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VALLABHAI NATHABHAI

v.

BAI JIVI & ORS.

January 10, 1969

B [J. M. SHELAT, V. BHARGAVA AND C. A. VAIDIALINGAM, JJ.]

Bombay Tenancy and Agricultural Lands Act 57 of 1948, *ss.* 29(1) *and* 84—*Nature of remedies under—Remedies whether alternative.*

Respondent No. 1 was owner of two survey numbers situate in the District of Panchmahals in Gujarat to which the Bombay Tenancy and Agricultural Lands Act 57 of 1948 was applicable. On May 15, 1956 C the appellant voluntarily handed over possession of the said lands to respondent 1. The surrender was not, however, in writing and the procedure of inquiry and verification required by s. 15 of the aforesaid Act was not gone through. Respondent 1 thereafter personally cultivated the said lands. On January 16, 1961 the appellant applied to the Deputy Collector under s. 84 of the Act for summary eviction of respondent 1. The Deputy Collector dismissed the application holding that the tenant's remedy lay under s. 29(1) of the Act. The Gujarat Revenue Tribunal, D however, in a revision by the tenant held that s. 84 and not s. 29(1) applied. The High Court in a petition under s. 227 of the Constitution set aside the Tribunal's order holding that s. 84 did not apply. In appeal, by special leave, the question was as to the nature of the remedies under ss. 29(1) and 84 and whether a tenant who had remedy under s. 29(1) could still apply to the Collector under s. 84.

HELD : The appeal must be dismissed.

E (i) In the case of a surrender which is not valid and binding on the tenant there is no termination of tenancy, and therefore, the landlord is not entitled to retain the land even though possession thereof has been handed over to him or has been voluntarily taken by him. The position in such a case is that the tenant has a right to apply to the Mamlatdar for restoration of possession to him claiming that there has been no termination of tenancy, that his possession continues to be protected by the F provisions of the Act and that therefore, the possession should be restored to him. Such an application lies under s. 29(1) and, when so made, it becomes the duty of the Mamlatdar under s. 70, cl. (n) read with s. 29(1) to put the tenant in possession of the land in question "under the Act". In such a case the tenant is claiming possession under the provisions of the Act and not on the strength of his own title as when he applies for possession against a trespasser. [314 E-G]

(ii) The words "any person unauthorisedly occupying or wrongfully G in possession of any land" in s. 84, no doubt, are words of wide import and would include a landlord who is in unauthorised occupation or is wrongfully in possession. But then s. 84 in express terms limits its application to three types of cases only, namely, of a person unauthorisedly occupying or wrongfully in possession of the land (a) the transfer or acquisition of which etc. is invalid under the Act, or (b) the management of which has been assumed under the Act, or (c) to the use and occupation of which he is not entitled under the provisions of the Act and the H said provisions do not provide for the eviction of such person. [314 H-315B]

In the present case cl. (b) obviously could not apply as the land in question was not one, the management of which was assumed under the provisions of the Act. Clause (a) applies only to transfers or acquisitions

which are in breach of the provisions of Ch. V and possession or occupation whereof has been obtained under such invalid transfers and acquisitions. That being the position, the instant case would fall only under cl. (c) and therefore the condition that s. 84 would only apply to cases for which there is no other remedy under any of the provisions of the Act must apply to the present case. This condition shows that while giving drastic powers of summary eviction to an administrative officer the legislature was careful to restrict this power, firstly, because the result otherwise would be to deprive the person evicted under s. 84 of his remedy of appeal before the Collector which he would have if the order were to be passed under s. 29(1) and secondly, because it would enable a tenant to by-pass a judicial enquiry by the Mamlatdar under s. 29(1) by directly applying to the Collector under s. 84. Such a result could not have been intended by the legislature. Therefore, the contention that ss. 29(1) and 84 provide alternative remedies and a choice to the tenant cannot possibly be correct. [315D-316B]

Shankar Raoji v. *Mahdu Govind*, 57 Bom. L.R. 65 *Durgaben* v. *Bavla*, 58 Bom. L. R. 451, *Trambaklal* v. *Shankerbhai* 62 Bom. L. R. 261, *Shankerlal* v. *Haric Vagha*, Spl. C.A. No. 8/61, decided by High Court of Gujarat on 22-8-1961 and *Krishna Mahar* v. *Hussain Miya* Spl. C.A. No. 207/1956, decided by Shah & Vyas, JJ. in the High Court of Bombay on June 19, 1956, considered.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 104 of 1966.

Appeal by special leave from the judgment and order dated July 3, 8, 1964 of the Gujarat High Court in Special Civil Application No. 330 of 1962.

M. C. Bhandare, Anjali K. Verma, J. B. Dadachanji and *O. C. Mathur*, for the appellant.

S. T. Desai, M. N. Shroff for *I. N. Shroff*, for respondent No. 1.

The Judgment of the Court was delivered by

Shelat, J. The facts relevant to this appeal are short and no longer in dispute. Respondent 1 is the owner of Survey Nos. 974/2 and 975/4 situate in the village Delol in districts Panchmahals and the appellant at the material time was the tenant thereof. On May 15, 1956 the appellant voluntarily handed over possession of the said lands to respondent 1. It is, however, an admitted fact that the said surrender was not in writing and the procedure of inquiry and verification required by s. 15 of the Bombay Tenancy and Agricultural Lands Act, 57 of 1948 (hereinafter called the Act) was not gone through. The surrender though voluntary thus was not in accordance with s. 15 and therefore was not valid and binding on the appellant. It is not in dispute that respondent 1 thereafter personally cultivated the said lands. On January 16, 1961 the appellant applied to the Deputy Collector under s. 84 of the Act for summary eviction of respondent 1. The Deputy Collector dismissed the application holding that the tenant's remedy lay under s. 29(1)

A of the Act. The Gujarat Revenue Tribunal, however, in a revision by the tenant set aside that order holding that s. 84 and not s. 29(1) applied. Respondent 1 thereupon filed a writ petition under Art. 227 in the High Court of Gujarat and the High Court held, on interpretation of ss. 29(1) and 84, that s. 84 did not apply in such cases and set aside the Tribunal's B order. What is the scope of s. 84 of the Act is the question, therefore, arising in this appeal which is filed by the tenant after obtaining special leave from this Court.

On behalf of the appellant Mr. Bhandare raised the following contentions :

C 1. that a surrender of tenancy contrary to s. 15 is an invalid surrender and does not terminate the tenancy;

2. that on such invalid surrender, if the landlord takes possession such possession is wrongful and unauthorised and therefore the land must be said to be D in unauthorised occupation and wrongful possession of the landlord;

3. that when the tenant on such dispossession files an application his right does not arise under any of the provisions of the Act as he has given up possession in breach of his right and title;

E 4. that in such a situation the tenant does not seek to enforce a right arising under the provisions of the Act but claims possession relying on his title as a tenant;

5. that such an application therefore falls under s. 84 and not under s. 29(1); and

F 6. that s. 84 directed against a person who is in unauthorised occupation and wrongful possession and therefore there is no warrant for any distinction between unauthorised occupation or wrongful possession arising under an invalid surrender and that arising under an invalid sale or transfer.

G Mr. Desai for the respondents supported, on the other hand, the High Court's judgment and relied on certain decisions of the High Courts of Bombay and Gujarat on the interpretation of ss. 29(1) and 84 of the Act. Before we proceed to examine these contentions it is necessary first to read the relevant sections.

H Section 15 reads as under :

"A tenant may terminate the tenancy in respect of any land at any time by surrendering his interest therein in favour of the landlord;

Provided that such surrender shall be in writing and verified before the Mamlatdar in the prescribed manner." A

The relevant part of s. 29(1) reads as under:

"A tenant—entitled to possession of any land—under any of the provisions of this Act may apply in writing for such possession to the Mamlatdar." B

Sub-section 2 of s. 29 provides that no landlord shall obtain possession of any land held by a tenant except under an order of the Mamlatdar. Section 84 reads as under :

"Any person unauthorisedly occupying or wrongfully in possession of any land— C

(a) the transfer or acquisition of which either by the act of parties or by the operation of law is invalid under the provisions of this Act,

(b) the management of which has been assumed under the said provisions, or D

(c) to the use and occupation of which he is not entitled under the said provisions and the said provisions do not provide for the eviction of such persons, may be summarily evicted by the Collector." E

Section 15(1) was inserted in the Act by s. 11 of Bombay Act 13 of 1956. Even before 1956 there was in the Act s. 5(3) the proviso of which required a surrender of tenancy by a tenant to be in writing and verified by the Mamlatdar. There is, however, no dispute before us that the proviso to s. 15(1) applies to the present case and that the surrender under which respondent 1 obtained possession of the land in question was neither in writing nor was verified in any inquiry before the Mamlatdar. F

Under s. 15(1) a tenant, as defined by s. 2(18) of the Act, can terminate the tenancy in respect of the land held by him as a tenant by surrendering his interest in favour of his landlords and as provided by sub-section 2 on such surrender of the G tenancy the landlord becomes entitled to retain the land so surrendered by the tenant in the same manner as when the tenancy is terminated under ss. 31 and 31A of the Act. The tenancy on such surrender comes to an end and thereupon the relationship between them of a landlord and a tenant and the rights arising out of that relationship terminate. The legislature, H however, was aware of the possibility of landlords taking advantage over the tenants and therefore to safeguard the tenants against such a possibility it laid down through the proviso that a

A surrender by a tenant could only be valid and binding on him if it was in writing and was verified by the Mamlatdar. Before the Mamlatdar would verify such surrender it would be his duty to ascertain whether the surrender was voluntary and was not under pressure or undue influence of the landlord. But once the surrender satisfied these two conditions it has the same effect B as the termination of tenancy the tenancy comes to an end and the landlord becomes entitled to retain the land of which possession is delivered to him by the tenant surrendering his interest as a tenant therein. In cases, however, where the surrender has not satisfied the two conditions, even if it is voluntary, it is no surrender and therefore there is no termination of relationship C of a landlord and tenant. Consequently, even if the tenant has voluntarily surrendered possession and the landlord has taken it over, since the tenancy still continues the tenant obviously is entitled to retain possession and therefore to its restoration. Though, therefore, s. 15 does not in so many words provide that in such a case the tenant is entitled to restoration of possession, there being no volid surrender where the two conditions are not D satisfied, the tenancy continues and the tenant can claim possession from the landlord as the tenant of the land in question, such claim being based on his right as such tenant to be in possession of such land and the landlord's disability to terminate the tenancy under the provisions of the Act. It is true that s. 37 expressly provides for restoration of possession to the tenants in the E eventuality provided therein while s. 15 does not so provide. But the right to restoration had to be provided for in s. 37 as there would be termination of tenancy which becomes revived and on revival thereof the tenant becomes entitled to restoration of possession. In a case under s. 15, however, if the surrender is not valid it is no surrender at all and there is no F question of termination of tenancy. The tenant continues to be entitled to possession and therefore there is no question of the section having to provide for restoration of possession. There is, therefore, no force in the contention that in the case of an invalid surrender the tenant is not entitled to possession under the provisions of the Act. He is in fact entitled to claim back possession under s. 15 itself for under sub-section 2 of the land- G lord becomes entitled to retain the land only if the surrender is in accordance with the provisions of s. 15.

Section 29(1) confers a right on a tenant to apply to the Mamlatdar for possession and s. 29(2) gives a right to a landlord to apply to the Mamlatdar to obtain possession of land held by a H tenant. In both the cases it is the duty of the Mamlatdar to restore possession to the tenant or to the landlord, as the case may be. It will be noticed that whereas sub-section 2 is confined to an application by a landlord for possession from his tenant,

sub-section 1 is not so confined and therefore a tenant can apply for possession against any one including the landlord. But for such an application the condition is that he must be one who is "entitled to possession" of the land in question "under any of the provisions of this Act". Thus, in all cases where a tenant is entitled to possession of land under any of the provisions of the Act he has a right under s. 29(1) to apply to the Mamlatdar for restoration of possession against any one including the landlord and it is the duty of the Mamlatdar, if satisfied that the tenant is entitled to such possession under any of the provisions of the Act, to restore possession to him. Cls. (b) and (n) of s. 70 lay down the duties and functions of the Mamlatdar in the following words :

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"(b) to decide whether a person is a tenant or a protected tenant or a permanent tenant."

"(n) to take measures for putting the tenant or landlord—into the possession of the land—under this Act."

Section 74 provides for an appeal to the Collector against the orders of the Mamlatdar in cases therein set out and cl. (m) provides such an appeal against an order passed by the Mamlatdar under s. 29.

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In the case of a surrender which is not valid and binding on the tenant there is, as aforesaid, no termination of tenancy, and therefore, the landlord is not entitled to retain the land even though possession thereof has been handed over to him or has been voluntarily taken by him. The position in such a case is that the tenant has a right to apply to the Mamlatdar for restoration of possession to him claiming that there has been no termination of tenancy, that his possession continues to be protected by the provisions of the Act and that, therefore, possession should be restored to him. Such an application lies under s. 29(1) and, when so made, it becomes the duty of the Mamlatdar under s. 70, cl. (n) read with s. 29(1) to put the tenant in possession of the land in question "under this Act". In such a case the tenant is claiming possession under the provisions of the Act and not on the strength of his own title, as when he applies for possession against a trespasser. That clearly being the position, propositions 3, 4 and 5 of Mr. Bhandare cannot be sustained.

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The question then is whether a tenant who has a remedy under s. 29(1) can still apply to the Collector under s. 84. In other words, whether the legislature has provided alternative remedies under both the sections to such a tenant ? The words "any person unauthorisedly occupying or wrongfully in possession of any land" in s. 84, no doubt, are words of wide import and would include a landlord who is in unauthorised occuptaion or is

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A wrongfully in possession. A landlord who under an invalid surrender is in possession of the land is, no doubt, a person in unauthorised occupation or is wrongfully in possession. But then s. 84 in express terms limits its application to three types of cases only, namely, of a person unauthorisedly occupying or wrongfully in possession of the land (a) the transfer or acquisition of which etc. is invalid under the Act, or (b) the management of which has been assumed under the Act, or (c) to the use and occupation of which he is not entitled under the provisions of the Act and the said provisions do not provide for the eviction of such person.

Mr. Bhandare's argument, however, was that the present case falls under cls. (a) and (c) of s. 84, that the condition of the other provisions of the Act providing for eviction of such a person applies only to cases falling under cl. (c) and not to those falling under cl. (a). We do not have to decide in the present case whether the said condition of there being no other provision in the Act providing for eviction of a person in unauthorised occupation or wrongful possession applies only to cases falling under cl. (c) or to all cases under cls. (a), (b) or (c), as in our opinion the present case is clearly one falling under cl. (c) and not cls. (a) or (b) of s. 84. Clause (b) obviously cannot apply as the land in question was not one, the management of which was assumed under the provisions of the Act, namely, ss. 44, 45 and 61. So far as cl. (a) is concerned, it applies to cases in respect of the land, the transfer or acquisition of which either by the act of parties or by operation of law is invalid under the provisions of the Act. Clause (a) clearly refers to Ch. V of the Act which lays down certain restrictions on transfers of agricultural lands and acquisition of estates and lands. Sections 63, 64 and 65 in that chapter prohibit transfers of agricultural land to non-agriculturists and recognize only sales to persons and at prices specified therein. Clause (a), therefore, applies to transfers or acquisitions which are in breach of the provisions of Ch. V and possession or occupation whereof has been obtained under such invalid transfers or acquisitions. That being the position the instant case would fall only under cl. (c) and not under cl. (a) as contended by Mr. Bhandare, and therefore, the condition that s. 84 would only apply to cases for which there is no other remedy under any of the provisions of the Act must apply to the present case. This condition shows that while giving drastic powers of summary eviction to an administrative officer the legislature was careful to restrict this power firstly because the result otherwise would be to deprive the person evicted under s. 84 of his remedy of appeal before the Collector which he would have if the order were to be passed under s. 29(1) and secondly, because it would enable a tenant to by-pass a judicial

inquiry by the Mamlatdar under s. 29(1) by directly applying to the Collector under s. 84. Such a result could not have been intended by the legislature. Therefore, the contention that ss. 29(1) and 84 provide alternative remedies and a choice to the tenant cannot possibly be correct. A

We now turn to the decisions to which our attention was drawn by counsel. In *Shankar Raoji* v. *Mahadu Govind*(1) the High Court of Bombay observed that s. 29(1) gave a right to the tenant to obtain possession through the Mamlatdar in every case where he was entitled to possession under any of the provisions of the Act and that the clear object of s. 29(1) was that if the Mamlatdar was satisfied that the tenant was entitled to possession by reason of his tenancy it was his duty to protect that possession and order any one who had dispossessed him to restore possession to him. Section 29(1) thus assumed that the tenant must claim possession as such under the provisions of the Act. In *Durgaben* v. *Bavla*(2) the landlord obtained possession from the tenant under s. 29(2) on the ground that the tenant had surrendered the lease. The tenant applied under s. 84 alleging that notwithstanding the order of the Mamlatdar under s. 29(2), he had continued in possession and that the landlord had forcibly dispossessed him. It was held that the Collector had no jurisdiction under s. 84 and that the remedy, if any, of the tenant was under s. 29(1). In holding so, the High Court observed that it was only in the absence of a provision in the Act for eviction of an unauthorised person that the Collector had jurisdiction under s. 84 to order summary eviction. The High Court held that ss. 29(1) and 84 did not provide alternative remedies to the tenant, for, under s. 29(1) he could claim possession on his title as a tenant under the provisions of the Act and not under s. 84. The High Court also further observed that if it were to construe the two sections as providing alternative remedies, such a construction would result in a curious consequence, *viz.*, that in a case where a landlord has obtained possession after obtaining an order from the Mamlatdar such possession would obviously be under a title. If the tenant in such a case were to allege that the landlord's possession was unauthorised or wrongful and were to apply under s. 84, the Collector would have to decide the question whether the landlord's possession was wrongful or unauthorised or not. But in that case the Collector would decide it and set aside the Mamlatdar's order under his original jurisdiction under s. 84 and not under his appellate jurisdiction under s. 74 and s. 74 would thus be rendered superfluous. In *Trambaklal* v. *Shankerbhai*(3) the High Court of Bombay held that in order that there may be a valid B C D E F G H

(1) 57 Bom. L.R. 65. (2) 58 Bom. L.R. 451.

(3) 62 Bom. L.R. 261.

A transfer or acquisition through surrender, such surrender must be a lawful one and made in accordance with the provisions of the Act. If such a surrender was not verified and recognised under s. 15 there would be no cessation of tenancy right and therefore if the landlord had obtained possession under such an invalid surrender the tenant retained the right to restoration B of possession under the Act. It is clear that these decisions do not lay down anything contrary to what we have said above and therefore would not assist the appellant.

There are two unreported decisions, one by the High Court of Gujarat and the other by the High Court of Bombay to which also our attention was drawn. In *Shankerlal* v. *Haria* C *Vagha*(1) the facts were as follows: One Chandrasingh and his brothers owned Survey Nos. 23/2, 23/3 and 26/5. In 1956-57 opponent 2 surrendered these lands to Chandrasingh who personally cultivated them. Until 1955-56 opponent 1 cultivated Survey No. 26/5. He thereafter surrendered that Survey number to Chandrasingh and his brothers who personally cultivated it thereafter. The Mamlatdar admittedly had held D no inquiry in respect of these surrenders under s. 15. On January 28, 1959 Chandrasingh and his brothers sold these lands to the petitioners and the petitioners thereafter cultivated them in 1959-60. In 1959 opponents 1 and 2 applied to the Collector under s. 84 and the Collector ordered restoration of possession to opponent 1 and 2. The Gujarat Revenue Tribunal rejected E a revision application filed by the petitioners against the said order. In a writ petition under Art. 227 the petitioners raised two contentions before the High Court: (1) that they were not in unauthorised occupation or wrongfully in possession as they derive title from the owner, their vendors, and (2) that in any event the opponents had a remedy under s. 29(1) and therefore could F not have recourse to s. 84. As regards the first contention the High Court held that the surrenders by opponents 1 and 2, not being in writing and unverified, were not binding on them, the relationship of tenant and landlord had not, therefore, terminated and opponents 1 and 2 were entitled to possession of the lands. That was the position which obtained on January 28, G 1959 when Chandrasingh and his brother purported to sell the lands to the petitioners. The petitioners, therefore, were in unauthorised possession as Chandrasingh and his brothers were not entitled to possession and could not transfer possession to the petitioners. The High Court also held that the said sale was contrary to s. 64 and therefore, invalid and did not create any rights as to ownership or possession in favour of the petition- H ers. The possession of the petitioners, therefore, was unauthorised and wrongful and s. 84 applied and the first contention

(1) Spl. C.A. 8 of 1961, decd. by the High Court of Gujarat on August 22, 1961.

failed. As to the second contention, the High Court held that under s. 29(1) a tenant could apply to the Mamlatdar for possession but that required that the right to possession must arise "under the provisions of the Act". If the tenant did not seek to enforce a right arising under any of the provision of the Act but claimed possession on his own title as a tenant, s. 29(1) would not apply and his remedy would be under s. 84 only. The High Court held that when a tenant claimed possession not relying upon any incident of his contract of tenancy nor on any provisions of the Act but on his own title to possession, that is, to protect his possession as a tenant against a trespasser s. 84 and not s. 29(1) would apply even though the land the possession of which he claimed was the land of which he was a tenant and the trespasser was his landlord. What the tenant in such a case was seeking to do was not to enforce his right as a tenant under the provisions of the Act but he was enforcing his right against third parties, namely, the petitioners in that case who were in wrongful occupation. The tenant was claiming possession not under the provisions of the Act but on his own title, *albeit* as a tenant, against a person who had no title to ownership or possession in the land and therefore s. 29(1) did not apply to such a case. Consequently, s. 29(1) was not another provision providing for eviction which opponents 1 and 2 could avail of. In *Krishna Mahar v. Hussan Miya*(1) the respondent was the owner of the land in question. He applied under s. 29(2) to the Mamlatdar. The Mamlatdar passed an order directing the petitioner, the tenant, to hand over possession. The petitioner appealed to the Collector under s. 74 of the Act who set aside the Mamlatdar's order. But before the Collector passed his said order the respondent executed the Mamlatdar's order and obtained possession. The petitioner then obtained possession in pursuance of the Collector's said order but the respondent forcibly dispossessed him and thereupon on January 10, 1952 the petitioner complained to the Mamlatdar. The Mamlatdar expressed his inability to assist him and thereupon the petitioner applied to the Collector under s. 84. The Collector held that the respondent was in wrongful possession and passed an order of eviction. The Revenue Tribunal however, set aside that order holding that the petitioner's application was barred by limitation. An application for condonation of delay was also rejected. The petitioner, thereupon filed a petition under Art. 227. The High Court held that there was a clear distinction between an application under s. 29(1) and one under s. 84. for, under s. 29(1) whereas the tenant would be claiming the right to possession under the provisions of the Act, under s. 84 he would be claiming the right to possession not under any

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(1) Spl. C.A. No. 207 of 1956, decd. by Shah and Vyas, JJ. in the High Court of Bombay on June 19, 1956.

A of the provisions of the Act but on his own title to possession as a tenant. Such an application could be even against a person who was his landlord *qua* the land in question if such landlord was in unauthorised occupation or wrongful possession. These two decisions again do not lay down anything inconsistent to what we have said above on the scope and interpretation of
B s. 29(1) and s. 84. We do not therefore see how either of these two decisions can be availed of by Mr. Bhandare in support of his contentions.

In our view the High Court was correct in its interpretation of the two sections and the conclusion which it arrived at in holding on the facts of the present case that the Collector had no
C jurisdiction under s. 84 to entertain the tenant's application. The result is that the appeal fails and is dismissed with costs.

G.C. *Appeal dismissed.*