
(1956) 06 BOM CK 0013
In the Bombay High Court
Case No : Special Application No. 496 of 1956

Deolal Bulakhi Saitwal	Vs	APPELLANT
Kadu Tolaram Mahajan and Others		RESPONDENT

Date of Decision : 26-06-1956

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 24, 25, 34, 34(2A)
Constitution of India, 1950 — Article 227

Citation : AIR 1957 Bom 68 : (1956) 58 BOMLR 941 : (1957) ILR (Bom) 1

Hon'ble Judges : Vyas, J;Shah, J

Bench : Division Bench

Advocate : Y.V. Chandrachud, for the Appellant; R.A. Jahagirdar, Amicus Curiae, for the Respondent

Judgement

Vyas, J.—This is an application under Article 227 of the Constitution of India by Deolal Bulakhi Saitwai, the original landlord, and it is made against the order of the Revenue Tribunal, by which order the Revenue Tribunal confirmed the orders passed by the Mamlatdar and the Prant Officer.

2. The applicant applied u/s 34 of the Bombay Tenancy and Agricultural Lands Act to the Mamlatdar of Raver to recover possession of the suit lands Section Nos. 236/1-2 and 822/2 of Raver on the ground that he bona fide required these lands for personal cultivation. The Mamlatdar, upon the evidence before him, came to the conclusion that the landlord's requirement was bona fide and that the income of the suit lands was the main source of the income of the landlord for his maintenance. He, however, took the view that since the area of the lands, of which the possession was sought by the landlord, exceeded 16 acres of Jirayar land which is the area of an agricultural holding, the landlord was entitled to recover possession of only half the portion of the suit lands for his personal cultivation, leaving the remaining half in the possession of the tenants for cultivation by them.

This order of the Mamlatdar was confirmed in appeal by the Prant Officer. Upon

the landlord going in revision before the Revenue Tribunal, the Tribunal also confirmed the orders passed by the Courts below. It is in these circumstances that the landlord has come to this Court under Article 227 of the Constitution of India contending that he is entitled to recover possession of the entire suit lands, whose area is 16 acres 23 gunthas, from the tenants.

3. The point which arises in this application is a short one, and the point is as to the construction of the expression "land held by the landlord" which occurs in Clause (3) of Sub-section (2A) of Section 34 of the Tenancy Act. It would appear from the order passed by the Mamlatdar, which order was confirmed in appeal by the Prant Officer and in revision by the Revenue Tribunal, that the construction which all the courts put upon the words "land held by the landlord" was "land owned by the landlord." Mr. Chandrachud for the petitioner-landlord challenges that construction and contends that the expression "land held by the landlord" in Clause (3) of Sub-section (2A) of Section 34 means "land possessed by the landlord for personal cultivation" and does not mean "land owned by the landlord." On the other hand, Mr. Jahagirdar for the tenants contends that the term "land" which is to be found in Clause (1), (2) and (3) of Sub-section (2A) means "land of which the possession is sought or claimed by the landlord"; and it is clear that if we accept Mr. Jahagirdar's contention, the present application of the landlord must fail since in this case the area of the land of which the possession is sought by the landlord exceeds the area of an agricultural holding, that is, it exceeds 16 acres of jirayat land.

4. Mr. Jahagirdar says that the word "land" in Clause (1), (2) and (3) of Sub-section (2A) of Section 34 must have the same connotation as the word "land" in the opening words of Sub-section (2A). Sub-section (2A) opens with the words: "If the landlord bona fide required the land;" and it is contended by Mr. Jahagirdar that in this phrase the word "land" must mean "the land of which the possession is sought by the landlord." Mr. Jahagirdar then says that the Legislature could not have intended to use the same word in different places in the same Sub-section in different senses and contends that the term "land" in Clause (1), (2) and (3) of Sub-section (2A) must be construed to mean "the land of which the possession is sought by the landlord." In our view, the construction which Mr. Jahagirdar is contending for is against the scheme of Section 34. It is clear that the Legislature enacted Section 34 with the intention of laying down a test which should guide the Courts in cases in which a landlord asks for possession of his land from a tenant on the ground of bona fide personal cultivation and the test laid down is how much other land (i.e. the land other than the land of which the possession is sought) of the landlord was in possession of the landlord for personal cultivation at the date of the notice. When the landlord sets the Tenancy law in motion and applies to a Tenancy Court u/s 34 for recovering possession of his land from his tenant under any of the provisions of Section 34, this crucial test must not be lost sight of. We are accordingly of the view that the word "land" in Clause (2) and (3) of Sub-section (2A) of Section 34 must be construed to mean not the land of which the

possession is sought by the landlord, but the other land of the landlord possessed by him for personal cultivation at the date of the notice.

5. Besides, if, as Mr. Jahagirdar says, the Legislature had intended that the word "land" in Clause (1), (2) and (3) of Sub-section (2A) of Section 34 should connote the land of which the possession is sought by the landlord, it is difficult to understand why in order to denote the same land the Legislature should have used different phraseology in the first three clauses of Sub-section (2A). In Clause (1), the phraseology is, "land held by the protected tenant". In Clause (2) and (3), the words used are "land held by the landlord." If Mr. Jahagirdar's contention has any force, i.e. if the Legislature's intention had been that the word "land" in all the above clauses of Sub-section (2A) was to mean the land of which the possession is sought by the landlord" the Legislature would have simply used the word "land" in these clauses instead of using the words "land held by the protected tenant" in Clause (1) and the words "land held by the landlord" in Clauses (2) and (3). If Mr. Jahagirdar's construction of the word "land" in Clauses (1), (2) and (3) of Sub-section (2A) were to be accepted, it must follow that the words "held by the protected tenant" in Clause (1) and the words "held by the landlord" in Clause (2) and (3) are wholly redundant? We cannot imagine that the legislature which uses words after due care and deliberation used words which, upon Mr. Jahagirdar's construction, would be wholly unnecessary.

6. There is another reason also why we are of the opinion that Mr. Jahagirdar's contention cannot be accepted. The expression to be construed in Clauses (2) and (3) of Sub-section (2A) is "land held by the landlord" and not merely "land". A plain reading of the clauses would show that the Legislature could not have used the expression "land" in the two clauses as meaning "land of which possession is claimed by the landlord". If we put the construction suggested by Mr. Jahagirdar upon the word "land" in Clauses (2) and (3) of Sub-section (2A), it would be impossible to give a reasonable meaning indeed any meaning at all to the expression "land held". One and the same piece of land could not bear two conflicting or contradictory descriptions. In the context of the two clauses, no land could at the same time be the land of which the possession is sought by the landlord and yet be the land held by the landlord. In Clause (3) of Sub-section (2A) the legislature has used the expression "land held by the landlord" as distinguished from "land leased" and the two expressions do not appear to refer to the land of the same category. It would be meaningless to say that the land, which is in the possession of a tenant and of which the possession is sought by the landlord, is held by the landlord for cultivation, and yet that would be the inescapable position upon the construction suggested by Mr. Jahagirdar.

7. In our view, the word "held" which qualifies "land" in Clauses (1), (2) and (3) of Sub-section (2 A) must, on a proper construction, mean, possessed for cultivation". The courts below have construed it to mean "owned", but in our judgment it is an erroneous construction. The Legislature could not have

intended that the expression "land held" which occurs in Clause (1) and the same expression which is used in Clauses (2) and (3) should have different meanings. They must have intended that it must have the same uniform meaning in Clauses (1), (2) and (3). Now, let-us turn to Clause (1), and Clause (1) reads;

""The land held by the protected tenant on lease stands in the record of rights in the name of the landlord on the first day of January 1952 as the superior holder."

It is elementary that a land which is held by a tenant is held on lease. It is not owned by a tenant, THE tenant has no title to it, but he is in possession thereof for cultivation. This position is so absolutely beyond controversy that it is unnecessary to elaborate upon it. Clearly therefore, the expression "land held by the protected tenant" in Clause (1) could only mean and must mean "land in possession of the tenant for cultivation. There is no reason to imagine that, while using the same expression "land held" by the landlord in Clauses (2) and (3), the Legislature could have intended to give a different meaning to it. The same expression, wherever it may occur in the same section, must have been interned to have the same meaning unless a contrary intention is clear from the context or otherwise. In our opinion, the Legislature used the expression "land held" in Clauses (1), (2) and (3) of Sub-section (2A) with the intention that it must have the same uniform meaning throughout, namely, "land possessed for cultivation".

8. In this connection, it is significant to No. that Clauses (2) and (3) of Sub-section (2A) do no, Speak of a land, but the words used are "land held". If Clauses (2) and (3) of Sub-section (2A) had contained the expression "landlord holding land and if an occasion had arisen to construe that expression, it might have been necessary to turn to the Land Revenue Code or the Transfer of Property Act for construction of the expression since the Tenancy Act does not contain the definition of the expression "holding land", and in that ease an argument might have been available that the word "land" should be construed to include the land which may be in possession of a tenant and of which the actual possession is, sought by the landlord. Hut such is not the position in this case and we are not called upon to decide what the word "land" might have meant in the expression "landlord holding land". The words used in Clauses (1), (2) and (3) of Sub-section (2A) of Section 34 are "land held" and we are of the view that in the context of the provisions of Section 34 read as a whole, the expression "land held" must mean "land possessed for cultivation."

9. Upon the above construction of the expression "land held", in Clause (2) of Sub-section (2A) would mean that it the land possessed for personal cultivation by the landlord is in area equal to an agricultural holding or less, the landlord would be entitled to terminate the tenancy of the protected tenant in respect of the entire land of which the possession is sought by the landlord. Clause (3) of" Sub-section (2A) would mean that if the land which is in possession of the landlord for cultivation is more than the area of an agricultural holding, then the landlord would, be entitled to terminate the tenancy of the protected tenant only

in respect "of half the area of the land of which the possession is sought by the landlord. It may be noted that in this particular case, at the date upon which the notice was sent by the landlord to the tenants, the landlord was not in possession of any land at all for personal cultivation. Clearly, therefore, upon the construction put by us upon the words land held" in Clauses (1), (2) and (3) of Sub-section (2A), it must follow that the landlord would be entitled to recover possession of the entire land of which the possession is sought by him from his tenant.

10. If we turn to Sections 24 and 25 of the Act, it would appear that we are fortified in the construction which we have put upon the expression "land held" in Clauses (1), (2) and (3) of Sub-section (2A) of Section 34. In both the Sections 24 and 25, the words used are ""where any tenancy of any land held by any tenant is terminated etc. etc." There is no doubt that in these sections also, the expression "land held" must mean "the land possessed for cultivation."

11. It is for the reasons stated above that we have come to the conclusion that the expression "land held" which occurs in Clauses (1), (2) and (3) of Section 34, Sub-section (2A), must be given the meaning "land possessed for personal cultivation".

12. Accordingly, the application is allowed and it is directed that the landlord shall recover possession of both the survey numbers as prayed by him. Since the tenants have not appeared in this case, there will be no order as to costs. We cannot part with this case without expressing our gratefulness to Mr. Jahagirdar who kindly consented to appear for the tenants amicus curiae and who rendered valuable assistance to us.

13. Application allowed.