Pandurang Sakharam Jadhav Vs Nago Hiru Gharat

Court: Bombay High Court

Date of Decision: Aug. 4, 1960

Acts Referred: Bombay Agricultural Debtors Relief Act, 1947 â€" Section 32(2)(5)

Citation: (1960) 62 BOMLR 988

Hon'ble Judges: H.K. Chainani, C.J; Tarkunde, J

Bench: Division Bench

Final Decision: Allowed

Judgement

H.K. Chainani, C.J.
The petitioner is the owner of the two lands in dispute. On January 17, 1944, he sold these lands to one Govind

Khandu Patil, who in turn sold them to Parsharam Atmaram Vichare. After Vichare purchased the lands, they were given on lease to Govind

Khandu Patil, who cultivated them till 1947-48. Since 1948-49, opponent No. 1, hereinafter referred to as the opponent, has been cultivating the

lands. From the admissions made by the petitioner in his evidence, it appears that the opponent had been introduced on the lands as a tenant by

Vichare in 1948-49. On June 25, 1947, the petitioner'' made an application under the Bombay Agricultural Debtors Relief Act, in which he

contended that the transaction between him and Govind Khandu Patil was a mortgage. He prayed for redemption of that mortgage. In that

proceeding, it was held that the transaction was a mortgage and an order was made for possession of the lands being restored to the petitioner on

his paying the amount found due. On December 27, 1956, the petitioner gave a notice to the opponent terminating his tenancy. In that notice he

stated that he was giving this notice without prejudice to his legal rights. Subsequently, the petitioner also made an application for obtaining

possession of the land u/s 31 read with Section 29 of the Tenancy Act of 1948, but that application was withdrawn. On August 9, 1957, the

petitioner passed a receipt for the rent received by him for the year 1956-57. In that receipt it is stated that he had accepted the rent under protest

and without prejudice to his contention that the opponent was not a tenant. On September 11, 1957, the petitioner made an application to the

Mamlatdar for obtaining a declaration that the opponent was not a tenant of the lands. The opponent relied on the conduct of the petitioner in

giving a notice to him for termination of his tenancy and in accepting rent from him, and contended that the petitioner had thereby recognised him as

his tenant. These contentions were accepted by the Mamlatdar, who accordingly held that the opponent was a tenant of the lands. The order made

by the Mamlatdar was set aside by the Prant Officer. He referred to the fact that in the rent receipt passed by the petitioner, he had stated that he

was accepting the rent, without prejudice to his contention that the opponent was not a tenant 0f the lands. The Prant Officer came to the

conclusion that after the redemption of the mortgage, the petitioner had not allowed the opponent to hold over and that on the other hand he had

disputed his title as a tenant. He, therefore, held that the tenancy came to an end when the mortgage was redeemed. Against this order, the

opponent applied in revision to the Bombay Revenue Tribunal. Before the Tribunal the opponent raised what the Tribunal has described as a new

point and it was that, as he was a tenant of the mortgagee in 1948-49, i.e. before the coming into force of the Bombay Tenancy and Agricultural

Lands Act, 1948, in December 1948, he must be deemed to be a tenant under the Act of 1948. This contention was accepted by the Tribunal.

The Tribunal accordingly set aside the order of the Prant Officer and restored the order of the Mamlatdar, Against the order made by the Revenue

Tribunal, the petitioner has filed the present application.

2. Mr. Patil, who appears on behalf of the petitioner, has raised various points. He lias urged that the Tribunal should not have allowed the

opponent to make out a new case in the revision application filed by him. He has contended that, u/s 32(2)(v) of the Bombay Agricultural Debtors

Relief Act, the award made in favour of the petitioner will prevail over the rights, if any, acquired by the opponent to continue in possession of the

lands under the Tenancy Act. Another argument advanced by Mr. Patil is that the lease of the lands by Vichare to the opponent cannot affect the

petitioner"s right to obtain possession of the land, as it took place during the pendency of his application under the Bombay Agricultural Debtors

Relief Act. The last point, which Mr. Patil lias urged, is that the opponent is not entitled to the protection of the 1948 Act after the redemption of

the mortgage, as he was not a protected tenant under the Act of 1939.

3. We do not think that it is necessary for us to deal with all the points, which have been urged by Mr. Patil, as in our opinion he must succeed on

the last point, which he has urged, that the opponent cannot now claim to be a tenant under the Act of 1948. The opponent became a tenant of the

lands for the first time in 1948-49, when the Tenancy Act of 1939 was in force. He was, therefore, not a protected tenant within the meaning of

that Act. Section 31 of the Act of 1948, as it stood when this Act came into force, provided:

For the purposes of this Act, a person shall be recognised to be a protected tenant if such person has been deemed to be a protected tenant u/s 3,

3A or 4 of the Bombay Tenancy Act, 1939.

The opponent was not a protected tenant under the Act of 1939. He cannot, therefore, be deemed to be a protected tenant under the Act of

1948.

4. Mr. Rege, who appears on behalf of the opponent, has relied on the definition of the word ""tenant"" contained in Clause (18) of Section 2 of the

Act of 1948, as it stood in 1948, according to which "tenant" means an agriculturist who holds land on lease and includes a person who is deemed

to be a tenant under the provisions of this Act. Section 4 of the Act states that

A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant, if such land is not cultivated personally by the

owner and if such person is not- ...

(c) a mortgagee in possession.

It has been held in Kanji Kurji Vs. Kala Gopal, that the words ""mortgagee in possession"" in Section 4(c) include all persons, who derive title under

a mortgagee in possession, and that, therefore, a tenant from a mortgagee inpossession, who derives title through him, cannot acquire the status of

a deemed tenant or a statutory tenant under the Act. The opponent cannot, therefore, be deemed to be a tenant u/s 4 of the Act. Section 3 of the

Act makes the provisions of Chapter V of the Transfer of Property Act applicable to tenancies and leases of agricultural lands in so far as they are

not inconsistent with the provisions of the Act. The opponent had been brought on the land by the mortgagee. Under s. 111(c) of the Transfer of

Property Act, his lease came to an end when the interest of the mortgagee in the land terminated, i.e. when the mortgage was redeemed.

Thereafter he cannot be deemed to be a tenant u/s 4. He cannot also be recognised to be a protected tenant u/s 31, as he was not a protected

tenant under the Act of 1939. There is also, no other provision in the Act, under which the opponent is entitled to continue in possession of the

lands as a tenant of the petitioner,

5. Mr. Rege has contended that under the Bombay Tenancy Act, 1939, the opponent had acquired the right to continue in possession of the lands

until his tenancy was terminated as provided in that Act. He has urged that this right cannot be held to have been taken away merely by reason of

the repeal of the 1939 Act. This argument cannot be accepted, because the protection given to him by the 1939 Act ceased to exist when that Act

was repealed. Thereafter he could only claim those rights conferred by the 1939 Act, as had already become vested or as were expressly saved.

The only rights saved by Section 89(2) of the 1948 Act are rights which had already been acquired or which had already accrued. A. mere right

existing in the members of the community or any class of them to take advantage of an enactment, without any act done by any individual towards

availing himself of that right, cannot properly be deemed a ""right accrued"" within the meaning of a saving section, such as is contained in Section 38

of the Interpretation Act, or Section 7 of the Bombay General Clauses Act (see Oaies on Statute Law, 1952 Edition, page 324). In Patel

Maganbhai Jethabhai Vs. Somabhai Sursang, , F.B. , it was observed:-

... what has got to be borne in. mind is that when one speaks of vested rights, those are rights which are not the creature of law or of an enactment,

but those are rights which are acquired by a person claiming them by some action taken by him under the law.

At page 1388 it was observed:

Now, it will be noticed that the General Clauses Act uses in Section 7 the expression "affect any right, privilege, obligation or liability acquired,

accrued or incurred under any enactment so repealed." This really is a paraphrase of a vested right and therefore a. right or privilege must be

acquired or have accrued under any enactment. A right given by the enactment itself which has not been acquired by the party or which has not

accrued to the party is not a vested right in the sense in which vested right is understood... But when we talk of a vested right, we are not talking of

a right in that wide sense, but a vested right is a right used in the sense which the Privy Council has defined and described, viz., a right of which a

party claiming it has availed himself under the statute by doing any act and not merely by relying on the right conferred by the statute itself.... It may

further be said that no person has a vested right to any law continuing on the statute book. No citizen can say that a protection given to him by the

Legislature must indefinitely continue and cannot be taken away unless,... by reason of the presence of that law on the statute book he has acquired

some right, ho has taken some action, he has changed his position which has brought into existence some right which is vested in him.

The opponent had not taken any action in order to assert such rights as were conferred on him by the Act of 1939 before that Act was repealed.

He had not changed his position in any way on account of that Act. The rights given to him by the Act had, therefore, not become vested in him

and they came to an end when that Act was repealed, unless there is anything in the Act of 1948, which can be held to have saved those rights. As

I have already stated, Section 31 of this Act does not protect the opponent because he was not a protected tenant under the Act of 1939. His

rights as a tenant of the mortgagee came to an end when the mortgage was redeemed. He cannot be deemed to be a tenant thereafter in view of

Section 4(c) of the Act. There is also no other provision in the Act of 1948, which would entitle the opponent to continue in possession as a tenant

of the lands after the redemption of the mortgage.

6. Mr. Rege has relied on the observations in the Full Bench judgment of this Court in Jaswantrai Tricumlal v. Bai Jiwi (1956) 59 Bom. L.R. 168,

that so far as the Act of 1939 is. concerned, the tenants of mortgagees in possession became statutory tenants on the redemption of the mortgage.

These observations must, however, be read in the context. The observations occur in the portion of the judgment, which deals with the decision of

a Division Bench of this Court in Dinkar Bhagwant v. Ran Babaji (1956) 59 Bom. L.R. 101. That was a case, in which the tenant of the mortgagee

was a protected tenant under the Act of 1939. u/s 31 of the Act of 1948, he was. therefore, a protected tenant within the meaning of this Act and

was consequently entitled to the protection given by this Act. The observations of the Full Bench must, therefore, be regarded as applying to

tenants of mortgagees, who were protected tenants within the meaning of the Act of 1939. They will not assist the opponent because he was not a

protected tenant under the Act of 1939.

7. The petition must, therefore, succeed. We set aside the order made by the Revenue Tribunal and restore the order made by the Prant Officer

declaring that opponent No. 1 is not a tenant of the lands. The petitioner should get his costs from opponent No. 1.