A

KESHEORAO

v.

NARNARAYAN & ANOTHER

February 17, 1977

[M. H. BEG, C.J., A. C. GUPTA AND P. S. KAILASAM, JJ.]

B

Constitution of India—Article 227—Powers of the High Court—Bombay Tenancy & Agricultural Lands (Vidarbha Region and Kutch Area). Act 1958—Sections 36, 38, 100(2), 132(3)—Recovery of possession.

Berar Regulation of Agricultural Leases Act 1951—Section 9A—Minor lessor's application for possession within 3 years after attaining majority.

C

Respondent No. 1 landlord after his father's death and during his minority let out the agricultural land in dispute to the appellant tenant through his mother for one year. After the expiry of the lease period the tenant refused to deliver possession of the field. The mother filed a suit for possession which was dismissed. Section 9A of the Berar Regulation of Agricultural Leases Act 1951 (Madhya Pradesh Act No. XXIV of 1951) enables a minor lessor to get possession within 3 years of his attaining majority. The landlord, therefore, after attaining majority filed a petition for possession. By order dated 8-8-1955, the authorities terminated the tenancy under s. 9A(2) of the Berar Act. It was directed that the landlord shall apply for possession

D

of the suit land after 31-3-1956. Pending the proceedings under s. 9A the landlord applied for recovery of mesne profits or, in the alternative, the lease amount. Subsequently, the landlord filed a suit in the year 1960 against the tenant for recovery of mesne profits or for rent since the tenant continued to be on the land. When the suit was pending the landlord filed another application under s. 100(2) and s. 36 read with section 38 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region & Kutch Area) Act 1958 (Bombay Act No. XLIX of 1958). The relief prayed was for a declaration that

E

Kesheorao was not a tenant. In the alternative, the landlord claimed for relief of resumption of the suit filed under section 36(2) and 38(1) of the Tenancy Act. The Tenancy Court took the view that the tenancy was terminated by the order dated 8-8-1955 under section 9A of the Berar Act and that the possession of Kesheorao thereafter was not in the capacity of a tenant and allowed the landlord's claim for possession under s. 132(3) of the Tenancy Act. The Tribunal reversed the judgment of the Appellate Authority and held that the tenant was a protected lessee and entitled to enjoy that status under s. 6 of the Tenancy Act. The Tribunal held that the landlord in his

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application under section 36(2) will have to satisfy the conditions contained in s. 38(3) and (4) of the Tenancy Act. The Tribunal, therefore, dismissed the application of the landlord for possession. The High Court in exercise of its powers under Article 227 of the Constitution quashed the order of the Revenue Tribunal and restored the order passed by the Deputy Collector. The High Court held that the landlord was entitled to get possession under s. 36 read with s. 38 and section 100(2) of the Tenancy Act and directed the handing over of the possession to the landlord.

G

In an appeal by Special Leave the tenant contended that (1) The landlord took various proceedings on the basis that the appellant was a tenant and, therefore, the landlord recognised or at any rate acquiesced in the tenancy of the appellant.

(2) The order passed under s. 9A of the Berar Act cannot be given effect to under s. 36 of the Tenancy Act.

(3) In any event, the application for possession was not filed within two years from the date of the order for possession.

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Dismissing the appeal by special leave.

HELD : (1) After the order dated 7-8-1955 was passed under section 9A of the Berar Act the lease was terminated and the appellant ceased to be a

tenant. The status of the appellant as a tenant was also lost on the expiry of the 7 years period on 31-3-1956 conferred on him under the Berar Act. It is clear from various proceedings that the landlord never recognised or acquiesced in the tenancy of the appellant. The claim was for mesne profits or in the alternative for lease and cannot amount to acquiescing in the tenancy. Under the Tenancy Act no right has been conferred on the appellant after his status as protected tenant came to an end. The landlord in fact made an application for possession within the period of two years from the date the Tenancy Act came into force and the application was, therefore, not barred by limitation. [16H, 17A-C, E-F] A B

(2) The Revenue Tribunal was in error in upsetting the order of the Appellate Authority to the effect that after the order under s. 9A of the Berar Act was passed the possession of the appellant was not in the capacity of a tenant. The High Court was justified in interfering with the order of the Revenue Tribunal. [17G-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2031 of 1968. C

(Appeal by special leave from the Judgment and Decree dated 1.2.1968 of the Bombay High Court (Nagpur Bench) in Special Civil Appeal No. 387 of 1966).

M. N. Phadke, V. M. Phadke and *A. G. Ratnaparkhi,* for the appellant. D

Sharad Manohar, Suresh Sethi and *B. P. Maheshwari,* for respondents.

The Judgment of the Court was delivered by

KAILASAM, J. This appeal arise out of special leave granted by this Court against the judgment and order of the High Court of Judicature Bombay at Nagpur. For convenience sake we will refer to the appellant as the tenant and the respondent No. 1 as the landlord because the history of the litigation is 25 years old and the parties had resorted to various remedies before various Tribunals. E

The dispute relates to Field Survey No. 6 area 15 acres 23 gunthas in village Gangaon. Jodhraj the father of Narnarayan, the landlord before us, died some time in 1942. Narnarayan who was then a minor became the owner and his widowed mother Trivenibai leased the land on behalf of the minor to Kesheorao, the tenant before us, for one year. After the expiry of the lease on 31st January, 1952, the tenant refused to deliver possession of the field. The mother filed the suit, Suit No. 125-A of 1952 for possession. The suit as well as further proceedings by way of appeal and second appeal failed and the tenant was held to be protected lessee for a period of five years from 1951-52. F G

Availing himself of the benefit of section 9-A of the Berar Regulation of Agricultural Leases Act Madhya Pradesh Act 24/51 which enabled the minor to get possession within 3 years of his attaining majority he filed a petition for it. By an order dated 8th August, 1955 the Sub-Divisional Officer found that Narnarayan is entitled to terminate the lease of the tenant Kesheorao and ordered that lease of H

A Kesheorao is terminated under section 9A(2) of the Berar Regulation of Agricultural Leases Act and further ordered under that section that Narnarayan shall apply for possession of the suit filed after 31st March, 1956. This order admittedly became final. Pending the proceedings under section 9-A the landlord applied for recovery of mesne profits or in the alternative for lease amount. The landlord subsequently filed Civil Suit No. 3 of 1960 against the tenant for recovery
B of mesne profits or for rent. The suit was necessitated because the tenant continued to be on the land. The claim was for mesne profits or for lease amount. When this case was pending the landlord filed another application under section 100(2) and section 36 read with section 33 of the Bombay Tenancy Act, 1953. (Vidharba Region and Kutch area). The relief prayed for was for a declara-
C tion that Kesheorao was not a tenant. In the alternative the landlord claimed for relief of resumption of the suit filed under sections 36(2) and 38(1) of the Bombay Tenancy Act. The tenancy suits and the landlord's application were also prolonged and ultimately the appellate authority took the view that the tenancy was terminated by order dated 8th August, 1955 under section 9-A of the Berar Regulation of Agricultural Leases Act and that his possession thereafter
D was not in the capacity of a tenant and therefore set aside the order dated 30th September, 1963 and allowed the landlord's claim for possession under section 132(3) of the Bombay Tenancy and Agricultural Lands Act, 1958. The tenant took up the matter to the Revenue Tribunal, Nagpur and the Revenue Tribunal set aside the order of the Appellate authority holding that the tenant was protected lessee and entitled to enjoy that status under section 6 of the
E Tenancy Act. Holding that the landlord in his petition under section 36(2) will have to satisfy the condition contained in section 38(3) and (4) of the Tenancy Act the Revenue Tribunal decided that the landlord was not entitled to that relief. Aggrieved by the order of the Revenue Tribunal the landlord filed the writ petition out of which this appeal arises before the Nagpur High Court under Article 227 of the Constitution praying that the order of the Revenue Tribunal
F may be quashed and the order passed by the Special Deputy Collector may be restored. The High Court allowed the writ petition setting aside the order of the Revenue Tribunal. The High Court held that the petitioner was entitled to get possession under section 36 read with section 38 and section 100(2) of the Bombay Tenancy Act and directed that the possession will be given to the landlord after the crops of the year 1967-68 are removed.

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It is unnecessary for the purposes of this appeal to go into the various proceedings between the landlord and the tenant. For the purpose of decision of this appeal it is sufficient to state that the landlord who was a minor filed a petition under section 9-A of the Berar Regulation of Agricultural Leases Act and obtained an order from the Sub-Divisional Officer on 8th August, 1955 terminating the
H lease of the tenant and directing that the landlord shall apply for possession of the field on 31st March, 1956. After 7th August, 1955 when the lease was terminated the tenant ceased to be a tenant.

Equally the status of the tenant was lost by Kesheorao when the protected tenancy came to an end with the expiry of the 7th years' period conferred on him under the Berar Act. The result was that the tenancy rights of Kesheorao were put an end to by the order dated 8th August, 1955 and whatever rights he might have had under the Berar Act came to an end on 31st March, 1956. The only ground on which the rights of a tenant are claimed is that after 31st March, 1956 and after 31st March, 1958 though his tenancy rights expired he continued to be a tenant because he was in possession and various proceedings were taken by the landlord on the basis that he was a tenant. This plea cannot be accepted. It is seen from the various proceedings that the landlord never recognised or acquiesced in the tenancy of Kesheorao. The landlord claimed for mesne profits or alternatively for lease amount. The claim was not based on the landlord acquiescing in the tenancy. We have been taken through the relevant provision of the Bombay Tenancy Act but there is no provision by which any right as a tenant is conferred on Kesheorao after his status as protected tenant expired. In this view the tenant ceased to have any right after 31st March, 1958, up to which time he could continue due to an amendment in the Act and, if he had managed to continue in possession it was in spite of the landlord.

The objection that is taken by the learned counsel for the tenant is that the order which is made on 8th August, 1955 under section 9-A cannot be given effect to except under the provisions of section 36 of the Bombay Tenancy Act. It was also submitted that in any event the application had not been filed within two years from the date of the order for possession. It was brought to our notice that the landlord did make an application on 11th January, 1960 for possession within two years from the date of the Bombay Act coming into force and as such it is not barred by limitation. The applicability or otherwise of section 132(2) and (3) was vehemently argued, but, in the view we have taken, it is unnecessary to go into that question. We find that the tenant ceased to have any right after 31st March, 1958 and did not acquire any rights subsequently by the landlord acquiescing in the tenancy. While the tenant had no right the landlord had obtained an order under section 9-A terminating the lease of the tenant and directing the landlord to apply for possession of the field on 31st March, 1956. The landlord had in fact applied for possession after we are also informed that the landlord obtained possession as early as 18th February, 1968. In the circumstances we do not feel called upon to interfere with the decision of the High Court holding that the landlord is entitled to get possession. The Revenue Tribunal was in error in upsetting the order of the appellate authority that the tenancy was terminated by the Sub-Divisional Officer on 8th August, 1955 under section 9-A of the leases Act and that his possession thereafter was not in the capacity of a tenant. The High Court was therefore justified in interfering with the order of the Revenue Tribunal. We see no ground for interfering with the conclusion arrived at by the High Court and dismiss this appeal. In the circumstances the parties will bear their own costs.

P.H.P. *Appeal dismissed.*