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KUMAR SHREE DIGBIJAYSINHJI

v.

NANJISAVDAS & ORS.

July 23, 1968

B [R. S. BACHAWAT and K. S. HEGDE, JJ.]

Saurashtra Land Reforms Act, 1951 (*Act* 25 *of* 1951), 18, 19—*Grant of land by former ruler of merged State recognised by Government of India on condition that grantee would not be entitled to evict tenants—Such condition whether a right or privilege of the tenant within the meaning of s.* 18—*Grantee declared by State Government notification to be a Girasdar subject to s.* 18—*Such Girasdar whether can file application* C *under s.* 19 *for allotment of land for self-cultivation after eviction of tenants.*

In 1947 the Ruler of Virpur State in Saurashtra granted certain agricultural lands to the appellant. Later these lands were exchanged for others. In 1948 the administration of Virpur State was assumed by the United State of Saurashtra. The Saurashtra Government questioned the grant but the Government of India at a conference with the Ruler recog- D nised it as having been lawfully made to the appellant, with the condition that he would not evict the tenants from the lands. The arrangement was set out in a letter dated November 2, 1949 from the Political Department of the Government of India to the Revenue Department, United State of Saurashtra. Though the appellant was not a party to the arrangement he was aware of and accepted the arrangement and the conditions upon which his grant was confirmed by the Government of India. The E Saurashtra Land Reforms Act came into effect on September 1, 1951. On January 29, 1954 the Government of Saurashtra issued a notification under s. 15(2) of the Act declaring the appellant to be a Girasdar for purposes of the Act subject to the provisions of s. 18 thereof, and this was later by another notification, clarified to mean that he was a Girasdar subject to the condition imposed by the Government at the time of his recognition, that he could not evict the tenants. In the meantime the appellant made an application to the Mamlatdar for an allotment of land F for personal cultivation under s. 19 of the Act. This application was allowed by the Mamlatdar but the Revenue Tribunal in revision held that the application under s. 19 was not maintainable. The appellant's petition before the High Court under s. 227 of the Act was dismissed on the grounds that (i) the conditions incorporated in the letter of November 2, 1949 having been accepted by the appellant enured for the benefit of the tenants under s. 18 of the Act; (ii) the rights of the Girasdar were restricted by the notification under s. 2(15) of the Act declaring him G to be a Girasdar and the appellant was bound by those restrictions. Against the High Court's judgment the appellant came to this Court.

HELD : (i) Had the Government of India annuled the grant made to the appellant the annulment would have been an Act of State and could not be questioned before the Municipal Tribunals. Instead of annulling the grant the government elected to confirm it subject to the conditions incorporated in the letter dated November 2, 1949. The H appellant accepted the grant subject to those conditions and was bound by them. [408 F]

State of Saurashtra v. *Jamadar Mohamad Abdulla,* [1962] 3 S.C.R. 970, referred to.

(ii) The conditions incorporated in the letter dated November 2, 1949 were intended for the benefit of the tenant. The tenants could claim the benefit of the condition that the appellant could not evict them. The condition was annexed to the grant to the appellant. The right or privilege of the tenant arising out of this condition was a right or privilege arising out of a grant within the meaning of s. 18. The expression 'grant' in s. 18 is wide enough to take within its sweep a grant by the Government to the Girasdar and is not limited to a grant by the Girasdar to the tenant. [409 G-H]

(iii) On the strength of the order of allotment of land for personal cultivation under s. 20(2) the Girasdar is entitled to evict the tenants from the land allotted to him. When the Girasdar applies under s. 19 for allotment of land for personal cultivation, he seeks to evict the tenant from the land. Therefore when the appellant filed his application under s. 19 he sought an order which would enable him to evict the tenants in contravention of the condition of his grant that he would not evict the tenants. In view of s. 18 nothing in Chapter IV of the Act enabled him to obtain an order limiting or abridging the rights and privileges of the tenants arising under the condition. The Mamlatdar could not under s. 20 pass an order which would enable the appellant to evict them. The application filed by the appellant under s. 19 was therefore incompetent. [410 F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 37 of 1965.

Appeal from the judgment and order dated August 12, 1958 of the Bombay High Court at Rajkot (now Gujarat High Court) in special civil Application No. 55 of 1957.

B. Sen, P. V. Hathi, K. L. Hathi and Atiqur Rehman, for the appellant.

M. V. Goswami, for respondents Nos. 1, 2, 3, 6 and 7.

N. S. Bindra and *S. P. Nayar,* for respondents Nos. 26 and 27.

The Judgment of the Court was delivered by

Bachawat, J. This appeal raises questions of interpretation of certain provisions of the Saurashtra Land Reforms Act 1951 (Act No. XXV of 1951). On June 1, 1947 Narendrasinghji the then ruler of the Virpur State granted certain agricultural lands situate within the State to the appellant, his paternal uncle. On February 11, 1948 Narendrasinghji and the appellant effected an exchange under which the appellant returned the lands at Matiya and Guda to Narendrasinghji and in lieu thereof was granted certain lands in Kharedi. The lands in Kharedi are the subject-matter of dispute in this litigation. On February 17, 1948 the grant was recorded in the "Hak Patrak' of the Virpur State. On March 8, 1948 the administration of the Virpur State was assumed by the United State of Saurashtra. The grant to the appellant was questioned by the Saurashtra Government. Thereafter at a conference called the Jamnagar Conference, it was arranged between Narendrasinghji and the Government of India that the lands

A in Kharedi should be regarded as lawfully granted to the appellant subject to the condition that the grantee would not evict the cultivators from the land. The arrangement was set out in a letter dated November 2, 1949 from the officer on special duty (Integration) Political Dept., to the Secretary, Revenue Department, United State of Saurashtra. The letter stated :

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> "According to the Jamnagar Conference decision as this grant was an exchange, it was acceptable after verification regarding reasonableness of the exchange. It having been decided on enquiry that the exchange was reasonable, the grant is accepted subject, however, to the liability of the grantee (a) to pay 12½% as
C assessment (b) to see that no cultivator shall be evicted from the land .... The grantee K. S. Digvijaysinghji may kindly be informed of this assessment charge and the other contents of this letter and may be put in possession of the land and allowed to be retained by him subject to the liabilities specified in this letter."

D Though the appellant was not a party to the arrangement, he was aware of and accepted the arrangement and the condition upon which his grant was confirmed by the Government of India. Had he not accepted those conditions, it was likely that the government would have resumed the grant under the Saurashtra Land Resumption Ordinance No. 84 of 1949 which came into force on
E January 13, 1950. The Saurashtra Land Reforms Act came into force on September 1, 1951. On January 29, 1954 the Government of Saurashtra issued a notification under sec. 15(2) of the Act declaring the appellant to be a Girasdar for purposes of the Act subject to the provisions of sec. 18 thereof. By a notification dated July 20, 1954 the Saurashtra Government clarified the earlier notification stating that the appellant was a Girasdar sub-
F ject to the provisions of sec. 18 of the Act, *i.e.*, the condition imposed by the government at the time of his recognition that he cannot evict the tenants. In the meantime the appellant had applied to the Mamlatdar, Kalawad, for an order of allotment of land for personal cultivation under sec. 18 of the Act. The application was resisted by the tenants who are the respondents in this
G appeal. The tenants claimed that they had "chav" rights and that in any event the appellant was not entitled to eject them. The Mamlatdar allowed the application and allotted to the appellant lands out of the holding of four tenants. An appeal from his order was dismissed by the Deputy Collector, Eastern Division, Halar. On a revision application filed by the tenants the Bom-
H bay Revenue Tribunal set aside these orders and dismissed the application filed under sec. 19. All the tribunals concurrently found that the tenants did not hold "chav" rights. The Mamlatdar allowed the application under sec. 19 on the ground that the

conditions imposed upon the appellant before the passing of the Act did not debar him from taking the benefits under the Act. The Deputy Collector affirmed this order on the ground that by obtaining the order of allotment of lands for personal cultivation the appellant was not seeking to evict tenants by exercising his rights as a landlord. The Tribunal disagreed with the views of the Mamlatdar and the Deputy Collector and observed that as the appellant was aware of and accepted the conditions imposed by the arrangement incorporated in the letter dated November 2, 1949, he was bound by them and his rights in the land were limited by the condition that he could not evict the tenants. The Tribunal held that the tenants were entitled to take advantage of the conditions under sec. 18 of the Act and the application under sec. 19 was therefore not maintainable.

The appellant then applied to the High Court of Bombay at Rajkot under Art. 227 of the Constitution challenging the correctness of the order of the Revenue Tribunal. The High Court dismissed the application. It held that the conditions incorporated in the letter of November 2, 1949 having been accepted by the appellant enured for the benefit of the tenants under sec. 18 of the Act. It also held that the rights of the appellant as Girasdar were restricted by the notification under sec. 2(15) of the Act declaring him to be a "Girasdas" and the appellant was bound by those restrictions. The present appeal has been preferred by the appellant under a certificate granted by the High Court.

It is not disputed that the Government of India had the power to impose upon the appellant the conditions incorporated in the letter dated November 2, 1949 and that the appellant is bound by them. The government could refuse to recognise the grant made to the appellant by the ruler of the Virpur State and to annul the grant. Had the government annulled the grant, the annulment would have been an Act of State and could not be questioned before the municipal tribunals [see *State of Saurashtra* v. *Jamadar Mohamad Abdulla*(1)]. Instead of annulling the grant the government elected to confirm it subject to the conditions incorporated in the letter dated November 2, 1949. The appellant accepted the grant subject to those conditions and is bound by them.

The question is whether in spite of the conditions incorporated in the letter dated November 2, 1949 the appellant is entitled to allotment of land under sec. 19 of the Saurashtra Land Reforms Act 1951. The Act was passed for the improvement of land revenue administration and for ultimately putting an end to the Girasdari system. It makes provisions to regulate the relationship between the Girasdars and their tenants, to enable the latter

(1) [1962] 3 S.C.R. 970.

A to become occupants of the land held by them and to provide for the payment of compensation to the Girasdars for the extinguishment of their rights. Girasdar means any talukdar, bhagdar, bhayat, cadet or mul-girasia and includes any person whom the government may by notification in the official gazette declare to be a Girasdar for the purposes of the Act, [s. 2(15)]. It is B common case that the appellant is a Girasdar by virtue of the notification of the Saurashtra Government declaring him to be a Girasdar. The Act overrides other laws. Save as otherwise provided in the Act, its provisions have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of C any such law or any usage, agreement, settlement, grant, sanad or any decree or order of any court or other authority, (s. 3). Chapter III regulates the relationship of Girasdar with their tenants. Subject to certain exceptions any person who is lawfully cultivating any land belonging to a Girasdar is for the purposes of the Act deemed to be the tenant, (s. 6). Sections 6 to 17 confer on the tenants certain benefits, privileges and immunities D in respect of rent, cess, rate, hak, tax, service, termination of tenancy and eviction from dwelling houses. Particularly s. 12 provides that no tenancy can be terminated except in accordance with the provisions of Chapter IV or except on certain specified grounds. Section 18 provides :—

> "Nothing contained in this Act shall be construed E to limit or abridge the rights or privileges of any tenant under any usage or law for the time being in force or arising out of any contract, grant, decree or order of a court or otherwise howsoever."

Section 18 shows that the Act is intended to confer on the tenant rights and privileges which he does not otherwise enjoy or possess F under any usage or law in force or any contract, grant, decree or order of a court or arising in any other way. If the tenant has any right or privilege apart from the provisions of the Act, he needs no protection under the Act. He can claim protection under his existing rights and privileges. His existing rights and privileges are not limited or abridged by anything in the Act.

G The conditons incorporated in the letter dated November 2, 1949 were intended for the benefit of the tenants. The tenants can claim the benefit of the condition that the appellant would not evict them. The condition is annexed to the grant to the appellant. The right or privilege of the tenant arising out of this condition is a right or privilege arising out of a grant within the H meaning of sec. 18. Tht expression "grant" in sec. 18 is wide enough to take within its sweep a grant by the government to the Girasdar and is not limited to a grant by the Girasdar to the tenant.

The next question is whether the rights and privileges of the tenant arising out of the conditions incorporated in the letter dated November 2, 1949 is limited or abridged by an order for allotment of land to the appellant under sec. 19 for personal cultivation. Chapter IV enables Girasdars to obtain allotment of land for personal cultivation. Any Girasdar may file an application for such allotment before the Mamlatdar under sec. 19 within a certain time. On making the necessary enquiries the Mamlatdar may pass an order making an allotment of land to the Girasdar, [s. 20(2)]. After making the order the Mamlatdar has to issue an occupancy certificate to the Girasdar in respect of the deed. [s. 20(3)]. No Girasdar can obtain possession of any land held by a tenant except in accordance with such order, [s. 20(4)]. Nothing contained in Chapter IV applies to any land in respect of which a tenant has acquired chav or buta hak, (s. 27). Under s. 39 the Girasdar may obtain an occupancy certificate in respect of land allotted to him under Chapter IV. Section 50(2) provides for execution of orders of the Mamlatdar awarding possession. Chapter V provides for acquisition of occupancy rights by tenants. Having regard to sec. 30(1) and the proviso to sec. 32(b) the acquisition of occupancy rights by tenants is subject to an order of allotment to the Girasdar under Chapter IV and any occupancy certificate issued to a tenant ceases to be effective as soon as any agricultural land or any portion thereof is allotted to a Girasdar under Chapter IV either before or after the date on which the occupancy certificate issued to the tenant has become effective.

On the strength of the order of allotment of land for personal cultivation under sec. 20(2) the Girasdar is entitled to evict the tenants from the land allotted to him. When the Girasdar applies under sec. 19 for allotment of land for personal cultivation, he seeks to evict the tenants from the land. Therefore when the appellant filed his application under sec. 19 he sought an order which would enable him to evict the tenants in contravention of the condition of his grant that he would not evict the tenants. In view of sec. 18 nothing in Chapter IV enables him to obtain an order limiting or abridging the rights and privileges of the tenants arising under the condition. The Mamlatdar could not under sec. 20 pass an order which would have the effect of limiting or abridging those rights and privileges. The appellant had no right to evict the tenants and the Mamlatdar could not pass an order which would enable the appellant to evict them. The application filed by the appellant under sec. 19 was therefore incompetent.

The appellant as a Girasdar was subject to the provisions of sec. 18. The declaration in the notification dated January 29, 1954 that he was subject to the provisions of sec. 18 stated what followed from the express provisions of the Act. Because of sec.

A 18, the appellant was subject to the conditions imposed by the Government at the time of his recognition that he cannot evict the tenants. The notification dated July 20, 1954 declared the existing disability of the appellant in respect of eviction of tenants.

The application filed by the appellant under sec. 19 was rightly
B dismissed by the Revenue Tribunal and the High Court rightly refused to interfere with this decision under Art. 227 of the Constitution.

The appeal is dismissed with costs.

G.C. *Appeal dismissed.*