

SUPREME COURT OF INDIA

Smt. Madhumati Atchut Parab

Vs.

Shri Rajaram V. Parab

C.A.No.2971 of 2001

(Tarun Chatterjee and Aftab Alam JJ.)

29.01.2009

JUDGMENT

Tarun Chatterjee, J.

1. This appeal is directed against the judgment and order dated 26th of June, 2000 of the Division Bench of the High Court of Bombay at Panaji in Letters Patent Appeal No.9 of 1999 whereby the appeal was dismissed by the High Court based on the decision passed in Letters Patent Appeal No.44 of 1998 decided on 13th of June, 2000.

2. The relevant facts leading to the present appeal are as follows:

“The appellant is the owner of a property called VAGAD, survey No. 131, subdivision No. 33 and 37 situated at Paliem, Taluka Pernem, Goa, (hereinafter referred to as "the disputed property"). Three persons namely Vassu, Shankar and Bhiva were recorded as tenants in respect of the disputed property in 1972 and the present respondents are their heirs and legal representatives. The appellant applied before the Court of Mamlatdar at Pernem, for a declaration that the respondents were not tenants of the disputed property within the meaning of the *Goa, Daman and Diu Agricultural Tenancy Act, 1964* (in short "Goa Tenancy Act). The Mamlatdar, after a detailed enquiry into the facts, passed an order on 28th of October 1986 granting the aforesaid declaration in respect of the disputed property. In appeal, the Deputy Collector dismissed the same and affirmed the order of the Mamlatdar, by an order dated 5th of January 1992.

Further, an appeal to the Administrative Tribunal was taken, which reversed the orders of the Deputy Collector and the Mamlatdar, by an order dated 30th of June, 1997 by re-appreciating the evidence on record. The appellant filed a writ petition being WP No. 113 of 1998, before the High Court of Bombay at Panaji, challenging the order of the Administrative Tribunal. The Writ Petition was dismissed on the ground that under Section 7 of the Goa Tenancy Act, there was no power vested with the Mamlatdar to grant negative declaration. Aggrieved by this judgment, the

appellant filed a Letters Patent Appeal being LPA No. 9 of 1999 before the Division Bench of the High Court. As noted herein earlier, the same was dismissed vide its judgment dated 26th of June, 2000. Thereafter, the appellant had filed this special leave petition in this Court, which on grant of leave was heard by us in the presence of the learned counsel appearing on behalf of the parties.

3. We have heard the learned counsel appearing on behalf of the parties and examined the materials on record. The issue which we have to deal with while disposing of this appeal is whether under Section 7 of the Goa Tenancy Act, the Mamlatdar was vested with the authority to grant a negative declaration to the effect that a particular person is/was not a tenant when any such dispute is/was referred to him for his decision.

4. Before going into the rival contentions of the parties, it is necessary for us to refer to objects and reasons for enacting the Goa Tenancy Act. This Act has been enacted to provide for the regulation of the terms of tenancy with respect to agricultural lands in the Union Territory of Goa, Daman and Diu and for matters connected therewith. Section 7 of the Goa Tenancy Act reads as under:-

"Section 7: Question of tenancy:- If any question arises whether any person is or was a tenant or should be deemed to be a tenant under this Act the Mamlatdar shall, after holding an inquiry, decide such question. In any such enquiry, the Mamlatdar shall presume that any statement as to the existence of a right of tenancy in a record of rights prepared in the prescribed manner under and in accordance with the provisions of this Act, is true."

5. As noted herein earlier, the learned Single Judge as well as the Division Bench of the High Court decided that the Mamlatdar did not have any jurisdiction to grant a negative declaration following the ratio of its decision in LPA No. 44 of 1998. On a consideration of the objects and reasons of the Goa Tenancy Act and the relevant provisions of the same, we are of the view that although Section 7 of the Goa Tenancy Act provides that where any question arises whether any person is or should be deemed to be a tenant, the Mamlatdar shall, after holding an enquiry, decide such question, even then, the negative declaration namely "such a person is/was not a tenant" should also be dealt with by the Mamlatdar for the reasons stated hereinafter. The expression in Section 7 of the Act as to the determination of the fact that whether a person "is or was a tenant", would also include the question whether the person is not a tenant, and after conducting an enquiry the Mamlatdar shall decide the same. Therefore the question, which was raised, is that, if the Mamlatdar after conducting an enquiry comes to the conclusion that the concerned person is/was not a tenant, he is bound to mention the same. Therefore, it does also amount to a declaration to the effect that the person is not a tenant. Accordingly, it results in a negative declaration. It bemuses us that when the wordings in the section are clear to the effect that the Mamlatdar has to decide about the tenancy of a concerned person, the expression "If any question arises whether any person is or was a tenant....." can purport to have a meaning that the mamlatdar is not authorized to issue a negative declaration that the person is not a tenant. This expression, as noted herein

earlier also, is clear that when there is a dispute or doubt over the tenancy of a person, then the Mamlatdar shall decide such question after conducting a due enquiry to establish the same. Therefore, if the conclusion of the Mamlatdar, on enquiry, is that a particular person is not a tenant, he is bound to declare such a person that he is not a tenant. We do not also have any doubt regarding the expression "is or was tenant" in Section 7 of the Goa Tenancy Act which would include the positive declaration as well as the negative declaration. If the observations made by the Division Bench of the High Court are accepted, it would then mean that if a person approaches the Mamlatdar to declare him as a tenant or on the application of a landlord for a decision on the tenancy of his occupant, the Mamlatdar ultimately reaches to a conclusion that the concerned person whose tenancy has to be decided is not a tenant, he has to refrain from taking any decision and decline to exercise his jurisdiction. Such a situation would be unacceptable, untenable and a sheer waste of time of the Mamlatdar to conduct a detailed enquiry under Section 7 of the Goa Tenancy Act on the application filed before it. This, in our view, cannot be the intention of the Legislature to create such an ambiguous position, which would result in a lengthy procedure, that might ultimately yield no result.

6. At the risk of repetition, it is pertinent to mention that the expression "if any question arises" embraces within its sweep both the facets, i.e., positive declaration as well as negative declaration, and the conclusion can be reached only at the end of the enquiry. The learned counsel appearing on behalf of the appellant contended that if we examine the provision of section 7 of the Goa Tenancy Act and also Section 70 of the Bombay Tenancy Act, it would be evident that both the provisions are similar in nature and are pari-materia to each other. We have already quoted Section 7 of the Goa Tenancy Act. It is, therefore, necessary now to reproduce Section 70 of the Bombay Tenancy Act which is as follows :-

"Section 70-Duties of the Mamlatdar:-

"For the purposes of this Act, the following shall be the duties and the functions to be performed by the Mamlatdar :-

(a) To decide whether a person is an agriculturist;

(b) To decide whether a person is, or was at any time in the past, a tenant or a protected tenant or a permanent tenant... ..".

7. In this connection, Section 85 of the Bombay Tenancy Act is also necessary to be produced. Section 85 of the said Act is as follows:-

"Section 85 - Bar of Jurisdiction

(1) No Civil Court shall have jurisdiction to settle, decide or deal with any question (including a question whether a person is or was at the time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord the land held by him) which is by or under this Act required to be settled, decided or

dealt with by the Mamlatdar or Tribunal, a Manager, the collector or the Maharashtra Revenue Tribunal in appeal or on revision, the State Government in exercise of their powers of control.

(2) No order of the Mamlatdar, the Tribunal, the Collector or the Maharashtra Revenue Tribunal or the State Government made under this Act shall be questioned in any civil or criminal court.

Explanation:- For the purposes of this section a Civil Court shall include a Mamlatdar's Court constituted under the *Mamlatdar Courts Act, 1906*."

8. From a bare perusal of Section 85 of the Bombay Tenancy Act, it would be evident that this provision bars the jurisdiction of Civil Court to deal with any question including a question whether a person is or was at the time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord the land held by him which would be decided or dealt with only by the Mamlatdar or Tribunal or a Manager, the Collector or the Maharashtra Revenue Tribunal in appeal or revision by the State Government in exercise of their powers of control. When a question arises whether a particular person is an agriculturist or a tenant or not, it is only the Mamlatdar who has the jurisdiction to decide the same. The question, therefore, is whether under Section 70 of the Bombay Tenancy Act, the Mamlatdar has the power or jurisdiction to grant a negative declaration that is whether the concerned person is or was not a tenant. In *Nivrutti Laxman Kondobahiri vs. Shiv Dayal Laxminarayan Sarada & Ors.*¹ (Full Bench), Hon. Chainani, C.J. (as His Lordship then was) observed:-

"It has, however, been urged that while an application may be made to a Mamlatdar for obtaining a declaration that a person is a tenant, an application for a negative declaration that a person is not a tenant, is not competent. It has been contended that the object of the Act is to protect tenant and that it confers special rights upon them and that consequently, where the owner of a land alleges that person is not a tenant or that he is not entitled to be protection of the Act, the application cannot be said to be one for the purposes of the Act. There does not seem to us to be much force in this argument. The purposes of the Act are, as will be seen from the preamble, to regulate the relations of landlords and tenants of agricultural lands. While the Act confers extensive rights on tenants, the landlords are not deprived of all their rights – For instances, they can terminate the tenancies and resume possession of their lands in certain circumstances. Under Section 29, both the landlords and the tenants can apply to the Mamlatdar for obtaining possession of lands. Under clause (b) of Section 70 of the act, the Mamlatdar has jurisdiction to determine whether a person is a tenant. He can, therefore, also decide that a person is not a tenant. If he can decide this question, on an application made to him by a tenant, it is difficult to understand why he should not be able to decide this question, when the application is made by the landlord. In either case, the question which the Mamlatdar will have to determine is whether the relationship of landlord and tenant exists between the parties. The jurisdiction to decide this question vests exclusively in the Mamlatdar and the Civil Court is not

competent to decide it. This question will also have to be determined by reference to and in the light of the provisions of the Act as to who are and who are deemed to be tenants and as to how and in what circumstances a tenancy can be terminated. Such a determination will, therefore, be for the purpose of the Act. The words for the purpose of this Act, in our opinion, mean for the purposes of deciding any question relation to a matter, which is regulated or governed by the provisions of this Act. If, therefore, the question raised before the Mamlatdar relates to a matter, which is to be decided by reference to the provisions of the Act, its determination by the Mamlatdar will be for the purposes of the Act and it is immaterial whether the application raising the question is made by the landlord or by the tenant." (Emphasis supplied)

9. Similar was the view expressed by the Bombay High Court relating to Section 70 of the Bombay Tenancy Act in the decision in *Trimbak Sopan vs. Ganga Ram Mhatarba*² in which the Bombay High Court observed as follows :-

".....A very interesting argument has been advanced by Mr.Tarkunde, and his contention is that a suit against a trespasser is only cognizable by the civil court, and therefore, if an issue arises in such a suit as to whether it is for the civil court to decide that issue: if the defendant is a trespasser, the Civil Court has jurisdiction to pass a decree for possession; if, on the other hand, the civil court comes to the conclusion that the defendant is a protected tenant, then the Court would have no jurisdiction and the suit would have to be dismissed or sent to the Mamlatdar to dispose of it according of law.

Mr.Tarkunde's further contention is that it is only to those issues which the Mamlatdar is required to determine in a proceeding which should be filed before the Mamlatdar that Section 70(b) has any application.....

.....Now, if this argument was sound, really no occasion would ever arise for the Mamlatdar to decide the issue as to whether a person is a tenant or a protected tenant, because, if a person could only go to the Mamlatdar in those case where he admitted that the defendant was a tenant or a protected tenant, then the issue as to whether the person was a tenant or a protected tenant would not arise. Such an issue can only arise when there is a dispute as to the status of the particular person, and it is only when an allegation is made that the person is not a tenant or a protected tenant that the Mamlatdar would be called upon to try such an issue. Now, it is clear that the question whether a person is a tenant or a protected tenant is not a jurisdictional fact as far as the Mamlatdar is concerned but is a fact in issue.

The jurisdiction of the Mamlatdar does not depend upon the person being a tenant or a protected tenant. On the contrary, the Mamlatdar himself has been given the jurisdiction to try the question as to whether a person is a tenant or a protected tenant.

Mr.Tarkunde says that the issue before the civil court is not whether the defendant is a protected tenant or not, but the issue is whether the defendant is a trespasser or a

protected tenant. In my opinion, when the Legislature has left it to the Mamlatdar to decide the issue whether the defendant is a protected tenant or not, it implies that he must decide that the defendant is not a trespasser in order to hold that he is a tenant or a protected tenant and he must also hold that he is a trespasser in order to determine that he is not a tenant or a protected tenant. I agree with Mr.Tarkunde that the provisions in law which oust the jurisdiction of the civil court must be strictly construed. But considering it as strictly as I can, looking to the language used by the Legislature in Section 70(b) of the Tenancy Act, and looking to the scheme of the Act, it seems to me clear that all questions with regard to the status of a party, when the party claims the status of a protected tenant, are left to be determined by the Revenue Court, and the jurisdiction of the civil court is ousted....."

10. In view of the discussions made hereinabove, we are, therefore, of the view that under Section 7 of the Goa Tenancy Act, which is pari-materia with Section 70 of the Bombay Tenancy Act, the Mamlatdar is conferred with power to decide the question after holding an enquiry whether a particular person is or is not a tenant of the disputed property.

11. It is true that the High Court by the impugned judgment has distinguished the two provisions of the two different Acts, namely, Section 7 of the Goa Tenancy Act and Section 70 of the Bombay Tenancy Act relying on the provisions of Section 4 of the Goa Tenancy Act. According to the High Court, if Section 7 of the Goa Tenancy Act and Section 70 of the Bombay Tenancy Act could be considered as pari materia in that case the Mamlatdar could decide the question, i.e. the concerned person is or is not a tenant, there would be no need to provide for negative declaration under Section 4 of the Goa Tenancy Act. According to the High Court, the cardinal principle of interpretation was that the duty of the court is to give effect to the intendment of the legislature. Once the legislature has expressly provided for grant of negative declaration in limited cases, it would contemplate ouster of jurisdiction in matters other than Section 4. This would also be a harmonious construction as the jurisdiction of the civil court would not be ousted and there would be no conflicting judgments. Making these observations, the High Court held that the language of the Goa Tenancy Act contemplates that no negative declaration can be granted by the Mamlatdar under Section 7 of the Goa Tenancy Act. At the same time, the High Court also observed that, of course, when the issue arises whether the person is a tenant or not before the Mamlatdar, he could always decide whether the person who claims the right has so proved or not. It was also the finding of the High Court that the jurisdiction of the Mamlatdar to decide whether the concerned person is or was not a tenant, was inherent in deciding the said issue. Before we proceed further, let us produce Section 4 of the Goa Tenancy Act which runs as under:-

"Section 4 - Persons deemed to be tenants - A person lawfully cultivating any land belonging to another person (hereinafter in this section referred to as the owner) on or after the 1st of July, 1962 but before the commencement of this Act, shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not -

- (i) a member of the owner's family, or
- (ii) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or of any member of the owner's family, or
- (iii) a mortgagee in possession. Provided that if upon an application made by the landlord within one year from the commencement of this Act to the Mamlatdar within whose jurisdiction the land is situated:-
 - (a) the Mamlatdar declares that such person is not a tenant and his decision is not reversed on appeal or revision, or
 - (b) the Mamlatdar refuses to make such declaration but his decision is reversed on appeal or revision, such person shall not be deemed to be a tenant under this Section.

Provided further that a sub-tenant cultivating any land belonging to another person [on or after the 1st of July, 1962, but before the commencement of this Act] shall, notwithstanding the fact that the creation of the sub-tenancy might have been prohibited by any law for the time being in force, be deemed to be lawfully cultivating the land as a tenant for the purposes of this section; and in such cases, the intermediary tenant or tenants prior to the creation of the sub-tenancy shall not be deemed to be tenant or tenants for the purposes of this Act;

Provided further that in the case of a person claiming to be a tenant on the ground that he was a sub-tenant cultivating any land after the 1st July, 1962, but before the commencement of this Act, the application by the landlord for a declaration that such person is not a tenant may be made within three months of the commencement of the Goa, Daman and Diu Agricultural Tenancy (Amendment) Act, 1966."

12. A plain reading of this provision which in addition would show that legislature has provided by introducing Section 4 that the landlord can seek a negative declaration in respect of the category of persons mentioned in Section 4(1). It is true that under Section 4(1) of the Goa Tenancy Act, the Mamlatdar is conferred with jurisdiction to declare the category of person mentioned therein is or was not a tenant in respect of the disputed property. But if we read Section 7 and the objects and reasons of the Act and considering the fact that for a limited purpose the Mamlatdar is conferred with such power to declare the negative declaration in respect of the certain category of persons under Section 4(1) of the Goa Tenancy Act, it cannot be said that while deciding the question under Section 7 of the Goa Tenancy Act, the jurisdiction of the Mamlatdar to declare that the concerned person is or was not a tenant is ousted. Accordingly, we are of the view that the High Court was not justified in holding that a Mamlatdar is not conferred under Section 7 of the Goa Tenancy Act to deal with and decide whether the concerned person is a tenant or not a tenant in respect of the disputed property.

13. Again it is needed to be mentioned that the jurisdiction under Section 7 of the Goa Tenancy Act is not confined to cases where the relationship of the landlord and tenant is admitted. In fact, it is only where the said relationship is alleged by one party and denied by the other that the question falls to be considered and the decision of the question is left exclusively to be determined by the Mamlatdar under the provision of the Act. It is likely that a trespasser would thereby be able to prolong litigation between him and the owner of the property by frivolously raising a plea that he is a tenant or a protected tenant; but, on the other hand, a landlord may also frivolously allege that a tenant is a trespasser. We must, therefore, hold that the only forum that can deal with this plea is the Mamlatdar. If he rejects the plea, then only the dispute between the owner and the trespasser would be triable by the ordinary Civil Court; but otherwise, the Mamlatdar alone would decide the dispute in so far as it falls within the purview of the Act. In our view, the jurisdiction of the Mamlatdar under Section 7 of the Goa Tenancy Act is not confined to cases where the question is whether a person is or was a tenant in respect of the disputed property. The High Court in the impugned judgment, as noted herein earlier, held that the provisions of the Bombay Tenancy Act and Goa Tenancy Act are similar, but in view of Section 4 of the Goa Tenancy Act, the decisions of the Bombay Tenancy Act, as referred to herein earlier, could not be applied in the present case. We are unable to subscribe this view. When the legislature has provided that the landlord can seek a negative declaration in respect of the category of person mentioned in Section 4(1) of the Goa Tenancy Act, it cannot conclusively lead to the conclusion that in other cases, namely, where the question arises as to whether a person is or is not a tenant, the Mamlatdar is not conferred with any power to grant negative declaration that the concerned person is not a tenant in respect of the disputed property. Accordingly, we are of the view that the Mamlatdar had the jurisdiction to declare a negative declaration, that is to say, a particular person is not a tenant under Section 7 of the Goa Tenancy Act and, therefore, the judgment of the High Court cannot be sustainable.

14. That apart, in our view, the scope of Section 7 of the Goa Tenancy Act is quite different from that of Section 4 of the Goa Tenancy Act. Section 4 is to operate from within a limited period of one year from the date of enforcement of the Act, i.e., 8th of February, 1965, while section 7 is operative for all time.

15. For the reasons aforesaid, we set aside the judgment of the High Court and restore the order of the Mamlatdar and the application filed by the appellant before the Mamlatdar stands allowed.

16. The appeal is accordingly allowed. There will be no order as to costs.

¹*AIR 1960 Bombay 56*

²*AIR 1953 Bombay 241*