
(1964) 07 GUJ CK 0010
In the Gujarat High Court

Umraomiya Akbarmiya Malek

APPELLANT

Vs

Bhulabhai Mathurbhai Patel and Another

RESPONDENT

Date of Decision : 28-07-1964

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 31A, 31A(d)

Citation : (1965) 6 GLR 788

Hon'ble Judges : N.K. Vakil, J

Bench : Single Bench

Judgement

N.K. Vakil, J.—This is a writ petition under Article 227 of the Constitution and the only question that arises for consideration is the interpretation of Clause (d) of Section 31A of the Bombay Tenancy and Agricultural Lands Act No. LXVII of 1948 as it stands after its amendment by the Gujarat Act No. XVI of 1960. I shall for the sake of convenience refer to the main Act No. LXVII of 1948 in this judgment as the Act. The petitioner claimed to be the landlord of survey Nos. 922 and 928 admeasuring about 4 acres 20 Gunthas and 7 acres and 4 Gunthas respectively of village Vanod Taluka Thasra. He applied to the Mamlatdar u/s 29 read with Section 31 of the Act for possession from his tenant-respondent No. 1 in this petition. The Mamlatdar decided all the contentions raised by the tenant against him but dismissal the application of the landlord of the ground that he did not fulfil the conditions laid down in Section 31A Clause (d) of the Act. An appeal was filed against the finding of the Mamlatdar but that was also dismissed by the Prant Officer. A revision application was filed before the Gujarat Revenue Tribunal by the landlord but that was also dismissed. The petitioner based his claim of being the landlord of said lands on a gift made by one Usubmia Mohmedmia who was his maternal grand-father. It was an admitted fact that the name of Usubmia Mohmedmia was in the record of rights during the period mentioned in Clause (d) of Section 31A that is to say during the period from 1st day of January 1952 upto 15th June 1955. Before the Tribunal relying upon the decision of Waman Ganesh Joshi v. Ganu Guno Khapre 61 Bom. L.R. 1267 it was urged on behalf of the petitioner that the expression landlord himself used in Section 31 A(d) of the

Act included a predecessor-in-title and as the name of his predecessor-in-title the grandfather was in the revenue record he was entitled to terminate the tenancy. But the Tribunal pointed out that the said view was not accepted by the Gujarat High Court in the case of Bhanushanker Ambalal Joshi v. Laxman Kale and others 1 G.L.R. 169. It was also contended before the Tribunal on behalf of the petitioner that Usubmia was his maternal grandfather and in an ancestor and though the petitioner was not able to show that the land stood in his own name in the record of rights in the relevant period it was sufficient compliance with the conditions laid down in Section 31A(d) if it was shown that during that period the lands stood in the name of his said ancestor. The Tribunal however rejected this plea on the ground that the applicants claim to the property was based on a gift from Usubmia his maternal grandfather; therefore when the question of title by way of a gift arose no consideration about his claim though the ancestor arose and the applicant should be held to base his title on the ground that there was a gift in his favour and under the circumstances the fact of Usubmia being his ancestor cannot help him and dismissed the revision application. On behalf of the petitioner however it is submitted that after the decision in 1 Guj. L.R. 169 was given Clause (d) has been materially amended and therefore, the ratio of the decision in 1 Guj L.R. 169 cannot apply. It is contended that the amended clause does not prohibit the termination of tenancy by a person who bases his claim to be the landlord on a transfer from his predecessor-in-title if such predecessor is his ancestor and such ancestors name appears on the revenue record on the 1st day of January 1952 and thereafter during the period between the said date and 15th June 1955. Before I take up for consideration this contention on merit it will be expedient to refer to the two decisions mentioned by the Tribunal and the observations made therein as presumably the amendment has been made because of the observations made and the conclusion reached therein.

2. Clause (d) of Section 31A of the said Act as it stood before its amendment by the Gujarat Act No. XVI of 1960 read as follows:

The land leased stands in the record of rights or in any public record or similar revenue record on the 1st day of January 1952 and thereafter during the period between the said date and the appointed day in the name of the landlord himself or of any of his ancestors or if the landlord is a member of a joint family in the name of a member of such family.

It may be noted that the appointed day is defined in the Act to mean 15 day of June 1955. This Clause (d) creates one of the restrictions on the right of a landlord to terminate the tenancy for cultivating the land personally u/s 31. This Clause (d) as it stood then came in for consideration and interpretation as stated above by the division Bench of the Bombay High Court in Waman Ganesh Joshi v. Ganu Guna Khapre 61 Bom. L.R. 1267 and by the Full Bench of the Gujarat High Court in Bhanushanker Ambalal Joshi v. Laxman Kale and others 1 Guj. L.R. 169.

3. The petitioner of the case in 61 Bom. L.R. 1267 was a purchaser in a court sale of certain agricultural lands. After the purchase in the court sale the

petitioner gave a notice terminating the tenancy u/s 31 of the Act and thereafter filed an application for possession of the lands from the tenant u/s 29 read with Section 31 of the Act. The claim was disallowed on the ground that his name did not appear in the record of rights in the period as mentioned in Clause (d) of Section 31A and therefore he could not terminate the tenancy as he could not be said to own the land during the period mentioned in Clause (d). In the petition before the High Court it was urged that it was not necessary that the name of the petitioner himself should stand in the record of rights during the given period. It was enough if the petitioner was able to show that the name of his predecessor-in-title who in that case was the judgmentdebtor was in the record of rights on the first date and during the period mentioned. It was not disputed that the name of the said judgmentdebtor so appeared in the record of rights. In support of this contention reliance was placed on a previous decision of the same High Court in *Khalilulla Hasmiya v. Yesu* 59 Bom. L.R. 201. In the said decision Their Lordships were concerned with Section 34 as it stood before the Bombay Tenancy and Agricultural Lands (Amendment) Act 1955 and Bombay Act XV of 1957 came into force. Clause (1) of Sub-section (2A) of Section 34 indicated a similar restriction on the right of the landlord. The said provision was as follows:

If the landlord bona fide requires the land...then his right to terminate the tenancy shall be subject to the following conditions, namely,

(1) The land held by the protected tenant on lease stands in the record of rights in the name of the landlord on the 1st day of January 1952 as the superior holder.

It was held in that case that Section 34(2A)(1) of the said Act merely required the claimant to show that the person who was a lessor of the tenant on January 1 1952 had taken care to have his name entered in the record of rights as superior holder. The said section did not necessarily require that the name of the claimant himself must appear in the record of rights on January 1 1952 as superior holder. Where therefore a claimant whose name did not stand in the record of rights on January 1 1952 as superior holder sought to evict a tenant he must show that he claimed through the lessor whose name stood in the record of rights during the prescribed period. Relying upon the principle decided in the case of *Khalilulla Hasmiyn v. Yesu* the Bombay High Court in the later case also came to the conclusion that the term landlord occurring in Clause (d) of Section 31A of the Act in spite of the difference in the language of old Section 34 and Section 31A(d) includes any person from or through whom a landlord derives his right as such landlord and that for proper compliance with the conditions mentioned in Clause (d) of Section 31A it is sufficient that either the name of the claimant or his predecessor-in-title stands in the record of rights during the required period.

4. In the case of *Bhanushanker Ambalal v. Laxman Kala* the Full Bench of this High Court disagreed with the interpretation put on the said Clause (d) by the Bombay High Court. In the matter before the Full Bench the petitioner-landlord claimed that the land had been gifted to him by his father and the mutation

entry in that behalf had also been made. The name of his father was in the record of rights during the required period. He was therefore entitled to terminate the tenancy and Clause (d) did not come in his way. The petitioner relied on the case of Waman Ganesh v. Ganu Guna in support of his claim. While negating the claim of the petitioner Their Lordships have observed as follows:

This right recognised in favour of the landlord by Section 31 is not however an absolute right. It is hedged in by certain conditions some of which are to be found in Section 31A. One condition is that the land of which the landlord seeks possession on the ground that he bona fide requires it for cultivating personally must have stood in the record of rights or any public record or similar revenue record on 1st January 1952 and thereafter upon the appointed day which is 15th June 1955 in the name of the landlord himself or any of his ancestors or if the landlord is a member of a joint family in the name of any member of such family. The language of Clause (d) appears to us to be clear and there is nothing doubtful or ambiguous about it. Be it noted the section speaks not of landlord but of landlord himself.

Their Lordships were of the view that the construction sought to be placed on behalf of the petitioner on the words Landlord himself by including in their connotation a transferee from a landlord seems to be highly artificial and open to grave objection. It is further observed as under:

Considerable support is to be derived for the view which we are inclined to take when we read the expression in the name of the landlord himself along with the words which follow upon it viz. or any of his ancestors or if the landlord is a member of a joint family in the name of a member of such family. The date 1st January 1952 no doubt arbitrary is the datum line. The manifest object of the provision is to section that the benefit of Section 31 is to be confined to a person whose ancestor is shown to be the landlord on that date and in the case of the landlord being a member of a joint family, then in the name of any other member of that family on that date. The bone does not rest in or accrue to any other person. Therefore a transferee from a landlord in whose name the land is shown to stand cannot fit into the structure of this clause.

In Their Lordships' view the inclusion of word himself in Clause (d) of Section 31A made a material difference and on a mature consideration they differed from the view expressed by the Bombay High Court in the case of Waman Ganesh v. Ganu Guna and concluded that in their opinion the expression landlord himself in Section 31A(d) cannot embrace a person who is a transferee of a landlord.

5. From the above observations it can be seen that this High Court held that under Clause (d) as it stood then when a person claimed to be a landlord and wanted to terminate the tenancy one of the conditions that he has to satisfy is to show that the land during the period between 52 and 15-6-55 stood in his own name or of his ancestor or if he was a member of a joint family then in the name of one of its members but of no one else.

6. One other fact of importance in the said decision of *Bhanushanker Ambalal v. Laxman Kala* demands attention and that is that though the landlord was a donee inter vivos from his own father under a gift and the name of his father was in the revenue record during the required period the claim of the landlord was negatived on the ground that these facts did not comply with the condition laid down in Clause (d) as it then stood. Even the fact that the name of his father an ancestor was in the record of rights during the required period did not save his right. The reason is obvious to my mind. The term ancestor in the said clause is used conjunctionally in respect of a claim by a landlord where he bases his title on inheritance from an ancestor whose name stood in the record of rights during the required period. In the said case the petitioner based the claim of being a landlord not on inheritance from his father but on a transfer by way of a gift from him. True it is that the said question was not directly agitated or considered as such in the said case. At the same time the fact remains that the claim of the petitioner to terminate the tenancy was rejected on the ground that it did not comply with the requirements of the said Clause (d).

7. On behalf of the present petitioner it was urged that the term ancestor means one from whom the person is descendant either by the father or the mother and as the present landlord claimed through his maternal grandfather the maternal grandfather would be his ancestor within the meaning of the word in cause (d). We need not however enter into a discussion as to whether the maternal grandfather can be so recognised as an ancestor or not for even if it is so assumed for the purposes of argument in my view as discussed above it cannot help the petitioner as he did not claim his title to the land by way of inheritance from his maternal grandfather (and he could not under any circumstances because the maternal grandfather is alive) but by way of a gift from the grandfather. The following observations in the above-referred to Bombay Case of *Waman Ganesh v. Ganu Guna* also support this view:

The cases of an heir and of a member in a joint family are now expressly provided for by the introduction of the words of any of his ancestors or if the landlord is a member of a joint family the name of a member of such family in Clause (d) of Section 31A of the Act.

So the word "ancestor" with the relevant part of Clause (d) of Section 31A of the Act was interpreted by the Bombay High Court also only to connote a claim by a landlord through his ancestor as an heir only. I have no hesitation therefore to hold that a landlord who claims title to the land not by way of inheritance from an ancestor but bases his claim by way of a transfer or assignment of the land from such an ancestor cannot be said to comply with the requirement of the conditions laid down by Clause (d) as it then stood before the amending Gujarat Act XVI of 1960.

8. Mr. C.C. Patel, the learned advocate for the petitioner conceded that in view of the decision of the High Court of Gujarat the petitioners claim could not have succeeded but as mentioned here in above he urged that the said decision was

given before the amendment was made in Clause (d) and under the amended section the petitioners right even when he claims by way of transfer from an ancestor is not negated and his case falls within the four corners of the amended Clause (d).

9. The Gujarat Government on the 13th December 1960 by Section 7 of the Gujarat Act XVI of 1960 amended Clause (d) and the amended Clause reads as under:

The land Leased stands in the record of rights or in any public record or similar revenue record on the 1st day of January 1952 and thereafter during the period between the said date and the appointed day in the name of the landlord himself or of any of his ancestor but not of any other processor-in-title from whom title is derived whether by assignment or Court sale or otherwise if the landlord is a member of a joint family in the name of a member of such family.

It has to be noted that the Maharashtra Government also thought it necessary to amend the Clause by Act IV of 1961 and the amended Clause (d) in the Maharashtra Act stands as under:

The land leased stands in the record of rights or in any public record or similar revenue record on the 1st day of January 1952 and thereafter during the period between the said date and the appointed day in the name of the landlord himself or of any of his ancestors but not of any person from whom title is derived whether by assignment or Court sale or otherwise or if the landlord is a member of a joint family in the name of such family.

Both the Governments made the said amended clause retrospective in its operation from 1-8-1956 that is the day when Section 31A itself was introduced on the Statute. I have deemed it expedient to refer to the amendment made by the Maharashtra Government also because as can be seen the language which is used by the two Legislatures is different and the learned advocate for the petitioner has tried to rely upon this difference in the language to his advantage. I shall comment upon it at its proper place.

10. The argument on behalf of the petitioner is that the words but not of any other predecessor-in-titles after the word ancestors in the amended clause of the Gujarat Act are of great significance and they are used to provide for the case where the title is derived by assignment or transfer from an ancestor. In substance the argument is that the words any other are used to indicate predecessor-in-title other than the ancestor and if the ancestor is the predecessor-in-title from whom the landlord claims not by inheritance but even by way of an assignment or transfer inter vivos of any kind then the landlord is entitled to terminate the tenancy provided the name of that ancestor is in the revenue record during the required period. To emphasize this submission the difference in the language of the two amendments by the two Legislatures was relied upon. It was urged that the language used by the Maharashtra Government in the amended clause clearly shows that it was intended to exclude

all predecessors-in-title including an ancestor the words used being but not of any person from whom title is derived whether by assignment. It is true that the language of the amendment made by Maharashtra Government in Clause (d) is more clear and may not admit of any argument of the nature advanced before me. But that by itself cannot go to show that the Gujarat Legislature had a different intention in making the amendment as they have used different wordings. In my judgment inspite of the difference in the language the effect intended to be given by the Gujarat amendment is the same as that intended by the Maharashtra Government. I find it difficult even on the language as it stands in the amended Clause (d) of the Gujarat Act to accept the submission made; for more than one reason. In my view if the Legislature intended to except the case of an assignee or a transferee from an ancestor and it intended to give such a transferee the right to terminate the tenancy the Legislature would have said but not of any predecessor-in-title other than his ancestor from whom the title is derived whether by assignment or Court sale or other wise.... It is true that the use of the words but not of any other predecessor-in-title after the words ancestor gives some scope for raising the contention as done by the petitioner But on proper consideration I do not find any force in the submission.

11. Mr. Patel then urged that when the Legislature has used the words any other they must be given their due weight and full effect and the Legislature must be assumed to have inserted them deliberately and with a purpose. If the construction that he is placing is not accepted then these words any other according to him become redundant. It cannot be denied that ordinarily this is one of the canons of the law of interpartition of statutes. I shall in due course point out that these words do not become redundant if the clause is not interpreted in the way Mr. Patel wants us to. But assuming that it is so it is not always that some word or words cannot be ignored or given less importance in the interpretation of statutes. Particularly when the language used is capable of being reasonably construed in two different ways words of surplusage may be ignored if it is clear that otherwise the manifest intention of the Legislature will be defeated. The history of the legislation the intention of the Legislature and the scheme of the Act as a whole are also important factors to be considered and given effect to in interpreting a section or a part there of particularly in cases when the words used do not by themselves admit of one interpretation only.

12. As I have already indicated above if it was a clear intention of the Legislature to create an exception within an exception that is to say to except the case of a transferee or assignee from an ancestor from the disability created by the clause against landlords who are only transferees and assignees from persons whose names appeared in the record of rights during the relevant period the appropriate language would have been as indicated by me here in above. In my judgment the Legislature used these words any other to indicate and emphasize the two categories of predecessors-in-title viz. (1) where the landlord based his title on heirship from his ancestor as his predecessor-in-title and (2) where the landlord based his claim on a title by way of an assignment or transfer of any

kind from his predecessor-in-title which may include even an ancestor as his predecessor-in-title. The Legislature has therefore laid down that a person who claims to be a landlord basing his title on heirship from his ancestor as a predecessor-in-title and if the ancestor's name appears in the record of rights during the required period he will be said to fulfil the requirements of Clause (d). But if the landlord claimed title by way of a transfer an assignment or otherwise and even though the predecessor-in-title may be his ancestor and his name appears in the record of rights during the required period, it will not help the landlord. The emphasis is therefore in my view of the fact whether the claim is based on title by inheritance or it is based on a title by transfer or assignment of any kind. If Clause (d) is construed as I have done the words any other also are given their due weight and neither of them becomes redundant as argued on behalf of the petitioner. Looking to the decisions of the High Courts and the history of the legislation in my view the Legislature intended to give advantage of terminating the tenancy only (a) to a person who claims to be a landlord and his own name appears in the record of rights during the required period or (b) to one who claims to be a landlord as an heir to an ancestor and the name of such ancestor appears in the record of rights during that period or (c) to a landlord who is a member of a joint family and the name of one of the members appears in the record of rights during that period. But transferees from all persons including those who may be called ancestors even though the names of such transferors that is the predecessors-in-title appear in the revenue record during the required period are intended to be debarred from terminating the tenancy. As already seen before the amending Bombay Act No. XIII of 1956 came into force which brought on the Statute Book Section 31A the landlord's right to terminate the tenancy was restricted by Clause (1) of Sub-section (2A) of Section 34 of the Act and that clause required the landlord before he could terminate the tenancy to show that the land held by the protected tenant on lease stood in the record or rights in the name of the landlord on the 1st day of January 1952 as superior holder. This clause came to be interpreted as referred to here in above in the case of Khalilulla Hasmiya v. Yesu and the Legislature having found that the wordings of the clause permitted a broader interpretation it tried to express their intention by the introduction of Clause (d) in Section 31A to remove the lacuna that was exposed by the said decision. Then again they found that the language of the new Clause (d) of Section 31A also was not sufficiently clear to avoid the interpretation placed by the Bombay High Court in the case of Waman Ganesh v. Ganu Guna and presumably to remedy this weakness and to express its intention more clearly the Legislatures of both the States thought it expedient to amend the Clause (d) in the year 1960. That intention as I have found and which this High Court in the Full Bench decision in Bhanushanker Ambalal v. Laxman Kala also indicated is that a landlord who claimed by inheritance and whose ancestor's name was in the record of rights during the required period or a landlord whose own name appeared in the revenue record during the required period or a landlord who was a member of the joint family and the name of one of the members of the joint family appeared in the revenue record during the period is

only entitled to terminate the tenancy. The Legislature never intended to give the right to terminate the tenancy to any other person as such transferees or assignees even though such transfers were made in their favour by a person who may be categorised "an ancestor and even if the name of such ancestor appears in the revenue record. In my view the Legislatures both of Gujarat and Maharashtra accepted the interpretation of the said clause by the Gujarat High Court as correctly expressing the legislative intent and made the consequent amendments in the said clause though in different wordings.

13. The necessary result of this train of reasoning and the interpretation that I have placed on the amended Clause (d) is that the present landlord who claims to be the landlord through his maternal grandfather who is alive as donee by way of gift of the suit lands does not satisfy the requirements of even the amended Clause (d). The petition is therefore dismissed. Rule discharged with costs.