

(1960) 11 GUJ CK 0006
In the Gujarat High Court

Fulabhai Kalidas

APPELLANT

Vs

Bhikhabhai Qadbadbhai and Another

RESPONDENT

Date of Decision : 25-11-1960

Acts Referred:

Citation : (1961) 2 GLR 199

Hon'ble Judges : S.T. Desai, C.J;A.R. Bakshi, J

Bench : Division Bench

Judgement

S.T. Desai, C.J.—The petitioners are owners of a parcel of land bearing Survey No. 240I/A. They applied to the Collector under the relevant provisions contained in the Land Revenue Code for a permission to use the land for non-agricultural purposes- and obtained such permission. Then they filed a Tenancy Suit to terminate the tenancy of the tenants on the ground that they wanted the land for a non-agricultural purpose of their own, and that they bona fide required the land for that purpose. The Mamlatdar who tried the Tenancy Suit held that the petitioners did not bona fide require the land, and he dismissed the suit. The Deputy District Collector to whom an appeal was preferred reached a contrary conclusion. He held that the requirement of the petitioners was bona fide. It was contended before the Deputy Collector that possession of the land could not be given to the petitioners because to do so would be in violation of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. The tenants also relied on Section 31B(2) of the Tenancy Act. The contentions of the tenant were negatived, and the Deputy Collector ordered that possession should be given to the petitioners. The tenant carried the matter in revision to the Revenue Tribunal. The Tribunal was of the opinion that the case was covered by Section 31B(2) of the Tenancy Act and held that possession could not be given to the petitioners. The petitioners have now come to this Court on this petition.

It has been argued before us by Mr. Sheth that Section 31B has no application whatever to the present case. In order to appreciate the arguments of Mr. Sheth

it will be convenient to set out here Section 31(1) and (2). They are as under:

31 (1) :Notwithstanding anything contained in Sections 14 and 30 but subject to Sections 31A to 31D (both inclusive) a landlord may after giving notice and making an application for possession as provided in Sub-section (2) terminate the tenancy of any land (except a permanent tenancy) if the landlord bona fide requires the land for any of the following purposes:

- (a) for cultivating personally or
- (b) for any non-agricultural purpose.

31 (2) :The notice required to be given under Sub-section (1) shall be in writing shall state the purpose for which the landlord requires the land and shall be served on the tenant on or before the 31st day of December 1956. A copy of such notice shall at the same time be sent to the mamlatdar. An application for possession u/s 29 shall be made to the Mamlatdar on or before the 31st day of March 1957.

2. The argument of Mr. Sheth is that the Tribunal fell into an error in not appreciating the meaning and effect of the preamble to the Fragmentation Act and also of certain provisions of that Act. There is little in the preamble in that enactment which can possibly advance the present argument. Mr. Sheth has placed particular reliance on the definition of land in Section 2(5) of that Act where land is defined to mean agricultural land whether alienated or unalienated. Then he has referred us to Section 8 of that Act which lays down that no land in any local area shall be transferred or partitioned so as to create a fragment. The argument is that the expression land in Section 8 can only mean agricultural land. Mr. Sheth has also referred us to the definition of tenancy and land in the Tenancy Act. The argument founded on these provisions of the Tenancy Act is that the definition of land in Section 2(8) of the Tenancy Act speaks of land used for agricultural purposes. Relying on all these provisions the argument of Mr. Sheth has proceeded that Section 31B(2) can only apply to those lands which are used for agricultural purpose. The argument ran that the effect of the petitioners obtaining permission from the Collector to use the land for non-agricultural purposes was to convert the nature of the land let out to the tenant from agricultural use to land which could be put to non-agricultural use and therefore the moment permission was given by the Collector to the petitioners to put the land in question to non-agricultural use the lands went outside the scope of the Tenancy Act.

3. The whole argument in our opinion rests on an insecure foundation. It is true that the definition of land in the two enactments speaks of agricultural land for obviously the enactments deal with agricultural land. Therefore when we find the expression land it must be understood in the general sense in which the expression land is used there. But when we come to specific provisions we do not see how it can be said that the expression land having been used there it can have no bearing the moment permission is given by a Collector to use the land

for nonagricultural purposes. It is hardly necessary to mention that a permission can be obtained by a landlord from the Collector ex parte The Collector while granting the permission is not bound to serve any notice on the tenant and there is nothing on the record of this case to show that any attempt was made by the petitioners to serve any notice on the tenant.

4. Obviously while considering the application of the petitioners under the Code the Collector was not concerned with the application of any provisions of the Tenancy Act. He was making an act under the Land Revenue Code. That being the position it is extremely difficult to see how it can be said that Section 31B ceases to operate in case of a land which has been let out by the owner to a tenant the moment the landlord obtains permission from the Collector to put the land to non-agricultural use. The initial words of Section 31B viz. In no case tenancy shall be terminated u/s 31 clearly go to show that the conditions postulated in Sub-sections (1)(2) and (3) must be satisfied before a tenancy can be terminated u/s 31. Then it may be noted that Section 31 begins with the words notwithstanding anything contained in Sections 14 and 30 but subject to Sections 31A to 31D and therefore it is abundantly clear-and we have said so on a number of occasions-that there cannot be termination of a tenancy by a landlord u/s 31 without conforming with the provisions of Section 31B where those provisions are applicable. In the case before us it is clear that the result of entertaining the petitioners suit would have been to create a sub-fragmentation. Section 31B is aimed at ensuring that no fragmentation should result in consequence of any termination of any tenancy by a landlord obtaining an order for possession in his favour against a tenant. In every case where a tenancy is sought to be terminated u/s 31 the court has to see that the result of the termination of the tenancy and order for possession in favour of the landlord leaves with the tenant nothing less than half the area of the land leased to him. It is also the duty of the court in any such case inter alia to see that the order does not result in any" contravention of the provisions of the Fragmentation Act meaning thereby among other things that the result is not to create a fragmentation. If the result is not to be a fragmentation it is impossible to see that the result can yet be allowed to be a sub-fragmentation

5. The position may be stated in the form of an illustration. In the case before us it is common ground that any area of less than two acres would be a fragment. The area let out the subject matter of the lease is 3 1/2 acres. Sub-sections (1) and (2) of Section 31B require two conditions to be satisfied before the landlord can get possession of the land by terminating the tenancy of the tenant. Assuming that he satisfies the requirements of Section 31 about the bona fide nature of his requirement and the non-agricultural purpose of the requirement he would not be able to get possession of the land in any manner which would leave with the tenant less than 14 acres of land. Not only that but the condition postulated in Sub-section (2) must also be satisfied and that Sub-section requires that there should not result any fragmentation.

6. Therefore in any case this much is certain that an area of 2 acres must remain with the tenant and what remains with the tenant must also not be less than half the area leased to him. Applying these considerations to the case before us it is easy to see that the result of the petitioners being awarded possession of any land from the tenant would be to violate the provisions contained in both the Sub-sections (1) and (2) of Section 31B. In the result the petition fails and will be dismissed with costs.