Narayan Bhondoo Pimputkar & Another vs Laxman Purshottam Pimputkar & Ors on 30 October, 1973

Equivalent citations: 1974 AIR 111, 1974 SCR (2) 116, AIR 1974 SUPREME COURT 111, 1974 2 SCR 116, 1974 2 SCJ 183, 1974 (1) SCC 11

Author: Hans Raj Khanna

Bench: Hans Raj Khanna, V.R. Krishnaiyer, Ranjit Singh Sarkaria

PETITIONER:
NARAYAN BHONDOO PIMPUTKAR & ANOTHER .

Vs.

RESPONDENT:
LAXMAN PURSHOTTAM PIMPUTKAR & ORS.

DATE OF JUDGMENT30/10/1973

BENCH:
KHANNA, HANS RAJ
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KHANNA, HANS RAJ
KRISHNAIYER, V.R.
SARKARIA, RANJIT SINGH

CITATION:
1974 AIR 111 1974 SCR (2) 116
1974 SCC (1) 11

ACT:
Gujarat Patel Watans Abolition Act, 1961 (Gujarat Act 48 of 1961). s. 4 Abolition of 'Patel watans'- Right of watandar to execute decree for possession of land, it affected.

HEADNOTE:
On the question whether, the right to execute a decree for the possession of watan land which has been obtained by the watandar came to an end, because of the abolition by the Gujarat Patel Watans Abolition Act. 1961, of patel watans and the extinguishment of all incidents appertaining to them under s. 4 of, the Act,
HELD : (1) There is nothing in the language of s. 4 which renders such decrees for possession to be in executable. Had the legislature intended that such decrees should become

in-executable, the legislature would have indicated .such intention by incorporating some provision to that effect. [121B]

(2) The words "any decree or order of a Court" in the opening clause of the section do not indicate that the decree or order of court could not be executed with effect from the appointed day. The opening clause of the section only indicates that irrespective of any usage or custom and irrespective of any settlement, grant, agreement, sanad or decree or order of a court or the existing watan law. which might have defined and declared the incidents appertaining to patel watans, the results contemplated by the various clauses of the section would follow and nothing contained in such settlement etc. would prevent the operation of that section. [122E-123A]

(3) If the fact that patel watans have been abolished and incidents appertaining to them have, been extinguished does, not lead to the conclusion that the right of the erstwhile watandar to the possession of the watan lands also comes to an end. Section 4(iv) expressly provides that the resumption of watan land consequent upon the abolition of patel watans would be subject to the provisions of sections 6, 7 and 10, According to s. 6, the watan land. subject to the conditions mentioned in that section, shall be regranted to the watandar. He shall be deemed to be occupant of the said land, and he would be entitled to continue in possession if he complies with the provisions of that section. That is, so far as the quondam watandars are concerned, they are entitled to be in possession of the watan lands, though not in their capacity as watandars but by virtue of the operation of s. 6 of the Act. If the respondent would be entitled to be in possession of the land under s. 6, the right to execute the decree for possession of land cannot be denied to him. [121C-122]

(4) If the respondent is entitled to execute the decree for possession of the land obtained against the appellants the question whether the appellants, if allowed to remain in possession, could have applied for regrant to them under s. 10 is not relevant. [122C-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1573(N) of 1972.

Appeal by special leave from the judgment and order dated the 3rd February, 1971 of the Gujarat High Court at Ahmedabad in Second Appeal No.639 of 1968.

V. S. Desai, P. C. Bhartari and A. G. Meneses, for the appellants.

D. V. Patel, P. H. Parekh and Sunanda Bhandare, for respondent No. 1.

S. K. Dholakia and M. N. Shroff, for respondent No. 2. D. N. Mishra, for respondents Nos. 3a to 3d.

The Judgment of the Court was delivered by KHANNA, J.-Whether the decree for the possession of the land in dispute awarded in favour of Laxman Purshottam Pimputkar respondent No. 1 (hereinafter described as the respondent has become inexecutable after the coming into force of the Gujarat Patel Watans Abolition Act, 1961 (Gujarat Act 48 of 1961) (hereinafter referred to as the Act) is the short question which arises for determination in this appeal brought by special leave against the judgment of the Gujarat High Court.

The appellants and the respondent belong to one family. The respondent represents the seniormost branch of the family. The family was granted Patilki Watan in a number of villages, including Solsumbha, in district Thana. The watan land situated in Solsumbha is the subject matter of the present dispute. Under the Bombay Hereditary Offices Act, 1874 the person who actually performs the duty of a hereditary office for the time being is called an officiator. Purshottam, father of the respondent, was the officiator till 1921 when, because of a disqualification incurred by him, a deputy was appointed in place of Purshottam. After the death of Purshottam in 1940, the respondent became the officiator the branch of the appellants claimed to be ill possession of the watan land in dispute and some other lands under a partition effected in 1914. In 1944 the respondent moved the government for resumption of the, watan land in dispute which was in possession of the branch of the appellants. Prayer was also made by the respondent that he might be delivered possession of the land. The government after some enquiry resumed that land by order dated October 9, 1946 and directed that possession of the same be restored to the respondent. The appellants thereafter moved the government for reconsideration of that order. The government on May 2, 1947 modified its previous order by directing that the. appellants could continue to retain the possession of the land in dispute subject to payment of rent as might be fixed by the government from time to time. The respondent thereupon instituted suit for a declaration that the order of the government dated May 2,1947 and an ancillary order dated March 1, 1949 were null, void and inoperative. Prayer was also made that the appellants should remove all obstructions and hindrances from the land in dispute and should hand over the possession of the same to the respondent. It was further prayed that the appellants should render account of the income, of the land to the respondent. The suit was resisted by the appellants on the ground that the impugned orders were administrative orders and no suit could lie for setting them aside. The suits were also stated to be barred by limitation. The trial court decreed the suit in favour of the respondent. On appeal the District Judge set aside the decreed in favour of the respondent. The decision of the District Judge was affirmed on second appeal by the High Court. The respondent then came up in appeal to this Court by special leave. This Court as per its judgment dated December 13, 1962, reported in, (1964) 1 S.C.R. 200, accepted the appeal of the respondent and set aside the judgment of the High Court and the District Judge and restored that of the trial court whereby decree for possession of the land in dispute had been awarded in favour of the respondent against the appellants.

In the meanwhile in 1960 the State of Bombay was bifurcated and the land in dispute which was earlier part of Bombay State became part of the State of Gujarat. On April 1, 1963 the Act came into

force. On July 19, 1966 the respondent filed an application to execute the, decree for possession of the land which-had been awarded in his favour. Objection was then taken by the appellants that the decree awarded in favour of the respondent had become inexecutable because of the coming into force of the Act. This objection found favour with the executing court which consequently dismissed the execution application. Appeal filed by the respondent against the order of the executing court was dismissed by the District Judge Bulsar. The respondent thereafter filed second appeal before the Gujarat High Court. The High Court came to the conclusion that the respondent was entitled to execute the decree for possession of the land obtained by him against the appellants. Appeal of the respondent was accordingly allowed. The appellants have thereafter come up in appeal to this Court by special leave.

The question which arises for determination, as stated earlier, is whether the decree for possession of the land in dispute which was awarded in favour of the respondent has become inexecutable because of the coming into force of the Act. It would, therefore, been to refer to the relevant provisions of the Act. Section 2 contains the definitions. According to section 2(7), "hereditary patelship" means every village office of a revenue or police patel held hereditarily under the existing watan law for the performance of duties connected with the administration or collection of the public revenue of a village or with the village police, or with the settlement of boundaries or other matters of civil administration of a village and includes such office even where the services originally appertaining to it have ceased to be demanded. Section 2(11) defines "patel watan" to mean a watan held under the existing watan law for the performance of duties appertaining to the hereditary patelship whether any commutation settlement in respect of such patel watan has or has not been effected. "Unauthorised holder" has been defined in section 2(14) to mean a person in session of a watan land without any right or under a lease, mortgage sale, gift or any other kind of transfer thereof, which is null and void under the existing watan law. "Watan", according to section 2(15), means watan property, if any, together with the hereditary office and the rights and privileges attached 'to it. Section 2(16) defines "watandar" to mean a person having hereditary interest in a patel watan under the existing watan law and includes a matadar and 'a representative watandar. Section 2(17) defines "watan land"

> to mean the land forming part of the watan property. According to section 2(18). "watan property" means the movable or immovable property held, acquired or assigned under the existing watan law for providing remuneration for the performance of the duty appertaining to a hereditary patelship and includes a right under the existing watan law to levy customary fees or perquisites in money or in kind, whether at fixed times or otherwise and also includes cash payments in addition to the original watan property made voluntarily by the State Government and subject periodically,to motion or withdrawal.
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> Section 3 gives, powers to the Collector, to decide various questions arising under the Act including the question whether any land is watan land and whether a person is, watandar or authorised holder or unauthorised holder. Right is also given to a person aggrieved by the order of the Collector to file appeal to the State Government Section 4 has material bearing and reads as under :

"4. Notwithstanding any usage or custom or anything contained in any settlement, grant, agreement, sanad, or any decree or order of a court or the existing watan law, with ,effect on and from the appointed day,-

(i) all patel watans shall be and are hereby abolished;

(ii) all incidents (including the right to hold office and watan property, the right to levy customary fees or perquisites in money or in kind, and the liability to render service) appertaining to the said watans shall be, and are hereby extinguished;

(iii) no office of patel shall be, hereditary; and

(iv) subject to the provisions of sections 6, 7 and 10 all watan land shall be and is hereby resumed and shall be subject to the payment of land revenue under the provisions of the Code and the rules made thereunder as if it were an unalienated land :

Provided that such resumption shall not affect the validity of any alienation of such watan land made in accordance with the provisions of the existing watan law or of the rights of an alienee thereof or any person claiming under or through him."

Section 5 deals with resumption of watan land which is not a grant of soil and is held subject to a total or partial exemption from payment of land revenue thereof. We are, in the present case not concerned with such watan land. According to section 6, watan land to which the provisions of section 5 do not apply shall, in cases not falling under section 7 or section 10 be regranted to the watandar of the watan to which it appertained on payment by or on behalf of the watandar to the State Government of the occupancy price equal to six times the amount of the full assessment of such land within the prescribed period and in the prescribed manner and the watandar shall be deemed to be occupant within the meaning of the Code in respect of such land and shall primarily be liable to pay land revenue to the State Government in accordance with the provisions of the Code and the rules made thereunder; and all the provisions of the Code and the said rules relating to unalienated land shall subject to the provisions of this Act, apply to the said land.

Section 7 deals with the regrant of watan land to authorised holders. According to the section, any watan land other than land to which the provisions of section 5 apply held by an authorised holder shall be regranted to him on payment by him or on his behalf to the State Government of the occupany price mentioned in section 6 and subject to the like conditions and consequences and all the provisions of section 6 shall apply mutatis mutandis in relation to the regrant of the, land under this section to the authorised holder as if were the watandar. Section 10 provides that where any watan land is in possession of an unauthorised holder, he shall be summarily evicted therefrom by the Collector in accordance with the provisions of the Code : Provided

that if the State Government is of opinion that in view of the investment made by such bolder in the development of the land or in the non- agricultural use of the land or otherwise, his eviction will cause undue hardship to him, it may direct the Collector to regrant the land to such holder on payment of such amount and subject to such terms and conditions as the State Government may determine and the Collector shall regrant the land accordingly. It is further provided in the section that watan land unless regranted under the section shall be disposed of in accordance with the provisions of the Bombay Land Revenue Code applicable to disposal of unoccupied unalienated land. Section 22 contains the saving clause and reads as under

"22. Nothing contained in this Act shall affect

(i) any obligation or liability already incurred under an incident of a patel watan before the appointed by, or

(ii) any proceeding or remedy in respect of such obligation or liability, and any such proceeding may be continued or any such remedy may be enforced as if this Act had not been passed."

Mr. Dasai on behalf of the appellants has contended before us that in view of the provisions contained in section 4 of the Act, the decree for the possession of the land in dispute awarded in favour of the respondent has become inexecutable. it is submitted that as the decree was awarded in favour of the respondent in his capacity as a watandar and as patel watans have been abolished, the respondent cannot obtain the possession of the land to which he was entitled as a watandar' This stand has been controverted by Mr. Patel on behalf of the respondent and he submits that there is nothing in the language of section 4 which renders the decree for the possession of the land in dispute inexecutable. In any case, according to Mr. Patel, the right of the respondent to execute the decree and the liability of the appellants to hand over possession of the land to the respondent under the decree have been kept intact by section 22 of the Act.

The provisions of section 4 of the Act have been reproduced above and it is manifest therefrom that with effect from the appointed day, viz, April 1, 1963 all patel watans are abolished and all incidents appertaining to the said watans are extinguished. It is further provided that as from the appointed day no office of patel shall be hereditary and that subject to the provisions of section 6, 7 and 1 0 all watan lands are resumed and would be subject to the, payment of land revenue. The question with which we are concerned is whether the right to execute the decree for the possession of watam land which has been obtained by the watandar against other persons comes to an end because of the abolition of patel watans and the extinguishment of all incidents appertaining to the said watans. The answer to this question, in our opinion, should be in the negative. There is nothing in the language of section 4 which renders Such decrees for possession to be inexecutable. Had the legislature intended that the decrees for possession of the watan lands which had been obtained by the watandars against third persons should become inexecutable, the legislature would have indicated such an intention by incorporating some provision to that effect. In the absence of any

such provision, it is not permissible to read 'a prohibition in section 4 of the Act 'On the execution of a decree for possession of the watan land obtained in favour of the watandar.

The fact that patel watans have been abolished 'and incidents. appertaining to the watans have been extinguished does not lead to the conclusion that the right of the erstwhile watandar to the possession of the watan lands also comes to an end. Indeed, clause (iv) of section 4 of the Act expressly provides that the resumption of watan land consequent upon the abolition of patel watans and the extinguishment of incidents appertaining to the said watans would be subject to the provisions of sections 6, 7 and 10. According to section 6, the watan land, subject to the conditions mentioned in that section,'shall be regranted to the watandar of the watan and he shall be deemed to be occupant of the said land. The watandar would be entitled to continue to be in possession of the watan lands, if he complies with the provisions of that section despite the abolition of patel watans and the extinguishment of incidents appertaining to the said watans. The object of the Act as would appear from its preamble was to abolish patel watans because its hereditary character smacked of some kind of feudalism. At the same time, the legislature made it clear that it was not intended to deprive the watandar of the possession of the land if he complied with the conditions laid down in section 6 of the Act. It, therefore, cannot be said that there was a severance of all connections between the watandar and the watan land because of the abolition of patel watans and the extinguishment of incidents appertaining to such watans. A residual right was still there in the erstwhile watandar and that included the right to retain possession of watan land if the conditions mentioned in section 6 were complied with. Section 7 of the Act contains provisions for regrant of watan lands to authorised holders. while section 10 provides for eviction of unauthorised, holders. Provision is also made for regrant of the land by the State Government to unauthorised holders if the Government forms the opinion that his eviction would cause undue hardship to him.

It would follow from a combined reading of sections 4, 6 7 and 10 of the Act that a watandar on the abolition of patel watans and extinguishment-of the incidents appertaining to the watans does not automatically lose his right to possession of the watan lands. The same is. true of an authorised holder. Their right to retain possession of watan land as long as they comply with the prescribed conditions is .statutorily recognised. The position of a watandar and an authorised holder is in marked contrast to that of an unauthorised holder who can be summarily evicted from the watan lands by the Collector under section 10 of the Act. So far as quondam watandars are concerned, they are entitled to be in possession of the watan lands not in their capacity as watandars but by virtue of the operation of section 6 of the Act. Likewise, the authorised holders are entitled to be in possession by virtue of section 7 of the Act. If the respondent is entitled to be in possession of the land in dispute under section 6 of the Act, the right to execute the decree for possession of the land can plainly be not denied to him on account of the provisions of the Act.

According to Mr. Desai, if the appellants are not dispossessed from the land in dispute in execution of the decree obtained by the respondent against them, the appellants can 'approach the State Government for regrant of the land in dispute to them because their eviction would cause undue hardship to them. It is, in our opinion, not necessary for the purpose, of the present case to go into the question whether the appellants can claim regrant of the land under section 10 of the Act because this question does not materially affect the right of the respondent to execute the decree for

possession of the land in dispute obtained by him against the appellants. If the respondent is entitled to execute the decree for possession of the land obtained against the appellants, in that event the question whether the appellants, if allowed to remain in possession, could have applied for regrant of the land to them, is hardly of any relevance.

Reference has been made by Mr. Desai to the words "any decree or order of a court" in the opening clause of section 4 of the Act. It is urged that those words indicate that the decree or order of a court can also be not executed with effect from the appointed day. This ,contention, in our opinion, is not well-founded. What is contemplated by the opening clause of section 4 of the, Act is that not-withstanding any usage or custom or anything contained in any settlement, grant, agreement, sanad, or any decree or order of a court or the existing law with effect from the appointed day, the results mentioned in the various clauses of that section would follow. The words "any decree or order of a court" are preceded by the words "anything conta ined in any settlement, grant, agreement, sanad". It is a well established rule in construction of statutes that general terms following particular ones apply only to such perso ns or things as are ejusdem generis with those comprehended 'in the language of the Legislature,. In other words, the general expression is to be read as comprehending only,things of the same kind as that designated by the preceding particular expressions, unless there is something to show that a under -sense was intended.(see p. 297 of Maxwell on the Interpretation of Statutes Twelfth Edition). In our opinion, the opening clause of section 4 indicates that irrespective of any usage or custom and irrespective of any settlement, grant, agreement, sanad, or decree or ,order of a court or the, existing watan law, which-might have defined ,and declared the incidents appertaining to patel watans. the results contemplated by the various clauses of section 4 would follow and nothing contained in the settlement, grant, agreement, sanad, or decree or order of the court or the existing watan law would prevent the operation of that section. In view of what has been held above, it is, in our opinion, not necessary to deal with the alternative argument of Mr. Patel that the execution proceedings taken by the. respondent to recover possession of the land were also protected by section 22 of the Act.

Reference has been made by Mr. Desai to a Full Bench decision of Nagpur High Court in the case of Chhote Khan v. Mohammad Obedulla Khan(1). It was held by the majority in that case that after the coming into force of the M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 the preemption decrees obtained by landlords are no longer executable because the persons seeking to enforce them have lost their proprietary interest. The aforesaid case cannot be of any help to the, appellants because it has been conceded by Mr. Desai that there were no provisions in the above mentioned Madhya Pradesh Act corresponding to sections 6, 7 and 10 of the Act with which we are concerned. It is also consequently not necessary to express any opinion about the correctness of the view taken by the majority in the above mentioned Full Bench decision.

There is, in our opinion, no merit in this appeal which is accordingly dismissed with costs.

V.P.S. Appeal dismissed.

(1) A.I.R. 1953,Nag. 361.