

(1988) 01 SC CK 0042

In the Supreme Court Of India

Case No : Civil Appeal No. 720 of 1974

Onkarlal Dulichandlal Agarwal (Dead) by Lrs.

APPELLANT

Vs

Sukhubai and Others

RESPONDENT

Date of Decision : 19-01-1988

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 38, 58(3), 60

Citation : (1988) 1 JT 264

Hon'ble Judges : M. P. Thakkar, J;K. N. Singh, J;D. N. Ojha, J

Bench : Full Bench

Final Decision : dismissed

Judgement

1. The High Court has rightly taken the view that Section 60 of the Bombay Tenancy and Agricultural Land (Vidarbha Tenancy Act) in terms excludes the applicability of Section 38 (which provides for termination of a tenancy by the landlord for personal cultivation) to lands situated within the limits of a Municipality. In the present case, the application was made by the landlord u/s 38 of the Act for termination of the tenancy for personal cultivation. As the applicability of Section 38 has been excluded by virtue of Section 60 of the Act, the application made by the appellants was not maintainable at all. faced with the situation that the land in question was admittedly situated within the limits of a Municipality and Section 60 was in terms excluded, learned Counsel for the appellants endeavored to support the appeal by raising the plea that notwithstanding Section 60, Section 38 could be invoked by the landlord having regard to a Notification issued by the State Government under the powers conferred by Section 58(3). The Notification u/s 58(3) can be given effect to only in respect of areas situated outside the limits of Municipalities and not to areas within Municipal limits unless Section 60 were to be treated as non-existent. The contention urged by learned Counsel for the appellant cannot be sustained without going to the length Of holding that though the legislature has in terms excluded the provision embodied in Section 38 so far as the areas situated within

the limits of a Municipality by virtue of Section 60 of the Act, Section 38 of the act would still be applicable to such areas. In order to do so it will be necessary to go to the length of holding that Section 60 enacted by the Legislature stands repealed by a Notification issued by the Government. Surely a provision enacted by the Legislature cannot be virtually repealed or annulled by a Notification issued by the Government. Such a proposition cannot be countenanced for obvious reasons. The view taken by the High Court is unexceptionable. The appeal fails and is dismissed. There will be no order regarding costs.