

(1955) 09 BOM CK 0020

In the Bombay High Court

Case No : Special Civil Application No. 1293 of 1955

Devshankar Gangaram Mehta

APPELLANT

Vs

Bachubha Devsing Chudasama and Others

RESPONDENT

Date of Decision : 26-09-1955

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 2(20), 34(1)
Constitution of India, 1950 — Article 226, 227
Transfer of Property Act, 1882 — Section 106

Citation : AIR 1956 Bom 113

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

Bench : Division Bench

Advocate : V.M. Limaye, for the Appellant; M.H. Chhatrapati and C.S. Trivedi, for the Respondent

Judgement

Vyas, J.—This is an application under Articles 226 and 227, Constitution of India by Devshankar Gangaram Mehta who is the original landlord. This applicant made an application No. 3067 of 1950 in the Court of the Tenancy Aval Karkun at Dhan-dhuka and the relief which he asked for in the application was to recover possession of survey Nos. 404, 321, 322, 294, 295, 293, 296 and 131 in the Sim of Zinzar.

It was an application u/s 34 (1), Bombay Tenancy and Agricultural Lands Act, 1948. The Tenancy Aval Karkun held that the present Opponent No. 1 Bachubha Devising Chudasama was a protected tenant of only some survey numbers out of the survey numbers in respect of which the landlord had asked for the relief of possession viz., that he was a protected tenant of survey Nos. 131, 321 and 322 of the Sim of Zinzar. The Tenancy Aval Karkun further held that the applicant before him required the lands for bona fide personal cultivation. In respect of the notice which the applicant landlord had given to the tenant, the Aval Karkun held that the notice period expired on 31-3-1950 and that, therefore, it was a valid and legal notice. Consistently with these findings of his, the Tenancy Aval Karkun made an order in favour of the landlord in so far as survey Nos. 131, 321 and

322 were concerned. So far as the remaining survey numbers were concerned, the Aval Karkun took the view that the present Opponent No. 1 Bachubha Devi singh Chudasama was not a tenant of those properties.

2. reeling aggrieved by the above-mentioned decision of the Tenancy Aval Karkun, the tenant Bachubha Devising Chudasama went in appeal to the Prant Officer of the Dholka Prant and the Prant Officer held that the notice which was given by the landlord was bad in law. The Prant Officer took the view that the notice contemplated termination of the tenant's tenancy not on 31-3-1950 itself, but on any date before 31-3-1950 and that accordingly it was not a valid and legal notice.

The Prant Officer-further held that the notice was bad on another ground also viz., that it demanded possession of the properties from the tenant not only on the ground that the landlord wanted these lands for bona fide personal cultivation, but also on the ground that the lands were sub-let by the original tenant to another person.

On these two grounds the Prant Officer held that the notice which was given by the landlord to the tenant was bad in law. Accordingly, he reversed the order of the Tenancy Aval Karkun and ordered the original application of the landlord to stand dismissed.

3. From the abovementioned order of the Prant Officer the landlord Devshankar Gangaram Mehta went in revision before the Bombay Revenue Tribunal and the tribunal also came to the conclusion that the notice which was given by the landlord to the tenant was not a proper notice.

In the opinion of the Revenue Tribunal, having regard to the contents of the notice, it was difficult to hold that the tenant could understand the notice to mean that he was to deliver possession of the properties "after the expiry of a clear year" as defined in Sub-section (20) of Section 2 of the Act.

Holding that the notice was bad, the Revenue Tribunal dismissed the revision application of the landlord. It is against that order of the Revenue Tribunal that the landlord has approached us under Arts. 226 and 227, Constitution Of India.

4. it may be stated at the outset that Mr. Limaye appearing for the landlord has given up the ground of subletting by the original tenant to another person as being the ground for asking for possession of the lands which were the subject matter of the application before the Tenancy Aval Karkun.

Mr. Limaye has urged that the only ground upon which his client, the landlord, is seeking to recover possession of the lands is the ground of bona fide personal cultivation. It would be necessary to bear this in mind while dealing with the present application.

5. The only point which has been agitated before us in this application is as to the legality and validity of the notice dated 26-12-1948 which was given by the

applicant-landlord to Opponent No. 1 tenant Bachubha Devising Chudasama. The relevant recitals in this notice, as to the period of the notice are: - (Original in Gujarati omitted). Translated into English, these recitals would mean "You are to remember that if for any reason these fields have not been handed over to us before 31-3-1950, you are to hand over possession thereof to us for our personal cultivation before the abovementioned date".

Now, Mr. Limaye for the applicant-landlord has strenuously contended before us that the expression "(Original in Gujarati omitted)", (before 31-3-1950) "meant" on the date 31-3-1950 but before the said date expired" i. e., at any time on that date (31-3-1950), morning, noon, evening, but before the mid-night of that date. Mr. Limaye says that such a notice was held to be a good notice in appeal No. 878 of 1952 which was decided by this Court on 20-9-1954.

In particular, Mr. Limaye has drawn our attention to the observations of Shah J., in that case and those observations were:

"It is true that the notice has called upon the defendants to vacate and deliver possession before 31-3-1947. But it is not clear as to whether it was before the evening of 31-3-1947 or the morning of 31-3-1947. It has often been said that a notice served by a landlord upon a tenant should be liberally construed. The learned Judges in the Courts below held that the notice was a proper notice and I do not think I will be justified in interfering with that conclusion." Mr. Limaye relies upon these observations of Shah J., in that case and argues that the expression ("Original in Gujarati omitted") (before 31-3-1950) is an expression similar to the expression which came up for construction in appeal No. 878 of 1952 and that in the light of the decision in that case we should hold in this case as well that the notice which was given by the landlord to the tenant was a good and valid notice.

Then Mr. Limaye has drawn our attention to the Calcutta case -- "Ismail Khan Mahomed v. Jaigun Bibi" 27 Cal 570 (A), in which case Banerjee and Stevens JJ., observed during the course of their judgment:

"Here the notice required the tenant to quit before the expiry of the last day of the Bengali year, that is a year of the tenancy, so that there was no appreciable interval between the expiry of the notice and the end of a year of the tenancy.

To say that the notice here is bad because it required the tenant to quit before instead of on the expiry of the last day of Chait, would be to indulge in subtleties which, as Lindley L. J., observed in -- "Sidebotham v. Holland" (1895) 1 QB 378 (B), "ought to be and are disregarded as out of place" ".

Belying upon this authority also Mr. Limaye has contended before us that the expression in the present notice (Original in Gujarati is omitted) (before 31-3-1950) would not render the notice illegal or invalid. Now, in the abovementioned Bombay case we do not know what the language of the entire notice was, but it is legitimate to presume that the language of the whole notice

was such that no doubt was left in the mind of the court as to the date on which the notice period was to expire, the only point which was not quite clear being the point of precise time on that particular date when the tenant was to hand over possession.

In the Calcutta case the notice was construed to mean that its language left no doubt that the period was to expire on a particular date viz., the last day of the Bengali year, but the latitude was left to the tenant to hand over possession of the properties in time before the expiry of that date i. e., in time before the mid-night of the last day of the Bengali year.

Here, in the present notice if the statement as to the notice period had stood at merely saying (Original in Gujrati omitted) (before 31-3-1950), perhaps the case would fall within the ambit of the abovementioned Bombay and Calcutta decisions. But here the landlord made an emphatic assertion on the point of the notice period practically in the next breath, when he stated that the tenant must hand over possession (Original in Gujrati omitted) (before that date) meaning thereby before 31-3-1950. In our view, the two expressions (Original in Gujrati omitted) i. e., "before 31-3-1950" and "you are to hand over possession to us for our personal cultivation before the abovementioned date", taken together must mean, if language has any meaning, that the tenant was called upon to hand over possession of the fields not on 31-3-1950 itself, latitude being left to him to choose his own time on that day, but even before 31-3-1950 i. e., on any date before the date 31-3-1950.

In our view, upon the language of this notice the tenant could contend that he was required to hand over possession of the properties to his landlord on any date before 31-3-1950 it may be 1-1-1950 or 10-1-1950 or 15-1-1950 or 1-2-1950, 10-2-1950 or 15-2-1950 or 1-3-1950 and so on.

We have no doubt that the language of the notice in the Calcutta case was much clearer than the language of the present notice, because the language of the notice in the Calcutta case made one thing quite clear viz., that the notice period was to expire on the 1st day of the Bengali year, but latitude was left to the tenant to hand over possession of the properties at any time on that particular day so long as he handed it over before the mid-night of that day.

Regarding the Bombay case we have already made our comments viz., that it is quite possible that having regard to the language of the notice as a whole in that case the Court did not feel any difficulty in coming to the conclusion that the notice was to expire on the 31st March of that particular year and the only latitude left to the tenant was as to the time when he might hand over possession on that day so long as he handed over possession before the mid-night of that particular day. The Court therefore held that there was nothing wrong with that notice.

6. it is true, as has been pointed out by their Lordships of the Privy Council in -- "Harihar Banerji v. Ramsashi Roy" AIR 1918 PC 102 (C), that a notice should as

far as possible, be liberally construed and must not be allowed to be defeated merely by reason of certain minor errors or inaccuracies.

But in this case, as the Revenue Tribunal has rightly pointed out, the language of the notice was such that it is difficult to come to the conclusion that the tenant must necessarily have understood the notice to mean that he was required to hand over possession of the properties upon the expiry of a full and clear year as defined in Sub-section (20) of Section 2 of the Act.

The Revenue Tribunal has rightly pointed out that this is not a case where the landlord could ask for interpretation of the notice upon a liberal construction. He has used language which is really slipshod and the benefit of slipshod language cannot be given to the landlord.

7. As I have mentioned above at the commencement of this judgment, Mr. Limaye has given up the ground of sub-letting by the original tenant to another person as being the ground for the landlord to ask for possession of these properties from his tenant. He has urged bona fide personal cultivation by the landlord as the only ground for the landlord to ask for possession and from that point of view, the notice for the reasons mentioned above, is illegal and invalid.

8. Accordingly, the application falls and is dismissed with costs.

Application dismissed.