

(1955) 07 GUJ CK 0005

In the Gujarat High Court

Case No : Civil Miscellaneous Application No. 55 of 1953

Sm. Sau. Indumati

APPELLANT

Vs

State of Saurashtra

RESPONDENT

Date of Decision : 02-07-1955

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(5), 226, 31(2), 31(6)

Citation : (1955) 07 GUJ CK 0005

Hon'ble Judges : Shah, C.J.;Baxi, J

Bench : Division Bench

Advocate : C.R. Maniar, for the Appellant; A.R. Bakshi, General and B.R. Joshi, Asst. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Shah, C.J.—The Petitioner prays for a writ under Article 226 of the Constitution for a declaration that the two Ordinances Nos. 84 of 1949

and 6 of 1950 and a Government notification issued there under are ultra vires of the Constitution and the Covenant and for other reliefs.

2. The Petitioner is the Rani Saheba of the Talukdar of Cithalgadh, a former jurisdictional Talukdar of Kathiawar. By an unregistered lease dated

25-11-46 the Talukdar leased out the village Padmagadh forming part of his Taluka for a period of 99 years.

The Petitioner alleges that she was put in, possession of the village under the lease. but at the time of the merger of the, Vithalgad Taluka, with the

State of Saurashtra the Manager of the Taluka inadvertently made over thus village to the State. This allegation is denied on behalf of the State and

it is denied that the Petitioner was put in possession of the village.

But if is undisputed that the village was made over to the Saurashtra State at the

time of the merger. However the circumstances under which it was made over to the Saurashtra, State are not, material to the decision of this petition. In 1949 the Ordinance known as the Saurashtra Grants

(Resumption) Ordinance No. 84 of 1949 which was referred to as the principal" Ordinance was passed by the Rajpramukh.

The preamble shows that the Ordinance was passed as it was found necessary in the public interest to provide for the resumption and

cancellation of certain grants. Section 3 of the Ordinance empowers the Government, if it is satisfied" that it" is necessary in the public interest

make an order in respect of any grants specified in the Schedule, to direct by notified order, that the grant, shall be deemed to have been invalid

and of no effect whatever and order resumption or cancellation of the grant either forthwith or from a specific date.

Section 4 of the Ordinance provides that the making of the order u/s 3 any land comprised in the grant shall be deemed to vest in and belong to the

Government and any right, or interest, which the Grantee or any person" claiming through him may have had or claimed¹ therein, shall determine.

The schedule to the Ordinance specifies the grants in respect of which an order u/s 3 can be made. This Ordinance was amended by Ordinance

No. VI of 1950 and the schedule to the main Ordinance was slightly amended and certain other grants were also included in it. The second-

Ordinance will henceforth be referred to as that: amending Ordinance.

The lease, which is the subject, matter of this petition, is included in the schedule by the amending Ordinance and the lease thereby became liable

to resumption under the principal Ordinance. By a Notification No. PD/INV/55 dated 16-7-51 the Government declared that it was satisfied that.

It; was necessary in the public interest to make an order u/s 3 of the principal Ordinance that respect of the lease and declared it to be invalid" and

ordered its cancellation forthwith.

The Petitioner made representations to the Government against the Ordinance and against of the Notification ordering resumption and ultimately

filed a Civil Suit to have the order set aside. The suit was subsequently withdrawn by her. She alleges that she did so because of the pressure of

the Rajpramukh of Saurashtra, who promised to bring about a settlement of this suit as well as of all suits and other claims of her husband against

the Saurashtra State.

This allegation is denied on behalf of the State and it is alleged that the suit was unconditionally withdrawn. After withdrawing the suit the Petitioner has filed the present petition.

3. The main grounds of the petition are that, both the Ordinances are unconstitutional as they contravene provisions of Article 31(2) of the Constitution of India; that the assent of the President as required by Clause 6 of Article 31 not having been received, the Ordinances remained ultra vires of the Constitution and of no legal effect at all; that the Ordinances and the Notification were void on the ground that they infringed the petitioner's fundamental right guaranteed under Article 19(1)(f) and (g) of the Constitution.

The order of resumption was challenged on the further ground that it was in contravention of Clause 6 of the Covenant, whereby the Saurashtra State had undertaken to discharge the obligations of the covenant in rulers. The Petitioner also contends that the order of Resumption could not be made on the ground of public interest.

All these grounds are contested on behalf of the State and it is further contended that the Petitioner having withdrawn her suit, the present petition was incompetent. The validity of the lease is also questioned on the ground of want of registration.

4. As stated above the principal Ordinance is expressed to be made in the public interest. The Ordinance provides for cancellation of certain sunâ½s and for their vesting in the State. The Ordinance therefore provides for acquisition of property and is covered by Clause (2) of Article 31 of the Constitution. The amending Ordinance does not mention the object of its enactment, but the object underlying it must be taken to be the same as that of the principal Ordinance, viz. to promote public interest.

We do not agree with the Petitioner's contention that the Impugned Ordinances or the notification issued thereunder contravene provisions of

Article 19(1)(f) or (g). This Article prohibits placing of any statutory restriction on the rights guaranteed under it except to carry out the purposes

mentioned in sub-clause (5). But where the law provides for outright acquisition of property by the State and for the vesting of that property in the

State, its legality has to be considered with reference to Article 31(2) of the

Constitution.

The petitioner contends that the principal Ordinance is void because it makes no provision) for compensation. It must be conceded that if the

principal Ordinance and particularly Sections 3 and 4 are declared void, that Ordinance as well as the amending Ordinance must be wholly

scrapped for these sections form the very core of the Ordinances and without them the other provisions of the Ordinances would be meaningless.

Now these Ordinances were enacted 18 months before the commencement of the Constitution and were submitted to the President for his

certification within 3 months of its commencement & they have been certified by the President under Clause (6) of Article 31. The certificate is

published at page 979 of the Saurashtra Government Gazette Extraordinary dated 12-2-50.

The Ordinances having been thus certified by the President they cannot be called in question. Petitioner appears to have challenged the validity of

these Ordinances in ignorance of the fact that they had been certified by the President. Clause (6) of Article 31 therefore applies and the Petitioner

cannot, not call these Ordinances into question.

5. The next ground urged on behalf of the Petitioner was that the Government Notification legal and void because no public interest was served by

resuming the lease for which Petitioner had agreed to pay consideration by way of rent and the bona fides of which cannot be questioned it having been

made in pre independence days when no one could have foreseen the emergence of the Saurashtra State.

A scrutiny of the grants enumerated in the Schedule shows that they are all grants by Chief in favour of their relations. With the exception of the

lease: in favour of the Petitioner and with the exception of two other grants which were made after 15-8-1947, every grant was made between

January 1948 and March. 1948 after it was decided, to merge the State in a Union.

It was certainly in public interest to prevent the rulers from flitting away the State lands in the eve of the disappearance of their State;) and

convert them into private property by the expedient of making grants in favour of the relations.

We do think that judging the particular type of mischief which the Ordinances

aimed at, they must be regarded as having been enacted in public

interest .and the public interest underlying them cannot be challenged merely because one isolated grant happens to be a lease and is of pre-

independence days. The impugned Notification merely carries out the purpose of the Ordinance and it cannot be said not to be in public interest.

We have held that the Ordinances cannot be called into question by virtue of Clause (6) of Article 31 and there nothing in the Constitution or the

Ordinances which would justify us to consider the merits of the Notification. Reference may be mad") to - "Dholpur Co-operative Transport and

Mulfi Purpose Union Ltd. v. Appellate Authority, Raja, sthan AIR 19s5 Raj 10 (A) and to - Brajnandan Sharma Vs. The State of Bihar, (BX and

the following¹ observations at page 324 quoted in the Rajasthan care:

In my opinion, we are alone concerned with the validity of the restrictive provisions contained in the Act. We are in no way concerned with the

merits of the particular order and cannot enter into them. The wording of the Act does not entitle the Courts to consider the order on its merits nor

do the provisions of Article 19 (5).

The wording of Article 19 (5) makes it quite clear that the words ""reasonable restrictions"" refer to the law Itself, and not to orders passed under

the law. The clause speaks of any existing) law in so far as it imposes reasonable restrictions and the making of a law imposing reasonable

restrictions. If the law is valid, there appears to be nothing anywhere in the Constitution, or in that particular Act itself, enabling the Courts to

consider the merits of the order.

6. It was next argued on behalf of the Petitioner that the order of resumption was in on Prevention of Article 6 of the Covenant. By Article 6 the

Saurashtra State took, over all liabilities ol1 the Covenanting rulers and undertook to discharge the same it is argued that the Vithalgadh Taluka

was under an obligation to respect the lease and allow the Petitioner to enjoy the village for the period of 9 years provided by the lease. "

Therefore the Saurashtra State was bound under Article 6 of the Covenant to respect that obligation and the order of resumption was

consequently void and of no effect. The obligation to respect the lease for the prescribed period, which the Saurashtra State undertook to

discharge, arises out of the contract contained in the lease. It was the

contractual obligation of the State and the State could not terminate that obligation by an executive order.

But the State's sovereign legislative authority is not in any way¹ curtailed by that obligation and it is open to the State to pass a law terminating the lease and releasing the State from its contractual obligation. This principle has been affirmed of this Court in the *1½ Dhrangadhra Chemical Works Ltd. V. State of Saurashtra* 8 Sau LR 157 (C) and we have nothing to add to what is stated there.

7. It was lastly argued that Section 6 of the principal ordinance barred a suit against Government for anything done under the Ordinance and took away the petitioner's ordinary remedy of a civil suit without providing an alternative remedy and both the Ordinances were void on that ground.

This ground has not been set out in the petition.

But assuming that this section offends any provision of the Constitution, it does not necessarily invalidate the entire Ordinance. The provision of

Section 6 and the rest of the Ordinances are not so inextricably related to each other that the one cannot be given effect unless the other is also a

valid legal provision. Therefore, as the question of validity of Section 6 of the main Ordinance does not affect the merits of this petition, we do not

express any opinion on the constitutionality of that section.

The Petitioner's learned Advocate had argued that the lease in favour of the petitioner was not a grant as it was for consideration and the Order

in question did not contemplate resumption of transfers which did not strictly fall within the category of grants i. e., grants without

consideration. This argument is against the plain language of the main Ordinance itself.

A grant has been defined by Section 2 (a) of the main Ordinance to include any transfer of land or interest therein, whether or not expressed to be

made for valuable consideration. The petitioner's lease is unquestionably a transfer of an interest in land for valuable consideration and is therefore

covered by the definition and is within the ambit of, the Ordinance.

The lease is moreover expressly included in the schedule to the Ordinance and the question whether a lease is a grant or not becomes of academic

importance. The Ordinance provides for the resumption of the lease in favour of the petitioner and it has been resumed by the Government in

accordance with the provisions of the Ordinance and the resumption must therefore be upheld.

8. For reasons stated above the petition fails and is ordered to be dismissed with costs.

Shah, C.J.

9. I agree