Trimbak Damodhar Raipurkar

Vs

Assaram Hiraman Patil and Ors.

Civil Appeal No. 19 of 1961

(P. B. Gajendragadkar, K. C. Das Gupta, A. K. Sarkar, N. Rajgopala Ayyangar, K. N. Wanchoo JJ)

29.11.1961

JUDGMENT

GAJENDRAGADKAR, J. –

This appeal by special leave arises out of a tenancy case instituted by the appellant against his tenants the respondents in the Court of the Mamlatdar Raver (East Khandesh), in the State of Maharashtra. The property in suit consists of agricultural lands, Survey Nos. 32 and 38, situated in the village Raipur. The respondents had executed a rent note in respect of these lands in favour of the appellant on February 5, 1943. The period for which the rent note was executed was five years and the rent agreed to be paid annually was Rs. 785/-. In ordinary course the lease would have expired on March 31, 1948. However, before the lease expired, on April 11, 1946 the Bombay Tenancy Act, 1939 (Bombay Act XXIX of 1939) was applied to the area of the East Khandesh where the lands are situated, and in consequence as a result of s. 23(1)(b) of the said Act the five years period stipulated in the rent note was statutorily extended to ten years; the result was that under the said statutory provision the rent note in favour of the respondents would have expired on March 31, 1953. During the subsistence of the tenancy thus statutorily extended the Bombay Tenancy and Agricultural Lands Act LXVII of 1948 came into force. This act repealed the earlier Act of 1939 except ss. 3, 3(a) and 4 as modified. Sections 5 and 14(2) of this Act are material. On March 11, 1952 the appellant gave notice to the respondents intimating to them that the period of the rent note executed by them which had been statutorily extended would expire on March 31, 1953 and calling upon them to deliver possession of the lands to him immediately thereafter. Before the notice could be effectively enforced on the expiration of the period of the lease, however, Bombay Act XXXIII of 1952 came into operation of January, 12, 1953. This Act repealed s. 14(2) and amended s. 5 and added sub-s. (3) to it. Shortly stated the effect of this amendment was that the tenancy of the respondents, who were till then ordinary tenants as distinct from protected tenants, could not be terminated on the expiry of their tenancy except by giving one year's notice and that too on the ground that the lands were required by the landlord for bona fide personal cultivation and that the income of the said lands would be the main source of income of the landlord. The relevant averments about these grounds had to be made by the landlord in issuing the notice to the tenants for terminating their tenancy.

On April 4, 1953 the appellant instituted the present tenancy proceedings for obtaining possession of the lands. The Mamlatdar who tried the proceedings rejected the appellant's claim on the ground that he had not terminated the tenancy of the respondents as required by law in that he had not given the statutory notice making the prescribed relevant averments in that behalf. The appellant then preferred an appeal against the decision of the Mamlatdar but the appellate authority agreed with the view taken by the Mamlatdar and dismissed his appeal. The dispute was then taken by the appellant

before the Bombay Revenue Tribunal by way of a the revisional application; and the revisional application succeeded. The Tribunal held that the relevant amendments on which the Mamlatdar and the appellate authority had relied in dismissing the appellant's claim were not retrospective and that the appellant was entitled to eject the respondents. This order of the Revenue Tribunal was challenged by the respondents by a petition filed by them under Art. 227 of the Constitution in the Bombay High Court. Then High Court has allowed the writ petition and held that the relevant amendments are retrospective in operation and that the appellant is not entitled to eject the respondents. On that view the order passed by the Revenue Tribunal has been set aside and that of the appellate authority restored. It is against this decision that the appellant has come to this Court by special leave.

It is necessary at the outset to set out the relevant statutory provisions which fall to be considered in the present appeal.

Section 23(1)(b) of the Bombay Tenancy Act of 1939 which statutorily extended the original contractual five years period of the lease to ten years reads thus : "Every lease subsisting on the said date (that is to say the date on which s. 23 came into force) 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 ten years". We have already noticed that as soon as this act was made applicable to the area where the lands in question are situated the original period of five years agreed to between the parties for the duration of the lease was statutorily extended to ten years.

Then followed the Tenancy Act LXVII of 1948. Section 5 of the said Act originally stood thus :

> "5. (1) No tenancy of any land shall be for a period of less than ten years.
>
> Notwithstanding any agreement, usage or law to the contrary, no tenancy shall be terminated before the expiry of a period of ten years except on the grounds mentioned in section 14 :
>
> Provided that any tenancy may be terminated by a tenant before the expiry of a period of ten years by surrendering his interest as a tenant in favour of the landlord."

Section 14, sub-s. (2) which is relevant reads thus :

> "In the case of tenant, the duration of whose tenancy is for a period of ten years or more, the tenancy shall terminate at the expiration of such period, unless the landlord has by the acceptance of rent or by any other act or conduct of his allowed the tenant to hold over within the meaning of Section 116 of the Transfer of Property Act 1882."

On January 12, 1953, the amending Act XXXIII of 1952 came into force. By this amending Act the following proviso was added to sub-s. (1) of s. 5 :

> "Provided that at the end of the said period and thereafter at the end of each period of ten years in succession, the tenancy shall, subject to the provisions of Sub-Sections (2) and (3), be deemed to be renewed for a further period of ten years on the same terms and conditions notwithstanding any agreement to the contrary."

The said amending Act repealed s. 14(2) of Act LXVII of 1948 and amended s. 5, sub-s. (2) in this

way :

> "The landlord may, by giving the tenant one year's notice in writing before the end of each of the periods referred to in Sub-Section (1), terminate the tenancy, with effect from the thirty-first day of March in the last year of each of the said period, if he bona fide requires the land for any of the purposes specified in Sub-Section (1) of Section 34, but subject to the provisions of Sub-Section (2) and (2A) of the said Section, as if such tenant was a protected tenant."

A new sub-section, sub-s. (3) was added to s. 5. This new sub-section reads thus :

> "Notwithstanding anything contained in sub-section (1) -
>
> (a) every tenancy shall, subject to the provisions of sections 24 and 25, be liable to be terminated at any time on any of the grounds mentioned in section 14; and
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> (b) a tenant may terminate the tenancy at any time by surrendering his interest as a tenant in favour of the landlord :
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> Provided that such surrender shall be in writing and shall be verified before the Mamlatdar in the prescribed manner."

It is common ground that if the provisions of the amending Act XXXIII of 1952 are applicable to the present proceedings the appellant would not be entitled to claim the ejectment of the respondents because he has not given any notice in that behalf as prescribed by the said relevant provisions of the amending statute. His case, however, is that the technical requirements of a valid notice prescribed by the amending Act do not apply to his claim inasmuch as the relevant provisions of the amending Act are not retrospective in operation. According to him he has already given notice to the respondents on March 11, 1952, intimating to them unequivocally his intention to eject them from the lands on the expiration of the year period of the lease. The High Court has hand that this contention is not wellfounded and so the appellant's claim for ejectment has been dismissed. The question which arises for our decision is whether the appellant is entitled to eject the respondents even without complying with the statutory requirement as to the valid notice prescribed by the amending Act XXXIII of 1952.

It would be noticed that though the lease originally was for five years, before the five years expired the duration of the lease was statutorily extended to ten years by virtue of the provisions of s. 23(1)(b) of Act XXIX of 1939. A somewhat similar, though from the point of view of the appellant a more revolutionary, result followed when a proviso was added to s. 5(1) by the amending Act XXXIII of 1952. By virtue of this amendment the period of the lease gets automatically extended for ten years from time to time. In other words, before the lease in favour of the respondents could expire on March 31, 1953, by virtue of the proviso to s. 5(1) of the amending Act of 1952 it got extended for ten years, and unless it is terminated by a valid notice a surrender is made by the tenant as specified by the statute the tenancy would be extended from time to time at every stretch for ten years. Therefore, there can be no doubt that as a result of the amending Act of 1952 the expiration of the lease did not take place on March 31, 1953 as had been anticipated by the appellant when he gave notice on March 11, 1952. In one sense the amending Act which is undoubtedly a piece of beneficent legislation conferred on the respondents additional rights and these additional rights were conferred on them before the lease in their favour had come to an end. In order to put an end to the

tenancy thus statutorily safeguarded the appellant has to follow the course prescribed by the amending statute and give a valid notice as required by the said statute. Just as the appellant could not have complained against the extension of the original period of five years to ten years by Act XXIX of 1939 so he cannot complain against the further extensions statutorily granted to the respondents by s. 5(1) of the amending Act XXXIII of 1952. That is one aspect of the matter.

Besides, it is necessary to bear in mind that the right of the appellant to eject the respondents would arise only on the termination of the tenancy and in the present case it would have been available to him on March 31, 1953 if the statutory provision had not in the meanwhile extended the life of the tenancy. It is true that the appellant gave notice to the respondents on March 11, 1952 as he was then no doubt entitled to do; but his right as a landlord to obtain possession did not accrue merely on the giving of the notice, it accrued in his favour on the date when the lease expired. It is only after the period specified in the notice is over and the tenancy has in fact expired that the landlord gets a right to eject the tenant and obtain possession of the land. Considered from this point of view, before the right accrued to the appellant to eject the respondents amending Act XXXIII of 1952 stepped in and deprived him of that right by requiring him to comply with the statutory requirement as to a valid notice which has to be given for ejecting tenants.

In this connection it is relevant to distinguish between an existing right and a vested right. Where a statute operates in future it cannot be said to be retrospective merely because within the sweep of its operation all existing rights are included. As observed by Buckley, L.J. in West v. Gwynne [[1911] 2 Ch.1 at pp. 11, 12.] retrospective operation is one matter and interference with existing rights is another. "If an Act provides that as at a part date the law shall be taken to have been that which it was not that Act I understand to be retrospective. That is not this case. The question here is whether a certain provision as to the contents of leases is addressed to the case of all leases or only of some, namely, leases executed after the passing of the Act. The question is as to the ambit and scope of the Act, and not as to the date as from which the new law, as enacted by the Act, is to be taken to have been the law." These observations were made in dealing with the question as to the retrospective construction of s. 3 of the Conveyancing and Law of Property Act, 1892 (55 & 56 Vict. c. 13). In substance s. 3 provided that in all leases containing a convenant, condition or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without licence or consent, such convenant, condition or agreement shall, unless the lease contains on expressed provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent. It was held that the provisions of the said section applied to all leases whether executed before or after the commencement of the Act; and, according to Buckley, L.J., this construction did not make the Act retrospective in operation; it merely affected in future existing rights under all leases whether executed before or after the date of the Act. The position in regard to the operation of s. 5(1) of the amending Act with which we are concerned appears to us to substantially similar.

A similar question had been raised for the decision of this Court in Jivabhai Purshottam v. Chhagan Karson [[1962 1 S.C.R. 568.] in regard to the retrospective operation of s. 34(2)(a) of the said amending Act XXXIII of 1952 and this Court has approved of the decision of the full Bench of the Bombay High Court on that point in Durlabbhai Fakirbhai v. Jhaberbhai Bhikabhai [(1955) 58 Bom. L.R. 85.]. It was held in Durlabbhai's case [(1955) 58 Bom. L.R. 85.] that the relevant provision of the amending Act would apply to all proceedings where the period of notice had expired after the amending Act had come into force and that the effect of the amending Act was no more than this that it imposed a new and additional limitation on the right of the landlord to obtain possession from his tenant. It was observed in that judgment that "a notice under s. 34(1) is merely a declaration to

the tenant of the intention of the landlord to terminate the tenancy; but it is always open to the landlord not to carry out his intention. Therefore, for the application of the restriction under sub-s. 2(A) on the right of the landlord to terminate the tenancy, the crucial date is not the date of notice but the date on which the right to terminate matures; that is the date on which the tenancy stands terminated".

Mr. Bengeri, for the appellant, fairly conceded that the decision of this Court in Jivabhai's case [[1962] 1 S.C.R. 568.] was against his contention but he purported to rely on another decision of this Court in Sakharam alias Bapusaheb Narayan Sanas v. Manikchand Motichand Shah [[1962] 2 S.C.R. 59.]. In that case the Court was called upon to consider the question as to whether the provisions of s. 88 of Bombay Act LXVII of 1948 were retrospective in operation or not, and it has been held that the said provisions are prospective. However, we do not think that the position with regard to the provisions contained in s. 88 can be said to be analogous or similar to the position with regard to the relevant provisions of the amending Act XXXIII of 1952 with which we are concerned in the present appeal. Therefore, we do not think that Mr. Bengeri can make any effective use of the said decision.

In the result the appeal fails and is dismissed with costs.

Appeal dismissed.

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