

(1961) 09 CAL CK 0001
In the Calcutta High Court
Case No : Civil Revision Case No. 911 of 1959

Ratnakar Ghosh and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 21-09-1961

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19, 19(f), 31
West Bengal Estates Acquisition Act, 1953 — Section 2, 4, 49, 5, 52

Citation : 66 CWN 405

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : Chandra Nath Mukherjee, for the Appellant; N.C. Chakravarty and S.K. Banerjee, for the Respondent

Judgement

Banerjee, J.—The petitioners were raiyats in respect of certain agricultural and non-agricultural lands. Their interest as raiyats vested in the State Government, when Chapter VI of the West Bengal Estates Acquisition Act (hereinafter referred to as the Act) came in force on April 10, 1956. Long prior to that date and even prior to the date when the Act (excepting Chapter VI) came into operation, the petitioners had made transfers of certain plots of land, held by them as raiyats, in favour of one or other of the opposite party nos. 3 to 5, as hereinbelow detailed :

(a) On June 2, 1953, the petitioners sold to Gulnehernessa Bibi (opposite party No. 5) plots Nos. 2463 and 2546 of Mouza Ahiran, in all measuring 2.9 acre.

(b) On June 2, 1953, the petitioners sold to Pagal Ghosh (Opposite Party No. 4) plots Nos. 1563 and 3045 of Mouza Ahiran, in all measuring 1.06 acre.

(c) On July 8, 1953, the petitioners sold to Jogendra Nath Saha (opposite party No. 3) plots Nos. 413, 436, 560 and 390 of Mouza Ahiran, in all measuring 4.03 acre.

After the vesting of their raiyati interest in the State Government, by operation of

section 52 read with section 4 of the Act, the petitioners became entitled to retain certain lands as provided in section 6 of the Act. They exercised their option of retention but the Assistant Settlement Officer (opposite party No. 2), in exercise of his power u/s 5A of the Act, held that the area of lands conveyed by them be deducted from the acreage of land retained by them. The material portion of the order is set out below :

It appears from the Registered kotala deed No. 1888 (of Nimtita S.R. Office) executed in favour of Bibi Gulnehar on 2-6-53 that plot No. 2463 of Khatian 324 area "24 decimals, plot 2546 Mouza Ahiran.05 decimals of mouza Ahiran from the deed No. 2315 (of Nimtita S.R. Office) executed in favour of Jogendra Nath Saha on 8-7-53 that plot No. 413 Khatian 98. 97 acre, 436-39 acre, 560-1.57 acre, 390-1.10 acre, and from the deed No. 1887 (Nimtita S.R. Office) executed in favour of Pagal Ghosh on 2-6-53 that plot No. 1563 Khatian 453-69 dec. of Ahiran 3045 khatian 453-37 dec, total 5.38 were transferred by Sri Ratnakar and Dharendra Ghosh. There is no relationship between the transferor and transferee. It appears from the big Raiyat Register that Sree Ratnakar Ghosh holds 40.17 agricultural, 1.59, Non-agricultural, .19 homestead land, and Sree Dharendra Nath Ghosh holds 30.55 of agricultural, 1.59 of Non-agricultural and 20 decimal of homestead land and have evaded the ceiling.

The above transfers made to the persons with whom the transferor has no relation and thus all the transfers are bona fide and as the transferors are big raiyats and holds land beyond the ceiling, the amount of land transferred as per above deed will be deducted from the lands, they have retained u/s 6(1) of E.A. Act.

2. The propriety of the order is being disputed in this Rule.

3. Section 5A was inserted in the Act, with retrospective effect by section 2 of the West Bengal Estates Acquisition (Amendment) Act, 1954 and the material portion of the section is herein below set out:

(1) The State Government may after the date of vesting enquire into any case of transfer of any land by an intermediary made between the 5th day of May, 1953 and the date of vesting, if in its option there are prima facie reasons for believing that such transfer was not bona fide.

(2) If after such enquiry the State Government finds that such transfer was not bona fide, it shall make an order to that effect and thereupon the transfer shall stand cancelled as from the date on which it was made or purported to have been made:

Provided that, subject to such cancellation, nothing in this subsection shall be deemed to affect any rights which the transferor or the transferee may otherwise have against each other.

(3) If after such enquiry the State Government finds that the transfer was bona fide, it shall make an order to that effect and thereupon the following

consequences shall ensue, namely:

(i) the land shall, without prejudice to any rights which the transferor or the transferee may have against each other, be deemed to be the land of the transferee for the purpose of this Act;

(ii) if any such land or any part thereof is retained by the transferee under the provisions of this Chapter, such land or such part thereof may be taken into account in calculating the land which may be retained by the transferor under this Chapter as if such land or such part thereof had never been transferred and were retained by the transferor or chosen by him as land to be retained by him.

4. Under sub-section (1) and (2) of Section 5A, (which I shall hereinafter describe as the first part of the section) the State Government, if prima facie of the opinion, after a statutory enquiry, that any transfer made between May 5, 1953 and the date of vesting is not bona fide, shall make an order to that effect and thereupon such transfers shall stand cancelled as from the date when they were made or purported to have been made. Under sub-section (3) of Section 5A, (which I shall hereinafter describe as second part of the section), even if the State Government finds that a transfer made between the material dates was bona fide, it shall make an order to that effect and thereupon two consequences will follow:

(i) the transferred land shall be deemed to be the land of the transferee for the purposes of the Act, and

(ii) if such land or any part thereof is retained by the transferee, in calculating the land which may be retained by the transferor, u/s 6 of the Act, the transferred land or any part thereof may be taken into account as if such land or such part thereof had never been transferred but was retained by the transferor or was chosen by him as land to be retained by him.

5. The first part of the section is understandable. Sub-section (7) of section 5A lays down the circumstances under which transfers shall be held not to be bona fide, the object to all intents and purposes being to prevent benami or sham transfers, made with the object of defeating the provision of the Act.

6. The object behind second part of the section is, however, not clear. Under Art. 19(f) acquisition and disposal of property is a fundamental right guaranteed under the Constitution. Disposal of property by way of bona fide sale, at a time when the Act had not come into operation, was an unexceptionable act by all known standards. Why then must a person be deprived of his right to retain the full quantity of land, which he might have otherwise retained, by reason of bona fide transfer or transfers made by him between May 5, 1953 and the date of vesting.

7. Mr. Chandra Nath Mukherjee, learned Advocate for the petitioners, condemned

the second part of section 5A of the Act as a colourable piece of legislation. He further contended that, even if not a colourable piece of legislation, the second part of the section was hit by Article 31(2), being a provision of compulsory acquisition not for a public purpose and without compensation and was not saved by Article 31A. He also contended that the second part of section 5A was based on an unreasonable classification under which all intermediaries, whether making a bona fide transfer or not, were subjected to some sort of limitation in the matter of retention of land. Lastly, he contended that the second part of Section 5A did not subserve the main purpose of the Act, so as to be an integral part of the Act and was not protected under Article 31A(1) of the Constitution.

8. I take up the arguments of Mr. Mukherjee in the order in which they were argued. I turn first of all to the argument based on colourable legislation theory. The doctrine of colourable legislation ultimately resolves itself into the question of competency of a particular legislature to enact a particular law. This is what may be gathered from the case of K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, in which Mukherjea, J. observed:

If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject matter of the statute or in the method of enacting it transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it also may be disguised, covert and indirect and it is to this latter class of cases that expression "colourable legislation" has been applied in certain judicial pronouncements.

9. To the same effect is the other decision of the Supreme Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, . Mr. Mukherjee did not argue that the West Bengal Legislature had not the legislative competency to enact the Act. The enactment therefore is not a colourable legislation in the sense that it was enacted without legislative competency.

10. The second argument of Mr. Mukherjee may shortly be disposed of. Article 31A of the Constitution is to the following effect:

31A (1) Notwithstanding anything contained in Article 13, no law providing for-

(a) the acquisition by the State or of any rights therein or the extinguishment or the modification of any such rights, or

(b) ***** *

(b) ***** *

(c) *****

(d) ***** *

(e) *****

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31:

Provided * * * *

(2) In these Articles-

(a) the expression "estate" shall in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or muafi or other similar grant and in the States of Madras and Kerala any janmam right;

(b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under proprietor, tenure-holder, raiyat, under - raiyat or other intermediary and any rights or privileges in respect of land revenue.

11. It is difficult to appreciate why Article 31A will not save the second part of section 5A of the Act. The West Bengal Estates Acquisition Act is itself an Act for acquisition of estates. Section 5A was inserted in the body of the main Act, by amending Act XIII of 1954, for the purpose of placing restriction on certain transfers. It was not a provision for compulsory acquisition, as imagined by Mr. Mukherjee and was not hit by Article 31(2) of the Constitution. I do not find any substance in the contention that section 5A will not fall within the saving provision of Article 31A of the Constitution.

12. If Article 31A applies the argument that the second part of section 5A introduced an unreasonable classification must also fail because the provision of section 5A would be immune from such criticism by reason of the provisions of Article 31A itself.

13. It remains for me now to consider the last argument of Mr. Mukherjee, namely, that the second part of section 5A did not sub-serve the main purpose of the Act so as to be an integral part thereof and was not, therefore, protected under Article 31A of the Constitution. The argument is attractive even though not of substance. The basis of the argument of Mr. Mukherjee is to be found in an observation by Wanchoo, J., in *Thakur Raghubir Singh and Others Vs. The State of Ajmer (Now Rajasthan) and Others*, where, dealing with section 8 of *Ajmer Abolition of Intermediaries and Land Reforms Act*, (more or less similar to the provisions of section 5A of the Act) his Lordship observed as follows :

The provision is not an independent provision; it is merely ancillary in character enacted for carrying out the objects of the Act more effectively. The intention of the legislature was to give power to the Collector after the estates vested in the State Government to scrutinise leases of this kind made after the 1st June, 1950,

which was apparently the date from which such legislation was under contemplation and to see whether the leases were such as a prudent landowner would enter into in the normal course of management. Such leases would be immune from cancellation; but if the Collector found that the leases have been entered into, not in the normal course of management but designedly to make whatever the landowners could before the estate came to be transferred to the State Government, he was given the power to cancel the same, as they would obviously be a fraud upon the Act. Such cancellation would sub-serve the purposes of the Act and the provisions for it would therefore, be in an integral part of the Act though ancillary to its main object and would thus be protected under Article 31A (1) of the Constitution.

14. The above observations would apply with great cogency to the provisions of sub-sections (1) and (2) of section 5A. of the Act, which deal with mala fide transfers. Sub-section (3) of section 5A, however, deals with bona fide transfers and it is difficult to conceive of any reason why even bona fide transferees shall be visited with adverse consequences, by reason of bona fide transfers made at a time when even the vesting had not taken place. Life of law is, however, not logic but experience. If the legislature in its experience, or to be more precise in its wisdom, chose to incorporate in the statute a provision highly illogical and not apparently sub-serving the main purpose of the Act, there is no power in me to strike down the provision, if the legislature had acted within its competency and had not violated the rights guaranteed by the Constitution. For the reasons aforesaid I am not prepared to give effect to the last argument of Mr. Mukherjee.

15. Before I close this judgment I desire to notice a point, which, however, was not argued by Mr. Mukherjee. The provisions of section 5A became applicable to raiyati and under - raiyati holdings, because of the provisions contained in section 52 of the Act, which I set out below:

52. On the issue of a notification u/s 49 the provisions of Chapters II, III, V and VII shall, with such modifications as may be necessary, apply mutatis mutandis to raiyats and under - raiyats as if such raiyats and under - raiyats were intermediaries and the land held by them were estates and a person holding under a raiyat or an under - raiyat were a raiyat for the purposes of clauses (c) and (d) of section 5:

Provided that if a raiyat or an under-raiyat retains all lands of a holding u/s 6, read with this section, he shall pay the same rent as he was paying immediately before the date of vesting and in cases where the land retained by a raiyat or an under-raiyat forms part of the lands in a holding held by him before the date of vesting, the rent payable by him shall bear the same proportion to the rent he was paying immediately before the date of vesting as the area of the land retained by him bears to the area of all the lands of the holding.

16. The Latin expression "mutatis mutandis" means in English "with necessary changes". The juxta - position of the expression "mutatis mutandis" after the

preceding expression "with such modifications as may be necessary" impresses upon the language of the section a tautologies duplication, which is difficult to explain. I need not however, make much of this point in this Rule, firstly, because the point was not emphasised by anybody and secondly, because a good deal may net turn on the defective language of section 52.

17. All the arguments advanced by Mr. Mukherjee in support of the Rule failing, this Rule must be discharged.

18. I however, make no order as to costs. Let the operation of the order be stayed for a fortnight as prayed for by the petitioner.