

Trustees of Shri Acharya Mahaprabhu's Bethak of Padra

Vs

Kachhia Ishwarbhai Shankarbhai

Civil Appeal No. 1442 of 1972

(CJI A. N. Ray, K. K. Mathew, N. L. Untwalia JJ)

11.11.1975

JUDGMENT

MATHEW, J. -

1. The appellants are trustees of a public religious trust registered under the Bombay Public Trusts Act, 1950, called Shri Acharya Mahaprabhu's Bethak of Padra. They filed a suit for recovery of possession of the plaint property belonging to the trust from the respondent. He raised various contentions. The suit was decreed by the trial Court. The respondent preferred an appeal against the decree : that was dismissed. The respondent then appealed to the High Court against the decision. The High Court set aside the decision and remanded the case to the trial Court for a finding whether the appellants required the premises for personal cultivation. It's against this order that this appeal by special leave has been filed.

2. There was no dispute between the parties before this Court that the respondent was holding over after the expiry of a contractual tenancy created in his favour by the trust for a period of one year and that he tenancy by holding over was terminated by a notice to quit issued on behalf of the trust on August 19, 1962. There can be no dispute that the appellants were entitled to institute the suit for recovery of possession of the property in view of the certificate issued by the Deputy Collector under Section 88-B of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short 'the Act'). The only question which falls for consideration in this appeal is whether the High Court was right in holding that Section 4-B of the Act operated as a bar to the termination of the tenancy for the reason that the trustees gave no valid reason for the same.

3. Section 4-B provides :

No tenancy of any land shall be terminated merely on the ground that the period fixed by agreement or usage for its duration has expired.

It seems to us clear that in order that Section 4-B might apply, the tenancy must be one for a definite period. We have already said that the respondent was a tenant holding over after the expiry of the contractual tenancy for a fixed period of one year. In law, therefore, he was a tenant from year to year as the original lease was for agricultural purpose. Section 3 of the Act provides that the provisions of Chapter V of the Transfer of Property Act, 1882, shall in so far as they are not inconsistent with the provisions of this Act apply to the tenancies and leases of land to which the Act applies. It therefore follows that the appellants could validly terminate the tenancy by giving the proper notice under that Act. And, such a notice was given.

4. It is trite learning that tenancy from year to year is not a tenancy for a period certain. Section 4-B can apply only to a tenancy in which a period has been fixed either by agreement or usage and that the period has expired. In the tenancy from year to year under which the respondent was holding over there could be no period fixed by agreement for its duration as that would be inconsistent with the basic hypothesis of a tenancy from year to year. Nor is there any evidence of any usage fixing the duration of the tenancy. It is relevant to note that the tenancy which the appellants terminated by the notice was the tenancy from year to year under which the respondent was holding the land and not any anterior tenancy. To the termination of that tenancy Section 4-B has no application.

5. It was, therefore, open to the landlord to terminate the tenancy by issuing the proper notice and thereafter to recover possession of the property without assigning any reason whatsoever. The High Court was wrong in holding that under Section 4-B the tenancy cannot be terminated without a valid reason and 'remanding' the case to the trial Court to find whether the landlord required it for personal cultivation or for any other valid reason.

6. We set aside the order of remand passed by the High Court and allow the appeal without any order as to costs. We direct the High Court to pass the proper order in the appeal and dispose of it.

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