(1968) 10 BOM CK 0018

Bombay High Court

Case No: Special Civil Application No''s. 1159 of 1965 and 517 and 2008 of 1968

Bapu Dnyanu Patil		APPELLANT
	Vs	
Sadashiv Ramchandra Joshi		RESPONDENT

Date of Decision: Oct. 8, 1968

Acts Referred:

- Constitution of India, 1950 - Article 10, 13, 14, 19, 31

Citation: (1969) 71 BOMLR 402 : (1969) MhLj 789

Hon'ble Judges: Wagle, J; Patel, J

Bench: Division Bench

Judgement

Patel, J.

These three applications raise the question of construction of the provisions of Section 32P of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Act of 1948). In each of these cases either the landlord or the tenant was a person under disability and the provisions of Section 32F had to be applied.

2. In Special Civil Application No. 1159 of 1965 the proceedings were commenced u/s 32G of the Act. The Additional Mamlatdar fixed the value of the land and directed it to be paid by installments as provided in his order. The appeal of the landlord before the Special Deputy Collector failed. The landlord took a revisional application to the Revenue Tribunal which was heard by a Bench consisting of the President, and a Member of the Tribunal. The Tribunal set aside the order on the ground that as Section 32P of the Act was applicable and as the tenant had not exercised the option within one year of his right to purchase having come into existence as provided by the said section, the order u/s 32G was bad. In, this case the tenant was minor during the relevant period, he became major on March 16, 1958, but did not ''exercise his right at any time until after the proceedings were commenced u/s 32G of the Act.

3. In Special Civil Application No. 517 of 1968 the landlord was a widow. She died on May 16, 1960. The mutation in the name of the successor in interest was effected on June 30, 1960. It was thereafter that the petitioner gave intimation of his desire to purchase the land on February 4, 1966 and the proceeding''s u/s 32G of the Act were commenced. When objection was taken u/s 32F the Lands Tribunal held that the tenant had lost his right u/s 32F of the Act and that the land should be disposed of u/s 32P of the Act after holding'' a formal inquiry in that behalf. This decision has been confirmed by District Deputy Collector and the Revenue Tribunal.

4. In Special Civil Application No. 2008 of 1966 the landlord was a minor on the deemed date. He attained majority on March 30, 1963 and in terms of Section 31(5) of the Act he terminated the tenancy of the petitioner and then filed an application. This application was decided finally on August 9, 1966. In the meantime he also made an application u/s 88C of the Act which was dismissed on June 27, 1966. The petitioner gave intimation of his desire to purchase the land on August 5, 1966. The present proceedings were commenced on June 29, 1965, The Additional Mamlatdar held that as the tenant had failed to exercise his discretion to purchase the said land, the land should be disposed of u/s 32P of the Act.

5. In all these petitions, it is argued that the provisions of Section 32F as a whole and particularly the provisions of Sub-sections (1A) and (2) thereof are ultra vires the Constitution on the ground that they offend Article 14 of the Constitution.

6. By the amending Act No. XIII of 1956 great deal of changes were made in the tenancy Act of 1948. It amended in a large measure the provisions of Section 31 of the said Act defining the rights of termination of tenancy for personal cultivation and non-agricultural use. By Sub-section (3) of Section 31 where a landlord happened to be a minor, or a widow, or a person subject to mental or physical disability, the time limit for termination of the tenancy under Sub-section (1) was extended, both for giving notice and. for making an application u/s 29 of the Act, viz. in the case of a minor, within one year from the date on which he attained majority, in the case of a widow, within one year from the date on which her interest in the land ceased to exist and in the case of any other disability, within one year from the date on which mental or physical disability ceased to exist. The proviso to Sub-section (3) provides that this was not intended to apply to person of this category if he was a member of a joint family. Section 31A imposes certain conditions on satisfaction of which alone the landlord could take possession. Sections 31B to 31D prevents termination of tenancy under certain circumstances with which we are not concerned in this inquiry. Then comes the part relating to purchase of land by tenants and contains Sections 32 to 32E, of the Act. Section 32(1) of the Act has fixed the terminal date to be the first day of April 1957 on which date every tenant was deemed to have purchased the land under certain circumstances. This section itself was made subject to other provisions of the same section and the succeeding sections. Section 32A gives a further right to a tenant to be a deemed

purchaser provided his holding does not exceed the ceiling area. Section 32B states when he would not be deemed to have purchased the land. Section 32C gives a tenant a right to choose one or the other of the lands of which he is a tenant if he held from different landlords. Section 32D gives him a right even in respect of fragments. Section 32E provides that the balance of any land after it is purchased .by a tenant u/s 32 should be disposed of in the manner laid down in Section 15 of the Act. Section 32G- requires the Tribunal constituted for the purpose of this group of sections to issue notices and determine the price to be paid for the lands by the tenants giving it certain powers necessary for effectuating the provisions of this group of sections. By Sub-section (2) the Tribunal has to record the statement of the tenant whether or not he is willing to purchase the land held by him as a tenant. Sub-section (3) requires the Tribunal to make an order in writing and if the tenant declines! to purchase the land, declare that the tenant is not willing to purchase the land and that the purchase has become ineffective if the tenant fails to appear in response to the notice and/or he makes a statement that he is not willing to purchase the land with a further power to review the said order if it is an ex parte order and if an application is made within sixty days from the date of communication of such order-to the tenant. If the tenant is prepared to purchase the land the consequences regarding the price and its adjustment and the terms on which the land is granted are defined. Section 32H prescribes the maximum and minimum price determinable by the Tribunal depending upon the assessment to which the land is subject. The next relevant section is 32(0). This section gives a tenant whose tenancy is created after the tillers'' day a right to purchase the land from the landlord provided that he gives an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within a period specified in Sub-section (1) thereof. In such a case, the provisions of Sections 32 to 32N and of Sections 32P, 32Q and 32R, in so far as they may be applicable, are made applicable. Section 32P enables the Tribunals where the purchase had become ineffective under the provisions of Section 32G or 32M or where a tenant failed to exercise the right given to him by Sections 32P, 32 0, 33C or 43-ID or on an application made to it to direct that the land be disposed of in accordance with the terms of that section.

7. It is in this scheme of the sections that Section 32P of the Act finds a place, and it reads as follows:

32F. (1) Notwithstanding anything contained in the preceding sections,- (a) where the landlord is a minor, or a widow, or a person subject to any mental or physical disability the tenant shall have the right to purchase such land u/s 82 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 81 :

Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st

day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property and not in a larger proportion.

(b) where the tenant is a minor, or a widow or a person subject to any mental or physical disability or a serving member of the armed forces, then subject to the provisions of Clause (a), the right to purchase land u/s 82 may be exercised-

(i) by the minor within one year from the date on which he attains majority ;

(ii) by the successor-in-title of the widow within one year from the date on which her interest in the land ceases to exist ;

(iii) within one year from the date on which the mental or physical disability of the tenant ceases to exist;

(iv) within one year from the date on which the tenant ceases to be a serving member of the armed forces ;

Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion.

(1A) A tenant desirous of exercising the right conferred on him under Sub-section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section.

(3) The provisions of sections 32 to 32E (both inclusive) and sections 32G to 32R (both inclusive) shall, so far as may be applicable, apply to such purchase.

8. The argument advanced by Mr. Naik for one of the petitioners is that the provisions requiring the tenant who is a minor or in the case of a widow, the successor of a widow or in the case of a member of armed forces, to give notice within a year of the minor attaining majority, the successor coming into title or a member of the armed forces ceasing to serve and a tenant suffering from physical and mental disability, is a burden which has been cast on a tenant contrary to the scheme of the provisions, while no such burden is cast on any other tenant tinder Section 32 who falls outside these categories, and they are declared to be automatically purchasers on the deemed date. It is argued that there is no possible reason for making this distinction between the tenants falling within Section 32F

and any other tenant. That such discrimination between tenants is not justified under Article 14 of the Constitution. Sub-section (1A), which has been added by Bombay Act XXXVIII of 1957, also casts upon a tenant the burden of giving-intimation to the landlord and the Tribunal within the period prescribed in the body of the scheme of Section 32F(1)(b) of the Act. This provision is also discriminatory and is not justified.

9. Before we advert to the merits of these contentions it is necessary to refer to the two decisions in connection with the provisions of the Act of 1948, which have got a bearing on the questions at issue. The first case is Sri Ram am Narain v. State (1958) 61 Bom. L.R. 811 In this case the validity of the provisions of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1956, was challenged on the ground that the same offended the provisions of arts, 14, 19 and 31 of the Constitution. It may be mentioned that a large number of Acts dealing with land reforms in different States were being challenged under these articles of the Constitution and, therefore, the Parliament thought that it was necessary to. amend the provisions of the Constitution removing all these enactments from the operation of these articles. Accordingly, Article 31A of the Constitution came to be enacted which provides as follows:

(1) Notwithstanding anything contained in article 13, no law providing for-

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the. property, or ...

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 10 or article 81." In Clause (2) of Article 31A the expression ""'estate" is defined to have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and includes:

(i) any jagir, inam or muafi or other similar grant...

(ii) any land held under ryotwari settlement ;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;

The expression "rights" is also defined similarly very widely. After enacting these provisions of general nature, the Parliament also enacted Article 31B whereby it added the Ninth Schedule to the Constitution and gave immunity to Certain Acts and Regulations mentioned therein from being challenged under any provisions of

Part III of the Constitution. The Act mentioned at serial No. 2 is the Act of 1948. Before the Supreme Court, the attack on the amending Act of 1956 was based on the ground that it was only the Act of 1948 as it existed on the date of the first amendment of the Constitution that received immunity from being challenged but not the amending Act. This contention was negatived by the Supreme Court not on the footing of anything contained in Article 31B but because of the provisions of Article 31A of the Constitution which applied to any estate, and as the amending Act of 1956 dealt with an estate or a right in an estate, the Supreme Court held that none of the provisions of the amending Act, 1956 was hit or could be hit by the provisions of Articles 14, 19 and 31 of the Constitution; it concluded by saying (p. 825):

We have, therefore, come to the conclusion that the impugned Act is covered by Article 81A and is protected from attack against its constitutionality on the score of its having violated the fundamental rights, enshrined in Articles 14, 19, and 31 of the Constitution. That being so, the attack levelled against Sections 5, 6, 8, 9, 17A, 31A to 31D and 32 to 32R on the score of their being violative of the fundamental rights conferred upon tile petitioners is of no avail to the petitioners.

It was argued that inspite of the fact that the Act of 1948 is added to the Ninth Schedule by Article 31B of the Constitution, if there is amendment in any of the provisions of that Act then that amendment is subject to the test of its constitutional validity. In this connection, we are referred to the decision of the Supreme Court in Sajjan Singh v. State of Rajasthan [1965] 1 S.C.J. 377 and reliance is placed on the passage at p. 390 which reads as follows:

...In other words, the fact that the said Acts have been included in the Ninth Schedule with a view to make them valid, does not mean that the legislatures in question which passed the said Acts have lost their competence to repeal them or to amend them. That is one consequence of the said provision. The other inevitable consequence of the said provision is that if a legislature amends any of the provisions contained in any of the said Acts, the amended provision would not receive the protection of Article 31-B and its validity may be liable to be examined on the merits.

In our view, even if the provisions of the Act amending the Act of 1948 cannot attract the protection of Article 31B, if the statute falls within the provisions of Article 31A of the Constitution, then evidently the arguments of the learned advocates appearing for the various petitioners cannot He sustained. The decision in Sri Earn Ram Narain''s case in unmistakable terms held that lands governed by the Act of 1948 would fall within the definition of the word "estate" contained in Article 31A(2)(a) of the Constitution and are entitled to the protection of Article 31A of the Constitution. The Supreme Court was specifically dealing with the amending Act of 1956 wherein this group of sections finds a place. Even if the question were open, having regard to the wide definition of the word "estate", we have not the least

doubt that the lands covered by those Acts and the impugned amending Act satisfy that definition. Once we come to this conclusion the necessary corollary must follow that these provisions cannot be challenged on the ground that they are violative of the provisions of Articles 14, 19 and 31 of the Constitution.

10. Even otherwise, assuming that we had to consider whether the distinction between landlords or tenants under disability on the one hand and those without any disability on the other, could reasonably form separate classes and whether the classification is reasonable, we would have upheld the validity of these provisions. It is no doubt true that in some measure according to the accepted notions of the days gone by some injustice is in fact involved in giving rights to a tenant contrary to the provisions of the law of contract. But then, in the larger interests of the community and for better development of land it is a necessary and permissible encroachment on the rights of owner in the land. In order that injustice should not be carried further than necessary, it would be necessary to protect both the landlord under disability and also the tenant under disability. In the ease of a minor tenant or a tenant under disability, the Legislature could not create liability under the Act during the disability of the tenant and it is for this reason that the Legislature separated the case of tenants under disability and gave them the options available to them under the statute to be exercised within a certain period. Similar considerations apply to landlords under disability.

11. It is argued that in the ease of tenants who did not suffer from any disability on the deemed date they were declared to be the owners and on the terminal date they were deemed to be the purchasers of the property, while in the case of tenants suffering disability they were required to exercise their option of giving- intimation both to the landlords and the Tribunal. Even here, having regard to the circumstances involved, it cannot be said that this is not necessary. In the case of a tenant not suffering from disability there is a definite date on which he could be declared as the purchaser subject to the defeasibility of his right under any of the eventualities provided in the Act. Every revenue officer would know that on and from that date he had to act u/s 32G of the Act for effectively completing the process of transfer of ownership to the tenants. In the case of tenants who suffered from disability there would not be, any certainty about the actual date. It would be too much to expect the officers concerned to contact every minor tenant to find out whether or not he had become major and further to find out whether or not he was going to exercise the option for which a period of one year was provided. Unless, therefore, any of the tenants concerned gave intimation as required by Section 32F(1a), no action could possibly be taken by the officers concerned. It is for this reason that a distinction has been made between tenants, suffering from disability and tenants not suffering from disability. In our view, there is nothing unreasonable in making this distinction, that the discrimination is permissible and that the provisions do not offend Article 14 of the Constitution.

12. Similar is the case of landlords under disability. Every tenant is expected to know his landlord. If the landlord is under disability, he would know it and he would also know when the disability ceases. He would be in a position to give the requisite notice so that the Tribunal is made aware of his rights as purchaser and can proceed u/s 32G.

13. Obviously, therefore, there is a just nexus between the classification of persons under disability and those not under disability and the purpose for which it is made. In our view, therefore, the classification is reasonable and Section 32P therefore is constitutionally valid.

14. Each of the applications was then argued on merits, which involve the construction of the provisions, of Section 32P and other relevant provisions of the Act of 1948. It is argued by each of the learned advocates for the petitioners concerned that Section 32 which makes the tenants purchasers having regard to the words "every tenant", must apply to all tenants irrespective of the question whether a landlord or a tenant was suffering from any disability, particularly because u/s 32F(2) the provisions of Sections 32 to 32E and Sections 32G to 32R are made applicable so far as they may be to purchases u/s 32F of the Act of 1948. Obviously, there are valid answers to this contention. The first answer is that the entire group of sections must be construed in their context and not in an isolated manner. Section 32 is a general provision while Section 32F is a special provision, and it is a well established rule of construction of statute that where there is general provision and special provision in an Act, the general provisions must be limited to those cases to which the special provision does not apply. The Legislature first, enacted the general provision (s. 32) which from its very language cannot possibly apply to a case where the special provision of Section 32F is applicable. Apart from this, it has made Section 32 of the Act subject to the succeeding provisions of the same section and other sections in that group of sections. That being so, the Legislature clearly intended that those cases which are governed by Section 32F of the Act are to be excluded from the operation of Section 32 thereof, which applies to other classes of tenants. In our opinion, the contention based on Section 32F(2) of the Act is equally unsustainable. It does not apply the provisions of Sections 32 to 32E of the Act without qualification. It applies them to cases falling u/s 32F only after the requisite notice is given. The provisions of Sections 32 to 32E are to be applied so far as they are applicable. Inasmuch as Section 32F of the Act gives an option to a tenant of a landlord under disability and a tenant under disability and requires the tenant in each case to exercise the option in the particular manner and further lays down the consequences of the option not having been exercised in that manner, it is impossible to apply the provisions of Section 32 to such a case and destroy the very provisions which limit the right given u/s 32F of the Act. Really speaking this contention is not even open to be argued inasmuch as a Full Bench of this Court in Ramchandra Anant v. Janardan (1902) 64 Bom. L.R. 635 has held that neither Section 32 nor its proviso is applicable to cases governed by Section 32F of the Act of 1948,

In each of these applications, therefore, the option ought to have been exercised in accordance with the provisions of Section 32F of the Act of 1948.

15. It is clear u/s 32F(1) that where a landlord is under a disability he is entitled to exercise his right of terminating the tenancy within, a year from the removal of the disability or in the case of a widow, from the date of secession of her interest by the successors, and within a further year thereafter a tenant must exercise his option of purchasing the land in the manner provided by Sub-section (1A) thereof. The right to terminate the tenancy as intended by Section 31(3) of the Act is to give notice and file an application u/s 29 for recovery of possession within a year. The language of these provisions is such that it is not possible to hold that in a case where the landlord has in fact filed an application for recovery of possession after terminating the tenancy, the right for the exercise of the option is postponed until after the decision of such an application. The language in Section 31 is not susceptible of that construction and it is not possible to accede to any such contention. The proviso, therefore, which is a part of Section 32 which postpones the deemed date in respect of an ordinary tenant who is himself not under a disability and whose landlord also is not under a disability cannot have application to such a case as is sought to be contended in some of these cases.

16. In the case of a tenant under disability Section 32F(1)(b) applies and having regard to the provisions of Section 32P it is impossible to hold that the provisions of giving notice and the exercise of right within a period provided therein are merely directory and not mandatory. In case of disability on the part of a tenant, the right must be exercised on the removal of the disability and in the case of a widow by the successors on her ceasing to have interest within one year in the manner provided by Sub-section (1)(b) of Section 32F of the Act. It is not, therefore, possible to accede to the contention that the provisions should be read as directory and not mandatory.

17. In the result, the rule in all these three cases must be discharged. Having regard to the circumstances of the case, we direct the parties to bear their own costs in each of the matters.