

(1978) 12 GUJ CK 0010
In the Gujarat High Court

Kumbhar Gamnaji Ratnaji

APPELLANT

Vs

Gurdipsinh Amarsinh and Another

RESPONDENT

Date of Decision : 13-12-1978

Acts Referred:

Citation : (1979) 1 GLR 914

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—Special Civil Application Nos. 1415/75 and 1416/75 by two different petitioners Kumbhar Gamnaji Ratnaji and Dipaji Magaji respectively are concerned with two different agricultural pieces of land respectively bearing survey No. 187/18 and 187/41 situated in village Ranpur in Deesa Taluka of Banaskantha District. These petitioners challenge the respective order of the Gujarat Revenue Tribunal Annexure-C to both of these petitions. As the background of the Special Applications Nos. 1415/ 75, 1416/75, 886/76 and 887/76 is identical and as the point of law involved in ; these first two petitions is also the same, I deal with these four petitions together by this common judgment.

2. A few facts at the bottom of this dispute require to be closely noted. These two pieces of land admittedly belonged to one Nasarvanji Parsi. Respondent No. 2 Bai Paru's husband was admittedly the tenant on the land. The said husband of Bai Paru had died prior to 1-4-1957 and so said Bai Paru had come to be the tenant on the lands; In the year 1961 the proceedings u/s 32G had arisen. By its order dated 19-4-1961 the Agricultural Lands Tribunal fixed the purchase price in respect of these two lands and declared Bai Paru a statutory purchaser. A certificate u/s 32-M declaring Bai Paru to have become the statutory purchaser u/s 32 of the Bombay Tenancy Act had come to be issued to her on 19-9-66.

3. Then Bai Paru wanted to dispose of these lands so she had applied to the Collector u/s 63 of the Act for permission to sell the land to one Gurudipsinh Amarsinh - the respondent No. 1 of these first two petitions. The competent

authority by its order dated 30th March 1971 had granted the said permission by charging sixty times assessment as the amount to be paid by the purchaser to the State. After getting the said permission Bai Paru executed the sale deed for these two lands on 4-8-1971 and got it registered. The respondent No. 1- Gurdipsinh Amarsinh in first two petitions (Spl. C.A. No. 1415 and 1416/75) claims to be put in possession with the standing crops pursuant to the sale deed. The said Bai Paru is the respondent No. 2 in both these petitions. In the year 1971, the Mamlatdar held some inquiry and deleted the name of the petitioner Gamnaji Ratnaji from Panipatrak for survey No. 187/18 and similarly the name of Dipaji Magaji petitioner of Spl. C.A. No. 1416/ 75 also came to be deleted. The respective entries Nos. 264 and 265 had come to be passed by the Revenue authorities on 4-8-1971.

4. Both Gamnaji and Dipaji are close relations of Bai Paru. Thereafter they filed Civil Suit No. 97/71 and 98/71 against the respondent No. 1 Gurdipsinh Amarsinh to restrain him from interfering with their possession of the respective survey numbers. Their say was that they were tenants on the land. Obviously the issue was raised by the learned Civil Judge, whether concerned petitioner is the tenant of Bai Paru or not. It is to be noted specifically that both Gamnaji and Dipaji alleged that they were inducted on the land by Bai Paru in the year 1963-64 and so they claimed to be the tenant of Bai Paru herself. This is specifically noted because the learned Advocate for these petitioners in the course of his submissions tried to allege without any basic foundation that these two petitioners were cultivating the lands over since the time of Bai Paru's husband.

5. The issues were referred to the Mamlatdar u/s 85A of the Act and the Mamlatdar registered those proceedings as case No. 6/74 in the case of Gamnaji and as No. 5/74 in the case of Dipaji. The Mamlatdar by this order dated 31-8-1974 (Annexure-A in both the first two petitions) held that the concerned person was not a tenant. Appeal Nos. 110/74 and 112/74 came to be preferred by Gamnaji and Dipaji respectively before the Deputy Collector who was pleased to allow the appeals and declare the respective person as a tenant on the land. Gurudipsing therefore, preferred two Revision Application Nos. 166/75 and 167/75. Both of them came to be allowed by the Revenue Tribunal. (Orders of the Deputy Collector in both these petitions are at Annexure-B and the orders of the Gujarat Revenue Tribunal are at Annexure-C in these first two petitions). The respective petitions i.e. Nos. 1415/75 and 1416/75 are, therefore, filed challenging the orders of the Revenue Tribunal in these two petitions.

6. The learned Advocate for the petitioner firstly took me through the judgment of the Tribunal and very vehemently contended that the Tribunal had wrongly allowed the Revision Application on the sole ground that the concerned petitioner was the close relative of Bai Paru and, therefore, was a member of the family and, therefore, could not be a tenant. It was rightly contended on behalf of the petitioner that this was almost a new case made out by the Tribunal and to this

extent the grievance is required to be accepted. Ordinarily I would have remanded the matter to the Revenue Tribunal for fresh decision, but in this case admitted facts are so glaring that I do not propose to remand the matter to the Revenue Tribunal for fresh decision in accordance with law.

7. As said by me above, it is an admitted fact that Bai Paru was a statutory purchaser and her tenure was a new and impartible tenure. The language of Section 43(2) which I reproduce below shows that such land is not transferable in anyway without the previous sanction of the Collector and except on payment as the State Government may by general or special order determine. The said section before its substitution by Gujarat Act, No. 30/77 read as follows:

43(1). No land purchased by a tenant under Sections 32, 32F (32I, 32O, 32U or 43-1D) or sold to any person u/s 32P or 64 shall be transferred by sale, gift, exchange, mortgage, lease or assignment or partitioned without the previous sanction of the Collector, and except on payment of such amount as the State Government may by general or special order determine.

The question is : when there is a specific prohibition u/s 43 of the Act, could Bai Paru-the respondent No. 2 - in these two petitions, create leases in favour of the respective petitioners in the year 1963-64? The language of Section 43 is absolute and admits of no exceptional treatment. If it be so, the alleged leasing out of the land by Bai Paru to these petitioners is an act prohibited by law and respective petitioners can't claim to be the lawfully inducted on the land.

8. The Deputy Collector, however, in this connection has relied upon the definition of word "to cultivate personally" in a case of a widow as given in Section 2(6) read with explanation-I. The Deputy Collector's approach to this problem is absolutely incorrect. Where, in any part of the Act, the term "cultivate personally" occurs, the definition is to be imported for the purpose of interpretation. In Section 43 there is no reference to the term "cultivate personally" and therefore, the said definition cannot be imported in Section 43 and it cannot, therefore, be held if a widow who is a statutory purchaser leases out the land to some one, she should be deemed to be cultivating the land personally and, therefore, she cannot be slid to have leased out the land. The provisions of the interpretation clause in a statute are not substantive law. They are only interpretational guides and they cannot be given extending meaning as seems to have been done by the Deputy Collector following some judgments of the Gujarat Revenue Tribunal. I have no hesitation in observing that the said view of the Gujarat Revenue Tribunal reported in // G.R.T. Law Reporter p. 24 proceeds on misconception of law and cannot be accepted as correct exposition of law on the point. I, therefore, find that the judgment of the Tribunal stands supported on the view of the law as I take it. I, therefore, see no reason to remand the matter to have the formal expression of the very conclusion at the hands of the tribunal afresh.

9. Even if for (he sake of argument it is held that when Bai Paru said to be

cultivating the land personally by dint of the definition of the term "to cultivate personally" given in Section 2(6) of the Bombay Tenancy Act, the said conclusion is to be carried to its logical limits. For all purposes in such a case, Bai Paru would be required to be cultivating the land personally and if it be so, the respective petitioners cannot claim to be cultivating the land independently of Bai Paru.

10. The learned Advocate for the petitioners in this connection invited my attention to the explanation II Appended to Section 4 of the Bombay Tenancy Act and urged that even where a widow gets the land cultivated by a tenant such a tenant would be a tenant in the meaning of Section 4 of the Act. This is an argument which is acceptable on the face of it, but the question is whether such a tenant who can be a tenant u/s 4, would escape the application of the prohibition contained in Section 43 or not. When Section 43 explicitly prohibits leasing out of the land by any person who has become a statutory purchaser u/s 32 of the Act, the act of leasing out itself is an act prohibited by law and once there is an explicit prohibition then such a person cannot claim to have the legal status of the tenant. Second explanation to Section 4 of the Act is to be kept confined to general cases and not to the exceptional cases envisaged by Section 43 of the said Act where the prohibition is couched in the absolute and uncompromising language. Mr. Majmudar however urged that as Bai Paru was a widow, there could not be statutory sale and by virtue of Section 32(F), the sale would be postponed. This is a proviso to the benefit of the widowed tenant and such a benefit can be waived. It is an admitted position here that there was a statutory sale u/s 32 followed by the issuance of a sale certificate u/s 32M of the Act.

11. In the above view of the matter, the judgment of the Tribunal Annexure-C in these two petition Nos. 1415/75 & 1416 of 1975 deserves to be confirmed though on different but purely legal grounds which I have set out above. The result is that Petition Nos. 1415/75 and 1416/75 require to be dismissed. Rule is accordingly discharged in both these petitions with no order as to costs. A few more facts would show how petitions Nos. 886/75 and 887/76 came to arise. In the course of the abovementioned two suits Nos. 97/71 and 98/71 filed by these petitioners respectively, the question of temporary injunctions arose. In the first round both the trial court and the District Court had refused to grant the ad-interim injunction to these petitioners. In Civil Revision Application Nos. 715/72 and 716/72 arising from these two suits respectively, this High Court had remanded the matter and the District Court by a common judgment dated 31-3-1976 had restrained the respondent No. 1 Gurudipsinh from interfering with the possession of these respective persons namely, Gamnaji and Dipaji. These two Special Civil Application Nos. 886 and 887 of 1976, therefore had come to be filed by Gurudipsinh respectively against Gamnaji and Dipaji challenging the order of the grant of injunction by the District Court. As I have now held in Special Civil Application Nos. 1415/75 and 1416/75 that Gamnaji and Dipaji cannot claim to be lawfully cultivating the land in view of the bar of sec.

43 of the Bombay Tenancy Act, Mr. J.M. Patel, the advocate for Gurudipsinh in these two Special Civil Applications Nos. 886 and 887 of 1976 does not press these petitions at this stage saying that he would now move the District Court or the trial Court for appropriate modification of the injunction order, in view of the judgment of this High Court in Spl. C.A. No. 1415 and 1416/75. Rule, therefore, in these two petition Nos. 886 and 887/76 stands discharged. The petitions therefore stand withdrawn and the rule is discharged in these two petitions with no order as to costs.