Krishan Malhar Mirasdar

Vs

Saswad Mali Sugar Factory Ltd.& Ors.

(S. B. Majmudar, M. Jagannadha Rao JJ)

13.01.1998

JUDGMENT

S.B.MAJMUDAR J

1.In this group of appeals a short question aries for consideration which runs as under:-

Whether the sub-lessees of the lessee, Saswad Mali Sugar Factory Ltd. and which was earlier functioning as Saswad Mali Sahakari Sakhar Karkhana in Solapur District of Maharashtra State were entitled to be treated as deemed purchasers of agricultural lands cultivated by them in the light of notification issued on 8.2.1978 by the State of Maharashtra in exercise of its powers under Section 43A(3) of the Bombay Tenancy and Agricultural Lands Act, 1946 (Act No.67 of 1948) (hereinafter to be referred to as 'the Act').

2.A Division Bench of the Bombay High Court in the impugned judgments has upheld the said right of the sub-lessees. That is how that present appeals on special leave have been filed by the original owners of the lands.

3.A few relevant facts leading to these appeals may be noted at the outset. The lands in question were originally leased out by the appellants to the aforesaid factory for the purpose of growing sugarcane. Under the lease deeds, which were renewed from time to time the sugar factory, the original lessee was permitted to sub-lease the said lands and accordingly, the sub-lessees came to occupy these lands at the relevant time when the leases were granted., The provisions of the Act did not apply to such leases in view of Section 88(1) (b) as it stood at the relevant time. As per the said section, the Act was not applicable as a whole to leases entered into for the benefit of industrial and commercial undertakings. There is no dispute between the parties that the leases of the lands granted to the sugar factory were covered by the sweep of this exemption clause.

4.Later on by Section 30 of the Bombay Act 13 of 1956 which amended the parent Act, Section 43A was inserted in the principal Act by way of Chapter III-A which dealt with special provisions for lands held on lease by industrial or commercial undertakings and by certain persons for the cultivation of sugarcane and other modified agricultural produce. Section 43A with its sub-sections is relevant for decision in the present appeals. It is profitable to extract it is extenso as under:-

> "CHAPTER III-A
>
> SPECIAL PROVISIONS FOR LANDS HELD ON LEASE BY INDUSTRIAL OR COMMERCIAL UNDERTAKINGS AND BY CERTAIN PERSON FOR THE

CULTIVATION OF SUGARCANE AND OTHER NOTIFIED AGRICULTURAL PRODUCE.34A(1) The provisions of sections 4B, 8,9,9A,9C,10,10A, to 31D (both inclusive), 32 to 32R (both inclusive), 33A, 33B, 33C, 43,63,63A,64 and 65, shall not apply to-

(a) land leased to or held by and industrial or commercial undertaking other than a Co-operative Society which in the opinion of the State Government bona fide carries on any industrial or commercial operations and which is approved by the State Government;

(b) lease of land granted to any bodies or persons other than those mentioned in clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of livestock;

(c) to lands held or leased by such co-operative societies as are approved in the prescribed manner by the State Government which have for their objects the improvement of he economic and social conditions of peasants or ensuring the full and efficient use of and for agriculture and allied pursuits.

(2) The State Government may by notification in the Official Gazette in this behalf direct that the provisions of the said sections shall not apply to a lease of land obtained by any person for growing any other class of agricultural produce to which it is satisfied that it will not be expedient in the public interest to apply the said provisions before the issue of such notification, the State Government shall direct an inquiry to be made by an officer authorized in this behalf by the Staff Government and shall given all persons who are likely to be affected by such notification, an opportunity to submit their objections.

(3) Notwithstanding anything contained in sub-sections (1) and (2), it shall lawful for the State Government to direct, by notification in the Official Gazette that the leases or lands, as the case may be to which the provisions of sub-sections (1) and (2) apply, shall be subject to such conditions as may be specified in the notification, in respect of-

(a) the duration of the lease;

(b) the improvements to be made on the land and the formation of co-operative farming societies for that purpose and financial assistance to such societies;

(c) the payment of land revenue, irrigation cess, local fund cess and any other charges payable to the State Government or any local authority; or

(d) any other matter referred to in sections mentioned in sub-section (1)".

5.The aforesaid sub-section (1) of Section 43A clearly indicates that though earlier because of Section 86(1)(b) Sections 1 to 87 were not applicable to such leases, after insertion of Section 43A(1) by Bombay Act 13 of 1956, certain sections of the parent Act only were not made applicable thereafter to those lands leased. Rest of the sections got applied. We are concerned with lands leased to commercial undertaking like Saswad Mali Sahakari Sakhar Karkhana as such sugar factory is a commercial undertaking. It is not in dispute between the parties that those lands are

covered by Section 43A(1)(a) as the State Government has approved Saswad Mali Sahakari Sakhar Karkhana for the applicability of the said provision. Once the said provision applied to the respondent sugar factory, consequences mentioned in sub-section (1) of Section 43A would get attracted. However, there is a power available to the State Government in sub-section (3) thereof under which it can issue notification to the effect that the leases or the lands, as the case may be, to which sub-sections (1) and (2) would apply shall be subject to such conditions as may be notified in the notification. The State of Maharashtra issued two notifications in exercise of that power. The first one was issued on 14.2.1958.It dealt with the lands covered by clause (b) of sub-section (1) of Section 43A.We are strictly not concerned with the said notification. The relevant notification which would apply in the present batch of appeals is one of even date issued in connection with the lands leased to sugar factories which have been approved by the State Government under clause (a) of sub-section (1) of Section 43A.The said notification as initially issued in 1958 did not confer any right to the sub-lessees of the factories to become deemed purchasers of the lands. On the contrary, it tried to apply the provisions of Section 14 of the Act for the first time to the lessee factories. As laid down therein such leases shall not be terminated unless the lessees, amongst others, have sub-let the lands contrary to the provisions of the lease without the previous permission of Mammal Consequently, initially when this notification operated, any lawful sub-lease was liable to be terminated and even lessee was liable to be evicted if such-lease was effected contrary to the provisions of lease. It is not in dispute between the parties that in the present cases, the leases documents under which the sugar factory was given lease, gave express permission to the lessee to sub-let. Therefore, strictly speaking the prohibition mentioned in clause (4) of the notification did not apply and hence the landlord did not object to sub-letting of lands by the sugar factory in favor of the sub-lessees concerned who are respondents in the present batch of appeals. It is also to be noted that when the aforesaid notification applied, the provision of Section 14 to the extent laid down by clause (4) of the notification became applicable. Section 14 by itself attracted Section 27 which prohibited even lawful and permissible sub-leases. While clause (4) applied the provisions of Section 4 of the limited extent of its applicability of only non-permitted sub-lessees. Consequently, Section 27 could not get attracted to such permitted sub-lessees by the leases covered by Section 43A(1)(a).We have also to note that Section 4 of the Act applied to such leases by virtue of Section 43A(1) as it was not one of the sections enumerated as excluded from their applicability to such leases. When we turn to Section 4, it is found clearly provided therein that a person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not-(a) a member of the owner's family; or (b) a servant on wages payable in cash or kind but in crop share or a hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family; or (c) mortgage in possession. Thus, the sub-lessees of the sugar factory straightaway came with the scope of protective umbrella of Section 4 of the Act and became deemed tenants as it cannot be said that they were not lawfully cultivating these lands. They were in possession of the lands as lawful sub-lessees of the sugar factory which was entitled by virtue of the express permission granted under the lease deeds by the landlords to sub-let. A constitution Bench of this Court in the case of Dahva Lal & Ors.Vs.Rasul Mohammed Abdul Rahim reported in [1963 (3) SCR 1] while interpreting Section 4 of the Act held that the Act affords protective umbrella to all persons who hold agricultural lands as contractual tenants, and subject to the exceptions specified all person lawfully cultivating the lands belonging to others whether their authority is derived directly from the owner of the land or not must be deemed to be tenants of the land.

6.However, learned senior counsel for the appellants, invited our attention to a decision of this Court in the case of Gopala Genu Wagale Vs.Mageshwardeo Patas Abishekh Anusthan Trust reported in

[(1978) 2 SCC 47] wherein it has been held by a Bench of two learned Judges of this Court that before Section 4 of the Bombay Tenancy Act can be pressed in service by any one, it must be fund that the person concerned was lawfully cultivating the land and in case of sub-tenant covered by Section 14(1)(a)(iii) and Section 27 of the Tenancy Act, protection of Section 4 of the Act would not be available as he cannot be said to be lawfully cultivating the lands. In our view, this decision cannot be of any avail to the appellants in the present cases for reason, firstly, in that decision the Court had clearly held that in a reference under Section 85A of the Tenancy Act about the status of the person concerned claiming to a sub-tenant of the land vis-a-vis head tenant, no further question about deemed tenancy survived for consideration. Having held so in paragraph 4 of the report, further observations were made in paragraph 5 of the report on the interpretation of Section 4.Strictly speaking they were not required for the decision of the case and were obiter. But even that apart, as seen from the facts of that case Section 4 was construed in the light of Sections 14 and 27 and on a conjoint reading thereof a view was taken that even if a sub-tenant is inducted by permission of the landlord, Section 27 would hit such permitted sub-lessee and hence sub-tenants cannot urged that they were lawfully cultivating the lands. In the present case, such a situation does not emerge as both Sections 14 and 27 are excluded by Section 43A(1) & (2) and Section 4 on the other hand is made applicable without the fetters of Sections 14 and 27. Therefore, in cases of leases covered by Section 43A, the provisions of Section 4 would operate on their own. Consequently, lawful sub-lessees of lessees covered by Section 43A cannot be held to be in unlawful cultivation. Once this conclusion is reached, Section 4 would operate on its own and once it operates on its own the sub-tenants who are lawfully cultivating the lands by express permission to sub-let granted by the landlords to the lessees could be said to be deemed tenants. Therefore, the ratio of the decision in Gopala Genu Wagale's case (supra) will not apply to the facts of the present cases. On the contrary, the ratio of the decision of the Constitution Bench of this Court in [1963 (3) SCR 1) would strictly get attracted. It was clearly held by J.C.Shah, J.speaking for the Constitution Bench that Section 4 operates on its own. That person lawfully cultivating lands of another and not covered by the excluded categories mentioned in sub-sections (a), (b) and (c) will automatically get the status of deemed tenant. It was observed that Section 4 seeks to confer the status of a tenant upon a person lawfully cultivating land belonging to another. By that provision, certain person who are not tenants for purposes of the Act. A person who is deemed to be a tenant by Section 4 is manifestly in a class apart from the tenant who holds lands on lease from the owner. Such person would be invested with the status of a tenant, if the three conditions mentioned in the Section are fulfilled. Consequently, the laid down in [(1976) 2 SCC 47] cannot be of any assistance to the appellants and the said decision was, therefore, rightly not applied to the facts of the present appeals by the High Court in the impugned judgment.

7.Now remains the question as to what is the scope and ambit of the further notification under Section 43A(3) dated 8.2.1978.The said notification lays down other conditions in connection with leases in respect of lands leased to sugar factories which were approved by the State Government under sub-section (1) of Section 43A.The notification, amongst others, laid down conditions permitting the landlords to terminate such leases as per clauses (4) and (4)A (1).Amongst others, the said notification lays down additional conditions, one of them being condition no.7 which is relevant for our consideration.

> "7(1).Where the lease land has been sub-leased by the sugar factory, the sub-lessee unless his lease is terminated under condition 48 shall have the right to purchase the land within one year from the expiry of the period during which the lessor is entitled to terminate the lease under section 1491).

(2) The provisions of sections 32 to 32R (both inclusive) shall so far as may be applicable, apply to the right of such lessee to purchase the land under this condition."

8.A look at the said provision shows that when the leased lands has been sub-leased by the sugar factory such sub-lessee, as per condition no.7, shall have a right to purchase the land within one year from the expiry of the period during which the lessor is entitled to terminate the lease under Section 14(1).

9.The short question is whether this condition can be said to be contrary to the scope and ambit of Section 43A(3).It may be noted that the vires of sub-section (3) of Section 43A were challenged neither before the High Court nor before us. It was also not submitted that the said provision suffers from excessive delegation of legislative power. Consequently, we have only to refer to the express provision of clause (7) and the field on which it would operate. As noted earlier, sub-section (3) of Section 43A stares with a non-obstinate clause and provides that notwithstanding anything contained in sub-sections (1) and (2), it shall be lawful for the State Government to direct, by notification in the Official Gazette that the lease or lands, as the case may be, to which the provisions of sub-sections (1) and (2) apply, shall be subject to such conditions as may be specified in the notification in connection with such lands or leases which are the subject-matters of Section 43A(1) and (2). It is true that under Section 43A(3) such notification can be issued in connection with leases or land covered by sub-sections (1) and (2) and conditions can be laid down by the State Government by the said notification in respect of matters referred to in clauses (a) to (d) thereof. Clauses (a) to (c) of Sections 43A(1) refer to the working of such leases and monetary obligations flowing therefrom. But when we turn to the provisions of clause (d) of Section 43A(3), it becomes clear that the State Government is empowered to provide for any further matter in connection with sections referred to in sub-section (1) of Section 43(1) of Section 43A. Sections 32 to 32R, amongst others, are mentioned in sub-section (1) of Section 43A. Therefore, on a conjoint reading of Section 43A(1) and clause (d) of sub-section (3) of Section 43A, it becomes clear that the State of Maharashtra had power and authority to lay down conditions about the applicability of Sections 32 to 32R in connection with leases in the present case are covered by Section 43A(1)(a), the notification in question could legitimately apply to Sections 32 to 32R subject to the conditions which may be laid down. Such an authority and power clearly flow from the express language of Section 43A(3) especially clause(d) thereof. Learned senior counsel for the appellants would have been right if clauses (d) would have only provided that the State Government could issue notifications for laying down conditions 'regarding any other matter referred to in sub-section (1)' of Section 43A but on the contrary it empowers the State Government to lay down condition 'regarding any other matter referred to in sections mentioned in sub-section (1)'. It necessarily means Legislature permitted the delegate to provide appropriate conditions for applicability of the excluded sections expressly mentioned in Section 43A(1). Therefore, in view of wide scope of the said provision of Section 43A(3)(d) it is not possible to agree with learned senior counsel for the appellants that the notification could not have provided for the benefit of deemed purchase to sub-leases of such factories. Learned senior counsel for the appellants submitted that on the scheme of the parent act apart from applicability of Section 43A(1) to sub-tenant even if legally permitted by the lease deeds, the sub-tenant could not be a deemed purchaser at least till 1976 when condition no.7 was made applicable in its present forms as during that time because of clause (4) of 1976 notification, Section 4 did not apply due to the applicability of Sections 14 and 27. Hence, even after 1978, he cannot be get the benefit of Section 4 as a deemed tenant. It is difficult to agree with this contention. The reason is obvious. So far as the lands leased to or held by any industrial or commercial undertaking are concerned, Section 1 to 87 did not apply initially. For the first time, the

Legislature made some of the provisions in the Act not applicable to such leases but applied the rest of them. While doing so, the Legislature in its wisdom did not exclude Section 4. Thus, Section 4 without Sections 14 and 27 applied to such leases covered by Section 43(1) from the very inception of the applicability of the Act to such leases. Therefore, it cannot be said that the further provision of deemed purchase for deemed tenants sub-leases of such permitted sub-lettings as per 1976 notification is in any way contrary to the scheme of the Act. On the contrary, as laid down by the Constitution Bench of this Court in the case of Sri Ram Narain Medhi Vs. The State of Bombay reported in [1959 Supp. (1) SCR 489] wherein the constitutionality of deemed purchase provision was upheld, the object of the amendment was to make the tiller of the soil the owner thereof and to exclude the intermediary landlord so as to bring the tiller in direction relationship with the State. This being the scope and real purport of the Act, it cannot be said that by inserting clause (7) in the notification of 1976 a provision was sought to be made which runs counter to the scheme of the parent Act. It is also to be kept in view that sub-section (3) of Section 43A empowers the State Government by notification to lay down conditions in connection with matters referred to in sub-sections (1) and (2) thereof about the leases or lands that would be covered by sub-sections (1) and (2). So, even if, the industrial or commercial undertakings may be themselves owning the lands through tenants the latter can be made deemed purchasers by issuance of such notification which would remain a permissible exercise. Learned senior counsel for the appellants fairly submitted that so far as the industrial concerns themselves being owners, had let out lands, their tenants can be legally brought within the scope of clause (7) of the notification of 1978. His grievance was about sub-tenants only. So far as this grievance goes, on the scheme of the Act and the express provision made in Section 43A(3) (d), it is not possible to countenance it. In that view of the matter, the decision of the High Court cannot be said to be in any way erroneous or going contrary to the scheme of the Act.

10.In the result, the appeals fail and are dismissed. However, we make it clear that we have examined the limited controversy which was posed for our consideration, as stated earlier and especially the validity of condition no.7 of the 1978 notification. Our judgment, therefore does not refer to any other controversies between the parties.