Junjaram

Vs

Bhaurao and others

Civil Appeal No. 2575 of 1982

(K. Ramaswamy, G. B. Pattanaik JJ)

22.02.1996

JUDGMENT

1.Abatement set aside, Substitution allowed.

2. Delay condoned.

3. This appeal by special leave arises from order of High Court of Bombay, Nagpur Bench dated December 4, 1980 in Writ Petition No. 1986/74 filed under Article 227 of the Constitution. The admitted facts are that the appellant was a tenant in respect of the lands situated in Brahmanwada in Murtizapur Taluk, District Akola in Vidarbha region of Maharashtra State. At the relevant time, Berar Regulations of Agricultural Leases Act. 1951 )Act No. 24/51 (for short,' Berar Act')was in vogue. The lands admittedly were agricultural lands admeasuring 29 acres 10 guntas in Serial No. 47. By a deed dated January 2. 1956 lands were surrendered as stipulated thus :

> "In the year 1955-56, he had taken loans and executed a promissory note. He discharged part of the debt. he was due of a sum of Rs. 300/- and he was unable to discharge the same. Consequently, he was surrendering his protected lease tenancy rights as a lease to the landlord in lieu of discharge of the debt."

4. Subsequently, within one year he filed an application under Berar Act for its restoration to him. While the authorities, namely, the Mamlatdar and the appellate authority held that surrender was illegal and directed restitution of the possession of the land to the appellant, in revision the Deputy Commissioner set aside the order and remitted the matter for fresh consideration. Pending decisions, the Bombay Tenancy & Agricultural Lands (Vidarbha Region) Act. 1958 (for short, the 'Act') had come into force. As an abundant caution, an application under Section 10 was also filed for restoration of possession of self-same land. Ultimately, in this proceedings, the Revenue Tribunal again has held that since the appellant had surrendered the possession of the land, he is not entitled to the restoration the claim being barred by limitation. it was held that the respondent being a widow of the original landlord on demise of her husband, the protected tenancy had ceased against her. Therefore, the appellant is not entitled to avail of the protected tenancy rights as against the widow which was upheld by the High Court in the writ petition. Thus this appeal by special leave.

5. Shri V.A. Bobde, learned senior counsel appearing for the appellant, contended that the premise on which the Tribunal and the High Court have proceeded is wrong in law. On the date when the alleged surrender was made, the landlord was alive and had taken possession of the land. Therefore, on the date when the surrender is said to be voluntarily made, the protected tenancy was subsisting. Section 6(1) of the Berar Act mandates that such a surrender shall be only registered instrument.

Since, admittedly, the surrender was not through registered instrument, the said surrender does not bind the appellant. The approach in that behalf is not correct in law. Shri V. B. Joshi, learned counsel appearing for the respondent, contended that while the proceedings were pending before the primary authority, the Act had come into force. Thereunder an application under Section 10 thereof came to be filed which was found not to have been filed within limitation. Even otherwise since the respondent was a widow, there is not protected tenancy rights available under the Act to the appellant. Therefore, the High Court in either event was right in concluding that the appellant was not entitled to the benefit of the provisions of the Berar Act or the Act.

6. Regard being had to the respective contentions, the question arises whether the appellant is entitled to the restoration of the possession of the lands which admittedly had been taken possession of, under surrender deed dated January 3, 1956? Section 6(1) of the Berar Act reads thus :

> "A protected lessee may by delivering to the landholder, not less than 30 days before the date of the commencement of the agricultural year, a registered document executed in favour of the landholder surrender his rights and thereupon he shall cases to be a lessee from the agricultural year next following such date."

7. It would clearly indicate that the legislature intended to protect the leasehold rights of a protected tenant and the surrender being in derogation of the right, Section 6(1) enjoins to divest that right only when the tenant surrenders agricultural leases only by a registered document executed in favour the landholder surrendering tenancy right thereunder. Then only the protected tenant ceases to be a lessee of the agricultural lands. Admittedly, though the document Annexure I marked in this paper book was executed on January 3, 1956 surrendering his rights in the aforesaid land, it was not though a registered instrument and that, therefore, the surrender is clearly illegal and in violation of mandatory provision. The contention of Shri Joshi is that the evidence on record shows that the appellant had voluntarily surrendered and it is not vitiated by any fraud or coercion and, therefore, the finding is well justified. We find no force in the contention. It is seen that only if the document is a registered instrument the question of enquiry into fraud or coercion would arise and the Tribunals need to go into that question. if the instrument is not a registered instrument, then the question of genuineness or fraud or coercion need not be gone into as the surrender gets crushed under the fringing facts of Section 6(1) of Berar Act.

8. it is then contended that the appellant had made an application made under Section 10 of the Act. Since the application had not been filed within the prescribed limitation, the Tribunal and the High Court were right in rejecting the application. This contention also has no force. Admittedly, as on the date when the Act had come into force, the proceedings under Bear Act were pending before the competent authority. The application under Section 19(2) of the Bear Act was filed within limitation. The question then is: whether those proceedings could be disposed of under the Act or abated under the Act ? Section 132 of the Act reads thus:

> "132. (1) The provisions of the enactments specified in Schedule I are hereby repealed to the extent specified in column 4 of the said Schedule.
>
> (2) Nothing in sub-section (1) shall, save as expressly provided in this Act, affect or be deemed to affect -
>
> (i) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or

(ii) any legal proceedings or remedy in respect of any such right, title interest, obligation or liability or anything done or suffered before the commence ment of this Act and any such proceeding shall be instituted, continued and disposed of, as if this Act had not been passed.

(3) Notwithstanding anything contained in subsection (2)-

(a) all proceedings for the termination of the tenancy and ejectment of a tenant of for the recovery or restoration of the possession of the land under the provisions of the enactments so repealed, pending on the date of the commencement of this Act before a Revenue Officer or in appeal or revision before any appellate or revising authority shall be deemed to have been instituted and pending before the corresponding authority under this Act and shall be disposed of in accordance with the provisions of this Act, and

(b) in the case of any proceeding under any of the provisions of the enactments so repealed, pending before a civil court on such date, the provisions of Section 125 of this Act shall apply."

9. A reading thereof indicates that the provisions of the Bear Act stood repealed by operation of sub-section (1) of Section 132. Sub-section (2) saves all the rights postulating that nothing in sub-section save as expressly provided in the Act, affected or was deemed to have affected any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of the Act. Since the right to restoration of agricultural land, a statutory right under the Bear Act had already accrued to and been acquired by the appellant, not withstanding its repeal, by operation of sub-section (1) of Section 132, the said right continues to subsist and be available to the appellant. Sub-section (3) is merely a procedural part and says that all proceedings for the termination of the tenancy, ejectment of tenant for the recovery or restoration of the possession of the land under Bear Act pending on the date of the commencement of the Act before a Revenue Officer in appeal or revision, shall be deemed to have been instituted and pending under the corresponding authority under the Act and shall be disposed of in accordance with the provisions of the Act. Thus the proceedings spending under Berar Act did not get abated. Consequently, the proceedings under the Berar Act shall be disposed of under sub-section (3) of Section 132 as if those provisions are in operation to the extent of the rights had under the Berar Act and saved by operation of sub-section (2) of Section 132 of the Act.

10. Since right to restoration of the possession was saved by operation of sub-section (20 of Section 132 of the Act read with Section 19 of the Berar Act, the same shall be disposed of under the Act as the rights under the Berar Act are available to the appellant. Consequently, there was no necessity for the appellant to file a fresh application for restoration as the application for restitution was pending before the competent authority. The Revenue Tribunal and the High Court, therefore, were wrong in holding that the application for restoration was barred by limitation.

11. It is then contended that the respondent being a widow, the right to protected tenancy cases as against her and that, therefore, the order was not vitiated by any error of law. This contention also is not correct in law. As on the date of the surrender, admittedly, her husband was alive and surrender, was in his favour. No doubt, subsequently, he died and the respondent became widow. On the date of the surrender, the right was available to her husband and even subsequently on demise of her husband, the existing right continued to exist and was not divested by any statutory operation.

Therefore, the High Court and the Tribunal wrongly proceeded on the premise that she being a widow, appellant cased to have any protected tenancy right for restitution of the possession of land as against the widow.

12. The appeal is, therefore, allowed and the order of the High Court and the Tribunal are set aside and that of the original authority is restored. No costs.

Appeal allowed.