Ramchandra Keshav Adke (Dead) By Lrs. and Others

Vs

Govind Joti Chavare and Others

Civil Appeals Nos. 58 and 810 of 1968

(V. R. Krishna Iyer, R. S. Sarkaria, A. C. Gupta JJ)

04.03.1975

JUDGMENT

SARKARIA, J. -

1. These appeals by special leave are directed against the common judgment, dated October 5, 1967, of the High Court of Bombay dismissing two writ petitions filed by the appellants to impugn the orders of Maharashtra Revenue Tribunal. The material facts are these.

2. On September 8, 1953, the predecessor of appellants Nos. 1 and 2 (hereinafter called the landlords) made an application to the mamlatdar of Miraj, that the tenant (Respondent No. 1) was willing to surrender his tenancy in the agricultural land, bearing Survey No. 102/2, admeasuring 8 acres and 22 gunthas, situated at village Haripur, Taluka Miraj, District Sangli in the State of Maharashtra. The landlord prayed that the surrender in his favour should be verified under Section 5(3) of the Bombay Tenancy and Agricultural Lands Act 67 of 1948. To this application the landlord annexed a letter of surrender bearing the thumb-impression of the tenant. The mamlatdar did not verify the surrender, or pass any final order in the matter. The landlord's application however came up before Shri Bhokare, the then Circle Officer of Miraj who after recording the statements of the tenant and the landlord, made this order on it :

> The applicant and the tenant are present. The tenant Shri Chaware states that the suit land viz. S. No. 102/1 measuring 8-22 and assessed at Rs. 44-3-0 of Haripur belongs to the applicant and that he is cultivating the same as a protected tenant. He further adds that he does not want to cultivate the same any longer and so he is surrendering the possession willingly along with crops and also the right as pro-tenant.

I. Therefore, order that the possession of the suit land should be handed over to the applicant with the crops and the right as pro-tenant should be deleted under Section 29(i)(3) of the B.T. and A.L. Act, 1948.

Haripur,

Bhokare,

18-9-53. (M. M. BHOKARE),

Circle Officer,

Sangli.

3. Pursuant to the above order, a panchnama was prepared by the talati on November 20, 1953, in which it was stated that the possession of this tenancy land had been given to the landlord. The latter executed a Kabje-Pavti to the effect, that he had obtained the possession. Mutation entry No. 431 was also made in this respect in the record of rights of the village and the name of the landlord was entered as kabzedar in actual possession. On April 23, 1959, the landlord sold this land to appellants Nos. 3 and 4 and respondents Nos. 2 and 3.

4. On November 9, 1959, the tenant made an application against the landlord and his transferees (Sherikars) to the Additional Tenancy Aval Karkun, Miraj, praying for a declaration the he was the tenant-in-possession of the land in dispute and further that the opponents be injuncted not to disturb his possession over the land. In the alternative, he prayed that if he was found to have lost possession, the same be restored to him. This application was opposed by the landlord and his transferees on two main grounds : (1) that the tenant had duly surrendered his tenancy in 1953 and he was not in possession thereafter, and (2) that his application was time-barred. Both these grounds found favour with the Tenancy Aval Karkun, and the dismissed the tenant's application by an order dated November 22, 1961.

5. Aggrieved, the tenant filed Tenancy Appeal No. 292 of 1962 before the Special Deputy Collector, Sangli. The tenant preferred another appeal also, to the Deputy Collector against the order, dated September 18, 1953, of the Circle Officer, MR. Bhokare, whereby the tenant's name was deleted from the record of rights. The Deputy Collector held that Shri Bhokare's order was not an order passed by a mamlatdar as required by the tenancy law, and consequently, it was without jurisdiction and void. He further held that there was no verification of the surrender application as required by law. He further found that, in fact, the tenant had never surrendered the tenancy, but had continued to be in possession till he was illegally dispossessed in 1959 and consequently his application was within time. On these findings the Special Deputy Collector allowed both the appeals, and directed that the possession of the suit land be restored to the tenant. He also set aside the order of the Circle Officer regarding the mutation entry.

6. Against the Deputy Collector's decision, the landlord preferred two revisions applications before the Maharashtra Revenue Tribunal. The Tribunal dismissed the revision applications and affirmed the findings of the Deputy Collector. The landlords and their transferees thereupon moved the High Court of Bombay by two writ petitions under Article 227 of the Constitution for impugning the revisional orders of the Tribunal. The High Court, as already stated, dismissed the petitions. Hence, these appeals.

7. The common question that falls to be determined in these appeals is whether in the circumstances of this case, the alleged surrender by the tenant was valid ?

8. The Deputy Collector and the Tribunal have concurrently answered this question in the negative on the threefold ground : (i) That the so called surrender was a sham transaction because the tenant continued thereafter to be in possession and paid rent to the landlord upto 1959; (ii) That Circle Officers were not empowered to dispose of tenancy cases and as such Shri Bhokare's order, dated September 18, 1953, was without jurisdiction and (iii) That the surrender had not been verified as required by law.

9. The High Court upheld the finding on ground No. (i), the same being a finding of fact not shown to be erroneous. It did not think it necessary to of into the second ground. Regarding the third ground, it held that the alleged surrender was a nullity as there was no compliance with the

mandatory requirement of Section 5(3) of the Bombay Tenancy Act, 1953 (sic) read with Rule 2-A in regard to the verification of a surrender.

10. Section 5(3)(b) of the Act, at the material time, was as follows :

> A tenant may terminate the tenancy at any tome by surrendering his interest as a tenant in favour of landlord. Provided that such surrender shall be in writing and shall be verified before the mamlatdar in the manner prescribed.

11. The manner of such verification has been prescribed by Rule 2-A, in these terms :

> The mamlatdar when verifying a surrender of a tenancy by a tenant in favour of the landlord under clause (b) of sub-section (3) of Section 5, shall satisfy himself, after such enquiry as he thinks fit, that the tenant understands the nature and consequences of the surrender and also that it is voluntary, and shall endorse his findings in that behalf upon the document of surrender.

12. It will be seen from a combined reading of these provisions that a surrender of tenancy by a tenant in order to be valid and effective must fulfill these requirements : (1) It must be in writing. (2) It must be verified before the mamlatdar. (3) While making such verification the mamlatdar must satisfy himself in regard to two things, namely (a) that the tenant understands the nature and consequences of the surrender, and (b) that it is voluntary. (4) The mamlatdar must endorse his finding as to such satisfaction upon the document of surrender.

13. Mr. Desai, learned Counsel for the appellants contends that the provisions of Rule 2-A are directory and not mandatory; that in any case there has been a substantial compliance with the requirements of relevant provisions of the Act and the rule. It is submitted that the deed of surrender executed by the tenant was presented along with the application of the landlord, to the mamlatdar; that the Circle Officer exercising the powers of Aval Karkun, then made an enquiry and recorded the statements of the tenant and the landlord to ascertain whether the surrender had been intelligently and voluntarily made by the tenant, and that it was only after verifying the requisite facts, the officer made the order directing delivery of possession to the landlord and deletion of the tenant's name from the record of rights. It is argued that the mere fact that the Circle Officer's order or endorsement was strictly not in the form prescribed, would not invalidate the surrender. In this connection, the learned Counsel drew out attention to this sentence in the judgment of the Tribunal : "But there is no doubt that the above formalities were gone through before the Circle Officers".

14. Thus, the first point to be considered is, whether the requirements of these provisions are mandatory or directory. "No universal rule", said Lord Campell (Liverpool Borough Bank v. Turner, (1861) 30 LJ Ch 379, 383; Craies on Statue Law, 7th Edn. p. 262), "can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope". Such intention of the Legislature is therefore to be ascertained upon a review of the language, subject-matter and importance of the provision in relation to the general object intended to be secured, the mischief, if any, to be prevented and the remedy to be promoted by the Act.

15. Prior to the enactment of the Bombay Tenancy Act, 1939, the laws governing the relations between landlords and tenants in the State did not ensure equal status of contract or agreement to the

contracting parties inasmuch as the tenants were in a much inferior position. The tenant had no security of tenure, nor any protection against eviction or rack-renting. Bombay Act 29 of 1939 was the first measure enacted to remedy these evils and to improve the condition of tenants of agricultural lands in the Province.

16. The Bombay Act 67 of 1948 registered an advance in the matter of ameliorating the lot of ryots. It marked a big step taken in the post-independence era by the State Legislature towards implementation of the policy of agrarian reforms. Chapter II of the Act deals with tenancies in general. Sections 5 and 15 are in this chapter. Chapter III makes provision for special rights and privileges of tenants and allied matters. The provisions in these chapters confer on 'protected tenants' the right to purchase their holdings from their landlords, to prevent uneconomic cultivation and to create and encourage peasant proprietorship.

17. Provision for 'surrender' of tenancy first appeared in a bald form, without any safeguards, in the proviso to Section 5(2) of the Act of 1948. The proviso ran thus :

> Provided that any tenancy may be terminated by a tenant before the expiry of a period of ten years by surrendering his interest as a tenant in favour of landlord.

18. In its unguarded form, the provision was inadequate and vulnerable. It was susceptible to abuse. Under its cloak, scheming landlords could squeeze out tenants, or induce them by questionable means to leave the protective umbrella of the Act. The Bombay (Amendment) Act 33 of 1952, which came into force on January 12, 1953, recast this provision and hedged round that surrender with effective safeguards. It substituted sub-section (3)(b) - as reproduced by us earlier in this judgment - for the old proviso in Section 5.

19. The language of Section 5(3)(b) and Rule 2-A is absolute, explicit and peremptory. The words "Provided that" read with the words "shall be", repeatedly used in Section 5(3)(b), make the termination of tenancy by surrender entirely subject to the imperative conditions laid down in the proviso. This proviso throws a benevolent ring of protection around tenants. It is designed to protect a tenant on two fronts against two types of dangers - one against possible coercion, undue influence and trickery proceeding from the landlord, and the other against the tenant's own ignorance, improvidence and attitude of helpless self-resignation stemming from his weaker position in the tenant-landlord relationship.

20. Thus, the imperative language, the beneficent purpose and importance of these provisions for efficacious implementation of the general scheme of the Act, - all unerringly lead to the conclusion that they were intended to be mandatory. Neglect of any of these statutory requisites would be fatal. Disobedience and even one of these mandates would render the surrender invalid and ineffectual.

21. Having seen that the requirements of Section 5(3)(b) and Rule 2A are obligatory, and not directory, it remains to be considered whether these imperatives have been substantially complied with in the manner prescribed, and if not, what is the consequence of non-compliance ?

22. The question of inherent jurisdiction apart, all that the Circle Officer did in this case, was that he recorded the statements of the tenant and landlord and made the order - which we have reproduced in full earlier in this judgment. Although in this order he referred to the tenant's statement "that he does not want to cultivate the same any longer and so he is surrendering the possession willingly alongwith crops and also the right as pro-tenant", he did not say a word that he was satisfied that the

tenant had voluntarily made the surrender after understanding its nature and consequences, much less did he endorse his satisfaction on the tenant's deed of surrender as required by Rule 2-A. Verification of the surrender implies that the authority was satisfied as to the statutory requisites after due enquiry. Such satisfaction of the authority was the essence of the whole thing. In other words, this requirement as to the recording of its satisfaction by the authority in the manner prescribed by the rule, was the substance of the matter and not an empty formality. In the absence of the requisite endorsement, therefore, it cannot be said that there has been even a substantial compliance with the statutory requirements.

23. Mr. Desai's contention that the Tribunal had found that the Circle Officer had complied with all the formalities prescribed by law, does not appear to be correct. The sentence from which it is sought to be spelled out should be torn from its context. Earlier, in its judgment, the Tribunal had clearly said in concurrence with the Deputy Collector, that the surrender had not been verified as required by law.

24. Next point to be considered is, what is the consequence of non-compliance with this mandatory procedure ?

25. A century ago, in Taylor v. Taylor ((1876) 1 Ch D 426), Jassel, M. R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy Council, in Nazir Ahmed v. Emperor (LR 63 IA 372 : AIR 1936 PC 253) and later by this Court in several cases (Shiv Bahadur Singh v. State of U. P., 1954 SCR 1098 : AIR 1954 Cri LJ 910; Deep Chand v. State of Rajasthan, (1962) 1 SCR 662 : AIR 1961 SC 1527 : (1961) 2 Cri LJ 705), to a magistrate making a record under Sections 164 and 364 of the Code of Criminal Procedure, 1898. This rule squarely applies "where, indeed, the whole aim and object of the Legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other." (Maxwell's Interpretation of Statues, 11th Edn., pp. 362-363) The rule will be attracted with full force in the present case, because non-verification of the surrender in the requisite manner would frustrate the very purpose of this provision. Intention of the Legislature to prohibit the verification of the surrender in a manner other than the one prescribed, is implied in these provisions. Failure to comply with these mandatory provisions, therefore, had vitiated the surrender and rendered it non est for the purpose of Section 5(3)(b).

26. For the reasons, we affirm the judgment of the High court and dismiss the appeals with one set of costs.

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