

(1962) 05 GUJ CK 0007
In the Gujarat High Court

The Shivrajpur Syndicate Ltd. and Another	APPELLANT
Vs	
Mohanlal Nathabhai	RESPONDENT

Date of Decision : 01-05-1962

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 70, 85, 85A, 85B, 85B

Citation : (1963) 4 GLR 446

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Judgement

V.B. Raja, J.—This revision application is filed by the original plaintiffs, who filed Civil suit No. 55 of 1957 in the Court of Civil Judge, Junior Division, Kalol, for recovering vacant possession of land S.N. 183 in Sivrajpur village. It was contended that the land was not land as defined in the Bombay Tenancy and Agricultural Lands Act, 1948, which will hereinafter be referred to as the Act, and further that a notification u/s 88(b) of the Act had been issued by the Government on 28-3-1957, reserving the suit land for non-agricultural use and industrial development and that on that account also the provisions of the Act were not applicable to the suit land. The contention of the opponent was that he was a permanent tenant and he had been cultivating the suit land for many years, although subsequently the land was used for non-agricultural purpose. The learned Judge framed certain preliminary issues, and although the issue of the notification was admitted by him, the learned Judge held that the notification did not affect the rights of the defendant in view of the provisions of Section 43C of the Act. He, therefore, held that the provisions of the Act were applicable to the suit land. He thereupon proceeded to consider the question whether some of the issues should be referred to the Mamlaldar u/s 85B of the Act.

2. In revision it is contended that in view of the notification which was admitted by both the parties the view taken by the learned Judge is wrong. The learned Judge thought that the notification was only prospective and not retrospective and that the defendant had acquired certain rights u/s 43C of the Act. He also

considered the question whether such rights could be called vested rights. He came to the conclusion that in view of the fact that the defendant had acquired certain rights u/s 43C of the Act those rights could not be taken away and that the Tenancy Act was therefore applicable.

3. Section 88(b) of the Act provides that nothing in the foregoing provisions of the Act shall apply 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. The Act contains 90 sections. The notification having been admitted the effect of Section 88(b) of the Act is quite clear which provides that nothing in the foregoing provisions of the Act shall apply to any area which the State Government from time to time by notification in the official gazette specify as being reserved for non-agricultural or industrial development. It is therefore clear that nothing in the foregoing provisions of the Act shall apply to the suit land as from the date of the issue of the notification. The learned Judge also considered *Tamboli Bhogilal v. Mohanlal Chunilal* 59 Bom. L.R. 274 *Jasin Tomu v. Harischandra* 61 Bom. L.R. 1112 and *Maganbhai Jethabhai v. Somabhai* 60 Bom. L.R. 1383. But it is not necessary to consider these cases in this revision application because this is a revision application and the only question for decision in this case is whether the learned Judge below failed to exercise jurisdiction vested in him or exercised jurisdiction not vested in him or acted in the exercise of jurisdiction illegally or with material irregularity. The question of rights of the parties relates to the merits of the case and does not affect the question of jurisdiction. The question whether the defendant has or has not any rights and whether such rights are vested rights or not is a matter to be decided ultimately by the Court having jurisdiction. But the learned Judge proposed to refer some of the issues to the Mamlatdar under Sections 85 and 85A of the Act in view of his finding that the Tenancy Act applies. But it is quite clear that Sections 85 and 85A do not apply to the suit land by reason of the notification issued and the provision contained in Section 88(b) of the Act. There is no ambiguity in this provision. It clearly provides that nothing in the foregoing provisions of the Act viz. Sections 1 to 87 of the Act shall apply to the suit land because of the notification issued by the State Government. Sections 85 and 85A are two of the sections which are in the foregoing provisions of the Act referred to in Section 88 of the Act. The Act however contains 90 sections and it is only Sections 1 to 87 that do not apply to the suit land. Section 89 of the Act which saves certain rights does apply to the suit land and the question as to the scope and application of Section 89 to the suit land would be considered by the Civil Court and not by the Mamlatdar because Sections 85, 70 and 85A do not apply to the suit land having regard to the fact that there is a notification in regard to the area in which the suit land is situated.

4. The Learned Counsel for the opponent relies on the judgment of their Lordships of the Supreme Court in C.R.A. 185/1956. But there the main question of controversy related to the rights between the parties and not to jurisdictional facts. That judgment will have to be followed and applied by the Court deciding

the rights of the parties. As this Court is not deciding the question of the rights of the parties it is not necessary to consider that judgment of their Lordships of the Supreme Court.

I therefore hold that in view of the notification issued by the Government Sections 85 and 85A of the Act do not apply to the suit land. The Civil Court must therefore decide all the issues before it. As this Court is only deciding the jurisdictional question it will not decide whether the Court below erred in the decision regarding the other issues. The revision application is allowed. There will be no order as to costs.