

(1958) 08 BOM CK 0019

In the Bombay High Court

Case No : Special Civil Application No. 55 of 1957

K.S. Digvijaysinhji Hamirsinhji

APPELLANT

Vs

Nanji Savdas

RESPONDENT

Date of Decision : 12-08-1958

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1959) 61 BOMLR 44

Hon'ble Judges : Shelat, J;Shah, J

Bench : Division Bench

Judgement

Shah, J.—This Special Application raises a question as to the interpretation of certain provisions of the Saurashtra Land Reforms Act, No. XXV of 1951. The lands in dispute were within the jurisdiction of the former Virpur State. One Hamirsinhji Thakore of Virpur died in 1937, leaving him surviving his son Dilipsinhji who succeeded to the Virpur Gadi according to the custom of primogeniture. Dilipsinhji died in the year 1945 and he was succeeded to the gadi by his son Narendrasinhji. On June 1, 1947, Narendrasinhji granted certain agricultural lands as "giras" to the petitioner Digvijay-sinhji who was the grantor's paternal uncle. These lands were situate in the villages of Matiya and Gunda. On February 11, 1948, an exchange was effected between Narendrasinhji and the petitioner whereby the lands in Matiya and Gunda were returned to Narendrasinhji and the petitioner was granted certain lands at Kharedi which are the subject-matter of this petition. On February 17, 1948, entries were posted in the "Hak Patrak" of the Virpur State which evidenced the grant of the lands to the petitioner. On March 8, 1948, the administration of the Virpur State was handed over to the United State of Saurashtra. In February 1949, Mr. V.P. Menon, Secretary to the Ministry of States, Dominion of India, held a conference at Jamnagar to discuss the questions relating to private properties of the Rulers and certain formulae were evolved for granting recognition to the claims of the erstwhile Rulers to their private properties. Thereafter an agreement was arrived at between Narendrasinhji and the Government of India, under which the lands

at Kharedi were regarded as lawfully granted to the petitioner but subject to the restriction that the grantee was not to evict the tenants on the lands. The arrangement between the Government of India and Narendrasinhji was set out in a letter dated November 2, 1949, which states inter alia:?

According to the Jamnagar Conference decision as this grant was an exchange, it was acceptable after verification regarding reasonableness of the exchange. It having been decided on enquiry that the exchange was reasonable, the grant is accepted subject however to the liability of the grantee (a) to pay 12 % as assessment, (b) to see that no cultivator shall be evicted from the land.

The letter also requested that intimation be given to the petitioner about the assessment charged under the agrarian law and that he should be put in possession of the land subject to the liability specified in the letter.

2. The Saurashtra Land Resumption Ordinance No. 84 of 1949, making provision for resumption of certain lands was issued by the Raj Pramukh in 1949. It is undisputed, however, that the lands in dispute in this application are not included in the schedule to that Ordinance. The State of Saurashtra then passed the Saurashtra Land Reforms Act, 1951, which was enacted for

improvement of land revenue administration and for ultimately putting an end to the Girasdari system

and

to regulate the relationship between the Girasdars and their tenants and to enable the tenants to become occupants of the land held by them and to provide for the payment of compensation to the Girasdars for the extinguishment of their rights.

The expression "Girasdar" was, by Section 2(15) of that Act, defined as meaning any talukdar, bhagdar, bhayat, cadet or mulgirasia and included any person whom the Government may, by notification in the Official Gazette, declare to be a Girasdar for the purposes of this Act. The petitioner, though a junior member of the Virpur family, was not a girasdar as a cadet bhayat or mulgirasia. On January 29, 1954, the Government of Saurashtra declared the petitioner for the purposes of the Act, a "girasdar" but subject to the provisions of Section 18 of the Act. By a notification dated July 20, 1954, the earlier notification of January 29, 1954, was clarified and it was recited that the petitioner was declared a girasdar subject to the provisions of Section 18 of the Act, i.e., conditions imposed by the Government of India that he cannot evict tenants, should be incorporated in the notification. In the meanwhile, the petitioner had applied on March 26, 1952, for an order of allotment of "gharkhed land" u/s 19 of the Land Reforms Act read with Rule 12. The application was resisted by the tenants, who contended that in the lands in dispute, they held "Chav" rights. They also contended that the petitioner was not a "girasdar" and that in any event he could not evict the tenants. The Mamlatdar negated the contention of the tenants that they held

Chav rights in the village Kharedi. He observed that the notification issued by the Government on July 20, 1954, only disabled the girasdar from evicting any tenant, "but when the petitioner was declared a girasdar by the Government "for the purposes of the Land Reforms Act," he was entitled to all the privileges of a girasdar under the provisions of that Act; and that the condition attached, to the declaration of status of the girasdar being of a date anterior to the enactment of the Act, only operated to disable the girasdar from evicting the tenants out did not disentitle him to the advantages conferred upon him by the Act. The Mamlatdar then proceeded to award to the petitioner land out of the holdings of four tenants. Those tenants were Kanbi Sava Uka, Kanbi Lala Premji, Kanbi Ruda Bhawan and Kanbi Naran Kala. Against the order passed by the Mamlatdar, an appeal was preferred to the Deputy Collector, Eastern Division, Halar. The Deputy Collector agreed with the view of the Mamlatdar that the tenants were not holding "Chav" rights. He further held that there was a difference between eviction and allotment, and inasmuch as the petitioner was not seeking to evict the tenants by exercising the right as a landlord but was seeking to avail himself of the statutory right created in his favour by virtue of the order of allotment, the restriction imposed by the notification dated January 29, 1954, and amended by notification dated July 20, 1951, was ineffective. The tenants then applied in revision to the Revenue Tribunal against the order passed by the Deputy Collector. The Tribunal disagreed with the view of the Mamlatdar and the Deputy Collector on the effect and interpretation of the notification dated January 29, 1954, as amended, and observed that as the petitioner had knowledge of the restriction imposed under the agreement incorporated in the letter dated November 2, 1949, the agreement was binding upon him, and the lands were allotted to him subject to the conditions which were on his behalf assented to by the Ruler of Virpur. They further observed that the rights in the land granted to the petitioner by his declaration as a girasdar were restricted by conditions which were imposed under the letter dated November 2, 1949, which incorporated the agreement between the Government of India and the Ruler of Virpur" and also by the conditions which were imposed under the notification dated January 29, 1954, as amended, and the petitioner was accordingly incompetent to evict the tenants who were entitled to take advantage by virtue of Section 18 of the Land Reforms Act, of the conditions imposed upon the petitioner. They, therefore, held that the petitioner was not entitled to any "gharkhed" land from the tenants whose lands were included in the letter dated November 2, 1949. The Tribunal then proceeded to consider whether the tenants had "Chav" rights; and they agreed with the view of the Mamlatdar and the Deputy Collector on that question. On the view taken by them that the rights of the petitioner were restricted by the grant made to him and by the notification declaring him a girasdar he was not entitled to evict the tenants on allotment in his favour of lands referred to in the letter dated November 2, 1949, the application of the petitioner was dismissed. The petitioner has applied to this Court challenging the correctness of that order under Article 227 of the Constitution.

3. It is urged by Mr. Baxi on behalf of the petitioner that a girasdar under the Land Reforms Act has a statutory right to get an order of allotment of land for personal cultivation, and the restriction, if any, imposed upon his rights as a landlord vanish when the order of allotment is made in his favour by the Mamlatdar, and that the statutory rights of the girasdar cannot by executive orders of the Government be restricted or limited in the absence of an express provision in the statute authorising the Government in that behalf. In other words, it is urged, that the rights of the tenants in the lands before the enactment of the Land Reforms Act must be regarded as subject to the rights conferred by statute upon the girasdar, and once the Mamlatdar, in exercise of his powers under Chap. IV of the Land Reforms Act, allots any land for personal cultivation to a girasdar, the rights of the tenants in the land are extinguished.

4. In order to appreciate the contention it may be necessary to refer to certain provisions of the Land Reforms Act of 1951. We have already referred to the definition of the word "Girasdar" in Section 2(15) of the Act. By Section 3, it is provided that the Act is to override all other laws except as otherwise provided by the Act. By Section 6, the persons who are lawfully cultivating the land belonging to a girasdar are, for the purposes of the Act, to be deemed tenants. By Section 12, provision is made for termination of tenancies. Termination may take place on account of default on the part of a tenant or some act done by him which is destructive or permanently injurious to the land comprised in his holding, or by reason of his sub-letting or using the land for purposes other than agricultural. It is also implicit in Section 12 that tenancy may be determined in accordance with the provisions of Chap. IV which deals with allotment of lands. Section 18, on which reliance has been placed by the Tribunal provides that:

Nothing contained in this Act shall be construed to limit or abridge the rights or privileges of any tenant under any usage or law for the time being in force or arising out of any contract, grant, decree or order of a Court or otherwise howsoever.

Chapter IV deals with allotment of land to a girasdar for personal cultivation. By Section 19 it is provided that any girasdar may, at any time within four months, from the date of the commencement of the Saurashtra Land Reforms Act, apply to the Mamlatdar for allotment to him of land for personal cultivation. Section 20 contemplates that an enquiry shall be made by the Mamlatdar on the application of the Girasdar, and authorises that officer to make an order of allotment of land for personal cultivation. Under Sub-section (1), the Mamlatdar is required to issue notice to the tenant or tenants concerned and to give them an opportunity of being heard and to make enquiry in the manner prescribed. By Sub-section (2) it is provided that the Mamlatdar, having due regard to provision of the Chapter, may pass an order allotting to a girasdar such land as may be specified in the order. By Sub-section (3) it is provided that the Mamlatdar shall issue occupancy certificate to a girasdar in respect to his gharkhed and the land if any, allotted to him. Then a disability is imposed by Sub-section (4) upon the

girasdar. He is prohibited from obtaining possession of any land held by a tenant otherwise than in accordance with an order under Sub-section (3). Section 21 provides, insofar as it is material that a girasdar of class A or class B shall be allotted land for personal cultivation so that added to the area of his gharkhed estate and of khalsa land, if any, in his possession, the total area does not exceed the prescribed area. The remaining provisions of that Chapter are not material in this application. The scheme of Chap. IV is that a girasdar has a statutory right to obtain land for personal cultivation to the maximum extent permissible u/s 21 and for that purpose he may make an application to the Mamlatdar and obtain an order from that officer allotting to him from his tenant land for personal cultivation. Chapter V deals with acquisition of occupancy rights by a tenant and by Section 28, Clause (1), a tenant is authorised to acquire occupancy rights in his holding on payment of such amount as may be equal to six times the assessment payable in respect of agricultural lands included in his holding, by making an application in the prescribed form to the Mamlatdar. Section 29 contemplates the holding of an enquiry by the Mamlatdar and Section 30 provides for the issue of an occupancy certificate to the tenant. Section 31 sets out the consequences of the issue of an occupancy certificate to a tenant. By Clause (a), a tenant in respect of the holding for which a certificate has been issued, becomes an occupant directly from the State and has all the rights and is subject to all the obligations of an occupant under the Act and under the Code in respect of the holding. Section 32 provides that occupancy certificate issued u/s 30 shall be effective from the date specified therein. There is, however, a proviso to Clause (b) which states that where any agricultural land or any portion thereof is allotted to a girasdar under the provisions contained in Chap. IV, either before or after the date on which an occupancy certificate issued to a tenant in respect of such land or a portion thereof has become effective under this section, the occupancy certificate issued to a tenant in respect of such land or portion thereof shall be deemed to have, and to have always had, no effect whatsoever and certain consequences shall then ensue. Section 50, provides for execution of orders for awarding possession or restoration of possession. The order of the Mamlatdar has to be enforced as if it is a decision of the Mamlatdar under Ordinance No. 52 of 1948. In our judgment the combined effect of the provisions of the Act is that tenants who are in possession of land to which the Act applies are entitled subject to certain exceptions on payment of the amount prescribed by Section 28, to be declared occupants. A girasdar is entitled under the Act to claim certain minimum area as gharkhed land, i.e., land for his personal cultivation: and to the extent to which rights are conferred upon the girasdar by the Act, the protection which is conferred upon the tenants and rights conferred upon them, are restricted.

5. A girasdar, either when so declared or by virtue of his status as defined in Section 2, Clause (15), may make an application for obtaining an order for allotment of land for personal cultivation. When an order of allotment is made, the rights which the tenants hold in the land, will be extinguished. That is made

abundantly clear by the proviso to Clause (b) of Section 32. Section 18, however, provides that the rights of occupancy of the tenants which are acquired under any usage or law for the time being in force or arising out of any contract, grant, decree or order of a Court or otherwise howsoever, are not to be limited or abridged by anything contained in the Act. Prima facie, there may arise a conflict between Section 18 and the effect of the order which the Mamlatdar might pass u/s 20 and the consequences which may ensue by reason of the provisions contained in Section 39. But that conflict, in our judgment, is resolved on the view that the rights which a tenant has and which, are not to be limited or abridged, are to be regarded as enforceable so long as the tenancy is subsisting. That view is supported by the provision contained in Section 12. The Legislature has in Section 12 set out the circumstances in which a tenancy may be determined and the procedure for termination of tenancy. Section 12 contemplates determination of tenancies by the instance of the landlords and also by statutory operation. Section 18 cannot be isolated from the other provisions of the Act. It is then reasonable to hold, reading Sections 12 and 18 together, that so long as the tenancy subsists, the rights of tenants are not to be limited or abridged notwithstanding anything contained in the Act. Mr. Baxi is, therefore, right in contending that ordinarily there is a statutory determination of tenancy by virtue of allotment of land to a girasdar. It is clear that from the order of allotment flows the consequence that the girasdar becomes entitled to obtain possession of the land allotted consistently with the order of the Mamlatdar and the girasdar becomes, by virtue of the provisions of Section 39, an occupant of the land, and the rights of the tenants holding that land are extinguished.

6. But, in our view, in the present case, the rights of the tenants which have been declared under the letter dated November 2, 1949, and further confirmed by the order declaring the petitioner a girasdar on January 29, 1954, as amended by order dated July 20, 1954, must prevail. The petitioner claims to be a grantee from the Euler of Virpur. During the course of the negotiations for surrender of the former Virpur State, the lands at Kharedi were given to the petitioner by the Euler in exchange for the lands at Matiya and Gunda. Ultimately an arrangement was arrived at between the Government of India and the Ruler of Virpur whereby the exchange was upheld but subject to the restriction that the grantee was not to evict the tenants. The Revenue Tribunal has found that the petitioner had knowledge of this condition and if knowing this condition he agreed to accept and continued to accept the benefit which was reserved to him under the Merger Agreement, it is not, in our judgment, open to the petitioner to contend that he is not bound by the condition which was imposed. The condition incorporated in the letter dated November 2, 1949, having been accepted by the petitioner it must enure for the benefit of the tenants for whose benefit it appears to have been imposed. Mr. Baxi urged that even if the authority or right conferred upon the petitioner under the agreement dated November 2, 1949, was restricted, once the Land Reforms Act of 1951 was passed, the rights and obligations of the parties have to be adjudged in the light of the Act and not in

the light of the agreement incorporated in the letter. But by the very notification declaring the petitioner a girasdar, the rights of the tenants have been expressly preserved and a disability is imposed upon the petitioner which prevents him from evicting the tenants in the land of which he was declared a girasdar. That declaration also enures for the benefit of the tenants u/s 18 of the Act.

7. We are unable to accept the argument of Mr. Baxi that it is not open to the Government to impose any restrictions upon the rights of a girasdar. In our judgment, there is nothing in the Act which requires the Government when declaring a landlord a girasdar, not to impose any conditions upon him, or not to declare the extent of the rights of the tenants in the land of which the landlord is declared a girasdar. If by the very terms of the declaration the petitioner was incompetent to terminate the tenancy of tenants of the land of which he is declared a girasdar, we are of the view that he cannot achieve that object by obtaining an order for personal cultivation of the land of tenants who are by tenure, grant or contract protected from eviction. We are, therefore, of the opinion that the Tribunal was right in holding that the land of the tenants who were protected from eviction could not be allotted to the petitioner for personal cultivation. In that view of the case, this application fails and the rule is discharged with costs.