(1956) 12 BOM CK 0020

Bombay High Court

Case No: Second Appeal No"s. 185 and 233 of 1955

Tamboli Boghalal Chhotalal and Another		APPELLANT
	Vs	
Mohanlal Chunilal Kothari and Others		RESPONDENT

Date of Decision: Dec. 18, 1956

Acts Referred:

- Bombay Tenancy Act, 1939 - Section 3A, 5(1), 5(2)
- Bombay Tenancy and Agricultural Lands Act, 1948 - Section 1, 10, 11, 12, 13
- Constitution of India, 1950 - Article 245

Citation: AIR 1957 Bom 130 : (1957) 59 BOMLR 274 : (1957) ILR (Bom) 420

Hon'ble Judges: Vyas, J

Bench: Single Bench

Advocate: H.R. Gokhale and N.R. Oza, for the Appellant; N.V. Karlekar and H.V. Karlekar, for the Respondent

Judgement

1. This is. an appeal by the defendants and it raises a question of construction of Clause (d) of Sub-section (1) of Section 88 of the Bombay Tenancy and Agricultural Lands Act, 1948.

2. The question has arisen in this way: The plaintiffs, who are respondents in this appeal, filed Civil Suit No. 452 of 1951 in the Court of the Second Joint Civil Judge, J.D., at Baroda to recover possession of lands S. Nos. 115, 118, 119/1, 125 beghas out of S. No. 126 and S. No. 129 of the village Akota, a village in the former State of Baroda, and to recover the amount of Rs. 601 as arrears of rent in respect of the abovementioned lands for the Fasal of Samvat year 2007. The plaintiffs" case was that defendant No, 1, for himself and defendant No. 2, had taken these lands on lease for the Fasal of Samvat year 200-1 under a rent note dated the 17th April 1948. By this rent note the defendants had agreed to deliver-possession of the lands to the plaintiffs on the expiry of the

agricultural season on Akhatrij of Samvat year 2005 (May 1949). According to the plaintiff"s case, the defendants cultivated the lands during the period of the rent note. However, they failed to deliver possession of the lands to the plaintiffs on the expiry of the period of the rent note-and continued to hold over and enjoy the income of the lands. The plaintiffs served the defendants with a notice on the 24th March, 1950, terminating the tenancy of the defendants and demanding possession of the lands on Akhatrij of Samvat year 2007 (9th May 1951) at the end of the cultivation season: The defendants did not comply with that notice and failed to deliver possession of the lands to the plaintiffs. The plaintiffs" contention was that the defendants" possession of these lands after the Akhatrij of the Samvat year 2007 (9th May 1951) was possession as trespassers. It was upon these contentions that the plaintiffs filed the abovementioned suit No. 452 of 1951 against the defendants.

3. The defendants resisted the suit upon the contention that they were permanent tenants, of the lands mentioned above. In the alternative, they contended that they wore protected tenants of these lands and were entitled to remain in possession for a period of ten years u/s 5, Sub-section (1) of the Bombay Tenancy Act. It was contended by them that upon the merger of the State of Baroda with the State of Bombay, the Bombay Tenancy and Agricultural Lands Act, 1948, was applied to the territory of the former Baroda State, that the tenancy rights which were acquired by them under the Act and had vested in them could not be taken away by a notification issued by the State of Bombay under Clause (d) of Sub-section (1) of Section 88 of the Bombay Tenancy Act and that accordingly the Civil Court would have no jurisdiction to try and decide the suit and eject the defendants from these lands.

4. The learned trial Judge held that the defendants had failed to prove that they were permanent tenants or protected tenants of the suit lands. He also held that view of the notification issued by the State of Bombay under Clause (d) of Sub-section (1) of Section 88 of the Bombay Tenancy and Agricultural Lands Act, 1948, the suit lands which were situated within two miles of the Municipal limits of the city of Baroda were excluded from the operation of the Act although they were agricultural lands and accordingly the defendants did not acquire any rights under the Act in respect of these lands. The learned Judge took the view that the tenancy of the defendants was terminated by a notice which was legal and valid. According to the learned Judge, the period of the defendants" tenancy expired on the 9th May 1951 and it was from that date that the defendants were called upon to hand over possession of the hands to the plaintiffs. Upon this view of the matter which the learned Judge took, he passed a decree directing the plaintiff No. 2 to recover possession of the suit lands Section Nos. 115, 118, 119/1, 125 beghas out of S. No. 126 and S. No. 129 of the village Akota from the defendants. It was also directed that plaintiff No. 2 do recover the amount of Ms. 601 with interest at 6 per cent, from the date of suit till realisation from the defendants. The defendants, feeling aggrieved by this Judgment and decree, appealed to the District Court at Baroda. The appeal was heard and decided by the learned Assistant Judge at Baroda and the learned Judge dismissed

the appeal and confirmed the Judgment and decree passed by the trial Court. It is from that appellate decree that this appeal has been filed by the defendants.

5. The question which has arisen for decision in this appeal is whether the tenancy lights created in favour of a tenant before the coming into force of the Bombay Tenancy and Agricultural Lands Act, 1948, and enjoyed by a tenant after the Act came into force could be affected as the result of a notification issued by the State Government under Clause (d) of Sub-section (1) of Section 88, specifying the lands as reserved for urban, non-agricultural or industrial development. The tenants had passed a rent note in favour of the landlords on the 17th April, 1948. The period of the tenancy was to expire on Akhatrij of Samvat year 2005 (May 1949). The possession, however, was not delivered by the tenants and they continued to bold over. During the period of bolding over, they bad annual tenancy rights in respect of the lands. On the 24th March 1950 the landlords gave them a notice. These lands are situated in what was formerly known as the Baroda State and they are situated within a radius of two miles from the Baroda city Municipal limits. The Baroda State merged with the State of Bombay on 1st August 1949 and the Bombay Tenancy and Agricultural Lands Act, 1948, carne into force in that area on the same date, 1st August 1949. It was 16 months thereafter that the Government of the State of Bombay issued a notification on the 24th April 1951 under Clause (d) of Sub-section (1) of Section 88 of ''the Act, saying that the area within the limits of the Municipal Borough of Baroda City and within a distance of two miles of the limits of the said Borough was reserved for urban, non-agricultural or industrial development, It would thus be seen that by virtue of the rent note dated the 17th April 1949, the tenancy rights were acquired by the tenants (defendants) before the coming into force of the Act, and even after the Act came into force on the 1st August 1948, the rights under the Act were enjoyed by the tenants for 16 months when the Government notification u/s 88, Sub-section (1), Clause (d), was issued on the 24th April 1951. During the period between 1st August 1949 and 24th April 1951, Section 3 and Section 5, Sub-section (1) of the Act were in full operation in this area. Under the provisions of Section 5, Sub-section (1), the tenancy of these tenants had become a tenancy for a period of not less than ten years and the said period of ten years was renewable by cycles of ten years each, unless the landlords gave one year''s notice under Sub-section (2) of Section 5. In other words, unless the landlords gave a notice under Sub-section (2), the tenancy rights, which might extend over several cycles of ten years each, were acquired by the tenants during the period between 1st August 1949 and 24th April 1951, In fact, they were acquired on 1st August 1949 when the Act was applied to this area, because on that date the tenants were already enjoying annual tenancy rights over these lands. Thus, the tenancy rights which were potentially capable of being enjoyed by these tenants (or considerable duration, unless the landlords gave one year''s notice, were acquired by the tenants on 1st August 1949 and the tenants were enjoying those rights when the State Government issued a notification u/s 88, Sub-section (1), Clause (d), of the Act. So much about the benefits u/s 5, Sub-section (1), to which the tenants had become entitled at the date of the notification.

6. Now, let us turn to Section 3 which provides: "Every tenant shall, from the eighth day of November 1947 be deemed to be a protected tenant for the purposes of this Act and his rights as such protected tenant shall he recorded in the Record of Rights, unless his landlord has prior to the aforesaid date made an application to the Mamlatdar for a declaration that the tenant is not a protected tenant." The material date for the application of Section 3, so far as the suit lands are concerned, is 1st August 1950 and not 8th November 1947. Thus, under the provisions of Section 3, these tenants were deemed to be protected tenants of the lands from 1st August 1950. At the date of the. State Government notification (24th April 1951), therefore, the tenants were already in enjoyment of the protected tenancy rights over these lands. It would thus be clear that valuable rights in respect of these lands, which were capable of being enjoyed for several cycles of ten years each, had already vested in the tenants at the date upon which the Government of the State of Bombay issued a notification u/s 88, Sub-section (1), Clause (d). In my view, although competence is given to the State Government under Clause (d) to issue a notification reserving certain lands for urban, non-agricultural or industrial development, the said competence is prospective and not retrospective and it does not extend to the hiking away of the already vested valuable rights of the tenants. Retrospective operation of tile power conferred upon the State Government under Clause (d) would result in great hardship to the tenants. Deprivation of the already vested rights, which were capable of being enjoyed for a long period and upon the enjoyment of which would depend the economic stability of the peasant population, cart scarcely be consonant with the principles of natural justice, and I do not think that the Legislature, one of whose objects in enacting this legislation was to improve the economic and social conditions of peasants, could have intended to empower the State Government to issue a notification which, if retrospective operation were to be given to it, would seriously hit and undermine the social and economic life of the tenants. A retrospective operation of a notification issued by the State Government under Clause (d) of Sub-section (1) of Section 88 would render the object of the Act itself nugatory and illusory and there is no Canon of construction which says that a Court should put such a construction upon the provisions of a Statute.

7. Mr. Karlekar for the landlords has invited my attention to a decision of this Court in Sakharam alias Bapusaheb Narayan Sanas v. Manikchand Motichand Shah. 57 Bom LR 223 . In my view, this decision will not help Mr. Karlekar"s clients. In that case, the lands in dispute were agricultural lands and were situated within the limits of the Poona Municipal Corporation: The plaintiff was a landlord -of those lands." On October 30, 1939, he had leased the lauds to Sakharam and others (defendants Nos. 1 to 4) for a term of ten years. On October 22, 1948, he gave a notice calling upon the defendants to give up possession of the lands on October 30, 1949. On January 6, 1950, the plaintiff filed a suit in the Court of the Joint Civil Judge, J.D., Poona, to recover possession of the lands from the defendants. Defendant No. 1 contended inter alia that a Civil Court had no jurisdiction to try the suit as it was governed by the Bombay Tenancy and Agricultural Lands Act, 1948, and that when the tenancy commenced in 1939, the Bombay Tenancy Act, 1939,

was in force under which he was shown as a protected tenant. The trial Court held that by virtue of Clause (c) of Sub-section (1) of Section 88, the provisions of Ss. 1 to 87 of the Act did not apply to the lands and the Civil Court had jurisdiction to try the suit, although the defendant had set up a plea that he was a protected tenant. Mr. Justice Shah, who delivered the Judgment of the Bench, observed in the course of his Judgment; "The Legislature has conferred upon persons who were recognised as protected tenants under the Act of 1939 the rights and privileges available to protected tenants under the Act of 1948. If Section 88 of the Act of 1948 had not been enacted by the Legislature, the defendants who were recognised as protected tenants under the Act of 1939 would be entitled to claim the rights which were conferred upon them by the Act of 1939 and affirmed by the Act of 1948. But the Legislature has excluded from the operation of the Act of 1948 certain classes of leases and also lands which are situate in specified areas. Once that exclusion is made, whatever rights may be deemed otherwise to have been conferred by Section 31 upon protected tenants must be regarded as ineffective, if the land is of the description mentioned in Section 88 or that the land is within the area specified in that section." These observations would show that if the Legislature itself excluded certain lands and certain classes of leases from the operation of the Act under Clause (d) of Sub-section (1) of Sections 88, the exclusion would have a retrospective effect. It is to be seen, however, that this is not a case of the Legislature itself having directly excluded the suit lands from the operation of the Act. The reservation of the lands for urban, non-agricultural or industrial development was ordered by the State Government by issuing a notification under Clause (d) of Sub-section (1) of Section 88, and the Legislature has provided u/s 88 that when such reservation is made, the provisions of Ss. 1 to 87 of the Act would not apply to that area. There is an essential difference between the two exclusions. In one case the exclusion followed from the act of the Legislature itself which applied its mind at the time of enacting the legislation, to the question of excluding certain areas from the purview of the Act, whereas in the other case, the exclusion resulted from a decision of the State Government to reserve the area for urban, non-agricultural or industrial development. The two classes of exclusion cannot be equated and, in my view, the Legislature could not have intended to give a retrospective effect to the second category of exclusion, namely, the exclusion of certain areas from the operation of the Act upon the State Government, by a notification, reserving the said areas for urban, non-agricultural or industrial development. The Legislature of a State is a sovereign authority in the sphere of legislation on State subjects, and in the exercise of that authority it has competence to enact legislation with retrospective effect. Here, however, as I have just said, we are concerned not directly with a legislative act of the State Legislature, but with an executive act of the State Government, namely, the issue of a notification under the power conferred upon the State Government by Clause (d) of Sub-section (1) of Section 88. It is to be noted that under Clause (d) the State Government is empowered to issue a notification from time to time, i.e., at any time or times it decides to reserve certain lands for urban, non-agricultural or industrial development. It may take such a decision even ten or twenty years after the coming into force of the Act; and if it decides after twenty years that a certain area in

which the Act has been in force all those years shall be reserved for urban, non-agricultural or industrial development, the peasants of that area would in the meantime have acquired tenancy rights u/s 5, Sub-section (1) and protected tenancy rights u/s SA. The Legislature, in empowering the State Government under Clause (d), would not have intended to take away those valuable rights of the tenants. Such an intention would strike at the very roots of the object with which this benevolent legislation was enacted for ameliorating the social and economic conditions of the peasants. On the question of construction of Clause (d), it is necessary to remember an essential difference between Clause (c) and Clause (d) of Sub-section (1) of Section 88. Under Clause (c) the Legislature provided that with effect from the date of the Act itself, certain areas would he excluded from the operation of Sections 1 to 87 of the Act, thus informing the peasant population of those areas at the earliest possible time that the benefit of the Act would not be available to them. Under Clause (d), the position was quite different. Power was given to the State Government to specify certain areas as reserved areas for urban, non-agricultural or industrial development, but there was no obligation cast upon the Government to take a decision in that direction immediately on coming into force of the Act. The Government may take a decision after 5, 10 or even 20 years after the coming into force of the Act and during all that indeterminate time, the peasants would not know whether the area in which they lived and tilled the lands might ultimately be reserved for urban, non-agricultural or industrial development, and if so, when. That being so, if the exclusion of the areas, reserved by the State Government by a notification for urban, non-agricultural or industrial development, is to be given a retrospective effect, the peasants would be exposed to a perilous state of suspense and insecurity and their social and economic conditions, which the Legislature intended to improve by this legislation would suffer a severe setback. Intention of the Legislature is to be gathered from the words used by the Legislature. In Clause (d) we find the words "from time to time", and in my view these words would show that the Legislature did not intend to empower the State Government to issue a notification which would have retrospective operation. These words ""from time to time" which the Legislature used in Clause (d) would show that the Legislature conferred power on the State Government to decide at any time or times after the coming into force of the Act, whether certain lands would be required for urban, non-agricultural or industrial development and to specify those lands by a notification. The Government of the State might issue such notifications after 5, 10 or 20 years after the introduction of the Act and during all that period the tenants would have acquired rights u/s 3 and Section 5 (1) of the Act and would have been in enjoyment of those rights. Now, if the State Government, instead of making up its mind immediately on coming into force of the Act whether particular lands are necessary or not necessary for urban, non-agricultural or industrial development, allowed the tenants to acquire and enjoy tenancy rights under Sections 3 and 5(1) of the Act, it is difficult to hold that the Legislature would have intended to wipe out those rights when it empowered the State Government to issue a notification under Clause (d) of Sub-section (1) of Section 88. It is important to bear in mind that if the State Government, immediately on coming into force of the Act on 1st August 1949, had made up its mind to specify this area as reserved for

urban, non-agricultural or industrial development and had forthwith issued a notification under Clause (d), the protected tenancy rights, which were acquired by the tenants over these lands on 1st August 1950, would not have come into existence at all. But the State Government did not take a decision on the coming into force of the Act on 1st August 1949 whether these lands were required for urban, non-agricultural or industrial development and the result- of it was that with effect from 1st August 1950, the tenants acquired valuable protected tenancy rights over these lands. I have already stated above that the material date for the purpose of Section 3 of the Act, so far as the suit lands are concerned, was 1st August 1950. For these reasons, I am of the opinion that in enacting Clause (d) of Sub-section (1) of Section 88 of the Act, the intention of the Legislature was not to give a retrospective effect to the exclusion from the operation of the Act of the lands which might be specified by the State Government by a notification under Clause (d) of Sub-section (1) of Section 88 as being reserved for urban, non-agricultural or industrial development. The intention of the Legislature must be determined in the light and in the context of the object of the Act and, as I have already mentioned above, one of the objects of the Act is to ameliorate or improve the economic and social conditions of the peasants. If I were to construe Clause (d) as Mr. Karlekar wants me to construe it, the construction would be plainly opposed to that object of the Legislature. Accordingly, I must accept Mr. Gokhale''s contention that the exclusion of the lands, specified by the State Government in its notification issued under Clause (d) of Sub-section (1) of Section 88, from the operation of the Act would not have retrospective effect, and the defendants tenants would not be divested of the valuable vested tenancy rights acquired by them and enjoyed by them since the coming into force of the Act.

8. In Sakharam alias Bapusaheb Narayan Sanas v. Manikchand Motichand Shah, (A), Mr. Justice Shah in the course of his Judgment referred to the case of Shivrani Narayan Bhide v. Shridhar Keshav Patwardhan which was decided in First Appeal No. 166 of 1952 (B), by a Division Bench of this Court consisting of Mr. Justice Gajendragadkar and Mr. Justice Chainani. It was also a case in which the exclusion of the land from the operation of the Act followed directly from the act of the Legislature itself. Therefore, this case also would not help Mr. Karlekar''s clients. The important feature which would distinguish the present case from Sakharam alias Bapusaheb Narayan Sanas v. Manikchand Motichand Shah (A) and Shivram Narayan Bhide v. Shridhar Keshav Patwardhan (15), is that, whereas in those cases the exclusion arose from the legislative enactment itself, namely Clause (c) of Sub-section (1) of Section 88, the exclusion in this case followed from a notification issued by the State Government under Clause (d). This distinction, in my view, is a fundamental distinction.

9. Mr. Karlekar has invited my attention to a decision of a Division Bench of this Court consisting of Mr. Justice Gajendragadkar and myself in Civil Revn. Appln. No. 482 of 1954, which was decided on 4th March 1935 (C). It does not appear from our Judgment in that case that the point of retrospective effect of the exclusion, from the operation of the Act, of the land specified by the State Government by a notification under Clause (d) was

raised before us or was argued before us. Had such a point been raised or argued before us, it is inconceivable that we would not have referred to it in our Judgment, since the distinction between the two categories of exclusion is so obvious. That being so, I am of the view that the decision of this Court in Civil Revn. Appln. No. 482 of 1954 also would not avail Mr. Karlekar''s clients.

10. For the reasons stated above, the Judgments and decrees passed by both the Courts below will have to be reversed and this appeal will have to be allowed. The appeal is allowed and the suit of the plaintiffs is ordered to stand dismissed with costs throughout.

11. Precisely the same point as the one which is involved in Second Appeal No. 185 of 1955 is also involved in Second Appeal No. 233 of 1955. For the same reasons as I have mentioned above, Second Appeal No. 233 of 1955 will also have to be allowed. It is allowed and the suit of the plaintiffs is ordered to stand dismissed with costs throughout.

12. Appeal allowed.