

Khatun and another

Vs

Balakrishna Keshav Deshpande

Civil Appeal No. 191 of 1981

(L. M. Sharma, N. M. Kasliwal JJ)

13.03.1992

JUDGEMENT

KASLIWAL, J.:-

1. This appeal by grant of special leave is directed against the judgment of the Bombay High Court dated July 31, 1980. Briefly stated the facts necessary for the determination of this appeal are that the Appellants Khatun widow of Bala Sheikh and Rashida widow of Mira Sheikh were the tenants of lands Survey Nos. 105, 106 and 155 situated in village Gulvanchi in Jath Tahsil of Sangli District Maharashtra. The respondent filed an application for possession of the aforesaid lands on the ground of default in payment of rent for the years 1962-63, 1963-64 and 1964-65. We deem it unnecessary to make a mention of various orders passed by different Revenue Courts in this litigation and pick up the thread from the order of the Maharashtra Revenue Tribunal dated 7-6-1975 by which the respondent landlord was granted restoration of possession holding that the appellants were proved as defaulters in the payment of rent for the aforesaid period. The High Court dismissed the writ petition filed by the appellants challenging the order of the Maharashtra Revenue Tribunal. The appellants in these circumstances have come before this Court by the grant of special leave.

2. The parties were governed by the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the 'Tenancy Act'). The lands in question were watan lands and under S. 7 of the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955 (in short the Abolition Act, 1955) all lands held under a watan stood resumed to the Government on 3rd June, 1955. Subsequently on an application moved by the respondent-landlord an order regranteeing the land in his favour was passed on June 28, 1971. Section 28 of the Abolition Act of 1955 reads as under:-

"Nothing in this Act shall in any way be deemed to affect the application of any of the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, to any alienated land or the mutual rights and obligations of a landlord and his tenants save in so far as the said provisions are not in any way inconsistent with the express provisions of this Act.

3. It may be further noted that by S. 32 of the Tenancy Act, every tenant was deemed to have purchased the land from his landlord on the 1st day of April, 1957 which was considered as tillers day. However, S. 32-F(I)(b) (ii) of the Tenancy Act laid down that where the tenant is a widow, the right to purchase land under S. 32 may be exercised by the successor-in-title of the widow within one year from the date on which her interest in the land ceases to exist. It is not in dispute in the

4. It is not necessary to go into all the questions raised in this appeal as the appeal deserves to be allowed on a limited point. Admittedly, the land in question were watan lands and under S. 7 of the Abolition Act, all watan lands stood resumed on 3rd June, 1955 and the order of re-grant in favour of the respondent-landholder was passed on June 28, 1971, the present application for recovery of possession was based and against the appellants on the ground of default in the payment of rent for the years 1962 to 1965. The order for recovery of possession has been passed in favour of the respondent on the ground of default in the payment of rent for the aforesaid years 1962 to 1965. In our view no right to claim any rent for the aforesaid period was available to the respondent prior to June 28, 1971, the date of the order of regrant passed in his favour.

5. Learned counsel for the respondent placed reliance on S. 28 of the Abolition Act and submitted that the respondent got the mutual rights of landlord and tenant revived as soon as the order of regrant was passed in his favour and he became entitled to claim the arrears of rent for the aforesaid period of 1962-65 also as he had already filed an application for recovery of possession in 1966 on the ground of default in the payment of rent for the aforesaid period. We find no force in the above contention. Section 28 of the Abolition Act does not confer any retrospective right on the landholder to claim any arrears of rent prior to the order of regrant passed in favour of the landholder under S. 7 of the Abolition Act. There was an automatic resumption of the right of the landholder in a watan land on 3rd of June, 1955 and he was no longer entitled to claim any rent from the tenant of such watan land till any order of regrant was passed in favour of such land-holder. That apart S. 28 clearly provides that nothing in the Abolition Act shall in any way be deemed to affect the application of any of the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, save in so far, as the said provisions are not in any way inconsistent with the express provisions of this Act. This, in our view clearly shows that S. 28 does not confer any right under the Abolition Act which may in any way be inconsistent with the rights conferred on a tenant under the Tenancy Act. In this view of the matter without expressing any opinion on the respective rights of the parties under the Abolition Act or the Tenancy Act, we hold that no order for recovery of possession could have been passed in favour of the respondent in the facts and circumstances of the present case.

6. In the result, we allow this appeal, set aside the judgment of the High Court dated 31-7-1980 and dismiss the application for recovery of possession filed by the landholder. In the circumstances of the case, we pass no order as to costs. Appeal allowed.

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