

State of Bombay

Vs

Sardar Venkat Rao Krishna Rao Gujar

Civil Appeal No. 455/59

(A. K. Sarkar, K. Subha Rao, J. R. Mudholkar JJ)

06.04.1962

JUDGMENT

MUDHOLKAR, J. -

The respondent was a proprietor of mauza Bhivapur, Tehsil Umerer, District Nagpur. His proprietary interest in the village was abolished by the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (M.P. 1 of 1951). By virtue of section 4 of the Act, all rights, titles and interests, among others, in all pathways, village sites, hats, bazars and meals in Bhivapur vested in the State of Madhya Pradesh for the purposes of the State free from all encumbrances under section 4(1)(a) of the Act. Under the provisions of the States Re-organisation Act, 1956 those rights vested in the State of Bombay and now by virtue of Bombay Re-Organisation Act, 1960 (11 of 1960) in the State of Maharashtra. The provisions of section 4(1)(a) are as follows :-

"All rights, titles and interest vesting in the proprietor or any person having interest in such proprietary right through the proprietor in such area including and (cultivable or barren) grass-land, scrub jungle, forest, trees, fisheries, wells, tanks, ponds, waterchannels, ferries, pathways, villager sites, hats, bazars and melas;..... shall cease and be vested in the State for purposes of the State free of all encumbrances; and the mortgage debt or charge or any proprietary right shall be a charge on the amount of compensation payable for such proprietary right to the proprietor under the provisions of this Act;"

After the Act came into operation proceedings for compensation in respect of the village Bhivapur were started in the court of Compensation Officer, Umrer, in Revenue case No. 583/1-A-4/1950-51 decided on January 19, 1952. The Compensation Officer held that 0.14 acres of land out of Khasra No. 61/1 which is recorded in the village papers as abadi wherein a bazar is held, should be settled with the respondent under section 5(a).

On a portion of the land which was used for bazar, ottas and chabutras, with or without sheds, and separated by passages, exist. It is common ground that they belong to the respondent. It is also common ground that the land covered by ottas and chabutras on which sheds have been constructed were ordered to be settled on the respondent in the revenue case referred to above. The respondent's contention, however, was that not only the sheds and the land on which those sheds were erected but also the open uncovered ottas and chabutras should also have been settled with him by virtue of the provisions of section 5(a) of the Act along with the land appurtenant to those structures. The total area of this land, according to him, is 2.85 acres. The respondent, therefore, preferred an appeal

against the order of the Compensation Officer which directed settling only 0.14 acres of land on him. That appeal was however, dismissed by the Additional Commissioner of Land Reforms and Additional Commissioner of Settlement, Madhya Pradesh, on March 28, 1952. The respondent thereafter was asked to remove his ottas and chabutras.

Even so, the matter of settling land covered by ottas and chabutras on the ex-proprietors was being considered by Government. On May 16, 1952, a press note was issued by the Directorate of Information and Publicity, Government of Madhya Pradesh, the material portion of which runs thus :

"The Government consider that the option given to ex-proprietors to remove the material etc., might cause hardship to them in such cases. Government have, therefore, decided on the following lines of action in such matters :

(i) where the ottas and chabutras were constructed in brick and stone, they should be allowed to remain with the ex-proprietors and the land thereunder should be settled with them under Section 5(a) of the Madhya Pradesh Abolition of Proprietary Rights Act, 1950 (1 of 1951) on terms and conditions determined by the Government; and

(ii) where the ottas and chabutras are in mud, the land under them should be deemed to have vested in the State Government.

But after this press note was issued the Government, apparently on the advice of its law officers, issued instructions to the Deputy Commissioners on June 22, 1954, to give one month's notice all ex-proprietors to remove the materials, clear the site of ottas and chabutras other than those on which there were sheds. In pursuance of this, a notice was issued to the respondent on July 13, 1954.

Feeling aggrieved by this, the respondent preferred a petition under Article 226 of the Constitution before the High Court of Nagpur for issue of a writ of mandamus or certiorari or other appropriate writ to quash the orders passed by the Compensation Officer and the appellate authority as well as the order of the State Government of Madhya Pradesh dated June 22, 1954, and the notice issued in pursuance thereto on July 13, 1954. The High Court allowed the petition and set aside the impugned orders and directed the State Government to settle the entire area of Khasra No. 61/1 of Bhivapur with the respondent on such terms and conditions as may be determined by it. It may be mentioned that the entire area of Khasra No. 61/1 is 12.85 acres or so. The State of Madhya Pradesh sought a certificate from the High Court under Article 133(1)(c) of the Constitution. But the certificate was not granted. Thereupon a special leave petition was made before this Court under Article 136 of the Constitution. Leave was granted by this Court by its order dated March 18, 1957. That is how the appeal has come up before us.

It may be mentioned that the High Court granted the petition of the respondent on the view that ottas and chabutras etc., are buildings within the meaning] of section 5(a) of the Act and that consequently the State Government was bound to settle the land covered by them with ex-proprietors along with land appurtenant to those structures. In the application made before the High Court for grant of certificate, the following three grounds were raised :

"5. For that the total market area as claimed by the non-applicant being only 2.85 the entire abadi area of 12.85 acres in Khasra No. 61/1 could not be granted and settled

with the ex-proprietor.

6. For that the ottas and chabutras in the bazar area could not be held to be buildings contemplated under section 5(1)(a) read with Section 4(1)(a) of the Act 1 of 1941 and could not be settled with the ex-proprietor under the law.

7. For that the buildings envisaged in the provisions 5(1)(a) are those buildings which are situated in the abadi and not those standing in bazars even though the bazar may also be located in the abadi and that ottas and chabutras etc., in the bazar being an integral part thereof are clearly different from those other buildings used for agricultural or domestic purposes."

It would, however, appear from para. 2 of the order of the High Court refusing certificate that the learned Advocate-General for the State did not challenge the correctness of the meaning given by the High Court to the word "buildings" in section 5(a) of the Act. But the contention he pressed was that the words "ottas and chabutras" must be restricted to structures standing on the abadi of the village excluding that on which bazar was held, which under section 4(1)(a) vests in the State. Before us however, Mr. Bindra reiterated the contention which was originally pressed in the High Court that ottas and chabutras cannot be regarded as buildings within the meaning of that word in section 5(a) of the Act. According to him the concession made by the learned Advocate-General was on a question of law and the State is entitled to withdraw that concession.

In our opinion the question whether ottas and chabutras fall within the term "buildings" is not purely one of law and the State is not entitled to withdraw that concession. It would also appear from grounds 5 and 6 in the special leave petition that what was really sought to be urged before this Court was the contention actually pressed by the learned Advocate-General in support of the application for grant of certificate. All the same we allowed Mr. Bindra to urge the contention that ottas and chabutras are not included in the term "buildings" in section 5(a) of the Act.

The relevant portion of section 5(a) of the Act reads thus :

"Subject to the provisions in sections 47 and 63 - all open enclosures used for agricultural or domestic purposes and in continuous possession for twelve years immediately before 1948-49; all open house-sites purchased for consideration; all buildings; within the limits of a village site belonging to or held by the outgoing proprietor or any other person, shall continue to belong to or be held by such proprietor or other person as the case may be; and the land thereof with the areas appurtenant thereto shall be settled with him by the State Government on such terms and conditions as it may determine;"

"Village site" means the abadi in an estate or a mahal.

Section 5(a) is an exception to section 4(1)(a) of the Act. No. doubt, section 4(1)(a) provides for the vesting in the State of the land on which bazar is held. But reading that section along with section 5(a) it is clear that where any buildings belonging to the proprietor exist on any portion of the abadi and that land, together with the land appurtenant to those buildings, had to be settled with the ex-proprietor. Land on which the bazar is held is part of the village abadi land and, therefore, all buildings standing on such land would fall within section 5(a) of the Act and would have to be settled with the ex-proprietor.

The only question, therefore, is whether ottas and chabutras can be regarded as buildings. A perusal of that provision would show that where the ex-proprietor has spent money on constructing something within the limits of the village sites, that thing had to be settled with shim. The word "buildings" should, therefore, be given its literal meaning as something which is built. Mr. Bindra's contention, however, is that for a structure to be regarded as a building, it should have walls and a roof and in support of this contention he relied upon the decision in *Moir v. Williams* ((1892) 1 Q.B. 217.) In that case Lord Esher has observed that the term building generally means all enclosures of brick and stone covered by a roof. But he has also made it clear that the meaning to be given to that word must depend upon the enactment in which the word is used and the context in which it is used. There, what was being considered was the provisions of the Metropolitan Buildings Act, 1855 (1 & 19 Vict. c. 122) which dealt with residential houses. He also relied upon the decision in *Morrison v. Commissioners of Inland Revenue* ((1915) 1 K.B. 176 at 722.). That was a case under the Finance (1909-10) Act, 1910 (10 Miw. 7 c. 8). The observations on which he relied are as follows :

"It is quite clear that the expression 'buildings' does not mean everything that can by any means be described as built : it means buildings in a more narrow sense than structures, because there are other structures of a limited class which under the terms of the sub-section may also be taken into consideration."

Far from these observations helping him they clearly show "at the natural or ordinary meaning to be given to the word "Buildings" is something which has been built. That meaning would be modified if the provisions of law justify giving some other meaning. Finally he relied upon the decision in *Samuel Small v. Parkway Auto Supplies* (49 A.I.R. 1361 at 1363.). The observations relied on by him are as follows :

"The word 'building' in its ordinary sense denotes 'a structures or edifice including a space within its walls and usually covered with a roof, such as a house, a church, a shop, a barn or a shed.'

"The word 'building' cannot be held to include very species of erection on land, such as fences, gates or other like structures. Taken in its broadest sense, it can mean only an erection intended for use and occupation as a habitation or for some purpose of trade, manufacture, ornament or use, constituting a fabric or edifice, such as a house, a store, a church, a shed.....

These observation must be considered in the context of the Act which was being construed and in the context in which they were made. There the Court had to consider whether erection of gasoline pumps and construction of under ground gasoline tanks and pits with concrete sides sunken in the ground are within a restrictive covenant that no building of any kind shall be erected or maintained within a certain distance of street. In the particular context buildings had, according to the Court, to be given its popular meaning. That case, therefore, does not assist the appellants.

In our opinion High Courts was quite right in holding that even uncovered ottas and chabutras fall within the term "building" as used in section 5(a) of the Act and, therefore, along with the land appurtenant to them they must be settled with the respondent.

Mr. Bindra pointed out that the High Court was in error in asking the Government to settle the whole of Khasra No. 61/1 on the respondent because whereas its area is 12.85 acres, the land covered by the structures, including the appurtenant land, does not measure more than 2.85 acres.

Mr. Purushottam Trikamdass, learned counsel for the respondent readily conceded this fact and said that the High Court has committed an error through an oversight and that all that the respondent wants is 2.85 acres of land and nothing more. Mr. Bindra then said that it would not be proper to give a direction to the Government to settle any particular area of the land and it should be left to the revenue authorities to determine the precise area covered by the structures and the passages separating these various structures. We agree with him. It would be sufficient to direct the Government to settle with the respondent the whole of the land covered by the structures as well as land appurtenant to those structures from out of Khasra No. 61/1. What the area of that land would be is a matter to be determined during the settlement proceedings. With this modification we dismiss the appeal with costs.

Appeal dismissed.

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