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MADHARAO RAJESHWAR DESHPANDE

v.

SHANKER SINGH & ORS.

February 24, 1970

B [J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

Bombay Tenancy and Agricultural Land (Vidharbha and Kutch Area) Act 99 of 1958 as amended by Act 2 of 1962, ss. 41, 42, 43 and 46—Scope of.

The appellant was the owner of certain land and the first respondent was the protected lessee. In 1963, the appellant filed a petition for possession of the land on the ground that the first respondent failed to exercise his right of purchase under s. 41(1) of the Bombay Tenancy and Agricultural Land (Vidharbha and Kutch Area) Act, 1958. The authorities under the Act held that the tenant had become a statutory owner from April 1, 1961, under s. 46(1) and dismissed the petition. In the High Court the appellant raised for the first time, the contention that under s. 42(c) of the Act the appellant should have been left an area not less than one family holding (that is about 26 acres), that s. 46(1) was applicable only when the condition in s. 42(c) was satisfied, that under s. 43(14A), which was introduced into the Act by Act 2 of 1962, the first respondent should take steps to exercise his right of purchase, and since the first respondent did not do so, he must be deemed to have surrendered the land to the appellant under s. 43(14A). The High Court did not accept the contention.

In appeal to this Court,

HELD: (1) The appellant was not entitled to raise any contention based on s. 42(c) as no foundation was laid for doing so in the pleadings or at any prior state till the matter reached the High Court. [814 A-B]

(2) The operation of s. 46(1) was not affected by the subsequent insertion of sub-s. 14A in s. 43, as it did not have any retrospective operation. Therefore, the first respondent had become a statutory owner of the land in his tenancy under s. 46(1), on April 1, 1961, even though he did not take any steps to purchase that land from the appellant. [814 B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2393 of 1966.

Appeal by special leave from the judgment and order dated March 1, 1966 of the Bombay High Court, Nagpur Bench in Special Civil Application No. 190 of 1965.

G. L. Sanghi and *A. G. Ratnaparkhi*, for the appellant.

D. V. Patel, for the respondent.

The Judgment of the Court was delivered by

Grover, J. This is an appeal by special leave from a judgment of the Bombay High Court dismissing a petition filed by the appellant under Art. 227 of the Constitution.

The dispute relates to survey No. 284 having an area of 11 acres and 6 gunthas in Mouza Paras, Taluk Balapur, District Akola. The appellant is the owner of this field while respondent no. 1 is the protected lessee. The case is governed by the Bombay Tenancy and Agricultural Land Act (Vidharbha & Kutch area) Act 99 of 1958 which came into force on December 30, 1958, hereinafter called "the Act". In August 1963 the appellant filed an application before the Tahsildar under ss. 43(14A) and 36(2) of the Act for possession of the aforesaid field on the ground that respondent No. 1 had failed to exercise his right of purchase in respect of that field under the provisions of the Act. He must, therefore, be deemed to have surrendered the same to the appellant. The Tahsildar sustained the defence of respondent No. 1 that he had become an owner of the said field on April 1, 1961 under s. 46 of the Act and dismissed the application. The order of the Tahsildar was confirmed by the Deputy Collector (Tenancy Appeals) and the Maharashtra Revenue Tribunal to whom the matter was taken in appeal and revision respectively. It may be mentioned that originally the appellant had filed applications against three of his tenants including respondent No. 1 and the tribunal dismissed by one order all the three revision petition preferred against the orders made in the three cases. The appellant, however, filed a petition under Art. 227 of the Constitution challenging the order made in the case of respondent No. 1 alone.

The Act as originally enacted was amended by Act 2 of 1962 which came into force on March 1, 1962. Chapter III related to termination of tenancies by landlords and special rights of tenants. Sections 38, 39 and 39A gave rights to different categories of landlords to terminate the tenancies of their tenants for *bona fide* personal cultivation. A ceiling was fixed with regard to the area of which possession could be claimed as also the minimum area of land which must be left with the tenant. The tenants were given the right to purchase land in the second part of Chapter III. Section 41(1) provided that subject to the provisions of ss. 42 to 44 a tenant other than an occupancy tenant would be entitled to purchase from the landlord the land held by him as a tenant and cultivated by him personally. In case of a landlord who was under some kind of disability, namely, if the landlord was a minor or a widow or a serving member of the armed forces or a person subject to physical or mental disability the right to purchase land of such landlord accrued to the tenant after the expiry of two years from a date prescribed in the case of each category of such landlord. Section 42 as it stood on April 1, 1961 was as follows:

"Extent of land which tenant may purchase under section 41.—The right of a tenant under s. 41 to purchase

A from his landlord the land held by him as a tenant shall be subject to the following conditions, namely :—

(a) if the tenant does not hold and cultivate personally any land, as a tenure-holder, the purchase of the land by him shall be limited to the extent of three family holdings;

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(b) if the tenant holds and cultivates personally any land as a tenure-holder the purchase of the land by him shall be limited to such area as will be sufficient to make up the area of the land held by him as a tenure-holder to the extent of three family holdings;

C (c) the extent of the land remaining with the landlord after the purchase of the land by the tenant whether to cultivate personally or otherwise shall not be less than one family holding".

Clause (c) was deleted by Act 2 of 1962 which came into force on March 1, 1962. Section 43 prescribes the procedure which D was to be followed by a tenant in the matter of purchase of the holding. Section 46(1) made a categorical provision that notwithstanding anything in Chapter III or any law for the time being in force or any custom, usage, decree, contract or grant to the contrary the ownership of all lands held by tenants which they were entitled to purchase from their landlord under any of the provisions E of Chapter III was to stand transferred to and vest in such tenants with effect from April 1, 1961 and from such date the tenants were to be deemed to be the full owners of the lands. The first proviso contained provisions relating to the tenants who were under a disability and the second proviso laid down that where any proceeding under ss. 19, 20, 21, 36 or 38 was pending on the date specified in sub-s. (1) in respect of any land the transfer of owner- F ship of such land was to take effect on the date on which the proceeding was finally decided and if the tenant retained possession of the land in accordance with the decision in such proceedings. Under sub-s. (2) the tenant continued to be liable to pay to the landlord the rent of the land the ownership of which stood transferred to him until the amount of the purchase price payable by G him to the landlord had been determined under s. 48.

Certain amendments which were made by Act 2 of 1962 may be noticed. Sub-section 14A was inserted in s. 43 which was in these terms :

"If a tenant fails to exercise his right of purchase H under section 41 in respect of any land or the purchase of any land becomes ineffective, the land shall be deemed to have been surrendered to the landlord, and thereupon the provisions of sub-sections (1) and (2) of section 21

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and Chapter VII shall apply to such land as if the land was surrendered by the tenant under section 20".

Section 49A provided for transfer of ownership of lands to the tenants with effect from first day of April 1963 where the land had already not been transferred by operation of s. 46 or where the tenant had not purchased it under s. 41 or s. 50. B

Before the Maharashtra Revenue Tribunal the position taken up on behalf of the appellant was that the tenant had failed to exercise his right of purchase in respect of the field in his possession and therefore he should be deemed to have surrendered the same to the appellant by virtue of the provisions of s. 43(14A) of the Act. C The tribunal went into the scheme of the Act and also considered the Ceiling on Holdings Act which was in force in the Vidarbha Region. After referring to the relevant provisions of the Act it was observed that the final stage for transfer of ownership of land to the tenant was provided by ss. 46 and 49A. The effect of the Tenancy Act and the Ceiling on the Holdings Act, according to the Tribunal, was that no person was entitled to hold an area in excess D of three family holdings. Under the Act the maximum area which he could have resumed would have been three family holdings and that also if he could prove that he *bona fide* required it for personal cultivation and was mainly dependent on the income of that land for his maintenance. The tenant was given the right to purchase the land in his tenancy from the landlord in accordance with s. 43. E If he did not take steps to acquire the same he still became a statutory owner of that land by virtue of s. 46 with effect from April 1, 1961. Therefore even if the tenant did not apply for purchase of land held by him he became an owner with effect from April 1, 1961 subject to any other conditions as were laid down in the provisions of the Act. This vesting of ownership in the tenant was not F affected by subsequent enactment of sub-s. (14-A) by Act 2 of 1962 which did not have retrospective operation.

Thus, according to the tribunal, even if respondent No. 1 did not apply under the relevant provisions of the Act for purchasing the land comprising his tenancy he became an owner thereof by virtue of the provisions of s. 46(1) and no tenancy rights were left G which could be deemed to have been surrendered under s. 14A which came into existence after April 1, 1961. Although the provisions of s. 42(c), as they stood before the amendment effected by Act 2 of 1962, were not pressed at any prior stage a contention was raised before the High Court that in accordance therewith the appellant should have been left an area not less than one family holding H on independent calculation with respect to the land held by each tenant. The High Court repelled this contention by saying that it was not possible to accept such a construction of s. 42(c).

A As there was no proceeding pending for termination of the tenancy of respondent No. 1 the conclusion of the tribunal that respondent No. 1 had become a statutory owner on April 1, 1961 was upheld.

Before us an attempt was made on behalf of the appellant to reiterate the contention based on the provisions of s. 42(c) as it B existed before the amendment made by Act 2 of 1962. It was urged that one of the most important conditions of the right to purchase was that the extent of the land remaining with the landlord after the purchase by the tenant (whether to cultivate personally or otherwise) shall not be less than one family holding. On December 30, 1958 the appellant had no land whatever with him in his possession. C He was, therefore, entitled to retain an area to the extent of one family holding which came to 26 acres. By virtue of the provisions of s. 42(c) respondent No. 1 was not entitled to purchase the entire land comprising his tenancy as under s. 46(1) the ownership of land stood transferred to the tenant only if he was entitled to purchase from the landlord such land. As this condition was not fulfilled in the present case owing to the provisions of s. D 42(c) it followed that on April 1, 1961 the ownership of the land in question was not transferred to respondent No. 1 under s. 46(1). This situation continued upto March 1, 1962 when the amending Act came into force. Sub-section (14-A) of s. 43 was one of the new provisions inserted by the Amending Act. Respondent No. 1, could, therefore, exercise his right of purchase only under s. 41 E read with s. 43(14-A). As he failed to exercise his right under those provisions the entire land in his tenancy must be deemed to have been surrendered to the landlord, namely, the appellant before April 1, 1963 which was the relevant date for the purpose of the operation of s. 49-A.

F We are unable to accept any of the contentions raised on behalf of the appellant. So far as the effect of s. 42(c), as it stood before its deletion by the amending Act is concerned, it was neither referred to nor relied upon before any of the revenue authorities including the Maharashtra Revenue Tribunal. The application which was filed by the appellant was not founded on any facts or pleas relevant to s. 42(c). The contention as raised leads to unusual and G strange results. If the appellant was entitled to an area of 26 acres it is difficult to see how he could choose only respondent No. 1 and leave out the other tenants for the purpose of retaining land not less than one family holding. It is significant that the appellant had filed applications on similar lines against two other tenants also. After the decision of the tribunal had been given he did not H pursue the matter further which means that he abandoned his claim with regard to the lands in their tenancies. Respondent No. 1 has a holding with an area of little over 11 acres. It is incomprehensible how the appellant could seek to satisfy the requirements of s.

42(c) by demanding the entire area from respondent No. 1 alone. We, however, do not wish to express any final opinion on the scope and ambit of s. 42(c) because we are satisfied that the appellant was not entitled to raise any contention based on the aforesaid provision as no foundation was laid for doing so in the pleadings or at any prior stage except before the High Court. We concur in the view of the tribunal that respondent No. 1 became a statutory owner of the land in his tenancy by virtue of s. 46(1) of the Act with effect from April 1, 1961 even though he did not take steps to purchase that land from the appellant under s. 43. The operation of s. 46(1) could not be affected by the subsequent insertion of sub-s. (14-A) in s. 43 which did not have retrospective operation.

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The appeal therefore fails and it is dismissed. But in the circumstances there will be no order as to costs.

V.P.S. *Appeal dismissed.*