

(1957) 03 BOM CK 0016

In the Bombay High Court

Case No : Special Civil Application No. 3356 of 1956

Harshadrai Raghunathji Desai

APPELLANT

Vs

Balubhai Maganlal Batliwala and Another

RESPONDENT

Date of Decision : 08-03-1957

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 1, 10, 11, 12, 13
Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226, 227

Citation : AIR 1958 Bom 62 : (1957) 59 BOMLR 1036 : (1957) ILR (Bom) 818

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

Bench : Division Bench

Advocate : I.C. Bhatt, for the Appellant; D.V. Patel, for the Respondent

Judgement

Dixit, J.—This is a petition under Article 227 of the Constitution and it raises an interesting question under the Bombay Tenancy and Agricultural Lands Act, 1948.

2. The applicant filed a civil suit in the Court of the Civil Judge, Junior Division, Navsari, to recover possession of a field bearing Survey No. 46 situate in a village called Kabilpur in the Navsari Taluka of the Surat District. The applicant's case was that the first opponent was a trespasser. The trial Court gave the applicant a decree for possession. The matter was taken in appeal in the District Court at Surat and in appeal the learned Assistant Judge who heard the appeal, directed the first opponent to get decided two points: (1) whether the disputed land was agricultural land; and (2) whether the first opponent was a protected tenant or not.

3. Accordingly, the first opponent filed an application (No. 64 of 1954-55) before the Mamlatdar of Navsari. The applicant filed a written statement raising various contentions, one of which was and which is material to the determination of the question raised that in view of Section 83(1) (b) of the Tenancy Act, the Mamlatdar of Navsari had no jurisdiction to decide the question whether the suit land was leased out for an industrial or commercial undertaking. Upon the

evidence adduced before him, the Mamlatdar decided the application in favour of the first opponent. The matter was then taken before the Supernumerary Assistant Collector, Navsari Taluka, and that authority held that the Mamlatdar had no jurisdiction to decide the question whether the first opponent was a tenant of the suit land. Feeling aggrieved by that order, the first opponent went before the Bombay Revenue Tribunal and a Bench of that Tribunal reversed the order of the appellate authority and remanded the case to him with a direction that he should dispose of the matter in accordance with law. The applicant, feeling aggrieved by that order, has filed this petition under Article 227.

4. The question raised upon this application is whether the Mamlatdar had jurisdiction to decide the question which he decided, namely, whether the land in question falls within the ambit of Section 88(1) (b). There are three sections to which attention may be called. The first of these is Section 70, which enumerates the duties of Mamlatdar and the functions to be performed by him under the Act; and one of the duties and functions to be performed by him is to decide the question whether a person is a tenant or a protected tenant. This will be seen from Section 70(b) of the Act. It may also be relevant to point out that one of the duties and functions of the Mamlatdar is also, according to Clause (o) of Section 70, to decide such other matters as may be referred to him by or under this Act. Sub-section (1) of Section 85 provides that "no Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector or the Bombay Revenue Tribunal in appeal or the State Government in exercise of their powers of control." In order, therefore, to decide whether a particular matter falls within the jurisdiction of the Mamlatdar for decision, It is necessary to consider the effect of Sections 70 and 85 together. In other words, before the Mamlatdar has jurisdiction to decide a matter arising under the Tenancy Act, it must be shown that the question falls within one of the several clauses enumerated in Section 70. If it is shown that a particular question falls within the ambit of Section 70, it is clear that, according to Section 85. the Civil Court has no jurisdiction to settle, decide or deal with the question.

5. Mr. I.C. Bhatt, appearing for the applicant, relies strongly upon Section 88, which so far as material, provides, by Sub-section (1) Clause (b), that nothing in the foregoing provisions of this Act shall apply "to lands on lease for the benefit of an industrial or commercial undertaking". The scheme underlying Section 88 seems to be that, if a case falls within one of the clauses mentioned in Section 88, then the provisions contained in Sections 1 to 87 of the Act would not apply. In other words, where Section 88 applies, the rest of the provisions of the Act will not apply, and Mr. Bhatt, appearing for the owner, has strongly relied upon this provision. Now, the facts which seem to be evident from the record are these. The applicant is the owner of the land in dispute. This land was let out to the first opponent; but it appears that, although a lease was executed, at the date of the lease there was no industrial undertaking upon the land let out. In fact, the lease appears to be silent about the purpose for which the land was let

out. But it appears that there was upon the land a gin alter the lease was executed, and it would appear from the record -- and it is an admitted fact -- that non-agricultural use of the land was made at least till the year 1944. The position, therefore, was that from the time when the gin was put upon the land to the time when the non-agricultural use of the land ceased to exist, -- the land was used for a purpose other than agriculture; and Mr. Bhatt's contention is that the land in suit is a land which falls within the description of Section 88(1) (b) and the provisions of the Act commencing with Section 1 and ending with Section 87 will not apply to this land. The question which the Mamlatdar has to decide is the question whether the first opponent is a tenant. This clearly falls within the duties of the Mamlatdar u/s 70(b), Now, the tenant claims that the land is not used for the purpose mentioned in Section 88(1) (b), and in order to decide this question, the relevant date would be the date when the tenant raises the question. This application was filed before the Mamlatdar in the year 1954-55 and the material date would, therefore, be the date when the first opponent raised the question. The contention urged on behalf of the first opponent is that, although the Mamlatdar may have the power to decide the question, that is, whether the first opponent is a tenant, the Mamlatdar has no power to decide the question whether the land let out to the first opponent is one which was given for the benefit of an industrial or commercial undertaking. Now, it is obvious that, if the Mamlatdar has power to decide the question whether the first opponent is a tenant, it must follow that he has power to decide the question whether the land is an agricultural piece of land or a land held upon lease for the benefit of an industrial or commercial undertaking. To decide the question whether a person is a tenant, it is necessary to decide the question whether he is a tenant of an agricultural piece of land, and without deciding the question whether the land is agricultural or one held for the benefit of an industrial or commercial undertaking, it will not be possible for the Mamlatdar to decide whether the first opponent is a tenant. But Mr. Bhatt argues that the Mamlatdar has no such power because Section 88(1)(b) removes from his jurisdiction lands held on lease for the benefit of an industrial or commercial undertaking. This seems to me -- with respect to Mr. Bhatt -- to be begging the question. The case of the applicant is that the land is held on lease for the benefit of an industrial or commercial undertaking. The first opponent disputes this position, and I fail to see how the Mamlatdar would be able to decide the question whether the first opponent is a tenant without deciding the question whether the land held by the first opponent is an agricultural piece of land or a land held by him for the benefit of an industrial or commercial undertaking. It is evident that Section 85, in terms, deprives the Civil Court of its jurisdiction to settle, decide or deal with questions which arise under the Act; and Mr. Bhatt argues that the question whether the land is a land hold for the benefit of an industrial or commercial undertaking is a question which it is for the Civil Court to decide and not for the Mamlatdar to do so. Now, speaking directly, the powers and the duties of the Mamlatdar are those indicated in Section 70, and the Mamlatdar must, therefore, decide only those matters which are enumerated in Section 70. But if, in order to

decide a question falling within Section 70, the Mamlatdar is required to decide some other question which he cannot decide without deciding the particular fact, it seems to us there is no force in the contention that the Mamlatdar will be prevented from deciding the question. Mr. Bhatt argues that the moment you apply Section 88(1)(b), the provisions of the Act as appearing from Section 1 to 87 can have no application. But that, as I said, is begging the question. Here the applicant says that the land is held by the first opponent on lease for the benefit of an industrial or commercial undertaking. The contention of the first opponent is that the land is held by him as an agricultural piece of land, and if the question falling within Section 70 (b) cannot be decided by the Mamlatdar without deciding the other question, it seems to us that it is impossible to accept the argument that the Mamlatdar will have no power to decide that question. The Mamlatdar has power to decide any jurisdictional fact in order to decide a question falling within Section 70. If, therefore, the position is that, in order to decide the question whether the first opponent is a tenant the Mamlatdar is required to decide whether the land held by the first opponent is an agricultural piece of land or land held by him on lease for the benefit of an industrial or commercial undertaking, the Mamlatdar would, in our opinion, have the power to decide such question. In other words, the Mamlatdar would have power to decide all questions which have reference to jurisdictional facts.

6. But Mr. Bhatt, appearing for the applicant, relies strongly upon a judgment delivered by Mr. Justice Shah in Civil Revn. Appln. No. 72 of 1955, D/- 4-9-1956 (Bom) (A). In that case, the facts were these. The plaintiffs filed a civil suit in the Court of the Third Joint Civil Judge, Senior Division, Ahmedabad, against three persons and claimed a decree for possession of two fields. The plaintiffs' case was that the first defendant took the lands in dispute from the plaintiff's upon a lease for five years at an annual rental of Rs. 1,980. The lease was executed on the 7th of July 1943. There was a provision in the deed of lease whereby the first defendant was entitled to construct houses, bungalows, chawls and factories, and he was permitted to use the land for non-agricultural purposes on condition of payment of taxes to the Municipality and to Government, and he also agreed to be liable for the payment of non-agricultural conversion charges. The defence was that the first defendant was an agriculturist and that the lands in dispute were taken for agricultural use, and that, inasmuch as the first defendant was a tenant, the Civil Court had no jurisdiction to entertain and to decide the suit for possession. Upon these contentions, the learned trial Judge raised an issue whether the Bombay Tenancy and Agricultural Lands Act applied to the suit land. The parties went to trial upon the issue AS a preliminary issue and the learned trial Judge took the view that it was the duty of the Mamlatdar under the Act to decide whether the lease granted to the first defendant was for agricultural purposes or for purposes mentioned in Section 88(1) (b) and that it was for him to decide whether the first defendant was a tenant or a protected tenant. The matter was, therefore, taken in revision before this Court and Mr. Justice Shah, who heard the application, took the view that the question whether the lands

were used for a non-agricultural purpose was a question which was to be decided by a Civil Court and not by the Mamlatdar. This is what he said:--

"But the jurisdiction to decide whether the provisions of the Bombay Tenancy and Agricultural Lands Act apply to a particular piece of land has not been expressly or by implication conferred upon the Mamlatdar by any clause."

Then he observed:--

"In the absence of any provision which enables the Mamlatdar to conclusively determine whether any particular land is held on lease for the benefit of an industrial or commercial undertaking and, therefore, not governed by the provisions of the Act, I am unable to see how the jurisdiction of the Civil Court is excluded in that behalf."

Finally, he said:--

"In so far as the jurisdiction of the Civil Court is excluded the provisions must be strictly construed. There being nothing in the provisions of the Act, which either expressly provide or by clear implication show that it is within the competence of the Mamlatdar to decide whether the land is held on lease for the benefit of an industrial or commercial undertaking, in my view, the Civil Court is the only forum competent to decide whether the land is held on lease for the benefit of an industrial or commercial undertaking and therefore exempt from the operation of the Bombay Tenancy and Agricultural Lands Act, 1948." He then proceeded to refer to the authorities cited before him and concluded:--

"In my view, the learned trial Judge was in error in holding that the Civil Court was incompetent to decide whether the Bombay Tenancy and Agricultural Lands Act applied to the suit lands."

This is a judgment given by a single Judge; but it is nevertheless a judgment of this Court, and unless there are strong grounds for differing from that conclusion, we would be bound to follow that decision even if it be a decision of a single Judge. Now, in taking the view which Mr. Justice Shah took, he appears to have overlooked, with respect, two important definitions. The first of these is the definition of the expression "tenant". The expression "tenant" has been defined in Section 2(18) as meaning "an agriculturist who holds land on lease and includes a person who is deemed to be a tenant under the provisions of this Act. The word "landlord" shall be construed accordingly." The expression "land" is again defined in Section 2(8) as meaning "land which is used for agricultural purposes". Now, if a question falls within Section 70, it is obvious that such a question is, by virtue of Section 85, barred from the jurisdiction of the Civil Court. There is no dispute that the question whether the first opponent is a tenant is a question which falls within Section 70(b) and that is a question which the Mamlatdar has power to decide under the Act. This question cannot be decided by the Civil Court in view of Section 85. But in deciding the question whether the first opponent is a tenant, one has to decide the question whether

the land in the possession of the first opponent is a land used for agricultural purposes or for a purpose as defined in Section 88(1) (b). The question is not to be decided in the abstract. A "tenant" means a person who holds land on lease, and "land" as defined in the Act is land which is used for agricultural purposes. Therefore, the Mamlatdar, having jurisdiction to decide the question whether the first opponent is a tenant, has to decide the question whether the land is used for an agricultural purpose or for a purpose as defined in Section 88(1)(b). He cannot decide the question whether the first opponent is a tenant without deciding the question whether the land in possession of the first opponent is land used for an agricultural purpose or for a purpose other than agriculture. Therefore, if in order to decide the question whether the first opponent is a tenant it is necessary for him to decide the question whether the lands in the possession of the first opponent are or are not used for an agricultural purpose, it is a question which is for the Mamlatdar to decide; and in view of Section 70, such a question is saved from the jurisdiction of the Civil Court.

Therefore, Section 70 and Section 85 are to be read together. It is true that the question whether the lands are used for an agricultural purpose or for a purpose other than agriculture is not, by express language, allowed to be decided by the Mamlatdar u/s 70; and in so far as Section 70 does not expressly empower the Mamlatdar to decide this question, the bar contained in Section 85 will not apply. But, in our view, if in order to decide the question whether the first opponent is a tenant it is necessary to decide the question whether the lands in the possession of the first opponent are used for an agricultural purpose or for a purpose as mentioned in Section 83(1)(b), it is a question which the Mamlatdar has power to decide and the Civil Court is debarred from deciding the question by necessary implication.

7. In our view, therefore, with respect, Mr. Justice Shah was in error in holding that it was for the Civil Court to decide the question and not for the Mamlatdar to decide it. It is true that a Mamlatdar is constituted a tribunal of special jurisdiction. It is also true that, before the jurisdiction of the Mamlatdar is invoked, it is necessary to see whether by Section 70 power has been given to him to decide the question; and if the Mamlatdar is not authorised to decide the question u/s 70, the jurisdiction of the Civil Court is obviously not barred. But, in view of the considerations which I have mentioned above, it seems to us that it is for the Mamlatdar to decide the question as to whether the lands in the possession of the first opponent were used for agricultural purposes or non-agricultural purposes. That being our view, we hold that the order of the Bombay Revenue Tribunal is right.

8. It may be pointed out that the order which the Bombay Revenue Tribunal has made is an order of remand. It is well settled that, where an order is made which is an order of remand, no petition by way of writ would lie to this Court under Article 227. But, in this case, the question raised was whether the Mamlatdar had or had not jurisdiction to decide the question; and since the question was one of

jurisdiction, we have permitted this point to be argued upon this writ petition.

9. In the result, therefore, the view taken by the Bench of the Bombay Revenue Tribunal is right and this application must fail.

Tendolkar, J.

10. As this petition involves a somewhat important question of law on which we are taking a view different from that taken by my learned brother Shah, J., I wish to state shortly the grounds that have induced me to take that view.

11. The question for decision is whether a Mamlatdar, when he is called upon to decide or determine any of the matters which it is within his jurisdiction to decide u/s 70 of the Bombay Tenancy Act, has the power to decide whether the Act itself applies to the facts before him. Speaking generally, and without reference in the first instance to the relevant sections of the Act, I think it will not be denied that, where any Tribunal is clothed with the power to decide or determine any rights under any Act, it must of necessity follow that the Tribunal has power to determine whether the Act applies to the facts before it. It appears to me to be a somewhat novel proposition of law that before a Tribunal can decide or determine a given case some other Court or Tribunal must previously determine that the Tribunal has the power to determine that case, or, in other words, that the Tribunal has jurisdiction to entertain the case and to determine or decide it; and yet that is the proposition that Mr. Bhatt has canvassed before us. We have here a simple case where a person applied to the Mamlatdar for a declaration that he was a tenant and a protected tenant. This is a matter which is within the competence of the Mamlatdar to decide u/s 70, Sub-section (b) of the Bombay Tenancy and Agricultural Lands Act; but before the Mamlatdar can decide or determine it, if the opponent pleads that the Act itself does not apply, it seems to me to be obvious that the Mamlatdar shall have to determine whether or not the Act applies, because unless the Act applies he cannot entertain the petition or decide or determine it. By Section 1, Sub-section (2), the Act is specifically made applicable to the whole of the State of Bombay. In relation to any question that the Mamlatdar has jurisdiction to decide u/s 70, the Act necessarily deals with land as defined in the Bombay Tenancy and Agricultural Lands Act in Section 2, Sub-section (8), which de-lines "land" as meaning "land which is used for agricultural purposes". Therefore, prima facie, the Bombay Tenancy and Agricultural Lands Act applies to oil lands in the State of Bombay; but by reason of the provisions of Section 88, some lands enumerated in that section are taken out of the operation of the entire Act. Section 88, Sub-section (1), opens with the words: "Nothing in the foregoing provisions of this Act shall apply" and proceeds to enumerate lands of different kinds to which nothing in the provisions of the Act shall apply. In other words, the object and purpose of Section 88 of the Act is to take out of the operation of the Act certain lands enumerated in that section; so that, although initially Ss, 1 to 87 apply to all lands used for an agricultural purpose within the State of Bombay, they will in effect apply only to such lands as do not fall within the excepted categories in Section 88. The very

basis of the jurisdiction of the Mamlatdar to determine any questions u/s 70 being the applicability of the provisions of the Act, he must of necessity determine whether the land with which he is concerned is land to which the Act applies or does not apply. In other words, it appears to me to be implicit in the power of the Mamlatdar to decide and determine whether a person is or is not a tenant under the Bombay Tenancy and Agricultural Lands Act that he has power to determine whether such person claims to be a tenant in respect of land which is subject to the provisions of the Act, or whether he claims to be a tenant in respect of land which is taken out of the provisions of the Act.

12. section 85 bars the jurisdiction of Civil Courts in respect of matters which are required to be settled, decided or dealt with by the authorities mentioned in the provisions of the Bombay Tenancy and Agricultural Lands Act; and if the Mamlatdar has jurisdiction to settle, decide or deal with a matter, to that extent the result must follow that the jurisdiction of the Civil Court is ousted. It is well settled that the jurisdiction of a Civil Court may be ousted not only by express words, but also by necessary implication; and if the Mamlatdar has jurisdiction by necessary implication, although not by express words, to determine a matter, to that extent the jurisdiction of a Civil Court must of necessity, by reason of Section 85, be excluded. But so far as the present case is concerned, the matter really goes a little further than this. The opponent in this case claimed that the provisions of the Act do not apply because the lands held by the person who claims to be a tenant were held on lease for the benefit of an industrial or commercial undertaking within the meaning of Section 88, Sub-section (1)(b) of the Act; and if they were so held, they were taken out of the application of this Act by virtue of Section 88. But indeed this particular sub-clause of Section 88 appears to me to be a sub-clause which is almost redundant. The Act can only apply to lands as defined by the Act in Section 2, Sub-section (8), and that definition, as I have already pointed out, is "land which is used for agricultural purposes". If a land is used for an agricultural purpose, it cannot possibly be land "held on lease for the benefit of an industrial or commercial undertaking". The definition of a "tenant" u/s 2, Sub-section (18) is an agriculturist who holds land used for an agricultural purpose. Importing into that definition of "land" in Section 2, Sub-section (8), a person who holds land for the benefit of an industrial or commercial undertaking cannot possibly be a person who holds land which is used for agricultural purposes. Therefore, even if Section 88 (1)(b) did not exist in the Act, I am quite unable to see how the provisions of the Act could have been made applicable to land which was held on lease for the benefit of an industrial or commercial undertaking; and quite obviously, it cannot possibly be suggested that the Mamlatdar has no jurisdiction to decide whether the land held by a person who claims to be a tenant is land used for agricultural purposes. It would be implicit in a finding that the land was held for an agricultural purpose that it was not held for the benefit of an industrial or commercial undertaking; and indeed, in that sense, it would not really be necessary to determine independently whether the land is or is not held for the benefit of an industrial or

commercial undertaking. But we have chosen to deal with the matter, not merely as a matter u/s 88(1) (b), but as a matter which may cover any other case of exclusion enumerated in Section 88(1). As the exclusion merely helps to determine what lands attract the provisions of the Act and, therefore, in respect of what lands the Mamlatdar has jurisdiction, the determination of any of these matters is, in my opinion, a purely jurisdictional fact which it is competent for the Tribunal, whose jurisdiction is invoked under the provisions of the Bombay Tenancy and Agricultural Lands Act, to determine; and to the extent to which the Tribunals set up under the Bombay Tenancy and Agricultural Lands Act, 1948, have jurisdiction to determine the matter, the jurisdiction of the Civil Court is necessarily excluded.

13. Moreover, were there any doubt or ambiguity as to the correct interpretation of the provisions of this statute, it is a well recognised principle of construction of statutes that, where a Court is dealing with a benevolent legislation, the Court ought to interpret the Act so as to prevent the mischief and to promote the remedy. It is beyond question -- and the Bombay Tenancy Act of 1939, which was the predecessor of the Act of 1948, in terms stated so in the preamble -- that the Act was intended to provide for the protection of tenants of agricultural lands; and the preamble of the 1948 Act inter alia states that amongst the purposes of the Act was the purpose of "improving the economic and social conditions of peasants". It is obviously a beneficent piece of legislation, and apparently the object of the Legislature in setting up special tribunals to decide questions arising under the Act was to provide the tenant with what they considered would be a speedier and less expensive remedy than litigation in a Civil Court. Experience has unfortunately belied their hopes; but that is beside the point. If we were to construe the Act, as my learned brother Shah, J., has done, as laying down that the moment a landlord says that the land in question does not fall within the scope of the Bombay Tenancy and Agricultural Lands Act, but falls within any of the excepted categories in Section 88, a Civil Court could alone determine this question, it would lead to the most undesirable consequence that a landlord can, in any proceeding instituted by a tenant u/s 70 of the Act, raise a plea, however unjustified, that the land does not fall within the scope of the Act and the Mamlatdar can do nothing until the question whether the land falls within the scope of the Act is determined in a civil suit, with the necessary concomitants of an appeal and a revision; or, in other words, for several years, as things stand today, the tenant will not have his rights decided or determined. I for one would hesitate a great deal before arriving at such a decision even if two views were possible of the provisions of this Act; but, as I have indicated earlier, in my opinion the only possible view is that it is inherent in the powers of the Mamlatdar to decide and determine matters which are specifically enumerated in Section 70 that the Mamlatdar should have the power to determine, in the first instance, whether the Act applies to the lands in question; and I am clearly of the opinion that, to the extent to which it becomes necessary for him to determine, for the purpose of deciding any question u/s 70,

whether lands fall within any of the categories of lands enumerated in Section 88, he has implied jurisdiction to do so, and the jurisdiction of the Civil Court in that regard is ousted.

14. In my opinion, therefore, the Bombay Revenue Tribunal was right in requiring the District Deputy Collector to determine this question.

15. P.C.: The petition, therefore, fails and the rule will be discharged. As there was an authority in favour of the contention of the appellant, the fairest order to make would be that there would be no order as to costs,

16. Rule discharged.