HEIRS AND LRS. OF DECEASED
SOMABHAI KANJIBHAI BARIA

v.

PATEL PARSHOTTAMDAS JAMDAS (D) AND ANR.

MARCH 7, 1995

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

Bombay Tenancy and Agricultural Lands Act, 1948:

Sections 32G(6) and 88(1)(c)—Schedule III—Condition Precedents for applicability of.

Gujarat Watans Abolition Act, 1961:

Section 9—Applicability of.

Tenants—Possession of Watan lands—Abolition of watans with effect from 1.4.63—Regrant despite abolition of watans—Termination of tenancy with effect from 31.3.61 and filing of civil suit for possession on 14.8.62—No consent given by landlord either in writing or by acquiescence subsequent to determination of tenancy—Determination of rights of tenancy between the parties—Held jurisdiction of Civil Court was not barred.

The appellants were in possession of watan lands as tenants of respondents. Despite abolition of watans with effect from 1.4.1963 by Gujarat Watans Abolition Act, 1961 re-grant was made in favour of the respondents on 23.4.1966. In the meanwhile the respondents terminated the tenancy of appellants with effect from 31.3.1961 and on 14.8.1962 filed a suit for possession. The appellants raised objections that the Civil Court has no jurisdiction to decide the question whether they were tenants under the respondents and that they were not liable to ejectment on the basis of termination of tenancy. Relying on Section 88 of the Bombay Tenancy and Agricultural Lands Act, 1948 the Civil Court dismissed the suit and held that appellants were tenants and therefore until the question of termination of tenancy was decided by Mamlatdar the Civil Court had no jurisdiction.

On revision the High Court held that the Civil Court was wrong in its conclusion that the tenancy court has jurisdiction to determine the

rights of the tenancy between the parties and accordingly reversed the decree and remitted the matter for trial according to law. In appeals to this court it was contended on behalf of the appellants that by operation of sub-section (6) of Section 32(G) of the Tenancy Act despite the abolition of the watan and re-grant in favour of the respondent, the right of tenancy created in favour of the tenants still subsists. Therefore, the question whether the tenancy was legally terminated was to be decided only by the mamlatdar and not by the civil court.

Dismissing the appeals, this Court

HELD : 1. The High Court was right in holding that the condition precedent prescribed under Section 88(1)(c) of the Tenancy Act read with section 9 of Watan Act has not been complied with and that therefore, the civil court alone has jurisdiction to decide the question. [584-E]

2. For application of sub-section (6) of Section 32(G) of the Bombay Tenancy and Agricultural Land Act, 1948 two essential conditions are required to be satisfied. The kind of land tenures, referred to in sub-section (6) should find place in the III Schedule. The Watan Abolition Act, 1961 is not part of Schedule III. Secondly though the re-grant is made in favour of the holder of the watan with a condition that it is not transferable, the lease created before the re-grant must be subsisting. In that event, the tenant would be entitled to purchase the land under section 32(G). In this case the tenancy was terminated with effect from 31.3.1961 and the suit for possession was filed on 14.8.1962. After the determination of the tenancy and after the respondent filed the suit, there was no consent by the landlord either in writing or by acquiescence or by conduct. In that view of the matter, the civil court was clearly in error in holding that there exists a jural relationship of landlord and tenant between the respondent and the appellants and that, therefore, the mamlatdar is the competent authority to decide the dispute of the tenancy rights. [583-G-H, 584-D]

Maneksha Ardeshir Irani v. *Manekil Edulji Mistry,* [1975] 2 S.C.R. 341, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2685, 2872-73 of 1977.

From the Judgment and Order dated 14/15-7-1977 of the Gujarat

High Court in C.R.A. No. 397 of 1977.

V.N. Ganpule, Vimal Dave and Mrs. Neelam Kalsi for the Appellant.

S.K. Dhokakia, H.A. Raichura and Ms. Promila Choudhary for the Respondents.

The following Order of the Court was delivered :

Respondent Patel Parshottamdas Jamnadas has died. The appellants have filed an application to bring the legal representatives on record. Ghanshamdasbhai Parshottamdas Patel, son of the deceased Patel Parshottamdas Jamnadas, has also made an application independently on the basis of will said to have been executed by his father. Without going into the inter se rights of the legal representatives of Patel Parshottamdas Jamnadas, we bring Ghanshamdasbhai Parshottamdas Patel on record to represent his estate for the purpose of the disposal of these appeals. The inter se rights, if any, would be decided in an appropriate proceedings.

The three appeals are being disposed of by a common order. The appellants initially were tenants of respondent. The lands are watan lands. Though the appellants remained in possession from the year 1939, since the lands being watan lands, they are not directly governed by the Bombay Tenancy and Agricultural Lands, Act 1 of 1948 (for short, 'the Tenancy Act') as extended to the State of Gujarat. The Gujarat Watans Abolition Act, 1961, abolished the watans with effect from 1.4.63. Subsequently, regrant was made in favour of the respondent on March 23, 1966. In the meanwhile, the respondent terminated the tenancy of the appellants with effect from 31.3.61 and filed present civil suit for possession on August 14, 1962.

The appellants contended that civil court has no jurisdiction to decide the question whether the appellants are tenants under the respondent and that they are not liable to ejectment on the basis of termination of tenancy. The civil court relying upon s.88 of the Tenancy Act, held, as preliminary issue, that the appellants are tenants and that, therefore, until the question of termination of tenancy has been duly determined by the mamlatdar, the civil court has no jurisdiction. Accordingly, the civil court dismissed the suit. On revision, the learned single Judge of the High Court, by judgment dated 15.4.77, held that for application of s.88 of the Tenancy

Act, read with s.9 of Watan Act, 1961, two conditions must be satisfied, namely, the lease should have been lawfully made and such a lease must be subsisting on the appointed date, namely, April 1, 1963. Though there was a lease, since it was determined as effective from 31.3.61, there was no subsisting lease. Therefore, the civil court was wrong in its conclusion that the tenancy court has jurisdiction to determine the rights of the tenancy between the parties and accordingly reversed the decree and remitted the matter for trial according to law. Thus these appeals by special leave.

Shri Ganpule, learned senior counsel for the appellants, contended that by operation of sub-s.(6) of s.32(G) of the Tenancy Act, despite the abolition of the watan and re-grant in favour of the respondent, the right of tenancy created in favour of the tenants still subsists. Therefore, whether the termination of the tenancy has been legally done should be decided only by the mamlatdar and not by the civil court. We find no force in the contention.

Sub-s.(6) of s.32(G) envisages :

> "If any land which, by or under the provisions of any of the Land Tenures Abolition Acts referred to in Schedule III of this Act, is re-granted to the holder thereof on condition that it was not transferable, such condition shall not be deemed to affect the right of any person holding such land on lease created before the re-grant and such person shall as a tenant be deemed to have purchased the land under this section, as if the condition that it was not transferable was not the condition of re-grant."

For application of sub-s.(6) of s.32 (G) two essential conditions are required to be satisfied. The kind of land tenures, referred to in sub-s.(6), should find place in the IIIrd Schedule. We have verified Schedule III and the Watan Abolition Act 1961 is not part of Schedule III. Secondly, though the re-grant is made in favour of the holder of the watan with a condition that it is not transferable, the lease created before the re-grant must be subsisting. In that event, the tenant would be entitled to purchase the land under s.32(G). It is already seen and a clear finding of fact was recorded by the High Court and it is not disputed before us that the tenancy was terminated with effect from 31.3.1961 and the suit for possession was filed on 14.8.1962.

The question then is what is the nature of possession the appellants held. This Court in *Maneksha Ardeshir Irani* v. *Manekji Edulji Mistry,* 1975 (2) SCR 341, held that on cessation of original tenancy, the right of protected tenant would continue until it would duly come to an end. It was found that on August 1, 1956 it came to a terminus and the original contract of tenancy thereby had ceased. The appellant therein was in occupation of the land only on sufferance since the land-lord had not given any consent for the continuance of possession of the tenant. When the landlord did not give his consent, express or necessary implication, after the termination of lease, his possession is only by sufferance and he cannot be said to be in possession as a tenant holding over or a tenant at will.

The same ratio applies to the facts in this case. After the determination of the tenancy and after the respondent filed the suit, there was no consent given by the landlord either in writing or by acquiescence or by conduct. In that view of the matter, the civil court was clearly in error in holding that there exists a jural relationship of landlord and tenant between the respondent and the appellants and that, therefore, the mamlatdar is the competent authority to decide the dispute of the tenancy rights. The High Court was right in holding that the condition precedent prescribed under s.88(1)(c) of the Tenancy Act read with s.9 of Watan Act has not been complied with and that, therefore, the civil court alone has jurisdiction to decide the question.

The appeals are accordingly dismissed. No costs.

In view of the above findings, the suits stand decreed, as nothing more remains for trial as agreed by both the counsel.

T.N.A. Appeals dismissed.