

BOMBAY HIGH COURT

Janga Raoji Mali

Vs.

Nasarat Jahan Begam

Special Civil Application No. 3315 of 1956

(M.C. Chagle, C.J., S.T. Desai and K.T. Desai, JJ.)

04.07.1957

JUDGMENT

M.C. Chagla, C.J.

1. This full bench calls at our hands a proper construction of Section 88(1A) of the Tenancy Act and its effect upon the provisions of Section 34. The facts briefly are that the landlady filed an application before the Mamlatdar for possession of certain lands on the ground that she bona fide required them for personal cultivation. The Mamlatdar allowed the application. The tenant went in appeal to the Prant Officer and the Prant Officer held that the landlady did not require the lands bona fide and also gave other findings in favour of the tenant, with which we are not concerned in this full bench. The landlady went in revision to the Revenue Tribunal, and the Revenue Tribunal accepting the findings of fact of the Prant Officer, as it was bound to do, remanded the matter to him to determine whether the case of the tenant fell under Section 88(1A), and this order of remand was challenged before Mr. Justice Tendolkar and Mr. Justice Kotval on the ground that in view of the findings of the Prant Officer, the order of remand was unnecessary. The learned Judges took the view on a certain interpretation placed by them upon Section 88(1A) that the order of remand would be necessary, but inasmuch as they felt that there was a conflict between the view they were taking and the judgment of a division bench consisting of Mr. Justice Bavdekar and Mr. Justice Gokhale in *Ramkisan Damodar v. Kumbhar Garbad Mali*¹ they referred this matter to a full bench.

2. The scheme of the Tenancy Act has often been considered by this Court. Section 14 of the Tenancy Act imposes a restriction upon the landlord with regard to his terminating the tenancy. The rights that the landlord possessed under the ordinary law were considerably curtailed by the Legislature enacting under Section 14 that a tenancy shall not be terminated except on the grounds set out in that section, and this was notwithstanding any agreement, usage, decree or order of a Court of law. Now, this section dealt with all tenants whether they were protected or

not protected tenants. Then we come to Section 34 which is in a Chapter dealing with protected tenants and as the marginal note indicates quae the protected tenants the landlord was given certain right which he would not have possessed under Section 14, and that right was to obtain possession of the land from a protected tenant if he required it bona fide for cultivating personally and if he gave one

¹(1956) Special Civil Application No. 1971 of 1956

year's notice. Now, this right the landlord could only enjoy in reference to protected tenants. He could not exercise this right against tenants who were not protected tenants. Having conferred this right upon the landlord, the Legislature proceeded to enact Sub-section (2) which imposes certain conditions upon the exercise of this right by the landlord. When the Act was originally passed, it did not contain Section 88(1A), but an amending legislation was passed, being Bombay Act XXXIII of 1952 which introduced Sub-section (2A) in Section 34 which imposed further restrictions upon the right of the landlord to terminate the tenancy, and as that sub-section in terms says if the landlord bona fide requires the land for any of the purposes specified in Sub-section (1), then his rights to terminate the tenancy shall be subject to the following conditions, and then the conditions are set out. In the amending legislation, the Legislature also introduced Section 88(1A) and this is in the following terms:

"A protected tenant whose name stands entered as an owner in the record of rights on the first day of January 1952 in respect of any land fifty acres or more of jirayat or twelve and half acres or more of irrigated land in area in addition to the land held by him on lease as a protected tenant shall not be entitled to any rights or privileges conferred on a protected tenant by the provisions of Section 32 or 34.

Therefore, the object which the Legislature had in mind in enacting this subsection was not to put protected tenants who had no land of their own on the same footing as the protected tenants who had lands of the area mentioned in the sub-section but to the extent that any rights were given to protected tenants as such under Section 32 or 34 they were taken away with regard to the protected tenants who were not merely tenants but also landlords in their own rights. Now, there is no difficulty with regard to Section 32 because the right given under that section is a right to the protected tenant to purchase land from the landlord, so that if a tenant owns land of the area mentioned in Section 88(1A), he would not be in a position to exercise this right, but the difficulty arises with regard to Section 34, and the view that has been urged before us and which view seemed to have found favor with the learned Judges Mr. Justice Tendolkar and Mr. Justice Kotval is that Section 34 inasmuch as it cuts down the ordinary rights of a landlord to terminate a tenancy under the Transfer of Property Act, confers rights and privileges upon the tenant, and if a landlord sues for possession on the ground of personal cultivation, the tenant cannot avail himself of the rights and privileges contained in Section 34 if his case falls under Section 88(1A). Therefore, the view taken was that even if the landlord does not require land bona fide for his personal cultivation, even if he does not give one year's notice, if he applies for possession against a protected tenant and if the protected tenant is found to be a protected tenant who falls in

the category mentioned in Section 88(1A), then the landlord can get possession by reason of that fact, and it was precisely because of this that the learned Judges took the view that a remand was necessary, because even though the Prant Officer had held that the landlady did not require the land for personal cultivation, if the tenant did have land of the area mentioned in Section 88(1A), then the landlady would be entitled to possession notwithstanding the finding against her given by the Prant Officer. Now, as we have had occasion frequently to observe with regard to the Tenancy Act, every section presents serious difficulty as far as construction is concerned and the Tenancy Act will certainly not be looked upon by future legislators as a model of drafting. But whatever the difficulty, it is the duty of the Court to try and give effect to what the Legislature has enacted and as far as possible to give such effect to legislation as in the first place to carry out the object of the legislation and in the second place to try and avoid anomalies. Now, two extreme views are possible about the construction of Section 34. One extreme view for which Mr. Joshi pressed upto a point was that Section 34 confers rights upon a landlord and not upon a tenant at all. In a sense, it is true that the wide restriction imposed upon the landlord under Section 14 was relaxed in the case of landlords dealing with protected tenants and to that extent it is undoubtedly true that Section 34 deals with a right conferred upon the landlord with regard to determining a protected tenancy. But to say that Section 34 only deals with the rights and privileges of the landlord would be totally to ignore and fail to give effect to the language used by the Legislature in Section 88(1A), because in that section express reference is made to the rights and privileges conferred on a protected tenant by the provisions of Section 32 or 34. Therefore, in the view of the Legislature Section 34 did confer some rights or privileges upon the protected tenants which were taken away after Section 88(1A) had been introduced. Therefore, it should really be our duty to give a construction to Section 34(1) which will indicate what are the rights and privileges of the protected tenant which the Legislature had in mind when enacting Section 88(1A). Now, the other extreme view which has been urged before us by Mr. Gokhale is that Section 34(1)(a) only deals with the rights of tenants. Now, that view is entirely unacceptable for more than one reason. As already pointed out, the possession of all tenants was protected by Section 14 and a protected tenant would have in that sense been in a much better position if Section 34 had not been enacted, because under Section 34 he was liable to be evicted in certain circumstances, when he could not have been evicted under Section 14. Therefore, to say that Section 34 was enacted to confer a right and privilege upon the protected tenant is to wholly ignore the provisions of Section 14. It is precisely because of this, that, with great respect, we do not agree with the learned Judges Mr. Justice Tendolkar and Mr. Justice Kotval that Section 34 has got to be considered in the light of the provisions of the Transfer of Property Act. Section 34 has to be considered in the light of Section 14. Section 14 had already restricted the right of the landlord under the provisions of the Transfer of Property Act, and Section 34 went on, as already pointed out, to relax these restrictions and confer certain rights upon the landlord which he did not possess by reason of the provisions of Section 14. The other almost insuperable difficulty in the way of accepting this contention that Section 34 only deals with the rights and privileges of protected tenants is this that if the case of such tenant were to fall under Section 88(1A), then Section 34 can have no effect or force. In other words, a landlord would not be able to obtain

possession if he required it for personal cultivation even if his ease fell under Section 34(1). It is not disputed that if a landlord cannot bring his case under Section 34(1) he cannot get possession under any other section if the ground on which he is seeking possession is bona fide personal requirement. Therefore, if you were to say that Section 34 deals with privileges of tenants and Section 34 ceases to apply by reason of Section 88(1A), then the very foundation of the landlord's application would disappear.

3. But that is not only anomalous but absurd because Section 88(1A) was enacted to give relief to landlords who ordinarily would not have been able to get possession under Section 34 but who would now be in a position to get possession if the case of the protected tenant fell under Section 88(1A). Therefore, in our opinion, neither of these two extreme constructions can be put upon Section 34 and we must try and construe Section 34(1) in a manner which will both uphold the rights of the landlord conferred under Section 34 and also give effect to the rights and privileges of the protected tenant to which reference was made by the Legislature in Section 88(1A).

4. Now, the true position as it seems to us is that a right or privilege was conferred upon a landlord under Section 34 and that was to get possession from his protected tenant provided he required it bona fide for personal cultivation and provided he gave one year's notice. That is Section 34(1). Having conferred that right and privilege upon the landlord, the Legislature hedged it in with various conditions. It first enacted Sub-section (2) which imposed certain conditions and restrictions upon the landlord before he could get possession under Section 34(1), and by the amending Act it imposed further restrictions upon the right of the landlord to obtain possession. Therefore, to the extent that the right of the landlord under Section 34(1) is hedged in with conditions and restrictions under Sub-sections (2) and (2-A), these sub-sections confer upon the protected tenant corresponding rights and privileges. So, under Sub-sections (2) and (2-A) on the one hand you have restrictions upon the right of the landlord conferred upon him under Section 34(1) and on the other hand you have rights and privileges given to the protected tenant that the landlord cannot obtain possession although his ease falls under Section 34(1). It is, therefore, in our opinion, these rights and privileges which the Legislature was considering under Section 88(1A) when it referred to the rights and privileges of a protected tenant under Section 34. The effect of taking this view would be that no landlord even though the case of the protected tenant falls under Section 88(1A) can obtain possession from a protected tenant unless he requires it bona fide and gives one year's notice or in other words he satisfies the conditions mentioned in Section 34. If he satisfies these conditions, then if it is established that the protected tenant possessed land of the area mentioned in Section 88(1A), it would not be necessary for the Tribunals to determine whether the conditions under Sub-sections (2) and (2-A) are satisfied or complied with.

5. Now, turning to the judgment of Mr. Justice Bavdekar and Mr. Justice Gokhale in *Bamkisan Damodar v. Kumbhar Garlad Mali*, which has led to this full bench, all that the learned Judges there were considering was whether it was necessary for the landlord to give one year's notice to

a protected tenant whose case fell under Section 88(1A) and the learned Judges came to the conclusion that it was necessary. Now, in view of what we have said, we must agree with the view taken by these learned Judges. It may be pointed out that the learned Judges did not consider the other aspects of the matter because it was not strictly necessary for them to do so. For the same reasons, we regret we are unable to accept the view of Mr. Justice Tendolkar and Mr. Justice Kotval that as soon as it is established that the protected tenant falls in the category mentioned in Section 88(1A), the whole of Section 34 has no application.

6. Our answer to the question submitted to us is that Section 34 confers rights and privileges on the landlord to the extent that Section 34 (1) gives the landlord the right to obtain possession on the conditions laid down in that section and confers rights and privileges on the tenant to the extent that that right is restricted by the conditions mentioned in Sub-sections (2) and (2-A).

7. In view of this inasmuch as the finding of the Prant Officer confirmed by the Tribunal is that the landlady did not require the land is question bona fide for personal cultivation, no question of remand can arise. The result, therefore, will be that the petition will succeed and the order of the Tribunal remanding the matter will be set aside. The respondent must pay the costs of the petitioner.

Petition allowed.