

BOMBAY HIGH COURT

Sm. Durgaben Manibhai Makanji

Vs.

Moria Bavia

Special Civil Appeal No. 2274 of 1955

(Chagla, C.J. and Dixit, J.)

22.12.1955

JUDGMENT

Chagla, C.J.

1. This petition raises an important question as to the powers of a Collector under Section 84, Tenancy Act. It would appear that the first opponent is the tenant of the petitioner and according to the petitioner, the name of the first opponent's father appeared as a protected tenant in the record of rights. The father died some time in May 1952 and it is the case of the petitioner that opponent 1 surrendered the lease. The petitioner approached the Mamlatdar and obtained an order under Section 29(2). According to the petitioner he had already obtained possession of the land from opponent 1 and he got the possession confirmed by the order of the Mamlatdar. The case of the tenant was that notwithstanding the order of the Mamlatdar he in fact continued to be in possession and he was only dispossessed by the landlord sometime in 1954. Thereupon he approached the Collector and the Collector passed an order under Section 84 summarily evicting the petitioner. The petitioner approached the Revenue Tribunal which held against him and he has now come before us under Article 227 of the Constitution.

2. The powers of summary eviction are always drastic and it should be the duty of the Court to construe these powers as strictly as possible. Under Section 84 power is conferred upon the Collector summarily to evict any person unauthorisedly occupying or wrongfully in possession of any land. Presumably there is no obligation upon the Collector before he makes the order to give a judicial hearing to the party which might be affected by such an order. Therefore, we must be careful to see that such wide powers are confined strictly to the cases mentioned in Section 84. The power summarily to evict is not against any person unauthorisedly occupying or wrongfully in possession of any land, but it is only against such a person provided the case against such a person falls under either clause (a), (b) or (c) of Section 84 which provides.

"(a) the transfer of which either by the act of parties or by the operation of law is invalid under the provisions of this Act.

(b) the management of which has been assumed under the said provisions, or

(c) to the use and occupation of which he is not entitled under the said provisions".

Then we have what appears to us the qualifying provision, "and the said provisions do not provide for the eviction of such persons". In our opinion, looking to the position of this expression in the Section and looking to the context of the Section also it is clear that these words do not merely qualify sub-Clause (c) as contended by Mr. Paranjpe, but they qualify all the three clauses. Therefore, in order that Section 84 should apply, three conditions are necessary. In the first place, the person against whom the order is made must be unauthorisedly occupying or wrongfully in possession of any land. The second condition is that the case must fall either under clause (a), (b) or (c) and the third condition is that the provisions of the Act do not provide for the eviction of such persons.

The Legislature was very careful in enacting this Section and conferring this wide power upon the Collector to see that where a procedure for eviction was provided for in the Act itself that procedure had to be availed of and it was only in those rare cases where the tenant or the landlord had to proceed against a person unauthorisedly in possession and there he could not avail himself of the procedure under the Tenancy Act that he should approach the Collector and ask his assistance for summary eviction. In this case it is not disputed by Mr. Paranjpe that the tenant could have proceeded under Section 29(1). That Section provides that a tenant or an agricultural laborer or artisan entitled to possession of any land or dwelling house under any of the provisions of the Act may apply in writing for such possession to the Mamlatdar and it is the case of the tenant that he is entitled to possession of this land under the provisions of this Act. But what is strenuously urged by Mr. Paranjpe is that although the tenant was entitled to proceed under Section 29(1), that remedy did not bar his remedy under Section 84. According to Mr. Paranjpe the law gives him an alternative remedy. He may proceed under Section 29(1) or he may avail himself of the more expeditious remedy under Section 84. If we were to accept this contention we would really be not only conferring wide and drastic powers upon the Collector to circumvent the provisions of the Act but we would also be making the provisions of Section 29(1) completely infructuous. It is difficult to understand why any tenant should make an application under Section 29(1) if he could avail himself of the remedy - and quicker remedy - under Section 84. The prejudice to the party against whom an order is made under Section 84 is obvious. Apart from the fact that the order would be made without a proper judicial inquiry, he would be deprived of his right of appeal to the Collector which has been conferred upon him under Section 74 and also his right to go to the Revenue Tribunal in revision against the order of the Collector under Section 76.

Mr. Paranjpe's answer is that notwithstanding this decision of the Collector it would be open to the landlord to file a substantive application against the tenant under Section 29(2). We are not at all sure whether that is the true position in law after the Collector has summarily decided against the landlord under Section 84, but even if such a remedy is open to the landlord it is poor consolation to him to say that after he has been thrown out he should then go and approach the

Mamlatdar for being restored to his land. The result of accepting this contention would be to throw the burden upon the landlord to make an application under Section 29(2) when the law in clear terms Obliges the tenant to approach the Mamlatdar and get the necessary order from him of eviction against his landlord. All summary powers are ordinarily intended either to supplement ordinary powers conferred under a Statute or to deal with situations which the ordinary law cannot deal with or does not contemplate. But it is difficult to accept the contention that summary powers should be conferred as an alternative to the ordinary procedure laid down under the law. It would make nonsense of all the elaborate provisions laid down in the Tenancy Act, if we were to hold that in every case a party aggrieved need not comply with the procedure required by the Act but could approach the Collector and get an order of summary eviction from him. It is precisely because of this that the Legislature was at pains to qualify the powers conferred upon the Collector under Section 84 by the expression "and the said provisions do not provide for the eviction of such persons." It is only in the absence of a provision in the Act itself for the eviction of an unauthorized person that the Collector has the jurisdiction and the power to order summary eviction. Once it is conceded, as it is conceded in this case, that the Act provides for the eviction of a landlord, on the facts of this case the Collector had no jurisdiction to proceed under Section 84.

3. It may be pointed out that the landlord's contention is that he is entitled to the possession of the land under the order made by the Mamlatdar in 1952. Therefore, clearly the landlord is in possession under a colour of title. The tenant can only succeed provided the order of the Mamlatdar is held to be invalid and what the Collector under Section 84 has done in effect is to reverse the order of the Mamlatdar because without reversing that order he could not come to the conclusion that the landlord was in unauthorised possession. The collector acting under Section 84 has no appellate jurisdiction. He cannot sit in appeal over the orders passed by the Mamlatdar. It is only under Section 74 that the Collector is constituted the appellate authority against the orders of the Mamlatdar. But admittedly when the Collector is exercising his summary powers under Section 84, he is not acting as an appellate authority under Section 74. Therefore, from another point of view also so long as the order of the Mamlatdar stood and it had not been validly challenged by the party aggrieved by it, the Collector has no jurisdiction to reverse that order or to ignore it and come to a conclusion contrary to that order.

4. We, therefore, set aside the order of the Tribunal and also the order of the Collector and direct that if the tenant has any grievance against the landlord he should approach the Mamlatdar under Section 29(1) and the Mamlatdar will decide the matter according to law. The first opponent to pay the costs.

Petition allowed.