Sakharam @ Bapusaheb Narayan Sanas and Another

Vs

Manikchand Motichand Shaha and Another

Civil Appeal No. 185

(CJI S. P. Sinha, K. Subha Rao, Raghuvar Dayal JJ)

19.04.1961

JUDGMENT

SINHA, C.J. -

The only question for determination in this appeal is whether the defendants-appellants are 'protected tenants' within the meaning of the Bombay Tenancy Act (Bombay Act XXIX of 1939) (which hereinafter will be referred to, for the sake of brevity, as the Act of 1939), whose rights as such were not affected by the repeal of that Act by the Bombay Tenancy and Agricultural Lands Act (Bombay Act LXVII of 1948) which hereinafter will be referred to as the Act of 1948). The Courts below have decreed the plaintiff's suit for possession of the lands in dispute, holding that the defendants were not entitled to the protection claimed by them as 'protected tenants'. This appeal is by special leave granted by this Court on April 4, 1955.

The facts of this case are not in dispute. Shortly stated, they are as follows. By virtue of a lease dated October 30, 1939, the defendants obtained a lease of the disputed lands from the plaintiff for a period of 10 years, expiring on October 30, 1949. The lands in dispute have been found to lie within two miles of the limits of Poona Municipality. The landlord gave notice on October 22, 1948, terminating the tenancy as from October 30, 1949. As the defendants did not vacate the land, in terms of the notice aforesaid, the plaintiff instituted the suit for ejectment in the Court of the Civil Judge, Junior Division, at Poona in Civil Suit No. 86 of 1950. The Act of 1939 became law on March 27, 1940, but the Act was applied to Poona area with effect from April 11, 1946. Under s. 3 of the Act, a tenant shall be deemed to be a 'protected tenant' in respect of any land if he has held such land continuously for a period of not less than six years immediately preceding either the first day of January, 1938, or the first day of January, 1945, (added by the Amending Act of 1946) and has cultivated such land personally during the aforesaid period. It is not disputed that the defendants-appellants became entitled to the status of 'protected tenants' as a result of the operation of the Act, as amended by the Bombay Tenancy (Amendment) Act, 1946 (Bombay Act XXVI of 1946), and under s. 3A(1) the defendants were deemed to be 'protected tenants' under the Act and their rights as such were recorded in the Record of Rights. Sections 3 and 3A(1), aforesaid, are set out below :-

> "3. A tenant shall be deemed to be a protected tenant in respect of any land if
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> (a) he has held such land continuously for a period of not less than six years immediately preceding either
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> (i) the first day of January 1938 or

(ii) the first day of January 1945 and

(b) has cultivated such land personally during the aforesaid period.

3A(1) Every tenant shall, on the expiry of one year from the date of the coming into force of the Bombay Tenancy Amendment Act of 1946, be deemed to be a protected tenant for the purposes of this Act and his rights as such protected tenant shall be recorded in the Record of Rights, unless his landlord has within the said period made an application to the Mamlatdar within whose jurisdiction the land is situated for a declaration that the tenant is not a protected tenant".

Under s. 3A(1) aforesaid, it was open to the landlord, within one year of the date of the commencement of the Amending Act of 1946, to make an application to the Mamlatdar for a declaration that the tenant was not a 'protected tenant'. No such proceeding appears to have been taken. As a result of the expiration of one year from November 8, 1946 - the date of the coming into operation of the Amending Act of 1946 - the defendants were deemed to be 'protected tenants' and it is not disputed that they were recorded as such. Section 4 of the Act, with which we are not concerned in the present case, made further provisions for recovery of possession by tenants who had been evicted from their holdings in circumstances set out in that section. The Act, therefore, in its terms, was intended for the protection of tenants in certain areas in the Province of Bombay (as it then was). If nothing had happened later, the defendants would have had the status of 'protected tenants' and could not have been evicted from their holdings, except in accordance with the provisions of the Tenancy Law. But the Act of 1939 was replaced by the Act of 1948. The question that arises now for determination is whether the Act of 1948 wiped out the defendant's status as 'protected tenants'. For determining this question, we have naturally to examine the relevant provisions of the later Act.

The Act of 1948, by s. 2 cl. (14) prior to its amendment by Bombay Act XIII of 1956, provides that "'protected tenant' means a person who is recognised to be a protected tenant under section 31". Section 31 runs as follows :-

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

The force and effect of s. 31 will have to be discussed later while dealing with the arguments raised on behalf of the landlord-respondent. The next relevant provisions of the Act of 1948 are those of s. 88(1)(c) which reads :-

"Nothing in the foregoing provisions of this Act shall apply :-

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(c) to any area within the limits of Greater Bombay and within the limits of the municipal boroughs of Poona City and Suburban, Ahmedabad, Sholapur, Surat and Hubli and within a distance of two miles of the limits of such boroughs; or.....".

As already observed, the lands in dispute in the present controversy have been found to be situate within two miles of the limits of the Poona Municipal Borough, which, for the purpose of this case, has been equated to 'Borough of Poona City and Suburban'. It has been contended on behalf of the

respondent that under the later Act the disputed lands are outside the purview of the Act and that, therefore, the defendants-appellants are not entitled to claim the status of 'protected tenants'. The appellants have answered this contention by reference to the provisions of s. 89, which may now be set out (in so far as they are necessary for the purpose of this case) :-

> "89 (1) The enactment specified in the Scheduled is hereby repealed to the extent mentioned in the fourth column thereof.
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> (2) But nothing in this Act or any repeal effected thereby -
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> #.....##
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> (b) shall, save as expressly provided in this Act, affect or be deemed to affect,
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> (i) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or -
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> (ii) any legal proceeding or remedy in respect of any such right, title, interest, obligation, or liability or anything done or suffered before the commencement of this Act, and any such proceeding shall be continued and disposed of, as if this Act was not passed....".

It has been contended on behalf of the appellants that the repealing s. 89, read with the Schedule, makes it clear that the whole of ss. 3, 3A and 4 of the Act of 1939 have been saved, subject to certain modifications, which are not relevant to the present purpose; and that sub-s. 2(b) of s. 89 has in terms, saved the appellants' rights as 'protected tenants' because those rights had already accrued to them under the Act of 1939. But this contention is countered by the learned counsel for the plaintiff-respondent on three grounds, namely, (1) that s. 88 expressly provides that ss. 1 to 87 of the later Act shall not apply to lands situate in the Municipal Borough of Poona City and Suburban and within a distance of two miles of the limits of such borough; (2) that what has been saved by cl. (b) of sub-s. (2) of s. 89 is not every rights but only such rights as had been actually exercised and recognised; and (3) that the terms of the saving clause, as contained s. 89(2)(b) were not identical with s. 7 of the Bombay General Clauses Act, inasmuch as cl. (b) aforesaid only speaks of such proceedings being continued and disposed of, without reference to the institution of such proceedings.

Shortly put, the arguments on behalf of the appellants is that the taking away of the status of a 'protected tenant' from certain lands, as specified in s. 88, is only prospective and not retrospective, whereas the argument on behalf of the respondent is that the repeal was with retrospective effect and only so much was saved as would come directly within the terms of cl. (b) of s. 89(2), and that the right claimed by the appellants was in express terms taken away by s. 88.

The argument based on the second ground may be disposed of at the outset in order to clear the ground for a further consideration of the effect of ss. 88 and 89, on which the whole case depends. The learned counsel for the plaintiff-respondent placed strong reliance upon the following observations of the Lord Chancellor in the case of Abbot v. The Minister for Lands [[1895] A.C. 425, 431] :

> "They think that the mere right (assuming it to be properly so called) existing in the members of the community or any class of them to take advantage of an enactment,

> without any act done by an individual towards availing himself of that right, cannot properly be deemed a "right accrued" within the meaning of the enactment."

The contention is that in order that the defendants-appellants could claim the status of 'protected tenants' as a right accrued under the Act of 1939, they should have taken certain steps to enforce that right and got the relevant authorities to pronounce upon those rights, and as no such steps had admittedly been taken by the appellants, they could not claim that they had a 'right accrued' to them as claimed. In our opinion, there is no substance in this contention. The observations, quoted, above, made by the Lord Chancellor, with all respect, are entirely correct, but have been made in the context of the statute under which the controversy had arisen. In that case, the appellant had obtained a grant in fee-simple of certain lands under the Crown Lands Alienation Act, 1861. By virtue of the original grant, he would have been entitled to claim settlement of additional areas, if he satisfied certain conditions laid down in the relevant provisions of the statute. The original settlee had the right to claim the additional settlements, if he so desired, on fulfilment of those conditions. He had those rights to acquire the additional lands under the provisions of the Crown Lands Alienation Act, 1861, but the Crown Lands Act of 1884, repealed the previous Act, subject to a saving provision to the effect that all rights accrued by virtue of the repealed enactment shall, subject to any express provisions of the repealing Act in relation thereto, remain unaffected by such repeal. The appellants' contention that under the saving clause of the repealed enactment he had the right to make additional conditional purchases and that was a 'right accrued' within the meaning of the saving clause contained in the repealing Act of 1884, was negatived by the Privy Council. It is, thus, clear that the context in which the observation relied upon by the respondent, as quoted above, were made is entirely different from the context of the present controversy. That decision is only authority for the proposition that 'the mere right, existing at the date of a repealing statute, to take advantage of provisions of the statute repealed is not a 'right accrued' within the meaning of the usual saving clause'. In that ruling, their Lordships of the Privy Council assumed that the contingent right of the original grantee was a right but it was not a 'right accrued' within the meaning of the repealed statute. It was held not to have accrued because the option given to the original grantee to make additional purchases had not been exercised before the repeal. In other words, the right which was sought to be exercised was not in existence at the date of the repealing Act, which had restricted those rights. In the instant case, the right of a 'protected tenant' had accrued to the appellants while the Act of 1939 was still in force, without any act on their part being necessary. That right had been recognised by the public authorities by making the relevant entries in the Record of Rights, as aforesaid. On the other hand, as already indicated, s. 3A(1) of the Act of 1939 had given the right to the landlord-respondent to take proceedings to have the necessary declaration made by the mamlatdar that the tenant' had not acquired the status of a 'protected tenant'. He did not proceed in that behalf. Hence, it is clear that so far as the appellants were concerned, their status as 'protected tenants' had been recognised by the public authorities under the Act of 1939, and they had to do nothing more to bring their case within the expression 'right accrued', in cl. (b) of s. 89(2) of the Act of 1948.

It having been held that the second ground of attack against the claim made by the appellants is not well-founded in law, it now remains to consider whether the first ground, namely, that here is an express provision in s. 88, within the meaning of s. 89(2)(b), taking away the appellants' right, is supported by the terms of ss. 88 and 89. In this connection, it was pointed out on behalf of the respondent that s. 88(1) in terms provides that ss. 1 to 87 of the Act of 1948 shall not apply to lands of the situation of the disputed lands; and s. 31 has been further pressed in aid of this argument. Section 31 has already been quoted, and it begins with the words "For the purposes of this Act". The provisions of the Act of 1948 relating to the rights and liabilities of a 'protected tenant' are not the

same as those under the Act of 1939. Hence, though the provisions of ss. 3, 3-A and 4 of the earlier Act of 1939 have been adopted by the later Act, it has been so done in the context of the later Act, granting greater facilities and larger rights to what are described as 'protected tenants'. In other words s. 31 has been enacted not to do away with the rights contained in ss. 3, 3-A and 4 of the earlier statute, but with a view to apply that nomenclature to larger rights conferred under the Act of 1948. The provisions of s. 88 are entirely prospective. They apply to lands of the description contained in cls. (a) to (d) of s. 88(1) from date on which the Act came into operation, that is to say, from December 28, 1948. They are not intended in any sense to be of a confiscatory character. They do not show an intention to take away what had already accrued to tenants acquiring the status of 'protected tenants'. On the other hand, s. 89(2)(b), quoted above, clearly shows an intention to conserve such rights as had been acquired or had accrued before the commencement of the repealing Act. But it has further been contended on behalf of the respondent, in ground 3 of the attack, that sub-cl. (ii) of cl. (b) of s. 89(2) would indicate that the legislature did not intend completely to re-enact the provisions of s. 7 of the Bombay General Clauses Act. This argument is based on the absence of the word 'instituted' before the words 'continued and disposed of'. In our opinion there are several answers to this contention. In the first place, sub-cl. (i) is independent of sub-cl. (ii) of cl. (b) of s. 89(2). Therefore, sub-cl. (ii), which has reference to pending litigation, cannot cut down the legal significance and ambit of the words used in sub-cl. (i). Sub-cl. (ii) may have reference to the forum of the proceedings, whether the Civil Court or the Revenue Court shall have seizin of proceedings taken under the repealed Act. We have already held that the expression 'right accrued' in sub-cl. (i) does not exclude the rights of 'protected tenants' claimed by the appellants. It is well settled that where there is a right recognised by law, there is a remedy, and, therefore, in the absence of any special provisions indicating the particular forum for enforcing a particular right, the general law of the land will naturally take its course. In this connection, it is relevant to refer to the observations of the High Court that "even if it were to be assumed that the right as a 'protected tenant' remained vested in the defendants even after the enactment of s. 88(1), that right, in its enforcement against the plaintiff, must be regarded as illusory". In our opinion, those observations are not well-founded. Courts will be very slow to assume a right and then to regard it as illusory, because no particular forum has been indicated. Lastly, the legal effect of the provisions of sub-cl. (ii) aforesaid is only this that any legal proceeding in respect of the right claimed by the defendants shall be continued and disposed of as if the Act of 1948 had not been passed. Applying those words to the present litigation, the inference is clear that the controversy has to be resolved with reference to the provisions of the repealed statute. That being so, in our opinion, the intention of the legislature was that the litigation we are now dealing with should be disposed of in terms of the repealed statute of 1939. It has not been disputed before us that if that is done, there is only one answer to this suit, namely, that it must be dismissed with costs. Accordingly, we allow the appeal, set aside the judgments below and dismiss the suit with costs throughout, to the contesting defendants-appellants.

Appeal allowed.

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