Patel Bhuder Navji Etc

Vs

Jat Mamdaji Kalaji (Deceased) through L. Ks. Jat Saheb Khan Mamdaji Etc

Civil Appeals Nos. 123 and 124 of 1966

(CJI M. Hidayatullah, G.K. Mitter JJ)

13.02.1969

JUDGMENT

MITTER, J. -

1. These are two appeals by special leave from judgments of the Gujarat High Court, dated April 28, 1965, in Civil Revision Applications Nos. 88 and 93 of 1961. As the questions involved in both the applications were the same, the High Court delivered the main judgment in Civil Revision Application No. 88/1961 and referred to the same in its judgment in Civil Revision Application No. 93 of 1961. The two applications in the High Court arose out of certain proceedings under the Saurashtra Agricultural Debtors Relief Act. The applicants before the High Court and the appellants before this Court were mortgagees in possession of certain lands belonging to the debtors who are now represented by the respondents. The main question before the High Court was and before us is, whether the debtors has lost all their interest in the lands mortgaged by reason of the operation of the Saurashtra Land Reforms Act, XXV of 1951 and as such were not competent to make an application under the Saurashtra Agricultural Debtors Relief Act, 1954. Hereinafter the two Acts will be referred to as the Land Reforms Act and the debtors Relief Act.

2. It is not necessary to deal separately with the facts in the two appeals as the course of proceedings in both cases were similar giving rise to common questions of law. We therefore propose to take note of the facts in Civil Revision Application No. 88 of 1961. The creditors, appellants before us, were in possession of the properties - the subject-matter of litigation, under two mortgage deeds of Samvat years 1997 and 1999. The first mortgage was for Rs. 991/- and the second for Rs. 1,011/-. The mortgages were with possession and the mortgages have been appropriating the income of the usufruct thereof for the last 50 years. There is noting to show whether they were under a liability under the documents of mortgage to pay the revenue and other dues to the State but there is no dispute that they have been doing so for many years past. The lands were situate in Bajana State with its own peculiar land tenure system known as the Girasdari system.

3. The Land Reforms Act which came into force on July 23, 1951, purported to effect important and far reaching changes in the said system. The preamble to the Act shows that its object was "the improvement of land revenue administration and for ultimately putting an end to the Girasdari system" and the regulation of the relationship between the Girasdars and their tenants, to enable the latter to become occupants of the land held by them and to provide for the payment of compensation to the Girasdars for the extinguishment of their rights. It will be noted at once that the Act aimed at regulating the relationship of persons in the position of landholders and their tenants and to enable the tenants to become the real owners of the soil under direct tenancy from the State. It was not meant to extinguish or affect the rights of the landholders as mortgagors unless the persons in

occupation and become tenants either by contract or by operation of law.

4. The Act came into force in the whole of Saurashtra area of the State of Gujarat. Under Section 2(15) 'Girasdar' meant any Talukdar, Bhagdar, Bhayat, Cadet or Mulgirasia etc. Under Section 2(13) 'estate' meant all land of whatever description held by a Girasdar including uncultivable waste whether used for the purpose of agriculture or not and 'Gharkhed' meant any land reserved by or allotted to a Girasdar before the 20th May, 1950, or for being cultivated personally and in his personal cultivation. A tenant under Section 2(30) meant an agriculturist who held land on lease from a Girasdar or a person claiming through him and included a person who was deemed to be a tenant under the provisions of the Act. Under Section 3 the provisions of the Act were to have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 4 provided that "all land of whatever description held by a Girasdar is and shall continue to be liable to the payment of land revenue to the State of Gujarat". Section 5 classified Girasdars according to the measure of their holding and under clause (c) thereof a Girasdar was to belong to Class C if the total area of agricultural land comprised in his estate did not exceed Ac. 120-00. Section 6(1) of the Act laid down that any person who was lawfully cultivating any land belonging to a Girasdar was to be deemed for the purposes of the Act to be the tenant if he was not a member of the Girasdar's family or a servant on wages payable in cash or in kind, etc., or a mortgagee in possession. The Explanation to the sub-section however shows that a person who was otherwise deemed to be a tenant was not to cease to be such only on the ground that he was a mortgagee in possession. Under Section 19 it was open to any Girasdar to apply to the Mamlatdar for the allotment to him of land for personal cultivation within a certain fixed time. Such application had to be made in a specified form giving the prescribed particulars. The applicant had to show inter alia, the area and location of the land in respect of which the allotment was prayed for, the right under which he claimed the land and full particulars of his estate as also the area of khalsa land, if any, in his possession. Under Section 20 of the Act it was for the Mamlatdar to issue notice to the tenant or tenants concerned on receipt of an application under Section 19 and make an enquiry in the prescribed manner after giving the parties an opportunity of being heard. After such inquiry the Mamlatdar was required to pass as order making an allotment to the Girasdar of such land as may be specified in the order and this was to be followed by the issue of an occupancy certificate to a Girasdar in respect of his Gharkhed and the land, if any, allotted to him under the section. Under sub-section (4) no Girasdar was to obtain possession of any land held by a tenant except in accordance with the order under the section. Section 34 laid down the total area of the holding which a C class Girasdar could be allotted for personal cultivation. Sub-section (2) of the section provided that a C class Girasdar could not be allotted any khalsa land if it was held by a tenant. Chapter V containing Sections 31 to 41, provided for acquisition of occupancy rights by tenants and Section 31 laid down the consequences which were to issue in the wake of grant of occupancy certificates. A tenant who was granted such a certificate was to be free of all relations and obligations as tenant to the Girasdar. The Girasdar in his turn was to be entitled to receive and be paid compensation as provided in the Act. Under Section 36 the right, title and interest of the Girasdar in respect of an occupancy holding were to be deemed to have been extinguished on the payment by the Government of the last instalment of compensation. The functions of a Mamlatdar are laid down in Section 46 of the Act. It was for him to decide inter alia what land should be allotted to a Girasdar for personal cultivation and to make such allotment to decide whether a person was or was not a tenant, to determine whether a tenancy shall be terminated under Section 12 and many other matters. Under Section 51 an appeal lay to the Collector against any order of the Mamlatdar.

5. The above analysis of the relevant provisions of the Land Reforms Act amply demonstrates the

manner in which a change was to be brought about in the relationship between the Girasdar and his tenants and the rights which they were respectively to acquire under the orders of the Special Mamlatdar. The said officer had no jurisdiction to terminate any rights under mortgage.

6. The full text of the order of the Mamlatdar on the application of the Girasdars (the respondents to the appeal), is not before us. The copy of the order on the respondents' application marked Ext. 8/1 bearing date 16th January, 1954, was handed over to us. It appears therefrom that the Girasdar was allowed to keep as Gharkhed certain lands by paying six times the assessment in the treasury but with regard to Serials Nos. 684 and 685 (the lands given to the mortgagees), the same were held by the Mamlatdar to be khalsa and full assessment thereof was ordered to be taken. The Mamlatdar further noted that there was no need to grant any occupancy rights.

7. On May 2, 1955, the respondents applied for adjustment of their debt to the Civil Judge exercising jurisdiction under the Debtors Relief Act. The creditors relied on the order of the Special Mamlatdar declaring the lands as khalsa as fortified by the decision of the Bhayati court of Bajana State. It was contended that the lands having been declared khalsa the debtors had lost their rights therein. Reliance was also placed on Forms 7 and 8 by counsel for the appellants to show that his clients had acquired proprietary rights in the said khalsa lands. According to the Civil Judge the judgment of the Bhayati court had merely decided that the Bajana State had no title or interest in the land in question and that the Jats Mulgirasdars were independent proprietors thereof. The Judge however remarked that it was not for the Special Mamlatdar to decide any question as to title and he had merely ordered recovery of full assessment from the persons in actual possession and this in no way vested any title in the creditors. In the result the Civil Judge directed the restoration of the lands to the debtors subject to certain limitations and conditions.

8. The creditors went up in appeal to the Assistant Judge, Surendranagar. There it was contended on their behalf that the mortgages had been extinguished by the title of the paramount power and on the date of the application under the Debtors Relief Act there was no subsisting mortgage between them and the respondents. Reliance was placed on the decision of the Special Mamlatdar declaring the land to be khalsa land as extinguishing the mortgages by forfeiture of the land to the State. The Assistant Judge dealt with the question at some length and came to the conclusion that the mortgages had not been extinguished and not being tenants within the meaning of Section 6 the creditors could not have got an occupancy certificate in respect of the lands in their possession. He further stressed on the decision of the Special Mamlatdar to show that only the liability for the full assessment of the lands was indicated without any disturbance to the rights inter se between the mortgagors and the mortgagees. Dealing with the question of the advances made and the amounts still due to the creditors, it was ordered that the debtors should pay Rs. 1,698/- in twelve yearly instalments and the award was directed to be modified accordingly.

9. The matter was then taken up by way of Civil Revision to the High Court of Gujarat. The High Court arrived at the following conclusions -

> (a) The decision of the Bhayati court merely declared that the State was entitled to recover taxes of various kinds from the lands in possession of tenants or mortgagees. There was no decision that the lands in possession of the mortgagees were confiscated to the State.
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> (b) The Special Mamlatdar rejected the application of the debtor and directed the lands in possession of the different creditors to be treated as Government lands as

according to him the decision of the Bhayati court amounted to a forfeiture of the lands by the Bajana State.

(c) It was not necessary to test the correctness of the decision of the Special Mamlatdar as in view of the provisions in the Debtors Relief Act which was an Act subsequent to the Land Reforms Act the provisions of the latter Act were to prevail.

10. In the result the High Court affirmed the order of the Assistant Judge in appeal directing possession to be handed over to the debtors.

11. Before us great stress was laid on the decision of the Special Mamlatdar and it was argued that subject to any appeal from his order his decision was binding on the parties and not having gone up in appeal from the order of the Special Mamlatdar the debtors could not be allowed to agitate their rights to the land ignoring the said order. We have not before us the full text of the order of the Special Mamlatdar relied on by the appellants nor are we satisfied from copies of Form 7 described under Rule 81 of the rules promulgated under the Land Reforms Act that was any adjudication of the rights of the debtors and the creditors inter se. In our view all that the Special Mamlatdar decided and had jurisdiction to decide under the Act was, whether the debtors could be given occupancy certificates or allotted any land Gharkhed and the Special Mamlatdar merely ordered that the lands being khalsa full assessment had to be taken in respect of them and there was no need to grant occupancy rights. In order to get such occupancy rights the creditors had to show that they had become tenants which obviously they could not be under the provisions of Section 6 of the Land Reforms Act. The fact that they had all along paid the revenue and other dues to the State, if any, would not clothe them with the right of the tenants. Under Section 76(c) of the Transfer of Property Act mortgagee in possession must, in the absence of a contract to the contrary, out of the income of the property, pay the Government revenue, all other charges of a public nature and all rent accruing due in respect thereof during such possession. We do not know whether there was contract to the contrary and whether the mortgagors had covenanted to pay the rent and the revenue. But even if they could not meet the revenue and other State dues out of the income and paid the same out of their own pockets in order to save the security, the mortgagees were only entitled under Section 72(b) of the Transfer of Property Act to add the amount to the mortgage money. They could not by paying such rent or revenue acquire a title in derogation of the rights of the mortgagors and the payments, if any, are to be taken into account when the mortgagors seek to redeem the property.

12. That apart, it has not been shown to us that the debtors were awarded any compensation in respect of the khalsa lands given in mortgage to the appellants. The occupancy certificates, if any, given by the Special Mamlatdar to the appellants cannot under the provisions of the Land Reforms Act extinguish the title of the mortgagors. Whether the mortgagors as C class Girasdars can be allowed to retain land in excess of the limits specified in the Act and whether as a result of the restoration of the lands to them by the award such limit will be exceeded in this case, are not questions for us to consider. The right of the mortgagors not being extinguished under any provision of law to which our attention was drawn, no fault can be found with the award as finally modified by the judgment of the Assistant Judge and effect must be given thereto. In our view, it is not necessary to consider the point canvassed at length before the High Court and dealt with in the judgment of the said court as to whether the provisions of the Debtors Relief Act override those in the Land Reforms Act. The object of the two Acts are different. The object of the land Reforms Act, as already noted, is the improvement of the land revenue administration and putting an end to the Girasdari system and granting of occupancy rights to the Girasdars and/or their tenants, whereas the Debtors Relief Act governs the rights of the debtors and creditors inter se inter alia by scaling down

the debts and providing for restoration of their property to debtors. In our view, the rights of the debtors in this case were not extinguished under the Land Reforms Act and it was open to the Court exercising jurisdiction under the Debtors Relief Act to scale down the debt and provide for restoration of the land in possession of the mortgagees to the mortgagors on taking fresh account between the parties and directing payments by one party to the other as has been done in this case.

13. The appeals therefore fail and are dismissed with costs.

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