BOMBAY HIGH COURT

Durlabhai Fakirbhai

Vs.

Jhaverbhal Bhikhabhai

Special Civil Appln. No. 1111 of 1955

(Chagla, C.J., Bavdekar and Tendolkar, JJ.)

12.10.1955

JUDGMENT

Chagla, C.J.

1. A very short question has been referred to this Full Bench and it arises with regard to the proper interpretation of Act 33 of 1952 which amended Section 34, Tenancy Act. A few facts which may be stated in order to appreciate the point raised are that the landlord gave a notice on 6-3-1952 to his tenant under Section 34, Tenancy Act on the ground that lie needed the land *bona fide* for his personal cultivation. The notice was to expire on 31-3-1953. The landlord filed an application for possession under Section 29 before the Mamlatdar on 11-4-1953. The Mamlatdar granted possession, in appeal the Prant Officer confirmed the decision of the Mamlatdar, and in revision the Bombay Revenue Tribunal confirmed the order of the two lower Courts, and the matter has now come up before us on this Full Bench.

2. Now, when the notice was given on 6-3-1952 the conditions laid down in Section 34 which permitted the landlord to obtain possession from his tenant were satisfied. By the Amending Act 33 of 1952 certain further limitations were placed upon the right of the landlord to obtain possession, and when the notice terminated the tenancy on 31-3-1953 those limitations would not permit the landlord to obtain possession, and the contention of the tenant was that the Amending Act applied to the facts of this case, that the landlord was prevented from taking possession under the provisions of the Amending Act 33 of 1952, and therefore the application of the landlord should have been dismissed. The view taken by the Revenue Tribunal was that inasmuch as the notice was given on 6-3-1952 and the Amending Act came into force subsequently on 12-1-1953, the Amending Act had no application and the landlord wad entitled to succeed. The most significant fact of this case is that the Amending Act came into force before the notice of 6-3-1952 expired on 31-3-1953. The tenancy only terminated on 31-3-1953 and the right of the landlord to obtain possession only accrued to him on the termination of the tenancy, viz., 31-3-

1953. At that date a law was in force which prevented the landlord to obtain possession from the tenant because certain limitations were placed upon his right to obtain possession and under those limitations the Court could not grant him possession. What is argued by Mr. Patel on behalf of the landlord is that the material date which, we must consider is not the date of termination of the tenancy, 31-3-1953, but the date of the giving of the notice, viz., 6-3-1952. Therefore the question resolves itself into a very narrow compass. For the purpose of the application of the amended Act which is the material date, the date of the giving of the notice or the date when the tenancy terminated ?

3. Section 34, as the marginal note indicates deals with the landlord's right to determine a protected tenancy and Sub-Section (1) provides that a landlord may terminate the tenancy of a protected tenant by giving him one year's notice in writing, stating therein the reasons for such termination, if the landlord *bona fide* requires the land for any of the following purposes, namely, (1) for cultivating personally, or (2) for any non-agricultural use or his own purpose. Therefore, Section 34(1) refers to a notice as the procedure by which a landlord can determine a protected tenancy. But the right to determine the protected tenancy only arises provided he is entitled to possession under the circumstances mentioned in Section 34. Sub-Section (2) imposes limitations upon the right of the landlord to terminate the tenancy and these limitations are set out in that Sub-Section. The Amending Act 33 of 1952 imposes one further limitation in this Sub-Section which was by clause (c). The amending Act also embodied in the original Act Sub-Section (2-A) and that was in the following terms :

> "If the landlord *bona fide* requires the land for any of the purposes specified in Sub-Section (1) then his right to terminate the tenancy shall be subject to the following conditions...."

Therefore Sub-Section (2-A) imposed a further restriction upon the right of the landlord to terminate the tenancy.

4. Mr. Patel's contention is that a valid notice having been given on 6-3-1952, unless the Amending Act was in terms retrospective it could not affect that notice. The Amending Act does not deal with the notice at all. It deals with the right of the landlord to terminate the tenancy, and in this connection three specific stages must be envisaged. The first is the giving of the notice by the landlord. That does not automatically terminate the tenancy. The period of notice has to expire and at the expiry of the period the tenancy stands terminated. The third stage is that on the termination of the tenancy the right accrues to the landlord to obtain possession and it is in this third stage that the landlord either proceeds to take possession from his tenant or files the necessary application in Court to obtain possession if the tenant is refractory. Therefore the cause of action that accrues to the landlord and which he comes to Court to enforce is the right to possession and that cause of action only accrues to him when the tenancy is terminated and not when he gives notice. The vested right also that accrues to him is when the tenancy is terminated;

the vested right is the right to obtain possession and till the tenancy is terminated there is no vested right in the landlord. Therefore, if the Amending Act 33 of 1952 was in any way affecting the vested right of the landlord, then clearly it could not be given a retrospective effect unless the Legislature in terms made it retrospective. But if in this case the landlord's vested right did not arise till 31-3-1953, if the tenancy was not terminated till 31-3-1953, and he had no right to obtain possession till 31-3-1953, it is difficult to understand how an Act which came into force on 12-1-1953 could possibly be said to have affected a vested right of the landlord. The error in the argument advanced by Mr. Patel is that there is a vested right in the landlord to give a notice. There is no such vested right.
The Legislature may provide for a certain form or content of the notice, and it would be necessary for the landlord to give a valid notice in order to terminate the tenancy. But the vesteo right, the right to possession, only arises when the notice has run out its natural course and the tenancy has been determined by reason of the expiry of the notice.

5. We must also bear in mind that we are dealing with an Act which was passed with the object of giving protection to tenants and the object of the Amending Act was further to protect the possession of the tenants; and if when the landlord files his application it is found that he has not satisfied the conditions which would entitle him to deprive the tenant of his possession, it is difficult to take the view that the Legislature intended that although at the date of the giving of the notice the landlord was considered, to be entitled to possession, when the notice expired he Would still be entitled to possession although in the meanwhile the Legislature had stepped in and had prevented the landlord from obtaining possession and evicting the tenant. Therefore, if there was a matter of doubt - in our opinion it is not really a matter of doubt - we should give to the Amending Act a construction which must be in favor of the tenant.

6. Mr. Patel has drawn our attention to the language of Sub-Section (2)(a) of Section 34 which before it was amended by Act 12 of 1951 was in the following language :

> "(2) Nothing in Sub-Section (1) shall entitle the landlord, (a) to terminate the tenancy of a protected tenant, if the landlord at the date of the notice has been cultivating personally other land fifty acres or more in area".

By Amending Act 12 of 1951 this Sub-Section was amended to run as follows :

> "(2) Nothing in Sub-Section (1) shall entitle the landlord -
> (a) To terminate the tenancy of a protected tenant, if the landlord at the date on which the notice is given or at the date on which the notice expires has been cultivating personally other land fifty acres or more in area".

This amendment, if anything, clearly shows that when the Legislature wanted to take into consideration the two terminii, the date of the giving of the notice and the expiry of the notice, it

clearly mentioned them in the Act itself, and but for the Sub-Section mentioning the date of the notice in the first instance, or both the dates, viz., the date of the notice and the expiry of the notice in the second instance, on an ordinary construction the provision with regard to Sub-Section (2)(a) would have to be construed at the date when the tenancy terminated and when the land become entitled to possession. Therefore, in our opinion, the language of Sub-Section (2)(a) by the amendment does not help Mr. Patel in the contention he has put forward.

7. Mr. Patel has then relied on a judgment of the Calcutta High Court in *'Jibankrishna v. Abdul Kader[1]',* The facts of that case were rather extraordinary. The right was given to the landlord under the Bengal Tenancy Amendment Act (4 of 1928) to terminate the tenancy of a tenant by a notice, although it was not stated that the notice should be of a particular duration. But the landlord did not become entitled to possession except at the end of the agricultural year next following the year in which the notice to quit was served upon the

[1] AIR 1933 Cal 435 (SB)

tenant by the landlord. An Amendment was made to this Act and the amendment came into force before the tenancy in that particular case was determined, and the question that arose before the learned Chief Justice and his two colleagues was whether the Amending Act applied or the old Act applied, and the learned Chief Justice in his judgment said that the old Act would apply and not the new Act, and the reason which the learned Chief Justice expressly gives for coming to this conclusion is that the new Act alters the nature of the notice and provides for a period of the notice which the old Act did not require and he is troubled by the fact that if the new Act was to apply all the notices given would be invalid, and therefore he did not think it right that the new Act should be made applicable to the notices which were already given before the new Act came into force. But he makes it clear that if there had not been this provision with regard to notices a different view could well have been taken of the effect of the Amending Act. Therefore with respect to the Calcutta High Court, that decision was given on the peculiar facts of the case. The facts before us are entirely different. The Amending Act does not in any way invalidate notices already given before the Amending Act came into force. The notices are perfectly valid. What the Amending Act does is that it imposes a new limitation upon the right of the landlord to obtain possession, and if the landlord fails to satisfy the Court at the date when the tenancy expires and he becomes entitled to possession that he is entitled to possession in law as the law then stands, he cannot obtain relief from the Court.

8. We are, therefore, of the opinion that the Amending Act would apply to all cases where the period of notice expired after the Amending Act came into force.

Answer accordingly.