
(1958) 09 BOM CK 0024

In the Bombay High Court

Case No : Civil Revision Application No. 263 of 1957

Namdev Bhikha

APPELLANT

Vs

Ramnath Shivnarayan

RESPONDENT

Date of Decision : 23-09-1958

Acts Referred:

Citation : (1959) 61 BOMLR 351

Hon'ble Judges : Miabhoy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Miabhoy J.

1. This petition is filed u/s 91 of the Hyderabad Tenancy and Agricultural Lands Act, 1950. The petition is by one Namdeo. He was the protected tenant of Survey No. 1, measuring 4 acres 33 gunthas, assessed at Rs. 10-4-0, situated in the village Easgaon. This Namdeo made an application on November 4, 1952, to the Deputy Collector for fixation of standard rent in respect of this land. This application was made u/s 17 of the Act. The application was decided by the Deputy Collector on September 8, 1954. The Hyderabad Tenancy and Agricultural Lands Act, 1950, fixes the maximum rent in respect of agricultural lands. This is done by Section 11 of the Act. On the date on which the application was made by Namdeo, the section was as follows :?

Notwithstanding any agreement or usage or any decree or order of a Court, or any law to the contrary, the maximum rent payable by a tenant for a lease of any land shall not, in the case of irrigated land except land under wells exceed 1/3rd, and in the case of unirrigated land or irrigated land under wells exceed 1/2th of the crop of such land or of the value of such crop as determined in the prescribed manner. Therefore, on the date on which Namdeo made the application, the maximum rent, which was payable by a tenant to his landlord was 1/3rd or 1/4th according to the class of land in respect of which the tenancy existed. However,

this Section 11 was changed during the pendency of the application of Namdeo, and a new Section 11 was introduced on February 4, 1954. That new section stands as follows:?

Notwithstanding any agreement or usage or any decree or order of the Court, or any law to the contrary, the maximum rent payable by a tenant for a lease in respect of the following classes of land shall be the multiples of the land revenue for the time being in force or if no land revenue is in force the land revenue which may be assessed thereon, as shown hereunder against them:?

The opponent Ramnath is the landlord of the aforesaid field. The agreed rent was Rs. 625. The Deputy Collector divided the periods for which reasonable rent was determined into two. The first period was from November 4, 1952, to February 3, 1954, and the second period was from February 4, 1954, onwards. In respect of the first period, the Deputy Collector decided that the reasonable rent was Rs. 300 per annum. This decision appears to have been arrived at by the Deputy Collector on a statement made by Namdeo that he was prepared to pay that much amount as reasonable rent to the landlord. In respect of the second period, the Deputy Collector fixed the rent at five times the land revenue, and he calculated it at Rs. 51-4-0. The parties are not agreed as to whether this figure is correct. However, it is not necessary for me to enter into this question, because, the principle on which the Deputy Collector has proceeded is quite clear that the reasonable rent is five times the assessment. If once the figure of assessment is ascertained, then the amount of rent, which would be payable by the tenant to the landlord, can easily be ascertained. Ramnath, then, preferred an appeal to the Collector. His contention was that reasonable rent was the agreed rent, and should have been fixed at Rs. 625. Namdeo also preferred a cross-appeal. His contention was that the amendment of Section 11 had retrospective effect, and, therefore, rent in respect of the first period from November 4, 1952, to February 3, 1954, should also have been fixed at five times the assessment. Both these appeals were decided by the Collector by his impugned order dated March 21, 1955. The Collector rejected the contention of, Namdeo that the amended Section 11 had retrospective effect. He ordered Namdeo to pay rent at the agreed rate of Rs. 625 per annum for the years 1952-53 and 1953-54. He upheld the order of the Deputy Collector for standard rent from February 4, 1954, onwards. Namdeo has come in revision to this Court from this order. [His Lordship after considering points not material to this report, proceeded.]

2. The question for consideration is whether, on the facts of the present case, the newly amended Section 11 of the Hyderabad Tenancy and Agricultural Lands Act is applicable or the old unamended Section 11 of the Act is applicable. It cannot be disputed that Section 11 of the Act deals with vested rights and contractual obligations. It is well known that, when a statute deals with or affects vested rights or impairs contractual obligations, ordinarily, the presumption is that the Legislature did not intend to give it a retrospective effect. In such a case, the proper construction of the statute would be that it is prospective. Therefore, the

question for consideration is whether there is anything in the amending Act or in the amended Section 11, which would show an intention which would rebut this presumption in favour of the Act being prospective. Mr. Deshpande firstly relied upon the language of Section 11 itself. He contended that this amended section was to come into operation in spite of any agreement or law or decree or order of the Court. It was contended that this was an indication that the Legislature intended that this section was to have retrospective effect. I do not agree. In my opinion, all that the new section means is that, if there was any law or any order, which was in operation on the date on which the amended section came into operation, then, in spite of such law or agreement or order of the Court the newly amended section will come into force. I do not think this can be regarded as an indication of the mind of the Legislature that Section 11 was to be applied in such a way as to affect rights which had become vested in the parties before the newly amended Section 11 came into operation. Another section to which Mr. Deshpande referred was Sub-section (2) of Section 13 of the Hyderabad Tenancy and Agricultural Lands Act. That Sub-section is in the following- terms:

The rent due shall be payable by the tenant at the rate fixed in accordance with the provisions of Sections 11 and 12 and the tenant will have the option to pay the rent in cash so fixed or in equivalent produce grown on the land estimated according to the market value thereof.

The submission is that this sub-section obviously deals with a situation which arises after the rent has become due, and this sub-section states in terms that, in such a case, the rent due is to be determined with reference to Section 11. However, in my opinion, this sub-section cannot, in any way, affect the question which has got to be answered in this case. All that the section means is that, if the rent becomes due, then, it is to be fixed in accordance with the provisions contained in Section 11, but it does not state as to whether the section which is to be applied is the unamended section or the amended section. In my opinion, Sub-section (1) of Section 13 is more apposite for deciding this question. That sub-section was amended at the same time when Section 11 was amended, and that sub-section states that a tenant shall not be liable to pay rent at any rate exceeding that specified in Section 11 with effect from the date of the commencement of the Hyderabad Tenancy and Agricultural Lands Amendment Act, 1954. Therefore, this sub-section is a clear indication of the mind of the Legislature that the amended Section 11 is to be applied with effect from the commencement of the Amending Act, 1954. Therefore, in my opinion, not only there is no indication in the amending Act or the amended Section 11 to show that the Legislature intended to give retrospective effect to the amended Section 11, but there is a clear indication of the intention of the Legislature that the amended Section 11 will not have any retrospective effect.

3. Another argument which was advanced was based upon Section 17 of the Act. That section provides for the making of an application in a prescribed form for determination of reasonable rent. It was contended that, under similar

legislation, when this Court was dealing with a similar point, it had taken the decision that, when an application for determination of reasonable rent is made, rent is effective not only from the time it became due after the making of the application for reasonable rent, but is effective even in respect of arrears of rent. For this purpose, reliance was placed upon the judgment delivered by Mr. Justice Gajendragadkar in *Subraya Bama Bhatta v. Pyara Krishna Gouda* (1935) Civil Revision Application No. 1598 of 1953, decided by Gajendragadkar J., on September 22, 1955 (Unrep.) With respect, this decision cannot affect the decision which I have arrived at on its own merits. The question which Mr. Justice Gajendragadkar was dealing with was entirely different from the question which I have got to decide in the present application. In that case, the question which arose was whether, when an application is made for determination of standard rent, the authority concerned can fix standard rent only with respect to rent which becomes due after the date when the application for standard rent is made or whether he can do so for an anterior period also. That is not the question which I have got to decide in the present case. In the present case, the question is whether the amended Section 11 of the Hyderabad Tenancy and Agricultural Lands Act applies or the old Section 11 of the Act applies, and, in my opinion, having regard to the reasons which I have already given, the only answer which can be given to this question is the one which I have given, namely, that the amended section is not retrospective, but it is prospective. If an application comes to be made u/s 17 of the Act, then, in that case, that application will have to be decided on the basis as to whether the application relates to rent for the period prior to the date of the amendment or subsequent to the date of the amendment. If the application relates to a period which is prior to the date of the amendment, then, the rent must be determined with reference to the law existing before the amendment came into operation, and, if the application relates to a period subsequent to the date of the amendment, then, the rent will have to be decided with reference to the subsequent amendment.

4. Therefore, in my opinion, the present revision application will have to be allowed, and it will have to be sent back to the Deputy Collector with a direction that the Deputy Collector shall fix rent for the years 1952-53 and 1953-54 in accordance with the provisions as laid down in the old Section 11 of the Hyderabad Tenancy and Agricultural Lands Act, 1950. I am not determining the question as to whether the maximum rent applicable to the, facts of the present case is 1/4th or 1/3rd of the produce of the land. That is a question which the Deputy Collector will have to decide in accordance with his decision as to the class of land to which the land which is the subject-matter of the present tenancy dispute belongs....

5. Therefore, rule is made absolute. The matter is sent back to the Deputy Collector with a direction that the Deputy Collector shall fix rent for the years 1952-53 and 1954 in accordance with the provisions of the old Section 11 of the Hyderabad Tenancy and Agricultural Lands Act, 1950. Appropriate orders in accordance with law will be passed by the Deputy Collector regarding the amount

already deposited by the tenant Namdeo with the Deputy Collector. Each party to bear its own costs.

6. In Civil Application No. 2100 of 1958, stay is vacated. No order as to costs therein.