GUJARAT HIGH COURT

Bhanushanker Ambalal Joshi

Vs.

Laxman Kala

Special Civil Appln. No. 123 of 1960

(S.T. Desai, C.J. Miabhoy and Bhagwati, JJ.)

28.07.1960

JUDGMENT

Desai, C.J.

1. This petition came up for hearing before my brother Miabhoy and myself when Mr. Nanavaty, learned advocate for the petitioner, relied on a decision of the Bombay High Court in *Waman Ganesh Joshi v. Ganu Guna Khapre*[1], in support of the argument that the Revenue Tribunal was in error in interpreting Section 31A(d) of the Bombay Tenancy and Agricultural Lands Act, 1948. It was also argued before us that decisions of the Bombay High Court are binding on this Court. That question had by that time been referred to a Full Bench of this Court. The Full Bench has now expressed the view that a decision of the Bombay High Court given prior to the 1st May 1960, is binding on this High Court. Therefore, speaking generally, that decision of a Division Bench would be followed by a Division Bench of this Court. At that time, we had found it difficult to agree with the view expressed in the case of Waman Ganesh 61 Bom LR 1267 and the petition is now before us for disposal.

2. The facts are these. The petitioner is the landlord of the two survey numbers 681/1 and 681 respectively held by opponents 1 and 2 as tenants of the same. The petitioner gave due notice and then filed a tenancy suit before the Mamlatdar, Kodinar, for possession of the same on the ground that he required the lands *bona fide* for personal cultivation. Both the fields had been gifted to the petitioner by his father on 1st June 1953 and a mutation entry in that behalf had been made. The petitioner's father is alive. The Mamlatdar decided the suit in favor of the petitioner, holding that he required the lands *bona fide* for his personal cultivation and that the income from the lands would be his principal source of income. The Mamlatdar being of that view, passed an order in favor of the petitioner for possession of half of the suit lands. In appeal, the Prant Officer felt that the gift was invalid under the Act and therefore the petitioner had no right to apply for possession. He remanded the case for enquiry whether under the Tenancy Act the transfer was

valid or not. On remand, the Mamlatdar held that the petitioner had obtained a certificate under Section 84A of the Tenancy Act and therefore the transfer in his favor should in any event be regarded as valid. In the result, he confirmed his original judgment and passed an order in favor of the petitioner for possession of half the suit lands. The matter was once again

[1]61 Bom LR 1267

carried in appeal, this time to the Collector, who reversed the decision of the Mamlatdar on two grounds, firstly that the gift was not valid because it did not fulfil the requirements of Section 123 of the Transfer of Property Act; secondly that the landlord had not fulfilled the conditions laid down in Section 31A(d) of the Tenancy Act. The landlord carried the matter m revision to the Revenue Tribunal. The Revenue Tribunal decided in favour of the landlord on the point relating to the factum of relationship of landlord and tenant, but it decided against him on the ground that he had not fulfilled the conditions laid down in Section 31A(d). In the result, the Tribunal dismissed the revision application and the landlord has come to this Court on this petition.

3. The question that has been argued before us by Mr. Nanavaty lies in a narrow compass. Ha relies strongly on the decision of the Bombay High Court in the case of *Waman Ganesh v. Ganu Guna*[2], of which we have already made mention and to which we shall presently turn. He has also drawn our attention to a number of provisions in the Act. Relying on Section 14 of the Act, it is argued that the landlord envisaged by that section would be not only the individual landlord himself but would include a predecessor-in-title of that landlord. The argument has proceeded that the expression "landlord" should have the same meaning in Section 14 as well as in Section 31A(d). It will be convenient to set out the provisions of Section 31A(d) :

> "31A. The right of a landlord to terminate a tenancy for cultivating the land personally under Section 31 shall be subject to the following conditions :
> * * *
> (d) 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".

The argument founded on a comparison of the two sections is not tenable and for the simple reason that while Section 14 deals generally with the question of termination of tenancy in case of certain defaults committed by the tenant, Section 31A, which has to be with Section 31, is more of the nature of a corollary to Section 31. The provision contained in Section 31 lays down certain conditions of termination of tenancy. These conditions have to be strictly fulfilled we are unable to see any anology of the nature suggested by Mr. Nanavaty between Section 14 and Section 31A. Two other sections, to which our attention has been drawn by Mr. Nanavaty are Sections 34 and 35, Section 34 relates to the maximum land that can be held by a person and Section 35 rules that provision of Section 34 applies to lands coming into possession of persons

on gift, purchase, assignment or any other kind of transfer inter vivos, or by bequest, except in favor of recognized heirs. We do not see anything in any provision of these two sections which can lend any support to the present argument. Lastly, our attention has been drawn by learned advocate to Section 84A of the Act. That section relates to validation of transfers made before the appointed day. The argument here is that an examination of the relevant provisions of the Act relating to transfer goes to show that transfers are not prohibited. We agree that such is the position. But it does not therefore follow that because transfers are allowed under the Act, there should be no restriction or limitation on

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the right of a landlord to terminate the tenancy of a tenant, on any of the grounds mentioned in Section 31.

4. Section 31A(d) has to be read, not by itself, but contextually and particularly along with Section 31 to which it makes express reference in the initial part of the section. Section 31 deals with matters which are quite distinct from matters enumerated in Section 14. Section 31 recognizes in favor of the landlord the right to terminate tenancy on two grounds mentioned in it : if he *bona fide* requires the land (a) for cultivating personally, or (b) for any non-agricultural purpose. This right recognized in favor 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 1-1-1952 and thereafter upto the appointed day, which is 15-6-1955, in the name of the landlord himself or any of his ancestors or, if the landlord is 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 a "landlord" but of 'landlord himself.'

5. 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 us to be highly artificial and open to grave objection. We are unable to stretch their meaning to what seems to us to be a breaking point. In our judgment, effect must be given if possible to every word in the clause so that no part of it and no material word in it will be inoperative or superfluous. In that view of the matter we must read the words "in the name of the landlord himself" as the landlord individually and not anyone claiming through him as a successor-in-interest. 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 1-1-1952, no doubt arbitrary, is the datum line. The manifest object of the provision is to see that the benefit of Section 31 is to be confined to a person who on that date is shown to be himself the landlord or 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 benefit 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.

6. The greatest reliance, however, is placed on the decision in 61 Bom LR 1267 mentioned above. We have given careful and anxious consideration to that decision of the Bombay High Court. The learned Judges who decided that case drew upon an earlier decision of the same High Court where clause (1) of Sub-Section (24) of Section 34 came up for construction. We may mention that the provision in the present clause (d) of Section 31A is on the same lines as clause (1) of Sub-Section (2A) of Section 34 but with a material and crucial difference and which in our judgment is a very vital difference. While the relevant clause in Section 34 spoke of a landlord, clause (d) of Section 31-A speaks of "landlord himself". A careful scrutiny of the decision shows that no emphasis was laid at the bar on the introduction by an amendment of the word "himself" in clause (d) of Section 31A. The learned Judges rested their judgment on an earlier Bombay case in *Khalilulla Hasmiya v. Yesu*[3], At p. 204 of the report (Bom LR) , in that case, Mr. Justice Gajendragadkar (as he then was), has made some observations pointing out the provisions of the amended section. The attention of the learned Judges in the later case appears to have been drawn to those observations but they expressed the view that :

> "But even in the amended clause, the words of the original clause (1) of Sub-Section (2A) of Section 34 are substantially retained and, with respect, we are of the view that the decision in the aforesaid case still holds good in so far as clause (d) of Section 31A of the present Act deals with the conditions that the name of the landlord must stand in the record of rights on the date and during the period specified in the clause".

7. With respect, we are unable to agree with the view expressed by the Bombay High Court in the case of *Waman Ganesh v. Ganu Guna*[4], For reasons already discussed we are of the opinion that the expression "landlord himself" 311 Section 31A(d) cannot embrace a person who is a transferee of a landlord. In the result the petition fails and will be dismissed. The rule will be discharged. The respondent in this case is not represented by an advocate. Having regard to the importance of the matter, we had requested Mr. Sompura to present the other side of the case amicus curiae. We thank him for the help rendered by him.

Petition dismissed.

[3] 59 Bom LR 201 : AIR 1957 Bom 200

[4] 61 Bom LR 1267