

(1999) 09 SC CK 0033

In the Supreme Court Of India

Case No : C.A. No's. 8555-8556 of 1994

Sarda Education Trust

APPELLANT

Vs

Nandulal Vishwanath Tate and Others

RESPONDENT

Date of Decision : 10-09-1999

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 120, 129

Citation : AIR 1999 SC 3886 : (1999) AIRSCW 3972 : (1999) 7 JT 229 : (2000) 1 MhLj 1 : (1999) 6 SCALE 5 : (1999) 7 SCC 497 : (1999) 8 Supreme 85 : (2000) 1 UJ 324

Hon'ble Judges : S.N. Phukan, J;G. T. Nanavati, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal and C.A. No. 8556/94 involve a common question and they also arise out of a common judgment dated 20-2-1990 of the High Court of Judicature at Bombay in Writ Petition No. 49/89 and Writ Petition No. 2929/88. Respondent No. 1 in C.A. No. 8556/94 has died and the appellant-trust has, therefore, filed an application for bringing on record the Lrs. of respondent No. 1. Civil Appeal No. 8556/94 is, therefore, delinked and only Civil Appeal No. 8555/94 arising out of Writ Petition No. 49/89 is disposed of by this judgment.

2. The appellant-trust is a certified landlord under the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as 'the Act'). It made an application u/s 120 of the Act for summary eviction of the respondents on the ground that they have no right to remain on the land as legal heirs of the deceased tenant or in any other capacity and thus they are unauthorisedly occupying or wrongfully in possession of its land. The Sub-Divisional Officer, Daryapur allowed that application as he found that the respondents had not even initiated any proceeding for getting the declaration that they are the statutory owners. He also held that as the Trust was holding an exemption certificate, the respondents had no right to remain on the land as

legal heirs of the original lessee, Vishwanath and, therefore, they were in unauthorised occupation of the land. Respondent Nos. 1 to 4 filed a revision application before the Maharashtra Revenue Tribunal challenging the said order. The Tribunal dismissed it. In the writ petition filed in the High Court, the only point raised on behalf of respondents Nos. 1 to 4 was that the tenancy being heritable, they became the tenants of the Trust and, therefore, their possession cannot be said to be unauthorised or wrongful. The High Court accepted this contention and allowed the writ petition following the Full Bench decision of the High Court in *Khangah-Kadria Trust (Wakf) v. Shevantabai* 1989 Mah LJ 891.

3. It was contended by the learned Counsel for the appellant-Trust that the decision followed by the High Court has now been overruled by this Court in *Shriram Mandir Sansthan alias Shri Ram Sansthan Pusda Vs. Vatsalabai and Others*, . This court has now held that such tenancy under the Act is not heritable. In view of the decision of this Court in *Shriram Mandir Sansthan* (supra) this appeal has to be allowed and the judgment and order passed by the High Court will have to be set aside.

4. Learned counsel for respondents Nos. 1 to 4 however contended that they have now become owners of the land as their father should be deemed to have become owner of the land under the Act. The order passed by the S.D.O. discloses that though no proceedings were initiated by the deceased or his heirs for such a declaration. In their reply to the application filed by the appellant-Trust a contention was raised that they have become owners of the land. It was rejected by the S.D.O. on the ground that no material was placed before him to show that they have become owners. Proceedings were initiated by the S.D.O. for summary eviction u/s 120 of the Act. So far as the appellant-Trust is concerned, it produced the certificate which has to be taken as final till it is cancelled or modified by the State Government. In view of the said certificate and the provisions contained u/s 129 of the Act, it becomes clear that Section 54 of the Act, which provides for inheritance of tenancy did not apply to the land of the trust. The appellant-Trust having made out a case, it was for respondents Nos. 1 to 4 to prove that they have a right to remain on the land. They having failed to do so the S.D.O. was justified in passing the order of summary eviction. No evidence was produced before the Tribunal or even before the High Court to show that the respondents Nos. 1 to 4 have become owners of the land. Before this Court it was stated by their learned Counsel that a certificate to that effect has now been granted by the Tahsildar. On the other hand the learned Counsel for the appellant-trust stated before us that the said declaration has already been set aside and the matter is now pending before the Division Bench of the High Court as respondents Nos. 1 to 4 have filed an appeal. It, therefore, cannot be said at this stage that respondents Nos. 1 to 4 are the statutory owners of the land.

5. We, therefore, allow this appeal, set aside the judgments and order passed by the High Court in W.P. No. 49/89 and restore the order passed by the Tribunal.