APPELLATE CIVIL

FULL BENCH

Before Mr. M. C. Chagla, Chief Justice, Mr. Justice Bavdekar, and Mr. Justice Tendolkar.

DURLABBHAI FAKIRBHAI, PETITIONER *v.* JHAVERBHAI BHIKABHAI AND ANOTHER, OPPONENTS.*

1955 Oct. 12

Bombay Tenancy and Agricultural Lands Act (Bom. LXVII of 1948), s. 34—Amending Act (Bom. XXXIII of 1952)—Landlord giving notice to tenant terminating tenancy—Amending Act coming into force before expiry of period of notice—Landlord's application for possession—Whether amending Act applicable.

A landlord gave notice to his tenant under s. 34 of the Bombay Tenancy and Agricultural Lands Act, 1948, terminating the tenancy on the ground that he required the land *bona fide* for personal cultivation. Before the expiry of the period of the notice s. 34 of the Act was amended by Bom. Act XXXIII of 1952 which placed certain further limitations upon the right of a landlord to obtain possession. In an application by the landlord to obtain possession of the land the question arose whether the amending Act applied to the facts of the case.

Held, that the cause of action having accrued to the landlord only on the termination of the tenancy, the law to be applied was the law in force at the expiry of the period of the notice and not the date of the notice itself.

Jeebankrishna Chakrabarti v. *Abdul Kader Chaudhuri*,[1] referred to.

APPLICATION under art. 227 of the Constitution of India against the decision of the Bombay Revenue Tribunal.

The facts are sufficiently set out in the judgment.

The application came on for hearing before Chagla C. J. and Desai J. who referred the question to a Full Bench.

The following is the referring judgment delivered on August 4, 1955 :—

Chagla C. J.—The landlord gave a notice, dated March 6, 1952, terminating the lease of his tenant as from the March 31, 1953, on the ground that he required the land *bona fide* for his own personal cultivation. The tenant was under a lease for ten years commencing from 1944-45. The Revenue Tribunal has confirmed the order of the Prant Officer passing an order of ejectment against the tenant, which order he passed confirming the order of the Mamlatdar.

The submission made by Mr. Bhat is that the landlord is not entitled to possession because he has not complied with certain new conditions laid down in s. 34, on the satisfaction of which alone the landlord is entitled to possession. Section 34 (*1*) provides :—

"Notwithstanding anything contained in s. 14, a landlord may terminate the tenancy of a protected tenant by giving him one year's

*Special Civil Application No. 1111 of 1955.

1. (1933) 60 Cal. 1037.

1955

DURLABBHAI FAKIRBHAI v. JHAVERBHAI BHIKABHAI

notice in writing, stating therein the reasons for such termination, if the landlord *bona fide* requires the land for any of the following purposes, namely:—

(1) for cultivating personally, or

(2) for any non-agricultural use for his own purpose."

Chagla C. J. Sub-section (2) contains a limitation upon the right of the landlord to give such notice and the opening words of that subsection are:

"Nothing in sub-s. (*1*) shall entitle the landlord to terminate the tenancy....."

and then we have cls. (*a*), (*b*) and (*c*) which lay down certain conditions. Then there is sub-s. (*2-A*) which provides :

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

and then certain conditions are set out in cls. (1), (2), (3) and (4). At the date when the notice to terminate was given by the landlord, viz., March 6, 1952, the landlord complied with the conditions laid down in s. 34, but before the tenancy terminated the Act was amended by Act XXXIII of 1952, and that Act came into force on January 12, 1953, and that amending Act imposed a further condition upon the right of the landlord to terminate the tenancy and that condition is embodied in subsection (*c*) of s. 34 (*2*). It also incorporated sub-s. (*2-A*) which made the right of the landlord to terminate the tenancy subject to the conditions laid down in sub-s. (*2-A*), and the whole contention of Mr. Bhat is that inasmuch as the amending Act came into force before the termination of the tenancy, the tenancy cannot be terminated because the new conditions imposed by the amending Act were not complied with. Now, a tenancy can only be terminated by a valid notice given by the landlord and the test as to whether the notice given by the landlord in this case was valid or not must depend upon what the law was at the date when the notice was given, viz., March 6, 1952. As we have said, it is not disputed that at the date when the landlord gave the notice it was a valid notice complying with all the conditions laid down in s. 34 as it then stood. Can it be suggested that a notice which was valid became invalid by reason of the amending Act XXXIII of 1952? Because unless the notice became invalid the natural and inevitable consequence of a valid notice must be that a tenancy must stand terminated at the expiry of that notice. Mr. Bhat says that the Court must examine whether the landlord became entitled to possession having satisfied all the conditions laid down in s. 34 and those conditions must be the conditions contained in that section at the date when the tenancy expired. Mr. Bhat says that the right to possession only arises when the tenancy comes to an end; till then the tenant is entitled to be in possession; and

therefore, when the landlords' right to possession arises, if he has not complied with the conditions of the law he cannot be given possession. It was open to the Legislature in the amending Act to have stated that the Court shall not pass an order for ejectment unless certain conditions were satisfied, or it could have stated that the landlord shall not be entitled to possession unless certain conditions were satisfied. But in the amending Act the Legislature has not chosen to say so. All that the amending Act does is, as we have pointed out, to impose certain further limitations upon the right of the landlord to terminate the tenancy and as these limitations were imposed after the landlord had exercised his right to terminate the tenancy it is impossible to give retrospective effect to this legislation and to invalidate a notice which was perfectly valid at the date when it was given. Attention might also be drawn to s. 34 (2) (*a*) which clearly expresses the intention of the Legislature that certain conditions should be satisfied not only at the date on which the notice is given but also at the date on which the notice expires. Therefore, the Legislature realised that but for this express provision in sub-s. (*2-A*) if a notice had already been given before the legislative provision came into force, the subsequent legislative provision could not invalidate the notice or interfere with the right of the landlord. It is significant that there is no similar provision in s. 34 (*2*) (*c*) on which the tenant relies in this case, and in the absence of any such provision we cannot possibly hold that s. 34 (*2*) (*c*) requires the condition to be satisfied by the landlord not only at the date when he gave notice but also at the date when the notice expired.

Mr. Bhat has drawn our attention to a judgment of a Division Bench in *Ramanlal Lallubhai* v. *Ramji Keshav*,[2] where the Bench came to consider the effect of cl. (*b*) of s. 34 (*2*) and that also imposes a limitation upon the right of the landlord to terminate a tenancy and that particular limitation is that if the tenant has become a member of a Co-operative Farming Society, so long as such tenant remains as such member the landlord is not entitled to terminate the tenancy, and in that decision the Division Bench took the view that the material date was not the date of giving the notice but the date when the tenancy was to be terminated. Mr. Bhat is perfectly entitled to rely on this decision because it supports his contention that the same principle should apply to the construction of cl. (*c*) of s. 34 (*2*). We find from the judgment that the matter does not seem to have been fully argued. Attention does not seem to have been drawn to the provisions of s. 34 (*2-A*), and Mr. Patel for the landlord also says that there are decisions of the Calcutta High

2. 1953 Special Civil Application No. 1262 of 1953 decided by Chagla C. J. and Shah J. on December 15, 1953 (unrep.)

1955

DURLABBHAI FAKIRBHAI v. JHAVERBHAI BHIKABHAI

Chagla C. J.

Court which have taken the same view as indicated in the judgment just delivered. But it is difficult for us to distinguish the earlier judgment of the Division Bench and, therefore, it is not possible for us to take a different view from the view taken by the Division Bench. All that we can do is to refer this matter to a Fuller Bench so that the question should be reconsidered and fully argued. Normally we would not have appointed a Full Bench, but we are told that a large number of cases would be governed by this decision and it also happens that the Tribunal itself has taken the view expressed in our judgment and has decided several cases on the basis of that view. Therefore, it is necessary that the law should be settled and there should not be two conflicting judgments on the record of this Court. We will, therefore, refer this matter to Full Bench.

There is another point raised by Mr. Bhat and that is that as the lease was for a period of ten years he cannot be ejected prior to the expiry of his lease. The finding of fact by the Tribunal below is that the tenant was a protected tenant and he became a protected tenant by reason of s. 3 (*a*) in the Schedule. He was a tenant on November 8, 1947, and by reason of his being a tenant on that date he is deemed to be a protected tenant within the meaning of the Act. Mr. Bhat relies on the provisions of s. 30 and his contention is that any right which he has under a contract cannot be abridged by the provisions of this Act and his contention is that as the lease is for a period of ten years that right cannot be abridged by the provisions of the law that he becomes a protected tenant. We have had occasion to point out in the past the distinction made in the Tenancy Act between an ordinary tenant and a protected tenant. A protected tenant gets certain important rights and the most important right is that whatever the duration of his lease he cannot be ejected unless the landlord satisfies the conditions laid down in s. 34; in other words, if he requires the land for his own personal use. In the case of an ordinary tenant the only right that he has is that his tenure is protected for the duration of the lease and when the lease expires he must go out and it is not necessary for the landlord to establish any personal requirement. Therefore, the rights of a protected tenant and an ordinary tenant are different and the whole policy underlying the Tenancy Act is that tenants who were on the land at a particular point of time should have protection and the protection should be for an indefinite period. If this is the benefit conferred by the law and if it is result of the law that a tenant becomes a protected tenant, is it open to the tenant to say, "I will not accept that privilege but will prefer to take the benefit and advantage of my contract with my landlord which gives me a tenure for ten years"? This raises a very interest-

ing question and we agree with Mr. Bhat that the Tribunal was in error in taking the view that this was merely a question of fact and, therefore, it was not necessary to discuss this question as the finding given by the Mamlatdar and the Prant Officer was that the tenant was a protected tenant. The contention put forward by the tenant is that a certain inference of law arises on the admitted facts. Mr. Bhat says that even if it is held as a fact that he is a protected tenant by reason of s. 30 his right to continue on the land for ten years cannot be defeated. In our opinion, with respect to the Tribunal, it was in error when it refused to consider and decide this question of law. On this point we would have remitted the matter back to the Tribunal, but we feel that as ten years have already expired and even if the tenant was to be given all the protection that he claims, he would have to give up possession. We do not think this is a proper case where interference is called for.

Therefore, as far as the finding of the Tribunal is concerned that the tenant is not entitled to take the plea by reason of the fact that he has a lease for ten years that he cannot be ejected before the expiry of that period, we do not think we will interfere with that finding of the Tribunal. On the other question about the validity of the notice, the decision must await till the Full Bench decides the question of law.

The matter was accordingly heard by a Full Bench composed of Chagla C. J., and Bavdekar and Tendulkar JJ.

I. C. Bhatt, for the Petitioner.

Rajani Patel, with *M. M. Vakil,* for Respondents.

Chagla C. J.—A very short question has been referred to this Full Bench and it arises with regard to the proper interpretation of Act XXXIII of 1952 which amended s. 34 of the Tenancy Act. A few facts which may be stated in order to appreciate the point raised are that the landlord gave a notice on March 6, 1952, to his tenant under s. 34 of the Tenancy Act on the ground that he needed the land *bona fide* for his personal cultivation. The notice was to expire on March 31, 1953. The landlord filed an application for possession under s. 29 before the Mamlatdar on April 11, 1953. The Mamlatdar granted possession, in appeal the Prant Officer confirmed the decision of the Mamlatdar, and in revision the Bombay Revenue Tribunal confirmed the order of the two lower Courts, and the matter has now come up before us on this Full Bench.

Now, when the notice was given on March 6, 1952, the conditions laid down in s. 34 which permitted the landlord to obtain possession from his tenant were satisfied. By the Amending Act XXXIII of 1952 certain further limitations were placed upon the right of the landlord to obtain possession, and when the notice terminated the tenancy on March 31, 1953, those

1955

DURLABBHAI FAKIRBHAI v. JHAVERBHAI BHIKABHAI

Chagla C. J.

limitations would not permit the landlord to obtain possession and the contention of the tenant was that the Amending Act applied to the facts of this case, that the landlord was prevented from taking possession under the provisions of the Amending Act XXXIII of 1952, and, therefore, the application of the landlord should have been dismissed. The view taken by the Revenue Tribunal was that inasmuch as the notice was given on March 6, 1952, and the Amending Act came into force subsequently on January 10, 1953, the Amending Act had no application and the landlord was entitled to succeed. The most significant fact of this case is that the Amending Act came into force before the notice of March 6, 1952, expired on March 31, 1953. The tenancy only terminated on March 31, 1953, and the right of the landlord to obtain possession only accrued to him on the termination of the tenancy, viz., March 31, 1953. At that date a law was in force which prevented the landlord to obtain possession from the tenant because certain limitations were placed upon his right to obtain possession and under those limitations the Court could not grant him possession. What is argued by Mr. Patel on behalf of the landlord is that the material date which we must consider is not the date of termination of the tenancy, March 31, 1953, but the date of the giving of the notice, viz., March 6, 1952. Therefore, the question resolves itself into a very narrow compass. For the purpose of the application of the Amended Act which is the material date, the date of the giving of the notice or the date when the tenancy terminated ?

Section 34, as the marginal note indicates, deals with the landlord's right to determine a protected tenancy and sub-s. (*1*) provides that a landlord may terminate the tenancy of a protected tenant by giving him one year's notice in writing, stating therein the reasons for such termination, if the landlord *bona fide* requires the land for any of the following purposes, namely:—(1) for cultivating personally, or (2) for any non-agricultural use for his own purpose. Therefore, s. 34 (*1*) refers to a notice as the procedure by which a landlord can determine a protected tenancy. But the right to determine the protected tenancy only arises provided he is entitled to possession under the circumstances mentioned in s. 34. Sub-section (*2*) imposes limitations upon the right of the landlord to terminate the tenancy and these limitations are set out in that sub-section. The Amending Act XXXIII of 1952 imposes one further limitation in this sub-section which was by cl. (c). The Amending Act also embodied in the original Act sub-s. (*2-A*) and that was in the following terms :

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

Therefore, sub-section (2-*A*) imposed a further restriction upon the right of the landlord to terminate the tenancy.

Mr. Patel's contention is that a valid notice having been given on March 6, 1952, unless the Amending Act was in terms retrospective it could not affect that notice. The Amending Act does not deal with the notice at all. It deals with the right of the landlord to terminate the tenancy, and in this connection three specific stages must be envisaged. The first is the giving of the notice by the landlord. That does not automatically terminate the tenancy. The period of notice has to expire and at the expiry of the period the tenancy stands terminated. The third stage is that on the termination of the tenancy the right accrues to the landlord to obtain possession and it is in this third stage that the landlord either proceeds to take possession from his tenant or files the necessary application in Court to obtain possession if the tenant is refractory. Therefore, the cause of action that accrues to the landlord and which he comes to Court to enforce is the right to possession and that cause of action anly accrues to him when the tenancy is terminated and not when he gives notice. The vested right also that accrues to him is when the tenancy is terminated. The vested right is the right to obtain possession and till the tenancy is terminated there is no vested right in the landlord. Therefore, if the Amending Act XXXIII of 1952 was in any way affecting the vested right of the landlord, then clearly it could not be given a retrospective effect unless the Legislature in terms made it retrospective. But if in this case the landlord's vested right did not arise till March 31, 1953, if the tenancy was not terminated till March 31, 1953, and he had no right to obtain possession till March 31, 1953, it is difficult to understand how an Act which came into force on January 12, 1953, could possibly be said to have affected a vested right of the landlord. The error in the argument advanced by Mr. Patel is that there is a vested right in the landlord to give a notice. There is no such vested right. The Legislature may provide for a certain form or content of the notice, and it would be necessary for the landlord to give a valid notice in order to terminate the tenancy. But the vested right, the right to possession, only arises when the notice has run out its natural course and the tenancy has been determined by reason of the expiry of the notice.

We must also bear in mind that we are dealing with an Act which was passed with the object of giving protection to tenants and the object of the Amending Act was further to protect the possession of the tenants, and if when the landlord files his application it is found that he has not satisfied the conditions which would entitle him to deprive the tenant of his

1955

DURLABBHAI FAKIRBHAI v. JHAVERBHAI BHIKABHAI

Chagla C. J.

possession, it is difficult to take the view that the Legislature intended that although at the date of the giving of the notice the landlord was considered to be entitled to possession, when the notice expired he would still be entitled to possession although in the meanwhile the legislature had stepped in and had prevented the landlord from obtaining possession and evicting the tenant. Therefore, if there was a matter of doubt—in our opinion it is not really a matter of doubt—we should give to the Amending Act a construction which must be in favour of the tenant.

Mr. Patel has drawn our attention to the language of sub-s. (*2*) (*a*) of s. 34 which before it was amended by Act XII of 1951 was in the following language :

"(2) Nothing in sub-s. (*1*) shall entitle the landlord—

(*a*) to terminate the tenancy of a protected tenant, if the landlord at the date of the notice has been cultivating personally other land fifty acres or more in area."

By Amending Act XII of 1951 this sub-section was amended to run as follows:

"(2) Nothing in sub-s. (*1*) shall entitle the landlord—

(*a*) 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."

This amendment, if anything, clearly shows that when the Legislature wanted to take into consideration the two termini, the date of the giving of the notice and the expiry of the notice, it clearly mentioned them in the Act itself, and but for this sub-section mentioning the date of the notice in the first instance, or both the dates, viz., the date of the notice and the expiry of the notice in the second instance, on an ordinary construction the provision with regard to sub-s. (*2*) (*a*) would have to be construed at the date when the tenancy terminated and when the landlord became entitled to possession. Therefore, in our opinion, the language of sub-s. (*2*) (*a*) by the amendment does not help Mr. Patel in the contention he has put forward.

Mr. Patel has then relied on a judgment of the Calcutta High Court in *Jeebankrishna Chakrabarti* v. *Abdul Kadar Chaudhari*.[3] The facts of that case were rather extraordinary. The right was given to the landlord under the Bengal Tenancy Amendment Act (IV of 1928) to terminate the tenancy of a tenant by a notice, although it was not stated that the notice should be of a particular duration. But the landlord did not become entitled to possession except at the end of the agricultural year next following the year in which the notice to quit was served upon the tenant by the landlord. An amendment was made to this Act and the amendment came into force before

3. (1933) 60 Cal. 1037.

1955

DURLABBHAI FAKIRBHAI v. JHAVERBHAI BHIKABHAI

Chagla C. J.

the tenancy in that particular case was determined, and the question that arose before the learned Chief Justice and his two colleagues was whether the Amending Act applied or the old Act applied, and the learned Chief Justice in his judgment said that the old Act would apply and not the new Act, and the reason which the learned Chief Justice expressly gives for coming to this conclusion is that the new Act alters the nature of the notice and provides for a period of the notice which the old Act did not require and he is troubled by the fact that if the new Act was to apply all the notices given would be invalid, and, therefore, he did not think it right that the new Act should be made applicable to the notices which were already given before the new Act came into force. But he makes it clear that if there had not been this provision with regard to notices a different view could well have been taken of the effect of the Amending Act. Therefore, with respect to the Calcutta High Court, that decision was given on the peculiar facts of the case. The facts before us are entirely different. The Amending Act does not in any way invalidate notices already given before the Amending Act came into force. The notices are perfectly valid. What the Amending Act does is that it imposes a new limitation upon the right of the landlord to obtain possession, and if the landlord fails to satisfy the Court at the date when the tenancy expires and he becomes entitled to possession that he is entitled to possession in law as the law then stands, he cannot obtain relief from the Court.

We are, therefore, of the opinion that the Amending Act would apply to all cases where the period of notice expired after the Amending Act came into force.

Answer accordingly.

K. B. S.

APPELLATE CRIMINAL

Before Mr. Justice Dixit and Mr. Justice Vyas.

RAMCHAND TOLARAM KHATRI AND ANOTHER *v.* THE STATE.*

1955
Oct. 13

Evidence—Witnesses who are unwilling parties to giving of bribe, whether accomplices or partisan witnesses—Whether corroboration required for the acceptance of their evidence—Panchas who accompany a police raiding party, whether partisan witnesses—Indian Penal Code (Act XLV of 1860), ss. 161, 34.

Although evidence of witnesses who are not willing parties to the giving of bribes but who are only actuated with the motive of trapping

*Criminal Appeal No. 652 of 1955 with Criminal Appeal No. 671 of 1955.