
(1962) 04 BOM CK 0016

In the Bombay High Court

Case No : Special Civil Application No. 1298 of 1961

Mohiuddin Shaikh Chand

APPELLANT

Vs

Gulam Ghouse Gulam Jilani

RESPONDENT

Date of Decision : 26-04-1962

Acts Referred:

Constitution of India, 1950 — Article 227
Easements Act, 1882 — Section 60
Transfer of Property Act, 1882 — Section 53A, 54

Citation : (1962) 64 BOMLR 560

Hon'ble Judges : Tarkunde, J;Chitale, J

Bench : Division Bench

Judgement

Tarkunde, J.—The petitioner on February 9, 1954, agreed to purchase from opponent No. 1 a land Survey No. 168 at the village Bhokerdhan in the Aurangabad district for an amount of Rs. 5,000. On the same day he paid Rs. 1,000 to opponent No. 1 under an earnest receipt or Visar-Pavati, wherein the terms of the agreement were set out. In pursuance of the agreement the petitioner was placed in possession of the land. On August 11, 1956, the petitioner paid to opponent No. 1 Rs. 4,000 being the balance of the purchase-price, and obtained a receipt for the amount. Then on July 12, 1958, the petitioner and opponent No. 1 jointly filed an application before the Tahsildar, from which the present proceeding has arisen, praying that the transaction between them be declared valid u/s 98A of the Hyderabad Tenancy and Agricultural Lands Act. During the pendency of the matter before the Tahsildar, opponent No. 1 resiled from the position taken by him in the joint application and alleged that he did not enter into an agreement of sale with the petitioner, and did not execute the earnest receipt. The Tahsildar found that the agreement was entered into and the earnest receipt executed by opponent No. 1. Accordingly he granted a certificate u/s 98A. that the transfer was not invalid. In an appeal filed by opponent No. 1, the Deputy Collector set aside the Tahsildar's order on the ground that opponent No. 1 was unwilling to sell the land. The Deputy Collector also observed

incidentally that there was no adequate proof of the execution of the earnest receipt. The petitioner went in revision to the Maharashtra Revenue Tribunal. The case was heard by a Full Bench of the Tribunal. On the facts, the Full Bench were of the view that the agreement of sale was entered into between the parties as alleged by the petitioner, that the earnest receipt was duly executed, and that the petitioner was in possession of the land in part performance of the agreement. The Full Bench, however, held, disagreeing with the contrary view earlier held by a Division Bench of the Tribunal, that transfer of possession under an agreement of sale was not "a permanent alienation or transfer" of the land, and could not be validated u/s 98A. On this ground the Revenue Tribunal confirmed the order of the Deputy Collector. This decision of the Revenue Tribunal is challenged before us by the petitioner under Article 227 of the Constitution.

2. The question which falls for determination is whether transfer of possession of agricultural land in pursuance of an agreement of sale amounts to "a permanent alienation or transfer" within the meaning of that expression in Section 98A of the Hyderabad Tenancy and Agricultural Lands Act, 1950. It appears from the impugned judgment of the Revenue Tribunal, and from what we were told at the Bar, that this question is involved directly or indirectly in a number of other matters pending before Tenancy Courts. We have, therefore, considered the question with a good deal of care.

3. Sections 98A to 98D were introduced in the Hyderabad Tenancy and Agricultural Lands Act, 1950, by the amending Act of 1957 (Bombay Act No. XXXII of 1958). One purpose of these provisions was to provide the mode of validating transactions which were otherwise invalid under the Act, on payment of penalties at certain rates, provided the transactions had taken place before December 1, 1957. Section 98A provides for the validation of such transactions. The other object was to lay down the consequences of transactions which take place after December 1, 1957, and which are incapable of being validated under K. 98A. We are not directly concerned with the provisions of Sections 98B to 98D, which deal with transactions to which Section 98A does not apply. Sub-section (1) of Section 98A provides that a permanent alienation or transfer of any land in contravention of any of the provisions of Section 38D or of Chapter V as it stood at the commencement of the Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1957, shall not be declared to be invalid merely on the ground of such contravention, if the alienee or transferee pays to the State Government a certain amount of penalty. Sub-section (2) lays down that, on payment of such penalty, the Tahsildar shall issue a certificate to the alienee or transferee that such transfer is not invalid. Sub-section (3) says that, where the alienee or transferee fails to pay the penalty referred to in Sub-section (1) within such period as may be prescribed, "the transfer shall be declared invalid by the Tahsildar and thereupon the provisions of Sub-sections (4) to (5) of Section 98C shall apply". The provisions of Sub-sections (3) to (5) of Section 98C lay down in substance that the land shall be deemed to vest in the State Government, that

the Tahsildar shall determine the reasonable price of the land, that the Tahsildar shall dispose of the land on payment of the reasonable price according to a certain order of priority, and that the reasonable price so recovered shall, subject to payment of the encumbrances if any subsisting on the land, be credited to the State Government. It is thus clear that, even in respect of transactions which are capable of being validated u/s 98A, the penalty has to be paid before the date prescribed by the Rules, and in the absence of payment of the penalty in time, the land is to be forfeited to the State Government for distribution according to the order of priorities fixed under the relevant provisions of the Act.

4. Section 98A applies in terms to permanent alienations or transfers which have taken place in contravention of the provisions of Section 38D or of Chapter V of the Act.. The scope of Section 98A, which is a validating section, necessarily depends on the scope of these provisions, under which alienations and transfers are rendered invalid. Section 381) provides that, if a landholder at any time intends to sell the land held by a protected tenant or an ordinary tenant, he shall give notice in writing of his intention to such protected tenant or ordinary tenant and offer to sell the land to him. Chapter V of the Act is comprised of Sections 47 to 50C. Of these, Sections 47 to 50 are material for the present purpose. Section 47, in so far as it is relevant, provides:-

Notwithstanding anything contained in any other law for the time being in force or in any decree or order of a Court, no permanent alienation and no other transfer of agricultural land shall be valid unless it has been made with the previous sanction of the Taluqdar.

It will be noticed that the words "permanent alienation" and "transfer" occur in Section 47 just as they occur in Section 98A. Sections 48 and 49 provide for restrictions on the grant of sanction by the Collector to a permanent alienation or transfer. These sections indicate the purpose of the Legislature in providing that permanent alienations and transfers shall not be valid unless they have received the previous sanction of the Collector. u/s 48, the Collector is not to sanction a permanent alienation or transfer if thereby the area of the land held by the alienor or transferor falls short of a family holding or, on the other hand, the area of land held by the alienee or transferee, after the alienation or transfer, would exceed 2/3rds of the ceiling area determined under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. Section 49 lays down that the Collector shall not sanction an alienation or transfer in favour of a non-agriculturist unless the latter intends to adopt the profession of an agriculturist. Sections 47 to 49 are thus designed to secure that permanent alienations and transfers will not result in reducing the area of land held by alienors or transferors below a certain minimum, or in increasing the holding of the alienees or transferees above a certain maximum, or in the land going to persons who are not agriculturists and do not intend to adopt the profession of agriculture. Then Section 50 provides for cases in which the restrictions imposed by Sections 47 to 49 are not to apply. The provisions of Section 50, in so far as they are material, are as follows:-

The restrictions imposed by sections 47, 48 and 49 shall not apply to-

(a) ...

(b) registered sales of agricultural lands before the commencement of this Act;

(c) agreement to sell agricultural lands entered into before the commencement of this Act, if possession of the lands had been transferred to the vendees before such commencement in pursuance of such agreements.

The wording of Clause (c) of Section 50 suggests that the restriction imposed by Sections 47 to 49 would apply to agreements of sale of agricultural lands where possession of the lands is transferred to the vendees after the commencement of the Act, i.e. on or after June 1.0, 1950. If agreements of sale accompanied by transfer of possession were not intended to be covered by the expressions "" permanent alienation" and "transfer" of agricultural land, it was not necessary to specify, as Clause (c,) of Section 50 does, that the restriction imposed by Sections 47 to 49 shall not apply to those agreements of sale where the lands were transferred to the vendees before the commencement of the Act.

5. In their judgment, the Revenue Tribunal have held that an agreement of sale and the transfer of possession thereunder do not amount either to a permanent alienation or a transfer of the land in question. In Section 2(1)(o) of the Act, the expression "permanent alienation" has been defined as including

...any sale, exchange, gift or disposition by will and any transfer of a right of occupancy or of the patta of a holding but does not include any disposition by will.

After referring to the meaning of the word "occupancy" as given in the Hyderabad Land Revenue Act, the Revenue Tribunal have observed-and in our opinion rightly-that

occupancy is a special kind of land tenure and signifies that the holder has a lawful title to the land which he is entitled to hold subject to the provisions of the Land Revenue Act.

On the meaning of the term "transfer", the Revenue Tribunal have referred to Section 54 of the Transfer of Property Act, which provides in terms that a contract for the sale of immovable property "does not by itself create any interest in or charge on such property". Accordingly, the Revenue Tribunal came to the conclusion that an agreement of sale and transfer of possession thereunder do not constitute either a permanent alienation or a transfer of land.

6. It is clear from the judgment of the Revenue Tribunal that, while reaching the above conclusion, the Tribunal failed to take notice of Sections 47 to 50 of the Act. It must be emphasized that the judgment of the Revenue Tribunal does not mean that the transaction between the petitioner and respondent No. 1 is invalid, and is incapable of being validated u/s 98A; it means, on the contrary, that the transaction is valid being unaffected by Section 47 and does not, therefore, require validation u/s 98A. The primary question obviously is whether a

transaction of this nature, where possession is transferred under an agreement of sale, requires the previous sanction of the Collector u/s 47, and it is this question that the Revenue Tribunal have failed to consider.

7. We agree, with respect, with the Revenue Tribunal that transfer of possession under an agreement, of sale does not amount to a permanent alienation; but it is a moot point whether it does not also amount to a transfer within the meaning of that term as used in Sections 47 to 49 and in Section 98A. of the Act. It is true that normally the word "transfer" would bear the meaning which it has under the Transfer of Property Act; and it is also true that transfer of possession under an agreement of sale would not normally be regarded as a transfer of the land itself or of any interest therein. The word "transfer" is, however, sometimes used in a sense wider than the sense in which it is used in the Transfer of Property Act. It was, for instance, held in *Janardan v. Ramchandra* (1926) 28 Bom. L.R. 312 that in Section 60(a) of the Indian Easements Act the words "transfer of property" are not used in a limited sense of a transfer as defined in the Transfer of Property Act. It was urged on behalf of the petitioner that the word "transfer" in Sections 47 to 49 and Section 98A of the Hyderabad Tenancy and Agricultural Lands Act is also used in a wider sense than that of a transfer under the Transfer of Property Act. Two arguments were advanced in support of this contention.

8. In the first place, it was urged that the language employed in Section 50(c), to which a reference has already been made above, shows that the Legislature intended to include in the meaning of the word "transfer" a transfer of possession of agricultural lands in pursuance of an agreement of sale. There is some plausibility in this contention. Secondly, it was argued that, the purpose of the restriction imposed by Section 47, as expressed in the provisions of Sections 48 and 49, is liable to be frustrated if the word "transfer" did not include transfer of possession under an agreement of sale. It was contended that, where a contract for sale is by writing signed by the transferor, and the transferee has taken possession of the land in part performance of the contract and has performed or is willing to perform his part of the contract, he is entitled to defend his possession by relying on the equity of part performance as defined by Section 53A of the Transfer of Property Act against the transferor or any person claiming through him. In such a case the transferee, particularly when he has paid the entire purchase price, is for all practical purposes the purchaser of the land. If such a transaction did not require the previous sanction of the Collector, if in other words no invalidity attaches to such a transaction by virtue of Section 47, the purpose of the Legislature in making the provisions contained in SB. 47 to 49 can always be frustrated by parties entering into such transactions, without executing a formal deed of transfer as required by the provisions of the Transfer of Property Act and the Registration Act. It was, accordingly, urged for the petitioner that the Legislature intended to include in the word "transfer", as used in Sections 47 to 49 and 98A, a transaction in which possession was transferred under an agreement of sale.

9. It does appear to us that there is some ambiguity in the meaning of the word "transfer" as used in the aforesaid sections. But in deciding whether the Legislature intended to use the word in the narrower meaning which it has under the Transfer of Property Act or in a wider meaning, it is necessary to take notice of another provision of the Act. Reference has already been made above to Sub-section (3) of Section 98A. That provision applies to permanent alienations or transfers which took place after the commencement of the Hyderabad Tenancy and Agricultural Lands Act, 1950, and before December 1, 1957, which were invalid under the Act but were intended to be validated u/s 98A. Even in respect of such transactions, Sub-section (3) of Section 98A provides that, if the alienee or transferee fails to pay the penalty referred to in Sub-section (2) of that section "within such period as may be prescribed", the transfer shall be declared invalid by the Tahsildar, and thereupon the provisions of Sub-sections (3) to (5) of Section 980 shall apply. Under Rule 44 of the Hyderabad Tenancy and Agricultural Lands Rules, 1958, it has been provided that the penalty referred to in Sub-section (1) of Section 98A shall be paid on or before December 31, 1960. The effect of Sub-section (3) of Section 98A read with Rule 44 is that, in the case of all permanent alienations and transfers which were contrary to Section 47, and in respect of which penalty has not been paid before December 31, 1960, the land involved is to be forfeited to the State Government, and the occupancy price thereof, subject to the payment of encumbrances if any thereon, is to be credited to the State Government. In view of the grave consequences which are to follow u/s 98A(3) on the non-payment of penalty within the prescribed time, it would not be proper to attribute to the word "transfer" as it occurs in Section 47 a wider meaning than it would normally have. The result of attributing a wider meaning to that expression is to invalidate a large number of transactions, with the result that in many of such cases the lands involved are likely to be forfeited to Government. If the Legislature intended that transfers of possession under agreements of sale should be invalid in the absence of the Collector's sanction, and that the failure of the transferee to pay the penalty u/s 98A within the prescribed time should have the consequence of forfeiting the lands to the State Government, it was essential that the intention of the Legislature should have been expressed clearly and unambiguously. Inferences which can be drawn from the negative provision of Section 50(c) or from the legislative intention behind Sections 48 and 49 are not, in our view, sufficient to remove the ambiguity attaching to the word "transfer" so as to include therein a mere transfer of possession under an agreement of sale. Considering the matter as a whole, we have come to the conclusion, not without a good deal of hesitation, that the meaning of the word "transfer" occurring in Sections 47 and 98A and other allied provisions is restricted to its meaning under the Transfer of Property Act. Since, however, it appears to us that this restricted meaning of the word "transfer" might result in partially defeating the object of the Legislature in imposing the restriction mentioned in Sections 47 to 49, we direct that a copy of this judgment may be sent to the appropriate Department of the State Government, so that the State Government might, if it deems fit, initiate such amendments in the Act or

in the Rules as may be found necessary.

10. For the reasons mentioned above, the decision of the Revenue Tribunal is confirmed. The rule is discharged. There will be no order as to costs.