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September 25.

SATYANARAYAN LAXMINARAYAN HEGDE AND OTHERS

v.

MILLIKARJUN BHAVANAPPA TIRUMALE

(S. R. DAS, C.J., M. HIDAYATULLAH and K. C. DAS GUPTA, JJ.)

Writ of certiorari—Error apparent on the face of the record—Termination of tenancy—Question of necessity of notice to lessee—Revenue Tribunal's decision reversed by High Court—Legality—Constitution of India, Art. 227.

The respondent made an application to the Revenue Court for delivery of possession from his tenant, the appellant, on the footing that the latter failed to pay the rent for three consecutive years and so was entitled to get possession from him as per the terms of the lease. The appellant pleaded *inter alia* that the respondent was not entitled to an order for possession as he had not given notice that he was entitled to obtain possession of the same under the rent agreement and that he had terminated the tenancy. The Revenue Court made an order in favour of the respondent but, on appeal, the Collector set aside the order. The Collector's order was confirmed by the Bombay Revenue Tribunal which took the view that the Bombay Tenancy and Agricultural Lands Act, 1948, was applicable to the lands in question but that the respondent must fail because he had failed to terminate the tenancy by notice before taking proceedings for ejectment. The respondent then applied to the High Court of Bombay under Art. 227 of the Constitution of India, praying that it might exercise its power of superintendence over the Bombay Revenue Tribunal and set aside its order. The High Court was of the opinion that the Tribunal had committed an error which was apparent on the face of the record in holding that an order of possession could not be made unless a notice terminating the tenancy had been given before the institution of proceedings and, accordingly, it quashed the order of the Tribunal and restored that of the Revenue Court. The question was whether there was an error apparent on the face of the judgment of the Bombay Revenue Tribunal which the High Court could quash by issuing a writ of *certiorari*. In order to decide whether it was necessary for the landlord to give notice to the lessee of his intention to determine the lease, the relevant provisions of the Bombay Tenancy and Agricultural Act, 1948, and the Transfer of Property, 1882, had to be considered and the rival contentions of the parties showed that the point was far from being self evident and could be established only by lengthy and complicated arguments.

Held, that the High Court was wrong in thinking that the alleged error in the judgment of the Bombay Revenue Tribunal was one apparent on the face of the record so as to be capable of being corrected by a writ of *certiorari*.

An error which has to be established by a long drawn porcess of reasoning on points where there may conceivably be two opinions cannot be said to be an error apparent on the face of the record.

Hari Vishnu Kamath v. *Syed Ahmed Ishaque*, [1955] 1 S.C.R. 1104, relied on.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 189 of 1955.

Appeal by special leave from the judgment and order dated August 26, 1952, of the Bombay High Court, in Civil Application No. 319 of 1952.

Purshottam Tricumdas and *Naunit Lal*, for the appellants.

A. V. Viswanatha Sastri and *M. S. K. Sastri*, for the respondent.

1959. September 25. The Judgment of the Court was delivered by

Das Gupta J.

DAS GUPTA J.—On August 22, 1949, the respondent made an application in the Revenue Court of the Mamlatdar of Sirsi, District Kanara, praying for delivery of possession of property which the appellant was on that date possessing as the tenant under him, on the basis of a "Mulegeni" deed executed by the respondent's predecessor-in-interest in favour of the appellant's predecessor-in-interest. One of the terms of the lease was that if rent for three consecutive years fell in arrears the Mulegeni right will be void and the lessee should hand over possession of the property to the lessor. In the application made in the Mamlatdar's Court the respondent based his claim for possession on this express condition in the lease as also on an alleged termination by him of the tenancy. The Bombay Tenancy and Agricultural Lands Act, 1948 (Bombay Act No. LXVII of 1948), hereinafter referred to as the Bombay Tenancy Act, which it is not disputed applied to this tenancy contained provision for termination of tenancy in its s. 14.

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The defendant-appellant admitted that rent for three successive years had not been paid but contended *inter alia* that the plaintiff was not entitled to an order for possession of the property as he had not "given notice that he was entitled to obtain possession of the same under the rent agreement and that he had terminated the tenancy." The Mamlatdar overruled this contention and made an order for possession in favour of the plaintiff-respondent subject to the condition that the tenancy of the sub-tenants would not be disturbed.

On appeal the Collector of Kanara held that the Mamlatdar who had made the order had no power under the Bombay Tenancy Act and so had no jurisdiction to make such an order. He also held that the plaintiff-respondent was not entitled to an order for possession as the tenancy had not been terminated by due notice. Accordingly, he allowed the appeal and set aside the order of the Mamlatdar.

Against this order the landlord (plaintiff-respondent) appealed to the Bombay Revenue Tribunal. Before that Tribunal the question of the Mamlatdar's jurisdiction does not appear to have been raised. The Tribunal held that the Bombay Tenancy Act was applicable to lands held on Mulegeni tenure but the landlord must fail because he had failed to terminate the tenancy by notice before instituting the action for ejectment. Accordingly, he rejected the application for possession.

The landlord (plaintiff-respondent) then made an application to the High Court of Bombay and prayed that it may be pleased "to exercise its power of superintendence over the Bombay Revenue Tribunal under Art. 227 of the Constitution of India, by calling for the record and proceedings in the case, and on perusal thereof set aside the order of the Tribunal and the Collector and restore the order of the Mamlatdar, by issuing the writ of *certiorari* or any other suitable writ." The High Court was of opinion that the Tribunal had committed an error which was apparent on the face of the record in holding that an order of possession could not be made unless a notice terminating the tenancy had been given before the institution

of proceedings. In that view the Court issued a writ of *certiorari*, quashed the order of the Tribunal and restored the order of the Mamlatdar.

The character and scope of writs of *certiorari* have been dealt with by this Court in some detail in its decision *Hari Vishnu Kamath* v. *Syed Ahmed Ishaque* (1). After referring to certain earlier decisions of this Court cited therein this Court observed at p. 1121 :—

> "On these authorities, the following propositions may be taken as established : (1) *Certiorari* will be issued for correcting errors of jurisdiction, as and when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) *Certiorari* will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The Court issuing a writ of *certiorari* acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to re-hear the case on the evidence, and substitute its own findings in *certiorari*. These propositions are well-settled and are not in dispute."

Besides the above three propositions, a fourth proposition as to which there appears to have been some controversy, was also discussed, namely, whether *certiorari* can be issued when the decision of the inferior Court or Tribunal is erroneous in law. After referring to certain reported decisions, English as well as Indian, the position was thus summarised by this Court at p. 1123 as follows :—

(1) [1955] 1 S.C.R. 1104.

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"It may therefore be taken as settled that a writ of *certiorari* could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned Counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated. Mr. Pathak for the first respondent contended on the strength of certain observations of Chagla, C.J., in *Batuk K. Vyas* v. *Surat Municipality* (1), that no error could be said to be apparent on the face of the record if it was not self-evident, and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case."

The main question that arises for our consideration in this appeal by special leave granted by this Court is whether there is any error apparent on the face of the record so as to enable the superior court to call for the records and quash the order by a writ of *certiorari* or whether the error, if any, was "a mere error not so apparent on the face of the record", which can only be corrected by an appeal if an appeal lies at all.

As already stated the principal contention of the defendant-appellant was that the landlord, the plaintiff-respondent had no right to an order of possession

(1) A.I.R. 1953 Bom. 133.

inasmuch as, he had not terminated the tenancy by giving a notice to the defendant-appellant. The Bombay Revenue Tribunal accepted this contention as correct. The question is whether there was an error apparent on the face of the judgment of the Bombay Revenue Tribunal which the High Court could quash by issuing a writ of *certiorari*. It is necessary to consider first the words of s. 14 of the Bombay Tenancy Act which is said to require a notice before a tenancy can be terminated. The section is in these words:

"14. *Termination of tenancy*: (1) Notwithstanding any agreement, usage, decree or order of a Court of law, the tenancy of any land held by a tenant shall not be terminated unless such tenant:—

(a) (i) has failed to pay in any year, within 15 days from the day fixed for the payment of the last instalment of land revenue in accordance with the rules made under the Bombay Land Revenue Code, 1879, for that year, the rent of such land for that year, or

(ii) if an application for the determination of reasonable rent is pending before the Mamlatdar or the Collector under section 12, has failed to deposit within 15 days from the aforesaid date with the Mamlatdar or the Collector, as the case may be, a sum equal to the amount of rent which he would have been liable to pay for that year if no such application has been made, or

(iii) in case the reasonable rent determined under section 12 is higher than the sum deposited by him, has failed to pay the balance due from him within two months from the date of the decision of the Mamlatdar or the Collector, as the case may be;

(b) has done any act which is destructive or permanently injurious to the land;

(c) has sub-divided the land;

(d) has sub-let the land or failed to cultivate it personally; or

(e) has used such land for a purpose other than agriculture.

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2. In the case of a tenant, the duration of whose tenancy is for a period of 10 years or more. the tenancy shall terminate at the expiration of such period, unless the landlord has by the acceptance of rent or by any act or conduct of his allowed the tenant to hold over within the meaning of sec. 116 of the Transfer of Property Act, 1882.

3. Notwithstanding anything contained in sub-section (1), the tenancy of any land held by a tenant who is a minor or who is subject to physical or mental disability shall not be liable to be determined under the said sub-section only on the ground that such land has been sub-let on behalf of the said tenant."

It has to be noticed that this section does not in express terms provide for the act of termination of tenancy to be effected by notice given by the landlord. Section 29, sub-s. 2, which provides that no landlord shall obtain possession of any land or dwelling house held by a tenant except under an order of the Mamlatdar, also does not provide that any notice has to be given before an application for possession is to be made.

On behalf of the appellant it is contended however that the very words used in s. 14 compel the conclusion that there is no effective termination without some kind of overt act done by the landlord indicating that he intends to terminate the tenancy. This, it is said, is the result of the words used by the Legislature that a tenancy "shall not be terminated" in marked distinction to the words as regards termination of tenancies under s. 111 of the Transfer of Property Act. That section of the Transfer of Property Act lays down that the lease of immovable properties "determines" in a number of different ways. We find that with full knowledge of the use of the word "determines" in s. 111 of the Transfer of Property Act the Bombay Legislature instead of saying that the tenancy "determines" or "shall not terminate" said that the tenancy "shall not be terminated". It is suggested that this different language was used deliberately and not by accident. Again, in sub-s. 2 of s. 14 when the question of termination of tenancy by efflux of time

in certain cases is provided for, the legislature, it is pointed out, says that the tenancy shall terminate at the expiration of such period. The argument is that the only reason for this difference in language can be that the Legislature intended that while in the cases contemplated under sub-s. 2 of s. 14, the termination will take effect automatically without any positive overt act on the part of the landlord, an act of the landlord actually exercising his option to terminate shall be required in the cases under sub-s. 1 of s. 14 before there is an effective termination. In exercising that option it is urged the landlord must communicate his intention to do so to the other party to the contract, viz., the tenant.

The learned judges of the High Court point out that s. 24 of the Bombay Tenancy Act provides for a notice in writing before a proceeding for ejectment will lie where the termination is said to be on the ground set forth in s. 14(1)(b), viz., that a tenant has done any act which is destructive or permanently injurious to the land and point out that no provision for such notice has been made for any of the other cases contemplated by s. 14(1). The rival argument is that the provision for notice under s. 24 where the termination is on the ground whether the tenant had done any act which is destructive or permanently injurious to the land is to give the tenant a chance of remedying the injury committed and has nothing to do with the fact of termination, and that the Legislature might, if it had thought fit, also have enacted provision for such a chance to tenants who had not paid their rents to pay up their rents and might in that case have provided for a notice to be given by the landlord recording the fact of non-payment. Can the omission of the Legislature to provide for such opportunity to a defaulting tenant be any ground for thinking that the termination itself is effective without notice? Does the fact that s. 24 says that the landlord must serve on the tenant a notice in writing specifying the act of destruction or injury complained of therefore weaken in any way the inference implicit in the use of the words "shall not be terminated" that some communication

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of the landlord's exercising that option to terminate must be communicated to the tenant before there is an effective termination ?

On behalf of the plaintiff-respondent it is contended that in any case this intention to exercise the option to terminate is sufficiently expressed by the very fact of application for possession having been made and that it would be reasonable to hold that sufficient notice to terminate was given by the very fact of the application having been made. In this connection it is necessary to take into consideration the words used by the Legislature in s. 25 :—

Relief against termination of tenancy for non-payment of rent :—

" Where any tenancy of any land held by any tenant is terminated for non-payment of rent and the landlord files any proceeding to eject the tenant, the Mamlatdar shall call upon the tenant to tender to the landlord the rent in arrears together with the cost of the proceedings, within 15 days from the date of order, and if the tenant complies with such order, the Mamlatdar shall, in lieu of making an order of ejectment, pass an order directing that the tenancy had not been terminated and thereupon the tenant shall hold the land as if the tenancy had not been terminated :—

Provided that nothing in this section shall apply to any tenant whose tenancy is terminated for non-payment of rent if he has failed for any three years to pay rent within the period specified in s. 14."

Of course as the present case is one of failure by the tenant for three years to pay rent within the period specified in s. 14 the provision in the operative portion of s. 25 will not, it is conceded, apply to this case but the argument is that that circumstance is no reason why we should not consider the language in s. 25 to see whether the Legislature's intention was that the termination should take place prior to and independent of, filing of the proceedings. The use of the word " and " in " where any tenancy of any land held by any tenant is terminated for non-payment of rent *and* the

landlord files any proceedings to eject the tenant . . . . " is, it is said, a justification for the conclusion that the Legislature contemplated and intended that in all cases of termination on non-payment of rent the termination should take place first and after the termination was completed the landlord was at liberty to file proceedings to eject the tenant. If this contention be correct there would be no justification for thinking that the Legislature's intention was different in this matter where the non-payment was for three years.

This brings us to the consideration of the effect of s. 3 of the Bombay Tenancy Act. The section runs thus :—

> " 3. The provision of Chapter V of the Transfer of Property Act, 1882, shall, in so far as they are not inconsistent with the provisions of this Act, apply to the tenancies and leases of lands to which this Act applies ."

Chapter V of the Transfer of Property Act contains 12 sections—sections 105 to 116. Of these s. 111 contains provisions as regards the determination of lease. Cl. (g) of this section as it stood at the time the Legislature enacted the Bombay Tenancy Act including s. 3 was in these words :—

> " (g) by forfeiture ; that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter ; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself ; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event ; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease."

We have in this case a lease which says in express terms that on non-payment of rent for three consecutive years the lessor may re-enter. There will, therefore, be according to the provisions of Cl. (g) as they stand now and as they stood in 1948 when the Bombay Tenancy Act was enacted, a determination

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of the lease provided that the lessor has given notice in writing to the lessee of his intention to determine the lease. If Cl. (g) as it stood at the time of the enactment of the Bombay Tenancy Act and as it stands now applies to the tenancy in the present litigation there is no escape from the conclusion that there has been no determination of the tenancy under the provisions of s. 3 of the Bombay Tenancy Act. It has to be noticed, however, that the requirement of a notice in writing being given by the lessor to the lessee of the lessor's intention to determine the lease became a part of Cl. (g) only on the amendment of the Transfer of Property Act by Act 20 of 1929. By s. 57 of this Amending Act the words "gives notice in writing to the lessee of" was substituted for the words "does some act showing". Section 63 of the Amending Act provided *inter alia* that nothing in s. 57 of the Amending Act shall be deemed in any way to affect the terms and incidents of any transfer of property made or effected before the first day of April, 1930. A question has been raised that s. 57 of the Amending Act does not affect the present tenancy the lease having been given long before 1930 and the provisions of s. 111 (g) of the Transfer of Property Act which will apply to the tenancy in the present litigation are of cl. (g) as it stood before the Amending Act was passed. This argument however is repelled by pointing out that s. 3 of the Bombay Tenancy Act makes no distinction whatsoever as between tenancies and leases made before April 1, 1930, and those made after but instead it says generally that the provisions of Chapter V of the Transfer of Property Act, 1882, shall in so far as they are not inconsistent with the provisions of this Act, apply to the tenancies and leases of lands to which this Act applies. It has been suggested that the proper way of approaching this question is to read as a proviso to s. 111 (g) as well as the other sections mentioned in s. 63 of the Amending Act, the words "the terms or incidents of any transfer of property made effective before April 1, 1929, will not be affected hereby." Is this a correct approach to the problem? When the Bombay Legislature spoke of the provisions

of Chapter V of the Transfer of Property Act, 1882, did they have in their mind the Transfer of Property Act as it stood actually in the Statute Book and not as it would have stood with such a proviso added? Is it not proper to bear in mind in this connection that the Bombay Tenancy Act was intended to benefit the peasants and to improve the cultivation of lands?

In interpreting provisions of such beneficial legislation the Courts always lean in favour of that interpretation which will further that beneficial purpose of that legislation. Is this not an additional ground for thinking that in adopting s. 3 the provisions of Chapter V of the Transfer of Property Act, 1882, the Legislature had the intention of applying these provisions to all tenancies to which the Bombay Tenancy Act itself apply irrespective of the fact whether these tenancies were created before April 1, 1930, or not? It was contended therefore that even in so far as the claim for possession was based on the ground of forfeiture under the terms of the lease it was necessary for the landlord to prove that he had given notice in writing to the lessee of his intention to determine the lease. The Bombay Revenue Tribunal took the view that the plaintiff-respondent must fail in his application for possession because he had failed to terminate the tenancy by notice before taking proceedings for ejectment. Is the conclusion wrong and if so, is such error apparent on the face of the record? If it is clear that the error if any is not apparent on the face of the record, it is not necessary for us to decide whether the conclusion of the Bombay High Court on the question of notice is correct or not. An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions show the alleged error in the present case is far from self evident and if it can be established, it has to be established by lengthy and complicated arguments. We do not think such an error can be cured by a writ of *certiorari* according to the rule governing the powers of the superior court

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to issue such a writ. In our opinion the High Court was wrong in thinking that the alleged error in the judgment of the Bombay Revenue Tribunal, viz., that an order for possession should not be made unless a previous notice had been given was an error apparent on the face of the record so as to be capable of being corrected by a writ of *certiorari*.

For the reasons stated above the judgment and order of the High Court cannot be sustained. We, therefore, allow the appeal and set aside the order of the High Court issuing a writ of *certiorari*, quashing the order of the Tribunal and restoring the order of the Mamlatdar, and we restore the order of the Bombay Revenue Tribunal.

The appellant will get his costs here and in the High Court.

Appeal allowed.

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KESHAV LAXMAN BORKAR

v.

DR. DEVRAO LAXMAN ANANDE

(S. R. DAS, C.J., and K. SUBBA RAO, J.)

Election Petition—Prayer for declaring election of the respondent void and appellant duly elected—Valid votes and thrown away votes—Representation of the People Act, 1951 (43 of 1951), s. 101, rr. 57, 58.

The respondent who was at all material time holding a post of profit under the Government was elected to the Bombay Legislative Assembly. The appellant filed an election petition wherein he in addition to calling in question the election of the respondent, asked for a declaration that he himself had been duly elected. The Tribunal set aside the election of the respondent and further declared the appellant to be duly elected for the reason that the respondent's election having been set aside the appellant alone was left in the field, and there was no other candidates contesting the seat and the appellant was entitled to be declared as duly elected under s. 101 of the Representation of the People Act as having received the majority of the valid votes.

On appeal by the respondent the Bombay High Court while confirming the order of the Tribunal, in so far as it set aside the election of the respondent it also set aside the order of the