Rao Nihalkaran

Vs

Ramgopal

Civil Appeal No. 365 of 1965

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

27.01.1966

JUDGMENT

SHAH, J. -

Ramgopal - respondent in this appeal - was a tenant of certain Inam land situate in village Nanda Panth in Indore Tahsil. The appellant Rao Nihalkaran - holder of the Inam - served a notice terminating the tenancy on the ground that he needed the land for personal cultivation, and commenced an action in the Court of the Civil Judge, Class II, Indore, on July 21, 1950, against Ramgopal for ejectment. The Trial Court decreed the suit. During the pendency of the appeal to the District Court, Indore, by Ramgopal against the decree, Madhya Bharat Muafi & Inam Tenants and Sub-tenants Protection Act 32 of 1954 was enacted, and pursuant to the provisions thereof hearing of the appeal remained stayed till 1960. In the mean time the Madhya Pradesh Land Revenue Code (Act 20 of 1959) was brought into force. Ramgopal urged before the District Court that he had by virtue of s. 185 of the Code acquired rights of an occupancy tenant and the appellant's right to obtain an order in ejectment on the ground set up must be refused. The District Judge accepted the contention of the respondent and allowed the appeal. Against the decree passed by the District Court, Indore, the appellant appealed to the High Court of Madhya Pradesh, Indore Bench. Following their judgment in Rao Nihalkaran v. Ramchandra and Others (L.P.A. No. 14 of 1961 decided on Sept. 24, 1962.), the High Court confirmed the decree of the District Judge, and dismissed the appeal. With special leave granted by this Court, this appeal has been preferred.

The dispute in the appeal centers round the meaning of the expression "tenant" used in s. 185(1) cl. (ii)(a) of the Madhya Pradesh Land Revenue Code. The material part of the clause reads :

> "Every person who at the coming into force of this Code holds -
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> #(i) . . . . .##
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> (ii) in the Madhya Bharat region -
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> (a) any Inam land as a tenant, or as a sub-tenant or as an ordinary tenant,
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> shall be called an occupancy tenant, and shall have all the rights and be subject to all the liabilities conferred or imposed upon an occupancy tenant by or under this Code."

It is common ground that the tenancy of an occupancy tenant may be determined under s. 193 of the Madhya Pradesh Land Revenue Code by an order of the Sub-Divisional Officer on the grounds

specified in that section, and personal requirement of the land-lord is not one of such grounds. But the counsel for the appellant urged that the rights of an occupancy tenant arise in favour of a person under s. 185(1) cl. (ii) (a) only if there is between him and the claimant to the land a subsisting relation under which he holds land as a tenant at the date when the Code came into force. The Code has, it is said, no retrospective operation, and the person who under the law in force before the commencement of the Code had ceased to be a tenant because of termination of the contract between him and the landlord is not invested with the rights of an occupancy tenant under s. 185(1)(ii)(a). In the alternative it is contended that by virtue of s. 261 and s. 262(2), operation of s. 185 is expressly excluded, when a person against whom proceedings have been instituted prior to the commencement of the Code for a decree in ejectment in enforcement of a right acquired under the law then in force, claims the status of an occupancy tenant.

The District Court held that the expression "tenant" within the meaning of s. 185(1)(ii)(a) of the Code includes a person whose tenancy stood determined before the commencement of the Code, and with that view the High Court agreed. Counsel for the appellant complained that in reaching this conclusion, the Courts below ignored the definition in s. 2(y) of the Code that the expression "tenant" means a person holding land from a Bhumiswami as an occupancy tenant under Ch. XIV, and said that a person quo whom the contractual relation under which he was included as a tenant was determined prior to the commencement of the Code is not a tenant within the meaning of s. 185(1)(ii)(a). To appreciate this argument it is necessary to examine the relevant legislative history culminating in the enactment of the Code in 1959.

In 1948 twenty Indian States including the States of Gwalior, Indore and Malwa formed themselves into a Union. Five more States were later incorporated into this Union. Under the Constitution, Madhya Bharat was formed as a Part B State out of the territories of the United States of Gwalior, Indore & Malwa and certain enclaves merged therein and the Chief Commissioner's Province of Panth Piploda. Under the States Reorganisation Act, 1956 a new State of Madhya Pradesh was formed as from November 1, 1956 consisting of the Part B State of Madhya Bharat, parts of the former State of Madhya Pradesh, the territories of the States of Bhopal and Vindhya Pradesh and Sironj sub-division of Kotah in the former State of Rajasthan. Apparently the diverse land tenures prevalent in the covenanting States and the laws governing them remained in operation in their respective territories, even after the formation of the Part B State of Madhya Bharat. Attempts were made to evolve a uniform pattern of land revenue administration in conformity with the directive principles of State Policy in the Constitution to bring the tiller of the soil into direct relation with the State. The Legislature of Part B State of Madhya Bharat enacted Act 66 of 1950 to consolidate and declare the law relating to revenue administration in the United States of Gwalior, Indore and Malwa and land revenue, land tenure and other matters connected with the land in the Ryotwari tracts or villages of the United States. Section 54 of Act 66 of 1950 defined "Pakka tenant", "ordinary tenant", "sub-tenant" and prescribed the duties of a tenant by s. 55. By s. 73 a "Pakka tenant" was prohibited from sub-letting for any period any land comprised in his holding, unless he belonged to any of the classes mentioned in s. 74. By s. 74 certain classes of disabled persons were permitted to sub-let the whole or any part of their holding. But such a sub-lease made in pursuance of the provisions of the Act was to cease to be in force after one year of the determination of the disability by death or otherwise. By s. 75 it was provided that a sub-lease of the whole or any part of the holding of a "Pakka tenant" effected "properly and legally" prior to the commencement of the Act was to terminate after the expiry of the period of sub-lease or expiry of four years after the commencement of the Act, whichever period was less. By s. 76 a sub-lessee failing to hand over possession after expiry of his right was to be deemed a trespasser and liable to ejectment in accordance with the provisions of the Act. The Legislature with the object of improving the

conditions of agriculturists and with a view to remove the middleman between the State and the tiller of the soil also enacted the Zamindari Abolition Act and the Abolition of Jagirs Act.

Another statute which has a bearing on the dispute in this appeal - the Madhya Bharat Muafi and Inam Tenants Protection Act 32 of 1954 - was enacted to provide, for the duration of the Act, for the protection of tenants or ordinary tenants and sub-tenants of Muafidars, Inamdars and Istumurardars in Madhya Bharat against eviction by such Muafidars Inamdars of their tenants, as the case may be, and for stay of suits and other proceedings relating to such eviction. By s. 2(ii) the terms "tenant", "sub-tenant", "ordinary tenant" and "rent" were given the same meaning as was assigned to them in sub-ss. (1), (7), (8) & (9) of s. 54 Act 66 of 1950. By s. 3 a restriction was placed upon eviction of any tenant, sub-tenant or ordinary tenant of Inam land during the continuance of the Act and it was declared that the tenant, sub-tenant or ordinary tenant shall not pay rent higher than what he was paying in the agricultural year ending June 30, 1948. By s. 4 all suits, proceedings in execution of decrees or orders and other proceedings for the eviction of Inam land tenants, sub-tenants or ordinary tenants from Inam lands, or in which a claim for such eviction was involved, pending in the Court at the commencement of the Act or which may be instituted after such commencement, were to be stayed subject to the provisions contained in the Act. By sub-s. (11) of s. 4 it was provided that if the Inamdar, Muafidar or Istumurardar had taken possession of the land illegally from a tenant, sub-tenant or an ordinary tenant after August 15, 1947 such a tenant, sub-tenant or an ordinary tenant may apply to the Tahsildar to be restored to possession of such land and on such application the Tahsildar shall cause the land to be returned to such tenant, sub-tenant or ordinary tenant from the Inamdar, Muafidar or Istumurardar, as the case may be. By s. 6 it was provided that all suits and proceedings shall, after the expiration of the Act, be proceeded with subject to the provisions of any law which may then be in force from the stage which had been reached when the suit or proceeding was stayed.

Act 32 of 1954 was intended initially to remain in force for a period of two years, but its life was extended by later enactments. Protection against eviction during the continuance of the Act 32 of 1954 by enforcement of a decree passed in a suit or a proceeding either before or after the date on which the Act was brought into force was conferred upon tenants, sub-tenants and ordinary tenants. It is clear from the terms of ss. 3 & 4 of the Act that the Legislature did not seek to grant protection only to persons between whom and the claimants for protection there was a subsisting contractual relation. A person who was inducted into the land as a tenant, sub-tenant or ordinary tenant and who continued to hold the land at the commencement of the Act was entitled to protection, notwithstanding that under the law in force prior to the commencement of the Act the contractual relation was determined.

The Madhya Pradesh Land Revenue Code enacted in 1959. By s. 157 of the Code it was declared that there shall be only one class of tenure holders of lands held from the State to be known as Bhumiswami, and by s. 158 it was provided that every person, who at the time of coming into force of the Code, belongs to any of the four classes specified shall be called a Bhumiswami, and shall have all the rights and be subject to all the liabilities conferred or imposed upon a Bhumiswami by or under the Code, and among the persons specified is "every person in respect of land held by him in the Madhya Bharat region as a Pakka tenant or as a Muafidar, Inamdar or Concessional holder as defined in the Madhya Bharat Land Revenue and Tenancy Act Samvat 2007".

The argument of counsel for the appellant is that the respondent not being a tenant at the commencement of the Code could not acquire the rights of an occupancy tenant, and that any proceeding instituted against the tenant must be heard and disposed of according to the law in force

prior to the commencement of the Code. The definition of the expression "tenant" in s. 2(y) postulates a subsisting tenancy, but that definition may be resorted to for interpreting s. 185(1) only if the context or the subject-matter of the section does not suggest a different meaning. A tenant is by the definition a person who holds land as an occupancy tenant from a Bhumiswami : but the status of a Bhumiswami is recognized for the first time by the Code, and an occupancy tenant from a Bhumiswami would mean only a person belonging to that class who acquires rights of occupancy tenant after the Code comes into force. The position of a tenant prior to the date on which the Code was brought into force does not appear to have been dealt with in this definition. The definition which is specially devised for the purpose of the Act throws no light on the nature of the right which invests the holder of land with the status of an occupancy tenant at the commencement of the Code. In the context in which the expression "tenant" occurs in s. 185 the definition could not be intended to apply in determining the conditions which invest upon a holder of land the status of an occupancy tenant. If the expression "tenant" in s. 185(1) be released from the artificial definition as given in s. 2(y), in view of the context in which it occurs, the expression "tenant" in s. 185(1)(ii)(a), having regard to the object of the enactment would be ascribed the meaning that expression had in Act 32 of 1954.

This view is strengthened by certain indications found in cl. (ii)(b) if s. 185(1) which provides that in the Madhya Bharat region every person who at the commencement of the Code holds any land as ryotwari sub-lessee as defined in the Madhya Bharat Ryotwari Sub-Lessee Protection Act 29 of 1955 shall be called an occupancy tenant. Unless a ryotwari sub-lessee as defined in Act 29 of 1955 included a sub-lessee whose tenure was terminated before the commencement of the Code, that clause would not apply to any concrete case. The Court would not unless compelled by unambiguous language impute to the Legislature an intention to enact a provision which was ineffective. By s. 73 of Act 66 of 1950 a Pakka tenant could not sub-let for any period any land comprised in his holding except in the case provided for in s. 74, and by s. 75 it was provided that all sub-leases in force at the commencement of the Act were to terminate either on the expiry of the period of sub-lease or expiry of four years whichever was earlier. All sub-leases except those which were covered by s. 74 i.e. sub-leases granted by disabled persons before the commencement of the Act 66 of 1950 stood terminated sometime before the end of 1954 and by the express terms of s. 76 the sub-lessees were deemed to be trespassers and liable to ejectment in accordance with the provisions of the Act. Notwithstanding these provisions, by another Act 29 1955, scheme of which was substantially the same as the scheme of Act 32 of 1954, ejectment of ryotwari sub-lessees other than a sub-lessee under s. 74 of Act 66 of 1950 was suspended for the duration of the Act, and all suits and proceedings in execution for ejectment were to be stayed. By s. 2(b) of Act 29 of 1955 "Ryotwari sub-lessee" was defined as meaning "a person to whom a Pakka tenant of any ryotwari land has sub-let on sub-lease any part of his ryotwari land". By s. 3 a ban was imposed against ejectment of all ryotwari sub-lessees other than sub-lessees under s. 74 of Act 66 of 1950. By s. 4 provision was made for ejectment of ryotwari sub-lessees and provisions similar to ss. 5 & 6 of Act 32 of 1954 were made in this Act also. A ban was therefore imposed against eviction of ryotwari sub-lessees and proceedings for eviction against them was stayed by Act 29 of 1955. Therefore ryotwari sub-lessees who had ceased by determination of the sub-leases to have right in the lands were still protected from eviction during the pendency of Act 29 of 1955, and by s. 185(1)(ii)(b) of the Code upon the ryotwari sub-lessees the rights of occupancy tenants were conferred. If the expression "ryotwari sub-lessee" were to be construed to mean a ryotwari sub-lessee between whom and his lessor there was subsisting contract of sub-letting, the protection for all purposes would be ineffective, for, by express statutory provision read with s. 74 of Act 66 of 1950 all ryotwari sub-leases stood determined before Act 29 of 1955 was brought into force, and by virtue of s. 185 (3) of

the code a holder of land from a disabled Bhumiswami belonging to a class mentioned in s. 168(2) of the Code does not qualify for the status of an occupancy tenant. It may be noticed that in the class of disabled persons in sub-s. (2) of s. 168 of the Code are included all persons who are declared disabled by sub-s. (2) of s. 74 of Act 66 of 1950.

If ryotwari sub-lessees of disabled persons mentioned in sub-s. (2) of s. 74 of Act 66 of 1950 cannot claim rights of occupancy tenants by virtue of s. 185(3) of the Code and other ryotwari sub-lessees cannot qualify for those rights because of the determination of their interest as sub-lessees by virtue of ss. 75 & 76 of Act 66 of 1950 s. 185(1)(ii)(b) of the Code will not apply to any class of ryotwari sub-lessees. This is a strong ground in support of the view taken by the High Court that the expression "ryotwari sub-lessee" in s. 185(1)(ii)(b) of the Code includes persons whose contractual relation has been determined either under the terms of contract of sub-lease or statutorily under Act 66 of 1950. If that be the true meaning of the expression "ryotwari sub-lessee" there would be no reason to think that the Legislature sought to make a distinction between tenants, sub-tenants and ordinary tenants of Inam land in s. 185(1)(ii)(a) of the Code and ryotwari sub-lessees of other lands in s. 185(1)(ii)(b). A member belonging to those classes would therefore be included in the protection provided at some time prior to the date on which the Code was brought into force, if he was in possession of land as a tenant, sub-tenant or ordinary tenant and he continued to hold the land till the date of commencement of the Code.

The alternative argument that s. 185 of the Code has no application in respect of pending proceedings for ejectment is without substance. By s. 261 of the Code a large number of statutes specified in Sch. II were repealed. By s. 261 certain enactments specified in Sch. II including the Madhya Bharat Land Revenue and Tenancy Act 66 of 1950 and the Madhya Bharat Muafi and Inam Tenants and Sub-tenants Protection Act 32 of 1954 were wholly repealed. But it is expressly provided in s. 261 that the repeal shall not affect - (a) the previous operation of any law so repealed or anything duly done or suffered thereunder; or (b) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed or (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Act had not been passed. Section 262 which deals with transitory provisions by sub-s. (2) provides :

> "Any case pending in Civil Court at the coming into force of this Code, which would under this Code be exclusively triable by a Revenue Court, shall be disposed of by such Civil Court according to the law in force prior to the commencement of this Code."

Relying upon these two provisions it was urged that persons who were tenants, sub-tenants or ordinary tenants of Inam land prior to the date on which the Code was brought into force, whose rights have consistently with the law in force before that date been terminated, cannot set up rights of occupancy tenants acquired under s. 185, for, within the meaning of s. 261 the right to eject a tenant has accrued to the landlord before the commencement of the Code and a proceeding for enforcement of that right may be continued and the right enforced as if the Code had not been passed, and the Court in which the proceeding is pending would be bound to dispose of the proceeding according to the law in force prior to the commencement of the Code. The argument is misconceived. Act 66 of 1950 did not deal with the right of a landlord to evict a tenant from land.

Act 66 of 1950 was expressly repealed by the Code, but since the right to evict a tenant was governed by the general law of landlord and tenant the proviso to s. 261 had no operation. In terms the proviso to s. 261 protects a right, privilege, obligation, or liability which had been acquired, accrued or incurred under the law repealed by the Code. The right to obtain possession not having been acquired under the law repealed, a legal proceeding pending at the date of the commencement of the Code will be disposed of according to the law "then in force". That was expressly provided by s. 6 of Act 32 of 1954 and by s. 6 Act 29 of 1955. If at the date of the trial the tenant had acquired the right of an occupancy tenant, he could not be evicted otherwise than in the manner and for reasons mentioned in s. 193 of the Code. Personal requirement for cultivation of land is not, however, a ground on which claim, since the commencement of the Code, for ejectment may be maintained.

Section 262(2) is a transitory provision which enables a Civil Court to hear and dispose of a suit notwithstanding that under the Code such a proceeding would be triable by a Revenue Court. It is expressly declared that such a proceeding shall be disposed of according to the law in force prior to the commencement of the Code. That however does not imply that the contract between the parties which was sought to be enforced unaffected by the statutory declaration of occupancy tenants under s. 185 in favour of the tenant may be enforced. In our view sub-s. (2) is only procedural : it provides that a Civil Court will continue to have jurisdiction to dispose of a civil suit pending before it at the commencement of the Code, which if it had been instituted after the Code was passed, would have been tried by a Revenue Court, and in the disposal of such a suit the Civil Court will be governed by the procedural law applicable thereto prior to the commencement of the Code. There is nothing in s. 262(2) which seeks to nullify the statutory conferment of occupancy rights upon persons in the position of tenants, sub-tenants or ordinary tenants against whom proceedings were taken at the date when the Code was brought into force.

The appeal therefore fails and is dismissed with costs.

Appeal dismissed.

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