PANDURANG DNYANOBA LAD

v.

DADA RAMA METHE & ORS.

February 24, 1976

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

Bombay Tenancy & Agricultural Lands Act 1948—*Section* 32*G*(6)-32(*O*) —*Bombay Merged Territories Miscellaneous Alienations Abolition Act,* 1955—*Secs.* 6. 7, 8 9. 28—*Whether on abolition of Inams the relationship of landlord and tenant comes to an end—Whether tenant's right to purchase land under tenancy act affected by abolition act.*

The appellant owned a land which was held for the performance of miscellaneous inferior services and was classified as a Huzur Sanadi Inam land. The respondents were in possession of the land as tenants and were declared as purchasers under the Bombay Tenancy & Agricultural Lands Act, 1948. The Tenancy Act provides by section 32 that on 1st April, 1957, every tenant subject to certain conditions shall be deemed to have purchased from his landlord the land held by him as a tenant. The Bombay Legislature passed the Bombay Merged Territories Miscellaneous Alienations Abolition Act of 1955. The appellant contended that in view of the provisions of the Abolition Act, the relationship of landlord and tenant came to an end between the appellant and the respondents and that, therefore, respondents have no right to purchase the land. The contention of the appellant was negatived by the Agricultural Lands Tribunal which was confirmed in appeal by the Special Deputy Collector and in revision by the Maharashtra Revenue Tribunal. A writ petition filed by the appellant in the High Court of Bombay was summarily dismissed.

Dismissing the appeal by Special Leave,

HELD : 1. By section 4 of the Abolition Act, all alienations in the Merged Territories were abolished with effect from the appointed date. Sections 6, 7, 8 and 9 of the Abolition Act provide for the grant of occupancy rights in respect of the erstwhile Inam Lands. There is no provision in that Act by virtue of which the relationship of landlord and tenant between the ex-Inamdar and his tenant would stand extinguished. On the contrary, section 28 provides that nothing contained in the Act shall in any way be deemed to effect the application of any of the provisions of the Tenancy Act to any alienated land or the mutual rights and obligations of a landlord and his tenants save in so far as the said provisions are in any way inconsistent with the express provisions of the Act. The provisions of the Tenancy Act contained in section 32 are in no way inconsistent with any of the express provisions of the Abolition Act. [495-A, B-C, & D]

2. Section 32(O) of the Tenancy Act applies only to tenancies created after the tiller's day. [495E]

3. The object of the Abolition Act was the elimination of Inamdars as intermediaries and not the eviction of the tillers of the soil. [495G]

4. Section 32G(6) of the Tenancy Act shows that nothing contained in the Abolition Act can affect the tenant's right of purchase under section 32, even if any land is regranted to the holder under the Abolition Act on condition that it was not transferable. [496A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 475 of 1973.

(Appeal by Special Leave from the Judgment and Order dated the 26-4-1972 of the Bombay High Court in Special Civil Application No. 165 of 1972)

A *S. B. Wad* and *M. S. Ganesh*, for the appellant.

P. H. Parekh, for the respondent.

The Judgment of the Court was delivered by

CHANDRACHUD, J. The appellant owned a land, Survey No. 72, at Shiroli in the district of Kolhapur. The land was held by the B appellant for the performance of miscellaneous inferior services and was classified as a Huzur Sanadi Inam land. Respondents have been in possession of a portion of the land as tenants and were declared as purchasers under the Bombay Tenancy and Agricultural Lands Act, LXVII of 1948, (hereinafter called the Tenancy Act). Consequent upon the declaration, the Agricultural Lands Tribunal, Hatkanagale, fixed the price of the land under section 32G of the Tenancy Act. C That decision was confirmed in appeal by the Special Deputy Collector, Kolhapur, and in revision by the Maharashtra Revenue Tribunal. The appellant filed a petition in the Bombay High Court under article 227 of the Constitution to challenge the decision of the Revenue Tribunal but that petition was dismissed summarily by a learned Single Judge. This appeal by special leave is directed against the order of the High Court.

D The Tenancy Act provides by section 32 that on April 1, 1957, called the "tillers day", every tenant shall, subject to certain conditions, be deemed to have purchased from his landlord the land held by him as a tenant. Section 32G requires the Agricultural Land Tribunal to determine the purchase price of the land in accordance with a statutory formula. The dispute before us is not as regards the arith- E metic of the price fixation but as regards whether the respondents are qualified at all to purchase the land under section 32 of the Tenancy Act. The right of a tenant to opt for a compulsory purchase of the agricultural land held by him is no longer open to constitutional doubt or difficulty. But, the respondents' right to purchase the land is questioned by the appellant on the ground that they ceased to be tenants and have therefore no right of purchase.

F This plea is founded on the provisions of the Bombay Merged Territories Miscellaneous Alienations Abolition Act, XXII of 1955 (hereinafter called the Alienations Abolition Act). It is argued that with the abolition of Inams effected under that Act, the old relationship of landlord and tenant between the appellant and respondents came to an end, that with the re-grant of occupancy rights to the appellant a G new relationship of landlord and tenant came into existence between them and since the respondents did not exercise their right to repurchase the land within the period prescribed by section 32-O of the Tenancy Act, they have forfeited that right. According to the appellant, the provisions of the Tenancy Act and the Alienations Abolition Act are in a material respect inconsistent and the inconsistency has to be resolved by giving precedence to the latter Act.

H The merit of these contentions depends upon the validity of the basic premise that with the abolition of Inams which the Alienations Abolition Act brought about, the relationship of landlord and tenant

between the appellant and the respondents came to an end. We see no warrant for this premise.

By section 4 of the Alienations Abolition Act, all alienations in the merged territories were abolished with effect from the appointed date. As a result of the abolition of Inams effected by section 4, all alienated lands became liable under section 5 to the payment of land revenue in accordance with the provisions of the Bombay Land Revenue Code, 1879. Sections 6, 7, 8 and 9 of the Alienations Abolition Act provide for the grant of occupancy rights in respect of the erstwhile Inam lands. There is no provision in that Act by virtue of which the relationship of landlord and tenant between the ex-Inamdar and his tenant would stand extinguished. On the contrary, section 28 provides that nothing contained in the Act shall in any way be deemed to affect the application of any of the provisions of the Tenancy Act to any alienated land or, "the mutual rights and obligations of a landlord and his tenants save in so far as the said provisions are not in any way inconsistent with the express provisions of this Act". None of the provisions of the Tenancy Act, particularly the provision contained in section 32 of the Tenancy Act under which tenants became entitled to purchase the lands held by them in that capacity on the tillers' day, is in any way inconsistent with any of the express provisions of the Alienations Abolition Act. Section 32 of the Tenancy Act must therefore govern the rights of the ex-Inamdar and his tenants notwithstanding the abolition of the Inams brought about by the Alienations Abolition Act. Since the respondents did not cease to be tenants of the appellant on the introduction of the Alienations Abolition Act, they are entitled to purchase the land under section 32. Consequently, it was competent to the Agricultural Lands Tribunal to commence the price fixation proceedings under section 32G of the Tenancy Act.

Section 32-O of the Tenancy Act applies only to tenancies created atfer the tillers' day. It provides that in respect of such tenancies, a tenant desirous of exercising the right of purchase must give an intimation to the landlord and the Tribunal within one year from the commencement of his tenancy. As observed by us, the relationship of landlord and tenant between the appellant and respondents did not come to an end on the introduction of the Alienations Abolition Act nor indeed is there any legal justification for the theory that on the cesser of that relationship a new relationship of landlord and tenant came into existence between the parties so as to attract the application of section 32-O. The object of the Alienations Abolition Act was "to abolish .... alienations of miscellaneous character prevailing in the merged territories", that is to say, to abolish the Inam grants prevailing in those territories. The elimination of Inamdars as intermediaries, not the eviction of the tillers of the soil, was the object of that Act. By section 4, what was abolished was all alienations, all rights legally subsisting in respect of alienations and all other incidents of such alienations. A tenancy created by an Inamdar is not a right in respect of the alienation nor an incident of the alienation. In simple words, all rights of the Inamdars stood determined on the

A introduction of the Alienations Abolition Act; the rights of tenants continued to exist and were expressly protected by section 28 of the Alienations Abolition Act.

The provision contained in section 32G(6) of the Tenancy Act shows that nothing contained in the Alienations Abolition Act can affect the tenant's right of purchase under section 32. Section 32G(6) B provides that if any land is re-granted to the holder under the provisions of any of the Land Tenures Abolition Acts referred to in Schedule III of the Tenancy Act on condition that it was not transferable, such condition shall not be deemed to affect the right of any person holding the land on lease created before the re-grant and such person shall, as a tenant, be deemed to have purchased the land under section 32G as if the condition that it was not transferable was not the condition C of re-grant. The Alienations Abolition Act is included in Schedule III of the Tenancy Act as item No. 21. Thus, even if the land, after the abolition of the Inam effected under the Alienations Abolition Act, was re-granted to the appellant on condition that it was not transferable, such a condition cannot affect the right of the respondent to purchase the land under section 32 and 32G of the Tenancy Act. In other words, the statutory purchase of a land by a tenant under the D provisions of the Tenancy Act is excepted from the restraint of non-transferability. It is undisputed that the respondents were holding the land on a lease created before the occupancy rights were re-granted to the appellant on the abolition of the Inam.

The questions raised before us on behalf of the appellant merited careful consideration and we would have been happy to have the E benefit of a considered judgment by the High Court. But the Revenue Tribunal was right in its decision and so the summary dismissal of the Writ Petition by the High Court has not caused any failure of justice.

In the result, the appeal fails and is dismissed. We are thankful to Shri Parekh for assisting us in the case as amicus.

F

P.H.P. *Appeal dismissed.*