(1964) 02 SC CK 0015

Supreme Court of India

Case No: Appeal (civil) 120 of 1962

Hiralal Prabhubhai and Others		APPELLANT
	Vs	
Nagindas Atmaram Khatri		RESPONDENT

Date of Decision: Feb. 14, 1964

Acts Referred:

- Bombay Tenancy and Agricultural Lands Act, 1948 - Section 88, 89

Citation: AIR 1966 SC 367 : (1964) MhLj 532 : (1964) 6 SCR 773

Hon'ble Judges: K. Subba Rao, J; J. R. Madholkar, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Subba Rao, J.
This appeal by special leave raises the question of the applicability of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. Act No. 67 of 1948), hereinafter called the "1948 Act", to the tenancy of the land in dispute.

2. The appellants are the legal representatives of one Prabhubhai Ratanji. The suit property is agricultural land situate within two miles of the limits of the Surat Municipal Borough. It was part of the erstwhile Sachin State. On May 7, 1946, Nagindas Atmaram Khatri, the respondent herein, who was the owner of the said land, gave a lease of the same in favour of the said Prabhubhai Ratanji for a period of six years. On July 28, 1948, Sachin State became part of the State of Bombay. From that date the Bombay Tenancy Act, 1939, hereinafter called the "1939 Act", was made applicable to the said area. On April 23, 1951, Nagindas Atmaram Khatri, the landlord, gave a notice to the defendant terminating the lease from March 31, 1952. After giving the said notice, he filed Reg. Suit No. 403 of 1952 in the Court of the Subordinate Judge, Surat, for eviction of the lessee Parbhubhai Ratanji. The suit was contested on various grounds, the main contention

being that under the provisions of the 1939 Act, the defendant had acquired tenancy rights therein. As the defendant died on September 30, 1955, his legal representatives were brought on record in his place. The learned Civil Judge, inter alia, held that the 1939 Act was repealed by the 1948 Act and that the latter Act did not apply to the suit land, as it was within two miles of the limits of the Surat Borough Municipality. On that finding, he gave a decree for possession, arrears of rent and mesne profits. Against the said decree, the defendant preferred an appeal to the District Judge. The learned District Judge held that the landlord failed to prove that the suit property was within a distance of two miles of the limits of the Surat Borough Municipality and, on that finding, he came to the conclusion that the 1948 Act applied to the suit land and set aside the decree of the trial court awarding possession to the plaintiff, but maintained the decree for arrears of rent. Thereupon, the plaintiff preferred a second appeal to the High Court insofar as the decree of the District Court went against him. The said appeal came up before a Division Bench of that High Court. The High Court held that the suit land was within two miles of the limits of the Surat Borough Municipality and that, therefore, the 1948 Act did not apply to the suit land. On that finding, it set aside the decree passed by the learned District Judge and restored that passed by the learned Civil Judge. The legal representatives of the defendant have preferred the present appeal.

Learned counsel for the appellants contended that the High Court should have held that the rights of the appellants under the 1939 Act were saved by the 1948 Act. He contended broadly that the right of the appellants under the 1939 Act were preserved under s. 89(2) of the 1948 Act, with the result that the lease extended to 10 years under the 1939 Act was saved thereunder, and that by reason of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1952 (Bom. Act 33 of 1952), hereinafter called the "1952 Act", which brought the suit land within the scope of the 1948 Act, their rights so preserved came to be governed by the provisions of the 1948 Act and, therefore, the respondent could not evict them except in the manner prescribed by the provisions of that Act.

3. To appreciate the contentions of the parties it is necessary to trace briefly the history of the relevant provisions. Section 23(1) of the 1939 Act, as amended by the 1946 Act, read :

(a) No lease of any land situated in any area in which this section comes into force made after the date of the coming into force of this section in such area, shall be for a period of less than 10 years; and

(b) every lease subsisting on the said date or made after the said date in respect of any land in such area shall be deemed to be for a period of not less than 10 years."

4. The 1939 Act was repealed by the 1948 Act. Section 88(1) of the 1948 Act, as it stood before the amendment by the 1952 Act, read :

Nothing in the foregoing provisions of this Act shall apply -

(a) . . . . . .

(b) . . . . . .

(c) to any area within the limits of Greater Bombay or within the limits of the Municipal Borough of.....Surat.....and within a distance of 2 miles of the limits such boroughs."

5. Section 89 thereof read :

(1) The enactment specified in the schedule is hereby repealed to the extent mentioned in the fourth column thereof.

(2) But nothing in this Act or any repeal effected thereby -

(a) . . . . . .

(b) shall save as expressly provided in this Act affect or deemed to affect,

(i) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act;.....".

SCHEDULE I

Year	No.	Short Title	Extent of repeal
1	2	3	4
1939	XXIX	The Bombay Tenancy Act, 1939.	The whole except sections 3, 3-A and 4 as modified in the following manner.....

6. Section 88 of the 1948 Act was amended by the 1952 Act. The relevant part of the amended section reads :

(1) Nothing in the foregoing provisions of this Act shall apply -

(a) . . . . . .

(b) . . . . . .

(c) to any area within the limits of Greater Bombay within the limits of the Municipal Corporations constituted under the Bombay Provincial Municipal Corporation Act, 1949, within the limits of the Municipal Boroughs constituted under the Bombay Municipal Boroughs Act, 1925, and within the limits of any cantonment;.....".

7. The gist of the provisions in their application to a lease of agricultural land situated within two miles of the limits of the Surat Borough Municipality may be stated thus : Such a lease subsisting on the date of the amending Act of 1946, which came into force on April 11, 1946, shall be deemed to be for a period of not less than 10 years. The 1939 Act was repealed by the 1948 Act. Under s. 88(1)(c) of the 1948 Act, the provisions of that Act were not applicable to any area within the municipal limits of the said borough of Surat and within a distance of two miles of the limits of the said borough; but the right, title and interest of a lessee in such area was preserved under s. 89(2)(b)(i) of the said Act. Section 88(1) of the 1948 Act, among other things, was amended by the 1952 Act, which came into force on January 12, 1953. By the said amendment the 1948 Act was extended to any area within a distance of two miles of the limits of the Surat Borough Municipality. With the result, all the provisions of the 1948 Act would be applicable to a lease of agricultural land subsisting in such an area after the amendment came into force. If so, such a lease can be terminated only in the manner prescribed by s. 14 thereof.

8. What is the effect of this legal position on the facts of the present case ? The relevant facts on which there is really no dispute may now be stated.

9. The lease deed between the appellants'' predecessor and the respondent was executed on May 7, 1946, for a period of six years commencing from May 3, 1946; that is to say, it would expire in the ordinary course on May 2, 1952. Sachin State became part of the Bombay State from July 28, 1948. After it became part of the Bombay State, the 1939 Act, as amended by the 1946 Act, was extended to that State; with the result the lease which would have expired in May 1952 was statutorily extended by another 4 years, that is, till May 1956. On December 28, 1948, the 1948 Act came into force. That Act repealed the 1939 Act. It also exempted the lands within the limits of the Surat Borough Municipality and also lands within two miles of the limits of the said Municipality from the operation of the provisions of the said Act. But, it saved the right or interest of the lessee which he had acquired under the 1939 Act. When the 1952 Act came into force on January 12, 1953, the said lease, protected under the saving clause, was subsisting. By the said amendment, the 1948 Act was made applicable to the land in question which is within two miles of the limits of the Surat Borough Municipality. With the result, the interest of the appellants could be terminated only under s. 14 of the 1948 Act. On April

23, 1951, the respondent gave a notice to the appellants terminating the lease from March 31, 1952, and filed the suit for eviction on April 21, 1952. But before the suit was disposed of, the 1952 Act came into force, and by reason of the extension of the 1948 Act to the said land, the respondent could not evict the appellants except in the manner prescribed by the 1948 Act. The High Court, therefore, was wrong in holding that the appellants could not claim the benefit of the provisions of the 1948 Act.

10. At this stage another argument advanced by learned counsel for the respondent may also be noticed. The argument is that the saving provision in s. 89(2) operates only if there is no express provision to the contrary, but such an express provision is found in s. 88(1), inasmuch as it says that the provisions of Sections 1 to 87 will not apply to the area in question. It is further contended that the saving of the appellant''s right would be otiose, as he could not enforce his right under the Act. A similar argument was advanced but was repelled by this Court in 290550 . There the lands in dispute were situate within two miles of the limits of the Poona Municipal Borough. The question was whether the rights of the appellants as protected tenants were affected by the repeal. This Court held that the provisions of s. 88(1) were entirely prospective and that they applied to lands of the description contained in the said section from the date on which the Act came into force and that they were not intended, in any sense, to be of confiscatory character. When it was further contended that the right would be illusory, as it could not be enforced under the Act, this Court pointed out that as there was a right recognized by law there was a remedy and, therefore, in the absence of any special provisions indicating a particular forum for enforcing a particular right the general law of the land would naturally take its course. This decision is binding on us. We, therefore, reject this contention.

11. Even so, learned counsel for the respondent contended that in the view taken by the High Court it had become unnecessary for it to give its findings on two of the important issues that arose in the case, namely, issues 3 and 4, which are as follows :

Issue 3. Whether the plaintiff proves that he wants possession for bona fide personal cultivation.

Issue 4. Whether the defendant proves that he had not damaged the suit property in view of the decision in Reg. C. Suit No. 619 of 1950 by the Joint Civil Judge (J.D.), Surat.

12. He, therefore, pointed out that the matter would have to be remanded to the High Court for its decision on the said two points.

13. In view of the supervising circumstances, it is not possible to accede to this argument. As pointed out earlier, on April 23, 1951, the respondent issued the notice on the ground that the tenancy of six years would expire on March 31, 1952. But by reason of the 1939 Act the tenancy was statutorily extended till 1956. So the said notice had become ineffective and the respondent would not be entitled to any relief on its basis. It would be open to him to take any appropriate proceedings, which the law allows, in a proper

tribunal. In the circumstances the only course open to us is to set aside the decree of the High Court and to restore that of the District Judge. The parties will bear their respective costs throughout.

14. Appeal allowed.