

Shriram Mandir Sansthan , Shri Ram ... vs Vatsalabai & Ors on 17 December, 1998

Author: Suiala V. Manohar

Bench: Sujata V. Manohar, A.P. Misra

PETITIONER:

SHRIRAM MANDIR SANSTHAN , SHRI RAM SANSTHAN PUSODA

Vs.

RESPONDENT:

VATSALABAI & ORS.

DATE OF JUDGMENT: 17/12/1998

BENCH:

Sujata V. Manohar, A.P. Misra.

JUDGMENT:

Mrs.Suiala V. Manohar, J.

The appellants in these appeals are trusts, either for an educational purpose or are institutions for public religious worship. The entire income from the lands belonging to each of these institutions is appropriated by it for the purposes of the trust. All these institutions are covered by Section 129(b) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as the Tenancy Act of 1958'). Section 129 of the Tenancy Act of 1958 is as follows:

"129. Nothing in the foregoing provision except section 2, the provision of Chapter II (excluding sections 21,22,23, 24 and

37) and section 91 and the provisions of Chapters X and XII in so far as the provisions of the said Chapters are applicable to any of the matters referred to in sections mentioned above shall apply

-

(a)

(b) to lands which are the property of a trust trust for an educational purpose, hospital Panjarpole, Gaushata, or an institution for public religious worship,

provided the entire income of such lands is appropriated for the purpose of such trust; and

(c)

(d)

Explanation - For the purpose of clause

(b), a certificate granted by the Collector after holding an inquiry, that the conditions mentioned in the said clause are satisfied by the trust shall be the conclusive evidence in that behalf. Each of these trusts have been granted a certificate by the Collector under the Explanation to Section 129 of the Tenancy Act of 1956.

The respondents in each of the appeals and/or their predecessors-in-title were tenants in respects of the lands belonging to the appellants. On the death of the tenant, the appellants filed an application for summary eviction of the respondents under Section 120 of the Tenancy Act of 1958. The appellants contended that on the death of the tenant, the tenancy came to an end and they were entitled to obtain possession of the lands. In these proceedings, ultimately the Maharashtra Revenue Tribunal in revision held that the tenant of the appellants-trust had not become a statutory purchaser under the Tenancy Act of 1958. However, the heirs of the deceased tenant were entitled to succeed to the tenancy. Hence the revision application of the appellants was dismissed. This decision was challenged by the appellants by filing a writ petition before the High Court. The High Court has dismissed the writ petitions so filed on the ground that the issue is covered against the appellants by a decision of the Full Bench of the Bombay High Court in Khanqah-Kadria Trust (Wakf), Balapur v. Shevantabai wd/o Raoji Shivaji (1989 Mh.L.J. 891). This has led to the filing of the present appeals.

The question which requires consideration in all these appeals is whether, in the case of lands belonging to a trust or an educational institution falling within Section 129(b) of the Tenancy Act of 1958, the tenancy is heritable on the death of a tenant, by his heirs. Under Section 54 which forms a part of Chapter III of the Tenancy Act, 1958, it is provided as follows:

"54. (1) Where a tenant dies, the landlords shall be deemed to have continued the tenancy -

(a) if such tenant was member of an undivided Hindu family to the surviving member of the said family, and

(b) if such tenant was not a member of an undivided Hindu family, to his heirs, on the same terms and conditions on which such tenant was holding at the time of his death.

(2) Where the tenancy is inherited by heirs other than the widow of the deceased tenant, such widow of the charge for maintenance on the profit of such land.

(3) The interest an occupancy tenant in his holding shall on his death pass by in accordance with his personal law."

The marginal note to Section 54 sets out, "Rights of tenants to be heritable".

Section 129, however, which deals with the tenancy of lands belonging, inter alia, to places of public religious worship and educational institutions, provides, (inter alia) that Chapter III of the Tenancy Act, 1958 will not apply to such institutions. Therefore, Section 54 does not apply to the tenants of these institutions, Are these tenancies heritable under any other provision of law? To answer this question we will have to examine, broadly, the scheme of the Tenancy Act of 1958. The preamble to the Act states, inter alia, that "WHEREAS it is expedient to amend the law which governs the relations of landlords and tenants of agricultural lands..... in the Vidarbha Region of the State of Maharashtra with a view to bringing the status and rights of tenants as far as possible in line with those prevailing in certain other parts of the State;

AND WHEREAS it is expedient in the interests of the general public to regulate and impose restrictions on the transfer of agricultural lands

belonging to or occupied by agriculturists, agricultural labourers, and to provide for the assumption of the management of circumstances and to make provisions of certain other matters hereinafter appearing"

The Act, therefore, ostensibly seeks to bring the relationship of landlords and tenants in the Vidarbha Region in line with the position prevailing in other parts of the State of Maharashtra. The other object of the Act is to regulate and impose restrictions on the transfer of agricultural lands and to provide for the assumption of the management of the agricultural lands and to make certain other provisions. The Act, therefore, is not meant entirely for the benefit of tenants although it gives valuable rights to the tenants of agricultural land generally. Under Section 2(32) a "tenant" is defined to mean a person who holds land on lease and includes - (a) a person who is deemed to be a tenant under Sections 6,7, or 8 and (b) a person who is a protected lessee or occupancy tenant.

Sections 6, 7 and 8 fall under Chapter II of the Tenancy Act of 1958 which deals with general provisions regarding tenancy. Under Section 46 which forms a part of Chapter III, there is a provision for transfer of ownership of all lands held by tenants, which they are entitled to purchase from their landlords under any of the provisions of this Chapter with effect from 1st of April, 1961. There are certain exceptions to these provisions which are set out in that section. Under Section 49A which was inserted in Chapter III by the Maharashtra Act 2 of 1962, notwithstanding anything contained in sections 41 or 46, on and from the 1st of April, 1983, the ownership of all lands held by a tenant being land which is not transferred to the tenant under section 46, or which is not purchased by him under section 41 or 50, shall stand transferred to and vest in such tenant who shall, from the date aforesaid, be deemed to be the full owner of such land, if such land is cultivated

by him personally, and on condition that the landlord has not given a notice of termination of tenancy as set out in that section and subject to the various other provisions of that section. These sections which form a part of Chapter III do not apply to tenancies of lands covered by Section 129.

Only some of the preceding provisions of the Tenancy Act of 1956 apply to tenancies of lands belonging to trusts for educational purposes or institutions for public religious worship provided the entire income of such land is appropriated for the purposes of such trusts. The provisions which apply are Section 2, all sections falling under Chapter II with the exception of Sections 21, 22, 23, 24 and 37; Section 91, Chapter X and Chapter XII. Section 54 which forms a part of Chapter III, therefore, does not apply to the land belonging to such a trust or and institution for public religious worship. The Full Bench of the High Court in the case of Khanqah-Kadria Trust (Wakf), Balapur v. Shevantabai wd/o Raoji Shivaji (supra), however, held that although Section 54 which makes a tenancy heritable does not apply, the ordinary law relating to succession would apply and, therefore, tenancy of lands belonging to such trusts for an educational purpose or institutions for public religious worship would also be heritable.

To examine the correctness or otherwise of this view it is necessary to emphasis that Section 54 which makes tenancies heritable is expressly made inapplicable to tenancies of lands falling under Section 129(b). What is the effect of Section 129 which excludes the application of Section 54 to the tenancies of lands belonging to such trusts and institutions? The obvious effect is that the provisions is contained in Section 54 will not apply. But is it, also intended thereby that such a tenancy shall not be heritable? The best way to answer this question would be to see what would be the effect of holding that such a tenancy would be otherwise heritable. First of all, Section 54 makes, if it all, only a slight departure from the ordinary law of succession. Clause (b) of Section 54(1) provides that if the deceased tenant was not a member of an undivided Hindu family, the tenancy would go to his heirs. Since this is the ordinary law of inheritance, its exclusion must entail exclusion of the ordinary law of inheritance. Sub-section (3) of Section 54 provides that the interest of an occupancy tenant on his death shall pass by inheritance or survivorship according to his personal law. This also is nothing but a statement of the ordinary law of inheritance and succession. If we were to hold that the ordinary law of succession applies, the result would be, at least in the case of a tenant who is not a member of an undivided Hindu family, and an occupancy tenant, that his heirs would be entitled to succeed to the tenancy. At the same time, exactly the same provision in Section 54(1)(b) and Section 54(3) would not apply! This would lead to a self-contradictory situation. It is, therefore, clear that at least for tenants of the description falling under Section 54(1)(b) and Section 54(3), the ordinary law of inheritance is not applicable in all cases where tenancies are not governed by Section 54. The exclusion of Section 54 necessarily implies exclusion of ordinary law of testamentary succession. Section 54 does not preserve the right of a tenant to make a will bequeathing his tenancy to a person of his choice in the case of those tenancies which are governed by Section 54. Heritability is to be governed entirely by Section 54. Therefore, by excluding Section 54, the clear intention is to make such tenancies non-heritable.

Section 54(1)(a) makes a slight departure from Hindu Law of Succession. Inheritance by survivorship is conferred on all members of the joint family instead of only the coparceners. Therefore, all members of the joint family male and female inherit. The provisions in the Hindu

Succession Act in cases where there are female heirs of a male having an interest in the joint family property, are also not applicable. The question the legislature intended that tenancies not covered by Section 54(1)(a) would nevertheless be governed by the ordinary law. In our view Section 54(1)(b) or Section 54(3). The entire section must be read harmoniously. The legislative intention as seen from the scheme of Section 54 is, that heritability of any tenancy falling within the definition of that term under the Tenancy Act of 1958 is governed exclusively by Section

54. Where Section 54 is made expressly non-applicable under the Tenancy Act of 1958, the tenancy is not heritable at all. An express provision in the Act which excludes the operation of certain provisions, cannot be made nugatory by resorting to general law.

This conclusion is strengthened by the fact that Section 37 which forms a part of Chapter II is also expressly excluded from application to the tenancies of such trust. Section 37 provides as follows :

"37. Save as provided in this Act, the rights and privileges of any tenant under any usage or law for the time being in force or arising out of any contract, grant, decree or order of a court or otherwise howsoever, shall not be limited or abridged."

Therefore, in the case of tenancies of such trusts, preservation of rights and privileges of a tenant under any law for the time being in force is excluded. Therefore, the rights and privileges of any tenant of such land belonging to a trust or religious institution would only be as prescribed under the Tenancy Act 1958. A resort cannot be had to any other law for the time being in force to determine their rights and privileges.

Learned counsel for the respondents drew our attention to the decision in the case of *Gian Devi Anand v. Jeevan Kumar and Ors.* [(1985) 2 SCC 583]. The Court has observed in that case that in the absence of any provision in the Act the ordinary law of succession would apply. However, under the Bombay Tenancy Act of 1958, there is an express provision which excludes from the ambit of Section 54, tenancies of institutions covered by Section 129(b). Since Section 54 alone governs the heritability of tenancies covered by the Tenancy Act, 1958, the exclusion of Section 54 necessarily implies the exclusion of the ordinary law of succession and inheritance as well from the tenancies so excluded. [See in this connection *Ratan Lal Adukia v. Union of India* principle that a special subsequent legislation which is a code in itself excludes the earlier general law on the subject.] The High Court was, therefore, not right when it held that although Section 54 is excluded, the ordinary law of succession and inheritance is not. And, therefore, the tenancy of lands belonging to the institutions covered by Section 129(b) would be heritable under the ordinary law if not under Section 54. In fact, the Bombay High Court from 1958 to 1980 had consistently held the view that the tenancy of a public trust was not heritable. But in 1980 the High Court held that Section 40 of the Bombay Tenancy and Agricultural Lands Act was not the only source of inheritance and as such the tenancy of a public trust was heritable under that Act. The present Section 54 is the relevant section as far as lands in the Vidarbha Region are concerned. The Full Bench upheld the view taken in 1980. In our view, the exclusion of Section 54 by necessary implication also excludes the provisions of ordinary law of succession and inheritance from the tenancy of agricultural lands of institutions falling under Section 129(b).

Section 129 clearly seeks to protect certain lands from the provisions of the tenancy Act of 1958. The section thus protects lands held or leased by a local authority or a university, lands which are the property of a trust for an educational purpose, hospital, panjarpole, Gaushala or an institution for public religious worship, provided the entire income of such land is appropriate for the purposes of such trust. It also protects lands assigned or donated by any person before the commencement of the said Act for the purpose of rendering services useful to the community, namely, maintenance of water works, lighting or filling of water troughs for cattle. It also protects any land taken under management by a civil, revenue or criminal court as set out therein. There is a further safeguard ensuring that the income from such lands is appropriated for the purposes of a trust covered by Section 129(b). The explanation provides for the grant of a certificate by the collector after holding an inquiry. thus, the clear intention of Section 129 is to protect certain lands from tenancy legislation where the lands or income from such lands is being utilised for public purposes set out there. In this context, if the tenancy of such lands are not made heritable, this would clearly be in furtherance of the purpose of exempting such lands under Section 129.

We, therefore, allow these appeals and set aside the impugned judgment and order of the High Court in each of the appeals. There shall, however, be no order as to costs.