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decided by ordinary litigation. We cannot accept the position that it is left to the petitioner's choice and option to decide which remedy he will adopt. This is clearly a case where an alternative adequate and efficacious remedy is open to the petitioner. This is clearly a case where the decision of the petitioner's right by the ordinary procedure in the Courts of law will in no way prejudice him, and therefore we do not think that we should exercise our special jurisdiction under art. 226 to issue a writ, even assuming that the petitioner's contention is right that the Act is unconstitutional.

The result is that the petition fails and is dismissed with costs.

Rule discharged.

K. B. S.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Bhagwati.

1952 *Aug.* 26

MALLIKARJUN BHAVANI TIRUMALE *v.* SATYANARAYAN LAXMINARAYAN HEGDE AND OTHERS.*

Bombay Tenancy and Agricultural Lands Act (Bom. LXVII of 1948), ss. 24, 25, 29—Tenant committing default in payment of rent—Application by landlord for recovery of possession—No provision in Act for notice of termination of tenancy before making application—Bombay Revenue Tribunal taking contrary view—Error in decision apparent on face of record—Jurisdiction of High Court to correct error by writ of certiorari.

Where the decision of a Tribunal is merely erroneous, the High Court cannot interfere however erroneous that decision may be; but if its decision is vitiated by an error apparent on the face of the record, then the High Court would correct it by a writ of *certiorari*.

Perry and Co. Ltd. v. *Commercial Employee's Association, Madras*,[1] referred to.

There is no provision in the Bombay Tenancy and Agricultural Lands Act, 1948, which makes it incumbent upon the landlord to give notice of termination of the tenancy when the tenant fails to pay rent. If, therefore, the Tribunal, importing into the Act its own ideas of what is reasonable, holds such notice to be necessary to enable the landlord to make an application to the Mamlatdar under s. 29 of the Act, its decision is manifestly wrong and the error is patent inasmuch as the Tribunal acts in conscious violation of the Tenancy Act and its provisions.

* Special Civil Application No. 319 of 1952.

[1] (1952) 3 S. C. R. 519.

APPLICATION under art. 227 of the Constitution of India for a writ of *certiorari* to quash the orders of the Bombay Revenue Tribunal and the Collector and to restore that of the Mamlatdar.

Mallikarjun (applicant) was the owner of several lands situate at Puttanmane in Sirsi taluka of North Kanara district. One Satyanarayan (opponent) held the said lands as a Mulgeni tenant of the applicant under a Mulgeni lease, dated February 27, 1950. While he was so holding the lands, he failed to pay rent thereof for three years, viz. 1946-47, 1947-48 and 1948-49. The Mulgeni lease contained a forfeiture clause under which the opponent was bound upon such default to deliver possession to the applicant.

On August 22, 1949, the applicant applied to the Joint Mamlatdar at Sirsi under s. 29 (2) of the Bombay Tenancy and Agricultural Lands Act, 1948, for taking possession of the lands. The opponent *inter alia* contended that the application was not maintainable as his tenancy was not duly terminated by giving him a notice.

The Mamlatdar held that there was no provision in the Act for compulsory notice except s. 34, and, therefore, on September 27, 1949, he granted the application.

On appeal, the Collector of Kanara set aside the order on August 2, 1950, on the ground that the tenancy had not been terminated by due notice.

Thereupon the applicant applied in revision to the Bombay Revenue Tribunal which by its order, dated August 30, 1951, confirmed the Collector's decision.

On November 28, 1951, the applicant applied under art. 227 of the Constitution of India and prayed that the orders of the Tribunal and the Collector may be set aside and that of the Mamlatdar should be restored by issuing a writ of *certiorari* or and other suitable writ.

The application was heard.

G. N. Vaidya, for the petitioner.

G. P. Murdeshwar, for opponent No. 1.

H. M. Choksi, Government Pleader, for opponents Nos. 2 to 4.

CHAGLA C. J. Opponent No. 1 became a tenant of the petitioner under a mulgeni lease, dated February 27, 1915. Under this lease it was provided that if the tenant was in

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arrears of rent the landlord would be entitled to terminate the lease and enter into possession. Admittedly on February 13, 1949, the first opponent was in arrears of rent for three years and he was also in arrears of rent on May 5, 1949, for three years, May 5, 1949, being the material date to consider under the provisions of s. 14 (*1*) (*a*) (*i*) of the Tenancy Act. On August 22, 1949, the landlord, the petitioner, made an application to the Mamlatdar for possession, and on September 27, 1949, the Mamlatdar ordered possession to the landlord. The tenant went to the Collector and the Collector reversed the order of the Mamlatdar on August 2, 1950. There was a revision application to the Tribunal and the Tribunal confirmed the Collector's order. In doing so it followed its earlier decision given on April 23, 1951, where the applicant was one Venkar Narayan Mahajan.

Now, the question that arises on this petition is whether the decision of the Tribunal is merely erroneous in law or whether there is an error apparent on the face of the record. Mr. Murdeshwar with his usual vigour has strongly urged upon us that if we decide against the first opponent and against the Tribunal we will be going contrary to the decision of the Supreme Court and we run the risk of being corrected by the Supreme Court. Our attention has been drawn to the decision of the Supreme Court in *Parry and Co. Ltd* v. *Commercial Employee's Association, Madras,*[1] and the observations of Mr. Justice Mukherjee at page 524 are, with respect, observations which this Court has always accepted as the correct law on the question of *certiorari,* and the observations are to the effect that when a Court with jurisdiction erroneously decides a matter that Court or Tribunal cannot be corrected by a writ of *certiorari.* But Mr. Justice Mukherjee, again with respect, rightly points out the distinction between an erroneous decision and a decision of a Tribunal where an error is apparent on the face of the record. Therefore, as we said before, the question here is whether the decision of the Tribunal is erroneous or it is a decision which is vitiated by the fact that there is an error apparent on the face of its record. If the decision is merely erroneous, Mr. Murdeshwar is right that we should not interfere, however erroneous that decision may be. On the other hand, if we are satisfied that there is an error apparent on the face of the record, then it would be our duty to interfere.

[1] [1952] 3 S. C. R. 519.

Now, what the Tribunal says is this. It accepts the finding of fact that the tenant was in arrears for three years, it accepts the right of the landlord to terminate the tenancy, but what it says is that the landlord was not entitled to get an order of possession because the landlord gave no notice to the tenant. As we shall presently point out, there is no provision in the Tenancy Act which makes it incumbent upon the landlord to give notice of termination of the tenancy when the tenant has failed to pay rent. On the contrary, it is clear from the provisions of the Tenancy Act that the Legislature did not intend that the landlord should give notice when he was seeking to resume possession of the demised land on the ground that the tenant had failed to pay rent. The relevant provisions of the Act on this question are to be found first in s. 14 (*1*) which provides:

"Notwithstanding any agreement, usage, decree or order of a Court of law, the tenancy of any land held by a tenant shall not be terminated unless such tenant....."

and cl. (*a*) (*i*) provides for failure to pay rent in the manner laid down in that clause, and it is common ground that the tenant has failed to pay rent as required by s. 14 (*1*) (*a*) (*i*). Then s. 24 provides for relief against termination of tenancy in certain cases, and that section lays down that when the tenant has done any act which is destructive or permanently injurious to the land, no proceeding for ejectment against such tenant shall lie unless and until the landlord has served on the tenant a notice in writing specifying the act of destruction or injury complained of and the tenant fails within a period of one year from the service of notice to restore the land to the condition in which it was before such destruction or injury. Therefore, the Legislature thought it fit only in this one particular case to insist upon the landlord giving a notice and giving the tenant an opportunity to restore the land to the condition in which it was before the destruction or injury complained of. It is rather significant to note that under s. 14 one of the grounds which results in the termination of the tenancy is the tenant doing any act which is destructive or permanently injurious to the land. Therefore, while s. 14 (*1*) sets out the various circumstances under which a tenancy is terminated, the Legislature has thought fit to select only one instance of the termination of the tenancy where it is made incumbent upon the landlord to serve a notice. Then s. 25 deals with reliefs against the termination of the tenancy for non-payment of rent, but no relief

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can be given where the arrears of the rent is for three years. And s. 29 (2) provides:

"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."

The landlord in this case has made an application in the prescribed form under s. 29 (2), and the view taken by the Tribunal is that his application is not maintainable inasmuch as the application was made without giving notice to the tenant. With respect to the Tribunal, it is difficult to understand where the Tribunal finds any provision in the Tenancy Act which makes it incumbent upon the landlord to give notice. In a rather curious statement of the law the Tribunal says this:

"Section 24 of the Act expressly states that in the case of a tenant's act which is destructive or permanently injurious to the land, a written ultimatum is necessary. It is reasonable to suppose that where a landlord has exercised his option to terminate the tenancy on other grounds, the landlord's intention should be communicated to the tenant. That is what is implied in s. 25 of the Act."

Now, the Tribunal has very vast powers and we are conscious of those powers, but amongst those powers is certainly not the power to legislate nor to decide cases according to its own ideas, of what is reasonable. The Tribunal is a tribunal of limited jurisdiction and its jurisdiction consists in applying the provisions of the Tenancy Act. It is also the duty of the Tribunal to hold that as just and proper which the Legislature considers as just and proper. It is not open to the Tribunal to travel outside that ambit of the Tenancy Act and decide for itself what should be done and what should not be done. In effect what the Tribunal is doing by this decision is to add to the provisions of s. 24 and insist upon the notice by the landlord in cases of non-payment of rent when the Legislature has thought fit not to require the landlord to give notice.

It may be pointed out that even apart from the Tenancy Act, looking to the general provisions of the law, the decision of the Tribunal is patently wrong. Even under the Transfer of Property Act, as this is a lease prior to 1930, a landlord would not be required to give notice for forfeiture for non-payment of rent. It is only after 1930 that such a notice would be necessary. Therefore, even if the landlord was suing under the Transfer of Property Act, he could have got an order of ejectment for non-payment of rent without notice. The Tenancy Act has made no provision for notice, and yet the Tribunal by

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trying to import its own ideas of what is right and proper has imposed a condition upon the right of the landlord to maintain an application under s. 29 which finds no place whatever in the Act.

Therefore, in our opinion, the decision of the Tribunal is not merely erroneous, but its record contains an error which is apparent on the face of it. It is manifestly wrong decision and the error is patent inasmuch as the Tribunal has acted in conscious violation of the Tenancy Act and its provisions. Under the circumstances we think we are perfectly justified in interfering by a writ of *certiorari*.

We would, therefore, issue a writ of *certiorari*, quash the order of the Tribunal, and restore the order of the Mamlatdar. Opponent No. 1 to pay the costs. Government pleader to bear his own costs.

Rule absolute.

M. W. P.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Shah.

1952
Sept. 22

WALCHANDNAGAR INDUSTRIES LIMITED AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS *v.* RATANCHAND KHIMCHAND MOTISHAW (ORIGINAL PLAINTIFF), RESPONDENT.*

Indian Companies Act (VII of 1913), s. 86F—Director of company entering into petty contract of purchase with company—Consent of Board of Directors to particular contract not obtained—Action taken against contracting Director for contravention of section—Director relying upon prior resolution of Board giving general consent—Whether consent contemplated by s. 86F must be specific—Remedial nature of section—Canons of construction.

The consent of directors contemplated by s. 86F of the Indian Companies Act, 1913, is not a general consent but one which is referable to a particular or a specific contract or contracts. The Board of Directors must consider both the nature of the contract and the case of the particular director who wants to enter into that contract before the consent is given. Consent within the meaning of the section can be given only after a consideration of both the factors, viz. the nature of the contract and the qualifications of the director concerned.

Tyler v. *Ferris*,[1] distinguished.

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* First Appeal No. 566 of 1952.

[1] [1906] 1 K. B. 94.