

Shankar Deoba Patil (by L. Rs.)

Vs

Ganpatlal Sheodayal and Others

Civil Appeals 1949 and 1950 of 1968

(H.R. Khanna, V.R. Krishna Iyer JJ)

23.11.1976

JUDGMENT

KHANNA, J. –

1. This judgment would dispose of two civil appeals 1949 and 1950 of 1968 which have been filed against the judgment of the Bombay High Court disposing of two petitions under Article 227 of the Constitution of India filed by respondent 1 (hereinafter referred to as the respondent).
2. On November 13, 1957 the respondent filed a suit against the appellant for possession of the land comprised in field Nos. 17, 18, 19, 22 and 24 situated in village Sawangi in district Yeotmal, on the allegation that the appellant had taken forcible possession of that land in the year 1952. The appellant took a plea in that suit that he was a tenant of the land in dispute under Section 6 of the Bombay Tenancy and Agricultural Lands (Vidharbha Region) Act, 1958 (Bombay Act 99 of 1958) (hereinafter referred to as the Act). A prayer was also made by the appellant that the question of his tenancy be referred to the revenue court. The civil court accordingly made a reference under Section 125 of the Act to the tehsildar for the decision of the question as to whether the appellant had acquired the status of a tenant under Section 2(32) read with Section 6 of the Act.
3. A list of the tenants occupying the various lands was also published under Section 8 of the Act. In that list, the appellant was shown as a tenant of the land in dispute. The respondent filed objections to the inclusion of the name of the appellant in that list as a tenant of the land in dispute and prayed for correction of that list under Section 8(3) of the Act.
4. The tehsildar went into the question as to whether the appellant was a tenant of the land in dispute both in the reference made to him under Section 125 of the Act as well as in the objections filed by the respondent to the inclusion of the appellant's name in the list published under Section 8 of the Act. In both the proceedings, the tehsildar held that the appellant was a tenant of the land in dispute under Section 2(32) read with Section 6 of the Act. The appeals filed by the respondent against the order of the tehsildar were dismissed by the Sub-Divisional Officer. The respondent then took the matter in revision before the Maharashtra Revenue Tribunal. The tribunal dismissed both the revisions. The respondent thereafter filed two petitions under Article 227 of the Constitution of India before the Bombay High Court. It was urged on behalf of the respondent in petition 243 of 1966, which arose out of reference made under Section 125 of the Act, that no reference was maintainable under Section 125 of the Act, as the suit in the course of which that reference was made had been filed in 1957 long before the coming into force of the Act. The High Court accepted this contention and held that the reference under Section 125 of the Act was not competent. The orders made by the revenue courts in that reference were consequently held to be without

jurisdiction and as such quashed. It was observed that the various disputed questions would have to be decided by the civil court itself.

5. Petition 244 of 1966, which related to the orders made by the revenue authorities in objections filed by the respondent to the list of tenants published under Section 8 of the Act was withdrawn by the respondent at the time of hearing before the High Court.

6. We have heard Mr. Lokur on behalf of the appellant and Mr. Pillai on behalf of the respondent. No cogent ground has been urged before us to induce us to interfere with the order of the High Court in so far as it has held that no reference under Section 125 could be legally made because the suit in which the said reference was made had been filed earlier than the coming into force of the Act. Mr. Lokur, however, submits that as the respondent has withdrawn his petition 244 of 1966 to quash the orders made on the objections filed by the respondent to the list published under Section 8 of the Act, the respondent cannot now assert that the appellant is not a tenant of the land in question. So far as this contention of Mr. Lokur is concerned, we are of the opinion that the appellant should agitate the same before the civil court when it decides the question as to whether the appellant is or is not a tenant of the land in dispute. It would be for the civil court to determine the effect of the withdrawal of the petition 244 of 1966 on the question as to whether the appellant is or is not a tenant of the land in dispute. We further make it clear that the orders in so far they relate to the inclusion of the name of the appellant in the list published under Section 8 of the Act which were sought to be quashed by means of petition 244 of 1966, shall remain intact, as the petition to quash those orders was withdrawn by the respondent.

7. The two appeals are disposed of accordingly. In the circumstances, we make no order as to costs of these appeals.

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