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(1968) 03 GUJ CK 0015

In the Gujarat High Court

Ganibhai Musabhai APPELLANT

Vs

State of Gujarat and Another RESPONDENT

Date of Decision : 20-03-1968

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32, 32R, 88C, 88D, 88D
Constitution of India, 1950 — Article 227

Citation : (1969) 10 GLR 274

Hon'ble Judges : A.R. Bakshi, J

Bench : Single Bench

Judgement

A.R. Bakshi, J.—These are two petitions challenging the order passed by the State Government in exercise of the powers conferred by Sub-section (1) of Section 88D of the Bombay Tenancy and Agricultural Lands Act, 1948. (hereinafter referred to as the Act). Since both these petitions involve a similar question, they were heard together and this judgment will cover the subject matter of both the petitions.

2. The petitioner in Special Civil Application No. 901 of 1963 is the owner of certain lands situated at Vadod in the Anand Taluka and he made an application before the Mamlatdar, Anand, u/s 88C of the Act for the grant of an exemption certificate and a certificate dated 19th October 1959 was granted to him under that section by the Tenancy Aval Karkun of Anand. That certificate granted u/s 88C was revoked by an order dated January 1963 passed by the Under Secretary to the Government of Gujarat. Revenue and Agriculture Department, by virtue of the powers under Sub-section (1) of Section 88D of the Act, In the order that was passed under that section it was stated that the State Government was satisfied that the annual income of the petitioner exceeded Rs. 1500/- and that, therefore, the State Government directed that with effect from the date of the order the lands shall cease to be exempt from the provisions of Sections 32 to 32R of the Act from which they were exempt u/s 88C of the Act and that the certificate granted to the petitioner u/s 88C by the Mamlatdar of Anand in respect of the lands should stand revoked. According to the petitioner the order

passed u/s 88D of the Act is a judicial order and before passing such an order it was incumbent on the State Government to hear the petitioner and to give him an opportunity of being heard. According to the petitioner the revocation of the certificate rendered the petitioner''s land liable to compulsory sale u/s 32 of the Act and affected the property rights of the petitioner and it was incumbent on the State Government to hold an inquiry and to hear the petitioner before an order u/s 88D was passed. The petitioner also urged in his petition that the order u/s 88D was passed without hearing him and without giving him an opportunity of being heard and that the order was passed in contravention of the principles of natural justice. In the affidavit-in-reply to the petition it was stated that a tenant of land Survey No. 416 (Paikl) of Vadod had made an application on 28th December 1961 with a request to revoke the exemption certificate granted to the landlord u/s 880 on the ground that the landlord''s income exceeded Rs. 1, 500/-. That application was sent to the Collector for report and a statement of the petitioner was recorded in the course of an inquiry held by the Tenancy Aval Karkun. Thereafter, as the Government was satisfied from the records that the annual income of the petitioner exceeded Rs. 1, 500/-, the certificate granted to him was revoked. The further defence that was revealed in the affidavit-in-reply was that it was not necessary to hold a further inquiry if the facts were clear from the record and that it was not incumbent upon the State Government to give an opportunity to the petitioner of being heard when in fact the facts of the case were clear from the record of the case on the petitioner''s own admission that his income exceeded Rs. 1,500/-.

3. It thus appears that the petitioner was granted a certificate of exemption u/s 88C of the Act on 19th October 1959 and thereafter it appears, a tenant made an application to revoke the certificate and the papers were sent to the Collector for report and the petitioner was called and his statement was recorded by the Aval Karkun. Thereafter the impugned order was passed under Sub-section (1) of Section 88D of the Act revoking the certificate that was granted to the petitioner u/s 88D by the Mamlatdar of Anand. The order revoking the certificate was passed under the signature of the Under Secretary to the Government of Gujarat, Revenue and Agriculture Department.

4. In Special Civil Application No. 835 of 1963 the petitioner is the landlord of certain agricultural lands situated at Dhandhuka, District Ahmedabad. The petitioner applied to the Mamlatdar, Dhandhuka, for an exemption certificate in respect of the lands u/s 88C of the Act and the Mamlatdar granted the exemption certificate in favour of the petitioner on 24th September 1958. On 1st January 1962 a tenant made a representation to the State Government stating therein that the income of the landlord had exceeded Rs. 1,500/- and that therefore the certificate granted to the petitioner should be revoked. That application as it appears from the affidavit-in-reply filed by the Under Secretary to the Government of Gujarat, Revenue Department, was forwarded by the Government to the Collector of Ahmedabad for inquiry and report and later on it was sent to the Mamlatdar by the Collector on 11th April 1962. The Mamlatdar issued notice

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to the petitioner and his tenants to appear before him to adduce evidence in support of their pleas. Accordingly the parties appeared on 28th April 1962 and the Mamlatdar, Dhandhuka, held an inquiry by recording the statements of witnesses and allowing the parties to cross-examine them. After completing the inquiry the Mamlatdar submitted his report to the Collector and the Collector submitted his report to the Government, After perusing the facts of the case and also the inquiry papers and the report, the Government, as stated in the affidavit-in-reply was satisfied that the annual income of the petitioner exceeded Rs. 1,500/- and that, therefore, the State Government by its order dated 1st January 1963 directed that the certificate granted to the petitioner u/s 88C should stand revoked. According to the petitioner he had no notice of the inquiry before passing the impugned order and no show cause notice was issued before the order was passed and the petitioner had no opportunity of being heard before the respondent No. 1, Under Secretary to the Government of Gujarat, Revenue Department, under whose signature the order was passed. According to the petitioner while exercising the powers u/s 88D of the Act for withdrawing an exemption granted by the Mamlatdar, the State Government was acting judicially and the authority which passed the order was bound to follow the principles of natural justice. The case of the respondent appears to be that an opportunity of hearing was in fact given and that there was no breach of the principles of natural justice made by the State Government while passing the order u/s 88D. It was also contended that the Under Secretary to the Government of Gujarat, Revenue and Agriculture Department was not a Tribunal and that, therefore, a petition under Article 227 of the Constitution of India was not maintainable.

5. The first question that would arise for consideration in these two petitions is what is the nature of the proceedings taken u/s 88D of the Act. Are they proceedings merely of an administrative nature as was contended on behalf of the Government or are the proceedings of a judicial or a quasi-judicial nature as was contended on behalf of the petitioner? The answer to this question would depend upon the nature of the provisions and the effect that would be produced by an action taken under those provisions. It would, therefore, be necessary to examine some of the relevant provisions of the Act. Section 31 of the Act provides for the landlord''s right to terminate the tenancy for personal cultivation and non-agricultural purpose. Sub-sections (1) and (2) of Section 31 are as under:

31. (1) Notwithstanding anything contained in Sections 14 and 30 but subject to Sections 31A to 31D (both inclusive), a landlord (not being a landlord within the meaning of Chapter III-AA) may, after giving notice and making an application for possession as provided in Sub-section (2), terminate the tenancy of any land (except a permanent tenancy), if the landlord bona fide requires the land for any of the following purposes:

(a) for cultivating personally, or

(b) for any non-agricultural purpose.

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(2) The notice required to be given under Sub-section (1) shall be in writing, shall state the purpose for which the landlord requires the land and shall be served on the tenant on or before the 31st day of December 1956. A copy of such notice shall, at the same time, be sent to the Mamlatdar. An application for possession u/s 29 shall be made to the Mamlatdar on or before the 31st day of March 1957.

The termination of tenancy u/s 31 as will be seen from the section itself is subject to Sub-sections 31A to 31D. Section 31A prescribes the conditions of termination of tenancy and Section 31B(1) provides that in no case a tenancy shall be terminated u/s 31 in such manner as will result in leaving with a tenant, after termination, less than half the area of the land leased to him. Sections 32 onwards relate to purchase of land by tenants. Section 32 provides that on the first day of April 1957, every tenant shall, subject to the provisions mentioned in the section be deemed to have purchased from his landlord, free of all encumbrances, the land held by him as tenant, if the conditions mentioned in Section 32 were satisfied. The other sections in the group of sections from Section 32 to Section 32R provide for matters relating to the purchase of land by tenants, determination of price of land to be paid by the tenants, mode of payment of price and other incidental matters. In order to be exempt from the operation of Sections 32 to 32R, it would be necessary to make an application to the Mamlatdar for a certificate of exemption and on receipt of such an application, the Mamlatdar, after giving notice to the tenant or tenants of the land hold an inquiry and decide whether the land leased by such person is exempt from the provisions of Sections 32 to 32R and if the Mamlatdar decides that the land is so exempt, he shall issue a certificate in the prescribed form to such person. The necessary requirements for being eligible to the exemption are that it would be necessary to establish that the land does not exceed an economic holding and that the total annual income including the rent of such land does not exceed Rs. 1,500/-. This, has been provided for in Section 88C of the Act which reads as under:

88C. (1) Save as otherwise provided by the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1960, nothing in Sections 32 to 32R (both inclusive) shall apply to lands leased by any person if such land does not exceed an economic holding and the total annual income of such person including the rent of such land does not exceed Rs. 1,500:

Provided that the provisions of this sub-section shall not apply to any person who holds such land as a permanent tenant or who has leased such land on permanent tenancy to any other person.

(2) Every person eligible to the exemption provided in Sub-section (1) shall make an application in the prescribed form to the Mamlatdar within whose jurisdiction all or most of the pieces of land leased by him are situate, within the prescribed period for a certificate that he is entitled to such exemption.

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Provided that where such person is a widow she may make such application before the 1st day of July 1961 notwithstanning that the period prescribed under this section has expired.

(3) On receipt of such application, the Mamlatdar shall, after giving notice to the tenant or tenants of the land, hold inquiry and decide whether the land leased by such person is exempt under Sub-section (1) from the provisions of Sections 32 to 32R.

(4) If the Mamlatdar decides that the land is so exempt, he shall issue a certificate in the prescribed form of such person.

Any proceeding u/s 88C for the grant of an exemption can be started by making an application and on receipt of such application a notice has to be given to the tenants of the land and after holding an inquiry, the Mamlatdar is required to decide whether the land is exempt from the provisions of Sections 32 to 32R and it is on the strength of such a decision that a certificate u/s 88C is issued to the person who has made the application. Such an order that is passed u/s 88C is appealable as provided in Section 74(1)(w) and is revisable u/s 76 by the Revenue Tribunal. Before, therefore, a certificate u/s 88C could be granted, it would be necessary for the applicant to establish his eligibility to exemption and to show that the land does not exceed an economic holding and that the total annual income of the applicant including the rent of such land does not exceed Rs. 1, 500/-. The applicant will have to supply the necessary data which would be liable to be challenged and tested by the tenants in the course of the inquiry that the Mamlatdar would make u/s 88C. This necessarily involves an inquiry and the assessment of the data supplied by the parties in respect of the requirements necessary to be established under Sub-section (1) of Section 88C and it is only when the Mamlatdar comes to the conclusion on an appreciation of the data placed before him that the ingredients of Sub-section (1) of Section 88C have been established that he could issue a certificate under Sub-section (4) of Section 88C. The effect of such a certificate is to grant an exemption from the operation of Sections 32 to 32R and to stop the process contained in those sections operating in favour of the tenants.

6. The certificate granted under Sub-section (4) of Section 88C is thus the result of a quasi-judicial inquiry and is granted only in cases where certain objective facts have been established and after the parties whose rights are likely to be affected by the grant of the certificate have bad an opportunity of an inquiry and a bearing. The grant of such a certificate has an important effect on the property rights of the landlord-and the tenants as could be seen from the provisions contained in Sections 32 to 32R. Such a certificate which has been granted after a proper inquiry could be revoked u/s 88D of the Act. It would here be relevant to quote the provisions of that section:

88D. (1) Notwithstanding anything contained in Sections 88, 88A, 88B and 88C, if the State Government is satisfied-

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(1) in the case of an area referred to in Clause (b) of Section 88, that the chances of non-agricultural or industrial development are remote, or that after the eviction of tenants from any land in such area, the land has not been used for a non-agricultural or industrial purpose,

(ii) that the lands transferred by a Bhoodan Samiti are not cultivated personally by the transferee or are alienated by them,

(iii) in the case of lands referred to in Clause (b) of Section 88B, that the trust is unable to look after the property or has mismanaged it or that there are disputes between the trust and the tenants, and

(iv) in the case of lands referred to in Section 88C, that the annual income of the person has exceeded Rs. 1, 500 or that the total holding of such person exceeds an economic holding,

the State Government may, by order published in the prescribed manner, direct that with effect from such date as may be specified in the order such land or area, as the case may be, shall cease to be exempted from all or any of the provisions of this Act from which it was exempted under any of the sections aforesaid, and any certificate granted u/s 88B or 88C, as the case may be, shall stand revoked.

(2) Where any such land or area ceases to be so exempted then in the case of a tenancy subsisting on the date specified in the order issued under Sub-section (1), the landlord shall be entitled to terminate such tenancy u/s 31, within one year from such date and the tenant, unless, his tenancy is so terminated, shall have a right to purchase the land within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy. The provisions of Sections 31 to 31D ''both inclusive'' and Sections 32 to 32R (both inclusive) shall, so far as may be applicable, apply to such termination of tenancy and to the right of the tenant to purchase the land.

Sub-clause (iv) of Sub-section (1) of Section 88D requires that the State Government before withdrawing the exemption granted u/s 88C should be satisfied that the annual income of the person has exceeded Rs. 1,500/- or that the total holding of such person exceeds an economic holding. In the inquiry u/s 88C the relevant authority was to be satisfied that the land did not exceed an economic holding and that the total annual income of such person did not exceed Rs. 1,500/- and In a proceeding u/s 88D, the State Government, before it could pass an order u/s 88D, is required to be satisfied that the annual income of the person has exceeded Rs. 1,500/- or that the total holding of such a person exceeds an economic holding a finding which would disentitle the person in whose favour a certificate had already been granted u/s 88C from claiming an exemption. The very nature of the proceeding u/s 88D is such that the proceeding under that section could start only after an order u/s 88C was already passed. If an order u/s 88D is made, it would set at naught the previous order that was passed as a judicial or a quasi judicial order. Sub-clause (iv) of Sub-

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section (1) of Section 88D further requires satisfaction by the State Government on the objective facts mentioned therein At the time when an inquiry u/s 88C was made, the authority acting under that section had also to be satisfied as regards the existence of the two objective facts mentioned in the section and since the rights of the tenants were likely to be affected, it was necessary before passing an order u/s 88C to issue notices to tenants and to hear both the parties. There would thus be a lis between them which would be decided on the data supplied by the parties and on the objective satisfaction of the authority that the requirements of eligibility to exemption were satisfied. The same points of dispute as regards the total holding and the annual income would be before the authority passing an order u/s 88D(1)(iv) and the authority passing an order under that sub-section would be required to be satisfied about those objective facts before it would decide to revoke the certificate granted u/s 88C. In a proceeding u/s 88D also, therefore, the question of eligibility to exemption would be of paramount consideration.

7. As we have seen, Sections 32 to 32R relate to certain property rights relating both to landlords and tenants. Those sections confer certain rights on the tenants which would to some extent affect the property rights of the landlords. An exemption from the operation of Sections 32 to 32R granted in favour of the landlord would make him exempt from the operation of Sections 32 to 32R and his property would be saved from the operation of those sections. As soon as such an exemption is revoked, the immunity from the operation of those sections would be set at naught and although such a person whose exemption certificate has been revoked has been given a right to terminate the tenancy u/s 31 within one year, his rights will to some extent continue to be affected. In the first instance his right to terminate the tenancy is restricted to the period of one year only and even if he does so, he would not be able to get more than half the area of the land. There is no doubt that the granting of a certificate of exemption u/s 88C does confer advantages in relation to property rights and by virtue of an order u/s 88D such advantages would not be available to the landlord. Such is the consequence of the revocation of the certificate granted u/s 88C. Section 88D thus aims at taking away those property rights which have been acquired after making an inquiry as to the existence of objective facts.

8. The aforesaid discussion shows that the object of Section 88D is not merely to collect data for making an order in an administrative matter. Section 88D requires in the first instance gathering of data on the two facts mentioned In Sub-clause (iv) of Sub-section (1) and to appreciate the evidence so collected and to arrive at a decision as regards the existence of the objective facts mentioned in Sub-clause (iv) of Sub-section (1). Although, therefore, the holding of an inquiry does not appear to have been specifically provided for in Section 88D, it does not necessarily follow that the function to be performed u/s 88D and the order to be passed under that section is merely of an administrative nature. The satisfaction that is required u/s 88D is in respect of certain facts as regards the existence of which a quasi-judicial inquiry was already made. The dispute of the same nature

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would exist in a proceeding u/s 88D as existed at the time when an Inquiry u/s 88C was made and similar property rights would be involved also in proceedings u/s 88D. Whether the authority acting under a particular provision of law acts administratively or judicially has to be gathered from the relevant provisions and from the cumulative effect of the nature of the rights affected, the manner of the disposal provided for, the nature of the power conferred and the criterion required to be adopted. No hard and fast rule could be formulated which would apply invariably to every case and to every provision. Various factors would require to be examined while coming to the conclusion whether a particular function is of a judicial or an administrative character. The power to revoke a certificate already granted has been conferred on the State Government by a statutory rule and the exercise of such a power is in respect of a dispute the result of which would affect the rights of the parties. An order passed u/s 88D would have the effect of nullifying an order that has been passed after a quasi-judicial inquiry and it is important to bear in mind that the order u/s 88D could be passed only after satisfaction on an objective fact which would require determination after the assessment of the data placed before the authority who passes the order u/s 88D. These are the distinctive features of the power conferred on the State Government u/s 88D.

9. The authority that is to make an order u/s 88D has been Invested with an authority to pass an order under that section under a statute and that authority has been given the power to so determine the question on its being satisfied as regards the facts mentioned in the section. There is thus a duty cast upon the authority passing an order u/s 88D to consider the data that is before it in order to come to the conclusion as to whether certain facts exist. Although therefore the section by itself does not prescribe any formality or procedure, it does appear that the authority deciding the question u/s 88D will be required to consider the data that is laid before it and to consider the evidentiary material in order to arrive at a conclusion as regards the existence of the facts on the basis of which the authority could pass an order under that section. While taking an action u/s 88D the authority has not to act as a matter of expediency or as a matter of administrative policy. This is not a case in which there would be at no stage of the proceeding any lis or dispute as regards the existence of the facts on which the authority has to get satisfied. Reference may in this connection be made to the observations made by the Supreme Court in Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, . It is not necessary in order to constitute a judicial or quasi-judicial function exercised by authority that it should be a full fledged Court. It is not necessary that in all cases the proceedings must have the formalities of the practice and procedure followed in a Court of law. If the authority has to decide a question on the appreciation of evidence and assessment of the data before it, if the authority has not to act in accordance with any question of policy or expediency and if the proceedings are such that the decision taken would affect property rights and if the provisions are such that they require the satisfaction of the authority about the existence of

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objective facts after an assessment of the evidence on those facts, then having regard to the cumulative effect of all the factors already considered hereinabove, it would be difficult to say that the function that would be performed by the authority passing an order u/s 88D and the proceedings adopted under that section were merely of an administrative character. On the other hand these factors show beyond doubt that the proceedings are of a judicial or quasi-judicial character and the authority acting under that section was bound to give an effective hearing to the party against whom the order was purported to be passed. It is, therefore, not possible to accept the argument of the learned Assistant Government Pleader that the authority acting u/s 88D could have legally passed an order under that section without hearing the petitioner and that the High Court had no power to interfere with the order that was passed under that section since the authority passing the order was not a Tribunal within the meaning of Article 227 of the Constitution of India.

10. Now it is an admitted position in both the petitions that the authority that passed the impugned orders had not heard the petitioners in both the Special Civil Applications. It also appears that no notice was issued by the Under Secretary to the Government asking the petitioners to explain why an action u/s 88D should not be taken against them and why the certificates granted to them u/s 88C should not be revoked. It further appears that the Under Secretary to the Government had not heard any of the petitioners as regards the material that was gathered against them and placed before the authority for its consideration. It does not appear that after the report of the Collector or the Mamlatdar, if any, the petitioners were heard and their explanation taken on the facts that were collected. There is, therefore, no doubt about the fact that the Under Secretary to the Government had given no opportunity to any petitioners of a hearing by him while taking a decision to pass an order u/s 88D. All that appears to have been done is that a notice seems to have been issued by the Mamlatdar and the petitioner appears to have been called and his statement was recorded.

11. In the second petition it appears that some evidence was taken but even so, the petitioners were never asked by the Government or by the Under Secretary to offer any explanation as regards the material on the basis of which action was purported to be taken. No hearing appears to have been given by the Government before cancelling the certificates and it cannot be said from the mere fact that a statement of the petitioner was recorded or that some evidence was taken by the Mamlatdar that the Government had given an effective hearing to the petitioners before cancelling the certificate. The revocation of the certificates was an action of such a nature as would affect the property rights of the petitioners and these rights would be prejudicially affected if the petitioners were not heard and their explanation was not taken by the Government on the material that was being considered by the Government while taking an action u/s 88D and while cancelling the certificates the petitioners had obtained u/s 88C. Since none of the petitioners has got a hearing before the Government and the

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authority that passed the order u/s 88D, the order revoking the certificate under that section cannot stand and must be set aside.

12. Special Civil Application No. 901 of 1963 is allowed and the order Exhibit "B" dated January 1963 passed u/s 88D revoking the certificate granted u/s 88C is quashed and the rule is made absolute with costs. Special Civil Application No. 835 of 1963 is also allowed and the order dated 1st January 1963 passed u/s 88D revoking the certificate granted u/s 88C is quashed and the Rule is made absolute with costs.

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