

(1952) 11 BOM CK 0013

Bombay High Court

Case No: Special Civil Application No. 1310 of 1952

Jagannath Narayan

APPELLANT

Vs

Vasant Ramkrishna
and Others

RESPONDENT

Date of Decision: Nov. 17, 1952

Acts Referred:

- Bombay Land Revenue Code, 1879 - Section 84
- Bombay Tenancy and Agricultural Lands Act, 1948 - Section 117, 14, 25, 27(1), 29(3)
- Constitution of India, 1950 - Article 226
- Transfer of Property Act, 1882 - Section 106, 111

Citation: AIR 1953 Bom 332 : (1953) 55 BOMLR 341 : (1953) ILR (Bom) 710

Hon'ble Judges: Chagla, C.J; Dixit, J

Bench: Division Bench

Advocate: S.G. Patwardhan, for the Appellant; M.G. Chitale and H.M. Choksi, Government
Pleader, for the Respondent

Judgement

Chagla, C.J.

(1) This is an application under Article 226 of the Constitution for a writ against the Revenue Tribunal which held that the landlord had not terminated the tenancy of his tenant although the tenant was in default in payment of rent because no notice terminating the tenancy had been given. Mr. Patwardhan relies on a decision of this Court given in -- [Mallikarjun Bhavaneppa Vs. Satyanarayan Laxminarayan and Others](#), , and in that decision we pointed out that the Legislature did not make it incumbent upon the landlord to give notice to his tenant when default had been committed in payment of rent. Mr. Chitale with his usual tenacity has made a valiant attempt at distinguishing that judgment and trying to persuade us that, as far as the present case is concerned, we should not follow that decision.

(2) Now, what Mr. Chitale points out to us is that when we gave that decision our attention was not drawn to Section 30, Tenancy Act, and Section 30 provides :

"Save as otherwise provided in Sub-section (3) of Section 6 and Sub-section (1) of Section 27 no other provision contained in this Act shall be construed to limit or abridge the rights or privileges of any tenant under any usage or law for the time being in force or arising out of any contract, grant, decree or order of a Court or otherwise howsoever."

And Mr. Chitale's contention is that the tenant was entitled to a notice u/s 84, Land Revenue Code, and even though the Tenancy Act may not have provided expressly for a notice in the event of the tenant being in arrears of rent, the right of the tenant to receive a notice u/s 84 has not been taken away or abridged by reason of Section 30, Tenancy Act, Section 84, Land Revenue Code provides that an annual tenancy shall require for its termination a notice given in writing by the landlord to the tenant, and Mr. Chitale is right to this extent that no annual tenancy, when we are dealing with an agricultural lease, can be terminated for any reason without a notice being given by the landlord; in other words, when there is an annual tenant holding an agricultural lease, if he has failed to pay rent, it is not open to the landlord to take proceedings to eject him unless he has terminated the tenancy by giving notice contemplated by Section 84, and Mr. Chitale would be on very strong grounds if he could satisfy us that his client is an annual tenant within the meaning of Section 84. Now, it has been found both by the Mamlatdar and the Collector that Mr. Chitale's client is a protected tenant, and Mr. Chitale's submission is that a protected tenant under the Tenancy Act is an annual tenant and therefore the provision of Section 84 applies. In our opinion, that is not the correct position in law. When we look at the scheme of the Tenancy Act, Section 5 provides that no tenancy of any land shall be for a period of less than ten years. Therefore, every tenant under the Tenancy Act has been given security of tenure to the extent of ten years and he can only be ejected on one of the grounds mentioned in Section 14. The position of the protected tenant is stronger and a protected tenant is defined by Section 3 of the old Act which is continued by the schedule to the new Act, as a tenant who has held land continuously for a period of not less than six years immediately preceding either the first day of January 1938 or the first day of January 1945, and who has cultivated such land personally during the aforesaid period. Therefore, the Act gives a special protection to those tenants who have been on the land for a particular period and the protection given to them is that they cannot be ejected except on the ground mentioned in Section 14 and the tenancy of a protected tenant can also be terminated on the grounds mentioned in Section 34. Therefore, the position of the two classes of tenants recognised by the Tenancy Act is this : We have a non-protected tenant who is given security to the extent of ten years. We have a protected tenant who has been given security for an unlimited duration and he can only be ejected either for a ground mentioned in Section 14 or for a ground mentioned in Section 34. Neither of these two classes of tenants can be described as

an annual tenant, as an annual tenant is a tenant whose tenancy is limited in duration to one year. It is open to the landlord to terminate that tenancy by giving the requisite notice. If he does not give that notice, the tenancy continues from year to year, but under the Tenancy Act the duration of a tenant's tenancy, whether he is protected or not protected, is not one year. As we have said before, in the case of a non-protected tenant the duration of the tenancy is at least ten years; in the case of a protected tenant the duration is unlimited and he cannot be ejected at all unless a case arises u/s 14 or Section 34. Now, it is not possible to speak of a protected tenant as an annual tenant. Mr. Chitale has relied on Section 106, T.P. Act which raises the presumption in the case of a lease of immovable property for agricultural purpose that it is a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy. But this presumption only arises in the absence of a contract or local law or usage to the contrary, and the Tenancy Act clearly displaces this presumption by making it impossible for the landlord to terminate the tenancy either of a protected or non-protected tenant by giving a six months' notice expiring at the end of the year. Therefore, Mr. Chitale cannot place any reliance upon the terms of Section 106. If the tenancy of a protected tenant is not an annual tenancy, then he is not entitled to any notice u/s 84. Therefore, there is no right conferred upon such a tenant which has been safeguarded by reason of Section 30 of the Tenancy Act.

3. The next contention of Mr. Chitale is that we must apply to this case the provisions of Section 111(g) and Mr. Chitale says that that section becomes applicable by reason of Section 3, Tenancy Act, and Section 3 provides that

"the provisions of Chap. V. T.P. Act shall, in so far as they are not inconsistent with the provisions of this Act, apply to the tenancies and leases of lands to which this Act applies."

Although Chap. V by reason of Section 117 does not apply to agricultural leases, Mr. Chitale says that the Legislature by enacting Section 3, Tenancy Act has in terms incorporated the provisions of Chap. V. T.P. Act. Mr. Chitale may be right in putting forward this contention, but then we must find some section in Chap. V, T.P. Act which applies to the question that we are considering at present and the only section on which Mr. Chitale can rely is Section 111(g). When we turn to Section 111, T.P. Act, it deals with the question of the determination of lease and it lays down various instances under which a tenancy comes to an end, and when we turn to Sub-section (g), it provides that a lease determines by forfeiture, and the three cases of forfeiture are enumerated in that sub-section, and Sub-section (g) (1) provides "in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter". Now, this provision can only apply to non-payment of rent provided there is an express clause in the lease that on the tenant failing to pay rent the landlord would be entitled to re-enter. It is only in that case that a forfeiture would result. But for such a clause a tenancy u/s 111 does not come to an end

because the tenant fails to pay rent. The tenancy must continue for the fixed period and it would only come to an end by efflux of time. Now, in the present case no question of forfeiture arises because it is not the case of the landlord that the tenancy has come to an end by forfeiture. The landlord relies upon the express provision of the Tenancy Act which provides that the tenancy shall be terminated if the tenant fails to pay rent and that provision is to be found in Section 14 of the Act which in terms States that "a tenancy of any land held by a tenant shall not be terminated unless such tenant" and Sub-clause (a) provides for failure to pay rent. Therefore, there is a statutory provision in the Tenancy Act for termination of a tenancy by reason of non-payment of rent. We do not find any such provision in the T.P. Act and therefore Section 111(g), T.P. Act which requires a notice to be given if the landlord relies upon forfeiture for termination of the tenancy has no application to the present case.

4. Mr. Chitale then relies upon the principle underlying Section 111(g) and Mr. Chitale says that it is a principle of justice, equity and good conscience that a tenant's lease should not be terminated by reason of non-payment of rent unless the landlord gives him a notice. This point came up for our consideration in a recent case reported in -- [Namdeo Lokman Lodhi Vs. Narmadabai Keshoodeo and Others](#), , and in that case we held that "the amendment to Section 111(g) as to notice does not embody a principle of justice, equity and good conscience and therefore, cannot be given effect to in the case of leases to which the Act does not apply." But even the principle of equity, justice and good conscience, assuming such a principle underlay Section 111(g) as amended, would only apply to a case of notice being given on a forfeiture taking place, and as we have just pointed out, we are not dealing with a case of forfeiture at all. Mr. Chitale has drawn our attention to the provision of Section 25, Tenancy Act and he has contended that this is really a case of forfeiture. Now, Section 25 is clear in its terms and it expressly provides not for relief against forfeiture but for relief against termination, of tenancy for non-payment of rent. It casts an obligation upon the Mamlatdar in the event of a landlord filing any proceeding to eject the tenant on the ground of non-payment of rent when arrear of rent is not beyond three years, to give an opportunity to the tenant to pay the rent within the period specified in that section. Therefore, the scheme of Section 25 is that when the landlord files proceedings for ejectment for non-payment of rent, the Mamlatdar has to consider what is the extent of arrears, and if the extent of arrears is such as would entitle him not to pass any order of ejectment but to give time to the tenant to pay the arrears, he must do so, but Section 25 has nothing whatever to do with the question of giving notice. Whether notice is necessary before ejectment proceedings are taken out or is not necessary cannot be decided on a consideration of the provisions of Section 25. Having carefully considered arguments advanced by Mr. Chitale we are of the opinion that the decision we came to in -- "Mallikarjun v. Satyanarayan", (A), is a correct decision and our view is not in any way altered by considering both Sections 30 and 3 of Tenancy Act.

(5) The result is that this petition must succeed and the order of the Tribunal will be set aside and the order of the Mamlatdar restored. No order as to costs.

(6) Petition allowed.