

---

**(1958) 08 BOM CK 0014**

**In the Bombay High Court**

**Case No : Special Civil Application No. 19 of 1958**

Kanbi Chhagan Manji

APPELLANT

Vs

Aher Jiva Mala

RESPONDENT

---

**Date of Decision : 12-08-1958**

**Acts Referred:**

Constitution of India, 1950 — Article 227

**Citation : (1959) 61 BOMLR 50**

**Hon'ble Judges : Shelat, J;Shah, J**

**Bench : Division Bench**

---

## **Judgement**

Shah, J.—One Sindhi Piru Adam was a barkhalidar of a piece of land admeasuring 8 acres and 6 gunthas bearing survey Nos. 104 and 480 of Agatarai. The barkhalidar applied to the Mamlatdar u/s 8 of the Saurashtra Barkhali Abolition Act XXVI of 1951, for allotment of land for personal cultivation, and an order was passed allotting to him the entire area of the land, survey Nos. 104 and 480, and the barkhalidar was put in possession thereof. The barkhalidar then sold the land to Aher Jiva Mala and Aher Mulji Gokal. The petitioner, who was a tenant on the land before he was dispossessed in consequence of the allotment, then applied to pre-empt the land sold to opponents Nos. 1 and 2. He claimed to exercise the right conferred upon him by Section 8(2)(a) of the Barkhali Abolition Act. The Mamlatdar granted the application of the petitioner. In appeal to the Deputy Collector, the order passed by the Mamlatdar was confirmed. Against that order, a revision application was filed before the Revenue Tribunal. The three Members who constituted the Revenue Tribunal differed in their ultimate conclusion. Two of the Members were of the view that in order that the right to pre-empt a sale or lease of land by the Barkhalidar can be exercised u/s 8(2)(a), the tenant must establish that he is in possession of a part of the land which was originally occupied by him as a tenant. If with the tenant no land out of his original holding has remained, the right to pre-empt cannot be exercised. The third Member of the Bench was of the view that the object of the Act was to settle hona fide girasdars as well as hona fide tenants on the land, and if the interpretation of the

word "pre-emption" in the Act was given as suggested by the majority of the Bench, that "would fundamentally defeat the purpose of the Act and would have grave and serious implications." He was, therefore, of the view that the order passed by the Mamlatdar and the Deputy Collector should be confirmed. The Revenue Tribunal, in accordance with the decision of the majority of the Members, set aside the order passed by the Deputy Collector and dismissed the application filed by the petitioner for pre-emption. The petitioner has applied to this Court under Article 227 of the Constitution.

2. Now the Saurashtra Barkhali Abolition Act of 1951 was passed, as the preamble of the Act states, to "provide for certain measures for the abolition of Barkhali tenure" and "for improvement of the land revenue administration and for agrarian reforms." The object of the Act is to abolish barkhali tenure and to confer upon the tenants the rights of occupancy. By Section 10, right is conferred upon every tenant, after commencement of the Act, to apply to the Mamlatdar for acquiring occupancy rights in respect of his holding. But the Legislature, with a view to make equitable distribution of land between barkhalidars and their tenants, has enacted that certain barkhalidars possessing small holdings may be allotted land from their tenants for personal cultivation. That provision is to be found in Section 8, Sub-section (1) whereof provides that a barkhalidar in whose estate the agricultural land is equal to two economic holdings or less and who is not a Chakariat, Dharmada institution, or Jivaidar for life, shall be allotted land for personal cultivation in the following manner: (a) each of his tenants shall first be given half an economic holding, including any khalsa land in possession of such tenant; (b) if there remains any barkhali land, the barkhalidar shall be given land to make up half an economic holding, including gharkhed and khalsa land in his possession, if any; (c) if there still remains any barkhali land, it shall be divided half and half between the barkhalidar and the tenant. Evidently, this sub-section applies only in a case where the holding of a barkhalidar is two economic holdings or less. By Sub-section (2), Clause (a), a right exercisable within ten years (of allotment or the issue of occupancy certificate) to pre-empt a sale or lease is conferred. We must confess that the phraseology which the Legislature has chosen to use is somewhat ungrammatical and inappropriate and appears more to conceal its import than to express it. Sub-section (2), Clause (a), provides that the barkhalidar in respect of land allotted to him for personal cultivation under Sub-section (1), and the tenant in respect of land allowed to remain in his possession under the said sub-section, shall have a mutual right of pre-emption for ten years for lease or sale at a price to be determined by the Mamlatdar under the rules made in that behalf by the Act. We find it difficult to ascertain the precise implication of the expressions "in respect of" and "shall have a mutual right of". It was urged by Mr. Nanavaty, who appears on behalf of the transferees from the barkhalidar, that the Legislature intended to confer upon the barkhalidar, who has possession of land allotted to him for personal cultivation and the tenant who is allowed to remain in possession of the land under Sub-section (1), a right to preempt a sale or lease of land which is part of

or is contiguous to the land allotted to the Barkhalidar or allowed to remain in the possession of the tenant. In other words, it is urged, that if out of a unit of land a part is allotted u/s 8 to the barkhalidar and the balance remains with the tenant, on sale or lease of the holding the transferee from the barkhalidar or the tenant may be pre-empted for the benefit of the remaining land of the tenant or the barkhalidar. However for so construing, Sub-section (1) may have to be entirely re-written, and several clauses added thereto. Again there is nothing in the provision either express or implied which supports the view that the right of pre-emption can be exercised only by a contiguous owner. Evidently, the sub-section confers the right of pre-emption both upon a barkhalidar and a tenant. The section may be divided into its two component parts: (1) the barkhalidar, in respect of the land allotted to him for personal cultivation under Sub-section (1), shall have a right of pre-emption for lease or sale, and (2) the tenant, in respect of the land allowed to remain in his possession under the said sub-section, shall have a right of pre-emption for lease or sale. If the barkhalidar is given a right of pre-emption for the benefit of the land allotted to him for personal cultivation, the first question which springs to mind is "in respect of what land is the right of pre-emption to be exercised"; and the Legislature does not appear to have furnished an answer or even a clue to that question. Similarly, on the interpretation by Mr. Nanavaty, if the tenant allowed to remain in possession of the land under Sub-section (1) is given the right of pre-emption for the benefit of land remaining in his occupation, we are completely left in the dark as to the land on which such right of pre-emption is to be exercised. The expression "in respect of" is obscure in its import; and we are unable to appreciate the implication of the expression "shall have mutual right of pre-emption...for lease or sale" in the context in which it occurs. It appears, however, having regard to the scheme of the Act, that the Legislature intended that there should be equitable distribution of land on the abolition of barkhali tenure and that the barkhalidara" tenants be made occupants of the lands in their possession subject to the right of certain small-scale barkhalidars to claim land for personal cultivation. The Legislature also intended that if within ten years, the barkhalidar who has obtained possession of land from the tenant for personal cultivation or the tenant who has been allowed to remain in possession of the land under Sub-section (1), transfers the same by lease or sale the other party interested in the land shall have a right to pre-empt such lease or sale, and the exercise of the right of pre-emption is not conditioned by the pre-emptor being in occupation of the land adjacent to the land sought to be pre-empted. In our judgment there is nothing in Sub-section (2) which supports the view that the right which a tenant has for pre-empting a sale or lease by a barkhalidar is restricted to those cases in which the tenant is allowed to remain in possession of land adjacent to the land to be pre-empted. We, therefore, hold that a tenant who is deprived of possession of land under Sub-section (1) whether it is the entire area of the land in his occupation or a part of the land, may pre-empt a purchaser of the land from the barkhalidar, if the purchase or the lease is within ten years from the date on which the order allotting the land under Sub-section (1) is passed. On

that view of the case, the order passed by the Revenue Tribunal will be set aside and the order passed by the Deputy Collector restored with costs in this Court.