

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.8802-8803 OF 2013

Sitabai Shantaram Talawnekar & Ors.Appellants

Versus

Custodian of Evacuee Property & Ors.Respondents

W I T H

Contempt Petition(C)Nos.187-188 of 2012

In

Civil Appeal Nos.8802-8803 of 2013

[Arising out of S.L.P.(C)Nos.35980-35981 of 2009]

J U D G M E N T

R. Subhash Reddy, J.

Civil Appeal Nos.8802-8803 of 2013

1. These civil appeals are filed, aggrieved by the judgment and order dated 08.05.2009 passed in W.P. No.142 of 2009 and the judgment and order dated 09.09.2009 passed in L.P.A. No.14 of 2009 by the High Court of Bombay at Goa.

2. The subject matter of dispute relates to property known as 'Conde-Mayem'. The said property, covered by Survey Nos.113, 116, 114 and 115/1, 2 and 3, is situated at Mayem, Bicholim in the State of Goa. The said property originally belonged to one Eurico de Soza Joquem Noroana. After the liberation of Goa the said property was declared as evacuee property and same was under the supervision of

the Custodian of Evacuee Property, under provisions of the Goa, Daman and Diu Administration of Evacuee Property Act, 1964 (for short, 'Evacuee Property Act'). The appellants claim to be in possession of the aforesaid properties as tenants of the Custodian. When there was a dispute between the predecessors of the appellants and the 2nd respondent (now represented by his legal heirs), the predecessors of the appellants filed Civil Suit No.126 of 1984 on the file of Civil Judge, Senior Division, Bicholim praying for permanent injunction restraining the respondent-defendant from interfering with the suit property. On 15.07.1985 the Civil Judge, Senior Division, Bicholim granted ex-parte injunction in the civil suit and it is stated that the appeal filed before the District Judge by the 2nd respondent ended in dismissal. On 05.11.1984 respondent no.2 filed an application before the Court of Custodian of Evacuee Property, Panji, claiming that he was in possession of the portion of cashew garden and the appellants were trying to evict him as he was not paying the exorbitant rent demanded by the appellants. Vide order dated 21.01.1986 the Custodian of Evacuee Property dismissed the application of respondent no.2. Alleging that inspite of injunction orders obtained by the appellants in Civil Suit No.126 of 1984, respondents were interfering with the property in question, the appellants got police protection from the trial court vide order dated 29.08.1989. Thereafter the 2nd respondent filed Regular Civil Suit No.60 of 1990 in respect of portion of property covered by Survey Nos.114 and 116 and the said suit ended in dismissal vide order dated 18.12.1992.

3. As per Section 56 of Goa, Daman and Diu Agricultural Tenancy Act, 1964 (hereinafter referred to as, 'the Tenancy Act'), the Act was not applicable in respect of evacuee properties. By virtue of Goa Administration of Evacuee Property (Amendment) Act, 1989, the provisions of Goa, Daman and Diu Agricultural Tenancy Act, 1964 were made applicable to the evacuee properties. In view of such amendment, respondent no.2 filed an application under Sections 7 and 8-A of the Tenancy Act seeking declaration that he is a tenant of the portion of the suit properties covered in Civil Suit No.126 of 1984. The primary authority, i.e., Joint Mamlatdar-I, Bicholim, Goa vide order dated 30.08.2002 allowed the application declaring the 2nd respondent as a tenant. The said order is confirmed by the appellate authority vide order dated 08.01.2003 and further confirmed by Administrative Tribunal vide order dated 30.12.2008. When the appellants have filed writ petition in W.P.No.142 of 2009 questioning the aforesaid orders, learned Single Judge of the High Court of Bombay at Goa dismissed the writ petition vide order dated 08.05.2009. When the said order is appealed before the Division Bench, by way of Letters Patent Appeal, same is dismissed as not maintainable. Though the Division Bench of the High Court did not go into merits of the matter, but in view of the long standing dispute between the parties, we have heard the matter on merits with the consent of the learned advocates appearing on both sides.

4. Learned senior counsel Sri Siddharth Bhatnagar appearing for the appellants has contended that the application of the 2nd respondent

claiming tenancy was allowed without recording any valid reasons in support of the claim. It is submitted that the alleged oral compromise is made basis by the primary authority for allowing the application without examining the relevant aspects as per the provisions of Tenancy Act for declaration of tenant. It is submitted that there is no evidence on record to show that 2nd respondent was a 'tenant' or 'deemed tenant' within the meaning of the Tenancy Act and rules made thereunder to allow his application for declaration of tenancy rights. It is further submitted that undisputedly land in question is an evacuee property governed by the provisions of the Evacuee Property Act and that though originally the Tenancy Act was not applicable to evacuee properties but only by virtue of Amending Act 19 of 1989, the said Act is made applicable to evacuee properties for tenancies created by Custodian. It is further submitted that in absence of any acceptable evidence on record to show that 2nd respondent was tenant of the land in question his claim was erroneously allowed by the primary authority and no other authority, namely, appellate and revisional authorities and the learned Single Judge of the High Court have considered the matter in proper perspective and have confirmed the order mechanically.

5. On the other hand, Sri P. Venugopal, learned counsel appearing for the legal heirs of the 2nd respondent, has submitted that there is a concurrent finding by all the authorities which is confirmed by learned Single Judge of the High Court, as such, there are no grounds to interfere with the same. It is submitted that the parties are related and

the 2nd respondent was in possession of a portion of the land which is covered by the application claiming tenancy rights and the oral evidence led before the primary authority confirms the possession of the 2nd respondent. It is further submitted that in view of the available oral and documentary evidence on record, the primary authority has declared tenancy in favour of 2nd respondent and there are no grounds to interfere with the impugned orders passed by the High Court confirming the orders of the statutory authorities.

6. Having heard learned counsels on both sides, we have perused the impugned order and other material placed on record.

7. The Goa, Daman and Diu Agricultural Tenancy Act, 1964 is an Act to provide for the regulation of the terms of tenancy with respect to agricultural lands in the Union Territory of Goa, Daman and Diu. Section 2 sub-section (23) of the Tenancy Act defines the term, 'tenant'. As per the aforesaid Section 'tenant' means a person who on or after the date of commencement of the Act holds land on lease and cultivates it personally and includes a person who is or was deemed to be a tenant under the Act. Section 4 of the Tenancy Act deals with the 'persons deemed to be tenants'. As per Section 4 deemed tenant is a person lawfully cultivating any land belonging to another person on or after the 1st of July, 1962 but before the commencement of the Act, i.e., 08.02.1965. Section 56 of the Act originally exempted certain categories of lands, including the lands covered by the Goa, Daman and Diu Administration of Evacuee Property Act, 1964.

8. The Goa, Daman and Diu Administration of Evacuee Property Act, 1964 and the Goa, Daman and Diu Agricultural Tenancy Act, 1964 are amended by the Amending Act 19 of 1989, extending the benefits of Tenancy Act to the evacuee properties. As per Section 2(kkk) of the Amending Act, 'tenancy' means the relationship existing between the tenant and the Custodian; and as per Section 2(kkkk) 'tenant' means a person who on or after the date of commencement of the Goa Administration of Evacuee Property (Amendment) Act, 1989, holds land and cultivates it personally but does not include a person who holds land on lease for the purpose of plucking the fruits only. Section 3 of the Amending Act amends Section 3 of the principal Act, to override other laws. As amended, Section 3 of principal Act reads as under :

“3. Act to override other laws.—

(1) On and from the date of coming into force of the Goa Administration of Evacuee Property (Amendment) Act, 1989, the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act 7 of 1964), for the time being in force, shall apply in respect of agricultural land and tenancies created by the Custodian.

(2) The provisions of this section shall, save as otherwise expressly provided, have effect notwithstanding anything to the contrary contained in any instrument having effect by virtue of any such law.”

A reading of definition of 'tenancy' and 'tenant' coupled with the amended Section 3 of the principal Act makes it clear that the provisions of Goa, Daman and Diu Agricultural Tenancy Act, 1964 are made applicable only to agricultural land and tenancies created by the

Custodian. There is yet another important aspect which has bearing on the issue is the provision under Section 32 of the Evacuee Property Act which reads as under :

“32. Transactions relating to evacuee property void in certain circumstances.-(1) As from the commencement of this Act, no transfer of or transaction in respect of any property belonging to a Portuguese national shall be valid unless it is made with the previous approval of the Custodian.

(2) Subject to the other provisions contained in this Act, every transaction entered into by any person in respect of property declared or deemed to be declared to be evacuee property within the meaning of this Act shall be void unless entered into by or with the previous approval of the Custodian”

Section 32, as referred to above, makes it clear that any transfer or transaction in respect of any evacuee property is not valid unless it is made with the previous approval of the Custodian.

9. From a perusal of the impugned orders passed by the primary authority, appellate authority and the revisional authority and the order of the learned Single Judge of the High Court, we are of the view that the claim of the 2nd respondent is allowed without recording any valid reasons based on acceptable evidence to prove the tenancy as claimed by him. The 2nd respondent has not claimed tenancy directly from the Custodian, in absence of which he cannot have the benefit of Amending Act 19 of 1989. Amending Act 19 of 1989 which amends the Goa, Daman and Diu Administration of Evacuee Property Act, 1964 and the Goa, Daman and Diu Agricultural Tenancy Act, 1964 makes it clear that ‘tenancy’ means the relationship existing between tenant and the

Custodian. The 2nd respondent has not claimed tenancy on the basis of relationship existing with the Custodian. Further, by virtue of Section 3, as amended, the provisions of Tenancy Act are made applicable only to agricultural land and tenancies created by the Custodian. The said provision is a provision overriding other laws. Even as per the claim of the 2nd respondent he was not in possession at the time of making the application but it was his case that he was dispossessed after the appellants' predecessors obtained injunction orders in Civil Suit No.126 of 1984. As such, he has claimed to be a deemed tenant within the meaning of Section 4 of the Tenancy Act. To establish deemed tenancy under Section 4 of the Tenancy Act, one has to prove that person claiming deemed tenancy was in possession on or after the 1st of July 1962 and before the commencement of the Act, i.e., 08.02.1965. The 2nd respondent has not filed any acceptable documentary evidence to prove that he was in possession during the relevant time to claim tenancy. Even to claim sub-tenancy or transfer from the predecessor of the appellants, who was admittedly tenant from the Custodian under the provisions of the Evacuee Property Act, there was no prior approval from the Custodian as contemplated under Section 32 of the Evacuee Property Act. The primary authority, though referred to various objections raised by the appellants herein, has allowed the application based on the alleged oral settlement by the appellants' predecessor and the 2nd respondent. Such oral settlement which is disputed by the appellants cannot be the basis for grant of tenancy rights on the

application made by the 2nd respondent. Even the appellate and revisional authorities have not considered the relevant aspects and disposed of the appeal and revision. Learned Single Judge of the High Court, by giving credence to the inspection report and excise licences obtained by 2nd respondent, has confirmed the order passed by the authorities.

10. For the aforesaid reasons, we allow these appeals and set aside the impugned orders, consequently the application filed by the 2nd respondent before the Joint Mamlatdar-I of Bicholim in Case No.JM/-1/TNC/19/95 stands dismissed.

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11. In the Special Leave Petitions, while issuing notice on 14.12.2009, this Court has ordered to maintain *status quo* with regard to possession of the lands in question. Alleging that legal representatives of the 2nd respondent have violated the said order, appellants have moved the contempt petitions. In view of the final orders passed by this Court in these civil appeals it is not necessary to pass any orders in these contempt petitions at this stage. Accordingly, these contempt cases are closed.

.....J.
[L. NAGESWARA RAO]

.....J.
[R. SUBHASH REDDY]

New Delhi.
February 25, 2020.