

Onkarlal Dulichandlal Agarwal (dead) by Lrs.

Vs

Smt. Sukhubai and Others

Civil Appeal No. 720 of 1974

(M.P. Thakkar, K.N. Singh, N.D. Ojha JJ)

19.01.1988

ORDER

The High Court has rightly taken the view that Section 60 of the Bombay Tenancy and Agricultural Land (Vidarbha Region) Act in terms excludes the applicability of Section 38 (which provides for termination of a tenancy by the landlord for personal cultivation) to lands situated within the limits of a municipality. In the present case, the application was made by the landlord under Section 38 of the Act for termination of the tenancy for personal cultivation. As the applicability of Section 38 has been excluded by virtue of Section 60 of the Act, the application made by the appellants was not maintainable at all. Faced with the situation that the land in question was admittedly situated within the limits of a municipality and Section 60 (sic Section 38) was in terms excluded, learned counsel for the appellants endeavoured to support the appeal by raising the plea that notwithstanding Section 60, Section 38 could be invoked by the landlord having regard to a notification issued by the State Government under the powers conferred by Section 58(3). The notification under Section 58(3) can be given effect to only in respect of areas situated outside the limits of municipalities and not to areas within municipal limits unless Section 60 were to be treated as non-existent. The contention urged by learned counsel for the appellant cannot be sustained without going to the length of holding that though the legislature has in terms situated within the limits of a municipality by virtue of Section 60 of the Act, Section 38 of the Act would still be applicable to such areas. In order to do so it will be necessary to go to the length of holding that Section 60 enacted by the legislature stands repealed by a notification issued by the government. Surely a provision enacted by the legislature cannot be virtually repealed or annulled by a notification issued by the Government. Such a proposition cannot be countenanced for obvious reasons. The view taken by the High Court is unexceptionable. The appeal fails and is dismissed. There will be no other regarding costs.

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