
(1967) 03 BOM CK 0014
In the Bombay High Court
Case No : Second Appeal No. 753 of 1961

Narayan Gopal Mhatre

APPELLANT

Vs

Shankar Sitaram Sontakke

RESPONDENT

Date of Decision : 02-03-1967

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43C

Citation : (1967) 69 BOMLR 699 : (1968) MhLj 30

Hon'ble Judges : Thakker, J;Patel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Patel, J.—The question involved in this appeal is one of interpretation of the provisions of the Tenancy Act.

2. The short facts leading to this appeal are as follows :

The land in dispute is situated at Panchapakhadi, a village in Thana District. It belonged originally to one Ardeshir Meherwanji Daruwalla. The land was purchased by the plaintiff on February 13, 1956, under exh. 23. At the time of the purchase the father of the defendant-the appellant before us-was a tenant and after his death the defendant became the tenant. On March 22, 1956, the plaintiff gave notice to the defendant terminating his tenancy by the end of March 1957, and followed it up by this suit for a declaration of his title and for possession, which he filed on July 30, 1957.

3. The Tenancy Act, 1939, was applied to this area and the defendant's father was, therefore, recorded as protected tenant. That Act was replaced by the Bombay Tenancy and Agricultural Lands Act, 1948, which also gave the tenants protection of the Act. By Bombay Act XXXIII of 1952, the Act came to be amended by giving exemption from the operation of the Tenancy Act to lands which fell within the limits of a Municipal Borough and within the periphery of two miles of those limits. The result of this amendment was that the Tenancy Act did

not apply to the land in suit. This amendment came into force on January 12, 1953. The Tenancy Act was further amended by Bombay Act XIII of 1956, which again carried out large amendments in the Act. While doing so, two chapters came to be added, being Chapters 3A and 3B to the said Act and the Tenancy Act applied retrospectively to lands within municipal limits on and from the date of this amendment. This amendment became applicable on August 1, 1956, subject to this that as to the lands in respect of which the Government issued notification u/s 88B as substituted, the Act did not apply. Though, therefore, the notice terminating the tenancy was issued on March 22, 1956, the tenancy came to be terminated by the end of March 1957 and the suit was instituted later, after the amendment as above.

4. Because of this change in law the defendant contended that the sale of the suit land was invalid under the provisions of Section 64 of the Tenancy Act and that the Civil Court had no jurisdiction. His contention was that his father was a protected tenant under the 1939 Act and by the amendment of 1956 that protection was revived with the result as above. The other contentions regarding the notice and other matters are not relevant to the present purpose.

5. The trial Court held that the sale was invalid and it, therefore, dismissed the plaintiff's suit. The appellate Court reversed this judgment and made a decree in favour of the plaintiff. The matter is referred to the Division Bench as the question involved is of some importance.

6. The two questions are whether the plaintiff's sale deed is valid u/s 64 as contended by the defendant and whether the Civil Court has jurisdiction to determine the suit.

7. Both the contentions of the defendant are founded on the amending Act XIII of 1956. If the defendant's tenancy is revived the question would be whether the sale deed is invalid. If it is not revived then no question arises about the invalidity of the sale. The decision depends upon the provisions of Section 43C of the Act as now added. So far as relevant it is:

Nothing in Sections 32 to 32R (both inclusive), 33A, 33B, 33C and 43 shall apply to lands in the areas within the limits of :

(a) Greater Bombay,

(b) ...

(c) a municipal borough constituted under the Bombay Municipal Boroughs Act, 1925,

(d) a municipal district constituted under the Bombay District Municipal Act, 1901...

Provided that if any person has acquired any right as a tenant under this Act on or after the 28th December 1948, the said right shall not be deemed to have been affected by the Bombay Tenancy and Agricultural Lands (Amendment) Act,

1952, or save as expressly provided in Section 43D, by the Amending Act, 1955, ...notwithstanding the fact that either of the said Act has been made applicable to the area in which such land is situate.

8. As seen earlier areas within municipal limits were exempted from the operation of the Act by the 1952 amendment. By the amendment of 1956 lands falling within the municipal limits and cantonment limits were brought under the Act but having regard to the nature of the property involved exceptions had to be created. Both the purposes have been served by Section 430. The main part of the section exempts the lands falling within municipal limits or cantonment limits from the application of Sections 32 to 32R, 33A, 33B, 33C and 43 and the proviso revives the rights of the tenant in such lands.

9. Reliance has been placed upon the proviso. The decisions in Patel Maganbhai Jethabhai Vs. Somabhai Sursang, , and Dhundiraj Jayaram Marathe Vs. Dhondu Anaji Pilankar and Others, , held that this proviso is a substantive enactment and relates to right acquired by a tenant after the date stated and is not an exception to the main part of the section.

10. The other relevant section for the present purpose is Section 88. It falls within the set of sections which exempt certain lands from the operation of the Act. Section 88 so far relevant reads:

...Save as otherwise provided in Sub-section (2), nothing in the foregoing provisions of this Act shall apply-

(a) to lands belonging to, or hold on lease from, the Government ;

(b) to any area which the State Government may, from time to time, by notification ill the Official Gazelle, specify as being reserved for non-agricultural or industrial development;

(c). . .

(d) ...

We are not concerned with the rest of the said section. In virtue of the power vested in the State Government by Clause (b), it issued a notification exempting certain area in which admittedly the said land is situated from the operation of the Act in August 1956: see Bombay Government Gazette Part IV B (1956), p. 929. It was issued on the same day that the amending Act came into force. It is:

The areas within the limits of (1) Greater Bombay, (2) the Municipal Corporation of the cities of Poona and Ahmedabad and (3) the Municipal Boroughs of Thana, Kalyan, surat, Sholapur and Hubli.

11. Because of the frequent amendments in the Tenancy Act difficulties have been created in the interpretation of the Act as demonstrated by a large body of ease law. The present case is one more addition.

12. The first ease which came before the Supreme Court is Sakharam @

Bapusaheb Narayan Sanas and Another Vs. Manikchand Motichand Shah and Another, . The appellant was a tenant of land and was entitled to protection of the Act under the Act of 1939 as amended in 1946. The new Act of 1946 became law on December 12, 1948. By Section 88(1)(c) the lands within municipal areas and two miles beyond were exempted from the operation of the provisions of the Act. The High Court held that Section 88(1)(c) was an express provision within the meaning of Section 89(1)(b), the saving clause and hence the protection was lost. The Supreme Court presided over by three Judges held otherwise, holding that the provisions of Section 88(1)(a) to (d) were prospective and applied from the date on which the Act came into operation, i.e. from. December 28, 1948. They were not intended to be confiscatory. The right to protection which had already accrued to a tenant under 1939 Act was saved, Section 88 not being express provision within the meaning of the words in Section 89(1)(b).

13. Later similar question arose in Mohanlal Chunilal Kothari Vs. Tribhovan Haribhai Tamboli, , in relation to Section 88(1)(d) as it then stood which was similar to Section 88(1)(B) after amendment of 1956. The State Government issued a notification under the said section exempting the area in which the lands in dispute were situated. The case was heard by a larger bench of five Judges. In this case also the judgment was delivered by the learned Chief Justice who said that (p. 360) :

...This [The Supreme]Court never intended..to lay down that the provisions of Clause (d) of Section 88(1) aforesaid were only prospective and had no retrospective operation. Unlike Clauses (a), (b) and (c) of Section 88(1), which are prospective, those of Clause(d) would in the context have retrospective operation in the sense that it would apply to land which could be covered by notification to be issued by the Government from time to time so as to take those lands out- of the operation of the Act of 1948 granting the protection.

Section 89(1)(b) was not even referred to. Evidently it seems that a notification u/s 88(1)(d) was treated as an express provision within the meaning of Section 89(1)(b). With great respect it is difficult to reconcile the two decisions in principle since the effect of the latter decision is to treat a notification of State Government as on a higher pedestal than legislative enactment of Section 88(1) (a) to (c).

14. The question again came before the Supreme Court in Sidram Narsappa Kamble Vs. Sholapur Borough Municipality Another, . The appellant had taken the land from the Municipality on April 1, 1946, for three years. The land was situated within municipal limits. The Tenancy Act, 1939 came to be applied to the area and the appellant became a protected tenant as the municipality did not make an application for a declaration that he was not a protected tenant. Then the Tenancy Act of 1948 came to be enacted and the appellant would have u/s 31 become a protected tenant but for Section 88. The Supreme Court overruled the decision in Sakharam v. Manikchand and agreeing with the High Court held that though Section 88 did not specifically say that the interest of a protected

tenant acquired under the Tenancy Act of TD39 was taken away, yet it must have that effect and it therefore expressly provided otherwise within the meaning of the words "save as expressly provided in this Act" in Section 89(2)(b), and the tenant was denied the protection of the Act.

15. Mr. Abhyankar relies on the decision in *Ishverlal Thakorelal Almaula Vs. Motibhai Nagjibhai*, . It was heard by a bench of three Judges. This case is similar to the case in hand except for the fact that the exemption granted by the notification u/s 88(1)(b), as it now stands, did not apply to the lands. It was a simple case of agricultural lands which became exempted under 1952 amendment, but the exemption of which was taken away by 1956 amendment. It was held that the proviso was an independent provision though attached to Section 43C, and dealt with a matter unrelated to it. Mr. Abhyankar places particular reliance on the observations of Mr. Justice Shah speaking for the majority which are to the following effect (p. 465):

In terms it seeks to protect rights acquired or arising not under Sa. 32 to 32-E... but under the principal Act 67 of 1948 on or after December 28, 1948, and those rights are protected not from the operation or the substantive part of Section 43-C, but from the operation of Act 33 of 1952, or of "the Amending Act of 1955".... The "Amending Act of 1955" is no other than Act 13 of 1956.... The Legislature has by referring to the "Amending Act of 1955" sought also to protect, save as expressly provided in Section 43-D, the rights acquired under Act 67 of 1948, notwithstanding the amendments made by Act 13 of 1956. By Section 48 of Act 13 of 1956, the scheme of exemption from the operation of the Act of certain provisions thereof was extensively amended in respect of different classes of land. Section 88 of Act 67 of 1948 as originally enacted was substituted by Sections 88, 88-A, 88-B, 88-C and 88-D. But this modified scheme of exemption and other provisions of the Act were by virtue of the proviso to Section 43-C not to affect the rights of tenants acquired on or after December 28, 1948 under Act 67 of 1948 save as expressly provided by Section 43-D.

The learned Judge has said in para (5) that (p. 464) -.

It is common ground that the land with which we are concerned in this appeal is not of the description in Sections 88 and 88-A to 88-C of the Act as amended by Act 13 of 1956.

Their Lordships were not considering the actual effect of Sections 88, 88A, 88B, 88C, and 88D in relation to Section 43C at all and the observation above referred to is only a passing observation. From the tenor of the judgment it appears that no arguments were advanced before the Court in relation to the group of these sections nor was the decision in *S.N. Kamble v. Sholapur Municipality* referred to.

16. It is true that the proviso revives the right of the protected tenant acquired by him on or after December 1948. It is also true that such right is not to be deemed to have been affected by... or save as expressly provided in Section 43D by the Amending Act, 1955 even though it is made applicable to the area in

which the land is situated. It must be noticed in this connection that Section 88 was not allowed to remain as it originally was but was wholly substituted by Act XIII of 1956, at the same time at which Section 430 and the proviso came to be added into the Act. Both these provisions must, therefore, be construed together in order to find out whether or not irrespective of the provisions of Sections 88, 88A to 88C protection should be available to a tenant under the proviso to Section 43C.

17. The provisions of the Act have to be construed as a whole and if possible every part of the statute must be given its due effect. If the language is plain, the Court is bound to give effect to the same whatever be the consequences. But if there is apparent conflict between two sections in the Act then it becomes the duty of the Court to reconcile the same and adopt a harmonious construction so that none of the sections may be rendered meaningless or redundant.

18. Mr. Abhyankar's interpretation is that the revival of rights acquired after December 28, 1948, is absolute except as affected by Section 43D and no other provision in the amending Act of 1955 can have effect. This would mean that though by the amending Act of 1955 the rights of tenants of lands governed by the Tenancy Act, 1948 were largely modified and could be taken away by a notification u/s 88 as it originally stood or by a notification u/s 88(1)(b) after August 1956, the right of the tenants of lands which were excluded from the Tenancy Act of 1948, but which were revived, could not be affected at all either by the amending Act or a notification u/s 88. If this was so, it would mean that the special provisions of Sections 88 to 88D intended for meeting special needs of the locality were unnecessarily enacted and were redundant. The effect would be that the tenants' interest should override all considerations of public interest. The intention of the Legislature could not have been to give such right to a tenant by the proviso as the Supreme Court has observed in *8. N. Kamble v. Sholapur Municipality*.

19. Once action is taken u/s 88(1)(b) the protection given by the Act is intended to be taken away. The present conflict between the proviso to Section 43C and the group of Sections 88 to 88D can be resolved by limiting the meaning of the proviso, with the qualification that the Act itself must be applicable in which case alone the proviso can apply. This is made clear by the words "notwithstanding the fact that either of the said Acts has been made applicable to the area in which such land is situate". It is apparent that if the whole Act does not apply on a notification being issued, the amendments also do not apply. If the Act itself is not applicable to lands exempted by these sections there can be no question of reviving the right of the tenant or continuing it.

20. There is another way of looking at it. Assume that Section 43C retrospectively revived the rights of tenants of lands within municipal and cantonment limits, but no notification was issued the same day and then the next day a notification u/s 88(1)(b) was issued which the State Government would have been entitled to do. As decided by the decisions in *Mohanlal v.*

Tribhovan and 8. N. Kamble v. Sholapur Municipality, the protection could have been taken away, for the proviso to Section 43C gave no guarantee of continuing the protection for all time to come. If this result could be produced the next day after the amending Act came into force, we do not see why Section 43C and this group of sections be not construed as we have done.

21. In this view of the matter it is clear that the defendant is not entitled to the protection of the Act and, therefore, he cannot challenge the sale as invalid or the jurisdiction of the Court to decide the suit.

22. In the result the appeal is dismissed.

23. Looking to the circumstances of the case there will be no order as to costs.