
(1960) 06 GUJ CK 0012
In the Gujarat High Court

Malik Vaghji Bawaji and Another

APPELLANT

Vs

Patel Makan Hirji and Others

RESPONDENT

Date of Decision : 29-06-1960

Acts Referred:

Barkhali Abolition Act, 1951 — Section 2(i), 2(iv), 4
Saurashtra Barkhali Abolition Act, 1951 — Section 2, 2(i), 4

Citation : (1960) 1 GLR 18

Hon'ble Judges : S.T. Desai, C.J; N.M. Miabhoy, J

Bench : Division Bench

Judgement

S.T. Desai, C.J.—A question of some importance has been raised before us on this petition and the question relates to the connotation and the ambit of the expression tenant in the Saurashtra Barkhali Abolition Act 1959. That Act it may be mentioned was enacted principally to abolish barkhali tenure prevailing in certain parts of Saurashtra. It appears from the provisions of the Act that it brought about certain agrarian reforms and improvement in the land revenue administration. It is necessary to examine the scope of the Act in so far as it is helpful in understanding the principal question which arises for our determination.

2. But of this more hereafter. The petitioners are barkhalidars within the meaning of Section 2(i) of the Barkhali Abolition Act of 1951 and one of their fields Hamirki admeasuring four acres was mortgaged with possession to one Lallu Bechar. Two other fields admeasuring 6 acres and 16 gunthas belonging to the barkhalidars were also mortgaged with possession. It is not necessary to set out the details pertaining to these mortgages. The opponent-tenants filed an application in Form 11 for obtaining occupancy certificate in respect of some of these lands on the ground that they were cultivating the suit lands since long prior to the mortgage of the same. The Mamlatdar held that the opponents were cultivating the suit lands prior to the mortgages. He reached the conclusion that the opponents were covered by the definition of tenants in Section 2(iv) read with Section 4 of the Barkhali Abolition Act. Section 4 it may be observed mentions persons who are to be deemed to tenants. The Mamlatdar also held

that the estate off the barkhalidar was more than two economic holdings and they were not entitled to any gharkhed land. The barkhalidars appealed against the decision of the Mamlatdar which appeal was rejected. The matter was carried in revision to the Revenue Tribunal and the Revenue Tribunal also rejected their application and the barkhalidars have come to this Court on this petition. The Revenue Tribunal has pointed out in its judgment that it was admitted by the applicant Vaghji Bawaji that when the suit lands were mortgaged to Ambaram Karsan the opponents were cultivating the suit lands. The Tribunal has also pointed out that the opponents were on the land and were cultivating the same before the Barkhali Abolition Act came into force.

3. Mody who appears for opponents 1 and 2 has not supported that judgment of the reasons given by the Tribunal. He has rested his arguments before us on a brief contention and the contention is that in any event opponents 1 and 2 were persons who held the lands on lease from the mortgagees of the barkhalidars and the mortgagees must be regarded as persons claiming through the barkhalidars and therefore opponents 1 and 2 were tenants within the meaning of that expression as defined in Section 2 of the Act. That being the position says Mr. Mody it is not even necessary for him to urge before us that the Tribunal was right in taking the view that the opponents 1 and 2 were deemed tenants within the meaning of the Act. Succinctly stated the argument is that a lessee of such lands from a mortgagee of a barkhalidar is within the ambit and scope of the Act.

4. Section 2(iv) defines Tenant to mean an agriculturist who holds land on lease from a barkhalidar or a person claiming through him and a person who is deemed to be a tenant under the provision of this Act.

5. It will convenient to set out here the definition of "Barkhalidar"

2. (i) Barkhalidars means a person who holds a tenure as Barkhalidar Jivadar Chakariyat Kherati or Dhramada and includes.

a) any person who has been granted any such tenure; or

b) any holder of an estate whom the Government may by Notification in the Official Gazette declare to be a Barkhalidar for the purpose of this Act. Provided that where the great grand-father grand father or father of a Barkhalidar is alive only the great grand-father or the father as the case may be who is alive shall be deemed to be the Barkhalidar for the purposes of this Act.

It will also be convenient to set out here the relevant part of Section 4 which mentions person who are deemed to be tenants:

4. (1) Any person who is lawfully cultivating any land belonging to a Barkhalidar shall for the purposes of this Act be deemed to be his tenant:

... .. Explanation :- A person who is otherwise deemed to be a tenant shall not cease to be a tenant only on the ground that he is also in mortgagee in possession.

6. The principal contention urged before us on behalf of the petitioners on the other hand is that a mortgagee in possession of land from a barkhalidar cannot be regarded as a person claiming through the barkhalidar. In support of the contention Mr. Hathi learned Advocate for the petitioners, has support to emphasize the distinction between a mortgagor and mortgagee and he has drawn our attention to Section 59(A) of the Transfer of Property Act. In our judgment nothing in that section can throw any light on the present controversy. Then Mr. Hathi has leaned heavily on a decision of the Bombay High Court in *Kanji Kurji v. Kula Gopal* 59 Bom. L.R. 846. The expression a mortgagee in possession in Section 4 of the Bombay Tenancy Agricultural Lands Act 1948 came up for consideration by the Court in that case. Section 4 of the Bombay Act mentions persons who are to be deemed tenants for purpose of the Act. In that case the point in dispute was whether a tenant from a mortgagee in possession who derives title through the mortgagee can acquire the status of a deemed tenant or a statutory tenant under the Act and it was held that such a tenant cannot acquire the status of a deemed tenant or a statutory tenant under the Act. We are in respectful agreement with the observations there made by Mr. Justice Tendolkar as to the meaning and effect of Section 4 of that Act.

7. Now if the determination of the question before us had to turn on the meaning and effect of Section 4 of the Barkhali Abolition Act we would have certainly fallen in line with the same view as the two sections which enumerate persons who are "deemed to be tenants" are in *pari materia*. But the question before us is not of the meaning and implication of the expression a mortgagee in possession in Section 4(i)(c) of the Barkhali Abolition Act but of the words a person claiming through him that is through the barkhalidar in the definition of the expression tenant in the Barkhali Abolition Act. The definitions of tenant in the two enactments are not in *pari materia*. The decision which is so strongly relied on by Mr. Hathi does not in our opinion advance the case of the petitioner in any manner.

8. Interpretation of one statute by comparison of any provision in it with that in analogous legislation on principle of affinity with the subject or the same class of persons or things is permissible and even of significance when done with due care and caution and strictly within the framework of the doctrine embracing statutes in *pari materia*. Comparison is permissible in case of such provisions because they are framed upon one system and having one object in view. The inherent worth of the doctrine is founded on the realities of the process of harmony and consistency. Where however the requisite degree of sameness is not present mere similarity is no criterion. By way of contrast as inclusion or exclusion may show an intention even contrary to that of the analogous provision. In our opinion the analogy relied on by Mr. Hathi is not real and we must give the definition with which we are concerned its full meaning and scope.

9. Considered the light of these observations we must read the expression "tenant" in the Barkhali Abolition Act to include not only an agriculturist who

holds land on lease directly from the barkhalidar but an agriculturist who holds land from a mortgagee in possession with whom the land has been mortgaged by the barkhalidar unless there is anything repugnant to the subject of the matter art context of it. The barkhalidar puts the mortgage in possession of the land and it becomes open to the mortgagee and is indeed necessary for him at times to give the land on lease to tenants. It is difficult for us to see why we should cut down the ordinary meaning and effect of the expression "a person claiming through him." And be it noted we are dealing with in enactment the very purpose of which as may readily be gathered from its provisions was to abolish the barkhali tenure. Section 5 of the in terms express and explicit lays down that on the commencement of the Act all rights titled and interest of barkhalidar in agricultural land comprised in barkhali estate shall cease and be vested in the State free from all encumbrances subject to the provisions of the Act. It is in the background of the provisions of this acquisitorial legislation that we have to gather the connotation of the expression tenant defined in Section 2(iv) The Legislature although it enacted in Section 5 that all lands of barkhalidars shall be vested in the State did not however deem it necessary to render the barkhalidar wholly land-less. It provides in Section 6 for application by a barkhalidar for allotment of land for personal cultivation and in Section 7 for enquiry by the Mamlatdar in the matter of allotment. Section 8 contains provisions of some importance and relates to allotment of land for personal cultivation It will be convenient to set out some material part of that section:

8. Allotment of land for personal cultivation (1) 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. Provided that the maximum land so allotted shall not exceed one economic holding.

Section 15 rules inter alia that a barkhalidar shall become an occupant in respect of his gharkhed and in respect to land allotted to him u/s 7. It is Unnecessary to burden this judgment with some other provisions of the Act and we need only mention that the definition has to be understood in the context of the Act and applied with that context in mind.

9. Comparison of provisions of one enactment with provisions of another enactment even when they are similar is often unsafe guide to construction And more so when the relevant and material provisions in the two enactment are not

in pari materia. Therefore any analogy drawn from the decision under the Bombay Tenancy and Agricultural Lands Act, 1948 is apt to be misleading. We must confine the examination of the question before us to the language used by the Legislature and the definition of tenant which indubitably is not a restricted one but in words of width and amplitude.

10. One of the arguments urged by Mr. Hathis in support of his contention is that if the words a person claiming through him in the definition of tenant could apply to a mortgagee of a barkhalidar the provisions of Section 4 of the Barkhali Abolition Act would be rendered redundant. A bare examination of the provisions of Section 4 goes to show that such cannot be the result. It seems unnecessary, therefore, to discuss the provisions of Section 4 for the purpose of pointing this out. It is; next urged that the words "a person claiming through him" can only relate I to the sons and other heirs of a barkhalidar or to a purchaser from a barkhalidar. We see no reason for accepting this limitative connotation of the expression am particularly since we must have regard to the ambit and object to the whole enactment.

11. For all these reasons we are satisfied that opponents 1 and 2 were tenants within the meaning of the provisions of the Act relevant for the purpose of the dispute between the parties and entitled to occupancy certificates asked for by them. The petition fails and will be dismissed. The rule will be discharged with costs.