

(1986) 03 BOM CK 0033
In the Bombay High Court
Case No : Second Appeal No. 18 of 1974

Chandbi and Others

APPELLANT

Vs

Narayan Lengure

RESPONDENT

Date of Decision : 04-03-1986

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 124(4), 132(2), 38, 39, 46

Citation : (1987) 1 BomCR 252 : (1987) MhLj 143

Hon'ble Judges : H.W. Dhabe, J

Bench : Single Bench

Advocate : P.T. Trivedi, for the Appellant; B.V. Gaikwad, for the Respondent

Final Decision : Allowed

Judgement

H.W. Dhabe, J.—This is a plaintiff's appeal in a suit for declaration that the order dated 6-1-1966 passed by the Revenue Tribunal, Wani is illegal and void.

Briefly the facts are that the defendant claimed that he was a protected lessee of the field Survey No. 11 of village Wani belonging to the original plaintiff. It appears that the proceedings were initiated u/s 46 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short, "Tenancy Act") for transfer of statutory ownership to the defendant and for determination of purchase price of the suit field. The Agricultural Lands Tribunal, Wani by its order dated 6-1-1966 held that the defendant was the statutory owner of the suit field. It, therefore, determined the purchase price for the same under the provisions of the Tenancy Act. It however appears that prior to this case the plaintiff had filed a case for possession of the suit field in which it was held by the learned Naib Tahsildar, Wani, by his order dated 30-11-1963 that the lease of the defendant cannot be terminated save as provided under the then existing section 61 of the Tenancy Act. However, thereafter the aforesaid order dated 6-1-1966 conferring statutory ownership upon the defendant was rendered by the Agricultural Lands Tribunal pursuant to which the defendant deposited the purchase price of the suit

field. Feeling aggrieved, the plaintiff has challenged in the instant suit the aforesaid order dated 6-1-1966 as being without jurisdiction because according to the plaintiff the suit field which admittedly was situated within municipal limits could not be statutorily transferred to the defendant u/s 46 of the Tenancy Act. Since the agricultural lands situated within the municipal limits are exempt from its application u/s 60 of the said Act. The defendant resisted the suit by filing his written statement. The learned trial Court held that in view of the proviso to section 60 of the Tenancy Act since the defendant was admittedly a protected lessee his suit field was not exempt from the provisions of section 46 of the said Act. He, therefore, dismissed the suit filed by the plaintiff. The plaintiff preferred an appeal but without success. He, has, therefore, preferred the instant second appeal in this Court.

2. An important question of law as to the construction of section 60 of the Tenancy Act and in particular its proviso is raised by the parties in the instant appeal. In addition, it is also contended on behalf of the defendant that the instant suit is barred in view of the provisions of section 124(2) of the Tenancy Act. For the sake of convenience section 60 of the Tenancy Act is reproduced below for ready reference :

"60. Nothing in sections 38, 39 and 39-A and sections 40 to 44 (both inclusive) and section 57 shall apply to lands in the areas within the limits of a municipality constituted under the Central Provinces and Berar Municipalities Act, 1922, and within the limits of the City of Nagpur as constituted under the City of Nagpur Corporation Act, 1948 excluding the areas of the villages specified in schedule IV:

Provided that if any person has acquired any right under the Berar Regulation of Agricultural Leases Act, 1951, the said right shall not be deemed to have been affected by this section."

2-A Section 60 of the Tenancy Act is contained in a chapter which enacts special provisions in respect of areas within the limits of a Municipality. The substantive part of section 60 provides that sections 38, 39 and 39-A, sections 40 to 44, sections 46 to 50 and section 57 would not apply to the lands which are situated within the limits of a municipality constituted under the Central Provinces and Berar Municipalities Act, 1922, and within the limits of the City of Nagpur as constituted under the City of Nagpur Corporation Act, 1948 excluding the areas of the villages specified in Schedule IV. It may be stated that at this stage that the suit field is admittedly situated within the limits of the municipality.

3. The learned Counsel for the plaintiff has urged before me that what is protected under the proviso to section 60 of the Tenancy Act is the right acquired by any person under the Berar Regulation of Agricultural Leases Act, 1951 (for short, "the Leases Act") only. The submission is that the right of statutory ownership is conferred not under any of the provisions of the Leases Act but u/s 46 or 49-A of the Tenancy Act which is not expected under the proviso to section 60 with the result that in view of the substantive provisions of section 60 the

right to statutory ownership would not be available to any tenant including the protected lessee whose suit field is situated within the limits of a municipality. The learned Counsel for the defendants has, however, urged before me that on a fair construction of the proviso which is an exception to an exception carved out under the substantive part of section 60, the rights of a protected lessee under the Tenancy Act are all saved. It is his submissions that u/s 132(2) of the Tenancy Act the rights which protected lessee has under the Leases Act were already saved and, therefore there was no propriety in saving the same again under that the provisions of section 60 of the Tenancy Act. He therefore, urges that the proviso to section 60 should be construed to mean that all the right of a protected lessee under the Tenancy Act including the rights of statutory ownership u/s 46 or 49-A of the said Act should be held to be saved thereunder.

4. To appreciate the rival submissions I may refer to certain provisions of the Tenancy Act. Section 2(25) defines a "protected lessee" to mean a person recognised to be a protected lessee under sub-section (2) of section 6. Sub-section (2) of section 6 provides that for the purposes of this Act, a person shall be recognised to be a protected lessee if such person was immediately before the commencement of this Act, deemed to be a protected lessee u/s 3 of the Leases Act. Section 2(32) defines a "tenant" to mean a person who holds land on lease and includes a person who is deemed to be a tenant under sections 6, 7 or 8. It is thus clear that the protected lessee would also be a tenant within the meaning of section 2(32) of the Tenancy Act. In fact even otherwise a protected lessee is a tenant upon whom certain rights and privileges are conferred under the Leases Act. Since the protected lessee is a tenant within the meaning of the Tenancy Act all rights and privileges which are generally conferred upon the tenant under the said Act are available to him under the provisions of the said Act. Besides the rights as tenants, there are also certain special rights conferred upon a protected lessee under certain provisions of the Tenancy Act, such as section 38(7) under which the right of termination of tenancy for personal cultivation conferred upon the landlord is not available to him if he has acquired the said land after 1-8-1953 by transfer or partition and if there is a protected lessee upon the suit land whose right as a protected lessee has come into existence before such transfer or partition.

5. Turning now to the Scheme of the Lease Act it may be seen that section 3 of the said Act provides that every lease of land by a landholder entitling the lessee to hold land in the agricultural year 1951-52 or thereafter shall be deemed to be for a period of eight years from the commencement of that year. It is in this manner that a protected status is granted to a tenant under the Leases Act. Section 5 of the said Act provides for renewal of leases, section 7 places certain restrictions upon any transfer by the lessee, section 8 regulates termination of lease held by a protected lessee and section 9, in particular, provides for termination of his tenancy on the ground of personal cultivation. It is, however, clear from the provisions of the Leases Act that no right of statutory ownership is conferred upon the protected lessee thereunder which right is conferred upon all

the tenants for the first time under the provisions of sections 46 and 49-A of the Tenancy Act. Not only the right of statutory ownership but even the right to purchase created under sections 41 and 50 of the Tenancy Act is also not conferred upon the protected lessee under the provisions of the Leases Act.

6. It is in the light of the above provisions of the Tenancy Act as well as the Leases Act that it is necessary to construe the provisions of section 60 of the Tenancy Act. So far as the substantive portion of section 60 is concerned it undoubtedly takes away valuable rights of the tenants under sections 38, 39, 39-A, 40 to 44, 46 to 50 and section 57 of the Tenancy Act if their fields are situated within the municipal limits. The proviso to section 60, however, saves any right which they may have under the Leases Act. As already pointed out above, the right created under the Leases Act is about conferring a status of a protected lessee upon a tenant who was having the lease of the agricultural field for the agricultural year 1951-52 or thereafter. A person upon whom the status of a protected lessee is conferred under the provisions of the Leases Act has been given certain rights in regard to the continuance of his lease, in regard to the termination of his tenancy upon the grounds enumerated in section 8 and in regard to the right of the landlord for resumption of land on the ground of personal cultivation. However, no right of statutory ownership of the land leased to a protected lessee is conferred upon him under the Leases Act. The exception carved out in the proviso to section 60 of the Tenancy Act construed without causing any harm to its language would show that it is any right conferred upon a protected lessee under the Leases Act which is affected by the substantive part of section 60 of the said Act.

7. It may be seen that the substantive part of section 60 exempts the agricultural land within the limits of a municipality from the application of the provisions of sections 38, 39 and section 39-A relating to the restrictions placed upon the right of the landlord to terminate the tenancy of the ground of personal cultivation as well as from the application of the provisions of section 40 to 44 and 46 to 50 relating to the purchase of fields leased out to the tenants or their statutory ownership. If it was the intention that all the above exemptions should not apply in the case of a protected lessee it was easy for the legislature to say that all the exemptions under the substantive part of section 60 would not be applicable in the case of a protected lessee. Instead of that what is protected under the proviso to section 60 is only a right which a protected lessee has under the Leases Act which would mean his right in regard to termination of lease on the ground of personal cultivation which is regulated by section 9 of the Leases Act is only protected thereunder and not the right of statutory ownership which is conferred not under the Leases Act but u/s 46 or 49-A of the Tenancy Act.

8. There is also no merit in the submission on behalf of the defendant that since the proviso to section 60 is an exception to an exception created in the substantive part of section 60 it should mean that all the rights under the Tenancy Act are available to a protected lessee. The above submission suffers

from over-simplification of the principle of construction invoked on behalf of the defendant. If the language of the statute is clear and unambiguous there is no question of invoking any canon of construction in interpreting the same. No such construction is admitted by the clear language used in section 60 of the Tenancy Act including its proviso.

9. Another submission advanced on behalf of the defendant invoking a rule of construction is based upon the provisions of section 132(2) of the Tenancy Act. Section 132(1) provides for repeal of enactment specified in Schedule I which includes the Leases Act. Section 132(2) incorporates a saving clause in regard to the repealed enactments including the Leases Act. The submission based upon section 132(2) of the Tenancy Act is that if the existing rights of the persons as protected lessees were already saved u/s 132(2) there was no need to provide for the same in the proviso to section 60 of the Tenancy Act and hence the proviso should be construed to include something more than what is already saved u/s 132(2) meaning thereby that it should be construed to mean that all the rights of a protected lessee under the Tenancy Act are saved. In my view, no such construction of the proviso to section 60 is possible even with the aid of section 132(2). It must be seen that section 132(2) saves the existing rights under the repealed Acts including the Leases Act if there is no express provision in that regard under the Tenancy Act. However, in the substantive part of section 60 there is an express provision taking away the rights of tenants of the lands in municipal areas conferred under the provisions of the Tenancy Act mentioned thereunder which includes sections 46 and 49-A of the said Act relating to statutory ownership as well as the provisions of sections 38, 39 and 39-A relating to resumption of land for personal cultivation. Therefore, had the proviso to section 60 been not enacted even the rights of the protected lessee relating to resumption of land for personal cultivation would not have been saved u/s 132(2) of the Tenancy Act. Since the intention of the Legislature is to save such rights of the tenants of lands in municipal areas, to effectuate the said intention the proviso to section 60 is enacted by the Legislature. However, the scope of the proviso cannot be enlarged to save all rights which are excepted by the substantive part of section 60. No assistance, therefore, can be drawn from section 132(2) of the Tenancy act to enlarge the protection which is granted to a protected lessee under the proviso to section 60. The above submission on behalf of the defendant, therefore, deserves to be rejected.

10. It has, therefore, to be held that what is protected under the proviso to section 60 is the rights acquired by any person of being a protected lessee as well as the right to him as a protected lessee under the Leases Act and since the Leases Act does not confer upon him any right of statutory ownership or even a right to purchase the field as provided in sections 46 to 50 of the Tenancy Act no such right is available to the protected lessee by virtue of proviso to section 60 of the said Act. In other words the substantive portion of section 60 would be applicable to a protected lessee so far as the question of statutory ownership is concerned in which case the suit field which is situated within the limits of a

municipality would not stand exempted from the provisions of sections 46 and 49-A of the Tenancy Act. The defendant would not, therefore, be entitled to become a statutory owner u/s 46 or section 49-A of the said Act. The impugned order of the learned Agricultural Lands Tribunal conferring upon him the status of a statutory owner u/s 46 as well as fixation of purchase price of the same was thus illegal and without jurisdiction.

11. The next contention urged on behalf of the defendant is that the instant suit is barred in view of the provisions of section 124(2) of the Tenancy Act. Section 124 relates to the bar of jurisdiction of the Civil Court. It is provided in section 124(1) that no Civil Court shall have jurisdiction to settle, decide or deal with any question including a question whether the person is or was at any time in the past, a tenant and whether the ownership of any land is transferred to , and vests in, a tenant u/s 46 or section 49-A or section 49-B which is by or under this Act required to be settled, decided or dealt with by the Tahsildar, the Tribunal, the Manager, the Collector of the Maharashtra Revenue Tribunal in appeal or revision or the State Government in exercise of their powers of control. Sub-section (2) of section 124 provides that the order of the Tahsildar, the Tribunal, the Manager, the Collector of the Maharashtra Revenue Tribunal or the State Government made under the Tenancy Act shall not be called in question in any Civil or Criminal Court.

12. In regard to the bar of jurisdiction of the Civil Court it is well-settled that if any statutory authority acts without jurisdiction in passing its order the jurisdiction of the Civil Court is not barred. It is very clear from para 33 of the judgment of the Supreme Court in the case of Katikara Chintamani Dora and Others Vs. Guntreddi Annamaniaidu and Others, that the rule of exclusion of the jurisdiction of the Civil Court by an express or an implied bar created under the statute is subject to two limitations: the first limitation is that the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been applied or the statutory Tribunals have not acted in conformity with the fundamental principles of judicial procedure, and the second is as regards the exact extent to which the powers of the statutory Tribunals are exclusive. It is only in regard to the matters where the statutory authority acts within the four corners of the Statute that the jurisdiction of the Civil Court is barred. In the instant case the very basis of the suit is that the order of the learned Agricultural Tribunal was without jurisdiction. If the plaintiff could prove that the order was without jurisdiction, in my view the jurisdiction of the Civil Court would not be barred. In view of the exemption u/s 60 in relation to the question of statutory ownership in regard to the lands situated within the limits of a municipality there was no right conferred upon the plaintiff to become the statutory owner of the suit land and as such the order of the learned Agricultural Lands Tribunal conferring upon him the said status and fixing the purchase price for the suit land was illegal, void and without jurisdiction. The above contention raised on behalf of the defendant also therefore, deserves to be rejected.

13. In the result, the instant appeal is allowed. The impugned judgments and decrees of the Courts below are set aside. The suit of the plaintiff is decreed and it is declared that the order of the Revenue Tribunal at Wani dated 6-1-1966 in Revenue Case No. 269/69(13) of 1962-63 of Wani is illegal and void. It is further declared that the certificate of transfer of land issued to the defendant pursuant to the aforesaid order is also void. In the circumstances, however, there would be no order as to costs.