

BOMBAY HIGH COURT

Paika Dasaru

Vs.

Rajeswar Balaji

Civil Rev. Appl. No. 193 of 1955

(Chagla, C.J., Mudholkar and Gokhale, JJ.)

25.01.1955. 13.03.1957

JUDGMENT

Chagla, C. J.

1. The question that arises in this Full Bench lies in a very narrow compass. The question is : What is the proper construction to be placed upon section 16(1) of the Berar Regulation of Agricultural Leases Act (XXIV of 1951).

2. The few facts which are necessary to state in order to understand the question raised are that that plaintiff and his brother Anandrao owned certain lands and there was a partition suit and pursuant to the decree in the partition suit survey No. 39/2 was allotted to Anandrao and survey No. 39/1 was allotted to the plaintiff. The plaintiff let out survey No. 39/1 to the defendant. There was then an appeal and in appeal survey No. 39/1 was allotted to Anandrao and survey No. 39/2 to the plaintiff. The plaintiff then filed a suit from which this application arises, contending that the defendant was not his lessee and he was a trespasser, and claiming possession of the survey No. 39/2. The defense of the defendant was that survey No. 39/2 was let out to him on his agreeing to surrender possession of the other survey number which had been let out to him by the plaintiff. A preliminary issue was raised before the learned Judge by the defendant that only the Revenue Officer under Act XXIV of 1951 could decide the issue whether the defendant was a lessee of the plaintiff or not, and the Court had no jurisdiction to decide this issue. The learned Judge held that this issue could be determined by the Civil Court, and the question that now arises before us is whether the learned Judge was right in the view that he took.

3. Now, section 16(1) is in the following terms :-

"Whether any question arises whether any transaction between a landholder and a person claiming to be his lessee is a lease within the meaning of this Act, such question shall be decided by the Revenue Officer."

In this case the defendant claims to be the lessee of the plaintiff; he also claims that the lease is a lease within the meaning of this Act, and in order to substantiate his case of a lease he puts forward a particular transaction. The plaintiff disputes that transaction and his contention is that there is no such transaction, that the defendant is not his lessee, and that he is a trespasser. In order to fully understand the implications of section 16(1) it is necessary to look at certain other provisions of the Act. Section 16(2) permits the Revenue Officer in deciding the question referred to in sub-section (1) to ignore the provisions of the Indian Evidence Act and the Indian Registration Act or any other law for the time being in force in order to determine the real nature of the transaction; and section 16(3) makes the decision of the Revenue Officer under this section binding on the parties to the proceedings and persons claiming through them. Section 16-A provides :

"(1) Whenever any question as is referred to in section 16 arises before a Civil Court in any suit or proceedings, the Court shall, unless such question has already been determined by a Revenue Officer, refer the question to the Revenue Officer for decision and shall stay the suit or proceeding so far as it relates to the decision of such question.

(2) The Civil Court shall accept the decision of the Revenue Officer on the question and decide the suit or proceeding before it accordingly."

Now "lease" has not been defined under the Act, but section 3(1) provides :

"Every lease of land by a landholder entitling the lessee to hold land in the agricultural year 1951-52 shall, subject to the provisions of section 4, be deemed to be for a period of seven years from the commencement of that year unless such lease is for a period in excess of seven years from such commencement."

Section 3(2) applies the same provisions to a lease after the agricultural year 1951-52. It may be pointed out that it is the defendant's case that the lease was given to him for the agricultural year 1952-53 and that by reason of the provision of section 3(2) he became a protected lessee and therefore he could not be evicted.

4. Now, what is urged by Mr. Behare is that under section 16(1) the jurisdiction of the Revenue Officer only arises when the transaction is admitted and the only question is what the nature of the transaction is, whether the nature of the transaction is a lease or some other relationship in law. But according to Mr. Behere if the transaction is disputed, then the question must be tried by the Civil Court and not by the Revenue Officer. It is perfectly true that when the Court construes a section which ousts the jurisdiction of a Civil Court, the section must be construed strictly, but giving the strictest possible construction to section 16(1) it is difficult to accept the contention of Mr. Behere. However strict a construction we may be inclined to place upon section 16(1), even so it is necessary to give effect to what the Legislature has provided both in section 16(1) and

section 16 (2). Now, if a transaction is disputed and if that issue can only be tried by the Civil Court, then it is difficult to understand what power has been conferred upon the Revenue Officer by section 16(1). If the Court decides the question as to whether there is a transaction or not between the contending parties, then the question whether that transaction is a lease within the meaning of this Act is merely a consequence which arises by reason of section 3 of the Act. If the lease is for the period 1951-52 or thereafter then it is a protected lease. That would confer no power whatever upon the Revenue Officer to decide whether there was a transaction or not, and if the Revenue Officer had no such power then it is difficult to understand how Sub-Section (2) Section 16 could ever have any application. Reading section 16 (1) and (2) together, it is clear that when the defendant puts forward a transaction on the strength of which he contends that he is a lessee and that his lease is a protected lease under section 3, then it is the Revenue Officer who must investigate into that transaction and determine the real nature of the transaction under the power conferred upon him under section 16(2). If the view of the learned Judge were to prevail, section 16(2) would become entirely nugatory. As soon as the transaction is disputed, the Civil Court alone would have jurisdiction to decide whether there was a transaction or not, and in determining whether there was a transaction or not the Civil Court would not have the power conferred upon the Revenue Officer under Section 16 (2). But what the Legislature clearly intended was that when there is an issue between the parties under which a question arises as to whether the defendant is or is not a lessee and whether or not he is protected under the Act, then the question should be decided not according to ordinary law but according to the special provisions of Section 16 (2). It is true that the plaintiff does not admit that the defendant is a lessee. He comes to Court contending that the defendant is a trespasser and to the extent that he puts forward that contention he is perfectly entitled to go to the Civil Court. But as soon as the defendant contends that there is a transaction by which he has become the lessee of the plaintiff, the question immediately arises as to whether there is such a transaction or not and as soon as that question arises the jurisdiction of the Civil Court is ousted and the jurisdiction is conferred upon the Revenue Officer to decide that Question.

5. The question may be looked at from another point of view. The contention of Mr. Behere is that the Revenue Officer's jurisdiction only arises when the transaction is either admitted or established by Civil Court. In other words, the existence of the transaction is a jurisdictional fact and the jurisdiction of the Revenue Officer depends upon the existence of a transaction. Now, it is clear that far from the existence of a transaction being a jurisdictional fact, it is a fact in issue, it is the very issue which the Legislature intended that the Revenue Officer should try, and therefore, in our opinion looking at the whole scheme of Section 16 it is clear that if an issue arises between the parties whether there was a transaction which resulted in one of the parties becoming a lessee and the lease is a lease which fails within the Act, then that issue can only be tried by the Revenue Officer and not by the Civil Court.

6. Now, we have before us some conflicting decisions of the Nagpur High Court on this point. There is a judgment of the learned Chief Justice (Civil Revision No. 309 of 1954 (Nag)) (A)

where he takes the view that it is only when the transaction is ambiguous and its real nature has to be unearthed that the civil Court has to stay the suit and refer the matter to the Revenue Officer. With very great respect, we do not understand this limitation placed by the learned Chief Justice upon the power conferred upon the Revenue Officer that he can only determine whether there is a transaction if it is ambiguous and not determine it if it is not ambiguous. But whether the transaction is ambiguous or clear, it is a transaction put forward by the defendant and if the plaintiff denies that transaction the defendant has put the transaction in issue and if it is in issue that issue can only be tried by the Revenue Officer. Why the fact that the transaction is ambiguous one alters either the jurisdiction of the Revenue Officer or the Civil Court, with very great respect, we do not understand.

7. There is also the judgments of a Division Bench where Mr. Justice Mangalmurti took one view in favour of Mr. Behere and Mr. Justice Naik took the contrary view. In our opinion, again with respect, the view which Mr. Justice Naik has taken is the correct view, and Mr. Justice Naik in Civil Revision No. 561 of 1954 (Nag) (B) says that the conditions precedent to the exercise of jurisdiction by the Revenue Officer are :

- (1) Parties must raise the Question and be on issue on it.
- (2) The question must be between the landholder and a person claiming to be his lessee.
- (3) The question must be whether there would be a lease under the Act.

We agree that if these questions arise, then the Revenue Officer alone can try the issue.

8. There are also judgments of Mr. Justice Tambe, and the learned Judge has followed the view taken by the learned Chief Justice. As we have pointed out that we are unable to accept the view taken by the learned Chief Justice, it must follow that we are also unable, with very great respect, to accept the view of Mr. Justice Tambe.

9. The result is that the Civil Revision Application must succeed. The order of the trial Court will be set aside and the issue would be referred to the Revenue Officer to be determined by him. The matter will come back to the Civil Court after the issue is decided and under Section 16(3) the Revenue Court will give effect to the decision of the Revenue Officer.

Revision allowed.