Shri Mahadeo Paikaji Kolhe Yavatmal vs The State Of Bombay on 4 April, 1961

Equivalent citations: 1961 AIR 1517, 1962 SCR (1) 733, AIR 1961 SUPREME COURT 1517

Author: P.B. Gajendragadkar

Bench: P.B. Gajendragadkar, A.K. Sarkar, K.N. Wanchoo, K.C. Das Gupta, N. Rajagopala Ayyangar

PETITIONER:
SHRI MAHADEO PAIKAJI KOLHE YAVATMAL

Vs.

RESPONDENT:
THE STATE OF BOMBAY

DATE OF JUDGMENT:
04/04/1961

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
SARKAR, A.K.
WANCHOO, K.N.
GUPTA, K.C. DAS
AYYANGAR, N. RAJAGOPALA

CITATION:
1961 AIR 1517 1962 SCR (1) 733
CITATOR INFO :
R 1962 SC 694 (28,67)
R 1967 SC1110 (11)
R 1970 SC 439 (14)

ACT:
Agricultural Land-Amendment of law relating to tenancies-Constitutional validity of enactment Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958 (Bom. 99 of 1958).

HEADNOTE:
The petitioners challenged the constitutional validity of

the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958, which extended the provisions of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1956, to Vidarbha and Kutch. That Act was declared valid by this Court in Sri Ram Narain Medhi v. The State of Bombay, [1950] Supp. 1 S.C.R. 489, and one of the reason-, for doing so was that the lands covered by that Act fell within the definition of the word 'estate' contained in the Bombay Land Revenue Code, 1879. The lands in question in the present petitions were situated in Amraoti and Yeotmal and the existing law relating to land tenures in force in that area was the Madha Pradesh Land Revenue Code, 1954. This Code did not employ the word ,estate' and it was contended by the petitioners that the impugned Act was not within the protection of Art. 31A of the Constitution.

Held, that the contention must fail.

Although the Madhya Pradesh Land Revenue Code, 1954, did not employ the word 'estate', the relevant definition contained in ss. 2(17) and 2(18) of impugned Act and ss. 2(7), 2(20) of the Code read with ss. 145 and I46 thereof leaves no manner of doubt that the lands in the possession of the petitioners were tenures and in substance ,in estate.

Since the petitioners held the lards tinder the State and paid land revenue for them, the lands fell within the class of local equivalents of the word 'estate.' as contemplated by Art. 31A(2)(a) of the Constitution.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petitions Nos. 93 and 125 of 1959.

Petitions under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

V. M. Limaye, E. Udayarathnam and S. S. Shukla, for the petitioners.

H.N. Sanyal, Additional Solicitor-General of India, R. Ganapathy Iyer and D. Gupta, for the respondent.

W. S. Barlingay and A. G. Ratnaparkhi, for the Interveners. 1961. April 4. The Judgment of the Court was delivered by GAJENDRAGADKAR, J.-These two writ petitions have been filed under Art. 32 of the Constitution and they seek to challenge the validity of the Bombay Tenancy and Agricultural Lands Act 99 of 1958 (hereafter called the Act). The impugned Act in substance is intended to extend to Vidarbha region and Cutch area which had then become a part -of the Greater Bi- Lingual State of Bombay the provisions of the Bombay Tenancy and Agricultural Lands (Amendment) .Act, 1956 (Act XIII of 1956). The preamble to the impugned Act shows that it was intended to amend the law relating to tenancies of agricultural lands and sites used for allied purposes in the two areas of the State of Bombay and to make certain other provisions in regard to those lands. In extending the

provisions of the earlier Bombay Act XIII of 1956 to the two areas the legislature has conformed to the pattern set up by the said earlier Act. The policy underlying the Act and the object intended to be achieved by it are the same and the method adopted in achieving that object is also the same. The validity of the earlier Bombay Act (XIII of 1956) was challenged before this Court in Sri Ram Ram Narain Medhi v. The State of Bombay (1) but the challenge failed and the Act was held to be constitutional. One of the points which arose for decision in that case was whether the impugned Act was protected by Art. 31A(2)(a) of the Constitution, and the answer to that question depended upon the determination of another issue which was whether the lands to which the said Act applied were an "estate" as required by Art. 31A(2)(a). In dealing with that question this Court held that the word "estate" as defined by s. 2(5) of the Bombay Land Revenue Code, 1879, clearly applied to the lands (1) [1959] Supp. 1 S.C.R. 489.

covered by the Act and so Art. 31A(2)(a) was applicable. Having regard to this decision the only point which Mr. Limaye attempted to raise before us in support of the two writ petitions is that the lands belonging to the two petitioners are not an "estate" within the meaning of Art. 31A(2)(a), and so the impugned Act is outside the protection of Art. 31A. If this contention is not upheld then it is obvious that(the writ petitions must fail; if the said contention is upheld then of course the other contentions raised by the two writ petitions against the validity of certain specific provisions of the Act may fall to be consi- dered.

The two petitioners are Namdeorao Baliramji and Mahadeo Paikaji Kolhe respectively. The first one resides at Amraoti and the second at Yeotmal. The first owns about 80 acres dry lands situated in Amraoti out of which 43 acres are under his personal cultivation and the rest in the possession of the tenants. The second petitioner owns about 1168 acres dry lands situated in Yeotmal out of which 400 acres are under his personal cultivation and the rest with the tenants. The lands in both the cases are charged to the payment of land revenue. The case for both the petitioners is that the lands thus held by them are not an "estate" within the meaning of Art. 31A(2)(a).

Article 31A(2)(a) provides, inter alia, that the expression "estate" shall in relation to any local area have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area. The existing local law, it is common ground, is the Madhya Pradesh Land Revenue Code, 1954 (II of 1955), and so it is necessary to find whether the lands belonging to the petitioners can be said to be an 'estate' within the meaning of the said Code. Before we do so, however, it may be pertinent to refer to the relevant definitions in the impugned Act. Section 2(17) of the Act defines land as meaning, inter alia, land which is used or capable of being used for agricultural purposes and includes the sites of farm buildings appurtenant to such land. Section 2(18) defines a land-holder as meaning a tenure-holder whom the State Government has declared on account of tile extent and value of the, land or his interests therein to be a land-holder for the purposes of this Act. Now,s.27 of the Madhya Pradesh Land Revenue Code in question defines a holding as meaning, inter alia,a parcel of land separately assessed to land revenue,and s. 2(20) defines a tenure-holder as meaning a person holding from the State Government as a Bhumiswami or a Bhumidari. Chapter XII of the Code deals with tenure-holders. Section 145 provides that there, shall be two classes of tenure,- holders of lands held from the State, namely, Bhumiswami and Bhumidhari. Section 146 deals with Bhumiswami. It provides that "every person

who at the coming into force of this Code belongs to any of the classes specified in clauses (a) to

(f) of the said section shall be called a Bhumiswami and shall have all the rights and is subject to all the liabilities conferred or imposed upon a Bhumiswami by or under this Code". Amongst these classes is the class covered by el. (e) which relates to persons in respect of lands held by them as occupants in Berar. Thus reading the relevant definitions along with the provisions of s. 146 of the Code it would follow that the land in the possession of the Bhumiswami who is a tenure-holder is in substance all estate. It is true that the word "estate" as such has not been employed in the Code, but it must be borne in mind that Art. 31A(2)(a) refers not only to estate but also to its local equivalent. It was realised that in many areas the existing law relating to land tenures may not expressly define all estate as such though the said areas had their local equivalents described and defined. That is why the relevant provision of the Constitution has deliberately used both the word "estate" as well as its local equivalent".The petitioners hold lands under the State and they pay land revenue for the, lands thus held by them.Therefore, there is no difficulty in holding that under the existing law relating to land tenures the lands held by them fill within the class of the local equivalents of the word "estate" as contemplated by Art. 31A(2)(a). If that is so the contention raised by Mr. Limaye that the impugned Act is not protected by Art. 31A cannot succeed. As we have already indicated it is not disputed that if Art. 31A applies there can be no further challenge to the validity of the impugned statute. The writ petitions accordingly fail and are dismissed with costs one SEt of hearing costs.

Petitions dismissed.