Supreme Court of India
Maulana Shamsuddin vs Khushilal And Ors. on 8 September, 1978
Equivalent citations: AIR 1978 SC 1740, (1979) 1 SCC 121, 1979 1 SCR 582, 1978 (10) UJ 723 SC
Author: Untwalia
Bench: N Untwalia, P Shinghal, S M Ali
JUDGMENT Untwalia, J.

1. In this appeal by certificate granted by the Madhya Pradesh High Court the question of law which falls for our determination is whether conferral of Bhumiswami rights on Shri Khushi Lal, respondent No. 1 in respect of the lands in question in accordance with Section 190 of the Madhya Pradesh Land Revenue Code, 1959, hereinafter referred to as the M.P. Code of 1959, by the Revenue Authorities is correct and sustainable.

2. Maulana Shamsuddin, the sole appellant in this appeal, was a Muafidar in the erstwhile State of Bhopal of the disputed lands in accordance with the Bhopal State Land Revenue Act, 1932 (for brevity, the Bhopal Act of 1932). The first respondent claimed to be a Shikmi of the appellant in respect of the lands in question. His case was that the appellant was the occupant of the lands within the meaning of the Bhopal Act of 1932. On the coming into force of the M.P. Code of 1959, the appellant became a Bhumiswami under Clause (c) of Section 158 and the respondent became an occupancy tenant under Section 185(1)(iv)(b). Thus he became entitled to conferment of Bhumiswami rights under Section 490. He applied before the Tahsildar, Huzur, respondent No. 5 for mutation of his name as a Bhumiswami in the Revenue records. The Tahsildar by his order dated the 24th June, 1963 directed Khushi Lal to deposit compensation equivalent to 15 times of the land revenue on the payment of which his name was to be recorded as a Bhumiswami of the holdings. It appears his name was so recorded on the deposit of the compensation money. The appellant filed an appeal before the Sub-Divisional Officer. Huzur, respondent No. 4 from the order of the Tahsildar. His appeal was dismissed by the Sub-Divisional Officer on the 12th of December, 1963. The appellant failed before the Additional Commissioner, Bhopal, respondent No. 3 on the dismissal of his second appeal on the 25th August 1964. He went in revision before the Board of Revenue, (respondent No. 2). The revision was allowed on the 6th of July, 1965. The Board held that the appellant was not an occupant within the meaning of Section 2(15) of the Bhopal Act of 1932 and consequently the first respondent was not a Shikmi under the said Act. He did not become an occupancy tenant under the M.P. Code of 1959 and, therefore, conferral of Bhumiswami rights on him was erroneous in law. The first respondent filed a Writ Petition in the High Court and succeeded there. The High Court held that the Board was not right in its view of the law. The appellant was an occupant and the respondent No. 1 was a sub-tenant (Shikmi) under the Bhopal Act of 1932. Consequently he became an occupancy tenant entitled to conferment of Bhumiswami rights under the M.P. Code of 1959. The appellant has preferred this appeal in this Court to challenge the decision of the High Court and for restoration of the order of the Board of Revenue.

3. Mr. Harbans Singh, appearing for the appellant, advanced a very fair and able argument to advocate his cause. He could not and did not dispute that if the appellant was an occupant, the first respondent was a Shikmi under the Bhopal Act of 1932 and if that be so then the order of the High Court is unassailable. But he vehemently contended that the appellant was not an occupant. learned

Counsel for the respondents controverted his argument. Prima facie the argument, as presented, for the appellant appeared to have substance and force but on a close scrutiny we had no difficulty in rejecting it.

4. Section 2 of the Bhopal Act of 1932 is the definition section and as usual at the outset it uses the phrase "In this Act, unless there is anything repugnant in the subject or context,". Sub-section (5) defines "Alienated land" to mean "land in respect of which, pursuant to a grant made by His Highness the Ruler, Government has, in whole or in part, assigned or relinquished its right to receive land revenue, and includes such village waste and forest as are mentioned in the sanad of the grant." Thereafter the sub-section says :-"If the land revenue is assigned the person to whom such assignment is made is called a "Jagirdar". If the land revenue is relinquished the person in whose favour such relinquishment is made is called "Muafidar";". Sub-section (15) provides :-

"Occupant" means a person who holds land direct from the Government or would do so but for the right of collecting land revenue having been assigned or relinquished.

5. It would thus be seen that if pursuant to the grant made by His Highness the Ruler of Bhopal, Government's right to receive land revenue was assigned to the grantee then he was called a Jagirdar and if it was relinquished then the person in whose favour such relinquishment was made was called Muafidar. Under the first part of the definition of "occupant" given in Sub-section (15) a person who holds land direct from Government would be an occupant and being not a person in whose favour the right to receive land revenue has either been assigned or relinquished will be required to pay to the Government land revenue or rent. We are using both the words 'revenue' and 'rent' on the assumption that such an occupant being neither a Jagirdar nor a Muafidar would be required to pay some money to the Government for being in occupation of the land. Under the second part of the definition a Jagirdar or a Muafidar would also be holding land direct from Government but because the right of collecting land revenue has either been assigned or relinquished, strictly speaking, he does not hold land direct from the Government in the sense of paying any land revenue or rent to it because the Government has parted with the right to collect land revenue from him. We are of the opinion, in agreement with the High Court, that on a careful analysis of the definition of the term "occupant" in Section 2(15), it is legitimate to conclude that even a Jagirdar or a Muafidar is an occupant. He holds land under the Government; on the resumption of the Jagir or the Muafi rights by the Government the land reverts back to it. Payment of land revenue or rent for holding land under the Government was not a sine-qua-non for making the holder of the land an occupant.

6. "Rent" is defined in Sub-section (19) of Section 2 of the Bhopal Act of 1932 to mean "whatever is payable to an occupant in money, kind or service by a shikmi for the right to use land." This would show that strictly speaking a person holding the land direct from the Government within the meaning of the first part of the definition in Sub-section (15) is not to pay any money to the Government in the shape of rent but what he will be required to pay would be the land revenue. But a Jagirdar or a Muafidar holding the land under the Government is not required to pay any land revenue. Sub-section (21) defines "Shikmi" to mean "a person who holds land from an occupant and is, or but for a contract, would be liable to pay rent for such land to that occupant, but does not

include a mortgagee or a person holding land directly from Government." Respondent No. 1 was inducted upon the land by the appellant in the year 1958. Since then he had been cultivating the land. He could not but be a Shikmi within the meaning of Sub-section (21). Mr. Harbans Singh was not right in saying that he was a mere cultivator and was cultivating the land not as a sub-tenant or a Shikmi but must be doing so under some special arrangement of cultivating the land as a servant of the appellant or the like. There is no warrant for such a contention.

7. Section 46 of the Bhopal Act of 1932 runs thus :

(1) All land to whatever purpose applied and wherever situate, is liable to the payment of revenue to the Government, except such land as has been wholly exempted from such liability by a special grant of His Highness the Ruler or by a contract with the Government, or under the provisions of any law or rule for the time being in force.

(2) Such revenue is called "Land Revenue"; and that term includes moneys payable to the Government for land, notwithstanding that such moneys may be described as premium, rent, quit-rent, or in any other manner in any enactment, rule, contract or deed.

8. This section lends support to the view which we have expressed above that a person holding land directly under the Government and not being a Jagirdar or a Muafidar will be liable to pay land revenue to the Government in whatever name the payment of money may be described such as premium, rent, quit-rent etc.

9. The High Court in its judgment has adverted to some sections contained in Chapter VI of the Bhopal Act of 1932. Section 51 provided for disposal of unoccupied land. Sub-section (1) of Section 52 says that a person acquiring the right to occupy land under Section 51 will be called an occupant of such land and under Sub-section (2) all persons who, prior to the commencement of this Act, had been entered in settlement records as responsible for the payment of land revenue to the Government, or who, but for a special arrangement, would have been so responsible, would be deemed to be occupants within the meaning of Section 52. In our opinion this special arrangement mentioned in Sub-section (2) cannot be squarely equated with the assignment or relinquishment of the right to receive land revenue envisaged by the Bhopal Act of 1932.

10. We do not feel inclined to agree with the High Court that the appellant became occupant under Section 52(2) of the Bhopal Act of 1932 because he was a person who was entered into settlement records prior to the coming into force of that Act. Firstly it is not clear whether the facts so stated in the judgment of the High Court are quite correct, and, secondly, it is admitted on all hands that the appellant was a Muafidar and, therefore, in our opinion he was an occupant within the meaning of Section 2(15).

11. Section 54 provided that the rights of an occupant, meaning thereby the occupant as mentioned in Section 52, were to be permanent, transferable and heritable. Ordinarily and generally the rights of a Jagirdar or a Muafidar being occupants within the meaning of Section 2(15) read with Section 167 were neither transferable nor heritable and in that sense the rights were not permanent. In our

opinion, therefore, the type of occupant who is dealt with in Chapter VI of the Bhopal Act of 1932 is not the type of occupant having the same kind of incidence as defined in Section 2(15). As we have already indicated it is a well-established principle of law that a particular term defined in the definition section is subject to anything repugnant in the context of the other provisions of the Statute. The provisions of Chapter VI being at variance with the definition clause cannot make the occupant described in that Chapter the same occupant as defined in Section 2(15).

12. Our attention was drawn by the learned Counsel for the appellant to Section 167 of the Bhopal Act of 1932 dealing with the restriction in the rights of the Jagirdars and Muafidars to transfer such rights or create encumbrances on them. According to the said Section no Jagirdar or Muafidar could "transfer his rights as Jagirdar or muafidar, or, except for such period as he is in possession of his jagir or muafi create an encumbrance on the income thereof." But inducting a person as Shikmi on the land was not prohibited under Section 167. On the other hand, Section 194 provided that an occupant could make a lease of his holding and under certain circumstances it could not be for a term of more than 12 years. It was then argued that the right of a Muafidar being in the nature of a life grant was valid only for the life time of the Muafidar. So the Muafidar could not induct a person as Shikmi who ultimately could become an occupancy tenant entitled to conferment of Bhumiswami rights later on. This argument has to be stated merely to be rejected. It may well be that the right of a Shikmi would not have lasted beyond the duration of the right of the Muafidar. But then, his rights were enlarged by operation of the welfare legislation enacted by the State Legislature for the benefit of the cultivators of the soil in the year 1959. Section 185(1)(iv)(b) of the M.P. Code of 1959 says :-

(1) Every person who at the coming into force of this Code holds-

...

(iv) in the Bhopal region-

(b) any land as a shikmi from an occupant as defined in the Bhopal State Land Revenue Act, 1932 (IV of 1932) :

...

shall be called an occupancy tenant and shall have all the rights and be subject to all the liabilities conferred or imposed upon an occupancy tenant by or under this Code.

As held by us above the appellant was an occupant as defined in the Bhopal Act of 1932 and thus under Clause (c) of Section 158 on the coming into force of the Code he became a Bhumiswami. But his Bhumiswami rights were liable to be conferred, under certain conditions, on the occupancy tenant under Section 190. As a matter of fact in accordance with the said provision the Bhumiswami rights were conferred on respondent No. 1 on payment of compensation being in the amount of 15 times of the land revenue for payment to the appellant. Our attention was drawn to a recital of facts in the Statement of the case of some of the respondents that the appellant had withdrawn the said amount of compensation. But we are not resting our judgment on that ground as in our opinion,

whether he has withdrawn the amount of compensation or not, he cannot challenge the conferment of his Bhumiswami rights on respondent No. 1, which have been validly and legally conferred.

13. We may now briefly deal with a few more short submissions of the appellant. In Section 185(1)(iv)(a) of the M.P. Code of 1959 it is provided that if a person who at the time of coming into force of the said Code was holding any land as a sub-tenant as defined in the Bhopal State Sub-tenants Protection Act, 1952 shall also be called an occupancy tenant. A copy of this Act could not be made available for our perusal. But what we get from the order of the Board of Revenue is that a sub-tenant as defined in the Bhopal Act of 1952 means a person who holds a parcel of khud kasta land from a Jagirdar. Along with this our attention was also drawn to the Bhopal State Sub-Tenants (Of Occupants) Protection Act, 1954. In this Act, Section 2(b) runs thus :-

The expression "occupant" shall have the same meaning as in the Bhopal State Land Revenue Act, 1932 (IV of 1932) and, for the purposes of this Act, it should also include a muafidar, as defined in Bhopal State Land Revenue Act, 1932 (IV of 1932).

In other sections of the said Act protection against ejectment was given to the Shikmis. The argument was that protection to the sub-tenants of Jagirdars was given in the Bhopal Act of 1952 and protection to such persons was given in case of sub-tenants of Muafidar under the Bhopal Act of 1954 by including Muafidar in the expression 'occupant' occurring in the said Act. Counsel, therefore, submitted that if the term 'occupant' in the Bhopal Act of 1932 had included a Muafidar then there was no necessity of expressly and separately including a Muafidar in the definition of the said expression in the Act of 1954. In our opinion this argument has no substance. It may be by way of abundant precaution or for putting the matter beyond any shadow of doubt that the expression 'occupant' was defined in a comprehensive manner in the Bhopal Act of 1954. Section 3 of the said Act shows that even a Muafidar could sub-let a land to a person and induct him as a Shikmi prior to the coming into force of this Act. Such a Shikmi got the protection against ejectment by operation of law engrafted in the Bhopal Act of 1954. After the passing of this Act, he no longer could be said to be a Shikmi only during the life time of the Muafidar but was so even beyond it.

14. The counsel for the appellant called our attention to a decision of this Court in Begum Suriya Rashid and Ors. v. State of Madhya Pradesh [1969] I SCR 869 : 1971 MPLJ. 352. In this case it was held that the muafi grants to the predecessor-in-interest of the appellants before the Supreme Court were not hereditary or perpetual and the appellants could not claim title as Muafidars even though some contradictory arabic expressions had been used in the document of grant. This decision does not advance the case of the appellant any further.

15. For the reasons stated above, we dismiss this appeal but make no order as to costs.