
(1957) 04 MP CK 0002
In the Madhya Pradesh High Court
Case No : C.F.A. No. 181 of 1955

Arya Pratinidhi Sabha

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 16-04-1957

Acts Referred:

Contract Act, 1872 — Section 65

Citation : (1957) JLJ 909

Hon'ble Judges : Shrivastava, J; Sen, J

Bench : Division Bench

Advocate : K.R. Bobde and V.K. Sanghi, for the Appellant; H.L. Khaskalan, for the Respondent

Final Decision : Dismissed

Judgement

1. These four appeals (F.A. Nos. 181 to 184 of 1953) filed by plaintiffs arise out of the judgment and decree in civil suits 10-A to 13-A of 1952 in the court of Civil Judge, Class I, Raipur. They have been heard together and this judgment governs the disposal of all the four appeals.

2. The following facts are not disputed--

The village of Sonskhan Tahsil Baloda-bazar District Durg was held by one James Patrick Meek who got the same from the Government under a conveyance dated 4th July 1853 under Waste Land Mahal Rules in absolute rights (Jarkharidi rights) free from the liability to pay land-revenue. The said James Patrick transferred his interests in the village to James Handersen in 1905 and James Handersen transferred them to Jaydeosingh, Dalipsingh Tularam and Udairam. The village was divided into four Pattis and each of the plaintiffs came to own one Patti out of the four in due course.

3. In 1948, C.P. & Berar Land Revocation of Land Revenue Exemptions Act (Act 38 of 1948) was enacted and acting under that authority, the Government has assessed all these four Pattis to land revenue. The land-revenue has been partly

realised and the Government is threatening to recover the rest. It was contended on behalf of the plaintiffs that the demand for land-revenue is illegal and void. Accordingly, it was prayed that the Government should be restrained from recovering the amount and should further be ordered to refund what they have already recovered.

4. The lower court has held that the legislation was validly enacted and the plaintiffs were liable to pay land-revenue as demanded. Accordingly, all the four suits were dismissed. Hence these four appeals.

5. Shri Bobde, who appeared for the appellants in all these appeals, has given up all the grounds stated in the memorandum of appeal. He does not dispute that the legislature had power to enact the Land Revenue Revocation of Exemptions Act in 1948 and that the law is valid. He has conceded that under that law, the Government was perfectly within their right to assess and recover land-revenue from the appellants. He had developed the arguments on a new ground thus. The Government had contracted at the time of the original grant in 1863 that the land shall be held free of land-revenue in future. If the legislature takes away the exemption by law, the Government as a contracting party is now bound to make good the loss which results to the plaintiffs on account of the imposition of land-revenue. He argues that this amounts to breach of a contract or alternatively he relies on section 65 of the Contract Act for reimbursement of the amount paid.

6. Before we take up the arguments advanced by the learned counsel for the appellants, we shall deal with a preliminary point which has been raised by the Government Advocate. He has contended that the grant of lands free of land-revenue is a sovereign act and its breach cannot be questioned in a municipal court. He relies upon a case reported in *Mohia Chunder Dev. vs. Secretary of State for India* (1 Cal. 11). That was a case in which the plaintiff was refused an excise licence to sell intoxicants although his bid was the highest. It was observed:--

But where an act is done or a contract entered into in the exercise of powers usually called sovereign powers, by which we mean powers which cannot be lawfully exercised except by a sovereign or a private individual delegated by a sovereign to exercise them, no action will lie.

The view taken in this case has been dissented from in *Hari Bhanji vs. Secretary of State* (4 Mad. 344). *The Secretary of State vs. Hari Bhanji* (5 Mad. 273) *Vijaya Ragava vs. Secretary of State* (7 Mad. 466). In *Jehangir vs. Secretary of State* (6 Bom. L.R. 131), it has been observed:--

The test whether an act is or is not an Act of State excluding the jurisdiction of the Courts, is not whether it is capable of being legally performed only by persons specially empowered in that behalf as authorised by the law to perform specific acts of Government; but whether it is an act of the State in those external relations, which Municipal or positive law addressed by political superiors to political inferiors does not profess to regulate.

An act of State in respect of which the jurisdiction of the Courts is barred must be an act which does not purport to be done under colour of a legal title at all, and which could neither assert or violate any right conformable by law, but which must rest for its jurisdiction on considerations of external politics and interstatal duties and rights.

In *P.V. Rao and others vs. Khushaldas S. Adani* (A.I.R. 1942 Bom. 277) it has been observed:--

An act of State is different fundamentally from an act of sovereign authority. An act of State operates extra-territorially. Its legal title is not any municipal law but the overriding sovereignty of the State. It is difficult to conceive of an act of State between a sovereign and his subjects. If Government justifies its act under colour of title and that title arises from a municipal law, that act can never be an act of State.

It is thus clear that the jurisdiction of municipal courts is barred only in the case of "Acts of State" which operate extraterritorially. They have no reference to acts against the subject of the State itself. In the present case, the fact that land-revenue could be remitted only by the State Government will not oust the jurisdiction of municipal courts. The case will, therefore, have to be considered on its merits.

7. Passing on to the arguments of the learned counsel for the appellant, it may be noted that the powers to legislate exist in spite of any contract or previous legislation to the contrary. The Government cannot bind the Government in future by contract or legislation in any way. The law was stated thus:--

In AIR 1943 29 (Federal Court) , it was held:--

In spite of any obligations which may be created by Sanads granted by Government, the legislature has power to enact legislation to the contrary.

In *Maharaj Umeg Singh and Others Vs. The State of Bombay and Others* , it was held--

Once the topic of legislation was comprised within any of the entries in the Lists 2 and 3 of the Seventh Schedule to the Constitution, the fetter or limitation on such legislative power had to be found within the Constitution itself; and if there was no such fetter or limitation to be found there, the State legislature had full competence to enact the impugned Act, no matter whether such enactment was contrary to the guarantee given, or the obligation undertaken by the Dominion Government or the Province of Bombay or even the State of Bombay.

It is thus abundantly clear that in spite of the fact that there was a contract in 1865, remitting all land-revenue on the village, the legislature had power to enact legislation taking away the exemption.

8. The Revocation of Land Revenue Exemptions Act 1948 was enacted with the express purpose "to remove all prevalent exemptions from liability to pay land-

revenue. Section 3 of the Act runs thus:--

3. (1) "Every estate, Mahal, village or land to whatever purpose applied and wherever situate which was heretofore exempted from payment of the whole or part of land-revenue by special grant of, or contract with the Government, or under the provision of any law or rule for the time being in force or in pursuance of any other instrument, shall, notwithstanding any thing contained in any such grant, contract, law, rule or instrument, be liable....."

This section enacts that land revenue exemptions are withdrawn in spite of the fact that they were created by any grant by or contract with the Government. The terms of the contracts thus become ineffective, and the J enactment would prevail against it.

9. The learned counsel for the appellants has argued that the Government in its administrative capacity should be distinguished from the Government exercising legislative power and it is stated that even if the "Government exercising legislative power" has enacted the law, the contract would be binding on the "Government exercising administrative power". It is difficult to appreciate this argument. When the enactment expressly mentions that it will have effect In spite of any contract to the contrary, it seems that the contract would be at an end; and the legislation will prevail. If the sale of the village had been made by a private party, our view is that the private party would not be responsible for any future legislation taking away the exemptions to pay land-revenue, even though the party has stated in the deed that such exemptions would continue. The vendee in such a case would take the land subject to any future valid legislation which may impose any tax or take away any tax exemptions. The position that the Government was the vendor in the present case Instead of a private individual should not make any difference to the reasoning. The Government will not be bound to refund or reimburse the amount paid.

10. All the four appeals fail and are hereby dismissed. The appellants will pay the costs of the respondent and bear their own.