BOMBAY HIGH COURT

Jayantraj Kanakmal Zambad

Vs.

Hari Dagdu

Special Civil Appln. No. 205 of 1960

(Chainani, C.J., Kotwal nd Shikhare, JJ.

20.09.1961

JUDGMENT

Chainani, C.J.

1. The facts which have given rise to this reference to the Full Bench, are as follows: The petitioners are the land holders of three lands of which the opponent no.1, herein after referred to as the opponent, was a protected lessee under the provisions of the Berar Regulation of Agricultural Leases Act, 1951 (XXIV of 1951), hereinafter referred to as the B.R.A.L. Act. The petitioners gave a notice terminating the tenancy of the opponent under sub-section (1) of section 9 of the Act. The opponent then made an application to the Sub-Divisional Officer under sub-section (3) of section 9, in which he prayed that the notice should be declared to be invalid and inoperative. On this application, the Sub-Divisional Officer made an order on 12-11-1956 terminating the lease of the opponent with effect from 1-4-1957. Against this order, the opponent appealed to the Additional Deputy Commissioner, who set aside the order of the Sub-Divisional Officer and held that the notice given by the petitioners was invalid. There was a second appeal by the petitioners to the Revenue Tribunal. On 13-2-1958 the Revenue Tribunal allowed the appeal of the petitioners, set aside the order made by the Additional Deputy Commissioner and restored the order of the Sub-Divisional Officer.

2. While these proceedings were pending, the Bombay Vidarbha Region Agricultural Tenants (Protection from Eviction and Amendment of Tenancy Laws) Act, 1957 (No.IX of 1958) was enacted by the legislature. This Act came into force on 20th January 1958. Section 3 of this Act imposed a bar on the eviction of tenants for a period of two years. Section 4 provided that all proceedings pending at the commencement of the Act or which might be instituted during the period of the Act for the termination of the tenancy and eviction of a tenant shall be stayed on certain conditions referred to in the section. This Act was in force when the Revenue Tribunal made its order. While, therefore, restoring the order made by the Sub-Divisional Officer, the

Revenue Tribunal directed that the proceedings for the termination of the tenancy and eviction of the applicant shall be stayed, if he deposited the rent of the lands due for the year ending 13st March 1958.

3. This last Act, as well as the B.R.A.L. Act were repealed by the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch area) Act, 1958 (No.XCIX of 1958), which came into force on 30-12-1958. I will refer to this Act as the Tenancy Act. On 20-2-1959 the petitioners made an application for ejection of the opponent under sub-section (1) of section 19 of the B.R.A.L. Act. The Sub-Divisional Officer dismissed this application on the ground that no such application could be maintained after the coming into force of the Tenancy Act. He was of the view that the only remedy open to the petitioners was to make an application to the Tahsildar under section 36 of the Tenancy Act. The order made by the Sub-Divisional Officer was confirmed in appeal by the Collector, and in second appeal by the Revenue Tribunal. Thereafter, the petitioners filed the present special civil application. The application came up for hearing before a Division Bench of this Court. Having regard to the importance of the questions involved and also to the fact that the decision on questions arising in this case would govern a large number of cases, the Division Bench referred the following question for determination by a Full Bench.

> "Whether the application of the landlord should be decided under section 19 of the Berar Regulation of Agricultural Leases Act and by the Sub-Divisional Officer or it should be decided by a Tahsildar under the new legislation in view of section 132(3) of Act No.99 of 1958?"

We have decided to modify the question for our consideration as follows:

> "Whether an application made by a landholder under sub-section (1) of section 19 of the Berar Regulation of Agricultural Leases Act, 1951 (XXIV of 1951), after the coming into force of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958 (XCIX of 1958), should be decided under the previsions of the former Act or under the provisions of the latter Act?"

In order to decide this question, it is necessary to refer to the relevant provisions of the B.R.A.L. Act and the Tenancy Act. Sub-section (1) of section 8 of the B.R.A.L. Act provided that notwithstanding any agreement, usage, decree or order of a court of law, the lease of any land held by a protected lessee shall not be terminated except under orders of a Revenue Officer made on any of the following grounds, namely:

> "(a) (i) he has failed to pay on or before the 15th day of March in any agricultural year the lease-money of such land for that year; or
> * * * * * * *

(b) he has done any act which is destructive or permanently injurious to the land;
x x x x x x x x
(g) he has been served with a notice by the land-holder as provided in Section 9."

Sub-section (2) of this section stated that no order for the termination of lease on the ground specified in clause (a) of sub-section (1) shall be passed, unless the Revenue Officer has by notice called upon the protected lessee to tender the lease-money due together with cost of proceedings within such period as may be specified by the Revenue Officer in the notice and the lessee has failed to deposit the required amount within the said period. Sub-section (3) of this section was as follows:

"No proceedings for ejectment on the ground specified in clause (b) of sub-section (1) shall lie unless the land-holder has served on the protected lessee a notice in writing specifying the act of destruction or injury complained of and the protected lessee has failed within a period of six months from the date of service of notice or within such further period as the Revenue officer may grant to restore the land to the condition in which it was before such destruction or injury."

4. Under this section, therefore, a landholder could not himself terminate a tenancy. In order to terminate the tenancy, he had to make an application to a Revenue Officer and obtain an order for the termination of the tenancy. Sub-section (1) of this section contemplated an order for the termination of a tenancy. This is made further clear by the opening words in sub-section (2) "No order for the termination of a lease ....." In sub-section (3) however, the proceedings before the Revenue Officer are referred to as "proceedings for ejectment." This shows that a proceeding instituted under sub-section (1) for obtaining an order for the termination of a lease was regarded as being essentially a proceeding for ejectment. The purpose or object of securing an order for termination of a lease is to get back possession of the land from the lessee. Ejectment is, therefore, ordinarily a necessary consequence of the order terminating a lease. The draftsman did not, therefore, consider it material whether the proceeding under Section 8 was described as a proceeding for termination of a lease or as a proceeding for ejectment for (except where the application was dismissed) it ultimately resulted in the eviction of the tenant.

5. In this connection, it is necessary to refer to section 19, which was in the following terms:

"19. (1) A landholder may apply to the Revenue Officer to eject a protected lessee against whom an Order for the termination of the lease has been passed under Section 8 or 9.
(2) Any protected lessee who has been dispossessed by the landholder of his land except in accordance with the provisions of this Act, may within one year from the date of such dispossession, apply to a Revenue Officer for reinstatement of possession.
(3) On receipt of an application under sub-section (1) or (2), the Revenue Officer may, after making such summary enquiry as he deems fit, pass an Order for restoring

possession of the land to the landholder or the protected lessee as the case may be and may take such steps as may be necessary to give effect to his order."

In view of this section a landholder could not take possession of his land from his lessee, even though he had obtained an order from the Revenue Officer for the termination of the lease. He had to make a separate application under sub-section (1) of this section for ejecting his tenant.

6. The position, therefore, was that in order to obtain possession of his land from a protected lessee, the landholder had first to obtain an order from the Revenue Officer for the termination of the lease under section 8, and thereafter make an application under sub-section (1) of section 19 for ejecting the protected lessee. After receiving the latter application, the Revenue Officer had to make a summary inquiry, and thereafter make an order for restoring possession of the land to the land-holder. It may be noted here that the order which, under this section the Revenue Officer could make in favour of a landholder, is referred to as an order for "restoring" possession of the land. If this section 19 is read along with section 8, and in particular sub-section (3) of section 8, it will be clear that the legislature regarded both the proceedings under section 8 and section 19 as being parts of one proceeding, which is described in some places as a proceeding for termination of a lease and in others as proceeding for ejectment. The proceeding commenced with the application under sub-section (1) of section 8 and ended with an order under sub-section (3) of section 19. The application under sub-section (1) of section 19 was only a second step in the proceeding initiated under sub-section (1) of section 8 to obtain back the possession of the land. Even though, therefore, a separate application had to be made under sub-section (1) of section 19, the proceeding under this sub-section was a part or continuation of the proceeding under section 8. In other words, the proceeding under section 8 did not come to an end until an order had been made under sub-section (3) of section 19.

7. Sub-section (1) of Section 9 of the B.R.A.L. Act gave a right to the landholder to terminate the lease of a protected lessee by giving him three months' notice in writing if he required the land for cultivating it personally. Sub-section (2) stated that the landholder would not be entitled to terminate the lease of the protected lessee on the ground that he wanted the land for personal cultivation, unless the area held by him and available to him for personal cultivation was below fifty acres, and where this condition was satisfied, the landholder would be entitled to terminate the lease in respect of only so much area of the land as was necessary to make the total area equal to fifty acres.

8. Sub-sections (3), (4) and (5) were in the following terms:

"(3) If, upon receipt of a notice under sub-section (1), the protected lessee considers:
(a) that the notice is not bona fide, or
(b) that he should be permitted to give up some other land of the same landholder in lieu of the land mentioned in the notice; he may apply to the Revenue Officer within thirty

days from the date of receipt of the notice either for declaration that the notice shall have no effect or for permission to give up some other land of the same landholder in lieu of the land mentioned in the notice as the case may be.

(4) On receipt of such application, the Revenue Officer shall, after hearing the landholder and making such enquiry as he may deem fit, and, where the protected lessee asks for permission under clause (b) of sub-section (3), after taking such matters into consideration as may be prescribed, decide the application.

(5) If under sub-section (4) the lease of a protected lessee is terminated in respect of a part of a land leased to him, the lease-money shall be apportioned in the prescribed manner in proportion to the area of the land left with the protected lessee."

Sub-section (6) provided that if on re-entering upon any land after termination of the lease of a protected lessee in accordance with this section, a landholder failed to utilise the land for the purpose for which the lease was terminated, the dispossessed lessee might apply to the Revenue Officer to put him in possession of the land. This section did not contemplate any application being made by the landholder to the Revenue Officer. The only application to the Revenue Officer provided for by this section was an application by a lessee under sub-section (3). On such an application, the Revenue Officer had to hold an enquiry and thereafter decide the application. The opening words "If under sub-section (4) the lease of a protected lessee is terminated" in sub-section (5), indicate that the order which the Revenue Officer had to make in case he held that the notice under sub-section (1) of Section 9 was bona fide, was an order terminating the lease of the protected lessee. This is made further clear by sub-section (1) of Section 19, which refers to "a protected lessee against whom an order for the termination of the lease has been passed under Section 9". The only order which the Revenue Officer could make under Section 9 is an order on the application made by the lessee under sub-section (3). It is, therefore clear that if the Revenue Officer, after holding the enquiry contemplated under sub-section (4), came to the conclusion that the notice was valid, he had to make an order for the termination of the lease.

9. Thereafter, the landholder could make an application under sub-section (1) of Section 19. Although this section required a separate application for ejection of a protected lessee, the proceeding under this section was really part or continuation of the proceeding under sub-section (3) of Section 9, for, the lessee's rights could not be said to have been effectively determined until an order for the ejectment had been made under Section 19. An order for the termination of a lease by itself serves no useful purpose, unless it is followed by an order for ejectment. In cases in which the lessee had initiated the proceeding under sub-section (3) of Section 9, the proceedings cannot, therefore, be said to have finally terminated until either his application had been granted and the notice had been held to be invalid, or alternatively, until an order had been made under sub-section (3) of section 19.

10. Section 9-A contained special provisions applicable to minor landholder. Sub-section (1) of this section provided that within three years after attaining majority a minor could apply to the

Revenue Officer for terminating the lease of a protected lessee. Sub-section (2) stated that after making such inquiry as he thought fit, the Revenue Officer could terminate the lease and also place the landholder in possession of the land. Even though, therefore, under sub-section (1) the application was only for terminating the lease of a protected lessee, the Revenue Officer could under sub-section (2) make not only an order for the termination of the lease, but also a further order for possession of the land being given to the land-holder. It is, therefore, clear that the legislature regarded the proceeding for terminating the lease of a protected lessee as being really a proceeding for obtaining possession of the land, which proceeding did not end until either the application had been rejected, or alternatively, an order for possession of the land being given to the landholder had been made.

11. Sub-section (2) of Section 17 provided that from every decision or order of a Revenue Officer under this Act, an appeal shall lie as if such decision or order had been passed by such officer under the Berar Land Revenue Code, 1928. This section, therefore, made the orders made under sections 8, 9 and 19 appealable. It has been contended that as an order made under section 19 was separately appealable, the proceeding under this section cannot be regarded as part of the proceeding under Section 8 or 9. We are unable to accept this argument. The various provisions of the Act, to which I have referred, Sections 8, 9, 9-A and 19, clearly show that an application under section 19 did not start a separate proceeding, but that it was an application made in a proceeding initiated under Section 8 or Section 9.

12. I will now refer to the relevant provisions of the Tenancy Act. These are contained in Section 132. Sub-section (1) of this section repeals the Berar Regulation of Agricultural Leases Act, 1951; the whole of Chapter XIV of the Madhya Pradesh Land Revenue Code, 1954; and the Bombay Vidarbha Region Agricultural Tenants (Protection from Eviction and Amendment of Tenancy Laws) Act, 1957. Sub-section (2) of this section runs as follows:

> "Nothing in sub-section (1) shall, save as expressly provided in this Act, affect or be deemed to affect:
> (i) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or
> (ii) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability or anything done or suffered before the commencement of this Act, and any such proceedings shall be instituted, continued and disposed of, as if this Act had not been passed."

This sub-section saves rights, which had accrued under the repealed enactments. It also states that legal proceedings in respect of such rights may be instituted, as if the Act had not been passed. After a land-holder had obtained an order for the termination of a lease under Section 8, or 9 of the B.R.A.L. Act, a right accrued to him to recover possession of the land. This right could then be enforced by making an application under sub-section (1) of Section 19. The same

remedy can now be pursued by reason of the above provision in Section 132(2) of the Tenancy Act. In other words, an application under Section 19 could be made even after the commencement of this Act.

13. Sub-section (3) of Section 132 is in the following terms:

> "(3) Notwithstanding anything contained in sub-section (2) (a) all proceedings for the termination of the tenancy and ejectment of a tenant or for the recovery or restoration of the possession of the land under the provisions of the enactments so repealed, pending on the date of the commencement of thils Act before a Revenue Officer or in appeal or revision before any appellate or revising authority shall be deemed to have been instituted and pending before the corresponding authority under this Act and shall be disposed of in accordance with the provisions of this Act, and
> "(b) in the case of any proceeding under any of the provisions of the enactments so repealed, pending before a civil Court on such date, the provisions of section 125 of this Act shall apply."

This sub-section operates notwithstanding anything contained in sub-section (2), It, therefore, overrides sub-section (2). It applies to proceedings of two kinds : (i) proceedings for the elimination of the tenancy and ejectment of a tenant and (ii) proceedings for the recovery or restoration of the possession of the land under the provisions of the enactments repealed by sub-section (1), one of which was the B.R.A.L. Act. It has been argued that a proceeding under section 8, except possibly one under clause (b) of sub-section (1) of section 8, and a proceeding under section 9 of the B.R.A.L. Act, were only proceedings for termination of the lease and that they would not fall within the expression "for the termination of the tenancy and ejectment of a tenant" in clause (a) of sub-sec.(3) of Section 132. Similarly, it has been contended that this expression would not include applications under sub-section (1) of section 19, which were only for ejectment of a tenant. For the reasons, which I have already given, the proceedings under section 8 or 9 and section 19 were all parts of the same proceeding for the termination of lease and ejectment of a tenant. All these proceedings will, therefore, fall within the ambit of the expression "for the termination of the tenancy and ejectment of a tenant" in clause (a) of sub-section (3) of section 132. Sub-section (3) of section 19 of the B.R.A.L. Act stated that on an application made under sub-section (1) by a landholder, the Revenue Officer could make an order for restoring possession of the land to the landholder. The order, which the Revenue Officer could make in favour of the landholder under sub-section (3) of section 19 was therefore, described as an order for restoring possession of the land. Sub-section (6) of section 9 also referred to a landholder's re-entering on the land after the termination of the lease of the protected lessee. An application under Section 19 was, therefore, an application for restoration of the possession. Such an application would, therefore, also fall within the expression "for the recovery or restoration of the possession of the land" used in clause (a) of sub-section (3) of Section 132 of the Tenancy Act.

14. The next requirement of Sub-section (3) of Section 132 is that a proceeding of the kind referred to therein must be pending on the date of the commencement of the Tenancy Act. As I have already pointed out in cases in which the Revenue Officer declared the notice given under Section 9 to be valid, the proceeding under this section did not come to an end until an order had been made under sub-section (3) of Section 19. Such a proceeding can, therefore, be said to remain pending until a final order has been made under sub-section (3) of section 19. In *In re Clagett's Estate : Fordham v. Clagett*[1], Jessel, M.R., observed that

> "a cause is said to be pending in a Court of Justice when any proceeding can be taken in it."

This observation has been cited with approval by the Supreme Court in *Asgarali Nazarali v. State of Bombay*[2], at p.509. A proceeding under section 9 remains pending so long as an application can be made in it under sub-section (1) of section 19 and until an order has been made under sub-section (3) of section 19. An application made under section, after the commencement of the Tenancy Act, is, therefore, an application in a pending proceeding of the kind referred to in clause (a) of sub-section (3) of section 132 of the Tenancy Act. This sub-section will therefore, apply to such an application and it will be deemed to have been instituted under the Tenancy Act and shall be disposed of in accordance with the provisions of this Act. In this view, it is not necessary to decide whether a Court is competent to supply casus omissus in regard to which there was considerable argument before us. The reply to the question referred to the Full Bench, therefore, will be that an application made under sub-section (1) of section 19 of the

[1](1882) 20 Ch. D. 637

[2] AIR 1957 SC 503

B.R.A.L. Act after the commencement of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958 shall be deemed to have been instituted and pending before the corresponding authority under the latter Act and shall be disposed of in accordance with the provisions of that Act.

Answer accordingly.