1961

March 27.

JIVABHAI PURSHOTTAM

v.

CHHAGAN KARSON AND OTHERS

(P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

Agricultural Land—Protected tenant—Notice by landlord for termination of tenancy—Amendment of enactment—Applicability—Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVII of 1948), as amended by Amending Act XXXIII of 1952, ss. 34 (2A), 34(1).

Sub-section (2A) of s. 34 of the Bombay Tenancy and Agricultural Lands Act, 1948, as amended by the Amending Act of 1952, applied from the date when the tenancy stood terminated on expiry of the notice of ejectment served on the tenant by the landlord under s. 34(1) of the Act and not from the date of the notice.

The Amending Act could not be said to divest the landlord of any vested right since he could have none till the period of notice terminated and the tenancy came to an end.

Consequently, where the landlord gave notice of ejectment under s. 34(1) of the Act, but the Amending Act came into force before the period of notice expired the landlord could be entitled to possession only after satisfying the provisions of that subsection.

Durlabbhai Fakirbhai v. *Jhaverbhai Bhikabhai*, (1956) 58 Bom. L. R. 85, referred to.

Jeebankrishna Chakrabarti v. *Abdul Kader Choudhuri*, (1933) I.L.R. LX Cal. 1037, distinguished.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 153 of 1958.

Appeal by special leave from the judgment and order dated January 9, 1956, of the Bombay High Court in Special Civil Application No. 2258 of 1955.

J. B. Dadachanji, S. N. Andley, and *Rameshwar Nath*, for the appellant.

S. P. Sinha, M. I. Khowaja and *A. C. Dave*, for respondent No. 1.

1961. March 27. The Judgment of the Court was delivered by

WANCHOO, J.—This appeal by special leave against the judgment of the Bombay High Court raises a question of the interpretation of s. 34 (2-A) of the

Bombay Tenancy and Agricultural Lands Act, No. LXVII of 1948 (hereinafter called the Act). The brief facts necessary for present purposes are these: The appellant is the landlord and the respondent a protected tenant. The appellant gave notice of termination of tenancy to the respondent on December 31, 1951, under s. 34(1) of the Act. The notice was for one year as required by s. 34(1) and the tenancy was to terminate from after March 31, 1953. The landlord therefore made an application on April 7, 1953, under s. 29(2) of the Act for obtaining possession of the land to the Mamlatdar. In the meantime, an amendment was made to the Act by the insertion of sub-s. (2-A) to s. 34 by the Amending Act No. XXXIII of 1952, which came into force on January 12, 1953. By this amendment certain further restrictions were placed on the right of the landlord to terminate the tenancy of a protected tenant. The relevant part of sub-s. (2-A) is in these terms:—

"If the landlord *bona fide* requires the land for any of the purposes specified in sub-section (1) then his right to terminate the tenancy shall be subject to the following conditions, namely—

(1) The land held by the protected tenant on lease stands in the record of rights in the name of the landlord on the first day of January, 1952, as the superior holder.

(2) If the land held by the landlord is in area equal to the agricultural holding or less, the landlord shall be entitled to terminate the tenancy of the protected tenant, in respect of the entire area of such land.

(3) If the land held by the landlord is more than the agricultural holding in area, the right of the landlord to terminate the tenancy of the protected tenant shall be limited to an area which shall, after such termination, leave with the tenant half the area of the land leased.

(4) The tenancy in respect of the land left with the protected tenant after termination under this section shall not at any time be liable to be terminated on the ground that the landlord *bona fide*

1961

Jivabhai Purshottam v. Chhagan Karson & Others

Wanchoo J.

requires the said land for any of the purposes specified in sub-section (1).

Explanation.—The "agricultural holding" shall mean sixteen acres of jirayat land or four acres of irrigated or paddy or rice land, or lands greater or less in area than the aforesaid areas in the same proportion:

....."

The restriction contained in sub-s. (2-A) is in addition to the restrictions in sub-s. (2), which lays down that the landlord shall have no right to terminate the tenancy of a protected tenant, if the landlord at the date on which the notice is given or at the date on which the notice expires has been cultivating personally other land fifty acres or more in area, provided that if the land which is being cultivated personally is less than fifty acres, the right of the landlord to terminate the tenancy of the protected tenant and to take possession of the land leased to him shall be limited to such area as will be sufficient to make the area of the land which he has been cultivating to the extent of fifty acres.

When therefore the landlord applied for possession of the land under s. 29(2) of the Act, the tenant objected andclaimed the benefit of the third clause of sub-s. (2-A), and the question that arose for determination was whether the tenant was entitled to the protection contained in this clause .The Mamlatdar to whom the application under s. 29 (2) was made allowed the application. The respondent thereupon appealed but his appeal was dismissed. He then went in revision to the Revenue Tribunal, which was rejected. The tenant then filed an application under Art. 227 of the Constitution before the High Court and contended that the provision of s. 34(2-A) should have been taken into consideration by the Revenue Courts in deciding the application of the landlord under s. 29(2) and that the revenue courts were wrong in the view they had taken that that sub-section did not apply to the present proceedings. The High Court allowed the application of the tenant, relying on its previous Full-Bench decision in *Durlabbhai Fakirbhai* v. *Jhaverbhai Bhikabhai* (1), where it was held that as the tenancy had

(1) (1956) 58 Bom. L.R. 85.

terminated and the right to obtain possession had accrued to the landlord after the coming into force of the Amending Act, the Amending Act applied and therefore the landlord, if he fails to satisfy the further conditions under the Amending Act, would not be entitled to possession. It further held that the Amending Act would apply to all proceedings where the period of notice had expired after the Amending Act had come into force and that what the Amending Act did was that it imposed a new limitation on the right of the landlord to obtain possession and if the landlord failed to satisfy the court at the date when the tenancy expired and he became entitled to possession that he was so entitled in law as it then stood, he could not claim relief from the court. It is the correctness of this view which is being challenged before us in the present appeal.

The contention on behalf of the appellant is that s. 34(1) gives a right to the landlord to terminate the tenancy by one year's notice, which was given in this case in December 1951 before the Amending Act came into force. Therefore the notice having been given before the Amending Act came into force, the further limitation put on the right of the landlord by sub-s. (2-A), introduced by the Amending Act, would not apply to notices given before the Amending Act came into force. The appellant further contends that the right to terminate a tenancy having arisen when the notice was given, the law to be applied, in case of notices given before the Amending Act came into force, would be the law existing on the date of notice.

We are of opinion that there is no force in this contention. If we look at the words of sub-s. (2-A), it provides certain conditions subject to which the right to terminate the tenancy shall be exercised. It may be that s. 34(1) requires one year's notice in order to exercise this right to terminate, but sub-s. (2-A) imposes restrictions on the landlord's right to terminate the tenancy and does not speak of any notice at all. Therefore, when we have to look to the application of sub-s. (2-A) it is the date on which

1961

Jivabhai Purshottam v. Chhagan Karson & Others

Wanchoo J.

the tenancy terminates which detemines its application. The restriction by sub-s. (2-A) is on the right to terminate the tenancy and this restriction would come into play on the day on which the landlord's right to terminate the tenancy is perfected, namely, the day on which the tenancy actually terminates in consequence of the notice given to terminate it. A notice under s. 34(1) is merely a declaration to the tenant of the intention of the landlord to terminate the tenancy; but it is always open to the landlord not to carry out his intention. Therefore, for the application of the restriction under sub-s. (2-A) on the right of the landlord to terminate the tenancy, the crucial date is not the date of notice but the date on which the right to terminate matures, that is, the date on which the tenancy stands terminated. It is on that date that the court has to enforce the right of the landlord arising out of the notice of termination and therefore the court has to see whether the termination is in accordance with the restrictions imposed by sub-s. (2-A) on the date the right is to be enforced.

Nor are we impressed by the argument that by applying sub-s. (2-A) to notices issued before the Amending Act came into force we would be taking away the vested right of the landlord. As we have already pointed out, the notice under s. 34 (1) is merely a declaration to the tenant of the landlord's intention to terminate the tenancy and no further proceedings may be taken by the landlord in consequence thereof. It is only when the period of notice has expired and the tenancy has terminated that the landlord acquires a vested right to obtain possession of the land. Therefore, the Amending Act did not affect any vested right of the landlords till the tenancy actually stood terminated after the expiry of the notice. Consequently, the provisions of the Amending Act which came into force before the tenancy stood terminated by the notice will have to be taken into consideration in determining the right of the landlord in the matter of the termination of tenancy, for the Amending Act put certain fetters on this right of termination. In the circumstances, we are of opinion

that the view taken by the High Court is correct and sub-s. (2-A) would apply to all cases where notices might have been given but where the tenancy had not actually terminated before the coming into force of the Amending Act.

This view, which appears to us to be plain enough on the words of sub-s. (2-A), is further enforced by another consideration, even if there is any doubt as to the meaning of sub-s. (2-A). That consideration is that the Amending Act is a piece of beneficent legislation meant for the protection of tenants. Therefore, if there is any doubt about the meaning of sub-s. (2-A) that doubt should be resolved in favour of the tenant, for whose benefit the Amending Act was passed. In this view it is obvious that the legislature could not have intended that the benefit of this beneficent measure should not be extended to tenants in whose cases the tenancy had not yet terminated, though notices had been given, when the further restrictions were being put on the right to terminate the tenancy.

Learned counsel for the appellant has drawn our attention in this connection to *Jeebankrishna Chakrabarti* v. *Abdul Kader Chaudhuri* (1). In that case, the Bengal Tenancy Act was amended and the amendment provided that a tenant would be liable to ejectment on one year's notice by the landlord. The earlier law provided for a notice of ejectment but did not provide that the notice should be for one year; it provided no period of notice whatsoever and it was sufficient under it to give notice expiring with the end of an agricultural year in order to effect ejectment, howsoever short might be the period of notice. The question therefore arose whether the amendment applied to notices given under the old law, and the Calcutta High Court held that it did not. The circumstances under which that decision was given are entirely different from the circumstances of the present case. In that case the contents of notice were changed; while formerly what was required was a notice without any particular period, the amendment required a notice of one year. There was no provision in the

(1) (1933) I.L.R. LX Cal. 1037.

1961

Jivabhai Purshottam v. Chhagan Karson & Others

Wanchoo J.

Amending Act making notices which were in accordance with the previous law ineffective. In these circumstances the Calcutta High Court was right in holding that the amendment did not affect notices already given. No such question however arises in the present case. The period of notice is the same before and after the amendment in the present case, and what we have to see is whether the crucial date for the application of the new sub-section (2-A) is the date of the notice or the date of the termination of the tenancy. We have already held that that date must be the date of the termination of the tenancy. In the circumstances the appeal fails and is hereby dismissed with costs.

Appeal dismissed.

1961

March 27.

DARYAO AND OTHERS

v.

THE STATE OF U. P. AND OTHERS

(and Connected Petitions)

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. N. WANCHOO, K. C. DAS GUPTA and N. RAJAGOPALA AYYANGAR, JJ.)

Fundamental Right—Res judicata—Dismissal of writ petition by High Court—If and when bar to petition in Supreme Court—Constitution of India, Arts. 32, 226.

Where the High Court dismisses a writ petition under Art. 226 of the Constitution after hearing the matter on the merits on the ground that no fundamental right was proved or contravened or that its contravention was constitutionally justified, a subsequent petition to the Supreme Court under Art. 32 of the Constitution on the same facts and for the same reliefs filed by the same party would be barred by the general principle of *res judicata*.

There is no substance in the plea that the judgment of the High Court cannot be treated as *res judicata* because it cannot