Gopala Genu Wagale vs Nageshwardeo Patas Abhishekh Anusthan ... on 12 January, 1978

Equivalent citations: AIR1978SC347, (1978)2SCC47, 1978(10)UJ99(SC), AIR 1978 SUPREME COURT 347, 1978 2 SCC 47 1978 U J (SC) 99, 1978 U J (SC) 99, 1978 U J (SC) 99 1978 2 SCC 47, 1978 2 SCC 47

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Bench: V.D. Tulzapurkar, Y.V. Chandrachud

JUDGMENT

Y.V. Chandrachud, J.

1. The respondent Shri Nageshwardeo Patas Abhishekh Anusthan Trust filed a suit against the appellant Gopala Genu Wagale, since deceased, for possession of two lands, survey Nos. 249 and 544 situated at Patas, district Pune, alleging that the appellant was a trespasser. The appellant having raised a plea that be was in possession of the lands as a tenant, the trial court referred the issue of tenancy to the Tehsildar under Section 85-A of the Bombay Tenancy and Agricultural Lands Act, 1948. The court also referred another incidental issue to the Tehsildar as to whether the appellant could be deemed to have purchased the suit lands on the tiller's day, namely, April 1, 1957.

2. The Tehsildar, relying upon the notice dated December 22, 1956 issued by the respondent to the appellant under Section 31 of the Bombay Tenancy Act and upon the proceedings initiated by the Agricultural Lards Tribunal under Section 32-G of the Tenancy Act, answered the issues in favour of the appellant by holding that he was in possession of the lands as a tenant of the respondent trust. Respondent's appeal against the decision of the Tehsildar was dismissed by the Additional Collector and in revision the Revenue Tribunal confirmed the view of the authorities below. The respondent thereafter filed a petition in the Bombay High Court under Article 227 of the Constitution which was allowed by the High court on September 23, 1975. Differing from the concurrent findings of the three authorities, the High Court held that the appellant was not in possession of the lands as a tenant of the respondent. This appeal by special leave is directed against the judgment of the High Court.

3. The limits of the High Court's jurisdiction under Article 227 of the Constitution are two well-established to require any elaborate restatement. The High Court in the exercise of its powers under Article 227, cannot function as a court of appeal and is generally bound by the findings of fact recorded by the tribunal below. But bearing in mind these limitations, we are unable to accept the contention pressed upon us by Mr Ginpule, appearing on behalf of the appellant, that the High

Court has exceeded its powers in interfering with the judgment of the Revenue Tribunal

4. The issue before the revenue authorities was whether the appellant was in possession of the suit lands as a tenant of the respondent. The fundamental infirmity in the appellant's case consists in his very plea that he was in possession of the lands as a sub-tenant of the original tenant, one Pandharinath Vale. The simple answer to the issue referred by the Civil Court to the Tehsildar, therefore, is that according to the appellant himself, he was in possession of the lands under a head-tenant of the respondent and was thus a sub-tenant and not a tenant.

5. learned Counsel for the appellant contends that even assuming for the sake of argument that the appellant was in possession of the lards as a subtenant, he would still be a "deemed tenant" by reason of the provisions contained in Section 4 of the Bombay Tenancy Act and therefore the issues referred to the Tehsildar ought to be answered in his favour. It is impossible to accept this contention. Section 4 of the Tenancy Act provides, to the extent material, that a person "Lawfully cultivating" any land belonging to another person shall be deemed to be a tenant in certain circumstances. For the purposes of this section, the important enquiry is to find whether a person who claims to be a tenant is cultivating the land "lawfully". The answer to this question is furnished by Section 27 of the Tenancy Act which says, in so far as in material, that no sub-division or sub-letting of the land held by a tenant shall be valid. Section 27 prohibits sub-tenancies in unqualified terms and what is more, Section 14(1)(a)(iii) makes a tenancy liable to be terminated on the ground of subletting As a result of the combined operation of Section 27 and Section 14(1)(a)(iii), the cultivation of a land by a sub-tenant cannot for the purposes of the Bombay Tenancy Act be said to be lawful. 'Lawful' cultivation being an important ingredient of Section 4 and that being significantly absent in the case of a sub-tenant, he cannot be deemed to be a tenant.

6. A manifest error from which the concurrent finding of the three revenue authorities suffer is their uncritical reliance on two circumstances, neither of which, in our opinion, can help establish the tenancy of the appellant. The first circumstance on which reliance was placed is that the respondent had given a notice to the appellant under Section 31 of the Bombay Tenancy Act. That circumstance cannot established the appellant's tenancy and indeed it is a matter of common knowledge that many a notice was given under Section 31 txabundant cautela in order that a person in possession of a land may not be able, by mere reason of the expiry of the period mentioned in Section 31(2), to contend that his possession is attributable to a right of tenancy and has by lapse of time become unassailable. The second circumstance on which the revenue authorities placed preponderating reliance is that the Agricultural Lands Tribunal has initiated proceedings for fixing the statutory price of the lands under Section 32-G of the Tenancy Act. One could have understood if that Tribunal were to hold that the price of the lands was liable to be fixed on the basis that the appellant was a tenant of the respondent. But the only order which the Tribunal passed was that since the landladies were widows, the tiller's day stood postponed. Thus, in the first place there was no adverse order against the landladies and therefore, they could not have filed an appeal against the order passed by the Agricultural Lands Tribunal. Secondly, the proceeding before the Tribunal was instituted by the Tribunal suo motu one cannot read into the conduct of the landladies any concession as regards the supposed and not at the instance of the landladies wherefor, status of the appellant as a tenant. And thirdly, the Tribunal did not find that the appellant was a tenant, since

the stage for such an inquiry was still to arrive.

7. It is remarkable that though the appellant contended that he was in possession of the lands as a tenant of the respondent, he could produce no evidence at all in support of that contention. He kept away from the witness-box and made his unknowledgeable son bear the brunt of the burden. The appellant was unable to produce any rent receipt and the effective entries in the revenue records show beyond any manner of doubt that he was not in possession of the lands as a tenant of the respondent. The High Court was, therefore, justified in concluding that the finding recorded by the revenue authorities did not have "even an iota of evidence" to support it.

8. Accordingly, we confirm the judgment of the High Court and dismiss the appeal. There will be no order as to costs.