
(1991) 08 BOM CK 0064

In the Bombay High Court

Case No : Writ Petition No's. 43 and 432 of 1986

Bapurao

APPELLANT

Vs

Bapurao Andha and Another

RESPONDENT

Date of Decision : 05-08-1991

Acts Referred:

Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 2(1)

Citation : (1991) 4 BomCR 72

Hon'ble Judges : N.P. Chapalgaonkar, J

Bench : Single Bench

Advocate : R.G. Bhadekar, in W.P. No. 43/86, D.N. Patki, in W.P.No. 432/86, for the Appellant; B.B. Jadhav, for the respondent No. 1 in W.P.No. 43/86 and S.K. Barlota A.G.P. for respondent No. 2 in W.P.Nos. 43 and 432/86, for the Respondent

Final Decision : Allowed

Judgement

N.P. Chapalgaonkar, J.—Both these writ petitions raise a common question of law and, therefore, are being disposed of by this common judgment. Father of the present respondent No. 1 namely; Maruti s/o. Malloji (in Writ Petition No. 43 of 1986) was the owner of Survey No. 168 (old survey No. 133) admeasuring 15 acres 34 gunthas situated at Nandgaon in kinwat taluka of Nanded district. Admittedly, he is tribal. He executed agreement of sale on 3-2-1953 in favour of present petitioner and a certificate of validation purporting to be u/s 98-A of The Hyderabad Tenancy and Agricultural Lands Act, 1950 was granted validating this transaction by the revenue authorities on 16-11-1960.

2. The original owner tribal Rama Ratanji (in Writ Petition No. 432 of 1986) executed an agreement of sale on 21-3-1955 agreeing to sell Survey Nos. 79 and 51 to the extent of 4 acres 32 gunthas, 4 acres and 8 gunthas respectively, situated at Bendi in Kinwat taluka to one Bilankhan-present petitioner. Suo Motu proceedings were initiated under the provisions of The Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (for short, the Restoration Act) but the

said proceedings were dropped holding that the agreement was effected on 21-3-1955 and, therefore, the alleged transfer is covered by the period mentioned in the Act for its operation. However, the Additional Commissioner, Aurangabad passed an order on 27-3-1986 in exercise of the powers u/s 7 of the Restoration Act holding that is the agreement dated 21-3-1955 was validated u/s 98-A of the Tenancy Act by the Tahsildar by issuing the validation certificate on 6-8-1982, the transaction will have to be taken to have been concluded on 6-8-1982 and is, therefore, covered by the operation period mentioned in the Act. He was, therefore, pleased to remand the matter for further inquiry to the Tahsildar, Kinwat. Both these judgments are subject matter of challenge in these writ petitions.

3. Shri D.R. Bhadekar and Shri D.N. Patki, learned Counsel for the petitioners, submitted firstly that if a statute has provision to validate a contract which is otherwise illegal, order or certificate of validation would validate the contract but it cannot be assumed that contract has taken place on the date when it was validated. Section 98-A of the Hyderabad Tenancy and Agricultural Lands Act, 1950 provides that a permanent alienation or transfer of any land in contravention of provisions of section 38-D or of Chapter V as it stood before the amendment of 1957 shall not be declared to be invalid merely on the ground of such contravention if the alienee or transferee pays to the State Government, sum specified in the said provision as penalty. Therefore, the permanent alienation or transfer which has taken place on a particular day cannot be said to have come into effect on the day it was validated. Any certificate or order of validation would relate back to the original date of the permanent alienation or transfer and in both these cases since the agreement of sale is admittedly executed before 1-4-1957, the said transactions are outside the purview of transfers affected by the Restoration Act, 1974 as per the definition of the term "transfer" given in section 2(1)(i) of the said Act. It was further submitted by both the learned Counsel that there was no actual transfer in both these cases. Therefore, the Act does not apply.

4. Shri Bappasaheb Jaghav, learned Counsel appearing on behalf of the respondent No. 2 in Writ Petition No. 43 of 1983, submitted that the purpose of the Restoration Act, 1974 is to restore the lands to the tribal who need special protection, hence even when the possession is permanently transferred by a tribal to a non-tribal, then the possession of the said land will have to be restored to the tribal apart from the consideration whether there was a legal transfer or not. The actual enjoyment of the land will have to be the tribal person if he has parted with such enjoyment by a valid transfer or otherwise. When a man puts another person in possession with intent to permanently transfer ownership of the said property to the prospective purchaser and the person who is put in possession has the right to defend his possession, then it will have to be construed as a transfer for the purposes of the Restoration Act. If the term "transfer" is not construed so liberally, then in many cases, according to Shri Jaghav, the purpose of the Restoration Act would fail.

5. Section 98-A of the Hyderabad Tenancy and Agricultural Lands Act so far as it is relevant for the purpose of these writ petitions is reproduced below---

"98-A(1) A permanent alienation or transfer of any land in contravention of any of the provisions of (section 38-D) Chapter V as it stood before the commencement of the Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1957 (hereinafter referred to as the Amending Act, 1957)---

(a) if made on or after the 10th day of June, 1950, but before the 26th day of January, 1956, shall not be declared to be invalid merely on the ground of such contravention if the alienee or transferee pays (to the State Government a penalty of five rupees);

(b) if made on or after the 26th day of January 1956, but before the 1st day of December 1957, shall not be declared to be invalid merely on the ground of such contravention if the alien or transferee pays to the State Government a penalty equal to one per cent of the consideration or Rs. 100 whichever is less :

Provided that, if any such alienation or transfer has been made in favour of a tenant in actual possession, the penalty shall be one rupee only;

Provided further that, if any permanent alienation or transfer is made in favour of any person other than the tenant who was in actual possession and such alienation or transfer is made either after the unlawful eviction of such tenant, or the alienation or transfer results in the eviction of such tenant, then the alienation or transfer shall not be validated as aforesaid, but if the tenant so evicted has failed to apply for restoration to possession of the land u/s 32 within the period therein provided the alienation or transfer may be validated as aforesaid."

It is thus clear from the opening clause of section 98-A that the legislature intended to protect permanent alienation and transfers. A validation certificate merely removes the stigma of illegality because of the contravention of certain provisions of the Tenancy Act. It does not create an exception to the general laws governing the transfer of immovable property. In both these cases, contract is merely an agreement of sale. There is no sale deed, gift deed, deed of exchange or mortgage deed, lease deed or any other disposition made inter vivos. There is only an agreement of sale and it is settled position that the agreement of sale does not create a right in favour of the prospective purchaser. Sale, gift, exchange, mortgage or lease would create a right in the property in favour of the person and would put an end to the right which was there in favour of executant. An agreement of sale cannot be equated with any of these contracts.

6. Shri D.R. Bhadekar and Shri D.N. Patki, learned Counsel for the petitioners, submitted that the special definition of the word "transfer" as given in section 2(1)(i) is wide enough to cover the agreement of sale coupled with the possession. According to them, the word "any other disposition made inter vivos" would cover the agreement of sale executed by a person in favour of another if it

is coupled with possession and the intention to put an end to ownership of the executant and create it in favour of the person is evident from the fact that considering this to be the transfer, a validation certificate u/s 98-A of The Hyderabad Tenancy and Agricultural Lands Act, 1950 has been obtained.

7. Firstly, I will consider whether the validation of such a contract was permissible or not. Section 98-A of the Hyderabad Tenancy and Agricultural Lands Act provides for the validation of permanent alienation or transfer. The agreement of sale is neither of these two. Therefore, the Division Bench of this Court in the case of Mohiuddin Shaikh Chand v. Gulam Ghouse Gulam Jilani 64 B.L.R. 560 held that since the transfer of possession of the agricultural lands in pursuance of agreement of sale does not amount to "a permanent alienation or transfer " there can be no validation of such a contract u/s 98-A. Therefore, merely because a validation certificate purporting to be one u/s 98-A has been obtained by the petitioners herein, the transaction cannot be termed to be a transfer or permanent alienation as contended by the petitioners.

8. The second contended is that the words "any other disposition" used in section 2(1)(i) of the Restoration Act would cover the agreement of sale. The provisions of section 2(1)(i) of the Restoration Act are reproduced below for ready reference:

"Section 2(1)(i) "transfer" in relation to land mens the transfer of land belonging to a tribal made in favour of a non-tribal during the period commencing on the 1st day of April 1957 and ending on the 6th day of July, 1974, either-

(a) by act of parties, whether by way of sale, gift, exchange, mortgage or lease or any other disposition made inter-vivo or

(b) under a decree or order of a Court, or

(c) for recovering any amount of land revenue due from such Tribal, or for recovering any other amount due from him as an arrear of land revenue, or otherwise under the Maharashtra Co-operative Societies Act, 1960 or any other law for the time being in force but does not include a transfer of land falling under the proviso to sub-section (3) of section 36 of the Code : and the expressions, "Tribal-transferor" and "non-Tribal-transferee" shall be constructed accordingly;"

The word "disposition" means an assurance of any interest in the property by any instrument whether inter-vivo or by will. Disposition can hardly be considered to be a legal term. In Goli Eswariah Vs. Commissioner of Gift Tax, Andhra Pradesh, , learned Judges of the Supreme Court were pleased to observe-

"The word "disposition" is not a term of law. Further it has no precise meaning. Its meaning has to be gathered from the context in which it is used. In the context in which that term is used in section 2(xxiv), it cannot mean to "dispose of". Otherwise even if a man abandons or destroys his property, it would become a "gift" under the Act. That could not have been the intention of the legislature.

In section 2(xxiv), the word "disposition" is used along with words "conveyance, assignment, settlement, delivery, payment of other alienation of property". Hence it is clear from the context that the word "disposition" therein refers to a bilateral or a multi-lateral act. It does not refer to a unilateral act."

Disposition may mean either abandonment of the property or it may mean the transfer or conveyance of the property. As observed by the learned Judges of the Supreme Court, since the term disposition is not a legal term, it does not carry a specific meaning. It will have to be interpreted in the context in which it is used. The meaning will have to be gathered from the surrounded words by applying the principles of interpretation of statutes. If it appears as a general word following particular words and reference in the clause is to a particular kind or category, then the meaning of the general word will have to be taken to have been limited by a kind or category indicated by examples given by particular words. If the particular words do not specify to one kind of category, then the rule ejusdem generis will not apply. Sale, gift, exchange, mortgage or lease are special or particular words and all these terms signify demise of interest in the property. Therefore, they can be considered to be belonging to same category. The general term "disposition" appearing thereafter will have also to be taken to mean to be referring to contract by which some interest in the property of one person is lost and is created in favour of another. Secondly, we will also have to note that by Clause (i) of section 2(1) legislature has carved out some transfers which have been made subject to the provisions of the Restoration Act. Therefore, any other disposition in sub-clause (a)(i) of section 2(i) would cover only the transfers of interest in the property by one person to another person in whatever form they are. An agreement of sale does not create any such right. (See Rambaran Prosad Vs. Ram Mohit Hazra and Others, . Therefore, it cannot be said to be a disposition for the purpose of this Act.

9. Shri B.B. Jadhav, learned Counsel for the respondent in Writ Petition No. 43 of 1986, submitted that wider meaning to the term disposition will have to be given looking to the object of the legislation. Whenever there is an ambiguity and more than one meaning are possible, then submission of Shri Jadhav may hold good ground. But there is no such ambiguity in the instant case. The term "disposition" cannot mean an agreement of sale in the context in which it is used in the present case. If the legislature intended that all the lands, the possession of which is taken by a non-tribal person will have to be restored to the tribal person, then such a specific provision would have been there. According to Shri Jadhav, such a provision would have furthered the object of the Act. Though one may wish such a provision in the legislation, Court cannot legislate and cannot substitute what is clearly expressed by the legislature.

10. Once we hold that the transaction between the respondent and the petitioner is not covered by Clause (i) of section 2(1) of the Restoration Act, it follows that there cannot be a restoration of this land to the respondents-tribals.

11. In the result, both the petitions are allowed. Judgment and Order of the

learned Additional Commissioner, Aurangabad dated 29-11-1985 in File No. 85 T.N.C. Adiwasi-R 40 and dated 27-3-1986 in File No. T.N.C. Aribal R-2 are both quashed. Rule made absolute. There be no order as to the costs.