

(1967) 03 GUJ CK 0011
In the Gujarat High Court

Narayanprasad Haribhai Majmudar and Another	APPELLANT
Vs	
Merubhai Rayabhai and Another	RESPONDENT

Date of Decision : 20-03-1967

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 2(10), 32G, 70(b), 71

Citation : (1967) 8 GLR 897

Hon'ble Judges : P.N. Bhagwati, J

Bench : Single Bench

Judgement

P.N. Bhagwati, J.—The petitioners are former Watandars of village Zezra, situate in Taluka Viramgam, District Ahmedabad. The first respondent is a tenant of the petitioners in respect of certain land situate in village Zezra. The Watan of the petitioners was abolished by the Bombay Paragna and Kulkarni Watans (Abolition) Act, 1950, and under that Act the petitioners became the occupants in respect of the said land. The said land accordingly came to be governed by the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, (hereinafter referred to as the Tenancy Act). On the tillers' day, that is, 1st April 1957, the first respondent being admittedly a tenant became the deemed purchaser of the said land and since the determination of the purchase price depended upon whether the first respondent was a protected tenant or a permanent tenant, the first respondent along with certain tenants adopted proceedings for a declaration that they were permanent tenants. These proceedings were, however, infructuous as the Revenue Tribunal held that a joint application by several tenants was not maintainable. Notices were thereafter issued by the Agricultural Lands Tribunal for determination of the purchase price u/s 32G and pursuant to the notice the petitioners and the first respondent appeared before the Agricultural Lands Tribunal. The first respondent claimed that he was a permanent tenant in respect of the lands held by him but this claim was disputed by the petitioners who contended that the first respondent was merely a protected tenant. The question, therefore, arose before the Agricultural Lands Tribunal Whether the first respondent was a protected tenant or a permanent

tenant. The petitioners contended that this question was triable exclusively by the Mamlatdar u/s 70(b) of the Tenancy Act and the Agricultural Lands Tribunal had, therefore, no jurisdiction to entertain it and that in any event it could not be entertained by the Agricultural Lands Tribunal except upon a substantive application made u/s 71 of the Tenancy Act. This contention was disputed by the first respondent who urged that by reason of the notification dated 9th July 1960 issued by the State Government u/s 2(10) of the Tenancy Act, the Agricultural Lands Tribunal had jurisdiction to decide the question whether the first respondent was a protected tenant or a permanent tenant and the question having arisen in proceedings validly taken u/s 32G, it was not necessary that in order to enable the Agricultural Lands Tribunal to assume jurisdiction, a separate application should be made to it u/s 71. These rival contentions raised a question of jurisdiction of the Agricultural Lands Tribunal and at the instance of the parties, this question was tried as a preliminary issue. The Agricultural Lands Tribunal by an order dated 8th August 1965 upheld the contention of the first respondent and held that the Agricultural Lands Tribunal had jurisdiction to decide the question whether the first respondent was a protected tenant or a permanent tenant and a separate application u/s 71 was not necessary to invoke that jurisdiction. This view of the Agricultural Lands Tribunal is challenged on the present petition.

2. The question which arises is one of jurisdiction and it depends for its determination on the true interpretation of certain provisions of the Tenancy Act. Section 32 enacts that on the tillers' day, that is, 1st April 1957, a tenant shall be deemed to have purchased the land held by him from the landlord and this right to become a deemed purchaser is conferred on two kinds of tenants, namely, permanent tenants and protected tenants. Section 32G lays down the procedure for determination of the purchase price payable by the tenant on becoming the deemed purchaser and the purchase price has to be determined by the Agricultural Lands Tribunal in accordance with the provisions of Sections 32H and 63A(3). Two modes of determination of the purchase price are provided in Section 32H, one by Clause (i) where the tenant is a permanent tenant and the other by Clause (ii) where the tenant is a protected tenant and the amount of the purchase price, therefore, varies according as the tenant is a protected tenant or a permanent tenant. The Agricultural Lands Tribunal has, therefore, to determine in the first instance whether the person claiming to be a tenant is a tenant in respect of the land for it is only if he is a tenant willing to purchase the land that the question of determining the purchase price arises for consideration and if he is a tenant, the Agricultural Lands Tribunal has further to determine whether he is a protected tenant or a permanent tenant for on that depends the determination of the amount of the purchase price. These are questions which would ordinarily fall within the jurisdiction of the Agricultural Lands Tribunal on the principle that an authority entrusted with jurisdiction to determine a particular question has by necessary implication jurisdiction to decide all incidental questions which are necessary to be decided in order to determine the

main question or, in other words, conferment of power to do a thing carries with it by necessary implication the power to do all that which is necessary in order to accomplish that thing. But u/s 70(b) of the Tenancy Act the jurisdiction to determine whether a person is a tenant or a protected tenant or a permanent tenant is vested in the Mamlatdar and this provision by necessary implication excludes the jurisdiction of the Agricultural Lands Tribunal to make an inquiry into this question for the purpose of the Tenancy Act. The Agricultural Lands Tribunal would, therefore, it would seem, have no jurisdiction to decide whether a person is a tenant or a protected tenant or a permanent tenant if such a question arises in the course of the proceedings u/s 32G. Such a question would have to be decided only by the Mamlatdar u/s 70(b). An identical view was taken by a Division Bench of the Court in Bhikhabhaijethabhai and Others Vs. J.V. Vyas, Additional Collector and Another, though it may be pointed out that the reasoning on which the Division Bench proceeded in that case was slightly different from the one which has appealed to me in the present case. The Division Bench held in that case that even if Section 70(b) were left out of account, the Agricultural Lands Tribunal had no jurisdiction to decide the question whether a person is a tenant or not whereas the view which I am taking now is that but for Section 70(b), the Agricultural Lands Tribunal would have jurisdiction to decide the question whether a person is a tenant or a protected tenant or a permanent tenant but this jurisdiction is excluded by necessary implication by Section 70(b). This view is permissible to me despite the decision of the Division Bench since I find support for it in a recent decision of the Supreme Court given on 7th February 1967 in Kuberbhai Dahyabhai v. The Gujarat Revenue Tribunal Civil Appeal No. 365 of 1966. This decision of the Supreme Court clearly recognises that but for Section 70(b), the Agricultural Lands Tribunal would have jurisdiction to determine whether a person is a tenant or a protected tenant or a permanent tenant but this jurisdiction is taken away by Section 70(b).

5. If this be the correct position, it is manifest that the Agricultural Lands Tribunal would have no jurisdiction to decide whether the first respondent was a protected tenant or a permanent tenant and the order of the Agricultural Lands Tribunal holding to the contrary would be liable to be set aside. But, contended the first respondent, a vital difference in the provision was made by the Notification dated 9th July 1960 issued by the State Government u/s 2(10) of the Tenancy Act. Section 2(10) gives an inclusive definition of "Mamlatdar" and says that "Mamlatdar" includes a Mahalkari and any other officer whom the State Government may appoint to perform the duties of a Mamlatdar under the Tenancy Act and in exercise of the power conferred under this sub-section the State Government issued the notification dated 9th July 1960 appointing "each of the officers appointed u/s 67 of the said Act to be a Tribunal for any area in the State, to perform the duties of a Mamlatdar under the said Act within the area. " The argument of the first respondent was that by virtue of this notification the Agricultural Lands Tribunal was clothed with the powers of a Mamlatdar under the Tenancy Act and was, therefore, competent to decide all questions which

could be decided by the Mamlatdar under the provisions of the Tenancy Act including the question whether a person was a tenant or a protected tenant or a permanent tenant u/s 70(b). The first respondent, in support of this contention, relied on two unreported decisions of Divan J., one given on 15th October 1963 in *Becharji Okhaji v. Pratapji Jasaji*, Special Civil Application No. 702 of 1963 and the other given on 26th February 1964 in *Kuberbhai Dahyabhai v. Gujarat Revenue Tribunal* Special Civil Application No. 1093 of 1963. The petitioners contested the validity of this argument urged on behalf of the first respondent and contended that it was based on a misconstruction of the notification dated 9th July 1950. This notification, argued the petitioners, had merely the effect of conferring the powers of the Mamlatdar on the officers who were exercising the powers of the Agricultural Lands Tribunal so that the officers became entitled to exercise two jurisdictions, one of the Agricultural Lands Tribunal and the other of the Mamlatdar and it did not have the effect of investing the Agricultural Lands Tribunal with the additional powers of a Mamlatdar. Every officer who was entitled to exercise the jurisdiction of the Agricultural Lands Tribunal was also, by virtue of this notification, entitled to exercise the jurisdiction of the Mamlatdar, but, according to the petitioners, that did not mean that when he was acting as the Agricultural Lands Tribunal, he could, in his capacity as the Agricultural Lands Tribunal also exercise the jurisdiction of the Mamlatdar. The petitioners strongly relied on the decision in *Bhikhabhai v. J.V. Vyas* (supra) to which I have already referred and contended that the ratio of this decision completely governed the determination of the present question and the impugned order holding that the Agricultural Lands Tribunal had jurisdiction to decide the question whether the first respondent was a protected tenant or a permanent tenant was, therefore, bad and liable to be set aside. These were the rival contentions urged before me and I will now turn to consider them.

4. Since considerable reliance was placed on behalf of the petitioners on the decision in *Bhikhabhai v. J.V. Vyas* (supra), it is necessary to point out at the outset that the decision of the Agricultural Lands Tribunal in this case was given on 8th March 1960 at a point of time when the notification dated 9th July 1960 had not been issued by the State Government. This Court was, therefore, called upon to consider the question of jurisdiction of the Agricultural Lands Tribunal without this notification and the effect of this notification on the jurisdiction of the Agricultural Lands Tribunal did not fall for consideration. As a matter of fact the notification was not brought to the attention of the Court and rightly so, as, on the facts of that case, it was irrelevant. On the position as it then stood without the notification, the Court held that the Agricultural Lands Tribunal had no jurisdiction to decide the question whether the second respondent was a tenant and it was immaterial that the officer who constituted the Agricultural Lands Tribunal was also a Mamlatdar having jurisdiction to decide that question u/s 70(b). Speaking on behalf of the Court, I pointed out:

The same person may occupy both the positions, viz., that of a Tribunal u/s 32G and that of a Mamlatdar u/s 70(b), but, in one case he would be exercising the

jurisdiction of a Tribunal u/s 32G and in the other, he would be exercising the jurisdiction of a Mamlatdar u/s 70(b). The two authorities would be entirely distinct and independent authorities possessing distinct and independent jurisdictions and it is no argument to say that merely because the same person might be constituting both the authorities, the order of one authority can be equated with the order of the other. The orders would be of the authorities and not of the individual person.

These observations clearly show that merely because the same person happens to be both the Agricultural Lands Tribunal and the Mamlatdar, it does not mean that while acting as the Agricultural Lands Tribunal, he can also exercise the jurisdiction of the Mamlatdar. The officer may be the same but the jurisdictions are distinct and independent and while exercising the jurisdiction of the Agricultural Lands Tribunal, he cannot do that which is permissible to him only in the exercise of the jurisdiction of the Mamlatdar. But a fundamental difference in the position is made by the notification dated 9th July 1960 for that notification invests the Agricultural Lands Tribunal with the jurisdiction of the Mamlatdar. The true effect of the notification is no longer a matter of doubt or debate for it is settled by the two unreported decisions of Divan J. to which I have already referred. In those cases Divan J. held that the aforesaid observations of mine in *Bhikhabhai v. J.V. Vyas*, can have no application after the issue of the notification since the notification has the effect of clothing the Agricultural Lands Tribunal with the powers of the Mamlatdar and after the issue of the notification the Agricultural Lands Tribunal can exercise the powers of the Mamlatdar. These two decisions of Divan J. clearly negative the argument of the petitioners that the notification has merely the effect of conferring on the officer concerned the powers of a Mamlatdar so that the same officer would be constituting both the authorities, namely, the Agricultural Lands Tribunal and Mamlatdar and the case would be the same as in *Bhikhabhai v. J.V. Vyas* (supra). To quote the words of Divan J. in Special Civil Application No. 1093 of 1963, the effect of the notification is:

and, therefore, after the notification of July 9, 1960, in all respects the Agricultural Lands Tribunal besides discharging its own function could also discharge the duties and functions of a Mamlatdar under the Act. The separation of functions on the basis of which the decision in *Bhikhabhaijethabhai and Others Vs. J.V. Vyas*, Additional Collector and Another, was given was that the Agricultural Lands Tribunal was not the Mamlatdar for the purposes of the Act even though it was possible in some instances that one and the same individual may be functioning as Agricultural Lands Tribunal as well as the Mamlatdar. By the operation of this notification the Agricultural Lands Tribunal also became the Mamlatdar and for all practical purposes it could decide those questions which were left to the determination of the Mamlatdar u/s 70 of the Act ____ the Agricultural Lands Tribunal could decide all those questions which are to be decided by the Mamlatdar under the provisions of the Tenancy Act.

This decision of Divan J. in Special Civil Application No. 1093 of 1963 was taken in appeal to the Supreme Court and the Supreme Court by its decision in Kuberbhai Dahyabhai v. The Gujarat Revenue Tribunal Civil Appeal No. 365 of 1966, to which I have already referred, confirmed the view taken by the learned Judge. Dealing with the argument of the appellant that the Agricultural Lands Tribunal had no jurisdiction to deal with the question whether the appellant was or was not a tenant of the land, the Supreme Court observed:

Under Section 32 only a "tenant" is deemed to have purchased the land from his landlord on April 1, 1957. The Agricultural Lands Tribunal had therefore to determine in the first instance whether the claimant was a tenant in respect of the land. It is true that u/s 70 of the Act, jurisdiction to determine whether a person is a tenant or a protected tenant, is conferred upon the Mamlatdar, and that provision by implication excludes the jurisdiction of the other authorities to make an enquiry for the purposes of the Act into that question. But the State of Gujarat has by notification dated July 9, 1960, invested the officers designated to perform the duties of the Agricultural Lands Tribunal u/s 67 of the Act, with power to perform the functions of a Mamlatdar under the Act within the areas over which they have jurisdiction. The order of the Agricultural Lands Tribunal is not therefore open to question on the ground of lack of jurisdiction.

The Supreme Court held that the jurisdiction of the Agricultural Lands Tribunal to determine the question whether a person is a tenant or not was excluded by necessary implication by Section 70(b) but the Notification dated 9th July 1960 made a vital difference in the position and by reason of the Notification, the Agricultural Lands Tribunal was invested with jurisdiction to determine this question. The Notification was interpreted by the Supreme Court as conferring power on the Agricultural Lands Tribunal to discharge the functions of a Mamlatdar within the area over which it had jurisdiction. The view taken by Divan J. was thus confirmed by the Supreme Court and it must consequently be held that after the issue of the notification, the Agricultural Lands Tribunal was clothed with the powers of a Mamlatdar and the Agricultural Lands Tribunal had jurisdiction to decide all questions which could be decided by the Mamlatdar including the question whether a person is a tenant or a protected tenant or a permanent tenant u/s 70(b).

5. But even if the Agricultural Lands Tribunal had jurisdiction to decide the question whether the first respondent was a protected tenant or a permanent tenant, the petitioners contended that it was not competent to the Agricultural Lands Tribunal to decide this question unless a separate application was made to it u/s 71. Section 71, argued the petitioners, was mandatory in its terms and it provided clearly and specifically that, save as expressly provided by the Tenancy Act, all inquiries and other proceedings before the Mamlatdar or the Tribunal shall be commenced by an application which shall contain the particulars set out in the section. The petitioners urged that the question whether the first respondent was a protected tenant or a permanent tenant could not, therefore,

be determined by the Agricultural Lands Tribunal except upon an application made u/s 71. This contention is unsustainable and must be rejected. Section 71 undoubtedly requires that save as expressly provided by or under the Tenancy Act all inquiries and other proceedings before the Agricultural Lands Tribunal shall be commenced by an application and, therefore, unless there is some express provision to the contrary, any inquiry or other proceeding before the Agricultural Lands Tribunal must be commenced by an application. But when one turns to Section 32G, one finds that the proceeding for determination of the purchase price under that section is to be initiated by the Agricultural Lands Tribunal itself and, therefore, by reason of the excepting clause at the commencement of Section 71, such proceeding u/s 32G is not required to be commenced before the Agricultural Lands Tribunal by an application u/s 71. Now in a proceeding validly commenced u/s 32G various questions may arise for the determination of the Agricultural Lands Tribunal and one of those questions would be whether a person is a tenant or a protected tenant or a permanent tenant. The Agricultural Lands Tribunal would then have to ask itself the question whether it has jurisdiction to determine such question. When the Agricultural Lands Tribunal asks itself this question in a case occurring after the issue of the notification dated 9th July 1960, the answer would straightway be that it has jurisdiction to decide such question, and if it has jurisdiction to decide such question, it can certainly proceed to do so in the proceeding u/s 32G which is pending before it. It is difficult to see why an application u/s 71 should be necessary for determination of the question whether a person is a protected tenant or a permanent tenant when such question arises in a proceeding validly initiated u/s 32G. The Agricultural Lands Tribunal can decide such question for the purpose of disposing of the proceeding u/s 32G and Section 71 cannot possibly have application in such a case. It would indeed be absurd to suggest that for determination of every question arising u/s 32G, an application must be made to the Agricultural Lands Tribunal u/s 71. The applicability of Section 71 would undoubtedly have to be considered when a proceeding is initiated before the Agricultural Lands Tribunal but once proceeding is validly initiated, all questions arising in the proceeding can be disposed by the Agricultural Lands Tribunal and no separate application u/s 71 would be necessary for the determination of such questions.

6. These were all the contentions urged on behalf of the petitioners and since there is no substance in them, the petition fails and the rule is discharged with costs.