

(1955) 09 BOM CK 0073

In the Bombay High Court

Case No : Special Civil Application No. 1567 of 1955

Nagayya Gurupadayya Charantimath and Another

APPELLANT

Vs

Chayappa Santanappa Huilgol and Others

RESPONDENT

Date of Decision : 23-09-1955

Acts Referred:

Bombay Tenancy And Agricultural Lands Act, 1948 — Section 34, 76

Constitution Of India, 1950 — Article 225, 226, 227

Maharashtra Land Revenue Code, 1966 — Section 135(j)

Citation : AIR 1956 Bom 560 : (1956) 58 BOMLR 144 : (1956) ILR (Bom) 232

Hon'ble Judges : Vyas, J;Dixit, J

Bench : Division Bench

Advocate : H.B. Datar, for the Appellant; K.G. Datar, for the Respondent

Judgement

Vyas, J.—A short point which has arisen in this application, which is filed by the tenants under Articles 225 and 227 of the Constitution of India, may be stated in this way. There is an application filed by a landlord u/s 34, Bombay Tenancy and Agricultural Lands Act, 1948, before a Mamlatdar for recovering possession of his lands from his tenant for bona fide personal cultivation. The Mamlatdar considered certain questions of fact, including a question whether the landlord required possession of his lands for bona fide personal cultivation, and came to the conclusion that the landlord wanted possession of the lands for bona fide personal cultivation and ordered the tenant to hand over possession to him.

On the tenant appealing to the Assistant Collector, the Assistant Collector disposed of the appeal only upon a preliminary point raised by the tenant, viz., whether in view of a certain entry in respect of the lands in the record of rights, the respondent before him had established that he was a landlord at all. The Assistant Collector held that the respondent had failed to establish a relationship of landlord and tenant between the parties, that therefore the provisions of the Act did not apply and that accordingly the respondent was not entitled to recover possession of the lands from the appellant.

The landlord went in revision before the Bombay Revenue Tribunal and the Tribunal held that the finding of the Assistant Collector that there was no relationship of a landlord and tenant between the parties was erroneous in law & reversed the Assistant Collector's order. The effect was that the Mamlatdar's order was restored. Now the point in these proceedings under Articles 226 & 227 is whether the finding of the Mamlatdar that the landlord wanted possession of the lands for bona fide personal cultivation is conclusive in this case.

(2) Upon the application on the landlord before the Mamlatdar, the points which arose for the Mamlatdar's decision were: (1) Whether the present applicants were protected tenants of the suit lands; (2) whether proper notice terminating the tenancy was given to them by the landlord u/s 34 of the Act; (3) whether the lands were required by the landlord for bona fide personal cultivation and (4) whether the landlord was already cultivating 50 acres or more of land.

The Mamlatdar held that the present applicants were protected tenants of the suit lands, that proper notice terminating their tenancy was given to them u/s 34 of the Act, that the lands were required by the landlord for bona fide personal cultivation and that the landlord was cultivating less than 50 acres of land at the date of his application. The finding with which we are at present concerned is regarding the landlord's claim that he needs to have possession of his lands, because he bona fide wants to cultivate them personally.

To this finding the Assistant Collector paid no attention and gave no consideration whatever while deciding the tenant's appeal. He disposed of the appeal solely upon a preliminary point taken by the tenant that his alleged landlord was not really his landlord at all since his name was not shown as a kabjedar (occupant) of these lands in, the record of rights, but was shown in the column of "other rights". The Assistant Collector upheld that point, did not go into any question of fact and upset the order of the Mamlatdar.

The aggrieved landlord appealed to the Bombay Revenue Tribunal in revision and the Tribunal in the exercise of its revisional jurisdiction, came to the conclusion that the finding of the Assistant Collector, based purely upon an entry in the record of rights which had only a presumptive value, was erroneous in law. The Tribunal observed that there were clear admissions by the respondent before them that he was a protected tenant of these lands and that these admissions were sufficient to rebut the presumption arising out of an entry in the record of rights u/s 135(j) of the Land Revenue Code.

In view of these admissions the Tribunal held that the applicant before them was the landlord of the respondent and accordingly they reversed the Assistant Collector's order. This resulted in the restoration of the Mamlatdar's order.

(3) Now, it is clear that under Article 227 every High Court has superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction and in the exercise of this power we have jurisdiction to interfere where there is an error apparent "on the face of the record."

In this case, we are satisfied that there is an error apparent on the face of the order of the Revenue Tribunal, in that the Revenue Tribunal overlooked an important fact that the finding of the Mamlatdar that the lands were required by the landlord for bona fide personal cultivation, which was a finding of fact, was not examined and considered and its correctness was not tested and determined by the Assistant Collector in the appeal which was filed before him by the tenant.

The Revenue Tribunal failed to consider that the effect of merely reversing the decision of the Assistant Collector would be to restore the finding of the Mamlatdar on a question of fact without the propriety of the said finding having been ascertained by the Assistant Collector who was a superior fact finding authority. The Assistant Collector adopted a short-cut and though he, being an appellate authority, was a final fact-finding tribunal under the Act, he did not apply his mind at all to the material question of fact whether the possession of the lands was required by the respondent before him for bona fide personal cultivation.

This question of fact went to the very root of the relief asked for by the landlord u/s 34 of the Act, and the decision of the Mamlatdar upon it should not have been allowed to remain as the last word on the point. The Assistant Collector, apparently in his zest to finish the appeal quickly, evidently forgot that if his view that there was no relationship of a landlord and tenant between the parties, which was based upon his Interpretation of an entry in the record of rights, was reversed by the Revenue Tribunal, the finding of the Mamlatdar that the possession of the lands was wanted by the landlord for bona fide personal cultivation would stand untested on the record.

As a final fact finding tribunal, he should have taken the account of such a situation arising and should not have resorted to a short-cut. A shortcut is most undesirable in cases where the dispute between the parties relates to important rights to property. The result of the error on the part of the Revenue Tribunal, which error as I have said is apparent on the face of its order, has been that the tenant has been deprived of an opportunity of showing that the Mamlatdar's finding on a question of fact whether the landlord wants to recover possession of his lands for bona fide personal cultivation is erroneous.

The tenant's contention before the Mamlatdar was that the landlord did not want possession of the lands for bona fide personal cultivation and there is nothing to show that the tenant had given up this contention during his appeal before the Assistant Collector. Simply because a point, which the Assistant Collector called a preliminary point, was taken by the tenant, it could not follow that the tenant had abandoned his substantial contention upon - which he had resisted the landlord's application for possession, viz., that the possession was not required by the landlord for bona fide personal cultivation.

There is also nothing to show that before the Revenue Tribunal the tenant conceded that the landlord required the lands for bona fide personal cultivation.

It is true that before the Revenue Tribunal the tenant's Advocate pressed certain two contentions which were contentions on points of law. But this would not mean that the advocate had expressly abandoned his client's (tenant's) important contention on a question of fact,

The Revenue Tribunal, not being a fact-finding tribunal, the tenant's advocate might well have thought that if his submissions on points of law were accepted by the Tribunal, the Tribunal would remand the matter to the Assistant Collector for final determination of the question of fact whether the landlord's claim that he wanted possession of these lands for personal cultivation was a bona fide one. In short, there is nothing to show that either before the Assistant Collector or before the Revenue Tribunal, the tenant had abandoned his contention that the landlord's demand for possession of the lands for personal cultivation was not a bona fide one.

It is true that the Revenue Tribunal, not being a fact-finding tribunal, could not have decided a question of fact whether the landlord wanted possession of these lands for bona fide personal cultivation or not. If the Assistant Collector had considered this question and had given his finding about it, then it would not have been open to the Revenue Tribunal to go behind that finding of fact and they would have been bound to accept it.

As the matters stand, however, the Assistant Collector not having gone into the question at all, it was necessary in the ends of justice for the members of the Revenue Tribunal to remand the case back to the Assistant Collector for giving a finding on the important question of fact regarding the landlord requiring the possession of these lands for bona fide personal cultivation and for disposal according to law.

(4) As there is an error apparent on the face of the Revenue Tribunal's order and as the said error has resulted in the denial of an opportunity to the tenant to show that the landlord does not want the possession of these lands for bona fide personal cultivation. It is clear that we must interfere, but the question is whether we should remand the case to the Revenue Tribunal or to the Assistant Collector.

Mr. H.B. Datar for the petitioners has invited our attention to a decision of the Division Bench of this Court consisting of the learned Chief Justice and my learned brother in Sp. Civil Appln. No. 856 of 1954 (Bom) (A) under Articles 226 and 227 of the Constitution of India decided on 13-7-1954.

It was observed by the Court in that case that the question as to whether the landlord's requirements were bona fide or not was a question of fact which could only be decided by the fact-finding tribunal. The Court said that the Revenue Tribunal was not a fact-finding tribunal, its jurisdiction being limited and it being entitled to interfere only on question of law. This view of the Court was based on the provisions of Section 76, Bombay Tenancy and Agricultural Lands Act, 1948, and Section 76 lays down:

"(1) Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1939, an application for revision may be made to the Bombay Revenue Tribunal constituted under the said Act against any order of the Collector on the following grounds only: (a) that the order of the Collector was contrary to law; (b) that the Collector failed to determine some material issue of law; or (c) that there was a substantial defect in following the procedure provided by this Act, which has resulted in the miscarriage of justice." It is clear, therefore, that under the law as contained in the Bombay Tenancy and Agricultural Lands Act, 1948, the jurisdiction of the Bombay Revenue Tribunal is limited and it would be competent to the Revenue Tribunal to interfere with the orders passed by the subordinate tribunals only if the said orders were contrary to law or showed that some material issues of law had not been determined or if the orders disclosed that there was a substantial defect in following the procedure laid down under the Act, which defect had resulted in the miscarriage of justice. The Court directed in that case that the case be remanded to the Collector with a direction that he should decide whether the requirements of the landlords were bona fide as required by Section 34 of the Act.

(5) Mr. K.G. Datar appealing for the landlord Has invited our attention to another decision of a Division Bench of this Court consisting of Bavdekar and Shah JJ. in *Dhondi Fakira v. Laxmi Bai*, Sp. Civil Appln. No. 381 of 1955 (Bom) (B) which was decided on 21-6-1955.

It was observed in that case that upon the facts which were proved and were set out by the Tribunal in their order, the inference as to the bona fides or otherwise of the requirement of the landlord would be an inference on a question of fact and not on a question of law and that accordingly the Tribunal would have no jurisdiction to interfere with the conclusion of the Prant Officer in that behalf. The Court quashed the order passed by the Revenue Tribunal and directed that the proceedings be sent back to the Tribunal with a direction under Article 227 of the Constitution that the Tribunal should proceed to hear and dispose of the revision application of the landlord according to law.

The position, therefore, to which we are driven in this case is that as the Assistant Collector in his order failed to consider, and record a finding on an important question of fact, viz. whether the landlord wanted to recover possession of the lands for bona fide personal cultivation, and as the Revenue Tribunal also did not remand the matter back to the Assistant Collector for recording a finding on the above mentioned question of fact, we are of the opinion that the order of the Revenue Tribunal cannot be sustained and must be quashed.

In the light of the decisions of this Court in Sp. Civil Applns. Nos. 856 of 1954 (A) and 381 of 1955 (B), we direct that the matter be sent back to the Revenue Tribunal with a direction that, if there is any point of law left to be decided in this matter, the Revenue Tribunal should decide that point of law and so far as the question of fact, viz., whether the landlord wants to recover possession of the

lands for bona fide personal cultivation is concerned, the Revenue Tribunal will send back the case to the Assistant Collector for recording a finding on this issue and for disposal according to law.

(6) Mr. H.B. Datar for the petitioners has contended before us that we should also give direction to the Revenue Tribunal that the matter must be sent back by them to the Assistant Collector for consideration of the question whether in respect of S. No. 518 the petitioners are ordinary tenants or protected tenants and whether the effect of the order of the Revenue Tribunal, by which order the order of the Mamlatdar is restored, is that the landlord would be entitled to recover possession of only 2 acres 14 gunthas or 4 acres 28 gunthas, out of S. No. 515.

Mr. H.B. Datar submits that according to the order of the Mamlatdar, the landlord is entitled to recover possession of only 2 acres 14 gunthas out of S. No. 515 and not 4 acres 28 gunthas. Now in the first place, there is nothing to show on the record that the -petitioners are in possession of 4 acres 28 gunthas of land out of S. No. 515. Therefore, we are unable to accept Mr. H.B. Datar's contention that the effect of the order of the Mamlatdar, which is restored by the order of the Revenue Tribunal, is that the landlord will recover possession only of 2 acres 14 gunthas and not of 4 acres 28 gunthas out of S. No. 515.

So far as the other question raised by Mr. H.B. Datar for the petitioners, viz., that the petitioners are only ordinary tenants as opposed to protected tenants of S. No. 515, is concerned, it would appear that such a contention was not raised even before the Mamlatdar. It cannot now be permitted to be raised.

Therefore, we do not propose to direct the Revenue Tribunal that the case should be sent back to the Assistant Collector for considering any such questions, as to whether the petitioners are statutory tenants or not in respect of S. No. 518 or whether the effect of the order of the Revenue Tribunal is that the landlord will obtain possession of only 2 acres 14 gunthas and not 4 acres 28 gunthas out of S. No. 515.

The only order which we do pass is that the Bombay Revenue Tribunal will consider if there is any point of law involved in this case which is raised by the parties and is still left undecided and will decide that point itself and so far as the question of fact regarding the landlord wanting possession of the lands for his bona fide personal cultivation or otherwise is concerned, the Revenue Tribunal will send back the case to the Assistant Collector for recording a finding thereon and thereafter for disposal according to law.

(7) We make no order as to costs.

(8) Order accordingly.