SUPREME COURT OF INDIA

Digvijaysinghji Hamirsinghji

Vs.

Manji Savda

C.A.No.37 of 1965

(R. S. Bachawat and K. S. Hegde, JJ.)

23.07.1968

JUDGEMENT

BACHAWAT, J.:-

1. This appeal raises questions of interpretation of certain provisions of the Saurashtra Land Reforms Act 1951 (Act No. XXV of 1951). On June 1, 1947 Narendrasinghji the then ruler of the Virpur State granted certain agricultural lands situate within the State to the appellant, his paternal uncle. On February 11, 1948 Narendra-Singhji and the appellant effected an exchange under which the appellant returned the lands at Matiya and Guda to Narendrasinghji and in lieu thereof was granted certain lands in Kharedi. The lands in Kharedi are the subject matter of dispute in this litigation. On February 17, 1948 the grant was recorded in the "Hak Patrak" of the Virpur State. On March 8, 1948 the administration of the Virpur State was assumed by the United State of Saurashtra. The grant to the appellant was questioned by the Saurashtra Government. Thereafter at a conference called the Jamnagar Conference, it was arranged between Narendrasinghji and the Government of India that the lands in Kharedi should be regarded as lawfully granted to the appellant subject to the condition that the grantee would not evict the cultivators from the land. The arrangement was set out in a letter dated November 2, 1949 from the officer on special duty (Integration) Political Department, to the Secretary, Revenue Department, United State of

Saurashtra. The letter stated:

"According to the Jamnagar Conference decision as this grant was an exchange, it was acceptable after verification regarding reasonableness of the exchange. It having been decided on enquiry that the exchange was reasonable, the grant is accepted subject however to the liability of the grantee (a) to pay 12 1/2 per cent as assessment (b) to see that no cultivation shall be evicted from the land...The grantee K. S. Digvijaysinghji may kindly be informed of this assessment charge and the other contents of this letter and may be put in possession of the land and allowed to be retained by him subject to the liabilities specified in this letter."

Though the appellant was not a party to the arrangement, he was aware of and accepted the arrangement and the conditions upon which is grant was confirmed by the Government of India. Had he not accepted those conditions, it was likely that the government would have resumed the grant under the Saurashtra Land Resumption Ordinance No. 84 of 1949 which came into force on January 13,1950. The Saurashtra Land Reforms Act came into force on September 1, 1951. On January 29, 1954 the Government of Saurashtra issued a notification under Sections 15(2) (2 (15) ?). of the Act declaring the appellant to be a Girasdar for purposes of the Act subject to the provisions of Section 18 thereof. By a notification dated July 20, 1954 the Saurashtra Government clarified the earlier notification stating that the appellant was a Girasdar subject to the provisions of Section 18 of the Act, i. e., the condition imposed by the government at the time of his recognition that he cannot evict the tenants. In the meantime the appellant had applied to the Mamlatdar, Kalawad, for an order of allotment of land for personal cultivation under S. 18 (19 ?) of the Act. The application was resisted by the tenants who are the respondents in this appeal. The tenants claimed that they had "chav" rights and that in any event the appellant was not entitled to eject them. The Mamlatdar allowed the application and allotted to the appellant lands out of the holding of four tenants. An appeal from his order was dismissed by the Deputy Collector, Eastern Division, Halar. On a revision application filed by the tenants the Bombay Revenue Tribunal set aside these orders and dismissed the application filed under Section 19. All the tribunals concurrently found that the tenants did not hold "Chav" rights. The Mamlatdar allowed the application under Section 19 on the ground that the conditions imposed upon the appellant before the passing of the Act did not debar him from taking the benefits under the Act. The Deputy Collector affirmed this order on the ground that by obtaining the order of allotment of lands for personal cultivation the appellant was not seeking to evict tenants by exercising his rights as a landlord. The Tribunal disagreed with the views of the Mamlatdar and the Deputy Collector and observed that as the appellant was aware of and accepted the conditions imposed by the arrangement incorporated in the letter dated November 2, 1949, he was bound by them and his rights in the land were limited by the condition that he could not evict the tenants. The Tribunal held that the tenants were entitled to take advantage of the conditions under Section 18 of the Act and the application under Section 19 was therefore not maintable.

2. The appellant then applied to the High Court of Bombay at Rajkot under Art. 227 of the Constitution challenging the correctness of the order of the Revenue Tribunal. The High Court dismissed the application. It held that the conditions incorporated in the letter of November 2, 1949

having been accepted by the appellant enured for the benefit of the tenants under Section 18 of the Act. It also held that the rights of the appellant as Girasdar were restricted by the notification under Section 2 (15) of the Act declaring him to be a "Girasdar" and the appellant was bound by those restrictions. The present appeal has been preferred by the appellant under a certificate granted by the High Court.

3. It is not disputed that the Government of India had the power to impose upon the appellant the conditions incorporated in the letter dated November 2, 1949 and that the appellant is bound by them. The Government could refuse to recognise the grant made to the appellant by the ruler of the Virpur State and to annul the grant. Had the Government annulled the grant, the annulment would have been an act of State and could not be questioned before the municipal tribunals (see State of Saurashtra v. Jamadar Mohammad Abdulla, (1962) 3 SCR 970 = (AIR 1962 SC 445)). Instead of annulling the grant the Government elected to confirm it subject to the conditions incorporated in the letter dated November 2, 1949. The appellant accepted the grant subject to those conditions and is bound by them.

4. The question is whether in spite of the conditions incorporated in the letter dated November 2, 1949 the appellant is entitled to allotment of land under Section 19 of the Saurashtra Land Reforms Act, 1951. The Act was passed for the improvement of land revenue administration and for ultimately putting an end to the Girasdari system. It makes provisions to regulate the relationship between the Girasdars and their tenants, to enable the latter to become occupants of the land held by their and to provide for the payment of compensation to the Girasdars for the extinguishment of their rights. Girasdar means any talukdar, bhagdar, bhayat, cadet or mulgirasia and includes any person whom the government may by notification in the official gazette declare to be a Girasdar for the purposes of the Act, S. 2 (15). It is common case that the appellant is a Girasdar by virtue of the notification of the Saurashtra Government declaring him to be a Girasdar. The Act overrides other laws. Save as otherwise provided in the Act, its provisions have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law or any usage, agreement, settlement, grant, sanad or any decree or order of any court or other authority, (S. 3). Chapter III regulates the relationship of Girasdars with their tenants. Subject to certain exceptions any person who is lawfully cultivating any land belonging to a Girasdar is for the purposes of the Act deemed to be the tenant, (S. 6). Sections 6 to 17 confer on the tenants certain benefits, privileges and immunities in respect of rent, cess, rate, hak, tax, service, termination of tenancy and eviction from dwelling houses. Particularly S. 12 provides that no tenancy can be terminated except in accordance with the provisions of Chapter IV or except on certain specified grounds. Section 18 provides:-

"Nothing contained in this Act shall be construed to limit or abridge the rights or privileges of any tenant under any usage or law for the time being in force or arising out of any contract, grant, decree or order of a court or otherwise howsoever."

Section 18 shows that the Act is intended to confer on the tenant rights and privileges which he does not otherwise enjoy or possess under any usage or law in force or any contract, grant, decree or order of a court or arising in any other way. If the tenant has any right or privilege apart from the provisions of the Act, he needs no protection under the Act. He can claim protection under his existing rights and privileges. His existing rights and privileges are not limited or abridged by anything in the Act.

5. The conditions incorporated in the letter dated November 2, 1949 were intended for the benefit of the tenants. The tenants can claim the benefit of the condition that the appellant would not evict them. The condition is annexed to the grant to the appellant. The right or privilege of the tenant arising out of this condition is a right or privilege arising out of a grant within the meaning of Section 18. The expression "grant" in Section 18 is wide enough to take within its sweep a grant by the government to the Girasdar and is not limited to a grant by the Girasdar to the tenant.

6. The next question is whether the rights and privileges of the tenant arising out of the conditions incorporated in the letter dated November 2, 1949 are limited or abridged by an order for allotment of land to the appellant under Section 19 for personal cultivation. Chapter lV enables Girasdars to obtain allotment of land for personal cultivation. Any Girasdar may file an application for such allotment before the Mamlatdar under Section 19 within a certain time. On making the necessary enquiries the Mamlatdar may pass an order making an allotment of land to the Girasdar, S. 20 (2). After making the order the Mamlatdar has to issue an occupancy certificate to the Girasdar in respect of the deed, S. 20 (3). No Girasdar can obtain possession of any land held by a tenant except in accordance with such order, S. 20 (4). Nothing contained in Chapter IV applies to any land in respect of which a tenant has acquired chav or buta hak, (S. 27). Under S. 39 the Girasdar may obtain an occupancy certificate in respect of land allotted to him under Chapter IV. Section 50 (2) provides for execution of orders of the Mamlatdar awarding possession. Chapter V provides for acquisition of occupancy rights by tenants. Having regard to S. 30 (1) and the proviso to S. 32 (b) the acquisition of occupancy rights by tenants is subject to an order of allotment to the Girisdar under Chapter IV and any occupancy certificate issued to a tenant ceases to be effective as soon as any agricultural land or any portion thereof is allotted to a Girasdar under Chapter IV either before or after the date on which the occupancy certificate issued to the tenant has become effective.

7. On the strength of the order of allotment of land for personal cultivation under S. 20 (2) the Girasdar is entitled to evict the tenants from the land allotted to him. When the Girasdar applies under S. 19 for allotment of land for personal cultivation, he seeks to evict the tenants from the land. Therefore when the appellant filed his application under S. 19 he sought under which would enable him to evict the tenants in contravention of the condition of his grant that he would not evict the tenants. In view of S. 18 nothing in Chapter IV enables him to obtain an order limiting or abridging the rights and privileges of the tenants arising under the condition. The Mamlatdar could not under S. 10 pass an order which would have the effect of limiting or abridging those rights and privileges. The appellant had no right to evict the tenants and the Mamlatdar could not pass an order which would enable the appellant to evict them. The application filed by the appellant under S. 19 was therefore incompetent.

8. The appellant as a Girasdar was subject to the provisions of S. 18. The declaration in the notification dated January 29, 1954 that he was subject to the provisions of S. 18 stated what followed from the express provisions of the Act. Because of S. 18, the appellant was subject to the conditions imposed by the Government at the time of his recognition that he cannot evict the tenants. The notification dated July 10, 1954 declared the existing disability of the appellant in respect of eviction of tenants.

9. The application filed by the appellant under S. 19. was rightly, dismissed by the Revenue Tribunal and the High Court rightly refused to interfere with this decision under Art. 227 of the Constitution.

10. The appeal is dismissed with costs.

Appeal dismissed.