
(1978) 09 MP CK 0026

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No's. 784 of 1973 and 65 of 1975

Smt. Padmavati Devi

APPELLANT

Vs

The State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 18-09-1978

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 31, 31(2), 31A

Madhya Pradesh Van Bhumi Shashwat Patta Prati Saharan Adhinyam, 1973 — Section 3(2)

Citation : AIR 1979 MP 32 : (1981) ILR (MP) 909 : (1979) JLJ 100 : (1979) 24 MPLJ 27

Hon'ble Judges : G.P. Singh, C.J.; J.S. Verma, J

Bench : Division Bench

Advocate : M.C. Nihalani, for the Appellant; K.K. Adhikari, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.P. Singh, C.J.

Smt. Padmavati Devi, the petitioner in this petition, is the wife of Shri Birendra Bahadur Singh who is the ex-Ruler of the Indian State Khairagarh. This State merged with the Central Provinces and Berar on 1st January 1948. Before the merger, the Ruler by a Sanad dated 29th Dec. 1947 granted a perpetual lease of forest area comprising of 5585 acres situated within Bodratola block in favour of the petitioner. An agreement was reached between the ex-Ruler of Khairagarh and the Premier of the Central Provinces and Berar on 19th June 1948 in which the forest lease granted in favour of the petitioner was recognised. On coming into force of the Constitution on 26th January 1950, the Central Provinces and Berar became the State of Madhya Pradesh. On 23rd June 1953, a perpetual lease was executed in favour of the petitioner by the Governor of Madhya Pradesh in recognition of the lease granted by the Sanad. The only difference between the grant made under the Sanad of the Ruler and the lease executed by

the Governor of Madhya Pradesh is that under the former the petitioner was not liable to pay any annual rent; but under the new lease the petitioner became liable to pay Rs. 100/- as annual rent.

The Madhya Pradesh Legislature enacted the Madhya Pradesh Van Bhumi Shashwat Patta Prati Sahharan Adhiniyam, 1973 (Act No. 33 of 1973). This Act was brought into force from 1st October 1973. Section 2 (a) of the Act defines "appointed date" to mean "the date on which the Act came into force." "Industrial lease" is defined by Section 2 (c) to mean "a lease of forest land for supply of forest produce as raw material to an industry." "Perpetual lease" as defined by Section 2 (e) means "lease of forest land for a period of 30 years or more but does not include an industrial lease." The Act by Section 3 revoked all perpetual leases of forest land from the appointed date, the effect of which was that all rights, titles and interest vesting in the lessee stood resumed by the State Government free from all encumbrances on the appointed date. Section 4 of the Act provides for continuance in possession of the lessee of such lands as were cleared up and brought under cultivation by the lessee before the appointed date. Section 5 directs the Collector to take possession of all forest lands under the perpetual leases revoked by the Act other than those specified in Section 4. Provision for payment of compensation is made by Sections 6, 7 and 10. The amount payable is determined in accordance with the principles set out in the Schedule to the Act.

The perpetual lease in favour of the petitioner which was granted by the Governor by lease deed dated 23rd June 1953, dated (stood ?) resumed under the aforesaid Act from 1st Oct. 1973. The petitioner by this petition challenges the validity of the Act on the ground that it violates her fundamental rights under Articles 14, 19 and 31 of the Constitution.

Before coming to the contentions advanced by the learned counsel for the petitioner, it is convenient to notice the salient features of the Act. The Statement of Objects and Reasons of the Act reads as under:

"Perpetual leases of extensive forest lands were granted to members of families of ex-Rulers and other persons for their personal usufruct, on insignificant sum of lease money and in some of them without attaching any obligation for utilising income therefrom for public good. Such leases constitute a perpetual drain on the resources of the State. The State is duty bound for the upliftment of the weaker sections of the society and it is necessary to tap every resource for the purpose. Such perpetual leases are also incompatible with the concept of "Garibi Hatao." It is therefore proposed to extinguish the rights of perpetual lessees in forest land except of those who have been granted lease for supply of raw material to industries."

In the statement of financial implications forming part of the Bill it is stated that the State will have to pay Rs. 73,850/- to the lessees and that from the forest lands coming to the State it will make an income of Rs. 1,50,000/- per year.

Section 3 of the Act, which is the key section, and the Schedule laying down the principles for determination of the amount payable read as follows:

"3. Revocation of perpetual lease of forest land -- (1) Save as otherwise provided in this Act, on and from the appointed date all perpetual leases of forest land which were heretofore granted by special grant of, or contract with, the State Government or under the provision of any law or rule for the time being in force or in pursuance of any other instrument shall notwithstanding anything contained in any such grant, contract, law, rule or instrument, stand revoked and resumed by the State Government.

(2) Upon the revocation of perpetual leases under Sub-section (1), the following consequences shall ensue, namely:--

(a) all rights, titles and interest resting in the lessee or any person having interest through the lessee in the forest land including land cultivable or barren, grass land; trees, plants not being trees (including grass, creepers, reeds and moss) or forest produce shall cease and shall stand resumed by the State Government free from all encumbrances, and the charge on any such right shall be charge on amount payable for the lease hold right to the lessee under the provisions of this Act;

(b) the interest of the lessee so revoked and resumed shall not be liable to attachment or sale in execution of any decree or other process of any Court, civil or revenue and any attachment existing at the appointed date and any other attachment passed before the said date shall, subject to the provisions of Section 73 of the Transfer of Property Act, 1882 (No. 4 of 1882), cease to be in force."

SCHEDULE

[See Sections 7 (1) and 10 (1)]

Where the forest land-

does not exceed 100 acres.

Rupees 50 per acre or part thereof.

exceeds 100 acres but does not exceed 200 acres.

Rupees Five thousand plus Rupees 45 per acre or part thereof in excess of 100 acres.

exceeds 200 acres but does not exceed 300 acres.

Rupees Nine thousand five hundred plus Rupees 40 per acre or part thereof in excess of 200 acres.

exceeds 300 acres but does not exceed 400 acres.

Rupees Thirteen thousand five hundred plus Rupees 35 per acre or part thereof in excess of 300 acres.

exceeds 400 acres but does not exceed 500 acres.

Rupees Seventeen thousand plus Rupees 30 per acre or part thereof in excess of 400 acres.

exceeds 500 acres but does not exceed 600 acres.

Rupees Twenty thousand plus Rupees 25 per acre or part thereof in excess of 500 acres.

exceeds 600 acres but does not exceed 700 acres.

Rupees Twenty two thousand five hundred plus Rupees 20 per acre or part thereof in excess of 500 acres.

exceeds 700 acres but does not exceed 800 acres.

Rupees Twenty four thousand five hundred plus Rupees 15 per acre or part thereof in excess of 700 acres.

exceeds 800 acres.

Rupees Twenty six thousand plus Rupees 10 per acre or part thereof in excess of 800 acres.

The contentions raised by the learned counsel for the petitioner are that the impugned Act has been passed merely to augment the revenues of the State and not for any public purpose; that the compensation provided is illusory; that the Act contravenes Article 31(2) of the Constitution; that the Act is not protected by Article 31A, as it does not visualise any agrarian reform; and that the Act has been solely passed with the object of depriving the petitioner alone of her lease which offends Article 14 of the Constitution.

It is first necessary to consider whether the Act is protected under Article 31A of the Constitution as is submitted in the return. It is conceded by the learned counsel for the petitioner that the area covered under the lease in favour of the petitioner comes within the definition of "estate" as defined in Article 31A(2). The question to be considered is whether the impugned Act is a law providing for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights within the meaning of Clause (a) of Article 31A(1). The other clauses of Article 31A(1) have not been relied upon by the State in supporting the validity of the impugned Act. Clause (a) of Art, 31A(1) has been construed by the Supreme Court in a number of cases. It is now well established that in order to invoke the protection of Article 31A(1)(a) it has to be shown by the State that the acquisition of the estate was with a view to implement agrarian reform. The Article is confined only to agrarian reform and its provision can apply only to a law made for acquisition by the State of any estate or rights therein or for extinguishment or modification of such rights if such acquisition, extinguishment or modification is connected with agrarian Reform; [See P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and

Another, ; Balmadies Plantations Ltd. and Others Vs. State of Tamil Nadu,]. In Balmadies Plantations" case, forests in Janmam Estates were acquired and it was held that as there was nothing in the Act to show that the acquisition was in furtherance of agrarian reform. Article 31A was not attracted. It was also held in that case that the mere fact that the ownership of the forests stood transferred to the State by the operation of the Act would not show that the object of the transfer was to bring about agrarian reform. It was further held that the augmenting the resources of the State by itself and in the absence of anything more regarding the purpose of utilisation of those resources, cannot be held to be a measure of agrarian reform. Balmadies Plantations" case has to be contrasted with the case of State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc., in which a Kerala Act providing for acquisition of private forests was held to be covered by Article 31A because provision was made in Section 10 of the Act for assignment of the forests acquired under the Act in favour of agriculturists, agricultural labourers, members of Scheduled Castes and Scheduled Tribes, unemployed young persons belonging to families of agriculturists and agricultural labourers. In upholding the Act, the Supreme Court held that the Act purported to acquire forest land without payment of compensation for implementing the scheme of agrarian reform by assigning the land on registry or by way of lease to the poorer section of the rural agricultural population. It will be seen that the case of Gwalior Rayon Silk Mfg. (Wvg.) Co. does not depart from the proposition that to bring an Act within the protection of Article 31A(1)(a) the acquisition must be linked with the scheme of agrarian reform or betterment of village economy. It is in the light of these decisions that it has to be seen whether the impugned Act can get the protection of Article 31A.

We have earlier referred to the Statement of Objects and Reasons. All that is stated therein is that perpetual leases of extensive forest lands were granted to members of families of ex-Rulers and other persons for their personal usufruct, on insignificant sum of lease money and that such leases constituted a perpetual drain on the resources of the State. The State was duty bound for the upliftment of the weaker sections of the society and it is necessary to tap every resource for that purpose. It is also stated that perpetual leases are incompatible with the concept of "Garibi Hatao." Nothing is stated in the Objects and Reasons that the acquisition of the perpetual leases would be linked with agrarian reform or improvement of the village economy. The only indication that one gets from the Objects and Reasons is that by resuming the leases the Government"s resources would be augmented and that the State would be in a better position to provide for the upliftment of the weaker sections of the society. The statement of financial implications accompanying the Bill that the Government after paying compensation to the extent of rupees 73,850/- would be able to make an income of Rs. 1,50,000/- per year goes to show that the resumption of the leases was also to augment the resources of the State. The Act does not contain any preamble. The long title of the Act is; "An Act to revoke all perpetual leases of

forest land in Madhya Pradesh and for matters connected therewith." The provisions of the Act do not state as to how the forest lands covered by the resumed leases would be utilised by the Government, No hint is given in the Act of implementing any scheme of agrarian reform or improving the village economy. There is also nothing in the return of the State to throw any light on this subject. In the circumstances, it is not possible to hold that resumption of leases for which provision is made in S 3 of the Act is in any way connected or linked with any scheme of agrarian reform or improvement of village economy. The Act, therefore, cannot get the protection under Article 31A of the Constitution.

The next question to be considered is whether the Act offends Article 31(2) of the Constitution. The argument of the learned counsel for the petitioner is that the purpose of the Act is to augment the resources of the State and that this is not a public purpose for which acquisition can be made under Article 31(2).

It is now well settled that augmenting the resources of the State is not a public purpose within Article 31(2) In *State of Madhya Pradesh Vs. Ranojirao Shinde and Another*, the Supreme Court observed that the power conferred under Article 31(2) is not a taxing power and that power cannot be utilised for enriching the coffers of the State. It was further observed that abolition of cash grants by the Madhya Pradesh Cash Grants Act, which was challenged in that case, would no doubt augment resources of State, but that cannot be considered as a public purpose under Article 31(2). It was also held in that case that choses in action and money cannot be acquired under Article 31(2). The view that choses in action cannot be subject of acquisition under Article 31(2) has now been overruled in *Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others*, . But *Palhak*'s case affirms that if the Legislature enacts a law acquiring choses in action only for the purpose of augmenting the revenue of the State or reducing the State expenditure, that would clearly not be public purpose and the legislation would plainly be violative of the constitutional guarantee embodied in Article 31(2) (See p. 824),

The Act under challenge before us does not make any specific mention of public purpose for which the perpetual leases of forests were being resumed. The one indication that one gets from the Objects and Reasons is that the State intended to resume the perpetual leases of extensive forest areas granted to families of ex-Rulers and other persons for insignificant sum of lease money which constituted a perpetual drain on the resources of the State so that it may increase its resources and be in a better position to act for the upliftment of the weaker sections of the society. The statement of financial implications forming part of the Bill also shows that one of the objectives at least was to augment the financial resources of the State. The Act does not state as to how the forest land acquired by the State would be used for the public good or as to how the Income derived from it by the State would be utilised. Even so, in our opinion, it cannot be said that the object of the Act is merely to augment the resources of the State and

that the resumption of leases is not for any public purpose. The object of the Act obviously is to do away with the concentration of big blocks of forest areas in the hands of a few individuals and to transfer this important means of production in the hands of the State which, being a welfare State, is expected to utilise it for the benefit of the weaker sections of that society as stated in the Objects and Reasons. The expressions "Public Purpose" in Article 31(2) is of very wide import and has to be construed in the light of the Directive Principles of State Policy, Article 39 (a) and (b) of which provide that it is the duty of the State to direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in concentration of wealth and means of production to the common detriment. This line of approach was adopted in *The State of Bihar Vs. Sir Kameshwar Singh*, . In that case while dealing with the public purpose behind the Bihar Land Reforms Act, 1950, Mahajan, J. (as he then was) observed as follows (at p. 274):

"Now it is obvious that concentration of big blocks of land in the hands of a few individuals is contrary to the principle on which the Constitution of India is based. The purpose of the acquisition contemplated by the impugned Act therefore is to do away with the concentration of big blocks of land and means of production in the hands of a few individuals and to so distribute the ownership and control of the material resources which come in the hands of the State as to subserve the common good as best as possible. In other words, shortly put, the purpose behind the Act is to bring about a reform in the land distribution system of Bihar for the general benefit of the community as advised. The legislature is the best judge of what is good for the community, by whose suffrage it comes into existence and it is not possible for this Court to say that there was no public purpose behind the acquisition contemplated by the impugned statute."

Das, J., (as he then was) in the same case observed that "we must regard as "public purpose" ,all that will be calculated to promote the welfare of the people as envisaged in the Directive Principles of State Policy whatever else that expression may mean" (p. 290). This construction of the expression "public purpose" is now strongly supported by the insertion of Article 31C by the Constitution (25th Amendment) Act, 1971, which, ignoring the part declared invalid in the *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, provides that notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in Clause (b) or Clause (c) of Article 39 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 or Article 19 or Article 31. This aspect of the matter is reflected in the concurring judgment delivered by K. Iyer, J. (for himself and Bhagwati and Jaswant Singh, JJ.) in *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another*,), In that case K. Iyer, J. quoted with approval the definition of public purpose formulated by Das, J., in *Kameshwar Singh's case* (p. 240). Referring to Article 39(a), K. Iyer, J, further observed that the expression

"material resources of the community" in the context "embraces all the national wealth, not merely the natural resources, all the private and public sources of meeting material needs, not merely public possessions." It was also observed that "distribution in the context of Article 39 will include nationalisation as a distributive process for the good of the community; (p. 250). Now, tested in the light of these principles, it is clear to us that the impugned Act in abolishing the perpetual leases of extensive forest areas and vesting them in the State Government so that the income thereof may be utilised for the good of the community, seeks to distribute material resources of the community to subserve the common good within the meaning of Article 39(a). It necessarily follows that resumption of perpetual leases by the Act is for an important public purpose, namely, to achieve the goal set by the Directive Principles under Article 39(a). In our opinion, it is impossible to condemn the Act on the ground that it has no public purpose behind it.

We will like to clarify that we have referred to Article 31C of the Constitution as inserted by the Constitution (25th Amendment) Act, 1971 to support the wide concept of Public Purpose and not to hold that Article 31(2) is not applicable because reliance on Article 31C was neither placed in the return nor during arguments. Further, we have not referred to Article 31C as amended by the Constitution (42nd Amendment) Act, 1976, as this amendment was not in existence when the impugned Act was enacted.

The next question is whether the amount payable to the lessees for resumption of their leases is illusory. Under Article 31(2), as amended by the Constitution (25th Amendment) Act, 1971, no law relating to acquisition can be called in question in any Court on the ground that the amount fixed by it or determined in accordance with the principles laid down by it is not adequate, or that the whole or any part of such amount is to be given otherwise than in cash. The impact of this amendment was considered by the Supreme Court in the *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, . The overwhelming view still is that the amount payable for the acquired property, either fixed by the Legislature or determined on the basis of the principles engrafted in the law of acquisition, cannot be wholly arbitrary or illusory, [See *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another*,], The question, therefore, is whether the amount payable under the Act can be said to be wholly arbitrary and illusory. The principle for determining the amount adopted in the Schedule is that the amount payable is calculated on the basis of rates fixed in the Schedule according to acreage of the area acquired. Higher rates are provided for smaller areas and lower rates are provided for larger areas. This mode adopted for fixing the amount payable cannot be said to be arbitrary. The rate no doubt is low, but that goes to the adequacy of the amount and not to the legitimacy of the principle. Calculated on the basis of the Schedule, the petitioner is to get Rs. 73,850/- The amount so found payable to the petitioner cannot be said to be illusory. All that can be said is that the petitioner will not be getting adequate compensation. This is apparent from the financial statement given in the Bill

itself. However, inadequacy of the amount payable does not now survive as a ground of attack under Article 31(2). In our opinion, therefore, the Act does not suffer from the vice that the amount payable under the Act is arbitrary or illusory.

As regards the challenge under Article 14, the petitioner is not the only lessee whose lease has been acquired. All perpetual leases as defined in the Act have been resumed u/s 3. The petitioner's claim that she is the only person affected by the Act is not correct. Misc. Petn. No. 62 of 1975 (Devendra Kumar v. State of M. P.) which was heard along with this petition furnishes an illustration of another lease which has been affected by the provisions of the Act. Even on the assumption that the petitioner is the only person holding a perpetual lease for such an extensive forest area and that she alone is affected by the Act, Article 14 is not violated, for the petitioner would then stand as a class different from any other person and, therefore, a law can be solely made for her; [See Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, ; Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others,]. The contention of the learned counsel for the petitioner based on Article 14 also cannot, therefore, be accepted.

All the contentions raised for challenging the validity of the Act thus fail. We hold the Act to be valid.

On the appointed date when the impugned Act came into force, timber and bamboos already felled by the petitioner were lying within the area of the forest lease resumed under the Act. This property was taken possession of by the State. By an order passed on 7th Dec. 1973, the State was permitted to auction this material and to credit the sale proceeds in Government treasury for disposal as would be ordered by the Court, after the petition is finally heard. The petitioner has also filed Misc. Petition No. 961 of 1973 seeking relief that the State be directed to return the timber and bamboos felled before the appointed date or to refund their sale proceeds. The question whether timber and bamboos felled before the appointed date lying within the area of the lease would vest in the State depends upon construction of Section 3 (2) (a) of the Act. The material words of this section provide that "all rights, titles and interest vesting in the lessee in the forest land including trees, plants or forest produce shall cease and shall stand resumed by the State Government free from all encumbrances." Now the Act statutorily resumes the perpetual lease, as a consequence of which, Section 2 (a) provides for cessation of the rights, titles and interest of lessee in the forest land, trees, plants and forest produce and resumption of the same by the State Government. It is, however, clear that intention of Section 3 (2) is to resume only such rights, titles and interest which vest in the lessee as lessee. There can be no doubt that so far as the standing trees and forest produce yet to be extracted are concerned, the interest stands resumed. But as regards trees that were felled and forest produce that was extracted before the appointed date, it cannot be said that interest in these properties vested in the lessee as lessee. The correct legal position is that interest in these properties would vest in the lessee not as lessee but as owner. The petitioner's interest, therefore, in

timber and trees that were felled before the appointed date did not vest in the State Government and she is entitled to the sale proceeds of these properties.

As a result, Misc. Petition No. 784 of 1973 is allowed. We direct that the sale proceeds of the timber and bamboos which were auctioned by order of the Court dated 7th Dec. 1973, be paid to the petitioner. There shall be no order as to costs in both these petitions. The security amounts be refunded to the petitioner.