

(1972) 07 OHC CK 0024

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 832 and 905 of 1969

Ram Chandra Swain

APPELLANT

Vs

Sub-Divisional Officer and Others
 Duryodhan Sahu Vs
Madhusudan Jena and Others

RESPONDENT

Date of Decision : 25-07-1972

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 22, 22(1), 22(2), 22(3), 22(4), 22(8)
Central Provinces Tenancy Act, 1898 — Section 46
Constitution Of India, 1950 — Article 19(5), (19)(f), 19(1)(f), 39(b)(c), 46, 226, 227, 341

Citation : (1972) 38 CLT 980

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : J.B. Patnaik and N. Patra, in O.J.C. 832169 and L. Rath and U.K. Nanda, in O.J.C. 905169, for the Appellant; A.G., Government Advocate, K.M. Swain in O.J.C. 832169, M. Patra, B. Dagara and Government Advocate in O.J.C. 905169, for the Respondent

Judgement

R.N. Misra, J.—These are two applications under Articles 226 and 227 of the Constitution and both these writ petitions seek to assail the vires of Section 22(4) of the Orissa Land Reforms Act, 1960 (hereinafter referred to as the Act) on the ground that it is ultra vires Article 19(1)(f) of the Constitution. Both these petitions were heard analogously and a common set of arguments were advanced before us. We, therefore, propose to dispose of these two cases by one common judgment.

2. It is conceded that the Orissa Land Reforms Act, 16 of 1960 has been included in the Ninth Schedule of the Constitution as Entry 52. But Sub-section (4) of Section 22 of the Act was not in the original statute which has constitutional immunity from challenge is Courts and was introduced by Amending Act 13 of 1965. There is no dispute at the Bar that the amendment does not have the constitutional immunity and is open to challenge. The impugned sub-section runs

thus:

The provisions contained in Sub-sections (1)(2) and (3) shall apply, *mutatis mutandis*, to a transfer by a member of the Scheduled Castes....

It is necessary to refer to the provisions of Sub-sections (1), (2) and (3). Those provisions run to the full effect:

(1) Any transfer of a holding or part thereof by a raiyat, belonging to a Scheduled Tribe shall be void except where it is in favour of

(a) a person belonging to a Scheduled Tribe, or

(b) a person not belonging to a Scheduled Tribe when such transfer is made with the previous permission in writing of the Revenue Officers Provided that in case of a transfer by sale the Revenue Officer shall not grant such permission unless he is satisfied that a purchaser belonging to Scheduled Tribe willing to pay the market price for the land is not available, and in case of a gift unless he is satisfied about the bona fides thereof.

(2) The State Government may having regard to the law and custom applicable to any area prior to the date of commencement of this Act by notification direct that the restrictions provided in Sub-section (1) shall not apply to lands situated in such area or belonging to any particular tribe throughout the State or a in any part of it.

(3) No such holding shall, unless the Court otherwise directs, be sold in execution of decree to any person not belonging to a Scheduled Tribe. Sub-section (3) extracted above was not also in the original Act and was introduced into the statute by the same amending Act which brought in Sub-section (4).

3. Learned Counsel for the Petitioner contend that Article 19(1)(f) of the Constitution guarantees that all citizens shall have their right to acquire, hold and dispose of property. The restriction provided in Section 22 of the Act is certainly one that seriously infringes the aforesaid guarantee. As such unless the restriction is authorised under Clause (5) of Article 19 of the Constitution, it must be declared as *ultra vires* the guarantee under Article 19(1)(f) of the Constitution. Clause (5) provides:

Nothing in Sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public order the protection of the interests of any Scheduled Tribe.

In view of the provisions of Clause (5), the Petitioners concede that such prohibition & is contained in Sub-sections (1), (2) and (8) of Section 22 of the Act may be taken as reasonable restrictions, but in regard to Scheduled Castes, the restriction is unreasonable because members of the Scheduled Castes cannot be equated with the general public and the provisions in Sub-section (4) of

Section 22 cannot be held to be in the interest of the general public. It is contended that members of the Scheduled Castes do not constitute even the minority of the total citizens in the State and as such an Infringement of the right of the majority of the citizens in an attempt to protect the interests of the Scheduled Castes can in no sense be taken to be in the interests of the general public of the State.

4. This contention of learned Counsel for the Petitioners overlooks the fact that members of the Scheduled Castes are a weaker section of society. Economically they are backward and there is need for special protection for them in order that they may come up to the general standard of citizens in the country. As was indicated by a Division Bench of the Patna High Court in *Sasthi Pado Sekhar and Another Vs. Anandi Chaudhary and Others*, .

The mere fact that the impugned provisions does not directly affect the citizens of other States of the Republic of India or even of the other divisions of the State of Bihar itself, does not, in my opinion, necessarily imply that the restrictions imposed there under are not in the interests of the general public. Legislation affecting a particular class or a particular area would, quite obviously, directly affect the member of that particular class or the inhabitants of that particular area. only, but if the object of the legislation was the protection and safe guarding of the interest of a particular class or of persons residing in a particular area, or, the object was the removal of some serious abuse or grievance or discontent of that particular class or particular area, it must be held that such a legislation indirectly affects the public in general. It can hardly be disputed that a legislation for securing one or another of the objects referred to in Clauses (b) and (c) of Article 39 of the Constitution must be held to be a legislation in the interests of the general public.

The Patna High Court was dealing with the provisions of the Chota Nagpur Tenancy Act. A similar restriction is contained in Section 46. Validity of such provision was being impugned with reference to Article 19(1)(f) before that Court.

Another Division Bench of the Patna High Court in the case of *Dasu Khan and Others Vs. Mohan Bhagat and Others*, dealing with the words "in the interest of general public" appearing in Article 19(5) came to say that it does not refer to the public of the whole of the Republic of India and it may include a limited class of persons in a limited area. They derived support for that view from a decision of their Lordships of the Supreme Court in the case of *Kavalappara Kottarathil Kochunl alias Moopili Nayar and Ors. v. The State of Madras and Ors.* AIR 1960 S.C. 1089.

A division Bench of this Court in the case of *Raghunath Choudhury Vs. Budhi Naik*, dealt with validity of a similar restriction in the *Nayagarh Land Transfer Rules*. The restriction in the rule was in the following terms:

No land or other Immoveable property of an aboriginal or a person of low caste,

especially Pans, Haris, and Khonds, will be sold, mortgaged, or leased out of raiyats of high class without the written sanction of the State authority.

A note appended to that rule gave a list of castes which were considered to be aboriginals or persons of low caste. The classification was not obviously on the basis of Scheduled Castes or Scheduled Tribes but some of the castes referred to in the rule and the note, have now been classified as Scheduled Castes after the Constitution.

A contention similar to the one that is raised before us was canvassed before this Court. This what was contended:

Mr. Pal for the Appellant-Defendant raised an ingenious constitutional objection to the validity of the said rule. He rightly pointed out that in the Constitution there is no such statutory expression as "aboriginal tribe" and that special protection is given to only "Scheduled Castes" and "Scheduled Tribes" as described in Articles 341 and 342. "Tanlas" have been described as members of the Scheduled Castes see item 88 (under Orissa of the Schedule to the Constitution (Scheduled Castes) Order 1950, made by the President in exercise of the powers conferred on him by Article 341(1). Article (19)(f) of the Constitution confers a fundamental right on all citizens to acquire, hold and dispose of properties subject to the restrictions contained in Clause (5) of that Article. Under that clause if any pre-existing law imposes reasonable restrictions on the exercise of any such right either in the interest of the general public or for the protection of the Interests of any Scheduled Tribe that law will not be struck down as unconstitutional even though it may contravene Sub-clause (f) of Clause (1) of Article 19. Mr. Pal's contention, therefore, is that while a law which is meant to protect the interests of Scheduled Tribes may be saved, any law which is meant to protect the interests of Scheduled Castes may not be saved by Clause (5) of Article 19 unless it is further established that the restrictions imposed by that law are reasonable and that those restrictions are in the interests of the general public. He, therefore, contended that as there was absolutely no material on record to show that the restrictions on the right of transfer imposed by Rule 3 of Nagargarh Land Transfer Rules (so far as the lands of Scheduled Castes were concerned) were either reasonable or were in the interests of the general public, that law will not be saved by Clause (5) of Article 19 and should, therefore, be struck down as unconstitutional as contravening Sub-clause (f) of Clause (1) of that Article.

Dealing with the contention Narasimham, C.J., said:

Mr. Pal is undoubtedly right in saying that the express mention of "Scheduled Tribes" alone in Clause (5) of Article 19 and the significant omission of "Scheduled Castes" in that clause must be given due importance. Hence any law for the protection of the Scheduled Tribes will always be saved by Clause (5) and a further investigation as to whether the restrictions imposed by that law are in the interests of the general public, will not arise. But where a law is meant for the protection of Scheduled Castes or any other section of the public (apart from

Scheduled Tribes) the reasonableness of the restrictions imposed by that law and the further question as to whether the protection given by that law is in the interests of the protection given by that law is in the interests of the general public are both justifiable.

But this conclusion only shows that the Court has to examine whether (i) the impugned Rule 3 of the Nayagarh Land Transfer Rules imposes reasonable restrictions and (ii) those restrictions are In the Interests of the general public. That Rule merely restricts the freedom of transfer of immoveable property by certain classes of people who are either aboriginals or members of low castes. A list of such castes is given in the note attached to the rule. Such restriction on the right of transfer of tenants lands is a well-known feature in the Revenue Laws of many States including Orissa, and they are meant mainly to protect the weaker section of the public from exploitation by rich money-lenders who would otherwise reduce the tenants to mere landless labourers. Thus, in the Agency Tracts, Interest and Land Transfer Act, 1917 (now replaced by the Orissa Scheduled Areas Transfer of Immoveable Property (by Scheduled Tribes) Regulation, 1956), there were restrictions on the transfer of lands from members belonging to hill tribes to other persons. Similarly, in Section 46 of the Central Provinces Tenancy Act, 1898 (in force in Sambalpur District) there were restrictions on the transfer of occupancy holdings and In the Chota Nagapur Tenancy Act also there were similar restrictions. These restrictions can be justified as having been based on the larger principle of the State Intervening to prevent the exploitation of the weaker sections of the community by more powerful and richer sections. This has been expressly recognised in Article 46 of the Constitution which runs as follows:

The State shall promote with special care the educational and economic interests of the weaker sections of the people, in particular the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

In State of Bombay v. F.N. Balsara A.I.R 1951 S.C. 518 their Lordships of the Supreme Court pointed out that in judging the reasonableness of the restrictions, for the purpose of applying the fundamental principles, the Directive Principles of State Policy should be borne In mind. See also Sashibhusan v. Mangala ILR 1953 Cutt 45. Hence the reasonableness of such restrictions either in any existing law or in any new law made after the commencement of the Constitution cannot be doubted.

Thus a law meant for the protection of the weaker sections of the public, especially members of low castes, may be held to be in the interests of the general public also because if members of those castes, who own lands are reduced to the position of landless serfs due to unrestricted exploitation by money-lenders and high caste people, far-reaching evil consequences, including

serious problem of maintenance of peace may ensue and hence the protection of these persons who form the weaker section of the community, might well be in the interests of the general public....

We entirely agree with the view expressed above by the learned Chief Justice. The provision contained in Sub-section (4) of Section 22 of the Orissa Land Reforms Act is actually one made for the protection of the Scheduled Castes who are indisputably the weaker community of society and as such, such a provision must be taken to be in the interests of general public.

5. Two aspects are material in this case: (a) is the restriction reasonable? and (b) is it in the interests of the general public?

6. Coming to the first aspect Patanjali Sastri, C.J. in *State of Madras Vs. V.G. Row*, made the following observation which has become classic:

...It is important in this context to bear in mind that the test of reasonableness, where ever prescribed should be applied to each individual statute impugned, and no abstracto standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a Case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the "decision should play an important part, and the limit to their interference with legislative judgment In such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable.

Similar tests were also indicated in the case of *State of Madras v. H.N. Rao* AIR 1970 S.C. 1163. It was said that there can be no absolute standard about what will be a reasonable restriction upon fundamental rights. In deciding about the reasonableness of the restrictions it is not possible to think only in the abstract. Several circumstances must be taken into consideration, in particular the purpose of the Act, the conditions prevailing in the country at the time, the nature of the restrictions etc. Tested this way the restriction in Section 22(4) of the Act cannot be said to be unreasonable. There is no absolute ban on alienation. On the other hand, the restriction is more or less regulatory and power is conferred on a public officer even to permit alienation in favour of a non-scheduled caste person under certain contingences. The restriction is commensurate with the need of protection of the interest of the members of the Scheduled Castes against the exercise of the fundamental right guaranteed under Article 19(1)(f) of the Constitution.

7. The question whether the restriction is in the interests of the general public cannot be answered on a priori reasoning; it depends upon the peculiar circumstances of each case. Here the evil which is sought to be remedied by imposition of the restriction is the miserable economic condition of the backward Scheduled Castes. Undoubtedly it is not in the interests of the general public to allow any class of person to remain exploited for ever and thereby permit seeds of discontent to originate and grow. Such a situation is ultimately bound to disturb the peace and harmony of the entire society. Therefore, it is in the interests of the entire country that such dark spots in the social set up must be eradicated without the least delay. The economic backwardness of the Scheduled Caste people is comparable with a sore in some part of the human body. No one ever doubts that in the general interest of the entire body, the sore has to be immediately attended to; otherwise the whole body would suffer and ultimately decay. Same is the cases with society at large. Unless its weak spots are attended to in time and appropriately, the fabrics of society would grow weak and ultimately dissipate beyond repair. Thus the restriction in question which seeks to regulate and we see no reason to hold that it does not serve the purpose unbridled alienations by the backward classes in favour of the richer and powerful sections of society is indeed in the interests of the general public.

8. Learned Counsel for both sides referred to a number of cases. But we do not find any need for referring to them at length. The position in law seems to be beyond doubt. We would accordingly hold that the impugned provision is not Ultra vires Article 19(1)(f) of the Constitution and is saved as imposing a reasonable restriction in the interests of the general public, within the meaning of Article 19(5) of the Constitution. The writ petitions fail. We, however, do not make any order as to costs.

K.B. Panda, J.

9. I, agree.