Sakharam Shripati Jadhav (Deceased) Through His Lrs and Others

Vs

Chandrakant Alias Madhav Laxman Agnihotri and Others

Civil Appeal No. 20 of 1987

(Sabyasachi Mukharji, K. N. Singh JJ)

08.01.1987

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. Special leave granted. Heard counsel for the parties on the appeal.

2. This appeal by special leave arises out of the judgment of the High Court of Bombay dated November 9, 1983. It raises a short and an interesting point. Shripati Balla Jadhav, father of the appellants had executed a lease deed with regard to the suit land in favour of the landlord and taken the said land on lease. The said lease was for the purpose of cultivation of chillies, tobacco, sugarcane, groundnuts etc. That is the version of the petitioners/appellants.

3. The question is, whether the lease was taken for the aforesaid purposes or was only for the cultivation of sugarcane alone. In deciding that question the terms of the lease will have to be borne in mind. Suo motu proceedings for fixing the price under Section 32(G) of the Bombay Tenancy and Agricultural Lands Act, 1948 - being Act No. 67 of 1948 (hereinafter called the 'Act') was taken on the assumption that the tenant had become statutory purchaser by virtue of Section 32 of the said Act. The proceedings were dropped as some of the respondents were then minors. An order was made by Deputy Collector in appeal from the order of the trial court in proceedings under Section 32-G of the said Act remanding the case to the trial court on Mach 31, 1973. Thereafter on July 17, 1975, the Maharashtra Revenue Tribunal confirmed the order of remand made by Dy. Collector, in revision filed by the respondents herein. The High Court thereafter rejected the writ petition of the landlord against the order of the Tribunal and as such the proceedings under Section 32(G), according to the appellants herein, are still pending.

4. On June 15, 1974, the respondents made an application under the Act for determination of reasonable rent on the basis that the lands were leased for growing sugarcane. The trial court on February 11, 1975 rejected the application in respect of the tenancy of Aval Kankoon on the ground that the lands had been leased not for growing sugarcane alone, but for different types of crops. On or about May 31, 1977, the Special Land Acquisition Officer, Kolhapur in Tenancy Appeal No. 302 of 1975 allowed the tenancy of Aval Kankoon and directed the determination of the rent on the basis that the lands were leased for growing sugarcane. The said order was confirmed on November 30, 1978 by the Maharashtra Revenue Tribunal, Kolhapur, in appeal filed by the appellants. There was a writ petition thereafter on November 9, 1983 by the appellants under Article 227 of the Constitution and the High Court of Bombay rejected the said writ application. The petitioners have came up in special leave to this Court.

5. It may be mentioned before we deal with the judgment under appeal that the said Act was an Act to amend the law relating to tenancy of the agricultural land and to make certain other provisions with regard to those lands. It may be mentioned that the purpose was to make the tillers owners of the land and in respect of mortgages of certain lands giving the tenant the right of repurchase of the land. It is a social agrarian reform measure to ameliorate the conditions of the tenants. See in this connection the Statement of Objects and Reasons of the said Act.

6. In the preamble it is stated that it was necessary to amend the law which governed the relations of landlords and tenants of agricultural lands; and further whereas on account of the neglect of a landholder or disputes between landlord and tenants, the cultivation of an estate has seriously suffered, or for the purpose of improving the economic and social conditions of peasants or ensuring the full and efficient use of land for agriculture, it was expedient to assume management of estates held by landholders and to regulate and impose restrictions on the transfer of agricultural lands, dwelling houses, sites and lands appurtenant thereto or occupied by agriculturists, agricultural labourers and artisans in the province of Bombay and to make provisions for certain other purposes therein the said Act was being passed. The Act was intended to benefit tenants in respect of the said evils. But Chapter III-A which was inserted by Bombay Act 13 of 1956 provided special provisions for land held on lease by industrial or commercial undertakings and by certain persons for the cultivation of sugarcane and other notified agricultural produce. Under the scheme of the Act under Sections 4-B, 8, 9,9-A, 9-B, 9-C, 10, 10-A, 14, 16, 17-A, 17-B, 18, 27, 31 to 31-D (both inclusive) 32 to 32-R (both inclusive), 33-A, 33-B, 33-C, 43, 63, 63-A, 64 and 65 dealt with the various kinds of rights of the tenants in land, including the right of repurchase as contemplated in Sections 32 to 32-R. Section 32(1) provided that on first day of April, 1957 which was called "the tillers" day" in the Act every tenant should subject to the other provisions of the Act and the succeeding sections be deemed to have purchased from the landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant, if such tenant was a permanent tenant thereof and cultivated land personally; or such tenant was not a permanent tenant but cultivated the land leased personally; and the landlord had not given notice of term nation of his tenancy under Section 31; or notice had been given under Section 31, but the landlord had not applied to the Mamlatdar on or before 31st day of March, 1957 under Section 29 for obtaining possession of the land; or for certain other contingencies mentioned in clause (ii) and other clauses of Section 32 of the Act.

7. Section 43-A which is in Chapter III-A provides, inter alia, by clause (b) of Section 43-A(1) that to leases of land granted to any bodies or persons other than those mentioned in clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of livestock, the aforesaid provisions for the benefit of tillers or tenants would not apply.

8. In this appeal we are concerned with a very short question namely, whether the lease of land granted in this case is covered by clause (b) for the lease for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of livestock. Clause (a) of sub-section (1) of Section 43-A deals with land leased to or held by any industrial or commercial undertaking which in the opinion of the State Government bona fide carries on by any industrial or commercial operations and which is approved by the State Government.

9. By the order of the Maharashtra Revenue Tribunal, the tenant had been denied that right as against the landlord. The revision petition was filed by the respondents-tenants in proceedings under Section 43-B of the said Act to question the order made by the Member, Maharashtra Revenue Tribunal, Kolhapur, refusing to interfere with the order made by the Special Land Acquisition Officer (ii) Tulsi Project, Kolhapur, holding that the purpose of the lease as far as suit lands were

concerned was one for cultivating sugarcane and as such the lands were governed by the provisions of Section 43-A of the Act. The question is, is that finding correct ?

10. Both the courts had interpreted the original kabulayat herein dated February 24, 1947 to come to the conclusion that this land was leased for raising sugarcane. Our attention was also drawn to the official translation of the said documents which will be presently noted. It may be mentioned that initially proceedings under Section 88-C of the Act were filed on the basis that the lands were jiravat lands but the said proceedings were withdrawn, and further that proceedings under Section 32-G of the Act were also initiated in 1972, which were still pending. In those proceedings too, the character of the lands was stated to be jiravat lands. According to the learned counsel, this characterisation of the lands as jiravat lands was contrary to the findings recorded by the revenue authorities and there was an error apparent on the face of the record, and so was contended before the High Court. Secondly, the learned counsel had submitted before the High Court that on correct reading of the kabulayat there was an express mention that apart from sugarcane no other crops could be cultivated and if that was so, the revenue courts were in error in holding otherwise. The High Court noted that the proceedings before it were not proceedings in appeal. The High Court rightly rejected the application under Article 227 of the Constitution on the view that if a reasonable view of the evidence was taken by the authorities competent to decide the controversy, no interference was called for. Furthermore that was a fact which had to be determined on the basis of the evidence. However, it was contended before the High Court with reference to the kabulayat that it could be seen that this kabulayat of 1947 conferred a right of cultivation for five years. The kabulayat specifically mentioned that possession of the lands as well as the well was given under the document. It provided that the executant could take the crop in due consultation with the landholders and there the mention of the crops indicated all sorts of crops, like jawar, tur, bhuimug, mirchi, kapus, so, tambakhoo etc. It further recited that half of the crop would be retained by the owners and the other half would be retained by the tillers. After these preliminary recitals, reference was made primarily to the sugarcane crop. With regard to that aspect, it was undertaken by the executant that everyday till Jaggery was prepared, 20 sugarcanes and one pot of sugarcane juice would have to be reached to the owners. Similarly, it was provided how the fruits of the mango trees would be shared. It was further provided with regard to the manure as well as the seeds for raising sugarcane the parties were to share half and half expenditure. Similarly with regard to the maintenance of the irrigational facilities and also the expenditure for the preparation of Jaggery the parties were to share half and half. It was further provided that the land which was not available for sugarcane could be subjected to cultivation of jute or Chilli and no other till the land was available for sugarcane cultivation.

11. It may be instructive to refer to the material portion of the deed which states as follows :

These two lands I have taken from you agreeing to pay half crop share for a period of five years from shake 1869 to 1874 and have taken possession today alongwith well and trees. I will raise crops therein in consultation with you. In these lands, I will raise chillies, cotton, sugarcane, tobacco, etc. but I will cut and harvest them with your approval. I will give you a half share in all the crops raised as also in the fodder. I will take the remaining share as a tenant. You are to take the green grass growing on the western hedge in R.S. No. 493. I am to take the green grass from other hedges. In the dry fodder you are to get half the number of shieves (sic).

12. The next clause dealt with the price and it has also an important bearing and stated as follows :

The price of your share of crops and fodder is fixed at Rs. 1400. However I will give

> you the grain and fodder and will not ask you to take its price. Similarly I will pay you half the assessment and local fund in the month of January every year.

Every year as long as sugarcane crushing goes on I will give you every day 20 good sugarcanes, and a pitcher of sugarcane juice. The price of the sugarcane and juice is fixed at Rs. 15.

There are mango trees in the lands. If they bear fruits I will protect the same and will not pluck any nor will allow anyone else to do so. For protecting the fruits I will take one fourth and will give you three-fourth. The price of your share in the mangoes is fixed at Rs. 50.

13. Then in the second clause the executant states as follows :

> In the land where sugarcane is grown I will raise either chillies or jute as an alternate crop. I will not grow any other crop in that plot.

14. Thereafter the kabulayat dealt with the obligation of the executant to supply half the manure of the land and half the cost of fertilizer and asserted that he would supply half the seed for sugarcane and carry the fertilizer and seed of sugarcane of his share at his cost. Free service as per usual practice was also ensured. The last clause on which reliance was placed provides as follows :

> I will cultivate the lands on these terms for five years. I will hand back the land in which sugarcane is raised in the month of Margarshirsha of shake 1873. The remaining land I will deliver to you between Margarshirsha and Falgun of shake 1876 as and when the standing crops are removed. Thus the lands are to remain with me till the amount of Rs. 3000 deposited by me is paid off.

15. According to the High Court, though initially there was some mention of other crops, the kabulayat in terms intended that the land would be used for cultivation of sugarcane, and when the sugarcane was not being cultivated, the other crops could be cultivated in those pieces of lands till the land was again available for sugarcane cultivation. If that be not the intention, according to the High Court, the entire document could not be correctly and reasonably reconciled. It could not be forgotten that this was a document reserving right of the amount of Rs. 3000 and Rs. 600 to be adjusted every year by giving the cultivated return and taking a receipt therefor. The receipt so intended to be taken only concerns itself with the sugarcane, sugarcane juice and sugarcane waste. Thus, the document taken as a whole could reasonably be read as providing for the purpose as it was found by the revenue authorities. Furthermore, the oral evidence, according to the High Court, of the parties clearly went on to show that the initial purpose must have been the lease for growing sugarcane. The High Court referred to the evidence of PW 1 who attested the document. As against this evidence, there was evidence of DW 1 which was an evidence only of denial and even he was unable to say whether in the document sugarcane, cotton and tobacco as crops were mentioned or not. He was unable to say in how many years actually the sugarcane had been cultivated and he submitted that by rotation the land could be used for cultivating sugarcane. It was further admitted, the High Court noted, that in cross-examination that Jaggery was taken to shops for sale.

16. The High Court was of the view that once the kabulayat was read in this manner, it did not appear even from the 7/12 extract that in some portion sugarcane crop was cultivated. The High Court found that that being the position of the record it was difficult to interfere with the finding of the lower court. In other words the High Court was of the view that the predominant purpose being sugarcane cultivation, the tenant was not entitled to the right asserted by him. The High Court also

noted that the fact that the lands to be characterised as jiravat lands would not be decisive for determining the purpose of the lease when that could be found from a document like the kabulayat. In the premises the High Court refused to interfere. It is the correctness or otherwise of that decision which is under challenge before us.

17. It was submitted before us that the whole of the land is not for the cultivation of sugarcane. It was urged that in an area of 11 acres, only 1 acre was subjected to the cultivation of sugarcane. The kabulayat or the lease clearly indicated that there were other purposes.

18. The question in this case is whether the lease was for sugarcane or also for other purposes ? Was it composite purpose lease or single purpose lease ? The object of the legislation has to be borne in mind.

19. The entirety of the lease has to be kept in view. Then and then only can the question be viewed properly.

20. Our attention was drawn to a Bench decision of the Bombay High Court in Usaf Usman Mujawar v. Shrimant Yeshwantrao Appasaheb Ghatage ((1963) 65 Bom LR 831). There the Division Bench observed that individual leases were not excluded from the operation of Section 43-A(1)(b) of the Act. According to the Bench decision of the Bombay High Court, the determining factor in considering whether clause (b) of Section 43-A(1) of the Act was applicable or not, was the purpose of the lease. If the purpose of the lease was for cultivation of sugarcane or growing of fruits or flowers or for the breeding of livestock, then it was excluded from the operation of Sections 32 to 32-R of the Act whether the lessee is a body of person or persons. The High Court further reiterated that what was required to be established on material evidence under Section 43-A(1) (b) of the Act was whether there was a lease; and whether the lease was for cultivation of sugarcane or growing of fruits or flowers. It is not necessary that the purpose of the leases must be specifically mentioned either in the instrument of the lease or that lease must before cultivation of sugarcane etc., in the entire field. It would be for the courts to reach a conclusion on the evidence available to it whether the lease was for cultivation of any particular crop or not. Nothing would turn on whether the agreement was to grow that crop in the entire field or not.

21. Our attention was drawn to the observations of the court at page 835 of the report. It was contended before the Bombay High Court that for attracting the provisions of Section 43-A of the Act, it must be proved by the landlord that the agreement specifically provided that the leases was for cultivation of the sugarcane or for the growing of fruits or flowers or for breeding of livestock, and further it must also be established that the agreement was to grow sugarcane in the entire land leased out and not in any part thereof. The High Court was of the view that it was true in the language of clause (b) that it had to be established that the lease was granted for the cultivation of sugarcane or for growing fruits and flowers etc., but it nowhere specifically mentioned that the purpose of the leases must be specifically mentioned either in the instrument of the lease or that the lease must be for cultivation of sugarcane etc., in the entire field. On the other hand, according to the view of the Bombay High Court, what was required was to be established on material evidence whether there was a lease and whether the lease was for cultivation of sugarcane or for growing of fruits or flowers. In each case it would depend on the evidence whether the lease had been for cultivation of sugarcane or growing of fruits or flowers and that would depend on the nature of the cultivation. The Bombay High Court noted that they were informed that the cultivation of sugarcane could never be on the entire field but the cultivation of sugarcane was always carried on by rotation in parts of the field. It would, therefore, depend on the facts of each case and if that be so, it is for

the courts of fact to reach a conclusion on the evidence available to it whether the leases had been for cultivation of a particular crop or not. On behalf of the petitioners-appellants, learned counsel, Shri Javali contended that the leases contained in the Kabulayat had to be examined because it was not of scrultivation of sugarcane only. Shri Javali for the appellants contended that the land could not be exempted because the lease was not for the cultivation of the sugarcane alone. He drew our attention to the findings at page 13 of the paper book of the appellate court where apart from the record, it appeared that the crop of sugarcane actually raised in the suit lands was to the extent of 1 acre or more. This was continued since 1947 till 1972 and it was clearly stated by the tenants that they had stopped raising sugarcane after 1972 because of scarcity of water. The entries in the Record of Rights also substantiated the position that sugarcane was actually raised in the suit lands. The appellate court noted that there was a well in one of the suit lands having sufficient water to raise sugarcane. The statement of the tenants corroborated this fact when they stated that on the day of deposition there was 5 to 6 cubic feet water in the said well. That the court below had actually gone for site inspection and found that Baggayat crops like wheat was cultivated by the tenants on the water course available from the well in the suit land. But it is clear that the entire land was not used for cultivation of sugarcane.

22. The question is if lease for multiple cultivation is permissible in the scheme of Section 43-A then only leases (sic lessees) of the areas for cultivation of sugarcane or growing of fruits or flowers or for breeding of livestock could claim the benefit of protection from the tenants claim. This has to be borne in mind. With respect, we cannot accept the ratio of the decision of the Bombay High Court in its entirety. We are aware that sugarcane could not be cultivated in the entire field for the whole year. It has to be kept fallow and crops had to be grown in the meantime to increase the fertility. But what was primary and what was secondary and what was to be done in such a case as we found it as a fact has to be considered.

23. As mentioned hereinbefore, this petition is concerned with the proceeding under Section 43-B of the said Act which questioned before the High Court the order made by the Member, Maharashtra Revenue Tribunal, refusing to interfere with the order made by the Special Land Acquisition Officer (II) Tulsi Project, Kolhapur holding that the purpose of the leases so far as the suit land was concerned was one for cultivating sugarcane and as such the lands were governed by the provisions of Section 43-A of the Act. Having regard to the facts and circumstances enumerated before, we are of the opinion that the area which is in dispute in this case comprised of areas leased for raising sugarcane crop as also for other crops. In view of the provisions of law discussed above, insofar as the High Court upheld the finding that the entirety of the area in question was covered by lease for sugarcane, it is difficult to sustain the same. The area was covered by lease for multiple purposes. Some areas were leased out for sugarcane where along with sugarcane other crops were grown. These, however, shold be included as areas leased for sugarcane as ancillary crops or for better utilisation of the land in question. But here the leases covered areas other than the areas contemplated by sugarcane which could be demarcated in terms of the kabulayat which we have discussed before. In our opinion, having regard to the preamble to the Act and the primary purpose of the Act, it would be necessary to remand the matter back to the High Court for remanding it back to the appropriate officer to determine whether there was any area which was leased exclusively for sugarcane crop. If it is held on such enquiry that the entirety of the area was for sugarcane crop, then the order of the Tribunal made in this case cannot be interfered with. If on the other hand, there are areas which were leased out separately and independently of the leasing out for sugarcane and demarcated separately, then in respect of the same, no exemption can be given in derogation of the rights of the agricultural tenants in those leased areas and the appellant would be entitled to succeed. In a lease for composite purposes, if there was any area where only sugarcane was cultivated, that

area would be exempt from the ambit of the provisions of the Act and would be exempted. If, however, along with cultivation of sugarcane, other crops were cultivated in the area, such an area would not be entitled to exemption. We therefore remand the case with directions that the authorities below should find the position in light of aforesaid. It may be observed that the Bombay Tenancy and Agricultural Lands Act, 1948 was enacted with a high purpose of transferring the land tilled to the tillers of the soil with the exception of the lands which were leased out for growing sugarcane because of the need for protection of the industry of sugarcane and development of the economy.

24. This appeal is disposed of with the aforesaid directions. In that view of the matter, parties will pay and bear their own costs.

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