BOMBAY HIGH COURT

Khalilulla Hasmiya Ghole

Vs.

Yesu Raghu Dhadvel

Special Civil Appln. No. 1982 of 1956

(Gajendragadkar and Chainani, JJ.)

15.02.1956. 26.11.1956

JUDGMENT

Gajendragadkar, J.

1. This special civil application by the landlords raises the vexed question of construing one of the conditions laid down by Section 34 when a landlord seeks to eject his tenant on the ground that he wants his land *bona fide* for cultivating personally. This condition is prescribed by S 34 (2-A) (1). 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 conditions mentioned in Clause (1) to (4) of this subsection. It is with Clause (1) of this sub-section that we are concerned in the present application.

2. Now. Clause (1) of Sub-Section (2-A) provides that if the land held by the protected tenant on lease stands in the record of rights in the name of the landlord on the first day of January 1952 as the superior holder, then the landlord will have a right to terminate the tenancy on the ground of his *bona fide* requirement. The Revenue Courts and the Tribunal have rejected the petitioner's claim for possession of their land for the reason that this condition is not satisfied by them. The petitioners are admittedly the owners of the land. It is common ground that opponent No. 1 is the tenant of the land. On the 1st of January 1952 this land stood in the record of rights in the name of the petitioner's father, who was then alive, as a superior holder. The petitioners gave notice in 1953 and filed the present application for possession on the 15th of April 1954. There is no dispute that on the 1st of January 1952 the name of the petitioners' father alone appeared in the record of rights as the superior holder in respect of this land. It has been held against the petitioners that, since their names did not appear in the record of rights as superior holders on 1-1-1952, they do not satisfy the condition laid down by Section 34(2-A) (1) and so they cannot obtain possession of the land from the tenant. It is the correctness of this construction of Section 34 (2-A) (1) that is disputed before us by Mr. Limaye on behalf of the petitioners. On the other

hand, Mr. Vaidya, who at our request has assisted us by appearing amicus curiae for the tenant, has strongly contended that the view taken by the Revenue Tribunal is plainly consistent with the reasonable and literal construction of Section 34 (2-A) (1) and he has invited our attention to the fact that this view has been taken by the Tribunal consistently in all such cases.

3. It must be conceded that sub-section in question is capable of the construction put upon it by the Revenue Tribunal. If we were satisfied that this was the only construction of which this sub-section was capable, then we would certainly not have been justified in accepting Mr. Limaye's argument on any considerations of policy. It is a wellsettled rule of construction that, if any statutory provision is capable of only one construction, then it would not be open to the Court to put a different construction upon the said provision merely because the alternative construction would lead to unreasonable or even absurd consequences. The question of consequences and considerations of policy would be relevant only where the provision sought to be construed is capable of two constructions. In case any provision is capable of two constructions, then it would be open to the Court to adopt such a construction as would help the administration of the statute and avoid unreasonable consequences. Therefore, it is necessary to consider whether this clause is capable of any alternative construction. What this sub-section requires is that on the 1-1-1952 the name of the person who has leased out the land to the tenant must appear in the record of rights as a superior holder. In other words, as soon as it is shown that on the 1st of January 1952 the tenant was in possession of the land as a tenant and that the lease had been executed in his favour by a particular lessor, the name of this lessor must appear in the record as the superior holder on that date. In our opinion, it would be possible to take the view that this section merely requires the claimant for possession of the land under Section 34 to show that the person who was the lessor of the tenant on the 1st of January, 1952 had taken care to have his name entered in the record of rights as superior holder. This section does not necessarily require that it is the claimant whose name must appear in the record of rights on the 1st of January, 1952 as a superior holder. All that this section seems to require is that, whoever was the lessor or the landlord on the 1st of January 1952, must have his name entered as a superior holder in respect of his land. If that be so, it would naturally be necessary for the claimant who seeks to evict the tenant to show that he claims through the lessor whose name stood in the record of rights on the 1st of January 1952 and that he satisfies the other requirements of Section 34. We have carefully considered the material words used in this sub-section and we think that the construction which we are disposed to put on this sub-section does not involve any straining of the language.

4. If the construction put upon this provision by the Revenue Tribunal is accepted, it leads to obvious anomalies. In the case of a Mohammedan family, where considerations of undivided Hindu family or succession by survivorship do not apply, the death of the lessor whose name appeared in the record on the 1st of January 1952 as a superior holder would create an insuperable bar in the way of the successors of the lessor to obtain possession of the land, though their claim in that behalf may be otherwise fully justified by Section 34 of the Act. If the

husband's name appeared in the record on the specified date and he died, his widow may not be entitled to obtain relief on the technical and artificial ground that her name did not appear on the record on the 1st of January 1952. This provision was enacted by the amending Act on the 12th of January 1953. The Bill effecting this amendment was introduced in the Legislative Assembly on the 18th of July 1952 and it appears that, since Legislature found that some anomalies were discovered in the working of the Act, Legislature wanted to provide additional safeguards for the protection of tenants. Since the Act was passed on the 12th of January 1953, 1st of January 1952 was chosen arbitrarily as the appointed date and the provision in question seems to require that it must clearly appear that either the claimant or his predecessor appeared in the record of rights as a superior holder in respect of the land which is the subject-matter of subsequent proceedings under Section 34. It seems to us very difficult to assume that the right to obtain possession, which obviously vested in the landlord whose name appeared as superior holder on the 12th of January 1952, should have been intended to be taken away from his successor merely because such a landlord dies subsequently to the 12th of January 1952. In our opinion, though the literal construction which has been accepted by the Revenue Tribunal may be a possible construction, it would be more reasonable to accept the other construction which requires that it should be shown that the name of the person who was a landlord on the 1st of January 1952 appeared on the record as superior holder on that date. This alternative construction helps to carry out the object of Legislature and avoids any unreasonable or anomalous consequences.

5. Incidentally we may refer to the provisions of section 31A to which Mr. Vaidya has invited our attention. Sub-section (d) of this section has materially amended section 34(2-A) (1) with which We are concerned in the present application. The amended provision requires that the land leased should stand in the record of rights on the 1st of January 1952 or during the period between the said date and the appointed day in the name of the landlord himself or any of his ancestors, or if the landlord is a member of a joint family, in the name of member of such family. Legislature appears to have realised that the material words used by the Legislature in section 34(2-A) (1) were ambiguous and obviously the Legislature wanted to express its intention more clearly. That has been done by the latest amendment introduced by section 31A of the Act. In our opinion, it would not be unreasonable to hold that the material words even in section 34(2-A) (1) are capable of the construction which we feel disposed to put upon that provision,

6. If that be the true position, the order passed by the Revenue Tribunal and the Courts below must be set aside and the matter sent back to the learned Mamlatdar for disposal in accordance with law. Accordingly the application is allowed and the rule is made absolute. There will be no order as to costs.
Application allowed.