(1963) 06 KL CK 0007

In the High Court Of Kerala

Case No : O.P. No. 517 of 1963

Cheria Vasudevan Namboodiripad APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 27-06-1963

Acts Referred:

Constitution of India, 1950 — Article 14, 31A
Travancore Jenmi and Kudiyan (Amendment) Act, 1108 — Section 4, 4(1), 5

Citation : AIR 1964 Ker 171

Hon'ble Judges : M.S. Menon, C.J;P. Govindan Nair, J;M. Madhavan Nair, J

Bench : Full Bench

Advocate : V.K.K. Menon and D. Narayanan Potti, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

M.S. Menon, C.J.—This petition challenges the validity of the Jenmikaram Payment (Abolition) Act, 1960, on the ground that it violates Articles 14 and 19(1)(f) of the Constitution. The question for determination are whether such an attack is permissible in view of Article 31A of the Constitution; and if permissible, whether the Act is as a matter of fact violative of the fundamental rights guaranteed by those two provisions of the Constitution.

2. Clause (2) of Article 13 of the Constitution provides that, the State shall not make any law which takes away or abridges the fundamental rights conferred by the Constitution and that any law made in contravention of that clause shall, to the extent of the contravention be void. Clause (1) of Article 31A of the Constitution says that notwithstanding anything contained in Article 13, no law providing for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Articles 14, 19, and 31 of the Constitution.

3. Clause (2) of Article 31A defines the expressions ''estate'' and ''rights'' in

relation to an estate. It says :

"(a) the expression ''estate'' shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any Jagir, inam or muafi or other similar grants and in the State of Madras and Kerala, any Janmam right;

(b) the expression ''rights'' in relation to an estate, shall include any rights vesting in a properietor, Sub-proprietor, under proprietor, tenure holder, Rai-yat, under Raiyat, or other intermediary and any rights or privileges in respect of land revenue."

4. The definition of the expression ''estate'' makes it quite clear that a jenmom right is covered by that expression. And if the Jenmikaram Payment (Abolition) Act, 1960, relates to the extinguishment or modification of a jenmom right, as contended by the State, then the immunity from attack provided by Clause (1) of Article 31A will be available and the Act will not be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Articles 14 and 19(1)(f) of the Constitution.

5. In Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, the Supreme Court said:

"Under the definition, any jenmom right in Kerala is an ''estate''. A jenmom right is the freehold interest in a property situated in Kerala. Moor in his "Malabar Law and Custom" describes it as a hereditary proprietorship. A jenmom interest may, therefore be described as ''proprietary interest of a landlord in lands''."

6. That the jenmies of Travancore --this case arises from the Travancore portion of the Kerala State -- were proprietor is of the soil is beyod dis pute. They continued to be the proprietors even after the introduction of the Travancore Jenmi and Kudiyan Act of 1071. Section 5 of that Act, as originally enacted, did not destroy the proprietorship of the jenmi; it only conferred on the Kudiyan a right of permanent occupancy. All that paragraph 1 of Section 5 said was:

"Subject to the provisions of this Act, every Kudiyan shall have a right of permanent occupancy in his holding and shall be exempt from liability to eviction save as laid down in Section 7."

7. A new Section 5 was substituted for the old Section 5 by the Travancore Jenmi and Kudiyan (Amendment) Act. 1108. The new section said:

"From and after the commencement of the Amendment Act, the Jenmi shall not have any right, claim or interest in any land in a holding except the right to receive the Jenmikaram thereon and the Kudiyan shall be deemed to be the owner of the land subject only to the payment of the Jenmikaram."

8. It is clear from the new Section 5 that it transferred the ownership of the land from the jenmi to his kudiyan, or in other words, effected a termination of his

jenmom right in that land. The Jenmikaram Payment (Abolition) Act, 1960, cannot possibly be considered as dealing with a right which had ceased to exist long before its enactment It fpllows that the protection afforded by Article 31A of the Constitution is unavailable to the Jenmikaram Payment (Abolition) Act, 1960, and that it is susceptible to attack on the ground that it violates Articles 14 and 19(1)(f) of the Constitution.

9. Section 4 of the Travancore Jenmi and Kudiyan Act of 1071, as originally enacted, reads as follows:

"When a Jenmi transfers by sale, gift or otherwise, the Jenmom right in the whole or any part of his Jenmom lands and the Sirkar imposes or enhances the tax on the Jenmom lands transferred, such tax shall be borne by the transferee."

The word "his" bei''ore the words "Jenmom lends" was omitted by the Travancore Jcnmi and Kudiyan (Amendment) Act, 1108. The omission roust be due to the fact that with the introduction of the new Section 5 the ownership in the lands concerned ceased to be that of the jenmi and became that of the kudiyan.

10. In Purushothaman Nambudiri Vs. The State of Kerala, the Supreme Court said:

"It seems to us that the basic concept of the word ''estate'' is that the person holding the estate should be proprietor of the soil and should be in direct relationship with the State paying land revenue to it except where it is remitted in whole or in part".

According to the learned Government pleader the tax liability provided by Section 4 preserves the concept of the jenmi being the owner of the land in spite of the enactment of Section 5. It is not possible to accept the submission.

11. As pointed out in Krishnan Parameswaran v. Swaran Narayanar, 12 TLR 107 the usage has been

"to treat the Sirkar tax on Jenmom lands, as a charge upon the tenant and his customary share of the produce of the land."

The liability of the tenant to pay the Sirkar tax was not altered by the Travancore Jenmi and Kudiyan Act of 1071, as originally enacted, or as amended by the Travancore Jenmi and Kudiyan (Amendment) Act, 1108. What Section 4 did was only to provide that any imposition or enhancement of tax on the janmom lands because of a transfer by a jenmi of his rights -- which after the enactment of the new Section 5 can only be the right to receive the Jenmikaram -- shall be borne by the transferee of the Jenmi and will not augment the tax liability of the kudiyan except in those cases where he himsclf happened to be the transferee.

12. The learned Government Pleader also invited our attention to Explanation (2) to Section 3(1) of the Travancore Jenmi and Kudiyan Act of 1071 which savs:

"For the purposes of this definition, the payment of Jenmikaram shall be deemed to be the payment of Michavaram or customary dues and the payment of renewal fees."

To Explanation 1 to Section 3(17) which says:

"Payment of or the liability to pay the Jenmikaram is equivalent to paying or the liability to pay the Mischavaram, renewal fees or customary dues."

To Section 45 which deals with the apportionment of compensation money on acquisition under the Land Acquisition Act as follows:

(a) So much of the compensation money as indue to any buildings shall belong entirely to the Ku

(b) the balance left after deducting the portion of compensation money referred to in Rule (a) shall belong to the Jenmi and the Kudiyan in the proportion of the Jenrnikaram charged or chargeable on the land or portion of land and the average annual'' net produce of the land or portion of land, as the case may be:

Provided that if the capitalised value of the Jenmikaram is smaller than such share of the Jenmi the capitalised value alone shall belong to the Jcnmi and all the rest shall belong to the Kudiyan."

And contended that they indicate a continuance of the jenmi''s ownership of the land. We find it impossible to hold on the strength of these provisions that the ownership in the soil, after the enactment of the new Section 5, continued to be that of the jenmi, or in other words, that a jenmon right survived the enactment of that section.

13. The contention of the petitioner, as already stated, is that the Jenmikaram Payment (Abolition) Act, I960, violates Articles 14 and 19(1)(f) of the Constitution. We have come to the conclusion that the Act does violate the fundamental right guaranteed by Article 14 of the Constitution. And as that conclusion is sufficient to allow the petition a consideration of the question whether the Act violates Article 19(1)(f) also is unnecessary and is not undertaken in this judgment

14. Article 14 of the Constitution provides:

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Section 3 of the Jenmikaram Payment (Abolition) Act, 1960, deals with the abolition of the payment of jcnmikaram and Section 4 with the amount of compensation to be paid. Sub-section (1) of Section 4 relates to the amount of compensation payable to a jenmi other than a religious or charitable institution of a public nature. The schedule mentioned in Sub-section (1) of Section 4 reads as follows:

"Aggregate of the jounikaram due to a jenmi.

Compensation payable to the. jenmi.

(a) Rs. 500 and below

12 times the Jenmikaram less the collection charges.

(b) Above Rs. 500 but not exceeding Rs. 1000.

9 times the Jenmikaram less collection charges subject to a minimum which is not less than the maximum amount payable under (a)

(c) Above Rs. 1,000 but not exceeding Rs. 3,000.

7 times the Jenmikaram less collection charges subject to a minimum which is not less than the maximum amount payable under (b).

(d) Above Rs. 3,000 but not exceeding Rs. 7000.

5 times the Jenmikaram less collection charges subject to a minimum which is not less than the maximum amount payable under (c).

(e) Above Rs. 7,000,

4 times the Jenmikaram less collection charges subject to a minimum which is not less than the maximum amount payable under

15. A similar slab system for the payment of compensation occurred in Sections 52 and 64 of the Kerala Agrarian Relations Act, 1960. In Karimbil Kunhikoman Vs. State of Kerala, the Supreme Court dealt with every contention that could possibly be urged in support of such a system and said:

"We are clearly of opinion that the manner in which progressive cuts have been imposed on the purchase price u/s 52 and the market value u/s 64 in order to determine the compensation payable to land-owners or intermediaries in one case and to persons from whom excess land is taken in another, results in discrimination and cannot be justified on any intelligible differentia which has any relation to the objects and purposes of the Act."

16. The position is identical in the case before us, and it must follow that we must strike down the Jenmikaram Payment (Abolition) Act, 1960, as violative of Article 14 of the Constitution in so far as it relates to jenmies like the petitioner who come u/s 4(1) of the Act. We do so.

17. The petition is allowed as above. The respondent will pay the costs of the petitioner, advocate''s fee Rs. 150/-.

