Ramchandra

Vs

Tukaram and Others

Civil Appeal No. 616 of 1963

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

24.08.1965

JUDGMENT

SHAH, J. –

The first respondent Tukaram was a protected lessee within the meaning of that expression in the Berar Regulation of Agricultural Leases Act 24 of 1951 - hereinafter called the Berar Act in respect of certain land at Mouza karwand in the Vidharbha Region [now in the State of Maharashtra]. The appellant - who is the owner of the land served a notice under s. 9 [1] of the Berar Act terminating the tenancy on the ground that he required the land for personal cultivation, and submitted an application to the Revenue office under s. 8 [1] [g] of the Berar act for an order determining the tenancy. The Revenue officer determined the tenancy by order dated July 2, 1957 and made it effective from April 1, 1958. In the meantime the Governor of the State of Bombay [the Vidharbha region having been incorporated within the State of Bombay by the Sates organization Act 1956] issued Ordinance 4 to 1958 a ban was imposed against eviction of tenants, and by s. 3 of Act 9 of 1958 a ban was imposed against eviction o

The contention urged on behalf of the appellant is that the High Court should have restored the order passed by the Naib Tahsildar and should not have reopened the inquiry as directed in its judgment. It is necessary in the fist instance to make a brief survey of the diverse statutory provisions in their relation to the progress of the dispute, which have a bearing on the question which falls to be determined. The land was originally in the Vidharbha region which before the Bombay Reorganization Act, 1956 was apart of the State of Madhya Pradesh, and the tenancy of the land was governed by the Berar Act. The first respondent was a protected lessee in respect of the land under s. 3 of the Berar Act. Section 8 of the act imposed restrictions on termination of protected leases. It was provided that notwithstanding any agreement, usage, decree or order of a court of law, the lease of any land held by a protected lessee shall not be terminated except under orders of a Revenue officer made on any of the grounds co

> "A Landholder may apply to the Revenue Officer to eject a protected lessee against whom an order for the termination of the lease has been passed under sections 8 to 9."

Sub-Section [2] enabled a tenant dispossessed of land otherwise than in accordance with the provisions of the Act to apply to the Revenue Officer for restoration of the possession. By sub-s. [3] it was provided.

> "On receipt of an application under sub-section [1] summary enquiry as he deems fit,

> pass an order for restoring possession of the land to the landholder or the protected lessee as the case may be and may take such steps as may be necessary to give effect to his order.

The appellant had obtained from the Revenue Officer concerned an order under s. 8 [1] [g] determining the tenancy effective from April 1, 1958. But before that date ordinance 4 of 1957 was promulgated. This ordinance was later replaced by Bombay Act 9 of 1958. By s. 4 of Bombay Act 9 of 1958 all proceedings either pending at the date of Commencement of the Act or which may be instituted [during the period the Act remained in force] for termination of the tenancies were stayed.

The Tenancy Act Bombay Act 99 of 1958 which was brought into force on December 30, 1958 repealed Bombay Act 9 to 1958 and the Berar Act and made diverse provisions with regard to protection of tenants. By s. 9 of the Tenancy Act it was provided that no tenancy of any land shall be terminated merely on the ground that the period fixed for its duration whether by agreement or otherwise had expired, and by s. 19 it was provided that notwithstanding any agreement, usage, decree or order of a court of law, the tenancy of any land held by a tenant shall not be terminated unless certain conditions specified therein were fulfilled. Section 36 of the Tenancy act set up the procedure to be followed, inter alia, for obtaining possession from a tenant after determination of the tenancy, and sub-s. [2] enacted that no landlord shall obtain possession of any land, dwelling house or site used for any allied pursuit held by a tenant except under an order of the Tahsildar. By sub-s. [3] it was provided that on receipt of an

> "Notwithstanding anything contained in section 9 or 19 but subject to the provisions of sub section [2] to [5], a landlord may after giving to the tenant one year's notice in writing at any time within two years from the commencement of this act and making an application for possession under sub section [2] of section 26, terminate the tenancy of the land held by a tenant other than an occupancy tenant if he bona fide requires the land for cultivating it personally:

[Amendment of this sub-section my Maharashtra Act 5 of 1961 is not material for the purpose of this appeal]. By Sub-s. [3] it was provided that the right of a landlord to terminate a tenancy under sub-s [1] shall be subject to the conditions contained in cls. [a] to [e] [which need not, for the purpose of this appeal, be set out.] Sub- section [4] imposed on the right of the landlord certain restrictions in terminating the tenancy. A landlord may not terminate a tenancy [a] so as to reduce the area with the tenant below a certain limit or [b] contravene the provisions of the Bombay Prevention of Fragmentation Act, or [c] where the tenant is a member of a co-operative farming society, or [d] where the tenant is a co-operative farming society. Sub-section [4A] dealt with the special case of a member of armed forces ceasing to be a member of the serving force. Sub section [5], [6] and [7] made certain incidental provisions. By sub-s. [1] of s. 132 amongst others, the Berar Act and Bombay Act 9 of 1958 were repea

> "Notwithstanding anything contained in sub-section [1] -
>
> [a] all proceedings for the termination of the tenancy and ejectment of a tenant or for the recovery or restoration of the possession of the land under the provisions of the enactments so repealed, pending on the date of the commencement of this Act before a Revenue Officer or in appeal or revision before any appellate or revising authority shall be deemed to have been instituted and pending before the corresponding authority under this act and shall be disposed of in accordance with the provisions of

this act and

[b]..... .....

As from December 30, 1958 the Berar Act ceased to be in operation. But by sub-s. [2] of s. 132 any right, title, interest, obligation or liability already acquired before the commencement of the Tenancy Act remained enforceable and any legal proceedings in respect of such right, title, interest, obligation or liability could be instituted, continued and disposed of as if Bombay Act 99 of 1958 had not been passed. But to this reservation an exception was made by sub-s [3] that a proceeding for termination of tenancy and ejectment of the tenant or for recovery or restoration of possession of the land under any repeated provisions, pending on the date of the commencement of Act 99 to 1958 before a Revenue Officer was to be deemed to have been instituted and pending before the corresponding authority under the Tenancy Act and was to be disposed of a in accordance with the provisions of that Act. Therefore when a proceeding was pending for termination of the tenancy and ejectment of a tenant the proceeding had to

The High Court in the judgment under appeal following the decision in Jayantraj Kanakmal Zambad's case held that the application filed by the appellant purporting to under s. 36 [2] of the Tenancy Act must be regarded as an application under s. 19 of the Berar Act and therefore be deemed to be a continuation of the application under ss. 8 and 9 of the Berar act which was pending at he date when the Tenancy act was brought into force, and to such an application s. 38 [1] did not apply, but by virtue of sub-s. [3] cl. [a] of s. 132 the application had to be disposed of in accordance with the provisions of the Tenancy Act, thereby thereto. Mr. Patwardhan for the appellant has, for the purpose of this appeal, not sought to canvass the correctness of the view of the judgment in Jayantraj Kanakmal Zambad's case but has submitted that the High Court has nor correctly interpreted s. 132 [3] of the Tenancy Act.

The appellant had acquired a right to obtain possession of the land on determination made but he Revenue officer by order dated July 2, 1957 and a legal proceeding in respect thereof could be instituted or continued by virtue of sub-s. [2] of s. 132 as if the Tenancy Act had not been passed. The exception made by sub-s. [3] of s. 132 in respect of proceeding for termination of the tenancy and ejectment of a tenant which are pending on the date of the commencement of the Tenancy act is limited in its content. Proceeding which are pending are to be deemed to have been instituted and pending before the corresponding authority under the act and must be disposed of in accordance with the provisions of this Act apparently the Legislature intended to attract the procedural to the institution of fresh proceedings. To hold otherwise would be to make a large inroad upon sub-s. [2] of s. 132 which made the right, title or interest already acquired by virtue of any previous order passed by competent authority unenforcea

The High Court was, in our judgment, right in holding that the application filed by the appellant for obtaining an order for possession against the first respondent must be treated as one under s. 19 of the Berar Act, and must be tried before the corresponding authority. Being a pending proceeding in respect of a right acquired before the Act, it had to be continued and disposed of as if the Tenancy act had not been passed sub-s [2], subject to the reservation in respect of two matters relating to the competence of the officers to try the proceeding and to the procedure in respect of the trial. The appellant had obtained an order determining the tenancy of the first respondent. That order had to be aforesaid in the manner provided by s. 19 [1] i.e. the Revenue Officer had to make such summary inquiry as he deemed fit, and had to pass an order for restoring possession of the land to the landholder and to take such steps as may be necessary to give effect to his order. Since the repeal of

the Berar Act the pro tently with the rights of the parties] as he deems fit. But to the trial of the application for enforcement of the right acquired under the Berar Act, s. 38 of the Tenancy Act could not be attracted. Section 38 authorises the landlord to obtain possession of the land from a tenant, if the landlord bona fide required the land for cultivating it personally. In order to effectuate that right, the landlord must give a knotty of one yard's duration in writing and make an application for possession under s. 36 within the prescribed period. The section is in terms prospective and does not purport to affect rights acquired before the date no which the Tenancy Act was brought into force. The High Court was therefore also right in observing.

> "The notice referred to in sub-s. [1] of s. 38 could not obviously have been given in respect of proceedings which were pending or which are deemed to have been pending on the date of the commencement of this Act. It does not also appear that it was the intention of the Legislature that such proceeding should be kept pending for a further period until a fresh notice as required by sub-s. [1] of s. 38 had been given..... For the same reasons, the proviso to sub-s [2] of s. 36 will not apply in such cases.

But we are unable to agree with the High Court that sub-ss. [3] and [4] of s. 38 apply to an application filed or deemed to be filed under s. 19 of the Berar Act. The High Court appears to be of the view that by the use of the expression Shall be disposed of in accordance with the provisions of this Act it was intended that all the provisions of this Act it was intended that all the provisions of the Act, which would apply to an application made under sub-s. [2] of s. 36, would also apply to application which are deemed to have been made under this section, and therefore it followed that sub-ss. [3] and [4] of s. 38 applied to all applications for obtaining possession of the land for personal cultivation made under s. 19 of the Berar Act which were pending or which were deemed to have been pending on the date of the commencement of the Tenancy Act. If may be noticed that sub-s. [3] of s. 38 in terms makes the right of the landlord to terminate a tenancy under sub-s. [1] subject to conditions mentioned therei

The words of sub-s. [4] are undoubtedly general. But the setting in which the sub-section occurs clearly indicates that it is intended to apply to tenancies determined under s. 38 [1]. Large protection which was granted by s. 19 of the Tenancy Act has been withdrawn from tenants who may be regarded as contumacious. BY s. 38 [1] a landlord desiring to cultivate the land personally is given the right to terminate the tenancy, but the right is made subject to the conditions prescribed in sub-s. [3] and the legislature has by sub-s. [4] [a] sought to make an equitable adjustment between the claims of the landlord and the tenant. If sub-s. [4] be read as imposing a restriction on the determination of all tenancies, it would imply grant of protection to a contumacious tenant contumacious tenants who have disentitled themselves otherwise to the protection of s. 19 should still be benefited. Again if sub-s. [4] be read as applying to determination of every agricultural tenancy, its proper place would have been in su

The application made by the appellant is undoubtedly one for ejectment of the tenant and for recovery of possession. The Naib Tahsildar was competent to entertain the application. It is true that the application was originally filed under ss. 8 and 9 of the Berar Act on the ground that the landlord required the land bona fide for his personal cultivation, but once an order was passed under s. 8 [1] [g] by the Revenue officers, the only inquiry contemplated to be made on an application under s. 19 was summary inquiry before an order for possession was made in favour of the landlord. At that stage, there was no scope for the application of the conditions and restrictions prescribed by sub-ss [3] and [4] of s. 38, for, in our view, those provisions do not apply to proceeding to enforce

rights acquired when the Berar act was in operation.

We therefore modify the order passed by the High Court and direct that the orders passed by the Tahsildar and the Revenue Tribunal will be set aside and the matter will be remanded to the Tahsildar for dealing with the application on the footing that it is an application to enforce the right conferred by ss. 8 and 9 of the Berar Regulation of Agricultural leases, Act, 1951 and the provisions of s. 38 of the Bombay Act 99 of 1958 have no application thereto. There will be no order as to costs in this appeal.

Order modified and case remanded.

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