

Hari Ram and Others

Vs

Babu Gokul Prasad

Civil Appeal No.2272 of 1972

(Dr. T.K. Thommen, R.M. Sahai JJ)

18.12.1990

JUDGMENT

R. M. SAHAI, J.:-

1. The short question that arises for consideration in this appeal by grant of special leave against judgment of the Madhya Pradesh High Court is if the appellant who was ordinary tenant under Madhya Pradesh Revenue Code of 1954 became an occupancy tenant under Madhya Pradesh Revenue Code of 1959 and consequently acquired Bhumiswami rights or the lease being annual he lost his right by efflux of time after expiry of one year and was liable to ejectment and mesne profit.

2. Basis for seeking eviction were forcible occupation by appellant after the respondent had purchased the land from its Bhumiswami on 3rd November, 1958, letting being for cutting grass the appellant could not claim tenancy rights and in any case tenancy having been terminated in April, 1959 the appellant was liable to eviction. While resisting the suit the appellants claimed rights as occupancy tenant since their ancestors were sub-tenants over last thirty or forty years, and who acquired rights of ordinary tenant under Sec. 166 of M. P. Land Revenue Code, and the appellants having held the land as such on the date of enforcement of the M. P. Land Revenue Code of 1959 became occupancy tenants under sub-sec. (1) of S. 185 and Bhumiswami under Sec. 190. Notice of termination was assailed as invalid. It has been found by all the three Courts that the appellants were sub-tenants and the land was not let out to them or their predecessor for cutting grass. The Courts held that even though the Kabuliyat indicated that it was for growing grass but from the revenue records and other evidence, it was clear that a part of the land was used for growing agricultural crops. It being a finding of fact could not be assailed in second appeal. The High Court further agreed with the appellate Court that since notice terminating tenancy gave only 7 days time, it was not in accordance with law, and invalid. But the High Court allowed the second appeal as "if it is assumed that the defendants became ordinary tenants under the M. P. Land Revenue Code, 1954, their tenancy is to be terminated by efflux of time at the end of each agricultural year and they were not ordinary tenants of the land in suit on the date the M. P. Land Revenue Act came into force".

3. Section 166 of M. P. Land Revenue Code, 1954 reads as under:

"Any person who holds land for agricultural purposes from a tenure-holder and who is not an occupancy tenant under Section 169 or a protected lessee under the Berar Regulation of Agricultural Leases Act, 1951, shall be ordinary tenant of such land.

Explanation - For the purposes of this section -

i) any person who pays the lease-money in respect of any land in the form of crop share shall be deemed to hold such land;

(ii) any person who cultivates land in partnership with the tenure-holder shall not be deemed to hold such land;

(iii) any person to whom only the right to cut grass or to graze cattle or to grow singhara (*Trapa bispinosa*) or to propagate or collect lac is granted in any land shall not be deemed to hold such land for agricultural purposes.

A bare perusal of the Section indicates that any tenant other than occupancy tenant if he held the land for agricultural purposes from a tenure-holder, then he became ordinary tenant by operation of law. Doubt if any stood removed by the explanation which clarifies the class of persons who could be deemed to be covered under a tenant other than occupancy tenant. Since it has been found that the land was let out to appellant not only for the right to cut grass, he could not be held to be a person who was not holding the land for agricultural purposes. The word ,only in Explanation (iii) is significant. It postulates that entire land should have been used for the purposes enumerated. If part of the land was used for cultivation, then the land could not be deemed to have been granted for cutting grass only. It has been found that out of 5 and odd acres of land, the land under cultivation was 2 acres. Therefore, the negative clause in Explanation (iii) did not apply and the appellant became ordinary tenant under Section 166. In 1959, M. P. Land Revenue Act was enacted and Section 185 provided for the persons who could be deemed to be occupancy tenants. Its relevant part is extracted below:

(1) Every person who at the coming into force of this Code holds -

(i) in the Mahakoshal region -

(a) to (b).....

(c) any land as an ordinary tenant as defined in the Madhya Pradesh Land Revenue Code, 1954 (11 of 1955).

4. It is admitted that the land in dispute is in Mahakoshal region. Consequently the provisions of sub-clause (c) of clause 1 of sub-section (1) of S. 185 were attracted to appellant. Being ordinary tenants under Act 11 of 1955, they became occupancy tenants under Section 185. The land in their occupation could have been resumed by their Bhumiswami, that is, predecessor of respondent-plaintiff under S. 189(1) of the Act, which reads as under:

"Resumption by Bhumiswami in certain cases -

(1) A Bhumiswami whose land is held by an occupancy tenant (belonging to any of the categories specified in sub-section (1) of Section 185 except in items(a) and (b) of clause (i) thereof) may, if the area of land under his personal cultivation is below twenty five acres of unirrigated land, within one year of the coming into force of this Code, make an application to the Sub-Divisional Officer for resumption of land held by his occupancy tenant for his personal cultivation."

Consequences of failure to resume land under Section 189 are mentioned in Section 190(1) of M. P. Land Revenue Code, 1959, which is extracted below:

"Conferral of Bhumiswami rights on occupancy tenants -

(1) Where a Bhumiswami whose land is held by an occupancy tenant (belonging to any of the categories specified in sub-section (1) of Section 185 except in items (a) and (b) of clause (i) thereof) fails to make an application under sub-section (1) of Section 189 within the period laid down therein, the rights of a Bhumiswami shall accrue to the occupancy tenant in respect of the land held by him from such Bhumiswami with effect from the commencement of the agricultural year next following the expiry of the aforesaid period."

No proceedings for resumption were taken. Therefore the appellants became Bhumiswami by operation of law provided they held the land as ordinary tenants under Section 185(1) of 1959 Code. The High Court held otherwise. According to it, the tenancy being annual, it came to an end by efflux of time at the expiry of the year. Therefore the appellants were not holding the land as occupancy tenants on the date the Act came into force. The word 'holds' is not a word of art. It has not been defined in the Act. It has to be understood in its ordinary normal meaning: According to Oxford English dictionary it means, to possess, to be owner or holder or tenant of. The meaning indicates that possession must be backed with some right or title. That appears to be the meaning of the word in the context in which it has been used, as the requirements are that the land should be in Mahakoshal region, the person should be an ordinary tenant, and he must be holding the land on the date the Act came into force as such.

5. But the High Court decided the issue as matter of law, and allowed second appeal on a question which was never raised in any of the Courts. The result was, it fell into an error, as even assuming the lease expired on the expiry of the year, the tenant could still be retaining possession with consent, expressed or implied, of the landlord. In that case he would not be holding land without any right or title, but in the same capacity in which he was holding earlier. The tenancy was found to be annual. That is from July to June, as agricultural year is defined under the Code to mean the year beginning from July. Notice issued in April, 1959 to terminate has been found to be invalid. Therefore the tenancy continued in law. Suit was filed in 1961 whereas the Act came into force in 1959. The annual tenancy having come to an end in June, 1959 and the landlord having permitted him to continue as such. In his deposition, the appellant stated that when he received the notice terminating tenancy he met the respondent who told him that it was not meant for him and that since he was an old tenant he might continue. Not only that, the trial Court found as a fact that the appellants and their predecessors were sub-tenants from 1912 to 1959-60. This finding, having been affirmed even by the High Court, the appellant obviously became an ordinary tenant in 1954 and an occupancy tenant in 1959. The High Court in deciding the question as a matter of law and without adverting to the facts committed an error which vitiates the judgment.

6. In the result, this appeal is allowed. The judgment and order of the High Court is set aside and those of the Courts below are restored. The appellant shall be entitled to its costs.

Appeal allowed.

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