

(1975) 04 BOM CK 0008

In the Bombay High Court

Case No : Special Civil Application No"s. 498 and 500 of 1974

Shree Changdeo Sugar Mills Ltd.

APPELLANT

Vs

A.V. Desai

RESPONDENT

Date of Decision : 15-04-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 105
Constitution of India, 1950 — Article 227

Citation : (1976) 78 BOMLR 524

Hon'ble Judges : Deshpande, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Deshpande, J.—These two cases raise a common question as to the interpretation of Section 47(7)(k) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, hereinafter referred to as "the Ceilings Act". Respondent No. 2 in each case is the owner of the land. Both the lands were held on lease by the petitioners Shri Changdeo Sugar Mills Ltd. (hereinafter referred to as "the Sugar Mills"). Inquiries were held into the holdings of the Sugar Mills under the provisions of the Ceilings Act and it was found to be a surplus holder to the extent of 3, 627 acres under an order of the Deputy Collector dated February 21, 1963. Lands so declared as being in excess of the ceiling area were delimited and vested in the State u/s 21 of the Act including both the lands in dispute. The Sugar Mills preferred an appeal "to the Revenue Tribunal. In the meanwhile the Government of Maharashtra exempted an area of land measuring in all 121 acres and odd, including the lands in dispute, from the operation of the Ceilings Act by a Notification dated June 21, 1963 u/s 4:1(1)(k) of the said Act, on the application of the Sugar Mills on the ground that the same were held by it, i.e. industrial undertaking "for a bona fide industrial or other non-agricultural use." The Sugar Mills thereafter withdrew their appeal on July 19, 1963.

2. On January 28, 1969 the land owners applied separately to the Mamlatdar, for

resumption of the lands for bona fide personal cultivation, u/s 43A (7) read with the Notification dated February 14, 1958 issued by the Government under Sub-section (5) thereof read with Sections 31 to 31(d) of the Bombay Tenancy Act. The Sugar Mills raised a preliminary objection contending that after the order dated February 21, 1963 u/s 21 of the Ceilings Act, the landlords stood divested of all their interests in the land and as such their applications were not maintainable. This objection was over-ruled by the Mamlatdar, but accepted by the Deputy Collector in appeal. The Revenue Tribunal in revision, however, remanded the case for trial on merits on July 12, 1971 holding that relationship of landlord and tenant between the respondents and petitioner stood restored on the lands being exempted from the Ceilings Act. The Mamlatdar then allowed the application of the landlords for possession on remand. Appeal by the Sugar Mills to the Deputy Collector and its revision to the Revenue Tribunal were dismissed. Validity of this order is challenged by the Sugar Mitts in these special civil applications under Article 227 of the Constitution.

3. Exemption of the lands from the operation of any Act implies as though the said Act never applied to them at all. Ordinarily, therefore, such exemption should result in restoration of the lands to the position as it existed before commencement of the Act, including the revival of the title of the owners, and the liabilities of tenants to them. This is what Dr. Naik, the learned advocate for the respondents, strongly contends, and this indeed is the foundation of their claim to resume the lands. Mr. Chagla, the learned advocate appearing for the petitioners, however, has two-fold answers to such a claim. He firstly contends that even assuming that such relationship is revived, the limited ambit of exemption does not admit of use of the land for personal cultivation by any one. He also, secondly, contends that Notification dated June 21, 1963 cannot be so retrospective as to nullify the orders already passed, revive the title of the owners, and divest the State of the land already vested in it u/s 21 of the Ceilings Act. Both the contentions appear to me to be formidable.

4. Coming to Mr. Chagla's first point, relevant portion of Section 47 of the Ceilings Act is as follows:

47. (1) The following lands shall be exempt from the provisions of this Act, that is to say:-....

(k) such land as is notified by the State Government in the Official Gazette, being land which is held, or to be acquired in any manner, by an industrial undertaking for a bona fide industrial or other non-agricultural use. In considering whether such land is so held or to be acquired, the State Government shall have regard to the following considerations, that is to say....

5. The following portion of Sub-section (2) indicates the effect, of the lands ceasing to be used (1) by the said undertaking for the same purpose or (2) for the same purpose by any one else:

No land shall continue to be exempt under the provisions of Sub-section (1),

after it ceases to answer to any of the descriptions specified in that sub-section....

6. It is thus plain that exemption u/s 47(7)(k) is not absolute. It is limited to the use of lands by the Industrial undertaking, i.e. Sugar Mills, at whose instance, and for whose benefit the exemption is granted on being satisfied of its bona fides. Interests of the people at large in the pursuits of such undertakings must also have been present to the mind of the authorities, It is also limited to the non-agricultural use by the undertaking specified thereunder. Exemption also is limited to the period in which the conditions are complied with. Exemption thus is both conditional, and defeasible and limited in its ambit. Use of the land for personal cultivation or use thereof even by any other holder for any purpose is not permissible during the subsistence of the exemption. Any such user results at once in cessation of the exemption itself in terms of Sub-section (2). The very foundation of the two applications is thus liable to be knocked down with the intended change of user. Claim for resumption for agricultural use thus cannot be entertained.

7. Dr. Naik contends that cessation of the exemption by itself cannot prevent the respondents from cultivating the land, as long as they do not happen to be surplus holder within the purview of the Ceilings Act. Respondents in this case, so contends Dr. Naik, would not be any way the losers even if the Ceilings Act applies on cessation of the exemption. This contention assumes that on cessation of the exemption, (1) the lands would vest in the landlords or continue vested, (2\\) there would be fresh enquiry under Sections 14 to 21 of the Ceilings Act, (3) and it would be on the footing as though the land owners were holders, though on the appointed day, i.e. January 26, 1962, in fact, they were not. In the first instance, these assumptions are fallacious and unwarranted. As would be indicated presently, Notification exempting lands cannot set at naught the orders dated February 21, 1963 and, therefore, question of vesting the land in the landlords and fresh enquiry does not and cannot arise. Even if fresh enquiry is assumed to be competent, it could be only on the footing of the petitioners being the holders and the lands being their post-appointed day acquisitions, as on cessation of exemption, lands would revert to the holders, i.e. the petitioners. Any other assumption or construction would attribute a legislative-intent of excluding the lands from the pool, for a purpose never conceived and imagined. The land would be, thus, liable, even then to be declared as surplus, and delimited u/s 21, as contemplated u/s 47(2) read with Section 12 of the Ceilings Act. It is pertinent to note that land-owner of the land held on lease by the industrial undertakings is excluded from the right of resumption for personal cultivation available to other landowners u/s 19 of the Act. Secondly, and more importantly, Tenancy Authorities are not competent either to ignore the subsisting exemption and implicit limitations thereof or to do anything which in effect would result in making ineffective or cancelling the exemption granted by the State. To do so would amount to arrogate to itself powers which they do not possess. Using of the land for agricultural purpose is thus beyond the scope of the exemption and if the exemption is to cease on such user, the landlord must

be deemed to have been precluded under this scheme from claiming any land, from his tenant, the Sugar Mills, for that purpose. Thus in a case where industrial undertaking happens to be holder of the land as tenant on the appointed day, owner of the land cannot claim resumption thereof either under the Ceilings Act or under the Tenancy Act during the subsistence of the exemption granted u/s 47(7)(k) of the Ceilings Act.

8. The second contention of Mr. Chagla also is equally well-founded. The Notification exempting the lands, dated June 21, 1963 was enforced long after the lands stood vested in the State u/s 21 of the Ceilings Act under the order dated February 21, 1963. Such subsequent Notification cannot affect the rights created and liabilities suffered under the lawful order of the competent authorities, passed during the operation of the Act. All laws are prospective unless Legislature indicates to the contrary and so are the Notifications thereunder. Manifold questions involving application of this principle do not always afford easy solutions. However, Legislature has to speak with louder and clearer voice when it is intended to nullify such orders already passed. Section 47(7)(k) does not indicate any such intention, either by the usual non obstante clause or otherwise. A mere Notification can never have such retrospective effect, unless statute itself so indicates and further delegates powers to the State Government to give such retrospective effect. The Notification dated June 21, 1963 thus cannot have the force of wiping out the effect of the proceedings taken and valid orders passed already before June 21, 1963. Vesting of the land in the State and directing the landlords thereof must be deemed to have become effective and final and irreversible by the time the Notification was issued. Exemption so granted would operate only to prevent further steps under the Ceilings Act, i.e. dispossession of the petitioners and distribution of the lands u/s 27 of the Ceilings Act. The exemption so granted thus cannot revive the title of the land, lost to the landlords under the order dated February 21, 1963. They cannot claim, to be landlords, or possession of lands as such owners, nor is the petitioner liable to them as such tenant.

9. Dr. Naik's contention that the order dated February 21, 1963 is void for want of notice to the landlords is untenable at this stage. Apart from the competency to raise such a question, so collaterally and casually, no such point can be adjudicated in proceedings to which, the State, the beneficiary of the said order is not impleaded as party.

10. Dr. Naik also raised a preliminary objection to both the contentions of Mr. Chagla. It is true that the first point does not appear to have been raised by the petitioners at any stage. Relying on *Gandhinagar Motor Transport Society v. State of Bombay*) Dr. Naik contends that such a point should not be allowed to be raised. The case, however, deals with a point of jurisdiction. Point raised here goes to the root of the maintainability of the proceedings. It is not possible to ignore it without defeating the very object of exemption. He contends, next, that the remand order of the Tribunal dated July 12, 1971 had already become final.

The petitioner should not be allowed to reopen the same at this late stage, when the said order has already been worked out by the subordinate authorities. I do not find any substance in this contention also. It is now well-settled that when the matter goes to the superior Court in appeal or writ jurisdiction, all the interlocutory orders, including the remand orders, are open to review by such superior Court provided the litigation reaches in continuation of the same proceedings and has not come to a final termination and review thereof is not barred by Section 105, CPC or some such analogous provision. It would be enough to refer to the Division Bench judgment in the case of Ratanlal v. Bajirao Ganpat [1973] Mah. L.J. 65 to which I was a party. The preliminary objections of Dr. Naik thus are devoid of any merit.

11. Mr. Chagla also contends that the lands leased to the approved industrial undertaking such as the petitioners are covered by Section 43A (i)(a) of the Tenancy Act and are not liable to be resumed for personal cultivation under the concerned Notification, issued by the Government under Sub-section (3) thereof. Mr. Chagla drew my attention to the Government Notification dated March 27, 1957 published in the Bombay Government Gazette dated April 4, 1957, at p. 448 in Part IVB. The said Notification indicates that the petitioner Sugar Mills has been approved as one of such industrial concerns covered by Clause (a) of Section 43A (7) of the Bombay Tenancy Act. The applications by the landlords for possession of the land for personal cultivation were thus not maintainable in the present case.

12. Dr. Naik, however, contends that there is nothing on record to indicate that the leases between the Sugar Mills and respondents No. 2 landlords are covered by Clause (a), and not by Clause (b) of Section 43A (7) of the Tenancy Act. Unfortunately the respondents have raised this point first time here and have not cared either to enclose, copy of the application for possession or copies of the orders passed by the Deputy Collector or the Mamlatdar after remand, along with this petition or to get the record and proceedings of the case summoned before the hearing commenced. The order of the Deputy Collector before remand, however, indicates that the possession was claimed under the Notification issued under Clause (a) and not Clause (b) of Section 43A (1) of the Tenancy Act. It would have been necessary to send for the records and proceedings, if decision of the case were to turn on this point. Any decision on this point, however, is unnecessary in view of decision on other points.

13. Special Civil Applications deserve to be allowed.

14. I accordingly make rules absolute, set aside all the impugned orders and reject the application of the landlords for resumption of the lands.

15. In the circumstances of this case, there will be no order as to costs.