

PETITIONER:
LAXMINARAYAN DIPCHAND MAHESHWARI & ORS.

Vs.

RESPONDENT:
MAHARASHTRA REVENUE TRIBUNAL & ORS.

DATE OF JUDGMENT 13/02/1975

BENCH:
GOSWAMI, P.K.
BENCH:
GOSWAMI, P.K.
MATHEW, KUTTYIL KURIEN

CITATION:
1975 AIR 1036 1975 SCR (3) 537
1975 SCC (1) 487

ACT:
Bombay Tenancy and Agricultural Lands (vidarbha Region) Act.
1958, ss.43(14A), 46(1) and 49A (1)-Scope of 46, if
protected by , Art. 31A.

HEADNOTE:
Section 40 (1) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region Act 1958, provides that notwithstanding anything contained in Chapter 111. (containing ss. 38 to 57) the ownership of all lands held by tenants which they are entitled to purchase from their landlords under any of the provisions of chapter, shall stand transferred to and vest in such tenants on and from April 1961. from which date such tenants shall be deemed to be the full owners of qua lands. Section 43 (14A) provides that if a tenant fails to exercise hi,, right of purchase under s. 41 etc. the land shall be deemed to be surrendered to the landlords; and s. 49A(1) provides that notwithstanding anything contained in ss.41 and 46 etc., on and from April 1. 1963 the ownership of all land held by a tenant (being land which is not transferred to the tenant under s. 46 or which is not purchased by him under ss. 41 and 56), shall vest in such tenant. The Agricultural Lands Tribunal took action under s. 46 read with a. 48 of (he Act for fixing the price of the land in possession of the respondent who, Was personally cultivating the land as a cultivating tenant under the appellant-land-ford. The appellant contested the proceedings without success before the authorities under the Act as well as in a writ petition in the High Court. In appeal to this Court, it was contended (1) that s. 49a is not applicable to the present case as the opening non-obstante clause of that section makes no reference to s. 43(14A) while it specifically mentions ss. 41 and 46; (2) Since the tenant had not exercised his right to purchase the land in question under s. 43(14A) the land shall be deemed to have been surrendered to the appellant and no question of statutory transfer of ownership of the land would arise; and (3) Section 46 is violative of Aets. 14 and 19(1)(f) of the Constitution and is not saved by Art. 31A. Dismissing the appeal,
HELD : (1),Section 49A is not attracted in the instant case since that section provides for ownership of land which is

not transferred to the tenant under s. 46 or which is not purchased by the tenant under s. 41 or s. 50. The present case deals with compulsory transfer of ownership under s. 46. [539H]

(2) Under s. 46 the tenants became full owners of the lands by operation of law and there is a statutory vesting of the lands in them. This legal vesting by operation of s. 46 on and from April 1, 1961, cannot be divested in the absence of any clear provision under the Act. Section 43(14A) is a prospective provision and was introduced in the Act by amendment on March 1, 1962 and has no application. [540A-D]

(3) Section 46 has achieved the twin purpose of extinguishment of the right of the landlord in the estate and conferment of the same right upon the tenant. Once that happens, there is, in one breath, extinguishment of the right in favour of the State and the conferment of the said right in favour of the tenant. Article 81A is therefore clearly applicable and it cannot be contained that there is violation of Arts. 14 and 19. [541A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2609 of 1969.

Appeal by Special Leave from the judgment and order dated the 10th April, 1969 of the Bombay High Court (Nagpur Bench) in special Civil Appln. No. 1039 of 1966.

W. S. Barlingay, Sheil Sethi and Ganpat Rai, for the appellants.

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E.C. Agarwala, for respondent no. 2.

M. C. Bhandare and S. P. Nayar, for respondent No. 5.

The Judgment of the Court was delivered by

GOSWAMI, J. This petition by special leave is directed against the judgment of the Bombay High Court rejecting the appellant-landlords' application under articles 226 and 227 of the Constitution with regard to a revenue matter under the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (briefly the Act). The second respondent (hereinafter the respondent) was the cultivating tenant under the appellant-landlords. It was never in dispute in any of the earlier proceedings that the respondent was personally cultivating the land as a tenant.

On a report of the patwari submitted on April 6, 1963, the Agricultural Lands Tribunal, Malkapur, took action under section 46 read with section 48 of the Act for fixing the price of the land in possession of the respondent. The appellants contested the proceeding without success and an appeal preferred before the Special Deputy Collector for Tenancy met with the same fate. The appellants then preferred a petition of revision before the Maharashtra Revenue Tribunal, Nagpur. That also failed. As noticed earlier eventually the High Court also rejected the writ application. The short question that had been persistently raised in all the earlier proceedings and has been strenuously urged by Dr. Barlingay before us is whether in view of section 43(14A) of the Act the order of the Revenue Tribunal is legally sustainable.

In order to appreciate the above submission it is necessary to look at the relevant provisions.

Section 41 (1) reads as follows

41 (1). "Notwithstanding anything to the contrary in any

law, usage or contract but subject to the provisions of sections 42 to 44 (both inclusive) a tenant other than an occupancy tenant shall, in the case of land held by him as a tenant, be entitled to purchase from the landlord the land held by him as a tenant and cultivated by him personally".

It is not necessary to quote section 42 which provides for the extent of land which a tenant may purchase under section 41.

Section 43 (1) (a) and (14A) upon which much stress has been laid may be set out :

43 (1) (a). "A tenant who desires to exercise the right conferred by section 41 shall make an offer to the landlord stating the price at which he is prepared to purchase the land, such price not exceeding twelve times the rent payable by him and the depreciated value of any structures, wells and embankments constructed and permanent fixtures made and the value of any trees planted on the land by the landlord after the period of the last Settlement or, where no such Settlement is made during the period of thirty years before the com-

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menacement of this Act and the amount of the arrears of rent, if any, lawfully due on the day on which the offer is made".

43(14A). "If a tenant fails to exercise his right of purchase under section 41 in respect of any land or the purchase of any land becomes ineffective, the land shall be deemed to have been surrendered to the landlord, and thereupon the provisions of sub-sections (1) and (2) of section 21 and Chapter VI shall apply to such land as if the land was surrendered by the tenant under section 20".

The next material section is 46(1) which reads as under

46(1). "Notwithstanding anything in this Chapter or any law for the time being in force or any custom, usage, decree, contract or grant to the contrary, with effect on and from the first day of April 1961, the ownership of all lands held by tenants which they are entitled to purchase from their landlords under any of the provisions of this Chapter shall stand transferred to and vest in, such tenants and from such date such tenants shall be deemed to be the full owners of such lands

Section 49A (1) may also be read;

49A(1). "Notwithstanding anything contained in section 41 or 46, or any custom, usage, decree, contract or grant to the contrary but subject to the provisions of this section, on and from the 1st day of April 1963 the ownership of all land held by a tenant (being land which is not transferred to the tenant under section 46 or which is not purchased by him under section 41 or 50) shall stand transferred to and vest in, such tenant who shall, from the date aforesaid, be deemed to be the full owner of such land, if such land is cultivated by him personally, and.

It is submitted by Dr. Barlingay that since the tenant had not exercised his right to purchase the land in question, under sub-section (14A) of section 43 the land shall be deemed to have been surrendered to the landlords and no question of statutory transfer of ownership of the land would arise. He also submits that section 49A is not applicable in the instant case as the opening non-obstante clause of that section makes no reference to section 43(14A) while specifically mentions section 41 and section 46.

We may at once say that section 49A is not attracted in the instant case since the section provides for ownership of land which is not transferred to the tenant under section 46 or which is not purchased by the tenant under section 41 or section 50. It is admitted by the learned counsel that the land in question was not purchased by the tenant under section 41 or under section 50. The only contention is that this land cannot be the subject matter for compulsory transfer of ownership under section 46.

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Sub-section 14(A) of section 43 was inserted by Maharashtra Act 2 of 1962 with effect from March 1, 1962. On the other hand section 46(1) brings about a legal consequence with regard to transfer of ownership of land to tenants on and from April 1, 1961. Section 46(1) provides clearly and unambiguously that notwithstanding anything contained in Chapter III (containing sections 38 to 57) the ownership of all lands held by tenants, which they are entitled to purchase from their landlords under any of the provisions of this Chapter, shall stand transferred to and vest in such tenants on and from April 1, 1961, from which date such tenants shall be deemed to be the full owners of such lands. The tenants, therefore, become full owners of the tenanted lands by operation of law and there is a statutory vesting of the lands in them.- This legal vesting by operation of section 46 on and from April 1, 1961, cannot be divested in absence of any clear provision under 'the Act to that effect only by reference to a prospective provision like subsection (14A) of section 43 which came by an amendment much later on March 1, 1962. it is, therefore, not even necessary to consider the legal effect of the amalgam of the three sections, namely, sub-section (14A) of section 43, section 46 and section 49A in this appeal. We are satisfied the revenue authorities were justified in taking action under section 46 read with section 48 and the order cannot be challenged as, unsustainable in law.

The learned counsel next contends that section 46 of the Act is violative of article 19(1) (f) of the Constitution and is not saved by article 31A which is not applicable. Counsel submits that under section 46 there is no acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights in order to come within the saving provision of article 31A(1) (a). According to counsel the land is transferred from the landlord and vests in the tenant by virtue of section 46. There is, therefore, no acquisition by the State of any estate or of any rights therein nor is there any extinguishment or modification of such rights in favour of the State. Section 46 and such other provisions in the Act are in furtherance of agrarian reforms which are one of the principal objects of the Act., The fact that section 46 in terms transfers the land from landlord to tenant and vests the ownership in the latter does not mean that there is no extinguishment of the estate or its rights in favour of the State for the sole reason that there is no express mention

of such acquisition by the State in terms. The scheme underlying the provisions may be briefly stated. The State being the paramount Owner of the lands had earlier granted the land to the tenure holders who are the landlords under the Act. In order to transfer the land to tenants from the landlords the first step the

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State will have to take is to extinguish the rights of the tenure holders tinder the paramount owner. It is only then that transfer of the same land to the tenants under the landlords will be possible. Section 46, in our opinion, has achieved the twin purpose of extinguishment of the right of the landlord in the estate and conferment of the same right upon the tenant. Once that happens there is in one breath extinguishment of the right in favour of the State and the conferment of the said right in favour of the tenant. There is therefore, no substance in the contention that article 31A is not applicable in this case to enable the appellants to challenge the provision under article 19(1) (f) of the Constitution. The objection of the learned counsel is therefore, without substance. Since article 31A is clearly applicable, we need not deal with the objection of counsel on the score of violation of article 14 of the Constitution. In the result the appeal fails and is dismissed with costs.

V.P.S.

Appeal dismissed..

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