
(1960) 07 GUJ CK 0012
In the Gujarat High Court

Vashram Kala

APPELLANT

Vs

P.M. Shah and Others

RESPONDENT

Date of Decision : 01-07-1960

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 2(1), 2(1), 70, 70

Citation : (1960) 1 GLR 23

Hon'ble Judges : S.T. Desai, C.J;N.M. Miabhoy, J

Bench : Division Bench

Judgement

S.T. Desai, C.J.—This petition raises a question of some importance and nicety And the question relates to the connotation of the expression agricultural purposes. The petitioner is the owner of land bearing survey No. 97 admeasuring 6 acres and 33 gunthas situated at Jamanvada in Amreli District. On 29-3-57 the petitioner filed a tenancy suit against respondent No. 4 in the Court of the Tenancy Mahalkari of Kodinar u/s 70 of the Bombay Tenancy & Agricultural Lands Act praying for declaration that the fourth respondent was not the tenant of the petitioner in respect of survey No. 97. According to the petitioner the fourth respondent had unauthorisedly and illegally managed to get his own name entered in the record of rights as a tenant of the land it was common ground before the Courts below that the land was used by respondent No. 4 for grazing his cattle. An attempt has been made before us by Mr. Shah who appears for the petitioner to show that such was not the position. We have looked at the record and must proceed on the footing that the land was being used by respondent No. 4 for grazing his cattle.

2. The Tenancy Mahalkari decided that respondent No. 4 was not the petitioners tenant in respect of the suit land and directed that the entry in his favour should be deleted from the village record. An appeal to the Collector by the fourth respondent was dismissed and the matter was carried in revision to the Revenue Tribunal. The revenue Tribunal has stated in its judgment that the opponent was admittedly given the land by the petitioner for one year for grazing his cattle and

that created tenancy rights between the petitioner and the respondent No. 4 before us. In arriving at this decision the Tribunal laid stress on a part of the definition of Agriculture in the amended Section 2(1) of the Act which runs as under:

agriculture include horticulture the raising of crops grass or garden produce the use by an agriculturist of the land held by him or a part thereof for the grazing of his cattle the use of any land whether or not an appanage to rice or paddy land for the purpose of rab manure but does not include allied pursuits or the cutting of wood only.

The part of the definition stressed by the Tribunal is the words "the use by an agriculturist of the land held by him or part thereof for the grazing of his cattle". Relying on the fact that the petitioner had given the land to respondent No. 4 for grazing his cattle the Tribunal reached the conclusion that respondent No. 4 was tenant of the land in question and the petitioner was therefore not entitled to the declaration prayed for by him.

3. Respondent No. 4 has not appeared before us to resist this petition. But Mr. D.U. Shah who has argued this matter with ability and zeal, has very fairly drawn our attention to the various aspects of certain definitions with which as we shall presently point out we are very much concerned.

4. It has been argued by Mr. Shah that the Tribunal was in error in holding that respondent No. 4 was a tenant of the land in suit simply on the ground that the land had been given to him by the petitioner for grazing his cattle. The crux of the argument is that the words use by an agriculturist of the land held by him or a part thereof for the grazing of his cattle which is one of the meanings of agriculturist under the definition of that expression in Section 2(1) not only require that the land in dispute should be used for the grazing of his cattle by the person holding the same but they also require that the person holding the land must be an Agriculturist. It is said that this requirement of the relevant part of the definition has not been considered by the Tribunal seems to have assumed either that the respondent No. 4 before us was an agriculturist or taken it for granted that no emphasis required to be laid on the word agriculturist in the definition. In order to appreciate this argument it is necessary to examine some of the definition given in the Act.

2 (18)-tenant means a person who holds land on lease and includes:

- (a) a person who is deemed to be a tenant u/s 4;
- (b) a person who is a protected tenant; and
- (c) a person who is a permanent tenant;.

2. (8) "land" means-

- (a) land which is used for agricultural purpose or which is so used but is left fallow and includes the sites of farm buildings, buildings appurtenant to such

land; and

(b) for the purposes of Sections 11, 16, 17, 17C, 17B, 18, 19, 20, 26, 28, 29, 29A, 30, 41, 63, 64, 84, 84 and 84C

(i) the sites of dwelling houses occupied by agriculturists agricultural labourers or artisans and land appurtenant to such dwelling houses;

(ii) the sites of structures used by agriculturists for allied pursuits.

2 (2) Agriculturist" means a person who cultivates land personally.

5. The expression agricultural purposes which appears in the definition of land has not been defined in the Act. Founded on the definitions of tenant land and agriculturist the argument ran that before a person can be held to be a tenant in the context before us it must be established that he held some land used for agricultural purposes on lease and which he cultivated personally and it must also be established that he used the land in question for the grazing of his cattle. The expression to cultivate and to cultivate personally are also defined in the Act but it is not necessary here to set out those definitions. We have already set out the definition of agriculture. The first of the two requirements of that definition viz., use of the land by an agriculturist it is used has not been established in this case and on that ground the decision of the Tribunal must be set aside. There is in our opinion some force in his argument.

6. The crucial question that arises for our determination is whether in order that a person can be held to be a tenant it is sufficient to show that he uses that land or a part of the land held by him on lease for grazing his cattle or it is further necessary to establish that he is an agriculturist To put it somewhat differently can every person who holds a lease of agricultural land be said to be a tenant of such land and claim to be entitled to the benefits and privileges conferred on a tenant under the Act simply by showing that he used the land for grazing his cattle Now the very definition of "tenant requires inter alia that the tenant must be a person who holds land on lease and the expression land in that definition means land used for agricultural purposes. To ascertain the connotation of this expression agricultural purposes we must turn preferably to the definitions of agriculture and agriculturist in the Act itself for that would be internal and facial evidence and afford the best guidance in the matter.

7. The definition of agriculture postulates in the present context of land used for grazing cattle firstly that the person claiming to be a tenant within the ambit of the Act must be an agriculturist and secondly that he must use the land for grazing his cattle. Both these requirements must in our judgment be satisfied. Otherwise to mention only one reason the use of the expression "agriculturist in the definition of agriculture would be tautological and even meaningless. The mere use of land by a person for grazing his cattle is not of itself sufficient proof of his being an agriculturist. It must be established by some evidence that he indulges in agricultural operations. Ordinarily this may not require much

evidence. That he should be an agriculturist is an element postulated by the definition of "agriculture" and that is a requirement which must be satisfied. Its existence must not be a matter of assumption. For all these reasons we are led to the conclusion that if full meaning is to be given to the words the use by an agriculturist of the land held by him or a part thereof for the grazing of his cattle in the definition of agriculture we must satisfy ourselves that the person claiming to be a tenant is an agriculturist. In that view of the matter we must accede to the argument of Mr. Shah that before respondent No. 4 could be held to be a tenant on the ground that the land was given to him by the petitioner for one year for grazing his cattle it should have been established that respondent No. 4 was an agriculturist within the meaning of that expression as defined in the Act.

8. In the result we will set aside the order of the Tribunal and remand the matter to the Tribunal. The Tribunal will in the light of our judgment give such direction in the matter of the purposes of recording evidence and finding as deems proper.