Rangnath,

Vs

Daulatrao and Others

Civil Appeal No. 30 of 1968

(K. K. Mathew, P. N. Bhagwati, N. L. Untwalia JJ)

20.12.1974

JUDGMENT

UNTWALIA, J. -

1. In this appeal filed by special leave of this Court it would be noticed that the appellant has endeavoured on one ground or the other to get the 15 acres and 14 Gunthas of land in Osmanabad which at one time formed part of the erstwhile State of Hyderabad and eventually came to be a part of the State of Maharashtra. The disputed land is comprised in Survey No. 206/B. There is no dispute that the appellant was the Inamdar of this land. The Hyderabad Abolition of Inams and Cash Grants Act, 1954 being Hyderabad Act No. VIII of 1955 (hereinafter called the Abolition of Inams Act) came into force on its publication in the gazette on July 20, 1955. The Abolition of Inams Act was amended by the Hyderabad Abolition of Inams (Amendment) Act, 1956 and was further amended by Bombay Act 64 of 1959 which came into force on July 1, 1960. It is no longer in controversy that the Abolition of Inams Act became applicable to the appellants Inam by virtue of the amended provisions on July 1, 1960 as a result of which under Section 3 appellant's Inam was abolished and vested in the State. Upon its vesting, certain consequences followed which will be adverted to hereinafter in this judgment.

2. The first round of litigation started by the appellant against respondent No. 1 treating him as his tenant under the Hyderabad Tenancy and Agricultural Lands Act, 1950, Hyderabad Act No. XXI of 1950 (hereinafter called the Tenancy Act) was started by the appellant by serving a notice on the first respondent under Section 44 of the said Tenancy Act. The appellant claimed in that proceeding that he bona fide required the land for cultivating it personally and hence after service of notice purporting to terminate the tenancy by December 31, 1958 he proceeded to file an application on March 18, 1959 for possession of the land under Section 32(2) of the Tenancy Act. The Naib Tehsildar, Land Reforms, Osmanabad rejected the resumption application of the appellant by his order dated October 22, 1959 holding against him on merits that he has made out no case for termination of the tenancy. The appellant went up in appeal which was allowed by the Deputy Collector Land Reforms Osmanabad by his order dated May 25, 1962. The Deputy Collector allowed the appellant to resume the disputed lands in Survey No. 206 holding in his favour on merits. Respondent No. 1 went up in revision. The Revenue Tribunal allowed the revision of respondent No. 1 by its order made on October 15, 1962. It took the view accepting a new stand taken on behalf of the tenant respondent No. 1 that after the abolition and vesting of the appellant's Inam the said respondent who was in possession of the land covered by the Inam as a tenant holding from the Inamdar had acquired all the rights of an occupant in respect of such land under Section 6(1)(a) of the Abolition of Inams Act. The appellant moved the High Court of Bombay under Article 227 of the Constitution of India in Special Civil Application No. 1881 of 1962. Agreeing

with the view of the Revenue Tribunal the Special Civil Application was dismissed by the High Court on September 26, 1963.

3. The second round of fight culminating in the present appeal started between the parties when proceedings under Section 2A which was introduced in the Abolition of Inams Act by Section 6 of Bombay Act, 64 of 1959 were initiated before the officer authorised by the State Government to decide certain questions relating to Inams. The Tehsildar gave a notice to respondent No. 1 for payment of price in lieu of his having acquired the right of an occupant in the land in accordance with Section 6 of the Abolition of Inams Act. The appellant filed his objection and asserted that respondent No. 1 had not become the occupant of the land under the provisions of law aforesaid. Various questions were raised by him. The Deputy Collector decided the matter in the first instance by his order dated November 30, 1962. He held that the land was granted to the appellant for his service as Mahajan; it could, therefore, be deemed to be a Watan land. He further held that the provisions of Section 6 of Abolition of Inams Act were applicable and the date of vesting of the Inam was July 1, 1960 and not July 20, 1955. Since he was not the Officer to decide the question of possession under Section 6(1) of the Abolition of Inams Act, he remained content by saying in his order dated November 30, 1962.

The land in question being the Watan land, shall be resumed and vested in Government with effect from July 1, 1960 and the person in possession of the land at the time of vesting shall be entitled to occupancy right under Section 6(1) of the Act in respect of the said land.

He finally directed that a copy of this order be sent to the Tehsildar Osmanabad for further necessary action. The Tehsildar by his order dated July 15, 1963 decided the matter in favour of the first respondent and held him to be a tenant in possession of the land on the date of vesting of the Inam and hence a person acquiring the rights of an occupant under Section 6(1). The objection of the appellant was rejected by the Tehsildar.

4. The appellant filed an appeal before the State Government under Section 2A(2) of the Abolition of Inams Act from the decision of the Tehsildar. The rejection of the appellants appeal by the State Government was communicated to him by a letter dated November 27, 1964 of the Under Secretary to the Government of Maharashtra, Revenue and Forest Department. The appellant challenged the order of the State Government in Special Civil Application No. 1019 of 1965 under Articles 226 and 227 of the Constitution of India in the Bombay High Court. A Bench of the High Court dismissed his Writ Application by its judgment and order dated October 14, 1966. The appellant presented this appeal by special leave of this Court.

5. Mr. B. N. Lokur, learned Counsel for the appellant made the following submissions in support of the appeal :

> 1. That the State Government was not justified in rejecting the appellant's statutory appeal without giving him a hearing and without passing any reasoned order.
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> 2. That the Inam in question was a service Inam and hence in view of the provision of law contained in Section 102A(c) of the Tenancy Act the said Act was not applicable to the land in question; respondent No. 1 could therefore never be a tenant of the land.
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> 3. That the proceedings initiated by the appellant for resumption of land under the

Tenancy Act were all ultra vires and without jurisdiction, there being no relationship of landlord and tenant between the parties under the Tenancy Act, jurisdiction could not be conferred by an erroneous stand of the appellant that the first respondent was his tenant.

4. In any view of the matter the tenancy was terminated by service of a notice under Section 44 and the filing of the application under Section 32(2) of the Tenancy Act, against respondent No. 1. He, was, therefore, not a tenant in possession of the land on July 1, 1960 the date of vesting of the Inam.

5. The High Court has committed an error in holding that its judgment in Special Petition No. 1881 of 1962 operated as res judicata on the question of respondent No. 1 acquiring the right of an occupant under Section 6(1) of the Abolition of Inams Act.

6. In our judgment none of the points urged on behalf of the appellant is fit to succeed.

7. It was not necessary for the State Government to give a personal hearing to the appellant or his authorised representative before disposal of his appeal. As has been repeatedly pointed out by this Court the State Government ought to have disposed of the statutory appeal of the appellant filed under Section 2A (2) of the Abolition of Inams Act by a speaking order. It may not be possible in all cases to say that a non-speaking order is bad or invalid on that account alone but when an order is liable to be challenged under Articles 226 or 227 of the Constitution of India, courts do insist that an appeal of the kind filed by the appellant should be and ought to have been disposed of by a speaking order giving some reasons in its support. But on the facts and in the circumstances of this case the High Court did not feel persuaded, and in our opinion rightly, to set aside the order of the State Government and remit back the appellant's appeal to them merely on that account. No determination or adjudication of facts was involved. The decision of the case rested on the points of law. The High Court did not examine the question as to whether respondent No. 1 could not be a tenant of the appellant because of the reason that the Inam had been held to be a Watan Inam and consequently according to the appellant it was a service Inam. In the present proceeding the High Court pointed out that respondent No. 1 was admittedly the appellant's tenant. Mere service of notice under Section 44 of the Tenancy Act had not terminated the tenancy. The proceeding for resumption of the land under the Tenancy Act finally terminated against the appellant on the ground that respondent No. 1 could no longer be evicted as he had acquired the right of an occupant under the Abolition of Inams Act.

8. On the finding recorded by Deputy Collector in his order dated November 30, 1962 that the appellant held the Inam as a Watan for the purpose of this case we shall assume in his favour that it was a service Inam and hence the provisions of the Tenancy Act were not applicable. But such a stand is wholly contrary to the appellant's case in the previous proceedings for resumption of land. Everywhere the appellant asserted that respondent No. 1 was his tenant, so much so that in his Special Civil Application No. 1881 of 1962 a copy of which was given to us by Mr. S. T. Desai, learned Counsel for respondent No. 1, he had stated in paragraph 7

That the learned Member of the Tribunal has failed to apply his mind to the provisions of Section 102(c) which was in force prior to the substitution of new Section 102-A(c) of the Hyderabad Tenancy and Agricultural Lands Act. It does not apply to the case in question as the suit land is an Inam land not a service Inam, so the Tenancy Act is applicable to the present case.

It is not open to the appellant to change his stand and then assert that the previous proceeding started by him for resumption of the land was ultra vires and without jurisdiction as the Tenancy Act was not applicable to the land. The appellant then tried to urge that respondent No. 1 could not be and was not a tenant of the land. But this contention is also not open to the appellant. No where it has been asserted by the appellant not even in the statement of the case and the additional grounds filed in this Court except in the argument put forward by his learned Counsel that the Inamdar of the kind the appellant was, had no right to induct any tenant on the Inam land. The fact remains that respondent No. 1 was in cultivating possession of the land in question paying rent to the appellant since long before the vesting of the Inam. It could not but be in his capacity as a tenant of the appellant. It is not open to the appellant to assert that the order made by the Revenue Tribunal or as a matter of that in his earlier Special Civil Application by the Bombay High Court was in a proceeding in which there was inherent lack of jurisdiction in the first authority and consequently the order was also a nullity.

9. There is no substance in the fourth submission of Mr. Lokur. Section 44(1) of the Tenancy Act reads as follows :

> 44. (1) Notwithstanding anything contained in Section 6 or 19 but subject to the provisions of sub-sections (2) to (7), [landholder (not being a landholder within the meaning of Chapter IV-C) 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 requires the land for cultivating it personally.
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> 10. Section 32 prescribes the procedure of taking possession of the land and sub-section (2) says :
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> Save as otherwise provided in sub-section (3A), no landholder shall obtain possession of any land or dwelling house held by a tenant except under an order of the Tehsildar, for which he shall apply in the prescribed form within a period of two years from the date of the commencement of the Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1957, or the date on which the right to such possession accrued to him whichever is later.
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> Reading the wordings of Sections 44(1) and 32(2) of the Tenancy Act it was not possible to accept the contention put forward on behalf of the appellant that by mere service of notice and the filing of application for possession the tenancy had come to an end. Until and unless possession was directed to be delivered to the land holder by the competent authority, the tenant continued in possession and continued to be so as a tenant. A Full Bench of the Bombay High Court in Dattatraya Sadashiv Dhond v. Ganpati Raghu Gaoli (67 Bom LR 521) expressed the view at page 529 :
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> 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.

Although the view so expressed by the Bombay High Court may not be quite accurate and the better view to take may be to say that the process of termination of tenancy started by the service of notice and the filing of the application for possession by the landholder is not complete until an order for possession is made by the competent authority and, therefore, there is no termination of tenancy until an order for possession follows in the process, the matter becomes beyond the pale of controversy in view of Rule 28(5) of the Hyderabad Tenancy and Agricultural Lands Rules made in accordance with sub-section (10) of Section 44 of the Act. Sub-section (10) empowers the State Government to provide by rules the time when the termination of tenancy will take effect and Rule 28(5) says that on the granting of the application for possession the tenancy shall stand terminated from the commencement of the year following the year in which the application is granted. It is, therefore, clear that the tenancy did not come to an end by the mere service of notice and the filing of the application by the appellant against respondent No. 1 under the Tenancy Act. He was a tenant when the Inam of the appellant vested in the State on July 1, 1960. Indisputably, he was in possession of the land on that date. Consequently he acquired the rights of an occupant under Section 6(1) of the Abolition of Inams Act. There was no error committed by the High Court in deciding this question against the appellant.

11. The High Court was also right in holding that the issue as to the acquiring by respondent No. 1 of the right of an occupant was barred on the principles of res judicata in view of the previous decision in the earlier Special Civil Application. Neither the Revenue Tribunal nor the High Court in - proceeding went into the merits of the appellant's claim for - of the land. It defeated him on the ground that since respondent No. 1 had acquired the right of an occupant on the abolition and the vesting of the Inam the application under Section 32(2) of the Tenancy Act had got to fail. The issue directly and substantially fell for determination in the earlier case. It was decided against the appellant and he cannot re-agitate the very same question in this proceeding.

12. For the reasons stated above the appeal fails and is dismissed with costs to respondent No. 1 alone.

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