
(1959) 06 BOM CK 0018

In the Bombay High Court

Case No : Special Civil Application No. 217 of 1959

Bai Jiviben

APPELLANT

Vs

Bombay Revenue Tribunal

RESPONDENT

Date of Decision : 24-06-1959

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 31

Citation : (1959) 61 BOMLR 1475

Hon'ble Judges : H.K. Chainani, C.J;V.S. Desai, J

Bench : Division Bench

Judgement

H.K. Chainani, C.J.—The point involved in both these applications is whether a widow can terminate tie tenancy of her land u/s 31 of the Bombay Tenancy and Agricultural Lands Act. The Bombay Revenue Tribunal has taken the view that a widow has no such right and that the right to maintain such an application is available only to the successor-in-title of the widow under Sub-section (3) of Section 31. This view is in accordance with the decision of the Full Bench of the Revenue Tribunal in Parvati Bhau Patil v. Nagu Ragha Patil, decided on October 22, 1958.

2. The question to be determined, therefore, is whether this view is correct Sub-section (1) of Section 31 provides that a landlord may, after giving notice and making an application for possession as provided in Sub-section (2), terminate the tenancy of any land, if the landlord bona fide requires the land for cultivating personally, or for any non-agricultural purpose. Sub-section (3) of Section 31; provides inter alia that where a landlord is a minor, or a widow, or a person subject to mental or physical disability or a serving member of the armed forces, then such notice may be given and an application for possession u/s 29 may be made,

(i) by the minor within one year from the date on which he attains majority,

(ii) by the successor-in-title of a widow within one year from the date on which

her interest in the land ceases to exist,

(iii) within one year from the date on which mental or physical disability ceases to exist; and

(iv) within one year from the date on which a serving member of the armed forces ceases to be a serving member.

There is a proviso to this sub-section with which we are not concerned. Sub-section (1), therefore, gives a right to every landlord to terminate the tenancy of his land, if he requires it bona fide for personal cultivation. There is nothing in this sub-section, which states that this right shall not be available to a widow or that it cannot be exercised by her in the manner provided. Clause (ii) in Sub-section (3), no doubt, gives a similar right to the successor-in-title of a widow, but it does not in any way restrict the right, which the widow herself possesses, of terminating the tenancy under Sub-section (1) of Section 31. The object of this clause is to protect the rights of the successor-in-title of the widow and to ensure that he does not suffer owing to negligence or inaction on the part of the widow. But there are no words either in this clause or in any other part of the section, which deprive a widow of the right conferred upon every landlord under Sub-section (1). It could never have been the intention of the Legislature that even, though a widow may require additional income from her land for her maintenance, she should not be able to obtain possession of the land during her lifetime and that this right should only be available to her successor-in-title.

3. The full bench of the Bombay Revenue Tribunal has given two reasons for the view taken by it. The first is based on the special meaning given to the expression "cultivate personally", when the landlord is a widow. Clause (6) in Section 2 of the Act defines the expression "to cultivate personally" as meaning

to cultivate land on one's own account-

(i) by one's own labour, or

(ii) by the labour of any member of one's family, or

(iii) under the personal supervision of oneself or any member of one's family by hired labour or by servants on wages payable in cash or kind but not in crop share,...

Explanation I to this section states that a widow or a minor or a person, who is subject to physical or mental disability, or a serving member of the armed forces, shall be deemed to cultivate the land personally, if such land is cultivated by servants, or by hired labour, or through tenants. This provision creates a legal fiction, under which cultivation through a tenant is to be deemed to be personal cultivation. Consequently, if a land belonging to a widow is leased to and cultivated by a tenant, it is to be regarded as being cultivated by her personally. It has, therefore, been urged that as in law a land leased to a tenant is to be deemed to be cultivated by the widow personally, she cannot terminate the

tenancy u/s 31 on the ground that she requires the land for personal cultivation. Sub-section (1) of Section 31, which gives a landlord a right to terminate the tenancy on the ground that he wants the land for personal cultivation, no doubt contemplates that the land must not previously be in the personal cultivation of the landlord. But under Clause (6) of Section 2, read with the Explanation, "personal cultivation" in the case of a widow includes five different modes of cultivation. She may let it out to a tenant or she may cultivate it by her own labour, or by the labour of any member of her family, or she may engage servants, or she may hire labour in order to cultivate it. If she desires to terminate the tenancy on the ground that she wants to lease the land to another tenant, she will not be able to do so, because she will then "be cultivating the land by the same mode by which it was being cultivated previously. The entire scheme of the Act is to provide security of tenure for a tenant and to prevent a landlord from substituting one tenant, by another. The object of the Act would, therefore, be defeated, if a widow is allowed to replace one tenant by another. But there is no reason why a widow should not be able to terminate the tenancy on the ground that she wants to cultivate the land by her own labour or the labour of a member of her family or through Servants or by hired labour. Section 8 of the Act provides that the rent payable by a tenant shall not exceed five times the assessment payable in respect of the land or twenty rupees per acre, whichever is less. The maximum rent, which a widow can, therefore, get from her land by letting it out to a tenant is, therefore, limited by the Act. It cannot exceed five times the assessment or rupees twenty per acre. On the other hand, it is not in dispute that she will realise very much more income, if she works on the land herself or gets it cultivated through servants or by hired labour.

4. The intention of the Legislature in enacting Sub-section (3) of Section 31 was not to deprive widows, minors or other persons subject to disabilities of any rights which they possess in common with other landlords, but to confer certain additional rights on them. On the view taken by the Revenue Tribunal, a widow can never obtain possession of a land from a tenant, even though she requires additional income from it for her maintenance. We are certain that the Legislature could not have intended to cause such hardship, particularly in these days, when the general tendency is to enlarge and not restrict the rights of widows and other persons subject to disabilities.

5. In our opinion, therefore, in the case of a widow, the words "cultivating personally" in Clause (a) in Sub-section (1) of Section 31 mean cultivation through her own labour or the labour of any member of her family or through servants or by hired labour. It has been contended that this interpretation will not be in accordance with the rule that a word or expression must be given the same meaning in every part of the statute. This, however, is not a universal rule. (See *Shamrao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, and *Shamrao Vishnu Parulekar Vs. The District Magistrate, Thana*, As observed in *Craies*" Statute Law, 5th edn., p. 159,

The presumption that the same words are used in the same meaning is however; very slight, and it is proper if sufficient reason can be assigned, to construe a word in one part of an Act in a different sense from that which it bears in another part of an Act.

Similar remarks appear in Maxwell on Interpretation of Statutes, Tenth Edition (p. 322) :

But the presumption is not of much weight. The same word may be used in different senses in the same statute and even in the same section.

Section 2 also states that the words defined in this section shall have the special meanings" given in the section, unless there is "anything repugnant in the subject of context." Having regard to the context, in which the words "cultivating personally" occur in Clause (a) of Sub-section (i) of Section 31, they will not in the case of a widow include cultivation through a tenant.

6. The other ground given by the Tribunal has reference to Section 37 of the Act-Sub-section (i) of this section states that if after the landlord takes possession of the land after the termination of the tenancy u/s 31, he fails to use it for any of the purposes specified in the notice given u/s 31 within one year from the date on which he took possession or ceases to use it at any time for any of the aforesaid purposes within twelve years from the date on which he took such possession, the landlord shall forthwith restore possession of the land to the tenant whose tenancy he had terminated. The difficulty felt by the Tribunal was that if a widow obtains possession of a land from her tenant on the ground that she requires it for personal cultivation and subsequently leases it to another tenant, the first tenant would not be able to avail himself of the right conferred by Section 37, as he cannot contend that the widow is not cultivating the land personally. The position then would be that a widow would be able to replace one tenant by another. This difficulty will also not arise in the view which we take that a widow cannot obtain possession u/s 31 on the ground that she wants to lease the land to another tenant. It is also not likely that a Tenancy Court will hold her requirement to be bona fide when she only wants to substitute one tenant for another. Her income is not likely to be augmented in this manner, for the maximum rent which she can realise is five times the assessment or rupees twenty per acre, whichever is less. If, however, after obtaining possession of the land from her tenant on the ground that she wants to cultivate it, not through a tenant, but in some other way, she leases it to another tenant, it would perhaps be possible to say that she has not used it for the purpose for which she had taken possession of the land. In that case, the former tenant would be entitled to obtain back possession of the land u/s 37.

7. I may add that the view, which we are taking, is in accordance with the view, which Mr. Justice S.T. Desai and myself had taken in Padmakar Ram chandra Pethakar v. Murlidhar liari Jadhav (1959) Special Civil Application No. 3747 of 1958, decided by Chainani C.J. and S.T. Desai J., on 17, 1959 (Unrep.). That was

a case of a minor landlord, but the principle of that decision will also apply in the present case, because the explanation to the definition contained in Clause (6) of Section 2 and Sub-section (3) of Section 31 apply not only to minors but also to widows.

8. We are accordingly of the opinion that the view taken by the Bombay Revenue Tribunal is wrong. In our opinion, the widow-petitioners in the two I cases were competent to terminate the tenancies of their tenants u/s 31 and to make applications to the Mamlatdar u/s 29 for obtaining possession of their lands.

9. The orders passed by the Bombay Revenue Tribunal in the two cases will be set aside and the matters will be remanded to the Revenue Tribunal for disposal in accordance with law. No order as to costs.