

Vishnu Mahadeo Pendse

Vs

The Rajen Textile Mills (P) Ltd. and Another

Parashram Mahadeo Pendse

Vs

The Rajen Textile Mills (P) Ltd. and Another

Civil Appeals Nos. 132 and 133 of 1968

(Y. V. Chandrachud R. S. Sarkaria, A. C. Gupta JJ)

01.05.1975

JUDGMENT

GUPTA, J. –

1. These two appeals brought on certificate of fitness granted by the High Court of Bombay arise out of two suits for possession. Civil Appeal No. 132 of 1968 has its origin in the suit instituted by appellant Vishnu Mahadeo Pendse as plaintiff. Parashram Mahadeo Pendse, appellant in Civil Appeal No. 133 of 1968, instituted the other suit. The respondents Rajen Textile Mills (P) Ltd., and Shri L. N. Madhwani, Director of the said company, were the defendants in both the suits.

2. The facts giving rise to these appeals are briefly these. The lands of Survey Nos. 181 and 182A, owned by Vishnu Mahadeo Pendse, and the lands of Survey Nos. 176, 179A and 179B owned by Parashram Mahadeo Pendse, situate within the municipal limits of Barsi in district Sholapur were leased out by the owners to Barsi Spinning and Weaving Mills Ltd. (hereinafter referred to as Barsi Mills); Both leases were for a period of 99 years with effect from January 1, 1943. On an application of a creditor of the Barsi Mills, the High Court of Bombay made a winding up order on November 10, 1953. On October 5, 1954 all the assets of Barsi Mills including their tenancy rights in the said lands were sold by auction and purchased by one K. N. Madhwani. At the request of the auction purchasers the liquidator executed a conveyance of the lands in favour of the respondent Rajen Textile Mills (P) Ltd. (hereinafter referred to as the respondent Mills) on August 9, 1955. Sometime in 1957 the appellants started proceedings in the Court of the Mamlatdar under Section 31 of the Bombay Tenancy and Agricultural lands Act, 1948 (hereinafter referred to as the 1948 Act) for possession on the ground that they required the lands for personal cultivation. The Mamlatdar dismissed the application for possession on the view that the respondents were trespassers and as such that court had no jurisdiction. Then in 1961 the appellants instituted Suits Nos. 15 and 16 of 1961, out of which these appeals arise, in the Court of the Civil Judge, Senior Division at Sholapur, for recovery of possession of the lands and for several other incidental reliefs. The case made in the complaints was (1) that the leasehold rights of Barsi Mills in the lands were personal rights and not capable of being transferred by a liquidator in winding up proceedings, (2) that the auction sale and the conveyance in favour of the respondent Mills were contrary to the provisions of Sections 27 and 28 of the 1948 Act and therefore invalid, and (3) that the auction

purchaser not being an agriculturist, the auction sale and the subsequent conveyance were void under Section 63 of the 1948 Act. The trial Court decreed the suit on the view that the auction sale and the conveyance contravened the provisions of Section 27, 28 and 63 of the 1948 Act. The respondents preferred appeals to the Bombay High Court challenging the decision of the trial Court; the High Court allowed the appeals and dismissed the suits. The High Court was of the view that (1) there was no term in the lease prohibiting Barsi Mills from transferring their leasehold rights nor was there any law prohibiting such transfers, and (2) the lands in dispute were held on lease for the benefit of an industrial undertaking, namely Barsi Mills, within the meaning of Section 88(1)(b) of the 1948 Act; Section 88 specifies the lands and areas to which the 1948 Act did not apply.

3. Mr. Patel, learned Counsel for the appellants, raised two contentions : (1) the lands are agricultural lands and as such Section 88(1)(b) which excluded from the operation of the 1948 Act lands held on lease for the benefit of an industrial or commercial undertaking has no application, and (2) having regard to the proviso to Section 43C of the 1948 Act the auction sale and the subsequent assignment of the leasehold rights were void.

4. Before we proceed to consider the merits of these contentions, it seems to us that the suits for possession must fail on a preliminary ground, as urged by Mr. Bal, Counsel for the respondents. In the plaint the plaintiff in each case asks for a declaration that the auction sale and the conveyance are both void. Giving effect to this contention means that the leases in favour of Barsi Mills remain live leases and Barsi Mills continue to be the tenant of the lands. If this is the position, the suits for possession are premature because the leases for 99 years have not yet run out. Further, the declaration asked for cannot be made in the absence of the liquidator representing Barsi Mills, but Barsi Mills have not been impleaded in the suits. It is well known that a company until it is dissolved retains its distinct entity, though in the case of a company in liquidation the administration of its affairs passes to the liquidator. Clearly therefore these suits for possession are not maintainable.

5. On the merits also, the suits are bound to fail. The appellant contention is that the auction sale and the conveyance were void in view of Section 27, 28 and 63 of the 1948 Act. Section 27 prohibits sub-division, sub-letting and assignment of land by a tenant and any such act in violation of the provisions of this section makes the tenancy "liable to termination". Section 28 bars attachment, seizure or sale in execution of a decree or order by civil court of any interest in the land held by the tenant. Section 63, as it stood at the relevant time, barred transfer of land in favour of a person who was not an agriculturist unless sanctioned by the prescribed authority. It will be seen that any act contrary to the provisions of Section 27 does not ipso facto terminate the tenancy but only makes the tenancy liable to termination. It is not claimed that the tenancy held by Barsi Mills was terminated before the suit was instituted.

6. Apart from this, Section 88(1)(b) of the 1948 Act makes it clear that the aforesaid provisions could have no manner of application. Section 88, so far as it is relevant, is in these terms :

Section 88 (1) : Nothing in the foregoing provisions of this Act shall apply -

#(a) * * *##

(b) to lands held on lease for the benefit of an industrial or commercial undertaking;

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There is no dispute that the lands in question were held on lease for the benefit of Barsi Mills which was an industrial undertaking. Section 88 remained in force from the time the 1948 Act came into operation till August 1, 1956 when it was replaced by a new section introduced by the Amendment Act No. XIII of 1956. The auction sale and the conveyance having taken place before August 1, 1956, Sections 27, 28 and 63 of the Act did not apply to the lands in dispute which were held on lease by Barsi Mills. Mr. Patel for the appellants argued that as the respondent Mills were using the lands largely for agricultural and not industrial purposes, Section 88(1)(b) itself had no application. Admittedly, the respondent Mills had built a few structures on the lands and used a large part of the remaining area for agricultural purposes. It is difficult to see why a land held on lease by an industrial or commercial undertaking, if used for agricultural purposes, would not be land held for the benefit of such industrial or commercial undertaking. But apart from this, there is an obvious answer to this contention as pointed out by Counsel for the respondents. The lands in question were given in lease of Barsi Mills in 1943 when the Bombay Tenancy Act, 1939 was in operation. That Act defined 'land' as meaning land which was used for agricultural purposes including, inter alia, the sites of farm buildings appurtenant thereto. The definition of land in the 1948 Act, so far as it is material for the present purpose, is :

"Land" means land which is used for agricultural purposes, and includes

(a) the sites of farm buildings appurtenant to land used for agricultural purposes, and

(b) the sites of dwelling houses occupied by agriculturists, agricultural labourers or artisans and land appurtenant to such dwelling houses.

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Therefore, when Section 88(1)(b) speaks of lands held on lease for the benefit of an industrial or commercial undertaking it means lands used for agricultural purposes held on lease by an industrial or commercial undertaking. Section 88(1)(b) excluded inter alia the application of Section 27, 28 and 63 of the Act to lands used for agricultural purposes if such lands are held by an industrial or commercial undertaking as lessee. Thus it is plain that lands used for agricultural purposes by an industrial or commercial undertaking are directly covered by Section 88(1) (b). It is not necessary to refer to the proviso to section 43C which was inserted in the principal Act by the Amending Act XIII of 1956. The auction sale and the conveyance having taken place long before the proviso was engrafted cannot be affected by it.

7. For the reasons stated above these appeals fail and are dismissed with costs : one hearing fee.

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