Smt. Parvati and Others

Vs

Smt. Fatehsinhrao Pratapsinhrao Gaekwad

Civil Appeal No. 1947(N) of 1972

(A. P. Sen, B. C. Ray JJ)

18.09.1986

JUDGMENT

RAY, J. -

1. This appeal on special leave is against the judgment and decree made on October 4, 1971 in SA No. 313/63 by the High Court of Gujarat whereby it was held that in view of the retrospective effect given by virtue of the notification issued under Section 88(1)(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 the provisions of the said Tenancy Act was not applicable in respect of lands within the municipal limits of the city of Baroda and as such the civil court was competent to determine the reasonable rent in respect of the lands in question taken settlement of by the defendant on the basis of the kabuliyat executed on June 2, 1956 for a period of three years from 1956 to 1958.

2. The admitted facts of this case are that the defendant Kashiram Jaiswal, since deceased, took position of the lands measuring 20 acres 27 gunthas in S. No. 707 of Baroda Kasba situated behind Kirti Mandir in the city of Baroda from the respondent by executing a Kabuliyat dated June 2, 1956 for a period of three years from 1956 to 1958 at an annual rent of Rs. 2225. The said kabuliyat was however not registered. The defendant paid in total a sum of Rs. 970.31 in respect of arrears of rent if the said years 1956-57 and 1957-58. The plaintiff who is trustee of the temple Kirti Mandir instituted a regular suit No. 143/59 in the court of Third Joint Civil Judge, Baroda for recovery of arrears of rent at Rs. 3479.69 setting off the amount paid already. The defence was that the suit was not entertainable in the civil court inasmuch as even though the Tenancy Act ceased to apply on the issue of the notification under Section 88(1)(b) of the said Act in respect of lands within the municipal limits of city of Baroda yet the rights of the tenant in respect of the suit land which accrued before the said notification subsisted or in other words the same was not affected by the said notification. It has been further contended that since the Mamlatdar has determined the fair rent in accordance with the provisions of Sections 8 and 9 of the said Act at Rs. 375 and 5 annas lawfully payable in respect of the said land the plaintiff could not recover any amount in excess of the said sum. The trial court held that the Tenancy Act was applicable to this case and since the Mamlatdar has already determined the reasonable rent in respect of the lands in question the civil courts was not competent to determine the same once again. The suit was accordingly dismissed. On appeal the District Judge, Baroda dismissed the appeal and affirmed the judgment and decree of the court below. Against this judgment and decree SA No. 313/63 was preferred in the High Court of Gujarat. The High Court on considering the decision of this Hon'ble Court in S.N. Kamble case [S.N. Kamble v. Sholapur Borough Municipality, (1966) 2 SCR 618 : AIR 1966 SC 538] held that in view of the notification issued under Section 88(1)(b) of the said Act the provisions of the Tenancy Act will not apply retrospectively in view of the notification issued under sub-section (1)(b) of Section

88 of Act 30 of 1956 issued on May 21, 1958. The High Court, therefore, framed the following issue :

> At what rate is the plaintiff entitled to claim rent in respect of the land in occupation of deceased defendant Surajmal Kashiram for the two years 1956-57 and 1957-58 having regard to the rent may be considered reasonable in the light of the evidence that may be adduced before the court.

And sent the records to the trial court for determination of the said issue on allowing the parties to adduce evidence. The trial court was also directed to return the evidence together with its findings thereon to the High Court of Gujarat. The trial court after considering the evidence adduced by both the parties held that the reasonable rent of the land in question was Rs. 2225 per annum. With these findings of the trial court the records were returned to the High Court of Gujarat. On October 4, 1971 the High Court of Gujarat allowed the appeal setting aside the judgment and decree passed by the courts below decreeing the suit for a sum of Rs. 3479.69 paise as rent to be recovered from the legal heirs of the defendants-respondents.

3. The sole question that poses itself for consideration before this Court is whether the issuance of notification under sub-section (1)(b) of Section 88 of Act 30 of 1956 on May 21, 1958 making the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 inapplicable to the lands reserved for non-agricultural or industrial development in the municipal limits of the city of Baroda retrospectively. Or in other words whether the said Act will not at all apply to lands within the Baroda Municipality which have been reserved for non-agricultural or industrial development by the aforesaid notification dated May 21, 1958 published in the official gazette. If the Act does not at all apply then the determination of rent of the suit land as made by the Mamlatdar under the provisions of Sections 8 and 9 of the said Act will be of no avail and the civil court will be competent to determine the rent payable by the defendant-tenant in respect of these lands in question to the respondent on the basis of the kabuliyat by the defendant-appellant or in case the kabuliyat is held to be inadmissible in evidence because of non-registration the reasonable rent payable in respect of the said land is to be determined. To determine this question it is pertinent to refer to the provisions of Section 88(1)(b) which is quoted hereinbelow :

> Section 88(1) Save as otherwise provided in sub-section (2), nothing in the foregoing provisions of this Act shall apply -
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> (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.

On a plain reading of the provisions of Section 88(1) it is crystal clear that on the issuance of the notification under Section 88(1)(b) on May 21, 1958 reserving the land within the municipal limits of the city of Baroda for non-agricultural or industrial development the provisions of the Tenancy Act were made inapplicable retrospectively subject to the exception provided in sub-section (2) of Section 88. Another section very relevant to be considered in this connection is Section 89 of the said Act. Sub-section (2)(b) of the said section further provides that save as expressly provided in this Act nothing in this Act or any repeal effected thereby shall be deemed to affect any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act. It was tried to be contended before us on behalf of the appellant that in view of this provision the right of the defendant-tenant to pay rent as determined by the Mamlatdar under the

provisions of Section 8 and 9 of the Bombay Tenancy and Agricultural Lands Act, 1948 will not be affected by the retrospective effect given by Section 88 of the said Act. It has been further urged that the reasonable rent in respect of the lands in question has already been determined by the Mamlatdar and the civil court is not competent to decide reasonable rent once again and the determination made by the civil court is ineffective.

4. It was urged on behalf of the respondent that in view of the notification issued under Section 88(1)(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 the provisions of the Tenancy Act are not applicable to lands within municipal limits of Baroda city at all as retrospective effect was given to the said provisions and as such the rights that had accrued to a tenant in respect of a land within municipality will automatically go.

5. As already held before that on a plain reading of the provisions of Section 88 of the Act it is quite clear and apparent that the provisions of the said Tenancy Act are not applicable to any area notified by the State Government as being reserved for non-agricultural or industrial development. In the instant case, there has been a notification by the government on May 21, 1958 under sub-section (1)(b) of Section 88 of Act 30 of 1956 declaring that the lands within municipal limits of the city of Baroda are reserved for non-agricultural or industrial development. The consequence that falls is that the provisions of Bombay Tenancy and Agricultural Lands Act, 1948 are not applicable to the land in question as the same is situated within municipal limits of the city of Baroda and as a result these rights acquired under the said Act automatically becomes non est. It has been tried to be urged by referring to the provisions of Section 89(2)(b) of the said Act that right, title and interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act will not be affected by the retrospective affect given to the provisions of Section 88 of the said Act. This argument, in our considerable opinion, is totally devoid of any merit. In view of specific provision in the said sub-section (2)(b) of Section 89 to the effect "shall, save as expressly provided in this Act, affect or deemed to be affected". It follows from this provision that in the absence of an express provision in the Act any right, title, interest, obligation or liability already acquired or accrued before the commencement of this Act shall not be affected by the Act of 1948. Section 88(1)(b) of the said Act has specifically provided that on the issue of a notification in the official Gazette specifying areas reserved for non-agricultural or industrial development the provisions of the Tenancy Act, 1948 shall not apply. Therefore, reading these two provisions together the only reasonable conclusion that follows is that the provisions of the Act will not be applicable to the lands notified by the government in the official Gazette as being reserved for non-agricultural or industrial development. This has been expressly provided in Section 88(1)(b) of the Act. The argument that the argument that the retrospective effect given to the provisions of Section 88(1)(b) will not affect the rights or interest acquired or accrued under the said Act prior to the commencement of the 1948 Act is of no substance and as such it cannot be sustained. It may be pertinent to refer to the provisions of Section 89-A of the Act wherein it has been expressly provided that notwithstanding repeal of the 1939 Act the provisions of Section 3, 3-A and 4 of the Bombay Tenancy Act, 1939 as set out in Schedule I to this Act shall always be deemed to be extended to and to be in force in, those areas on the dates on which this Act was extended to and brought into force. Therefore, express provisions has been made for the preservation of the rights accused under Sections 3, 3-A and 4 of the Bombay Tenancy Act, 1939 in spite of the repeal of 1939 Act by the Bombay Act 1948, that is, the Bombay Tenancy and Agricultural Lands Act, 1948. This very question about the effect of the provisions of Section 88(1)(b) and the provisions of Section 89(2)(b) of the Act fell for consideration in the case of Sakharam v. Manikchand Motichand Shah [(1962) 2 SCR 59 : AIR 1963 SC 354]. In that case the only question that arose for determination was whether the defendant-appellants were "protected tenants" within the meaning of

Bombay Tenancy Act, 1939 (Bombay Act 29 of 1939). It was held that the provision of Section 88 of the Bombay Tenancy and Agricultural Lands Act, 1948 were entirely prospective and it would apply to such lands as prescribed in clauses (a) and (d) of Section 88(1) from the date on which the Act came into operation i.e. December 28, 1948 and are not of a confiscatory nature so as to take away from the tenant the status of a protected tenant already accrued to him. It has been further observed that Section 89(2)(b) of the Act clearly intends to conserve such rights as were acquired or accrued before its commencement and that any legal proceeding in respect of such rights was to be disposed of in terms of the Act of 1939. It is to be noticed in this case that the question as of effect of a notification published in the official Gazette by the Government under Section 88(1)(b) of the said Tenancy Act of 1948 did not arise for consideration. Furthermore, as we have said already hereinbefore that Section 89-A read with Schedule I to the said Act clearly preserves the rights acquired or accrued under the provisions of Sections 3, 3-A and 4 of the Bombay Tenancy Act, 1939. This case, therefore, strictly speaking does not deal with the question that specifically has arisen in the instant case.

6. This Court in the case of Mohanlal Chunilal Kothari v. Tribhovan Haribhai Tamboli [(1963) 2 SCR 707 : AIR 1963 SC 358] has held that a notification issued under clause (d) of sub-section (1) of Section 88 of the Bombay Tenancy and Agricultural Lands Act, 1948 declaring lands within municipal area as reserved for urban non-agricultural or industrial development were clearly retrospective in operation and the intention of the legislature obviously was to take away all the benefits arising out of the Act of 1948 and not those arising out of the Act of 1939 that is under Sections 3, 3-A and 4 of the said Act as soon as the notification was made under clause (d). In other words, it has been observed specifically that the rights acquired under the Tenancy Act, 1939 except rights acquired under Sections 3, 3-A and 4 will be no longer in existence after the issuance of notification under Section 88(1)(b) of the Act of 1948.

7. In a later decision in Sidram Narsappa Kamble v. Sholapur Borough Municipality [S.N. Kamble v. Sholapur Borough Municipality, (1966) 2 SCR 618 : AIR 1966 SC 538], this question came to be considered by a larger Bench of this Court and it was held that the plain effect of the provisions contained in Sections 31, 88 and 89(2)(b) is that in view of the express provision contained in Section 88(1)(a), the appellant could not claim the benefit of Section 31 nor could it be said that his interest as a protected tenant was saved by Section 89(2)(b) of the said Act. It was further observed that Sections 3, 3-A and 4 of 1939 Act were continued in a modified form in Schedule I of the 1948 Act only for the purpose of Section 31 of the 1948 Act. It is obvious that the consequence follows that protected tenants are only those tenants specified in those three sections aforesaid and that no new protected tenant could come into existence under the 1948 Act. The intention from the express words of Section 88(1)(a) is also the same. It has been observed that the intention from the express words of Section 88(1) is that there will be no protected tenant after the 1948 Act came into force in regard to lands held on lease from a local authority in view of the express provision contained in Section 88(1)(a). We have already held hereinbefore that the effect of the notification dated May 21, 1958 issued under Section 88(1)(b) of the Tenancy Act of 1948 specifying the lands within the municipal limits of Baroda city reserved for non-agricultural and industrial development is that all rights, title, obligation etc. accrued or acquired under the said Act ceased to exist as the said section expressly states that the provisions of the Tenancy Act of 1948 will not apply to such lands. Section 88(1) is given retrospective effect. The provision of Section 89(2)(b) are not applicable to protect the right, title, interest already accrued before the commencement of this Act except as provided in Section 89-A owing to express provisions made in Section 88 of the said Act.

8. In view of our findings referred to hereinbefore the irresistable conclusion follows that the

determination by Mamlatdar under Sections 8 and 9 of the Tenancy Act automatically becomes ineffective and non est by virtue of Section 88(1)(b) of the said Act and the notification made thereunder. The civil court is legally competent to determine the reasonable rent payable by the defendant-tenant and this determination has been duly made by the civil court and same has been affirmed by the High Court of Gujarat. There is, therefore, no merit in this appeal which is dismissed without any order as to costs.

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