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STATE OF MAHARASHTRA

v.

LAXMAN ABAJI & ANR.

April 20, 1971

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[C. A. VAIDIALINGAM AND A. N. RAY, JJ.]

Hyderabad Abolition of Inams Act, 1954 (Act VIII of 1955)—Landlord and Tenant—Relationship if continued to subsist between date of abolition of Inams vesting land in the state and date of coming into force of the entire Act.

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On the question whether the relationship of landlord and tenant continued to subsist between July 20, 1955 when the inams were abolished and the land vested in the State under the Hyderabad Abolition of Inams Act, 1954 (VIII of 1955) and July 1, 1960 when a notification under s. 1(3)(b) of the Act made the entire Act applicable,

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HELD: Though the Inams were abolished and the land vested in the State by reason of s. 3(1) of the Act the rights and interests of landlord and tenant mentioned in s. 3(2) (b) were preserved by s. 33 inasmuch as s. 3(2) cls. (d), (g), (h) and (i) did not come into effect until July 1, 1960. The crucial date for grant of occupancy rights under the 1955 Act is July 1, 1960 when the entire Act including, in particular, the provisions regarding grant of occupancy rights and cls. (d), (g), (h) and (i) of s. 3(2) came into effect. The relation between landlord and tenant ceased on July 1, 1960 and if any tenant surrendered possession prior to July 1, 1960, and the inamdar accepted such surrender and remained in possession of the land on the relevant date, i.e., July 1, 1960, the inamdar would be entitled to grant of occupancy rights. On the other hand if the tenant claimed to be in possession of the land on the relevant date and the inamdar also claimed to be in possession the Government will have to ascertain as to who was lawfully in possession on the relevant date. [416E ; 417G].

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Dattatraya Sadashiv Dand v. Ganpati Raghu Gaoll, 67 B.L.R. 521, approved.

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CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2531 and 2533 of 1966.

Appeals from the judgments and orders dated April 1, 1965 of the Bombay High Court in Special Civil Applications Nos. 804 and 697 of 1964 respectively.

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M. C. Bhandare, Badri Das Sharma for S. P. Nayar, for the appellant (in both the appeals).

W. S. Barlingay and A. G. Ratnaparkhi, for respondent No. 1 (in C. A. No. 2533 of 1966).

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The Judgment of the Court was delivered by

Ray, J.—These two appeals are by certificate from two judgments dated 1 April, 1965 of the Bombay High Court.

Both the appeals turn on the question as to whether the relationship of landlord and tenant continued to subsist between 20 July, 1955 when the inams were abolished by and the land vested in the State under the Hyderabad Abolition of Inams Act, 1954 being Act VIII of 1955 (hereinafter referred to as the 1955 Act) and 1 July, 1960 when a notification under section 1(3) (b) of the 1955 Act made the entire 1955 Act applicable.

The contention on behalf of the State was that when the 1955 Act came into existence on 20 July, 1955 inams were abolished and the land vested in the State, and, therefore, the relationship between the inamdar landlord and the tenant in respect of the inam land ceased. The contention on behalf of the inamdar and the tenant on the other hand was that though inams were abolished and the land vested in the State on the coming into force of the 1955 Act on 20 July, 1955 the relationship of inamdar landlord and tenant continued upto 1 July, 1960 because all the provisions of the 1955 Act did not come into effect until 1 July, 1960 and those which did not come into operation had the effect of saving and preserving the relationship between inamdar landlord and tenant. The High Court upheld the contention of the inamdar landlord and the tenant.

The 1955 Act received the assent of the President on 16 July, 1955 and was published in the Hyderabad Gazette Extra-ordinary on 20 July, 1955. Under section 1(3) (a) of the said 1955 Act sections 1, 2, 3 (except clauses (d), (g), (h) and (i) of sub-section (2) of section 3), sections 30 to 34 (both inclusive), section 35 to the extent to which it enabled rules to be made for the purposes of the aforesaid sections, section 36 and section 37 of the 1955 Act came into force on the date of the publication of the 1955 Act in the official Gazette. The other important provision is section 1(3) (b) of the 1955 Act which enacted that the rest of the Act "shall come into force on such date as the Government may, by notification in the official Gazette, appoint in this behalf".

It may be stated here that the short title of the 1955 Act was Hyderabad Abolition of Inams Act, 1954. By the Hyderabad Abolition of Inams (Amendment) Act, 1959 the title of the 1955 Act was changed to Hyderabad Abolition of Inams and Cash Grants Act, 1954. The Amendment was by reason of the Act being made applicable to "cash grants and inams in the nature of community service, inams and *watans*" by introducing sub-section (2A) in section 1 of the 1955 Act. The 1959 Amendment Act came into force on 1 July, 1960 by a gazette notification dated 3 June, 1960. There was another gazette notification on 3 June, 1960 No. HDA-1060-IV-(b)-L—that in exercise of the powers conferred by clause (b) of sub-section (3) of section 1 of the Hyderabad

A Abolition of Inams and Cash Grants Act, 1954 the Government of Maharashtra appointed 1 July, 1960 to be the date on which the rest of the said Act "shall come into force". That is how all the provisions of the 1955 Act came into force on 1 July, 1960.

B The State relied on section 3(1) of the 1955 Act in support of the proposition that the inams were abolished and the land vested in the State, and, therefore, the relationship of landlord and tenant came to an end.

C It is noticeable that section 3(2) of the 1955 Act provided "save as expressly provided by or under the provisions of the Act and with effect from the date of vesting, the consequences mentioned in clauses (a) to (i) will ensue". The important clauses in section 3(2) of the 1955 Act are as follows:—

D "(b)—All rights, title and interest vesting in the inamdar, kabiz-e-kadim, permanent tenant, protected tenant and non-protected tenant in respect of the inam land, other than the interests expressly saved by or under provisions of this Act and including those in all communal lands, cultivated and uncultivated lands whether assessed or not, waste lands, pasture lands, forests, mines and minerals, quarries, rivers and streams, tanks, and irrigation works, fisheries and ferries, shall cease and be vested absolutely in the State free from all encumbrances;

E (d)—all rents and land revenue including cesses and royalties, accruing in respect of such inam lands, on or after the date of vesting, shall be payable to the State and not to the inamdar, and any payment made in contravention of this clause shall not be valid.

F (g)—the inamdar and any other person whose rights have vested in the State under clause (b) shall be entitled only to compensation from the Government as provided for in this Act;

G (h)—the relationship with regard to inam land as between the inamdar and kabiz-e-kadim, permanent tenant, protected tenant or non-protected tenant shall be extinguished;

H (i)—the inamdar, kabiz-e-kadim, permanent tenant, protected tenant, and a non-protected tenant of inam lands and any person holding under them and a holder of a inam, shall as against the Government, be entitled only to such rights and privileges and be subject to such conditions as are provided for under this Act and any other rights and privileges which may have accrued to any

of them in the inam before the date of vesting against the inamdar shall cease and shall not be enforceable against the Government or the inamdar".

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Among these clauses, clause (b) which came into effect on 20 July, 1955 saved from vesting in the State the interests expressly saved by or under the provisions of the 1955 Act. As to what interests were saved or protected from being vested in the State would be found in section 33 of the 1955 Act and clauses (b), (d), (g), (h) and (i) of section 3(2) of the 1955 Act. Section 33 of the 1955 Act is as follows :—

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“Nothing in this Act shall in anyway be deemed to affect the application of the provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950, to any inam or the mutual rights and obligations of an inamdar and his tenants, save in so far as the said provisions are in anyway inconsistent with the express provisions of the Act”

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Section 33 therefore provided first that the application of the provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950 to any inam was not to be affected by the 1955 Act save in so far as the said provisions were inconsistent with the provisions of the said 1955 Act. Secondly, section 33 saved the mutual rights and obligations of an inamdar and his tenant. It would, therefore, follow that the combined effect of clause (b) of Section 3(2) and of section 33 of the 1955 Act is that the mutual rights and obligations of the inamdar and the tenant were not affected by the 1955 Act.

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The rights and obligations of the inamdar would be *inter alia* to receive rent and land revenue. The rights of the tenant on the other hand would be primarily to continue in possession of the land and to enjoy its income subject to liability to pay rent and deliver possession to the inamdar in accordance with the provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950 in so far as the same were applicable.

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Clauses (d), (g), (h) and (i) of section 3(2) of the 1955 Act did not come into effect on 20 July, 1955. Those clauses came into effect only on 1 July, 1960. These clauses dealt with some of the mutual rights and obligations of the landlord and tenants which were preserved until 1 July, 1966.

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Clause (d) deals with rent and land revenue including cesses and royalties in respect of inam lands on or after the date of vesting to be payable to the State and not to the inamdar. In view of the fact that this clause was not brought into operation until

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A 1 July, 1960 rent in respect of inam land was not payable to the State on or after the date of vesting, namely, 20 July, 1955 until the coming into effect of clauses (d), (g), (h) and (i) on 1 July, 1960.

B Clause (h) dealt with extinction of relationship as between landlord and kabiz-e-kadim, permanent tenant, protected tenant or non-protected tenant with regard to inam land. Kabiz-e-kadim, permanent tenant, protected tenant and non-protected tenant are all defined in section 2 of the Act. Broadly stated, they are all different categories of tenant. In view of the fact that clause (d) did not come into effect on 20 July, 1955 it follows that the legislative intention was that the relationship between inamdar and tenant with regard to inam land would continue and be not extinguished until the provision was made applicable on 1 July, 1960.

C Clause (i) provided that with effect from the date of vesting rights and privileges which might have accrued to any person in inam before the date of vesting against the inamdar would cease and would not be enforceable against the Government or the inamdar. Clause (i) did not come into effect until 1 July, 1960 and is another illustration of the saving of mutual rights and obligations of the landlord and the tenant.

D It therefore follows that though the inams were abolished and the land vested in the State by reason of section 3(1) of the 1955 Act the rights and interests of landlord and tenant mentioned in section 3(2) (b) of the 1955 Act were preserved by section 33 of the 1955, Act inasmuch as section 3(2) clauses (d), (g), (h) and (i) of the 1955 Act did not come into effect until 1 July, 1960.

E Clause (b) of section 2 of the 1955 Act defined the expression "date of vesting". The Hyderabad Abolition of Inams (Amendment) Act, 1956 (Act 10 of 1956) (hereinafter called the 1956 Amendment Act) which was deemed to have come into force on 20 July, 1955 provided as follows :—

F "Notwithstanding anything contained in the principal Act, with effect from the date of publication of that Act in the official Gazette and till the commencement of the provisions mentioned in clause (b) of sub-section (3) of section 1 of that Act, the full land revenue, payable in respect of every inam abolished and vesting in the Government under section 3 of that Act, shall be recovered from the inamdar of such inam as if he were the occupant of such land and, on the commencement of the said provisions of that Act, it shall be recovered in accordance with those provisions".

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Section 4 of the 1956 Amendment Act provided for recovery of land revenue from the inamdar with effect from the date of publication of the 1955 Act, namely, 20 July, 1955. Section 4 of the 1956 Amendment Act was to remain effective and operative till the commencement of the provisions mentioned in section 1 (3) (b) of the 1955 Act, namely, 1 July, 1960. Section 4 of the 1956 Amendment Act provided for recovery of land revenue from the inamdar as if he were the occupant of such land. The words "as if he were the occupant of such land" indicate that the inamdar was to be treated in possession of the inam. This was necessary because the grant of occupancy rights mentioned in sections 5 and 6 of the 1955 Act did not come into effect until 1 July, 1960. The dominant idea was to continue the relationship of landlord and tenant in respect of the inam land and to look to the inamdar only for land revenue by treating him to be an occupant.

Sections 4, 5, 6, 7 and 8 of the 1955 Act deal respectively with registration of inamdars, kabiz-e-kadim, permanent tenant, protected tenant and non-protected tenant as occupants. These occupancy rights under sections 4 to 8 could not be granted before 1 July, 1960 when those sections came into force. Upto 1 July, 1960 the mutual rights and obligations of the landlord and the tenant were preserved by providing *inter alia* in section 33 of the 1955 Act, the application of the Tenancy Act. Again, after the abolition of the inams by the 1955 Act the right of the landlord to be in possession was preserved. Similarly, the right of the tenant to continue in possession was preserved. Neither the right of the landlord nor the right of the tenant was any right which flowed from any authority or grant of the Government. These rights emanated from the protective provisions of the statute. It is because of the continuance of the mutual rights and obligations of the landlord and the tenant that section 4 of the 1956 Amendment Act recognised the inamdar "as if he were in occupation of the land" for the purpose of land revenue. This liability of the inamdar to pay land revenue was provided in order to enable the inamdar to enjoy all his rights including that of revenue in the inam land.

It may also be noticed here that although the scheme of the 1955 Act was to abolish the inams and to vest the land in the State, there was no provision in the Act empowering the Government to resume possession. The relationship between inamdar and his tenant came to an end on 1 July, 1960 when the State by reason of the coming into force of sections 4 to 8 of the 1955 Act granted occupancy rights to persons mentioned in those sections.

In Civil Appeal No. 2531 of 1966 respondent No. 2 Gajya was inamdar of survey No. 22 measuring 28 acres 15 gunthas

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- A** situated at Azambag Village, Taluka Gangakhed at Hyderabad. Respondent No. 1 Laxman claimed to be a tenant on the basis of the lease executed by respondent No. 2 on 9 April, 1950. After 1 July, 1960 the Tahsildar of Gangakhed took necessary steps to confer the occupancy rights on respondent No. 2 in regard to the said land as he was in possession of the land on the date of vesting, namely, 20 July, 1955.
- B** Respondent No. 1 objected to the occupancy rights under section 6 of the Act as he was lawfully in possession of the said land on 1 July, 1960. The Tahsildar by his order dated 20 October, 1962 rejected the application of respondent No. 1 and conferred the occupancy rights on respondent No. 2 as the latter was in possession of the disputed land on the date of vesting.
- C** Respondent No. 1 being aggrieved by the order preferred an appeal to the State Government. The appeal was dismissed on 24 January, 1964. Respondent No. 1 thereafter filed an application under Article 227 of the Constitution in the Bombay High Court. The High Court by an order dated 1 April, 1965 set aside the order made by the Government and the Tahsildar and remanded the matter to the Tahsildar to hear all parties including the inamdar and thereafter decide who was lawfully in possession of the land on 1 July, 1960. The High Court took the view that the crucial date for conferment of occupancy rights under the 1955 Act would be 1 July, 1960 when the entire 1955 Act came into operation and the relationship of landlord and tenant which was preserved even after the date of vesting, namely, 20 July, 1955 came to an end on 1 July, 1960.
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- In Civil Appeal No. 2533 of 1966 respondent No. 1 was the inamdar of three pieces of land measuring in all 69 acres and 37 gunthas situated at village Paranda, Taluka Paranda, district Osmanabad. Respondent No. 2 was the tenant of respondent No. 1 in respect of those lands and was in possession of those lands on 20 July, 1955. Some time in the months of May and June, 1956 respondent No. 2 voluntarily surrendered his tenancy rights in the land to respondent No. 1. The surrender was accepted by the inamdar. The possession of the land was delivered to respondent No. 1. After the coming into effect of the entire 1955 Act on 1 July, 1960, the Tahsildar notified that respondent No. 2, the tenant was entitled to occupancy rights under the provisions of the 1955 Act. Respondent No. 1 objected and claimed that he was entitled to the occupancy rights of the land under section 6 of the 1955 Act as he was lawfully in possession of the land on 1 July, 1960 and the respondent No. 2 had surrendered his tenancy rights in 1956. The Tahsildar by his order dated 30 June, 1963 conferred the occupancy rights on respondent No. 2, the tenant as he was in possession on 20 July, 1955. Respondent No. 1, the inamdar preferred an appeal to the State Government. The State
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Government rejected the appeal on 24 January, 1964. The inamdar thereafter made an application to the Bombay High Court under Article 227 of the Constitution. The High Court by an order dated 29 March, 1965 held that the material date for the purpose of grant of occupancy rights was 1 July, 1960 and not the date of vesting of the land in the State on 20 July, 1955. The High Court further held that on 1 July, 1960 the inamdar was lawfully in possession of the land. The High Court directed that the Government should recognise the inamdar as occupant under section 6 of the 1955 Act.

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The High Court was right in both the orders. The crucial date for grant of occupancy rights under the 1955 Act is 1 July, 1960 when the entire 1955 Act including in particular the provisions regarding grant of occupancy rights and clauses (d), (g), (h) and (i) of section 3(2) of the 1955 Act came into effect. The Government became entitled to the possession of the land. The Government became entitled to grant of occupancy rights. The relationship between landlord and tenant ceased on 1 July, 1960. If any tenant had surrendered possession prior to 1 July, 1960 as happened in Civil Appeal No. 2533 of 1966 and the inamdar accepted such surrender and remained in possession of the land on the relevant date 1 July, 1960 the inamdar would be entitled to grant of occupancy rights. On the other hand, if the tenant claimed to be in possession of the land as in Civil Appeal No. 2531 of 1966 on the relevant date 1 July, 1960 and the inamdar also claimed to be in possession, the Government will have to ascertain as to who was lawfully in possession on the material date 1 July, 1960.

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The Bombay High Court in *Dattatraya Sadashiv Dhand v. Ganpati Raghunath Gaoll* (1) held that the relationship of landlord and tenant continued up to 1 July, 1960. We are in agreement with the decision on that point.

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For these reasons the appeals fail and are dismissed with costs, as of one hearing fee.

K. B. N.

Appeals dismissed.

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(1) 67 Bom. L. R. 521.