relationship of the landlord and tenant is governed by the provisions of the said Act. Section 15 provides for termination of tenancy by surrendering thereof which reads thus :

"15(1) A tenant may terminate the tenancy in respect of any land at at any time by surrendering his interest therein in favour of the landlord :

Provided that such surrender shall be in writing and verified before the Mamlatdar in the prescribed manner.

(2) Where a tenant surrenders his tenancy, the landlord shall be entitled to retain the land so surrendered for the like purposes, and to the like extent, and in so far as the conditions are applicable subject to the like conditions as are provided in sections 31 and 31A for the termination of tenancies.

(2A) The Mamlatdar shall in respect of the surrender verified under sub-section (1), hold an inquiry and decide whether the landlord is entitled under sub-section (2) to retain the whole or any portion of the land so surrendered, and specify the extent and particulars in that behalf.

(3) The land or any portion thereof, which the landlord is not entitled to retain under sub-section (2), shall be liable to be disposed of in the manner provided under clause (c) of sub-section (2) of secion 32 p."

Section 29 provides for procedure of taking possession which is as under :-

"29 (1) A tenant or an agricultural labourer or artisan entitled to possession of any land or dwelling house under any of the provisions of this Act may apply in writing for such possession to the Mamlatdar. The application shall be made in such form as may be prescribed and within a period of two years from the date on which the right to obtain possession of the land or dwelling house is deemed to have accrued to the tenant, agricultural labourer or artisan, as the case may be.

(2) Save as otherwise provided in sub-section (3A), no landlord shall obtain possession of any land or dwelling house held by a tenant except under an order of the Mamlatdar. For obtaining such order he shall make an application in the prescribed form and within a period of two years from the date on which the right to obtain possession of the land or dwelling house, as the case may be, is deemed to have accrued to him.

(3) On receipt of application under sub-section (1) or (2), the Mamlatdar shall, after holding an inquiry, pass such order thereon as he deems fit :

provided that where an application under sub-section (2) is made by a landlord in pursuance of the right conferred on him under section 31, the Mamlatdar shall first decide, *as preliminary*

A issues, whether the conditions specified in clauses (c) and (d) of section 31A and sub-sections (2) and (3) of section 31B are satisfied. If the Mamlatdar finds that any of the said conditions is not satisfied, he shall reject the application forthwith.

B (3A) Where a landlord proceeds for termination of the tenancy under sub-section (1) of section 43-1B, then, notwithstanding anything contained in this Act, the application for possession of the land shall be made to the Collector, who shall, after holding an inquiry in the prescribed manner, pass such order thereon as he deems fit.

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(4) Any person taking possession of any land or dwelling house except in accordance with the provisions of sub-section (1), (2) or as the case may be, (3A), shall be liable to forfeiture of crops, if any, grown in the land in addition to payment of costs D as may be directed by the Mamlatdar or by the Collector and also to the penalty prescribed in section 81."

The said Act, therefore, contemplates termination of tenancy by surrender thereof; and consequent taking over possession by the landlord. E How such termination of tenancy could take place is, provided for in Section 15 of the Act in terms whereof *inter-alia* a surrender of the tenancy becomes a legal one only when such surrender is in writing and verified before the Mamlatdar in the prescribed manner. For the said purpose the Mamlatdar is also required to hold an enquiry. It is not in dispute that F purported surrender made by the predecessor-in-interest in favour of the respondents herein was although considered to be voluntary but the same did not satisfy the very legal requirement, contained in Section 15 of the Act.

Section 29 of the Act, as noticed hereinbefore, postulates taking over G of possession by the landlord from the tenant only in accordance with procedure prescribed therefor. In the event, the surrender made by the predecessor-in-interest of the appellant in favour of the respondent is found to be invalid; the possession thereof obtained by the later pursuant to or in furtherance thereof shall also be invalid. In such an event, although the H landlord takes a physical possession of the land, the right to possess the

same remains with the tenant. He could recover possession of the said land in accordance with law. The said Act is a beneficent statute. It should be construed in favour of the tenant and against the landlord. The protection given to the tenant in terms of the said Act must be given full effect. So construed, the expression possession' would also include right of possession. The view which we have taken is fortified by the decisions of this Court in *Ramchandra Keshav Adke (dead) by Lrs & Ors.* v. *Govind Joti Chavare & Ors.*, [1975] 1 SCC 559; *Bhagwant Pundalik & Anr. v. Kishan Ganpat Bharaskal & Ors.*, [1971] 1 SCC 15 and in *Abdul Ajij Shaikh Jumma & Anr.* v. *Dashrath Indas Nhavi & Ors.*, AIR (1987) SC 1626 and thus the consistent view had been that the surrender by the tenant for being legal must be in conformity with the provisions contained in Sections 15 and 29 of the Act.

In *Ram Chandra Keshav Adke* (supra) the question arose for consideration was whether the alleged surrender by the tenant was valid. This Court after interpreting Section 5 (3) (b) and Rule 2-A was of the view that the amendment was brought with a view to protecting the tenant on two fronts against two types of danger — one against possible coercion, undue influence and trickery proceedings from the landlord and other against the tenant's own ignorance, improvidence and attitude of helpless self-resignation stamming from his weaker position in the tenant-landlord relationship and, therefore, Sections 15 and 29 are mandatory in nature and any departure from this would make the surrender invalid. It was also held that the imperative language, the beneficent purpose and importance of these provisions for efficacious implementation of the general scheme of the Act; — all unerringly lead to the conclusion that they were intended to be mandatory. Neglect of any of these statutory requisites would be fatal. Disobedience of even one of these mandates would render the surrender invalid and ineffectual and the consequence of the violation of the mandatory provisions namely Sections 15 and 29 would be that the surrender would be rendered *non-est* for the purpose of Section 5(3)(b) and Rule 2-A.

In *Bhagwant Pundalik's* case (supra) this Court considered the analogous provisions of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 and held that the provisions are mandatory in nature and any violation of the Act would render the surrender invalid.

A In *Abdul Ajij's* case (supra) this Court while interpreting Sections 15 and 29 (2) of the Act held that the provisions are mandatory in nature and any violation of the said provisions would render the surrender invalid.

Section 32(1B) which was brought in by the amendment in the year
B 1969 reads thus :

> "Where a tenant who was in possession on the appointed day and who, on account of his being dispossessed before the 1st day of April, 1957 otherwise than in the manner and by an order of the Tahsildar as provided in section 29, is not in possession of the
C land on the said date and the land is in the possession of the landlord or his successor-in-interest on the 31st day of July, 1969 and the land is not put to a non-agricultural use on or before the last mentioned date, then, the Tahsildar shall, notwithstanding anything contained in the said section 29, either *suo motu* or on
D 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 thereafter, the provisions of this section and sections 32A to 32R (both inclusive) shall, insofar as they may be
E applicable, apply thereto, subject to the modification that the tenant shall be deemed to have purchased 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
F under this sub-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 the Ceiling area."

The salient features of Section 32 (1B) of the act are (1) that the
G tenant must be in possession of land on 15.6.1955 and (2) the tenant was evicted otherwise than by an order of the Mamlatdar before 1.4.1957 and (3) the landlord or his successor-in-interest which includes persons who acquire interest by testamentary disposition or devolution on death must be in possession as on 31.7.1969 and (4) the land is not put to a non-
H agricultural use before 31.7.1969.

In the case of *Dhondiram Totoba Kadam* (supra), however a somewhat contrary view was taken by this Court while interpreting the said proviso. This decision was rendered by a bench of three Judges and one of them disagreed with the majority judgment. The majority held that any voluntary surrender would be a valid surrender. It was held that voluntary giving up of possession would not amount to dispossession unless the law provides for it and the provisions should be construed liberally. It may be pointed out that this Court while holding so, only considered the provisions of Section 32 (1-B) of the Act and did not refer to Sections 15 and 29 (2) of the Act which mandated its compliance for a valid surrender.

The learned Judges although touched upon the question as regards obtaining legal possession, unfortunately failed to notice the mandatory provisions of Sections 15 & 29 of the Act. Once it is held that the provisions of Sections 15 & 29 are mandatory, it goes without saying that possession obtained by the landlord in violation of such mandatory provisions would be illegal. A Statute, as is well known, must be read in its entirety. The expression "Dispossession" having regard to the text and context of the Act cannot be given its natural meaning. The High Court arrived at a finding of fact that the appellant herein had satisfied all the requirements as contained in Section 32 (1B) of the Act. The High Court, however, relying on or on the basis of the decision of this Court in *Dhondiram Totoba Kadam* (supra), dismissed the appeal of the appellant. The High Court, as noticed hereinbefore, however, felt that the question raised is of great general importance.

Having given our anxious thought, we are of the opinion that for the reasons stated hereinbefore, the decision of this Court in *Dhondiram Totoba Kadam* (supra), having not noticed the earlier binding precedent of the co-ordinate Bench and having not considered the mandatory provisions as contained in Sections 15 & 29 of the Act had been rendered *per incuriam.* It, therefore, does not constitute a binding precedent.

In *Halsbury Laws of England,* 4th Edition Volume 26 it is stated :

> "A decision is given *per in curiam* when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow or when it has acted in ignorance of a Horse of Lords decisions, in which case it must

A follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force."

In *State of U.P. And Anr.* v. *Synthetics And Chemicals Ltd. & Anr.*, reported in [1991] 4 SCC 139, this Court observed :

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"Incuria" literally means 'carelessness'. In practice *per in curiam* appears to mean *per ignoratium.* English Courts have developed this principle in relaxation of the rule of *stare decisis.* The 'quotable in law' is avoided and ignored if it is rendered, *'in ignoratium of a statute or other binding authority'.* (Young versus C Bristol Aeroplane Co. Ltd.) Same has been accepted approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law."

D In *Govt. of Andhra Pradesh And Anr.* v. *B. Satyanarayana Rao (Dead) by Lrs.*, [2000] 4 SCC 262, it has been held as follows :

"Rule of per in curiam can be applied where a court omits to consider a binding precedent of the same court or the superior E court rendered on the same issue or where a court omits to consider any statute while deciding that issue."

Furthermore, this Court, while rendering judgment in *Dhondiram Totoba Kadam* (supra), was bound by its earlier decision of Co-ordinate Bench in *Ramchandra Keshav Adke* (supra). We are bound to follow the F earlier judgment which is precisely on the point in preference to the later judgment which has been rendered without adequate argument at the bar and also without reference to the mandatory provisions of the Act.

Learned counsel appearing for the respondent than urged that the G Tribunal has recorded a finding of fact that the landlord has transferred the land to the purchaser and, thus, he being no longer in possession, no benefit order could be passed in favour of the appellant.

The contention of the respondent was that he has executed an H agreement for sale in the year 1967 with one Bajrang Maruti Kanse and,

therefore, the landlord is not in possession. It is no doubt true that the Tribunal recorded a finding that the purchaser was in possession. Surprisingly, however, on perusal of the relevant documents, we find that the case set up by the respondent that he has executed an agreement for sale was not correct. In fact it was a mortgage with the right of re-conveyance and as such it was not an agreement for sale. Thus, the mortgagee was in possession of the land on behalf of the landlord because no title or interest was passed on in favour of the mortgagee, in so far as no registered document was executed transferred the interest in the land by the landlord in favour of the mortgagee.

In absence of any registered document having regard to the provisions contained in Sections 17 and 49 of the Registration Act, no lawful title could pass on to the mortgagee. Lawful title as well as the legal possession of the land in question therefore remained with the landlord. The so-called mortgagee in the aforementioned circumstances must be held to have merely in permissive possession of the land. Such a possession, on the part of the so-called mortgagee, being not in his own right, the land could have been restored in favour of the appellant. The Appellate Authority correctly analysed the legal position. It is true that the Tribunal while reversing the judgment and order of the Appellate Authority came to a finding that a third party was in possession but such purported finding of fact has been arrived at on applying wrong legal tests and without taking into consideration the effect of the provisions of the Transfer of Property Act and also the Indian Registration Act. In that view of the matter, the finding of the Tribunal was not sustainable. It is only in that premise the High Court arrived at a finding that the appellant has satisfied all conditions laid down under Section 32 (1B) of the Act.

In view of our findings that the decision in *Dhondiram Totoba Kadam* (supra) had been rendered *Per in curiam* and did not create a binding precedent, the judgment of the High Court having been rested solely thereon cannot be sustained. It is set aside accordingly. For the aforementioned reasons, the appeal deserves to be allowed. The appeal is allowed accordingly, judgment under challenge is set aside. There shall be no order as to costs.

R.P. *Appeal allowed.*