D. S. Chellammal Anni

Vs

Nasanan Samban

Civil Appeal No. 356 of 1963

(CJI P. B. Gajendragadkar, K. N. Wanchoo, J. C. Shah, N. Rajgopala Ayyangar, S. M. Sikri JJ)

13.03.1964

JUDGMENT

WANCHOO J. –

This is an appeal by special leave from the judgment of the Madras High Court. The appellant is a landlord in village Idaikkal, and the respondent is her tenant. The land in dispute was let by the appellant to the respondent and the rent was fixed partly in kind and partly in cash, the tenancy having been created sometimes before the Madras Cultivating Tenants (Payment of Fair Rent) Act, No. XXIV of 1956 (hereinafter referred to as the Fair Rent Act) came into force. The agreement as to the payment of rent in kind was that the appellant would get 60 per cent of the gross produce, the remainder going to the respondent. The dispute out of which this appeal has arisen arose in 1959 when the crop for that year was reaped. The respondent harvested the crop and brought it to the threshing floor of the appellant for division and claimed that the appellant was only entitled to 40 per cent of the crop as provided in the Fair Rent Act. The appellant's agent however demanded 60 per cent as provided in the agreement of tenancy. The dispute went on about for ten days while the harvested crop was lying in the threshing floor. Consequently, the respondent made an application to the Circle Inspector of Police complaining that the appellant was delaying the division of the produce and preventing the removal of the respondent's share, and that there was likelihood of a breach of the peace. Thereupon the police made inquiry into the matter and reported to the Tehsildar that the harvested crop was lying in the threshing floor and the agent of the appellant was not prepared to divide the produce in accordance with the provisions of law and was insisting on the division being made according to the agreement. It was also reported that the crop was deteriorating and the seeds had begun to germinate as the crop was exposed to rain. Thereupon the Tehsildar directed the Revenue Inspector to look into the matter and measure the quantity of the produce and note the gross yield and report. The Revenue Inspector thereupon visited the spot on September 27, 1959 after issuing notice to the appellant's agent to be present at the spot for the purpose of measuring the quantity and determining the yield. The appellant's agent was however absent and the Revenue Inspector made measurements in the presence of the respondent and some prominent persons of the village in spite of the absence of the appellant's agent. He then sent a report to the Tehsildar giving the result of his measurements. As however, the appellant's agent was not present, the crop could not be divided and the Revenue Inspector gave instruction to the respondent that the crop should not be removed. It appears however that the respondent removed the crop soon after the Revenue Inspector left. Thereafter the respondent sent a money order to the appellant for the amount representing the value of the appellant's share, namely, 40 per cent. It appears that soon after the appellant filed a criminal complaint of theft against the respondent and that was dismissed. Then followed the present petition under s. 3(4)(a) of the Madras Cultivating Tenants Protection Act, No. XXV of 1955, (hereinafter referred to as the Protection Act) for the ejectment of the respondent

before the Revenue Divisional Officer.

The Revenue Divisional Officer held that though the respondent was justified in insisting that the appellant should take only 40 per cent of the produce as provided by law he was not justified in removing the crop and that he should have proceeded to enforce his rights in the manner provided by law. As however the respondent had not chosen to proceed in that manner, the Revenue divisional Officer ordered his ejectment refusing to exercise the discretion which lay in him to give time to the respondent to deposit the arrears of rent in court. The respondent then went in revision to the High Court. The High Court held that in the circumstances of the case, the Revenue Divisional Officer should have exercised his discretion in favour of the respondent. The High Court therefore set aside the order of ejectment in view of the fact that the rent had been deposited in the High Court. Thereupon the appellant applied for and obtained special leave to appeal from this Court, and that is how the matter has come up before us.

In the special leave petition the appellant raised the contention that the Fair Rent Act and the Protection Act were unconstitutional as they placed unreasonable restrictions on the appellant's fundamental rights to hold her property. But in the arguments before us, learned counsel for the appellant has abandoned the attack on the constitutionality of the two Acts and has only contended that the High Court had no jurisdiction under s. 6-B of the Protection Act to interfere with the order of the Revenue Divisional Officer.

Before we consider the contention raised on behalf of the appellant we may briefly refer to the provisions of the two Acts, which bear on the question raised before us. The Protection Act was, as its title shows, passed for protection from eviction of cultivating tenants. It is not in dispute that the respondent was a cultivating tenant. Section 3(1) of the Protection Act lays down that "subject to the next succeeding sub-sections, no cultivating tenant shall be evicted from his holding or any part thereof, during the continuance of this Act, by or at the instance of his landlord, whether in execution of a decree or order of a Court or otherwise". The following sub-sections then lay down the conditions under which ejectment can be ordered. Sub-section (2) of s. 3 inter alia lays down that a tenant will not enjoy the protection of sub-s (1), if he is in arrears of rent and has not paid the arrears within the time specified therein. Sub-section (3) of s. 3 provides that a cultivating tenant may deposit in court the rent or, if the rent be payable in kind, its market value on the date of the deposit, to the account of the landlord. A notice of deposit is given by the Court (in which is included the Revenue Divisional Officer), and an enquiry is then made whether the amount deposited is correct after hearing the landlord and the tenant. If there is any deficiency, the tenant is ordered to make good the deficiency; and if he fails to pay the sum due, the landlord is entitled to ask the court for eviction in the manner as provided by sub-s. (4). Section 3(4)(a) lays down the procedure for evicting a tenant. Under this clause a landlord has to apply to the Revenue Divisional Officer and on receipt of such application, the Revenue Divisional Officer, after giving reasonable opportunity both to the landlord and the tenant to represent their case, holds a summary enquiry into the matter and decides whether eviction should be ordered or not. Clause (b) of sub-s. (4) of s. 3 further gives discretion to the Revenue Divisional Officer to allow the cultivating tenant such time as he considers just and reasonable having regard to the relative circumstances of the landlord and the cultivating tenant for depositing the arrears of rent payable under the Act, including such costs as he may direct. It is further provided that if the cultivating tenant deposits the sum as directed, he shall be deemed to have paid the rent. If however the cultivating tenant fails to deposit the sum as directed, the Revenue Divisional Officer shall pass an order for eviction.

Then we turn to the provisions of the Fair Rent Act, which are material for present purposes. We

have already pointed out that the fair rent in the case of wet land with which we are concerned in the present appeal is 40 per cent of the normal gross produce or its value in money : (see s. 4(1)). Then comes s. 7, which provides that "where the produce to be shared is grain the sharing shall be done at the threshing floor on which the threshing took place; and no portion of the produce shall be removed therefrom at such time or in such manner as to prevent the due division thereof at the proper time."

A combined reading of these provisions of the two Acts shows that in the case of a tenant whose rent is payable in kind, such tenant has to take the crop to the threshing floor for division and such division has to be made at the threshing floor and no portion of the produce can be removed therefrom so as to prevent the due division thereof. But it is open to a tenant under s. 3(3) of the Protection Act to deposit in court to the account of the landlord where the rent is payable in kind, its market value on the date of deposit; and this obviously postulates that though the tenant has taken the produce to the threshing floor, the landlord has not co-operated in its division. Clearly if the landlord does not co-operate in the division of the crop, the tenant cannot allow it to remain on the threshing floor to deteriorate and that seems to be the reason why under s. 3(3) of the Protection Act he is allowed to deposit the market value of the rent payable in kind in court, and it is then for the court to see whether the rent deposited is correct or not.

The first question that arises therefore is whether the respondent has acted in any manner prohibited by law; and the main contention of the appellant is that the respondent has transgressed the provisions of s. 7 of the Fair Rent Act and so cannot take advantage of the Protection Act. It is further contended that the respondent has also transgressed s. 3(2) of the Protection Act inasmuch as he did not deposit the arrears of rent within the time allowed thereunder and was therefore liable to eviction under s. 3(4) of the Protection Act. Section 7 of the Fair Rent Act lays down that the sharing of the crop shall be done at the threshing floor on which the threshing takes place and no portion of the product shall be removed therefrom at such time or in such manner so as to prevent due division thereof. It is clear that s. 7 can be transgressed in one of two ways; viz., (1) when the tenant does not bring the crop to the threshing floor at all, or (2) having brought it to the threshing floor he removes any portion of it at such time or in such manner as to prevent the due division thereof at the proper time. In the present case it is not in dispute that the respondent brought the crop to the threshing floor with the intention that it may be divided between him and the appellant and it is also not in dispute that the tenant was entitled to have the crop divided according to the Fair Rent Act and had therefore to give only 40 per cent to the appellant as provided thereunder. It was the appellant who was insisting all along through her agent that she should get 60 per cent as provided in the agreement of tenancy. What happened thereafter has been narrated by us above. The respondent approached the police, and the report of the Police Inspector shows that he went to the spot twice; on the first day the appellant's agent told the Police Inspector that he would settle the matter after consulting the appellant and the agent was asked to come back next day with the appellant's instructions. When the Police Inspector came the next day, no settlement could be arrived at. Later when the Revenue Inspector was sent by the Tehsildar, the agent of the appellant did not appear in spite of notice, and the Revenue Inspector took measurements of the crop and made a report thereof to the Tehsildar. It was after the crop had been measured by the Revenue Inspector that it was removed by the respondent. In these circumstances we are of opinion that it cannot be said that the crop was removed from the threshing floor in order to prevent due division thereof at the proper time; the respondent was always prepared for the division of the crop as provided by law, and the removal by him cannot in the circumstances be said to be for the purpose of preventing due division of the crop particularly when the measurements had also taken place. Removal of crop by the tenant can fall within the meaning of the section only if it is done for the purpose therein

specified; and it is plain that the removal in the present case was clearly not for that purpose. We are therefore of opinion that on the facts of this case it cannot be said that there was any transgression of s. 7 of the Fair Rent Act.

It is further urged on behalf of the appellant that even though the respondent might have been justified in removing 60 per cent of the crop which was his share, his removal of the appellant's share was a transgression of s. 7 of the Act. We cannot accept this. Section 7 forbids removal of any portion of the crop. There is no question therefore of the share of the appellant or the respondent, either the removal as a whole will transgress s. 7 or it will not; and that will depend upon the fact whether the removal was in order to prevent due division of the crop at the proper time. In the present case we have already indicated that the removal was not to prevent due division. The respondent was always prepared for due division and it was the appellant's agent who did not agree to division according to law. In these circumstances, this is not a case of removal of the crop (particularly after it had been measured by the Revenue Inspector) with a view to prevent its due division. There was therefore no transgression of s. 7 of the Fair Rent Act, even if the appellant's share was removed.

Then it is urged that even if there was no transgression of s. 7 of the Fair Rent Act, the respondent was not entitled to the protection of s. 3 of the Protection Act, as he did not pay rent within the time specified therein and had taken no steps under s. 3(3) of the Act. There is no doubt that strictly speaking the case is covered by s. 3(2) of the Protection Act inasmuch as the rent was not paid within the time allowed therein and was not even deposited in court under s. 3(3) of the Protection Act. What the respondent did in the present case was to send a money order to the appellant instead of depositing the money in court under s. 3(3) as he should have done. Even though the appellant was not agreeing to the division of the crop, the respondent did not act under s. 3(3) as he should have and instead sent a money order. That gave the appellant a cause of action to make an application under s. 3(4) of the Protection Act. But even though the appellant was entitled to make application under s. 3(4) of the Protection Act, the Revenue Divisional Officer was not bound to evict the tenant for cl. (b) of s. 3(4) gives him a discretion to give time to the tenant to pay the arrears having regard to the relative circumstances of the landlord and the cultivating tenant. This clearly means that the Revenue Divisional Officer has to take into account the circumstances of each case and then exercise his discretion whether be should give time to the tenant or not. In the present case the Revenue Divisional Officer did not consider that question as he took the view that he should not exercise the discretion in favour of the respondent because he had to acted as he should have acted and deposited the amount under s. 3(3) in court. This view of the Revenue Divisional Officer is in our opinion patently incorrect. Now if the respondent had acted as he should have acted and made a deposit under s. 3(3) of the Protection Act, the matter would have been dealt thereunder. The court (which includes the Revenue Divisional Officer) would then have to consider whether the amount deposited was correct and if it was deficient the court was bound to give time to the tenant to make up the deficiency. It is only when the deficiency is not made good within the time allowed that the landlord would have the right to make an application under s. 3(4) for eviction. It is clear therefore that the discretion allowed under cl. (b) of s. 3(4) only comes into play where the tenant for some reason or the other has not made a deposit under s. 3(3). To hold therefore, - as the Revenue Divisional Officer seems to have held - that the discretion will not be exercised in favour of the tenant because he had failed to make a deposit under s. 3(3) of the Act is a patent violation of the provision in cl. (b) of s. 3(4) as to the exercise of discretion.

It is however urged that even if the Revenue Divisional Officer had misunderstood cl. (b) of s. 3(4), the High Court could not interfere with the exercise of the discretion by the Revenue Divisional

Officer under s. 6-B of the Protection Act, inasmuch as this provision gives revisional jurisdiction to the High Court to the extent to which such jurisdiction is conferred on it by s. 115 of the Code of Civil Procedure. There are two answers to this contention. The first is that the Revenue Divisional Officer was patently wrong in his view of the law and therefore if the High Court interfered with the wrong exercise of discretion, this Court in its jurisdiction under Art. 136 will not interfere with the order of the High Court, which is clearly in the interest of justice. Secondly by taking the view that he cannot and should not exercise his discretion where a tenant has failed to take action under s. 3(3) of the Protection Act, the Revenue Divisional Officer has in our opinion failed to exercise jurisdiction vested in him under the law, and the High Court would be justified in interfering with its order even under s. 115 of the Code of Civil Procedure.

We are therefore of opinion that there is no force in this appeal and it is hereby dismissed with costs.

Appeal dismissed.

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