Raja Ram Mahadev Paranjype And Others vs Aba Maruti Mali And Others on 1 December, 1961

Equivalent citations: 1962 AIR 753, 1962 SCR SUPL. (1) 739, AIR 1962 SUPREME COURT 753, 1962 MPLJ 609 1964 BOM LR 569, 1964 BOM LR 569

Author: A.K. Sarkar

Bench: A.K. Sarkar, S.K. Das, Raghubar Dayal

PETITIONER:
RAJA RAM MAHADEV PARANJYPE AND OTHERS

Vs.

RESPONDENT:
ABA MARUTI MALI AND OTHERS

DATE OF JUDGMENT:
01/12/1961

BENCH:
SARKAR, A.K.
BENCH:
SARKAR, A.K.
DAS, S.K.
DAYAL, RAGHUBAR

CITATION:
1962 AIR 753 1962 SCR Supl. (1) 739
CITATOR INFO :
R 1966 SC1085 (4)
E 1968 SC 461 (2)
D 1970 SC 744 (7)
RF 1973 SC1041 (15)
R 1974 SC1613 (2)
R 1983 SC 990 (9)
R 1984 SC1164 (17)

ACT:
Landlord and Tenani-Ejectment-Non-payment of rent for three years-Statutory right, to eject-Power of court to grant relief-Equity-Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. 67 of 1948), ss. 14, 25, 29.

HEADNOTE:

In the first three appeals the tenants were in default in paying rents for three years and due notices had been served by the landlords terminating the tenancies. The landlords thus acquired statutory rights to eject the tenants and applied to the Mamlatdar, as required by s. 29 of the Bombay Tenancy and Agricultural Lands Act, 1948, for possession over the lands. The Mamlatdar refused to make an order for possession on the ground that the tenants were entitled to relief against forfeiture on equitable principles. In the fourth appeal also the tenants had defaulted in paying rents for three years. In respect of the default in the first year the tenant had been granted relief against forfeiture under s. 25(1) of the Act. The tenant contended that the default in the first year had merged in the order under s. 25(1) and could not be relied upon far holding that he had defaulted for three years.

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Held, that the landlords were entitled to orders for possession in all the four cases. Upon default in payment of rent for three years a statutory right accrued to the landlords under s. 25(2) to terminate the tenancy and to obtain possession. There was no provision in the Act for granting relief against forfeiture in such a case; the provision in s. 29(3) that the Mamlatdar "shall pass such orders as he deems fit" did not give him such a power. The Act merely empowered him to grant relief where the tenant was not in arrears for more than two years. No relief against forfeiture could be granted to the

740

tenants on equitable grounds; relief on equitable grounds could only be granted in cases of contractual rights and not in cases of statutory rights. Nor could relief be granted under s. 114 Transfer of Property Act as that provision was inconsistent with the provisions of the Bombay Act and was therefore inapplicable.

R. V. Boteler, (1864) 33 L. I. M. C. 101, referred to.

Raghuvir, Vyasaraya Acharya v. Govind Mogre Bandekar, (1955) I. L. R. Bom. 1069, disapproved.

Held, further, that in the fourth appeal the default in the first year could also be taken into consideration in computing of three years inspite of the tenant having been relieved against forfeiture for that year. The order granting the relief did not wipe out the default, it only prevented the termination of the tenancy for that

default alone.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 258-259 of 59 and 404 of 60.

Appeals by special leave from the judgment and orders dated July 2, 1956, January 9, 1957 and June 16,1958 of the Bombay High Court in Special Civil Applications Nos. 1471, 1527 and 2990 of 56 and 1431 of 1958 respectively.

V.M. Limaye, V.L. Narasimha Moorthy, E. Udayaratnam and S.S. Shukla, for the appellants.

B.C. Kamble and A.G. Ratnaparkhi, for respondents Nos. 1 and 3 (in C. S. No. 258/59).

S.G. Patwardhan, B.C. Kamble and A.G. Ratnaparkhi, for respondent No. 1 (in C. A. No. 259/59) and the respondent in (C.A. No. 404 of

60).

Rameshwar Nath, for the respondent (in C.A. No. 9 of 60).

1961. December 1. The Judgment of the Court was delivered by SARKAR, J.-These four appeals are by landlords whose applications to the authorities under the Bombay Tenancy and Agricultural Lands Act, 1948 for possession of the lands held by their tenants, on the grounds had that the tenancy had been terminated by due notices on the tenants' failure to pay rents for three years, were dismissed.

These authorities refused in three of these cases to make an order for possession either because the tenants had paid up all rent which had fallen in arrear or because the authorities thought it proper on the facts of the case to give them time to pay up. They felt that the tenants were entitled to relief against forfeiture on equitable principles. In the fourth case, which is covered by Civil Appeal No. 259 of 1959, it was held that there had not been on the facts of the case, default in payment of rent for three years and, therefore the tenant was entitled to statutory relief against eviction under s. 25(1) of the Act which we shall later set out.

The High Court at Bombay by a summary order, without stating any reasons, refused to interfere when moved under Art. 227 of the Constitution. The landlords have therefore filed these appeals with leave of this Court.

We shall now deal with the first three cases and later take up the fourth case. In these three cases relief was granted to the tenants on the basis of certain observation of the High Court at Bombay in Sitaram Vithal Chitnis v. Gundu Satyappa Dhade, Special Civil Application No. 1695 of 1955, unreported, which we quote here: "Every court of equity will be extremely reluctant to enforce an

order of ejectment against a tenant when the only ground on which the landlord seeks ejectment is failure to pay rent. Therefore, if the tenant is willing to pay all arrears of rent, in our opinion, it would be inequitable to turn these tenants out when they are prepared to make good the arrears of rent." With great respect to the learned Judges of the High Court, we are unable to assent to the proposition so broadly put.

We now set out the relevant provisions of the Act.

S. 5 (1) No tenancy of any land shall be for a period of less than ten years:

> Provided that at the end of the said period and thereafter at the end of each period of ten years in succession, the tenancy shall, subject to the provisions of sub-secs. (2) and (3), be deemed to be renewed for a further period of ten years on the same terms and conditions notwithstanding any agreement to the contrary.
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> (2) x x x x x x x x x x x x x x x x x x x x x x x x x (3) Notwithstanding anything contained in sub-sec. (1):
>
> (a) every tenancy shall, subject to the provisions of ss. 24 and 25, be liable to be terminated at any time on any of the grounds mentioned in s. 14.

x x x x x x x x x x x x x x x x x x x x x x x x x x x S. 14(1) Notwithstanding any agreement, usage, decree, or order of a court of law, the tenancy of any land held by a tenant shall not be terminated unless such tenant:-

> (a)(1) has failed to pay in any year, with in fifteen days from the day fixed.. the rent of such land for that year.

x x x x x x x x x x x x x x x x x x x Provided that no tenancy of any land held by a tenant shall be terminated on any of the grounds mentioned in this sub-section unless the landlord gives three months' notice in writing intimating the tenant his decision to terminate the tenancy and ground for such termination.

S. 25(1)Where any tenancy of any land held by any tenant is terminated for non- payment of rent and the landlord files any proceeding to eject the tenant, the Mamlatdar shall call upon the tenant to tender to the landlord the rent in arrears together with the costs of the proceeding within fifteen days from the date of order, and if the tenant complies with such order, the Mamlatdar shall, in lieu of making an order for ejectment, pass an order that the tenancy had not been terminated, and thereupon the tenant shall hold the land as if the tenancy had not been terminated:

> Provided that if the Mamlatdar is satisfied that in consequence of total or partial failure of crops or similar calamity the tenant has been unable to pay the rent due, the Mamlatdar may, for reasons to be recorded in writing, direct that the arrears of rent together with the costs of the proceedings if awarded, shall be paid within one year

from the date of the order and that if before the expiry of the said period, the tenant fails to pay the said arrears of rent and costs, the tenancy shall be deemed to be terminated and the tenant shall be liable to be evicted.

(2) Nothing in this section shall apply to any tenant whose tenancy is terminated for non-payment of rent if he has failed for any three years to pay rent within the period specified in section 14.

S. 29(1) A tenant or an agricultural labourer or an artisan entitled to possession of any land or dwelling house under any of the provisions of this Act may apply in writing for such possession to the Mamlatdar. x x x x x x x x x x x x x x x x x x x x x x x x x (2) No landlord shall obtain possession of any land or dwelling house held by a tenant except under an order of the Mamlatdar. For obtaining such order he shall make an application in the prescribed form and within a period of two years from the date on which the right to obtain possession of the land or dwelling house, as the case may be, is deemed to have accrued to him. (3) On receipt of such application under sub-section (1) or (2) the Mamlatdar shall, after holding an enquiry, pass such order thereon as he deems fit.

We are not concerned in these three cases with s. 24 mentioned in s. 5(3)(a). The "date fixed" mentioned in s. 14(1)(a)(i) is it may be stated the 20th of March of each year. It is not in dispute in these cases that the tenants were in default in paying rents for three years within s. 14(1)(a)(i) and due notices had been served by the landlords terminating the tenancies as required by the proviso to s. 14(1).

By s. 5, therefore, a tenancy under the Act is made to have indefinite duration being renewable for ten years at the end of every ten years and the landlord cannot put an end to the tenancy except under the provisions of the Act, one of which is s. 14. This is irrespective of any contract between the parties. Under s. 14 on the default in payment of a year's rent occurring, the landlord may, if he so chooses, bring the tenancy to end by giving the prescribed notice. If the tenancy is terminated, the tenant has, of course, no right to hold the land. The landlord would then be entitled to recover possession of the land from him. In view however of s. 29(2), the landlord cannot do so except by an application made to a Mamlatdar for the purpose. Now when such an application is made in case where the tenant has been in default for not more than two years, s. 25(1) would have to be applied and the Mamlatdar would have to give the tenant a chance to pay up and thereby annul the termination of the tenancy brought about under s.

14. In these three cases there is no controversy that the tenancies have been terminated under s.

14. There is also no dispute that the tenants are not entitled to be relieved against that termination under sub-s. (1) of s. 25 because of the provisions of sub-sec. (2) of that section, as in these cases the rent had not been paid for three years. They however claim relief on the principle on which equity grants relief against forfeiture of tenancies. The authorities under the Act have granted them the relief by applying this equitable principle.

In our opinion, the authorities were clearly in error in thinking that they could grant relief in these cases on equitable principles. In equity relief may be granted to a tenant who has incurred a forfeiture under the terms of the tenancy, that is, his contract with the landlord. Here, that is not the position. The tenancies have been terminated in these cases under a statutory provision. In the circumstances that have happened, the landlords have in our opinion acquired a statutory right to the possession of the lands and, therefore, to eject the tenants, the reasons for which view we shall discuss in some detail later. In such a case, no relief can be granted to the tenants on equitable principles. Equity does not operate to annul a statute. This appears to us to be well established but we may refer to white and Tudors Leading Cases in Equity (9th ed.) p. 238, where it is stated, "Although, in cases of contract between parties, equity will often relieve against penalties and forfeitures, where compensation can be granted, relief can never be given against the provisions of a statute."

The order of the authorities taking away the landlords' statutory right to possession by application of rules of equity cannot be supported.

It was then said that s. 29(3) gives ample power to the authorities to refuse to make an order for possession in the landlord's favour if the tenant pays up the arrears and the justice of the case requires that the tenant should not be deprived of the land. That sub-section no doubt says that the Mamlatdar "shall...pass such order thereon as he deems fit". We are however wholly unable to agree that this provision warrants the making of any order that the authority concerned thinks in his individual opinion that the justice of the case requires. We may here refer to R. v. Boteler where a statute which conferred power upon Justices to issue a distress warrant "if they shall think fit" was considered. In that case the Justices had refused to issue the distress warrant. Cockburn C. J. observed, "They went upon the ground that the introduction of this extra-parochial place into the union was a thing unjust in itself; in other words, that the operation of the act of parliament was unjust.....I think, therefore it amounts virtually to saying,-'We know that we ought upon all other grounds to issue the warrant, but we will take upon ourselves to say that the law is unjust, and we will not carry out the law'. That is not such an exercise of discretion as this Court will hold, in accordance with the authorities cited, to be one upon which it will act. The Justices must not omit or decline to discharge a duty according to law." We think that is what the authorities in the three cases before us have done. They have refused to carry out the Act because they felt that it worked hardship. They have refused to give to the landlords the relief which the Act said they should have.

Now, we feel no doubt that the Act provided that a tenant should be granted relief only in a case where he had not been in arrears with his rents for more than two years; in other words, if he had been in arrears for more than two years he was not to be given any relief against ejectment and the landlord would be entitled to an order for possession. First, we have to point out that the tenancy having been terminated in terms of the statute, the statute would necessarily create a right in the landlord to obtain possession of the demised premises. The tenancy having been terminated, the tenant is not entitled to remain in possession and the only person who would then be entitled to possession would be the landlord. The statute having provided for the termination of the tenancy would by necessary implication create a right in the landlord to recover possession. The statute recognises this right by providing by s. 29(2) for its enforcement by an application to the

Mamlatdar. Indeed, s. 29(2) itself mentions this right expressly for it says that the application shall be made within two years from the date on which "the right to obtain possession of the land"

accrued to the landlord. We repeat that this is a statutory right because it is the statute which fixes the term of the tenancy and also provides for its termination; it is not a contractual right which may be made subject to an equitable relief.

We turn now to s. 25. Under sub-s. (1) of this section the tenant has a right to an order continuing the tenancy inspite of its termination by notice under s. 14 for non-payment of rent. Sub-section (2) however provides that sub-s. (1) shall not be available to a tenant if he has failed for any three years to pay rent. The result is that the statute itself provides for relief to a tenant where such a termination has taken place and prescribes the conditions on which relief would be available. It would follow that the statute indicates that the tenant would not have the relief in any other circumstances. The result of this would inevitably be that the statute confers a right on the landlord to recover possession where the right under s. 25(1) is not available to the tenant, which right he can enforce in the manner indicated. That being so, s. 29 (3) cannot be read as conferring on the authorities a power to annul this intendment of the Act. The words "in lieu of making an order for ejectment" in sub-s. (1) of s. 25 support the view that the Act intends that except in the circumstances mentioned in it, the landlord is entitled as of right to get an order for possession from the Mamlatdar. This view is further strengthened by the proviso to s. 25 (1) which says that if the default in payment of rent had been caused by failure of crops or similar reasons, the Mamlatdar may give the tenant a year's time to pay up and shall then provide in the order to be made by him that on the tenant's failure to pay within that year, "the tenancy shall be deemed to be terminated and the tenant shall be liable to be evicted". In such a case the Mamlatdar could not by virtue of his supposed powers under s. 29(3) give further relief if the tenant failed to pay as directed, for the Act makes it incumbent on him to pass the conditional order of ejectment. There, of course, is possession for the Act to have treated the cases under sub-s. (1) and the proviso to it, differently. This again is another reason for saying that the Act provides that apart from the circumstances mentioned in sub-s. (1) of s. 25 and the proviso to it, the landlord has on a termination of the tenancy, a right to obtain an order for possession in his favour. It would be anomalous if the general words in s 29 (3) were to be construed as conferring power on the authorities to deprive him of the right which the other provisions in the Act give him.

We think, therefore, that s. 29 (3) only confers power to make an order in terms of the statute, an order which would give effect to a right which the Act has elsewhere conferred. The words "as he deems fit" do not bestow a power to make any order on considerations dehors the statute which the authorities consider best according to their notions of justice. Obviously, the provision has been framed in general terms because it covers a variety of cases, namely, applications by landlords and tenants in different circumstances, each of which circumstances may call for a different order

under the Act.

One other argument under a similar head as dealt with previously, was that the tenants were entitled to relief against forfeiture under s. 114 of the Transfer of Property Act. Section 3 of the Act provides that "the provisions of Chapter 5 of the Transfer of Property Act, 1882 shall in so far as they are not inconsistent with the provisions of this Act, apply to the tenancies and leases of land to which this Act applies". The present contention of the tenents is based on this section. It may be pointed out that ch. 5 of the Transfer of Property Act includes ss. 114 and 117. The last mentioned section provides that nothing in ch. 5 shall apply to leases for agriculture purposes except in so far as the State Government by notification declare them to be applicable. No such notification had been issued by the State Government. Therefore, the landlords contend, s. 114 does not apply to the present leases which are for agricultural purposes and the tenants are not entitled to relief under it. It does not seem to us necessary to decide the question so raised. In our view, the provisions in s. 114 of the Transfer of Property Act are inconsistent with the provisions of the Bombay and cannot, therefore, under s. 3 of the latter Act govern the tenancies to which it applies. We have earlier stated that the Bombay Act clearly intended that relief against termination of tendency for non- payment of rent would be given only in the cases mentioned in s. 25(1) and in no others. Under s. 114 of the Transfer of Property Act relief may be given in other circumstances. Therefore, the provisions of this section are inconsistent with the provisions of the Bombay Act. For this reason we do not think that the tenants in the cases before us are entitled to claim any relief under s. 114 of the Transfer of Property Act.

We think, therefore, that the tenants were not entitled to the relief which the authorities below granted them. Before we pass on to the other appeal raising a different question, we have to refer to the case of Raghuvir Vyasaraya Acharya v. Gobind Mogre Bandekar were it had been held by Chagla C.J., that s. 29 (3) justifies an order granting relief to the tenant and refusing to make an order for possession in favour of the landlord even where the tenant has not paid rent for more than two years. We think that this case was wrongly decided. Chagla C.J., held that s. 25 did not confer any substantive right on the landlord to obtain possession and that s. 29(3) conferred on the Mamlatdar a discretion to pass any proper order that he thought fit. We think, for the reasons earlier stated, that on both these matters the learned Chief Justices was in error. We repeat that under the Act the landlord gets a right to obtain possession of the demised premises on the termination of the tenancy under s. 14 and that s. 25 as also s. 29 clearly recognises that right.

We turn now to the remaining appeal, namely Civil Appeal No. 259 of 1959. The question raised here is whether for the purposes of s. 25(2) a tenant is to be considered as having failed to pay rent for any year in respect of which he had been granted relief under s. 25(1). The Revenue Tribunal, following a decision of the High Court at Bombay in Special Civil Application No. 2073 of 1955, unreported, held that

where a landlord made an application for possession of the demised land on the failure of the tenant to pay rent for a year within the time prescribed in s. 14, and the Mamlatdar granted relief to the tenant under s. 25(1), the default was merged in the order of the Mamlatdar and could not thereafter be relied upon for the purposes of s. 25(2). We did not have the original judgment of the High Court placed before us and are not aware of the reasons which persuaded it to the view that it took.

In our opinion, that view is clearly incorrect, Section 25(2) says that nothing in s. 25-which of course only means sub s. (1) of that section-shall apply to any tenant whose tenancy is terminated for non-payment of rent if he has failed for any three years to pay rent within the period specified in s. 14. We are unable to appreciate the contention that when a tenant has been granted relief under s. 25(1) in respect of any year's default, the default merged in the order granting relief and deceased to be a default. How can the default for the year merge in an order? No doubt relief has been given against the consequence of the default for the year, but that does not wipe out the default itself; it only prevents the termination of the tenancy, if any, consequent thereon, becoming effective. Inspite of the relief granted under s. 25(1), the tenant remains a tenant who made default in paying rent for the year within the period specified in s. 14 and that is the tenant mentioned in s. 25(2). We find nothing in s. 25(2) to justify the view that in such a case the year of default cannot be taken into account in computing the three years there mentioned. It is of some significance to point out that s. 25(2) does not require three successive years of default but it is satisfied where the tenant has been in default for any three years. If the interpretation put by the High Court were to be accepted, then a landlord wishing to recover possession of his land would have to wait till the tenant has committed default for three years, for if he took steps earlier and relief was granted to the tenant, he would not be able to recover possession after two more years of default by the tenant. We see no justification for thinking that the Act intended to put so much difficulty in the way of landlords.

We, therefore, come to the conclusion that these appeals must succeed. We set aside the orders of the High Court in the cases in which that Court had been moved and of the Revenue Tribunal and other authorities under the Bombay Act refusing to make an order for possession in favour of the landlords. We direct that the respondent tenants make over possession of the lands held by them to their respective landlords. The appellants will be entitled to costs throughout.

Appeals allowed.