
(1956) 02 BOM CK 0007

In the Bombay High Court

Case No : Special Civil Application No. 2285 of 1955

Chhanubhai Karansang

APPELLANT

Vs

Sardul Mansang and Others

RESPONDENT

Date of Decision : 07-02-1956

Acts Referred:

Bombay Tenancy Act, 1939 — Section 2(6), 34(2), 36(1)

Citation : AIR 1957 Bom 99 : (1956) 58 BOMLR 463 : (1956) ILR (Bom) 764

Hon'ble Judges : Chagla, C.J.;Dixit, J

Bench : Division Bench

Advocate : N.C. Shah, for the Appellant; V.M. Limaye, for the Respondent

Judgement

Chagla, C.J.—A rather interesting question arises as to the application of the Tenancy Act to lands situated outside the State of Bombay. The petitioner, who is the landlord, applied for possession of the land in the possession of his tenant-opponent No. 1 on the ground of bona fide requirement for Personal cultivation. The Mamlatdar held that the landlord had failed to prove his bona fide requirement and dismissed his application. The Prant Officer also dismissed the application but on a different ground. The view taken by the Prant Officer was that as a landlord personally cultivated land more than fifty acres, he was not entitled to Possession u/s 34 (2)(a) of the Tenancy Act and that view of the Prant Officer was confirmed by the Tribunal.

2. The area personally cultivated by the landlord, according to the finding of the Prant Officer and the Tribunal, is 55 acres and 29 gunthas and out of these 10 acres and 12 gunthas are lands situated in Saurashtra outside the State of Bombay. If 10 acres and 12 gunthas are excluded as being lands outside the State of Bombay, then the landlord does not come within the mischief of Section 34 (2) (a) and the decision of the Tribunal on this point cannot be maintained. Therefore, the question that arises for our determination is whether in Section 34 (2) (a) : "to terminate the tenancy of a protected tenant, if the landlord at the date on which the notice is given or at the date on which the notice expires has

been cultivating Personally other land fifty acres or more in area", the expression "other land" is restricted to land in the State of Bombay or would include land situated outside the State of Bombay or anywhere in the world. Mr. Limaye's contention is that the object of the Legislature was two-fold. The Legislature was of the opinion that a landlord cannot properly cultivate land, the area of which is more than fifty acres and, therefore, wherever the land is situated, that fact has to be taken into consideration, and the other aspect of the matter, according to Mr. Limaye, is that the Legislature thought that a tenant should not be deprived of his holding if the landlord had already fifty acres which he was personally cultivating. Again, according to Mr. Limaye, from this point of view it was immaterial whether the land was situated in the State of Bombay or outside. There are various difficulties in the way of accepting Mr. Limaye's contention. The ordinary principle of construction is that a Legislature is dealing with the subject-matter situated within its own territorial Jurisdiction. The Legislature is not concerned with improving the lot of any person out-side the State of Bombay; nor is it conversant with conditions prevailing outside the State. The tenant for whose benefit the legislation is put on the statute book and who has been defined and the landlord who has been correspondingly defined are tenant and landlord in the State of Bombay. It cannot be gainsaid that the Legislature was only dealing with tenant and landlord within the State of Bombay and not tenant and landlord outside the State of Bombay, and when the Legislature in Section 34 (2)(a) laid down the limit of fifty acres. It laid down that limit from the point of view of conditions prevailing in the State of Bombay, Obviously, the view was that less than fifty acres would not be an economic holding and, therefore, the landlord was Permitted to hold up to fifty acres and if he wanted more from his tenant, he was disentitled. Again, Section 36 (1) permits the Government to reduce the limit of fifty acres and this reduction cannot be from the point of view of conditions prevailing outside the State of Bombay but it could only be from the point of view of conditions prevailing in the State of Bombay." Therefore, the Legislature was indifferent to what the landlord's holding was outside the State of Bombay. If his holding was fifty acres, then in the view of the Legislature that was a sufficient holding and he should not be permitted to Increase it by depriving his tenant of his possession. Then again if the contention urged by Mr. Limaye were to be accepted, it would lead to another difficulty. In order to determine the holding of the landlord u/s 34 (2) what has got to be considered is the land which he personally cultivates, It is not any land which he holds or of which he is the owner but he must personally cultivate the land according to the definition given in the Act itself and that definition is to be found in Section 2 (6) . Therefore, if the expression "land" used in Section 34 (2) was to include land outside the State of Bombay, the Tribunals here will have to apply the definition of "cultivating personally" to lands outside the State of Bombay. The Legislature has defined the expression, "cultivating personally" looking to the conditions prevailing in the State of Bombay. The conditions in Saurashtra or any other parts of the world may be entirely different and it would be highly anomalous to decide whether a particular landlord is cultivating personally land

situated outside the State of Bombay in the light of the definition given in a local statute intended to be applied locally.

3. Therefore on a consideration of various, factors, we are of the opinion that the "other land" referred to in Section 34 (2) must be restricted to land in the State of Bombay. If that be the true view of the section, then the holding of the landlord was less than fifty acres because if we exclude the land situated in Saurashtra, in the State of Bombay he held less than fifty acres. Therefore he would not be disentitled from getting possession from his tenant u/s 34 (2) .

4. As we have pointed out, the Mamlatdar took the view that the landlord had failed to prove his bona fide personal requirement. If that be so, apart from anything else, the landlord is bound to fail. But this point has not been considered by the Prant Officer as he dismissed the landlord's application on a different ground. Now that we have differed from the Prant Officer in the view that he has taken with regard to the landlord's holding, we must remand the matter back to him and direct him to determine whether the landlord has succeeded in establishing his bona fide personal requirement. If he concurs with the view taken by the Mamlatdar, then he will dismiss the landlord's application. If, on the other hand, he differs from him, he will give the landlord the relief to which he is entitled in law Costs costs in the appeal before the Prant Officer.

5. Case remanded.