

(1959) 01 BOM CK 0007

In the Bombay High Court

Case No : Special Civil Application No. 2339 of 1958 and Special Application No"s. 2342 and 2639 of 1958

Nivruthi Laxman Kondobahiri

APPELLANT

Vs

Shivdayal Laxminarayan Sarda and Others

RESPONDENT

Date of Decision : 20-01-1959

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 4, 70

Citation : AIR 1960 Bom 56 : (1959) 61 BOMLR 957

Hon'ble Judges : Chainani, C.J;Patel, J;Mudholkar, J

Bench : Full Bench

Advocate : K.S. Sukthankar, Rajini Patel, I.C. Bhat, A.D. Desai, for N.C. Shah, for the Appellant; Y.V. Chandrachud and V.D. Malpani, for the Respondent

Judgement

Chainani, C.J.

(1) The question referred to the Full Bench is whether, under the provisions of the Bombay tenancy and Agricultural Lands Act, 1948, the Mamlatdar can entertain and decide an application filled by a landlord for a declaration that his opponent, who claims to be his tenant, is not a tenant under the said Act.

(2) There is no specific provision in the Act providing for such an application being made to the Mamlatdar, Section 70, however provides:

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

(b) to decide whether a person a tenant or a protected tenant or a permanent tenant. It is therefore, the duty and function of the Mamlatdar to decide whether a person is a tenant The power to decide whether a person is a tenant. necessarily includes the power to decide that the person is not a tenant. This power is, however, too be exercised by the Mamlatdar, as stated in this section, for the purposes of the Act. In view of these words in the section, in Magaubhai

Patel v. Bombay Revenue Tribunal Special Civil Appln No. 278 of 1957 the learned Judges were inclined to take the view that the Mamlatdar will have authority to decide the question whether a person is or is not a tenant. If that question arises in an application made under the Act, such as an application u/s 29 of the Act, If this had been the intention of the legislature, it would have used some such words as in any proceeding under the Act or in any application made under the Act. The words used "For the purpose of this Act: are very much wider. The other difficulty in accepting this view is the exclusion of the jurisdiction of the Civil court in matters which, under the Act are to be decided by the Mamlatdar. Section 85 of the Act 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 and the jurisdiction of the Civil court to determine such a question is ousted suit, section 85 of the Act. If therefore, in a civil suit, the question arises whether a person is a tenant or not, the civil court will have no jurisdiction to decide it section 85 of the Act, as amended in 1956 enables the Civil court to refer such a question to the Mamlatdar for determination. This amendment came into force with effect from 1st August 1956. Before that date the Civil court had no authority to refer any question for determination to the Mamlatdar. The only course open to it was to ask one or the other of the contending parties to make an application to the Mamlatdar and obtain his decision in the matter. It was so held by a division Bench of this court in Dhondi Tukaram v. Dadoo Piraji 55 Bom LR 663: AIR 1954 Bom 100. It was held in that case that in a suit filed against the defendant for possession of agricultural lands on the footing that he is a trespasser, if he raises a plea that he is a tenant or a protected tenant, the proper procedure to adopt would be to direct the party who raises such a plea to obtain a decision from the Mamlatdar and the application would be for a declaration that the applicant is a tenant that a reference to the Mamlatdar is necessary in such cases was also recognised in Maganbhai case (Special Civil Appln No. 278 of 11957) In the last but one paragraph of the judgment in that case, it has been observed that if an issue arises in Civil suit as to whether a person is or is not a sub tenant (or a tenant) that issue would be one for the Mamlatdar to decide upon a reference by the Civil court. The Mamlatdar can therefore decide this question, even if it arises in a proceeding other than a proceeding under the Tenancy Act. If the Mamlatdar has jurisdiction to decide the question after it arises in a Civil court, he will also have jurisdiction to decide it before it arises in the Civil court . A party may frequently find it more convenient to approach the Mamlatdar before he files a civil suit. The Act also contains no provision under which the exercise of jurisdiction by the Mamlatdar is made dependent upon the issue arising in a civil suit, or in some other proceeding the Act.

(3) It follows that an application for a declaration that a person is a tenant can lie before the Mamlatdar. This view finds support in the provisions of Ss. 4 and 74 of the Act. Section 4 provisions that a person lawfully cultivating any land belonging to another person shall be deemed to be a tenant except in the cases specified in

the section. This section does not, however, contain any provision for an application to the Mamlatdar, for declaring a person to be a tenant sub section (1) of section 74 provides that an appeal may be filed to the collector against an order of the Mamlatdar made u/s 4 and the Mamlatdars making an order upon it. The necessary inference therefore is that the Mamlatdar is competent to entertain an application for a declaration that a person is a tenant.

(4) It has, however, been urged that while an application may be made to a Mamlatdar for obtaining a declaration that a person is a tenant an application for a negative declaration that a person is not a tenant, is not competent. It has been contended that the object of the Act is to protect them and that consequently, where the owner of a land alleges that person is not a tenant or that he is not entitled to the protection of the Act, the application cannot be said to be one for the purposes of the Act. There does not seem to us to be much force in this argument. The purposes of the Act are, as will be seen from the preamble, to regulate the relations of landlords and tenants of agricultural lands. While the Act confers extensive of all their rights For instance, they can terminate the tenancies and resume possession of their lands in certain circumstances, u/s 29 both the landlords and the tenants can apply to the Mamlatdar for obtaining to determine whether a person is a tenant. He can therefore also decide that a person is not a tenant. If he can decide this question, on an application made to him by a tenant, it is difficult to understand why he should not be able to decide this question when the application is made by the landlord. In either case the question which the Mamlatdar will have to determine is whether the relationship of landlord and tenant exists between the parties. The jurisdiction to decide this question vests exclusively in the Mamlatdar and the Civil court is not competent to decide it. This question will also have to be determined by reference to and in the light of the provisions of the Act as to who are and who are deemed to be tenant and as to how and in what circumstances a tenancy can be terminated. Such a determination will therefore be for the purposes of the Act. The words for the purposes of this Act in our opinion, mean for the purposes of deciding any question relating to a matter, which is regulated or governed by the provisions of this Act, if, therefore, the question raised before the Mamlatdar relates to a matter, which is to be decided by reference to the provision of the Act, its determination by the Mamlatdar will be for the purposes of the Act, and it is immaterial whether the application raising the question is made by the landlord or by the tenant.

(5) We are accordingly of the opinion that a Mamlatdar can entertain and decide an application for a declaration that a person is or is not a tenant.

(6) The reply to the question referred to the Full Bench will, therefore, be in the affirmative.

(7) Reply accordingly.