
(1964) 02 GUJ CK 0006
In the Gujarat High Court

Jawaharlal Gulabchand and Another

APPELLANT

Vs

The Surat Dairy Co. Ltd. and Others

RESPONDENT

Date of Decision : 21-02-1964

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 74, 76, 85, 85A(1)
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1964) 5 GLR 786

Hon'ble Judges : J.B. Mehta, J

Bench : Single Bench

Judgement

J.B. Mehta, J.—This civil revision application is directed against the order of the 2nd Joint Civil Judge (S.D.) Surat dated March 11 1960 in Civil Suit No. 649 of 1956 by which he has referred the question whether the defendant No. 1 was the tenant of the suit land under the Tenancy Act to the Mamlatdar Choryasi Taluka for decision u/s 85 of the Bombay Tenancy and Agricultural Lands Act 1948 Bombay Act No. LXVII of 1948 hereinafter referred to as the Act

2. The facts which give rise to this application are as under: The applicants are the owners of lands S. Nos. 62 61 and 63/2 at Moje Panas in Umra Taluka Choryasi with trees bungalows garage etc. standing on them. A lease was executed on February 1 1943 between the applicants and opponent No. 1 the Surat Dairy Company Ltd. through its managing agents opponent No. 2 of which original defendant No. 3 was the managing partner for a period of 10 years from February 1 1943 to May 30 1953 on an annual rent of Rs. 600/-. When the said lease was about to expire the applicants on May 6 1953 gave a notice to quit to the opponent Nos. 1 to 3 and as possession was not handed over Tenancy Suit No. 256/1953 was filed for getting possession. The said suit was dismissed on May 30 1955 on the ground of invalidity of notice. Appeal No. 83 of 1955 filed by the applicants against the said decision was also dismissed by the Prant Officer on December 8 1955 on the ground that opponent No. 1 being a commercial undertaking proceedings did not lie in the Tenancy Court in view of Section 88(1) (b) of the Act. The applicants therefore filed the Civil Suit No. 649 of 1956 in the

Court of the evil Judge (J.D.) for possession of the suit lands against opponents Nos. 1 to 3 and Nos. 4 and 5 who had entered into possession after the expiry of the lease. Defendant No 3 in that suit who was a partner of opponent No. 2 had died during the pendency of the suit and the heirs of the said defendant were joined as opponent No. 3. The contention of defendants Nos. 1 2 and 3 was that they were tenants of the suit property under the Tenancy Act and the Court had no jurisdiction to hear the suit. The contention of defendants Nos. 4 and 5 was that defendant No. 4 was a cooperative farming society and that defendant No. 1 had posted the suit lands with the land of defendant No. 4 and the defendant Nos. 4 and 5 were therefore in lawful possession of the same. The contention of the plaintiffs in that suit was that defendant No. 1 was a commercial and industrial undertaking and therefore u/s 88 the provisions of the Act were not applicable and the said issue was resjudicata in view of the decision of the Prant Officer in Tenancy Appeal No. 83 of 1955. The trial Court has held that the decision of the Prant Officer did not operate as res judicata and it has referred the question whether defendant No. 1 was a tenant under the Act to the Mamlatdar Choryasi Taluka. The applicants have therefore filed this revision application u/s 115 of the Civil Procedure Code.

3. Two questions which arise for my consideration are:

(1) Whether the Civil Court was wrong in deciding the issue about res judicata?

(2) Whether the Civil Court had failed to exercise its jurisdiction by not deciding first the question whether Sections 70, 85, 85 applied to this case before referring the question whether defendant No. 1 was a tenant to the Mamlatdar?

4. As regards the first question it must be kept in mind that the applicants themselves had invoked the jurisdiction of the Mamlatdar by approaching him on the footing that the Act had applied and that the opponents were tenants under the Act and so there could not be any contention or issue in that proceeding that they were not tenants or that the Act did not apply. No evidence also could be led before the Mamlatdar in absence of any such contention and the Mamlatdar had there fore decided the tenancy suit only on the ground of the invalidity of the notice. In appeal however this point was sought to be argued by the applicants themselves as if it was a pure question of law and the Prant Officer had even refused. The request of the opponents to lead evidence to show that they were tenants covered by the Act. Merely from the stray statement in the deposition of defendant No. 3 the Prant Officer appears to have decided that opponent No. 1 was a commercial and industrial undertaking u/s 88(1)(b) and that the Tenancy Court had no jurisdiction and he had therefore dismissed the claim of the applicants. The decree being thus one of dismissal of the applicants claim the opponents could not file any appeal. In these circumstances even though the Prant Officer had decided this question as the said question was not directly and substantially in issue between the parties and on which as the opponents had no opportunity whatsoever of a fair trial and as the application was dismissed and the opponents had also no right to challenge the said decision this question could

not be said to have been heard and finally decided so as to operate as res judicata in a subsequent suit. In *Thakur Magundeo v. Thakur Mahadeo Singh and Anr.* 18 Cal. 647 at page 651 the test which the Privy Council had applied was this: Has the issue been finally decided? Their Lordships said.

We think that the finding of the Court in the previous suit was not final inasmuch as the decree was not based upon it and there could be no appeal against it because the decree was in favour of the party against whom the finding was recorded.

In the case of *Bai Nathi v. Narsi Dullabh* ILR 44 Bombay 321 at page 325 these observations were relied upon and it was held that where the suit was dismissed the defendant could not appeal against the decree and so the finding against him could not operate as res judicata. Mr. Chhatrapati argued that these observations are no longer good law in view of the decisions of the Supreme Court in *Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another*, and *Darvo and Ors. v. State of Uttar Pradesh* AIR 1961 S.C. 1458. In the first case the Supreme Court at page 943 has observed as under:

The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter—whether on a question of fact or a question of law—has been decided between two parties in one suit or proceeding and the decision is final either because no appeal was taken to a higher Court or because the appeal was dismissed or no appeal lies neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the CPC but even where Section 11 does not apply the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.

But there the Supreme Court was considering the question of an interlocutory order and it was held that there appeared to be no reason why the appellant should be precluded from raising before them the question about the applicability of Section 88 merely because he had not appealed from the High Courts order of remand. In the latter case the principle of res judicata has been extended even to writ petition. None of these decisions therefore lays down that even if a contention has been raised in the trial Court on a mixed question of law and fact and no opportunity at all was given to the defendant for meeting any such contention and the suit was dismissed the issues decided against that party can be said to have been heard and finally decided so as to invoke the bar of res judicata. Mr. Chhatrapati argued that no appeal could be filed against such a decision u/s 74 and it could be challenged only in revision u/s 76 of the Act. But in this case the decision being one of complete dismissal of the application the opponents could not challenge the said decision. Therefore the lower Court was

right in holding that the said decision could not operate as *res judicata*.

5. As regards the second contention both the parties have relied upon a number of authorities and therefore it is necessary to keep in mind the principle on which they have proceeded. Sections 85(1) of the Act bars the jurisdiction of the Civil Court to settle decide or deal with any jurisdiction which is by or under that Act required to be settled decided or dealt with by the Mamlatdar or the other authorities under the Act. Section 85A(1) provides that if any suit instituted in any Civil Court involves any issues which are required to be settled decided or dealt with by any authority competent to settle decide or deal with such issues under the Act the Civil Court shall stay the suit and refer such issues to such competent authority for determination. u/s 70(b) the Mamlatdar has to decide whether a person is a tenant or a protected tenant or a permanent tenant. Section 2 Clause (8) defines land as land which is used for agricultural purposes and Section 2 Clause (18) defines a "tenant as a person who holds land on lease. That is why one of the essential ingredients in the definition of the word tenant is that he must hold land used for agricultural purposes. Therefore in investing the Mamlatdar with the exclusive jurisdiction to determine the question whether a person is a tenant the legislature must be deemed to have empowered it to decide all the ingredients of that definition including the fact whether a person held the land for agricultural purposes or otherwise as a fact in issue. That is why even though there is no express bar in Sections 70 and 85 against the Civil Court deciding the question whether the land is used for agricultural purposes or otherwise the jurisdiction of the Civil Court to decide the question has been held to be impliedly barred. This would happen even where on the decision of this question viz. whether the land is used for agricultural purposes or not the result would be that the entire Act may be inapplicable. The question whether the Act is applicable or not in such cases depends on the decision of a question of fact viz Whether the land is used for agricultural purposes or not and the legislature having invested the Mamlatdar with the exclusive jurisdiction to decide this question as an integral part of the question whether a person is a tenant or not the jurisdiction of the Civil Court is held to be impliedly barred even to decide the incidental question of the applicability of the Act which turns on the decision of this primary question of fact. But where this primary question which is one of the essential ingredients of the definition of the word tenant and which immediately brings in issue the question whether the person is a tenant or not does not arise it cannot be said that the Mamlatdar alone would have the exclusive jurisdiction to decide the question and the jurisdiction of the Civil Court would be barred. Such a question would substantially arise in other cases of exemption u/s 88(1) of the Act as it stood before its amendment by the Gujarat Act XVI of 1960. Section 88(1) provided: "Nothing in the foregoing provisions of this Act shall apply:

(a) to lands held on lease from the Government a local authority or a cooperative society;

(b) to lands held on lease for the benefit of an industrial or commercial undertaking;

(c) to any area within the limits of Greater Bombay and within the limits of the Municipal boroughs of Poona City and Suburban Ahmedabad Sholapur Surat and Hubli and within a distance of two miles of the limits of such boroughs; or

(d) to any area which the State Government may from time to time by notification in the official Gazette specify as being reserved for urban non agricultural or industrial development.

Therefore if the question arose for determination whether the land was held on lease from the Government or a local authority or a co-operative society u/s 88(1)(a) or whether it was situated in the exempted areas mentioned u/s 88(1)(c) or (d) such a question would not immediately bring in issue the question whether the person was a tenant or not so as to exclude the jurisdiction of the Civil Court. In such cases there is nothing in the Act which would expressly or by necessary implication bar the jurisdiction of the Civil Court. It is only after the Civil Court holds in the first instance that the suit lands are not exempted that the further question would arise whether the person was a tenant or not which must be referred to the Tenancy Court u/s 85A. The exemption clause u/s 88(1)(b) would however present some difficulty. It provides that nothing in the foregoing provisions of the Act shall apply to a person who holds lands on lease for the benefit of an industrial or commercial undertaking. It is true that Tendulkar J. in *Harshadrai Raghunafhji v. Balubhai* 59 Bom. L.R. 1036 1042 observed that this sub-clause of Section 88 appeared to him to be a subclause which was almost redundant. If the land was used for an agricultural purpose it could not possibly be land held on lease for the benefit of an industrial or commercial undertaking. Importing into the definition of the word tenant u/s 2(18) the definition of land in Section 2(8) it was observed that a person who held land for the benefit of an industrial or commercial undertaking could not possibly be a person who held land which was used for agricultural purposes. It was further observed 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 a commercial undertaking and indeed in that sense it would not really be necessary to determine independently whether the land was or was not held for the benefit of an industrial or commercial undertaking. This appears to be ordinarily so when the land is used for non-agricultural purposes. But the section in terms exempts agricultural land held for the benefit of an industrial or commercial undertaking. Such cases can be easily envisaged If a sugar mill or a commercial dairy holds for its benefit agricultural farms the exemption would be clearly attracted. I should therefore be slow to give a construction which would lead to redundancy of words used by the legislature. The learned Judge has merely expressed an opinion and has not decided this point and it is both open and necessary for me to construe this section as I am dealing with the case of a dairy which is alleged to have taken on lease agricultural land for its purposes. In

Ganpat joti v. Shrimant Jayasingrao 58 Bom. ILR 20 88(1)(b) was held to be applicable even in cases where industrial or commercial undertaking was not in actual possession of the land and it had merely a right to recover rent and the company was therefore only in constructive possession. In the case of such a dairy the primary question to be decided is not whether the land is used for agricultural purposes or not so as to bring immediately in issue the question whether the person is a tenant or not. But the real question is whether the agricultural land is held on lease for the benefit of industrial or commercial undertaking and the whole applicability of the previous provision of the Act including Sections 70, 85 and 85A would depend on this collateral question which is totally distinct from and does not touch the question whether a person is a tenant or not. Such a question having not been left to be determined exclusively by the Mamlatdar or the other authorities under the Act I fail to understand how the Civil Courts jurisdiction would be excluded in determining this question. In fact the decision whether a person was a tenant or not under the Act would only decide that the land was used for agricultural purposes. The question would still remain whether such land used for agricultural purposes was held for the benefit of the commercial or industrial undertaking and on which would depend the very application of all the foregoing provisions of the Act and an adverse decision on which would make the Mamlatdar's decision on the question whether the person is a tenant under the Act completely without jurisdiction. The question should therefore be first answered by the Civil Court whether the said land was held for the benefit of an industrial or commercial undertaking and if it comes to the conclusion that the said land was not so held the foregoing provisions including Sections 70, 85 and 85A would apply to the suit land or the tenancy in question and then the matter should be referred to the Mamlatdar u/s 85A to determine the question whether the person was a tenant or not. Then and not till then the jurisdiction of the Civil Court would be barred. It would be duty bound to decide this question before making a reference u/s 85A. Mr. Chhatrapati relied in this connection on a decision of the Supreme Court in Bhatia Co-operative Housing Society v. D.C. Patel 55 Bom. ILR 199. The question that arose in that case was whether in view of Section 2t of the Bombay Act LVII of 1947 the Civil Court had no jurisdiction to entertain the suit for ejectment if the demised premises belonged to a local authority and which u/s 4(1) of the Bombay Rents Hotel and Lodging House Rates Control Act 1947 were outside the operation of the Act. Section 20 of the Bombay Act provided that the Small Causes Court would have jurisdiction to entertain and try any suit between a landlord and a tenant relating to recovery of rent or possession of any premises. At page 206 the Supreme Court observed that:

The crucial point therefore in order to determine the question of the jurisdiction of the City Civil Court to entertain the suit is to ascertain whether in view of Section 4 of the Act the Act applies to the premises at all. If it does the City Civil Court has no jurisdiction but if it does not then it has such jurisdiction. The question at once arises as to who is to decide. Thus point in controversy. It is

well settled that a Civil Court has inherent power to decide the question of its own jurisdiction although as a result of its enquiry it may turn out that it has no jurisdiction over the suit. Accordingly we think in agreement with the High Court that this preliminary objection is not well founded in principle or on authority and should be rejected.

Proceeding on this settled principle prima facie the question whether the suit lands or tenancy in question were exempted u/s 88(1) or not would be within the jurisdiction of the Civil Court unless that very question was specifically excluded from its jurisdiction expressly or by necessary implication. Section 7Q Clause (b) of the Act would not amount to the exclusion of such a question from the jurisdiction of the Civil Court by necessary implication.

6. I would now consider the various authorities which have been relied upon in this connection to show that this is the only principle which emerges from all the authorities which are binding on me. In *Harshadrai Raghunathji Desai v. Balubhai* 59 Bom. L.R. 1036 even though the case had arisen u/s 88(1)(b) the clause was not finally construed as I have shown earlier and it was only held at page 1040 as under:

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 opponent No. 1 is a tenant it is necessary to decide the question whether the lands in the possession of opponent No. 1 are used for an agricultural purpose or for a purpose as mentioned in Section 88(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.

Further proceeding it was observed:

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 opponent No. 1 were used for agricultural purposes or non-agricultural purposes.

Mr. Vakil however relied on passage at page 1038 where Their Lordships have observed:

Now speaking strictly 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 Section 87 can have no application. But that as I said is begging the question. Here the applicant says that the land is held by opponent No. 1 on lease for the benefit of an industrial or commercial undertaking. The contention of opponent No. 1 is that the land is held by him as an agricultural piece of land and if the question 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 a question whether opponent No. 1 is a tenant the Mamlatdar is required to decide whether the land held by opponent No. 1 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.

This passage could not be read in isolation from the entire context. The entire reasoning in holding that the question whether the land was used for agricultural purpose or non-agricultural purpose was a jurisdictional fact has been stated on the said page 1040 in view of the definition of the word tenant and the definition of the word land in the Act. The same question having incidentally arisen before the Mamlatdar it was held that he must have power to decide all such jurisdictional facts. I therefore cannot agree with Mr. Vakil that this judgment lays down any other principle than what I have already referred to. In Civil Revision Application No. 120 of 1957 Bhikhanrao Fakirrao Deshmukh v. Supadu Sinu Chaudhari decided on 20th December 1957 by the Division Bench of the Bombay High Court consisting of Chainani J. (as he then was) and Patel J. the question which came up for consideration was whether in view of the various amendments exemption u/s 88(1)(c) was directed to lands situated within the Chalisgam Municipal Borough. In that case their Lordships considered the decision in Harshadrai v. Balubhai and observed on that case the defendant had been directed to get decided from the Mamlatdar the question whether he was a protected tenant. Thereafter he made an application to the Mamlatdar. It was contended that the Mamlatdar had no jurisdiction to decide whether the Act applied to the lands in dispute. This Court held that he had because the question whether the Act applied to the land in dispute had to be decided by the Mamlatdar for the purpose of deciding whether the defendant was a tenant. Further proceeding it was observed that in Sakharam Narayan v. Manekchand Motichand 557 Bom. L.R. 222 the question about the applicability of the Act to the similar land in question was considered and decided and it was held that the split by the landlord was competent. In that case the question whether Section 85 and the other section of the Act did or did not apply was decided by the Court even though the defendant had claimed to be a protected tenant. It

was further observed:

...In the present case also the question whether Section 85 of the Act applies or not depends upon the decision of the question whether the Amending Act of 1955 does or does not apply to the present proceedings. In our opinion the Civil Court is competent to decide this question. Its jurisdiction cannot be ousted merely because it will have no power to decide the question about the defendant being a tenant or not in case the Act of 1995 was held to be applicable to the present proceedings.

Thus in this decision in spite of the decision in *Harshadrai v. Balubhai*, it was held that the Civil Court was competent to decide such a question. In Civil Application No. 1588 of 1956 decided on 20th September 1956 by the Division Bench consisting Bavdekar and Gokhale JJ. the question came up for consideration in the context of Section 88(1)(a) for lands held on lease from the Government. The application was made by the government to the Mamlatdar for a declaration that there was no relationship of landlord and tenant and the person concerned was not a protected tenant. The said application was held to be incompetent on the ground that inasmuch as Sections I to 87 do not apply to tenancies of lands which are held on lease from the Government an application under Sections 70 and 71 could not be made to the Mamlatdar for a declaration that any person is or is not a tenant or a protected tenant in respect of such lands. The contention that subsequently in the Civil Court an argument would be again raised that the question whether the person was a tenant or a protected tenant could be decided only by the Mamlatdar was repelled on the ground that the opponent No. 1 would be entitled to point out that the tenancy which the petitioner claimed was from the Government with the result that u/s 88 no provision of Sections 70 and 71 could be resorted to in regard to that tenancy. A Division Bench of this Court consisting of Shelat J. (as he then was) and Bhagwati J. in *Bhikhabhai Jethabhai and Ors. v. J.V. Vyas and Anr.* ILR 1963 Guj. 1072 (4 G.L.R. 873) also construed the effect of the said decision in C.R.A. No. 120 of 1957 after relying on the decision of the Supreme Court in *Bhatia Co-operative Housing Society v. D.C. Patel* 55 Bombay L.R. 199 as under:

If therefore in a Civil Court a question arises whether Section 85 applies or not so that if Section 85 applies the Mamlatdar alone would have jurisdiction to decide the further question arising in the Civil Court viz. whether a person is a tenant or not and if Section 85 does not apply the jurisdiction of the Civil Court to decide that question would not be barred the Civil Court would have jurisdiction to decide whether Section 85 applies or not. That is in our opinion the only effect of this decision.

Mr. Vakil however argued that these observations were obiter and were not necessary for the ultimate decision in that case as it was not disputed in that case that Section 70(b) and Section 85 applied to that case. That is true but I have mentioned this authority to show the principle which has been applied in all these decisions. It may be noted that even the Supreme Court in appeal against

the decision in Sakharams case reported in Sakharam @ Bapusaheb Narayan Sanas and Another Vs. Manikchand Motichand Shah and Another, did not hold such a suit to be incompetent. In the other appeal in Mohanlal Chunilal Kothari Vs. Tribhovan Haribhai Tamboli, also the Supreme Court went into the question whether the land in question was in an exempted area u/s 80(1)(d) holding that the Civil Court would have no jurisdiction to entertain a suit for possession only if the tenant could take advantage of the provisions of the Act. Thus in both these cases the suit in a Civil Court was not held one incompetent and the question of exemption was determined by the Civil Court Finally I come to a decision of the Division Bench of this Court consisting of Miabhoy and Mody JJ. in First Appeal No. 1009 of 1960 decided on 5th February 1963. In that case the question had to be considered whether the person was a tenant or a deemed purchaser on a construction of the various provisions of the Act. In that case a contention was raised by the learned Advocate General that there was nothing either expressly or impliedly in the Tenancy Act which conferred jurisdiction over the revenue authorities to decide the question as to whether the provisions of the Tenancy Act did or did not apply to the suit. Repelling that contention it was observed:

Now if the question which fell to be decided was the latter question only then we may at once say that the learned Advocate General is justified in his contention. But in the present case the latter question is not the only question which arises for decision in the case. That question arises only incidentally for the purpose of determining the main question whether the defendants were or were not tenants. There is authority for the proposition that when such is the case then that authority which has jurisdiction to decide the main issue about the tenancy will have jurisdiction to determine the question of the applicability of the Act and that authority is binding on this Court. The authority referred to is the case of Harshadrai Raghunathji Desai a Balubhai Maganlal Batliwala reported in 59 Bom. L.R 1036.

It was further observed:

The judgments delivered in the case show that it was so negatived on the ground that as the primary issue was the issue of tenancy and as the revenue authority had jurisdiction to deal with that issue and to deal with all questions of fact and law which were necessary to determine the issue of tenancy and as the question as to whether sea. 88 did or did not apply to the facts of the case was an issue of law which was necessary to decide the issue of tenancy that matter was within the competence of the revenue authority.

Proceeding further it was observed:

As already pointed out by us the question about the applicability of the Tenancy Act does not require an independent examination and decision apart from the issue of tenancy It arises only because the issue of tenancy has to be determined Thus the issue of tenancy is the vital issue and the issue of the applicability of the Act is a subsidiary issue. If the issue of tenancy does not arise the other

issue will not arise at all and needs no decision.

That case followed the earlier decision in 59 Bom. L.R. 1036 and it had proceeded on the footing that the issue of tenancy was necessary to be decided and that is why the question whether the Act applied or not had become an incidental question. The earlier decision as I have already pointed out had also proceeded on the footing that the issue of tenancy was materially in issue when the question arise whether the land was used for agricultural purposes or for non-agriculture purposes. In the said case under consideration also the issue of tenancy was immediately brought in question as the substantial question was whether the person concerned was a tenant or a deemed purchaser. Mr. Vakil also argued that in Civil Revision Application No. 855 of 1960 decided on 6th September 1961 Bhagwati, J. has followed the decision in 59 Bom. L.R. 1036. But there also the question was whether the land was used for an agricultural purpose or for a non-agriculture purpose and therefore it was one of the ingredients of the definition of the word tenant that was in issue. That is why the matter substantially in issue was whether a person was a tenant or not.

7. It is therefore, clear from all these authorities that where the issue of exemption from the Act arises before the Civil Court independently from the question of tenancy as in this case where although the land is used for agricultural purpose it is said to be held on lease for the benefit of a commercial or industrial undertaking it has to be independently examined and considered apart from the question of tenancy for u/s 88(1)(b) no provision of Sections 70 and 71 could be resorted to in such a tenancy so as to bar the jurisdiction of the Civil Court. The crucial question being one of the application of the Act to the suit land or tenancy in question the Civil Court has as observed by the Supreme Court in Bhatia Co-operative Housing Societys case earlier referred to inherent jurisdiction to decide the question of its own jurisdiction although as a result of its inquiry it may turn out that it has no jurisdiction over the suit if the suit land or tenancy in question is held to be covered by the Act. The learned trial Judge has therefore failed to exercise his jurisdiction in referring u/s 85A(1) the issue whether the defendant No. 1 was a tenant under the Act at this stage without first deciding the question in issue whether the suit land was exempted from Sections 1 to 87 of the Act on the ground that it was held on lease for the benefit of an industrial or a commercial undertaking. The decision of the lower Court is therefore set aside and the matter shall go back to the lower Court for disposal in accordance with law in the light of the aforesaid observations. In the result the Civil Revision Application is accordingly allowed and Rule made absolute with costs.