
(1966) 08 GUJ CK 0013
In the Gujarat High Court

Dhanabhai Raiji

APPELLANT

Vs

Udesing Bhaiji and Others

RESPONDENT

Date of Decision : 31-08-1966

Acts Referred:

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

Citation : (1967) 8 GLR 660

Hon'ble Judges : P.N. Bhagwati, J

Bench : Single Bench

Judgement

P.N. Bhagwati, J.—The question arising in this petition is a short one, but in order to appreciate it, it is necessary to state briefly a few facts giving rise to the petition. The petitioner was a tenant of respondent No. 3 in respect of land bearing Survey No. 491 situate in the Sim of Jambusar, Taluka Jambusar, District Broach. Respondent No. 3 terminated the tenancy of the petitioner by a notice dated 19th March, 1949 on the ground that respondent No. 3 required the land bona fide for personal cultivation. The notice was obviously given by respondent No. 3 u/s 34 of the Bombay Tenancy and Agricultural Lands Act, 1948, (hereinafter referred to as the Tenancy Act) as it stood at the material time. Respondent No. 3 thereafter on 12th April, 1950 filed an application u/s 29 of the Tenancy Act before the Mamlatdar, Jambusar, for recovering possession of the land from the petitioner. The Mamlatdar by an order, dated 13th May, 1959 allowed the application and directed the petitioner to hand over possession of the land to respondent No. 3 and pursuant to the order of the Mamlatdar, possession of the land was obtained by respondent No. 3 from the petitioner. Respondent No. 3 thereafter cultivated the land personally for a while and then sold the land to respondents Nos. 1 and 2 on 23rd March, 1951. On coming to know that respondent No. 3 had ceased to personally cultivate the land and had sold the land to respondents Nos. 1 and 2, the petitioner made an application to the Mamlatdar u/s 39 read with Section 37 of the Tenancy Act for obtaining restoration of possession of the land on the ground that respondent No. 3 had ceased to use the land for the purpose for which it was obtained by him from the

petitioner within twelve years from the date on which he took possession of the land. To this application, besides respondent No. 3, respondents Nos. 1 and 2 were also joined as parties since the relief of possession could not be effective unless it was also granted against respondents Nos. 1 and 2. Respondents Nos. 1 to 3 contested the application on various grounds which are not necessary to mention for the purpose of deciding the present petition. But it may be pointed out at this stage that the application was made after the amendment of Section 37 by Bombay Act 13 of 1956 which came into force on 1st August, 1956. The Tenancy Aval Karkun who heard the application, by an order, dated 31st May, 1958 decided the application in favour of the petitioner and directed respondents Nos. 1 to 3 to restore possession of the land to the petitioner. Respondents Nos. 1 and 2 thereupon preferred an appeal to the Prant Officer, Broach, but the Prant Officer dismissed the appeal and confirmed the order of the Tenancy Aval Karkun. Respondents Nos. 1 and 2 thereupon carried the matter in revision to the Revenue Tribunal. Before the Revenue Tribunal a new contention was raised on behalf of respondents Nos. 1 and 2 which was not urged either before the Tenancy Aval Karkun or before the Prant Officer and that contention was that by Bombay Act No. 13 of 1956, Section 34 was deleted and in its place was substituted Section 31 and consequent upon this amendment, Section 37 was also amended by substituting the words "under Section 31" for the words "under Section 34" and the effect of this amendment was that after the amendment an application for restoration of possession could not be filed u/s 39 read with Section 37 in cases where the landlord had taken possession of the land after terminating the tenancy of the tenant under the old Section 34. The argument was that since in the present case respondent No. 3 had obtained possession of the land from the petitioner after terminating the tenancy of the petitioner under the old Section 34, the petitioner was not entitled after the amendment to make an application for restoration of possession of the land on the ground that respondent No. 3 had failed to use the land for the purpose for which he had taken possession of the same. This argument was, however, sought to be met on behalf of the petitioner by relying on Sub-section (4) introduced in Section 37 by Gujarat Act 16 of 1960. It was urged on behalf of the petitioner that by reason of Sub-section (4) of Section 37, termination of the tenancy under the old Section 34 was equated with termination of the tenancy u/s 31 for the purpose of Section 37 and the benefit of Section 37 was extended to a tenant even in cases where his tenancy was terminated by the landlord under the old Section 34 prior to the introduction of the amended Section 31. The answer which respondents Nos. 1 and 2 gave to this contention urged on behalf of the petitioner was that Sub-section (4) of Section 37 introduced by Gujarat Act 16 of 1960 was not retrospective in operation and did not affect the vested right of respondents Nos. 1 and 2 as purchasers and the petitioner was, therefore, not entitled to rely on the same for sustaining his claim to restoration of possession. This plea was accepted by the Revenue Tribunal and the Revenue Tribunal took the view that the rights of respondents Nos. 1 and 2 as purchasers from respondent No. 3 had become vested prior to the introduction of sub Section (4) of Section 37 and Sub-

section (4) of Section 37 did not therefore, have the effect of affecting those rights and in this view of the matter the Revenue Tribunal allowed the Revision Application and set aside the order for restoration of possession of the land to the petitioner. The petitioner thereupon preferred the present petition challenging the view taken by the Revenue Tribunal.

2. It is clear from the facts which have just been narrated that respondent No. 3 took possession of the land after terminating the tenancy of the petitioner under the old Section 34 on the ground that he wanted it bona fide for personal cultivation and after taking possession of the land he used it for personal cultivation for a while but ceased to use it for personal cultivation from 23rd March, 1951 when he sold it to respondents Nos. 1 and 2. Now the unamended Section 37 Sub-section (1) was in the following terms:

37 (1) If after the landlord takes possession of the land after the termination of the tenancy u/s 34, he fails to use it for any of the purposes specified in the notice given u/s 34 within one year from the date on which he took possession or ceases to use it any time for any of the aforesaid purposes within twelve years from the date on which he took such possession, the landlord shall forthwith restore possession of the land to the tenant whose tenancy was terminated by him, unless he has obtained from the tenant his refusal in writing to accept the tenancy on the same terms and conditions or has offered in writing to give possession of the land to the tenant on the same terms and conditions and the tenant has failed to accept the offer within three months of the receipt thereof.

The petitioner was, therefore, entitled under the unamended Section 37 to restoration of possession of the land from respondents Nos. 1, 2 and 3. But before the petitioner could file an application for restoration of possession of the land u/s 39 read with Section 37, Section 37 came to be amended by Bombay Act 13 of 1956. Prior to the amendment the section which conferred a right on the landlord to recover possession of the land from the tenant on the ground of bona fide requirement for personal cultivation was Section 34 but by the amendment, Section 34 as it then stood was deleted and its place was taken by the new Section 31 which conferred the same right on the landlord but subject to certain restrictions and limitations. Consequent on this amendment Section 37 was also amended and the words "under Section 34" were substituted by the words "under Section 31" with the result that from and after the date of the amendment, Section 37 was confined in its applicability to cases where the landlord took possession of the land after terminating the tenancy u/s 31 and failed to use the land for any of the purposes specified in the notice u/s 31 within one year from the date on which he took possession or ceased to use it at any time for any of the said purposes within twelve years from the date on which he took such possession. This amendment came up for consideration before a Division Bench of the Bombay High Court consisting of Chainani C. J. and Shelat J., as he then was, in Special Civil Application No. 2517 of 1958 and the question which arose was whether a tenant from whom possession was taken by the

landlord after terminating the tenancy under the old Section 34 was entitled to file an application for restoration of possession of the land after the amendment of Section 37 on the ground that the landlord had after taking possession failed to use the land for any of the purposes specified in the notice under the old Section 34 within one year from the date on which he took possession or ceased to use the land for any of the said purposes within twelve years from the date on which he took possession. After considering the relevant provisions of the Tenancy Act, the Division Bench in a judgment delivered on 25th October 1958 came to the conclusion that after the amendment of Section 37 an application for restoration of possession of the land could not be filed by the tenant u/s 39 read with Section 37 in cases where the landlord had taken possession of the land after terminating the tenancy under the old Section 34. In view of this decision of the Bombay High Court which is binding upon me, it is clear that, had the law remained as it was, the application of the petitioner for restoration of possession of the land against respondents Nos. 1 to 3 would have been clearly misconceived and not maintainable. But this decision adversely affected the interests of the tenants by depriving them of the benefit which was intended to be given to them and the effect was in some cases to take away even vested rights of demanding restoration of possession of the land which had accrued to the tenants under the unamended Section 37 and, therefore, the Gujarat Legislature passed Gujarat Act 16 of 1960 introducing Sub-sections (4) and (5) in Section 37. Sub-section (4) of Section 37 provided that:

(4). Where before the commencement of the Amending Act, 1955, a landlord in accordance with the provisions of this Act as then, in force has terminated the tenancy of the land by giving notice to the tenant that he required the land for cultivating personally or for any non-agricultural purpose and has taken possession of the land whether before or after such commencement, then if he fails to use the land for the purpose specified in the notice within one year from the date on which he took possession or ceases to use it for the purpose specified in the notice at any time within twelve years from the date on which he took possession, the foregoing provisions of this section shall, notwithstanding any decree or order of a Court or tribunal, apply to such failure or cessation, as the case may be, as if there had been a termination of the tenancy u/s 31.

The Legislature thus put termination of the tenancy under the old Section 34 on the same footing as termination of the tenancy u/s 31 and extended the benefit of the provision enacted in Section 37 Sub-section (1) to cases where the landlord had taken possession of the land after terminating the tenancy of the tenant under the old Section 34 This was the provision which was relied upon by Mr. G. T. Nanavati, learned advocate appearing on behalf of the petitioner in support of the petition and his argument was that in view of this provision it was entirely immaterial to the applicability of Section 37 Sub-section (1) whether the termination of the tenancy of the petitioner was u/s 31 or under the old Section 34 and the application of the petitioner for restoration of possession of the land against respondents Nos. 1, 2 and 3 u/s 39 read with Section 37 Sub-section (1)

was maintainable notwithstanding that the termination of the tenancy of the petitioner was under the old Section 34 But this argument overlooks the provision enacted in the newly introduced Sub-section (5) of Section 37 which says:

(5). 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. Reading Sub-sections (4) and (5) of Section 37 together it is clear on a plain grammatical construction that though Sub-section (4) of Section 37 declares that Section 37 Sub-section (1) shall apply even in cases where a landlord has taken possession of the land after terminating the tenancy of the tenant under the old Section 34 as if the termination of the tenancy were u/s 31 and a liability is, therefore, imposed on the landlord to restore possession of the land to the tenant if the landlord has failed to use the land for any of the purposes specified in the notice within one year from the date on which he took possession or ceased to use it for the purpose specified in the notice at any time within twelve years from the date on which he took such possession, such liability is made to commence only from the date of coming into force of Gujarat Act 16 of 1960. The object of the Legislature clearly seems to be that since the right to demand restoration of possession of the land from the landlord, though in respect of failure or cessation arising prior to the coming into force of Gujarat Act 16 of 1960, is being conferred on the tenant by the introduction of Sub-section (4) by Gujarat Act 16 of 1960, that right should be made to come into existence from the date on which it is conferred and not from an earlier date with retrospective effect. The right of the tenant to demand restoration of possession of the land from the landlord in a case falling within the newly added Section 37 Sub-section (4) must, therefore, be held to arise for the first time on the date of coming into force of Gujarat Act 16 of 1960 and if an application is made by the tenant for restoration of possession of the land prior to that date, it would be premature and not maintainable. This view, I find, has also been taken by Vakil J in Special Civil Application No. 182 of 1962 (*Chhitabhai v. Naginlal* VII G.L.R. 222), and apart from the fact that the decision in that case is binding upon me, I am wholly in agreement with the view taken by Vakil J in that decision. It must, therefore, be held that the petitioner became entitled to demand restoration of possession of the land from respondents Nos. 1, 2 and 3 only from the date of coming into force of Gujarat Act, 16 of 1960 and the application made by the petitioner prior to that date was clearly premature.

4. The order passed by the Revenue Tribunal dismissing the application, must, therefore, be upheld though for different reasons and the petition must be dismissed and the rule discharged. There will be no order as to costs.