

Zohrabi vs Arjuna And Ors. on 16 August, 1979

Equivalent citations: AIR1980SC101, (1980)2SCC203, 1979(11)UJ725(SC), AIR 1980 SUPREME COURT 101, 1979 UJ (SC) 725, 1980 3 MAH LR 101 (SC), (1980) MAH LJ 58, 1980 (2) SCC 203, (1979) 2 SCWR 322

Author: A.C. Gupta

Bench: A.C. Gupta, P.S. Kailasam

JUDGMENT

A.C. Gupta, J.

1. This appeal arises out of a proceeding for ejectment under the Hyderabad Tenancy and Agricultural lands Act, 1950. The only question for consideration is whether the proviso to Sub-section (1) of Section 28 of the Act as amended in 1960 would apply to this case. Section 28(1) of the Act reads:

Where a tenancy of any land held by a tenant is terminated for non payment of rent and the land holder files any proceeding to eject the tenant, the Tahsildar shall call upon the tenant to tender to the land holder the rent in arrears together with the cost of proceeding within ninety days from the date of the order, and if the tenant complies with such order, the Tahsildar shall, in lieu of making an order of ejectment, pass an order directing that the tenancy has not been terminated and thereupon the tenant shall hold the land as if the tenancy had not been terminated.

There was a proviso to this sub section as follows:

Provided that 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 with in the period specified in Sub-clause (i) of Clause (a) Sub-section (2) of Section 19.

This proviso was amended by Section 7 of the Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1960. The Amendment Act added the following words at the end of the existing proviso:

and the land-holder has given intimation to the tenant of the default within a period of six months of each default.

The Amendment Act received the assent of the President on December 18, 1960 and was published in the Maharashtra Government Gazette, Extraordinary, on December 29, 1960.

2. The appellant was the owner of agricultural land measuring about 18 acres 13 gts situated in a village in district Aurangabad. The predecessor- in-interest of the respondents was a tenant of the said land. On January 3, 1961 the appellant issued a notice under Section 19(2) of the Hyderabad Tenancy and Agricultural Lands Act, 1950 terminating the tenancy on the ground of non payment of rent. The notice of termination was served on the tenant on January 11, 1961. The appellant applied for possession October 30, 1961. The original tenant having died during the pendency of the proceeding, his heirs and legal representatives were substituted in his place. The Naib Tahsildar allowed the application for possession. From his order the tenants took an appeal to the Deputy Collector, Land Reforms, Aurangabad which also failed. The tenants then preferred a revision before the Maharashtra Revenue Tribunal, Aurangabad. The Tribunal allowed the revision petition holding that the landlord not having intimation to the tenant of the default within a period of six months of each default as required by the amended Section 28 of the Act, could not succeed. The appellants before us question the propriety of the order passed by the Revenue Tribunal.

3. The only point urged on behalf of the appellant is that the amended Section 28 requiring the landholder, holder to give notice to the tenant within a period of six months of each default was not applicable to the case because the tenant having defaulted in payment of rent for three years before the amended proviso to Section 28(1) came into force on December 29, 1960. The landlord had acquired a right to institute a proceeding for the eviction of the tenants that could not be taken away by the amendment which was not given a retrospective operation either by express words or by necessary implication. We are unable to agree. It has been held ever since *Abbet v. Minister of Land* (1895) AC 425 that a mere right to take advantage of the provisions of an Act is not an accrued right. *Abbot's case* (supra) was followed by this Court in a number of cases: *Sakharam v. Manikchand Mothichand Shah and Anr.* *Hungerford Investment Trust Limited v. Haridas Mundhra and Ors.* *Lalji Raja & Sons v. Hansraj Nathuram* . In the present the application for possession was made long after the amendment came into force; even the right to institute a proceeding does not appear to have accrued before the amendment because the notice terminating the tenancy was also issued after the proviso was amended. There is no substance in the appeal which is dismissed with costs.