G.B. KASHIRASAGAR

v.

L.A. NARODE

SEPTEMBER 25, 1996

[M.M. PUNCHHI AND K. VENKATASWAMI, JJ.]

Land Laws and Agricultural Tenancy:

Bombay Tenancy and Agricultural Lands Act, 1948:

Ss.31, 31C—Eviction of tenant of sugarcane land—Bar to end tenancy—Application by landlord for eviction of tenant—Order passed in terms of compromise - Tenant surrendering 3 acres and retaining 1 acre and 38 guntas of land—Landlord again seeking to terminate the tenancy on the ground of bona fide personal cultivation alleging that earlier order was merely a consent order and strictly was not an order u/s 31—Held, provision u/s 31 read with s. 31C for eviction of tenant is one time measure—Proceedings u/s 31 had been once resorted to by landlord and a decision was made thereon with consent of parties to which the authority hearing the matter put his seal of approval—Section 31C is an obvious bar to a second attempt to end the tenancy.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2554 of 1982.

From the Judgment and Order dated 15.7.80 of the Bombay High Court in S.C.A. No. 2847 of 1975.

V.N. Ganpule and V.B. Joshi for the Appellant.

Ms. J.S. Wad for the Respondent.

The following Order of the Court was delivered :

The view of the High Court in rendering the appellant helpless in retaining his tenancy over a small piece of land admeasuring 1 acre and 38 guntas is put to challenge in this appeal.

It transpires that the appellant was in cultivating possession of 4 acres and 38 guntas of land under the respondent-landlord. On an application

A moved by the landlord under Section 31 of the Bombay Tenancy and Agricultural Lands Act, 1948 [the Act], the Tenancy Awal Karkun, Kopargaon passed an order on 3.5.1954 on the basis of a compromise effected between the parties whereunder 3 acres of land was surrendered to the landlord and the balance land was left to be retained by the tenant. It is
B beyond dispute that had the application been decided on merit, the worst that could have happened to the tenant was that he would have been made to vacate half the tenanted land. As is obvious, the tenant was worse off by the compromise and was left to retain less than half of the land to the extent of 1 acre. 38 guntas only. Be that as it may, the situation continued as such, when a second attempt was made by the landlord to evict the
C tenant under the same provision of Section 31 of the Act. This time, there again was a compromise. The land was conceded to be sugarcane land. Undeniably, different provisions of the Act apply to sugarcane lands, details of which we are not presently concerned with; except to say that the tenants of the sugarcane lands were then not evictable. Later came a
D notification which permitted eviction of tenants of sugarcane lands as well, provided such an endeavour did not come to clash with the provisions of Section 31C and 31D of the Act. Section 31C provides that the tenancy of any land left with the tenant after the termination of the tenancy under Section 31 shall not at any time afterwards be liable to termination again on the ground that the landlord bona fide required that land for personal
E cultivation. Section 31D provides that if, in consequence of the termination of the tenancy under section 31 any part of the land leased is left with the tenant, the rent shall be apportioned in the prescribed manner in proportion to the area of the land left with the tenant. The notification prompted the landlord to move again, seeking the land left with the tenant for bona
F fide personal cultivation. He naturally was confronted by the tenant with the bar under Section 31C of the Act. Two courts in the revenue hierarchy employed the bar and decided in favour of the tenant-appellant but the Land Tribunal in revision at the instance of the landlord, upset those orders and the High Court in a writ petition, has come to confirm the same.

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The ground on which the Land Tribunal and the High Court have demolished the defence available in Section 31C is that the earlier order under Section 31, dated 3.5.1954 was, strictly speaking, not an order under Section 31 but merely a consent order or a compromise order; not an order
H of the kind envisaged under Section 31C so as to erect a bar. It is to

examine that view that the parties' counsel have been heard and the relevant provisions gone into. A

It is noticeable that Section 31 provides for the procedure for termination of tenancy for personal cultivation and for non- agricultural use, for which the landlord has been vested with a right. If his claim is bona fide and is based on the rights conferred in the provision then read with Section 31C, the said provision patently appears to be a one-time measure. The matter in hand can be viewed in this manner that proceedings under Section 31 were resorted to by the landlord and a decision was made thereon, if not on contest with consent of the parties, to which the Authority hearing the matter put its seal of approval. No one can say that the said order was not an order in purported exercise of the powers and functions of the Authority under Section 31. Having had a larger share of the cake, it did not lie in the mouth of the landlord to be complaining that those proceedings were no proceedings at all, in terms of Section 31. Merely because the Authority did not record an order after contest, can be no ground to denude the power exercised by the Authority in that behalf. If this is so then Section 31C is an obvious bar to a second attempt to end the tenancy. Merely because the landlord bona fide requires that land for personal cultivation on the suggested premise that his family members have increased is of no consequence. Thus, in our view, the High Court, with due respect, was in error in rendering the appellant defenceless, denying him the benefit of Section 31C of the Act. We hold accordingly. B C D E

For the foregoing reasons, this appeal is allowed, the judgment and order of the High Court is set aside as also that of the Land tribunal; restoring the orders of the Authorities under the Act passed at the two stages; initial as well as secondary. No costs. F

R.P. Appeal allowed.