

(1956) 12 BOM CK 0009

In the Bombay High Court

Case No : Special Civil Application No. 1927 of 1956

Dattatraya Vishnu

APPELLANT

Vs

Ganpat Ragho and Another

RESPONDENT

Date of Decision : 12-12-1956

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 34, 34(2)

Citation : AIR 1957 Bom 193 : (1957) 59 BOMLR 164 : (1956) ILR (Bom) 336

Hon'ble Judges : Chagla, C.J.; Vyas, J.; Gajendragadkar, J

Bench : Full Bench

Advocate : V.M. Limaye, for the Appellant; G.N. Vaidya, for the Respondent

Judgement

Chagla, C.J.—This Pull Bench has been constituted to construe Clause (c) of Sub-section (2) of Section 34 of the Bombay Tenancy and Agricultural Lands Act 1948. When we look at the scheme of Section 34, Sub-section (1) gives the right to a landlord to evict his tenant if he bona fide requires the land for cultivating it personally or for any non-agricultural use for his own purpose. Sub-section (2) places certain restrictions upon the landlord from obtaining the land even if his case falls under Sub-section (1), and the first restriction is contained in Clause (a) which fixes a ceiling of the holding of the landlord and provides that even if the landlord, requires the land bona fide for personal cultivation, he cannot obtain the land if it goes beyond the ceiling. Then Clause (b) deals with a case where the tenant has become a member of a co-operative farming society. Clause (c), with which we are concerned, was enacted by Act 33 of 1952 and it is in the following terms:

"(c) to terminate the tenancy of a protected tenant on the ground that the landlord requires the land for cultivating it personally, unless the income by the cultivation of such land will be the main source of the income of the landlord for his maintenance".

The short question that we have to consider and decide is: What is the proper

meaning to be placed upon the expression "main source of the income of the landlord for his maintenance".

2. Now, two possible views have been placed before us. One view is that if the landlord is not in a position to maintain himself and it is found that the income from the land of which he is seeking possession can contribute substantially or in the main to make up for the deficit, then the condition laid down in Clause (c) would be satisfied. The other view is that not only the landlord must require the land for his maintenance, but it must also be found that the income from the land of which he is seeking possession is the principal source of his income. In other words, a comparative test must be applied and the income of the landlord from sources other than the land of which the possession is sought must be considered and it is only if the income from the land of which he is seeking possession is larger than the income from other sources that the condition laid down in Clause (c) will be satisfied. In order to decide which is more correct view we must look at the nature of the Act which we are construing and the object that the Legislature had in mind. It is needless to repeat what has often been said in this Court that this is an ameliorative Act and it has been enacted for the benefit of the tenants. It is also necessary to bear in mind that Sub-section (2) of Section 34, in which Clause (c) finds a place, is a restrictive provision restricting the right of the landlord to obtain possession which has been conferred upon him by Section 34 (1) , and therefore this restriction must be construed strictly in favour of the tenant and against the landlord.

In favour of the first view Mr. Limaye has strongly urged upon us that what the Legislature had in mind was a poor small landlord who would not be in a position to maintain himself and that consideration is the main and ruling consideration underlying Clause (c), and what he says is that if the landlord was not in a position to maintain himself then it was not necessary to apply the comparative test but that what was necessary was to find out whether he could supplement his income so that he could maintain himself mainly from the income which he would receive if he obtained possession of the land which he sought from his tenant. In our opinion, the Legislature really was not considering the question whether the landlord could maintain himself or not, because if that was the consideration which weighed, with the Legislature, the Legislature would never have enacted Clause (a) of Section 34 (2) because in that case even though a landlord may bona fide require the land for his personal cultivation, even though he may require it for his maintenance, if he already had a holding which conformed to the ceiling laid down by the Legislature then he could not evict the tenant. Therefore, Clause (c) was a further restriction upon the right of the landlord that even where he required land bona fide for his personal cultivation and even though the land in his possession did not reach the ceiling laid down by the Legislature, even so he could not obtain possession of the land unless two conditions were satisfied and "the two conditions were that he must require the land for his maintenance and the principal source of his income must be the land

of which he sought possession. In construing this expression "the main source of the income of the landlord for his maintenance", undoubtedly full effect must be given to both parts of this sentence "the main source of the income" and "for his maintenance". We find it rather difficult to take the view that the main source of the income means not the principal source of the income in the comparative sense, but the consideration that if he obtained possession of the land that land would in the main of substantially or largely contribute to the making up of the deficit which he finds in maintaining himself.

3. There is a clear authority of this Court which is of considerable assistance in construing this sub-section. A Division Bench of this Court consisting of Mr. Justice Chandavarkar and Mr. Justice Heaton in *Chunilal v. Vinayak* ILR 33 Bom 376 were called upon to construe the definition of the word "agriculturist" in the Deccan Agriculturist Relief Act and one of the parts of that definition was a person who earns his livelihood principally by agriculture, and the question was what that expression meant in the context of the Act, and Mr. Justice Chandavarkar in delivering the judgment of the Court at p. 379 observes:

"In ascertaining whether a man who has two or more sources of income of which the income from agriculture is one, occupies the status of agriculturist as defined in the Act, the Court must take into account all those sources and ascertain whether the income from agriculture is larger or smaller than the rest. All the sources must be taken, to be means of his livelihood, and. If the income from agriculture exceed the other incomes, he must be held to be earning his livelihood principally by agriculture".

Applying that test to the expression used by the Legislature in this case, which is identical, in our opinion the proper approach to the matter is that when a landlord applies for possession of the land as required by him for personal cultivation, the first question that must be decided is whether the source of his income from the land in suit or in the action is larger than his income from all other sources, if the income is not larger, then no further question remains to be determined and the landlord's action must fail. If it turns out that the source of his income from the land in question is larger than the income from all other sources, then the next question would be whether he requires this income for his maintenance. If the landlord is already in a position to maintain himself from the other sources, then again the landlord must fail. It is only if he satisfied both these conditions that he can obtain possession from his tenant. We are conscious of the fact, and Mr. Limaye has put a great deal of emphasis on it, that this interpretation may act very harshly upon the case of some poor small landlords who may not be able to make both ends meet with the help of the land which they are cultivating. But as we started by saying, the Act is for the benefit of the tenants and not for the benefit of the landlords. This is undoubtedly a case where the Legislature may consider whether it would not be in keeping with its policy to better the conditions of the tenants to give relief to small bona fide landlords who are actually on the land, who are cultivating the land, and who are still unable to

make both ends meet, and whether in such a case they should not be permitted to obtain the land in cultivation by the tenants or at least part of that land. But that is a matter of policy with which we are not concerned. We, must give a strict interpretation to the section which the language calls for.

4. Our attention was drawn to various decisions given by different Benches of this Court where different views of this sub-section have been taken. As none of these judgments are reported judgments, in our opinion it is unnecessary to discuss those judgments, and therefore we have given to this sub-section the interpretation which we think is the proper interpretation in the context of the Act.

5. Order accordingly.