

(1958) 07 BOM CK 0008

In the Bombay High Court

Case No : Special Civil Application No. 1060 of 1958

Satyanarayan Shrishankar Marwadi

APPELLANT

Vs

Vithoba Tatya Nandarkar

RESPONDENT

Date of Decision : 24-07-1958

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1959) 61 BOMLR 159

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Vyas, J.—This is an application under Articles 226 and 227 of the Constitution of India by the petitioner Satyanarayan Shrishankar Marwadi, wherein the petitioner has prayed for the quashing of the order passed by the Bombay Revenue Tribunal on November 8, 1957, by which order the Tribunal confirmed the order made by the Prant Officer on July 3, 1957. It may be noted that the Prant Officer by his order dated July 3, 1957, had confirmed the order of the Mamlatdar dated January 31, 1957.

2. This application raises a question under Sections 14 and 24 of the Tenancy Act, and the question is this where a landlord seeks to eject the tenant upon the ground that the tenant had done acts of destruction and permanent injury to the land, must he give two separate notices to the tenant, one u/s 14 and the next one u/s 24? In other words, can a landlord start a proceeding u/s 24 for ejectment of the tenant without having given him in the first instance a notice u/s 14, or, if a notice u/s 14 is given by him, is he absolved from giving a notice u/s 24? This question arises in the following circumstances:

3. The petitioner contends that he is the owner of the land comprised in S. Nos. 1047 and 1247 of Mangalvedha, District Sholapur. Opponent No. 1 Vithoba Tatya Nandarkar is a tenant of this land. The petitioner says that in order to prevent

soil erosion and also in order to drain off the excess of rain water he had constructed certain "bunds" and "tals" upon his land. It is the petitioner's case that opponent No. 1-tenant destroyed these "bunds" and "tals" by doing ploughing operations upon that portion of the land also. Then the petitioner says that opponent No. 1 constructed a new "tal" in front of the outlets and thereby diverted the flow of the rain water. These acts of opponent No. 1, says the petitioner, resulted in reducing the fertility of the soil and increasing the chances of soil erosion. These acts were, therefore, destructive of the land and had caused permanent injury to it. Upon these facts, says the petitioner, he gave a notice to opponent No. 1 on June 17, 1954. In the said notice he specified the acts of destruction of the land and injury to the land, that were done by opponent No. 1. The petitioner says that by the said notice, which was given by him u/s 14 of the Tenancy Act, he terminated the tenancy of opponent No. 1. Notwithstanding the termination of his tenancy, opponent No. 1 failed to restore possession of the land to the petitioner and, therefore, the petitioner made an application before the Mamlatdar, being Tenancy Case No. 294 of 1956, to obtain possession of the land from opponent No. 1. The Mamlatdar took the view that the notice which was given by the petitioner on June 17, 1954, was a notice u/s 24 of the Tenancy Act, that a separate notice u/s 14(1)(h) of the Act was necessary, but had not been given by the petitioner to opponent No. 1, and that, therefore, the petitioner was not entitled to obtain possession of the land from opponent No. 1. Accordingly, he rejected the petitioner's application for possession. From that order of rejection passed by the Mamlatdar on January 31, 1957, the petitioner went in appeal before the Prant Officer. The Prant Officer observed:

Section 24 speaks of one year's notice while Section 14 prescribes three months notice. The appellant combined these two notices into one and applied for possession. The Mamlatdar, therefore, rightly, dismissed the application.

Thus, the Prant Officer also agreed with the view of the Mamlatdar that a separate notice u/s 14(1)(b) ought to have been given by the petitioner, but was not given by him, and accordingly he also dismissed the appeal of the petitioner. This he did by his order dated July 3, 1957. From this order of the Prant Officer the petitioner went in revision before the Revenue Tribunal and the Revenue Tribunal rejected the revisional application. It is from this order of the Revenue Tribunal that the petitioner has filed the present application under Articles 226 and 227 of the Constitution of India.

4. It would appear that all the Courts below took the view that the notice dated June 17, 1954, which was given by the petitioner to opponent No. 1 was not a proper notice. Now, reading Section 14 and Section 24 of the Act, we have no doubt that the Legislature, while enacting these sections, clearly contemplated that two notices were necessary to be given by a landlord to his tenant in a case where a landlord seeks to eject the tenant upon the ground that the tenant had done acts of destruction and/or permanent injury to the land. If we turn to

Section 24, it opens with the words

Where any tenancy of any land held by any tenant is terminated on the ground that the tenant has done any act which is destructive or permanently injurious to the land.

Having used these words, the Legislature went on to say in Section 24: "no proceeding for ejectment against such tenant shall lie". It is clear, therefore, that before a proceeding for ejectment u/s 24 of the Act can lie against a tenant, there should have taken place a termination of the tenancy of the tenant by a notice u/s 14 of the Act. In the Tenancy Act there is only one section which deals with the termination of tenancies and that section is Section 14; and it is clear upon the reading of the plain language of Section 24 that before a proceeding for ejectment can be taken by a landlord against his tenant, there should, already have taken place a termination of the tenant's tenancy by a notice u/s 14. The important words in Section 24 are the words "such tenant". There is no doubt that the words "such tenant" mean the tenant against whom there has already been issued a notice of termination of tenancy u/s 14 of the Act by his landlord. It is, therefore, clear that the Act contemplates two notices, one u/s 14, that is to say, a notice terminating the tenancy of the tenant, and the other one u/s 24, that is, a notice about a proceeding to eject the tenant. This is also evident from the language used by the Legislature in Section 24. Section 24 says:

Where any tenancy of any land held by any tenant is terminated on the ground that the tenant has done any act which is destructive or permanently injurious to the land, no proceeding for ejectment against such tenant shall lie unless and until the landlord has served on the tenant a notice in writing specifying the act of destruction or injury complained of and the tenant fails within a period of one year from the service of notice to restore the land to the condition in which it was before such destruction or injury.

The important words are: "where any tenancy is terminated no proceeding for ejectment...shall lie..." It is clear, therefore, that the termination of tenancy must precede the commencement of a proceeding for ejectment. In the present case, the petitioner gave only one notice to opponent No. 1, and that, in our view, was a notice u/s 14. I shall presently point out that even this notice, namely, the notice u/s 14, was a defective notice. For the present, suffice it to say that in this case the landlord gave only one notice and that was a notice u/s 14; he did not give another notice, namely, a notice u/s 24, prior to the proceeding for ejectment, which he started on June 20, 1956.

5. The learned advocate Mr. Malpani appearing for the petitioner-landlord contends that the notice dated June 17, 1954, which was given by his client to opponent No. 1, was a notice under both the sections, namely, Sections 14 and 24 of the Act. Mr. Malpani says that the Legislature, while enacting Section 24, did not contemplate a separate notice, i.e., a notice distinct from a notice u/s 14, before the institution of a proceeding for ejectment. Upon the reading of the

section, it is impossible to accept the contention of Mr. Malpani. If the Legislature had intended that a notice of termination of tenancy u/s 14 would also be a notice for ejectment, the Legislature would, not have said:

no proceeding for ejectment against such tenant shall lie unless and until the landlord has served on the tenant a notice in writing specifying the act of destruction or injury complained of and the tenant fails within a period of one year from the service of notice to restore the land to the condition in which it was before such destruction or injury.

In that case, the Legislature would have stated:

where any tenancy of any land held by any tenant is terminated on the ground that the tenant has done any act which is destructive or permanently injurious to the land, no proceeding for ejectment against such tenant shall lie until after the expiry of one year from the service of notice of termination of the tenancy.

But such are not the provisions of Section 24. Besides, as Mr. Malpani himself has fairly pointed out, a notice upon the ground of destruction of land or permanent injury to the land, which is required to be given u/s 14, is not required to specify the act of destruction or injury complained of. Now, this itself would clearly suggest that two distinct notices are contemplated by the Legislature before a tenant could be ejected from the land upon the ground of destruction or permanent injury caused by him to the land. In the first instance, a notice u/s 14 should be given to the tenant, intimating to him that he had done an act which was destructive of or permanently injurious to the land, and after the expiry of three months from the date of that notice, i.e., after the tenancy of the tenant is terminated, another notice u/s 24 specifying the act of destruction or injury should be issued against the tenant, intimating to him that if he fails, within a period of one year from the date of receipt of that notice, to restore the land to the condition in which it was before the act of destruction or injury was done to it, he would have to be ejected from the land. It is impossible to accept the contention of Mr. Malpani that the Legislature intended to combine two notices into a single notice. In the present case, only one notice was given by the petitioner-landlord, and that was a notice u/s 14 of the Act; he did not give any notice u/s 24 of the Act before filing a proceeding for ejectment on June 20, 1956, against opponent No. 1.

6. The Revenue Tribunal in their order dated November 8, 1957, stated two grounds for holding that the notice given by the landlord to the tenant in this case was not a valid notice. One of the grounds, in the words of the Tribunal, was:

If the landlord noticed that his land was not restored to its original condition within one year from the service of his first notice, he should have given another notice u/s 24(b).

This would suggest that the view taken by the Tribunal in respect of the notice

dated June 17, 1954, which was given by the landlord to the tenant was that it was a notice u/s 14 of the Act. This was a correct view to take. But the Tribunal was wrong when it said that the landlord should have given another notice u/s 14(6). As I have stated above, the Legislature contemplated two separate notices, one u/s 14 and another u/s 24 of the Act. It was not necessary for the landlord to give another notice u/s 14(h) to the tenant before starting a proceeding for ejectment of the tenant.

7. The next ground upon which the Tribunal held that the notice was a bad notice was expressed in these words:

The landlord cannot, however, claim possession until one year has passed. A period of one year is given u/s 24, in order that the tenant may repair the land and restore it to the original condition. So, apart from any other question, the notice itself does not comply with the provisions of Section 24.

This view of the Tribunal was a correct view of a notice u/s 24. It is clear from the provisions of Section 24 that if the destruction or permanent injury caused by the tenant to the land is repaired, and if the land is restored to its original condition within one year commencing from the date of receipt of a notice under that section, the possession of the land could not be claimed by the landlord upon the ground of destruction or injury to the land. Before the landlord could succeed in his proceeding for ejectment, it must be established by him that the tenant had failed to restore the land to its original state within one year from the date of service of the notice to be given to him u/s 24. The point we wish to emphasise is that a notice u/s 14 is only a notice of termination of tenancy. Upon the termination of the tenancy, however, the landlord does not become entitled to possession automatically. He must next ask for possession, and for that purpose the Legislature has provided a procedure u/s 24. Before obtaining possession the landlord must give a notice under that section (Section 24), and only if the land is not restored to its original state within one year of the receipt of that notice, would he be entitled to the possession.

8. The notice which was given by the landlord in this case on June 17, 1954, was a defective notice. Section 14 provides:

Notwithstanding any agreement, usage, decree or order of a Court of law, the tenancy of any land held by a tenant shall not be terminated unless such tenant....

Provided that no tenancy of any land held by a tenant shall be terminated on any of the grounds mentioned in this sub-section, unless the landlord gives three months' notice in writing intimating the tenant his decision to terminate the tenancy and the ground for such termination.

The important words in the proviso are the words "intimating the tenant his decision to terminate the tenancy and the ground for such termination". It is clear, therefore, that what the Legislature contemplated while enacting Section

141 was that the notice to be given under this section must contain an intimation by the landlord to the tenant that the landlord had arrived at a decision to] terminate the tenancy of the tenant after three months from the date of receipt, of the notice. In other words, by a notice u/s 14 the landlord could only communicate to his tenant his decision to terminate his tenancy after the lapse of three months from the service of the notice. If the landlord goes beyond; it and calls upon the tenant to do something which he (the landlord) is not entitled to ask the tenant to do under the provisions of Section 14, then, in so far? as he calls upon the tenant to do something which he cannot ask him to do; u/s 14, the notice is an invalid notice. Now, if we turn to the notice in" this case, it would appear that the landlord called upon the tenant to hand over possession of the land to him upon the expiry of three months from the date of receipt of the notice. This the landlord was not entitled to" ask for under the provisions of Section 14, and upon this ground we must agree with the view of the Tribunal that the notice was an invalid notice. I have already stated above that so far as the notice u/s 24 of the Act is concerned, the landlord did not give any such notice to the tenant.

9. There is another reason also why we must hold that the notice given by the landlord to the tenant on June 17, 1954, was an invalid notice. u/s 14, a notice could only terminate the tenancy upon the expiry of three months I from the date of service of the notice. A notice u/s 14 does not terminate a tenancy forthwith, that is to say, with effect from the date of receipt of the notice itself. This is clear enough from the language of the section itself and no more comments are necessary upon this point. If we turn to the notice given in this case, it did not intimate to the tenant-opponent No. 1 that his tenancy would be terminated after the expiry of three months from the date of service of the notice. It told him distinctly that by the notice itself his tenancy was terminated. This is, therefore, a case of "termination forthwith" by the very act of giving a notice on June 17, 1954. Upon this ground also the notice given by the petitioner to opponent No. 1 was an invalid notice.

10. The result, therefore, is that the landlord has failed to comply with the statutory requirement of Section 24 of the Act, namely, the requirement that even if a notice of termination of tenancy u/s 14 is given to the tenant, another notice u/s 24 must be given to him intimating to him that in case he failed to restore the land to its original condition within one year from the date of St. service of that notice, he would have to be ejected, The landlord has also failed to comply with the statutory requirement of a notice u/s 14 itself in that beyond terminating the tenancy by that notice he went further and asked for possession of the land from the tenant upon the expiry of three months (from the date of receipt of that notice. Besides, the landlord sought to terminate the tenancy of the tenant by the very notice itself which also he could not do. The notice dated June 17, 1954, being thus an invalid notice upon various grounds, the landlord's application for ejecting the tenant was rightly dismissed by all the Courts below, though, as I have stated above, the view which they took of the notice was an

incorrect view.

11. This application must accordingly fail and be rejected with costs.