

Tavangowda Tamangowda Patil and Others

Vs

Yellappa Krishna Muchandi and Others

Civil Appeal No. 536 of 1970

(O. Chinnappa Reddy, P. N. Shinghal JJ)

15.01.1980

JUDGMENT

CHINNAPPA REDDY, J. –

1. A plot of land in Survey No. 898 of Belgaum measuring 150 ft. x 90 ft. was leased by the father of the appellants to the respondents in about the year 1947 on annual rent. The lease was for the purpose of storing timber etc. The land was watan land attached to the official Patil. The appellant's father died in 1956. In 1961 in appellants filed a petition before the Assistant Commissioner, Belgaum for restoration of the land to them as the lease in favour of the respondents by their father was determined on the death of their father. The Assistant Commissioner by his order dated December 10, 1962, allowed the petition and directed restoration of possession of the land to the appellants. An appeal preferred to the Deputy Commissioner, Belgaum and a further appeal to the Mysore Revenue Appellate Tribunal were dismissed. The respondents filed writ petition 2427 of 1966 in the High Court of Mysore. The High Court allowed the writ petition, holding that the respondents were protected by the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

2. Sri V. N. Ganpule, learned counsel for the appellants raised two contentions before us : (1) The lease in favour of the respondents stood determined on the death of the father of the appellants in 1956 and the respondents were not tenants within the meaning of Section 5(11) of the Bombay Rent Act. (2) In any case the land in question was not "premises" as defined in Section 5(8) of the Act and therefore, the provisions of the Bombay Rent Act were not attracted.

3. To appreciate the contentions raised by Shri Ganpule it is necessary to make a brief reference to the relevant provisions of the Bombay Hereditary Offices Act, 1874 and the Bombay Rents, Hotel and Lodging House Rates Control Act, 1974. Section 5(8) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, defines "premises" as meaning :

(a) any land not being used for agricultural purposes,

(b) any building . . .

Section 5(11) defines "tenant" as follows :

Tenant means any person by whom or on whose account rent is payable for any premises and includes -

#(a) \* \* \* \*(aa) \* \* \* \*##

(b) any person remaining, after the determination of the lease, in possession, with or without the assent of the landlord, of the premises leased to such person or his predecessor who has derived title before coming into operation of this Act;

#(c) \* \* \* \*##

Section 5(1) of the Bombay Hereditary Offices Act, 1874, is as follows :

Without the sanction of the State Government, or in the case of a mortgage, charge, alienation, or lease of not more than 30 years, of the Commissioner it shall not be competent -

(a) to a watandar to mortgage, charge, alienate or lease, for a period beyond the term of his natural life, any watan, or any part thereof, or any interest therein, to or for the benefit of any person who is not a watandar of the same watan;

(b) to a representative watandar to mortgage, charge, lease or alienate any right with which he is invested, as such, under this Act.

4. The submission of Shri Ganpule was that the material date for ascertaining whether the plot of land was "premises" within the meaning of Section 5(8) of the Bombay Rent Act was the date of letting and as it was not shown that the user of the land was converted from agricultural to non-agricultural purposes after obtaining the permission of Collector in accordance with the provisions of the Bombay Land Revenue Code, it must be held that the land was not 'premises' within the meaning of Section 5(8) on the material date. He relied on the decision of this Court in Subhadra Mst. v. Narsaji Chenaji Marwadi ((1962) 3 SCR 98 : AIR 1966 SC 806 : (1963) 1 SCJ 433). The fundamental flaw in the submission of Shri Ganpule is the underlying assumption that the land was agricultural land at the inception or at any rate at the time when it was let out to the respondents for the first time. We find no basis in the record for these assumptions. In fact, before the High Court when it was argued that the land was used for non-agricultural purposes and therefore, the provisions of the Bombay Rent Act were applicable, the answer of the present appellants was not that it was agricultural land on the material date but that it was exempt from the provisions of the Act as it belonged to the government. As we observed, there is no basis in the record for the assumption that the land was ever used for agricultural purposes. When the land was leased to the respondents it was admittedly leased for the purpose of storing timber etc. We are, therefore, unable to see any force in the first submission of Shri Ganpule.

5. There is equally no force in the other submission of Shri Ganpule. It is true that a lease granted without the sanction of the State Government is not valid beyond the lifetime of the watandar granting the lease and will not bind the successor watandars but the question is whether the respondents continued to be tenants within the meaning of Section 5(11) of the Bombay Rent Act notwithstanding the determination of the lease consequent on the death of the father of the appellants. Section 5(11)(b), which we have extracted, is clear that any person remaining, after the determination of the lease, in possession, with or without the assent of the landlord is also a tenant for the purposes of the Act. The learned counsel argued that the determination of the lease contemplated by Section 5(11)(b) was determination by an act of the landlord and not determination by the operation of the law. We do not see any justification for so confining the meaning to be given

to the expression "the determination of the lease" in Section 5(11) of the Act. The expression is unqualified and there is no compelling reason why we should add words of qualification. We, therefore, dismiss the appeal with costs.

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