
(1964) 07 GUJ CK 0001
In the Gujarat High Court

Chhitabhai Ukabhai

APPELLANT

Vs

Naginlal Manchharam Dave and Others

RESPONDENT

Date of Decision : 03-07-1964

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 34, 37, 37(4), 37(5)

Citation : (1967) 8 GLR 222

Hon'ble Judges : N.K. Vakil, J

Bench : Single Bench

Judgement

N.K. Vakil, J.—The Petitioner in this petition was the tenant of survey No. 27 which admeasured 6 acres and 25 gunthas situated at village Kansia, Taluka Ankleshvar, District Broach. This tenant - had to give possession to the landlord respondent No. 1 of four acres out of this land as a result of an order passed u/s 34 as it then stood under the Bombay Tenancy and Agricultural Lands Act, 1948, on the ground that the landlord wanted to cultivate the land personally. Thereafter, the tenant filed a Tenancy Application No. 369 of 1957 on 29th March 1957 alleging that the landlord had ceased to cultivate personally the land given to him for personal cultivation and had leased out that land to some other persons and on that allegation he prayed that the land should be restored to him under-law. He alleged that the respondent No. 1 had leased out the land tip the present respondent Nos. 2 to 4. The Aval Karkun, Ankleshwar, passed an order restoring possession of the suit land to the petitioner. The landlord thereupon preferred the Tenancy Appeal in the Court of the Prant Officer at Broach who confirmed the findings of facts given by the trial Court and dismissed the appeal. The landlord thereupon filed the revision application before the Tribunal and the tribunal was pleased to set aside the orders of the appellate Court as well as the trial Court and dismissed the original application filed by the petitioner holding the same as incompetent or being premature. The tenant being aggrieved by that order has approached this Court by this petition. The Tribunal in its judgment has discussed the position of law and the right of the present petitioner to file an application u/s 37 of the Act to restore possession on the allegations

made by him. The Tribunal pointed out that Section 37 was amended in 1956 and the amendment was given effect to on the 1st of August 1956 where by the words "Section 34" were substituted by the words "Section 31" and the Bombay High Court had held in special Civil Application No. 2517 of 1958 decided on the 25th October 1958 that tenants whose tenancies were terminated u/s 34 of the Act were not entitled to maintain applications u/s 37 after its amendment on 1st August 1956 and only the tenants whose tenancies were terminated u/s 31 of the Act could apply for restoration u/s 37. I may here mention that the learned advocate Mr. Desai appearing for respondent No. 1 has urged that it is his contention that the original notice given by the landlord was not u/s 34 of the Act of 1948 but it was under the provisions as they stood in the Act No. XXIX of 1939. I do not find it necessary to consider this contention and I leave the question open. Continuing with the judgment of the learned Tribunal, it is to be found that on the above-stated ground the Tribunal came to the conclusion that the application filed by the tenant was not maintainable u/s 37 as it stood before its amendment by Gujarat Act No. XVI of 1960 which came into force on 13th December 1960. Now, this amending Act came into force while the matter in question was pending before the Prant Officer in appeal. The tenant naturally, therefore, tried to rely upon the amended Section 37 to press his application to its conclusion. The Tribunal, however, on the interpretation of Sub-sections (4) and (5) of the amended Section 37 came to the conclusion that the application filed as such could not be decided under the amended section. The Tribunal was of the view that in the light of the specific provision of Sub-section (5) of the amended Section 37 the present application of the tenant was rendered premature and, therefore, the reliefs sought could not be granted. The tenant being aggrieved has come to this Court.

2. Mr. M. M. Patel, the learned advocate for the petitioner, submitted that Sub-section (4) must be given a retrospective effect and if Sub-section (4) is given a retrospective effect, his application is maintainable and the intention of the Legislature was to give advantage to the tenants who would have lost their rights to maintain such applications u/s 37 in the light of the Bombay decision, and this application should not be treated as premature. He argued that the effect of Sub-sections (4) and (5) is not to take away any right from the tenant but to give a right to the tenant and, therefore, the interpretation placed by the learned Tribunal is incorrect. I do not see any substance in this submission of Mr. Patel. There is not the slightest doubt as has been held by the Tribunal that if Sub-section (5) was not included in the Amending Act, the application of the tenant as it was filed, subject of course to the contention which I have mentioned herein above raised by the other side, would be maintainable. But Sub-section (5) itself makes the position entirely clear as to what was intended by the Legislature and we have not to fish in unknown waters to find out the intention of the Legislature. After bringing on the Statute Book Sub-section (4) which makes it possible for tenants whose tenancies had been terminated under any of the provisions of law as it then stood, to apply u/s 37(1), it also put on the Statute

Book Sub-section (5) which in explicit terms reads as follows:

where a failure or cessation referred to in Sub-section (4) has taken place before the date of the coming into force of the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1960, the liability of the landlord under Sub-section (1) to restore possession of the land to the tenant shall commence from that date.

3. So this provision lays down that where the right to the tenant arose under Sub-section (4) to make the application, the liability of the landlord under Sub-section (1) to restore possession of the land to the tenant shall arise from the date on which the Amending Act came into effect, i.e. on 13th December 1960. It is obvious therefore that under the effect of the Bombay decision till the Amending Act came into force on 13th December 1960, the tenant had no right to maintain the application which he had filed. The right that is given under the Amending Act is based on the liability of the landlord to restore possession from a particular date. The landlord's liability under Sub-section (5) to restore possession only arose on the 13th of December 1960. Any proceedings, therefore, which were taken by the tenant u/s 37 before that date have to be held to be premature and could not be given effect to by any Court of law. It is further obvious that by this construction placed on Sub-sections (4) and (5) of the new Section 37 the tenant is not at all prejudiced because he does get the right to file an application under the amended Section 37 on and after 13-12-1960. The two sub-sections have to be read together and a harmonious construction has to be placed. I, therefore, entirely agree with the interpretation of the amended section by the Tribunal and its effect on the application of the tenant.

4. As a result, the petition is dismissed. Rule discharged with costs.