Supreme Court of India
Sidram Narsappa Kamble vs Sholapur Borough Muncipality & ... on 27 August, 1965
Equivalent citations: 1966 AIR 538, 1966 SCR (1) 618
Author: K Wanchoo
Bench: Gajendragadkar, P.B. (Cj), Wanchoo, K.N., Hidayatullah, M., Shah, J.C., Sikri, S.M.

PETITIONER:
SIDRAM NARSAPPA KAMBLE

Vs.

RESPONDENT:
SHOLAPUR BOROUGH MUNCIPALITY & ANR.

DATE OF JUDGMENT:
27/08/1965

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
GAJENDRAGADKAR, P.B. (CJ)
HIDAYATULLAH, M.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1966 AIR 538 1966 SCR (1) 618
CITATOR INFO :
RF 1972 SC 161 (27)
D 1979 SC1055 (16)
F 1985 SC 836 (15,16)
RF 1986 SC2204 (2,7)
RF 1991 SC1538 (8)

ACT:
Bombay Tenancy and Agricultural Lands Act, (67 of 1948) ss. 31, 88 and 89 --Scope of.

HEADNOTE:
In 1946, the Bombay -Tenancy Act, 1939 was applied to the respondent-Muncipality. Section 3A of the Act provided that every tenant shall, on the expiry of one year from the date of the coming into force of the Amendment Act of 1946, be deemed to be a protected tenant, unless the landlord had within that period, applied to the Mamlatdar for a declaration that the tenant was not protected. The appellant had taken on lease lands from the respondent, and since the respondents had not applied lo the Mamltdar, the appellant became a protected tenant. 'Me 1939 Act was

repealed by the Bombay Tenancy and Agricultural Lands Act, 1948, Section 31of the 1948 Act provided that a person shall be recognised to be a protected tenant, if such person had been deemed to be a protected tenant under s. 3, 3A or 4 of the 1939 Act. But s. 88 of the same Act provided that nothing in the foregoing provisions of the 1948 Act shall apply to lands held on lease from a local authority, while s. 89(2) provided for the repeal of the 1939 Act except for ss. 3, 3A and 4 which continued, is modified in Schedule 1 of the 1948 Act, and also provided. that nothing in the 1948 Act, or any repeal effected thereby shall save as expressly provided in the 1948 Act, affect or be deemed to affect any right, title, interest, obligation or liability, acquired, accrued or incurred before the commencement of the 1948 Act. In 1955 the respondent gave notice to the appellant terminating his tenancy and subsequently filed a suit for possession. Pending proceedings arising from the suit, the appellant applied to the Mamlatdar for a declaration that he was a protected tenant of the lads, and the Mamlatdar gave the declaration. On appeal, the Collector held that the Mamlatdar had no jurisdiction to decide the question. The Bombay Revenue Tribunal, in revision, set aside the Collector's order, and the High Court, in application under Art. 227, restored Collector's order.

In his appeal to this Court-, the appellant contended that (i) the interest acquired by him as a protected tenant under the 1939 Act would not be affected in view of the provisions of s. 89(2) in the 1948 Act; and (ii) the Mamlatdar had jurisdiction to decide the question under s. 88B.

HELD : (i) The plain effect of the provisions contained in ss. 31, 88 and 89(2) (b), is that, in view of the express provision contained in s. 88 (1) (a). the appellant could not claim the benefit of s. 31, nor could it be said that his interest as protected tenant was saved by s. 89(2) (b), [625 G]

Sections 3, 3A and 4 of the 1939 Act were continued in a modified form in Schedule 1 of the 1949 Act only for the purpose of a. 11 of the 1948 Act and a perusal of those shows that protected tenants were only those tenants who satisfied these three sections and that no

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new protected tenants could come into existence under the 1948 Act As & 31 is one of the foregoing provisions referred to in s. 88, it win not apply to lands held on lease from a local authority. In effect, therfore, legislature, which had conferred by the 1939 Act, the status of a protected tenant on certain persons, took away that status by enacting s. 88 in the 1948 Act so far as lessees from a local authority were concerned. As far as s. 89(2)(b) is concerned, that part of it which says that any repeal effected thereby shall not affect or be deemed to affect any right etc., will not help the appellant because ss. 3, 3A and 4 of the 1939 Act were not repealed by the 1948 Act.

Nor will the clause "nothing in this Act, shall affect or be deemed to affect" apply, if there is an express provision in the 1948 Act which takes away the interest of a protected tenant acquired before its commencement, because of the qualifying words, "save as expressly provided in this Act", in the section. Section 88, of the 1948 Act is such an express provision which takes out leases from a local authority from the purview of ss. 1 of 87 of the 1948 Act, including s. 31 which is the only provision in the 1948 Act which recognised protected tenants. It follows that there can be no protected tenants of lands held on lease from a local authority under the 1948 Act. It is true that s. 88 does not in so many words say that the interest of a protected tenant acquired under the 1939 Act is being taken away so far as lands held on lease from a local authority are concerned; but in effect, s. 88(1)(a) must be held to say that there will be no protection under the 1948 Act for protected tenants under the 1939 Act, so far as lands held on lease from a local authority are concerned. The intention from the express words of s. 88(1) (a) is also the same. It may very well be that the legislature thought that the status of a protected tenant should not be given to lessees of lands from a local authority, in the interest of the general public, and therefore, took away that status which was conferred by the 1939 Act. by the express enactment of s. 88(1)(a). [622 F-G; 623 E-G; 624 F-G; 625 B-F; 616 C]

Further the appellant could not claim the benefit of s. 4A , which takes the place of s. 31 after the amendment of 1956, and claim that he is a protected tenant, because, s. 4A also does not apply to a case of lands held on lease from a local authority. [627 D-E]

Sakharam v. Manikchand, [1962] 2 S.C.R. 59, disapproved.

Mohanlal Chunilal Kothari v. Tribhovan Haribhal Tamboli, [1963] 2 S.C.R, 707, explained.

(ii) Section 88B will not protect the appellant, for his lease had already been determined before the section came into force on 1st April 1956 [627 C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 577 of 1963. Appeal from the judgment and order dated March 8, 1961 of the Bombay High Court in Special Civil Application No. 1120- of 1960.

S. G. Patwardhan and M. S. Gupta, for the appellant. N. D. Karkhanis J. B. Dadachanji and A. G. Ratnaparkhi or respondent No. 1.

The Judgment of the Court was delivered by Wanchoo, J. The appellant took on lease two survey numbers from the respondent, Sholapur Borough Municipality on April 1, 1946 for a period of three

years. The land is situate within the municipal limits. About November 8, 1946, the Bombay Tenancy Act, No. 29 of 1939 (hereinafter referred to as the 1939-Act) was applied to this area and s. 3-A of that Act provided that every tenant shall on the expiry of one year from the date of the coming into force of the Bombay Tenancy (Amendment) Act, (No. XXVI of 1946) be deemed to be a protected tenant unless his landlord has within the said period made an application to the Mamlatdar for a declaration that the tenant was not a protected one. The respondent did not file a suit within one year and therefore the appellant claimed to have become a protected tenant under the 1939-Act. The 1939-Act was repeated in 1948 by the Bombay Tenancy and Agricultural Lands Act, No. LXVII of 1948 (hereinafter referred to as the 1948-Act). Section 31 of the 1948-Act provided that for the purposes of this Act, a person shall be recognised to be a protected tenant if such person had been deemed to be a protected tenant under s. 3, 3-A or 4 of the 1939-Act. Ordinarily, therefore, the appellant would have become a protected tenant under this section of the 1948-Act, if he had become a protected tenant under the 1939Act. But s. 88 of the 1948-Act inter alia provided that nothing in the foregoing provisions of the 1948-Act shall apply to lands held on lease from a local authority. Therefore if s. 88 prevailed over s. 31, the appellant would not be entitled to the benefit of s. 31 and could not claim to be a protected tenant under this section. The appellant however relied on s. 89(2) of the 1948-Act which provided for the repeal of the 1939-Act except for ss. 3, 3-A and 4 which continued as modified in Sch. 1 of the 1948-Act. That sub-section provided that nothing in the 1948-Act or any repeal effected thereby shall save as expressly provided in this Act affect or be deemed to affect any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of the 1948-Act.

In the present case the respondent gave notice to the appel- lant on May 2, 1955 terminating his tenancy with effect from March 31, 1956. Subsequently the respondent filed suit No. 42 of 1957 for obtaining possession of the lands and for certain other reliefs. It was held in that suit that the respondent could not get possession of the lands as the appellant was entitled to the benefit of the 1948-Act and consequently the respondent's suit for pos session was dismissed. The respondent then appealed to the, District Court. During the pendency of that appeal the appellant made an application on September 8, 1958 for a declaration that he was a protected tenant of the lands and also for fixig rent under the provisions of the Tenancy Act. Further in the appeal filed in the District Court a compromise was arrived at by which the order dismissing the respondent's suit for possession was set aside and the suit was remanded to the trial court with the direction that the suit be stayed and disposed of after the decision by the Mamlatdar. The compromise provided that if the appellant was finally held to be tenant by the authorities under the 1948Act the suit for possession would be dismissed. It also provided that if the decision in the proceedings under the, Tenancy Act went against the appellant, the suit for possession would be decreed.

The Mamlatdar held that the appellant was a tenant and gave him a declaration under s. 70 (b) of the 1948-Act. The respondent then went in appeal to the Collector, and the Collector decided that the Mamlatdar had no jurisdiction to decide whether the appellant was a tenant. The appellant then went in revision to the Bombay Revenue Tribunal. The tribunal held, in view of the amendments that had been made in the 1948-Act by the Amendment Act of 1956 by which s. 88- B was introduced in the 1948-Act, that the revenue court had jurisdiction to decide whether the appellant was a tenant. Finally it remanded the matter to the Collector for decision on the question whether

the appellant was a tenant or a protected tenant on the merits.

The respondent had contended before the Revenue Tribunal that the appellant could not have the status of a tenant or protected tenant in view of the provisions of the 1948-Act and therefore the respondent filed a petition under Art. 227 of the Constitution of India before the Bombay High Court. Its contention before the High Court was that in view of s. 88 of the 1948-Act the appellant could not claim to be a protected tenant within the meaning of s. 31 of that Act and therefore the order of the Collector was right. It was also contended that s. 88-B would not apply to the case of the appellant as it came into force on April 1, 1956 after the determination of the tenancy of the appellant by notice. Both these contention were accepted by the High Court and the order of the Revenue Tribunal was set aside and in its place the order of the Collector dismissing the appellant's application was restored. Thereupon there was an application to the High Court under Art. 133 (1) (c) of the Constitution and

622. the High Court certified the case as a fit one for appeal to this Court; and that is how the matter has come up before us.

This appeal was first heard by a Division Bench of this Court and has been referred to a larger Bench in view of certain difficulties relating to the interpretation and inter-relation of ss. 31, 88 and 89 of the 1948-Act and in view of two decisions of this Court in Sakharam v. Manikchand(1) and Mohanlal Chunilal Kothari v. Tribhovan Haribhai Tamboli (2). It has been contended on behalf of the appellant that Sakharam's case(1) fully covers the present case and on the basis of that case the appeal should be allowed. On the other hand, learned counsel for the respondent contends that on the ratio of Mohanlal Chunilal Kothari's case, (2) the appellant should be held to be not a protected tenant and that considerations which applied to the interpretation of s. 8 8 (1) (d) equally applied to the interpretation of s. 88 (1) (a), (b) and (c). It is further urged on behalf of the respondent that in view of the latter decision, the decision in Sakharam's case(1) no longer holds the field.

Before we refer to the two decisions on which reliance has been placed on either side, we may refer to the various provisions of the 1948-Act as they were before the amendments of 1956 to decide the inter-relation of ss. 31, 88 and 89 of the said Act. It may be mentioned at the outset that S. 89 which repealed the 1939-Act did not repeal ss. 3, 3-A and 4 of that Act. These three sections continued as modified in Sch. 1 of the 1948-Act. A perusal of the modified sections in Sch. I shows that protected tenants were only those tenants who satisfied these three sections in the Schedule and that no new protected tenants could come into existence under the 1948-Act after it came into force from December 28, 1948. Further it seems to us obvious that ss. 3, 3-A and 4 of the 1939-Act were not repealed and were continued as modified in Sch. 1 of the 1948-Act for the purpose of s. 31 of the 1948-Act. That section provided as follows:-

> "For the purposes of this Act, a person shall be recognised to be a protected tenant if such person has been deemed to be a protected tenant under section 3, 3-A or 4 of the Bombay Tenancy Act, 1939."

These sections (ss. 3, 3-A and 4) which were continued in a modified form in Sch. 1 of the 1948-Act were so continued only for the purpose of S. 31 of the Act and it was not possible for (1) [1962] 2 S.C R. 59.

(2) [1963] 2 S.C.R. 707.

any tenant to be a protected tenant under the 1948-Act unless he was a protected tenant under the 1939-Act. The 1948-Act thus recogaised such tenants as protected tenants who were protected tenants under the 1939-Act and even though ss. 3, 3-A and 4 of the, 1939 Act were continued as modified by Sch. 1 of the 1948Act The modifications were such as showed that only those tenants would remain protected tenants under the 1948-Act who were protected under the 1939-Act.

Then we come to s. 88 of the 1948-Act which is in these terms :-

" (1). Nothing in the foregoing provisions of this Act shall apply -.-

(a) to lands held on lease from the Crown, a local authority or a co-operative society;

(b)....." Section 8 8 lays down that nothing in the foregoing provisions of the 1948-Act shall apply inter-alia to lands held on lease from a local authority, like a municipality. As s. 31 is one of the foregoing sections it will not apply to lands held on lease from a local authority. In other words, so far as lands held on lease from a local authority are concerned, there will be no provision in the 1948-Act for recognising a protected tenant even if a person was a protected tenant under the 1939-Act. It is only s. 31 which gave recognition to the status of a protected tenant under the 1948-Act and if that provision is in effect omitted so far as lands held on lease from a local authority are concerned, no such lessee can claim to be a protected tenant. In effect therefore the legislature which had conferred by the 1939-Act the status of a protected tenant on certain persons was taking away that status by enacting s. 88 in the 1948-Act so far as inter alia aessees from a local authority were concerned.

If matters had stood only on sq. 31 and 88 there would have been no difficulty in holding that the status of protected tenant conferred by the 1939-Act was taken away from certain lessees including lessees from a local authority under s. 88 of the 1948Act. But the appellant relies on s. 89(2)(b) and contends that provision saved his rights as a protected tenant. We have already mentioned that s. 89(1) repealed inter alia the 1939-Act except for ss. 3, 3-A and 4 which continued in a modified form in Sch. 1 of Section 89 (2) (b) on which reliance is placed by the appellant is in these terms : -

"But nothing in this Act or any repeal effected thereby-

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(a)
(b)  shall,    save as expressly  provided  in
this Act, affect or be deemed to affect.
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(i) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or

(ii) The argument is that the interest acquired as a protected tenant under the 1939-Act would thus not be affected in view of this provision in the 1948-Act; and it is this argument which we have to examine. Now we have already mentioned that ss. 3, 3-A and 4 relating to protected tenants in the 1939-Act were not repealed by the 1948-Act. Therefore that Part of s. 89 (2) (b) which says that any repeal effected thereby shall not affect or be deemed to affect any high title, interest etc. will not apply. But learned counsel for the appellant relies on the words "nothing in this Act shall affect or be deemed to affect any right, title or interest. . . . " and his argument is that even though there might not have been a repeal of ss. 3, 3-A and 4 of the 1939-Act by the 1948-Act S. 89 (2) would still protect him because it provides that nothing in the 1948-Act shall affect or be deemed to affect any right title, interest etc. acquired before its commencement. But the clause "nothing in this Act shall affect or be deemed to affect" is qualified by the words "save as expressly provided in this Act". Therefore, if there is an express provision in the 1948-Act, that will prevail over any right, title or interest etc. acquired before its commencement. Further the words "save as expressly provided in this Act" also qualify the words "any repeal affected thereby" and even in the case of repe al of the provisions of the 1939-Act if there is an express provisi on which affects any title, right or interest acquired before the commencement of the 1948-Act that will also not be saved.

The narrow question then is whether there is anything express in the 1948-Act which takes away the interest of a protected tenant acquired before its commencement. If there is any such express provision then s. 89(2) (b) would be of no help to the appellant. The contention of the respondent is that S. 88 is an express provision and in the face of this express provision the interest acquired as a protected tenant under the 1939- Act cannot prevail. On the other hand, it is urged on behalf of the appellant that s. 88 does not in express terms lay down that the interest acquired by a protected tenant under the 1939-Act is being taken away and therefore it should not be treated as an express provision. Now there is no doubt that s. 88 when it lays down inter alia that nothing in the foregoing provisions of the 1948-Act shall apply to lands held on lease from a 'local authority, it is an express provision which takes out such leases from the purview of sections 1 to 87 of the 1948-Act. One of the provisions therefore which must be treated as non-existent where lands are given on lease by a local authority is in s.

31. The only provision in the 1948-Act which recognised protected tenants is s. 31 and if that section is to be treated as non-existent so far as lands held on lease from a local authority are concerned, it follows that there can be no protected tenants of lands held on lease from a local authority under the 1948-Act. It is true that s. 88 does not in so many words say that the interest of a protected tenant acquired under the 1939-Act is being taken away so, far as lands held on lease from a local authority are concerned; but the effect of the express provision contained in s. 88 (1) (a) clearly is that s. 31 must be treated as non-existent so far as lands held on lease from a local authority are concerned and in effect therefore s. 8 8 (1)

(a) must be hold to say that there will be no protection under the 1948-Act for protected tenants under the 1939-Act so far as lands held on lease from a local authority are concerned. It was not

necessary that the express provision should in so many words say that there will be no protected tenants after the 1948-Act came into force with respect to lands held on lease from a local authority. The intention from the express words of s. 88(1) is clearly the same and therefore there is no difficulty in holding that there is an express provision in the 1948-Act which lays down that there will be no protected tenant of lands held on lease from a local authority. In view of this express provision contained in s. 88(1) (a), the appellant cannot claim the benefit of s. 31 ; nor can it be said that his interest as protected tenant is saved by s. 89 (2) (b). This in our opinion is the -plain effect of the provisions contained in s. 31, s. 88 and s. 89(2)(b) of the 1948-Act. It now remains to refer to Sakharam's case(1) which certainly supports the contention raised on behalf of the appellant. With respect, it seems to us that more has been read in that case in s. 89 (2) (b) than is justified under the terms of that provision. It was (1) [1962] 2 S.C.R. 59.

also observed in that case that the provisions of s. 88 were entirely prospective and were not intended in any sense to be of confiscatory character, and that s. 89(2) (b) showed clearly an intention to conserve such rights as were acquired before the commencement of 1948-Act. It seems to us, with respect, that in that case full effect was not given to the words "save as expressly provided in this Act" appearing in S. 89(2) (b), and it was also not noticed that there could be no new protected tenants after the 1948-Act came into force and that S. 88(1) in its application to leases from local authorities will have no meaning unless it affected the rights contained in S. 3 1. It may very well be that the legislature thought that the status of a protected tenant should not be given to lessees of lands from a local authority, in the interest of the general, public and therefore took away that interest by the express enactment of s. 8 8 (1) (a). The status was after all conferred by the 1939-Act and we can see no difficulty in its being taken away by the 1948Act. It may be mentioned that S. 8 8 (1)

(a) applies not only to lands held on lease from a local authority but also to lands held on lease from the State, and one can visualise situations where the State may need to get back lands leased by it in public interest. It must therefore have been in the interest of the public that a provision like S. 88 (1) (a) was made with respect to lessees from a local authority or the State who had become protected tenants under the 1939-Act. We are supported in the view we have taken by the decision of this Court in Mohanlal Chunilal Kothari's case(1) where it was held that S. 88 (1)(d) would be rendered completely ineffective if it was not to be applied retrospectively, though it was added in that case that it did not affect the rights acquired under the earlier Act of 1939. The latter observation, with respect, does not seem to be correct for their could be no new protected tenants under the 1948-Act to whom even S. 88 (1) (d) could have applied. Further if a notification under S. 88 (1) (d) could be retrospective upto the date of the 1948-Act we can see no reason on the language of this section to hold that it was retrospective only upto 1948 and would not affect the rights acquired tinder the 1939-Act. We may also mention that by an oversight 'it was stated in Mohanlal Chunilal Kothari's case(1) that clauses (a), (b) and (c) of S. 88(1) apply to things as they were at the date of the enactment. It is however clear that clauses (a), (b) and (c) of S. 88 (1) also apply in the future. For example cl. (a) lays down that nothing in the foregoing provisions of this Act shall apply to lands (1) [1963] 2 S.C.R. 707.

6 2 7 held on lease from Government, a local authority or co- operative society. The words "held on lease" in this clause are only descriptive of the lands and are not confined to lands held on lease on the date the Act came into force; they equally apply to lands ceased before or after the Act became law and the distinction that was drawn in Mohanlal Chunilal Kothari's case(1) that cls. (a), (b) and (c) applied to things as they were at the date of the enactment whereas cl. (d) was with respect to future, with respect, does not appear to be correct.

In this view of the matter, the view taken by the High Court in the judgment under appeal that s. 88 (1) (a) is an express provision which takes away the interest of protected tenants under the 1939-Act must be held to be correct. So far as the argument based on s. 88-B is concerned, it IS enough to say that we agree with the High Court that section will not protect the appellant for his lease had already been determined before the section came into force on April 1, 1956. Besides it may be observed that s. 4-A which takes the place of s. 31 after the amendment of 1956 still does not apply to a case of lands held on lease from a local authority and therefore what we have said with respect to s. 31 will equally apply to s. 4-A and the appellant cannot claim the benefit of that section and contend that he is a protected tenant under the 1939-Act and therefore cannot be ejected.

In the result we dismiss the appeal but in the circumstances of this case we order the parties to bear their own costs. Appeal dismissed.

(1) [1963] 2 S.C.R. 707.