(1959) 03 BOM CK 0020

In the Bombay High Court

Case No : Special Civil Application No''s. 2878 to 2881 of 1958

Kuberdas Hargovindas Modi — APPELLANT

Vs

State of Bombay and Others — RESPONDENT

Date of Decision : 18-03-1959

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 84C
Constitution of India, 1950 — Article 31(1), 31(2)

Citation : AIR 1960 Bom 459 : (1959) 61 BOMLR 1276

Hon'ble Judges : Mudholkar, J;Mody, J

Bench : Division Bench

Advocate : In No. 2878 of 1958, R.B. Kotwas, S.B. Vakil, R.J. Joshi and T. Andhyarujinah, instructed by Little and Co., Attorneys and In Nos. 2879 to 2881 of 1958 R.B. Kotwal, S.B. Vakil, R.J. Joshi, instructed by Little and Co., Attorneys, for the Appellant;

Judgement

Mudholkar, J.—Two of these petitions are under Article 226 of the Constitution and two under Article 227 of the Constitution.

2. The petitioner in the first and second petition is the occupant of Survey No. 204 of the village Sahijpurbogh. It is common ground that he sold this field to one Punjiram Prajapati on 1st April 1957 for Rs. 9,176. This sale has been declared invalid by the the Mamlatdar u/s 84C (2) of the Bombay Tenancy and Agricultural Lands Act. Pursant to this declaration the land purported to have been sold by the petitioner to Punjiram Prajapati has been declared by the Mamlatdar to have been forfeited to the Govt. and the price received by the petitioner is also declared to have been forfeited to the Government. The Mamlatdar''s order having been ultimately affirmed by the Prant Officer in appeal and by the Bombay revenue Tribunal in revision, the petitioner seeks to have all those orders quashed under article 227 of the Constitution. By way of precaution the petitioner is invoking the jurisdiction of this Court under Article 226 also and that is why he has made two applications. The petitioner in the other petitions is a purchaser of another field of the petitions is a purchase of another field of the

same village from the occupant thereof and the sale in his favour has been held by the Tenancy Aval Karkun to be invalid as being in contravention of section 63 of the Act. This order having been affirmed by the Bombay Revenue Tribunal the petitioner wants it to be quashed under Article 227. By way of precaution he has also filed and application under Article 226.

3. The petitioner''s contention is that the provisions of section 84C of the Act are unconstitutional inasmuch as they contravene Article 31(2) of the Constitution. It is said on behalf of the petitioner that what section 84C purports to do is to acquire property without payment of compensation and, therefore, this section is ultra vires the Constitution. We cannot accept the contention that section 84C deals with acquisition of property for a public purpose and, therefore, hold that it is not violative of Article 31(2) of the Constitution.

4. Now, in so far as this section provides that on a declaration made by the Mamlatdar under sub-section (2) of section 84C to the effect that the sale effected by the occupant of an agricultural land is invalid and consequently the land shall be deemed to vest in the government, the law can be sustained under Article 31(1) of the Constitution. Under this provision it is open to a Legislature to make a law whereunder a person may be deprived of his property. Such deprivation, of course, may be in the exercise of the police power or may be for the purpose of taxation or penalty. Here, so far as the sale by the occupant of the land is concerned the provisions of section 64 lay down a number of restrictions on him. Sub-section (2) of section 64 says that a ale held in contravention of the provisions of that section wold be invalid. It would, therefore, follow that the Legislature has prohibited the owner of a land from alienatig it except in compliance with certain provisions of law. Then by section 84C it has been provided that where an occupant of a land has effected a sale of his land without employing with the provisions of law or in contravention of the provisions of law and the sale declared invalid by the Mamlatdar, the land shall be forfeited to the government. Where a sale has been rendered invalid by law, the immediate result would be that the land would revert to the occupant and all that the purchaser is entitled to is the refund of consideration from his vendor, the occupant of the land No. doubt section 84C as already stated, provides that after a sale is declared to be invalid by a Mamlatdar, the land, which is the subject matter of the sale shall be forfeited to the Government but that must happen after its reversion to the occupant. Then, the land having reverted to the occupant because the sale had been declared invalid, the forfeiture would operate against the occupant of the land. It is competent to the Legislature to make a law of this type, and, therefore, section 84C in so far as it refers to the forfeiture of the land to the Government by reason of the sale being declared invalid is constitutional. The same, however, cannot be said wit regard to another provision of section 84C which is to the effect that the money or the purchase price received by the occupant of the land shall be forfeited to the Government and will be recoverable as an arrear of land revenue. No sooner the sale is declared invalid the purchaser becomes entitled to the refund of the purchase

price on the ground of failure of consideration. The price which is in the hands of the occupant of the land must, thereafter, be said to belong to the purchaser. The Legislature cannot effectively enact a law concerning forfeiture of the purchase price of land which its owner or occupant is incompetent to sell unless it enacts a provision therein prohibiting the purchaser from purchasing such land. It is no doubt true that under Article 31(1) of the Constitution the Legislaturecan make a law imposing a penalty but the law in order to be complete and effective must also provide for the circumstances under which the penalty will be leviable against an individual. Now, a penalty is a frm of punishment. A person will be liable to punishment only if he as contravened a provision of law. Therefore, the law must first enact a prohibition, then specify the person or persons who will be subject to that prohibition and thereafter provide for the penalty and specify the person or persons who will be liable to suffer it. Here, so far as the purchaser is concerned the law is very much short of this. It does not prohibit him from purchasing any land. Nor indeed does it even render him liable to suffer any penalty for purchasing a land which the occupant is incompetent to sell. So far as the occupant of the land is concerned, it can no doubt be said that he has contravened the provisions of section 64 if he has effected the sale without comploying with the provisions of that section. There is nothing in the provisions of that section which prevents the purchases from purchasing land from its occupant. It is true that in certain circumstances the sale in the purchaser''s favour would be rendered invalid. But that by itself is not sufficient to show that he was prohibited from purchasing any land. In our opinion, the provisions of section 84C-3 (b) which run thus-

"(3) On the declaration made by the Mamlatdar under sub-section (2)-

"(b) the amount which was received by the transferor as the price of land shall be deemed to have been forfeited to the State Government and it shall be recoverable as an arrear of land revenue;" cannot be regarded as a law relating to the deprivation of the propertyof a purchaser made under Article 31(1) of the Constitution. It is, if we may say so, an incomplete piece of legislation in the sense that though it prescribes a penalty,which would operate against a purchaser, it does not specify the act or the omission which will render him liable to this penalty. therefore, it is not open to the State Government to recover the purchase price belonging to the purchaser either from him or from the seller.

5. Mr. Kotwal points out that in the first two petitions the state Government is trying to recover the purchase money in the hands of the seller as an arrear of land revenue. In view of our finding that the purchase money cannot be forfeited to the Government, it cannot be recovered as an arrear of land revenue.

6. These petitions must, accordingly, succeed partially. For this reason we make the rule absolute in so far as the prayers 10 (d) and (e) as set out in Special Civil Application No. 2879 of 1958 are concerned and quash the orders of the Mamlatdar, the Prant Officer and the Bombay Revenue Tribunal as prayed for in Special Civil Application No. 2878 of 1958 to the extent of declaring the forfeiture

of the amount and directing its recovery as an arrear of land revenue. There will however, be no order as to costs.

7. In the other two applications the purchaser not being an agriculturist, the sale is invalid and, therefore, u/s 84C the Mamalatdar was entitled to declare that the land comprised in that sale stands forfeited to the Government. As regards the purchase price, we hold, for the reasons already stated, that it belongs to the purchaser and in the absence of appropriate provisions of law it cannot be forfeited to Government. The order of the Mamlatdar in regard to this must, therefore, be quashed as also his order directing the recovery of the money as an arrear or land revenue. the order of the Prant Officer in appeal and of the Bombay Revenue Tribunal in revision must also be quashed. We accordingly make the rule absolute in both the applications to the extent of quashing the orders of the Mamlatdar, the Prant Officer and the Bombay Revenue Tribunal in so far as the forfeiture of the purchase money is concerned, as prayed for in Special Civil Application No. 2880 of 1958 and in terms of prayer 10 (d) and (e) as set out in Special Civil Application No. 2881 of 1958. There will, however, be no order as to costs.

8. Order accordingly.

