R. V. M. Neeladri Rao and Another

Vs

The Board of Revenue

Civil Appeal No. 1648 of 1966

(J. C. Shah, V. Ramaswami-I, A.N. Grover JJ)

22.09.1969

JUDGMENT

GROVER, J. –

1. This is an appeal by certificate from a judgment of the Andhra Pradesh High Court given in a petition filed under Article 226 of the Constitution by the appellants.

2. The facts may be stated. The previous Maharajah of the impartible estate of Pithapuram in East Godavari District granted a lease on June 22, 1887, in favour of his third wife late Rani Subbayyamma Bahadur in respect of lands in various villages covering an area of acres 2669.65 cents. The Rani executed a will on November 8, 1914, bequeathing all her property including the lease-hold rights to the first appellant and on her death he succeeded to her estate. On December 10, 1956, the first appellant and transferred his lease-hold rights in acres 2519.63 cents to the second appellant and reserved to himself the rights in and over the remaining area of acres 150.52 cents. The third appellant is an assignee from the second appellant.

3. On the enactment of the Madras Estate (Abolition and Conversion into Ryotwari) (Act XXVI of 1948), hereinafter called the Act, the title of which was changed to the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Act XXVI of 1948), the Pithapuram Estate was notified and abolished with effect from September 7, 1949. The lands in question were taken over by the Government under the provisions of the Act and the Manager who had been appointed ordered that the rent should be collected direct from the tenants in possession of the lease-hold lands under Section 55(1) of the Act from the fasli year 1357 onwards on the reduced rates notified under the Madras Estates Land (Reduction of Rent) Act, later called Andhra Pradesh (Andhra Area) Estate Land (Reduction of Rent) Act (Act XXX of 1947). The first appellant filed a petition before the Estates Abolition Tribunal, Vizianagram, for payment of the estate of Pithapuram. That petition was opposed by the Government and the principal land-holder, according to whom, the claim of the first appellant was governed by Section 20 of the Act. This objection was upheld by the Tribunal. On January 8, 1959, the High Court confirmed the order of the Tribunal in appeal holding that the first appellant's rights were covered by Section 20 of the Act. In March, 1960, the appellants filed a petition under Article 226 of the Constitution praying for various reliefs. On September 9, 1960, the Government decided that as the lease was covered by Section 20 of the Act the Board of Revenue be asked to terminate the same and to pay all the amounts collected as also the compensation payable under Section 20 to the appellants. On September 17, 1960, the Board of Revenue issued a notice to the appellants calling upon them to show cause as to why the lease-hold rights in respect of acres 2669.65 cents should not be terminated. The appellants sent a reply on October 17, 1960, representing that they had no objection to the termination of the lease

provided the Government paid compensation to the appellants together with all the amounts so for collected by the Government from the lease-hold lands without deducting any collection charges together with interest accruing thereon till the date of the payment. On November 17, 1960, the Board formally terminated the lease and informed the appellants that compensation and all the amounts collected from the lease-hold lands would be paid to them after deducting cist at 4 annas per acre and cesses etc., but that no interest would be paid on the amounts collected by the Government and further that the Government was also entitled to deduct the collection charges. On January 25, 1961, the Board made an order directing that the appellants should be paid a sum of Rs. 24,949.20 which was stated to be the net collection made by the Government on the lease-holds came payable and collection made by the Government on the lease-hold lands after deducting the cist at 4 annas per acre, cesses at 50% of the total cesses payable and collection charges at 10% of the gross revenue collected. The Board further observed that the actual extent of the lease-hold lands came only to acres 2277.82 cents after the survey of which the portion transferred by the first appellant to the second appellant came to acres 2025.91 cents. The amounts sanctioned by the Board represented the amounts collected on account of an area of acres 2025.91 cents. The appellants raised objections to the extent of the land as also the amount of collections determined by the Board. On October 23, 1961, the Board determined that a sum of Rs. 44,351.80 should be paid to the second appellant towards compensation payable under Section 20 of the Act. The payment, however, which was made was not for that amount and a sum of Rs. 4,000/- was deducted on the plea that some excess collection had been made by the lessee prior to the notified date. Ultimately the second appellant was paid out of these amount a sum of Rs. 1499.16. It was held that with regard to the extent of acres 150.52 cents on which the first appellant claimed compensation this area belonged to the Government and was not part of the estate. The appellants raised various but without success.

4. A learned single judge of the High Court, who heard the writ petition, held that the proper course for the appellants to follow for the determination of the extent of the land was by way of a suit and that such a suit was not barred by Section 20(2) of the Act. It was held that there could have been no settlement under Section 22 of the Act for Fasli 1369 and therefore the settlement rate in respect of that year should not be taken into consideration for computing the rate of compensation. The deduction of 50% of cesses from the gross annual income was upheld. No direction was given regarding payment of interest on the arrears of rent which had been withheld from 1950 to 1961. It was held that the deduction of 10% towards incidental charges out of gross income instead of the net income was an error apparent on the face of the record and the order of the Board had to be revised accordingly. The excess collections which had been made by the appellants from their tenants were to be deducted from the amount of rent due to the appellants and not from the compensation payable to them. To a limited extent, therefore, the order of the Board was set aside and the case was remitted to it for disposal. The appellants preferred an appeal to the High Court which was dismissed.

5. The first contention that has been raised on behalf of the appellants has a two-fold aspect : first is that once there is notification of an estate under Section 3 of the Act and the Government took possession of the lease-hold lands the lessee ceased to have any rights relating, thereto. He was reduced to the position of a land-holder and whatever rights were preserved to him subsisted under Section 20 of the Act. The Government, from the notified date, became entitled to collect the rent as reduced under Act XXX of 1947. But that was only till the ryotwari settlement was made and thereafter it was the settled rent which was payable. Therefore for the period 1959-60 intervening between the ryotwari settlement and the termination of the lease the appellants were entitled to the rent at the rate at which it had been settled and not at the rate at which the reduced rent was payable

under Act XXX of 1947. According to the learned counsel for the appellants this would make a difference of about Rs. 2,200/- to which the appellants should have been found entitled apart from the other amounts which have been determined to be payable by way of rents which have been collected by the Government. This contention does not appear to have been raised in this form either before the learned single judge or before the division bench of the High Court nor has it been clearly stated in the statement of case of the appellants. It can be disposed of on the short ground that since it had not been raised before the High Court it is not open to the appellants to agitate it for the first time before this Court. At any rate, there seems to be little force in the submission which has been made. It cannot be disputed that the appellants were entitled to the amount collected by the Government under Act XXX of 1947 because even after the notification of the estate under Section 3 of the Act the provisions of that Act including Section 3(4) relating to reduction of rents and the land-holder continued to remain applicable. Under Section 16 every person whether land-holder or a ryot who became entitled to ryotwari patta was liable to pay to the Government such assessment as might be lawfully imposed on the land. That assessment had to be made by way of a ryotwari settlement under Section 22. Till the settlement was made the rent payable under Act XXX of 1947, was to constitute the land revenue payable to the Government from the notified date under Section 23 of the Act. But the assessment as settled under Section 22 was a matter between the Government and the ryot and if, by virtue of the settlement, the Government was entitled to more amount than the rent which was payable under Act XXX of 1947, the appellants had no justification or right for claiming the excess amount. The right of the lessee as land-holder till terminated under Section 20 of the Act was only to receive the rents collected under Section 3(4) of Act XXX of 1947.

6. The other aspect which relates to the rate at which the compensation for termination of the lease-hold rights payable to the appellants should have been computed was undoubtedly raised before the High Court. What was urged and has now been reiterated is that as a ryotwari settlement was brought into force the provisions of Act XXX of 1947, ceased to be applicable owing to the provisions of Section 23 of the Act. Therefore for the purpose of compensation it was the settlement rate which should have been taken into account and not the rent payable under Act XXX 1947.

7. Sub-section (2) of Section 20 provides that the person whose right has been terminated by the Government under the third proviso to sub-section (1) of the said section should be entitled to compensation from the Government which shall be determined by the Board of Revenue in such manner as may be prescribed having regard to the value of the right and the unexpired portion of the period for which the right was created. Rules have been framed in exercise of the power conferred by Section 67 read with Section 20(2) of the Act. These rules are in the following terms :

> "Rule 1. - The person, whose right has been terminated by the Government under the third proviso to sub-section (1) of Section 20 of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948, shall be entitled to compensation from the Government, which shall -
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> (i) in the case of a perpetual right, be equal to twenty times the net annual income derived by such person by virtue of such right; and
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> (ii) in the case of a right which was created for a specified number of years, be limited either to twenty times the net annual income derived by such person by virtue of such right or the net annual income multiplied by number of years of the unexpired portion of the period of such right, whichever is less.

> Rule 2. For purposes of Rule 1, the net annual income of a person shall be the average net income during the three Fasli years preceding the Fasli year in which right is terminated..... ..... ".

8. The argument on behalf of the appellants is that the rates of rent prevailing in Fasli years 1367 and 1368, were the rents fixed under Act XXX of 1947, and the rate prevailing in Fasli year 1369, was the one settled under Section 22 of the Act. Therefore the average net income should have been computed with reference to the net reduced rate prevailing in Fasli years 1367 and 1368 and the settlement rate fixed in Fasli year 1369. The view of the High Court was that till the determination of the lease under the third proviso to Section 20(1) of the Act the rights which the appellants had acquired under the patta were preserved and if the Government had not undertaken to make these collections the tenants would have paid the landholder only the rents as reduced by Act XXX of 1947. The fact that the Government had made the collections did not confer higher rights upon the appellants. After referring to the provisions in Section 23 that the land revenue payable to the Government with effect from the notified date shall, until the ryotwari settlement effected in pursuance of Section 22 had been brought into force in the estate, be calculated in the manner set out in the section the question was examined by the High Court whether the rent that could be collected from the lease-hold land would fall within the connotation of the land revenue payable to the Government. Its considered opinion was that the rent payable to the land-holder fell outside the range of Section 22. Therefore only the rent as fixed under Act XXX of 1947, in the three preceding years could be taken into account. Its must be remembered that the settlement rates represent what is payable to the Government as revenue in respect of the land granted on patta by the Government in the ryotwari settlement. They do not represent what is due to persons like the appellants from their tenants. We consider that it is not possible to equate the rents payable by the tenants to the appellants with the land revenue payable to the Government. No exception could thus be taken to the manner and the measure of computing compensation.

9. The next contention raised is that in determining the compensation payable to the appellants it is the unexpired portion of the period for which lease was created that should have formed the basis and not the period provided by Rule 1(ii). The unexpired portion of the lease, in the present case, was nearly 26 years. It is submitted that Rule 1(ii) itself is contrary to the intendment of Section 20(2) of the Act. In this connection it is noteworthy that Section 20(2) of the Act simply says that the rules must be framed having regard to the value of the right and the unexpired portion the period for which the right was created. That did not, in any way, fetter the power of the rule making authority to frame Rule 1(ii) in the manner in which it has been done. Even where the lease creates a perpetual right the compensation payable has to be equal to 20 times the net annual income. Where it is created for a specified number of years it has to be limited either to 20 times that net annual income or the net income multiplied by the number of years of unexpired portion of the period of lease "whichever is less". If the unexpired portion is 26 years, as in the present case, the compensation could not be more than what it would be in the case of a perpetual lease. Section 20(2) does not say that the amount of compensation must be arrived at only by multiplying the net income by the number of years of the unexpired portion of the lease. As observed by the High Court it only envisages that this should be taken into account along with the value of the right. We find no repugnancy between Rule 1(ii) and Section 20(2) of the Act.

The next question on which a good deal of stress has been laid relates to the deduction made on account of the cesses. It has been submitted that owing to Section 3(b) of the Act the estate vested in the Government and after such vesting there would be no land-holder and therefore there was none to whom cesses were to be paid. So the lessees even if originally liable to pay the cess ceased to be

so liable after the vesting of the estate in the Government by virtue of Section 3(f) which provides that the relationship of a land-holder and a ryot shall, as between them, be extinguished. It is pointed out that by virtue of the provisions of Section 16(1) of the Act the land-holder or the ryot who became entitled to the ryotwari patta would be liable to pay to the Government such assessment as might be lawfully imposed on the land and these cesses were collected from the ryots by the Government. Therefore the appellants were under no liability to pay the cess after the notified date.

10. Now in the patta, dated June 22, 1887, there was a provision that the lessees would pay the local cess and other cesses payable by the ryots in accordance with the rules framed by the Government previously and to be framed in the future. The High Court was right in saying that cess could not be excluded from the calculation of the net income because it had to be paid by the lessees along with the rent reserved under the lease. This is substantiated by the definition of "rent" in Section 3(ii) of the Madras Estates Land Act which under Section 2(1) of the Act becomes incorporated in it. The High Court referred also to numerous sections in the Act for the purpose of which rent includes any local tax, cess etc. and it was observed that the word "rent" was of a comprehensive nature and there was no warrant for restricting its content. Under Rule 2 it was the average net income which had to be taken into consideration. If the word "rent" is to be taken in a comprehensive sense as including taxes and cesses then the net income could only be arrived at by taking into account the cesses payable by the lessee. In our judgment cesses had to be deducted from the annual gross income in arriving at the net annual income which could form the basis of compensation.

11. Lastly it has been contended that the appellants are entitled to interest on the amount of unpaid rents in the hands of the Government for the period 1950 to 1961 as under Section 55 of the Act after the notified date the land-holder is not entitled to collect any rent which accrued due to him from any ryot before and is outstanding on that date. It is the manager appointed under Section 6 who alone would be entitled to collect the said amounts together with interest. The amounts were collected but no payment was made to the appellants. On the language of Section 55 as well as under the general principles of law, it submitted, the appellants should have been held to be entitled to the payment of interest on the amounts withheld by the Government. Section 55(1) clearly provides that it is the duty of the manager appointed under Section 6 to collect not only the rent but also any interest payable thereon together with any cost which might have been decreed and he has to pay the same to the land-holder. It would appear that on the analogy of the provision an obligation existed on the part of the Government to pay interest to the land-holders in case the amounts collected were not paid as and when collected. In National Insurance Co. Ltd., Calcutta v. Life Insurance Corporation of India, the appellant carried on life insurance business in addition to other insurance business. On the passing of the Life Insurance Corporation Act, 1956, which was intended to nationalise all Life Insurance business, "its controlled business" stood vested in the Life Insurance Corporation of India from the appointed date but the company was entitled to compensation. The Life Insurance Corporation had been referred awarded certain amount as compensation out of which a set-off was to be allowed on a sum which was specified. It was held that the company was entitled to interest on the balance at 4% per annum. Reference was made in this case to a number of English and Indian decisions in which the rule has been laid down that though under the statute there is no provision for payment of interest it should, nevertheless, be awarded, the principle being that if the owner of an immovable property loses possession of it he is entitled to claim interest in place of the right to retain possession. It may be mentioned that even under the Interest Act, 1839, the power to award interest on equitable grounds was expressly saved by the proviso to 5%. In our opinion this position has not been seriously controverted on behalf of the respondents that the appellants should have been held entitled to interest at the rate of 6% per annum.

12. In the result the appeal is allowed only to the extent that it is declared that the appellants should have been paid interest at the rate of 6% per annum on the amount of rents collected by the manager on behalf of the Government and the final figure of compensation should have been determined after taking into account the amount of interest which accrued due to such of the appellants as were entitled to it. In view of the entire circumstances there will be no order as to costs.

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