
(1975) 01 GUJ CK 0001
In the Gujarat High Court

Tajmohamad Hussainkhan Pathan

APPELLANT

Vs

V.J. Raghuvanshi

RESPONDENT

Date of Decision : 10-01-1975

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 88, 88(1)(a), 88(1)(a)
Criminal Procedure Code, 1973 (CrPC) — Section 561A

Citation : (1976) 17 GLR 231

Hon'ble Judges : P.D. Desai, J

Bench : Single Bench

Judgement

P.D. Desai, J.—Survey No. 3 admeasuring approximately 7. 51 acres situate in the Ahmedabad cantonment area is undisputedly owned by the union Government. The said land was leased to the petitioner from time to time since 1937. The last of such leases was for a period of five years commencing from June 1, 1968. The said lease expired on May 31, 1973. On May 29, 1973 the assistant military estates officer, the first respondent herein, issued a notice which was served upon the petitioner on May 30, 1973 calling upon him to handover vacant possession of the leased land on the date of the expiry of the lease. The petitioner has, thereupon, filed the present petition challenging the said notice.

2. Two points were urged at the hearing of the petition. First, that the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the tenancy Act) applied to the land in question and that the petitioner was a tenant entitled to the protection of the said Act and that as such he could not be evicted except in accordance with the provisions of the tenancy Act. Secondly, that under the cover of the impugned notice, the first respondent was seeking to take law into his own hands and intending to evict the petitioner otherwise than in due course of law and that such an Action was illegal and ultra vires.

3. It will be convenient to first dispose of the second contention urged on behalf of the petitioner. Mr. K. G. Vakharia, learned advocate appearing on behalf of the

first respondent, stated to the court that the impugned notice was no more than a request to the petitioner to handover vacant possession on the termination of the lease and that the respondents did not intend to dispossess the petitioner otherwise than in due course of law. In view of this clear statement made on behalf of the first respondent, the second contention based on an apprehension that the petitioner would be forcibly dispossessed otherwise than in accordance with law does not survive.

4. The validity of the first contention depends upon the true interpretation of Section 88 of the tenancy Act. Section 88 in so far as it is relevant for the purposes of this case reads as under:

88 (1) save as otherwise provided in Sub-section (2), nothing in the foregoing provisions of this Act shall apply-

(a) to lands belonging to, or held on lease from, the Government; (aa) to lands held or leased by a local authority;

(b) to any area which the State Government may, from time to time, by notification in the official gazette, specify as being reserved for non-agricultural or industrial development:....

There are two provisos to Clause (b) which are not relevant and they need not be read. Similarly, the other clauses and sub-sections of Section 88 (except Sub-Section 2) are also not relevant and they need not be cited. Sub-section (2) of Section 88 reads as under

(2) if any land held on lease from Government or any part thereof-

(i) is held at the commencement of the Bombay tenancy and agricultural Lands (Gujarat amendment) Act, 1960 by a person under a sub-lease from The lessee and is cultivated personally by such person, or

(ii) is sub-leased after the commencement of the Bombay tenancy and agricultural lands (Gujarat amendment) Act, 1960 by the lessee to any person For cultivation and such sub-leasing of the land or part thereof is Authorised in accordance with the terms of the lease, then all the provisions of this Act except Sections 32 to 32R (both inclusive) and Section 43 shall Notwithstanding anything contained in such lease, apply to the land, or As the case may be, the part thereof held under such sub-lease, as if the Person holding it under such sub-lease were a tenant within the meaning of Section 4 of this Act and lessee were the landlord:....

On a bare reading of the relevant provisions of Section 88 it is clear that except in certain cases of sub-leases dealt with in Sub-section (2), Sections 1 to 87 of the tenancy Act do not apply inter alia to lands belonging to or held on lease from the Government. Mr. Vakharia contends, relying upon these provisions, that since the land in question belongs to the union Government, the relevant provisions of the tenancy Act which confer the status of a protected tenant and

make such a tenant the statutory purchaser of the land leased to him would not apply in the present case. Mr. M.B. Shah, learned advocate appearing on behalf of the petitioner, however, urged that the expression the Government used in Section 88(1)(a) means the State Government and not both the State Government and the union Government and that, therefore, the land held on lease from the union Government would not be exempt from the relevant provisions of the tenancy Act.

5. Now, the expression the Government is not defined in the tenancy Act nor in the Bombay General Clauses Act, 1904. The said expression is, however, defined in the General Clauses Act, 1897. Section 3(23) of the said Act says that Government or the Government shall include both the Central Government and any State Government. But the opening part of Section 3 makes it clear that the definition applies only when the said expressions occur in any central Act or regulation made after the commencement of the Act. Ordinarily, therefore, this definition would not be helpful in construing the expression the Government occurring in a state statute. Section 4A of the said Act, however, enacts that the definitions of certain expressions given in Section 3 shall apply, unless there is anything repugnant in the subject or context, to all Indian laws. One of such expressions enumerated in Section 4A is Government. Therefore, if any state legislation uses the expression Government, it would be permissible to assign to it the meaning given to the said expression in Section 3(23) of the General Clauses Act, 1897 unless there is anything repugnant in the subject or context. In the present case, Section 88(1)(a) uses the expression the Government and not Government simpliciter. Section 4A would not, therefore, be attracted and the definition contained in Section 3(23) cannot be pressed into service in interpreting the said expression occurring in Section 88(1)(a). It would thus appear that neither the General Clauses Act, 1897 nor the Bombay General Clauses Act, 1904 is of any assistance in construing the expression the Government which occurs in Section 88(1)(a) and the question whether the said expression includes both the union Government and the State Government will, therefore, have to be resolved without any assistance being derived from the statutory definitions contained in either of the two General Clauses Acts.

6. Proceeding now to the task of construing the relevant expression without the inhibition of any statutory definition, it may be stated at the outset that an assumption might readily be made that if a state legislation uses the expression the Government, it would ordinarily mean the Government of that particular state. When the article the is used in conjunction with the word Government, it will not be unreasonable to make such a presumption. However, such a presumption can be displaced if there is a contrary indication available in the statute itself. One of the modes in which such a presumption can be displaced is by finding out whether the legislature has consistently used the word the Government at all places in the statute or whether it has used the word the Government at some places and the expression the State Government at other places. It is a well established canon of construction that when the legislature

uses different expressions in the same statute and more particularly in different parts of the same section, it would be legitimate to attribute to the legislature the intention of conveying different meanings by the use of the different expressions. If, therefore, two different expressions are used, namely, the Government and the State Government, it would be legitimate to proceed on the assumption that by using the expression the Government in some of the provisions of the Act, the legislature did not intend to refer to the State Government or to confine the operation of such sections only to the State Government. Now, so far as the tenancy Act is concerned, it is significant to note, in the first place, that in Section 88 itself the legislature has used two different expressions, namely, the Government in Sub-section (1), Clause (a) and the expression the State Government in Sub-section (1), Clause (b). In the next place, the expression State Government is also used in several other sections of the Act (see Sections 2(1) proviso, 2(2C), 2(9), 2(10), 6A, 7, 15, 17B, 23, 27, 44, 45, 88D etc.). Therefore, it would be legitimate to attribute to the legislature the intention of conveying a meaning other than that of the State Government by the use of the expression the Government in Sub-Section 88(1) (a) and the only different connotation that could be given to the said expression in contradistinction to the expression the State Government is that it has a broader sweep and that it includes both the Central Government and the State Government.

7. There is yet another way of looking at the matter. Section 88(1)(a) uses the expression the Government whereas Section 88(2) uses the expression Government simpliciter. Both these sub-sections deal inter alia with any land held on lease from the Government. In other words, the legislature while dealing with any land held on lease from the Government, has in the same section used the expression the Government one place and Government at another place. This would show that the expression "the Government" and "Government" are used in an interchangeable manner and that much emphasis cannot, therefore, be laid on the use of the article the which is prefixed to the word Government in Clause (a) of Sub-section (1) of Section 88. Merely by the use of the said article it cannot be said to have been definitely indicated by the legislature that it intended to refer to the State Government alone.

8. It would also be relevant to bear in mind that there appears to be no reasonable explanation for not exempting lands belonging to or held on lease from the union Government from the operation of the tenancy Act in view of the fact that the lands belonging to and held on lease from the State Government and local authorities are undisputedly exempted. It is well known that large tracts of open land vest in the Government and local self-Government bodies and that they cannot always be put to immediate use. Such lands, if they are agricultural lands, are often leased out for short duration so that instead of they being allowed to remain fallow, they could be profitably exploited till they are alternatively utilised for appropriate purpose. If the provisions of the tenancy Act are made applicable to such lands, persons to whom they are given on lease for

short duration would become entitled to the benefit of the provisions of the said Act and the Government as well as the local-self Government bodies may be deprived of those lands which are really intended to be used for more profitable purposes which might benefit the whole society. Section 88(1) is enacted to avoid such a situation. In view of this object underlying the said exemption provision, there is no need to give to the expression the Government occurring in Section 88(1)(a) the narrow and constricted meaning which has been contended for on behalf of the petitioner.

9. Looking, therefore, at the scheme of the Act, the use of the two different expressions, namely, the Government and the State Government in different parts of the Tenancy Act and the legislative object behind granting exemption to lands belonging to the Government and local authorities, the only conclusion which is possible is that the expression the Government is used in Section 88(1) (a) in a wider sense meaning not only the State Government but also the union Government.

10. In the view which I am inclined to take, I am supported by a decision of a division bench of the Bombay High Court given in the context of the exemption provisions contained in the Bombay rents, hotel and lodging house rates control Act, 1947. In *Rampratap Jaidaval v. Dominion of India* 54 B.L.R. 927 the question for consideration was whether in Section 4(1) of the rent Act, the expression the Government includes both the Central Government and the State Government and the division bench took the view that having regard to the fact that the legislature had used the expression the Government and the State Government in the same statute at different places and even in different parts of the same section, it would be legitimate to attribute to the legislature the intention of conveying different meanings by the use of the different expressions and that the only different meaning which could be given was that the expression the Government was used in a wider sense so as to include not only the State Government but also the Union Government. It was also pointed out in the said decision that there was no obvious explanation forthcoming as to why the legislature intended to exempt only the State Government and local authorities from the operation of the Act and not the union Government. This decision, though it is given in the context of a different statute, fortifies the view which I am inclined to take since it also deals with a similar provision of a similar statute and takes the same view which I intend to take.

11. Mr. Shah contended, however, that the court should be slow to interpret a statute in such a manner as would render it open to attack on the ground that it violates any of the fundamental rights and that giving to the expression the Government a wider meaning would render Section 88(1)(a) open to attack under Article 14 of the constitution. There is no dispute about the principle of construction upon which Mr. Shah relies but it has no application whatsoever in the context of the statute under consideration. In the first place, the tenancy Act is included in the ninth schedule and by virtue of the provisions of Article 31B it is

immune from challenge on the ground that it is inconsistent with or takes away or abridges any of the fundamental rights. Secondly, the Act has been held to be entitled to the protection of Article 31A as well and in view of the provisions of the said Article also the challenge based on Article 14 cannot be levelled against any of the provisions contained in the Act. Thirdly, exemptions of this nature made in favour of the Government have been held to be valid in the context of several other statutes. Fourthly, I fail to see how Article 14 could be invoked at all merely because the expression the Government is given a wider meaning. The exemption is already there in favour of the State Government and local authorities, even on the submission made on behalf of the petitioner, and merely by interpreting the section so as to make the exemption available even to the lands belonging to or held on lease from the union Government, no fresh ground of attack based on Article 14 could conceivably be raised.

12. Mr. Shah then invited my attention to the decision of the Supreme Court in Union of India (UOI) Vs. Jubbi and Dunia, etc., and urged that a law of which the objective was to free the tenant of landlordism and to secure to him his legitimate rights as a tiller should be so construed as to bind all landlords irrespective of whether such a landlord was an individual or the union Government. Now, there cannot possibly be any dispute about the proposition propounded by Mr. Shah. If there was nothing in the tenancy Act which either expressly or by necessary implication exempted the lands belonging to the union Government from the operation of the provisions of the said Act, the court would be loathe to discover an exemption in favour of such Government when none existed. In the statute under consideration, however, the provision as to exemption in favour of the Government is expressly found. The only question is whether the exemption is confined only to the lands belonging to the State Government or is also available in respect of lands belonging to the union Government. As pointed out earlier, there is no reasonable basis for distinguishing between the two Governments, so far as the exemption clause is concerned, if one bears in mind the object of granting the exemption. Besides, as a earlier stated, the scheme of the statute itself indicates that the expression the Government has been used in a wider sense. In these circumstances, in my opinion, there is no question of giving a narrow meaning to the expression the Government occurring in Section 88(1)(a) on the ground that a wider construction would defeat the object of the Act, namely, to free the tillers from evils of landlordism. The decision upon which reliance has been placed has no application because in the statute under consideration before the Supreme Court there was no express exemption in favour of the Government nor was such an exemption found to have been necessarily implied.

13. Mr. Shah next relied upon the decision of the Supreme Court in Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, and urged that where a word used in a statute has not been defined it must be construed in its popular sense and that accordingly the expression the Government must be given the meaning the State Government

because that is how it is understood in common parlance. I am unable to appreciate as to how this cannon of construction or the decision relied upon has relevance for the determination of the question posed in this case. In the context of taxing statutes, it is well-settled that where the definition of a word has not been given, it must be construed in its popular sense if it is a word of everyday use and popular sense in the context means that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it. However, the tenancy Act is not a fiscal measure and the expression the Government used in Section 88(1)(a) is not a word of everyday use having any definite popular sense. It is a word which has its origin in political science and it is capable of a wider or narrower meaning depending upon the subject and context in which it is used and the court has to choose the one or the other meaning by applying proper cannons of construction bearing in mind the legislative scheme and object. It is true, as stated earlier, that on a pure grammatical construction it may be possible to urge that the article the prefixed to the word Government might indicate that the legislature intended to give to the said expression a narrower meaning. That, however, is a consideration which is entirely different and it has no nexus with the construction of a word in a popular sense.

14. My attention was then invited by Mr. Shah to the decision of the Supreme Court in *The State of Uttar Pradesh Vs. Mohammad Naim*, wherein certain observations are made as to the meaning of the expression State Government and it was urged that the expression the State Government used in other sections of the tenancy Act must be read as meaning the Government of the state as contradistinguished from the State Government which meaning was assignable to expression the Government used in Section 88(1)(a). Frankly speaking, I am unable to appreciate this argument, or the relevance of the authority on which it is founded. In the case before the Supreme Court, the question was whether the State Government could make an application to the High Court u/s 561A of the Criminal Procedure Code for expunging the remarks made by the lower court and the question arose because it was held by the High Court that the state represented the executive as well as the judiciary and therefore it would be anomalous if an application were made by it through its executive branch to expunge the remarks made by its another wing, namely, the judiciary. The Supreme Court, while dealing with this finding of the High Court, pointed out that having regard to the definition of the expression State Government in Section 3(60) of the General Clauses Act, 1897, it would mean the authority or person authorised at the relevant date to exercise executive Government in the state and, after the commencement of the constitution, it means the governor of the state and that, therefore, if the State Government considers that the observations made by a court in respect of a department or officer through whom it exercises its executive powers are such as require invoking the inherent power of the High Court u/s 561 A, it would be difficult to see why the State Government cannot be considered to be the party aggrieved

by such observations who could invoke the jurisdiction of the High Court. It was further pointed out that state is a juristic person and that in the code of criminal procedure itself certain rights are conferred on the State Government. Therefore, the State Government as such would be entitled to move the High Court u/s 561A to redress the grievance that it might feel on account of any remarks made against its officers. Now, in the first place, in view of the circumstances pointed out earlier, the definition in Section 3(60) of the General Clauses Act, 1897, upon which this decision is founded, has no application in interpretation of the said word in a state statute. That apart, the definition applies only if there is nothing repugnant in the subject or context. In the present case, in the statute under consideration, the expression the State Government is used in contradistinction to the expression the Government and our endeavour is to find out as to what different meanings were sought to be conveyed by the use of the said two expressions. In the context, it would be difficult to construe the expression State Government as meaning the governor and to interpret the words the Government as meaning the State Government. The governor, in the scheme of our constitution, has little independent role to play and though the executive power of the state is vested under Article 154 of the constitution in the governor, it is to be exercised by him either directly or through officers subordinate to him in accordance with the constitution. Article 165 provides that all executive. Action of the Government of a state shall be expressed to be taken in the name of the governor. Under Article 163, the council of ministers aids and advises the governor in the exercise of his function (except in so far as he is by or under the constitution required to exercise his functions or any of them in his discretion). If one bears this constitutional scheme in mind, it is obvious that there could possibly be no distinction between the State Government on the one hand and the governor on the other except in those fields where powers are expressly reserved under the Constitution unto the governor exercisable by him at his own discretion. Therefore, in the statute under consideration, which does not deal with any matter which is reserved to the governor under the constitution, it would be futile to draw distinction between the governor and the State Government and to read the expression State Government as meaning the governor and the expression the Government as meaning the State Government in contradistinction. The State Government is a juristic person and it is that person which is referred to by the use of the expression State Government and not the governor. In my opinion, therefore, the authority on which reliance has been placed has no application in the facts of the present case and the argument based thereon is wholly misconceived.

It would appear from the foregoing discussion that the only conclusion possible that the expression the Government is used in a comprehensive sense in Section 88(1)(a) of the tenancy Act and that it is intended to cover both the State Government as well as the union Government and that therefore, the provisions of the said Act will not apply to lands belonging to or held on lease from the State Government as well as from the union Government. The first contention

urged on behalf of the petitioner, therefore, fails and it must be rejected.

No other point was urged. In the result, the writ petition fails and is dismissed.
Rule discharged with costs.