

(1955) 04 AHC CK 0021
In the Allahabad High Court
Case No : Civil Writ Petition No. 547 of 1954

Shaukat Ali

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 11-04-1955

Acts Referred:

Constitution of India, 1950 — Article 14, 31, 31A, 31A(1), 363
Rampur Thekedari and Pattedari Abolition Act, 1954 — Section 3

Citation : AIR 1955 All 518

Hon'ble Judges : Mootham, C.J;Agarwala, J

Bench : Division Bench

Advocate : S.C. Khare, for the Appellant; S.N. Dwivedi, for the Respondent

Final Decision : Dismissed

Judgement

Agarwala, J.—This is a petition under Article 226 of the Constitution praying that an order, direction or writ in the nature of "mandamus" be issued to the Government of Uttar Pradesh and to the Collector of Rampur restraining them from giving effect to a Notification No. 3136/1-A.559/1951 issued by respondent 1 on 28-6-1954, and directing them not to take possession of the properties held by the petitioner or to interfere with the rights of the petitioner over such properties.

2. The main point that arises for consideration in this case is whether The Rampur Thekedari and Pattidari Abolition Act (U. P. Act 10 of 1954), which abolishes Thekedari and Pattedari in Rampur is "ultra vires" the State Legislature or not. The facts briefly stated are as follows:

The petitioner is a pattedar of a certain village of the district of Rampur. Rampur was a princely State before 1947 and was Ruled by His Highness the Nawab of Rampur. In 1947, India obtained independence and became a Dominion by virtue of the Indian Independence Act of 1947. The Suzerainty of the British Crown over the Indian States lapsed at the same time because of Section 7 of the said

Act, and the State of Rampur along with the other States in India in the eye of Law became independent.

It was, however, expected that such States would not remain independent but would accede to one or the other of the Dominions into which India had been divided. The State of Rampur acceded to the Dominion of India by executing an instrument of accession in respect of three subjects, Defence, External Affairs and Communications, which were transferred to the Government of the Dominion of India. Later, on 15-5-1949, the Nawab of Rampur agreed to merge his State with the Dominion of India. This was done by means of an agreement entered into between the Governor General of India and His Highness the Nawab of Rampur. This agreement is printed in the revised edition of the White Paper on Indian States at pages 209.

Under para. I of the aforesaid agreement, the Nawab of Rampur ceded to the Dominion of India full and exclusive authority, jurisdiction and power for and in relation to the governance of the State as from 1-7-1949. Along with this agreement, what is known as the Collateral Agreement, was also executed on 15-5-1949. Clause iii. of the Collateral Agreement provided that--

"All contracts & agreements entered into by Your Highness before the date on which the Administration is made over to the Government of India will be honoured except in so far as any of these contracts or agreements may either be repugnant to the provisions of any law made applicable to the State or inconsistent with any general policy of the successor Government."

On 1-7-1949 an order known as the Rampur (Administration) Order, 1949, was promulgated by the Governor General under which a Chief Commissioner was appointed to administer the area of the former Rampur State.

At that time all agricultural land in the territory of Rampur State was, broadly speaking, administered in three different ways. One portion of the State lands was known as "Ilaqa Jadid". In this territory there were intermediaries called zamindars of the type known in Uttar Pradesh. They had proprietary rights in land and were liable to pay land revenue to the State Government. Another portion of the State lands consisted of "Jagirs" which, had been conferred by His Highness the Nawab of Rampur on certain persons who were the proprietors of their land and who had to pay no land revenue but were liable to pay a local rate or Abwab. The third area of the State lands consisted of what is known as "Kham villages".

The land belonged to the Nawab or the State and was let out to Pattedars and Thekedars who used to realise rents from the tenants cultivating the land.

3. Prior to the Merger Agreement the Nawab of Rampur had by a Notification dated 12-3-1949, promulgated a scheme whereby leases of villages were granted to Thekedars and Pattedars in consideration of a fixed amount payable to the Nawab, the lessees being entitled to retain possession of the land for a

number of years. The leases granted to Pattedars and Thekedars in this connection were those of proprietary rights, that is to say the lessees were intermediaries between the State and the tenants.

4. The arrangements so made were recognised by the Chief Commissioner after the merger of the State in the Dominion of India and in some cases the Chief Commissioner executed agreements in favour of the lessees and in others no such agreements were executed but the names of the lessees were entered in the revenue papers as such. These leases were for a period of ten years in the first instance with a Clause for renewal for another period of ten years.

5. On 27-7-1949 the States' Merger (Governors' Provinces) Order, 1949 was promulgated by the Governor General providing for the merger of the former princely States with the adjoining Provinces and for their governance as part of those provinces, Rampur State was, however, not included at first in this Order but by a later Order, called the "States' Merger (United Provinces) Order, 1949, Rampur State was included in the previous Order and was to be administered as part of the United Provinces. The States' Merger (United Provinces) Order came into force on 1-12-1949. Article 8 of the States' Merger (Governors' Provinces) Order provided that--

"8. Without prejudice to the Special provisions contained in Article 7, any contract made or deemed to be made before the appointed day, or on behalf of the Dominion for purposes connected with the governance of a merged State shall, as from that day, have effect as if it had been made by or on behalf of the absorbing province, unless it is wholly or in part for central purposes."

Thereafter the former territories of the Rampur State were merged in the province of United Provinces and have since been governed as a district of that Province now called the "State of Uttar Pradesh" under the Constitution which came into force on 26-1-1950. Article 1 of the Constitution read with the first schedule made the territories of the former Rampur State part and parcel of the State of Uttar Pradesh amenable to the jurisdiction of the State Legislature.

6. In 1954 the Uttar Pradesh Legislature passed the Rampur Thekedari and Pattedari Abolition Act, 1953 (U. P. Act 10 of 1954) which empowered the State Government to terminate the leases and thekas granted by His Highness the Nawab of Rampur on payment of compensation as provided for in the Act. u/s 3 of the said Act, a notification dated 28-6-1954 for determining the leases was issued. It is this notification which is sought to be rendered ineffective by the present petitions.

7. The contention of the petitioner is that this Act is "ultra vires" firstly, because it violates Clause (iii) of the Collateral Agreement dated 15-5-1949, and Article 8 of the States' Merger (Governors' Provinces) Order, 1949, already quoted, and, secondly, that the provisions relating to compensation are illusory and discriminatory and the Act does not award just compensation for the rights which have been extinguished and is, therefore, repugnant to Articles 31 and 14 of the

Constitution. It is the petitioner's case that Article 31A of the Constitution does not apply to the Act in question because the rights determined by the Act do not amount to an "estate" within the meaning of that Article.

8. In this petition the lease was granted or recognised before 29-11-1949, the date of the States' Merger (United Provinces) Order, 1949.

9. As regards the contention that the impugned Act contravenes para. 8 of the States' Merger (Governors' Provinces) Order, 1949, and para. (iii) of the Collateral Agreement dated 15-5-1949, it is alleged on behalf of the petitioner that Article 8 was the implementation of a treaty entered into between the Government of India and the Nawab of Rampur, the treaty being the Merger Agreement read with the Collateral Agreement dated 15-5-1949. It is urged that the power to alter the terms of the treaty is vested in the Central Legislature. Reference has been made to the Legislative List I, item 14 in the 7th Schedule to the Constitution.

10. The answer to this contention is two-fold: first, that Article 363 of the Constitution bars the jurisdiction of the Court to question any breach of treaties, agreements or the like made between the Government of India and the former princely States. The Court has, therefore, no jurisdiction to decide whether the enactment is invalid on the ground that it constitutes a breach of the terms of the Agreement between the Government of India and the Nawab of Rampur.

11. Secondly it may be noted that Clause (iii) of the Collateral Agreement dated 15-5-1949, which, while providing for the sanctity of contracts and agreements entered into by His Highness, the Nawab of Rampur, before the date on which the administration was taken over by the Government of India, clearly provided that these contracts and agreements would be honoured "except in so far as they may be repugnant to the provisions of any law made applicable to the State". This meant that these contracts and agreements could be abrogated by a law made by the State, though not by an executive Act. The law by which they have been abrogated is the impugned Act which cannot therefore be questioned as invalid.

12. The second ground urged on behalf of the petitioner namely that the compensation provided for in the Act on account of the determination of leases and thekas is not just or fair or that it is illusory or that it is discriminatory is also not open to him, as, even assuming that it is contrary to the provisions of Articles 14 and 31 of the Constitution, the Act comes within the ambit of Article 31A(1) of the Constitution which provides that--

"Notwithstanding anything in the foregoing provisions of this part no law providing for the acquisition by the State of any "estate" or of any rights therein or for 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, any provisions of this Part.

Provided that where such law is 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."

It may be noted here that the impugned Act received the assent of the President.

13. Article 31A(2) reads as under:

"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;

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

Article 31A would bar any objection to the validity of the Act on the ground that it contravenes Articles 14 and 31 if the impugned Act deals with the acquisition of an "estate" or of any rights therein or for the extinguishment or modification of any such rights. Section 3 of the impugned Act empowers the State Government to determine any lease. A lease is defined in the Act as a Theka, Patta or grant made by the State Government under and in accordance with the Notification published in the Rampur State Gazette dated 19-10-1935, and Ch. 13 of the Qanun Qabza Arazi Riyasat Rampur Act, 1937 or the said. Chapter read with Rampur State Gazette Notifications dated 28-5-1938, and 12-3-1949.

The lease in the present petition was created under the Notification dated 12-3-1949. This and similar leases are leases of proprietary rights in land. These leases created an intermediary between the State and the tenants and the lessees do not become tenants themselves. The leases being of proprietary rights in land, they are converted by the expression "rights in an estate" as mentioned in Clause 2(b) of Article 31A. The Act is, therefore, in our opinion saved by Article 31A from being questioned on the ground that it contravenes Articles. 14 and 31 of the Constitution.

14. We are, therefore, of opinion that this petition must fail. It is accordingly dismissed with costs.