SUPREME COURT OF INDIA

Sadashiv Dada Patil

Vs.

Purshottam Onkar Patil (D) by LRs.

C.A.No.4334 of 2006

(S.B.Sinha and Dalveer Bhandari JJ.)

29.09.2006

JUDGMENT

S.B. SINHA, J.

Leave granted.

The ancestors of Appellant were seized and possessed of watan lands. They were known as Watandars and the land was classified in the record of rights as Patil Inam Land of Class VIB. The ancestor of Respondent was inducted as a tenant in Survey Nos. 208/1 and 208/2 of Village Yaval in the District of Jalgaon, State of Maharashtra.

The erstwhile State of Bombay enacted the Bombay Tenancy & Agricultural Lands Act, 1948 (for short, "the Tenancy Act"). The Tenancy Act was enacted to amend the law relating to tenancies of agricultural lands and to make certain other provisions in regard thereto. By reason of the said provisions having regard to the economic and social conditions of peasants and for ensuring full and efficient use of land for agriculture, it was considered expedient to assume management of estates held by landholders and to regulate and impose restrictions on the transfer of agricultural lands, dwelling houses, sites and lands appurtenant thereto belonging to or occupied by agriculturalists, agricultural labourers and artisans in the Province of Bombay and to make provisions for certain other purposes thereinafter appearing.

The Tenancy Act came into force with effect from 02.04.1940. "Landholder" has been defined in Section 2(9) thereof to mean :

"Landholder" means a zamindar, jahagirdar, saranjamdar, inamdar, talukdar, malik or a khot or any person not hereinbefore specified who is a holder of land or who is interested in land, and whom the State Government has declared on account of the extent and value of the land or his interests therein to be a landholder for the purposes of this Act;"

"Agriculturist" has been defined in Section 2(2) of the Tenancy Act to mean a person who cultivates land personally. The words "to cultivate" with grammatical variation and cognate expressions mean to till or husband the land for the purpose of raising or improving agricultural produce, whether by

manual or labour or by means of cattle or machinery, or to carry on any agricultural operation thereon; and the expression "uncultivated" is to be construed correspondingly. The expression "to cultivate personally" is further defined in Section 2(6) of the Tenancy Act to mean :

"2(6) "to cultivate personally" means to cultivate land on one's own account –

(i) by one's own labour, or

(ii) by the labour of any member of one's family or

(iii) under the personal supervision of oneself or any member of one's family, by hired labour or by servants on wages payable in cash or kind but not in crop share, being land, the entire area of which-

(a) is situate within the limits of a single village, or

(b) is so situated that no piece of land is separated from another by a distance of more than five miles, or

(c) forms one compact block :

Provided that the restrictions contained in clauses (a) (b) and (c) shall not apply to any land, -

(i) which does not exceed twice the ceiling area,

(ii) upto twice the ceiling area, if such land exceeds twice the ceiling area.

Explanation I. A widow or a minor, or a person who is subject to physical or mental disability or a serving member of the armed forces shall be deemed to cultivate the land personally if such land is cultivated by servants, or by hired labour, or through tenants.

Explanation II. In the case of a joint family, the land shall be deemed to have been cultivated personally if it is cultivated by any member of such family."

Section 31 of the Tenancy Act empowers a landlord to terminate a tenancy after giving notice and making an application for possession as provided for in sub-section (2) thereof, if the same is required by him, inter alia, for cultivating purposes. However, such option could be exercised in the manner required under sub-section (2), in terms whereof notices were to be served by 31.12.1956.

Section 32 of the Tenancy Act provides for an option to the tenants to purchase the land in their possession, which reads as under :

"32. Tenants deemed to have purchased land on tillers' day. - (1) On the first day of April, 1957 (hereinafter referred to as "the tillers day") every tenant shall subject to the other provisions of this section and the provisions of the next succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant, if, -

(a) such tenant is a permanent tenant thereof and cultivates land personally;

(b) such tenant is not a permanent tenant but cultivates the land leased personally; and

(i) the landlord has not given notice of termination of his tenancy under section 31; or

(ii) notice has been given under section 31, but the landlord has not applied to the Mamlatdar on or before the 31st day of March 1957 under section 29 for obtaining possession of the land; or

(iii) the landlord has not terminated this tenancy on any of the grounds specified in section 14, or has so terminated the tenancy but has not applied to the Mamlatdar on or before the 31st day of March 1957 under section 29 for obtaining possession of the lands :

Provided that if an application made by the landlord under section 29 for obtaining possession of the land has been rejected by the Mamlatdar or by the Collector in appeal or in revision by the Maharashtra Revenue Tribunal under the provisions of this Act, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. The date on which the final order of rejection is passed is hereinafter referred to as "the postponed date" :

Provided further that the tenant of a landlord who is entitled to the benefit of the proviso to sub-section (3) of section 31 shall be deemed to have purchased the land on the 1st day of April 1958, if no separation of his share has been effected before the date mentioned in that proviso."

The said provision was amended by Maharashtra Act IX of 1961. The amended provision also indicates that the statutory scheme is that the legal fiction contained therein enures to the benefit of the tiller of the land. It provides for the right to purchase in favour of a tenant who had also been evicted subject to the conditions laid down therefor.

By reason of the said provision, a legal fiction is created which must be given full effect.

The State of Maharashtra enacted the Maharashtra Revenue Patels (Abolition of Office) Act, 1962 (for short, "the 1962 Act'). The watan land was defined to mean the land forming part of watan property. Section 3 of the 1962 Act provides for abolition of patel watans together with incidents thereof. Section 8 thereof makes the existing tenancy law applicable in respect of the watan land which has been lawfully leased and subsisted on the appointed day.

Respondent herein served a notice upon his landlord expressing his desire to pay the purchase price of the land in terms of Section 32-G of the Tenancy Act. The Tehsildar opined that as the tenancy commenced on the date of re-grant, the tenant ought to have given a notice within one year from the date thereof as contemplated under Section 32-O thereof; and as such a notice had not been given, the proceedings were dropped by order dated 31.01.1984. An appeal thereagainst was filed by Respondent and by an order dated 19.11.1985, the Appellate Authority opined that the provisions of Section 32-O of the Tenancy Act were not applicable and the tenant was entitled to purchase the tenanted land in terms of Section 32-G thereof.

The Maharashtra Revenue Tribunal was thereafter approached by Appellant herein by filing a revision application which was marked as Tenancy Appeal No. 3 of 1986. The said revision application was allowed.

A writ petition questioning the legality and/or validity of the said order was filed by Respondent. A learned Single Judge by an order dated 22.11.2002 opined that the provisions of Section 32-O were not applicable. The learned Single Judge in arriving at the said decision, followed an earlier judgment of the Bombay High Court in Kallawwa Shattu Patil and Ors. v. Yallappa Parasharam Patil and Anr., (1992) Mh. L J. 34.

A Letters Patent Appeal filed thereagainst was dismissed. The Division Bench in arriving at its findings, inter alia, opined that as Appellant did not exercise the remedy of eviction of tenant available under the Bombay Hereditary Offices Act, 1874 (for short, the 1874 Act') he was neither entitled for re-grant of the land in question under the 1962 Act nor was he entitled to seek possession thereof.

Mr. Uday B. Dube, the learned counsel appearing on behalf of Appellant, would submit that the Division Bench committed a serious error in relying upon the provisions of the 1874 Act, which had no application in the facts and circumstances of the present case. It was further submitted that the High Court also committed a manifest error in relying upon Kallawwa Shattu Patil's case (supra) to hold that the provisions of Section 32-O were not applicable. Section 8 of the 1962 Act, the learned counsel would contend, must be read with the proviso appended thereto and so construed, the same might have been held to give only prospective effect.

Mr. Himanshu Gupta, learned counsel appearing on behalf of Respondent, on the other hand, submitted that keeping in view the purport, and object of the Act, the decision of the High Court cannot be faulted.

Indisputably, the rights and obligations of the parties were governed by the Tenancy Act. Section 31 thereof entitled the watandar to serve a notice upon the tenant to hand over vacant possession to him of the tenanted land, if the land was required for one or the other purposes mentioned therein. Such a notice was to be served on or before 31.12.1956. It is not contended that Respondent was served with such a notice. No proceeding was initiated before 31.3.1957. The tenancy, therefore, continued.

First day of April, 1957 was declared to be the "tillers day'. If a person remained a tenant on the said date, by reason of the legal fiction created under Section 32 of the Tenancy Act, he would be deemed to have purchased the land from his landlord, free from all encumbrances subsisting thereon on the said day. Section 32-G thereof, on the other hand, casts an obligation on the Tribunal. The Tribunal is required to publish or cause to be published a public notice in the prescribed form calling upon the tenants who under Section 32 of the Tenancy Act are deemed to have purchased the land. Section 32-O contains a non-obstante clause providing notwithstanding any agreement or usage to the contrary, a tenant cultivating personally would be entitled within one year from the commencement of such tenancy to purchase from the landlord the land held by him or such part thereof as will raise the holding of the tenant to the ceiling area.

Section 8 of the 1962 Act, as noticed hereinbefore, provides that the rights and liabilities of the holder of such land and his tenant or tenants shall, subject to the provisions of the said part, be governed by the provisions of the that law. The proviso appended hereto whereupon reliance has been placed by Mr. Dube reads as under :

"Provided that, for the purposes of application of the provisions of the relevant tenancy law in regard to the compulsory purchase of land by a tenant, the lease shall be deemed to have

commenced from the date of the re-grant of the land under section 5 or 6 or 9, as the case maybe.

Explanation.- For the purposes of this section the expression "land" shall have the same meaning as is assigned to it in the relevant tenancy law."

The provisions of both the Acts are required to be construed harmoniously. They have to be construed keeping in view the purport and object, they seek to achieve.

Section 32 of the Act confers an absolute right to the tenant.

As in 1957 the right of the respondent to purchase the land became a vested right, proviso appended to Section 8 of the 1962 Act could not be read to mean that such right stood divested. Proviso appended to Section 8 refers to the application of the provisions of the relevant tenancy laws as the same does not abrogate a vested right. Proviso, it is well known, has a limited role to play. It may create an exception. It ordinarily does not create a right or takes away a vested or accrued right. Proviso to Section 8 of the 1962 Act, in our considered opinion, does not take away a vested right conferred under the Tenancy Act.

By construing both the Acts harmoniously, the High Court in our opinion, did not make a new law. It merely interpreted the same in the light of the object of the Act. The proviso appended to Section 8 of the 1962 Act merely postponed the operation of the statute. Fixation of price of the land in question subject to exercise of option by the tenant was to that extent beneficial to the landlord; but the same would not mean that legal fiction created under 32 of the Tenancy Act would stand effaced.

We have noticed hereinbefore that 31.03.1957 was the cut-off date. A statutory right was conferred upon the tenant. The said right was created to fulfill the object that the tiller should become the owner; but thereby the landlord was not to be deprived of the price of the land. Section 32-O of the Tenancy Act would not be attracted, only because proviso appended to Section 8 of the 1962 Act provides for a new date. For the said purpose, it was not necessary to make any amendment in the Tenancy Act in view of the fact that the relevant provisions of the Tenancy Act were made part of the 1962 Act. It is not a case where the Tenancy Act was required to be made applicable with retrospective effect, as proviso appended to Section 8 of the 1962 Act was to be read in the light of Section 32-G and Section 32-O of the Tenancy Act. Proviso appended to Section 8 of the 1962 Act has a limited role to play.

In S. Sundaram Pillai v. V.R. Pattabiraman, AIR (1985) SC 582, a three- Judge Bench of this Court held that a proviso may serve four different purposes, namely:

(1) qualifying or excepting certain provisions from the main enactment;

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of

explaining the real intendment of the statutory provision."

(See also Swedish Match AB and Anr. v. Securities & Exchange Board of India and Anr., [2004] 11 SCC 641.

Proviso to Section 8 of 1962 Act, therefore, should be interpreted accordingly. It did not create any right in favour of the landlord nor did it take away the right of the tenant. It would not be correct to contend that only because Section 31 of the Tenancy Act gives an option to the landlord to terminate the tenancy and take the possession of the land, Section 32-O thereof had been given a retrospective effect. The legal fiction created under Section 32 of the Tenancy Act cannot be given a limited meaning. A legal fiction, as is well known, must be given its full effect.

In East End Dwellings Co. Ltd. v. Finsbury Borough Council, (1952) AC 109 - [1951] 2 All ER 587, it was held :

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

The said decision has been quoted with approval by this Court in many decisions. (See Ashok Leyland Ltd. v. State of Tamil Nadu & Anr., [2004] 3 SCC 1 and Bharat Petroleum Corporation Ltd. v. P. Kesavan & Anr., [2004] 9 SCC 772.]

Mr. Dubey relied upon a decision of this Court in Maruti Udyog Ltd. v. Ram Lal and Ors., [2005] 2 SCC 638 wherein this Court opined:

"In construing a legal fiction the purpose for which it is created should be kept in mind and should not be extended beyond the scope thereof or beyond the language by which it is created. Furthermore, it is well known that a deeming provision cannot be pushed too far so as to result in an anomalous or absurd position. The court must remind itself that the expressions like "as if are adopted in law for a limited purpose and there cannot be any justification to extend the same beyond the purpose for which the legislature adopted it."

By giving the effect to the legal fiction created in the facts and circumstances of the case, the same is not extended beyond the scope thereof. It has not been pushed too far, as was the case therein.

We fail to see as to how giving effect to both the provisions of the Acts; anomalous or absurd result would ensue.

For the reasons aforementioned, we, with respect, agree with the findings of the High Court. However, keeping in view our findings aforementioned, it is not necessary to consider the implication of the provisions of the 1874 Act. The Appeal, therefore, is devoid of any merits, which is dismissed accordingly. No costs.