(1963) 09 MP CK 0005

In the Madhya Pradesh High Court

Case No : M.P. No. 58 of 1963

Govindrao APPELLANT

Vs

Board of Revenue RESPONDENT

Date of Decision : 24-09-1963

Acts Referred:

Central Provinces Tenancy Act, 1920 — Section 12A

Citation : (1963) JLJ 900

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : S.V. Jakatdar, for the Appellant; P.R. Padhey and P.S. Khirwadkar, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.—The facts and circumstances, which have given rise to this application under articles 226 and 227 of the Constitution, are that the Petitioner Govindrao was the Malik Maqbuza of Khasra No. 69 of village Raigaon in Burbanpur Tehsil. On the coming into force of the Madhya Pradesh Land Revenue Code, 1954, he became Bhumiswami of the land. One Lahanu, the predecessor-in-interest of opponents Nos. 6 to 8, was occupancy tenant of the said field of the Petitioner. On 9th may 1955 Lahanu sold the field by a registered sale-deed for Rs. 2,500 to the Respondent No. 5, Vinayakrao. Lahanu did not give any notice of the sale to the Petitioner as was required to be done by Section 12-A of the Central Provinces Tenancy Act, 1920 (hereinafter referred to as the Tenancy Act). On 9th January 1956, that is after the repeal of the Tenancy Act by the Madhya Pradesh Land Revenue Code, 1954, the Petitioner made an application u/s 176 of the Code for setting aside the sale and for being put in possession of the field. In that application the Petitioner stated his willingness to pay or deposit such amount as may be determined by the Court under the provisions of Section 176 of the Code.

2. The Sub-divisional Officer, Burbanpur, rejected the Petitioners application

holding that Section 176 of the Code was not applicable. His decision was upheld in appeal by the Collector, East-Nimar, as well as in second appeal by the Commissioner, Indore Division. The Petitioner then preferred a revision petition before the Board of Revenue, which was also dismissed. The learned President of the Board of Revenue took the view that the repeal of the Tenancy Act did not debar the Petitioner from bringing his case u/s 12-A as u/s 5 of the C. P. and Berar General Clauses Act, 1914, the right conferred on the Petitioner by Section 12-A of the Tenancy Act was saved and so also the remedy for the enforcement of that right. He, however, held that the right conferred by Section 12-A of the Tenancy Act on the Petitioner to pre-empt could not be treated as an acquired right as the Petitioner had done nothing to take advantage of the right conferred on him by Section 12-A and to enforce that right before the repeal of the Tenancy Act by the Code The learned President rejected the Petitioner''s contention that he was entitled to relief u/s 176 of the Code as the right of Malik Maqbuza under the Tenancy Act to resume the land sold by the occupancy tenant had been incorporated in Section 176. The learned President further held that the Petitioner''s application for resuming the land was u/s 176 of the Code and that it could not be treated as one u/s 12-A of the Tenancy Act especially when the Petitioner had not deposited, along with the application, the requisite amount for being put in possession of the field and that the making of a deposit was a condition precedent under Sub-section (11) (a) of Section 12-A of the Tenancy Act for the enforcement of the right of pre-emption conferred by that section.

3. Before stating the contentions of the learned Counsel appearing for the parties, it is necessary to refer to the material provisions of the Tenancy Act and of the Code. Section 12 (1) (c) of the Tenancy Act permitted an occupancy tenant to transfer his holding to the extent and in the manner indicated in that provision to any person. u/s 12-A (1), a tenant intending to make a sale as provided for in Clause (c) of Sub-section (1) of Section 12 was required to give to the landlord a written notice of his intention, stating therein the particulars of the intended sale including the amount of the consideration for which he intended to sell the right, and was also required to defer proceeding with the sale for a period of thirty days from the date on which the notice was delivered. Sub-section (8) of Section 12-A gave to the landlord the right of preemption in certain circumstances and under certain conditions. The terms of that Sub-section were thus-

(8) If the tenant makes a sale of any right in his holding in contravention of the foregoing provisions of this section and ''if the purchaser temporarily or permanently obtains possession of the right, the landlord shall be entitled at his option,-

(a) if the consideration for the right sold can be determined from the sale-deed, to purchase the right through a Revenue Officer, in the manner hereinafter provided, for the amount of the consideration stated in the sale-deed or to receive consent money of a sum equal to five percent of the consideration or one and a half times the annual rent of the holding or part of the holding, the right in which is sold, whichever is greater, or

(b) if the consideration for the right sold cannot be determined from the sale-deed, to purchase the right through a Revenue Officer, in the manner hereinafter provided, for a sum equal to the value, fixed by the Revenue Officer, of the right sold or to receive consent money of a sum equal to one and a half times the annual rent of the holding or part of the holding, the right in which is sold.

Sub-section (11) then said that if the landlord elected to purchase the right through a Revenue Officer under Sub-section (8) and the value of that right was not required to be fixed by the Revenue Officer, the landlord should deposit the necessary amount in the office of a Revenue Officer and should apply to him to get a sale-deed executed by the tenant of the purchaser, as the case may be, and put him in possession of the right.

4. Section 239 of the M. P. Land Revenue Code, 1954, which repealed the Tenancy Act, contained "savings provision". In Inter alia provided that rights acquired and liabilities incurred under any of the enactments repealed by the Code shall, so far as may be, be deemed to have been respectively acquired and incurred under the Code. Section 176 of the Code conferred on certain persons the right to apply to set aside transfers by occupancy tenants. It was in the following terms-

If an occupancy tenant transfers his rights in his holding or any portion there of in contravention of Section 175, any contenant or any person who, if he survived the tenant without nearer heirs, would inherit the holding or the tenure holder of whom such person holds the land, may apply to the Deputy Commissioner to be placed in possession, subject, so far as the Deputy Commissioner may, in accordance with the rules made u/s 237, determine to his acceptance of she liabilities of the tenant for arrears of rent and for advances for necessary expenses of cultivation.

5. Shri Jakatdar, learned Counsel appearing for the Petitioner, argued that before the Code of 1954 came into force the Petitioner had already acquired a right of pre-emption u/s 12-A (8) of the Tenancy Act; that this was a vested right which was saved u/s 239 of the Code and deemed to be a right acquired under the Code; and that consequently the Petitioner was entitled to apply for the enforcement of that right u/s 176 of the Code. On behalf of the purchaser, Respondent No. 5, Shri Padhye contended that under the Tenancy Act no right of pre-emption could accrue to the Petitioner till an application for its enforcement was made u/s 12-A (11): that none had been made in the present case; and that, therefore, the Petitioner had no accrued right which could be said to have been saved u/s 239 of the Code or the C. P and Berar General Clauses Act, 1914. It was said that on the sale of the holding to the Respondent No. 5 without notice to the applicant, the Petitioner had only a right to apply for preemption but that such a right being a mere right to take advantage of a statute could not be said

to be a "right accrued".

6. In our judgment, on the plain language of Section 12(1) and Section 12-A (8) there can be no doubt that the Petitioner acquired a right of pre eruption when the holding was sold by Lahanu to the Respondent No. 5 in contravention of the provisions of Section 12-A and when the purchaser obtained possession of the right. The only condition necessary for giving to the landlord the right conferred by Sub-section (8) of Section 12-A was that the tenant should make a sale of any right in a holding in contravention of the provisions of Section 12-A and the purchaser should temporarily or permanently obtain possession of the right. The accrual of the right did not in any way depend on the making of an application under Sub-section (11) or Sub-section (12) of Section 12-A for the enforcement of the right. The making of an application under the above two Sub-sections was only for the purpose of an investigation in respect of a right which existed. It was not for the purpose of deciding whether a right of pre-emption should or should not be given. The learned President of the Board of Revenue rightly held that the right conferred on the Petitioner by Section 12-A of the Tenancy Act and the remedy for its enforcement had been saved by Section 5 of the C. P. and Berar General Clauses Act, 1914, and that there was no legal bar to the Petitioner for bringing his case u/s 12-A of the Tenancy Act. But he inconsistently proceeded to hold that the right conferred on the Petitioner did not become an acquired right as he bad done nothing to enforce that right before the coming into force of the Code of 1954. In making this observation the learned President had perhaps in mind the dictum of Lord Herschell, L. C. in Abbot v. The Minister for Lands, 1895 AC 425 where it was observed that "the mere right (assuming it to be properly so called) existing in the members of the community or any class of them to take advantage of an enactment, without any act done by an individual towards availing himself of that right cannot properly be deemed ''a right accrued'' within the meaning of the enactment." These observations were made in connection with a statutory provision giving a right in regard to making an Additional purchase of adjoining lands which did not begin to operate till an application under that provision was made. An application under the relevant statutory provision in Abbot''s case (supra) was necessary for the accrual of the right. Such a step was not necessary under the Tenancy Act. On the true construction of Section 12-A (8), the right of pre-emption accrued to the Petitioner immediately on the sale of the holding in contravention of the provisions of Section 12-A and the making of an application under subsections (11) or (12) of Section 12-A was only a means of enforcing it. The dictum of Lord Herschell, L. C. in Abbot''s case (supra) was considered by the Privy Council in Director of Public Works v. Ho Po Sang, (1961) 2 All ER 721, and it was pointed out that the observations of Lord Herschell did not mean that the liberty to apply for a right was in itself an accrued right or privilege and that it was only when the doing of an act was a necessary condition for the acquisition of a right that it could appropriately be said that the mere right to take "advantage of an enactment" without any act done by an individual towards availing himself of that right,

cannot properly be deemed a ''right accrued.'' There is a difference between the existence of a right and an investigation in respect of it for its enforcement. The present case is more akin to the case of Hamilton Gell v. White (1922) 2 K. B. 422. That was a case where the question arose as to when the tenant u/s 11 of the Agricultural Holdings Act, 1908, acquired a right to compensation. By the Agricultural Holdings Act when the tenancy of a holding is determined by a notice to quit given in view of the sale of a holding the notice to quit is treated as an unreasonable disturbance within Section 11 of the Act of 1908 and the tenant is entitled to compensation upon certain terms and conditions. One of the conditions prescribed was that tenants should within two months after receipt of the notice to quit given to the landlord notice of their intention to claim compensation. Another condition was that such a tenant should make his claim for compensation within three months after quitting the holding. The tenant duty gave a notice of his intention to claim compensation within the time so limited. But before the tenancy had expired and before he could satisfy the second condition, Section 11 of the Act of 1908 was repealed. The tenant subsequently made his claim within three months limitation. It was held that notwithstanding the repeal the tenant was entitled to claim compensation as he had an accrued right which resulted from the fact that the landlord had given a notice to quit in view of the sale and that the condition imposed by Section 11 was a condition not of the acquisition of the right but of its enforcement. In the present case also, the conditions imposed by Sub-sections (11) and (12) of section 12-A are conditions for the enforcement of the right given by Sub-section (8) of that section.

7. If, as we think, the Petitioner acquired a right of pre-emption immediately after the sale of the holding to the Respondent No. 5, then u/s 5 of the C.P. and Berar General Clauses Act, 1914, the repeal of the Tenancy Act by the Code of 1954 did not affect that right or any remedy in respect of that right. The right remained unaffected and preserved and so also the remedy given by Sub-sections (11) and (12) of Section 12-A of the Tenancy Act for the enforcement of the right remained preserved. There is nothing in the Code of 954 to indicate an intention to destroy this right and remedy As has been laid down by the Supreme Court in State of Punjab v. Mohar Singh AIR 1955 S.C. 84., and Indira Sohanlal Vs. Custodian of Evacuee Property, Delhi and Others, ., wherever there is a repeal of an enactment the consequences laid down in Section 6 of the General Clauses Act, 1897, will follow unless, as the section its. If says, a different intention appears, and the line of enquiry would be not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them and that Section 6 is applicable in those cases also where there is a repeal of an enactment followed by a fresh legislation, unless the new legislation mainifests an intention incompatible with or contrary to the provisions of the section There is nothing in Section 239 of the Code of 954 or in any other provision of it manifesting an intention to destroy the right which accrued to the Petitioner and the remedy for enforcing it.

8. The contention advanced on behalf of the Petitioner that the right which the applicant acquired under the tenancy. Act would be deemed by virtue of Section 239 of the Code to be one acquired under the Code and thus enforceable u/s 176 of it, cannot be accepted. The deeming provision embodied in Section 239 is with the qualification contained in the expression "so far as may be" used in that section. It is clear from the terms of Sections 175 and 176 of the Code that it applies to transfers made after the coming into force of the Code. Sections 175 and 176 did not give any right of pre-emption to any landlord. By those provisions the right of preemption was given to a co-tenant and persons mentioned in Section 176, only in respect of transfers made after the coming into force of the Code. They did not destroy the right of pre-emption which had accrued to a person u/s 12-A of the Tenancy Act or the remedy in respect of it or substitute a new remedy in place of the remedy given by Sub-sections (11) and (12) of Section 12-A. The right of preemption given by Section 12-A (8) and the remedy in respect of it under subsections (11) and (12) cannot, therefore, on any principle of construction be equated with the right and remedy given by Sections 175 and 176 of the Code or be deemed to be under those provisions.

9. In this view of the matter, the Board of Revenue was right in holding that the application made by the Petitioner u/s 176 of the Code for enforcement of the right of preemption u/s 12-A of the Tenancy Act was misconceived and could not be treated as one under Sub-section (11) of that section, especially when the Petitioner had not made the necessary deposit for the execution of a sale deed in his favour. That the making of the deposit was necessary is clear from the provision in Clause (a) of Sub-section (8) and Clause (a) of Sub-section (11) of Section 12-A of the Tenancy Act. The effect of these provisions is that if the consideration of the right sold can be determined from the sale-deed so that the value of the right is not required to be fixed by the Revenue Officer then the landlord must deposit the necessary amount in the office of a Revenue Officer when applying to him to get a sale-deed executed by the tenant from the purchaser for putting him in possession of the right. Here, admittedly, the value of the right in the holding was Rs. 2,500. It could be determined from the sale-deed itself and did not require any valuation by a Revenue Officer. That being so, the Petitioner was not entitled to pre-empt the holding on the application he made.

10. For all these reasons, we are of the opinion that the conclusion reached by the Board of Revenue is correct Accordingly, this petition is dismissed with costs of the Respondent No. 5. Counsel''s fee is fixed at Rs. 100. The outstanding amount of security deposit, if any after deduction of costs, shall be refunded to the Petitioner.

