(1953) 04 GUJ CK 0005

In the Gujarat High Court

Case No : Civil Miscellaneous Application No. 78 of 1952

Patel Kana Kachra APPELLANT

Vs

Jadeja Bhikhubha Pathubha and Another RESPONDENT

Date of Decision : 06-04-1953

Acts Referred:

Constitution of India, 1950 — Article 213(2), 226, 238
Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands (Amendment) Ordinance, 1950 — Section 2
Saurashtra Land Reforms Act, 1951 — Section 19, 19(1), 19(2), 19(3), 3

Citation : (1953) 04 GUJ CK 0005

Hon'ble Judges : Shah, C.J;Baxi, J

Bench : Division Bench

Advocate : Jayantilal L. Hathi, for the Appellant; V.G. Hathi and N.M. Jadeja for Respondent No. 1 and A.R. Bakshi, General, for the Respondent

Judgement

Baxi, J.—The Petitioner has applied for a writ of certiorari for quashing an order of the Revenue Tribunal in revision application No. 77 of 1952-53.

2. By his order dated 28-2-50 the Mahalkari of personal cultivation) to the opponent No. 1 under Ordinance No. XLI of 1949 commonly (known?) as the Gharkhed Ordinance and directed that possession should be handed over to him on 31-3-50. The Mahalkari directed execution of this order on 22-3-50 but this order remained unexecuted and while the opponent No. 1 was endeavouring to get possession, certain legislation was passed prohibiting the execution of such orders and all proceedings in connection with the recovery of possession were stopped by the Collector by his order dated 10-7-50. The bar against execution was removed by the Saurashtra Gharkhed Tenancy Settlement and Agricultural Land (Amendment) Ordinance No. 4 of 1952 and the opponent No. 1 therefore applied to the Collector praying for restoration of the land allotted to him and for the execution of the Mahalkari''s order. The Saurashtra Land Reforms Act, 1951, Act 25 of 1951 was however passed in the meantime and the Collector held that as the Mahalkari''s order was inconsistent with the provisions of that Act, it could

not be executed and on this ground he dismissed the application. The opponent No. 1 thereupon preferred a revision application against the Collector''s order to the Revenue Tribunal which held that the rights acquired under the Gharkhed Ordinance were not abrogated by the provisions of the Land Reforms Act and execution of the Mahalkari''s order could not be refused. The Collector''s order was therefore set aside and the Mahalkari was directed to execute his order according to the Gharkhed Ordinance. The Petitioner has now applied to this Court for a writ of certiorari for quashing the Revenue Tribunal''s order.

3. In order to appreciate the points argued in this petition, it is necessary to mention certain legislative enactments passed after the Gharkhed Ordinance. The first piece of relevant legislation was the Emergency Ordinance No. 2 of 1950 called the Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands (Amendment) Ordinance, 1950. Section 2 of this Ordinance provided that notwithstanding anything contained in the Gharkhed Ordinance no Mamlatdar nor any other authority shall execute any order passed regarding giving, reserving or allotting any land for gharkhed under the Gharkhed Ordinance. This Ordinance was succeeded by Act 30 of 1950 Section 2 of which reproduces the provisions of Section 2 of the Emergency Ordinance. Thus a statutory bar against the execution of the Mahalkari''s order was created by the Emergency Ordinance No. 2 of 1950 which was subsequently enacted into Act 30 of 1950. Thereafter Ordinance No. 4 of 1952 was passed by which Section 2 of Act 30 of 1950 was repealed and in this way the statutory bar against execution of the Mahalkari''s order was temporarily removed. Under Article 213(2)(a) read with Article 238 of the Constitution every Ordinance promulgated by the Rajpramukh ceases to operate at the expiration of six weeks from the re-assembly of the State Legislature. We were informed at the Bar that the Saurashtra Legislative Assembly assembled after the Ordinance between 17-3-52 and 23-3-52. The Ordinance No. 4 of 1952, therefore, ceased to operate at the end of six weeks from 17-3-52 i.e. after 28-4-52. The effect of the expiry of this Ordinance will be considered later. It is sufficient to state here that on the expiry of the Ordinance. Section 2 of Act 30 of 1952 was revived and the bar against execution was also revived. In the meanwhile the Saurashtra Land Reforms Act 1951 had been passed and had come into force on 1-9-51, and the present dispute turns upon the interpretation placed by the Revenue Tribunal upon Sections 3 and 65 of the Act. The Collector held that the Mahalkari''s order was inconsistent with the provisions of the Land Reforms Act and had lost force by-virtue of the provisions of Section 3 read with Section 65(2) while the Revenue Tribunal held that the rights acquired under the Gharkhed Ordinance were saved and consequently the Mahalkari''s order remained executable.

4. It is not for us to decide in these proceedings which, of the two views is the correct view. The High Court has no doubt extensive jurisdiction in issuing prerogative writs but as observed by the Supreme Court in- Veerappa Pillai Vs. Raman and Raman Ltd. and Others,):

However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made.

See also-Ratilal Abhechand v. Custodian General of Evacuee Properties AIR 1952 Sau 112 (B). The High Court will exercise its jurisdiction in cases of assumption of jurisdiction by the inferior Tribunal which it did not possess or an error apparent on the face of the record. In-''Veerappa''s case (A)'' the Supreme Court observed as follows, p. 195:

Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies of officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice.

In the case before us the Collector and the Revenue Tribunal have taken different views of Sections 3 and 65 of the Land Reforms Act and we would have no jurisdiction to interfere by a writ if we find that the view taken by the Tribunal, whose order is sought to be quashed, can be reasonably taken. As observed by Chagla C.J. in- Batuk K. Vyas Vs. Surat Borough Municipality and Others, :

The mere fact that two views are possible on a question of law does not make the decision of a Tribunal with jurisdiction bad on the ground that it has erred in law and the error is apparent on the face of the record. We have had occasions several times to point out that only that error will be corrected by this Court which, is clearly apparent on the face of the record and which does not become apparent only by a process of examination or argument

See also-Bhaskar Narayan v. Mohammad Alimullakhan Mohammad Nurulla Khan AIR 1953 Nag 40 (D) and-Prabhatsinhji v. Members of Shahpur Khedut Samettee AIR 1953 Sau 28 (E). See also-Hamirkha Alarakha Hasam of Jamnagar v. Returning Officer in Civil Misc. Appln. No. 13 of 1953 (Sau) (F). On the other hand Where the Tribunal''s decision is contrary to the plain provision of an Act, it amounts to a conscious violation of law and the High Court will interfere. See-Mallikarjun Bhavaneppa Vs. Satyanarayan Laxminarayan and Others,).

5. The controversy on the construction of Sections 3 and 65 of the Land Reforms Act will be better appreciated if the two sections are considered together. These sections read as under:

Act to over-ride other laws.-Save as otherwise expressly provided in this Act, the provisions of this Act and of the rules and orders made thereunder shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law or any usage, agreement, settlement, grant, sanad or any decree or order of any Court or other authority.

65. Repeal.-(1) The following chapters and sections of the Saurashtra ''Gharkhed, Tenancy Settlement and Agricultural Lands Ordinance, 1949 Ordinance No. XLI of 1949 as amended from time to time, are hereby repealed, namely:

(a) the whole of Chapter II, the whole of Chapter III except Sub-sections (1), (2) and (3) of Section 19 and the whole of Chapters IV, V, VIII and IX; and

(b) Sections 55, 58 and 57 of Chapter VII: Provided that such repeal shall not, save as expressly provided in this Act, affect or be deemed to affect:

(1) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or (ii) any legal proceedings or remedy in respect of any such right, title, interest, obligation or liability or anything done or suffered to be done before the commencement of this Act, and any such proceedings shall be continued and disposed of as if this Act had not been passed.

(2) Any appointment, notification, notice, order rule or form made or issued under the provisions of the Ordinance so repealed shall continue to be in force and deemed to have been made or issued under the provisions of this Act, in so far as such appointment, notification, notice, order, rule or form is not inconsistent with the provisions of this Act, or rules made thereunder and shall continue to be in force unless and until it is superseded by any appointment, notification, or notice, order, rule or form made or issued under this Act.

Section S enacts that provisions of that Act shall over-ride any decree or order of any Court or other authority. Therefore the Mahalkari''s order lost force when the Land Reforms Act came into operation. This is however subject to the exception contained in the opening words of that section, viz., "save as otherwise expressly provided in this Act." The opponent No. 1''s right to receive Gharkhed land under the Mahalkari''s order as also his right to further execute it would therefore be saved only if these rights are saved by an express provision in the Act. Now the Mahalkari''s order was made under Chapter II of the Gharkhed Ordinance and this Chapter is repealed by Section 65(1) but Clause (1) of the proviso to that sub-section saves the rights acquired under the repealed provisions of the Gharkhed Ordinance and Clause (2) of the proviso enacts that proceedings already commenced to enforce such rights shall be continued and disposed of as if the Act was not passed though this is again subject to the clause contained in the proviso, viz., save as expressly provided in this Act. This means that the rights and proceedings referred to in the proviso would be saved unless it is expressly provided by the Land Reforms Act that they shall be abrogated. The Collector held that Section 3 read with Section 65(2) abrogates these rights as well the Mahalkari''s order and therefore the opponent No. 1''s right to receive the land allotted to him under the Gharkhed Ordinance does not survive and the Mahalkari''s order cannot be executed. It is contended that this is the only construction which the two sections read together admit of.

6. We shall now consider whether the view taken by the Revenue Tribunal viz., that Section 3 of the Land Reforms Act does not abrogate the rights acquired under the Gharkhed Ordinance is also a possible view. To construe Section 3 as overriding all rights to receive land allotted under the Gharkhed Ordinance though expressly saved by the proviso to Section 65(1), is to render the proviso nugatory and to nullify the saving clause contained in the opening words of Section 3. The Legislature must be deemed to have intended that both Section 3 and the proviso to Section 65(1) must have effect and not be mutually destructive. If its intention was to abrogate these rights the proviso would not have been enacted at all for there was no point in enacting a proviso, which was not intended to have any force. It appears to us that Section 3 lays down a general rule to which the proviso to Section 65(1) is an exception. The exception must therefore prevail against the general rule contained in Section 3 unless some provision of the Act, other than Section 3, destroys in express terms the rights saved by the exception. We therefore think that the Tribunal''s view that Section 3 does not abrogate the rights acquired under the Gharkhed Ordinance is not wholly impossible of acceptance. If that view is erroneous it is merely an error of law and does not amount to a conscious violation of law or a manifest error and we have no jurisdiction to correct it.

7. The learned Advocate-General raised Anr. objection against the Revenue Tribunal''s order. He argued that Section 2 of Act XXX of 1950 placed an absolute bar against execution of the Mahalkari''s order and the Revenue Tribunal acted in conscious violation of that Act in ordering execution. We have already stated that Section 2 of Act 30 of 1950 was repealed by Ordinance No. IV of 1952. That Ordinance however expired after 28-4-1952. The repealing Ordinance, having lapsed by expiration of time, the repealed Act 30 of 1950 and the bar against execution imposed thereby were automatically revived. This is because a repeal effected by a temporary legislation is only a temporary repeal and with the expiration of the temporary repealing enactment the original legislation would automatically resume its full force. No re-enactment of it would be required. See Swarup on interpretation of Indian Statutes 495. Gooderham and Works Ltd. v. Canadian Broadcasting Corporation AIR 1949 PC 90 (H). Therefore had the matter rested here, the Revenue Tribunal''s decision would have amounted to a conscious violation of the statutory bar against execution of the Mahalkari''s order, which bar was only held in abeyance during the time during which the repealing Ordinance No. 4 of 1952 was in force but which had regained full force on the date of the Collector''s order (27-5-52). Under these circumstances the issue of a writ would have become inevitable. But this Act 30 of 1950 is subject to the same over-riding provisions of Section 3 of the Land Reforms Act and to the extent to which it prohibits execution of an order for allotment of the Gharkhed land the right to which is saved by the proviso to Section 65(1), it is inconsistent with the provisions of that Act and the proviso to Section 65(1) must be given effect in spite of Act 30 of 1950. The learned Advocate-General argued that Act 30 of 1950 was not inconsistent with the provisions of the Land Reforms

Act and was intended to help in carrying its provision into effect. This maybe so with regard to other provisions of the Act, but there is little doubt that it is inconsistent with the provisions of the proviso to Section 65(1) and must be ignored and the rights saved thereby must be given effect to.

8. Section 3 and Section 65 of the Land Reforms Act thus admit of the construction placed on them by the Revenue Tribunal and consequently in putting that construction and making its order in accordance with it, it did not act without jurisdiction. No error apparent on the face of the record crept into the impugned order nor did the Revenue Tribunal consciously violate any law, and we cannot interfere with its order by means of a writ. The petition is therefore ordered to be dismissed. The Petitioner shall pay the opponent No. 1''s costs.

Shah, C.J.

9. I agree.

