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within the ambit of s. 37 (*3*). Therefore, it would be necessary for the Commissioner of Police when he extended the duration both on October 12, 1955, and November 12, 1955, to be satisfied that the preservation of the public order required the extension of the original order. It should also be borne in mind that both on October 12, 1955, and November 12, 1955, the original order was subsisting and had not come to an end. If the order had come to an end then the order could not have been amended and a fresh order had to be made, but if before the order of September 28, 1955, came to an end the Commissioner of Police extended its duration, as we have just said, the effect of that extension was to amend the original order and substitute in place of fifteen days contained in the original order the period November 12, 1955. It may also be pointed out that the original order has been amended in another particular and that is that whereas the original order exempted marriage processions, funeral processions and Ganpati processions, the order of November 12, 1955, has omitted Ganpati processions from the exemption. We put to Mr. Kotwal the view that it would be open to the Commissioner of Police to amend an order passed under s. 37 (3) from time to time by altering the territorial application and Mr. Kotwal had difficulty in resisting that view. If that be the true position and if the territorial application of the order could be altered or amended, we see no reason in principle why the temporal effect of the order in the sense of the duration cannot equally be amended by a subsequent order passed by the Commissioner of Police.

In our opinion, therefore, the challenge made either to s. 37 (*3*) on the ground of it being void under the Constitution or to the order passed by the Commissioner of Police on the ground that it was *ultra vires* the section must fail. The result is that the petition fails and the rule is discharged.

Rule discharged.

K. B. S.

APPELLATE CIVIL

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Feb. 7

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

CHHANUBHAI KARANSANG, PETITIONER *v.* SARDUL MANSANG, OPPONENT.*

Bombay Tenancy and Agricultural Lands Act (Bom. LXVII of 1948), s. 34 (2) (a)—Whether the expression 'other land' restricted to land in State of Bombay—Construction.

The expression 'other land' occurring in s. 34 (*2*) (*a*) of the Bombay Tenancy and Agricultural Lands Act, 1945, is restricted to land in the State of Bombay.

*Special Civil Application No. 2255 of 1955.

SPECIAL Civil Application against the decision of the Bombay Revenue Tribunal.

The facts are sufficiently set out in the Judgment.

N. C. Shah, for the Petitioner.

V. M. Limaye, for Opponent No. 1.

Chagla C. J.—A rather interesting question arises as to the application of the Tenancy Act to lands situated outside the State of Bombay. The petitioner, who is the landlord, applied for possession of the land in the possession of his tenant-opponent No. 1 on the ground of *bona fide* requirement for personal cultivation. The Mamlatdar held that the landlord had failed to prove his *bona fide* requirement and dismissed his application. The Prant Officer also dismissed the application but on a different ground. The view taken by the Prant Officer was that as the landlord personally cultivated land more than fifty acres, he was not entitled to possession under s. 34 (*2*) (*a*) of the Tenancy Act and that view of the Prant Officer was confirmed by the Tribunal.

The area personally cultivated by the landlord, according to the finding of the Prant Officer and the Tribunal is 55 acres and 29 gunthas and out of these 10 acres and 12 gunthas are lands situated in Saurashtra outside the State of Bombay. If 10 acres and 12 gunthas are excluded as being lands outside the State of Bombay, then the landlord does not come within the mischief of s. 34 (*2*) (*a*) and the decision of the Tribunal on this point cannot be maintained. Therefore, the question that arises for our determination is whether in s. 34 (*2*) (*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,"

the expression "other land" is restricted to land in the State of Bombay or would include land situated outside the State of Bombay or anywhere in the world. Mr. Limaye's contention is that the object of the Legislature was two-fold. The Legislature was of the opinion that a landlord cannot properly cultivate land, the area of which is more than fifty acres and, therefore, wherever the land is situated, that fact has to be taken into consideration, and the other aspect of the matter, according to Mr. Limaye, is that the Legislature thought that a tenant should not be deprived of his holding if the landlord had already fifty acres which he was personally cultivating. Again, according to Mr. Limaye, from this point of view it was immaterial whether the land was situated in the State of Bombay or outside. There are various difficulties in the way of accepting Mr. Limaye's contention. The ordinary principle of construction is that a Legislature is dealing with the subject-matter situated within its own territorial jurisdiction. The Legislature is not concerned with improving the lot of any person outside the State of Bombay; nor is it conversant with conditions prevail-

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ing outside the State. The tenant for whose benefit the legislation is put on the statute book and who has been defined and the landlord who has been correspondingly defined are tenant and landlord in the State of Bombay. It cannot be gainsaid that the Legislature was only dealing with tenant and landlord within the State of Bombay and not tenant and landlord outside the State of Bombay, and when the Legislature in s. 34 (*2*) (*a*) laid down the limit of fifty acres, it laid down that limit from the point of view of conditions prevailing in the State of Bombay. Obviously, the view was that less than fifty acres would not be an economic holding and, therefore, the landlord was permitted to hold up to fifty acres and if he wanted more from his tenant, he was disentitled. Again s. 36 (*1*) permits the Government to reduce the limit of fifty acres and this reduction cannot be from the point of view of conditions prevailing outside the State of Bombay but it could only be from the point of view of conditions prevailing in the State of Bombay. Therefore, the Legislature was indifferent to what the landlord's holding was outside the State of Bombay. If his holding was fifty acres then in the view of the Legislature that was a sufficient holding and he should not be permitted to increase it by depriving his tenant of his possession. Then again if the contention urged by Mr. Limaye were to be accepted, it would lead to another difficulty. In order to determine the holding of the landlord under s. 34 (*2*) what has got to be considered is the land which he personally cultivates. It is not any land which he holds or of which he is the owner but he must personally cultivate the land according to the definition given in the Act itself and that definition is to be found in s. 2 (*6*). Therefore, if the expression "land" used in s. 34 (*2*) was to include land outside the State of Bombay, the Tribunals here will have to apply the definition of 'cultivating personally' to lands outside the State of Bombay. The Legislature has defined the expression "cultivating personally" looking to the conditions prevailing in the State of Bombay. The conditions in Saurashtra or any other parts of the world may be entirely different and it would be highly anomalous to decide whether a particular landlord is cultivating personally land situated outside the State of Bombay in the light of the definition given in a local statute intended to be applied locally.

Therefore, on a consideration of various factors we are of the opinion that the "other land" referred to in s. 34 (*2*) must be restricted to land in the State of Bombay. If that be the true view of the section, then the holding of the landlord was less than fifty acres because if we exclude the land situated in Saurashtra, in the State of Bombay he held less than fifty acres. Therefore, he would not be disentitled from getting possession from his tenant under s. 34 (*2*).

As we have pointed out, the Mamlatdar took the view that the landlord had failed to prove his *bona fide* personal require-

ment. If that be so, apart from anything else, the landlord is bound to fail. But this point has not been considered by the Prant Officer as he dismissed the landlord's application on a different ground. Now that we have differred from the Prant Officer in the view that he has taken with regard to the landlord's holding, we must remand the matter back to him and direct him to determine whether the landlord has succeeded in establishing his *bona fide* personal requirement. If he concurs with the view taken by the Mamlatdar, then he will dismiss the landlord's application. If, on the other hand, he differs from him, he will give the landlord the relief to which he is entitled in law. Costs costs in the appeal before the Prant Officer.

Order accordingly.

K. B. S.

APPELLATE CIVIL

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

1956
Feb. 16

SHRINIVAS GANESH CHANDORKAR (ORIGINAL PLAINTIFF), APPELLANT *v.* UNION OF INDIA (ORIGINAL DEFENDANT) RESPONDENT.*

Constitution of India, art. 311—Government of India Act, 1935 (25 & 26 Geo. V, c. 42) s. 240 (3)—Whether the common law between master and servant applied to Government servants—Temporary Government servant, whether entitled to same rights as a permanent Government servant under the Constitution of India—Whether Government bound to give reason when discharging a temporary servant—Whether order of discharge can be challenged as mala fide*—Whether rules of natural justice applicable where Government discharges a temporary servant.*

The common law governing the relationship between master and servant applies equally where the employer is the State except when the case is governed by Art. 311 of the Constitution of India or s. 240 (*3*) of the Government of India Act, 1935. In the case of temporary Government servants the said provisions have however no application.

The plaintiff, who was employed as a temporary clerk in the Military Accounts Department of the Government of India, was discharged from service on the ground that he was declared medically unfit for further service. In a suit filed against the Union of India for a declaration that the order of discharge was not valid and that he still continued to be in service, the plaintiff contended—

(*i*) that a temporary Government servant, is entitled to the same rights as a permanent Government servant has under s. 240 (*3*) of the Government of India Act, 1935, or Art. 311 of the Constitution of India,

(*ii*) that the Government having given reason for dispensing with his services the order of discharge became an order of dismissal or removal and was governed by s. 240 (*3*) of the Government of India Act, 1935.

(*iii*) that the order was based on a medical certificate issued under art. 447 (*a*) of the rules framed by Government but the certificate was not properly issued as the employee's case was not covered by the said rules;

*First Appeal No. 389 of 1954.