

(1960) 07 BOM CK 0011

In the Bombay High Court

Case No : Civil Revision Application No's. 290, 678, 690, 803, 1074 and 1368 of 1958

Narayan Mahasing Patel

APPELLANT

Vs

Baliram Bhavdu Patil

RESPONDENT

Date of Decision : 26-07-1960

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 70(me)

Citation : (1960) 62 BOMLR 936

Hon'ble Judges : H.K. Chainani, C.J;Tarkunde, J

Bench : Division Bench

Judgement

H.K. Chainani, C.J.—These six applications arise out of six suits filed by landlords after August 1, 1956, for recovering arrears of rent for the period prior to August 1, 1956, from their tenants. In all these suits, it has been held that the Civil Court has no jurisdiction; and that the Only authority, which can make orders for the payment of rent; is the Mamlatdar u/s 70(me) of the Bombay Tenancy and Agricultural Lands Act. The correctness of this view has been challenged before us.

2. In order to decide the question, which arises, for consideration in, these applications, it is necessary to refer to the relevant provisions of the Act as they stood before August 1, 1956, and as they stand at present. I will first refer to the provisions of the Act, which were in force prior to August 1, 1956. Section 6 prescribed the maximum rent, which a landlord could recover. Sub-section (1) of Section 6 provided that the maximum rent payable by a tenant, in the case of an irrigated land, shall not exceed one-fourth, and in the case of any other land one-third, of the crop of such land or its value. Sub-section (2) of Section 6 empowered the State Government to provide for a lower rate of the maximum rent. Section 7 laid down that

The rent payable by a tenant shall, subject to the maximum rate fixed u/s 6, be the rent agreed upon between such tenant and his landlord or in the absence of

any such agreement the rent payable according to the usage of the locality or if there is no such agreement or usage, or where there is a dispute as regards the reasonableness of the rent payable according to such agreement or usage, the reasonable rent.

Section 12 empowered the Mamlatdar to determine the reasonable rent. For this purpose, an application had to be made to the Mamlatdar either by the tenant or by his landlord. Clause (g) of Section 70 provided that one of the duties and functions to be performed by the Mamlatdar shall be "to decide what is the reasonable rent u/s 12"". All these provisions of the Act were repealed with effect from August 1, 1956, when the Bombay Tenancy and Agricultural Lands (Amendment) Act (Act No. XIII of 1956) came into force. Section 8 of the Act as amended prescribes the maximum and minimum rates of rent. It states that the rent shall not exceed five times the assessment or Rs. 20 per acre, whichever is less, and shall not be less than twice such assessment. Sub-section (3) of this section states that

If by custom, usage, agreement or the decree or order of a court, the amount of rent payable is less than the maximum or minimum specified in Sub-section (1), the amount so payable shall be the rent in respect of the land.

Section 9 empowers the Mamlatdar to fix the rate of rent payable by a tenant for the lease of different classes of land situate in each village, or group of villages, or for any area in such village or group of such villages, Sub-section (1) of Section 9A states that

The rent payable by a tenant shall, subject to the maximum and minimum. fixed u/s 8, be the rent at the rate fixed u/s 9 in respect of the class of land to which the land held by the tenant belongs.

Section 9C provides that

Until the rent is fixed in accordance with the provisions of the preceding sections, a tenant shall, subject to the maximum provided u/s 8, be liable to pay to the landlord the rent at the rate at which it was payable immediately before the commencement of the Amending Act, 1955.

Section 43B provides that, in the case of any land to which Section 43A applies, the rent payable shall be reasonable rent as determined by the Mamlatdar under this section. Clause (1) of the section states that

A landlord or a tenant of such land may make an application in writing to the Mamlatdar for the determination of the reasonable rent in respect of such land.

Section 70 of the Act states that

For the purposes of this Act, the following shall be the duties and functions to be performed by the Mamlatdar-

(c) to determine the rates of rent u/s 9,...

(ma) to determine what is reasonable rent u/s 43B;.

(me) to direct the payment of rent determined under this Act or the arrears thereof.

Section 85 provides that

No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar....

3. It will, therefore, be seen that it is the duty and the function of the Mamlatdar to direct the payment of rent determined under this Act or the arrears thereof. u/s 14, a default in the payment of rent cannot be said to have occurred, "unless the tenant has failed to pay the rent, for any revenue year, before the 31st day of May thereof". There is also no provision in the Act, which empowers the Mamlatdar to direct the payment of rent before it has become due. Consequently, under Clause (me) of Section 70, the Mamlatdar can only direct the payment of rent which is in arrears. The words "or the arrears thereof" used in this clause do not, therefore, appear to have any significance. The clause also uses the words "determined under this Act". There are only two section 9 and Section 43B-which provide for determination by the Mamlatdar of the rate of rent and the reasonable rent respectively. Section 90 states that

Until the rent is fixed in accordance with the provisions of the preceding sections, a tenant shall... be liable to pay to the landlord the rent at the rate at which it was payable immediately before the commencement of the Amending Act, 1955;...

It could not have been intended that the Mamlatdar should not be in a position to make an order for the payment of rent, which is payable u/s 9C, that is, before the rate of rent has been determined u/s 9. Consequently, the expression "determined under this Act" will have to be held as meaning "determined by or under the provisions of this Act.

4. As, therefore, the power to direct the payment of rent due for the period subsequent to August 1, 1956, is given to the Mamlatdar, the civil Court's jurisdiction to give such direction is ousted by Section 85 of the Act. Consequently, no civil suit can lie for the recovery of rent, which is due for the period subsequent to August 1, 1956. Such rent can only be recovered by an application to the Mamlatdar u/s 71 read with Clause (me) of Section 70 of the Act.

5. The next question to be considered is, what is the position in regard to rent, which is in arrears for a period prior to August 1, 1956. To decide this question, it is necessary to determine what is the meaning to be given to the words "under this Act" in Clause (me) of Section 70. These words can be read as meaning "the provisions of the Act as they stand at present" or as meaning "the provisions of the Act as they stood from time to time since the Act was enacted in 1948". If

the latter meaning is given to the words, a civil Court will no longer be able to entertain a suit for the recovery of such rent. It is well settled that the ouster of jurisdiction of a Court should not be easily inferred. The Legislature has no doubt power to deprive a civil Court of its jurisdiction in any matter; but in that case, it must use either clear words to that effect or such language as necessarily implies that the Legislature intended to take away the jurisdiction of the civil Court. The language used in Clause (we) of Section 70 is not such as to indicate a clear intention on the part of the Legislature to oust the jurisdiction of the civil Court even in respect of rent, which was due before the Act was amended in 1956. On the other hand, Sub-section (3) of Section 13 contemplates suits for the recovery of rent even after the Act was amended. This Sub-section says that

...No decree of a Civil Court shall be executed for recovery by a landlord of any rent, the payment of which has been remitted, or during the period for which the payment of such rent has been suspended under this section....

6. Section 72 of the Act provides that

In all inquiries and proceedings commenced on the presentation of applications u/s 71 the Mamlatdar...shall exercise the same powers as the Mamlatdar's Court under the Mamlatdar's Courts Act, 1906, and shall...follow the provisions of the said Act, as if the Mamlatdar...were a Mamlatdar's Court under the said Act and the application presented was a plaint presented u/s 7 of the said Act....

In order to obtain an order under Clause (me) of Section 70, an application must be made to the Mamlatdar u/s 71. u/s 72, such an application must be treated as if it was a plaint presented u/s 7 of the Mamlatdar's Courts Act, and the Mamlatdar shall follow the procedure laid down under the said Act. Sub-section (J) of Section 5 of the Mamlatdar's Courts Act provides that "no suit shall be entertained by a Mamlatdar's Court unless it is brought within six months from the date on which the cause of action arose". As u/s 72, an application made to the Mamlatdar under the Tenancy Act is to be treated as it was a plaint in a suit instituted before the Mamlatdar, and as the Mamlatdar is required to follow the procedure laid down under the Mamlatdar's Courts Act, it has been held by this Court, in *Palabhai Parbatsing v. Rana Amarsing Shivasingji* (1955) Special Civil Application No. 1627 on November 1, 1955 (Unrep) of 1955. Decided by Chagla C.J. and Dixit J., that the period of limitation laid down in Sub-section (J) of Section 5 of the Mamlatdar's Courts Act will also apply to applications made to the Mamlatdar under the Tenancy Act, and that consequently, any such application will be barred by limitation, unless it is made within six months from the date, on which the cause of action arose. An application for an order under Clause (me) of Section 70 must, therefore, also be made within six months from the date, on which there was a default in the payment of rent. If the words ""this Act" in Clause (me) are held to mean the provisions of the Act as were in force from time to time, then no application would lie to the Mamlatdar in respect of arrears of rent for the years prior to 1955-56, while for the year 1955-56 such an application could probably not be entertained, unless it had" been made

within six months from May 31, 1956, the last date before which (he tenant had to pay the rent u/s 14. The ordinary period of limitation for a suit to recover the arrears of rent is three years. If, therefore, we accept the view, which has been advanced on behalf of the tenants, the position as on August 1, 1956, would be that the landlords had lost their right to recover the arrears of rent due to them for the years 1953-54 and 1954-55, for they could not file civil suits and their applications to the Mamlatdar would be held to have been barred by limitation. We do not think that it was the intention of the Legislature to bring about such a result or to take away the rights, which had already accrued to the landlords, or to extinguish their right to recover arrears of rent for 1953-54 and 1954-55. Where two views are possible, the construction, which causes the least hardship and inconvenience, has to be preferred. In our opinion, therefore, the words "under this Act" used in Clause (me) of Section 70 mean "the provisions of the Act as they stand at the time when the application is made to the Mamlatdar under this clause". The rent for the period prior to August 1, 1956, cannot be determined under the Act as it stands at present. No direction can, therefore, be issued by the Mamlatdar for the payment of arrears of rent due for the period prior to August 1, 1956. A civil suit for recovering such arrears will consequently be maintainable.

7. In this view, the orders passed by the lower Courts dismissing the suits or returning the plaints for presentation to the proper Court must be set aside. In some of the suits, the tenants had contended that they were liable to pay only reasonable rent for the years in question. u/s 7 of the Act, as it stood prior to its amendment in 1956, where there was a dispute as regards the reasonableness of the rent payable according to agreement or usage, the tenant was liable to pay only the reasonable rent, subject to the maximum rate fixed u/s 6. This reasonable rent was to be determined by the Mamlatdar u/s 12 of the Act. Even though these provisions of the Act have been repealed, the tenants cannot now be called upon to pay any amount in excess of the reasonable rent. The right to pay not more than the reasonable rent had already accrued to them. u/s 7 of the Bombay General Clauses Act, the Mamlatdar will, therefore, still possess the power to determine the reasonable rent for the years prior to August 1, 1956, u/s 12 of the Act, as it stood before August 1, 1956.

8. The orders passed in all the six suits are, therefore, set aside and the matters will be remanded to the trial Courts for proceeding further with the suits and then disposing of them in accordance with law. Costs costs in the suits.

9. As I have stated above, by reason of the provisions of Section 72 read with Sub-section (5) of Section 5 of the Mamlatdars' Courts Act, a landlord, who wishes to recover arrears of rent due for the period subsequent to August 1, 1956, must make an application to the Mamlatdar for realising the amount due to him within six months from the date on which the rent became payable. The ordinary period of limitation for filing a suit for recovering such amounts is three years. Government may, therefore, consider whether the Act should not be

amended so as to increase the period of limitation for applications to the Mamlatdar for recovering arrears of rent.