

(1956) 11 OHC CK 0016
In the Orissa High Court
Case No : O.J.C. No. 213 of 1956

Sankarsana Ramanuja Das

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 28-11-1956

Acts Referred:

Constitution of India, 1950 — Article 201, 31(1), 31(4), 31A, 31A(1)
Orissa Estates Abolition (Amendment) Act, 1954 — Section 2
Orissa Estates Abolition Act, 1951 — Section 1, 2

Citation : AIR 1957 Ori 96

Hon'ble Judges : Narasimham, C.J.; Mohapatra, J

Bench : Division Bench

Advocate : H. Mohapatra and N.V. Ramdas, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—The petitioner is the holder of a pre-settlement minor mam in Ganjam District and he has challenged the validity of Notification No. 4971-XV-2154-E. A, dated 15-7-1905 of the Government of Orissa issued u/s 3(1) of the Orissa Estate Abolition Act, 1951 (Orissa Act I of 1952) (hereinafter referred to as the Act), vesting the said minor mam in the State of Orissa. The challenge is made on the ground that a pre-settlement minor inam does not come within the definition of the expression "estate" as given in Section 2(g) of the Act and that consequently the Government of Orissa have no jurisdiction to issue a Notification u/s 3(1) of the Act in respect of this inam.

2. The Act was introduced as a Bill in the Orissa Legislative Assembly on 17-1-1950 and was passed by the Assembly on 28-9-1951. The Governor of Orissa reserved it for the consideration of the President who gave his assent on 23-1-1952. Since then the Act has undergone several amendments, but the amendment with which we are primarily concerned in this writ application is the amendment made on 24-12-1954, by the Orissa Estate Abolition (Amendment)

Act, 1954 (Orissa Act XVII, of 1954), by which the definition of the "expression ""estate" in Section 2(g) of the Act was enlarged. The old definition of that expression, omitting immaterial portions, was as follows: ""2. (g) "Estate" means any land held by an intermediary and included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes revenue-free lands not entered in any register and all classes of tenures or under tenures, or an inam estate or part of an estate.." By the said amendment of 1954 this definition was recast as follows: .

"2 (g) "Estate" includes a part of an estate and means any land held by or vested in an intermediary and included under one entry in any revenue roll or any of the general registers of revenue-paying lands and revenue-free lands prepared and maintained under the law relating to land revenue for the time being in force, and includes revenue-free lands not included in any register or revenue-free roll and all classes of tenures or under-tenures, and any jagir, inam or muafi or other similar grant."

Section 3 of the amending Act may also be quoted:

"3. For the purpose of removal of all doubts it is declared that such lands and such rights in relation thereto and such persons who hold such lands and such rights as were heretofore covered by the definitions of the words "estate" and ""intermediary" in the Orissa Estate Abolition Act, shall not cease to be so covered merely on the ground that by virtue of the provisions of this Act the said definitions have been amended and widened in scope."

It will be noticed that in the old definition of "estate" was included only an inam estate or part of an estate, whereas in the new definition the expression ""any inam" has been substituted. Section 3 of the amending Act expressly stated that the amendment was intended to widen the scope of the definition. The necessity for making this amendment arose chiefly in consequence of the definition of "estate" as given in the Madras Estates Land Act, 1908, as applied to Orissa. Section 3(2)(d) of that Act defined "estate" as:

""any inam village, of which the grant has been made, confirmed or recognised by the British Government, notwithstanding that subsequent to the grant the village has been partitioned amongst the grantees or the "successors-in-title of the grantee or grantees"".

By virtue of this definition, therefore, only pre-settlement whole inam villages would come within the definition of "estate" even though they might have been subsequently partitioned amongst the successors-in-interest of the grantee or grantees.

3. Prior to the amendment of 1954 the Act contained the expression "inam estate" and further stated in Section 2(q) that the expression will have the same meaning as in the Madras Estates Land Act. Hence there was justification

for the view that pre-settlement minor inams were not "estates" as defined in the Act and that consequently they could not be notified u/s 3(1) thereof. It was to include this class of inams that the amending Act of 1954 was passed, and the expression "any inam"" was substituted for the old expression "inam estate".

4. Some of the relevant provisions of the Constitution may now be referred to. Article 31(2) says that no property shall be compulsorily acquired for a public purpose, unless the law which provides for such acquisition also provides for payment of adequate compensation.

Clause (3) of that article says that no such law made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent. Clause (4) says that if any Bill pending at the commencement of the Constitution in the Legislature of a State is subsequently reserved for the consideration of the President and has received his assent, the law so assented to shall not be called in question in any Court on the ground that it contravenes the provisions of clause (2) of that article. On 18-6-1951 a new article viz: Art 31A, was inserted in the Constitution by the Constitution (First Amendment) Act 1951 and was given retrospective effect from the date of commencement of the Constitution. That article also was subsequently amended. Material portions of that article may be quoted:

"31A(1) Notwithstanding anything contained in Article 13 no law providing for:

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights 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 that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

"2. In this article:

(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"

5. According to the Advocate-General the definition of the expression ""estate" in Clause (2) of Article 31A is wide enough to include all classes of inams, including pre-settlement minor inams. Similarly, the definition of ""estate" in the Act after the amendment of 1954 was also wide enough to include pre-settlement minor inams. The Act and its amendment of 1954 both received the assent of the President and consequently they were entitled to the protection of Article 31A. It is; therefore, not open to challenge on the ground of contravention of any of the Fundamental Rights guaranteed in the Constitution.

6. Mr. H. Mohapatra on behalf of the petitioner however urged the following points against the Constitutional validity of the Notification issued u/s 3 (1) of the Act:

(i) The Act, even prior to the amendment of 1954 was not entitled to the protection given by Article 31A inasmuch as the President did not give his assent to it after it had become law as required by the Proviso to Clause (1) of that article.

(ii) The amending Act of 1954 will not get the protection of Article 31A because it is not a law "providing for the acquisition by the State of any estate".

(iii) The word "inam" occurring in Article 31A(2)(a) should be construed in an ejusdem generis sense as including an inam estate, but not a pre-settlement minor inam.

(iv) The expression "estate" in the Act would include only a whole inam and not a minor inam notwithstanding the amendment of 1954.

7. The first point raised by Mr. Mohapatra may be elaborated as follows:

The Orissa Estate Abolition Bill was reserved for the consideration of the President and assented to by him under the provisions of Clause (4) of Article 31. It would, therefore, get the protection of that article. But it was not again assented to by the President under the proviso to Article 31A(2) and consequently would not get the protection of that Article. This argument is practically concluded by the decision of the Supreme Court in the well-known Bihar case reported in *State of Bihar v. Kameshwar Singh*, AIR 1952 SC 252 (A). It is the same as the argument raised before their Lordships of the Supreme Court by Mr. Somayya which has been referred to in paragraphs 5 to 17 of the judgment of Patanjali Sastri C. J., in paragraph 153 of the judgment of Mahajan J. and in paragraph 178 of the judgment of Das J. (as he then was).

There it has been made clear that the expression "law" is used in Clause (3) of Article 31 and in Article 31A somewhat loosely, to include even a Bill which has not yet become law by being assented to by the President or Governor, as the case may be, and that it does not mean a Bill that has first assented to by the Governor and thus made into a law, before being reserved for the consideration of the President.

Their Lordships further pointed out that the only provision empowering the President to assent to a Bill, passed by a State Legislature, is contained in Article 201 of the Constitution and that there can be no question of the President assenting to a piece of State legislation which has previously been assented to by the Governor or himself. Clauses (3) and (4) of Article 31 and the Proviso to Article 31A deal with the consequences flowing from the President's giving his assent to a Bill passed by a State Legislature relating to acquisition of Estates, But these clauses do not by themselves empower the President to give his assent to any Bill. Consequently, there can be no further scrutiny of the assent, already

given by the President, to a Bill relating to such acquisition, with a view to find out whether such assent was given either under Clause (3) or Clause (4) of article, or under the Proviso to Article 31A.

8. In the present case Article 31A, had been inserted in the Constitution on 18-6-1951, whereas the Act received the assent of the President only on 23-1-1952 more than seven months later. The President's assent to the Act having already been given under Article 201 all the consequences as described in Clauses (3) and (4) of Article 31 and in the Proviso to Article 31A would necessarily follow. When the President gave his assent he is presumed to have known the existence of those clauses in the Constitution.

9. In the aforesaid Bihar case *The State of Bihar Vs. Sir Kameshwar Singh*, the Bihar Land Reforms Bill received the assent of the President on 11-9-1950 at a time when Article 31A was not in the Constitution, and the President could not possibly have been aware of the consequences flowing from his assent to that Bill so far as protection under Article 31A was concerned.

Yet their Lordships of the Supreme Court held that inasmuch as Article 31A was given retrospective effect from the date of commencement of the Constitution, the Bihar Land Reforms Act would get the protection of that article as it was assented to by the President, and it was immaterial as to whether, on the date the President gave his assent, Article 31A was factually in existence or not. Their Lordships repelled the contention that the Bill should again have been submitted to the President for his assent, after the (insertion of Article 31A in the Constitution.

In this respect, the Orissa Act is less vulnerable than the Bihar Act inasmuch as, on the date the President gave his assent to the Act, Article 31A had already been inserted in the Constitution.

10. As regards the second point raised by Mr. Mohapatra, his argument is that the Orissa Estate Abolition (Amendment) Act 1954 was not a self-contained "law providing for the acquisition of an estate" and would not therefore get the benefit of Article 31A. That amending Act consists of only three sections. The first section deals with short title and commencement. The second section merely says that Clause (g) of Section 2 of the parent Act shall be substituted by a new clause. Section 3 has already been quoted. In the Preamble it is made clear that it is an amendment to the Orissa Estate Abolition Act. Doubtless, if this amendment Act had stood alone it may not amount to a "law providing for acquisition of any estate" because there is no specific mention, anywhere in that Act, about the acquisition of estates. According to Mr. Mohapatra the amending Act would get the protection of Article 31A only if that Act itself contains express provisions for the acquisition of an estate.

11. This argument is based on a misconception about the legislative practice in India regarding amendments to statutes and the effect of an amending Act on the parent Act. It is well known that there are two methods of amending a

statute. One method is to amend the parent Act by naming the omissions and insertions necessary to change the affected provision. The other method is to state the affected provision in full in its changed form. The Indian legislative practice all along has been to make textual amendments in the parent Act, leaving the Act to speak as so altered.

In England however though such textual substitution is now becoming more and more common, most of the amending legislation fakes the form of separate Acts by adding to or modifying the substance of the earlier enactments and many of the earlier provisions, instead of being textually altered, "are deemed to extend", or "are to have effect", so as to include new matter, or otherwise to have a modified effect. If the English legislative practice of making amendments to statutes had been in vogue in India all along, there may be some force in the contention of Mr. Mohapatra that unless the amending Act also deals with acquisition of estates in express terms, it will not be a "law providing for acquisition."

"But the Indian practice has been only to make textual amendments in the parent Act leaving that Act to speak as so altered; and when the framers of " the Constitution used the expression "law" in Article 31A it must be assumed that they knew this legislative practice in India. Hence as a matter of construction it must be held that the words "law providing for acquisition"

occurring in Article 31A(1) would include not only the parent Act providing for acquisition but also the amending Act which should be deemed to have been incorporated in the parent Act even though the amending Act, in express terms, provides only for textual amendment of certain clauses. The amending Act cannot stand isolated and must be held to have been read by the President, as forming part of the parent Act, when he gave his assent to it.

12. Authority for this view is not required but I may refer to *Mangtula and Another Vs. Radha Shyam and Another*, where it was held that though an amending Act did not, in itself, contain any provision which was repugnant to an existing law, it had the effect of continuing all the provisions of the parent Act which were so repugnant, and consequently required the assent of the President under Article 254 of the Constitution, to make it prevail over the existing law. Similarly, in *Brij Bhukan Kalwar and Others Vs. S.D.O. Siwan and Others*, it was pointed out that an original Act could not be considered independently of the amendment because it was inextricably bound up with the amendment.

In *Prem Manjari Devi Vs. State of Bihar and Another*, the construction of Section 4(h) which was inserted in the Bihar Land Reforms Act, 1950, as amended by Bihar Act XX of 1954, came up for consideration, and it was held that Section 4(h) after the amendment was not an independent provision but was intimately associated and linked up with the main provisions of the parent Act and its constitutional validity must be judged with reference to all the relevant provisions of the parent Act. This section was also considered by the Supreme Court in *Raja*

Bahadur Kamakshya Narain Singh and Others Vs. The Collector and Deputy Commissioner of Hazaribagh and Others, where it was held to be a part of the law of acquisition of estates and as an integral part of the machinery by which acquisition of an estate took place.

13. Next I take up the construction of the expression "estate" in Article 31A(2) (a). The definition of that expression consists of two parts. In the first part it has been defined as having the same meaning as it has in the existing law relating to land tenures in force in a particular area. This means that in Ganjam area the definition of "estate" as given in the Madras Estates Land Act would apply.

But the latter part of the definition is to the effect that estate "shall also include any jagir, inam or muali or other similar grant". It is a well known, rule of statutory drafting that the inclusive definition is used to enlarge the meaning of words or phrases occurring in the body of the statute. As pointed out by Lord Watson in *Dilwarlh v. Commissioner of Stamps*, 1899 AC 99 at pp. 105 and 106 (F)

" "include" is very generally used in interpretation clauses to enlarge the meaning of words or phrases occurring in the body of the statute, and when it is so used those words and phrases must be construed as comprehending not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include."

It is true that in some instances the word "include" may be used in a restrictive sense by way of illustrating what has been said before. But there can be no doubt that in Article 31A(2)(a) the word "include" has been used in an expansive sense. The use of the words "and", "also", and "any" would show that though some classes of jagir, mam, or muafi grant may not come within the definition of "estate" as given in the law of land tenures in a particular area, the makers of the Constitution intended that all classes of jagirs, inams and muafi grants should be construed as "estates" and hence deliberately widened the definition of that expression by saying that it shall also include any jagir; inam or muafi.

The restrictive use of the word "include" would be wholly inconsistent with the words "also" and "any". The makers of the Constitution must be presumed to have been aware that whole inam villages were included in the definition of "estate" in the Madras Estates Land Act (Section 2(1)(d)). If their object in defining "estate" in Article 31A(2)(a) was to limit it to whole inam villages only, there would have been no necessity to insert the words mentioned in the latter part of the definition.

14. The ejusdem generis construction has absolutely no application so far as the construction of "inam" in Article 31A(2)(a) is concerned. Such a construction would be available only if general words follow some specified words in a Statute. But the words "jagir", "inam" and "muafi" cannot be said to be general expressions following any specified categories mentioned before them. It is true that the words "other similar grant" in the definition may have an ejusdem

generis significance in the sense that such grant should be similar to jagirs, inams or muafis, but Mr. Mohapatra's argument to the effect that the word "inam" should be construed ejusdem generis with "estate" and must therefore be limited to whole inams which are estates under the Madras Estates Land Act cannot be accepted. It must therefore be held that the definition given in Article 31A(2)(a) includes pre-Settlement minor inams also.

15. By the amendment of 1954 to the Act, the language used in Article 31A(2) (a) of the Constitution has been incorporated in the definition of "estate" in the Act as given in Section 2(g). Hence the observations made by me in the preceding paragraphs would apply with equal force. Hence the very fact that the Legislature omitted the words "inam" estate" as found in the parent Act and substituted the words "any inam" in the amendment of 1954 would show that the amendment was made with the sole purpose of widening the definition of the word "inam" so as to include all classes of inams. In Section 3 of the amending Act also it has been made clear that the definitions were amended and widened in scope.

16. I may notice another argument which was also advanced by Mr. Mohapatra. The definition of "estate" in Article 31A(2)(a) does not expressly include "part of an estate". Hence it was urged that though any legislation dealing with acquisition of a whole estate may be entitled to the protection of Article 31A, a law dealing with acquisition of only a part of an estate may not be entitled to such protection. In support of this argument reliance was placed on the language of Section 2(g) of the Act as amended which includes "part of an estate" also within the definition of "estate". On the basis of this argument it was urged that the acquisition of a pre-Settlement inam, whether it is a whole inam village or a small parcel of land in a village, may be valid if the entire inam is acquired, but if any portion of that inam is acquired such a piece of legislation would not get the protection of Article 31A.

This argument overlooks the well known maxim "omne majus continet in se minus" (the greater includes the less). If a law relating to the acquisition of an entire estate gets the protection of Article 31A it would necessarily follow that a law dealing with the acquisition of a part of an estate would also get the same protection.

17. I am, therefore, satisfied that the Notification of the petitioner's inam is not open to challenge on the ground of constitutional invalidity. The petition is dismissed with costs.

Hearing fee Rs. 100/- (Rupees one hundred only)

Mohapatra, J.

18. I agree.