
(1954) 01 RAJ CK 0004
In the Rajasthan High Court
Case No : Civil Writ No. 304 of 1952

Bhagwat Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 18-01-1954

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(5)

Rajasthan Court of Wards Act, 1951 — Section 8(1), 8(2), 9(1)

Citation : AIR 1954 Raj 131

Hon'ble Judges : Wanchoo, C.J.; Sharma, J; Bapna, J

Bench : Full Bench

Advocate : R.K. Rastogi, for the Appellant; C.B. Bhargava, Dy. Govt. Advocate, for the Respondent

Judgement

Wanchoo, C.J.—This is a reference by a Division Bench of this Court, and the following two questions have been referred to a Pull Bench for reply:

"1. Whether the provisions of Section 8(1)(c)(ii)(iii) & (iv) read with Section 12, Court of Wards Act, are inconsistent with the provisions of Articles 14 and 19(1) (f) and (5) of the Constitution?

2. Whether the provision of Section 9(3), Court of Wards Act, of 1951 is repugnant to Article 19(1)(f) and (5) of the Constitution of India?"

2. The facts, which have led to this reference, may be briefly narrated. The applicant Rao Bhagwatsingh is the jagirdar of Duni. The Government is intending to take action u/s 8(1) (c) of the Court of Wards Act, 1951, for declaring the applicant incapable of managing or unfitted to manage his estate, and in that connection the Collector of Jaipur has been directed to make an enquiry u/s 9(1) of the Act into the circumstances of the applicant, and the extent of his indebtedness.

The applicant, thereupon, contended before the Collector that certain provisions of the Court of Wards Act were ultra vires. He also gave notice to the State not to

proceed against him u/s 8(1) (c) of the Act. As the State is proceeding with the matter, and the Collector is continuing the enquiry u/s 9(1), the applicant made this application under Article 226 to this Court. By that application he challenged the validity of certain provisions in the Court of Wards Act, 1951, and this reference is with respect to those provisions.

Section 8(1) reads as follows:

"Land-holders shall be deemed to be disqualified to manage their own estate when they are-

(a) minors;

(b) persons adjudged by a competent civil court to be of unsound mind and incapable of managing their own estate;

(c) persons declared by the Government to be incapable of managing or unfitted to manage their own estate

(i)

(ii) owing to their having been convicted of a non-bailable offence or being unfitted by vicious habits or bad character for the management of their own estate,

(iii) owing to their having entered upon a course of extravagance,

(iv) owing to their failure without sufficient reason to discharge the debts and liabilities due by them,

(v) owing to such mismanagement as has caused general discontent among the tenants:"

3. The attack in the present case is against Section 8(1)(c)(ii)(iii) & (iv), and the contention of the applicant is that these provisions, which result in depriving him of his property and thus violating his fundamental right of holding his property under Article 19(1)(f), are ultra vires, because they are not saved by Article 19(5) on the ground of their being reasonable restrictions on his right of holding his property. It is urged that the substantive provisions are so vague that they cannot be held as reasonable restrictions, and further that the procedural provisions are of such a nature that they also cannot be upheld as reasonable restrictions.

4. It is well settled, that the court has to look at both the substantive and the procedural aspects of the impugned restrictions in order to judge the reasonableness of the provisions, and in this connection the following observations in -- "State of Madras v. V.G. Row" AIR 1952 SO 196 may be quoted with advantage "both the substantive and the procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness; that is to say, the Court should consider not only factors such as the duration and the extent of the restrictions, but also the circumstances under

which and the manner in which their imposition has been authorised.

It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

5. In that case, certain restrictions on the right of association conferred by Article 19(1)(c) came up for consideration, and the following observations were made at p. 200 in that connection:

"The right to form associations or unions has such wide and varied scope for its exercise, and its curtailment is fraught with such potential reactions in the religious, political and economic fields that the vesting of authority in the executive government to impose restrictions on such right, without allowing the grounds of such imposition, both in their factual and legal aspects, to be duly tested in a judicial inquiry, is a strong element which, in our opinion, must be taken into account in judging the reasonableness of the restrictions imposed for no summary and what is bound to be a largely one-sided review by an Advisory Board, even where its verdict is binding on the executive government, can be a substitute for a judicial enquiry.

The formula of subjective satisfaction of the Government or of its officers, with an Advisory Board thrown in to review the materials on which the Government seeks to override a basic freedom guaranteed to the citizen, may be viewed as reasonable only in very exceptional circumstances and within the narrowest limits, and cannot receive judicial approval as a general pattern of reasonable restrictions on fundamental rights."

6. Another case, on which strong reliance is placed on behalf of the applicant, is -- Thakur Raghubir Singh Vs. Court of Wards, Ajmer and Another, In that case, the reasonableness of Section 112, Ajmer Tenancy and Land Records Act (42 of 1950), came in for consideration. By that section, one more ground was introduced in Section 7, Ajmer Government Wards Regulation (No. 1) of 1888, and it was provided that a landlord, who habitually infringed the rights of a tenant under the Act of 1950 was to be deemed a landlord who was disqualified to manage his own property within the meaning of Section 6 of the said Regulation.

7. The constitutionality of this provision was assailed before the Supreme Court, and it was held to be unconstitutional and the following observations at p. 375 may be quoted;

"It is still more difficult to regard such a provision as a reasonable restriction on the fundamental right, When a law deprives a person of possession of his

property for an indefinite period of time merely on the subjective determination of an executive officer, such a law can on no construction of the word "reasonable" be described as coming within that expression, because it completely negatives the fundamental right by making its enjoyment depend on the mere pleasure and discretion of the executive, the citizen affected having no right to have recourse for establishing the contrary in a civil Court,"

8. It is with these two cases in the background that we have to consider the reasonableness of the provisions of Section 8 (1) (c) (ii) (iii) and (iv). It may be mentioned that Section 8 (2) provides that no declaration under Clause (c) of Sub-section (1): shall be made until the landholder has been furnished with a detailed statement of the grounds on which it is proposed to disqualify him, and has had an opportunity of showing cause why such declaration should not be made.

9. We shall first deal with the substantive part of the law. The three impugned, clauses provide the criteria on which the Government makes a declaration as to the unfitness of a landholder to manage his estate and deprive him of the possession of the property. The declaration is a subjective determination by the executive, and though provision is made by Section 9 (1) for making certain enquiries through the Collector, and in Section 8 (2) for giving a chance to the landholder to have a say, the declaration nevertheless still remains a subjective determination of the executive and no more. The criteria, which have been provided by Clauses (ii), (iii) and (iv) for making a declaration are, in our opinion, so vague and elusive and liable to such different interpretations by different persons that it is merely left at the pleasure of the executive government to decide in a particular case whether the criteria are satisfied.

10. Take for example Clause (ii) which lays down that the Government may declare a landholder unfitted to manage his own estate if he has been convicted of a non-bailable offence or is unfitted by vicious habits or bad character for the management of his estate. Non-bailable offences are legion. Some of them may be of a trivial character, while others may be of a serious nature. But it all depends upon the subjective determination of the Government whether to treat a conviction for a particular non-bailable offence as sufficient for a declaration of unfitness or not.

Similarly, unfitness by reason of vicious habits or bad character is also a very vague criteria. Various people may have various standards as to what are vicious habits or what is bad character. Some Government may think that because a landholder drinks he is of vicious habits. Another may think to the contrary. Again, some Government may think that because a landholder has a mistress, he is of bad character. Another Government may not think so. These considerations show that the criteria provided by Clause (ii) are so vague that it is really left to the pleasure of the Government to declare a person unfit to manage his estate because of them.

11. Then look at Clause (iii) which says that owing to the land-holder having entered upon a course of extravagance, a declaration can be made to the effect that he is, unfit to manage his estate.

What constitutes extravagance, is again a matter which is open to various interpretations. For example, some government may think that a landholder with an income of Rs. 10,000/- per annum, who spends every pie of it and does not save a single shell for a rainy day, has set on a course of extravagance. Another Government may think that he is a jolly good fellow, and may not think him set upon a course of extravagance at all.

We are not unmindful of the fact that there is a proviso which says that no declaration shall be made under Clause (iii) unless the Government is satisfied that such extravagance, or such failure to discharge the debts and liabilities is likely to lead to the dissipation of the estate. In this connection, it is enough to say that the State grants in Rajasthan are not transferable, and the right of the jagirdar to alienate state grant has been very stringently limited and he can only grant a lease for a certain number of years at the most. In such circumstances it can hardly be said that the estate is likely to be dissipated.

12. Then take Clause (iv) which provides that a landholder may be declared unfit to manage his estate if without sufficient reason he fails to discharge the debts and liabilities due from him. A dispute may arise in a particular case whether the landholder had failed to discharge his debts and liabilities without sufficient reason. Take for example the case of a landholder who is indebted and who has also to perform the marriage of his daughter. He spends a certain amount of money required by social environments in which he lives, and may consider that a sufficient reason for not discharging his debts and liabilities. The Government, on the other hand, may consider otherwise, and think that such a landlord has no business to waste large amounts of money on the marriage of his daughter when he is heavily indebted.

Then there may be a dispute whether certain debts and liabilities are really so. Such a dispute has arisen in this particular case. The applicant says that the state is saddling him with the liability to pay certain sums of money as maintenance allowance to his married sisters, and contends that no system of law is there which casts on him any legal liability to pay anything to his married sisters whatever may be his moral obligation. These difficulties clearly arise under this clause also, and show how vague it is, and how it will depend upon the mere subjective determination of the Government whether a declaration is made or not.

In this connection, we may refer to the U. P. Court of Wards Act where some indication is given of what would amount to extravagance or failure without sufficient reason to discharge the debts and liabilities. In the U. P. Act No. IV of 1912, it is provided that no declaration shall be made on these two grounds unless the Government is satisfied that the aggregate annual interest payable at

the contractual rate on the debts and liabilities due by the proprietor exceeds one-third of the gross annual profits of the property. There, at any rate, there is a criteria which is clear and certain. But in the Rajasthan Act that provision is not to be found, and everything is left to the subjective determination of the Government.

13. This being the state of the impugned provisions in Clauses (ii), (iii) & (iv), the question arises whether these provisions can be called reasonable restrictions on the fundamental right of the applicant to hold property. We are of opinion that a law which makes such vague provisions, the application of which depends entirely on the subjective determination of the executive, cannot possibly be called a reasonable restriction on the fundamental right of the applicant to hold property under Article 19(1)(f).

14. In this connection, we may refer to --"Jayantilal Laxmishanker v. State of Saurashtra" AIR 1952 Sau 59, where the reasonableness of the Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance, (No. XLI) of 1949, came up for consideration. Section 35 of that Act which was attacked provided as follows :

"Notwithstanding any law for the time being in force, usage or custom or the terms of contract or grant..... when it appears to the Government that it is necessary for ensuring the full and efficient use of the land for agriculture to assume management of any landholder's estate, a notification announcing such intention shall be published....."

The Special Bench observed as follows at page 63 with respect to this notification :

"The law under which the executive can encroach upon the fundamental rights guaranteed by the Constitution so easily and for a purpose so vague and indefinite without laying down the circumstances of compelling necessity cannot be considered either as reasonable or in the interests of the general public."

We think, therefore, that the substantive provisions contained in the impugned clauses are so vague that they cannot be said to be reasonable restrictions on the fundamental right of the applicant to hold property.

15. Another question, which arises, is whether the restrictions provided by these clauses can be said to be in the interests of the general public. We are conscious of the fact that interests of the general public include the interests of a section of it, and it is urged that these provisions are in the interests of at least the members of the family of the jagirdars. It is also contended that the object of the Act is to protect persons incapable of managing their own affairs, to prevent the dissipation of the property, and to enable land revenue to be more easily and more certainly collected.

So far as the last two objects are concerned, it is enough to say that in Rajasthan State grants are inalienable, and the revenue would, in any case, be

collected and there can be no dissipation or splitting up of the property. The only object therefore that remains is to protect persons incapable of managing their own affairs. In the present context of things when we find legislation in one state after another abolishing Zamindari, and when we also find that in this State too an Act has been passed for the resumption of jagirdari estates, the question may well arise whether it is in the interest of the general public that such jagirdars should be protected against whom the impugned clauses will apply.

We do not express any opinion about Section 8(a) and (b), or Clauses (i) and (v) of Section 8(c) as their validity does not arise in this case. But so far as the three impugned clauses are concerned, it seems to us that in the context of things as they are today when the Jagirdari Resumption Act is already on the statute book, it is hardly possible to say that the provisions contained in the impugned clauses are in the interests of the general public.

16. These three clauses, therefore, in our opinion, would fall also on the ground that the restrictions contained in them besides being not reasonable are not in the interests of the general public.

17. We now turn to the procedural part of the provisions. Section 8(2) provides that no declaration under Clause (c) of Sub-section (1) shall be made until the landholder has been furnished with a detailed statement of the grounds on which it is proposed to disqualify him, and has had an opportunity of showing cause why such declaration should not be made. It is urged that this provision sufficiently protects the interests of the landholder, and therefore the provisions of the three impugned clauses must be held to be reasonable.

In this connection, we may again refer to --"Baghubir Singh's case (B)". It was held there that when a law deprives a person of possession of his property for an indefinite period of time merely on the subjective determination of an executive officer, such a law can on no construction of the word "reasonable" be described as coming within that expression, because it completely negatives the fundamental right by making its enjoyment depend on the mere pleasure and discretion of the executive, the citizen affected having no right to have recourse for establishing the contrary in a civil court. That case, in our opinion, applies with full force to the circumstances of this case.

Here also the declaration u/s 8(c) is a mere subjective determination. The fact that the jagirdar is furnished with a detailed statement of the grounds, and given an opportunity of showing cause does not, in our opinion, take away from the mere subjective nature of the determination by the executive government resulting in depriving him of the possession of his property. Any recourse to the civil court is barred u/s 11 of the Act. Section 12 read with Section 45 makes it clear that the superintendence can be kept in cases covered by the impugned clauses for an indefinite period of time.

As was observed by the Supreme Court in --"V.G. Row's case, (A)", the formula of subjective satisfaction of the Government or of its officers, with an Advisory

Board thrown in to review the materials on which the Government seeks to override a basic freedom guaranteed to the citizen, may be viewed as reasonable only in very exceptional circumstances and within the narrowest limits, and cannot receive judicial approval as a general pattern of reasonable restrictions on fundamental rights.

The applicant in this case is a jagirdar, and, according to his petition, his income is two lakhs of rupees per year from the jagir. He is intended to be deprived of the possession of this jagir which he is otherwise entitled to hold on the basis of the subjective satisfaction of the Government. The mere fact that the applicant will be given a hearing will not, in any way, detract from the satisfaction still being subjective and not liable to be tested in court. It was this which was deprecated in -- "Raghubir Singh's case, (B)", in strong terms. We are, therefore, of opinion that the procedural part of the law in this case is also not a reasonable restriction on the fundamental rights of the applicant.

18. Learned Deputy Government Advocate pointed out that there was distinction between -- "Raghubir Singh's case" and this case. He submits that in the Ajmer Law there was no provision for giving an opportunity to the landholder to be heard. That may be so; but there can be little doubt that the Chief Commissioner of Ajmer could hardly pass an order disqualifying a person on the ground of extravagance or his inability to pay his debts without some kind of enquiry, and without hearing him. in some way or the other.

The Rajasthan Act provides for an enquiry and a hearing which, in our opinion, were implicit in the circumstances of the Ajmer law. But the declaration, which deprives a landholder of his property, is still a subjective declaration, and if the Government follows strictly the procedure provided by the law, it will not be open to any court to question the declaration. In these circumstances, we are of opinion that the procedural part of the law with respect to these three clauses is also not reasonable, and therefore these three clauses are ultra vires of Article 19(1)(f), and are not saved by Article 19(5).

19. We now turn to the second question put to us relating to Section 9(3). Considering the scheme of the Act, Section 9(3) appears to us to be necessary. Learned counsel for the applicant does not contend that this provision, as it stands, is unreasonable. What he says is that there is no time limit fixed in Section 9 for the completion of the enquiry by the Collector. He fears that the Collector may carry on the enquiry indefinitely, and the landholder may be subject to the disabilities provided in Section 37 of the Act. It is admitted, however, that he can cite no case where the enquiry u/s 9(1) has been unduly prolonged with the result that the disability u/s 9(3) has been kept going for an unreasonably long period.

Under these circumstances, as the provision contained in Section 9(3) is itself reasonable, and there is nothing to suggest that it has ever been abused, we see no reason to hold that simply because a time-limit has not been provided within

which an enquiry u/s 9(1) shall be completed, Section 9(3) is also hit by Article 19(1)(f), and is not saved by Article 19(5). We are of opinion that Section 9(3), as it stands, is a reasonable provision, and is saved by Article 19(5).

20. As we have held that the impugned clauses are invalid in view of Section 19(1)(f) of the Constitution, it is unnecessary to consider the effect of Article 14. We may indicate, however, that it will not be possible to hold that the Act is discriminatory for there is a basis for reasonable classification therein.

21. Our answers therefore to the two questions put to us are, as follows :

1. The provisions of Section 8(1)(c)(ii), (iii) & (iv) of the Court of Wards Act, 1951, are inconsistent with the provisions of Article 19(1)(f), and are not saved by Article 19(5) of the Constitution, and are therefore ultra vires.
2. The provisions of Section 9(3) of the Court of Wards Act, 1951, are reasonable restrictions within the meaning of Article 19(5) of the Constitution, and are therefore valid.