
(1972) 06 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 236 of 1971

Kesho Nath Bakshi

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 07-06-1972

Acts Referred:

Constitution of India, 1950 — Article 19(8), 31A

Jammu and Kashmir Tenancy (Stay of Ejectment Proceedings) Act, 1966 — Order 10

Citation : AIR 1973 J&K 71 : (1972) JKLR 761 : (1972) KashLJ 356

Hon'ble Judges : Mian Jalal-Ud-Din, J

Bench : Single Bench

Advocate : A.Chand, Advocates appearing for the Parties

Judgement

(1) This is a writ petition filed by Kesho Nath Bakshi praying for issuance of a writ of certiorari and mandamus and for declaring Act No. XXXIII

of 1966 void with the further prayer to ask the competent authority to proceed with the revenue case Badri and others vs. Jethu and others

pending with the Assistant Commissioner Jammu.

(2) The petitioner has averred that he is a retired Government servant. He, in order to make his two ends meet applied for ejectment of tenants at

will and protected ones on the ground of personal cultivation as provided under section 49 of the Jammu and Kashmir Tenancy Act of 1980. The

case was being tried by the Assistant Commissioner when under an Ordinance followed by an Act in the Assembly the hearing in such cases were

stayed in the year 1966. The stay proceedings for ejectment, it is averred, affects the fundamental rights of the petitioner in as much as it interferes

with his right to use the property and right to follow any occupation or trade and also the right to live. The order was passed maliciously in order to

deprive the petitioner or his rights and this has created bad blood among the landlords and the tenants.

(3) The State has filed objections through the Additional Advocate General. In these objections it is admitted that the petitioner has retired from

Government service ; that the petitioner alongwith other persons made an application under section 49 of the Jammu and Kashmir Tenancy Act for

ejectment of Jerhu and others from his land. It is also admitted that the above application for, ejectment was made under the provisions of

Ordinance 10 of 1966 which was later on replaced by Jammu and Kashmir Tenancy (stay of Ejectment Proceedings) Act 1966 The above Act, it.

is averred, is constitutionally valid under the provisions of Art. 31A of the Constitution of India as it is a piece of agrarian reform legislation meant

for the welfare of tillers of the agricultural lands At the time the above Ordinance and subsequently the Act were passed the question of fixing limit

in the area of agriculture holdings owned by the proprietors was under the above consideration of the respondent. In order to maintain status quo

and with a view to fix the size of agricultural holdings it was considered necessary to pass the above Ordinance and then the Act. Now as the bill

fixing to size of agricultural holdings in the legislature of Jammu and Kashmir has been introduced, till the above bill becomes law it is necessary that

status quo in respect of the position of tillers of land is maintained. The steps were taken in order to do social justice to the cultivators of the

agricultural land and save them from becoming landless which would otherwise adversely affect the interests of general public.

I have heard the arguments in the case.

(4) It appears that the petitioner previously also filed writ petition asking the court not to extend the date of stay of suits for ejectment of tenants

under section 49 of the Jammu & Kashmir Tenancy Act of 1980. Almost the same averments which has been made in the present petition were

made in the previous petition with this modification that in the present petition the petitioner challenges the constitutional validity of the Ordinance

and the Act whereas the previous petition was directed against the extension in the date of the Ordinance. When the petition came up before the

court for admission. Hon'ble Jaswant Singh J. recorded the following order:

"Heard the petitioner who is present in person. A writ of the nature sought for

cannot be issued by the High Court. The petition is accordingly dismissed in limine.'

After the aforesaid petition was dismissed, the petitioner filed the present petition.

(5) The petitioner himself argued the petition before me. His main argument is that the Ordinance which has been replaced by the Act adversely

affects his fundamental right to use the land for personal cultivation which is a right conferred on him to follow any occupation or trade and the right

to use the property. Nor is the Act saved by Article 31A of the Constitution of India in as much as the Act neither extinguishes nor modifies the

right but keeps only the right of the petitioner under suspense which is now envisaged by Art. 31A. Therefore the Full Bench authority Yogeshwar

Vs. State of Jammu and Kashmir of this court reported as AIR 1970 J&K 125 is not applicable to the present case and the parties are not

governed by the said authority. As against this the learned Additional Advocate General appearing for the State has submitted that the impugned

Act is a piece of agrarian reform of legislation designed for the welfare of the tillers of the agriculture lands and to enable the Government to

introduce agrarian reform in the State Legislature for the welfare of the class of tenants (of the agricultural land). According to the learned Addl

Advocate General the point is covered by the aforesaid Full Bench authority in as much as the State has modified the rights of the landlord to

recover the land from the tenant temporarily.

(6) On a careful consideration of the matter I am of the view that the point raised by the petitioner is not covered by the Full Bench authority

reported as AIR 1970 J&K 125. It was held in that case that the effect of introduction of subsection (3) in Section 47 of the Tenancy Act was to

completely obliterate the landlord's right of ejectment of a tenant on the ground of personal cultivation as given in Section 44 (1) (e) but it was held

that the amendment was saved by virtue of Article 31A (I) and (a) which confers two fold right on the State, first to acquire any agricultural lands

constituting an estate and any rights therein Secondly, without acquiring the estate it might extinguish or modify any right in the estate, the reason

being that the legislature intends to introduce an agrarian reform with the object of regulating the rights of landlord and tenant or of conferring a

more beneficial status or interest on the tenants with a view to achieve rural economy. The Full Bench observed that once this object was achieved then the legislation became completely immune from the challenge on the ground that the amendment infringes or destroys the fundamental rights of the property of a citizen as guaranteed under Sections 14, 19 and 31 of the Constitution of India. In the present case, however the fundamental right of the petitioner is neither extinguished nor modified in the sense that the proprietary rights have been destroyed or modified. In AIR 1954 SC 373 (d) the word 'Modification' as used in the Article has been interpreted to mean in the context of the Article 'modification of the proprietary right of a citizen like an extinguishment of that right and cannot include within its ambit a mere suspension of the right of management of estate for a time, definite or indefinite.' Therefore Article 31A cannot be said to have any application to present case, as the impugned amendment only suspends the right and does not modify it. It only intends to stay the operation of Section 49 of the Tenancy Act and this is a temporary restriction imposed on the right of the petitioner to recover the land for personal cultivation. The question therefore is, is the impugned law saved by the Constitution of India notwithstanding the fact that the petitioner's right is adversely affected although temporarily. In my opinion the impugned amendment saved by Art. 19 (5) of the Constitution of India as it is a reasonable temporary restriction on the right of the petitioner to recover the land from the tenant. Reasonable restriction would mean a restriction imposed by dictates of reason that is rational. The concept of reasonableness is a whole some doctrine to humanise the rights of an individual with these of public at large. But the limitation upon the right must not be arbitrary or excessive beyond what is actually necessitated by public interest. Restriction must have reasonable relation to the object which the legislation intends to achieve. This is the touchstone to test the rational behind the legislature. Therefore in order to arrive at the right conclusion we have to examine the scheme and the object of the amended Act and also refer to the returns filed by the State. Now in the returns filed by the Addl. Advocate General on behalf of the State it is averred that the impugned amendment staying applications for ejetment has been enacted with the object of regulating the rights of the landlord and the tenant and with a view to introduce agrarian reform in the State meant for the welfare of the

class of tenants. At the time the above ordinance was issued and subsequently the amendment Act was passed the question of fixing limits in the area of agricultural holdings owned by the proprietors was under the active consideration of the State. In order to maintain status quo and with a view to fix the size of the agriculture holdings it was considered necessary to pass the above mentioned Ordinance and then the Act. It is further averred that the Bill fixing the size of the agricultural holdings in the State Legislature has been introduced and till the above bill becomes law it is necessary that the status quo in respect of the position of tillers in the land is maintained. These steps were taken in order to do social justice to the class of tenants and save them from becoming a landless class. This also appears to the object behind the impugned amendment. This being the position, I am of the view that the temporary restriction imposed on the right of the petitioner is well founded and reasonable I am fortified in my view by AIR 1964 Mysore 43 where a somewhat similar question came up for consideration before the Division Bench of Mysore High Court That was a case where a landlord applied for eviction of his tenants under 'The Bombay Tenancy and Agricultural Lands Act'. One of the questions inter alia debated before the High Court was whether a landlord could prosecute the civil petition because proceedings in the civil court had been stayed under section 4 of the Mysore Tenants (Temporary Protection from Eviction) Act 1961 as that section statutorily stayed all suits and proceedings for eviction of lands held by tenants and whether this piece of legislation was valid The question was considered and it was held that the emergency legislation staying proceedings could be considered as reasonable restriction within the meaning of clause 5 of Article 19 imposed in the interest of the general public. It was observed that it would be enough to say that since the impugned legislation was enacted solely for the purpose of preserving status quo and for the purpose of eviction of tenants who might under the new law be able to retain possession of the land from which the eviction is sought during the interregna the impugned legislation being a purely temporary legislation enacted as an emergency measure so that it might be in operation until a permanent law was enacted, it would be unreasonable for any one to suggest that what the law does was to impose unreasonable restrictions. Their Lordships of Mysore High Court while considering the reasonableness or otherwise of the

restriction imposed by the legislature, further observed that the temporary character of the impugned legislation was worthy of consideration. If in the circumstances explained by the State that pending the enactment of a permanent legislation the legislature of the State thought it reasonable to preserve status quo and stop the eviction of the tenants on whom the legislation intends to confer certain benefits not already available to them, the law enacted with the object of stopping eviction temporarily for a specified period of time would not be unreasonable restriction on the fundamental right guaranteed by Art. 19 (f). Reliance was also placed in this case on the observations made in AIR 1957 SC 510 in which similar legislation under review was held to be one which did not impose unreasonable restriction as it was held to be a purely temporary measures to be in operation until a permanent law was enacted. For all this I will therefore be loath to say that the present piece of legislation staying proceedings of eviction is an unreasonable restriction on the fundamental right of the petitioner.

(7) For the foregoing reasons I am of the view that the impugned legislation is a reasonable restriction imposed on the fundamental rights of the petitioner and the petitioner cannot challenge its constitutional validity. The writ petition, therefore, fails which is hereby dismissed but without making any order as to costs.