Supreme Court of India
Naranbhai Dayabhai Patel & Anr vs Suleman Isubji Dadabhai on 11 January, 1996
Equivalent citations: 1996 AIR 1184, 1996 SCC (7) 278
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
NARANBHAI DAYABHAI PATEL & ANR.

Vs.

RESPONDENT:
SULEMAN ISUBJI DADABHAI

DATE OF JUDGMENT: 11/01/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
1996 AIR 1184 1996 SCC (7) 278
JT 1996 (1) 626 1996 SCALE (1)611

ACT:

HEADNOTE:

JUDGMENT:

O R D E R This appeal by special leave arises from the judgment of the Division Bench of the Gujarat High Court in L.P.A. No. 10/76 dated July 27, 1979. The undisputed facts are that the Bombay Tenancy & Agricultural Lands, Act, 1948 (for short, 'the Tenancy Act') was amended from time to time. The Amendment Act, 1956 had come into force on August 1, 1956. By operation of Section 32 of the Tenancy Act, the tenant has become a deemed purchaser w.e.f. April 1, 1957 which is envisaged by the Act as the "Tillers" day". The erstwhile land-holder, the respondent on December 12, 1956 terminated the tenancy of the appellants and filed the Trust deed before the Assistant Charity Commissioner under Section 18 of the Bombay Public Trusts Act, 1950 (Bom. Act XXIX of 1950) (for short, 'the Act') for registration. On January 31, 1957, the Trust was registered without any notice to the appellants. Against the said registration, the appellants carried the matter in appeal to the Charity Commissioner under Section 70 of the Act. But the Charity Commissioner by his order dated August 8, 1957 dismissed the appeal holding that "It is difficult to accept this argument". A trust is a mode of transfer known to law and if the legislature really wanted a transfer

by way of a trust also to be prohibited, it could have so mentioned. A gift as defined in Section 122 of the Transfer of Property Act "cannot be said to include a trust". Against the said judgment, the appellants filed before the District Judge an appeal on October 4, 1957. The Assistant Judge, Surat in Misc. Appln. No. 64 of 1957 by his order dated August 18, 1967 held that "From the aforesaid comments, it will be seen that a distinction is made about the vesting declaration and it has not been mentioned therein that the vesting declaration would tantamount to a gift." Accordingly, it had confirmed the order of the Assistant Commissioner. The appellants further carried the matter in appeal. The learned single Judge in First Appeal No. 347 of 1968 by judgment and decree dated September 22, 1975 set aside the order and held submissions. We record the valuable assistance rendered by him. The question is : whether the creation of the trust on the facts of this case is valid in law? It is seen that, as found by the learned single Judge of the High Court, pursuant to the proceedings taken under Section 32 declaring that the appellants were the deemed purchasers, they became deemed tenants on Tillers' day on April 1, 1957. The order was allowed to become final. Therefore, it binds the respondent, erstwhile owner of the land. The lands stood vested in the appellants. The respondent, thereby got divested his right as owner since the tenant became owner by statutory purchase. The question then is : whether the respondent could create a trust bequeathing the property as gift to the trust to which he also is the beneficiary? It is contended by Shri Mukul Mudgal, learned counsel that in view of the judgment of this Court in Maneksha Ardeshir Irani & Anr. vs. Manekji Edulji Mistry & Ors. [(1975) 2 SCR 341], the tenant has no right under Section 88-B of the Act to be heard before the permission is granted by the Collector under the Tenancy Act and that, therefore, though the Mamlatdar granted the order under Section 32, the appellant had no right to be heard in the matter. We are unable to agree with Shri Mudgal in his contention that the Mamlatdar in his proceedings under Section 32 had held that the appellants became the deemed purchasers by operation of Section 32. The respondent allowed that order to become final. Therefore, the land having been vested in the tenant by statutory operation of Section 32, the creation of the trust and registration thereof under Section 18 of the Act is not valid in law. Further a Letters Patent Appeal was carried and the Division Bench reversed the findings and held that there cannot be a transfer by a single person in his capacity as an individual and at the same time as a trustee beneficiary and that, therefore, it cannot be construed to be a gift under Section 122 of the Transfer of Property Act. The creation of the trust and registration thereof under Section 18 are valid in law. Thus this appeal by special leave has been filed.

Since the respondent, though served, had not appeared either through counsel or in person and since an important question of law has arisen, we requested Sri Mukul Mudgal, the learned counsel to assist this Court as amicus curiae and he has rendered valuable assistance by making thorough study and filing written Ardeshir Erani's case, [supra] this Court had held at page 344 thus:

> "The appellant at no stage denied the fact that the lands are the property of a Trust. The inquiry is between the Collector and the Trust. The conclusive evidence clause in the Section means that it is a rule of evidence which would not render it necessary for it to prove again the compliance with the requirements."

The High Court in that case had held that the appellant had at no stage denied the fact that the lands were the properties of the trust. In the backdrop of those facts, this Court concluded that the tenant

was not entitled to be heard. As stated earlier, when the tenant has a pre-existing right and he is divested of that right and by operation of the provisions of the Act he is precluded to file a suit challenging the correctness of the registration of the trust, certainly, he is a person vitally interested to defend his right, title and interest in the property. Therefore, he is a person interested to be heard before registration of the trust. In this case, admittedly, no notice was issued nor was he heard. It is clear from the proceedings that, as a fact, the registration was taken up by the Assistant Charity Commissioner on January 31, 1957 and on the same day the registration. It is seen that the order of Mamlatdar passed under Section 32 had become final. Thereby, the erstwhile land owner had been divested of his title to the property w.e.f. April 1, 1957. All to which he is entitled is the compensation in the manner prescribed under the Act. It is true that at the time of the registration of the trust, strictly the tenant is not entitled to be heard provided he has no pre-existing right in the land, the subject matter of bequeath. In the enquiry under Section 88-B, question relating to two aspects would arise in registration of trust of the kinds covered by the Act, viz., of the factum of the creation of the trust and the utilisation of the income derived from the land bequeathed to the trust towards charitable purpose. In that enquiry by the Collector on these two aspects, certainly the tenant has no right to say in the matter. But in a case where the tenant has a pre-existing right and his right is sought to be divested in creating the trust, certainly he is an interested person to be vitally affected by the registration of the trust. Consequently, when the proceedings under Section 18 of the Act was taken, as envisaged in Section 19 of the Act, the tenant being an interested person is entitled to be heard. In Maneksha was granted. The enquiry contemplated under Section 19 was given a ceremonial send off without being complied with. Under those circumstances, the learned single Judge was right in concluding that since the order passed under Section 32 was not assailed by the respondent, the appellants were entitled to be heard before granting registration for the trust and vesting the same in the trust.

The question then is : whether the Division Bench was right in interfering with the order? It is contended that clause 15 of the Letters Patent Act is not available to the respondent and that, therefore, the Letters Patent Appeal would not lie. This point is squarely covered by the judgment of this Court in Ramchandra Goverdhan Pandit vs. Charity Commissioner of State of Gujarat [(1987) 2 SCR 1083]. In that case on suo motu enquiry under the Act, the Deputy Commissioner had held that the properties were of public interest. On appeal, the Charity Commissioner confirmed and dismissed the appeal. Appeal under Section 72 of the Act was preferred to the District Court and the District Court dismissed the same. When the first appeal was filed in the High Court, the learned single Judge dismissed the appeal. In the Letters Patent Appeal the question arose : whether an appeal would lie against the decision of the learned single Judge. This Court examined the controversy and concluded at page 1089, thus :

> "The power of this District Court in exercising jurisdiction under Section 72 is a plenary power. It is true that the Commissioner is not subordinate to the District Court but the District Court has powers to correct, modify, review or set aside the order passed by the Commissioner. All the characteristics of an appeal and all the powers of an appellant Court are available to the District Court while deciding an application under Section 72. To decide this case we must be guided not only by the nomenclature used by the Section for the proceedings but by the essence and content

> of the proceedings. That being so, we have no hesitation to hold that the proceedings before the District Court under Section 72(1) are in the nature of an appeal and that District Court exercises appellant jurisdiction while disposing of a matter under Section 72(1). Consequently, the Single Judge of the High Court while deciding the appeal, from the order of the District Court deals with a matter made by the District Judge in the exercise of an appellate jurisdiction by a Court subject to the superintendence of the High Court and hence clause 15 of the Letters Patent is directly attached."

Consequently, this Court had held that the Letters Patent Appeal against the decision of the learned single Judge did not lie. The same ratio applies to the facts in this case. Leave of the learned single Judge was admittedly not obtained for filing the appeal. Consequently, since the appeal of the learned single Judge arises under the Act by virtue of the statutory conferment of supervisory jurisdiction, by operation of earlier part of clause 15 of the Letters Patent Act would vest in him. The Letters Patent Appeal would not lie to the Division Bench unless the certificate of the learned single Judge has been granted for leave to appeal. In that view, the appeal to the Division Bench was incompetent and is accordingly set aside.

The appeal is allowed accordingly. No costs.