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(1963) 01 GUJ CK 0012

In the Gujarat High Court

Case No : Special Civil Application No. 67 of 1961

Navnitlal Gordhandas and Others — APPELLANT

Vs

Keshavlal Maganlal and Another — RESPONDENT

Date of Decision : 28-01-1963

Acts Referred:
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 2(18), 2(8), 29(2)

Citation : AIR 1964 Guj 233 : (1964) 5 GLR 315

Hon'ble Judges : P.N. Bhagwati, J;J.M. Shelat, J

Bench : Division Bench

Advocate : M.D. Pandya, for the Appellant; N.V. Karlekar, for the Respondent

Judgement

Bhagwati, J.—This petition raises a short but interesting question of construction of certain provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, (hereinafter referred to as the Tenancy Act). This extra-ordinary and unique enactment has often been, described as a patchwork legislation framed without any scientific accuracy of language and this case affords one more justification of the rich volume of judicial vituperation it has evoked from many Judges in the past. The facts giving rise to this petition are not many and may be briefly stated as follows:

2. There is a piece of land beaming Survey No. 223 situate in Navapura Falia of the Town of Kalol in the Panchmabals District. Prior to 1932, one Himatbhaiji held permanent leasehold rights in the land and he had constructed a small Kutcha shed on a part of the land. The petitioner having a money claim against Himatbhaiji and one Chuna Karson filed Suit No. 1189 of 1932 against them and the suit resulted in a decree in favour of the petitioner. In execution of the decree the land together with the superstructure was attached and sold and the petitioner purchased the same and obtained possession of it on 13th February 1940. On the same day the petitioner gave the land and the superstructure on lease to one Dwarkadas for a period of one year. Though the period of the lease expired on 13th February 1941, Dwarkadas did not band back possession of the

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land and the superstructure to the petitioner. Dwarkadas on the contrary put up a new superstructure after demolishing the old one and sublet the land with the superstructure to respondent No. 1. The petitioner thereupon filed Suit No. 77 of 1946 against Dwarkadas and respondent No. 1 to recover possession of the land and the superstructure. On 26th September 1947 a decree was passed in the suit directing Dwarkadas and respondent No. 1 to remove the superstructure and to hand over possession of the land to the petitioner. An appeal was preferred against the decree by respondent No. 1 but the appeal was dismissed. Even so, respondent No. 1 did not vacate the land after removing the superstructure as required by the decree. The petitioner was, therefore, constrained to file an application for execution to recover possession of the land. Bai Anandi, wife of respondent No. 1, however, obstructed the execution of the decree, claiming that she was the owner of the land and the superstructure. An application for removing the obstruction was filed by the petitioner but it was beyond time and was, therefore, dismissed. The petitioner thereupon filed Suit No. 42 of 1951 against Dwarkadas, respondent No. 1 and Bai Anandi for a declaration that he was the owner of the land and for recovering possession of the land from them. In that suit a consent decree was passed on 14th April 1952 whereby respondent No. 1 and Bai Anandi were declared owners of the northern half of the land together with the superstructure standing thereon while the southern half of the land was declared to belong to the petitioner and respondent No. 1 and Bai Anandi were directed to hand over possession of the southern half of the land to the petitioner. The southern half of the land which was declared to belong to the petitioner and of which possession was directed to be handed over to the petitioner will be referred to by us hereafter as the disputed land. In spite of the consent decree respondent No. 1 and Bai Anandi did not hand over possession of the disputed land to the petitioner. The petitioner thereupon filed an application for execution of the consent decree and on 26th July 1952 obtained possession of the disputed land from respondent no. 1 and Bai Anandi. What happened thereafter is a matter of controversy between the parties. According to She petitioner respondent No. 1 took forcible possession of the disputed land on 25th February 1953 and refused to hand back possession of the disputed land to the petitioner. According to respondent No. 1, however, the petitioner gave a lease of the disputed land to respondent No. 1 on 23rd October 1952 at the rent of Rs. 2/- per month, since respondent No. 1 required the disputed land for making and storing agricultural implements. Whatever foe the true position on 27th January 1956 the petitioner filed Suit No. 6 of 1956 against respondent No. 1 in the Court of the Civil Judge, Junior Division, Kalol, for recovering possession of the disputed land from respondent No. 1. The contention of the petitioner was as is clear from what is stated above, that respondent No. 1 was a trespasser on the disputed land and was, therefore liable to hand over possession of the disputed land to the petitioner. Respondent No. 1 in the written statement filed by him in answer to the suit contended that he was an artisan making agricultural implements and that he had taken the disputed land on lease from the petitioner for making and storing agricultural implements since the disputed land was

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adjoining the other portion of the land on which he had his dwelling house and it was, therefore, convenient to him to carry on his occupation on the disputed land. Respondent No. 1 contended that he was, therefore, a tenant within the meaning of the Tenancy Act and that the Civil Court had, therefore, no jurisdiction to entertain the suit. Since the pleadings of the parties raised the issue whether respondent No. 1 was a tenant of the disputed land and this issue, was triable exclusively by the Mamlatdar u/s 70(b) of the Tenancy Act the learned Judge referred this issue to the Mamlatdar for his decision. When the matter vent before the Mamlatdar a statement was filed on behalf of respondent No. 1 and in the statement, respondent No. 1 claimed to be, a tenant of the petitioner in respect of the disputed land. It may be mentioned here that though in the written statement filed in answer to the suit, respondent No. 1 had alleged that he had built a Kutcha shed on the disputed land after taking it on lease from the petitioner, no such allegation was made by respondent No. 1 in the statement filed by him before the Mamlatdar. All that respondent No. 1 alleged be-fore the Mamlatdar was that he was an artisan and that he had taken the disputed land on lease from the petitioner for making and storing agricultural implements and that he was in fact carrying on that occupation on the disputed land. Evidence of several witnesses including himself was led by respondent No. 1 to prove that the petitioner had granted a lease of the disputed land to Respondent No. 1 and that respondent No. 1 was an artisan making agricultural implements and was carrying on occupation as such artisan on the disputed land. The petitioner also led evidence to contest these allegations of respondent No. 1. On the evidence the Mamlatdar came to the conclusion that respondent No. 1 was an artisan and that since it was established that the petitioner had granted a lease of the disputed land to respondent No. 1, respondent No. 1 was a tenant of the petitioner in respect of the disputed land within the meaning of the Tenancy Act. The petitioner being aggrieved by this decision of the Mamlatdar, preferred an appeal to the Prant Officer. The Prant Officer also reached the same conclusion as the Mamlatdar and dismissed the appeal. The matter was carried in revision before the Revenue Tribunal, but the Revenue Tribunal also, for reasons recorded in its order, dismissed the Revision Application. The petitioner thereupon preferred the present petition in this Court challenging the order of the Revenue Tribunal.

3. The decision of the Revenue Tribunal was attacked by Mr. M.D. Pandya, learned advocate appearing on behalf of the petitioner, mainly on two grounds. The first ground was that respondent No. 1 was not a tenant of the disputed land within the meaning of the Tenancy Act since the disputed land was not land used for agricultural purposes falling within the definition of the term "land" contained in Clause (a) of Section 2(8). The argument was that no one could be said to be a tenant entitled to the protection of the Tenancy Act unless he satisfied the requirements of the definition of "tenant" enacted in Section 2(18) and that it was, therefore, necessary for respondent No. 1 to show that he satisfied the requirements of that difinition. The only part of Section 2(18) which could be

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invoked by respondent No. 1 was, argued Mr. M.D. Pandya, the part which difines a "tenant" to mean a person who holds land on lease. But, that part, contended Mr. M.D. Pandya did not help respondent No. 1 for it was only a person holding land on lease who could be regarded as a tenant under that part and "land" was defined in Clause (a) of Section 2(8) to mean land used for agricultural purposes which the disputed land was admittedly not. There was no doubt an extended meaning given to the term "land" in Clause (b) of Section 2(8), but, pointed out Mr. M.D. Pandya, this extended meaning was by the express provision of the clause itself confined to certain Sections and Section 2(18) not being one of them this extended meaning could not be given to the term "land" in Section 2(18). The term "land" in Section 2(18), therefore carried only the limited meaning given to it in Clause (a) of Section 2(8). Following this line of reasoning Mr. M.D. Pandya contended that since the disputed land was not land used for agricultural purposes and was, therefore, not land within the meaning of Clause (a) of Section 2(8), respondent No. 1 though holding the disputed land on lease, could not be said to be a tenant entitled to the protection of the Tenancy Act. The second argument of Mr. M.D. Pandya was that even if the extended meaning given to the term "land" in Clause (b) of Section 2(8) were applicable to the definition of "tenant" in Section 2(18), notwithstanding the absence of reference to that Section in Clause (b) of Section 2(8), respondent No. 1 could not yet be regarded as a tenant since the disputed land did not come even within the extended meaning of the term "land". The disputed land, argued Mr. M.D. Pandya, was neither the site of a dwelling house occupied by an agriculturist, agricultural labourer or artisan nor land appurtenant to such dwelling house so as to fall within Sub-clause (i) of Clause (b) of Section 2(8) and Sub-clause (ii) of Clause (b) of Section 2(8) admittedly did not apply. The conclusion pressed by Mr. M.D. Pandya, therefore, was that the disputed land was not land even within the extended meaning given to the term "land" in Clause (b) of Section 2(8) and respondent No. 1 was, therefore, not a tenant. It was on the other hand argued by Mr. N.V. Karlekar, learned advocate appearing on behalf of respondent No. 1 that the issue whether respondent No. 1 was a tenant of the disputed land arose in reference to the contention that the Mamlatdar alone had exclusive jurisdiction to entertain a claim for recovery of possession of the disputed land u/s 29(2) and that the Civil Court had no jurisdiction to entertain the suit and the issue was, therefore, required to be decided for the purpose of Section 29(2). Since the question whether respondent No. 1 was a tenant of the disputed land fell to be decided for the purpose of Section 29(2) and Clause (b) of Section 2(8) provided that the term "land" shall have the extended meaning given to it in that clause for the purpose of Section 29, the term "land" in the definition of a tenant argued on N.V. Karlekar, must have such extended meaning when the expression "tenant" is used in Section 29(2). Mr. N.V. Karlekar urged that the disputed land was land within the extended meaning of that term given in Clause (b) of Section 2(8) and that respondent No. 1 was, therefore, a tenant entitled to invoke the provisions of Section 20(2) in answer to the suit filed by the petitioner. These were the rival contentions urged on behalf of the parties and we shall now

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proceed to examine the validity of these contentions.

4. Before we proceed to examine the arguments which were urged before us, it would be convenient to set out at this stage the relevant Sections of the Tenancy Act which have a bearing on the determination of the questions raised before us. It may be pointed out "that in this petition we are concerned with the Tenancy Act as it stood after the amendments effected in it by Bombay Act XIII of 1956. The entire case was argued before us, and we may mention, all throughout before the Mamlatdar, the Prant Officer as also the Revenue Tribunal on the basis that the rights and liabilities of the parties are governed by the amended Tenancy Act and the decision must, therefore, depend on the true Construction of the provisions of the amended Tenancy Act. But in order to arrive at the true construction, it is necessary to refer to some provisions of the Tenancy Act as it stood prior to the amendments effected by Bombay Act XIII of 1956, to which we shall briefly refer as the unamended Tenancy Act. Sections 2(8) and 2(18) of the unamended Tenancy Act were in the following terms:

"2(8). "Land" means land which is used for agricultural purposes, and includes:

(a) the sites of farm buildings appartenant to land used for agricultural purposes, and

(b) the sites of dwelling houses occupied by agriculturists, agricultural labourers or artisans and land appurtenant to such dwelling houses."

"2(18). "Tenant" means an agriculturist who holds land on lease and includes a person who is deemed to be tenant under the provisions of this Act. The word "landlord" shall be construed accordingly."

These Sections were amended and after the amendment they read as follows:

"2(8) ''land'' means:

(a) land which is used for agricultural purposes or which is so used but is left fallow, and includes the sites of farm buildings appurtenant to such land; and

(b) for the purposes of Sections 11, 16, 17, 17A, 17B, 18, 19, 20, 26, 28, 29, 29A, 30, 41, 63, 64, 64A, 84A, 84B and 84C:

(i) the sites of dwelling houses occupied by agriculturists, agricultural labourers or artisans and land appurtenant to such dwelling houses;

(ii) the sites of structures used by agriculturists for allied pursuits;"

"2. (18) "tenant" means a person who holds land on lease and includes:

(a) a person who is deemed to be a tenant u/s 4;

(b) a person who is a protected tenant; and

(c) a person who is a permanent tenant; and the word "landlord" shall be construed accordingly."

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It would thus be seen that the extended meaning of the term "land" which is to be found in Sub-clause (1) of Clause (b) of Section 2(8) of the amended Tenancy Act was also given to the term "land" by Clause (b) of Section 2(8) of the unamended Tenancy Act with this difference that whereas the extended meaning is given to the term "land" under the amended Tenancy Act only for the purposes of certain Sections specified in Clause (b) of Section 2(8), such extended meaning attached to the term "land" in the unamended Tenancy Act for the purposes of all Sections. u/s 2(18) of the unamended Tenancy Act, the tenant was required to be an agriculturist but that limitation is removed u/s 2(18) of the amended Tenancy Act. After the amendment, any person, whether an agriculturist or not, can be a tenant provided he holds on lease "land" as defined in Section 2(8) and "land" is given an extended meaning by Clause (b) of Section 2(8) for the purposes of certain Sections. The result is that the limitation which required that the tenant must be an agriculturist has now been removed. Now a tenant may not necessarily be an agriculturist; he may be any person holding land on lease. Of course land must be land as defined in Section 2(8) tut so long as "land" satisfies the definition contained in Section 2(8), any person holding it on lease would be a tenant. This amendment does throw some little light on the intention of the Legislature and indicates that when the legislature amended Section 2(18), the Legislature clearly contemplated an expansion of the meaning and content of the term "tenant" by bringing within its scope and ambit persons who were not agriculturists. Now if there could be a tenant only in respect of land used for agricultural purposes, as Mr. M.D. Pandya contended, there would have been indeed very little point in deleting the requirements that the tenant must be an agriculturist. It is clear that what the Legislature intended to do by the amendment was to bring within the scope and ambit of the definition of the term "tenant" in section 2(18) all persons holding land on lease and "land" for the purposes of certain Sections was given an extended meaning so that for the purpose of determining whether a person was a tenant for the purposes of those Sections "land" bad an extended meaning and any person who was holding on lease land within the extended meaning would be a tenant for the purposes of those Sections. Mr. M.D. Pandya contended that the Legislature could have very well included Section 2(18) in Clause (b) of Section 2(8) as one of the Sections for the purposes of which "land" should have an extended meaning, if the intention of the Legislature was that even a person holding on lease "land" within the extended meaning should be a tenant. But this contention of Mr. M.D. Pandya overlooks the fact that if the legislature had done any such thing, the expression "tenant" would have an extended meaning for the purposes of all Sections which it was certainly not the intention of the Legislature to achieve. The Legislature clearly desired that for the purposes of all the sections barring those mentioned in Clause (b) of Section 2(8), tenant should mean a person holding on lease "land" as defined in Clause (a) of Section 2(8) but for the purposes of the Sections specified in Clause (b) of Section 2(8) a tenant should be a person holding on lease not only "land" as defined in Clause (a) of Section 2(8) but also land within the extended meaning given to it in Clause (b) of Section 2(8) and

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that is why the Legislature resorted to this particular legislative device of making the term "land" which is a factor in the definition of the expression "tenant" a variable factor according as the expression "tenant" occurs in one Section or the other. This view which we are inclined to take is supported by the use of the words "for the purposes of" in Clause (b) of Section 2(8). The Legislature has designedly not said that the term "land" shall have the extended meaning in the Sections specified in Clause (b) of Section 2(8). The Legislature has declared that the term "land" shall have an extended meaning for the purposes of those Sections. The intention, therefore, clearly is that when we turn to those Sections, then for the purposes of those Sections, the term "land" must have an extended meaning so that in construing the expression "tenant" in those Sections, the term "land" must be given an extended meaning.

5. There is one further consideration which to our mind is decisive of the matter and it is this, namely, that if the construction contended for by Mr. M.D. Pandya were accepted, it would render quite a few Sections mentioned in Clause (b) of Section 2(8) devoid of any rational meaning. When we asked Mr. M.D. Pandya as to why certain Sections were mentioned in Clause (b) of Section 2(8), the answer given was that those Sections were mentioned in Clause (b) of Section 2(8) because the Legislature intended that the term, "land" in those Sections should have an extended meaning and that such extended meaning, was to be confined to the term "land" occurring in those Sections and could not be projected into the definition contained in Section 2(18) for the purpose of extending the meaning of the expression "tenant" occurring in those Sections. Now a mere reading of those sections is sufficient to convince us of the invalidity of this contention. We shall briefly examine some of those Sections in order to show the absurdity to which the construction canvassed by Mr. M.D. Pandya would lead.

6. The first Section referred to in Clause (b) of Section 2(8) is Section 11. That Section provides that notwithstanding any agreement, usage or law, it shall not be lawful for any landlord to levy any cess, rate vero, huk or tax or service of any description or denomination whatsoever from any tenant in respect of any land held by him as a tenant other than the rent lawfully due in respect of such land. Now a plain and grammatical construction of this Section clearly shows that the land in respect of which no cess, rate, vero, huk or tax or service other than the rent lawfully due can be demanded is the land held by the tenant from the landlord and if as Mr. M.D. Pandya conceded, land had-an extended meaning in this Section, the tenant and the landlord must also have an extended meaning because unless the tenant was a tenant in respect of the land within the extended meaning and the landlord was a landlord in respect of the land within the extended meaning, the Section could not possibly apply. Realising this difficulty, Mr. M.D. Pandya sought to place an artificial construction on the provisions of the Section. The construction involved verbal gymnastics of a rather intriguing character and defied not only all canons of construction but also the plain dictates of language and grammar. He contended that the tenant must be a

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tenant of land used for agricultural purposes and if such tenant held any other land within the extended meaning from the same landlord, then only could the Section apply to protect such tenant in respect of such land. But on this construction the protection given to a tenant would be considerably restricted. Prior to the amendments made by Bombay Act XIII of 1956, even if an agriculturist who was an occupant of agricultural land took on lease a site of a dwelling house from a landlord, he would be protected under this Section from any demand in excess of the rent lawfully due. But after the amendments he would not have any such protection for he would not be a tenant holding agricultural land on lease. Then take the case of an agriculturist who is a tenant of agricultural land but who also holds on lease from another landlord a site of a dwelling house. Under the unamended Tenancy Act, he would have been protected: But on the construction of Mr. M.D. Pandya, he would have no such protection under the amended Tenancy Act for the person from whom he has taken the site of the dwelling house on lease would not be a landlord, the expression "landlord" being also, like the expression "tenant" confined to land used for agricultural purposes. The effect Of accepting the construction suggested by Mr. M.D. Pandya would, therefore, be that Section 11 would, in relation to a site of a dwelling house or land appurtenant to such dwelling house, apply only to a case where such site or land has been taken on lease by a tenant of agricultural land from the same landlord from whom he has taken the argicultural land on lease. The protection which a tenant of a site of a dwelling house had under the unamended Tenancy Act would thus be considerably narrowed. That surely could never have been the intention of the Legislature. The Tenancy Act was amended in order to effect improvement in the position of tenants and not to affect their position adversely.

7. Turning to Sections 19, 20 and 26, we find that here also, on a plain and grammatical construction, "land" is referred to as the subject-matter leased out by the landlord to the tenant and if land bears an extended meaning in these Sections, as Mr. M.D. Pandya concedes, the expressions "landlord" and "tenant" must also correspondingly have an extended meaning. The landlord would be a landlord in respect of land bearing an extended meaning and the tenant would also likewise be a tenant in respect of land bearing an extended meaning. The extended meaning of the term "land" given in Clause (b) of Section 2(8) would thus be projected in the definition of "tenant" when the expression "tenant" occurs in these Sections.

8. A reference to Section 41 also fortifies us in this conclusion. We need not repeat what we have said above while dealing with Section 11 beyond observing that what we have stated there, applies with equal force to Section 41. The construction contended for by Mr. M.D. Pandya leads to an absurd position when we apply that construction to the provisions of Section 41. This construction cannot, therefore be accepted.

9. But apart altogether from these circumstances, there is one circumstance

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which is by far the most important and that is the introduction of Section 29A by Bombay Act XIII of 1956 This Section provides that the provisions of Section 29 shall apply to the sites used for allied pursuits as they apply to the sites of dwelling houses for an agricultural labourer or artisan in regard to taking possession of any land or dwelling house under the provisions of the Tenancy Act. The Section clearly proceeds on the assumption that the provisions of Section 29(2) which would of course include the provisions of Sub-section (2) of that Section, apply to the sites of dwelling houses of an agricultural labourer or artisan. If this assumption of the Legislature is correct, the term "tenant" in Section 29(2)must include an agricultural labourer or artisan who is holding the site of a dwelling house on lease from a landlord and the landlord would not be entitled to obtain possession of the site of the dwelling house from such agricultural labourer or artisan except by resorting to the provisions of Section 29(2). This would clearly show that for the purpose of Section 29(2)the expression "tenant", includes an agricultural labourer or artisan holding a site of a dwelling house on lease and that can only be if the extended meaning of the term "land" given in Clause (b) of Section 2(8) is projected into the definition of the expression "tenant" when that expression occurs in Section 29(2). It is no doubt true that the assumptions of the Legislature are not always well founded and they do not make the law. But when we find that the language used by the Legislature is reasonably capable of bearing a construction which accords with the legislative assumption, the legislative assumption can certainly be regarded as legislative interpretation or in any event exposition of the legislative intent. The expression "tenant" in Section 29(2)must, therefore, be held to include an agricultural labourer or artisan holding on lease land within the extended meaning given in clause (b) of Section 2(8).

10. Mr. M.D. Pandya opposed this construction by pointing out that if this construction were accepted by us, the result would be that Section 18, Clause (a) would be rendered superfluous and so also would the words "an agricultural labourer or artisan" in Section 29(1) be rendered unnecessary. Mr. M.D. Pandya pointed out that Sections 16 and 17 are Sections referred to in Clause (b) of Section 2(8) and that if, therefore, the expression "tenant" in these Sections includes a person holding on lease land within the extended meaning given in Clause (b) of Section 2(8), an agricultural labourer or artisan holding on lease a site of a dwelling house would come within the meaning of the expression "tenant" occurring in Sections 16 and 17 and would, therefore, be entitled to the benefit of the provisions contained in those Sections. But if that were so, argued Mr. M.D. Pandya, why was it necessary to make an express enactment in Section 18 applying the provisions of Sections 16 and 17 to dwelling houses and sites thereof occupied by agricultural labourers and artisans in any village? So also Section 29 being one of the Sections referred to in Clause (b) of Section 2(8), the expression "tenant" in Section 29(r) would include an agricultural labourer or artisan holding on lease "land" within the extended meaning given in Clause (b) of Section 2(8) and if that were so, why were the words "an agricultural labourer

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or artisan" enacted in Section 29(1)? These words, contended Mr. M.D. Pandya, would be totally superfluous and no construction should be placed which would have the effect of rendering any words in a statute superfluous or unnecessary. Now it is undoubtedly a good general rule in jurisprudence that one who reads a legal document, whether public or private, should not be prompt to ascribe to its language tautology or superfluity and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use; but this rule is not an inviolable rule and departures from it are not quite infrequent. "It may not always be possible" said Jessel M.R., in Yorkshire Insurance Co. v. Clayton (1881) 8 Q. B. D. 421 "to give a meaning to every word used in an Act of Parliament" and many instances can be found of provisions put into statutes merely by way of precaution. Nor is surplus age or even tautology wholly unknown in the language of the Legislature. Of course the Courts always observe the rule that words should not be rejected as superfluous or tautologous unless necessity or some sound reason demands, but when such is the case -- and as pointed out by us it is not as uncommon as one might imagine--words can and must be rejected in order to make sense of the other provisions of the statute. We have already pointed out that if the construction contended for by Mr. M.D. Pandya were accepted, many of the Sections referred to in Clause (b) of Section 2(8) would have to be given a strange and artificial meaning considerably narrowing the protection accorded to tenants under the unamended Tenancy Act and not really carrying out the object and purpose of the Tenancy Act, which was to effect an improvement in the lot of tenants. The other construction contended for by Mr. N.V. Karlekar, which we are inclined to accept is not only natural and grammatical but accords more with the object and purpose of the Tenancy Act and carries it out in a much fuller measure than the construction contended for by Mr. M.D. Pandya. It may be that this construction which we are inclined to accept leads to this, namely, that it renders Section 18(a) and certain words in Section 29(1) unnecessary. But as between these compelling anomalies, we have no hesitation in preferring the construction suggested by Mr. N.V. Karlekar which creates less anomalies than the construction contended for by Mr. M.D. Pandya which renders several Sections devoid of full force and effect. As a matter of fact we have our own doubts whether Section 18(a) and the words "an agricultural labourer or artisan" in Section 29(1) are really superfluous. If we turn to Section 18(a) we find that it makes the provisions of Sections 16 and 17 applicable not only to sites of dwelling houses but also to dwelling houses occupied by agricultural labourers and artisans. It is possible that the Legislature might have thought that though dwelling houses and sites of dwelling houses might be protected by mentioning Sections 16 and 17 in Clause (b) of Section 2(8) in cases where sites of dwelling houses were taken on lease by tenants, that might not carry with it the protection in regard to dwelling houses where merely dwelling houses without the sites thereof were taken on lease by tenants and the legislature might therefore have thought it necessary to make an express provision in Section 18(a). So also, when we turn to Section 29(1), we find that the words "an agricultural labourer or artisan" were already there in the

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unamended Tenancy Act and it is possible that these words might have been retained by the Legislature after the amendment because the Legislature might have thought that there might be conceivable situations where ah agricultural labourer or artisan might need protection even though he may not strictly fall within the definition of "tenant". These are not considerations which should in our opinion, deter us from taking the view which, for reasons which we have already mentioned, appears to be the most rational view consistent with the various provisions of the Tenancy Act.

11. We are, therefore, of the opinion, that for the purposes of Section 29(2)and various other Sections specified in Clause (b) of Section 2(8), the expression "tenant" must include a person holding on lease land which may fall within the definition of "land" contained in Clause (b) of Section 2(8). If, therefore, the disputed land in the present case was "land" within the meaning of the term contained in Clause (b) of Section 2(8), respondent No. 1 must be regarded as a tenant of the disputed land.

12. The next question which must, therefore, be considered is whether the disputed land fell within the extended meaning of the term ''land" given in Clause (b) of Section 2(8). No reliance was placed on Sub-clause (ii) of Clause (b) of Section 2(8) and the entire controversy between the parties turned on the question whether the disputed land fell within the words to be found in Sub-clause (1) of Clause (b) of Section 2(8). Mr. N.V. Karlekar attempted to argue that the disputed land was a site of a dwelling house occupied by respondent No. 1 and was, therefore, land within the meaning of Clause (b) of Section 2(8). The premise on which this contention was based was that after taking the disputed land on lease, respondent No. 1 had erected a dwelling house on the disputed land and that the disputed land was therefore, a site of a dwelling house occupied by respondent No. 1. This premise was, however, seriously disputed by Mr. M.D. Pandya on behalf of the petitioner. Mr. M.D. Pandya pointed out that that was not the case of respondent No. 1 at any time before the Mamlatdar nor was any evidence to that effect led before the Mamiatdar and that it was, therefore, not open to respondent No. 1 to make out any case before us based on this part of the definition of "land" contained in Sub-clause (1) of Clause (b) of Section 2(8). Mr. M.D. Pandya is, in our opinion, right in this contention. When we turn to the statement filed By respondent No. 1 before the Mamiatdar, we find that the case put forward by respondent No. 1 in the statement was not that he had erected a dwelling house on the disputed land and that the disputed land was, therefore, a site of a dwelling house occupied by him. Not a word was mentioned in the written statement that respondent No. 1 had erected a dwelling house on the disputed land. The case which was sought to be made out by respondent No. 1 was, as is apparent from the statement, that the disputed land was appartenant to the dwelling house which respondent No. 1 had erected on the adjoining land, though of course even this does not appear to have been clearly thought of by respondent No. 1. Respondent No. 1 undoubtedly led the evidence of several wit nesses, but none of the witnesses stated that respondent No. 1

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had erected a dwelling house on the disputed land. Two of the witnesses certainly deposed that respondent No. 1 had put up a Kutcha shed but they did not go further and state that the Kutcha shed was a dwelling house and it was occupied as a dwelling house by respondent No. 1. This was obviously so because it was not the case of respondent No. 1 that the disputed land was a site of a dwelling house occupied by him. In this view of the matter it is not possible for us to allow Mr. N.V. Karlekar to con-tend that the disputed land was the site of a dwelling house occupied by respondent No. 1 and, therefore, fell within the first part of the definition contained in Sub-clause (1) of Clause (b) of Section 2(8). That leaves the last part of the definition contained in Sub-clause (1) of Clause (b) of Section 2(8) and the contention based upon it, namely, that the disputed land was land appurtenant to the dwelling house occupied by impendent No. 1 on the adjoining land belonging to him and Bai Anandi. On this part of the case unfortunately the attention of neither patty was directed during the course of the hearing before the Mamlatdar or for the matter of that during the course of the hearing at any stage until the matter reached before us. Though the point was foreshadowed in the statement filed on behalf of respondent No. 1 before the Mamlatdar, no one seems to have thought that this was a ''point'' necessary to be gone into for the purpose of effectively adjudicating upon the matter in controvousy between the police. It is, therefore not only desirable but also necessary in the interest of justice that the matter should go back to the Mamlatdar so that the parties may have an opportunity of leading such evidence as they like on the question whether the disputed land is land apprutenant to the dwelling house of respondent No. 1 on the adjoining land belonging to him and Bai Anandi.

13. We, therefore, set aside the order passed by the Revenue Tribunal and direct that the matter should go back to the Mamlatiar for the purpose of determining the question whether the disputed land is land appurtenant to the dwelling house of respondent No. 1 on the adjoining land belonging to him and Bai Anandi. If the Mamlatdar comes to the conclusion that the disputed land is land appurtenant to such dwelling house, the Mamlatdar will hold that respondent No. 1 is a tenant of the disputed land for the purposes of the Sections mentioned in Clause (b) of Section 2(8). If however, the Mamlatdar finds that the disputed land is not land appurtenant to such dwelling house within the meaning of that expression as used in Sub-clause (1) of Clause (b) of Section 2(8), the Mamlatdar will declare that respondent No. 1 is not a tenant of the disputed land. There will be no order as to costs.

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