

(1952) 08 BOM CK 0003
In the Bombay High Court
Case No : Special Application No. 319 of 1952

Mallikarjun Bhavanappa

APPELLANT

Vs

Satyanarayan Laxminarayan and Others

RESPONDENT

Date of Decision : 26-08-1952

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 14, 14(1)(a)(i), 24, 25, 29(2)
Constitution of India, 1950 — Article 226

Citation : AIR 1953 Bom 207 : (1953) 55 BOMLR 80 : (1953) ILR (Bom) 618

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

Bench : Division Bench

Advocate : G.N. Vaidya, for the Appellant; G.P. Murdeshwar and H.M. Choksi, Govt. Pleader, for the Respondent

Judgement

[1] Opponent 1 became a tenant of the petitioner under a mulgeni lease dated 27-2-1915. Under this lease, it was provided that if the tenant was in arrears of rent, the landlord would be entitled to terminate the lease and enter into possession. Admittedly on 13-2-1949, opponent 1 was in arrears of rent for three years and he was also in arrears of rent on 5-5-1949, for three years. 5-5-1949, being the material date to consider under the provisions of Section. 14 (1) (a) (i), Tenancy Act. On 22-8-1949, the landlord, the petitioner, made an application to the Mamlatdar for possession, and on 27-9-1949, the Mamlatdar ordered possession to the landlord. The tenant went to the Collector and the Collector reversed the order of the Mamlatdar on 2-8-1950. There was a revision application to the Tribunal and the Tribunal confirmed the Collector's order. In doing so it followed its earlier decision given on 23-4-1951, where the applicant was one Venkat Narayan Mahajan.

[2] Now, the question that arises on this petition is whether the decision of the Tribunal is merely erroneous in law or whether there is an error apparent on the face of the record. Mr. Murdeshwae with his usual vigour has strongly urged upon us that if we decide against the first opponent and against the Tribunal we will be

going contrary to the decision of the Supreme Court and we run the risk of being corrected by the Supreme Court. Our attention has been drawn to the decision of the Supreme Court in *Parry and Co. Ltd. Vs. Commercial Employees' Association, Madras*, and the observations of Mukherjea J. at p. 524 are, with respect, observations which this Court has always accepted as the correct law on the question of certiorari, and the observations are to the effect that when a Court with jurisdiction erroneously decides a matter, that Court or Tribunal cannot be corrected, by a writ of certiorari. But Mukherjea J. again, with respect, rightly points out the distinction between an erroneous decision and a decision of a Tribunal where an error is apparent on the face of the record. Therefore, as we said before, the question here is whether the decision of the Tribunal is erroneous or it is a decision which is vitiated by the fact that there is an error apparent on the face of its record. If the decision is merely erroneous, Mr. Murdeshwar is right that we should not interfere, however erroneous that decision may be, On the other hand, if we are satisfied that there is an error apparent on the face of the record, then it would be our duty to interfere.

[3] Now, what the Tribunal says is this. It accepts the finding of fact that the tenant was in arrears for three years, it accepts the right of the landlord to terminate the tenancy, but what it says is that the landlord was not entitled to get an order of possession because the landlord gave no notice to the tenant. As we shall presently point out, there is no provision in the Tenancy Act which makes it incumbent upon the landlord to give notice of termination of the tenancy when the tenant has failed to pay rent. On the contrary, it is clear from the provisions of the Tenancy Act that the Legislature did not intend that the landlord should give notice when he was seeking to resume possession of the demised land on the ground that the tenant had failed to pay rent. The relevant provisions of the Act on this question are to be found first in Section 14(1) which provides:

"Notwithstanding any agreement, usage, decree or order of a Court of law, the tenancy of any land held by a tenant shall not be terminated unless such tenant....."

and Clause (a)(i) provides for failure to pay rent in the manner laid down in that clause, and it is common ground that the tenant has failed to pay rent as required, by Section 14(1)(a)(i). Then Section 24 provides for relief against termination of tenancy in certain cases, and that section lays down that when the tenant has done any act which is destructive or permanently injurious to the land, no proceeding for ejectment against such tenant shall lie unless and until the landlord has served on the tenant a notice in writing specifying the act of destruction or injury complained of and the tenant fails within a period of one year from the service of notice to restore the land to the condition in which it was before such destruction or injury. Therefore, the Legislature thought it fit only in this one particular case to insist upon the landlord giving a notice and giving the tenant an opportunity to restore the land to the condition in which it was before

the destruction or injury complained of. It is rather significant to note that u/s 14 one of the grounds which results in the termination of the tenancy is the tenant doing any act which is destructive or permanently injurious to the land. Therefore, while Section 14(1) sets out the various circumstances under which a tenancy is terminated, the Legislature has thought fit to select only one instance of the termination of the tenancy where it is made incumbent upon the landlord to serve a notice. Then Section 25 deals with reliefs against the termination of the tenancy for nonpayment of rent, but no relief can be given where the arrears of rent is for three years. And Section 29(2) provides:

"No landlord shall obtain possession of any land or dwelling house held by a tenant except under an order of the Mamlatdar. For obtaining such order he shall make an application in the prescribed form."

The landlord in this case has made an application in the prescribed form u/s 29(2), and the view taken by the Tribunal is that his application is not maintainable inasmuch as the application was made without giving notice to the tenant. With respect to the Tribunal, it is difficult to understand where the Tribunal finds any provision in the Tenancy Act which makes it incumbent upon the landlord to give notice. In a rather curious statement of the law the Tribunal says this :

"Section 24 of the Act expressly states that in the case of a tenant's act which is destructive or permanently injurious to the land, a written ultimatum is necessary. It is reasonable to suppose that where a landlord has exercised his option to terminate the tenancy on other grounds, the landlord's intention should be communicated to the tenant. That is what is implied in Section 25 of the Act."

Now, the Tribunal has very vast powers and we are conscious of those powers, but amongst those powers is certainly not the power to legislate nor to decide cases according to its own ideas of what is reasonable. The Tribunal is a tribunal, of limited jurisdiction and its jurisdiction consists in applying the provisions of the Tenancy Act. It is also the duty of the Tribunal to hold that as just and proper which the Legislature considers as just and proper. It is not open to the Tribunal to travel outside the ambit of the Tenancy Act and decide for itself what should be done and what should not be done. In effect what the Tribunal is doing by this decision is to add to the provisions of Section 24 and insisting upon the notice by the landlord in cases of non-payment of rent when the Legislature has thought fit not to require the landlord to give notice.

(4) It may be pointed out that even apart from the Tenancy Act, looking to the general provisions of the law, the decision of the Tribunal is patently wrong. Even under the Transfer of Property Act, as this is a lease prior to 1930, a landlord would not be required to give notice for forfeiture for non-payment of rent. It is only after 1930 that such a notice would be necessary. Therefore, even if the landlord was suing under the Transfer of Property Act, he could have got an order

of ejectment for non-payment of rent without notice. The Tenancy Act has made no provision for notice, and yet the Tribunal by trying to import its own ideas of what is right and proper has imposed a condition upon the right of the landlord to maintain an application u/s 29 which finds no place whatever in the Act.

(5) Therefore, in our opinion, the decision of the Tribunal is not merely erroneous, but its record contains an error which is apparent on the face of it. It is a manifestly wrong decision and the error is patent inasmuch as the Tribunal has acted in conscious violation of the Tenancy Act and its provisions. Under the circumstances we think we are perfectly justified in interfering by a writ of certiorari.

(6) We would, therefore, issue a writ of certiorari, quash the order of the Tribunal, and restore the order of the Mamlatdar. Opponent 1 to pay the costs. Government Pleader to bear his own costs.

(7) Application allowed.