BOMBAY HIGH COURT

Chandbeg Muradbeg

Vs.

Raje Madhaorao Devidasrao Jahagirdar

Second Appeal No. 462 of 1952 with Second Appeals Nos. 387 of 1952 and 6 of 1953, , against decision of Addl. Dist. J., Washim in C.A. No.40A of 1951, against decision of 2nd Addl. Dist. J., Yeotmal in C. A. No. 7-A and 11A of 1951; and against decision of Addl. Dist. J., Washim in C. A. No. 85-A of 1951

(Chainani, C.J., Tambe And Patwardhan, JJ.)

17.02.1960

JUDGMENT

Chainani, C.J.

1. The questions referred to the Full Bench are :

> (1) Whether having regard to the facts in these appeals the provisions of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act 1958, (Bombay Act No. XCIX of 1958), apply? and
> (2) Whether this Court has jurisdiction to hear the appeals in view of the questions raised under the Act or they lie within the exclusive jurisdiction of the Revenue Authorities?

2. These questions have been formulated in very wide terms. Clause (b) of sub-section (3) of section 132 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act 1958, (Bombay Act No. XCIX of 1958) (hereinafter referred to as the Tenancy Act) provides that in the case of any proceeding under any of the provisions of the enactments repealed by this Act, pending before a civil Court on the date of the commencement of the Act, the provisions of section 125 of the Act shall apply. Sub-section (1) of section 125 requires a civil Court to stay the proceedings and refer such issues as under the Act are required to be decided by an authority specified in the Act, to such authority for determination. Sub-section (2) provides that after the competent authority has decided the issues referred to it, it shall communicate its decision to the civil Court and such Court shall thereupon dispose of the suit in accordance with the procedure applicable thereto. The jurisdiction of the civil Court to hear the proceedings before it has therefore, not been completely taken away by section 132 read with section 125 of the Act. In

consultation with the learned Advocates for the parties, we have, therefore, reformulated the question for our consideration as follows :-

> "Whether in Second Appeals Nos. 387 of 1952, 462 of 1952 and 6 of 1953, it is necessary to refer to the Tahsildar, under section 125 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act 1958, questions relating to the status of parties, who claim to be tenants."

3. In order to answer this question, it will be necessary to consider the nature of the proceedings in each of these three cases. Second Appeal No. 387 of 1952 arises out of the suit filed by the landlords of survey Nos. 131 and 132 for obtaining possession of those lands. Survey No. 131 was service inam land, while survey No. 132 was khalsa land. The plaintiffs-landlords contended that defendant No. 1 had executed a kabuliyat, the period of which had expired and that they were, therefore, entitled to the possession of the lands. In answer to this claim, the defendants claimed that defendant No. 1 was a permanent tenant of survey No. 132 and a tenant of antiquity of survey No. 131. The trial Court held defendant No. 1 to be an ordinary tenant in respect of survey No. 132 and a tenant of antiquity in respect of survey No. 131, and the trial Court, therefore, granted the plaintiffs a decree for possession of survey No. 132. The claim in respect of survey No. 131 was dismissed. Both the parties appealed to the District Court. That Court Confirmed the finding of the trial Court in regard to survey No. 132 that the tenancy of defendant No. 1 had been lawfully terminated and that his possession was not lawful. The District Court differed from the finding of the trial Court in regard to survey No. 131 and held that defendant No. 1 was an ordinary tenant of this land also. The order made by the trial Court dismissing the claim of the plaintiffs for possession of survey No. 131 was set aside and a decree was granted to the plaintiffs for possession of both the lands, survey Nos. 131 and 132. From this decree, Second Appeal No. 387 of 1952 was preferred to this Court. During the pendency of this appeal, the new Tenancy Act came into force. Certain rights were claimed under this Act before the Division Bench before which the second appeal came up for hearing. As the Division Bench considered that the questions raised were of Considerable importance, the matter was referred to the Full Bench.

4. At the time when the suit was filed in 1949, the Berar Land Revenue Code, 1928, was in force. Chapter VIII of this Code gave certain rights to tenants. Section 73 of this Code laid down what class of tenants were to be regarded as tenants of antiquity and also conferred certain rights upon such tenants. Section 73-C dealt with permanent tenants. Section 74 provided that when there was no agreement relating to the period of his tenancy, the tenant should be deemed to be an annual tenant holding from year to year. Section 75 imposed certain restrictions on the right of the landlord to enhance the rent. These provisions, therefore, conferred several rights on tenants.

5. In 1951 the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (No. I of 1951) was passed. As a result of this Act, survey No. 131 ceased to

be inam land. Clause (p) of section 2 of this Act defines a "specified tenant" as including a permanent tenant and a tenant of antiquity. If, therefore, the contention of the defendants that defendant No. 1 was a tenant of antiquity of survey No. 131 is accepted, defendant No. 1 became a specified tenant under the above Act. Under section 68, he must theft be held to have become the lessee of the land from the State. On the other hand, if the defendants' above contention is negatived, then under Section 68 of the Act the landlords become occupants of the land.

6. Section 68 and several other sections of the M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act were repealed by the Madhya Pradesh Land Revenue Code, 1954 (II of 1955). Chapter XIV of the Code dealt with the rights of tenants. Sub-section (1) of section 132 of the new Tenancy Act repeals Chapter XIV of the Madhya Pradesh Land Revenue Code and the Berar Regulation of Agricultural Leases Act, 1951 (XXIV of 1951). Sub-section (2) of this section provides as follows :-

> "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 proceeding or remedy in respect of any such right, title, interest, obligation or liability or anything done or suffered before the commencement of this Act, and any such proceedings shall be instituted, continued and disposed of, as if this Act had not been passed."

Under this sub-section, therefore, proceedings instituted before the commencement of the Tenancy Act in respect of any rights acquired or liabilities incurred under any of the enactments repealed can be continued and disposed of as if the Tenancy Act had not been passed. Sub-section (3) is an exception to what is provided in sub-section (2). It contains two clauses, (a) and (b). Clause (a) deals with proceedings before Revenue Authorities, with which we are not Concerned. Clause (b) provides that notwithstanding anything contained in sub-section. (2), in the case of any proceeding under any of the provisions of the enactments so repealed, pending before a civil Court on such date, i.e. the date of the commencement of the Act, the provisions of section 125 of the Act shall apply. This clause, therefore applies only to proceedings under my of the provisions of the enactments repealed. The provisions repealed by section 132 are the Berar Regulation of Agricultural Leases Act and Chapter XIV of the Madhya Pradesh Land Revenue Code. If, therefore, any proceedings under any of these two enactments were pending in a civil Court on the date, on which the new Tenancy Act Came into force, section 125 would apply to such proceedings. Section 125 provides that if any suit instituted in any civil Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, deckle or deal with such issues under this Act, the Civil Court shall stay the suit and refer such issues to such competent authority for determination. Sub-section (2) provides that on receipt of such reference from the civil Court, the competent authority shall deal with and decide such

issues in accordance with the provisions of the Act and shall communicate its decision to the civil Court and such Court shall thereupon dispose of the suit in accordance with the procedure applicable thereto. Section 100 specifies the duties and functions to be performed by the Tahsildar. It is his duty to decide whether a person is a tenant, a protected lessee or an occupancy tenant. Section 124 provides that no civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Tahsildar.

7. In view of these provisions, it has been contended by Mr. Abhyankar on behalf of the defendants, that the questions whether the original defendant No. 1 was a permanent tenant of survey No. 132 and a tenant of antiquity of survey No. 131 should be referred to the Tahsildar for determination. He has contended that under the provisions of sections 124 and 125 of the new Tenancy Act, the Court has no jurisdiction to decide these questions. There is no force in these arguments. The suits were ordinary ejectment suits filed by the landlords under the ordinary law in order to obtain possession of their lands from their tenant. They were not suits under any of the enactments which have now been repealed. In these suits, the defendants claimed certain rights conferred by the repealed enactments. Mr. Abhyankar has contended that as rights were claimed under the repealed enactments, the suits must be deemed to have been instituted under the provisions of those enactments. This argument cannot be accepted. Section 132 itself draws a distinction between suits in which rights are claimed under the repealed enactments and those instituted under the enactments repealed. The former suits are governed by sub-section (2) of section 132, while clause (b) of sub-section (3) applies to the latter class of suits. The suit in the present case will, therefore, fall under sub-section (2) and as provided in that subsection, it must be continued and disposed of, as if the Tenancy Act had not been passed.

8. Mr. Abhyankar has invited our attention to Section 19 of the Tenancy Act, which provides that notwithstanding any agreement, usage, decree or order of a court of law, the tenancy of any land held by a tenant shall not be terminated except as provided in this section. He has also urged that by reason of sections 100 and 125 of the Act, the civil Courts no longer possess the jurisdiction to decide whether defendant No. 1 was a permanent tenant, a tenant of antiquity or an ordinary tenant. It is, however, a well-settled rule that unless the Legislature directs otherwise, every suit must he decided by reference to the law in force at the date of the suit. As observed by the Supreme Court in *Garikapati Veeraya v. Subbiah Choudhury*[1], the golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed. There is no provision in the Tenancy Act stating that this Act shall also apply to pending proceedings, which had not been instituted under any of the enactments repealed by this Act. On the other hand, sub-section (2) of section 132 provides that such suits shall be disposed of as if this Act had not been passed.

9. It appears that when the appeals were pending in the District Court, the defendants made an

application that they should be allowed to raise an additional contention that defendant No. 1 was a protected lessee under the Berar Regulation of Agricultural Leases Act. No order appears to have been passed on that application. A grievance about this has been made in the appeal now pending before this Court. Section 6 of the Tenancy Act provides that a person shall be recognized to be a protected lessee if such person was, immediately before the commencement of the Act, deemed to be a protected lessee under Section 3 of the Berar Regulation of Agricultural Leases Act. Mr. Abhyankar has, therefore, urged that the question whether defendant No. 1 was a protected lessee should be referred to the Tahsildar for determination. In this connection, it is necessary to consider the rival contentions of the parties. The case of the landlords was, and which case has been accepted by the lower Appellate Court, that defendant No. 1 was an annual tenant and that his tenancy had been lawfully terminated. If that contention is accepted and upheld by this Court, defendant 1 could not become a protected lessee under the Berar Regulation of Agricultural Leases Act, which came in force long after the suit was filed. On the other hand, if the contention of the defendants that defendant No. 1 was a permanent tenant of survey No. 132 and a tenant of antiquity of survey No. 131 is accepted, then the landlords' suit for possession of the lands must fail. In either case,

[1]1957 SCR 488

therefore, it is not necessary to refer any question to the Tahsildar for determination.

10. Second Appeal No. 387 of 1952 will, therefore, go back to the Division Bench for being heard on merits and thereafter disposed of in accordance with law.

11. So far as the other two anneals, Second Appeals Nos. 462 of 1952 and 6 of 1953, are concerned, they arise out of suits filed by the tenants for recovery of possession of the lands, from which they had been evicted, under section 73-A of the Berar Land Revenue Code. This Code was repealed by the Madhya Pradesh Land Revenue Code. Only Chapter XIV of the Madhya Pradesh Land Revenue Code has been repealed by the new Tenancy Act. The suits were, therefore, not suits under any of the enactments, which were repealed by the Tenancy Act. Section 132 of the Tenancy Act has, therefore, no application to these proceedings. It is also not seriously disputed that the questions, which arise under Section 73-A of the Berar Land Revenue Code, are not questions, which under the Tenancy Act can only be decided by the Tahsildar or other authority specified in this Act.

12. In these suits the trial Court passed decrees in 1951, in one case on 28th February 1951 and in another on 24th March 1951. Thereafter, plaintiffs-tenants obtained possession of the lands in execution of the decrees passed in their favour. Both the decrees were set aside on appeal by the District Court. In execution of the decree passed in appeal, in the suit, which has given rise to Second Appeal No. 6 of 1953, the landlords again recovered possession of the lands. The execution of the decree of the District Court in the other appeal, Second Appeal No. 462 of 1952, has been stayed by this Court. Consequently, the appellants-tenants are still in possession of the lands in this appeal. Section 6 of the Tenancy Act provides that a person lawfully cultivating any

land belonging to another person shall be deemed to be a tenant if such land is not cultivated by the owner. There are three exceptions to this provision, but it is not necessary to refer to them, as they do not apply in this case. It has been contended that as the tenants have been cultivating the lands since the date on which they obtained possession thereof in execution of the decree of the trial Court, they must be deemed to be tenants under section 6 of the Act, and that this question must be referred to the Tahsildar for determination. This argument is without any merit. The decree passed by the trial Court was reversed by the District Court. Consequently the possession of the appellants-tenants cannot at present be said to be lawful. The execution of the District Court's decree has been stayed by this Court, but that is without prejudice to the rights of either party. The interim order made by this Court only maintains the status quo, and does not alter the rights of any party. In any case it cannot alter the original character of possession of the tenants, which cannot be held to be lawful, so long as the decree of the District Court stands and is not set aside. The tenants are now trying to take an unfair and improper advantage of the interim protection granted to them by this Court. This they cannot be permitted to do. In any Case, the position at present is that having regard to the decree of the District Court, the appellants cannot at present be said to be cultivating the lands lawfully. They cannot, therefore, be deemed to be tenants under Section 6 of the new Tenancy Act. This section was not intended to and cannot apply in such Cases.

13. It has also been contended that as the tenants were cultivating the lands in 1951-52 after they had obtained possession of the lands in execution of the decrees passed by the trial Court, they became protected lessees under the Berar Regulation of Agricultural Leases Act. Under section 3 of this Act a person could become a protected lessee only if there was a lease of land by a landholder in his favour. It is conceded that in this case the landlords did not lease the lands to the appellants-tenants in 1951-52. The landlords had also not acquiesced in the decrees passed by the trial Court. On the other hand, they immediately challenged these decrees and subsequently succeeded in getting these decrees reversed by the District Court. It cannot, therefore, be said that the tenants cultivated the lands in 1951-52 under any leases granted to them by their landlords. They were consequently not protected lessees under the Berar Regulation of Agricultural Leases Act. It is, therefore, not necessary to refer to the Tahsildar the question whether the appellants can be deemed to be tenants under section 6 of the Tenancy Act.

14. These appeals will, therefore, also be referred back to the Division Bench for being heard on merits and thereafter disposed of in accordance with law.

15. The question, which we have formulated for our decision, will be answered in the negative.

16. Costs costs in appeals.

Reference answered in the negative.