Trimbak Gangadhar Telang and Another

Vs

Ramchandra Ganesh Bhide and Others

Civil Appeal Nos. 1998-2000 of 1968

(M.H. Beg, Jaswant Singh JJ)

19.01.1977

JUDGMENT

JASWANT SINGH, J. –

1. These appeals by special leave are directed against the judgment and order dated September 15, 1967/September 19, 1967 of the High Court of Judicature at Bombay whereby Special Civil Applications 1304 to 1306 of 1965 filed by the appellants under Article 227 of the Constitution were dismissed by the said High Court.

2. The facts leading to these appeals are : In 1938, Vasudeo Balwant Telang, since deceased, who was petitioner 1 in the aforesaid Special Civil Applications leased out agricultural land in dispute comprised in a portion of Survey No. 25/1 and the whole of the Survey No. 26 admeasuring 4 acres and 8 gunthas and 16 acres and 36 gunthas respectively situate in the outskirt of village of Haripur in Miraj Taluka of Sangli District of the erstwhile Miraj State (Junior) to Ganesh Bhikaji Bhide, father of Ramchandra Ganesh Bhide, respondent 1 herein, on an annual rent of Rs. 320. On March 23, 1948, the said Vasudeo Balwant Telang gave notice to respondent 1"s father intimating the latter that the land taken by him under a Kabulayat for cultivation upto April 10, 1948 would not be given to him for the next year. As there was no provision in the tenancy law then in force in the State of Miraj under which respondent 1's father could seek protection against his threatened eviction, respondent 1 executed a fresh deed of kabulayat on July 14, 1948, in favour of Vasudeo Balwant Telang for a period of one year agreeing to pay Rs. 700 as rent for that period to the latter. On the merger of the Miraj State in the then province of Bombay, the Bombay Tenancy and Agricultural Lands Act, 1939 (hereinafter referred to as 'the 1939 Act') was extended to Miraj State on August 13, 1948. Prior to the extension of 1939 Act to the Miraj area, respondent 1 had sublet some portions out of the aforesaid leased Survey Nos. in his occupation to respondent 2 and 3. On June 30, 1948, a notice was issued by the revenue authority to Vasudeo Balwant Telang informing him that respondents 2 and 3 who had to be deemed to be protected tenants had been recorded as such in respect of areas in their separate possession under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the 1948 Act') and that if he had any objection with regard thereto, he was at liberty to obtain a declaration against the same from the Mamlatdar by August 11, 1949 under Section 4 of the Act. Though Vasudeo Balwant Telang contested the notice, the objections preferred by him were overruled and respondents 1 to 3 were recorded as protected tenants in the record of right in respect of the areas in their possession. At or about this time, an entry was also made in the record of rights showing Rs. 20 per bigha as the rent payable by each of the aforesaid three respondents. The total rent of Rs. 320 per year computed at the said rate of Rs. 20 per bigha per annum was apportioned between respondents 1, 2 and 3 at Rs. 200, Rs. 80 and Rs. 40 respectively. After their recognition as protected tenants in the record of

right, though respondents 1 to 3 started paying their share of the rent separately to Vasudeo Balwant Telang, the latter credited the payment only to the account of respondent 1. On February 21, 1953, Vasudeo Balwant Telang served separate notices notices under Section 31 of the 1948 Act on respondents 1 to 3 terminating their tenancies with respect to the parcels of land in their respective possession on the ground that he required the same for his personal cultivation. Pursuant to the said notices, Vasudeo Balwant Telang filed an application on September 29, 1954 against respondents 1 to 3 for possession of the parcels of land in their cultivation on the ground that he bonafide required them for his personal cultivation. Before filing the aforesaid application for possession, Vasudeo Balwant Telang gave another notice on June 7, 1954 to respondent 1 under Section 14 of the 1948 Act purporting to terminate his tenancy with respect to all the parcels of land in dispute some of which were manifestly not in his possession on the ground that the latter had committed defaults in payment of rent for the years 1949-50 to 1953-54. Pursuant to this notice, copies whereof he sent to respondents 2 and 3. Vasudeo Balwant Telang filed another application against respondents 1 to 3 for possession of the aforesaid parcels of land on the ground that respondent 1 had made default in payment of rent for the aforesaid years. While contesting the application for possession respondents 1 to 3 contended that they were recognised by Vasudeo Balwant Telang as separate tenants of the portions of land in their possession; that the notice of termination of the tenancy issued by Vasudeo Balwant Telang to respondent 1 alone was invalid and that no default in payment of rent was made by them. They further pleaded that the agreed rent payable by them was Rs. 200, Rs. 80 and Rs. 40 per year respectively. The Extra Awal Karkun, Miraj dismissed the application for possession of all the aforesaid parcels of land observing that respondents 1 to 3 being separate and independent tenants of the plots in their possession, the aforesaid notice of termination of the tenancy given by Vasudeo Balwant Telang to respondent 1 alone was invalid. The decision of the Extra Awal Karkun, Miraj was confirmed in appeal by the Special Deputy Collector, Tenancy Appeal, Sangli. On the matter being taken in revision, the Bombay Revenue Tribunal relying on a decision of the Bombay High Court set aside the orders of the Extra Awal Karkun, Miraj Taluka, and Special Deputy Collector, Tenancy Appeal, Sangli, and remanded the case for fresh trial and disposal observing that the contractual tenancy of respondent 1 in all the parcels of land in dispute would continue even after respondents 2 and 3 were recognised as protected tenants of parts of the land in their possession unless the sub-tenancy of respondents 2 and 3 was recognised by Vasudeo Balwant Telang and the sub-tenants became directly responsible for payment of rent of the areas of land in their separate possession. The Bombay Revenue Tribunal further observed that the Extra Awal Karkun, Miraj and the Special Deputy Collector, Tenancy Appeal, Sangli had failed to deal with the question as to whether the sub-tenancy of respondents 2 and 3 was recognised by Vasudeo Balwant Telang and Whether respondents 2 and 3 became directly responsible for the payment of rent to Vasudeo Balwant Telang. By the time, this decision came to be rendered by the Bombay Revenue Tribunal, two other proceedings had been commenced by Vasudeo Balwant Telang inasmuch as in 1956, he filed an application for a declaration that respondents 1 to 3 were joint tenants of the land and were jointly and severally responsible for payment of the rent, and about the same time a suit in the Civil Court for the recovery of reasonable rent for the years 1949-50 to 1953-54 wherein a reference was made by the Court to the Mamlatdar, Miraj Taluka for determination of the reasonable rent. While disposing of the revision application which arose out of Vasudeo Balwant Telang's application for possession on the ground of default in payment of rent, the Revenue Tribunal directed the Mamlatdar, Miraj Taluka at the request of the parties to try and dispose of together all the three matters viz. The remanded application for possession on the ground of default in payment of rent, the application of Vasudeo Balwant Telang for declaration that the respondents 1 to 3 were joint tenants of the lands and the reference regarding the determination of reasonable rent for the years 1949-50 to 1953-54. Accordingly, the Mamlatdar Miraj Taluka, recorded further

evidence adduced by the parties and on a consideration thereof, he held that respondents 2 and 3 were recognised by Vasudeo Balwant Telang as independent tenants and as such the notice of termination of the tenancy given by Vasudeo Balwant Telang to respondent 1 alone was invalid. The Mamlatdar also held that the agreed rent during the years in question at the rate of Rs. 20 per bigha was Rs. 320 per year which was payable by the three tenants (respondents); that as the reasonable rent could not be in excess of the agreed rent and the respondent had not claimed that the agreed rent was in excess of the reasonable rent, the agreed rent was the reasonable rent. Proceeding on the basis that the agreed and reasonable rent was Rs, 320 per year, the Mamlatdar found that far from committing default in the payment of rent, the respondents had made over payment to the extent of Rs. 100. The Mamlatdar further held that respondents 1 to 3 were independent and not joint tenants of the aforesaid three parcels of land. On these findings he dismissed Vasudeo Balwant Telang's application for possession of the three parcels of land in dispute as also his application for declaration that respondents 1 to 3 were joint tenants of the said plots of land and declared that the responsible rent of the entire land was Rs. 320 per year. Aggrieved by the decision of the Mamlatdar, Miraj Taluka, Vasudeo Balwant Telang filed three separate appeals before the special Deputy Collector, Tenancy Appeal, Sangli who allowed the same holding that respondents 2 and 3 continued to be the sub-tenants of respondent 1 even after they were declared to be protected tenants and that the notice of termination of the tenancy served by Vasudeo Balwant Telang on respondent 1 was valid. The Special Deputy Collector further held that it had not been proved that the agreed rent was Rs. 320 per year. The Special Deputy Collector further held that the tenancy created vide Kabulayat dated July 14, 1948 executed by respondent 1 was to last for a period of ten years in accordance with Section 5 of the 1948 Act as it originally stood but the term regarding the payment of Rs. 700 as rent could not, as a result of that section, extend beyond the period specified in the rent note. The special Deputy Collector concluded by observing that there was no agreed rent in respect of the years in question. On these findings, the Special Deputy Collector remanded the aforesaid application for possession as well as the reference for determination of reasonable rent to the Mamlatdar, Miraj Taluka, directing the latter to determine afresh the question of reasonable rent under Section 12 of the 1948 Act and also to decide whether respondent 1 had committed default in payment of rent and was liable to be dispossessed of all the plots of land in dispute. The matter was then taken in revision by both the parties to the Bombay Revenue Tribunal which set aside the order of the Special Deputy Collector and restored that of the Mamlatdar in all the three proceedings holding that respondent 1 to 3 were separate tenants of Vasudeo Balwant Telang in respect of the areas of the land in their separate possession and the notice terminating the tenancy was invalid. The Revenue Tribunal also held that the reasonable rent of the land was rightly fixed by the Mamlatdar at Rs. 320 per year. Aggrieved by this decision of the Revenue Tribunal, the appellants filed the aforesaid Special Civil Applications in the High Court of Judicature at Bombay which, as already sated, dismissed the same by its judgment and order dated September 15, 1967/September 19, 1967. It is against this judgment and order that the present appeals have been preferred.

3. As would be apparent from the above narrative, the instant case does not involve any substantial question of law of general or public importance. Although counsel for the appellants has strenuously assailed the correctness of the findings of the Revenue Tribunal and of the High Court, we are unable to accede to his contention. We have not, despite careful consideration of the judgments and objections submitted to us, been able to discern any legal infirmity or error either in the decision of the Revenue Tribunal or of the High Court. It is a well settled rule of practice of this Court not to interfere with exercise of discretionary power under Articles 226 and 227 of the Constitution merely because two views are possible on the facts of a case. It is also well established that it is only when an order of a Tribunal is violative of the fundamental basic principles of justice and fair play or

where a patent or flagrant error in procedure or law has crept in or where the order passed results in manifest injustice, that a court can justifiably intervene under Article 227 of the Constitution. In the instant case, we have not been able to find any such flaw. The finding of the Revenue Tribunal that the respondents were independent tenants of separate parts of the land in dispute under Vasudeo Balwant Telang, the predecessor-in-interest of the appellants, which has been affirmed by the High Court, appears to be well founded in view of the following proved facts and circumstances :

1. The entry made in the record of rights after due enquiry according to law about the status of the respondents 2 and 3 as protected tenants in respect of the portions of the land in dispute in their possession.

2. Separate payment of the rent by the respondents and acceptance thereof by Vasudeo Balwant Telang.

3. Application by Vasudeo Balwant Telang for declaration that respondents were jointly and severally responsible for payment of rent of the land in dispute.

4. Notices by Vasudeo Balwant Telang to the respondents terminating their tenancies on the ground that he required the portions of the land in their respective possession for personal cultivation.

5. Application filed by Vasudeo Balwant Telang against the respondents under Section 31 of the 1948 Act averring that he bonafide required the land for his personal cultivation.

4. In view of the foregoing, there is hardly any justification to interfere with the impugned judgment and order. In the result the appeals fail and are hereby dismissed but without any order as to costs.

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