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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 Vyus.

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.

the Tribunal to set aside the appellate order and restore the order of the Mamlatdar without remanding the case to the appellate authority for recording a finding on that question.

Tanubai Shiva Kirdat v. Bombay Revenue Tribunal,⁽¹⁾ and *Dhondi Fakira Mahar v. Laxmibai Narhar Joshi*,⁽²⁾ referred to.

Special Civil Application under art. 227 of the Constitution of India against the decision of the Bombay Revenue Tribunal (V. M. Joshi, Esquire and S. B. Hubli, Esquire).

The facts are fully stated in the Judgment.

H. B. Datar, for the Petitioner.

K. G. Datar, for Opponent No. 1.

Vyas J.—A short point which has arisen in this application, which is filed by the tenants under arts. 226 and 227 of the Constitution of India, may be stated in this way. There is an application filed by a landlord under s. 34 of the Bombay Tenancy & Agricultural Lands Act, 1948, before a Mamlatdar for recovering possession of his lands from his tenant for *bona fide* personal cultivation. The Mamlatdar considered certain questions of fact, including a question whether the landlord required possession of his lands for *bona fide* personal cultivation, and came to the conclusion that the landlord wanted possession of the lands for *bona fide* personal cultivation and ordered the tenant to hand over possession to him. On the tenant appealing to the Assistant Collector, the Assistant Collector disposed of the appeal only upon a preliminary point raised by the tenant, viz., whether in view of a certain entry in respect of the lands in the record of rights, the respondent before him had established that he was a landlord at all. The Assistant Collector held that the respondent had failed to establish a relationship of landlord and tenant between the parties, that therefore the provisions of the Act did not apply and that accordingly the respondent was not entitled to recover possession of the lands from the appellant. The landlord went in revision before the Bombay Revenue Tribunal and the Tribunal held that the finding of the Assistant Collector that there was no relationship of a landlord and tenant between the parties was erroneous in law and reversed the Assistant Collector's order. The effect was that the Mamlatdar's order was restored. Now, the point in these proceedings under arts. 226 and 227 is whether the finding of the Mamlatdar that the landlord wanted possession of the lands for *bona fide* personal cultivation is conclusive in this case.

Upon the application of the landlord before the Mamlatdar, the points which arose for the Mamlatdar's decision were:

(1) Whether the present applicants were protected tenants of

1. (1954) Civil Application No. 856 of 1954 decided by Chagla C. J. and Dixit J., on July 13, 1954 (unrep.).

2. (1955) Civil Application No. 381 of 1955 decided by Bavdekar & Shah JJ., on June 21, 1955 (unrep.).

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the suit lands; (2) whether proper notice terminating the tenancy was given to them by the landlord under s. 34 of the Act; (3) whether the lands were required by the landlord for *bona fide* personal cultivation and (4) whether the landlord was already cultivating 50 acres or more of land. The Mamlatdar held that the present applicants were protected tenants of the suit lands, that proper notice terminating their tenancy was given to them under s. 34 of the Act, that the lands were required by the landlord for *bona fide* personal cultivation and that the landlord was cultivating less than 50 acres of land at the date of his application. The finding with which we are at present concerned is regarding the landlord's claim that he needs to have possession of his lands because he *bona fide* wants to cultivate them personally. To this finding the Assistant Collector paid no attention and gave no consideration whatever while deciding the tenant's appeal. He disposed of the appeal solely upon a preliminary point taken by the tenant that his alleged landlord was not really his landlord at all since his name was not shown as a *kabjedar* (occupant) of these lands in the record of rights, but was shown in the column of 'other rights'. The Assistant Collector upheld that point, did not go into any question of fact and upset the order of the Mamlatdar. The aggrieved landlord appealed to the Bombay Revenue Tribunal in revision and the Tribunal in the exercise of its revisional jurisdiction, came to the conclusion that the finding of the Assistant Collector, based purely upon an entry in the record of rights which had only a presumptive value, was erroneous in law. The Tribunal observed that there were clear admissions by the respondent before them that he was a protected tenant of these lands and that these admissions were sufficient to rebut the presumption arising out of an entry in the record of rights under s. 135 J of the Land Revenue Code. In view of these admissions, the Tribunal held that the applicant before them was the landlord of the respondent and accordingly they reversed the Assistant Collector's order. This resulted in the restoration of the Mamlatdar's order.

Now, it is clear that under art. 227 every High Court has superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction and in the exercise of this power we have jurisdiction to interfere where there is an error apparent on the face of the record. In this case, we are satisfied that there is an error apparent on the face of the order of the Revenue Tribunal, in that the Revenue Tribunal overlooked an important fact that the finding of the Mamlatdar that the lands were required by the landlord for *bona fide* personal cultivation, which was a finding of fact, was not examined and considered and its correctness was not tested and determined by the Assistant Collector in

the appeal which was filed before him by the tenant. The Revenue Tribunal failed to consider that the effect of merely reversing the decision of the Assistant Collector would be to restore the finding of the Mamlatdar on a question of fact without the propriety of the said finding having been ascertained by the Assistant Collector who was a superior fact-finding authority. The Assistant Collector adopted a short-cut and though he, being an appellate authority, was a final fact-finding tribunal under the Act, he did not apply his mind at all to the material question of fact whether the possession of the lands was required by the respondent before him for *bona fide* personal cultivation. This question of fact went to the very root of the relief asked for by the landlord under s. 34 of the Act, and the decision of the Mamlatdar upon it should not have been allowed to remain as the last word on the point. The Assistant Collector, apparently in his zest to finish the appeal quickly, evidently forgot that if his view that there was no relationship of a landlord and tenant between the parties, which was based upon his interpretation of an entry in the record or rights, was reversed by the Revenue Tribunal, the finding of the Mamlatdar that the possession of the lands was wanted by the landlord for *bona fide* personal cultivation would stand untested on the record. As a final fact-finding tribunal, he should have taken due account of such a situation arising and should not have resorted to a short-cut. A short-cut is most undesirable in cases where the dispute between the parties relates to important rights to property. The result of the error on the part of the Revenue Tribunal, which error as I have said is apparent on the face of its order, has been that the tenant has been deprived of an opportunity of showing that the Mamlatdar's finding on a question of fact whether the landlord wants to recover possession of his lands for *bona fide* personal cultivation is erroneous. The tenant's contention before the Mamlatdar was that the landlord did not want possession of the lands for *bona fide* personal cultivation and there is nothing to show that the tenant had given up this contention during his appeal before the Assistant Collector. Simply because a point, which the Assistant Collector called a preliminary point, was taken by the tenant, it could not follow that the tenant had abandoned his substantial contention upon which he had resisted the landlord's application for possession, viz., that the possession was not required by the landlord for *bona fide* personal cultivation. There is also nothing to show that before the Revenue Tribunal the tenant conceded that the landlord required the lands for *bona fide* personal cultivation. It is true that before the Revenue Tribunal the tenant's advocate pressed certain two contentions which were contentions on points of law. But this would not mean that the advocate had

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expressly abandoned his client's (tenant's) important contention on a question of fact. The Revenue Tribunal, not being a fact-finding tribunal, the tenant's advocate might well have thought that if his submissions on points of law were accepted by the Tribunal, the Tribunal would remand the matter to the Assistant Collector for final determination of the question of fact whether the landlord's claim that he wanted possession of these lands for personal cultivation was a *bona fide* one. In short, there is nothing to show that either before the Assistant Collector or before the Revenue Tribunal, the tenant had abandoned his contention that the landlord's demand for possession of the lands for personal cultivation was not a *bona fide* one. It is true that the Revenue Tribunal, not being a fact-finding tribunal, could not have decided a question of fact whether the landlord wanted possession of these lands for *bona fide* personal cultivation or not. If the Assistant Collector had considered this question and had given his finding about it, then it would not have been open to the Revenue Tribunal to go behind that finding of fact and they would have been bound to accept it. As the matters stand, however, the Assistant Collector not having gone into the question at all, it was necessary in the ends of justice for the members of the Revenue Tribunal to remand the case back to the Assistant Collector for giving a finding on the important question of fact regarding the landlord requiring the possession of these lands for *bona fide* personal cultivation and for disposal according to law.

As there is an error apparent on the face of the Revenue Tribunal's order and as the said error has resulted in the denial of an opportunity to the tenant to show that the landlord does not want the possession of these lands for *bona fide* personal cultivation, it is clear that we must interfere, but the question is whether we should remand the case to the Revenue Tribunal or to the Assistant Collector. Mr. H. B. Datar for the petitioners has invited our attention to a decision of the Division Bench of this Court consisting of the learned Chief Justice and my learned brother in *Tanubai Shivakirdat v. The Bombay Revenue Tribunal*⁽³⁾ under arts. 226 and 227 of the Constitution of India. It was observed by the Court in that case that the question as to whether the landlord's requirements were *bona fide* or not was a question of fact which could only be decided by the fact-finding tribunal. The Court said that the Revenue Tribunal was not a fact-finding tribunal, its jurisdiction being limited and it being entitled to interfere only on questions of law. This view of the Court was based on the provisions of

3. (1954) Civil Application No. 856 of 1954 decided by Chagla C. J. and Dixit J., on July 13, 1954 (unrep.).

s. 76 of the Bombay Tenancy and Agricultural Lands Act, 1948, and s. 76 lays down:

“(1) Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1939, an application for revision may be made to the Bombay Revenue Tribunal constituted under the said Act against any order of the Collector on the following grounds only: (a) that the order of the Collector was contrary to law; (b) that the Collector failed to determine some material issue of law; or (c) that there was a substantial defect in following the procedure provided by this Act, which has resulted in the miscarriage of justice.”

It is clear, therefore, that under the law as contained in the Bombay Tenancy and Agricultural Lands Acts, 1948, the jurisdiction of the Bombay Revenue Tribunal is limited and it would be competent to the Revenue Tribunal to interfere with the orders passed by the subordinate tribunals only if the said orders were contrary to law or showed that some material issues of law had not been determined or if the orders disclosed that there was a substantial defect in following the procedure laid down under the Act, which defect had resulted in the miscarriage of justice. The Court directed in that case that the case be remanded to the Collector with a direction that he should decide whether the requirements of the landlords were *bona fide* as required by s. 34 of the Act.

Mr. K. G. Datar appearing for the landlord has invited our attention to another decision of a Division Bench of this Court in *Dhondi Fakira Mahar v. Laxmibai Narhar Joshi*.⁽⁴⁾ It was observed in that case that upon the facts which were proved and were set out by the Tribunal in their order, the inference as to the *bona fides* or otherwise of the requirement of the landlord would be an inference on a question of fact and not on a question of law and that accordingly the Tribunal would have no jurisdiction to interfere with the conclusion of the Prant Officer in that behalf. The Court quashed the order passed by the Revenue Tribunal and directed that the proceedings be sent back to the Tribunal with a direction under art. 227 of the Constitution that the Tribunal should proceed to hear and dispose of the revision application of the landlord according to law. The position, therefore, to which we are driven in this case is that as the Assistant Collector in his order failed to consider, and record a finding on, an important question of fact, viz., whether the landlord wanted to recover possession of the lands for *bona fide* personal cultivation, and as the Revenue Tribunal also did not remand the matter back to the Assistant Collector for recording a finding on the abovementioned question of fact, we are of the opinion that the order of the Revenue Tribunal

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4. (1955) Civil Application No. 381 of 1955 decided by Bavdekar & Shah JJ., on June 21, 1955 (unrep.).

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cannot be sustained and must be quashed. In the light of the decisions of this Court in *Tanubai Shivkirdat v. Bombay Revenue Tribunal*⁽⁵⁾ and *Dhondi Fakira Mahar v. Laxmibai Narhar Joshi*,⁽⁶⁾ we direct that the matter be sent back to the Revenue Tribunal with a direction that, if there is any point of law left to be decided in this matter, the Revenue Tribunal should decide that point of law and so far as the question of fact, viz., whether the landlord wants to recover possession of the lands for *bona fide* personal cultivation is concerned, the Revenue Tribunal will send back the case to the Assistant Collector for recording a finding on this issue and for disposal according to law.

Mr. H. B. Datar for the petitioners has contended before us that we should also give direction to the Revenue Tribunal that the matter must be sent back by them to the Assistant Collector for consideration of the question whether in respect of S. No. 518 the petitioners are ordinary tenants or protected tenants and whether the effect of the order of the Revenue Tribunal, by which order the order of the Mamlatdar is restored, is that the landlord would be entitled to recover possession of only 2 acres 14 gunthas, or 4 acres 28 gunthas, out of S. No. 515. Mr. H. B. Datar submits that, according to the order of the Mamlatdar, the landlord is entitled to recover possession of only 2 acres 14 gunthas out of S. No. 515 and not 4 acres 28 gunthas. Now, in the first place, there is nothing to show on the record that the petitioners are in possession of 4 acres 28 gunthas of land out of S. No. 515. Therefore, we are unable to accept Mr. H. B. Datar's contention that the effect of the order of the Mamlatdar, which is restored by the order of the Revenue Tribunal, is that the landlord will recover possession only of 2 acres 14 gunthas and not of 4 acres 28 gunthas out S. No. 515. So far as the other question raised by Mr. H. B. Datar for the petitioners, viz., that the petitioners are only ordinary tenants as opposed to protected tenants of S. No. 518, is concerned, it would appear that such a contention was not raised even before the Mamlatdar. It cannot now be permitted to be raised. Therefore, we do not propose to direct the Revenue Tribunal that the case should be sent back to the Assistant Collector for considering any such questions, as to whether the petitioners are statutory tenants or not in respect of S. No. 518 or whether the effect of the order of the Revenue Tribunal is that the landlord will obtain possession of only 2 acres 14 gunthas and not 4 acres 28 gunthas out of S. No. 515. The only order which we do pass is that the Bombay Revenue Tribunal will consider if there is

5. (1954) Civil Application No. 856 of 1954 decided by Chagla C. J. and Dixit J., on July 13, 1954 (unrep.).

6. (1955) Civil Applicattion No. 381 of 1955 decided by Vavdekar & Shah JJ., on June 21, 1955 (unrep.).

any point of law involved in this case which is raised by the parties and is still left undecided and will decide that point itself and so far as the question of fact regarding the landlord wanting possession of the lands for his *bona fide* personal cultivation or otherwise is concerned, the Revenue Tribunal will send back the case to the Assistant Collector for recording a finding thereon and thereafter for disposal according to law.

We make no order as to costs.

Order accordingly.

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Before Mr. Justice Dixit and Mr. Justice Vyas.

MRS. SANTAN FERNANDES (ORIGINAL APPLICANT) APPELLANT - v.
MESSRS. B. P. (INDIA) LTD. (ORIGINAL OPPOSITE PARTY),
RESPONDENTS.*

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Workmen's Compensation Act (VIII of 1923), s. 3—Workman dying of heat stroke while doing his duty when atmospheric temperature was high—Duties as a scullion requiring workman to move constantly from low atmospheric temperature to high temperature—Whether accident arose out of employment—Whether in case of accident by heat stroke exposure of workman to direct rays of the sun necessary to make employer liable for compensation—“Locality risk” arising to some extent out of natural force, effect of.

A workman who was employed as a scullion on a ship suffered from a heat-stroke and died on board the ship. The atmospheric temperature was high then but the deceased had been working under cover and the nature of his employment did not expose him directly to the rays of the Sun. In a claim for compensation under the Workmen's Compensation Act, 1923, the question was whether the accident which resulted in the death of the workman arose out of his employment,

Held, (1) that inasmuch as the nature of the workman's employment as a scullion required him to move constantly from the low temperature of a cold-storage room to the high atmospheric temperature, the accident arose out of his employment and was not due to the general weather conditions;

(ii) that the fact that the nature of the workman's employment did not expose him directly to the rays of the Sun was immaterial; and

(iii) that the risk which the workman had to encounter in the course of his employment, *viz.* the risk of exposure to a sudden variation in the temperature by reason of his having to move from a low temperature area to a high temperature area could be appropriately termed “a locality risk”. The fact that the risk itself might to a certain extent have arisen from the operation of a natural force *viz.* the high atmospheric temperature on a particular day was immaterial.