Tribhovandas Haribhai Tamboli

Vs

Gujarat Revenue Tribunal and others

Civil Appeal No. 2378 of 1977

(Kuldip Singh, K. Ramaswamy JJ)

10.05.1991

JUDGEMENT

K. RAMASWAMY, J.:-

1.The facts relevant to the controversy are as under. The appellant had taken on lease, about 55 years ago, an extent of 2 acres, 6 gunthas of agricultural lands situated in Akote village from Vishwas Rao. The Bombay Tenancy and Agricultural Lands Act 67 of 1948 for short 'the Act' applies to the lease. By operation of S. 32(1) the appellant became a deemed purchaser from tillers' day i.e., April 1. 1957. S.32-G provides the procedure to determine purchase price. Since the landlord was insane, the right to purchase was statutorily deferred under S. 32-F till date of its cessation or one year after death. Under S. 88(1)(b) of the Act certain areas abutting Baroda Municipality were notified as being reserved for non-agricultural or industrial purpose with effect from May 2, 1958. By another notification pubished in the Gujarat State Gazette dated July 2,1964, certain lands including those situated in Akote and of the appellant's lease hold lands were reserved for industrial purpose. Consequently Ss.1 to 87 of the Act do not apply to the exempted area. While the landlord was continuing under disability, his son Vasant Rao sold the land to the respondent under registered sale deed dated August 19, 1964. By another notification under S. 88(1)(b) published in the Gazette dated October 29, 1964 the Government restricted the operation of the exemption to the area originally notified on May 2, 1958 i.e., Ss. 1 to 87 do not apply to the lands in question. This notification was rescinded by further notification published in the Gazette dated August 23, 1976. The Bombay Tenancy and Agricultural Lands (Gujarat) Amendment Act 36 of 1965, Ss. 18(1) and 18(2) thereof introduced two provisos to S. 88(1)(b) of the Act which was published in the Gazette on December 29, 1965 which are relevant for purpose of the case. S. 88(1)(b) with amendments reads thus :

> "(1) Save as otherwise provided in subsec. (2), nothing in the following provisions of this Act shall apply-

(a) to lands belonging to, or held on lease from the Government;

(aa) to lands held or leased by a local authority;

(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:

Provided that if after a notification in respect of any area specified in the notification is issued under this clause, whether before or after the commencement of the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1965, the limits of the area so specified are enlarged on account of the addition of any other area thereto, then merely by reason of such addition, the reservation as made by the notification so issued shall not apply and shall be deemed never to have applied to the area so added, notwithstanding anything to the contrary contained in any judgment, or order of any Court, Tribunal or any other authority.

Provided further that if any land in the area so added has been transferred or acquired after the issue of notification referred to in the first proviso but before the 29th day of October, 1964, such transfer or acquisition of land shall have effect as if it were made in an area to which this clause applies."

Sub-section (2) is not relevant. Hence it is omitted.

2. Vishwesh Rao died in September, 1965. The appellant became entitled to purchase the land on and from August 19, 1966. He filed an application before Mamiatdar to fix the price. He fixed on enquiry at Rs. 4,925.65 paise which was paid by the appellant.

3. In the enquiry, the respondent contended that he purchased the property from Vasantrao, son of the landlord. By operation of second proviso to S. 88(1)(b) the lands stood exempted from operation of Ss. 1 to 87 of the Act. So the Mamlatdar had no jurisdiction to decide the price of the land. The appellant raised the contention that Vasantrao has no right to sell during the lifetime of the father, the Karta of the Hindu Joint Family. The sale is invalid and does not bind him. He acquired statutory right of deemed purchaser and its exemption under Section 88(1)(b) does not divest his statutory right. The Mamlatdar accepted the appellant's contention and allowed the petition. On appeal to the Collector and revision to the Revenue Tribunal the decision was reversed. The Division Bench of the High Court by order dated February 3, 1977 dismissed the writ petition. The appellant had leave of this Court by Art. 136. Thus this appeal.

4. From these admitted facts the question emerges whether the operation of the second proviso to S. 88(1)(b) has retrospective effect depriving the appellant of the statutory right of 'deemed purchaser'. S. 88 of the Act empowers the Government to exempt certain other lands from the purview of Ss. 1 to 87 of the Act. The State Government exercised their power from time to time under Section 88(1)(b) and issued notification and published in the official Gazette specifying certain areas as being reserved for non-agricultural or industrial development i.e., urban development. Consequently the first proviso gets attracted which say that notwithstanding any judgment or order of any court, tribunal or any other authority under the Act to the contrary, once the notification was issued either before or after commenclnent of the Amendment Act reserving the area so added for non-agricultural or industrial development i.e. expansion for urbanisation, to the extent of the area

covered under the first proviso, the provisions of Ss. 1 to 87 were not applied and shall be deemed never to have been applied. The second proviso which is material for the purpose of the case further postulates that :

> "Provided further that if any land in the area so added has been transferred or acquired after the issue of the notification referred to in the first proviso but before the 29th day of October, 1964, such transfer or acquisition of the land shall have effect as if it was made to an area to which this clause applies."

(Emphasis supplied)

5. What is the effect of the second proviso to the facts is the question? Mr. Dutta, the learned counsel for the appellant contended that the first provision has the effect of excluding Ss. 1 to 87 of the Act only to those as which were initially reserved for non-agricultural or industrial development and has no application to the land added to it by a subsequent notification though it would become part thereof. Any alienation in violation of the Act would not attract the operation of the second proviso. The Act is an agrarian reform which created a vested right in the tenant as a deemed purchaser with effect from Tillers' day which cannot be divested retrospectively. The proviso should be construed to inhere in the tenaiit the vested rights created under the Act. The withdrawal of the notification dated Oct.. 29, 1964 renders the right of the appellant unaffected.

6. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field, which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a provision is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interation of the main enactment, so as to expert exclude from it, by implication what clearly falls within its express terms. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect.

7. The effect of the notification issued under S. 88(1)(b) was the subject of consideration in several decisions of this court. In Sakharam v. Manikchand (1962) 2 SCR 59: (AIR 1963 SC 354), Sinha, C. J., held that the provisions of S. 88 are entirely prospective and apply to such lands as are described in Cls. (a) to (d) of S. 88(1) from which the Act came into operation, namely, December 28, 1948 and are not of a confiscatory in nature so as to take away from the tenant the status of a protected tenant already accrued to him. In Mohanlal v. Tribhovan (1963) 2 SCR 707: (AIR 1963 SC 358), a Constitution Bench speaking through Sinha, C. J. held that Cls. (a) to (c) of S. 88(1) apply to things as they were on the date of the commencement of the Act of 1948 whereas Cl. (d) authorised the State Govt. to specify certain areas as being reserved for urban non-agricultural or industrial development, by notification in the official Gazette, from time to time. It was specifically provided in Cls. (a) to (c) that the Act, from its inception, did not apply to certain areas then identified, whereas Cl. (d) has reference to the future. The State Govt., could take out of the operation of the Act such areas as in its opinion should be reserved for urban non-agricultural or industrial development. Cl. (d) would come into operation only upon such a notification being

issued by the State Govt. In Sukhram's case, this Court never intended to lay down that the provisions of Cl. (d) are only prospective and have no retrospect operation. Unlike Cls. (a) to which are clearly prospective Cl. (d) has retrospective opration in the sence that it would to apply to land which would be covered by the notification to be issued by the Government from time to time so as to take that land out of the operation of the Act of 1948 granting the protection. (Emphasis supplied)

So far as Cls. (a) to (c) are concerned, the Act of 1948 would not apply at all to lands covered by them, but that would not take away the rights covered by the Act of 1939 which was repealed by the Act of 1948. Therefore, it was held that by operation of S. 89(2) the rights acquired under the Act. of 1939 would be available to the tenant.

8. When a doubt was expressed of the correctness of the above views on reference, another Constitution Bench in Sidram Narsappa Kamble v. Sholapur Borough Municipality, (1966) 1 SCR 618 : (AIR 1966 SC 538) held at p. 625 (at SCR) : (at p. 542 of AIR) thus:

> "Now there is no doubt that S. 88 when lays down inter alia that nothing in the foregoing provisions of the 1948 Act shall apply to lands held on lease from a local authority, it is an express provision which takes out such leases from the purview of Ss. 1 to 87 of the 1948 Act. One of the provisions therefore which must be treated as nonexistent where lands given on lease by a local authority is in S. 31..... . But the effect of the express provision contained in S. 88(1)(a) clearly is that S. 31 must be treated as nonexistent so far as lands held on lease from a local authority are concerned and in effect therefore S. 88(1)(a) must be held to say that there will be no protection under the 1948 Act for protected tenants under the 1939 Act so far as lands held on lease from a local authority are concerned.....
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> In view of this express provision contained in S. 88(1)(a), the appellant cannot claim the benefit of S. 31; nor can it be said that his interest as protected tenant is saved by S. 89(2)(b). This in our opinion is a plain effect of the provisions contained in S, 3 S.88 and S. 89(2)(b) of the 1948 Act."

9. In Parvati v. Fatehsinhrao Pratapsinhrao Gaekwad, (1986) 3 SCR 793: (AIR 1986 SC 2204), the facts were that the Government issued a notification on May 21, 1958 under S. 88(1)(b) of the 1948 Act reserving the land within the municipal limits of the city of Baroda for non-agricultural and industrial development. The appellant's husband had taken possession of certain lands situated in the city of Baroda on lease from the respondent-trustee. The respondent laid the suit against the appellant for recovery of arrears of rent. The defence was that the suit was not maintainable. Dealing with the effect of the notification issued under S. 88(1) (b), this Court held that the notification had retrospective operation and subject to certain exceptions provided in sub-see. (2) of S. 88 all rights, title, obligations etc. accrued or,acquired under the said Act ceased to exist. Therefore, S.89(2)(b) was inapplicable to protect such right, title or interest, acquired under the Act except as provided in S. 89A owing to express provision made in S. 88 of. the Act. Accordingly it was held that the Civil Court was legally competent to determine the reasonable rent payable by the tenant. In Navinchandra Ramanlal v. Kalidas Bhudarbai (1979) 4 SCC 75 : (AIR 1979 SC 1055), this Court was to consider a case that the notification under S. 88(1)(b) was issued on May 30, 1959 by which date the tenant acquired the statutory right of a deemed purchaser with effect from April 1, 1957. This Court held that the tenant cannot be divested of his deemed purchase by a subsequent notification issued thereunder. It would be seen that the effect of the second proviso was not considered therein.

10. The above interpretation would equally apply to the interpretation of the notification issued under the proviso to S. 88(1)(b) adding to the area reserved for non-agricultural or industrial development. its effect is that notwithstanding any judgment or order of any Court or Tribunal or any other authority, the provisions of Ss. 1 to 87 shall not apply and shall be deemed never to have applied to such added area as well. If any land in the newly added area has been transferred or acquired between the date of the notification issued under first proviso and October 29, 1964, such transfer or acquisition of land shall have the effect as if it was made in an area to which the main part of the proviso and S. 88(1)(b) would apply. The necessary consequence would be that the provisions of Ss. 1 to 87 shall not apply and shall be deemed never to have applied to such added area. It's implicit that such transfer or acquisition made to bring within the net of second proviso must be valid and bona fide one and not colourable, fraudulent, fictitious or nominal. The Legislature appears to relieve hardship to the bona fide purchasers. The title acquired by such transfer is not affected by the provisions of the Act. The Legislature advisedly used the words 'acquired or transferred'.

11. The respondents' own case is that Vishwesh Rao, Karta of the 'Hindu Joint Family was under disability due to lunacy. The tenant acquired statutory right as deemed purchaser under S. 32. The Act, by necessary implication, divests the landlord of his right to alienate the land held by the tenant. The statutory right to purchase the land under S. 32 as deemed purchaser was postponed by operation of S. 32-F of the Act till the cessation of the disability or one year after the death of the landlord. In such situation can the son during the lifetime of the father has right to sell the same property to the respondents, and whether such a sale made on August 19, 1964 to the respondents was valid and binds the appellant.

12. In Raghavachariar's Hindu Law Principles and Precedents, Eighth Ed., 1987 in S. 275 at p. 239 stated thus:

> "So long as the joint family remains undivided, the senior member of the family is entitled to manage the family properties, and the father, and in his absence, the next seniormost male member of the family, as its manager provided he is not incapacitated from acting as such by illness or other sufficient cause. The father's right to be the manager of the family is a survival of the patria potastas and he is in all cases, naturally, and in the case of minor sons necessarly the manager of the joint family property. In the absence of the father, or if he resigns, the management of the family property devolves upon the eldest male member of the family provided he is not wanting in the necessary capacity.to manage it."

13. Regarding the management of the joint family property or business or other interests in a Hindu joint family, the Karta of the Hindu joint family is a prima inter partes. The managership of the joint family property goes to a person by birth and is regulated by seniority and the Karta or the Manager occupies a position superior to that of the other members. A junior member cannot, therefore, deal with the joint family property as Manager so long as the Karta is available except where the Karta relinquishes his right expressly or by necessary implication or in the absence of the Manager in exceptional and extraordinary circumstances such as distress or calamity affecting the whole family and for supporting the family or in the absence of the father whose whereabouts were not known or who was away in remote place due to compelling circumstances and that his return within the reasonable time was unlikely or not anticipated. No such circumstances are available here to attract the facts of the case.

14. Vasantrao, the vendor, son of the Karta of the Hindu joint family per se has no right to sell the property in question as Manager so long as the father was alive. When father was under disability due to lunacy, an order from the court under Lunacy Act IV of 1912 was to be obtained to manage the joint family property. No proceedings were taken under Ss. 39, 43 and 45 of the Lunacy Act to have the inquisition made by a competent District Court to declare him as insane and to have him appointed as Manager of the joint family. In P. K. Gobindan Nair v. P. Narayanan Nair (1912) 23 Mad LJ 706, a Division Bench of the Madras High Court held that a guardian cannot be appointed as Manager under the Guardian and Wards Act on an adjudication of Karnavan of an undivided Malabar Tarwad as a lunatic removing the Karnavan as a member due to lunacy. In A. Ramacharlu v. Archakan Ananthacharlu, AIR 1955 Andh Pra 261, a Division Bench consisting of Subba Rao, C.J. and Satvanarayana Raju, J. (as they were) considered the question of appointment of a son as the Manager of the Mitakshara family whose father was alleged to be a lunatic. Subba Rao, C.J., speaking for the Bench, held that in view of the finding that the Karta, though was mentally not sound, but was capable to manage the property, the application for appointment of a son as Manager of the joint family property was not to be ordered. Since Vasantrao did not obtain any order from the competent Court under the Lunacy Act to have him appointed as Manager of the joint family to alienate the property, the sale is per se illegal. The sale, therefore, appears to be to defeat the statutory right of the appellant. The rigour of the second proviso to S. 88(1)(b) is thus inapplicable.

Thereby the right and interest as a deemed purchaser acquired by the appellant has not been affected by a subsequent notification issued under S. 88(1)(b). The High Court, therefore, committed a manifest error in holding that the appellant is not entitled to the relief. The appeal is accordingly allowed and the orders of the High Court, the Tribunal and District Collector are set aside and that of the Mamlatdar is confirmed, but in the circumstances parties are directed to bear their own costs.

Appeal allowed.

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