Diwan Ram Rao

Vs

Mohan Lal

Civil Appeal No. 2611 of 1969

(N.L. Untwalia, P.N. Shinghal, A.D. Koshal JJ)

30.10.1979

JUDGMENT

UNTWALIA, J. –

1. Diwan Ram Rao Palshikar, the appellant in this appeal by special leave directed from the judgment of the Madhya Pradesh High Court, was a minor in the year 1947. The suit land bearing Khasra No. 92/93 measuring 1.10 acres was his Inam land situated in mouza Palsia-Hana now within the municipal limits of Indore City. During the appellant's minority his estate was under the management of the courts of Wards of the Holkar State. The Manager of the Court of Wards had given the land in dispute on lease to Shri Mohanlal Kimti, the defendant-respondent in the appeal, for one year i.e. fasli year 1357, equivalent to 1947-48, for agricultural purpose. That was the case of the appellant and according to his further case the lease expired on June 5, 1948. He attained majority on June 15, 1948. Even so the respondent failed to deliver possession of the suit land either to the Court of Wards or to the appellant. He, therefore, served on respondent 2 two registered notices, one dated September 7, 1948 and the other dated April 30, 1951, calling upon him to deliver possession of the agricultural land in dispute. He brought the suit on June 27, 1952 for possession and for recovery of Rs. 150 by way of mesne profits for three years as also for future damages at the rate of Rs. 50 per year till delivery of possession. It may be noticed here that the amounts claimed by the appellant were exactly at the rate of Rs. 50 per year, the rate at which the tenancy had been given to the respondent.

2. The defendant in his original written statement filed on September 2, 1952 contested the claim of the appellant on various grounds asserting that he had taken the land for construction of huts and had built upon it. This was in reply to the appellant's assertion that the land had been given for agricultural purpose but had been misused for building purpose. During the pendency of the suit in the trial Court the Madhya Bharat Munafi and Inam Tenants and Sub-Tenants Protection Act, 1954 (Madhya Bharat Act 32 of 1954) was passed and came into force on December 15, 1954. In accordance with the provision contained in the said Act the respondent applied to the High Court where the suit was pending to stay it under Section 3 and 4 of the said Act. In spite of opposition by the appellant the court allowed the prayer of the respondent and stayed the suit by its order dated August 31, 1955.

3. Madhya Bharat Act 32 of 1954 expired on October 2, 1959 on coming into force of the Madhya Pradesh Land Revenue Code, 1959 (Madhya Pradesh Act 20 of 1959). The appellant, thereupon filed an application on February 2, 1960 for resuming the proceedings of the suit. The proceedings were resumed. On November 22, 1960, however, the respondent filed an application for amendment of the written statement and claimed to resist the suit on the ground that he had become an

occupancy tenant of the disputed land under Section 185 of the Land Revenue Code. In spite of the objection by the appellant, amendment was allowed and a new issue being Issue 12 was framed in the following terms :

> Has the defendant become occupancy tenant in view of Section 185(2) of M. P. Land Revenue Code ? If so effect ?

4. The trial Court took up the 12th issue aforesaid for trial as a preliminary issue in the suit and held that since the land in dispute was the Inam land of the appellant and the same was leased out to the respondent for agricultural purpose wherein he was induced as an ordinary tenant he continued to hold it as such on October 2, 1959 when the Land Revenue Code came into force and, therefore, he became an occupancy tenant, under Section 185(1)(ii)(a) of the Land Revenue Code. The appellant was, therefore, not entitled to dispossess him. The claim for money was decreed to the tune of Rs. 150 for the past three years and at the rate of Rs. 50 per year in future. No eviction decree was granted. The decree of the trial Court has been maintained by the first appellate Court as also by the Hight Court in second appeal. On grant of special leave by this Court the plaintiff preferred this appeal.

5. Mr. M. N. Phadke submitted that in order to claim protection under the Land Revenue Code it was necessary for the respondent to show that on October 2, 1959 he was holding the land as a tenant for agricultural purpose. Counsel submitted that in the instant case in view of the written statement of the respondent the land was leased out to him not for agricultural purpose but for building purpose or in any event admittedly he had used and continued to use it for that purpose. It was further submitted that even on the basis of the allegations in the plaint the land was leased out for one year for agricultural purpose but shortly after the lease it was misused by the respondent for building purpose and hence the admitted position on October 2, 1959 was that the respondent was holding the land either as a trespasser or even if holding it as a tenant he was holding it not for agricultural purpose but for bulding purpose. In that view of the matter it was assured on behalf of the appellant that the respondent did not become an occupancy tenant under the Land Revenue Code. Mr. T. P. Naik strenuously contested the submission of Mr. Phadke and argued that for declining the preliminary issue which the parties agreed to be tried in the first instance only the allegations in the plaint had to be looked into and not those in the written statement. In any view of the matter, reading the written statement as a whole and especially the amended one it was clear that the respondent had acquired the right of an occupancy tenant under the Land Revenue Code.

6. In our Judgment the High Court has correctly decided the case in favour of the respondent following the decision of this Court in Rao Nihalkaran v. Ramgopal ((1966) 3 SCR 427 : AIR 1966 SC 1485) wherein the entire history of the relevant laws has been lucidly traced, if we may say so with respect, by Shah J., as he then was, delivering the judgment on behalf of a Constitution Bench of this Court. It is not necessary for us to repeat that history. Suffice it to say that the legislature of Madhya Bharat which was a Part B State enacted Act 66 of 1950 entitled the Madhya Bharat Land Revenue and Tenancy Act. The various kinds of tenants are defined in Section 54 and 55 of the said Act. We would refer to Section 54 (xviii) :

> Tenant - Tenant means a person who holds land for agricultural purpose, from the government or from an assignee of the proprietary rights and who is, or but for a contract would be liable to pay rent for his holding; but does not include :-
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> (i) a concessional holder as defined in sub-clause (x);

(ii) a holder of a service holding, as defined in Section 99;

(iii) a person to whom only the rights to cut grass or graze cattle or propagate or collect has been granted.

In order to give protection to the tenant Act 32 of 1954 was passed by the Madhya Bharat Legislature. As stated above, the suit for eviction of the tenant had to be stayed and was stayed under the said provision of law. In Nihalkaran case ((1966) 3 SCR 427 : AIR 1966 SC 1485) the tenancy of the respondent had been determined by the appellant by a valid service of notice. The argument of counsel for the latter was that the respondent not being a tenant at the commencement of the Code could not acquire the rights of an occupancy tenant and that any proceeding instituted against the tenant must be heard and disposed of according to the law in force prior to the commencement of the Code. This argument was repelled at pages 432-33 thus :

> The definition of the expression "tenant" in Section 2(y) postulates a subsisting tenancy, but that definition may be resorted to for interpreting Section 185(1) only if the context or the subject-matter of the section does not suggest a different meaning. A tenant is by the definition a person who holds lands as an occupancy tenant from a Bhumiswami but the status of a Bhumiswami is recognised for the first time by the Code, and an occupancy tenant from a Bhumiswami would mean only a person belonging to that class who acquires rights of occupancy tenant after the Code comes into force. The position of a tenant prior to the date on which the Code was brought into force does not appear to have been dealt with in this definition. The definition which is specially devised for the purpose of the Act throws no light on the nature of the right which invests the holder of land with the status of an occupancy tenant at the commencement of the code. In the context in which the expression "tenant" occurs in Section 185 the definition could not be intended to apply in determining the conditions which invest upon a holders of land the status of an occupancy tenant. If the expression "tenant " in Section 185(1) be released from the artificial definition as given in Section 2(y), in view of the context in which it occurs, the expression "tenant" in Section 185(1)(ii)(a), having regard to the object of the enactment would be ascribed the meaning that expression had in Act 32 of 1954.

7. Mr. Phadke, however, submitted that in Nihalkaran case ((1966) 3 SCR 427 : AIR 1966 SC 1485) there was no dispute that the tenant whose tenancy had been determined by notice was holding the land for agricultural purpose and in that view of the matter protection was afforded to him under the Land Revenue Code, while in the instant case either the tenancy was not for agricultural purpose or the respondent had ceased long ago to hold it for such a purpose, hence he was not entitled to claim protection under the Land Revenue Code. In our opinion the argument put forward on behalf of the appellant is not sound and cannot be accepted as correct and for two reasons to be stated hereinafter.

8. The first reason is that reading the pleadings of the parties together as a whole it would be found that the lease had been granted for agricultural purpose. The appellant all along treated him as a tenant under Act 66 of 1950 in spite of the huts which the respondent had put upon the land. In the notice which the appellant had given prior to the institution of the suit, as is mentioned in the judgment of the High Court, it was clearly stated that the land in dispute was an Inam land; that it was an agricultural land and that it was leased out to the defendant for agricultural purposes. In the plaint, paragraphs 1 and 2 the same position was reiterated. In paragraph 3, however, it was stated that he had built a house on the land and hence also the suit was filed. But the main case of action

mentioned in paragraph 4 of the plaint was the expiry of the period of one year's lease. On the averment in the plaint itself two things may be pointed out. Firstly it was not asserted that the lease stood forfeited on account of the misuse of the land. The determination of the lease was claimed only on account of efflux of time. Secondly the house which was alleged to have been built by the defendant could not be on the entire area of more than one acre. It must have been on a portion of it only. In that view of the matter Section 55 of Madhya Bharat Act 66 of 1950 comes into play. The said section runs as follows :

> 55. Duties of a tenant. - A tenant shall use his holding only for agricultural purpose, namely :-
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> (i) the growth of any crops, except such as may, from time to time be prohibited by the Government; or
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> (ii) the growth of grass or food for cattle; or
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> (iii) the growth of trees; or
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> (iv) the erection of a dwelling house for his domestic use; or
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> (v) the erection of such buildings or other structures as he may reasonably require for the purpose of his agriculture; or
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> (vi) the construction and maintenance of any work of the kind described in Section 56.

In the plaint no facts were stated which could take the case out of Section 55. It is no doubt true that in the year 1952 the respondent was advised (which transpired to be an ill-advice) to take the plea that the land was neither an agricultural land nor was it used as an agricultural land. But he asserted in the same original written statement that the lease deed was got executed by him year after year. In the written statement the defendant merely claimed that he had constructed a hut even prior to the execution of the rent note i.e. the lease for one year : If that be so, even on the reading of the original written statement it appears to us that the respondent claimed to have constructed a hut within the meaning of Section 55 of Act 66 of 1950. But to crown all when the amendment in the written statement was allowed in the year 1960 permitting the respondent to claim to be an occupancy tenant under Section 185(2) of the Land Revenue Code that could be done only on the footing that he asserted on that date that he was holding the land as an agricultural tenant. It may well be that such a stand which was implicit in the amendment of the written statement was not quite consistent with his original stand. Yet the amendment was allowed and no grievance of it was made either in the first appellate Court or in the High Court, nor, even before us. As we have said above reading the written statement as a whole and specially in view of the clear and definite assertion in the plaint we do not feel persuaded to disagree with the courts below and hold that the preliminary issue has wrongly been decided against the appellant and in favour of the respondent.

9. The second reason for upholding the judgment of the High Court is that the ratio of Nihalkaran case ((1966) 3 SCR 427 : AIR 1966 SC 1485) cannot be confined to a case of determination of tenancy by notice only. It is well known that a tenancy of a tenant gets determined by several modes such as by efflux of time, by notice, by forfeiture brought about by the misuse of the land and the like. It is difficult to distinguish between one kind of determination of the tenancy and the other for the application of the ratio decidendi of Nihalkaran case ((1966) 3 SCR 427 : AIR 1966 SC 1485).

It could not be and was not disputed that a tenant continuing in possession of the land even after its determination by one method or the other does not abruptly become a trespasser. If a beneficial legislation gives him protection against eviction he can claim protection in spite of the determination of the tenancy. That is in substance what was held in Nihalkaran case ((1966) 3 SCR 427 : AIR 1966 SC 1485). If that be so, we see no reason to refuse protection to the respondent in this appeal and to hold that because he has used the land for "building purpose", he could not get the protection of being an occupancy tenant under the Land Revenue Code.

10. For the reasons stated above we dismiss this appeal but make no order as to costs.

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