

(1981) 01 GUJ CK 0014

In the Gujarat High Court

Case No : Spl. Civil Application No. 589 of 1979

Bavjibhai Morarbhai

APPELLANT

Vs

Jagubhai Fakirbhai

RESPONDENT

Date of Decision : 22-01-1981

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 79

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 84

Citation : AIR 1981 Guj 193 : (1981) 22 GLR 917

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Advocate : A.H. Mehta, for the Appellant; J.M. Patel, for the Respondent

Judgement

1. This is a petition filed by one Mr. Bavjibhai Morarbhai. An application was filed by this petitioner u/s 84 of the Bombay Tenancy and Agricultural Lands Act (the "Act". in short) before the Assistant Collector. The learned Assistant Collector held that the application u/s 84 of the Act was not competent and so it was liable to be rejected. The Assistant Collector who is also simultaneously an officer exercising jurisdiction u/s 79-A of the Bombay Land Revenue Code, 1879 (the "Code" for short) tried to pass an order of eviction against the opponent on the ground that the land was new tenure land in the hands of the applicant the present Petitioner, and that the opponent could not get into possession. The Assistant Collector, therefore, passed the order of eviction under the code.

2. Being aggrieved by the aforesaid order of the Assistant Collector, which is at Annexure "A" to the petition. The opponent Mr. Jagubhai Fakirbhai who was ordered to be summarily evicted under the rules of the Code, filed the Revision No. TEM. B.S. 61 of 1978. The Gujarat Revenue Tribunal agreed with the Assistant Collector that Section 84 of the Act was not attracted and so the learned Member of the Gujarat Revenue Tribunal confirmed that part of the order of the Assistant Collector. The Revenue Tribunal, however rightly remarked that the Assistant Collector exercising powers u/s 84 of the Act and the Assistant

Collector exercising powers under the Land Revenue Code are different characters and that while exercising jurisdiction u/s 84 of the Act, the Assistant Collector was not competent to Act under the Land Revenue Code. The Land Revenue Tribunal, therefore, allowed the revision application and set aside the order of summary eviction Passed by the Assistant Collector. Being aggrieved by the said order of the Gujarat Revenue Tribunal the original applicant u/s 84 of the Act has moved this Court under Article 227 of the Constitution of India.

3. Both the authorities below, namely the Assistant Collector and the Member, Gujarat Revenue Tribunal have held that the application u/s 84 of the Act was not competent. It was the say of the petitioner in his application under the Act that he was the owner of the land and that the present respondent had, as a rank trespasser, effected his entry into some parts of the two survey numbers involved and therefore he was liable to be summarily evicted. Section 84 of the Act is quoted below.

"84. Any person unauthorisedly occupying or wrongfully in possession of any land -

(a) the transfer or acquisition of Which either by the act of parties or by the operation of law is invalid under the Provisions of this Act.

(b) the management of which has been assumed under the said provisions or

(c) to the use and occupation of which he is got entitled under the said provisions and the said provisions do not provide for the eviction of such persons may be summarily evicted by the Collector."

4. Mr. A. H. Mehta the learned advocate appearing for the petitioner, urged that the averments made by the applicant in the petition squarely decided the question, of jurisdiction. The petitioner in that application had alleged that the respondent was unauthorisedly occupying or was in possession of the land, and he was the rank trespasser that he has no right to the use and occupation of the land obviously because no provision of the Act recognises the right of such rank trespassers and that the Act was silent about the eviction of such persons from the agricultural lands In other words. Clause (c) of the Section 64 of the Act was invoked.

5. The Assistant Collector thought that the unauthorised occupation in the present case did not fall within the purview of the Tenancy Act as, the lands it appears were not granted under the provisions of the Tenancy Act: The Revenue Tribunal also thought that the unauthorised occupation alleged in this case did not fall within the purview of the Tenancy Act and therefore the application u/s 84 of the Act could not be granted. Why the application did not fall within the purview of Section 84 of the Act was not elaborated by the Tribunal. It is, therefore, assumed that like the Assistant Collector, the learned Member of the Tribunal also thought that the man claiming must have his right recognised by the provisions of the Act, It is this misreading of Section 84 of the Act that has

occasioned the present petition.

6. It is to be remembered at the outset that the Bombay Tenancy Act though primarily intended to govern the relationship of landlords and tenants was not confined to only that field. It dealt with many other matters. In order to see that the agricultural lands are put to optimum use other provisions are inserted in the Bombay Tenancy Act like those of management of agricultural lands and also summary eviction contemplated by Section 84 of the Bombay Tenancy Act. In order to see that the agricultural lands are not wasted by trespassers to the detriment of agricultural produces which are very essential for the common good a speedy remedy is provided by Sec 84 of the Act. In my view clause (c) of Section 84 of the Act will be clearly attracted in this case. The petitioner specifically alleged in his application that the respondent was a trespasser who had no right to the use and occupation of the land alleged to be encroached upon. When the petitioner alleged that the respondent had no right whatsoever it was implicit in his contention that the respondent was not entitled to the use and occupation of the land under any provisions of the Act. The facts as stated in the application u/s 84 of the Act clearly made out a prima facie case u/s 84 of the Act. Both the authorities below were therefore clearly in error in holding that Section 84 of the Act was not attracted. Mr. J. M. Patel, the learned advocate appearing for the respondent however urged that Section 84 could not be called in aid unless the petitioner claimed some protection under the Tenancy Act. This is not the correct reading of the law. Section 84 of the Act does not deal with the basis of claim of a person who files the application. All it deals with is the allegation against the opponents. Mr. Patel also urged that in this case the respondent was claiming title to the property and when complicated questions of title were involved, the Assistant Collector exercising jurisdiction u/s 84 of the Act would be quite within his powers to refuse to exercise his jurisdiction u/s 84 of the Act which is otherwise discretionary. The argument of Mr. Patel is like putting the cart before the horse. Before the trial actually proceeded and came to be dealt with and decided on merits, the authorities below dismissed the application on a technical plea of incompetence of the application. So the only question that I am required to decide is whether the application falls u/s 84 of the Act or not on the basis of the pleadings of the petition. In my view the clear finding in this regard is what I have stated above.

7. This question had arisen squarely before the Division Bench of the Bombay High Court in the case of Mallasha Sayabanna Mangonda Vs. Khadir Ajam Aherwadi, After citing the earlier Division Bench judgments of the Bombay High Court, the Division Bench held that in a case like the one on hand that Section 84 of the Act would be squarely attracted. Mr. Patel for the respondent had in this connection relied upon the judgment of another earlier Division Bench of the Bombay High Court in the case of Suleman Hasham Memon Vs. Kashiram Bhau Patil, This case was considered by the very High Court in the above mentioned Mallasha Sayabanna's case (supra). In that case the Court held that a Collector under summary proceedings u/s 84 of the Act could not decide questions of title

in relation to the land in dispute. This proposition was not called in question. If after the evidence was laid before him the Collector or the Assistant Collector exercising jurisdiction u/s 84 of the Act finds that there have arisen complicated questions of title he may drop the proceedings at that stage. The application of the applicant u/s 84 of the Act has not been rejected on this ground but it has been rejected only on the ground that the Court had no jurisdiction. In my view, this case falls squarely within Section 84, clause (c) of the Act. The respondent as alleged by the petitioner is unauthorisedly and wrongly in possession of the land in question. The petitioner has also alleged that the respondent is not entitled to the use and occupation of the land under the provisions of the Act because, he is branded as a trespasser and we can take judicial notice of the fact that in the set of allegations of this type the provisions of the Bombay Tenancy Act do not provide for the eviction of such persons. When no right is attributed or claimed by the respondent under the provisions of the Bombay Tenancy Act it can well be said that the later part of Section 84 clause (c) will not at all be attracted.

8. In above view of the matter, I allow this application by setting aside the orders at Annexures "A" and "B" passed by the Assistant Collector and the Member. Gujarat Revenue Tribunal respectively and remand the proceedings u/s 84 of the Act to the original Court for its decision in accordance with law. Both the learned advocates have agreed that in the facts and circumstances of the case the parties should be allowed to engage advocates at the stage of trial. The request is ex facie reasonable and I am sure, if it is made before the Trial Authority, it will be duly considered. The petition is accordingly allowed. Rule is accordingly made absolute with no order as to costs.

9. Petition allowed.