
(1956) 02 BOM CK 0031

In the Bombay High Court

Case No : Special Civil Application No. 2567 of 1955

Maruti Manku Patil and Another

APPELLANT

Vs

Waman Trimbak and Others

RESPONDENT

Date of Decision : 07-02-1956

Acts Referred:

Bombay Tenancy and Agricultural Lands (Amendment) Act, 1952 — Section 34, 34(2A) (3), 36(1), 36(2)

Citation : AIR 1956 Bom 639

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

Bench : Division Bench

Advocate : G.S. Raisinghani, for the Appellant; Y.V. Chandrachud, for the Respondent

Judgement

Chagla, C.J.—The petitioners are tenants and the first respondent is the landlord and he filed an application before the Mamlatdar based on a notice given by him on 22nd March 1952 terminating the tenancy as from 31st March 1953 on the ground that he required the lands for his personal cultivation.

2. Two questions arose before the Revenue Tribunal and which has been agitated before us. One was whether the Amending Act 33 of 1952 which came into force on the 12th January 1953 before the notice expired had application. In view of the recent Full Bench decision it is clear that the rights of the parties must be governed by the Amending Act.

The only contention with regard to the Amending Act put forward by the tenant was that the landlord was only entitled to half the area of the land leased u/s 34 (2A) (3) of the Tenancy Act. That raises a question of fact and we will remand this matter to the Mamlatdar to decide whether the landlord's holding was more than the holding described in the explanation. If his holding is more then he will get benefit of the provisions of Section 34(2A)(3), otherwise the landlord will be entitled to the whole of the land leased to the tenant.

3. The other contention raised by the tenant was based on a notification issued by Government on the 21st February 1952. This notification purported to be issued u/s 36(2) and the Tribunal has held that the notification is ultra vires of the State Government. The scheme of Section 36(1) and (2) is this. u/s 34 the limit of the holding of the landlord is laid down as fifty acres.

If the landlord has more than fifty acres then he cannot get possession from the tenant on the ground of his requiring the land for personal cultivation. Section 36(1) empowers the Government to reduce the limit of fifty acres, and Sub-section (2) provides:

"The State Government may by a like notification direct that the limits of fifty acres specified in the said section or the reduced limits specified in the notification under Sub-section (1) shall comprise of such kind or kinds of lands in the area as may be specified in the notification."

What the Government has done by the notification issued on the 21st February 1952 is to lay down the ratio of paddy or bagayat land to jirayat land and the ratio is one acre of paddy or bagayat land or of both shall be deemed to be equivalent to four acres of ordinary or jirayat land for the purpose of computing the limit of fifty acres. Therefore, in substance the effect of the notification is that although a landlord may have bagayat land the area of which is less than the limit fixed in Section 34 or Section 36(1), by reason of this ratio being laid down the limit would be decreased and he might become disentitled to obtain possession u/s 34.

Section 36(2) does not empower Government to lay down the proportion between bagayat land and jirayat land so as to reduce the limit fixed in Section 34 or 36(1). It is difficult to understand why Section 36(2) was at all enacted, because if the only power that Government had was to describe the kind of lands which should be included in the limit fixed in Section 34 or Section 36(1) then it was entirely unnecessary to do so because whatever the nature of the land you had to compute the total acreage and if that exceeded the limit fixed then the landlord became disentitled.

It seems to us clear that the intention of the Legislature was to alter the limit if the land was paddy or bagayat, and a larger value was to be given to paddy or bagayat land than to jirayat land. But if that was the intention of the Legislature, the intention has not been effectively carried out by the language used in Section 33(2).

The Legislature could clearly have given the power to the Government to vary the limit fixed in Section 36(1) by fixing the proportion u/s 36(2), but inasmuch as such power is not given to the State Government we agree with the Tribunal that the notification of the 21st February 1952 is ultra vires. Therefore, whatever rights the tenant might have had under this notification, inasmuch as the notification is not valid the tenant cannot agitate that question.

4. Therefore, the order of the Revenue Tribunal which awarded to the landlord possession of the entire land will be set aside and as already pointed out the matter will go back to the Mamlatdar to determine the issue which we have framed, and on the decision of that issue the Mamlatdar will pass the appropriate order.

On the question of the agricultural holding of the landlord, the Mamlatdar will determine that holding on the basis of the two partitions which have been held to be proved by the Mamlatdar, one between the first respondent and his brother which took place in 1948 and the second between the first respondent and his sons which took place on the 28th July 1952, and the holding will be determined with reference to the land which came to the share of the first respondent pursuant to these two partitions.

5. Costs of this petition costs in the remand.

6. Order set aside.