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BALKRISHNA SOMNATH

v.

SADA DEVRAM KOLI & ANOTHER

January 20, 1977

B [V. R. KRISHNA IYER AND A. C. GUPTA, JJ.]

Bombay Tenancy & Agricultural Lands Act, 1948 (*Bombay Act LXVII of* 1948) *as amended by Bombay Act XIII of* 1956, *section* 32—*Scope of—Interpretation of the words "disabled person's share in the joint family has been separated by metes and bounds" occurring in proviso to s.* 32 *F*(1)(*a*).

C Under s. 32 of the Bombay Tenancy and Agricultural Lands Act 1948, the tiller of the land had the right to purchase the land tenanted to him. Where the landlord is a minor or a widow or a person subject to any mental or physical disability, the right to purchase such land is postponed till their disability disappears and one year lapses thereafter. But this embargo on the exercise of the right of purchase by the tenant does not operate as per proviso to s. 32F(1)(a), if the property belongs to a joint family and there is a partition therein and the land is allotted to the person under disability.

D In both the appeals, the family owned lands and other assets and there was a partition confined to agricultural land only. In one case the share fell to a widow while in the other it fell to a minor, admittedly a disabled person within the meaning of s. 32F(1). Before the Tribunal and the High Court, the landlord claimed, therefore, protection under the proviso to clause (a) of section 32F(1) of the Act while the respondent contended that even if the agricultural land had been divided and other assets admittedly remained joint, the appellant was ineligible to claim the benefit of the proviso. The High Court decided against the landlord and held : "The proviso is not satisfied unless the share of a disabled person is separated by metes and bounds in all the joint family property and unless the agricultural land allotted to him corresponds to his share in the entire property and is not in excess thereof".

E

Dismissing the appeal to this Court,

HELD : (1) The broad idea is to vest full ownership in the tenantry. A compassionate exception is made in favour of a handicapped landlords who cannot prove their need to recover their land on approved grounds. The F Legislature conditioned the proviso by insisting that the separation should be from the whole joint family assets and not a tell-tale transaction where agricultural lands alone are divided and secondly even where there is a total partition only a fair proportion of the lands is allotted to the disabled person. [682 C-D-F]

(2) What section 32F(1) insists upon is that (a) share of such person in the joint family has been separated by metes and bounds; (b) the Mamlatdar is satisfied that the share of the disabled person in the land is separated in the G same proportion as the share of that person in the entire joint family property and not in a larger proportion. [681 G]

(3) The imperative condition for the operation of the proviso is that there should be a total separation and so far as a disabled member is concerned, it must cover all the joint family properties. The usage of the expressions "the share of such person in the joint family", "the share of such person in the land", "the share of that person in the entire joint family property" in the section the clear statement in the proviso that the disabled person's share in H the joint family must have been separated by metes and bounds and the statutory exercise expected of the Mamlatdar by the proviso involving an enquiry into the share of the disabled person in the land and its value, the share of that person in the entire joint family properties, the proportion that the allot-

ment of the land bears to his share in the entire joint family property with a view to see that there is no unfair manouvre to defeat the scheme of the Act—lead to the necessary postulate that it is not confined to the share of the land only but really means his share in the entire joint family property. [683 E-H, 684 A] A

(4) In the instant case there is no division of all the joint family property. Only the landed properties have been separated. [684-B]

Observation : B

The reform of the inherited law-making methodology may save court time and reduce litigation. Our legislative process, not an unmixed blessing, works under such instant stress and *ad hoc* hephazardness that the whole piece of legislation when produced makes experienced draftsmen blush, as in the instant case, the involved drafting of s. 32F has had its share in the marginal obscurity of meaning. [682 B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 129 of 1968. C

Appeal by Special Leave from the Judgment and Order dated the 18-8-66 of the Bombay High Court in S.C.A. No. 1299/67 and

Civil Appeal No. 2007 of 1969

From the Judgment and Order dated the 18th, 20th June 1968 of the Bombay High Court in S.C.A. No. 1676 of 1964. D

and

Special Leave Petition (Civil) No. 3175/75

From the Judgment and Order dated the 31-10-74 of the Bombay High Court in Special Civil Appln. No. 2610 of 1970.

V. M. Tarkunde, V. N. Ganpule and *P. C. Kapoor* for the appellant in C. A. 129 of 1968. E

S. N. Anand for Respondent No. 1 in CA 129/68

V. N. Ganpule for the Petitioner in SLP

S. B. Wad and *R. N. Nath* for the Appellants in CA 2007 of 1969. F

R. B. Datar and S. C. Agarwal for Respondent No. 1 in CA 2007/69

The Judgment of the Court was delivered by

KRISHNA IYER, J. These two appeals raise a short issue of interpretation of the proviso to s. 32F (1) (a) of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bombay Act LXVII of 1948) (hereinafter referred to as the Act). The appellants in both the cases are the aggrieved landlords, the tenants' right of puchase under the Act having been upheld by the High Court. The correctness of this view is canvassed before us by counsel. G

The facts necessary to appreciate the rival contentions may be stated briefly. The parties are different but the issue is identical and so a single judgment will dispose of both the appeals. H

A In Civil Appeal No. 2007 of 1969 the widow of a deceased landowner, one Dattatraya, is the appellant. The deceased owned several houses, had a money-lending business and considerable agricultural lands. He left behind him on his death in 1952 a widow (the second appellant) and two sons, one of whom is the first appellant. Admittedly the Act, an agrarian reform measure, was extensively amended by Bombay Act XIII of 1956 conferring great rights on tenants and B inflicting serious mayhem on landlordism. The case of the appellants is that there was a partition among the mother and the two sons of the agricultural estate whereunder the second appellant (the widow) was allotted around 80 acres of land out of which about 15 acres were held by the first respondent as a tenant. On the Tillers' Day tenants bloomed into owners by the conferment of the right of purchase. On the basis that the first respondent had become the owner, a proceeding C for the determination of the purchase-price of these lands was initiated by the Tribunal, as provided under s. 32G of the Act. Although notice was not given to the second appellant, the first appellant appeared before the Tribunal, urged the case that the land held by the first respondent was set apart in a family partition to his mother, the second appellant, and that since she was a widow she came squarely within the protective provision of the proviso to cl. (a) of s. 32F(1) D of the Act. The first respondent, however, contested the partition and further pressed the plea that even if the agricultural lands had been divided since the house and the money-lending business and other assets admittedly remained joint, the appellant was ineligible to claim the benefit of the proviso aforesaid. We need not trace the history of the litigation from deck to deck but may conclude the story E for the present purpose by stating that the High Court took the view that the second appellant (widow did not qualify under the said proviso : "The proviso is not satisfied unless the share of a disabled person is separated by metes and bounds in *all of the joint family property* and unless the agricultural land allotted to him corresponds to his share in the entire property and is not in excess thereof."—This was the construction put by the Court on the proviso and challenged before F us by Shri Wad in C. A. 2007 of 1969 and by Shri Tarkunde in C. A. 129 of 1968.

In Civil Appeal No. 129 of 1968 the legal scenario is similar. The family owned lands and other assets and there was a partition on November 7, 1956 confined to agricultural land only, but the house property remained undivided. The partition deed shows that G the land under the tenancy of the first respondent has been set apart to the share of a minor appellant. The Tillers' Day arrived. The tenant claimed to have become owner. Proceedings under s. 32G of the Act for determination of the compensation were commenced and the mantle of protection of the proviso to s. 32F (1) (a) was pleaded in vain. The High Court having negatived the landlord's contention summarily, this Court has been approached, the point H urged being the same as in the previous appeal.

In both the appeals we may proceed, for testing the legal proposition, on assumed facts. We may take it that there was a parti-

tion in both cases during the period referred to in the proviso, i.e., before March 31, 1958. We may further take it that the widow and the minor come within the category specified in s. 32F (1) (a). We have also to proceed on the basis that the joint family in each case has other assets which remain joint and undivided.

Before proceeding further with the discussion it may be proper to read the relevant provision for a break up of the statutory limbs :

"32F. (1) Notwithstanding anything contained in the proceeding sections—

(a) where the landlord is a minor, or a widow or a person subject to any mental or physical disability the tenant shall have the right to purchase such land under section 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31 and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31 :

Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion.

x x x x"

Where the landlord is a minor or a widow, as in this case, the tenants' right to purchase such land under s. 32 is postponed till their disability disappears and one year lapses thereafter. But this embargo on the exercise of the right of purchase by the tenant does not operate if the property belongs to a joint family and there is a partition therein and the land in question is allotted to the person under disability. What the section insists upon is that (a) share of such person in the joint family has been separated by metes and bounds; and (b) the Mamlatdar is satisfied that the share of such person in the land is separated in the same proportion as the share of that person in the entire joint-family property and not in a larger proportion.

We are dealing with an agrarian reform law whose avowed object is to confer full proprietorship on tilling tenants and it is a fact of common knowledge that landlords resort to cute agrarian legal engineering to circumvent the provisions. The legislature, with local knowledge of familiar manipulations and manouvres calculated to

A defeat land reforms, makes widely-worded provisions the 'why' of it may not be easily discernible to the Court. We have to give full force and effect without whittling down or supplying words. Nor can the Court presume the mischief and remedy the evil by interpretative truncation. A blend of the grammatical and the teleological modes of construction is the best and that is what has been done by the High Court.

B We are free to agree that the involved drafting of the section has had its share in the marginal obscurity of meaning. But our legislative process, not an unmixed blessing, works under such instant stress and *ad hoc* haphazardness that the whole piece when produced makes experienced draftsmen blush. Reform of the inherited law-making methodology may save court time and reduce litigation. Be
C that as it may, we have to wrestle with the language of the Proviso to decode its true sense.

The broad idea is to vest full ownership in the tenantry. A compassionate exception is made in favour of handicapped landlords who cannot prove their need to recover their land on approved grounds. These disabled categories include infants and widows.
D But if the lands belong to joint families of which they are members, the *raison d'etre* for such protection does not exist because the manager of this joint family takes care of its collective interests. Where, however, there has been a partition of the joint family, then the widow or minor has to stand on her or his own disabled legs and so the Proviso to s. 32F (1) (a) was brought in by amendment to give them protection for the period of the disability and a little longer.
E But every ruse to save the lands is used by landlords and so, once it was in the air that minors and widows may be exempted, a spate of partitions perhaps ensued. Joint living is the dear, traditional hindu way of life but jettisoning jointness to salvage land is dearer still. Blood is thicker than water, it has been said; but in this mundane world, property is thicker than blood: So partition deeds, conveniently confined to land, became a popular art of extrication.
F And the Legislature, anxious to inhibit such abuse, while willing to exempt genuine, total separations, conditioned the Proviso under consideration by insisting that the separation should be from the whole joint family assets and not a tell-tale transaction where agricultural lands alone are divided and secondly, even where there is a total partition, only a fair proportion of the lands is allotted to the disabled person.

G In this light, we may read the Proviso. To steer clear of possible confusion we may agree that partial partition may be legally permissible and the Hindu law does not require investigation into the motives or motivelessness behind the partition. We also accept that division in status is good enough to end commensality or jointness under the personal law. But we are now in the jurisdiction of land
H reform legislation and the Legislature, with a view to fulfil its objectives, may prescribe special requirements. The Court has to give effect to them, in the spirit of agrarian reform and not read down the wide words on judicial suppositions.

Here the Proviso can rescue the widow or the minor only if the prerequisites are fairly and fully fulfilled. Section 32 states that the tenants shall be deemed to have purchased the tenanted land on the Tillers' Day. The Tribunal *suo motu* takes action to determine the purchase price. But all this is kept in abeyance if the landlord belongs to the disabled category and qualifies under s. 32F (1). The crucial issue is whether the Proviso applies even if the separation of the widow or minor is restricted to agricultural lands. Shri Wad and Shri Tarkunde vehemently urge that it is none of the concern of the agrarian law what happens to the other assets of the joint family, so long as the lands are divided in fair proportion. Shri Datar presses what the High Court has laconically reasoned, viz., that it is possible to defeat the scheme by division of the lands alone. For one thing, in most such partial partitions, inspired by the desire to avoid the land reforms in the offing, the Legislature can, as a policy decision, insist on a whole partition, to reduce the evasion. Moreover, there will be a sudden fancy for allotting all the good lands to the share of widows and minors, depriving the tenants of their legitimate expectations. And, if lands and other assets are to be divided, then less lands will go to the disabled persons or even none. For instance the house may be allotted to the widow and the lands taken over by adult males. The ornaments may all go to the woman, the agriculture to the men. We need not speculate, but may content ourselves with stating that the Legislature has, for some reasons, decided to lay down conditions and the words of the text must be assigned full effect.

The Proviso clearly states that the disabled person's share 'in the joint family' must have been 'separated by metes and bounds'. Separation from the joint family means separation from all the joint family assets. Otherwise the sharer remains partly joint and, to that extent, is not separated from the joint family. Notional division or division in status also may not be enough because the Act insists on separation 'by metes and bounds'. Ordinarily 'metes and bounds' are appropriate to real property, meaning, as the phrase does, 'the boundary lines of land, with their terminal points and angles'. In the context, the thrust of the expression is that the division must be more than notional but actual, concrete, clearly demarcated. The ineptness and involved structure and some ambiguity notwithstanding, the sense of the sentence is clear. The share of a person in the joint family, plainly understood, means his share in all the joint family properties and not merely in the real estate part. What is more, the section uses the expressions 'the share of such person in the joint family', 'the share of such person in the land', 'the share of that person in the entire joint family property'. Thus it is reasonable to hold that when the expression used is 'the share of such person in the point family', it is not confined to the share in the land only. It really means his share 'in the entire joint family property'. Moreover, the statutory exercise expected of the Mamlatdar by the Proviso involves an enquiry into the share of the disabled person in the land, and its value, the share of that person in the entire joint family property, the proportion that the allotment of the land bears to his share in the entire joint

A family property with a view to see that there is no unfair manouvre to defeat the scheme of the Act. The necessary postulate is that there is a division in the entire joint family property. Therefore, the imperative condition for the operation of the Proviso is that there should be a total separation and so far as a disabled member is concerned it must cover all the joint family properties.

B We are therefore in agreement with the interpretation adopted by the High Court. In the cases under appeal there is no division of all the joint family properties. Only the landed properties have been separated. The appeals therefore fail and are dismissed. In the circumstances, we direct parties to bear their costs.

S.R. *Appeals dismissed.*