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the Collector, thereby the nature of the proceedings in which the dispute is litigated is not so fundamentally altered that even the bare right of a litigant to be heard in support of the appeal before his appeal is disposed of should be regarded as excluded. We are unable to agree with the view of the Tribunal that the District Deputy Collector acted properly in dismissing the appeal filed by the petitioner summarily without giving him a hearing. It is unnecessary, therefore, to consider the other questions which have been decided by the Tribunal.

We accordingly set aside the order passed by the Tribunal. We also set aside the order passed by the District Deputy Collector and direct that the proceedings be sent back to the District Deputy Collector with a direction that the District Deputy Collector do hear and dispose of the appeal pending before him according to law. Costs in this application will be costs before the District Deputy Collector.

Order accordingly.

H. R. G.

APPELLATE CIVIL

Before Mr. Justice Shah and Mr. Justice Vyas.

VISHNU GOVIND MULIK AND ANOTHER *v.* PANDURANG RAGHUNATH SABNIS AND OTHERS.*

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The Bombay Tenancy and Agricultural Lands Act (Bom. Act LXVII of 1948), s. 76—Whether Revenue Tribunal can decide a Question of fact upon evidence on record in the absence of a finding by the Collector.

A landlord filed an application before the Mamlatdar for possession of the land in dispute on the ground that he required it for *bona fide* personal cultivation. On the point whether the area under the personal cultivation of the landlord at the date of the notice was more than 50 acres or less the Mamlatdar held that the area did not exceed 50 acres. On appeal the Prant Officer did not give any finding on the issue. In revision from the decision of the Prant Officer, the Bombay Revenue Tribunal considered the evidence on record and accepted the finding of the Mamlatdar that the landlord was personally cultivating only 14 acres of land. On the question whether the Tribunal was competent to appreciate evidence and find on facts.

Held, what is forbidden by the Act is the super-imposition by the Tribunal of its own appreciation of evidence; it does not forbid appreciation of evidence when there has been none by the lower court.

Held, further that as the Prant Officer had made no effort to appreciate or even consider the evidence on record and as he had failed to give a finding upon that evidence and to remand the case to the Mamlatdar, there was no specific provision in the Act which forbid the Tribunal from applying its own mind to the evidence on record; in such a case the Tribunal does not superimpose its own appreciation of evidence upon that of the lower court.

SPECIAL Civil Application No. 415 of 1956 against the decision of the Bombay Revenue Tribunal.

*Special Civil Application No. 415 of 1956.

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V. G. Hegade for the Petitioners.

A. G. Kotwal for *G. K. Kamat* for Respondent No. 1.

Vyas J.—[His Lordship after stating the facts of the case and dealing with points not material to this report, proceeded.] Advertising to the next point, viz. the point whether the area under the personal cultivation of the landlord at the date of the notice was more than 50 acres or less than 50 acres, it is to be noted that according to the Mamlatdar, who considered the evidence before him, the area which the landlord was cultivating at the date of the notice did not exceed 50 acres of land. On this point, the judgment of the Prant Officer was sketchy and unsatisfactory. The Prant Officer did not give any finding on this issue. He merely observed that although the respondent-landlord had admitted that he was owning more than 50 acres of land, he had given an explanation that some portion of the land was fallow, that grass was growing upon it and that, therefore, it was not to be taken into consideration. Then the learned Prant Officer stated that from the record of the case it appeared to him that sufficient evidence had not been recorded on this point. Although the Prant Officer did not give his own finding whether the area under the personal cultivation of the landlord exceeded or did not exceed 50 acres of land, the learned members of the Revenue Tribunal, again in places more than one in their judgment, made an erroneous observation that upon this point also there was a concurrent finding of both the Courts below. It may be noted however that after making the above incorrect observation, the learned members of the Revenue Tribunal went on to deal with this point themselves. They considered certain extracts produced by the landlord, referred to the testimony which the landlord gave before the Mamlatdar and upon the application of their own mind to the material on the record, they came to the conclusion that certain lands out of the 59 acres of land which were owned by the landlord were fallow, that grass was growing upon them and that, therefore, they should be left out of consideration so far as the point of the area under personal cultivation of the landlord was concerned. They accepted the finding of the Mamlatdar that the landlord was personally cultivating only 14 acres of land. Mr. Hegade appearing for the tenants before us has strenuously contended that as the Prant Officer, who was the final fact-finding authority, had not given a clear or categoric finding upon this question of fact, but had on the contrary said that sufficient evidence had not been recorded upon this point, the learned members of the Revenue Tribunal had no competence at law to go into this question themselves and give a finding upon it. We are unable to accept the submission of Mr. Hegade. If the Prant Officer as a final fact-finding authority had given a finding on this question of fact regarding the extent of the area under personal cultivation of the landlord, then of course it would not have been open to the

Revenue Tribunal to go behind that finding. The Prant Officer's finding would have been final. But such is not the position here. Here the Prant Officer did not record any finding on this issue; he did not appreciate the documentary evidence which was led before the Mamlatdar—indeed he did not even refer to it; he made no attempt to point out why the explation given by the landlord was not acceptable to him; and he did not say in what respects he considered the evidence recorded in the Mamlatdar's Court insufficient. In other words, he did not deal with this question of fact at all. It is true that it is not within the jurisdiction of the Revenue Tribunal to re-appreciate the evidence, appreciated by the Prant Officer. But where the Prant Officer made no effort to appreciate or even consider the evidence although the evidence was there on the record (e. g. documentary evidence of revenue extracts), where he failed to give a finding upon that evidence and also failed to remand the case to the Mamlatdar which he should have done if he thought that the evidence recorded in the Mamlatdar's court was insufficient and when there is no specific provision in the Act which forbids the Tribunal from applying their mind to the evidence which exists on the record, we are of the view that it is open to the Tribunal in the exercise of their revisional jurisdiction to decide a question of fact upon such evidence as is on the record, provided of course the Tribunal considers that the evidence on the record is sufficient to enable them to give a finding upon that particular point. If the Tribunal does so, it does not superimpose its own appreciation of evidence upon the appreciation made by the lower court. It is the superimposition of its own appreciation of evidence by the Tribunal which is forbidden by the Act and not the appreciation of evidence when there has been none by the lower court. In the case before us, the Mamlatdar who had a certain amount of oral and documentary evidence before him considered the said material sufficient to enable him to pronounce his judgment that the landlord was actually cultivating only 14 acres of land. The Prant Officer characterised the above evidence as insufficient, but this characterisation was unsupported by any reasons whatever, and he did not give a finding. It was in these circumstances that the learned members of the Revenue Tribunal applied their own independent mind to this question and considered that the extracts which were produced by the landlord and the sworn testimony of the landlord and were sufficient for the purpose of the conclusion that the landlord was actually cultivating only 14 acres of land. It is true that as the Prant Officer had not given a specific finding upon this question of fact, the members of the Revenue Tribunal, if they had been so disposed to do, could have remanded the case to the Prant Officer for giving a finding. But they did not do so and chose to consider the evidence on the record themselves and gave a finding upon this

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point. We do not think that they went beyond their competence in doing so. In our view, therefore, no valid reasons are made out by Mr. Hegade for a remand of this case to the Revenue Tribunal with a direction to remand it to the Prant Officer.

Order accordingly.

H. R. G.

APPELLATE CRIMINAL

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

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ARUNACHALIAM SWAMI AND OTHERS *v.* THE STATE OF BOMBAY*

Criminal Procedure Code (Act V of 1898), ss. 162, 173, 207A, 208, 213, 215, 540 and 561A—Constitution of India arts. 14, 227—Committal Proceedings—Difference between procedure of inquiry upon Police report under s. 207A and procedure upon private complaint under s. 208—Right to call defence evidence and right to move High Court whether prejudicially affected in inquiry under s. 207A—Object and Scope of s. 207A—Power under s. 207A (6) to consider the statements recorded by the Police whether inconsistent with the provisions of s. 162—Scope of art. 14—General principles governing committal orders.

Section 207A of the Code of Criminal Procedure does not prejudice the right of the accused to lead evidence or to move the High Court inasmuch as s. 540 empowers a Magistrate to summon and examine defence witnesses even during an inquiry under s. 207A and the High Court can set aside a Committal Order in revision or under s. 561A as well as under art. 227 of the Constitution of India.

Section 207A (6) which requires a Magistrate to consider all the documents referred to in s. 173, which include statements recorded by the Police under s. 161, is an exception to the provisions of s. 162.

Semble, that s. 207A does not offend against art. 14 of the Constitution of India.

In passing an order of commitment the Magistrate is not supposed to weigh the evidence and to decide whether the accused is innocent or guilty; he is only concerned to see whether there is sufficient evidence to go to the jury.

CRIMINAL Application praying, *inter alia,* for setting aside the order of commitment passed by A. S. Nawalkar, Esquire, Presidency Magistrate, 21st Court, Bandra.

Charge under s. 302 read with s. 34 of the Indian Penal Code.

The facts are sufficiently stated in the Judgment.

S. S. Kavlekar, with *P. K. Nair* for the Applicants.

H. M. Choksi, Government Pleader for the Respondent.

Chagla C. J.—The four petitioners before us were put up before the Presidency Magistrate, 9th Court, under s. 302 read with s. 34 of the Indian Penal Code. The learned Presidency Magistrate after following the procedure laid down in s. 207A of the Criminal Procedure Code came to the conclusion that

*Criminal Application No. 690 of 1956.