BOMBAY HIGH COURT

Ramchandra Anant Joshi

Vs.

Janardan Tulshiram Ghuge

Special Civil Appln. No. 748 of 1961

(Chainani, C. J., K.K. Desai and Chandrachud, JJ.)

24.08.1962

JUDGMENT

Chainani, C.J.

1. The petitioners landlords had given a notice to their tenant opponent No. 1 before 31st December, 1956 under Section 31 of the Bombay Tenancy and Agricultural Lands Act terminating the tenancy on the ground that they required the lands *bona fide* for personal cultivation. Subsequently before 31st March 1957, they made an application to the Mamlatdar for obtaining possession of the lands on the ground that they required them for personal cultivation. That application has not yet been finally disposed of and the matter is pending in appeal before the Deputy Collector. During the pendency of that application on 17th July 1958, the petitioners gave another notice to opponent No. 1 under Section 14 of the Act terminating the tenancy on the ground of defaults in the payment of rent. On 11th December 1958, the petitioners made an application under Section 29 read with Section 14 to the Mamlatdar for obtaining possession of the lands on the ground that there were defaults in the payment of rent for the years 1953-54 to 1957-58. The Tenancy Aval Karkun directed that possession of the lands should be restored to the petitioners. His order was set aside in Appeal by the Deputy Collector, as according to the Deputy Collector the second application made for possession by the petitioners on 11th December 1958 was not maintainable. The order of the Deputy Collector has been confirmed in revision by the Revenue Tribunal. Against that order, the present special Civil Application has been filed.

2. The Division Bench, before which this application came up for hearing, has referred the following two questions to the Full Bench :

> "Whether the landlords' application for possession under Section 29 read with Section 14 was not tenable on the ground that the landlords, having once terminated the tenancy

under Section 31 of the Act, were not entitled to terminate the tenancy again on any of the grounds mentioned in Section 14 of the Act; and

Whether the landlords' application under Section 29 read with Section 14 was not tenable on the ground that it was filed after the 31st of March 1957."

3. In regard to the first question, the principal argument, which has been advanced on behalf of the tenant, is that the tenancy having been already terminated by a notice given under Section 31, there was no tenancy in existence thereafter, which could be terminated by the second notice and that consequently the second application, in which possession was claimed on the basis of termination of a tenancy, which did not exist, was not maintainable. There does not appear to be much force in this argument. It assumes that a notice given by the landlord always results in determination of the tenancy. If the notice is for any reason defective, it will have no effect and the tenancy will cotinue. The landlord may also waive the notice in some cases with the assent of the tenant and in others, like those involving forfeiture, without such assent. For instance, if after giving a notice under Section 31, the landlord does not follow it up with an application for possession to the Mamlatdar, the notice will be deemed to have been waived. The consequence of waiver is to revive or restore the old tenancy, see Mulla's Transfer of Property Act, p. 696, fourth edition. The giving of a notice determining the tenancy will not therefore preclude the landlord from giving another notice. It is also clear from the provisions of Section 113 of the Transfer of Property Act and Illustration (b) to this section that under the ordinary law a second notice for terminating the tenancy can be given. Clause (h) in Section 111 of the Transfer of Property Act provides that a lease of immovable property determines on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other. Section 113 states that a notice given under Section 111, clause (h), is waived with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting. Illustration (b) to this section is as follows :

"A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived." This Illustration makes it clear that a second notice to quit the property leased may be given even though a similar notice has been given previously. It is not necessary for us to consider in this case what the consequences of the second notice will be. These will depend upon the facts and circumstances of each case. The second notice may in certain circumstances result in a waiver of the first notice. If it is given without prejudice to the rights created by the first notice, it may furnish to the landlord an alternative ground for obtaining possession of the property leased. If there is no waiver and if the lease came to an end by reason of the first notice, the second notice may become ineffective. On the other hand, the first notice may for some reason not be effective in terminating the tenancy and the second may be. But whatever may be the effect of the second notice, it is not invalid, merely because another notice terminating the

tenancy has been already given. This is the position under the ordinary law and the position under the Tenancy Act cannot be different. In fact Section 3 of the Tenancy Act states that the provisions of Chapter V of the Transfer of Property Act shall, in so far as they are not inconsistent with the provisions of the Tenancy Act, apply to the tenancies and leases of land to which the Tenancy Act applies. Section 29 of the Tenancy Act states that no landlord shall take possession of any land held by a tenant except under an order of the Mamlatdar. A landlord cannot therefore obtain possession of the land from his tenant, even if the tenant is willing to hand over possession to him. He has to approach the Mamlatdar for the purpose. Under the ordinary law, if a tenant continues in possession after his tenancy has been determined, his possession is protected by law and he cannot be ousted except in due course of law, but he has no right to Possession after the termination of tenancy. Under the Tenancy Act, however, even after his tenancy has been determined by a notice given by his landlord, the tenant has a legal right to continue in possession, until the Mamlatdar has made an order for possession being restored to the landlord. During the intervening period, the tenant has an estate in possession, of which he can only be deprived by an order of the Mamlatdar. A landlord cannot say for certain whether his application for possession based on the termination of the tenancy by him will be granted by the Mamlatdar. Consequently, if during the above period, i.e. the period between the termination of the tenancy by a notice given by the landlord and the disposal of the application for possession made to the Mamlatdar by the landlord, another ground for taking back possession of the land under the provisions of the Tenancy Act becomes available to the landlord, there is no reason why he should not be able to terminate the tenancy and apply for possession on that ground also. It seems to us, therefore, that even after the landlord has terminated the tenancy by giving a notice under Section 31, it is open to him to give another notice intimating to the tenant his intention to terminate the tenancy under Section 14 and to approach the Tenancy Court for possession on the grounds mentioned in this Section 14.

4. We have been referred to the decision of Dixit and Tendolkar, JJ. in Special Civil Appln. No. 3584 of 1956 decided on 8th March 1957. In the course of his judgment in that case, Dixit, J. observed :

> "In the first place, the landlords did terminate the tenancy under Section 34. If the tenancy was terminated, then there could be no other tenancy remaining which the tenant could validly surrender under Section 5."

These observations were referred to by Tendolkar, J. in his judgment in Special Civil Appln. No. 16 of 1957 decided on 17th July 1957, in which he observed :

> ".....and once tenancy has been validly terminated there survives no tenancy which can be surrendered."

It is possible to take the view that where a landlord claims possession on the basis of a surrender by the tenant of his tenancy rights, made after the landlord had previously given a notice terminating the tenancy, he waives the notice given by him and that consequently the surrender is valid. It is not necessary for us to consider this matter further, because in neither of these two cases the question, whether a second notice can be given by the landlord terminating the tenancy, was argued or considered.

5. The reply to the first question, therefore, will be that the application for possession made by the landlord under Section 29 read with Section 14, was not untenable merely on the ground that they had previously terminated the tenancy by a, notice given by them under Section 31 of the Act.

6. The next question, which has been referred to the Full Bench, is more difficult and not easy to decide. In this connection it is necessary to refer to certain relevant provisions of the Act. Sub-section (1) of Section 14 states that notwithstanding any law, agreement or usage, or the decree or order of a Court, the tenancy of any land shall not be terminated except on the grounds specified in this section. This section, therefore, curtails the right of a landlord to terminate the tenancy of his tenant and he can do so only on one or the other ground specified in this section. Section 31 enables a landlord to terminate the tenancy on two more grounds and these are that he requires the land *bona fide* for cultivating it personally or for any non-agricultural purpose. Sub-section (1) of Section 31 states that if the landlord requires the land for any of these purposes, then notwithstanding anything contained in Section 14 he may, after giving notice and making an application for possession as provided in sub-section (2), terminate the tenancy. Sub-Section (2) states that the notice required to be given under Sub-Section (1) shall be served on the tenant on or before the 31st day of December, 1956 and that an application for possession under Section 29 shall be made to the Mamlatdar on or before the 31st day of March 1957. Sub-section (3) extends the time for giving a notice and making an application under sub-section (2), where the landlord is a minor or a widow or a person subject to mental or physical disability or a serving member of the armed forces. Section 33B enables a certificated landlord, that is a landlord to whom a certificate has been issued under Section 88-C, to make an application for possession, if he requires the land *bona fide* for cultivating it personally, till the 1st day of April, 1962, or within three months of his receiving a certificate under Section 88-C, unless the landlord belongs to one of the categories mentioned in sub-section (3) of Section 31, in which case, subject to certain conditions the time for making an application is further extended. But apart from the landlords belonging to the categories mentioned in sub-section (3) of Section 31 and certificated landlords, the last date for making an application under Section 31 in the case of other landlords was 31st March, 1957. After this date no application for possession, on the grounds mentioned in Section 31, could be made by any such landlord. No similar date has been prescribed in respect of an application for possession on the grounds referred to in Section 14. There is no provision in Section 14 or in any other part of the Act, which debars a landlord, who does not belong to one of the special categories mentioned above, from making an application for possession under

Section 29 read with Section 14 after the 1st of April, 1957.

7. The other material section to be referred to is Section 32. Sub-section (1) of this section states that on the first day of April, 1957, referred to as the tillers' day, every tenant shall, subject to the provisions of this section and the provisions of the next succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant, if (i) the landlord has not given notice of termination of his tenancy under Section 31; or (ii) notice has been given under Section 31, but the landlord has not applied to the Mamlatdar on or before the 31st day of March 1957 under Section 29 for obtaining possession of the land; or (iii) the landlord has not terminated this tenancy on any of the grounds specified in Section 14, or has so terminated the tenancy but has not applied to the Mamlatdar on or before the 31st day of March 1957 under Section 29 for obtaining possession of the lands. The first proviso to this sub-section is as follows :

> "Provided that if an application made by the landlord under Section 29 for obtaining possession of the land has been rejected by the Mamlatdar or by the Collector in appeal or in revision by the Maharashtra Revenue Tribunal under the provisions of this Act, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. The date on which the final order of rejection is passed is hereinafter referred to as 'the postponed date'."

This section does not apply to the tenants of landlord belonging to the categories specified in sub-section (3) of Section 31, in regard to whom separate provision has been made in Section 32-F. Similarly Section 33-C and not Section 32 applies to tenants of certificated landlords. But barring these special cases, under Section 32, subject to other conditions with which we are not concerned, a tenant shall be deemed to have purchased from his landlord the land held by him as a tenant on 1st April 1957, provided no application for possession had been made by the landlord on or before 31st March, 1957. If such an application had been made before 1st April, 1957, then the tenant lost his right to become the owner on 1st April, 1957. But in that case he shall be deemed to have purchased the land on the postponed date, that is, on the date on which the final order rejecting such application is passed. Where, therefore, an application for possession had been made by the landlord before 1st April, 1957, the tenant did not acquire the right of purchase under Section 32 on 1st April, 1957. He acquires this right on the postponed date, provided the application for possession is rejected.

8. The question, which arises for determination now, is whether a landlord can make an application for possession on the grounds mentioned in Section 14, while an application for possession made by him before 1st April, 1957, is pending, or whether this right is impliedly taken away by Section 32, under which the tenant shall be deemed to have purchased the land, if the first application is ultimately rejected. The application for possession referred to in the proviso to sub-section (1) of Section 32 is the application referred to in Clauses (ii) and (iii) of

this sub-section, that is, the application made before 1st April, 1957. The right of purchase conferred on the tenant is postponed only till the date on which such application is finally rejected. There is no similar provision in regard to applications made after 1st April, 1957. It is therefore obvious that the postponed date cannot be further postponed. If, therefore, the application made by the landlord under Section 29 read with Section 14 after 1st April, 1957, is not disposed of before the earlier application for possession made prior to 1st April, 1957, is decided, it will become in fructuous for after the tenant has become the owner on the postponed date, the relationship of landlord and tenant will cease and no application for possession by the landlord can be entertained thereafter. If, however, the application made by the landlord after 1st April, 1957, is decided before the previous application made prior to 1st April, 1957, is disposed of, it might, if this application is decided in favour of the landlord, affect the right conferred on the tenant to become the purchaser of the land on the date on which the first application is rejected. The question to be considered, therefore, is whether such an application can be entertained. It has been contended that as there is no provision in the Act that an application on the grounds mentioned in Section 14 cannot be made after 1st April 1957, such an application is maintainable for since the Legislature has preserved the right to make such an application, it could not have intended that it should not be availed of in any case. There is undoubtedly force in this argument, but it seems to us that the intention of the Legislature in enacting Section 32 clearly was to transfer the ownership of the lands to the tenants on 1st April, 1957, except in cases where applications for possession had been made by the landlords before 1st April, 1957. Where such an application had been made, the right of purchase given to the tenant is postponed until that application is rejected. It is clear from this section that the Legislature did not intend that the right given to a tenant by this section should be destroyed or affected by an application made after 1st April, 1957. If an application for possession made under Section 29 read with Section 14 after 1st April, 1957 is decided in favour of the landlord before the application made by him prior to 1st April, 1957, is disposed of, it will affect the right of the tenant to become the owner of the land on the postponed date. It seems to us that this was not intended by the Legislature. The fact that the Legislature has provided that only an application made prior to 1st April, 1957, should affect the right of the tenant to become the purchaser of the land on 1st April 1957, clearly indicates that the Legislature contemplated that no such application should be made after 1st April, 1957.

9. In our opinion, therefore, where the landlord does not belong to one of the categories specified in sub-section (3) of Section 31 or is not a certificated landlord, he cannot make an application under Section 29 read with Section 14 after 1st April, 1957. This view is not in accordance with that taken in Special Civil Appln. No. 667 of 1961. The question does not then appear to have been fully argued. If full arguments had been advanced in that case, it is quite likely that a different view would have been taken.

10. In the present case it does not appear that the landlords belonged to the categories mentioned in sub-section (3) of Section 31. The reply to the second question will therefore depend upon

whether the landlords had made an application under Section 88-C of the Act and whether that application has been granted or rejected. If the landlords have been granted a certificate under Section 88-C of the Act, Section 32 will not apply and the application made by the landlords for possession of the lands will be maintainable, even though it had been made after 31st March, 1957. If, on the other hand, no application had been made by the landlords under Section 88-C of the Act or if such application had been made and has been rejected, the application for possession under Section 29 read with Section 14 would not be maintainable on the ground that it had been made after 31st March, 1957.

11. The matter will now be placed before the Division Bench for further disposal in accordance with law.
Answers accordingly.