
(1953) 05 PAT CK 0002
In the Patna High Court
Case No : A.F.O.O. No's. 149 to 169 of 1952

State of Bihar

APPELLANT

Vs

Jhirki Mining Corporation Ltd. and Others

RESPONDENT

Date of Decision : 14-05-1953

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 2
Constitution of India, 1950 — Article 163, 368, 379, 382, 392

Citation : AIR 1953 Patna 386 : (1953) 1 BLJR 508

Hon'ble Judges : Ramaswami, J;Jamuar, J

Bench : Division Bench

Advocate : Lalnarain Sinha, Bajrang Sahai and L.M. Sharma, for the Appellant;
P.R. Das, J.M. Ghosh, R.P. Sinha and Shambhu Prasad Singh, for the Respondent

Final Decision : Allowed

Judgement

Ramaswami, J.—These appeals are brought against the order of the Subordinate Judge of Hazaribagh dated 31-5-1952, granting a temporary injunction restraining the State of Bihar from taking possession of certain zamiridari estates which had been notified u/s 3 of the Bihar Land Reforms Act.

2. The appeals relate to twenty one suits which fall into three different categories. Title suits 76, 78, 80, 66 and 79 of 1951 are instituted on behalf of persons who claim that the Raja Bahadur of Ramgarh had granted them zamindari properties in Khorposh. The second group relates to Title Suits 52, 53, 54, 55, 56, 57, 58, 59 and 60 of 1951 in which the question at issue is whether the provisions of the Bihar Land Reforms Act apply to the Zamindari assets of joint stock companies, incorporated under the Indian Companies Act. The third group relates to Title Suits 71, 67, 72, 75, 74, 77 and 73 of 1951 in which the plaintiffs allege that they are trustees of the zamindari estates and that the Bihar Land Reforms Act does not apply to trust estates. In all the suits the reliefs claimed are of the same type. The plaintiffs asked in substance for a declaration that the Bihar Land Reforms Act was unconstitutional and invalid and that at any

rate the provisions of the Act did not apply either to joint stock companies, to estates granted in khorposh, or to estates vested in trustees for the purpose of public or private trust. It was urged that notifications issued by the State of Bihar u/s 3 of the Bihar Land Reforms Act were illegal and it was prayed that the State of Bihar and its officers should be restrained by injunction from acting under the authority of the notifications u/s 3, or to interfere with the possession of the plaintiffs over the Zamindari properties. The suits were instituted in the court of the Subordinate Judge on 25-9-1951. On the application of the plaintiffs the Subordinate Judge issued on 27-9-1951 an ad interim injunction restraining the defendant, State of Bihar, from taking possession of the properties in question. The question as to the constitutional validity of the Bihar Land Reforms Act was meanwhile raised in -- "Kameshwar Singh v. State of Bihar AIR 1951 Pat 91 (SB) (A), in the Patna High Court. On 12-3-1951 the High Court held that the Bihar Land Reforms Act was invalid as it violated Article 14 of the Constitution. The State of Bihar took an appeal to the Supreme Court from this decision. While the appeal was pending, the Constitution was amended by the Provisional Parliament by the Constitution (First Amendment) Act of 1951. That Act inserted the new Articles 31A and 31B which purported to protect all laws providing for the acquisition of estates, and, in particular, the Bihar Land Reforms Act from any attack on its validity on the ground that it violates or takes away or abridges any of the rights conferred by Part III of the Constitution. The validity of the Amending Act was in turn challenged in the Supreme Court in proceedings instituted under Article 32 but the validity of the Act was upheld in -- Sri Sankari Prasad Singh Deo Vs. Union of India (UOI) and State of Bihar, . On 5-5-1952, the Supreme Court decided the appeal preferred by the State of Bihar. The appeal was allowed by the Supreme Court and it was held that the Bihar Land Reforms Act was not unconstitutional or void except with regard to the provisions of Section 4(b) and Section 23(f). After the decision of the Supreme Court the question of injunction was taken up in the court of the Subordinate Judge of Hazari-bagh. It was urged on behalf of the State of Bihar that the controversy had been set at rest by the judgment of the Supreme Court and that the ad interim order of injunction granted in the suits should be vacated. The contention was overruled by the Subordinate Judge who made the order of ad interim injunction absolute and restrained the State of Bihar from disturbing the possession of the plaintiffs till the suits were finally decided.

3. The order of the Subordinate Judge is based firstly on the ground that there was a dispute whether the word "proprietor" in Section 2(p), Bihar Land Reforms Act, includes artificial persons like limited companies. It was contended before him that the Land Reforms Act could not on a proper interpretation apply to the Zamindari assets in possession of companies incorporated under the Companies Act. The Subordinate Judge took the view that the question was debatable and till the matter was decided in the course of the suits the status quo of the parties should be maintained. Secondly, the Subordinate Judge felt a doubt whether the Bihar Land Reforms Act applied to the zamindari estates held in trust. He

referred in this connection to Section 39 of the Act which provided that no proceeding shall be taken against a trustee holding an estate or tenure which has vested in the State on the ground that the right of managing such estate or tenure is not exercised by him or on the ground that such estate or tenure has been transferred to the State. So far as khorposhdars are concerned, it was argued before the Subordinate Judge that khorposh was not a tenure within the meaning of Section 2(o) of the Act, that the object of the grant was not to enable the grantee to collect rents or to bring the land under cultivation by establishing tenants on it but the object was to provide maintenance for the younger branches of the family of the holder of the impartible estate. The Subordinate Judge was lastly impressed by the argument put forward on behalf of the plaintiffs that the Land Reforms Act was passed by the provisional Legislature of the State under Article 382 of the Constitution. It was contended before the Subordinate Judge that Article 382 was a temporary and transitional provision and that the provisional Legislature of the State which had a temporary existence could not enact a law of a permanent character. It was argued that the Bihar Land Reforms Act was provisional in character and its force would be spent with the prorogation of the Legislature which passed it. The Subordinate Judge took the view that the question was debatable and that the plaintiffs had a prima facie case on this point.

4. In support of these appeals, the Government Pleader argued at the outset that most of the questions raised before the Subordinate Judge have now been decided either by the High Court or in appeal by the Supreme Court. The question whether the Bihar Land Reforms Act applied to the zamindari assets of the incorporated companies directly arose for determination in -- Janakinath Roy and Others Vs. The State of Bihar and Another, It was held by a Bench of this High Court that the question should be answered in the affirmative and that the Bihar Land Reforms Act is upon its true construction intended to apply to the zamindari assets of incorporated companies. Appeals were taken against this decision to the Supreme Court. The appeals were dismissed by the Supreme Court in -- Motipur Zamindari Co. Ltd. Vs. The State of Bihar and Another, As regards application of the Act to the trust estate the Government Pleader pointed out that the question has been decided by the High Court, in -- Abdul Hasan and Another Vs. State of Bihar and Another, It was held by a Division Bench of the High Court in that case that the Bihar Land Reforms Act applied to zamindari assets vested in the trustees for religious or charitable purpose. The Government Pleader further pointed out that in -- "M. J. C. Nos. 220 to 223 of 1952. D/- 9-6-1952 (F)", a Division Bench of this Court rejected the argument advanced in that case that Articles 379 and 382 were temporary and transitional provisions & that any legislation made by the provisional Parliament or by the provisional Legislature of Bihar State would cease to have any force and effect after the first meeting of Parliament or of the Bihar State Legislature newly constituted after the general election. The Division Bench rejected the petitions under Article 226 holding that the "argument was wholly without substance and that neither the

Constitution (First Amendment) Act, 1951, nor the Bihar Land Reforms Act, 1950, were temporary statutes".

5. The learned Government Pleader therefore argued that the basis of the reasoning of the Subordinate Judge for making the order of injunction has vanished and there was no warrant for restraining the State of Bihar from taking possession of the zamindari estates. As regards the khorposh grant, the contention of the Government Pleader is that the notifications u/s 3 have been issued not only in the name of the Raja Bahadur of Ramgarh but also in the names of the plaintiffs in whose favour the khorposh grants have been made. The argument is that khorposh grant is a tenure within the meaning of Section 2(g) of the Act. It was pointed that the grant was made for the purpose of collecting rent or bringing the land under cultivation by establishing tenants on it. The motive of the grantor may be provision of maintenance for junior members of the family, but the motive of the grantor has no relevance, on the question of the nature of the grant. In my opinion this argument has great force. Section 2(q), Bihar Land Reforms Act, defines "tenure" to mean the interest of a tenure-holder or an under-tenure-holder. Section 2(r) defines "tenure-holder" to mean a person who has acquired from a proprietor or from any other tenure-holder a right to hold land for the purpose of collecting rent or bringing it under cultivation by establishing tenants on it. In this connection reference should be made to Section 5, Bihar Tenancy Act and Section 5, Chotanagpur Tenancy Act, where the expression "tenure-holder" is defined in similar terms. I think that there is great force in the argument of the appellant that the khorposh grant is a tenure within the meaning of Section 2(q), Bihar Land Reforms Act, and that the argument of the respondents to the contrary has no substance. It was argued by the Government Pleader that if the khorposh is not a tenure within the meaning of Section 2(q) the plaintiffs would be in a much worse position since the khorposh grant would then be an incumbrance within the meaning of Section 4(a) and the effect of the notification in the name of the Raja Bahadur of Ramgarh would be to vest the estate in the Government free from all incumbrances.

6. But the main contention of Mr. P.R. Das in this case is that the Constitution (First Amendment) Act of 1951 was of a temporary character and that it ceased to be valid after the first meeting of the Parliament which was duly constituted after the general election. Counsel contended that Articles 31A and 31B have ceased to have any force or effect and the Bihar Land Reforms Act is therefore open now to be challenged on the ground that Article 14 of the Constitution has been violated. Counsel admitted that a similar argument was rejected by a Division Bench of the High Court in -- "M. J C. Nos. 220 to 223 of 1952 D/-9-6-1952 (F)". Counsel, however, pointed out that on 7-1-1953, another Division Bench granted a certificate under Article 132(1) that the case involved a substantial question of law as to the interpretation of the Constitution. It is therefore necessary to examine afresh the validity of the argument which the respondents have put forward and to ascertain if there is a fair question raised for trial.

7. The argument proceeds on the basis that Article 392 Gives a limited power of adaptation to the President Article 392(1) states :

"The President may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by order direct that this Constitution, shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient : provided that no such order shall be made after the first meeting of Parliament duly constituted under chapter 4 II of Part V."

The contention of the respondents is that under Article 392 the power of adaptation conferred on the President is limited to a temporary period and any order made under Article 392, would terminate as soon as the two Houses of Parliament met for the first time after the general election. The adaptation to be made by the President is clearly meant to be of a temporary character to enable the administration to tide over the interim period till the new Legislatures are constituted after the general election. The next step in the argument is that by virtue of the power of adaptation granted by Article 392 the President may amend any article of the Constitution. Mr. P.R. Das contended that if the President had chosen to amend the Constitution by directly introducing Articles 31A and 31B the amendment would not operate beyond the temporary period specified in Article 392(1). Mr. P.R. Das conceded that the President did not amend the Constitution by introducing Articles 31A and 31B but the President had by the power of adaptation amended Article 368 which enacts the procedure for amendment of the Constitution. After Article 368 was so adapted the provisional Parliament had by virtue of the authority derived from Article 379 enacted the provisions of the Constitution (First Amendment) Act of 1951 which introduced Articles 31A and 31B and amended the Constitution, in that respect. The argument presented on behalf of the respondents is that the President cannot by amending Article 368 authorise the provisional Parliament to amend the Constitution in a permanent manner. In this connection Mr. P.R. Das relied upon the familiar principle that a legislative authority cannot be permitted to do a thing indirectly which it cannot do directly. It was stressed by the learned counsel that the President who was the fountain-head of the power of the Parliament had limited powers and that limitation cannot be defeated or circumvented by his authorising another body to do what he himself cannot do.

8. In my opinion the argument of Mr. P.R. Daa is interesting but unsound. The power granted to the President under Article 392 is not a general power of amendment of the Constitution but it is a limited power of adaptation which may be exercised only in certain contingencies. The power of adaptation may be exercised by the President only for the purpose of removing difficulties "particularly in relation to the transition from the provisions of the Government of India Act. 1935, to the provisions of this Constitution". It is true that the

provisional Parliament was enabled to amend the Constitution by inserting Articles 31A and 31B because the President had adapted Article 368 of the Constitution. But it is fallacious to say that the power of the provisional Parliament to amend the Constitution is derived from the action of the President under Article 392. In truth, it is not the President but it is the Constitution which is the fountain-head of the power of the provisional Parliament. In this connection the provisions of Article 379 are important. Article 379(1) states:

"Until both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall be the provisional Parliament and "shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament."

Article 379(1) is, therefore, the constitutional provision which confers powers and imposes duties on the provisional Parliament. The article confers on the provisional Parliament "all the powers conferred by the provisions of the Constitution on Parliament". It was not contended by Mr. P.R. Das that the Parliament duly constituted after general election has no power to enact a permanent statute. The language of Article 379 is perfectly general and there is nothing in the context of the article to cut down the generality of the power conferred. If the language of Article 379 is properly construed it is plain that the provisional Parliament has authority to enact not merely laws of a provisional character but also permanent laws including laws for amending the Constitution enacted under the procedure prescribed under Article 368.

9. This view as to the scope of Article 379 is supported by the decision of the Supreme Court in -- Sri Sankari Prasad Singh Deo Vs. Union of India (UOI) and State of Bihar, The question at issue in that case was whether the Constitution (First Amendment) Act, 1951, which had inserted Articles 31A and 31B in the Constitution was "ultra vires" and unconstitutional. It was argued for the petitioners that the power of amending the Constitution under Article 368 did not devolve on the provisional Parliament by virtue of Article 379 as the words "All the powers conferred by the provisions of this Constitution on Parliament" could refer only to such powers as are capable of being exercised by the provisional Parliament consisting of a single chamber. The contention was that the power conferred by Article 368 called for the co-operative action of two Houses of Parliament and could be appropriately exercised only by the Parliament to be duly constituted under Chapter II of Part V. The argument was rejected by the Supreme Court and it was held that the words "all the powers conferred by the provisions of this Constitution on Parliament" in Article 379 were not confined to such powers as could be exercised by the provisional Parliament consisting of a single chamber and the phrase was wide enough to include the power to amend the Constitution conferred by Article 368. At page 462 Patanjali Sastri, J. states :

"The argument that a power entrusted to a Parliament consisting two Houses

cannot be exercised under Article 379 by the provisional Parliament sitting as a single chamber overlooks the scheme of the constitutional provisions in regard to Parliament. These provisions envisage a parliament of two Houses functioning under the Constitution framed as they have been on that basis. But the framers were well aware that such a Parliament could not be constituted till after the first elections were held under the Constitution. It thus became necessary to make provision for the carrying on, in the meantime, of the work entrusted to Parliament under the Constitution. Accordingly, it was provided in Article 379 that the Constituent Assembly should function as the provisional Parliament during the transitional period and exercise all the powers and perform all the duties conferred by the Constitution on Parliament. Article 379 should be viewed and interpreted in the wider perspective of this scheme and not in its isolated relation to Article 368 alone. The petitioners' argument that the reference in Article 368 to "two Houses" makes that provision inapplicable to the provisional Parliament would equally apply to all the provisions of the Constitution in regard to parliamentary action and, if accepted, would rob Article 379 of its very purpose and meaning",

10. The next branch of the argument on behalf of the appellant (respondent?) is that the Bihar Land Reforms Act was passed in the year 1950 when the general election had not been held and a duly constituted State Legislature had not come into existence. The Act was passed by the provisional Legislature mentioned in Article 382 of the Constitution. The argument is that Article 382 was a temporary and transitional provision and any statute made by the provisional Legislature will cease to have effect after the life of the provisional Legislature had expired. It was contended on behalf of the respondents that the provisions of the Bihar Land Reforms Act had ceased to be valid and effective since the new Legislature constituted under Article 168 has not ratified the statute. But the argument suffers from a fallacy. It is true that Article 382 is a temporary and transitional provision and that the Legislature to which this article refers is a Legislature of a provisional character. But it does not follow that a law made by a provisional Legislature should also have a provisional character. If this should be the result, all the laws passed by the provisional Legislature during the two years of its existence would cease to have any force and effect unless they were ratified. Such an intention could not have been contemplated by the framers of the Constitution.

11. But there is a more decisive answer to the contention raised by the respondent. The scope of the power conferred on the provisional Legislature is to be gathered from the language of Article 382 of the Constitution which grants that power. Article 382(1) states :

"Until the House or Houses of the Legislature of each State specified in Part A of the First Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the House or HOUSES of the Legislature of the corresponding Province functioning immediately before

the commencement of this Constitution shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of such State."

Article 382 therefore confers on the provisional Legislature of the State "all the powers conferred by the Constitution on the House or Houses of the Legislature of such State". The language of Article 382 is enacted in terms similar to the language of Article 379 of the Constitution which I have already discussed.

12. The provisional Legislature of the State has therefore all the powers conferred on the State Legislature duly constituted under Article 168 which includes the power to enact laws of a permanent character. There is nothing in the context of Article 382 to control the generality of the language granting power to the provisional legislature. In my opinion there is no substance in the contention of Mr. P.R. Das that the legislation enacted by the provisional State Legislature will cease to have any validity after the life of the provisional Legislature has come to an end and after the new State legislature under Article 168 has been constituted.

13. It is legitimate to note that Mr. P.R. Das did not address such an argument before the Supreme Court in *Sri Sankari Prasad Singh Deo Vs. Union of India (UOI) and State of Bihar*, in which the validity of the Constitution (First Amendment) Act was challenged. Learned counsel also did not address such an argument in -- *The State of Bihar Vs. Sir Kameshwar Singh*, in which the validity of the Bihar Land Reforms Act was at issue.

14. For the reasons I have expressed I think that the respondents have not shown that there is any fair or substantial question to be tried. The respondents have not made out a case for grant of temporary injunction restraining the State of Bihar from taking possession of the estates concerned. I would accordingly set aside the order of the learned Subordinate Judge, vacate the order of temporary injunction granted in favour of the respondents and allow all these appeals with costs.

Jamauar, J.

15. I agree and have nothing to add.