

HIGH COURT OF GUJARAT

**DHANABHAI RAIJI
V/S
UDEMLOYEES STATE INSURANCE CORPORATIONNG BHAIJI**

Date of Decision: 31 August 1966

Citation: 1966 LawSuit(Guj) 78

Hon'ble Judges: [P N Bhagwati](#)

Eq. Citations: 1967 GLR 660, 1967 ILR(Guj) 697

Case Type: Special Civil Application

Case No: 703 of 1962

Head Note:

Landlord misusing or not using land possessed under old S.34 - Tenants right to make application for restoration under Amendment act. - Question of maintainability of application made prior to amendment act.

Reading sub-secs. (4) and (5) of sec. 37 of the Bombay Tenancy and Agricultural Lands Act together it is clear that though sub-sec. (4) of sec. 37 declares that sec. 37 sub-sec. (1) shall apply even in cases where a landlord has taken possession of the land after terminating the tenancy of the tenant under the old sec. 34 as if the termination of the tenancy were under sec. 31 and a liability is therefore. imposed on the landlord to restore possession of the land to the tenant if the landlord has failed to use the land for any of the purposes specified in the notice within one year from the date on which he took possession or ceased to use it for the purpose specified in the notice at any time within twelve years from the date on which he took such possession such liability is made to commence only from the date of coming into force of Gujarat Act XVI of 1960. Since the right to demand restoration of possession of the land from the landlord though in respect

of failure or cessation arising prior to the coming into force of Gujarat Act XVI of 1960 is being conferred on the tenant by introduction of sub-sec. (4) by Gujarat Act XVI of 1960 that right comes into existence from the date on which it is conferred and not from an earlier date with retrospective effect. The right of the tenant to demand restoration land from the landlord in a case falling within the newly added sec. 37 sub-sec. (4) must. therefore be held to arise for the first time on the date of coming into force of Gujarat Act XVI of 1960 and if an application is made by the tenant for restoration of possession of the land prior to that date it would be premature and not maintainable. Sp. C. A. 2517 of 1958 decided on 25-10-59 (B H.C) referred to. Chhitabhai Ukabhai v. Nagindas Manohar ant others followed.

Acts Referred:

[Bombay Tenancy and Agricultural Lands Act, 1948 Sec 37\(6\), Sec 37\(4\)](#)

Final Decision: Petition dismissed

Advocates: [G T Nanavati](#), K S Nanavati, [I M Nanavati](#)

Judgement Text:-

Bhagwati J

[1] The question arising in this petition is a short one, but in order to appreciate it, it is necessary to state briefly a few facts giving rise to the petition. The petitioner was a tenant of respondent No. 3 in respect of land bearing Survey No. 491 situate in the Sim of Jambusar, Taluka Jambusar, District Broach. Respondent No. 3 terminated the tenancy of the petitioner by a notice dated 19th March, 1949 on the ground that respondent No. 3 required the land bona fide for personal cultivation. The notice was obviously given by respondent No. 3 under sec. 34 of the Bombay Tenancy and Agricultural Lands Act, 1948, (hereinafter referred to as the Tenancy Act) as it stood at the material time. Respondent No. 3 thereafter on 12th April, 1950 filed an application under sec. 29 of the Tenancy Act before the Mamlatdar, Jambusar, for recovering possession of the land from the petitioner. The Mamlatdar by an order, dated 13th May, 1959 allowed the application and directed the petitioner to hand over possession of the land to respondent No. 3 and pursuant to the order of the Mamlatdar, possession of the

land was obtained by respondent No. 3 from the petitioner. Respondent No. 3 thereafter cultivated the land personally for a while and then sold the land to respondents Nos. 1 and 2 on 23rd March, 1951. On coming to know that respondent No. 3 had ceased to personally cultivate the land and had sold the land to respondents Nos. 1 and 2, the petitioner made an application to the Mamlatdar under sec. 39 read with sec. 37 of the Tenancy Act for obtaining restoration of possession of the land on the ground that respondent No. 3 had ceased to use the land for the purpose for which it was obtained by him from the petitioner within twelve years from the date on which he took possession of the land. To this application, besides respondent No. 3, respondents Nos. 1 and 2 were also joined as parties since the relief of possession could not be effective unless it was also granted against respondents Nos. 1 and 2. Respondents Nos. 1 to 3 contested the application on various grounds which are not necessary to mention for the purpose of deciding the present petition. But it may be pointed out at this stage that the application was made after the amendment of sec. 37 by Bombay Act 13 of 1956 which came into force on 1st August, 1956. The Tenancy Aval Karkun who heard the application, by an order, dated 31st May, 1958 decided the application in favour of the petitioner and directed respondents Nos. 1 to 3 to restore possession of the land to the petitioner. Respondents Nos. 1 and 2 thereupon preferred an appeal to the Prant of ficer, Broach, but the Prant of ficer dismissed the appeal and confirmed the order of the Tenancy Aval Karkun. Respondents Nos. 1 and 2 thereupon carried the matter in revision to the Revenue Tribunal. Before the Revenue Tribunal a new contention was raised on behalf of respondents Nos. 1 and 2 which was not urged either before the Tenancy Aval Karkun or before the Prant of ficer and that contention was that by Bombay Act No. 13 of 1956, sec. 34 was deleted and in its place was substituted sec. 31 and consequent upon this amendment, sec. 37 was also amended by substituting the words "under sec. 31" for the words "under sec. 34" and the effect of this amendment was that after the amendment an application for restoration of possession could not be filed under sec. 39 read with sec. 37 in cases where the landlord had taken possession of the land after terminating the tenancy of the tenant under the old sec. 34. The argument was that since in the present case respondent No. 3 had obtained possession of the land from the petitioner after terminating the tenancy of the petitioner under the old sec. 34, the petitioner was not entitled after the amendment to make an application for restoration of possession of the land on the ground that respondent No. 3 had failed to use the land for the purpose for which he had taken possession of the same. This argument was, however, sought to be met on behalf of the petitioner by relying on sub-sec. (4) introduced in sec. 37 by Gujarat Act 16 of 1960. It was urged on behalf of the petitioner that by reason of sub-sec. (4) of sec. 37, termination of the

tenancy under the old sec. 34 was equated with termination of the tenancy under sec. 31 for the purpose of sec. 37 and the benefit of sec. 37 was extended to a tenant even in cases where his tenancy was terminated by the landlord under the old sec. 34 prior to the introduction of the amended sec. 31. The answer which respondents Nos. 1 and 2 gave to this contention urged on behalf of the petitioner was that sub-sec. (4) of sec. 37 introduced by Gujarat Act 16 of 1960 was not retrospective in operation and did not affect the vested right of respondents Nos. 1 and 2 as purchasers and the petitioner was, therefore, not entitled to rely on the same for sustaining his claim to restoration of possession. This plea was accepted by the Revenue Tribunal and the Revenue Tribunal took the view that the rights of respondents Nos. 1 and 2 as purchasers from respondent No. 3 had become vested prior to the introduction of sub sec. (4) of sec 37 and sub-sec. (4) of sec. 37 did not therefore, have the effect of affecting those rights and in this view of the matter the Revenue Tribunal allowed the Revision Application and set aside the order for restoration of possession of the land to the petitioner. The petitioner thereupon preferred the present petition challenging the view taken by the Revenue Tribunal.

[2] It is clear from the facts which have just been narrated that respondent No. 3 took possession of the land after terminating the tenancy of the petitioner under the old sec. 34 on the ground that he wanted it bona fide for personal cultivation and after taking possession of the land he used it for personal cultivation for a while but ceased to use it for personal cultivation from 23rd March, 1951 when he sold it to respondents Nos. 1 and 2. Now the unamended sec. 37 sub-sec. (1) was in the following terms: -

"37 (1) If after the landlord takes possession of the land after the termination of the tenancy under sec. 34, he fails to use it for any of the purposes specified in the notice given under sec. 34 within one year from the date on which he took possession or ceases to use it any time for any of the aforesaid purposes within twelve years from the date on which he took such possession, the landlord shall forthwith restore possession of the land to the tenant whose tenancy was terminated by him, unless he has obtained from the tenant his refusal in writing to accept the tenancy on the same terms and conditions or has offered in writing to give possession of the land to the tenant on the same terms and conditions and the tenant has failed to accept the offer within three months of the receipt thereof. "

The petitioner was, therefore, entitled under the unamended sec. 37 to

restoration of possession of the land from respondents Nos. 1, 2 and 3. But before the petitioner could file an application for restoration of possession of the land under sec. 39 read with sec. 37, sec. 37 came to be amended by Bombay Act 13 of 1956. Prior to the amendment the section which conferred a right on the landlord to recover possession of the land from the tenant on the ground of bona fide requirement for personal cultivation was sec. 34 but by the amendment, sec. 34 as it then stood was deleted and its place was taken by the new sec. 31 which conferred the same right on the landlord but subject to certain restrictions and limitations. Consequent on this amendment sec. 37 was also amended and the words "under sec. 34" were substituted by the words "under sec 31" with the result that from and after the date of the amendment, sec. 37 was confined in its applicability to cases where the landlord took possession of the land after terminating the tenancy under sec. 31 and failed to use the land for any of the purposes specified in the notice under sec. 31 within one year from the date on which he took possession or ceased to use it at any time for any of the said purposes within twelve years from the date on which he took such possession. This amendment came up for consideration before a Division Bench of the Bombay High Court consisting of Chainani C. J. and Shelat J., as he then was, in Special Civil Application No. 2517 of 1958 and the question which arose was whether a tenant from whom possession was taken by the landlord after terminating the tenancy under the old sec. 34 was entitled to file an application for restoration of possession of the land after the amendment of sec. 37 on the ground that the landlord had after taking possession failed to use the land for any of the purposes specified in the notice under the old sec. 34 within one year from the date on which he took possession or ceased to use the land for any of the said purposes within twelve years from the date on which he took possession. After considering the relevant provisions of the Tenancy Act, the Division Bench in a judgment delivered on 25th October 1958 came to the conclusion that after the amendment of sec. 37 an application for restoration of possession of the land could not be filed by the tenant under sec. 39 read with sec. 37 in cases where the landlord had taken possession of the land after terminating the tenancy under the old sec. 34. In view of this decision of the Bombay High Court which is binding upon me, it is clear that, had the law remained as it was, the application of the petitioner for restoration of possession of the land

against respondents Nos. 1 to 3 would have been clearly misconceived and not maintainable. But this decision adversely affected the interests of the tenants by depriving them of the benefit which was intended to be given to them and the effect was in some cases to take away even vested rights of demanding restoration of possession of the land which had accrued to the tenants under the unamended sec. 37 and, therefore, the Gujarat Legislature passed Gujarat Act 16 of 1960 introducing sub-Secs.. (4) and (5) in sec. 37. Sub-sec. (4) of sec. 37 provided that: -

"(4). Where before the commencement of the Amending Act, 1955, a landlord in accordance with the provisions of this Act as then, in force has terminated the tenancy of the land by giving notice to the tenant that he required the land for cultivating personally or for any non-agricultural purpose and has taken possession of the land whether before or after such commencement, then if he fails to use the land for the purpose specified in the notice within one year from the date on which he took possession or ceases to use it for the purpose specified in the notice at any time within twelve years from the date on which he took possession, the foregoing provisions of this section shall, notwithstanding any decree or order of a Court or tribunal, apply to such failure or cessation, as the case may be, as if there had been a termination of the tenancy under sec. 31. "

The Legislature thus put termination of the tenancy under the old sec. 34 on the same footing as termination of the tenancy under sec. 31 and extended the benefit of the provision enacted in sec. 37 sub-sec. (1) to cases where the landlord had taken possession of the land after terminating the tenancy of the tenant under the old sec. 34 This was the provision which was relied upon by Mr. G. T. Nanavati, learned advocate appearing on behalf of the petitioner in support of the petition and his argument was that in view of this provision it was entirely immaterial to the applicability of sec. 37 sub-sec. (1) whether the termination of the tenancy of the petitioner was under sec. 31 or under the old sec. 34 and the application of the petitioner for restoration of possession of the land against respondents Nos. 1, 2 and 3 under sec 39 read with sec. 37 sub-sec. (1) was maintainable notwithstanding that the termination of the tenancy of the petitioner was under the old sec. 34 But this argument overlooks the provision enacted in the newly introduced sub-sec.

(5) of sec. 37 which says: -

"(5). Where a failure or cessation referred to in sub-sec. (4) has taken place before the date of the coming into force of the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1960, the liability of the landlord under sub-sec (1) to restore possession of the land to the tenant shall commence from that date. "

Reading sub-Secs.. (4) and (5) of sec. 37 together it is clear on a plain grammatical construction that though sub-sec. (4) of sec. 37 declares that sec. 37 sub-sec. (1) shall apply even in cases where a landlord has taken possession of the land after terminating the tenancy of the tenant under the old sec. 34 as if the termination of the tenancy were under sec. 31 and a liability is, therefore, imposed on the landlord to restore possession of the land to the tenant if the landlord has failed to use the land for any of the purposes specified in the notice within one year from the date on which he took possession or ceased to use it for the purpose specified in the notice at any time within twelve years from the date on which he took such possession, such liability is made to commence only from the date of coming into force of Gujarat Act 16 of 1960. The object of the Legislature clearly seems to be that since the right to demand restoration of possession of the land from the landlord, though in respect of failure or cessation arising prior to the coming into force of Gujarat Act 16 of 1960, is being conferred on the tenant by the introduction of sub-sec. (4) by Gujarat Act 16 of 1960, that right should be made to come into existence from the date on which it is conferred and not from an earlier date with retrospective effect. The right of the tenant to demand restoration of possession of the land from the landlord in a case falling within the newly added sec. 37 sub-sec. (4) must, therefore, be held to arise for the first time on the date of coming into force of Gujarat Act 16 of 1960 and if an application is made by the tenant for restoration of possession of the land prior to that date, it would be premature and not maintainable. This view, I find, has also been taken by Vakil J in Special Civil Application No. 182 of 1962 (Chhitabhai v. Naginlal, VII G. L. R. 222), and apart from the fact that the decision in that case is binding upon me, I am wholly in agreement with the view taken by Vakil J in that decision. It must, therefore, be held that the petitioner became entitled to demand restoration

of possession of the land from respondents Nos. 1, 2 and 3 only from the date of coming into force of Gujarat Act, 16 of 1960 and the application made by the petitioner prior to that date was clearly premature.

[3] The order passed by the Revenue Tribunal dismissing the application, must, therefore, be upheld though for different reasons and the petition must be dismissed and the rule discharged. There will be no order as to costs.

Petition Dismissed

