Sidram Narsappa Kamble

Vs

Sholapur Borought Municipality Anr.

Civil Appeal No. 577 of 1963

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

27.08.1965

JUDGMENT

WANCHOO, J. –

The appellant took on lease two survey numbers from the respondent, Sholapur Borough Municipality on April 1, 1946 for a period of three years. The land is situate within the municipal limits. About November 8, 1946, the Bombay Tenancy Act, No. 29 of 1939 [hereinafter referred to as the 1939 - Act] was applied to this area and s. 3-A of that Act provided that every tenant shall on the expiry of one year from the date of the coming into force of the Bombay Tenancy [Amendment] Act, [No. XXVI of 1946] be deemed to be a protected tenant unless his landlord has within the said period made an application to the Mamlatdar for a declaration that the tenant was not a protected one. The respondent did not file a suit within one year and therefore the appellant claimed to have become a protected tenant under the 1939-Act. The 1939-Act was repealed in 1948 by the Bombay Tenancy and Agricultural Lands Act, No. LXVII of 1948 [hereinafter referred to as the 1948-Act]. Section 31 of the 1948-Act provided that regoing provisions of the 1948-Act shall apply to lands held on lease from a local authority. Therefore if s. 88 prevailed over s. 31 the appellant would not be entitled to the benefit of s. 31 and could not claim to be a protected tenant under this section. The appellant however relied on s. 89 [2] of the 1948-Act which provided for the repeal of the 1939-Act except for ss. 3. 3-A and 4 which continued as modified in Suh. I of the 1948-Act. That sub section provided that nothing in the 1948-Act or any repeal effected thereby shall save as expressly provided in this Act affect or be deemed to affect any right, title, interest, obligation or liability already acquired or incurred before the commencement of the 1948-Act.

In the present case the respondent gave notice to the appellant on May 2, 1955 terminating his tenancy with effect from March 31, 1956. Subsequently the respondent filed suit No. 42 of 1957 for obtaining possession of the land and for certain other relief. It was held in that suit that the respondent could not get possession of the lands as the appellant was entitled to the benefit of the 1948-Act and consequently the respondent's suit for possession was dismissed. The respondent than appealed to the District Court. During the tendency of that appeal the appellant made in application on September 8, 1958 for a declaration that he was a protected tenant to the lands and also for fixing rent under the provisions of the Tenancy Act. Further in the appeal filed in the District Court a compromise was arrived at by which the order dismissing the respondent suit for possession was set aside and the suit was remanded to the trial court with the direction that the suit be stayed and disposed of after the decision by

The Mamlatdar held that the appellant was a tenant and gave him a declaration under s. 70 [b] of the 1948-Act. The respondent then went in appeal to the Collector, and the Collector decided that the

Mamlatdar had no jurisdiction to decide whether the appellant was a tenant. The appellant then went in revision to the Bombay Revenue Tribunal. The tribunal held, in view of the amendments that had been made in the 1948-Act by the Amendment Act, of 1956 by which s. 88-B was introduced in the 1948- Act, that the revenue court had jurisdiction to decide whether the appellant was a tenant. Finally it remanded the matter to the Collector for decision on the question whether the appellant was a tenant or a protected tenant on the merits.

The respondent had contended before the Revenue Tribunal that the appellant could not have the status of a tenant or protected tenant in view of the provision of the 1948-Act and therefore the respondent filed a petition under Art. 227 of the Constitution of India before the Bombay High Court. Its contention before the High Court was that in view of s. 88 of the 1948- Act the appellant could not claim to be a protected tenant within the meaning of s. 31 of that act and therefore the order of the Collector was right. It was also contended that s. 88-B would not apply to the case of the appellant as it came into force on April 1, 1956 after the determination of the tenancy of the appellant by notice. Both these contention were accepted by the High Court and the order of the Revenue Tribunal was set aside and in its place the order of the Collector dismissing the appellant's application was restored. Thereupon there was an application was restored was restored. Thereupon there was an application of the High Cou

This appeal was first heard by a Division Bench of this court and has been referred to a larger Bench in view of certain difficulties relating to the interpretation and inter relation of ss. 31, 88 and 89 of the 1948-Act and in view of two decisions of this Court in Sakharam v. Manikchand and Mohanlal Chunilal Kothari v. Tribhovan Haribhai Tamboli. It has been contended on behalf of the appellant that Sakharam's case fully covers the present case and on the basis of that case the appeal should be allowed. On the other hand, learned counsel for the respondent contends that on the ratio of Mohanlal Chunilal Kothari's case the appellant should be held to be not a protected tenant and that considerations which applied to the interpretation of s. 88 [1] [d] equally applied to the interpretation of s. 88 [1] [a] [b] and [c]. It is further urged on behalf of the respondent that in view of the latter decision, the decision in Sakharam's case no longer holds the field.

Before we refer to the two decisions on which reliance has been placed on either side, we may refer to the various provisions of the 1948-Act as they were before the amendments of 1956 to decide the inter relation of ss. 31, 88 and 89 of the said Act. It may be mentioned at the outset that s. 89 which repealed the 1939-Act did not repeal ss. 3, 3-A and 4 of that Act. These three sections continued as modified in Sch. I of the 1948-Act. A perusal of the modified sections in Sch. I shows that protected tenants were only those tenants who satisfied these three section in the Schedule and that no new protected tenants could come into existence under the 1948- Act after it came into force form December 28, 1948. Further it seems to us obvious that ss. 3 3-A and 4 of the 1939-Act were not repealed and were continued as modified in Sch. I of the 1948-Act. That section provided.

> "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, 3-A or 4 of the Bombay Tenancy Act, 1939."

These sections [ss. 3, 3-A and 4] Which were continued in a modified form in Sch. I of the 1948-Act were so continued only for the purpose of s. 31 of the Act and it was not possible for any tenant to be a protected tenant under the 1948-Act unless he was a protected tenant under the 1939-Act. The 1948-Act thus recognised such tenants as protected tenants who were protected tenants under the 1939-Act were continued as modified by Sch. I of the 1948-Act the modifications were such as

showed that only those tenants would remain protected tenants under the 1948-Act who were protected under the 1939-Act.

Then we come to s. 88 of the 1948-Act which is in these terms:-

> " [1] Nothing in the foregoing provisions of this Act shall apply:
>
> [a] to lands held on lease from the Crown, a local authority or a co- operative society.
>
> [b]..... .....

Section 88 lays down that nothing in the foregoing provisions of the 1948- Act shall apply inter alia to lands held on lease from a local authority. In other words, so far as lands held on lease from a local authority. In other words, so far as lands held on lease from a local authority are concerned, there will be no provisions in the 1948-Act for recognising a protected tenant even if a person was a protected tenant under the 1939- Act. It is only s. 31 which gave recognition to the status of a protected tenant under the 1948-Act and if that provision is in effect omitted so far as lands held on lease from a local authority are concerned. No such lessee can claim to be a protected tenant. In effect therefore the legislature which had conferred by the 1939-Act the status of a protected tenant on certain persons was taking away that status by enacting s. 88 in the 1948-Act so far as inter alia lessees from a local authority were concerned.

It matters had stood only on ss. 31 and 88 there would have been no difficulty in holding that the status of protected tenant conferred by the 1939-Act was taken away from certain lessees including lessees from a local authority under s. 88 of the 1948-Act. But the appellant relies on s. 89 [2] [b] and contends that that provision saved his rights as a protected tenant. We have already mentioned that s. 89 [1] repealed inter alia the 1939-Act except for ss. 3, 3-A and 4 which continued in a modified forming Sch. I of section 89 [2] [b] on which reliance is placed by the appellant is in these terms:-

> "But nothing in this Act or any repeal effected thereby :-
>
> [a].....
>
> [b] Shall, save as expressly provided in this Act, affect or be deemed to affect.
>
> [i] any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or
>
> [ii].....

The argument is that the interest acquired as a protected tenant under the 1939-Act would thus not be affected in view of this provision in the 1948- Act; and it is this argument which we have to examine. Now we have already mentioned that ss. 3, 3-A and 4 relating to protected tenants in the 1939- Act were not repealed by the 1948-Act. Therefore that part so s. 89 [2] [b] which says that any repeal affected thereby shall not affect or be deemed to affect any right, title, interest etc. will not apply. But learned counsel for the appellant relies on the words nothing in this act shall affect or be deemed to affect any right, title or interest..... " and his argument is that even though there might not have been a repeal of ss. 3, 3-A and 4 of the 1939-Act by the 1948-Act s. 89 [2] would still protect him because it provides that nothing in the 1948-Act shall shall affect or be deemed to affect

any right, title, interest etc. acquired before its commencement. But the clause nothing in this act shall affect or

The narrow question then is whether there is anything express in the 1948- Act which takes away the interest of a protected tenant acquired before its commencement. If there is any such express provision then s. 89. [2] [b] would be of no help to the appellant. The contention of the respondent is that s. that s. 88 is an express provision and in the face of this express provision the interest acquired as a protected tenant under the 1939-Act cannot prevail. On the other hand, it is urged on behalf of the appellant that s. 88 does not in express terms lay down that the interest acquired by a protected tenant under the 1939-Act is being taken away and therefore it should not be treated as an express provision. Now there is no doubt that s. 88 when it lays down inter alia that nothing in the foregoing provisions of the 1948-Act shall apply to lands held on lease from a local authority, it is an express provision which takes out such leases from the purview of sections 1 to 87 of the 1948-Act. One of the provisi

It was now remains to refer to Sakharam's case which certainly supports the contention raised on behalf of the appellant. With respect, it seems to us that more has been read in that case in s. 89 [2] [b] than is justified under the terms of that provision. It was also observed in that case that the provisions of s. 88 were entirely prospective and wee not intended in any sense to be of confiscatory character, and that s. 89 [2] [b] showed clearly an intention to conserve such rights as were acquired before the commencement of 1948- Act. It seems to us, with respect, that in that case full effect was not given to the words save as expressly provided in this Act, appearing in s. 89 [2] [b], and it was also not noticed that there could be no new protected tenants after the 1948-Act came into force and that s. 88 [1] in its application to leases from local authorities will have no meaning unless it affected the right contained in s. 31. It may very well be that the legislature thought that the status of a protec

We may also mention that by an oversight it was stated in Mohanlal Chunilal Kothari's case that clause [a], [b] and [c] of s. 88 [1] apply to things as they were at the date of the enactment. It is however clear that clauses [a], [b] and [c] of s. 88 [1] also apply in the future. For example cl. [a] lays down that nothing in the foregoing provisions of this Act shall apply to lands held on lease from Government, a local authority or co- operative society. The words held on lease in this clause are only descriptive of the lands and are not contained to lands held on lease on the date the act came into force; they equally apply to lands leased before or after the Act became law and the distinction that was drawn in Mohanlal Chunilal Kotharis; case that cls. [a], [b] and [c] applied to things as they were at the date of the enactment whereas cl. [d] was with respect to future, with respect, does not appeal to be correct.

In this view of the matter, the view taken by the High Court in the judgment under appeal that s. 88 [1] [a] is an express provision which takes away the interest of protected tenants under the 1939-Act must be held to be correct.

So far as the argument based on s. 88-B is concerned, it is enough to say that we agree with the High Court that that section will not protect the appellant for his lease had already been determined before the section came into force on April 1, 1956 Besides it may be observed that s. 4-A which takes the place of s. 31 after the amendment of 1956 still does not apply to case of lands held on lease from a local authority and therefore what we have said with respect to s. 31 will equally apply to s. 4-A and the appellant cannot claim the benefit of that section and contend that he is a protected tenant under the 1939-Act and therefore cannot be ejected.

In the result we dismiss the appeal but in the circumstances of this case we order the parties to bear their own costs.

Appeal dismissed.

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