
(1956) 02 AHC CK 0026

In the Allahabad High Court

Case No : Civil Revision Application No. 189 of 1955

Raja Ganga Pratap Singh

APPELLANT

Vs

The Allahabad Bank Ltd., Lucknow

RESPONDENT

Date of Decision : 28-02-1956

Acts Referred:

Constitution of India, 1950 — Article 13(2), 14, 228

Uttar Pradesh Zamindars Debt Reduction Act, 1952 — Section 2

Citation : AIR 1956 All 635

Hon'ble Judges : Randhir Singh, J; Kidwai, J

Bench : Division Bench

Advocate : H.D. Srivastava, Afsar Husain and Umesh Chandra, for the Appellant; Iqbal Ahmad and Sheo Gopal, for the Respondent

Final Decision : Dismissed

Judgement

Kidwai, J.—The Allahabad Bank instituted a suit against the Deputy Commissioner incharge of the Court of Wards, Mallanpur Estate, for whom Raja Ganga Pratap Singh was later substituted, for the recovery of a considerable sum of money on the foot of a mortgage executed by the Court of Wards on behalf of the father of the applicant in 1939.

2. The defendant raised many pleas and stated a great many facts which indicate that his case was a very hard one and that, in spite of the fact that he and his predecessors had made payments of considerable sums of money to the Bank on the basis of earlier mortgages of which the mortgage in suit was said to be a renewal, a large sum still remains due.

Later on, by an application for amendment, he added a plea that he was entitled to the benefit of Sections 3 and 8, U. P. Zamindars' Debt Reduction Act of 1952 since the definition of debt given in the said Act was ultra vires being against the provisions of the Constitution.

3. This plea was incorporated in the written statement and an application was

made to the Court to make a reference to the High Court in view of the provisions of the proviso to Section 113, Civil P. C. The learned Civil Judge did not think it a proper case in which to make reference and he rejected the prayer. Thereupon the applicant filed Civ. Revn. Appln. No. 189 of 1955 in this Court in which it was prayed that this Court might, in the exercise of its powers of revision, set aside the order of the Civil Judge refusing to refer since a question as to the interpretation of the Constitution of India was involved.

4. Later on the applicant presented a petition under Article 228 of the Constitution praying that this Court may withdraw the case from the Court of the Civil Judge and dispose of it itself or determine the question of law and return the case for disposal to the Court of the Civil Judge. This is numbered as Civil Misc. Petition No. 4 (O.J.) of 1955. We have heard both the applications together.

5. The proviso to Section 113, Civil P. C. requires a reference to be made by the Court if the case involves a question as to the validity of any Act, Ordinance, Regulation or any provision contained in any Act, Ordinance or Regulation and the Court is of opinion that such Act, Ordinance or regulation or provision is invalid and inoperative and a decision of this point is necessary for the disposal of the case.

In the present case the Court came to the conclusion that, although the Act, Ordinance or Provision complained of was invalid, a decision of this question was not necessary for the disposal of the case. As we shall show in dealing with the second petition, namely the application under Article 228 of the Constitution, we agree that a decision as to the validity of the impugned provision is not necessary for the disposal of the case. The application for revision must, therefore, be rejected on the merits.

6. The next point which we will take up is the question of Article 228 of the Constitution. In order to withdraw a case to itself the High Court must be satisfied that two conditions exist:--

(1) that a substantial question of law as to the interpretation of the Constitution has arisen, and

(2) that the determination of this question is necessary for the disposal of the case.

7. The provision of the U. P. Zamindars' Debt Reduction Act, 1952, which is challenged has a definition of "debt" contained in Section 2 Clause (f) of the Act which reads as follows:--

" "debt" means an advance in cash or in kind and includes any transaction which is in substance a debt but does not include an advance as aforesaid made on or after the first day of July, 1952, or a debt due to--

(i) the Central Government or Government of any State;

(ii) a local authority;

- (iii) a scheduled bank;
- (iv) a co-operative society; and
- (v) a waqf, trust or endowment for a charitable or religious purpose only.
- (vi) a person, where the debt was advanced on his behalf by the Court of Ward".

8. It is contended before us that this definition deprives the petitioner of the right of equality before the law and of the equal protection of the laws guaranteed to him under Article 14 of the Constitution and that consequently it is void under Article 13(2) of the Const. to the extent to which it discriminates but that it must have effect given to it with regard to the remaining portion of it that is to say that the part of the definition beginning with words "but does not include" to the end must be rejected and the remainder of the definition must be read without them.

9. The definition may be looked at in one of two ways i.e. either (a) it contains a reasonable classification; or (b) it is discriminatory void and ineffectual.

10. Whichever view is taken the decision of the present case is unaffected. If the distinction drawn in the definition is reasonable classification, the provision is valid and the creditor, being a scheduled Bank, the debtor cannot get the benefit of the Zamindars' Debt Reduction Act. If, on the other hand, the definition is discriminatory it will be void and since the Act is made applicable to such debts only it cannot have effect at all & in this eventuality also the Act will be ineffectual so far as the present case is concerned. The only eventuality in which the Zamindars' Debt Reduction Act can affect the present case is if the portion of the definition which the applicant desires to exclude is treated as severable.

There is no dispute that if one or more provisions of an enactment are void under Article 13(2), it does not follow that the whole enactment is void. This is well settled by decision of the Supreme Court and by the words of Article 13(2) itself. The only question that has to be determined is whether the provision which is void can be separated from the rest of the provisions of the enactment, or in other words, whether, according to the intentment of the Legislature the rest of the enactment can have effect given to it after excluding the rejected portion. This is a question depending not upon the interpretation of any provision of the Constitution but on the construction of the statute concerned.

11. Lengthy arguments have been addressed to us on the question as to whether the impugned provision is severable or not. This is not the stage at which we are called upon to consider these arguments. All that we have to decide is whether the question as to how far, if at all a particular portion of the enactment is severable from the remainder of it is a substantial question of the law as to the interpretation of the "Constitution.

We have already stated that there is in fact no dispute as to the constitutional principles namely that every citizen is entitled to the equal protection of the laws

and equality before the law & also that any enactment which infringes that principle is to that extent void. In the present case therefore there is no question relating to the interpretation of the Constitution involved but merely a question of law as to the interpretation of the U. P. Zamindars' Debt Reduction Act of 1952 in order to determine whether a portion of it can be separated from the rest without in any manner affecting the validity of the remaining portion.

12. We have deliberately refrained from expressing any opinion on this point or even from giving a reference to the authorities upon which the applicant relies because we feel that this is a matter which has to be determined by the Court which is seized of jurisdiction to try the case and we do not wish by our remarks to prejudice the case of either party. Having regard to the view that we have expressed that no substantial question as to the interpretation of the Constitution is involved in this matter and further that even if such a question were involved its determination is not necessary for the disposal of the case, we dismiss this application with costs.