
(1953) 09 CAL CK 0008
In the Calcutta High Court
Case No : Civil Rule No. 495 of 1953

Pran Krishna Kamar and Another	Vs	APPELLANT
Junior Assessor, Sibarampore and Others		RESPONDENT

Date of Decision : 03-09-1953

Acts Referred:

Constitution of India, 1950 — Article 25, 26

Citation : AIR 1954 Cal 241 : 58 CWN 73

Hon'ble Judges : Deep Narayan Sinha, J

Bench : Single Bench

Advocate : Benode Bihari Haldar, for the Appellant; Jagneswar Majumdar and Mihir Kumar Sarkar, for the Respondent

Judgement

Deep Narayan Sinha, J.—This is an application in respect of procurement under the West Bengal Foodgrains (Intensive Procurement) Order 1962 (hereinafter referred to as the "Order"). The petitioners are "producers" as defined by the Order. They own and cultivate paddy lands in mouzas Srirampore, Shibakalinagore, Madhusudanpur and Kasinagore, in the 24 Parganas. The petitioners were served with notices in Form A by the Assessor-Inspector Kakdwip and the junior assessor Sitarampur. They filed declarations in Form B., sometime in 18-12-1952. In the declarations it was stated that the petitioners held and cultivated 432 bighas 15 kottas 4 ch. of paddy lands, out of which 273 bighas 10 kottas and 4 chattaks were held and cultivated on their personal account, 99 taighas 5 cottas were held and cultivated, for the purposes of a debuttar and 60 bighas were held, and cultivated for the purposes of a School. Part of the lands were cultivated in khas and part in bhag. It appears that the petitioners' father executed a deed of trust, dedicating certain properties in favour of the deity Sri Visalakshi and Siba Thakur and there is also a charitable trust.

2. The procurement officers investigated the facts and came to the conclusion that the petitioners held and cultivated 120.11 acres on their personal account,

and 84.71 acres on account of the Debuttar and trusts. The petitioners claimed exemption for 64 members of their family but were allowed exemption for 62 members. Notices in form "C" were served on the petitioners dated 5-2-1953 directing them to deliver 784 maunds 13 STS. 12 chattaks of aman paddy in respect of their holdings other than Kasinagore and 6 mds. 31 seers 4 chattaks in respect of the latter. The petitioners have not preferred any appeals before the appellate tribunal provided for by the Order, but have come up straight to this Court.

A rule was issued on 24-2-1953, directing the opposite parties to show cause why a writ in the nature of Mandamus should not issue, directing them not to give effect to the said directives. The constitutional points raised have already been dealt by me in -- Atulya Kumar De and Others Vs. The Director of Procurement and Supply and Others, (A). Mr. Haldar however raises a new point which requires consideration. In this case, a considerable portion of the land was held as shebait and trustee. He points out that under para. 2(4) of the Order a "producer" includes a person cultivating more than 10 acres of land, as a shebait or trustee.

3. Although the Order gives exemption to the members of the family of the shebait or trustee, there is no provision for any exemption to be given in respect of the bhog puja of the deity, or for the consumption of the beneficiaries.

4. Mr. Haldar argues that this is an infringement of the fundamental rights conferred upon the petitioners by the Constitution of India, by Articles 25(1) and 26 of the Constitution.

5. I think that the absence of any provision for the bhog or Puja of a Hindu Deity, while intercepting the produce of lands belonging to the deity was an unfortunate omission. I am however only concerned with finding out whether the omission makes the Order unconstitutional.

6. Article 25(1) of the Constitution runs as follows:

"Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."

The question is whether the acquisition by the State of the entire produce of a land dedicated to a deity or in trust, infringes the right conferred by this article. There is no question that the State is doing so for a consideration. No point is raised before me that there has been any infringement of Article 31 of the Constitution. In--" The State of Bihar Vs. Sir Kameshwar Singh, (B) Mahajan J. (p. 313) states as follows:

"Dr. Asthana argued the case of religious Institutions. He contended that the properties held by these institutions had already been dedicated for public purposes, that the income of these properties was being used for holding melas, feeding Sadhus and other charitable purposes and that any reduction in that

income would adversely affect those institutions and the properties that were already dedicated for public purposes could not be acquired under compulsory powers of acquisition. The argument is fallacious. A charity created by a private individual is not immune from the sovereign power to compulsorily acquire that property for public purposes. It is incorrect to say that the vesting of these properties in the State under the provisions of the Act in any way affects the charity adversely because the net income that the institutions are deriving from the properties has been made the basis of compensation awarded to them."

Das J. states (p. 316):

"Dr. Asthana appearing for certain religious institutions contended that their property already dedicated to a public purpose cannot be acquired for another public purpose. I see no substance in this contention. The property belonging to the religious institution will only change its form, namely from immovable property into money".

Mahajan J. further said (p. 278):

"Mr. Chakravarty urged that as regards trust properties the Bihar Legislature had no power to acquire them without payment of full compensation as certain educational and charitable institutions would thereby be seriously affected. He was, however, unable to point out how the Bihar Legislature had no power to acquire trust properties".

If the State can acquire property dedicated for religious purposes and/or trusts, it can equally acquire the usufruct. Since adequate compensation must be paid, the religious or charitable trust will function as if the usufruct has been changed into money. Since that is the way all trusts normally function, I can see no prejudice in it.

7. In -- " Raja Suryapalsingh and Others Vs. The U.P. Govt., (C) a Full Bench of the Allahabad High Court stated as follows: (P. 690);

"Arguments have been advanced by learned counsel on behalf of certain waqfs and Hindu religious institutions, based on Articles 25(I) and 26 Clause (c) of the Constitution. Article 25(1) provides that

"subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion"

It is said that a Mutawalli's right to profess his religion is infringed if the Waqf property is compulsorily acquired, but the acquisition of that property under Article 31 (to which the right conferred by Article 25 is expressly subject) has nothing to do with such rights and in no way interferes with this exercise.

Article 26 Clause (c) provides that "Subject to public order, morality and health, every religious denomination or any section, thereof shall have the right to own and acquire movable and immovable property" and the argument is that as such

institutions have been thereby guaranteed the right to own property any acquisition of their property is a contravention of the provisions of the Article. Article 19(1)(f) is distinguished from Article 26 Clause (c) on the ground that the ownership of property is guaranteed under the latter but not under the former. This argument we think to be wholly fallacious. Article 26 Clause (c) confers on every religious denomination the right to own and acquire property but it does no more than this and we can see no ground for holding that it prevents, or was intended to prevent property belonging to a religious body being acquired by authority of law."

8. I agree with this enunciation of the law.

9. The acquisition of the usufruct does not in any way take away the right of the citizen to freely profess or practise his religion. A Hindu deity is a juristic entity and does not physically partake of the bhoga offerings. There is nothing to show before me that there was any real difficulty created by intercepting the usufruct. Aman Paddy is not used in the bhoga of the deity. The special kind of offerings that are required by the deity can be acquired from the compensation paid. This also applies to the trust. There is nothing to show that the provisions of the trust cannot be carried out without utilising the actual usufruct Both Articles 25 and 26 are subject to "public order". As I have endeavoured to show in -- "Atulya De's case (A)", (Supra) the acquisition of rice and paddy under the Order is due to a grave public emergency. As was held in -- "In the matter of Khetsidas Giridharilal v. Protapmull Rameswar AIR 1946 Cal 197 (D) maldistribution of essential commodities in such times may easily result in public disorder.

10. In -- Ratilal Panachand Gandhi Vs. State of Bombay, (E) Chagla C. J. states as, follows:

"Article 25 protects religious freedom as far as individuals are concerned But here again the right is not an unrestricted right. It is a right subject to public order, morality, and health and further it permits the State to make any law regulating or restricting any economic, financial, political or secular activity although it may be associated with religious practice, and there is a further right given to the State and that is that the State can legislate for social welfare and reform even though in doing so it may interfere with the profession, practice and propagation of religion by an individual. When we turn to Article 26 it does not deal with the rights of an individual or of a citizen. It deals with the rights of a religious denomination or a section of a religious denomination....."

I agree with this enunciation of the law. The result is that I hold that the rights of the petitioners under either Article 25 or 26 of the Constitution, have not been infringed by the Order.

11. There is only one other aspect of the matter that requires consideration. Although a shebait or a trustee does not get exemption for the deity or a beneficiary he gets an exemption for the members of his own family, which is entirely wrong. So far as a Hindu endowment is concerned, the shebait is entitled

to the offerings made before the deity. Apart from this, neither he nor his family are entitled to utilise the usufruct. In this particular case, the shebait has got exemption for 62 members at the rate of 10 mds. for each member. None of these members have any right to consume any part of the usufruct so far as the debuttar is concerned. The difficulty is created by paragraph 3 (2) (b) (1) of the Order, whereby the Director is enjoined to calculate the available surplus by taking into account "the quantity of foodgrains required by a producer, for his family consumption according to the prescribed scale." But the answer is that a producer can never "require" anything which he is not entitled to in law.

Under the Hindu law, he or his family members are not entitled to be fed (unless there is a special provision to that effect in the deed of trust or endowment) out of the usufruct, hence he can never in the eye of law "require" the same. I am informed that shebaits and trustees make good the absence of any provision for the feeding of the deity or beneficiary, in the Order, by utilizing what they receive on this heading. I cannot however take notice of any such makeshifts. It would be better if the rules were amended and some provision made for deities and the performance of trusts, rather than countenance an illegality and then depend upon the goodness of human nature to do the right thing.

12. For the reasons aforesaid, this application must fail and be dismissed. The rule is discharged, all interim orders vacated, undertaking discharged. Inasmuch as the petitioners wish to appeal against this order, the interim injunction and undertaking will continue until a week after the reopening after the long vacation. Any further stay must be obtained from the Court of appeal.

13. There will be no order as to costs.