BOMBAY HIGH COURT

Saraswatibai

Vs.

Bhikamchand Premsukhdas

Special Civil Appln. No. 561 of 1964. decided by FB on Order of Reference made by Kotval and Padhye, JJ

(Tambe, C.J., Patel and Padhye, JJ.)

18.01.1966. 17.06.1966

JUDGMENT

TAMBE, C.J.

1. Facts in brief are: One Laxminarayan, father of Kishan Gopal, the second respondent to this petition, was the landholder of suit field, S. No. 90 situate in village Belkhed, taluka Akot, District Akola. He had leased that field to one Bhikamchand, respondent no. 1, and the first respondent had acquired the status of a protected lessee under the Berar Regulation of Agricultural Leases Act, 1951 (Act No. 24 of 1951) (hereinafter referred to as the Berar Leases Act). By giving a notice under sub-section (i) of section 9 of the Berar Leases Act, and following the prescribed procedure, Laxminarayan had terminated the tenancy of Bhikamchand and had obtained possession of the aforesaid field on 3rd July 1955. Laxminarayan died on 20th October 1955 and his son Krishna Gopal succeeded to his estate and was in possession of the said field. The State Legislature enacted the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act (Act No. XCIX of 1958) (hereinafter referred to as the new Tenancy Act). This Act repealed the aforesaid Berar Leases Act in its entirety. It came into force on 30th December 1958. Now, on 9th February 1969, Krishna Gopal sold the field to Smt. Saraswatibai, the petitioner before us. Bhikamchand thereafter filed an application before the Tehsildar under section 52 of the new Tenancy Act for being restored to possession on the ground that in selling the field to Saraswati, Krishna Gopal had committed a breach of the provisions of section 52. The Additional Tehsildar rejected this application by his order dated 25th August 1962. The Special Deputy Collector dismissed the appeal. Bhikamchand then preferred a revision application before the Revenue Tribunal, and the revenue tribunal allowed it. Against the aforesaid order of the revenue tribunal, the petitioner Saraswatibai had filed a writ petition under Article 227 of the Constitution.

2. To appreciate the contentions raised before the learned Judge, it is necessary to refer in brief to the material part of section 9 of the Berar Leases Act and section 52 of the new Tenancy Act. Section 9 permits a landholder to terminate the lease of a protected lessee if he requires the land for cultivating it personally, and sub-section (1) requires him to give a notice to that effect to the protected lessee. It is not necessary to deal with sub-sections (2) to (5). Sub-section (6) provides:

> "(6) If on re-entering upon any land after termination of the lease of a protected lessee in accordance with this section, a landholder fails at any time during such period as may be prescribed to utilise the land for the purpose for which the lease was terminated, the dispossessed lesseee may apply to the Revenue Officer to put him in possession of the land from the commencement of the agricultural year next following; and the Revenue Officer shall, after hearing the landholder and making such enquiry as he deems fit, put the lessee in possession of the land if he is satisfied of the failure and also award him such sum by way of compensation as the Revenue Officer may consider sufficient."

Rule 9 prescribes "such period" as that of two years. Sub-section (1) of section 52 of the new Tenancy Act provides:

> (1) Where after terminating the tenancy of any land under section 9 of the Berar Regulation of Agricultural Leases Act, 1951, or under Section 38, 39 or 39A of this Act, the landlord has taken possession of such land and he falls to use the land for the purpose specified in the notice given under the said section 9 or as the case may be, section 38, 39 or 39A within one year from the date on which he took possession or ceases to use it at any time for any of the aforesaid purposes within twelve years from the date on which he took such possession, the landlord shall forthwith restore possession of the land to the tenant whose tenancy was terminated by him ....."

Thus, the obligations cast on a landholder under sub-sec. (1) of Section 52 of the new Tenancy Act are more onerous than the obligations cast on the landholder under sub-section (6) of section 9 of the Berar Leases Act. Sub-section (6) of section 9 read with rule 9 requires the landholder, who had terminated the tenancy of his protected lessee on the ground that the land was required by him for his personal cultivation, to cultivate the land personally for a period of two years. After having entered upon the land, if he fails to cultivate it personally during that period, then the said sub-section confers a right on the former protected lessee apply to the revenue officer for being restored to possession. Thus, the result was that the landholder was free, after the expiry of the period of two years, to deal with the land in any manner he liked. He may lease it out; he may convert it to non-agricultural use, if law permitted him to do so; or he could sell it. The limitations placed by section 52 of the new Tenancy Act, however, as already stated, are more onerous, than the obligations cast on the landlord by section 9 (6) of Berar Leases Act. After determining the tenancy of the protected lessee and obtaining possession thereof, a landholder has to bring it under personal cultivation within the period of one year and to continue to cultivate it personally for a period of 12 years. If he failed to do so, the further obligation has been cast on him to restore possession of the land to the former tenant. Thus, to state briefly, the

obligation cast under sub-section (6) of section 9 on the landholder was to cultivate the land for a period of 2 years from the date of obtaining possession; while the obligation cast under section 52 was to cultivate the land personally for a period of 12 years. The revenue tribunal had taken the view that the provisions of section 52 were applicable to the facts of the present case.

3. Now, when the matter came up for hearing before the learned single Judge, it was contended by Mr. Jakatdar, learned counsel for the petitioner, that the view taken by the tribunal was erroneous. Mr. Jakatdar argued that in the instant case, the landholder Laxminarayan on terminating the tenancy under section 9 had obtained possession on 3-7-1955. He and after his death, his son Krishna Gopal, had cultivated the land personally for a period of two years as required by sub-section (6) of section 9 of the Berar Leases Act. His obligation under the said sub-section had, therefore, been fully discharged and no potential right in favour of the former tenant had, after the expiry of the period of two years remained with the former tenant. It is thereafter that Krishna Gopal had sold the land to the petitioner. The sale, therefore creates no right in favour of the former tenant, respondent No. 1, to be restored to possession. On this line of reasoning, Mr. Jakatdar argued that section 52 had no application. During the course of his argument, Mr. Jakatdar stated that if on the date the new Tenancy Act came into force, the landholder was in possession and the period of two years prescribed in sub-section (6) of section 9 had not expired, section 62 may come into play, but where the period of two years of personal cultivation had already been completed prior to the coming into force of the new Tenancy Act section 52 would have no application. Mr. Madkholkar, learned counsel for the first respondent, on the other hand, contended that section 52 of the new Tenancy Act would have application where the landholder was in possession on the date the new Tenancy Act came into force irrespective of the fact whether the period of two years had been completed or not, and that is the effect, according to Mr. Madkholkar on the language used in section 52. In support of his contention, Mr. Madkholkar has placed reliance on a decision of Mr. Justice Abhyankar in *Krishna Gopal v. Bhikamchand*[1], It was the argument of Mr. Madkholkar that though sub-section (6) of section 9 had cast an obligation on the landholder to cultivate the land personally for a period of two years only from the date of obtaining possession, the legislature had made that liability onerous by enacting section 52 and casting an obligation on a landholder to personally cultivate the land for a period of 12 years. This obligation is, on the language used in section 52, cast on every landholder who was in possession of land obtained by him on determination of the tenancy under section 9 of the Berar Leases Act. It is indeed true that the decision of Mr. Justice Abhyankar, on which reliance has been placed by Mr. Madkholkar fully supports him. Facts in that case in brief were: The landholder terminated the tenancy of his tenant under section 9 of the Berar Leases Act and had obtained possession on 6-8-1955. He died and his son Krishna Gopal succeeded him. Both the landholder as well as his son Krishna Gopal cultivated the land personally for over two years, and Krishna Gopal continued to cultivate the land personally even after the new Act came into force. On 29-4-1960, he sold the land, and on 25-1-1962 the tenant filed an application for restoration of possession under section 52 of the new Act. The tenant's case was that the landholder had violated the provisions of section 52, inasmuch as he had ceased

to cultivate the land personally within the period of 12 years from the date possession had been obtained. The contention had been upheld by the revenue tribunal. Against the decision of the Tribunal, the transferees as well as the landholder had preferred a writ petition under Article 227. It had been argued on behalf of the petitioners before Mr. Justice Abhyankar that the landholder, having discharged the obligation cast on him by sub-section (6) of section 9 of the Berar Leases Act, was free to deal with the land in any manner he liked, and the sale effected by him after the expiry of the period of 2 years was not in any manner vitiated, giving rise to a right in favour of the former tenant to be restored to possession. On behalf of the former tenant, it was contended that section 52 cast an obligation on the landholder, who had obtained

[1] Special Civil Appln. No. 73 of 1964 D/-9-4-1965

possession under Section 9 of the Berar Leases Act, to cultivate the land personally if the landholder was in possession on the date the new Tenancy Act came into operation. The learned Judge accepted the contention raised on behalf of the former tenant. He observed.

> "There seems to be no escape from the conclusion that the policy of the legislature in enacting Section 52 was to ensure that where a landlord has obtained possession of land on the ground of personal cultivation or for any other purpose and is in possession and control of the land on the date of the coming into force of Section 52 of the new Tenancy Act, he must continue to use the land for the same purpose or continue to cultivate personally for a period of 12 years counting from the time he entered into possession of the land. Such provision seemed necessary to the Legislature to advance the purpose of the whole Act which is to ensure tilling of the land by the persons who are already on land."

4. It appears that Mr. Justice Wagle, before whom this petition came up for hearing, did not agree with the aforesaid view, and his view was different than that taken by Mr. Justice Abhyankar. In his opinion, Section 52 would have no application where the period of two years prescribed by sub-section (6) of Section 9 read with R. 9 had expired prior to the coming into force of the new Tenancy Act. According to him, in such a case, the landholder was free to sell his land even though he had continued to remain in possession on the date the new Act came into force; such a sale did not attract the provisions of Section 52, and did not give rise to a right in favour of the former tenant to be restored to possession. He, therefore, referred this question to a Division Bench. The Division Bench was of the opinion that the question involved being one of general importance, which would affect the tenancies terminated under Section 9 of the Berar Leases Act, all over the Vidarbha area, it would be better that in view of the conflict between two learned Judges, the question is decided by a larger Bench. However, neither Mr. Justice Wagle nor the Division Bench has framed the question which is to be considered in the reference before us. We therefore frame the following questions :

> "(1) Whether the provisions of Section 52 of the Bombay Tenancy and Agricultural Lands

(Vidarbha Region and Kutch Area) Act, 1958 are attracted to cases where the lease of a protected lessee had been determined by the landholder under Section 9 of the Berar Regulation of Agricultural Leases Act, 1951 and possession thereof taken prior to the date the new Tenancy Act came into force and the landholder continued to personally cultivate the land on the date the new Act came into force.

(2) If the answer to the first question is affirmative, whether the expiry of two years prior to the coming into force of the new Act would have any bearing on the application of Section 52."

5. Both Mr. Jakatdar and Mr. Madkholkar have reiterated the arguments which they had advanced before Mr. Justice Wagle. In our judgment, the answer to the first question will have to be in favour of the petitioner. It is the well settled rule of construction that every statute is prospective in its operation unless the Legislature either in express terms or by necessary intendment makes its operation retrospective. Section 132 of the new Tenancy Act relates to repeals and savings, and a reference to this section is, in our opinion, of assistance in considering the question which falls for our consideration. The material part of this section is in following terms.

"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. Clause (ii) of sub-section (2) and sub-section (3) deal with the pending proceedings, and it is not, therefore, necessary to reproduce them. Reference to Schedule I would show that the Berar Leases Act has been repealed. The combined effect of sub-section (2) of Section 132 and the general principle that the statute is prospective in its operation is that unless there be an express provision, we would not be justified in giving Section 52 of the new Tenancy Act a retrospective operation, so as to affect any right, title, interest, obligation or liability already acquired under the Berar Leases Act prior to the commencement of the new Tenancy Act. We have already stated that when a tenancy is determined by a landholder under Section 9 of the Berar Leases Act, and possession has been obtained, the landholder incurs an obligation to cultivate the land personally for a period of two years from the date of obtaining possession. The corresponding right acquired by the landholder under sub-section (6) of Section 9 of the Berar Leases Act is an absolute right to deal with his land in any manner he likes as is permissible in law after the expiry of the said period of two years. In other words, on the expiration of the period of two years, the totality of his right of ownership over the land vests in him. It has to be considered whether the aforesaid obligation of the landholder and the corresponding right of the landholder is in any manner affected by the provisions of Section 52 or any other provision of the new Tenancy Act. We have already

reproduced sub-section (1) of Section 52. Now, section 52 (1) comes into play under the following circumstances : (1) There has to be termination of the tenancy of any land under Section 9 of the Berar Leases Act, or under Section 38, 39 or 39-A of the new Tenancy Act, and (2) taking of possession by the landholder in pursuance of the aforesaid order of determination of tenancy. It is the happening of the second circumstance that gives rise to the obligations cast on the landholder under sub-section (1) of Section 52, and these obligations are two-fold. The landholder has to put the land, of which possession has been obtained, to the use for which he had determined the tenancy, and to continue to so use the land for a period of 12 years. If he fails to do so, or commits breach of any of the aforesaid obligations, there is a further obligation cast on the landholder to restore the former tenant to the possession of the land. The question to be considered is whether Section 52 has application when the aforesaid second event, which give rise to the obligations, occurs after the Act has come into force, or has application even though the event has occurred prior to the date on which the Act came into force. On the language used in Section 52, we find it difficult to hold that there is any express provision made in Section 52 which makes it applicable to a case where the event of taking possession, which gives rise to the said obligations, has taken place prior to the date the Act had come into force. Mr. Madkholkar has laid emphasis on the clause "has taken possession" and argued that Section 52 provides that where after the determination of tenancy under Section 9 of the Berar Leases Act, the landholder has taken possession of such a land, the obligations arise. The clause "has taken possession" clearly includes a case where the event of taking possession has occurred prior to the date the Act came into force. The argument on the first impression appears to be well made, but on a closer scrutiny of Section 52, it is difficult to accept it. It is indeed true that the clause "has taken possession" is wide enough to include a case where the landholder, who had determined the tenancy under Section 9 of the Berar Leases Act, had taken possession of the land prior to the date the Act came into force. But it has to be noticed that the clause "landlord has taken possession" not only governs the case where the tenancy had been terminated under Section 9 of the Berar Leases Act, but the same expression also governs a case where the determination of the tenancy is either under Section 38, 39 or 39-A of the new Tenancy Act. Now, the event of determination of tenancy under Section 38, 39 or 39-A of the new Tenancy Act could not by any stretch of imagination have occurred prior to the date the Act itself had come into force. The clause "landlord has taken possession" when read in reference to the determination of tenancy under Section 38, 39 or 39-A would necessarily refer to the taking up possession on the determination of the tenancy under Section 38, 39 or 39-A at a point of time subsequent to the coming into force of the Act. There is no good reason why the same clause which governs both the determination of tenancy under Section 9 as well as determination of tenancy under Section 38, 39 or 39-A should be given two different meanings. Had the Legislature intended to make Section 52 applicable to cases where possession had been taken prior to the date the Act came into force, the legislature would have clearly so provided, and the first part of sub-section (l)

of Section 52 would have read differently. For instance, the first part would have read "Where after terminating the tenancy of any land of any tenant under Section 9 of the Berar Regulation of Agricultural Leases Act, the landlord has taken possession of or takes possession, or where after termination of the tenancy under Section 38, 39 or 39-A of the Act, the landlord takes possession of such land". To accept the argument of Mr. Madkholkar, we would have to read the statute in the aforesaid manner. In our opinion, we would not be justified in doing so. There are also other indications in the other sub-sections of Section 52 itself, which indicate that the word "has" has been used in relation to the events which would occur only after the Act has come into force, and could not have occurred at a point of time earlier than the date on which the Act came into force. For instance, we would refer to sub-section (2) and sub-section (3) of Section 52. Sub-section (2) provides :

"(2) After the tenant has recovered possession under sub-section (1) he shall, subject to the provisions of this Act, hold such land on the same terms and conditions on which he held it at the time his tenancy was terminated." Now, the event of recovery of possession by a tenant under sub-section (2) of Section 52 could occur only after the Act has come into force, and yet that event, has been described by the draftsman by use of the expression "has recovered". Sub-section (3) provides :

"(3) If the landlord has failed to restore possession of the land to the tenant as provided in sub-section (1), he shall be liable to pay such compensation to the tenant as may be determined by the Tehsildar for the loss suffered by the tenant on account of eviction." Now, the event of the failure on the part of the landlord to restore possession of the land to the tenant under sub-section (1) of Section 52 would occur only after the Act has come into force. Yet, the draftsman has referred to the said failure as "has failed". Reading these subsections together it appears that the draftsman has used these three expressions "has taken possession", "has recovered" and "has failed" in the sense "takes possession", "recovers" and "fails". To accept Mr. Madkholkar's argument would, in our opinion, result in affecting the rights and obligations which had already been acquired or incurred under the Berar Leases Act, prior to its repeal, by a landholder, who had obtained possession of the land prior to the date the new Act came into force. We have already stated that the obligation incurred by a landholder under sub-section (6) of Section 9 of the Berar Leases Act is to cultivate the land personally for a period of two years from the date the possession is obtained, and the corresponding right acquired by him is that on expiry of the said period of two years he gets an absolute right to the land and is no more under an obligation to cultivate it personally. The right accrued in favour of the former tenant under sub-section (6) of Section 9 is to be restored to possession in the event the landholder fails to cultivate the land personally within the period of two years next after the date the landholder has taken possession. If Mr. Madkholkar's contention is accepted, the obligations of a landholder would become more onerous and the rights of the former tenants would get much enlarged. The obligation to cultivate the land personally would extend to the period of 12 years instead of 2 years. The right which the tenant had would

be enlarged and he would be entitled to claim to be restored to possession if the landholder fails to cultivate the land personally at any time within 12 years next to the date of obtaining possession. Sub-section (2) of Section 132 provides that the repeal cannot have the effect of affecting any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, unless it has been so expressly provided. For reasons already stated, in our opinion, there is no such express provision in Section 52 of the new Tenancy Act. There is no such express provision in any of the sections of the new Tenancy Act. It is for these reasons and with respect we are unable to concur in the view taken by Abhyankar, J. in the case on which reliance has been placed by Mr. Madkholkar. In our judgment, the provisions of Section 52 would be attracted only to such cases where a landholder takes possession on determination of tenancy either under Section 9 of the Berar Leases Act or Section 38, 39 or 39-A of the new Tenancy Act, after the new Tenancy Act has come into force.

6. In the result, our answer to the first question will be in the negative. In view of our answer to the first question, second question does not survive. Costs costs in the cause. The case will now go to the appropriate Bench for disposal on merits.
Reference answered.