
(1972) 05 GUJ CK 0005
In the Gujarat High Court
Case No : First Appeal No. 849 of 1965

New Asarwa Manufacturing Company Ltd.	APPELLANT
Vs	
Jetha Parma	RESPONDENT

Date of Decision : 03-05-1972

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 88

Citation : AIR 1973 Guj 156 : (1973) 14 GLR 77

Hon'ble Judges : A.A. Dave, J

Bench : Single Bench

Advocate : I.M. Nanavaty, for the Appellant; M.R. Barot, for the Respondent

Judgement

1. This appeal arises out of the Judgment and decree of the learned Judge City Civil Court Ahmedabad dismissing the suit for want of jurisdiction

2. The present appellant New Asarwa Manufacturing company Limited filed a suit against the present respondent Jetha Pram for obtaining possession of the agricultural land described in plain para 2, bearing survey numbers 391 and 392 situate in the sim of Asarwa at Ahmedabad. The plaintiff pleaded that the land was situated within the municipal limits and as it was required for N. A. purpose. it was not governed by the provisions of the Tenancy Act and therefore prayed fro a decree for possession. The defendant by his written statement took up a plea that he was a protected tenant and therefore the civil Court had no jurisdiction to grant any relief to the plaintiff company. From the pleadings the learned Judge framed four issues of which issue No. 1 was as under:--

"(1) Is it show that his court has got jurisdiction to try this suit in view of the fact that the land question is agricultural land?"

This issue was tried as a preliminary issue and the learned Judge recorded a finding that the land being agricultural land, the Court had no jurisdiction to entertain the suit and that only the Mamaltdar u/s 70 of the Tenancy Act. could have jurisdiction to decide such a question . On this finding the learned Judge

dismissed the suit. Against the said judgment and decree the plaintiff has preferred the present appeal to this Court.

3. Mr. I. M. Nanavaty, learned Advocate for the appellant urged that the learned Judge evidently had that the learned Judge evidently her relief on the ruling of the Supreme Court in the case of Sankharam v. Manikchand Motichand Shah AIR 1963 354 wherein it was observed that--

"..... the proceedings for the ejectment upon notice after the expiry of the term of the term of the tenant who has acquired the status of a protected tenant u/s 3A by the Bombay Tenancy Act 1939 as amended in 1946 in respect of land falling within the area mentioned in Section 88(2)(c) of the Act are governed by the repealed Act of 1939".

Mr. Nanavaty urged that this ruling was overruled by the Supreme Court in the subsequent case of Sidram Narsappa Kamble Vs. Sholapur Borough Municipality Another, and hence the view taken by the learned Judge that the court had no jurisdiction to entertain the suit with regard to the agricultural land situated within the municipal limits of Ahmedabad was clearly wrong. Mr. Nanavaty submitted that the lands situated within the municipal limits of Ahmedabad city were exempted from the operation of the Tenancy Act u/s 88 of the Bombay Tenancy Act 1948. He submitted that the even when in 1956 the provision of exempting the lands situated within the municipal limits of the Ahmedabad City was deleted from Section 88 of the Act, another sub-clause was added authorizing the Government to reserve any area for N. A. or industrial purpose by issuing a notification. He submitted that once such a notification specifying that an area was issued by the Government the provision of the Tenancy Act would not govern the agricultural lands situated in that area. Mr. Nanavaty submitted that the suit land was included within the municipal limits of the Ahmedabad City since 1939 and as such the land was exempted from the operation of the Tenancy Act of 1939 as well as 1948 and as the notification specifying the whole of Ahmedabad City as an area for N. A. or industrial purpose by a notification which was simultaneously issued on the day the Tenancy Act as amended in 1956 came into force it was clear that the provisions of the Tenancy Act did not apply to the land in Asarwa area and therefore the learned Judge was clearly in error in dismissing the plaintiff's suit on the ground that the defendant was a protected tenant.

4. Mr. M. R. Barot learned Advocate for the respondents on the other hand urged that under the Tenancy Act as amended in 1956 relevant clause in Sec 88 exempting the land situated within the municipal area of Ahmedabad city was deleted and when by inserting another clause, Government was authorised to reserve a particular area for N. A. or industrial purpose, the Government cannot by issuing a notification declare the whole City of Ahmedabad as an area for such purpose. Mr. Barot, therefore urged that the authority delegated to the Government was an abuse of power and therefore the notification in question was invalid.

5. It may be noted at the outset that there is no dispute that the suit land is situated in Asarwa area of Ahmedabad City which may be situated within the municipal limits of Ahmedabad city since 1939. It is also not disputed that the agricultural lands situated within the municipal limits of Ahmedabad city were not governed by the provision of the Tenancy Act 1939 or 1948. For the first time an Act amended in 1956, provision regarding exemption of all agricultural lands situated within the municipal limits of Ahmedabad City was deleted. But another sub-section was added authorising the Government to issue a notification to specify an area for non-agricultural or industrial purposes so as to exempt it from the operation of the Tenancy Act. Mr. Barot has been unable to controvert the plea taken by Mr. Nanavaty that such a notification was simultaneously published by the Government declaring the limits of the Ahmedabad city as an area for non-agricultural or industrial purpose. I will now consider the relevant section of the Act as they stood in 1939, 1948 and 1956. Section 88 which originally stood in Act of 1948 is as under:--

"88. (1) Nothing in the foregoing provisions of this Act shall apply:--

(a) to lands held on lease from the Crown, local authority or a co-operative society:

(b) to lands held on lease of the benefits of an industrial or commercial undertaking:

(c) to any area within the limits of Greater Bombay and within the list of the Municipal Boroughs of Poona city and Suburban Ahmedabad, Surat and Haveli and within a distance of two miles of the limits of the such Boroughs; or

(d) to any area which the Provincial Government may, from time to time, by notification in the official gazette, specify as being reserved for urban non-agricultural or industrial development

(2) Notwithstanding anything contained in sub-section (1) the Provincial Government may by notification in the official gazette direct that the particular land or class of lands in any area shall not be exempt from all or any of the provisions of this Act".

Thus by sub-section 1 (c) of Section 88, the provisions of the Tenancy Act were not made applicable to the lands situated within the limits of Municipal Borough of Ahmedabad. By Bombay Act 13/56 which came into force on 1st August 1956, the following section was substituted:

"88. (1) Save as otherwise provided in sub-section (2), nothing in the foregoing provision of this Act shall apply:--

(a) to land belonging to or held on lease from the Government:

(b) to any area which the State Government may from time to time, by notification in the official gazette specify as being reserved for non-agricultural or industrial development".

Thus sub-clauses (d) of Section 88(1) now has been reproduced as Section 88(1) (b) as it came into force on 1st August 1956 and sub-clauses (d) of Section 88(1) of 1948 Act which exempted the area within the Municipal of Greater Bombay or Municipal Boroughs of Poona, Ahmedabad, Hubli was deleted. Thus, in order to claim exemption from the operation of the Tenancy Act to any agricultural land after this Act came into force on 1st August 1956. it has to be shown that the area was specified by the Government by issuing a notification in the official gazette as being reserved for non-agricultural or industrial development. In the commentary on the Bombay Tenancy and Agricultural Lands Act 9th Edition, by K. S. Gupte at page

614. it is stated that--

"..... the area comprised in the city of Ahmedabad as constituted under the Bombay Provincial Municipal Corporation Act, 1949 as they existed don 1-2-1957 is reserved for non-agricultural and industrial development vide Government of Gujarat (Rev. and Agril . Development) notification No. GHM-247-M/TNC-6760-80419-J, dated 17-10-1964"

This notification superseded the notification No. TNC-5156/169426-M. dated 1-2-1957. Under the notification. dated 1-2-1957, the Government of Bombay had specified the area comprised in Greater Bombay immediately before the date of the commencement of the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) (Amendment) Act. 1956; and (2) the areas within the limits of --

(a) the Municipal Corporations of the cities of Poona and Ahmedabad. etc.

It may be noted that the Act 13 of 1956 came into force from 1st August 1956. Simultaneously on that very day, that is 1st August 1956, the Government issued a notification No. G. N. R. D. 5156/101965-F dated 1-8-1956. reserving the area within the Municipality of Greater Bombay and the Municipalities of Poona and Ahmedabad etc. for non-agricultural and industrial purpose. As stated above this notification was submitted by notification dated 1-2-1957 which in turn was substituted by the notification dated 17th October 1957. This fact is not controverted by Mr. Barot. It is. therefore. clear that on the very day the Act 13/56 came into force, a notification was issued by the Government specifying the lands within the Municipal limits of the Ahmedabad city as an area for non-agricultural or industrial development, and this notification from time to time. But it does not transpire that at any time. there was a period of interregnum under which this provision exempted operation of Bombay Tenancy Act as applied to Gujarat to agricultural lands situated within the municipal limits of the Ahmedabad city. The result is that right from 1948 onwards, the lands situated within the limits of Ahmedabad city were exempted from the operation of the Tenancy Act. It is therefore clear that the tenant cannot claim the status of a protected tenant in order to urge that the land of which he was the protected tenant was governed by the provisions of the Tenancy Act. In other words, he

cannot urge that the civil court had no jurisdiction to decide this matter and that only the Mamlatdar would be competent to pass proper orders for possession of agricultural lands as provided in Section 88 of the Act. No doubt as stated earlier, the decision of the Supreme Court in Sakharam's case (supra) supports the plea of the defendant wherein it was observed that --

"The provisions of Section 88 are entirely prospective. They apply to lands of the description contained in Cls. (a) to (d) of Section 88(1) from the date on which the Act came into operation, that is to say, from December 28, 1948. They are not intended in any sense to be of a confiscatory character. They do not show an intention to take away what had already accrued to tenants acquiring the status of protected tenants. On the other hand, Section 89(2)(b) clearly shows an intention to conserve such rights as had been acquired or had accrued before the commencement of the repealing Act. So the proceedings for the ejectment upon notice after the expiry of the term of the tenancy of the tenant who has acquired the status of a protected tenant u/s 3-Act by the Bombay Tenancy Act. 1939 as amended in 1946, in respect of lands falling within the area mentioned in Section 88(2)(c) of the 1948 Act. are governed by the repealed Act of 1939."

In the instant case. relying on this decision, the learned Judge was of the view that the status of the protected tenant which the defendant had acquired under the Act of 1939 as amended by the Act of 1948 cannot be taken away, with the result that the defendant will be governed by the provisions of the Tenancy Act and the civil court would have no jurisdiction to entertain the present suit. However, this case was overruled by the Supreme Court in the case of, Sidram Narsappa Kamble Vs. Sholapur Borough Municipality Another, wherein it was observed that --

"It is true that Section 88 does not so many words say that the interest of a protected tenant acquired under the 1939 Act is being taken away so far as lands held on lease from a local authority are concerned. But the effect of the express provision contained in Section 88(1)(a) clearly is that Section 31, the only provision in the Act which recognised the status of protected tenant. must be treated as non-existent so far as lands held on lease from a local authority are concerned. Therefore Section 88(1)(a) must be held to say that there will be no protection under the 1948 Act for protected tenants under the 1939 Act so far so lands held on lease from a local authority are concerned. It was not necessary that the express provision should in so many words say that there will be no protected tenants after the 1948 Act came into force with respect to lands held on lease from a local authority."

It was further observed that --

"The provision of Section 88(1)(a) of the Bombay Tenancy and Agricultural Lands Act (1948) is an express provision which takes away the interest of protected tenants under the Bombay Tenancy Act (1939). Therefore. the lessee (appellant) from the municipality; who claimed to have acquired interest of protected tenant

under the Bombay Tenancy Act (29 of 1939) cannot claim the benefit of Section 31 nor can he say that his interest as protected tenant is saved by Section 89(2) (b)."

The Supreme Court while making these observations overruled the case reported in AIR 1963, Supreme Court 354, referred to earlier.

6. Mr. Barot, however, referred to the case decided by this High Court in special civil application No. 542 of 1964 decided on 26-28/3-1969 by J. B. Mehta, J. wherein after considering the effect of Sections 43-C and 43D of the Act, he held that --

"..... all rights acquired by persons as tenants under the Principal Act were to continue to remain available to them in respect of lands within the Municipal Boroughs as if Act 33 of 1952 were never enacted."

Mr. Barot also referred to the decision of this court in first appeal No. 525 of 1965 decided on 22-21972 wherein also a similar view was taken. In my opinion, these rulings cannot help the defendant-respondent. In both those cases, the land did not form part of the municipal limits of the Ahmedabad city when the Act 13/56 came into force. Thus, by Section 32 of the said Act, all the tenants of agricultural lands on 1-4-1957 were held to be deemed purchasers and their rights which they had under the said Act cannot be taken away by subsequently including the area within the municipal limits. In the instant case, Asarwa area was already a part of Ahmedabad city since 1939. It is, therefore clear that the ratio of the two cases relied on by Mr. Barot cannot govern the facts in the instant case. As held by the Supreme Court in Kamble's case, the defendant would not be entitled to claim status of a protected tenant with regard to agricultural land situated within the limits of Ahmedabad city as stated in Section 88(1)(b) of the Act. The Supreme Court has specifically overruled its earlier decision in Sakharam's case. In view of the Supreme Court decision in Kamble's case, the view taken by the learned Judge, City Civil Court, that the civil Court had no jurisdiction to decide the case is clearly wrong and cannot be sustained.

7. Mr. Barot, however, next urged that the provisions of Section 88(1)(b) as contained in the Act of 1948 was deleted by the Act 13 of 1956. Therefore if the Legislature intended that all the lands situated within the municipal limits of Ahmedabad city or other cities mentioned therein, were not to be exempted from the operation of the Tenancy Act and if the Government was authorised to specify a particular area for non-agricultural or industrial development for being exempted from the operation of the Act, Government can do it only by applying its mind as to whether that particular area was really necessary for such development. He submitted that the notification issued by the Government of Bombay and subsequently by the Government of Gujarat declaring the municipal limits of the Ahmedabad city as the area for non-agricultural or industrial development was clearly contrary to the intention of the legislature. He submitted that the Government in issuing the notification in such wide terms

abused the authority vested in it by the legislature. Mr. Barot, therefore, urged that the notification in question was illegal. It may be noted that this point had not been taken by the defendant in the written statement nor in the appeal memo. The Government is not a party before us. In the absence of the Government, the question whether the notification in question is valid or invalid cannot be decided. Mr. Barot however urged that he may be permitted to raise this plea and that he should be given an opportunity to lead evidence to show that the Government had not applied its mind while it issued the said notification. Mr. Nanavaty thereupon urged that whether the notification is valid or not is to be interpreted *ex facie* from its contents and it would not be permissible to the party to lead evidence in that behalf. I need not decide this point at this stage for the simple reason that it does not specifically arise before me. It was not pleaded by the party and it would not be proper on my part to express any opinion the suit was dismissed by the learned Judge on a preliminary issue. It will have to be remanded to be tried *de novo* according to law. It would then be open to the defendant to amend the written statement and take a plea about the notification being in excess of the authority vested in the Government if deemed proper.

8. In the result, the appeal succeeds. The judgment and decree of the learned trial Judge dismissing the suit are hereby set aside and the suit is restored on file. It is remanded to the trial Court with a direction to proceed further according to law. The learned trial Judge is directed to dispose it of within two months from the receipt of papers by it. In view of the facts of this case there will be no order as to costs of this appeal.

9. Appeal allowed.