

Rambai Manjanath Nayak and others

Vs

Union of India and others

Civil Appeal No. 3119 of 1983

(CJI M.H. Kania, J.S. Verma, S.C. Agrawal, Yogeshwar Dayal, A.S. Anand JJ)

17.11.1992

Judgement

VERMA, J.

1. This appeal is against the judgment of Gujarat High Court dated January 12, 1983 dismissing appellants' writ petition challenging the constitutional validity of Chapter XX-A of the Income-tax Act, 1961 wherein the question raised was whether immovable property would vest in the Central Government free from all encumbrances under Section 269-1, upon a final order being made under Section 269F(6) and consequently whether a tenant governed by the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 can be evicted from such property.
2. The appellants constitute a partnership in the name and style of M/s. Satkar Hotel and Restaurant and for their business had taken on rent the 3-storeyed Shamalaji Kripa building in Sayajigunj, Vadodara from its owner M/s. S. S. Parshottamdas and Company on a monthly rent of Rs. 1,500/- The said M/s. Parshottamdas and Co. incurred huge debts for the repayment of which they executed a Composition Deed in favour of a Committee formed by the creditors for the purpose of management and disposal of the debtor's property. A registered sale deed was executed on December 27, 1973 conveying the Shamlaji Kripa building to respondents Nos. 5 to 10 for a consideration of Rs. 4,50,001 / paid by a cheque dated July 12, 1973 for Rs. 50,001 / - and another cheque of Rs. 4 lakhs dated February 4, 1974. According to the recital in the sale deed the purchasers were given constructive possession and the existing tenant was to attorn in favour of the purchaser. By a letter dated February 5, 1974 M/s. S. S. Parshottamdas and Co. informed the appellant of the sale requiring the appellant to attorn to the purchasers - respondents Nos. 5 to 10.
3. The competent authority under Section 269B of the Income-tax Act, 1961 initiated proceedings for acquisition of the said property under Chapter XX-A of the Act by a notice dated August 31, 1974 under Section 269D(1) to that effect published in the Gazette of India dated November 16, 1974. This notice was also served on the appellants as the persons in occupation of the property in accordance with Section 269D(2) of the Act. The appellants did not make any objection to the acquisition proceeding. An order of acquisition of the said property was made under Section 269F(6) on December 12, 1975 and that order became final on January 27, 1976.
4. An order under Section 269-1(1) made by the competent authority was served on the appellants on February 5, 1976 directing them to deliver possession of the said property to the Central Government within 30 days. On February 7, 1976, the Inspecting Assistant Commissioner of Income-tax, Range 11, Baroda served an order on the appellants wherein also a direction was given to hand over possession of the property in question within the specified period. In these

circumstances, apprehending their eviction, the appellants filed a writ petition in the Gujarat High Court on February 24, 1976 challenging the constitutional validity of certain provisions of Chapter XX-A of the Income-tax Act, 1961 and consequently the order under Section 269F(6) of the Act together with consequential notices dated February 5, 1976 and February 7, 1976 issued to the appellants. The Gujarat High Court dismissed the appellants writ petition and other connected matters. The High Court however, granted a certificate of fitness to appeal to the Supreme Court under Article 133(l) of the Constitution, in view of the question of law involved being of general importance. This gives rise to the present appeal.

5. The contention of Shri Karanjawala learned counsel for the appellant, in substance, is that the statutory tenancy not being an encumbrance on the property does not get extinguished on acquisition of the property and, therefore, the right of the Statutory tenant to continue in occupation remains unimpaired even after the acquisition made under Chapter XXA of the Income-tax Act. The learned counsel also submitted that tenancy, whether monthly or statutory, is property within the meaning of Article 19(l)(f) and Article 31 of the Constitution on account of which there can be no acquisition of the tenancy rights without payment of compensation. The submission of the learned counsel for the appellants is that a statutory tenant under the Rent Act, in occupation of the acquired property continues as a tenant of the Central Government and the order of acquisition made under Chapter XX-1A of the Act does not permit taking possession from the tenant by virtue of the other provisions in that Chapter enabling recovery of possession from the occupant of the property. The appeal is confined only to these submissions. In reply Dr. Gauri Shankar submitted that there is no acquisition of the tenancy rights and, therefore, the question of payment of compensation for the tenancy rights does not arise. The learned counsel for the respondents submitted that the right of a statutory tenant to continue in possession and enjoy the protection against eviction by virtue of the provisions of the Rent Act does not clothe the statutory tenant with a right of the kind claimed by the appellants. It was further submitted that the liability of the tenant in occupation of an acquired property to deliver possession by virtue of the provisions in Chapter XX-A of the Act and deprivation of the protection of the Rent Act is a consequence of the statutory provisions governing properties owned by the Central Government. On this basis, it was urged by the learned Counsel for the respondents that the appellants as tenants in occupation of the acquired property have no basis to make this challenge. Alternatively it was urged, the compensation awarded is for acquisition of all rights in the property and, therefore, the right, if any, of the tenant is merely to claim his share in the compensation amount.

6. The judgment of the Gujarat High Court under appeal is reported in (1983) 142 ITR 211 : (1983 Tax LR 695). The High Court held that the tenants in occupation of the property acquired under Chapter XX-A of the Income-tax Act, 1961 are liable to be evicted therefrom under Section 269-1 of the Act with a view to vest it absolutely in the Central Government free from all encumbrances. The legislative history leading to the insertion of Chapter XX-A in the Income-tax Act, 1961 and the scheme of the, Chapter have been referred to, at length.

7. The Government of India appointed the Direct Taxes Inquiry Committee under the Chairmanship of Justice K. N. Wanchoo, former Chief Justice of India in 1970 to recommend concrete and effective measures inter alia to unearth black money and prevent its proliferation through further evasion; to check avoidance of tax through various legal devices, including the formation of trusts; and to reduce tax arrears. Pursuant to some recommendations of the Committee, the Taxation Laws (Amendment) Act, 1972 was enacted incorporating those suggestions whereby Chapter XX-A was inserted in the Act with effect from November 15, 1972. The Statement of Objects and Reasons for its enactment mentioned that it was to counter evasion of tax through under-statement of the value

of immovable property in sale deeds and also to check circulation of black money by empowering the Central Government to acquire immovable properties including agricultural lands, at prices which correspond to those recorded in the sale deeds; to improve the present arrangement for valuation for the purposes of income-tax etc. and other ancillary matters. The provisions contained in the newly inserted Chapter XX-A of the Act have to be understood in this background. Obviously, the legislation was enacted and the provision for acquisition of property made therein for a public purpose. We may here mention that subsequently Chapter XX-C was inserted by the Finance Act, 1986 with effect from October 1, 1986 providing for purchase by Central Government of immovable properties in certain cases of transfer and, therefore, Chapter XX-A relating to acquisition of immovable properties in certain cases ceased to operate in respect of transfer of immovable property made after September 30, 1986. The validity of certain provisions of Chapter XX-C of the Act is the subject matter of challenge in some other matters decided separately and, therefore, no further mention of Chapter XX-C is required to be made in the present context.

8. A brief reference to the scheme of Chapter XX-A and the provisions therein may now be made. Chapter XX-A was inserted to provide for acquisition of immovable properties, in certain cases of transfer to counteract evasion of tax. In the said chapter, as originally enacted, by Income-tax (Amendment) Act, 1981, Section 269AB was inserted with effect from 1st July, 1982 and Section 269RR was inserted by the Finance Act, 1986 with effect from 1st October, 1986.

9. Section 269A contains the definition of assesses used in the different provisions in the Chapter. Section 269AB provides for registration of certain transactions requiring that such transactions shall be reduced to writing in the prescribed manner and registered with the competent authority. The specified transactions are those which allow the possession of any immovable property to be taken or retained and whereby a person acquires any right in or with respect to any building or part thereof which has been constructed or which is to be constructed, not being a transaction required to be registered under the Registration Act, 1908. Section 269B provides for appointment of competent authority for the purpose of the Chapter. Section 269C empowers the competent authority to initiate proceedings for the acquisition of immovable property transferred for an apparent consideration which is less than the fair market value of that property and the consideration had not been truly stated in the instrument of transfer with the object of facilitating the reduction or evasion of the tax liability of the transferor or facilitating the concealment of any income which ought to be disclosed by the transferee for the purpose of the taxation laws. The Section also provides certain safeguards prescribing the manner in which the power has to be exercised by the competent authority. Section 269D provides that the competent authority shall initiate proceedings for the acquisition under this Chapter of any immovable property referred to in Section 269C by notice to that effect published in the Official Gazette. It also requires such notice to be served on the transferor, the transferee, the person in occupation of the property and every other person known to be interested in the property. There is restriction against initiation of the acquisition proceeding after the expiration of nine months from the end of the month in which the instrument of transfer of the property is registered under the Registration Act or, as the case may be, under Section 269AB. Section 269E permits objections to be made by the transferor, the transferee or any other person interested in the property to whom notice is required to be given. Section 269F provides for hearing of the objections against acquisition of the immovable property and decision by the competent authority. Section 269G provides an appeal before the Appellate Tribunal against the order for acquisition of any immovable property which is required to be decided after giving an opportunity of hearing. A further appeal to the High Court is provided by Section 269H, at the instance of the Commissioner or any person aggrieved by the order of the Appellate Tribunal made under Section 269G. Section 269-1 then provides for vesting of the property in the Central Government when the order of acquisition of any

immovable property becomes final. Further reference to this Section would be made later. Section 269J provides for payment of compensation by the Central Government for acquisition of the immovable property which amount is a sum equal to the aggregate of the amount of the apparent consideration for its transfer and fifteen per cent of the said amount. Section 269K requires tender of the compensation amount to the person or persons entitled thereto, as soon as may be, after the property becomes vested in the Central Government under sub-section (4) of Section 269-1. It also provides for adjudication of dispute relating to apportionment of compensation amongst persons claiming to be entitled thereto after deposit of the compensation amount by the Central Government in the Court and for other ancillary matters. Section 269L provides for assistance by Valuation officers to enable the competent authority to properly discharge its functions. Section 269Q exempts transfer of immovable property made by a person to his relative on account of natural love and affection for a consideration which is less than its fair market value if a recital to that effect is made in the instrument of transfer. Section 269RR inserted with effect from 1-10-1986 provides that the provisions of this Chapter shall not apply to, or in relation to the transfer of any immovable property made after the 30th day of September, 1986, in view of Chapter XX-C being inserted with effect from October 1, 1986. The remaining provisions of Chapter XX-A are not material for our purpose.

10. The main provisions of Chapter XX-A with reference to which the arguments advanced in the present case have to be considered are parts of Section 269D and Section 269-1. The material parts of these-two Sections as they were at the relevant time are as under:

"Preliminary notice.

269D. (1) The competent authority shall initiate proceedings for the acquisition, under this Chapter, of any immovable property referred to in Section 269C by notice to that effect published in the Official Gazette:

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(2) The competent authority shall

(a) cause a notice under sub-section (1) in respect of any immovable property to be served on the transferor, the transferee, the person in occupation of the property, if the transferee is not in occupation thereof, and on every person whom, the competent authority knows to be interested in the property;

(b) cause such notice to be published

(i) in his office by affixing a copy thereof to a conspicuous place;

(ii) in the locality in which the immovable property to which it relates is situate, by affixing a copy thereof to a conspicuous part of the property and also by making known in such manner as may be prescribed the substance of such notice at convenient places in the said locality."

"Vesting of property in Central Government.

269-1. (1) As soon as may be after the order for acquisition of any immovable property made under sub-section (6) of Section 269F becomes final, the competent authority may, by notice in writing, order any person who may be in possession of

the immovable property to surrender or deliver possession thereof to the competent authority or any other person duly authorised in writing by the competent authority in this behalf, within thirty days of the date of the service of the notice.

xxx xxx xxx xxx

(2) If any person refuses or fails to comply with the notice under sub-section (1), the competent authority or other person duly authorised by the competent authority under that sub-section may take possession of the immovable property and may, for that purpose, use such force as may be necessary.

xxx xxx xxx xxx

(4) When the possession of the immovable property is surrendered or delivered under sub-section (1) to the competent authority or a person duly authorised by him in that behalf or, as the case may be, when the possession thereof is taken under sub-section (2) or subsection (3) by such authority or person, the property shall vest absolutely in the Central Government free from all encumbrances:

Provided that nothing in this sub-section shall operate to discharge the transferee or any other person (not being the Central Government) from liability in respect of such encumbrances and, notwithstanding anything contained in any other law, such liability may be enforced against the transferee or such other person by a suit for damages."

11. The main submission of learned counsel for the appellant is that the tenancy right of the tenant in occupation of the acquired property is not acquired and such a tenant continues in occupation as the tenant of the Central Government till evicted in accordance with law. The submission is that tenancy right not being an encumbrance on the acquired property, it continues. To support this submission it has been urged that no compensation is provided for acquisition of the tenancy right for this reason and there can be no acquisition of a property right without award of some amount as compensation.

12. The High Court has dealt with the contention at length before rejecting it and since we are in general agreement with the reasons given by the High Court it is not necessary to reiterate the same at length.

13. The scheme of Chapter. XX-A clearly shows that the acquisition is not merely of the proprietary rights in an acquired property but also of the possessory rights therein which would undoubtedly include the tenancy rights. This also finds support from Section 269AB which was inserted subsequently. It requires registration of certain transactions which permit possession of any immovable. Property to be taken or retained and whereby a person acquires any rights in or with respect to any building or part of it, which has been constructed or which is to be constructed, not being a transaction by way of sale, exchange or lease thereof which is required to be registered under the Registration Act. This provision clearly indicates that any transaction conferring a right to take or retain possession of the immovable property or whereby a person acquires any rights therein is also governed by Chapter XX-A. Accordingly, a lease which is not required to be registered under the Registration Act is clearly included within its ambit. In other words, any transaction whereby a person acquires any right to remain in possession of any immovable property is governed by the

provisions. A person in possession under a monthly tenancy or continuing in possession as a statutory tenant by virtue of the protection against eviction given by the Rent Act cannot be outside the ambit of Chapter XX-A. Section 269D requires preliminary notice to be given by the competent authority to the transferor, the transferee and the person in occupation of the property if the transferee is not in occupation thereof as well as to every other person known to be interested in the property, in addition to publication of the notice in the Official Gazette for initiating proceedings for acquisition of the immovable property. The requirement of notice to the person in occupation of the property and every person interested in the property is obviously for the reason that all such persons including those having interest merely in possession are considered to be persons interested in the acquisition proceeding. Section 269E enables all such persons to make objections against the acquisition of the immovable property on publication of the notice and the competent authority is required by Section 269F to hear and decide those objections on merits, stating the reasons for the decision in writing, before making the final order of acquisition of the property. Obviously, a tenant in possession, of whatever nature, has this opportunity. An appeal to the Appellate Tribunal is provided by Section 269G which has to be decided on merits. A further appeal then lies to the High Court under Section 269H. A person interested only in possession of the property also has the opportunity to show cause against the acquisition of that property. The order of acquisition made by the competent authority under Section 269F(6) becomes final only thereafter on conclusion of this process wherein all legitimate objections are adjudicated on merits.

14. It is only after the order of acquisition of any immovable property made under subsection (6) of Section 269F becomes final that the competent authority is empowered, to order any person who may be in possession of the immovable property to surrender or deliver possession thereof within 30 days of the date of service of the notice given for this purpose in accordance with sub-section (1) of Section 269D. Sub-section (2) of Section 269-1 empowers the competent authority to take possession of the immovable property, if necessary by use of force if the person in possession refuses or fails to comply with the notice under sub-section (1). Sub-section (4) then provides that on possession of the immovable property being obtained by the competent authority in this manner, 'the property shall vest absolutely in the Central Government free from all encumbrances'. The proviso to sub-section (4) enacts that the transferee or any other person apart from the Central Government is however, not discharged from liability in respect of such encumbrances which liability may be enforced against the transferee or such other person by a suit for damages. The proviso also makes it clear that the vesting of the property in the Central Government is absolutely free from all encumbrances on possession being obtained by the competent authority, giving a complete discharge to the Central Government, the liability, if any, in respect of a surviving encumbrance being only of the transferee or any other person not being the Central Government; and that the person claiming to enforce such an encumbrance can do so only against the transferee or such other person merely by a suit for damages. Section 269J provides that on such acquisition of the immovable property the Central Government shall pay as compensation a sum equal to the aggregate of the amount of apparent consideration for its transfer and 15% of the said amount. The additional 15% is in the nature of solatium for compulsory acquisition of the property. The proceedings are akin to those of acquisition under the Land Acquisition Act and the compensation payable is quantified in this manner. Section 269K requires the Central Government to tender the amount of compensation so payable to the person or persons entitled thereto as soon as may be after the property becomes vested in the Central Government under sub-section (4) of Section 269-1, free from all encumbrances. Sub-section (2) therein requires the Central Government to deposit, the amount of compensation in the Court, if any dispute arises as to the apportionment of the compensation amongst persons claiming to be entitled thereto and refer such dispute for decision to

the Court. It is, therefore, clear that this compensation amount is to be shared between persons claiming to be entitled thereto and in case of any dispute the amount so deposited is to be apportioned according to the decision of the Court.

15. These provisions make it clear that a tenant in possession is at best entitled only to a share in the compensation amount but has no right to continue in possession after the order of acquisition made under Section 269F(6) has become final, since he is bound to deliver possession of the property to the Central Government in accordance with Section 269-1. It is also clear from the proviso to sub-section (4) of Section 269-1 that any person claiming any encumbrance on the property which may survive against the transferee or any other person, not being the Central Government, can enforce the same only against the transferee or such other person and that too by a suit for damages alone. The scheme of Chapter XX-A clearly envisages that no one in possession of the immovable property or any part of it, in whatever character, can retain or continue in possession after the order for acquisition of the immovable property made under subsection (6) of Section 269F has become final, the right to immediate possession of the property being from that time only in the Central Government and none else. It is, therefore, futile to contend that a tenant in possession under a contractual tenancy or a statutory tenant by virtue of the protection granted under the Rent Act can continue in possession as the tenant of the Central Government with no obligation to deliver possession to the competent authority, in spite of the clear provision for delivery of such possession under Section 269-1 of the Act.

16. Learned counsel for the appellants referred to decisions of this Court in *Gian Devi Anand v. Jeevan Kumar*, (1985) 2 SCC 683 : (AIR 1985 SC 796) and *Damadilal v. Parashram*, (1976) 4 SCC 855: (AIR 1976 SC 2229) dealing with the nature of right of a statutory tenant under the Rent Acts. These decisions are of no assistance to the appellants in the present context. They were rendered in the context of protection against eviction available to a statutory tenant or his heirs in accordance with the provisions of the Rent Acts in view", of the definition of 'tenant' therein. Even assuming a statutory tenant can be said to have some right or interest in the property which is not merely a protection against eviction conferred by the Rent Acts, the scheme of Chapter XX-A of the Income tax Act provides for acquisition of the property and its vesting in the Central Government free from all encumbrances. The only surviving right of all persons having any interest in the property at the time of acquisition is to share in the compensation amount and to enforce the right under a surviving encumbrance, if any, against the transferee or any such person, other than the Central Government, by a suit for damages alone. On such acquisition all rights, proprietary and possessory, vest in the Central Government which obviously eliminates the Continuance of any tenancy rights.

17. The net result of sub-sections (1) and (4) of Section 269-1 read with the other provisions of Chapter XX-A is that once the order of acquisition of any immovable property made under sub-section (6) of Section 269F has become final, the transferor, the transferee or any other occupant of the property has to deliver possession thereof to the competent authority and on the possession being so obtained, by virtue of subsection (4) of Section 269-1, the property shall vest absolutely in the Central Government free from all encumbrances. There is no other situation visualised in the scheme of Chapter XX-A and no person including any tenant in occupation of the immovable property has any surviving right to continue in possession. The expression 'person in occupation of the property' in Section 269D(2)(a) includes every person including a contractual or a statutory tenant. The provision for sharing the compensation amount in Section 269K and that of enforcement of any right under a surviving encumbrance, if any, against the transferee or any other person, excluding the Central Government, by a suit for damages takes care of the interest, if any, of an occupant of the immovable property. There is, thus no room for any doubt that the transferor or the

transferee in possession is bound to deliver possession of the property on its acquisition in this manner, and the right of a tenant including a statutory tenant to continue in possession is also not saved by the provisions in Chapter XX-A. The contention of the appellants that the appellants' right as a tenant survives and continues in spite of the order for acquisition of the immovable property having become final and the property having vested in the Central Government free from all encumbrances is untenable. It is therefore, rejected.

18. It may also be mentioned that the Rent Acts ordinarily exclude properties owned by the Central Government from operation of those Acts. The scheme envisaged by Chapter XX-A of the Income-tax Act is in conformity therewith. Consequently, the appeal fails and is dismissed. No costs. Appeal dismissed.

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