
(1990) 03 BOM CK 0073

In the Bombay High Court

Case No : Writ Petition No. 2903 of 1979 and Special Civil Application No. 2255 of 1978

Motilal Ramchandra Vora

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 09-03-1990

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43A(1), 43A(3)

Citation : (1990) 3 BomCR 213 : (1990) 92 BOMLR 452

Hon'ble Judges : C. Mookerjee, C.J.; Sharad Manohar, J

Bench : Division Bench

Advocate : A.M. Setalvad, G.R. Bege and N.D. Aklujkar, for the Appellant; B.R. Naik, Prashant Naik and S.M. Mhamane for respondent No. 1, J.R. Lalit, for respondent No. 2, S.D. Kulkarni and N.D. Bhatkar, Assistant Government Pleader, for the Respondent

Judgement

C. Mookerjee, C.J.—The petitioners of these two writ petitions are owners of certain lands mentioned in their respective petitions situated in Malsbiras Taluka of Solapur District. The petitioners had originally leased out their lands to Saswad Mali Sugar Factory Ltd., Mali Nagar, Malsbiras, for the purpose of growing sugarcane. According to the petitioners of Writ Petition No. 2255 of 1988, the said Saswad Mali Sugar Factory Ltd., the lessees, were permitted to sub-lease and had granted sub-lease of the said lands in favour of Saswad Mali Sahakari Karkhana at Mali Nagar. According to the petitioner of Writ Petition No. 2068 of 1979, the Respondent No. 2, the Sugar Factory, had subleased the lands in favour of others mentioned in the petition. The said Respondent No. 2 had leased out the entire factory, machinery etc., to the Respondent No. 3 Saswad Mali Sahakari Sakhar Karkhana.

2. Section 88(1) of the Bombay Tenancy and Agricultural Lands Act 1948, as originally enacted, totally excluded the application of the said Act to lands held on lease for the benefit of an industrial or commercial undertakings. Section 30 of Bombay Act No. 13 of 1966 had, inter alia, amended the Bombay Tenancy and

Agricultural Lands Act, 1948, by inserting section 43-A in the principal Act. The said amending Act 13 of 1966 had also substituted the original section 88 of the principal Act.

3. Section 43-A of the Bombay Tenancy and Agricultural Lands Act, 1948, is in the following terms:---

"43-A. (1) The provisions of sections 4-B, 8, 9, 9-A, 9-B, 9-C, 10, 10-A, 14, 16, 17-A, 17-B, 18, 27, 31 to 31-D (both inclusive), 32 to 32-R (both inclusive), 33-A, 33-B, 33-C, 43, 63, 63-A, 64 and 65 shall not apply to---

(a) lands leased to or held by any industrial or commercial undertaking (other than a Co-operative Society) which in the opinion of the State Government bona fide carried on any industrial or commercial operation and which is approved by the State Government;

(b) lease of land granted to any bodies or persons other than those mentioned in clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of livestock;

(c) lands held or leased by such co-operative societies as are approved, in the prescribed manner, by the State Government which have for their objects the improvement of the economic and social conditions of presents or ensuring the full and efficient use of land for agriculture and allied pursuits.

(2) The State Government may by notification in the Official Gazette, on this behalf direct that the provisions of the said sections shall not apply to a lease of land obtained by any person for growing any other class of agricultural produce to which it is satisfied that it will not be expedient in the public interest to apply the said provisions. Before the issue of such notification, the State Government shall direct an inquiry to be made an officer authorised in this behalf by the State Government and shall give all persons who are likely to be affected by such notification, an opportunity to submit their objections.

(3) Notwithstanding anything contained in sub-sections (1) and (2) it shall be lawful for the State Government to direct, by notification in the Official Gazette, that the leases of lands, as the case may be to which the provisions of sub-sections (1) and (2) apply, shall be subject to such conditions as may be specified in the notification, in respect of---

(a) the duration of the lease;

(b) the improvements to be made on the land and the formation of co-operative farming societies for that purpose and financial assistance to such societies;

(c) the payment of land revenue, irrigation case, local fund case and any other charges payable to the State Government or any local authority; or

(d) any other matter referred to in sections mentioned in sub-section (1)."

4. It is the case of both parties that the State Government under clause (a) of

sub-section (1) of section 43-A of the Bombay Tenancy and Agriculture Lands Act had accorded approval to certain sugar factories including the Saswad Mali Sugar Factory Ltd. In the above view the provisions of the various section mentioned in sub-section (1) of section 43-A by their own force did not apply to leases of lands obtained by the said Sugar Factory.

5. By Notification No. TNC. 5157/173483 (a) dated 14th February, 1958, the Government of Maharashtra, Revenue Department, had directed that the lands leased to sugar factories which had been approved by the State Government u/s 43-A(1)(a) shall be subject to the conditions set out in the said notification. The State Government had also specified similar conditions in respect of the leases of the lands referred to in clause (b) of sub-section 43-A(1) of section of the Act.

6. The State Government issued fresh notification no. TNC. 6773/70428-18 dated 8th February, 1978 u/s 43-A(3) of the Act amending the aforesaid notification dated 14th February, 1958. The substituted condition Nos. 1, 4, 4-A and 7 for the first time made references to sub-leases in respect of lands held by or leased to the sugar factories.

7. By filing those writ petitions, the petitioners have challenged the condition Nos. 4-A and 7 specified in the said notification dated 8th February, 1978 u/s 43-A(3) of the Bombay Tenancy and Agricultural Lands Act, 1948.

8. Mr. Setalvad, the learned Counsel for the petitioner in Writ Petition No. 2255 of 1978, urged that all statutory powers must be exercised reasonably and for the purpose of the Act vide *S. Pratap Singh Vs. The State of Punjab*, . According to Mr. Setalvad, by bringing the sub-leases of the lands leased to sugar factories within the scope of the conditions specified u/s 43-A(3) of the Act, the State Government had acted inconsistently with the provisions contained in section 43-A of the said Act, inasmuch as making provision for sub-leases were beyond the ambit of the powers conferred upon the State Government to specify conditions u/s 43-A(3) of the Act. In other words, the State Government has transgressed the limits of its rule making powers. The learned Advocated for the petitioner in Writ Petition No. 2903 of 1970 adopted these submissions. He also faintly argued that the said amended Rules were discriminatory and violative of Article 14 of the Constitution.

9. The amended condition No. 1 of the impugned notification dated 8th February, 1978 specified that no such lease where the land is sub-leased by the Sugar Factory shall be terminable on the ground that the period fixed by agreement or usage for its duration has expired. The substituted condition No. 4 of the said notification dated 8th February, 1978 specifies that a leases or a sub-lease shall be terminated only upon the grounds mentioned therein and upon service of notices prescribed by Rule 4.

10. The substituted condition No. 4-A is in the following terms:---

"4-A. (1) Notwithstanding anything contained in condition 4, if the leaser bona

fide requires any land leased by him for cultivation it personally (a) where the leased land is in the actual possession of the Sugar Factory or (b) where the leased land has been subleased by the Sugar Factory and is in actual possession of the sub-leasee, such lease or as the case may be the sub-leasee may after giving notice and after making an application for possession as hereinafter provided in the sub-clauses (2) and (3) and subject to the conditions mentioned in sections 31-A, 31-B, 31-C and 31-D be terminated by the lessor, within two years from the date of publication of Government Notification, Revenue & Forests Department, No. TNC/6773/70428/L/9 dated 8th February, 1978 in the Official Gazette provided that, in applying the condition prescribed u/s 31-A as aforesaid clause (d) of section 31-A shall be read as (i) for the words "the appointed day" the words, letters and figures " the day of publication of the Government Notification, Revenue & Forests Department, No. TNC/3778/70428/1/9 dated 8th February, 1978, in the Official Gazette, shall be substituted provided further that if the land leased or sub-leased , as the case may be, does not exceed economic holding and the lessor earns his livelihood principally by agriculture or by agricultural labour, the conditions mentioned in the sections 31-A and 31-B shall not apply but the lessor's right to terminate the lease shall be subject to the conditions mentioned in the clauses (b) and (c) of sub-section (5) of section 33-B, with this modification that clause (c) of the said sub-section (5) shall be read as if for the words "the commencement date appearing therein the letters and figures" the date of the publication of Government Notification, Revenue & Forests Department, No. TNC/6773/70428/L/9 dated 8th February, 1978 in the Official Gazette were substituted.

(2) xxxxx) (3) xxxxx)) (Not set out) (4) xxxxx) (4B) xxxxx)

The condition No. 7 substituted by the said notification dated 8th February, 1978 is in the following terms:---

"7 (1) Where the lease land has been sub-leased by the Sugar Factory the sub-leasee, unless his lease is terminated under condition 4-A, shall have the right to purchase the land within one year from the expiry of the period during which the lessor is entitled to terminate the lease u/s 4-A.

(2) the provisions of section 32 to 32-B (both inclusive) shall, so far as may be applicable, apply to the right of such lessee to purchase the land under this condition."

The petitioners have submitted that the protection given to the sub-lessee and conferred upon them of the right to purchase (vide condition No. 7) were totally repugnant to and inconsistent with the purposes for which the State Government u/s 43-A(3) was authorised to issue notification. Recognition of holder sub-leases and conferring upon them right to purchase lands held for lease to sugar factories has the effect of destroying the very character of these holdings. Such conditions pertaining to sub-lessees could not be laid down by a notification u/s 43-A(3). According to the petitioners, by such a notification the

Government can only specify conditions for regulating the relationship of lessors and lessess and the holder and the persons holding the land for cultivation of sugarcane.

11. We proceed to first examine the scope of section 43-A(1) of the Bombay Tenancy and Agricultural Lands Act, 1948. Unlike the previous section 88(1)(b), the present section 43-A(1) partially excludes the application of Bombay Tenancy Act to the leases or lands mentioned therein and at the same time sub-section (3) authorises the State Government to prescribe conditions in respect of the said lesses. We have already mentioned that sub-section (1) of section 43-A specifies the provisions of the Bombay Tenancy and Agricultural Lands Act which by their own force shall not apply to leases of lands obtained by approved industrial or commercial undertakings, certain co-operative societies for cultivation of sugarcane, fruits, flowers, etc. Sub-section (3) of section 43-A has conferred power upon the state Government to direct by notification in the Official Gazette that the leases of lands, as the case may be, to which the provisions of sub-sections (1) and (2) apply, shall be subject to such conditions as may be specified in the notification. The expression "notwithstanding anything contained in....." in sub-section (3) of section 43-A clearly indicated that the Legislature intended to give overriding effects to the provisions of sub-section (3). Therefore there could be hardly any question of repugnancy between the provisions of sub-section (1) and the conditions which might be prescribed under sub-section (3) of section 43-A.

12. Undoubtedly, the State Government's said power to specify conditions must always be for giving effect to the provisions of the status and not to override or stultify the same. We may at the same time bear in our mind the said powers to specify conditions under sub-section (3) of section 43-A are not narrow but very wide. The petitioners have not challenged the vires of section 43-A(3) which is protected under Articles 31-A or 31-B of the Constitution. They have also not urged that section 43-A provides for excessive delegation. Therefore the only question before us is whether by specifying the conditions the State Government had exceeded its delegated powers. The State Government notification under sub-section (3) may be in respect of (a) duration of the lease, (b) improvements to be made on the land, etc., (c) payment of land revenue, taxes and other charges and (d) any other matter referred to in sections in sub-section (1). Thus the condition which might be specified in section 43-A(3) are not confined to prescribing the duration of the leases covered by sub-section (1) of section 43-A. While exempting the classes of lands mentioned in sub-section (1) of section 43-A from the operation of the provisions of the Bombay Tenancy and Agricultural Lands Act, the Legislature delegated to the State Government power to specify under sub-section (3) conditions for holding such classes of lands. The State Government under Clause (c) of sub-section (3) of section 43-A was also competent to prescribe conditions covering the matters referred to in the various sections of Bombay Tenancy and Agricultural Lands Act specified in Clause (d).

13. Mr. Setalvad, the learned Counsel for the petitioner in Writ Petition No. 2255 of 1978, himself submitted that the object of sub-section (1) of section 43-A was to exclude the regime of the provisions mentioned in the said sub-section in case of tenancies of lands to which section 43-A was attracted. It would be only logical to hold that while making the provisions specified in sub-section (1) inapplicable by their own force to these classes of lands, the Legislature delegated to the State Government wide powers to specify the conditions for holding these lands.

14. Mr. Setalvad has relied upon the decision in the cases of *Bashir v. Commissioner of Lands* 1960 AC 44 and *Prag Ice and Oil Mills and Another Vs. Union of India (UOI)*, , in support of his submission that the conditions specified under sub-section (3) of section 43-A must always be conferred to terms of the lease regarding (a) duration, (b) termination, (c) parties. We have already observed that the State Government under sub-section (3) has been given power to make comprehensive and self-contained provisions in respect of classes of lands mentioned in sub-section (1) of section 43-A. In view of the scheme of sub-section (3) and the wide language used in Clause (d), we are unable to give a restricted meaning to the scope of the power delegated to the State Government to specify conditions. Clause (d) can not be read as *ejusdem gene* is to preceding Clauses (a), (b) and (c) of sub-section (3) because Clause (d) does not belong to the same genus or class as the said three other clauses, vide *Hoechst Pharmaceuticals Ltd. And Another v. State Of Bihar And Others*. (And Other Appeals) *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, . Significantly, Clause (d) of sub-section (3) does not confer upon the State Government merely power to specify that any of the sections mentioned in sub-section (1) shall apply to leases of lands covered by sub-section (1) of section 43-A. By using in Clause (d) the words "any other matter referred to in sections in sub-section (1)" there has been a delegation to the State Government of power to not merely extend these sections of the Tenancy Act but to adopt and incorporate the sections specified in sub-section (1) of section 42-A in the matter of the application of these provisions to leases mentioned in sub-section (1) of section 43-A. In other words the State Government has been conferred power not only to specify that any of these sections shall apply but to further provide that the said sections of the Act shall apply subject to such modifications or alterations as may be specified in relation to the leases covered by section 43-A(1). In the present context, the word "matter" means subject matter.

15. The condition No. 7(1) has conferred right of purchases upon both lessees and sub-lessees of lands which have been leased to sugar factories. The new condition No. 7(2) expressly provides that the provisions of sections 32 to 32-B (both inclusive) shall, so far as may be, apply to right of such lessee to purchase the land under this sub-section. Such right of purchase under condition No. 7(1) is founded not upon section 38 of the Act but upon the condition No. 7(1) itself of the notification dated 8th February, 1978.

16. There was no impediment in the way of the State Government extending the

right of purchase to the sub-lessees. It was not material that in relation to the lands which are not covered by section 43-A such right of purchase has been given only to lessees and not their sub-lessees. Section 43-A makes self-contained provisions relating to leases of lands inter alia for industrial and commercial operations which are approved by the State Government for cultivation of sugarcane, fruits and flowers, etc. In the very scheme of things, by reason of the wide scope of the delegation under sub-section (3), the State Government was under no hindrance from either recognising sub-lessees of such lessees covered by sub-section (1) of section 43-A or from conferring upon them along with the lessees the right of purchase. These special provisions of section 43-A including conditions specified would prevail over the general provisions which the statutes made inapplicable to leases covered by section 43-A(1). It is also significant that such right of repurchase under condition No. 7 (1) was to subsist for a limited period of time specified in condition No. 4 read with condition No. 7(1).

17. The decision of the Supreme Court in the case of *Gopala Ganu v. N.S.A.A. Trust* AIR 1978 S.C. 247, has no manner of application in deciding the scope of the State Government's power u/s 43-A(3) to specify conditions in relation to leases referred to in sub-section (1). In *Gopala Ganu's* case (*supra*) the appellant had, inter alia, urged that even assuming he was a sub-tenant, he would still be a "deemed tenant" by reason of the provisions contained in section 4 of the Bombay Tenancy Act. The Supreme Court did not accept this contention because section 4 of the Tenancy Act provided that a person "lawfully cultivating" any land belonging to another person shall be deemed to be a tenant in certain circumstances. According to the Supreme Court, for the purposes of section 4, the important inquiry would be to find whether a person who claimed to be a tenant was cultivating the land lawfully. The Supreme Court also referred to section 27 of the Tenancy Act which provided that no sub-division or subletting of the land held by a tenant shall be valid. Section 27 prohibited sub-tenancies in unqualified terms. Reference was also made to section 14(1)(a)(iii) which made a tenancy liable to be terminated on the ground of subletting. The Supreme Court's view was that the cultivation of a land by a sub-tenant cannot, for the purposes of the Bombay Tenancy Act, be said to be lawful and therefore a sub-tenant could not be a deemed tenant (*vide* pages 348-349). With respect, these observations of the Supreme Court ought to be read in the context of the question before it. *viz.*, scope of section 4 read with sections 27 and 149(1)(a)(iii) and cannot be relied upon in order to decide the ambit of the State Government's power to specify conditions u/s 43-A(3) of the Act. Both section 14 and section 27 are among the provisions of the Bombay Tenancy Act which section 43-A(1) made inapplicable in cases of leases approved for sugarcane cultivation. Therefore, subletting of lands covered by section 43-A(1) is not forbidden. The State Government would not be acting contrary to any provision applicable to these classes of lands by specifying that both lessees and sub-lessees would be entitled under condition No. 7 to exercise right of purchase

under the circumstances prescribed therein. Even assuming that a sublessees of lands falling outside the scope of section 43-A was not entitled to the benefits of deemed tenancy u/s 4, there could be no legal bar in the way of the State Government from specifying in section 43-A(3) that the right of purchase of lands covered by section 43-A(1) may be exercised both by the lessess and the sub-lessees of the lands leased to a sugar Factory.

18. Dr. Naik appearing on behalf of the respondents has rightly submitted that in the instant case it is not open to the petitioners to question the vires of the legislature under which the impugned conditions have been specified in exercise of delegated powers of legislation. The petitioners could not have urged that any condition specified u/s 43-A(3) was inconsistent with the provisions of the parent enactment because we have already mentioned that neither section 14(1)(a)(iii) nor section 27 apply to leases covered by section 43-A(1). The special provisions of section 43-A shall always prevail in these classes of leases. One cannot successfully urge that these conditions infringe any of the provisions of Part III of the Constitution. (In this connection see the discussion of the legal position in *Express Newspaper's case* 1985(1) S.C.C. 690 . These conditions relating to sub-lessees could have been held arbitrary if they were not in conformity with the enabling powers conferred by section 43-A(3). But we have already observed that section 43-A(3) conferred wide powers to specify conditions for these classes of lands. There has been no transgressing of delegated powers by framing the impugned condition Nos. 4, 44 and 7. We hold that it is misconceived to agree that recognition in these specified conditions of the rights of sub-lessees would be beyond the delegation envisaged by section 43-A. The preamble of the Bombay Tenancy Act and the entire scheme of the Act indicate that the objectives of the Legislature were to bring about agrarian reforms and to (a) maximise the Agricultural output (b) fair and equitable distribution of agricultural income (c) increase in employment, (d) providing for social and ethical order etc. (vide *Madhusudan Singh and Others Vs. Union of India (UOI) and Others*, . By providing for purchase of landlord's interest, the State intended to extinguish in certain cases the right of the landlord and to confer the same upon the actual tiller. Such a conferment of right upon the sublessees would be furthering the subjectives contemplated by Article 39(b). The section 43-A(1) by making certain sections of the Bombay Tenancy Act inapplicable in effect postponed or kept in abeyance the applicability of these provisions to lands covered by section 43-A(1). By reason of the conferment of power u/s 43-A(3) to specify conditions, the legislature delegated power to decide to what extent the matters covered by the provisions mentioned in sub-section (1) of section 43-A or any of them, should be prescribed in cases of these classes of leases and lands. The impugned conditions prescribed by the State Government were for achieving land reforms and therefore cannot be termed arbitrary unfair or unreasonable.

19. We have already observed that the petitioners have not challenged the vires of section 43-A(3) which delegates the power to prescribe conditions to the State Government. One of the object of rule making power is to fill up the gaps in

order to give effect to the legislative bill. The power u/s 43-A(3) included a power to adopt the provisions mentioned in sub-section (1); and power to incorporate and modify necessarily extended power of the delegated authority to extend, enlarge the application of the sections mentioned in section 43-A(1). We may also point out that the petitioners have not challenged the impugned conditions, 4, 4-A or 7 in so far as they referred to lessees. Therefore, the purchases of lands given to lessees has not been questioned. We have also given our reasons why the inclusion of the sub-lessees in these conditions are also valid and legal. Rules are accordingly discharged. No order as to costs.