
(1954) 03 BOM CK 0012

In the Bombay High Court

Case No : Special Civil Application No. 2318 of 1953

Jorawarkhanji Latifkhanji

APPELLANT

Vs

State of Bombay

RESPONDENT

Date of Decision : 09-03-1954

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 12, 6, 6(1), 6(2), 7
Bombay Tenancy and Agricultural Lands Rules, 1949 — Rule 3, 5(5)

Citation : AIR 1954 Bom 515 : (1954) 56 BOMLR 662 : (1954) ILR (Bom) 1235

Hon'ble Judges : Chagla, C.J.;Tendolkar, J

Bench : Division Bench

Advocate : N.A. Palkhivala and Dixit Maneklal and Co, for the Appellant; M.P. Amin, General, G.N. Joshi and Little and Co., for the Respondent

Judgement

Chagla, C.J.—This is a petition challenging a notification issued by Government on October 29, 1953, u/s 8(2) of the Bombay Tenancy and Agricultural Lands Act, 1948. The petitioner is a tuluqdar of several villages in the Dliolka taluka in the Ahme-dabad District, including the village of Varna. Oil 1-11-1952, Government issued a notification u/s 6 (2) of the Act and it fixed the maximum rent-at one-sixth of the crop value instead of one-third as provided by Section 6 (1). On 1-11-1952, Government issued a notification u/s 8 (1) of the Act declaring that the rents payable wholly or partly as a crop share in the villages specified in column 3 of the Schedule appended to that notification, which included the village of Varna, shall, with effect from 1-8-1953, be commuted into cash rent.

On the same date Government issued a circular drawing the attention of the Collector of Ahmedabad to the notification which it had issued with regard to the commutation of crop share, and in this circular it points out that the Mamlatdars and the Mahalkari concerned should be asked to apprise the landlords of the necessity of making applications in Form I appended to the Bombay Tenancy Act to the Mamlatdar or the Mahalkari or the Aval Karkun concerned for commutation

of crop share rent into cash within three months from the date of the publication of the notification in the regional language. The Mamlatdar, the Mahalkari or the Aval Karkun were directed to determine as quickly as possible the rates of commutation in the manner prescribed in Sub-rules (4) and (5) of the Bombay, Tenancy and Agricultural Lands Rules, 1949.

The petitioner made the necessary application and the proceedings were pending before the Mamlatdar. In the meanwhile on 29-10-1953, the Government issued the notification which is challenged by this petition, and by that notification which was purported to have been issued u/s 8(2), Government fixed the rates of commutation as specified in Schedule II appended to that notification with effect from 1-8-1953, and the rate in Schedule II is the following:

"In respect of Jirayat lands, three times the assessment levied or leviable according as the lands are fully assessed or totally or partially exempt from payment of assessment."

Therefore, briefly, the position as far as the petitioner is concerned is that u/s 6(1) he became entitled only to one-third of the crop share and this crop share has been valued by the petitioner at Rs. 70,371-3-8. When the notification was issued by Government u/s 6 (2) and the basis was reduced to one-sixth, the amount of rent which he became entitled to receive from the tenant in terms of cash was reduced to Rs. 35,000, and it is now pointed out that if the petitioner is now to receive cash rent on the basis fixed by Government, viz. three times the assessment, the amount would come to Rs. 5,265-8-3.

2. The question that we have to consider and determine is not from the point of view of the loss sustained by the landlord, but from the point of view of the power of Government to issue the particular notification u/s 8 (2). Our attention has been drawn to a judgment recently delivered in the case of -- Chimanlal Dipchand Vs. The State of Bombay, & the Advocate General has particularly emphasised the observations in the judgment that the Act we are considering is an ameliorative measure and that we must not overlook that this legislation was put upon the statute book in order to improve the economic and social conditions of peasants.

We must constantly bear that objective in mind, but even bearing that objective in mind we have got to consider whether the Legislature has empowered the Government to issue the particular notification that it has. In that case we were called upon to consider the validity of a notification issued u/s 6 (2), and we held that Government had the power to vary the maximum fixed u/s 6 (1) from time to time and to fix any maximum it thought proper, and also to fix the maximum not only on the basis of crop share but on any other suitable basis.

3. Now, the scheme of Section 8, which we have to consider in this case, is, in our opinion, fairly clear. Section 8 (1) gives the power to the Government to declare that the rents which were payable by tenants in crop or in kind should be commuted into cash. Therefore, once the notification is issued u/s 8 (1), there

would be no longer an obligation upon the tenant to pay the rent by means of giving to the landlord a share in the crop which he has grown, but the obligation would be to pay the rent in cash. Section 8 (1) does not lay down what is to be the rate of commutation or how the cash rent is to be determined on the basis of the crop share to which the landlord is entitled. It was for that purpose that the Legislature enacted Section 8 (2).

Under Section 8 (2) the power of the Government is to fix the rate of commutation. Commutation in its plain grammatical meaning as used in this context is a payment in money for payment in kind, and what the Government is empowered to do is to fix, as it were, the rate of exchange between the two commodities mentioned in this sub-section. On the one hand is the crop which the tenant grows, on the other hand is the cash or the money, and the Government is given wide power to determine how the tenant should pay to the landlord rent in money instead of in kind which he used to pay before the issue of the notification u/s 8 (1). In our opinion, the power to fix the rate of commutation must necessarily imply that that power must be exercised bearing in mind that there should be a reasonable relationship to the value of the crop in fixing the money worth of that crop.

It is impossible to contend that when you are fixing the value of the crop in terms of money you should pay no attention whatsoever to the quantity of the crop raised, to the quality of the crop, or to its value. The whole object of Section 8 (2) is to provide a machinery whereby the rate of exchange should be determined, and you cannot determine a rate of exchange if you ignore or overlook the value of the commodity which you are exchanging into money. Now, what the Government has done in this case is to fix the rate of commutation as three times the assessment. The lands in question were surveyed for the purpose of assessment more than 25 years ago and the assessment was fixed on the basis of the lands as they were at that time.

Undoubtedly, the fertility of the land, the crops grown, and other factors were taken into consideration in fixing the assessment, but that, as we said, was more than 25 years ago and a great deal of history has been written in our country in the last 25 years. Today when Government fixes the rate of commutation on the basis of assessment, it is impossible to contend that the assessment would have any bearing whatsoever upon the value of the crop grown on the land which bears a particular assessment, and Government is very frank about it because in its affidavit it has accepted the position as they have denied the petitioner's submission that it was incumbent upon Government to fix a rate which bore a reasonable proportion or relation to the value of the crop share commuted.

Therefore, the notification that is being issued fixing the rate is without taking into consideration the yield of the crop, without taking into consideration the agreement between the landlord and the tenant as to the payment of the crop share, without taking into consideration the market value of the crop at a particular time, and also without taking into consideration the kind or the quality

of the crop that may be grown on the land. A Hat rate on the basis of assessment is fixed, although on a particular land rice might be grown, on another land wheat might be grown, on a third land sugarcane or cotton might be grown, and there may be a particular land which may be fallow or "warkas".

4. In substance, what Government has done is, by availing itself of the machinery provided u/s 8 (2), substantially to lower the maximum which it itself has fixed u/s 6 (2) of the Act. In our opinion the Legislature never intended that once the maximum rent was fixed u/s 6 (2) it was open to Government u/s 8 (2) further to reduce or lower that maximum rate. The maximum rent having already been fixed, Section 8 merely provided the machinery whereby the landlord should be in a position to receive that maximum rent fixed u/s 6 (2). That position is obvious if one were to look at the provisions of Section 7.

As we had occasion to point out in the earlier judgment to which reference has been made, Section 7 is the only section which imposes a liability upon the tenant to pay rent and which confers a right upon the landlord to recover rent from the tenant. It is really the key section in this Act as far as the question of rent is concerned, and that section imposes a liability upon the tenant to pay the rent agreed upon between him and the landlord. This agreement is subject to the maximum rate fixed u/s 6 (2); in other words, there is no liability upon the tenant to pay even the agreed rent if that agreed rent is in excess of the maximum rent fixed u/s 6; but if the agreed rent does not exceed the maximum rent, he is liable to pay that rent subject to one exception that even though the agreed rent may conform to the maximum rent the tenant has a right to contend that that rent is not a reasonable rent and get the reasonable rent determined by the Mamlatdar u/s 12.

Now, what the Government has done by issuing this notification is to deprive the landlord of his right to receive the rent fixed under the agreement with the tenant subject to the maximum without the tenant complaining that that rent is not a reasonable rent and without the reasonable rent being properly determined as laid down by the Act. u/s 6 (2), as already pointed out, the landlord is entitled to receive a maximum of one-sixth of the crop share. The Government purporting to fix the rate of commutation u/s 8 (2) reduced the maximum by fixing an arbitrary rent which has no relationship whatsoever to the value of the crop. Therefore, the landlord is deprived of his right to receive the rent u/s 7 although the Legislature has not made Section 7 subject to Section 8 (2), as it has made that section subject only to the maximum rate fixed u/s 6.

Therefore, reading Sections 6, 7 and 8 together, it is clear that the landlord is entitled to receive the maximum rent fixed u/s 6 (2) subject to its being reduced on the ground that it is not reasonable, and he is entitled to receive that rent either in the share of the crop or in its money equivalent at the rate fixed by the State. But what he is entitled to receive is the money equivalent of the crop and not something else. The only power of the Government u/s 8 (2) is to fix any rate which it thinks proper, but that power does not extend to fix arbitrarily what

the landlord should receive in place of a share in the crop grown by his tenant. What Government in effect says to the landlord by this notification is, "You are entitled to receive one-sixth of the crop share. Instead of your receiving that one-sixth I will decide that you will only receive three times the assessment." The Government does not even purport to tell the landlord that according to Government the value of the one-sixth share to which he is entitled is a particular figure.

5. Section 8 (2) may be further looked at to see what the powers of the Mamlatdar are and how the powers of the Mamlatdar are different from the powers of the State Government. The power of the State Government is merely to fix the rate of commutation, and if Government does not fix the rate of commutation, then the power is conferred upon the Mamlatdar to fix the amount of commutation and the amount which he has to determine shall not exceed the rent at the maximum rate fixed u/s 6 and shall not be altered for a period of five years from the date on which it was determined. Now, the fixing of the rate by Government is not made subject to the maximum for obvious reasons, because as Government was merely laying down the exchange rate, as it were, it was unnecessary to provide that that should in any case exceed the maximum.

But when power is given to the Mamlatdar not to fix the rate but to fix the amount, it was necessary for the Legislature to provide that in fixing the amount the Mamlatdar should bear in mind the maximum rent determined u/s 6. Rules have been framed under the Act for the guidance of the Mamlatdar in fixing the amount of commutation and these rules are very significant. Rule 5 (5) provides:

"After holding the necessary inquiries under Sub-rule (4), the Mamlatdar shall determine-

(a) the actual yield of the crop subject to the provisions of rule 3;

(b) the share of the crop to which the landlord is entitled subject to the provisions of Section 6 and fix the commuted cash rent in accordance with the provisions of Rule 3."

Turning to Rule 3, it provides:

"(1) For the purpose of fixing the maximum rent payable in respect of any land under sub-section

(1) of Section 6 the total yield of the land or its value shall be determined by the Mamlatdar.

(2) Such yield shall be determined on the basis of the rates estimated on either of the following whichever may be lower:

(a) the quantity of average yield per acre of that crop as arrived at by actual cropputting experiments undertaken by the revenue or agricultural department or by both in that year in or near that local area;

(b) the actual yield per acre agreed to by the landlord and the tenant.

(3) The value shall be calculated on the basis of the average market price for the month of January to March as recorded in Taluka Form XVIII-A given in the Manual of Revenue Accounts."

Therefore, the Mamlatdar in determining the amount of commutation must take into consideration all the relevant factors which would help him to decide what a proper and fair rate of exchange as between a particular crop and the cash value of it should be. Is there any ground for suggesting that whereas the Mamlatdar is bound to take these relevant factors into consideration in fixing the amount of commutation, the Government can ignore all these factors in determining the rate of commutation? Whether it is the rate of commutation or the amount of commutation, the object of determining either is the same and the object is that the landlord should receive a proper money equivalent for the share in the crop which he is no longer entitled to collect by reason of the notification issued u/s 8 (1).

The Government does not dispute that the Mamlatdar, if the inquiry had gone on before him, would have taken all these factors into consideration, but its contention is that however much the Mamlatdar may be bound to weigh and consider these factors as far as the Government is concerned, it has unfettered power to determine any rate of commutation which it thinks proper.

6. Now, there is one other important aspect of the matter which arises from the manner in which Section 6(2) is drafted and Section 8(2) is drafted. In Section 6(2), Government has been given the power to fix the maximum rent on the basis of crop share or any other suitable basis, and in the earlier case to which reference has been made, with regard to certain lands Government fixed the maximum rent on the basis of assessment and that basis was challenged, and we pointed out that the Legislature had conferred power upon Government not only to fix the maximum rent on the basis of the crop, but on any other basis it thought proper. When we look at the language of Section 8 (2), the only power conferred upon Government is to fix the rate of commutation. It does not confer power upon Government to fix the value of the crop on any suitable basis it thinks fit.

The misapprehension of Government's position lies in this that Government thinks that the rate of commutation referred to in Section 8 (2) is any rate irrespective of the value of the crop. The power conferred upon Government is not to fix any rate, but to fix the rate of commutation, and in no view of the case could it be said that when Government fixed the rate on the basis of the assessment of the land concerned it was fixing a rate of commutation. What it was doing was to fix a rate and compelling the landlord to receive his one-sixth share on the basis of that rate, which rate as already pointed out had no relationship whatsoever to the value of the crop.

7. In our opinion, therefore, the notification is bad and invalid as it does not fall

within the ambit of Section 8 (2) and Section 8 (2) does not empower Government to issue the notification challenged by the petitioner.

8. There is one other aspect of the matter which also might be looked at, and that aspect is of some importance although it is not necessary to decide it. Mr. Chhatrapati, who appears for other petitioners who have also challenged a similar notification contends that the state Government, when it issued its direction to the Collector, definitely made up its mind that it did not want to fix the rate of commutation and that therefore the amount of commutation should be determined by the Mamlatdar.

The power of the Mamlatdar to fix the amount of commutation only arises in the event of the State Government not fixing the rate of commutation, and what is urged is that the power of the Government to fix the rate of commutation came to an end as soon as Government announced its decision not to fix the rate of commutation, appointed the Mamlatdar to take the necessary action "under the rules, proceedings were initiated, applications were filed by the landlords, and the necessary steps were taken in order to enable the Mamlatdar to determine the amount. It is while these proceedings were pending before the Mamlatdar that the state Government stepped in and issued a notification fixing the rate.

Now, proceedings before the Mamlatdar are very important proceedings from the point of view of the landlord and also from the point of view of the tenant, because these are judicial or "quasi-judicial" proceedings, and u/s 74 a right of appeal is given from the decision of the Mamlatdar to the Collector and there is a right of revision to the Revenue Tribunal u/s 76, and what Mr. Chhatrapati says is that Government cannot by an executive fiat put an end to judicial proceedings which were started at their own initiative.

It is said, and with considerable force, that it was open to Government not to allow these proceedings to be initiated; it could have exercised its power and fixed the rate; but once it allowed these proceedings to be initiated, the Government had no right to interfere with those judicial proceedings and to prevent a decision being arrived at by the Mamlatdar, which decision can be challenged before the appellate Court constituted by the Collector or in revision before the Revenue Tribunal; and therefore what is said is that the only proper method of determining the amount of commutation, once the proceedings are initiated before the Mamlatdar, is the method laid down in the Act itself which is the order of the Mamlatdar u/s 70 subject to the rules framed and the power of the Collector and ultimately the Revenue Tribunal to uphold or change or vary that order.

As we said before, in view of our decision on the main point urged by Mr. Palkhivala, it is unnecessary to decide whether the notification is bad also on the ground that by the notification Government has interfered with judicial or "quasi" judicial proceedings.

9. The result is that we must hold the notification to be invalid, and issue a writ

against the State preventing the State from enforcing the notification. The State to pay the costs of the petition.

Same order on the same grounds in Special Civil Applications 42, 185, 315, and 316 of 1954.

In Special Civil Application No. 382 of 1954 also we make the same order on the same grounds, as Mr. Chhatrapati does not challenge the notification of November 1, 1952.

10. writ issued.