Thakur Sanjeevan Rao

Vs

Jaidrath and Another

Civil Appeal No. 1060 of 1967

(A. N. Ray, I. D. Dua, K. K. Mathew JJ)

06.09.1972

JUDGMENT

DUA, J. -

1. This is landlord's appeal by Special Leave and is directed against the judgment of a learned single Judge of the Bombay High Court, disallowing the appellant's application under Article 227 of the Constitution challenging the order of the Maharashtra Revenue Tribunal, dated March 26, 1965, partly allowing the revision of Jaidrath and Vittal, tenants (respondents in this Court) presented in the Tribunal under Section 28(2) and 32(2) of the Hyderabad Tenancy and Agricultural Lands Act, 21 of 1950 (hereinafter called the Act).

2. Jaidrath and Vittal were tenants under the appellant (who was Inamdar) and according to the appellant's allegations the tenants were in arrears of rent for three consecutive years, 1957-58, 1958-59 and 1959-60. On June 18, 1960, the appellant terminated the respondent's tenancy by giving the necessary statutory notice. On August 4, 1960, an application was presented by the appellant to the Tehsildar, Millam, under Section 28(2) and 32(2) of the Act praying for arrears of rent amounting to Rs. 1,200 and for possession of the land on the ground that their tenancy had been lawfully terminated. This application was heard by the Naib-Tahsildar who allowed it and ordered the tenants to pay the rent amounting to Rs. 925.77 nP. to the landlord (Inamdar) and also held that the tenancy had been terminated. As a result of this conclusion the possession of the land was directed to be restored to the landlord under Section 32(2). This order was made on November 28, 1963. An appeal preferred to the Deputy Collector by Jaidrath and Vittal was dismissed on August 31, 1964. A revision under Section 91 of the Act was taken by the tenants to the Maharashtra Revenue Tribunal, Aurangabad which was allowed in part. The Tribunal affirmed the concurred findings of the Naib-Tahsildar and Deputy Collector that the tenants were in arrears of rent. In regard to the claim for possession the Tribunal held that under Section 3(1) of the Hyderabad Abolition of Inams Act, VIII of 1955 (hereinafter called the Abolition Act), all rights and interest with respect to the inam lands vesting in the Inamdar had ceased, and had vested absolutely in the State with effect from July 20, 1955. On this reasoning the landlord was held disentitled to claim possession of the inam land under Section 32(2) of the Act. The Tribunal further held on the evidence led by the tenants that the occupancy rights had been conferred on and given to the tenant under the provisions of the Abolition Act. The Tribunal, referring to the facts of the case observed in its order :

> "..... on October 7, 1961, the tenant Jaidrath submitted an application before the Tehsildar in which he alleged that the lands in dispute were Inam lands and thus Inam lands vested in the State from the date of enforcement of the Hyderabad Abolition of Inams and Cash Grants Act, 1954 and the petitioner was declared as the

> occupant of the said lands from July 27, 1955. In view of this fact the said tenant pleaded that the landholder was not entitled to recover possession of the said lands from the tenants. In support of his allegation he filed a notice he received from the Tehsil office for depositing the price of occupancy rights. In response to the notice it seems that he deposited Rs. 75/- in Treasury Office on June 30, 1961. The original challan has also been filed by Jaidrath....."

Dealing with this part of the case, the Tribunal added a little lower down :

> "As regards the second relief sought by the landholder, I wish to point out that both the lower courts failed to give correct decision. The tenant in the lower court submitted the notice received from the Tehsil office and the challan by which the price of occupancy rights was deposited by the tenant in the Government Treasury under the provisions of the Hyderabad Abolition of Inams and Cash Grands Act. The revision petitioners had raised the plea before the Trial Court that the suit lands were inam lands the occupancy rights of which were given to the tenants and hence the landholder was not entitled to recover possession of the said lands. There was great force in this plea. The documents filed by the tenants in the lower court clearly show that Serial Nos. 273 and 259 situated at Massa are iname lands. Jaidrath was given the price of occupancy rights by the notice issued on September 3, 1961. Thus we find the lands in dispute were inam lads. Under Section 3, sub-section (1) of the Hyderabad Abolition of Inams Act all rights and interests vesting in the inamdar in respect to the Inam lands ceased and vested absolutely in the State. The date of vesting is July 20, 1955, hence the landholder has lost his right to recover possession of the lands from the date of the enforcement of the Hyderabad Abolition of Inam Act. It is not correct to say that the landholder cannot be deprived of the rights accrued to him prior to the enforcement of the said Act. Both the lower courts have wrongly held that the subsequent change in the law will not deprive person of the rights which accrued to him before the new law was enforced. So far as the claim of rent is concerned, I think that the Inamdar was entitled to recover the amount of rent. But he cannot be given possession of the lands under Section 32(2) of the Hyderabad Tenancy Act when it is found that all rights pertaining to inam vested in the Government from July 20, 1955. Moreover the occupancy rights have also been conferred and given to the tenant under the provisions of the Hyderabad Abolition of Inams Act. In view of these facts the respondent was not entiled to recover possession of the inam lands."

3. The order of the Deputy Collector confirming that of the Naib-Tahsildar directing possession to be given to the landlord was accordingly set aside.

4. The High Court on being approached under Article 227 of the Constitution confirmed the final order of the Tribunal but on different grounds. According to the High Court where the inam was abolished with effect from July 20, 1955, under the Abolition Act the relationship of landlord and tenant continued to subsist till July 1, 1960, and the provision of the Act, therefore, continued, to apply to the land. But as in this case the landlord had on June 18, 1960, given to the tenants only a notice to quit and had not applied for possession under Section 32 of the Act the relationship of landlord and tenant continued to subsist up to July 1, 1960, when this relationship came to an end. Thereafter the landlord was not entitled to claim possession pursuant to the notice to quit. The learned single Judge took this view following the Full Bench decision of the Bombay High Court in

Dattatraya Sadashiv v. Ganapati Raghu (67 Bom LR 521.). This view of the High Court is challenged in the present appeal by Dr. Barlingay, who appeared in this Court in support of the appeal. Unfortunately there is no appearance on behalf of the respondents with the result that we did not have the benefit of the arguments in support of the opposite point of view.

5. Before us Dr. Barlingay contended that the High Court was in error in following the Full Bench decision in the case of Dattatraya Sadashiv case (supra), because that case was concerned with the landlord's claim for possession under Section 44(2) of the Act, which is not the case before us. Section 44(2) of the Act, according to Dr. Barlingay's submission, deals with a different situation and that section is inapplicable to the case in hand. The present case, according to the learned advocate, has to be decided in the light of Section 19, 28 and 32 and not Section 44(2) of the Act. According to Section 19(2) the landholder is entitled to terminate a tenancy on the ground inter alia that the tenant had failed to pay in any year rent for that year, within fifteen days from the day fixed under the Land Revenue Act for the payment of the last installment of land revenue due for the land concerned in that year. Section 28 which provides for relief against termination of tenancy for non-payment of rent lays down that where a tenancy of any land held by a tenant it terminated for non-payment of rent and the landholder files any proceeding to eject the tenant, the Tahsildar shall call upon the tenant to tender to the landholder the rent in arrears together with the cost of proceeding within ninety days from the date of the order and if the tenant complies with such order, pass an order directing that the tenancy has not been terminated, and thereupon the tenant shall hold the land as if the tenancy had not been terminated. According to the proviso to sub-section (1), however this relief against termination is not admissible to a tenant whose tenancy has been terminated for non-payment of rent if he has failed for any three years to pay rent within the period specified in Section 19(2)(a)(i). Section 32 which prescribes the procedure for taking possession lays down that no landholder shall obtain possession of any land etc., held by a tenant except under an order of the Tahsildar for which he shall apply in the prescribed form.

6. Dr. Barlingay pointed out by referring us to the Full Bench decision of the Bombay High Court in Dattatraya Sadashiv case (supra) that in that case the landlord's claim against the tenant was governed by Section 44(2) of the Act. Section 44 deals with a landlord's right to terminate protected tenancy where he requires it for cultivating it personally. In such a case, according to the submission, the tenancy is terminated only by virtue of an order of the revenue authorities. Our attention was invited to the following observation of the Bombay High Court in Dattatraya Sadashiv case (supra) :

> "In regard to the second question, sub-section (1) of Section 44 of the Tenancy Act provides that a landholder may after giving notice to the tenant and making an application for possession as provided in sub-section (2) terminate the tenancy of any land, if the landholder bona fide required the land for cultivating it personally. Sub-section (2) states that the notice required to be given under sub-section (1) shall be in writing and shall state the purpose for which the landholder requires the land and that an application for possession under Section 32 shall be made to the Tehsildar. Two things are, therefore, necessary for terminating a tenancy under sub-section (1) -
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> (1) a notice must be given to the tenant stating that the landholder requires the land for cultivating it personally. and
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> (2) the landholder must make an application for possession to the Tehsildar under Section 32 of the Act.

If these requirements are complied with, the tenancy stands terminated. Sub-section (2) of Section 32 provides that no landholder shall obtain possession of any land or dwelling house held by a tenant expect under an order of the Tehsildar, for which he shall apply in the prescribed form. A tenant is, therefor, entitled to continued in possession of the land until the Tehsildar has made an order for possession being restored to the landholder. It has, therefore, been urged that he continues to be a tenant until the Tehsildar has made his order. The manner in which a tenancy is to be terminated is, however, laid down in Section 44. Under this section the tenancy terminates when after giving the requisite notice the landholder makes an application for possession to the Tehsildar. Thereafter the tenant's possession is not unlawful, but it is not held by him as a tenant. He has an estate in possession, which he will lose if the Tehsildar makes an order in favour of the landholder. If, however, the Tehsildar rejects the application of the landholder, the termination of tenancy by the landholder will become ineffective. The tenancy will revive and the tenant will continue in possession as if his tenancy had not been terminated."

7. After so observing the High Court compared the case of termination of tenancy under Section 44 of the Act with the case governed by Sections 19 and 28. In its view, according to Section 19 which provides for termination of a tenancy inter alia on the ground of failure to pay rent within the prescribed time, the tenancy shall not be terminated unless the landholder given six months notice in writing intimating his intention to terminate the tenancy and also the ground of such termination. The High Court then referred to Section 28(1) and observed.

> "The opening words of this sub-section make it clear that a proceeding to eject a tenant can be instituted after the tenancy has been terminated, that is to say, an application for possession can be made to the Tehsildar under Section 32 only after the tenancy has been terminated. A tenancy is, therefore, terminated by the notice given under sub-section (2) of Section 19 and an order of the Tehsildar is not required for this purpose. In fact until the tenancy is terminated, the landholder does not get a right to possession of the land. The words 'as if the tenancy had not been terminated' at the end of the sub-section also imply that the tenancy had previously been terminated. Section 28, therefore, also shows that a tenancy is terminated by giving a notice to the tenant and that it does not continue until the Tehsildar has made an order for possession of the land."

Relying on these observations Dr. Barlingay submitted that the decision in Dattatraya Sadashiv case (supra) has been wrongly considered as an authority for the case in hand.

8. Prima facie Dr. Barlingay's submission seems to possess merit and the High Court appears to us to be not quite right in relying on Dattatraya Sadashiv case (supra) as a binding precedent for the present case. Unfortunately, a already observed, we did not have the benefit of the opposite view, or of the arguments supporting the view taken by the Tribunal or supporting the conclusion of the High Court on grounds other than those stated by it in the impugned judgment, because the respondents were unrepresented in this Court and this appeal was heard ex parte. Dattatraya Sadashiv case (supra) no doubt is a direct authority only for a case where an application is made by a landlord under Section 44 of the Act and the reference to Sections 19 and 28 was made apparently for the purpose of fortifying its view of Section 44 by contrasting the two kinds of cases dealt with by the Act.

9. Incidentally we may point out that in the State of Maharashtra v. Laxman Ambaji (AIR 1971 SC 1859.) this Court, while considering certain provision of the Act, observed that the relationship of

landlord and tenant under the Abolition Act ceased on July 1, 1960, and if a tenant had prior to that date surrendered possession and the Inamdar had accepted such surrender and had remained in possession on July 1, 1960, he would he entitled to the grant of occupancy rights. If, however, the tenant claimed to be in possession on that date the Government will have to ascertain as to who was in lawful possession on July 1, 1960, for the purpose of grant of occupancy rights. In the courts of the judgment reference was made to the Full Bench decision in Dattatraya Sadashiv case (supra) and that decision was approved on the point that the relationship of landlord and tenant continued up to July 1, 1960. These decisions do not deal with the effect of the absolute vesting in the State of all rights and interest with respect to the inam lands with effect from July 20, 1955. Again, can it be said that this vesting became ineffectual by reason of mere continuation of the relationship of landlord and tenant up to July 1, 1960 ? Under Section 1(3) of the Abolition Act which had been published in the Hyderabad Gazette Extraordinary on July 20, 1955, inter alia, Section 3, except clauses (d), (g), (h), and (i) of sub-section (2) of Section 3 came into force on July 20, 1955. Section 3 provides :

> "3. Abolition and vesting of inams and the consequences thereof. - (1) Notwithstanding anything to the contrary contained in any usage, settlement, contract, grant, sanad, order or other instrument, act, regulation, rules or order having the force of law and notwithstanding any judgment, decree or order of a Civil, Revenue or Atiyat Court, and with effect from the date of vesting, all inams to which this Act is made applicable under sub-section (2) of Section 1 of this Act shall be deemed to have been abolished and shall vest in the State.
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> (2) Save as expressly provided by or under the provisions of this Act and with effect from the date of vesting, the following consequences shall ensue, namely -
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> (a) the provisions of the land Revenue Act, 1317 Fasli relating to inams, and the provisions of the Hyderabad Atiyat Enquiries Act, 1952 and other enactments, rules, regulation and circular in force in respect of Atiyat grants shall, to the extent, they are repugnant, to the provisions of this Act, not apply and the provision of the Land Revenue Act, 1317 Fasli, relating to unalienated lands for purposes of land revenue, shall apply to the said inams;
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> (b) all rights, title and interest vesting in the inamdar, kabiz-e-kadim, permanent tenant, protected tenant and non-protected tenant in respect of the inam land, other than the interests expressly saved by or under provisions of this Act and including those in all communal lands, cultivated and uncultivated lands (whether assessed or not), waste lands, pasture lands, forest, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries and ferries, shall cease and be vested absolutely in the State free from all encumbrances;
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> (c) all such inam lands shall be liable to payment of land revenue;
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> (d) all rents and land revenue including cesses and royalties, accruing in respect of such inam lands, on or after the date of vesting, shall be payable to the State and not to the inamdar, and any payment made in contravention of this clause shall not be valid;
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> (e) all arrears of revenue, whether as judi, quit-rent or other cess, remaining lawfully

due on the date of vesting in respect of any such inam shall, after such date, continue to be recoverable from the inamdar by whom they were payable and may, without prejudice to any other mode of recovery be realised by deduction thereof from the compensation amount payable to him under this Act;

(f) no such inam shall be liable to attachment or sale in execution of any decree or other process of any Court and any attachment existing on the date of vesting or any order for attachment passed before such date in respect of such inam, shall, subject to the provisions of Section 73 of the Transfer of Property Act, 1882, cease to be in force;

(g) the inamdar and any other person whose rights have vested in the State under clause (b) shall be entitled only to compensation from the Government as provided for in this Act;

(h) the relationship with regard to inam land as between the inamdar and kabiz-e-kadim, permanent tenant, protected tenant or non-protected tenant shall be extinguished;

(i) the inamdar, kabiz-e-kadim, permanent tenant, protected tenant, and a non-protected tenant of inam lands and any person holding under them and a holder of an inam, shall as against the Government, be entitled only to such rights and privileges and be subject to such conditions as are provided for under this Act and any other rights and privileges which may have accrued to any of them in the inam before the date of vesting against the inamdar shall cease and shall not be enforceable against the Government or the inamdar.

(3) Nothing contained in sub-section (1) and (2) shall operate as a bar to the recovery by the inamdar of any sum which becomes due to him before the date of vesting by virtue of his rights as inamdar and any such sum shall be recoverable by him any process of law, which, but for this Act, would be available to him."

10. We have reproduced this section for showing that the effect of these provision on the facts of the present case would have to be considered before granting the appellant's prayer for possession. The other question which also requires consideration is the respondent's contention upheld by the Tribunal that the occupancy rights under the Abolition Act had already been conferred on the tenants. The entire record not being before us and the tenants not being represented in this Court we are unable to deal with this important point.

11. After considering all the implications of the appellant's arguments as suggested by Dr. Barlingay we consider it proper to set aside the order of the High Court and send the case back to it for re-decision after considering the distinction pointed out by the Full Bench of the Bombay High Court in Dattatraya Sadashiv case (supra), and in the light of this Court's decision in Laxman Ambaji case (supra). As just pointed out, we did not have the advantage even of going through the relevant record of the case as it was not got printed by the appellant. In the circumstances, this judgment should not be construed to contain any expression of opinion either way on the merits of the controversy exhaustively discussed by the Tribunal in its order, dated March 26, 1965. Our decision is limited only to the point that Dattatraya Sadashiv case (supra), is not a binding precedent for the decision of the case in hand.

12. The order of the High Court is accordingly quashed and the case remitted back to the High Court for a fresh decision of the application under Article 227 of the Constitution in accordance with law and in the light of the observations made above. As there was no representation on behalf of the respondents there will be no order as to costs.

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