
(1969) 11 OHC CK 0022
In the Orissa High Court
Case No : M.A. No. 30 of 1966

Basudeb Misra

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 12-11-1969

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 13A, 13D, 13D(1), 13E, 13F
Poor Removal Act, 1992 — Section 2

Citation : (1970) 36 CLT 193

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : M.S. Mohanty, for the Appellant; Addl. Standing Counsel, for the Respondent

Judgement

R.N. Misra, J.—This is an appeal u/s 13-G(3) of the Orissa Estates Abolition Act, 1951 (Act I of 1952) as amended by Orissa Act V of 1963, at the instance of an ex-intermediary. "Intermediary interest", as defined u/s 2(hh) of the Act, came to vest in the State of Orissa u/s 3-A of the Act by a notification dated 13-4-1961, though in the petition before the Tribunal the date of vesting was stated to be 27-4-1963, the learned Tribunal has now found that the vesting was actually on 13-4-1961 and that fact is not disputed in the appeal.

2. On 27-7-1963, an application was made purporting to be u/s 13-D(1) of the Act for a declaration that the estate in question was a "trust estate" and was, therefore, to be excluded from vesting in terms of the notification u/s 3-A of the Act. As the records show, the proceeding went ex parte. The learned Tribunal, on the solitary evidence of a witness examined on behalf of the claimant, came to hold that the estate in question was a trust estate as defined under the Act. Thereafter he proceeded to examine as to whether he had jurisdiction to make the declaration in respect of the estate in dispute. He came to find that the estate having vested with effect from 13-4-1961 and Chapter II-A of the Act having been introduced in the Statute under Orissa Act V of 1963, which came

into force with effect from 11-4-1963, he had no jurisdiction to make the declaration asked for as the Amending Act was not retrospective in character. On such a finding he held that the application before him was not maintainable.

3. The short question for determination in this appeal, therefore, is as to whether Orissa Act V of 1963 is retrospective in operation so as to cover vesting of trust estates made prior to the incorporation of the amendment by way of Chapter II-A of the Act.

4. Mr. M.S. Mohanty for the Appellant approached the matter during argument from various aspects to indicate that retrospectivity, though not expressed in the language of the Amending Act, must be spelt out from the circumstances. The provision in question was incorporated into the parent Act by Orissa Act V of 1963. According to him, to come to a right conclusion as to whether the Amending Act has retrospective operation the following should be looked into:

- (1) What was the law before making of the Act.
- (2) What was the mischief and the defect for which the law did not provide.
- (3) What remedy the legislature has resolved and appointed to cure the mischief.
- (4) The true reason of the remedy.

5. Mr. Mohanty submits that if this is the approach from which the matter is examined, the necessary conclusion to follow would be that the Amending Act was intended to be retrospective in operation. Before I enter into the discussion on the basis of the submissions of Mr. Mohanty, I consider it proper to refer to a Bench Decision of this Court in Gobinda Chandra Harichandan Jagadev v. State of Orissa 35 C.L.T. 968. My learned brother Patra, J., speaking for the Division Bench, said.

It would thus be apparent that u/s 13-D it is only the trustee of an estate in respect of which a notification u/s 3-A is issued, that can make an application under this Chapter...There is no thing in the Act to revive cases already closed or to give retrospective effect to any of the provisions of Chapter II-A.

Mr. Mohanty wants me not to follow the said decision on the ground that the vesting in that case was admittedly in 1955 and the notification of vesting was u/s 3 of the Act. The Court was, therefore, concerned with a case of vesting u/s 3, and as admittedly Chapter II-A cannot apply to a vesting which is not u/s 3-A in view of the provisions of Section 13-A(f) in Chapter II-A, the facts of that case would be substantially different from the facts of the present case. To that extent I agree that Mr. Mohanty is absolutely correct. Therefore, it becomes necessary to examine the matter on the footing that the point in issue has not been covered and I am free to examine it. I had an impression that this Court had disposed of similar matters on earlier occasions and I called upon the learned Additional Standing Counsel, who appeared for the State, to place decisions for reference. He has not cited any as yet.

6. It is necessary to start with the examination of the provisions of the Act in a case of this type. The Orissa Estates Abolition Act, 1951, as enforced initially, did not have any provision for excluding trust estates from vesting under the Act. All the estates were meant to vest including trust estates and we find a provision in Section 2a(2) which was there from the very beginning in the following terms:

In the case where in the opinion of the Compensation Officer the net income or any portion of the net income in respect of any estate held under trust or other legal obligation has been dedicated exclusively to public, charitable or religious purposes without any reservation of pecuniary benefit to any individual, the compensation payable in respect of such income or such portion thereof shall, instead of being assessed under Clause (1), be assessed as a perpetual annuity equal to such net income or such portion thereof as the case may be:

Provided that the State Government may, by a special order in each case declare such trusts or other legal obligations to be entitled to the benefit of this case.

Explanation-The salary, remuneration or any allowance payable to a Mutawalli in the case of a wake or to a trustee in any other case including shebait of a Hindu religious trust not exceeding fifteen per cent of the income dedicated exclusively to charitable or religious purposes, shall not be deemed to be a reservation of pecuniary benefit to any individual within the meaning of this clause.

"Trust estate" as defined now u/s 13-A(e) of the Amending Act reads thus:

"trust estate" means an estate the whole of the net income whereof under any trust or other legal obligation has been dedicated exclusively to charitable or religious purposes of a public nature without any reservation of pecuniary benefit to any individual.

Explanation :-The salary, remuneration or any allowance payable to a Mutawalli in the case of a Wake or a Trustee in any other case including a sebayat of a Hindu Religious Trust not exceeding fifteen per cent of the income dedicated exclusively to charitable or religious purposes shall not be deemed to be a reservation of a pecuniary benefit to any individual within the meaning of this clause.

7. A comparison of the two provisions extracted above would clearly go to show that the concept of the "trust estate", as now defined, was embodied in Section 2a(2) of the Estates Abolition Act, 1951 which still continues as a part of the Statute. Therefore, it follows that the legislature was aware of the existence of trust estates and from the very beginning made provision for special treatment of such estates in its own wisdom. a. Intermediary interest was for the first time incorporated in the Statute under Orissa Act XV of 1956. Historically such an amendment became necessary in view of a series of decisions of the Supreme Court and the amendment of the definition of "estate" in the Constitution. By the very Act provision for vesting of intermediary interest was provision for vesting of intermediary interest was provided for and Section 3-A was incorporated.

9. It was for the first time in 1963 that a scheme for saving of trust estates from vesting was thought of being provided. The statement of objects and reasons for Orissa Act V of 1963 stated:

It is considered expedient that the estates which constitute the main source of income of public religious and charitable trusts should be reserved for separate treatment instead of being abolished by a general notification u/s 3-A of the Orissa Estates Abolition Act. The operation of such notification is, therefore, proposed to be limited to this extent by providing for special procedure with a view to eliminate after proper enquiry such estates from the ambit of such notification.

It is apparent that until 1963 exclusion of trust estates from vesting was not contemplated. Like any other estate trust estates were also made to be subject to the said incidence under the Act. Legislation for trust estates as a separate class at the point of vesting for the first time became the subject matter of Orissa Act V of 1963.

10. The language in which the provisions in Chapter II-A of the Act are expressed by the legislature does not provide scope for any element for retrospective operation. As indicated above, Section 13-A(f) defines a "vesting notification" to mean a notification issued u/s 3-A, and Section 13B states:

Notwithstanding anything to the contrary in any of the provisions contained in any other Chapter, a vesting notification shall have effect subject to the provisions of this Chapter.

Section 13-D makes provision for the constitution of Tribunals. Section 13-D has relevancy and, therefore, should be extracted in full:

(1) The trustee in respect of a trust estate shall upon the issue of a notification u/s 3-A, make an application in the prescribed form and manner to the Tribunal within three months from the date of such notification claiming that the estate is a trust estate.

(2) If the Collector of the district on his own information or on receipt of any information from the Endowment Commissioner or the Board of Wakfs or from any source whatsoever, is of the view that there are circumstances to indicate, that any estate is a trust estate he may make a reference within the aforesaid period to the tribunal for determination whether the estate is a trust estate or not.

From the language of Section 13-D and the provision for the period of limitation it is difficult to construe that the legislature contemplated even vestings prior to the Act, in respect of which the period of limitation prescribed had expired.

11. Section 13-E makes provision for publication of claims and references and Section 13-F provides for the effect of notification on estates not in the list. Section 13-G deals with the procedure for disposal of claims and provides for an

appeal to this Court. Section 13-H prescribes the procedure for the enquiry before the Tribunal and Section 13-D makes provision for the effect of the orders passed u/s 13-G. Section 13-K requires consideration and is, therefore, fully extracted:

For removal of doubts it is hereby declared that-

(a) the provisions contained in Clause (2) of Section 2a shall apply in respect of estates which vest in the State in pursuance of the provisions of this Chapter and to which the said provisions would otherwise apply;

(b) and nothing in this Chapter shall be deemed to debar the State Government from vesting any trust estate by the issue of a notification u/s 3."

From the aforesaid provisions considered separately as also cumulatively it is difficult to find out any indication of legislative intention of retrospective application of Chapter II-A of the Act.

12. Mr. Mohanty contended that retrospectivity may not be express, but is available to be spelt out from the Statute. According to him, there may be something in the Statute itself which may lead impliedly to give retrospective operation. In support of his contention he made reference to two decisions. The first one is reported in *Pardo v. Bingham* (1869) 4 Chancery Appeals 735 and *East End Dwellings Co. Ltd. v. Finsbury Borough Council* 1952 App Cas 109. I have looked into these cases, but I am afraid it would be difficult, relying on the ratio indicated therein, to hold in the present case that there is an implied retrospectivity.

13. It is well known that even when a benefit is being given by a Statute or an Amending Statute and some existing mischief is sought to be taken away retrospectivity has not to be presumed. As was stated by his Lordship S.K. Das, J. speaking for the Court in *The Central Bank of India Vs. Their Workmen*, ; the contrary, is not necessarily retrospective; it may be either enlarging or restraining and it takes effect prospectively, unless it has retrospective effect by express terms or necessary intendment.

With a view to finding out the state of authority elsewhere on this aspect of the matter upon examination I find English Courts have adopted the same basis. Construing the provisions of Section 2 of the Poor Removal Act, 1992 which reads as follows:

No woman residing in any parish with her husband at the time of his death shall be removed from such parish for 12 calendar months next after his death, if she so long continues a widow.

Lord Denman, C.J. in the case of *R. v. St. Mary Whitechapel* 116 E.R. 811 Inhabitants said.

It was said that the operation of the Statute was confined to persons who had become widows after the Act was passed, and that the presumption against a

retrospective statute being intended supported this construction, but we have before shown that the statute in its direct operation is prospective, as it relates to future removals only and that it is not properly caned a retrospective Statute because a part of the requisites for its action is drawn from time antecedent to its passing.

In *Master Ladies Tailors v. Minister of Labour and National Service* AIR (1950) SC 525, it has also been stated thus:

The fact that a prospective benefit under a statutory provision is in certain cases to be measured by or depends on antecedent fact does not necessarily make the provision retrospective.

This aspect I have particularly quoted because Mr. Mohanty contended before me that if the development in the matter from stage to stage is historically analysed with reference to the trust estates on one side and the Estates Abolition Act on the other, retrospectivity should be presumed.

14. In deciding the question of applicability of a particular Statute to past events, the language used is the most important factor to be taken into account and the real issue in each case is as to the dominant intention of the legislature to be gathered from the language used, the object indicated, the nature of rights affected and the circumstances under which the Statute is passed. Accepting this to be a sound proposition for examining Mr. Monanty's contention before me and applying this as the standard, I am led to believe that retrospectivity cannot be spelt out from the Amending Act of 1963. Lindley L.J. has been quoted by Craies to have stated in the case of *Lauri v. Rened* (1992) 3 Chancery Division 402,

It is a fundamental rule of English law that no statute shall be construed so as to have a retrospective operation unless its language is such as plainly to require such a construction.

It was indicated by Lord Lindley again on this occasion speaking for the Judicial Committee in the case of *Md. Abdussamad v. Kurben Husaina* (1903) L.R. 31 Ind App 30.

It is not, however, in accordance with sound principles of interpreting statutes to give them a retrospective effect.

15. Having indicated the legal position thus I proceed to examine another aspect of the matter. It is a cardinal incidence of an properties that they never remains in a vacuum. With the vesting notification, the various provisions of the Estates Abolition Act, 1951 start operating and the consequences automatically follow. Certain rights get extinguished, certain other rights are transformed and yet others are restricted. For instance" by operation of the various provisions of Section 5 there is a vesting of the estate free from encumbrance. The intermediary gets dispossessed, possession is taken over by the State and by the following sections the possession of the intermediary in certain eventuality becomes that of an occupancy tenant. Other tenants come to be recognised as

occupancy tenants directly under the State. Service tenures get abolished and tenure holders who had no interest in such property become occupancy tenants. Proceedings u/s 3-A of the Act are taken and unless claims are made as allowed under the provisions of the Statute rights get extinguished and there are various other consequences also. In this background if the legislature ever wanted what vesting u/s 3-A of the Act prior to Orissa Act V of 1963 was to be governed by Amending Act, specific provision indicating retrospectivity would have been expected in the Amending Act. It is equally cardinal that where by operation of an Act or by acts of parties rights have become extinguished and new rights have sprung up a Statute is not to operate retrospectively to take away or disturb such a situation.

16. On the aforesaid analysis and taking all these aspects into consideration, I am led to accept that the legislature never wanted by incorporating Chapter II-A of the Act to revive claims in respect of trust estates or saving from vesting which had taken effect prior to its incorporation in the parent Act. The impugned estate having vested in the State of Orissa on 13-4-1961 just about 2 years prior to the incorporation of Chapter II-A into the Act by amendment in 1963, it will be difficult to accept Mr. Mohanty's contention that the provisions are retrospective and, therefore, the Tribunal was wrong in refusing relief to the Appellant once it found that the estate was really a trust estate.

17. It must, therefore, be held that the provisions of Chapter II-A of the Act are not retrospective and the Tribunal was justified in holding that the Appellant was not entitled to any relief before it. Mr. Mohanty's objection that a benefit of this type should not be withheld in respect of trust estates for which notification had been made earlier to the Act is a grievance which the Court cannot redress. It is the duty of the Court to interpret the law and the rules of interpretation are well known. It is open to the legislature to take into account the grievances in respect of vesting of the trust estates prior to Orissa Act V of 1963, but so far as this Court is concerned relief cannot be extended. The appeal fails and is dismissed. But in view of the peculiar circumstances of this case, there will be no order as to costs.