A DAHIBEN W/O RANCHHODJI JIVANJI AND ORS. ETC.

v.

VASANJI KEVALBHAI (DEAD) AND ORS. ETC.

APRIL 7, 1995

B [K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Bombay Tenancy and Agricultural Lands Act, 1948—Sections 88(1)(c) and 89(2)(b)—Protected tenants under Bombay Tenancy Act, 1939—Residing in areas covered by clause (c) of section 88 (1)—Status of—Whether they C *would continue to enjoy status of protected tenants after the enactment of the Act—Held, No.*

Section 88(1)(c) as amended by Bombay Act No. 33 of 1952—Interpretation of—Act inapplicable to area specified in clause (c)—Amendment of 1952 deleting that part of clause (c) and substituting a new clause D *(c)—Whether amendment would relate back to Act as enacted—Held, yes—Amendment would apply to suit pending when amendment had come into force.*

Bombay Tenancy Act, 1939—Sections 7 and 23—Protected tenant—Termination of tenancy for bonafide need—Tenancy cannot be terminated merely E *by issuance of notice—Till question of bonafide need is decided in favour of landlord, tenancy cannot come to an end—Rights of Protected tenant—Not saved by Bombay Tenancy and Agricultural Lands Act, 1948—Benefit of statutory extension u/s 23—Not available.*

F *Interpretation of Statutes—Retrospectivity of amendment—Beneficial legislation—Liberal interpretation.*

The land in question was leased to the ancestors of the respondents form 1894 to 1945. Thereafter, the predecessor—In interest of the appellant executed a registered lease in favour of the respondents on 12.1.1942 for G **five years. The lease was to expire on 11-1-1947. The Bombay Tenancy Act, 1939 having come into force in the meantime, the respondents became protected tenants and because of the insertion of Section 23 in that Act subsequently, the duration of the lease got statutorily extended for 10 years, i.e. till 11.1.1952. The land was purchased by the appellants on** H **4.8.1947.**

Appellants filed a suit on 25-4-1949 for possession of the land under the occupation of the defendants. The suit was filed after the plaintiffs had issued a notice to respondents on 19-10-1947 u/s 7 of the Bombay Tenancy Act, 1939 terminating the tenancy and claiming that the land was required for personal cultivation. Possession was demanded by the notice on the expiry on 31-3-1949. In the mean time the Bombay Tenancy and Agricultural Lands Act, 1948 came into force and section 88(1)(c) thereof stated that the Act would not apply to any area within the limits, *inter alia,* of the municipal boroughs named in the clause. The suit land being admittedly situate within this periphery the Act did not apply, when enacted, to the area in question. The respondents claimed that they being protected tenants and section 89 (2) (b) of the 1948 Act having saved this right, the suit for eviction did not lie. They pleaded that despite what had been provided in section 88 (1)(c) of the Act, they continued to be protected tenants and that because of what was held in *Mohanlal Chunilal Kothari* v. *Tribhovan Haribhai Tamboli*, [1963] 2 SCR 707 and *Hiralal Prabhubhai* v. *Nagindas Atmaram Kothari*, [1964] 6 SCR 773, the provisions of the 1948 Act, as enacted had to apply to the facts of this case. They relied on the decision in *Ishverlal Thakorelal Almaula* v. *Motibhai Nagjibhai Bhai*, [1966] 1 SCR 367.

However an amendment was made by Bombay Act 33 of 1952 which substituted a new clause (c) deleting that part of earlier clause (c) which made the Act inapplicable to specified area.

The appellant urged that as in the present case the tenancy had been determined w.e.f. 31-4-1949, amendment brought in 1952 would not ensure to the benefit of the respondents. The respondents alleged that even if their rights were to be determined as per the 1939 Act, the mere fact of issuance of notice of termination was not enough to bring to an end the jural relationship existing between the parties and that by force of section 23, as inserted in the 1939 Act, the period of tenancy of the respondents got extended upto 11-1-1952 as the written lease was executed on 12.1.1942.

The appellants then contended that the ratio of *Mohan Lal's* case was inapplicable to the facts of the present case.

Dismissing the appeal, this Court

HELD : 1. The defendant's case that despite what had been provided

A in section 88 (1) (c) of the Bombay Tenancy and Agricultural Lands Act, 1948, they continued to be protected tenants could not be accepted in view of the Constitution Bench decision in *S.N. Kamble*. That decision specifically disapproved what was held by a three-judge Bench of this Court in *Sakharam*. The Constitution Bench held that *Sakharam's* Bench, while holding that despite what had been stated in section 88(1) (c) of the Act, the tenant B who acquired the status of a protected tenant under the provision of 1939 Act would continue to enjoy that status even for the areas covered by clause (c), was not correct, because that Bench somehow missed important words "save as expressly provided in this Act" finding placed in Section 89 (1) (b) of the Act, reliance on which was placed by *Sukhram's* Bench to uphold the C status of even those protected tenants residing in the area covered by clause (c) of section 88 (1). The Constitution Bench said that section 88(1)(c) was an express provision showing the contrary. [239-C to E]

S.N. Kamble v. *Sholapur Borough Municipality*, [1966] 1 SCR 618, relied on.

D

Ishverlal Thakorelal Almaula v. *Motibhai Nagjibhai Bhai*, [1966] 1 SCR 467, distinguished.

Sakharam v. *Manikchand Motichand Shah*, [1962] 2 SCR 59, referred

E to.

2. The mere fact of issuance of notice of termination is not enough to bring to an end the jural relationship existing between the parties inasmuch as under section 7 of the Bombay Tenancy Act, 1939, the tenancy of a protected tenant could not be terminated merely by issuance of the F notice, but the termination could be for the *bonafide* need of the landlord either for personal cultivation or for any non-agricultural purpose. Though the plaintiffs did state in the notice of termination that the need of the land was *bonafide* for personal cultivation, that had to be determined, and till that question was decided in favour of the landlord the tenancy could not come to an end. [240-G, H, 241-A]

G

3. The view taken in *Mohanlal's* case about the retrospectivity was quite apposite. Being concerned with a legislation beneficial to tenants, the courts were required to give a liberal interpretation. The Bombay Tenancy and Agricultural Lands Act, 1948, as amended by Bombay Act No. 33 of H 1952, being a beneficial legislation, the benefit of the same should be made

available to the tenant even though the same takes away vested right of the landlord. In the instant case, the amendment in question had come into force when the suit of the appellant was pending before the trial court, which meant that no vested rights to get possession had accrued to the landlord- plaintiff. The amendment had to be held as applicable to the suit which was pending because of which the respondent's status as protected tenants got revived by the time the trial court was seized of the matter. So, that court had no jurisdiction to proceed further. [241-F, 237-G, 244-B, D]

Mohanlal Chunilal Kothari **v.** *Tribhovan Haribhai Tamboli*, **[1963] 2 SCR 707;** *K.C. Mukherjee* **v.** *Ram Ratan Kuer*, **AIR (1936) PC 49;** *Rafiquenessa* **v.** *Lal Bahadur*, **AIR (1964) SC 1511;** *Lakshminarayana* **v.** *Niranjan*, **[1985] 2 SCR 202;** *Dayavati* **v. Inderjeet, [1966] 3 SCR 275;** *H Shiva Rao* **v.** *Sushila*, **AIR (1987) SC 248 and** *Motiram* **v.** *Suraj Bhan*, **[1960] 2 SCR 896, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1578 of 1974 Etc.

From the Judgment and Order dated 26.4.73 of the Gujarat High Court in L.P.A. No. 115 of 1970.

S.K. Dholakia, H.A. Raichura and Ms. Promila Chowdhary for the Appellants.

B.K. Mehta for the Respondent No. 1.

S.B. Vakil, Ms. P.S. Shroff, Ms. Monica Sharma, S.S. Shroff for the Respondent No. 2.

The Judgment of the Court was delivered by

HANSARIA, J. In this appeal we are basically concerned with the interpretation of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short the 'Act') as amended by Bombay Act No. 33 of 1952. Being concerned with a legislation beneficial to tenants, the courts are required to give a liberal interpretation; and if we can foretell our conclusion, according to us, the amendment of 1952 would relate back to the Act as enacted. In any case the amendment would apply to the suit which was pending when the amendment had come into force. In view of this conclusion of ours, the appeal shall to be dismissed, as a amendment has given

A benefit to the tenants, who are respondent in this appeal.

2. The facts which noted be need for the disposal of the appeal are that the appellants filed a suit on 25.4.1949 for possession of the land under the occupation of the defendants. The suit had come to be filed after the B plaintiffs had issued a notice to defendants 1 and 2 on 19.10.1947 under section 7 of the Bombay Tenancy Act, 1939 terminating the tenancy and claiming that the land was required for personal cultivation. The possession was demanded by the notice on the expiry of 31st March, 1949. In the mean time, the Act came into force whose section 88 (1) (c) stated that the Act would not apply to any area within the limits, *inter alia,* of the municipal C borough of Surat and within a distance of two miles of the limit of the borough. The suit land being admittedly situate within this periphery the Act did not apply, when enacted, to the area in question. However, an amendment was made by Bombay Act 33 of 1952 which substituted a new clause (c) deleting that part of earlier clause (c) which made the Act D inapplicable to an area of two miles within the limits of municipal boroughs named in the clause. Now, if the 1952 amendment were to apply retrospectively, that is, from the date coming into force of the act, the civil court in which the suit for eviction was filed would admittedly cease to have jurisdiction; and *vice versa*. This point has been answered differently by the four adjudicating authorities below, one reversing the decision of the other E on appeal being preferred to it. The latest decision is that of the Letter Patent Bench of the Gujarat High Court which has held that the amendment as retrospective.

3. As the dispute is about the retrospectivity of the amendment, it is F not necessary to note in detail the case of the parties as put forward in the plaint and written statement. Suffice to say that according to the plaintiffs the land in question was leased to the ancestors of the defendants for 51 cultivating seasons that is from 1894 to 1945. Thereafter, the predecessor-in-interest of the plaintiffs executed a registered lease in favour of the G defendants on 12.1.1942 for five years, because of which the lease would have expired on 11.1.1947. The Bombay Tenancy Act, 1939 having come into force in the meantime, the defendants became protected tenants and because of the insertion of section 23 in that Act subsequently the duration of the lease got statutorily extended for 10 years, that is, till 11.1.1952. The H land was purchased by the plaintiffs on 4.8.1947, whereafter a notice was

issued on 9.10.1947 terminating the tenancy and demanding possession on the expiry of the lease on 31st March, 1945. The defendants not having delivered vacant possession, the present suit was filed on 25.4.1949. The defendants took the stand that they being protected tenants and section 89(2)(b) of the Act having saved this right, the suit for eviction did not lie; in any case, it did not lie in the civil court. In the present appeal, we are only concerned with the question of jurisdiction inasmuch as the letters Patent Bench has not expressed any opinion on the merits of other point raised in this appeal.

4. The defendant's case that despite what has been provided in section 88 (1) (c) of the Act, they continued to be protected tenants cannot be accepted in view of the Constitution Bench decision in *S.N. Kamble* v. *Sholapur Borough Municipality*, [1966] 1 SCR 618. That decision specifically disapproved what was held by a three-judge Bench of this Court in *Sakharam* v. *Manikchand Motichand Shah*, [1962] 2 SCR 59. The Constitution Bench held that *Sakharam's* Bench, while holding that despite what has been stated in section 88 (1) (c) of the Act, the tenant who acquired the status of a protected tenant under the provisions of 1939 Act would continue to enjoy that status even for the areas covered by clause (c), was not correct, because that Bench somehow missed important words "save as expressly provided in this Act" as finding placed in Section 89 (1) (b) of the Act, reliance on which was placed by *Sakharam's* Bench to uphold the status of even those protected tenants residing in the area covered by clause (c) of section 88 (1). The Constitution Bench said that section 88(1) (c) was an express provision showing the contrary.

5. Despite what was held in *Kamble's* case, the contention advanced on behalf of the respondents-tenants is that because of what was held by this court in *Mohanlal Chunilal Kothari* v. *Tribhovan Haribhai Tamboli*, [1963] 2 SCR 707 and *Hiralal Prabhubhai* v. *Nagindas Atmaram Khatri*, [1964] 6 SCR 773, the provisions of the 1948 Act, as enacted, have to apply to the facts of the present case. According to the learned counsel for the respondents, what they have contended finds support from the decision in *Ishverlal Thakorelal Almaula* v. *Motibhai Nagjibhai Bhai*, [1966] 1 SCR 367, in which this Court approved the Full Bench decision of the Bombay High Court in *Shantilal* v. *Somabhai*, ILR (1959) Bombay 577, (Name of this case has been stated in this Court's judgment as *Patel Maganbhai Jethabhai*

A v. *Somabhai Sursang.*

6. Shri Dholakia, appearing for the appellants, contends that *Hiralal's* case being based on what was held in *Sakharam's* decision, which was overruled in *Kamble's* case, that case cannot be called in aid by of the respondents. Shri Mehta, who addressed us on behalf of respondent No. B 2, urged that despite *kamble's* case what was held in *Hiralal's* case qua the first argument advanced on behalf of the tenants holds good. This, however, cannot be so because reference to that case even on the first argument shows that it was essentially founded on *Sakharam's* case, as it was held that the right in question was preserved by section 89(2)(b) of the Act, C and it is precisely this which *Kamble's* case had not regarded as correct position in law.

7. As to the decision of this Court in *Ishverlal*, Shri Dhokalia submits that the case dealt with the interpretation of the proviso to section 43 (c) D of the Act which did not leave much to doubt that the proviso was retrospective. It is , therefore, contended that the ratio of *Ishverlal's* case has no application. We find no difficulty in agreeing with Shri Dholakia.

8. Shri Dholkia, to buttress his submission, has sought to press into E service another decision of this Court which was rendered in *Maneksha Ardeshir Irani* v. *Manekji Edulji Mistry*, [1975] 2 SCR 341, in which the benefit of Section 4 (b) of the Act was not made available to the tenant after the contractual lease had been determined. The learned counsel urges that as in the present case the tenancy has been determined with effect from 31.4.1949, amendment brought in 1952 would not enure to the benefit F of the respondents. Shri Vakil, appearing for respondent No. 1, has countered, this submissions by advancing two arguments. The first is that even if the rights of the respondents were to be determined as per the in 1939 Tenancy Act, the mere fact of issuance of notice of termination is not enough to be bring to an end the jural relationship existing between the G parties inasmuch as under section 7 of that Act the tenancy of a protected tenant could not be terminated merely by issuance of a notice; but the termination can be for the *bonafide* need of the landlord either for personal cultivation or for any non- agricultural purpose. Though the plaintiffs did state in the notice of termination that the need of the land is *bonafide* for H personal cultivation, that has to be determined, and till this question is

decided in favour of the landlord the tenancy cannot be come to an end. We find sufficient force in this contention. Another submission advanced by Shri Vakil is that by force of section 23, as inserted in the 1939 Act, the period of tenancy of the defendants got extended upto 11.1.1952 as the written lease was on 12.1.1942. As such, the tenancy was continuing when the suit was filed in 1949. As to this contention, we would observe that the Act, as enacted, having not saved any right of the protected tenants like the respondents, the benefit of statutory extension to the period of tenancy given to protected tenants by section 23 of the 1939 Act would not be available. It may be pointed out that this is also the view taken by the Letters Patent Bench as would appear from what has been stated at page 200 of the Judgment as printed in the paper book.

9. In so far as *Mohanlal's* case is concerned, the submission of Shri Dholakia is that that case has dealt with an altogether different fact situation. The same was that when the Act came into force it had applied to the tenants in question. But by virtue of the notification of 1951, the area within which the land was situate, had been taken out from the purview of the Act; and it is because of this that *Mohanlal's* case held that the notification was retrospective, and the Act would not apply to the suit in question. Shri Dholakia submits that the Bench had noted the fact that the 1951 notification had been cancelled in 1953, which too weighed with the Bench in deciding as it had done. The learned counsel also brings to our notice that in *Kamble's* case certain observations made in *Mohanlal's* decision were not thought to be correct.

10. According to us, however, the aforesaid is not enough to make the real ratio of *Mohan Lal's* inapplicable to the facts of the present case. As would be pointed out later, the view taken in *Mohanlal's* case about the retrospectivity is quite apposite and this part of *Mohanlal's* decision is sufficiently buttressed by what has been stated in many other decisions of this Court dealing with the question as to when a beneficial legislation has to be interpreted qua its retrospectivity.

11. As we are concerned in the present appeal with legislation dealing with protection to tenants, we propose to refer to those cases, primarily of this court, which have dealt with the aforesaid aspect qua legislation of the type with which we are seized. Before we come to the

A decisions of this Court, it would not be out of place to first mention about the decision of Privy Council in *KC Mukherjee* v. *Ram Ratan Kuer*, AIR (1936) PC 49, in which the provisions of Bihar Tenancy Amendment Act, 1934 were applied to the case, though the amendment had seen the light of the day during the pendency of the appeal before the Privy Council.

B

12. As the amendment in question is not to a procedural law, it may be stated that the settled principle of interpretation, where substantive law is amended, is that the same does not operate retrospectively unless it is either expressly provided or the same follows by necessary implication. Lest it be thought that a vested right cannot be taken away at all by retrospective C legislation, reference may be made to *Rafiguennessa* v. *Lal Bahadur*, AIR (1964) SC 1511 where it was stated that even where vested rights are affected legislature is competent to take away the same by means of retrospective legislation; and retrospectivity can be inferred even by necessary implication. In that case, the provisions of the Assam Non-agricultural D Urban Areas Tenancy Act were made applicable to pending proceedings.

13. The change in law may apply, not only when the proceeding is pending in the court to the first instance, but during pendency of appeals as well, as pointed out in *Lakshminarayana* v. *Niranjan*, [1985] 2 SCR 202. E In that case, some earlier decisions of this Court on this point were noted, one of which was in the case of *Dayavati* v. *Inderjeet*, [1966] 3 SCR 275, in which it was observed that if the new law speaks in language, which expressly or by clear intendment, takes in even pending matters, the court of appeal may give effect to such a law, even after the judgment of the court of the first instance.

F

14. What is more to the point for our purpose is the decision in *H. Shiva Rao* v. *Sushila*, AIR (1987) SC 248, in which a two -Judge Bench held that legal principle that rent control legislations being beneficial have to be given liberal interpretation is well settled. It was further observed that G when substantive rights are taken away, ordinarily the statute would not be retrospective except where there is express provision or the same were to follow by clear implication. But in the case of rent control statute, it being a beneficial legislation, the benefit of the same should be made available to the tenant even though the same takes away vested right of the landlord, H unless there is express provision or clear implication to the contrary. The

Bench went on to state that if the language of the statute is ambiguous, then the construction that fulfils the object to the legislation must provide the key to the meaning; and for this purpose the Court should, if necessary, iron out the creases. (See paras 4 and 5)

15. It would, however, be appropriate to refer to a three-Judge Bench decision in *Motiram* v. *Suraj Bhan*, [1960] 2 SCR 896, in which though this Court was concerned with the interpretation of beneficial statute like East-Punjab Urban Rent Restriction Act, it was observed at page 903 that where an amendment affects the vested rights, the same would operate prospectively unless it is expressly made retrospective of the same follows as a matter of necessary implication.

16. We have, therefore, to see whether insofar as the amendment at hand is concerned, could it be reasonably said that the same operates retrospectively. It is here that what was observed by the Constitution Bench in *Mohanlal's* case becomes relevant. The Bench observed that insofar as clause (d) of section 88(1) of the Act is concerned, the same would have in the context, retrospective operation, in the sense that it would apply to land which could be covered by a notification to be issued by the Government from time to time, so as to take those lands out of operation of the Act granting the protection. This observation is *de hors* what was stated in the later part of the judgment in which the Bench referred to the cancellation of the notification. If a notification taking away substantive rights of tenants can have retrospective operation, no objection can be taken, according to us, on principle, to a provision taking away substantive rights of landlords having retrospective operation.

17. When an argument was advanced on the basis of cancellation that the same could not take away the right which had accrued to the landlords as a result of the first notification, the Bench found no force in the argument and observed that if the landlords had obtained an effective decree and had succeeded in ejecting the tenants as a result of that decree, which might have become final between the parties, that decree might not have been reopened and the execution taken thereunder might not have refused. But the second notification had come to be issued during the pendency of the suit, because of which it was held that the court was bound to apply the law as it was found on the date of its judgment, because there

A was no question of taking away of any vested rights in the landlords. In the present case, the position is precisely what was found in the *Mohanlal's* case inasmuch as the amendment in question had come into force when the suit of the appellant was pending before the trial court, which goes to show that no vested rights to get possession had accrued to the landlord-
B plaintiff.

18. In view of the aforesaid, we have no difficulty in holding that insofar as the present case is concerned, the amendment has to be held as applicable to the suit which was pending. Indeed, we would go further and say that even if vested right would have accrued to the landlord by the time
C the amendment of 1952 came to force, a view could well be taken that the amendment should apply retrospectively.

19. We, therefore, conclude by standing that the amendment did apply to the suit at hand because of which the respondents' status as
D protected tenants got revived by the time the trial court was seized of the matter. So, that court had no jurisdiction to proceed further.

20. Having come to the aforesaid conclusion, it is further stated that no useful purpose would be served by requiring the Mamlatdar to take up the case of the appellants inasmuch as the respondents having been clothed
E again with the rights available to protected tenant, decree of eviction cannot be passed against them on the basis of termination of their tenancy by the notice which had come to be issued by the appellants on 19.10.47 under the provisions of the Tenancy Act of 1949, relying which the present proceeding was initiated against the respondents demanding possession
F from them.

21. This being the legal and factual position, the appeal has to be dismissed, which we hereby do. However, in the facts and circumstances of the case, the parties are left to bear their own costs throughout.

G **HANSARIA, J.** The appellants herein, who are respondents in C.A. No. 1578 of 1974, having been held in the judgment rendered in that appeal today to be protected tenants, this appeal has to be allowed inasmuch as the learned single Judge of the High Court decided against the appellants because of his conclusion reached in the related appeal that the appellants
H are not protected tenants, and so, not entitled to the benefit of section 32G

of the Bombay Tenancy and Agricultural Lands Act, 1948. A

2. it would, therefore, be open to the legal representatives of the appellants to proceed further as was ordered by Agricultural Lands Tribunal and Mamlatdar in his order dated 16.4.1964, which was upheld by the Assistant Collector, Alpath Prant, Surat on appeal to him and by the Gujarat Revenue Tribunal on revision being preferred to it. B

3. The appeal is allowed accordingly. Parties are left to bear their own costs throughout.

R.A. Appeal allowed.