(1955) 05 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous Petition No. 59 of 1953

Sampuran Singh — APPELLANT

Vs

Competent Officer — RESPONDENT

Date of Decision : 18-05-1955

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 2, 8
Constitution of India, 1950 — Article 14, 19, 19(1)(f), 19(1)(f), 19(5)
Evacuee Interest (Separation) Act, 1951 — Section 9, 9(2), 9(2)

Citation : (1955) 05 P&H CK 0010

Hon'ble Judges : Passey, C.J;Chopra, J

Bench : Division Bench

Advocate : K.N. Tiwari, for the Appellant; Chetan Das, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Passey, C.J.—This is a petition under Art. 226 of the Constitution for a writ of certiorari quashing the order of the competent officer, Patiala dated 20-12-1952 and a writ of prohibition restraining the Custodian Muslim Evacuee Property, Pepsu from taking possession of 3 bighas and 15 biswas of agricultural land (Khasra No. 73) in village Suhron of the Rajpura Tehsil.

2. The land in question belonged to one Karam Bux evacuee and had been held in usufructuary mortgage by the petitioners for a period of over 20 years. The Competent Officer respondent 1 acting under Cl. (2) of S. 9 of the Evacuee Interest (Separation) Act, 1951 (Act 64 of 1951) (hereinafter called the Act) has held the mortgage to have extinguished and respondent 2 (Custodian, Muslim Evacuee Property) to be entitled to the immediate possession of the land without paying anything to the mortgagees.

There are 40 other similar petitions in which the lands have been subject to usufructuary mortgages and the mortgages have, due to the mortgagees having been in possession and enjoyment of profits for the period specified in the mortgage deed, or 20 years, whichever was less, been extinguished; and where the agreed period or 20 years had not yet expired, the mortgage debt due has been determined keeping in mind the proportion which the unexpired portion of that period bore to the total of that Period. In one of these 41 petitions the present mortgagee is the transferee from the original mortgagee but that cannot distinguish him from the other petitioners who are original mortgagees as he having stepped into the -shoes of his transferor, has become entitled to all the rights and subject to all the obligations that arose from the original contract.

Section 9 of the Act deals with usufructuary mortgages in possession irrespective of whether the mortgagee is an original mortgagee or a transferee from him. As in ail these petitions the same points of law are involved they can easily be disposed of together.

3. The owners of the land involved in these petitions were Muslims who due to the partition of India in 1947 and the terrible communal frenzy that flared up in the wake of that partition left for Pakistan or other places outside the territories now forming India. The evacuee owners had mortgaged their lands with possession to non-evacuees and the mortgagees had been deriving profits from those lauds and appropriating those-profits from the dates of the mortgages. The value of the right to redeem represents the equity of redemption and the extent of the interest of the evacuee in his land.

That equity of redemption vests in the Custodian by virtue of the operation of S. 8, Administration of Evacuee Property Act (31 of 1950) and the interest of the mortgagee in possession is evidently immovable property. Because of the admixture of the interest of the evacuee mortgagors and the rights of the non-evacuee mortgagees in one and the same property, the mortgaged lands constitute ''composite property'' as the term is defined in cl. (d) of S. 2 of Act 31 of 1950.

Composite properties presented complex problems not easy of solution with the help of the provisions of the Administration of Evacuee Property Act (31 of 1950), because of the intertwining of evacuee and non-evacuee interests. As it was felt necessary that no doubt might remain regarding the nature or value of the property that had become vested in the Custodian, measures had to be adopted to determine the individual extent of the two interests.

With that object in view Act 64 of 1951 was enacted and it came into force from 29-10-1951, the date it received the assent of the President. By cl. (1) of S. 9 of that Act no mortgaged property of an evacuee can be liable to pay interest at a rate higher than 5 per cent. p.a. on the principal and according to cl. (2) usufructuary mortgages of agricultural land are to be extinguished without any payment on the termination of the period for which the mortgage was effected or 20 years whichever is earlier from the date of the execution of the mortgage deed.

In cases in which the agreed period of mortgage has not expired or 20 years have not passed, the Competent Officer has been authorized to fix the mortgage debt having regard to the proportion which the unexpired portion of the period bears to the total of that period. To know the precise reparative scope of the section it may be useful to reproduce it together with its marginal headings:

(9) Certain Relief''s In Respect of Mortgaged Property of Evacuees: (1) Notwithstanding anything to die contrary in any law or contract or any decree or order of a civil court or other authority, where the claim is made by a mortgagee, no mortgaged property of an evacuee shall, subject to the provisions of sub-S. (2), be liable for the payment of interest at a rate exceeding five per cent per annum simple on the principal money advanced or deemed to have been advanced.

(2) Where a mortgagee has taken possession on any terms whatsoever of any agricultural land and is entitled to receive profits accruing from the land and to appropriate the same, every such mortgage shall be deemed to have taken effect as a complete usufructuary mortgage and shall be deemed to have been extinguished on the expiry of the period mentioned in the mortgage deed or twenty years, whichever is less, from the date of the execution of the mortgage deed; and if the aforesaid period has not expired and the mortgage debt has not been extinguished, the competent officer shall determine the mortgage debt due having regard to the proportion which the unexpired portion of that period bears to the total of that period.

It may be stated at once that it is not the case of the petitioners that the Act is ultra vires of the Constitution. The attack is confined to the vires of S. 9 of the Act alone, the contention being that it (S. 9) goes beyond the purpose for which the law embodied in Act 64 of 1951 was made.

4. As the preamble would show the Act was brought on the statute book for it was deemed expedient by the Parliament to make special provisions for the separation of the interests of evacuees from those of other persons in property in which such other persons were also interested and for matters connected therewith. The object of the Act apparently, therefore, was not only the separation of the interests of the evacuees from those of the non-evacuees but also to deal with other matters that were closely connected with the separation of those interests.

The words ''other matters connected therewith'' in my view, cover and include, although not very directly, the effectuation of separation of the evacuees interest through the mode prescribed in cl. (2) of S. 9.

Section 9 devises a practicable method of separating and assessing the two interests in composite property by doing which it becomes possible to make evacuee interest available for a pool, which might be used for the implementation of an appropriate compensation scheme for the benefit of the displaced persons. The Act lays down certain rules for dealing with certain problems connected with the administration of evacuee property not directly regulated by the provisions of Act 31 of 1950 and it aims at separating evacuee, interest from non-evacuee interest so that the evacuee interest may be managed more effectively.

In that sense the aim of the Act is in continuation of the aim with which Act 31 of 1950 was passed by the legislature and it will, therefore, be not wrong to regard the Act to be virtually an addendum to Act 31 of 1950 as the Act in the context of administration of evacuee property, provides a method by which evacuee interest is to be extricated out of composite property and managed or dealt with separately.

5. The question whether Act 31 of 1950 violated the provisions of Arts. 14, 19(1)(f) and 31(1)(2) of the Constitution came up before some of the High Courts in India and all of them have held that it does not do so. See - '' Asiatic Engineering Co. Vs. Achhru Ram and Others, - Abdul Majid Haji Mahomed Vs. P.R. Nayak, ; - Firm Sahib Dayal Bakshi Ram Vs. Assistant Custodian of Evacuees'' Property, Amritsar and Another, , and - S.M. Zaki Vs. The State of Bihar and Others, The grounds on which these cases, were decided apply equally to the impugned Act which is to all intents and purposes supplementary to Act 31 of 1950.

6. The argument that S. 9 of the Act transgresses the scope of the purpose for which it was enacted, must be repelled for the section only provides the manner in which the unencumbered extent of the evacuee interest can be precisely known and thus taken out of the conception of composite property. The provisions of the section instead of being contrary to or running in excess of, are in accord with the intention of the Act.

7. It is next, urged on behalf of the petitioners that S. 9 of the Act is repugnant to the provisions of Art. 14 of the Constitution because it denies the non-evacuee mortgagees equality before the law and the equal protection of laws within the territory of India. It is also pointed out that the section has created arbitrary discrimination inasmuch as (a) evacuee mortgagors and non-evacuee mortgagees, (b) non-evacuee mortgagors and evacuee mortgagees, (c) evacuee mortgagors and evacuee mortgagees and (d) non-evacuee mortgagees of evacuee agricultural lands and non-evacuee mortgagees of urban property, have been so split and classed as to be clothed with different legal rights.

8. In view of Art. 14 of the Constitution which provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India, there can be absolutely no doubt that the Constitution recognizes the supremacy of law and also that all the citizens of India have equality of legal status. The Article ensures to all citizens equal protection of laws within India and the terms ''equality before the law'' and ''equal protection of laws'' Tooth lay down the guarantee of equal justice for all citizens of this country. The safeguard is invaluable and the courts would zealously protect and maintain the fundamental right accepted as inviolable by Art. 14, but the meaning of the terms ''equality before the law'' or equal

protection ''of law'' cannot be pushed to the extent that they prescribe complete prohibition of legislation which is not general in character or universal in application, or to include an unqualified forbidding direction that the State will in no case have the power to classify persons or things even though the necessity of making law for a section of the subjects or things may in their interest be imperative.

9. In - S.B. Trading Co. Ltd. Vs. Shyamlal Ramchandra, , it was held that:

No legislation in any practical sense is possible without some kind of classification and some kind of discrimination. The very nature and purpose of every legislation depend on the choice of some subject or others, to the exclusion of the rest and some arena for its operation. This selective quality is inherent and implicit in every legislation. The fundamental guarantee of Art. 14 of the Constitution should not be construed in such a manner as to make legislation impossible for all practical purposes.

Again i Asiatic Engineering Co. Vs. Achhru Ram and Others, , it was held that:

The guarantee of equal protection is not to be understood as requiring that every person in the land shall possess practically the same rights and privileges as every other person......What the Article contemplates is that both in the matter of the laws applicable and the mode in which they are administered, all persons, in like circumstances and conditions should possess the same privilege and be subject to the same liabilities.

The principle and power of classification have been recognized in a series of judgments of the Supreme Court of India e.g. - Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, - The State of West Bengal Vs. Anwar Ali Sarkar, ; - Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay, - Ameerunnissa Begum and Others Vs. Mahboob Begum and Others, and Kedar Nath Bajoria Vs. The State of West Bengal, but in all these rulings it has been clearly laid down that the classification made must bear a reasonable relation to the objective which the legislation has in view.

10. In Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay, , who wrote the majority judgment observed:

While Art. 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely, (i) that the classification must be founded on intelligible differentia which distinguished persons or things that are grouped together from others who are left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the Act. What is necessary is that there must be a nexus between the basis of classification and the object of the Act.

In this very case Patanjali Shastri C.T. observed:

Equal protection of the laws under Art. 14 postulates persons in the same situation and in the same circumstances claiming that the same law should be applied to them...............In applying the dangerously wide and vague language of the equality clause to the concrete facts of life, a doctrinaire approach should be avoided.

In Ameerunnissa Begum and Others Vs. Mahboob Begum and Others, , it has been held that:

The nature and scope of the guarantee that is impliedly in the equal protection clause of the Constitution have been explained and discussed in more than one decision of this Court and do not require repetition. It is well settled that a legislature which has to deal with diverse problems arising out of an infinite variety of human relations must, of necessity, have the power of making special laws to attain particular objects, and for that purpose it must have large powers of selection or classification of persons and things upon which such laws are to operate.

Mere differentiation or inequality of treatment does not ''per se'' amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause, it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object which the legislature has in view.

The latest pronouncement on the subject is contained in Kedar Nath Bajoria Vs. The State of West Bengal, , in which it was held that:

The equal protection of the laws guaranteed by Art. 14 of the Constitution does not mean that all laws must be general in character and universal in application and that the State is no longer to have the power of distinguishing and classifying persons or things for the purposes of legislation. To put it simply, all that is required in class or special legislation is that the legislative classification must not be arbitrary but should be based on an intelligible, principle having a reasonable relation to the object which the legislature seeks to attain.

If the classification on which the legislation is founded fulfils this requirement, then the differentiation which the legislation makes between the class of persons or things to which it applies and other persons or things left outside the purview of the legislation cannot be regarded as a denial of the equal protection of the law, for, if the legislation were all embracing in its scope, no question could arise of classification being based on intelligible differentia having a reasonable relation to the legislative classification should be scientifically perfect or logically complete.

It will thus be seen that in the above mentioned cases to which perhaps a few more of the same court could be added, the operative scope of the Article and the purpose behind the Article have been lucidly brought out and they constitute the guiding and authoritative law on the subject. They make it clear that the

Article does not destroy the powers of the Legislature to make law for a section of the community. A law for a section of the community would not be bad because it does not apply equally to other citizens of the country. The classification and differentiation created by a particular law has, however, to the not unreasonable or opposed to the object which the legislation had in view.

11. For the purposes of legislation mortgagors of evacuee property and non-evacuee mortgagees of evacuee property and so also the big group of displaced persons, can from distinct classes. The Act docs not create any distinction among members of the group of evacuee mortgagors or discrimination among members of the group of non-evacuee mortgagees.

Now cl. (1) of S. 9 of the Act only prescribes a uniform maximum rate of simple interest at 5 per cent, per annum on the principal advanced against evacuee mortgaged property and similarly cl. (2) envisages an uniformly applicable scheme by which the encumbrance to which agricultural lands belonging evacuees are subject are to be removed and this exhibits the relation of the object of the Act with the classification made.

Classification of evacuee mortgagors or non-evacuee mortgagees into distinct groups has; in view of what has been said above, regard being had to the object of the Legislature, to be held to have a reasonable basis. It is by no means arbitrary or capricious, and the mere fact that the evacuee mortgagor group or incidentally the displaced persons group, if the interests of evacuees are to be pooled and made available for compensation to displaced person, are intended to be or would be benefited, cannot render the classification repugnant to the spirit of Art. 14.

A similar view was taken in S. Raghbir Singh Vs. Union of India (UOI) and Others, decided by a Division Bench of the Punjab High Court. I would, therefore, hold that S. 9 of the Act cannot be condemned as violative of the fundamental right of equality recognized and guaranteed by Art. 14 of the Constitution.

12. It is next contended that the Act violates the provisions of cl. (1) sub-cl. (f) of Art. 19 and that of Art. 31 of the Constitution. If Art. 31 has any applicability then the right recognized by Art. 19 cannot be stressed, for obviously if the property has been lawfully acquired in the terms of Art. 31 then it can be of no avail to contend that the right guaranteed by Art. 19(1)(f) must all the same remain inviolable.

Taking Art. 19(1)(f) separately there is no doubt that it says that all citizens have the right to acquire, hold and dispose of property but this is subject to the rider imposed by cl. (5) of the Article according to which nothing in sub-cl. (f) of cl. (1) shall affect the operation of an existing law in so far as it imposes or prevents the State from making any law imposing reasonable restrictions on the exercise of any of the rights conferred by the said sub-clause either in the interest of tile general public or for the protection of the interest of any schedule tribe.

The term general public is comprehensive enough to include a part of the public. On this interpretation the alleged restriction created by S. 9 of the Act which operates in lawful and proper aid of or protects a section of the general public, is in public interest. The right guaranteed by Art. 19(1)(f) although necessarily fundamental can hardly be called to be absolute as it remains subject to the controlling condition given in cl. (5) which recognizes the validity of those laws that impose reasonable restrictions and have been made in the interest of the general public or that may be made for that purpose.

The restriction prescribed by S. 9 of the Act with regard to the rate of interest on the principal advanced against evacuee property or on the rights of the mortgagees that they can hold land in usufructuary mortgage for a maximum period of 20 years where-after the mortgages would be extinguished, are in my view valid restrictions falling within the purview of cl. (5) of Art. 19 of the Constitution They have been imposed in the interest of the general public and taking into consideration the great need for which the Act was passed are evidently not in excess of what was required to he done in public interest. The contention of the Learned Counsel has, therefore, no force.

13. Shri Tiwari has next urged that S. 9 of the Act offends against the provisions of cls. (1) and (2) of Art. 31 of the Constitution, for though it permits extinguishment of mortgagee rights thereby involving deprivation of their property to the mortgagees resulting in inferential acquisition by the State, it does neither say that such acquisition would be for a public purpose nor that compensation would be payable to the mortgagee for the loss of his property.

The principle laid down in the Article guaranteeing that no citizen shall be deprived of his property save by authority of the law is unquestionable. That law might allow the State to acquire private property; but the acquisition must be for a public purpose on payment of compensation. Clauses (1) and (2) of the Article are subject to the exceptions created by the sub-clauses following sub-cl. (2).

It thus falls to be examined whether the extinguishment of mortgagee rights means or amount* to acquisition by the State and if it does whether there is a provision in S. 9 of the Act for compensating the mortgagee. What is further to be seen is whether the alleged acquisition would be for a public purpose. The last question need not detain us as it is perfectly clear that the object of the Act is to extinguish usufructuary mortgages of evacuee agricultural land which had been in existence for 20 or more years so that evacuee interest can be completely separated and to benefit displaced persons who form a considerable section of the community. That evidently is a public purpose.

I S. Raghbir Singh Vs. Union of India (UOI) and Others, which was almost a similar case in which the validity of S. 9 of the Act had come up for decision, it was held that it did not infringe any of the rights that Arts. 14, 19 (1) (f) and 31 purported to protect. With reference to Art. 31 it was further found that its provisions could not possibly be attracted as the petitioners had not been deprived of the property and all that the Legislature had done was to reduce the rate of interest on the monies advanced by them.

In - Pirthi Singh v. State of Pepsu'', AIR 1953 Pepsu 161 (L), which was decided by a Division Bench of this Court, it had been contended that the transfer of proprietary lights of an owner in his land to his occupancy tenant by legislation (in that case by Ordinance No. 23 of 2006), the tenants had been made owners of 3/4th of the land in their occupation without paying anything to their landlords and they had further been given the right to purchase the remaining 1/4th share of those landlords on payment of a price to be calculated at 100 times the land revenue payable on that 1/4th share, it was held repelling the argument, that the conferment of absolute proprietary rights on the tenants by extinguishing those of the landlords did not amount to acquisition of the ownership rights of the landlords by the State and the Ordinance could not be called a law of acquisition.

With the extinguishment of the mortgage charge the property which was the subject of the charge would revert to its owner and by no stretch of words can the State be said to have acquired the mortgagee rights. There has thus been no acquisition or deprivation without commensuration of any non-evacuee interest. The right of ownership still vests in the mortgagor evacuee and the fact that on extinguishment of the mortgage, the land would vest in the Custodian unencumbered, does not make the Custodian, who represents the State for the purpose of administration of evacuee property, owner of the land.

Only the mortgage charge on the land is intended to be liquidated in accordance with the rule laid down in cl. (2) of S. 9. The State has acquired neither the rights of the mortgagors nor those of the mortgagee by any legislative fiat. The Madras High Court in - Santhanakrishna Odayar Vs. Vaithilingam and Others, has held that any law which confers rights of ownership or possession on individuals, the State itself not acquiring it, is not within the operation of Art. 31(2) and its validity must be determined only with reference to the terms of Art. 19(1)(f) and Art. 19(5).

14. Section 9 of the Act has no relation to any acquisition law or rule nor does it authorize or enable the State to acquire non-evacuee interest for any evacuee but only fixes a maximum rate of interest that a mortgagee can claim against mortgaged property and provides a basis viz., the length of possession of the mortgagee during which he has earned profits from the land, for determining compensation and all that shows that the Act is not a law of acquisition nor one in which no compensation is provided.

15. It is urged by Shri Tiwari that whatever had already been derived by the mortgagee from the land in the form of income or profit could not be compensation as contemplated by Art. 31 and that compensation should have reference to the value of the right on the date that right is acquired. In the first place as observed above the term acquisition in the sense it is used in Art. 31, is

inapplicable to the present cases and in the second Profits received from the land for a specific number of years can afford a reasonable basis for assuming that the mortgagee has been amply compensated both with regard to the principal he advanced and the interest thereon at a reasonable rate. If the mortgagee has already been compensated he need not require to be paid any further or added compensation at the time he is to redeem and restore the land to the owner mortgagor free of charge.

In cl. (2) of S. 9 a measure by which compensation is to be determined has been provided and it amply answers to the requirements of cl. (2) of Art. 31 and it cannot be bad for it enables compensation to be computed retrospectively. When the question of compensation comes off the factor of the mortgagee having been repaid both with regard to the principal and interest by the profits already enjoyed by him cannot be irrelevant.

What would be a reasonable compensation would depend upon the circumstances present at the time the question of compensation is to be decided. S. 9(2) lays down a uniform rule for determining compensation to usufructuary mortgagees and this the Legislature had ample power to do and the rule saves the section from being hit by the provisions of cl. (2) of Art. 31. It cannot, therefore, be argued that the measure of compensation laid down in sub-cl. (2) of S. 9 of the Act is only imaginary or that it docs not respond to the requirement of Art. 31 that either the compensation must be fixed or the principle on which or the manner in which compensation is to be determined and given must be specified.

16. The argument that the provisions of S. 9 (2) come into conflict with the provisions of cl. (2) of Art. 31 can be rejected on another ground also for which cl. (5) (b) (iii) of Art. 31 may be referred to. According to that clause, cl. (2) of Art. 31 can have no effect upon the provisions of any law that the State may (after the coming into force of the Constitution) make in pursuance of any agreement entered into between the Government of India and the Government of any other country, or otherwise with respect to property declared by law to be evacuee property.

The law contemplated by the clause might have been made by the State-pursuant to any agreement between it and the Government of another country or it might have been made ''otherwise'' but it must relate to property that must have been declared by law to be evacuee property.

The word otherwise connotes that the law need not always be made with its origin in an agreement with a foreign country. It can be made unilaterally by the Government of India, the only pre-requisite being that it must be concerning property declared by law to be evacuee property. Property involved in the cases before us has to be taken to be declared by Jaw to be evacuee property inasmuch as it is ''evacuee property'' covered by the definition of the term in clause (f) of S. 2 Administration of Evacuee Property Act (31 of 1950).

It is not seriously disputed that it was within the competency of the Legislature to declare what property would be evacuee property and that the interest of the mortgagors in these cases constituted evacuee property.

17. For all these reasons I would dismiss the petitions. No costs.

CHOPRA J.

18. I agree.