

Pundalik Vishram Patil

Vs

Bandu Chintaman Sonar

Civil Appeal No.320 of 1977

(A. M. Ahmadi, K. Jayachandra Reddy JJ)

09.10.1990

JUDGMENT

K. JAGANNATHA SHETTY, J.:-

1. The matter arises under the Bombay Tenancy and Agricultural Lands Act, 1948 with regard to entitlement of the appellant-tenant to purchase lands under his occupation. The lands are located at Pimparale village. Admittedly the respondent-landlord leased the lands by two leases to the appellant. The first land was leased under a registered lease deed dated 25 March 1958 for a period of 10 years. The other lands were leased in 1959 and 1960. Under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ("The Fragmentation Act") the scheme for consolidating was taken up in the village in the year 1951 and it was completed in 1958.

2. Ordinarily, the lease of a land allotted under the Consolidation scheme would be contrary to the provisions of S. 31 of the Fragmentation Act and would be bad in law. Notwithstanding the execution of the leases, the landlord moved the Assistant Commissioner, Jalgaon to declare the leases as void being contrary to provisions of the Fragmentation Act. The Assistant Collector acceded to his request and invalidated the leases. He made the order on 10 December 1963. That order was confirmed by the Commissioner, Bombay on 27th June 1964. The appellant challenged the validity of that order before the Bombay High Court by means of a writ petition. During the pendency of the writ petition, the Fragmentation Act was amended by insertion of S. 31-AA which provides for validation of illegal transfers on payment of penalty. Thereupon the appellant withdraw his writ petition pending before the High Court. He made payment of fine of Rs.3/- for validation of leases and consequently they were validated by the Sub-Divisional Officer, Jalgaon. The leases were validated from 20 April 1968. The appellant gave a notice dated 7th June 1968 u/ S. 32-0 of the Bombay Tenancy Act expressing his intention to purchase the lands under his occupancy.

3. The question arose whether the notice given by the tenant was valid. The landlord contended that the notice was not given with the period prescribed under law. The lands Tribunal, however, treated the said notice as proper and determined the purchase price at Rs.,3300/- payable in annual instalments. The appeal filed by the landlord was rejected by the Assistant Collector. Both the authorities accepted the case of the tenant that since the transactions were validated on 20th April, 1968 the notice given on 7th June was quite in order. This view was, however, not accepted by the Maharashtra Revenue Tribunal in the revision filed by the landlord. The Tribunal has observed that the provisions of S. 31 -AA would not be applicable to the case because the applicability of Fragmentation Act was withdrawn in respect of all lands in Pimparale village under the Government

Notification dated 29 October 1956. Similar was the view expressed by the High Court in the Writ Petition filed by the appellant.

4. Having considered the arguments of Counsel in the light of the material on record, it seems to us that the landlord having taken recourse to invalidate the leases on the ground that they were contrary to the Fragmentation Act could not be allowed to turn round and say that the leases were not invalid and consequently the notice of the tenant under section was not proper. But for the proceedings initiated and the declaration obtained by the landlord as to the invalidity of the leases, the tenant would have issued Notice under S. 32-0 with reference to the original leases. The landlord has prejudiced his rights and he should not be allowed to be benefited by his own illegal action. The tenant is required to be protected in the premises.

5. We, therefore, set aside the orders of the High Court and the Maharashtra Revenue Tribunal and restore that of Assistant Collector. In the circumstances of the case, we make no order as to costs.

Appeal allowed.

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