Navinchandra Ramanlal

Vs

Kalidas Bhudarbhai and Another

Civil Appeal No. 2200 of 1969

(P. N. Shinghal, D. A. Desai JJ)

21.02.1979

JUDGMENT

Desai, J. -

1. This appeal by special leave arises from a judgment rendered by the Gujarat High Court in Special Civil Application No. 542 of 1964 filed by the present respondent 1 against the present appellant contending that the land involved in the dispute is not exempt from the operation of the Bombay Tenancy and Agricultural Lands Act, 1948 ('Tenancy Act' for short).

2. A brief recital of the facts will put the point of law raised herein in proper perspective. Appellant is the owner of Survey No. 165 measuring 2 acres 21 gunthas situated in Village Acher City Taluka, District Ahmedabad. Respondent is and has been the tenant of this land since before 1946. He became a protected tenant under the Bombay Tenancy Act, 1939 and his name appeared in the register of protected tenants maintained under that Act. On the introduction of the Tenancy Act of 1948 the respondent continued to be the protected tenant under it. A very comprehensive amendment was made in the Tenancy Act of 1948 by the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1956 (Bombay Act XIII of 1956) ('1956 Act' for short). Section 32 as amended by 1956 Act provided for transfer of ownership of the land from a landlord to the tenant of the land by operation of law. The day was styled as 'tillers day' and Section 32 provided that subject to the other provisions of the section and provisions of the next succeeding section every tenant shall be deemed to have purchased from his landlord free from all encumberances subsisting thereon on the said day, the land help by him as tenant. The land involved in this appeal was one to which the Tenancy Act of 1948 as amended by the Amending Act of 1956 applied and by the operation of law the tenant - the respondent - claimed to be the owner of the land.

3. Section 88 of the Tenancy Act of 1948 as it stood at the relevant time provided for exemption of certain lands from its provisions, one such exemption being in respect of any area which the State Government may, by notification in the official gazette, specify as being reserved for urban non-agricultural or industrial development. Armed with this power the Government issued Notification No. TNC/5156/101955-F, dated August 9, 1956 whereby amongst others the Government specified the area within the limits of the Municipal Corporations of the cities of Poona and Ahmedabad as being reserved for urban non-agricultural and industrial development. This notification was superseded by another Notification No. TNC/5156/169426-M, dated February 14, 1957 whereby the Government specified amongst others the areas within the limits of the Municipal Corporations of the Cities of Poona and Ahmedabad as being reserved for the abovementioned purpose. Neither of the notification at the date of issue had any relevance to the land involved in this appeal because it was not situated within the area of the Municipal Corporation of Ahmedabad.

4. Subsequently the Government extended the limits of Ahmedabad Municipal Corporation whereby Acher village in which Survey No. 165 is situated was included in the area of Municipal Corporation of Ahmedabad on and from May 30, 1959.

5. In January, 1960, Agricultural Lands Tribunal having jurisdiction over the area wherein the Survey No. 165 is situated, commenced an enquiry under Section 32G of the Tenancy Act of 1948 for determining the purchase price of the land on the footing that under Section 32 respondent/tenant has become the deemed purchaser of it. In the course of this enquiry the appellant-landlord gave an application that the land in respect of which the enquiry is being held is now included within the limits of Municipal Corporation at Ahmedabad and hence in view of Section 88(1)(b) read with the notification dated February 14, 1957, it was exempted from the operation of Sections 1 to 87 of the Tenancy Act of 1948 and, therefore, the enquiry should be dropped. The Agricultural Lands Tribunal rejected the application of the appellant-landlord and proceeded further with the enquiry. The appellant-landlord appealed to the Collector which met with the same fate. Appellant carried the matter to the Gujarat Revenue Tribunal. The Revenue Tribunal was of the opinion that on a true and correct interpretation of Section 88(1)(b) read with the relevant notification, not merely the lands which were in Ahmedabad Municipal Corporation area at the date of the notification would be exempted from the operation of the Tenancy Act but the exemption would also extend to the lands brought within the corporation area from time to time without any fresh notification for reservation and accordingly allowed the Revision Application of the appellant-landlord and directed that the enquiry under Section 32G be dropped. Respondent 1 tenant approached the High Court of Gujarat under Article 227 of the Constitution. The High Court held that the exemption would apply only to the lands included within the limits of the Municipal Corporation of Ahmedabad as on the date of notification and in the absence of the fresh reservation by a fresh notification the lands included in the Municipal area on extension of the limits of the Municipal Corporation subsequent to the notification would not be exempted from the operation of the Tenancy Act. In reaching this conclusion one aspect that impressed the High Court was that while power to exempt the land from the operation of the Tenancy Act vests in the Government, the area of the Municipal Corporation may be extended by the Corporation authority and if to such extended area the exemption were to apply, the power of granting exemption would be enjoyed by Municipal Corporation which was not the legislative delegate and on which the power to exempt was not conferred and simultaneously, the legislative delegate, namely, State Government would completely abdicate its function. This aspect is specifically referred to as it proceeds on an erroneous assumption that Municipal Corporation can extend its own area. A reference to Section 3 of the Bombay Provincial Municipal Corporation Act would show that unless the State Government in exercise of the power conferred upon it, extends the limits, the Municipal Corporation on its own cannot extend the limit. The assumption being correct, it cannot be called in aid of the conclusion reached by the High Court. Mr. J. G. Shah for the respondent, however, frankly stated that he could not support the aforementioned reason of the High Court and, therefore, the Court should ignore it. We would say no more about it. In accordance with its opinion that the land falling in the subsequently extended limit would not enjoy the benefit of exemption, the High Court quashed the order of the Gujarat Revenue Tribunal and directed the authority under the Tenancy Act to proceed further with the enquiry under Section 32G.

6. Mr. I. N. Shroff, learned Counsel who appeared for the appellant urged that the High Court was in error in putting a narrow construction on Section 88(1)(b) because the power to exempt an area situate within the Municipal Corporation limit was to be exercised for urban non-agricultural or industrial development and that once such power is exercised, it should cover the entire area situate within the limits of Municipal Corporation at any given point of time, and this construction adopted

by Gujarat Revenue Tribunal deserves acceptance by this Court as it effectuates the purpose for which power is conferred. It was further contended that once a notification exempting the land from the operation of the Tenancy Act is issued under Section 88(1)(b), the exemption would become operative retrospectively and no vested right could thereafter be claimed.

7. The contention raised by Mr. Shroff would have necessitated examination of the scheme of the various provisions of the Tenancy Act as has been done by the High Court but in our opinion the High Court unnecessarily undertook this exercise wholly overlooking and bypassing two important amendments introduced in the relevant provisions of the Tenancy Act of 1948, viz., Sections 43C and 88(1) both of which were in force at the time when the petition was heard and upon proper construction both amendments being retro-active in their operation from the commencement of the Amendment Act of 1956 which came into force on August 1, 1956, would have clinched the issue. Therefore, it is not necessary to examine the contention from the angle from which the High Court has done but the contention of Mr. Shroff can by disposed of by a mere reference to the two relevant provisions.

8. The two sections relevant for considering the exemption from the operation of the Tenancy Act of 1948 are Sections 43C and 88. Section 43C as it stood before its amendment by Gujarat Act 36 of 1965 read as under :

> 43C. Nothing in Section 32 to 32R, both inclusive, and 43 shall apply to lands in the areas within the limits of -
>
> #(a) * * * * *##
>
> (b) a Municipal Corporation constituted under Bombay Provincial Municipal Corporations Act, 1949.
>
> Section 88(1)(b) as it stood prior to the introduction of a proviso by Gujarat Act 36 of 1965 read as under :
>
> 88. (1) Save as otherwise expressly provided in sub-section (2) nothing in the foregoing provisions of this Act shall apply -
>
> #(a) * * * * *##
>
> (b) to any area which the State Government may from time to time by notification in the official gazette specify as being reserved for non-agricultural or industrial development.

9. The Tenancy Act of 1948 was amended by the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1965, (Gujarat Act 36 of 1965). Section 7 of the Amendment Act of 1965 reads as under :

> 7. Amendment of Section 43C of Bom. LXVII of 1948 - In Section 43C of the principal Act, for the words 'areas within the limits of', the words 'area which on the date of the coming into force of the Amending Act, 1955 are within the limits of' shall be substituted and shall be deemed to have been substituted with effect on and from August 1, 1956.

Section 18 of the Amending Act reads as under :

18. Amendment of Section 88 of Bom. LXVII of 1948. - In Section 88 of the principal Act, -

(1) in sub-section (1), -

#(i) * * * * *##

(ii) to clause (b) the following provisos shall be added, namely :

Provided that if after a notification in respect of any area specified in the notification is issued under this clause, whether before or after the commencement of the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1965 (Guj. 36 of 1965), the limits of the area so specified are enlarged on account of the addition of any other area thereto, then merely by reason of such addition, the reservation as made by the notification so issued shall not apply and shall be deemed never to have applied to the area so added, notwithstanding anything to the contrary contained in any judgment, decree, or order of any court, tribunal or any other authority.

Both these amendments to the principal Act were introduced by Gujarat Act 36 of 1965 which came into force from December 29, 1965. However, looking to the language of the amendments made in Section 43C and Section 88(1)(b), both the amendments are retroactive from August 1, 1956, i.e. from the date Bombay Act 13 of 1956 came into force. In other words, amended Section 43C and Section 88(1)(b) with its proviso will have to be read as if they were introduced in that very form from August 1, 1956.

10. Having noticed the amendments let us look to its impact on the question of application of the Tenancy Act of 1948 to the lands included in the Municipal Corporation area of Ahmedabad after August 1, 1956.

11. Indisputably, Survey No. 165, the land involved in this appeal, being situated within the revenue limits of Acher village, was included in the area of Ahmedabad Municipal Corporation from May 30, 1959. Therefore, on August 1, 1956 when the amended Sections 43C and 88(1)(b) with its proviso as amended by Act 36 of 1965 came into force, the land being not in Municipal Corporation area, would not enjoy the exemption as conferred on the land within the municipal corporation area by the notification issued on August 9, 1956, superseded by the subsequent notification dated February 11, 1957 in exercise of the power conferred by Section 88(1)(b). Accordingly, this land Survey No. 165 would be governed by the Tenancy Act of 1948. The consequences of the application of the Tenancy Act of 1948 to land Survey No. 165 may now be examined.

12. By Bombay Act 13 of 1956 a revolutionary amendment of far reaching consequence was made in the Tenancy Act of 1948 and the amended Act came into force with effect from August 1, 1956. The most important provision of the Amending Act was Section 32 as amended by the Amending Act which provided for transfer of the ownership of land by operation of law from the landlord to the tenant. The title to the land which vested in the landlord on April 1, 1957, the tiller's day, passed to the tenant by operation of law. What is the effect of this transfer of title was examined by this Court in Sri Ram Ram Narain Medhi v. State of Bombay (1959 Supp 1 SCR 489, 518, 519 : AIR 1959 SC 459 : 1959 SCJ 679). The Court held as under :

The title of the landlord to the land passes immediately to the tenant on the tiller's

> day and there is a completed purchase or sale thereof as between the landlord and the tenant. The tenant is no doubt given a locus penitentiae and an option of declaring whether he is or is not willing to purchase the land held by him as a tenant. If he fails to appear or makes a statement that he is not willing to purchase the land, the Tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective. It is only by such a declaration by the Tribunal that the purchase becomes ineffective. If no such declaration is made by the Tribunal the purchase would stand as statutorily effected on the tiller's day and will continue to be operative, the only obligation on the tenant then being the payment of price in the mode determined by the Tribunal. If the tenant commits default in the payment of such price either in lump or by instalments as determined by the Tribunal, Section 32M declares the purchase to be ineffective but in that event the land shall then be at the disposal of the Collector to be disposed of by him in the manner provided therein. Here also the purchase continues to be effective as from the tiller's day until such default is committed and there is no question of a conditional purchase or sale taking place between the landlord and tenant. The title to the land which was vested originally in the landlord passes to the tenant on the tiller's day for the alternative period prescribed in that behalf. This title is defeasible only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or committing default in payment of the price thereof as determined by the Tribunal. The tenant gets a vested interest in the land defeasible only in either of those cases and it cannot therefore be said that the title of landlord to the land is suspended for any period definite or indefinite.

13. If the effect of the land being governed by Section 32 on tiller's day is to transfer the title of the landlord to the tenant by operation of law, defeasible only in the event of tenant declining to purchase the land or committing default in payment of price as determined by the Tribunal, the next question is : if the land is subsequently brought within the municipal corporation area which area enjoys the exemption under Section 88(1)(b), would the vested title be divested ?

14. This question can be answered shortly by referring to the amended Section 43C and Section 88(1)(b) with its proviso, both of which clearly assert that the exemption granted under Section 88(1)(b) by a notification issued by the Government would enure for the benefit of the land which was within the municipal corporation area on August 1, 1956 and in no case the additional area which may be included within the municipal corporation area after August 1, 1956 would enjoy the exemption granted by the notification unless a fresh notification is issued. Admittedly, since February 14, 1957 no fresh notification is issued. The land bearing Survey No. 165 was not within the municipal corporation area either on February 14, 1957, the day on which exemption was granted, or on August 1, 1956 when Bombay Act XIII of 1956 was put into operation or on April 1, 1957, the tiller's day, when title to land would stand transferred to the tenant by sheer operation of law without anything more. Therefore, the notification dated February 14, 1957 would not cover the land which was at the date of the issue of the notification not included in Ahmedabad Municipal Corporation area. Subsequent extension of the area of municipal corporation would not enjoy the benefit of exemption in view of the proviso to Section 88(1)(b) and the opening words of Section 43C both of which clearly recite that the exemption would apply to the land included in the municipal corporation area on August 1, 1956, the day on which Bombay Act 13 of 1956 came into force, and not to any subsequently added area to the area of municipal corporation. Land bearing Survey No. 165 was brought within the municipal corporation area after August 1, 1956 and, therefore, the notification dated February 14, 1957 would not cover such added or extended area and

there would be no exemption under that notification for the land in the extended area.

15. If the land bearing Survey No. 165 does not enjoy the benefit of exemption under Section 88(1)(b) and it being agricultural land in respect of which the respondent was tenant on the tiller's day, the respondent has, by operation of law, become the owner and is a deemed purchaser. The Agricultural Lands Tribunal would have to proceed with the enquiry to determine the price as required by Section 320.

16. Mr. Shroff, however, contended that the decisions of this Court in Mohanlal Chunilal Kothari v. Tribhovan Haribhai Tamboli ((1963) 2 SCR 707 : AIR 1963 SC 358 : (1963) 2 SCJ 101), and Sidram Narsappa Kamble v. Sholapur Borough Municipality ((1966) 1 SCR 618 : AIR 1966 SC 538 : (1967) 1 SCJ 117), would clearly indicate that whenever a notification under Section 88(1)(b) is issued by the appropriate Government granting exemption to any area from the operation of the Tenancy Act for the purposes mentioned in the sub-section, such exemption will apply retrospectively and no vested right under the Tenancy Act, 1948 or even one under the Bombay Tenancy Act, 1939, could be claimed by anyone. It is not necessary to examine this contention because subsequent to the later decision in Sidram Narsappa Kamble (supra), the Tenancy Act of 1948 was amended by Gujarat Act 36 of 1965 making it abundantly clear that if there is any notification exempting any area from the operation of the Tenancy Act issued by the appropriate Government under Section 88(1)(b) the exemption would enure for the benefit of that area included in the municipal corporation as on August 1, 1956 and in the absence of a fresh notification such exemption would not be available to the extended area or area added to the area of municipal corporation and this amendment is made effective notwithstanding any judgment, order or decision of the court or Tribunal to the contrary. Presumably, in order to combat the effect of some judgments which purported to lay down that the exemption once granted would apply to any area that may be included in the corporation area at a date much later to the date of issue of the notification, the amendment was made. Accordingly, law having undergone a substantive amendment bearing on the subject, the ratio in the decision of Mohanlal Chunilal Kothari and Sidram Narsappa Kamble which turned upon the construction of Section 88(1)(b) as it stood at the relevant time, would not be of any assistance.

16. Therefore, for the reasons herein stated, this appeal fails and is dismissed with costs.

</html