

THE SUPREME COURT REPORTS

DAHYA LAL AND OTHERS

1962

May 3

v.

RASUL MOHAMMED ABDUL RAHIM

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR,
K. SUBBA RAO, K. N. WANCHOO,
and J. C. SHAH, JJ.)

Agricultural Land—Tenant inducted by mortgagee—Whether could be evicted, or deemed to be tenant under the mortgagor—The Bombay Tenancy and Agricultural Land Act, 1948 (Bom. 67 of 1948), ss. 4 cls. (a), (b), (c), 29—Constitution of India, Art. 227.

In 1891 the ancestors of the appellant mortgaged the land to U. who inducted one R. as a tenant on the land. The appellant as owners of the equity of redemption applied to the Court constituted under the Bombay Agricultural Debtors Relief Act for adjustment of the debt due under the mortgage and for redemption of the land mortgaged. An award was made on this application by compromise and in execution of the award R. was evicted. R. applied to the Mahalkari under s. 29 of the Bombay Tenancy and Agricultural Lands Act, 1948 for an order restoring possession of the land. The application was rejected and the order was confirmed by the Deputy Collector and the Revenue Tribunal. In a petition Art. 227 of the Constitution, the High Court of Bombay set aside the order passed by the Tribunal and ordered that possession of the land be restored to the respondent and declared that the respondent was entitled to continue in occupation as a tenant on the same terms on which he was a tenant of the mortgagee.

Held, that the Act affords protection to all persons who hold agricultural lands as contractual tenants, and subject to the exceptions specified all persons lawfully cultivating lands belonging to others, and it would be unduly restricting the intention of the Legislature to limit the benefit of the Bombay Tenancy and Agricultural Land Act to persons who derive their authority from the owner, either under a contract of tenancy, or otherwise. All persons other than those mentioned in cls. (a), (b) and (c) of s. 4 of the Act who lawfully cultivate land belonging to other

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persons whether their authority is derived directly from the owner of the land or not must be deemed to be tenants of the land.

CIVIL APPELLATE JURISDICTION : Civil Appeal
No. 516 of 1960.

Appeal by special leave from the judgment and order dated July 19, 1957, of the Bombay High Court in Special Civil Application No. 809 of 1957.

W. S. Barlingay and Ganpat Rai for the appellants.

C. B. Pai, J. B. Dadachanji, S. N. Andley, Rameshwar Nath and P. L. Vohra, for the respondents 1-5.

R. Ganapathy Iyer and R. H. Dhebur, for the respondent No. 6 and for the State of Maharashtra (Intervener).

1962. May 3. The Judgment of the Court was delivered by

Shah J.

SHAH, J.—Survey No. 126 admeasuring 11 acres and 20 gunthas of Mouje Telod, District Broach belonged to the ancestors of the appellants. By deed dated July 24, 1891, the owners mortgaged the land to one Umiyashanker with possession. Shortly after the mortgage, the mortgagee inducted one Mohammed Abdul Rahim as a tenant on the land.

The appellants as owners of the equity of redemption applied to the Court constituted under the Bombay Agricultural Debtors Relief Act, 28 of 1947, for adjustment of the debt due under the deed dated July 24, 1891, and for redemption of the land mortgaged. On February 19, 1954, an award was made in this application by compromise between the parties declaring that Rs. 3,000/- were

due to mortgagee under the deed dated July 24, 1891, that "the land in dispute was in the possession of Mohammed Abdul Rahim as tenant of the mortgagee, and that the mortgagor had the right to take possession of the land from the said tenant." In execution of the award, Mohammed Abdul Rahim—who will hereinafter be referred to as the respondent—was evicted. On June 7, 1954, the respondent applied to the Mahalkari of Hansot for an order under s. 29 of the Bombay Tenancy & Agricultural Land Act, 1948, restoring possession of the land. The Mahalkari rejected the application and that order was confirmed in appeal by the District Deputy collector, and by the Bombay Revenue Tribunal in revision from the order of the Deputy Collector. The High Court of judicature at Bombay was then moved by the respondent under Art. 227 of the Constitution. The High Court following its earlier judgment in *Jaswantrao Tricumal Vyas v. Bai Jiwi* set aside the order passed by the Tribunal and ordered that possession of the land be restored to the respondent and declared that the respondent was entitled to continue in occupation as tenant on the same terms on which he was a tenant of the mortgagee. The mortgagors have appealed to this Court against that order of the High Court with special leave.

The Bombay Tenancy Act of 1939 was enacted to protect tenants of agricultural lands in the Province of Bombay and for certain other purposes. That Act was repealed by s. 89 of the Bombay Tenancy and Agricultural Lands Act, 1948, which came into operation on December 28, 1948. By the repealing clause, certain provisions of the Act of 1939 with modifications were continued. By the Act of 1948, under s. 2(18) as it stood at the material times, a tenant was defined

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as "an agriculturist who holds land on lease and includes a person who is deemed to be tenant under the provisions of this Act." s. 14 of the Act provides that notwithstanding any agreement, usage, decree or order of a Court of law, the tenancy of any land held by a tenant shall not be determined unless the conditions specified in that section are fulfilled. It was unnecessary to set out the conditions because it is common ground that the tenancy of the respondent was not sought to be determined on any of the grounds in s. 14: it was in execution of the award made by the Debt Relief Court that the respondent was dispossessed. Section 29, by sub-s. (2) provides that no landlord shall obtain possession of any land or dwelling house held by a tenant except under an order of the Mamlatdar. For obtaining such order he shall make an application in the prescribed form 'x x x'. Section 4 of the Act in so far as it is material provides: "A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not (a) a member of the owner's family, or (b) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner's family, or (c) a mortgagee in possession". Section 4 seeks to confer the status of a tenant upon a person lawfully cultivating land belonging to another. By that provision, certain persons who are not tenants under the ordinary law are deemed to be tenants for purposes of the Act. A person who is deemed a tenant by s. 4 is manifestly in a class apart from the tenant who holds lands on lease from the owner. Such person would be invested with the status of a tenant if three conditions are fulfilled— (a) that he is cultivating land lawfully, (b) that the land belongs to another person, and (c) that he is not within the excepted categories.

The respondent was on December 28, 1948, undoubtedly cultivating land which belonged to another persons ; he was lawfully cultivating the land because he derived his right to cultivate it from the mortgagee of the land, and he did not fall within the excepted categories. *Prima facie*, he was a "deemed tenant" within the meaning of s. 4 of the Act.

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But Dr. Barlingay, on behalf of the appellants, contended that a person can be said to be lawfully cultivating land within the meaning of s. 4 only if he has derived his right to cultivate directly from the owner of the land, and not from some other person who has a limited interest, such as a mortgagee from the owner. Counsel also contended that the expression "mortgagee in possession" in cl. (c) of s. 4 includes a person claiming a derivative right such as a tenant of the mortgagee in possession. We are unable to agree with these contentions. The Bombay Tenancy Act of 1939 conferred protection upon tenants against eviction, converted all subsisting contractual tenancies for less than ten years, restricted the rights of landlords to obtain possession of land even on surrender, granted the status of protected tenants to all persons who had personally cultivated land for six years prior to the date specified, provided for fixation of maximum rates of rent, abolition of cesses and suspension and remission of rents in certain contingencies, and barred eviction of tenants from dwelling houses. The Act was found inadequate and was substituted by the Bombay Tenancy and Agricultural Lands Act of 1948. The latter Act preserves the essential features of the Act of 1939 provides for additional rights and protection to tenants such as fixation of reasonable rent, commutation of crop share into cash, right to produce of naturally growing trees on land, relief against termination of tenancy for non-payment of

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rent, special rights and privileges of protected tenants, vesting of estates in Government for managment, restriction on transfer of agricultural land and the constitution of Special Tribunals for deciding disputes relating to value of land. The two Acts were manifestly steps in the process of agrarian reform launched with the object of improving the economic condition of the peasants and ensuring full and efficient use of land for agricultural purpose. The provisions of the Bombay Tenancy and Agricultural land Act, 1948 must be viewed in the light of the social reform envisaged thereby.

The Act 1948, it is undisputed, seeks to encompass within its beneficent provisions not only tenants who held land for purpose of cultivation under contracts from the land owners but persons who are deemed to the tenants also. The point in controversy is whether a person claiming the status of a deemed tenant must have been cultivating land with the consent or under the authority of the owner. Counsel for the appellants submits that tenancy postulates a relation based on contract between the owner of land, and the person in occupation of the land; and there can be no tenancy without the consent or authority of the owner to the occupation of that land. But the Act has by s. 2(18) devised a special definition of tenant and included therein persons who are not contractual tenants. It would therefore be difficult to assume in construing s. 4 that the person who claims the status of a deemed tenant must be cultivating land with the consent or authority of the owner. The relevant condition imposed by the statute is only that the person claiming the status of a deemed tenant must be cultivating land "lawfully": it is not the condition that he must cultivate land with the consent of or under authority derived directly from

the owner. To import such a condition it is to re-write the section, and destroy its practical utility. A person who derives his right to cultivate land from the owners would normally be a contractual tenant and he will obviously not be a "deemed tenant". Persons such as licencees from the owner may certainly be regarded as falling within the class of persons lawfully cultivating land belonging to others, but it cannot be assumed therefrom that they are the only persons who are covered by the section. The Act affords protection to all persons who hold agricultural land as contractual tenants and subject to the exceptions specified all persons lawfully cultivating lands belonging to others, and it would be unduly restricting the intention of the Legislature to limit the benefit of its provisions to persons who derive their authority from the owner, either under a contract of tenancy, or otherwise. In our view, all persons other than those mentioned in cls. (a), (b) and (c) of s. 4 who lawfully cultivate land belonging to other persons whether or not their authority is derived directly from the owner of the land must be deemed tenants of the lands.

Under the Transfer of property Act, the right of a tenant who has been inducted by a Mortgagee in possession ordinarily comes to an end with the extinction of the mortgage by redemption, but that rule, in our judgment, has no application in the interpretation of a statute which has been enacted with the object of the granting protection to persons lawfully cultivating agricultural lands. Nor has the contention that the expression "mortgagee in possession" includes a tenant from such a mortgagee any force. A mortgagee in possession is excluded from the class of deemed tenants on ground of public policy: to confer that status upon a mortgagee in possession would be to invest him with rights inconsistent with his fiduciary character. A

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transferee of the totality of the rights of a mortgage in possession may also be deemed to be a mortgagee in possession. But a tenant of the mortgagee in possession is inducted on the land in the ordinary course of management under authority derived from the mortgagor and so long as the mortgage subsists, even under the ordinary law he is not liable to be evicted by the mortgagor. It appears that the Legislature by restricting the exclusion to mortgagees in possession from the class of deemed tenants intended that the tenant lawfully inducted by the mortgagee shall on redemption of the mortgage be deemed to be tenant of the mortgagor. In our view, therefore, the High Court was right in holding that the respondent was entitled to claim the protection of the Bombay Tenancy and Agricultural Lands Act, 1948 as a deemed tenant.

One more argument about the jurisdiction of the High Court under Art. 227 of the constitution to set aside the order of the Bombay Revenue Tribunal may be considered. The High Court in setting aside the order of the Revenue Tribunal exercised jurisdiction under Art. 227 of the Constitution, and it was urged by counsel for the appellants that this was not a fit case for exercise of that jurisdiction. But the Legislature has expressly prohibited by s. 29 (2) of the Act, landlords from obtaining possession of any lands otherwise than under an order of the Mamlatdar. The possession of the disputed land was obtained by the appellants in execution of the award of the debt adjustment Court and without an order of the Mamlatdar. The respondent was therefore unlawfully dispossessed of the land, and the Revenue Authorities in refusing to give him assistance illegally refused to exercise jurisdiction vested in them by law. The question being

one of jurisdiction, the High Court was, in our view, competent to exercise the powers vested in it by Art. 227.

The appeal therefore fails and is dismissed with costs.

Appeal dismissed.

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STATE OF U. P.

(J. L. KAPUR, K. C. DAS GUPTA and
RAGHUBAR DAYAL, JJ.)

1962
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Public Nuisance—Auctioning vegetables in private house—Carts of seilers kept on public road—Unlawful obstruction, if auctioneers responsible—Noise caused in auctioning—Whether trade injurious to public health and comfort—Code of Criminal Procedure, 1898 (Act V of 1898), s. 133.

The appellants carried on the trade of auctioning vegetables in a private house in the Subzimandi quarter. The persons who brought vegetables for sale kept their carts on the public road where they caused obstruction to traffic. The noise caused by the auctioning caused discomfort to persons living in the locality. An order was passed under s. 133 of the Code of Criminal Procedure restraining auctioning vegetables in their house.

Held, that the order was not justified under s. 133 of the Code. Merely because the appellants carried on auctioning in connection with which the carts were brought, they could not be considered to have caused the obstruction. In a trade like auctioning which has to be carried on as necessary for the well being of the community some amount of noise has to be borne by the public. Section 133 was not intended to stop such trades merely because of the discomfort caused by the noise.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 79 of 1960.

Appeal by special leave from the judgment and order dated August 18, 1959, of the Allahabad High Court in Criminal Revision No. 947 of 1959.