

(1967) 04 GUJ CK 0005
In the Gujarat High Court

Baroda Borough Municipality

APPELLANT

Vs

Soma Bhaiji

RESPONDENT

Date of Decision : 26-04-1967

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 70, 70(b), 85, 85, 85A

Citation : (1967) 8 GLR 907

Hon'ble Judges : P.N. Bhagwati, J;A.R. Bakshi, J

Bench : Division Bench

Judgement

A.R. Bakshi, J.—These revision applications involve a common point as regards the interpretation and application of Section 85 A of the Bombay Tenancy and Agricultural Lands Act, 1948. The petitioner in each of the Civil Revision Applications Nos. 181 to 187 of 1965 filed a suit against the respondent of each revision application in which a question arose as to whether the defendant was a tenant or not. The issue as to whether the defendant was a tenant in the suit land was referred by the Civil Court to the Mamlatdar for his decision u/s 85A of the Bombay Tenancy and Agricultural Lands Act and the suits were stayed till the decision of the competent authority under that Act. The Mamlatdar decided the issue and communicated his decision to the Civil Court. The plaintiff in each suit applied to the Civil Court for stay of the suit on the ground that he wanted to prefer an appeal against the decision of the Mamlatdar and that therefore, the suit be stayed till the appellate authority decided the appeal. The learned Civil Judge refused to stay the suit on the ground that it was not necessary to wait for the decision of the appellate authority as the Mamlatdar had communicated his decision to the Civil Court. It is an admitted position that the plaintiff has preferred appeals against the decisions of the Mamlatdar in all the cases which were referred to him by the Civil Court. The learned Civil Judge, while rejecting the request of the plaintiff to stay the suits relied upon a decision of this High Court in Civil Revision Application No. 154 of 1962 dated 28th August 1964. The plaintiff in each of the suits has preferred Civil Revision Applications Nos. 181 to 187 of 1965. A similar question arose in Civil Revision Application No. 50 of 1966

in which relying on the same decision of Raju J. in Civil Revision Application No. 164 of 1963, the learned Civil Judge, Junior Division, Karjan-Sinor disallowed the application of the petitioner for stay of the suit till the appeal against the decision of the Mamlatdar was decided by the appellate authority. In Civil Revision Application No. 139 of 1966, the learned Civil Judge, Junior Division, Borsad rejected the application of the petitioner to stay the suit till the decision of the appeal that was preferred before the appellate authority was arrived at. In this matter also the learned Civil Judge relied upon and followed the decision of Raju J. in Civil Revision Application No. 164 of 1963. (Noted at I G. L. T. 23).

2. On behalf of the petitioners it was urged that Civil Revision Application No. 164 of 1963 was wrongly decided and that on a proper reading of Section 85A together with Section 85 of the Bombay Tenancy and Agricultural Lands Act, 1948, the Civil Court was bound to stay the suit till the decision of the competent authority referred to in Sections 85A and 85 was arrived at. Mr. M. M. Patel appearing on behalf of the respondents in Civil Revision Applications Nos. 181 to 187 of 1965 and Mr. M. I. Patel appearing on behalf of the respondent in Civil Revision Application No. 50 of 1965 had urged that the decision of the competent authority referred to in Section 85A could only mean the decision of the Mamlatdar and not the decision of any of the authorities who had the authority to hear appeals against such decisions of the Mamlatdar and that therefore, the Civil Court had no power to stay the suit until the appeal preferred against the decision of the Mamlatdar was decided. Section 85 of the Bombay Tenancy and Agricultural Lands Act provides that:

(1) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector or the Gujarat Revenue Tribunal in appeal or revision or the State Government in exercise of their powers of control.

(2) No order of the Mamlatdar, the Tribunal, the Collector or the Gujarat Revenue Tribunal or the State Government made under this Act shall be questioned in any Civil or Criminal Court.

Explanation. - For the purposes of this section a Civil Court shall include a Mamlatdar's Court constituted under the Mamlatdar's Courts Act, 1906.

This section provides for the bar of jurisdiction of the Civil Court in matters where any question before the Civil Court was as would require to be settled, decided or dealt with by any of the authorities mentioned in that section. Those authorities are the Mamlatdar or Tribunal, a Manager, the Collector or the Gujarat Revenue Tribunal in appeal or revision or the State Government in exercise of their powers of control, bearing this in mind, if we read Section 85A, it is clear that if in any suit pending in a Civil Court there is an issue which is required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such an issue under the Act, the Civil Court is enjoined to stay and

refer such issue to such competent authority for determination. It would be convenient here to quote the provisions of Section 85A of the Bombay Tenancy and Agricultural Lands Act. That section provides as under:

(1) If any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act (hereinafter referred to as the "competent authority") the Civil Court shall stay the suit and refer such issues to such competent authority for determination.

(2) On receipt of such reference from the Civil Court, the competent authority shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court and such Court shall thereupon dispose of the suit in accordance with the procedure applicable thereto.

Explanation. -For the purpose of this section a Civil Court shall include a Mamlatdar's Court constituted under the Mamlatdar's Courts Act, 1906. " It will be observed that Section 85A refers to the authority competent to

settle, decide or deal with issues under the Act and as provided in Section 85, the jurisdiction of the Civil Court that is barred is as regards questions which are required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector or the Gujarat Revenue Tribunal in appeal or revision or the State Government. It is thus obvious that the competent authority referred to in Section 85A must be any one of the authorities referred to in Sub-section (1) of Section 85 and as a necessary consequence, it would follow that when a reference is made by a Civil Court under Sub-section (1) of Section 85, the competent authority would be required to deal with and decide such issues which are referred to it in accordance with the provisions of the Act and after such a decision is directed to communicate its decision to the Civil Court and it is upon receipt of such a decision that the Civil Court should dispose of the suit in accordance with the procedure applicable thereto. Since a competent authority would include all the authorities mentioned in Sub-section (1) of Section 85, the Civil Court was bound to stay a suit in which such issues are raised till the decision of anyone of the authorities mentioned in Sub-section (1) of Sections 85. Sections 85 and 85A of the Bombay Tenancy and Agricultural Lands Act relate to the same subject matter and must therefore, be read together and reading these two sections together, the word "competent authority" given in Section 85A must, without doubt, mean and include each one of the authorities in the hierarchy of authorities mentioned in Section 85 of the Act and the Civil Court was bound to stay the suit till the decision of anyone of those authorities was received. We are, therefore, not in agreement with the decision of Raju J. in Civil Revision Application No. 164 of 1963 (noted at I G. L. T. 23). The decision of the learned Judge in that Civil Revision Application is as under:

Under Section 85A of the Bombay Tenancy and Agricultural Lands Act, 1948, a suit has to be stayed till the decision of a competent authority and when once

the decision is communicated to the Civil Court, the Civil Court is bound to dispose of the suit. It should not wait for decision of the appellate authority over the decision of the competent authority. The view taken by the lower Court is correct. The revision application is, therefore, dismissed with costs.

3. Sections 85 and 85A of the Bombay Tenancy and Agricultural Lands Act refer to question which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under the Act. Under Sub-clause (b) of Section 70 it is the duty and function of the Mamlatdar to decide whether a person is a tenant or not. When such a question arises in a Civil Suit, by virtue of Section 85 the Civil Court will have no jurisdiction to settle, decide or deal with such an issue as it is required to be decided by the Mamlatdar u/s 70 of the Act. By virtue of Section 85A of the Act, it would be necessary for the Civil Court to refer such a question for decision to the Mamlatdar and until that decision is arrived at, the Civil Court, is enjoined to stay the suit.

4. When a decision on such a reference by the Civil Court is arrived at by the Mamlatdar, that decision of the Mamlatdar would be subject to an appeal under Sub-section (1)(v) of Section 74 and obviously, the final decision on the question would be that of the appellate authority. The appellate authority thus would be the authority who would be competent to settle, decide or deal with the question which is required to be decided by such authority under the Act, and therefore also the appellate authority would be the competent authority within the meaning of Section 85A and the reference to the decision of the competent authority in Section 85A must be to the decision of the appellate authority who, as stated above, according to the Act, would be the competent authority to settle, decide or deal with the issue that has arisen before the Civil Court. If that were not so, a strange and anomalous situation would arise. If on a reference by the Civil Court, the Mamlatdar decided the issue in favour of one party and a decree of the Civil Court was passed in favour of that party without waiting for the decision of the appellate authority and subsequently if the decision of the Mamlatdar was reversed by the appellate authority, there would be two conflicting decisions—one of the Civil Court and the other of the authority. which decided the appeal against the decision of the Mamlatdar. Such a result could never have been intended by the Legislature and if we read Sections 85 and 85A together, the decision of the competent authority referred to in Section 85A is and must be the final decision arrived at by the competent authority referred to in Sub-section (1) of Section 85, that is, anyone of the authorities in the hierarchy referred to in that sub-section.

5. For the reasons stated above, we are of the view that Civil Revision Application No. 164 of 1963 decided by Raju J. on 28th August 1964 was wrongly decided and we hold that the Civil Court was bound to stay the suit till the appeals preferred by the petitioners against the decisions of the Mamlatdar were decided. The revision applications are, therefore, allowed and the order passed

by the learned Civil Judge in each of the suits is set aside and we order that each of the civil suit should be stayed till the question that was arisen under the Act is finally decided by the competent authority under the Act. No order as to costs.