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Bombay Tenancy and Agricultural Lands Act, 1948.

Implementation of provisions of Section 43A(i)(b)--of....,

Government of Bombay.
Revenue Department,
Resolution, No. TNC.5158/125219-M,
Sachivalaya, Bombay, 9th January 1960.

READ:- Government Circular, TNC.5158/85038-M, dated 12th June 1958.

Letter from the Commissioner, Poona Division, No.TNC-9, dated 5th August 1959.~~(Extract)~~

"Reference:-Government Revenue Department Circular, No.TNC-5158/85038 dated the 12th June 1958.

2. Under their above Circular, Government have issued instructions that it may be left to the landlord or tenant to establish the purpose of the lease with reference to the actual use to which the land is being put before and after the grant of the lease if the lease deed ~~[illegible]~~ mention the purpose for which the land is leased. The above Circular does not clarify the procedure to be followed in respect of lands which are leased for the cultivation of sugar-cane, etc. but which are being used for growing some other crops. The Collector of Ahmednagar has reported that instances have come to his notice wherein lands leased out for the cultivation of sugar-cane have been actually used for growing some other crops and he has, therefore, raised the following two points for clarification :-

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(1) Whether the evidence of actual use of the land leased should be considered and the leases of lands which specifically mention the purpose of lease viz. cultivation of sugarcane should be held to be bogus and landlords' claim for exemption under Section 43-A(1)(b) of the Tenancy Act should be rejected and encuiry under Section 32-G should be made in such cases.

(2) Whether the decision of the Tenancy Court dismissing the landlord's application for possession under Section 31 on the ground that the lease is for sugarcane should operate as ~~[illegible]~~ holding enquiry under Section 32-G or whether the Tribunal should proceed with the enquiry if the actual use of the leased land does not prove that the lease is for the cultivation of sugarcane.

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A copy of the Collector's letter is enclosed.

3. The other Collectors in the Division were consulted. They hold divergent views on these questions. My views on the points raised by the Collector are as under :-

(1) Where in the lease deed it is specifically mentioned that the land has been given for the purpose of growing sugarcane, then such land will come under the purview of Section 43-A even though the lessee uses it for growing some other crop. Because according to the wording of the section, land granted for the cultivation of sugarcane comes within the scope of that section.

There may be cases in which the land is incapable of growing sugarcane, but in order to def[illegible]

lease deed that the land is leased for that purpose. In such cases it may be possible to hold that the clause in the lease deed is malafide and that notwithstanding the clause, the lease has not in fact been given with the object of growing sugarcane and hence that the land does not come within the purview of Section 43-A. Such cases will have to be considered on their individual merits.

(2) It seems to me that the finding of the Mamlatdar in the suit under Section 83 that the lease is for the purpose of sugarcane should act as res-judicate for the Agricultural Lands Tribunal while holding enquiry in respect of the land in question under Section 32-G of the Tenancy Act.

4. As the points raised by the Collector are of general importance, I would request Government to issue necessary clarification on them.

RESOLUTION: It has already been explained in the Government Circular, No.TNC.5158/85038-M, dated 12th June 1958 that what is material for deciding whether a land is leased for the growing of Sugar-cane or fruits or flowers for the purpose of deciding whether it is covered by Clause (b) of sub-section(1) of Section 43-A is the actual use to which the land is being put to by the lessee. The above clarification would, however, apply only to those cases where no specific mention of the purpose of the lease is made in the lease document. Where the lease document contains a specific mention that the lease is for growing of sugar-cane etc. it would rather be difficult to hold that such leases are not covered by the provisions of Section 43A(1)(b) merely because the lessee is not using the land for growing sugar-cane as mentioned in the lease. In such cases, therefore, the Mamlatdar or the Tribunal before whom the question may arise in any proceedings under Section 31 or Section 32G, as the case may be, should decide, on the basis of the facts of each case, whether the mention of the purpose in the lease is only to circumvent the provisions of the Act or is genuinely mentioned. In deciding such cases the Mamlatdar or the Tribunal can rely on circumstantial evidence, e.g. if a lease of a land which has no irrigation facilities and which was never used for growing of sugar-cane mentions that the land is leased for growing of Sugar-cane and if the Mamlatdar

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finds that in spite of the lease the lessee is growing crops otherthan sugar-cane on the land, the Mamlatdar or the Tribunal can safely hold that the lease is not covered by the provisions of Section 43A(1)(b). In short, the Mamlatdar or the Tribunal will have to decide this issue on the merits of each case.

2. The second question raised for consideration is whether in the cases in which the application of a landlord under Section 31 for possession of land from tenant on the ground of personal cultivation was rejected by the Mamlatdar on the ground that the lease was covered by Section 43A, it would be open for the Tribunal to hold enquiry under Section 32G regarding purchase of land by the tenant under Section 32. The position in this behalf is that the decision of the Mamlatdar on this point in the proceedings under Section 31 would not act as res-judicata, and it would be competent for the Tribunal to reconsider the question in a proceeding under Section 32G.

3. The position explained in paras 1 and 2 above should be brought to the notice of all Revenue Officers concerned.

By order and in the name of the Governor of Bombay,

V. C. Thakore.
Under Secretary to Government.

To

The Commissioners of all Divisions (except the Commissioner of Nagpur),

All Collector in Bombay, Poona and Ahmedabad Division,

The Collector of Amreli,

The Collector of East Khandesh,

The Collectors of Bhavnagar and Jamnagar.

ISSUED ON.........

Despatch Clerk

No. TNC-WS-322 of 1960.

Copy forwarded for information and guidance to :- all Mamlatdars Mahalkaris, Prant Officers.