

(1994) 04 KL CK 0009
In the High Court Of Kerala
Case No : O.P. No. 4229 of 1994

Fr. Thomas Kulukkat and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-04-1994

Acts Referred:

Constitution of India, 1950 — Article 20, 226, 31B
Employees State Insurance Act, 1948 — Section 1(3)
Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 — Section 1(3), 13, 4, 5, 6

Citation : (1994) 04 KL CK 0009

Hon'ble Judges : M. Jagannadha Rao, C.J;K. Sreedharan, J

Bench : Division Bench

Advocate : George Varghese Kannanthanam, for the Appellant;

Judgement

M. Jagannadha Rao, C.J.—This Writ Petition, filed by Fr. Thomas Kumbukkat on behalf of Kanjirappally Taluk Karshaka Samrakshana Samithy, and 14 Ors. , raises the question of constitutional validity of the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (hereinafter called the "Act"). It is contended that even though the Act is place"s in the Ninth Schedule of the Constitution of India read with Article 31-B, the provisions of the Act are not constitutional as being violative of the basic features of the Constitution of India. It is contended that the Petitioners are in possession of various items of properties, in particular in forest area, and that they have obtained valid title to the property, having obtained the same from the Scheduled Tribes. They have improved the property and now it will cause great hardship, if they are to be evicted and the lands restored to the Scheduled Tribes.

2. It is urged before us is that the provisions of the Act are contrary to the rule of law which is the basic feature of the Constitution as mentioned in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, and as later explained in Waman Rao and Ors Vs. Union of India (UOI) and Others, It is contended for the Petitioners that the Act provides for summary enquiry by the Revenue

Divisional Officer, and then there is an appeal to the Collector. The parties are not permitted to have the services of Advocates, except with the permission of the Revenue Divisional Officer, and the enquiry is also conducted in a summary manner. This, according to counsel, is violative of the basic feature of the Constitution of India. It is also contended that the notification issued u/s 1(3) of the Act on 24th January 1986 in the Kerala Gazette brings the Act into force with effect from 1st January 1982 and that this is not permissible in law. It is contended that the Government has no power to bring the Act into force from an anterior date, for Section 1(3) only says that "It shall come into force on such date as the Government may, by notification in the Gazette, appoint".

3. We are of the view that both these contentions are ill-founded. So far as the second contention is concerted, it is true that Section 1(3) of the Act states that the Act shall come into force on such date as the Government may, by notification in the Gazette, appoint. It is also true that the Government issued a notification on 24th January 1986 in the Kerala Gazette bringing the Act into force from 1st January 1982. The said notification reads as follows:

S.R.O. No. 130/86.- In exercise of the powers conferred by Sub-section (3) of Section 1 of the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (Act 31 of 1975) the Government of Kerala hereby appoint the 1st day of January 1982 as the date on which the said Act shall be deemed to have come into force.

4. In *Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others*, , the provisions of Section 1(3) of the Employees' State Insurance Act, 1948, which states that the Act shall come into force on such date or dates as the Central Government may by notification in the Official Gazette, appoint, were questioned. Rejecting the contention that the aforesaid provision conferring uncanalised power was invalid, Gajendragadkar, G.J. observed:

... Section 1(3) is really not an illustration of delegated legislation at all; it is what can be properly described as conditional legislation....

We are therefore of the view that Section 1(3) is valid.

5. The next question is in regard to the validity of the notification dated 24th January 1986 which states that this Act of 1975 shall come into force from 1st January 1982. It is argued that the Government cannot give retrospective effect to the Act. Section 4 of the Act deals with restoration of immovable property alienated by a member of a Scheduled Tribe, on or after the commencement of the Act, to a non-Scheduled Tribe, without previous consent of the competent authority. Therefore, according to Section 4, even the transfers made after 1st January 1982 without permission, will, be invalid, because the date of commencement is 1st January 1982. The question is whether this is valid.

6. Section 5 is relevant in this context and states as follows:

any transfer of immovable property possessed, enjoyed or owned by a member of

a Scheduled Tribe to a person other than a member of a Scheduled Tribe, effected on or after the 1st day of January 1960, and before the commencement of this Act, shall be deemed invalid.

Assuming, therefore, that the commencement of the 1975 Act will be valid only from 1st January 1986, then the position u/s 5 will be that the transactions from 1st January 1960 upto 1st 1986 will be invalid and this will include transactions between 1st January 1982 and 1st January 1986 also. In other words, once Section 5 comes into force even on 24th January 1986, it retrospectively invalidates the alienations that took place from 1st January 1960, by a Scheduled Tribe to a non-Scheduled Tribe. In the result, the contention raised before us that the Government has no power to give retrospective effect to the Act from 1st January 1982 while issuing a notification u/s 1(3), pales into insignificance because Section 5 invalidates such transfers if made after 1st January 1960.

7. We may, however, point out that there can be some contention that Section 13 of the Act creates an offence and if the Act is notified on 24th January 1986 with effect from 1st January 1982, Article 20 of the Constitution is violated. But no such contention is raised before us. Hence, the validity of Section 13 is left open.

8. So far as the next contention that the provisions of the Act are violative of the basic features of the Constitution of India, and in particular the basic feature of rule of law, we are of the view that there is no substance in this; contention also. Section 6 provides for reconveyance of property to the Scheduled Tribes, but on an adjudication by the Revenue Divisional Officer. Enquiry is provided under Sub-section (2) of Section 6. There is an appeal, to the competent authority (said to be the District Collector) under Sub-section (5) of Section 6. There is a suo motu revisional jurisdiction vested in the Government u/s 7 which says that notwithstanding anything contained in Section 6, the Government may, on their own motion, issue certain directions, if they are satisfied after necessary enquiries that a Tribal was deprived of his possession or enjoyment, as the case may be. Therefore, it is clear that against any order passed in appeal by the District Collector-competent authority, u/s 6(5), or any other suo motu order passed by the Government u/s 7, the aggrieved party can approach this Court under Article 226 of the Constitution of India. When the jurisdiction of this Court under Article 226 of the Constitution of India to question the order of the quasi-judicial authorities under the Act is available, it is not correct to say that there, is violation of rule of law or infringement of right of judicial review. It is true that the Supreme Court in *Waman Rao and Ors Vs. Union of India (UOI) and Others*, held that the High Court could go into the question whether the basic features of the Constitution of India have been violated, even though the Act is placed in the Ninth Schedule of the Constitution. But in the present case, we are unable to find out any violation of the basic feature of the Constitution. Learned Counsel for the Petitioners only relied upon paragraphs 15, 16, 46, 47, 49 and 51 of *Waman Rao and Ors Vs. Union of India (UOI) and Others*, for the aforesaid proposition. But inasmuch as we are unable to find any violation Of the basic feature of the

Constitution, namely, the rule of law, we are unable to hold that the Constitutional amendment (40th amendment of 1976) is invalid.

For the aforesaid reasons, there are no merits in this Writ Petition and the same is accordingly dismissed.