APPELLATE CIVIL

Before Mr. Justice Gajendragadkar

SUBRAYA RAM BHATTA, APPLICANT (ORIGINAL PLAINTIFF) *v.* PYARA KRISHNA GOUDA, AND ANOTHER, OPPONENTS, (ORIGINAL DEFENDANTS).* 1955 Sept. 22

Bombay Tenancy and Agricultural Lands Act (Bom. Act LXVII of 1948), ss. 2 (15), 6, 7, 10, 12, 70 and 85—Bombay Tenancy and Agricultural Lands Rules 1949, rr. 8, 9 and Form 3—Landlord's Suit for recovery of arrears of rent of agricultural land—Whether Civil Court can try such a Suit—Tenant's plea that the rent is not reasonable—Whether such a plea valid in respect of arrears of rent—Whether Civil Court can determine such a plea?

Where in a suit filed by a landlord against his tenant on Feb. 2, 1953, for recovery of arrears of rent of agricultural land for the years 1950-1951 and 1951-1952, the tenant contended that the rent as claimed by the landlord was not 'reasonable' and that the Civil Court had no jurisdiction to try the suit;

Held, that a landlord's claim to recover arrears of rent in respect of agricultural land can be entertained by a Civil Court inasmuch as there is no provision in s. 70 of Bombay Tenancy and Agricultural Lands Act authorising and requiring the Mamlatdar to deal with the question of the recovery of arrears of rent; nor is it barred under s. 85 of the said Act.

Held, however, that the suit cannot be poceeded with in a Civil Court till 'reasonable rent' in respect of the land is determined by the Mamlatdar under s. 12 of the said Act.

In view of the provisions of s. 7 there is no justification whatever for excluding the jurisdiction of the Civil Courts to entertain a plea that the rent claimed by the landlord is unreasonable and that the landlord should be allowed to claim only for such rent as may be deemed to be 'reasonable'. But having regard to the provisions of ss. 12, 70 (*g*) and 85 of the Act, a Civil Court cannot deal with the question of the 'reasonableness' of the rent. The only mode for determining 'reasonable rent' permissible under the Act is by invoking the provisions of ss. 12 and 70 (*g*) of the Act.

Held, that an application for the determination of 'reasonable rent' under s. 12 of the Act may be made not only with respect to future but also past rent.

Chimanlal Dipchand v. *Bombay State*,[1] *Jorawarkhanji* v. *Bombay State*,[2] *Tukaram Kashiram* v. *Jyotiba Fakirappa*,[3] *Anant Madhavrav* v. *Basappa Shidgouda*,[4] referred to.

Civil Revision Application against the decision of V. D. Puned, Esquire, Civil Judge, Junior Division at Honavar.

Small Cause Suit for recovery of arrears of rent.

The material facts are stated in the Judgment.

---

*Civil Revision Application No. 1598 of 1953.

1. (1953) 56 Bom. L. R. 321.
2. (1954) 56 Bom. L. R. 662.
3. (1952) Civil Revision Application No. 465 of 1951 decided by Chagla C. J., on June 18, 1952 (unrep.).
4. (1955) Second Appeal No. 120 of 1953 decided by Dixit J., on June 22, 1955 (unrep.).

1955

SUBRAYYA RAM v. PYARA-KRISHNA GOUDA

Gajendra-gadkar J.

G. N. Vaidya, for the Applicant.

H. B. Datar, Amicus Curiae, for the Opponents.

Gajendragadkar J.—The plaintiff's suit to recover Rs. 186-8-0 from his tenants as arrears of rent for the years 1950-51 and 1951-52 has been dismissed by the learned trial Judge on the ground that the Civil Court has no jurisdiction to entertain the claim. The lands in question are survey Nos. 109, 116 and 265 of Mavinkurve village and the plaintiff's case was that they had been let out to the tenants for cultivation and the tenants were liable to pay the amount claimed by him by way of arrears of rent. The plea raised by the defendants against this claim was that a suit to recover arrears of rent in respect of agricultural lands could not be tried by a Civil Court and this plea has been upheld by the learned trial Judge. The view taken by the learned Judge that a claim for arrears of rent due in respect of agricultural lands cannot be entertained in a Civil Court is challenged before me by Mr. Vaidya on behalf of the landlord in the present revisional application.

Mr. Vaidya contends that the learned Judge has misconstrued the provisions of ss. 70 and 85 of the Bombay Tenancy and Agricultural Lands Act (Act LXVII of 1948). There can be no doubt that, before a Civil Court comes to the conclusion that its jurisdiction to entertain a civil action is ousted, the Court must be satisfied that there are provisions contained in any Act whch expressly oust its jurisdiction in respect of any given matters. Under s. 70 of the Tenancy Act, the duties of the Mamlatdar are enumerated and s. 85 provides for a bar of jurisdiction of the Civil Court. Under sub-s. (*1*) of s. 85, Civil Courts are precluded from settling, deciding or dealing with any question which is by or under the Act required to be settled, decided or dealt with by the Mamlatdar. The result of reading ss. 70 and 85 together would, therefore, be that all matters which are left, and are required, to be determined by the Mamlatdar under s. 70 would be excluded from the jurisdiction of the Civil Courts under s. 85. Mr. Vaidya concedes this position. But he argues that amongst the matters enumerated under s. 70 cannot be included the dispute which has given rise to the landlord's present suit. It is no doubt true that s. 70, sub-cl. (*g*) requires the Mamlatdar to decide what is the reasonable rent under s. 12. But there is no provision in s. 70 which authorises and requires the Mamlatdar to deal with the question of the recovery of arrears of rent by the landlord from his tenant, and unless the subject-matter of the present suit is expressly included within the duties assigned to the Mamlatdar under s. 70 of the Act it would not be possible to invoke the provisions of s. 85, sub-s. (*1*) in respect of such subject-matter and a suit in which a claim in regard to such

subject-matter is made would naturally fall within the jurisdiction of the civil court. In my opinion, therefore, Mr. Vaidya is entitled to succeed in his contention that a claim to recover arrears of rent in respect of an agricultural land made by the landlord against his tenant can be entertained by a Civil Court.

That, however, is not the end of the landlord's difficulties. After the suit is entertained, it is necessary to determine the merits of another point at issue between the parties. The tenants pleaded that the claim of the landlord for the recovery of arrears is unreasonable inasmuch as the said claim is made on the basis of annual rent which is not reasonable; and the question which this plea raises again touches the problem of jurisdiction of a Civil Court. Mr. H. B. Datar, who at my request has appeared *amicus curiae* on behalf of the tenants, argued that it is open to the tenant to contend under s. 7 that the rent claimed by the landlord is unreasonable; and Mr. Datar's argument is that the question raised by this plea must be determined by the special Court under s. 70 of the Act. In other words, a suit for the recovery of arrears of rent can no doubt be entertained by the Civil Court; but before the Civil Court passes a decree in favour of the plaintiff, the Civil Court must require the parties to get a decision from the special court on the question as to whether the rent claimed by the landlord from his tenant is reasonable or not. As I have already indicated, under s. 70 sub-cl. (*g*) it is for the Mamlatdar to determine the amount of reasonable rent under s. 12 of the Act. Mr. Vaidya, on the other hand, argues that the plea by which the tenant challenges the reasonableness of the rent cannot be raised in a suit for recovery of arrears of rent like the present. His argument is that the determination of reasonable rent under s. 12 of the Act must always be prospective, and if reasonable rent is not determined in advance it would not be open to the tenant to resist the landlord's claim to recover arrears of rent by raising the plea that the rent claimed is unreasonable. It is this argument which calls for a closer examination in the present revisional application. I have not been referred to any decision of this court where this argument has been examined, though three judgments have been cited before me in which certain observations are made bearing on this point. I am told that in some of its judgments the Revenue Tribunal has taken the view that reasonable rent cannot be determined retrospectively. That is why I propose to deal with this question at some length.

Mr. Vaidya relies upon the relevant provisions of the Act in the matter of determining reasonable rent in support of his argument that the determination of reasonable rent must inevitably be prospective. It would be convenient to examine the sections on which this argument is based in the first instance,

1955

SUBRAYYA RAM v. PYARA-KRISHNA GOUDA

Gajendra-gadkar J.

"Reasonable rent" as defined under s. 2, sub-s. (*15*) means "the rent determined under s. 12". It would be noticed that the definition of the expression "reasonable rent" does not purport either to define or to describe what can be regarded as reasonable rent in general terms. The method adopted by the Legislature in defining the expression "reasonable rent" is somewhat unusual and is purely artificial. Legislature was conscious that it would not be possible to give a general description of what reasonable rent should mean for the purposes of the Act. It has, therefore, defined the expression "reasonable rent" by referring to the actual decision which the special Court may reach in respect of each tenancy in the light of facts relevant to the land covered by the said tenancy. Since the definition of the expression "reasonable rent" in terms refers to the determination of the said question under s. 12, it would be relevant to consider s. 12. Section 12, sub-s. (*1*) provides for the making of an application either by the landlord or by the tenant for the determination of reasonable rent. Sub-section (*2*) provides for the issue of notice to the landlord or the tenant, as the case may be, and for the holding of an enquiry for the purpose of determining the reasonable rent of the land. Sub-section (*3*) refers to the factors which the Mamlatdar is required to take into account in determining the reasonable rent. Sub-section (*5*) then lays down that every order passed by the Mamlatdar under s. 12, if not appealed against, shall hold good for a period of five years and shall not be called in question during that period. The proviso to sub-s. (*5*) authorises the Mamlatdar to reduce the period during which his order should be in operation. Mr. Vaidya contends that the effect of sub-s. (*5*) read along with the proviso to the said sub-section appears to be that the operation of the order passed by the Mamlatdar under s. 12 should be prospective, and *prima facie* that does appear to be so. Mr. Vaidya has also relied upon the form prescribed for an application to be made under s. 12. This form has been prescribed under r. 8 and it is Form No. 3. It may be conceded that the form *prima facie* appears to be for the determination of a reasonable rent in cases where the rent has not already accrued due. Rule 9 provides for other factors which have to be taken into consideration by the Mamlatdar for determining reasonable rent, and, according to Mr. Vaidya, it would not be possible for the Mamlatdar to take into account those additional factors if he was called upon to consider what the reasonable rent of any given land was in the past. Confining himself to the scheme contemplated by the Act for the determination of reasonable rent as evidenced by s. 12 and the rules framed under the Act, Mr. Vaidya argues that the Act seems to require either the landlord or the tenant to apply for the determination of reasonable rent in advance, and if that be the scheme of the

Act and the effect of the relevant provisions bearing on this point, Mr. Vaidya seeks to derive strength to his argument that the plea about the unreasonableness of rent cannot be allowed to be raised under s. 7 where the landlord seeks to recover arrears of rent. The rent which is the subject-matter of the landlord's claim has already accrued due, and since no step was taken either by the landlord or by the tenant to get the reasonableness of the said rent determined in proper time, it is no longer open to the tenant to contend that the rent which has accrued due is unreasonable and so the reasonable amount of rent should be determined by the Mamlatdar. The argument thus presented appears no doubt to be attractive at first blush. But, in deciding the validity of this argument, it would be relevant and necessary to bear in mind certain other provisions of the Act. I have already mentioned that a claim to recover arrears of rent has not been left to be determined by the special court constituted under the Act. Such a claim must, therefore, continue to be entertained by Civil Courts. When a claim to recover arrears of rent is entertained by Civil Courts, the Civil Courts will have to bear in mind two important provisions which are contained in ss. 6 and 7 of the Act. Section 6 provides for the maximum rent notwithstanding any agreement, usage, decree or order of a court or any law to the contrary. In other words, s. 6, sub-s. (*1*) fixes a ceiling in the matter of rent and does not allow the landlord to recover rent in any case exceeding the maximum thus prescribed. That is one limit provided by s. 6, sub-s. (*1*). If a suit is brought by a landlord to recover arrears of rent, the tenant would be entitled to contend that the claim offends against the provisions of s. 6, sub-s. (*1*), and if the plea succeeds the landlord's claim would have to be proportionately reduced. In other words, the maximum prescribed under s. 6, sub-s. (*1*) could be invoked by the tenant even where he is resisting the claim of the landlord for recovery of arrears of rent. This position cannot be, and has not been, disputed before me. Legislature has provided another safeguard to the tenant and that is contained in the provisions of s. 7. This section provides that the rent payable by a tenant shall, subject to the maximum rate fixed under s. 6, be the rent agreed upon between such tenant and his landlord, or in the absence of any such agreement the rent payable according to the usage of the locality, or if there is no such agreement or usage, or where there is a dispute as regards the reasonableness of the rent payable according to such agreement or usage, be the reasonable rent. This section can be invoked by the tenant even in cases where the rent claimed by the landlord does not offend against s. 6, sub-s. (*1*). Even if the rent claimed by the landlord may be less than the maximum prescribed by s. 6, sub-s. (*1*), the tenant can still resist the landlord's claim on the ground that the rent claimed is not

1955

SUBRAYYA RAM v. PYARA-KRISHNA GOUDA

Gajendra-gadkar J.

reasonable. Looking at the plain words used in s. 7, I see no justification whatever for excluding the jurisdiction of the Civil Courts to entertain a plea that the rent claimed by the landlord is unreasonable and that the landlord should be given a decree only for such rent as may be deemed to be reasonable. In appreciating the argument that a plea about the unreasonableness of rent cannot be raised in a suit for the recovery of arrears of rent, it is important to remember that the claim to recover arrears of rent continues to be justiciable in the ordinary Civil Courts of the State; and the words used in s. 7 do not warrant the assumption that the right given to the tenant to challenge the reasonableness of the rent is not available to him on the ground that the rent has already accrued due and the tenant has failed to get a reasonable rent determined under the provisions of s. 12 of the Act. Mr. Vaidya fairly concedes that the other pleas contemplated by s. 7 can be raised by the tenant even in respect of a claim for arrears of rent. But his argument is that the rent claimed by the landlord by way of arrears cannot be challenged on the ground that it is unreasonable because the only section under which the reasonable rent can be determined is s. 12 and the determination of reasonable rent under s. 12 is intended to be prospective. In my opinion, this argument is not sound. The scheme of ss. 6 and 7 appears to me to be plain beyond words. Two safeguards have been provided for the protection of tenants. The first safeguard flows from the provisions of s. 6, sub-s. (*1*) which prescribes the maximum; and the second safeguard flows from the pleas which a tenant can raise under s. 7 of the Act. It seems to me clear that, even where the landlord claims to recover arrears of rent, the tenant would be entitled to raise a dispute about the reasonableness of the said rent in spite of the fact that the rent claimed is less than the maximum prescribed under s. 6, sub-s. (*1*). If Mr. Vaidya's argument was sound, it may lead to this consequence, that in entertaining a suit for arrears of rent, the reasonableness of rent may have to be determined by the Civil Court itself. That, however, appears to me to be inconsistent with the scheme of the Act, particularly in the light of ss. 70 and 85, and so I am disposed to think that, where arrears of rent are claimed against a tenant in a Civil Court, it would be necessary to have a decision from the special Court on the question as to what would be reasonable rent in respect of the land in question.

The position, therefore, is that in a suit for the recovery of arrears of rent a tenant is entitled to raise the plea that the rent claimed is unreasonable and the plea would then have to be determined. The next question which falls to be considered is: By whom is this plea going to be determined? I am disposed to take the view that this plea would have to be deter-

mined by the Mamlatdar under s. 70 of the Act. In coming to this conclusion, I have been influenced by the consideration that the only mode of determining the reasonable rent permissible under the Act is by invoking the provisions of s. 12 and s. 70 (*g*) of the Act. It is true that, when a plea about the unreasonableness of rent is raised in a suit like the present and an issue is framed on that plea, the Civil Court may have to await the decision of this issue by the special Court before it proceeds to deal with the matter finally according to law. But having regard to the provisions of ss. 12, 70 (*g*) and 85 of the Act, I do not think it would be possible to hold that the Civil Court itself should deal with the question of the reasonableness of rent when the said question arises in a suit for the recovery of arrears of rent. It may be stated generally that the reasonableness of rent has been left to be determined exclusively by the special court contemplated under s. 70 and the question, whenever it arises in a suit before the Civil Court, must, therefore, be left to be determined by the said special court.

If that be the true position, the argument based solely upon the procedure prescribed by s. 12 cannot be accepted as sound. It may be conceded that in normal cases falling under s. 12 an application may be made by the landlord or the tenant for the determination of reasonable rent in future. But where the question about the reasonableness of rent falls to be considered under s. 7 in a suit filed by the landlord for the recovery of arrears of rent, the determination of the reasonable rent must inevitably be retrospective. In such a case, the Mamlatdar would have to consider the question as to what should be regarded as the reasonable rent for the years in suit, and when the Mamlatdar determines the question the Civil Court will have to take up the threads of the suit once more and pass appropriate orders in accordance with the finding made by the Mamlatdar. In my opinion, therefore, in deciding whether the determination of reasonable rent must always and in every case be prospective under s. 12, it is necessary to take into account the scheme of the relevant provisions considered as a whole. The part played by ss. 6 and 7 in this matter can hardly be exaggerated, and if ss. 6 and 7 are intended to afford protection to the tenant against a landlord's claim even for the recovery of arrears of rent, then the construction for which Mr. Vaidya contends must be rejected on the ground that the said construction would tend to make s. 7 virtually nugatory. That is why I have come to the conclusion that in the present case the tenants are entitled to raise the plea that the rent claimed by the landlord is unreasonable and that the Civil Court must stay the further hearing of the suit and direct the parties to get the question about the reasonableness of rent

1955

SUBRAYYA RAM v. PYARA-KRISHNA GOUDA

Gajendra-gadkar J.

determined by the special Court under s. 70, sub-cl. (*g*) of the Act.

In considering this point, the provisions of s. 10 may also have to be taken into account. This section provides for the refund of rent recovered by the landlord in contravention of the provisions contained in ss. 6, 7, 8 or 9 of the Act. Mr. Vaidya suggests that this section can be applied only where a reasonable rent has been determined by making an application as contemplated by s. 12 and not otherwise. If a landlord has recovered rent either privately or by instituting a suit, the provisions of s. 10 cannot be invoked against him unless before the recovery was made the reasonable rent in question had been determined by the Mamlatdar on an application properly made to him under s. 12 of the Act. That is the argument which Mr. Vaidya has pressed before me in respect of the provisions of s. 10 of the Act. I am not impressed by this argument. Section 10 would apply to the contravention of s. 6 as well as of s. 7 and for invoking the provisions of s. 10 it would not be necessary, in my opinion, that the reasonable rent should have been determined beforehand. It should be noticed that liberty is given, not only to the tenant, but also to the landlord to apply in writing to the Mamlatdar for determination of reasonable rent. But if an application is not made and the question about the reasonableness of rent remains undetermined, it does not follow that the landlord can recover rent and would not expose himself to the penalty imposed by s. 10 even after it is found that the recovery made by the landlord offends against the provisions of s. 6 or s. 7. In my opinion, therefore, the scheme of penalties contemplated by s. 10 does not support the argument urged before me by Mr. Vaidya that the determination of reasonable rent must in every case be prospective. Mr. Vaidya contends that s. 10 provides for a penalty and the penalty is normally not imposed retrospectively. But in assessing the value of this argument, it would be relevant to remember that the penalty consists only in the payment of some compensation and nothing more. Rule 7 provides that a landlord recovering rent from a tenant in contravention of the provisions of ss. 6, 7, 8 or 9, shall be liable to pay penalty to the extent of ten times the amount of rent recovered by the landlord from such tenant, but in any case not less than Rs. 50, as the Mamlatdar may determine. It is not as if for a breach of the provisions of ss. 6, 7, 8 or 9, the landlord is exposed to the risk of imprisonment. The maximum penalty to which he exposes himself by recovering from the tenant rent contrary to the provisions of the relevant section is about ten times the excess amount recovered by him. Therefore, it is not necessary to hold that s. 10 can be applied only where the reasonable rent has already been determined. Whenever a landlord recovers rent from his tenant,

he does it with the knowledge that the tenant has been given protection by the statute by enacting ss. 6, 7, 8 and 9. The landlord also knows that, in order to remove doubt, trouble or difficulty, it is open to him to apply to the Mamlatdar under s. 12 for determining the reasonable rent; and so, if without getting the reasonable rent determined by the Mamlatdar the landlord is content to recover rent from the tenant, he does it always subject to the risk involved in incurring the penalty provided by s. 10 of the Act. In my opinion, therefore, even the penalty prescribed by s. 10 is consistent with the construction of ss. 6 and 7 which I have thought reasonable to adopt.

The result is that the plea raised by the tenants must now be determined by the Mamlatdar and it is only when and after the Mamlatdar has determined the question as to what is the reasonable rent payable in respect of the lands in suit that the Civil Judge would be able to take up the suit for final disposal in accordance with law.

Before I part with this point, however, it may be relevant to refer to some decisions to which my attention was invited. In *Chimanlal Dipchand* v. *Bombay State*,[5] the validity of s. 6, sub-s. (*2*) was challenged on the ground that it constituted delegated legislation. This challenge failed and it was held by Chagla, C. J. and Dixit, J. that the provisions contained in s. 6 (*2*) were not *ultra vires* of the local Legislature. In dealing with this question, the learned Chief Justice has considered the scheme of ss. 6 and 7. He has pointed out that s. 6 prescribes the maximum beyond which a landlord cannot make a claim and he has added (p. 337) :

"There is a further concession in favour of the tenant, and possibly in favour of the landlord, and that is that if there is a dispute as to the reasonableness of the rent, then notwithstanding any agreement or usage what the tenant is liable to pay is the reasonable rent."

This observation clearly shows that the plea that the rent claimed by the landlord even by way of arrears is unreasonable can be raised under s. 7. To the same effect are the observations made by the learned Chief Justice in *Jorawarkhanji* v. *Bombay State*[6] which was decided by the learned Chief Justice and Mr. Justice Tendolkar.

"Reading ss. 6, 7 and 8 together,"

observed the learned Chief Justice,

"it is clear that the landlord is entitled to receive the maximum rent fixed under s. 6 (*2*) subject to its being reduced on the ground that it is not reasonable." (p. 668).

That again shows that s. 7 applies to claims for arrears of rent and a plea that a given claim is unreasonable can be raised by the tenant even though the rent claimed has already accrued due. Section 6 appears to have been similarly construed by

5. (1953) 56 Bom. L. R. 321.
6. (1954) 56 Bom. L. R. 662.

1955

SUBRAYYA RAM v. PYARA-KRISHNA GOUDA

Gajendra-gadkar J.

Chagla C. J. in *Baldevdas Keshavji Patwari* v. *Bhalabhai Dayabhai Patel*[7] and *Virupaxgauda* v. *Basappa Shidlingappa*[8] Mr. Justice Dixit has likewise made similar observations in *Anant Madhavrao* v. *Basappa Shidgouda.*[9]

In the result, the revisional application must be allowed, the order dismissing the suit must be set aside, and the case sent back to the learned Judge for disposal in accordance with law in the light of this judgment.

The landlord should apply to the Mamlatdar for determination of the reasonable rent within one month from the receipt of the record in the trial Court. After this question is decided by the Mamlatdar, the parties should go back to the learned Judge and the matter should then be finally dealt with by him in accordance with law.

Rule absolute. Costs in the revisional application will be costs in the suit.

Rule absolute.

G. N. V.

7. (1952) Civil Revision Application No. 465 of 1951 decided by Chagla C. J., on June 18, 1952 (unrep.).

8. (1953) Civ. Rev. Appn. No. 1114 of 1952, decided by Chagla C. J. on November 26, 1953 (unrep.).

9. (1953) Second Appeal No. 120 of 1953 decided by Dixit J., on June 22, 1955 (unrep.).

APPELLATE CIVIL

Before Mr. Justice Dixit and Mr. Justice Vyas.

1955 *Sept.* 23

NAGAYYA GURUPADAYYA CHARANTIMATH, AND ANOTHER, PETITIONER (ORIGINAL TENANTS) *v.* CHAYAPPA SANTANAPPA HUILGOL, AND OTHERS, OPPONENTS (ORIGINAL LANDLORDS).*

Bombay Tenancy and Agricultural Lands Act—(Bom. Act LXVII of 1948), ss. 34, 76—Land required for personal cultivation—Jurisdiction of Bombay Revenue Tribunal

The Bombay Revenue Tribunal has no jurisdiction under s. 76 of the Bombay Tenancy and Agricultural Lands Act to decide the question of fact as to whether the landlord *bona fide* requires possession of land for personal cultivation under s. 34.

Where a Mamlatdar orders possession holding that land was *bona fide* required for personal cultivation and in appeal the order is set aside on another ground without considering the question as to whether the land was *bona fide* required for personal cultivation, it is not open to

*Special Civil Application No. 1567 of 1955.