

(1957) 09 MP CK 0012
In the Madhya Pradesh High Court
Case No : First Appeal No. 10 of 1952

State of Madhya Pradesh

APPELLANT

Vs

Laxmi Prasad Govind Prasad Bani

RESPONDENT

Date of Decision : 10-09-1957

Acts Referred:

Central Provinces and Berar Revocation of Land Revenue Exemptions Act, 1948 —
Section 3
Government of India Act, 1935 — Section 299(2), 299(3), 299(5)

Citation : AIR 1960 MP 372 : (1959) ILR (MP) 755 : (1960) JLJ 904 : (1960) 5 MPLJ 906

Hon'ble Judges : T.C. Shrivastava, J;G.P. Bhutt, J

Bench : Division Bench

Advocate : M. Adhikari, for the Appellant; A.P. Sen, for the Respondent

Final Decision : Allowed

Judgement

Shrivastava, J.

This appeal of the State of Madhya Pradesh is directed against the judgment and decree of the Court of Civil Judge, Class I, Raipur, in civil suit No. 2-A of 1950.

By a deed of conveyance, dated 6th February 1868, Durga Prasad, grandfather of the plaintiff-respondent, acquired from the Secretary of State for India 2578 acres of waste land for a consideration of Rs. 3,600. The area that was acquired was situate at Mohrengah and Pultrakondoo and in the subsequent settlement case to be called mousa Khaolidabri. The conveyance provided that the land shall be held

"for ever free from all present or future demand on account of Government Land Revenue, but subject to all general taxes or local rates, now or hereafter to be imposed by law in respect thereof, and to all claims of the Government of India in respect of such land other than claims of Government Land Revenue."

After the enactment of the Central Provinces and Berar Revocation of Land

Revenue Exemptions Act, 1948, hereafter to be called the Revocation Act, the State Government revoked the muafi and demanded payment of land revenue from the plaintiff. Accordingly, the plaintiff, under protests, paid the land revenue for the year 1948-49 amounting to Rs. 804. The case of the plaintiff was that this exaction was illegal. He accordingly sued the State of Madhya Pradesh for a declaration that the Revocation Act did not affect the grant and claimed refund of the amount realised from him. The lower Court allowed the claim on the ground that the said Act, in its application to the case, was ultra vires: vide Section 299(2) of the Government of India Act, 1935.

Section 3 of the Revocation Act, under which the muafi was resumed, is in these terms :

"Every estate, mahal, village or land to whatever purpose applied and wherever situate, which was heretofore exempted from payment of the whole or part of land revenue by special grant of, or contract with the 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, be liable to the payment of land revenue from the agricultural year 1948-49,"

The applicability of this provision to the present case was attacked by the learned counsel for the plaintiff on the following two grounds :

(1) That it contravenes Section 3 of the Crown Grants Act, 1895.

(2) That resumption of the muafi amounts to acquisition of land within the meaning of Section 299(2) of the Government of India Act, 1935, and, therefore, could not be provided for without the Legislature fixing the amount of compensation or specifying the principles on which, and the manner in which, it is to be determined.

The preamble of the Crown Grants Act is as below :

"Whereas doubts have arisen as to the extent and operation of the Transfer of Property Act, 1882, and as to the power of the Crown to impose limitations and restrictions upon grants and other transfers of land made by it or under its authority, and it is expedient to remove such doubts;"

Section 2 exempts the grants and transfers made by the Crown from the operation of the Transfer at Property Act, and provides that they shall be construed and take effect as if the said Act had not been passed. Section 3 is in these terms :

"All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, and rule of law, statute or enactment of the Legislature to the contrary notwithstanding."

Construing Section 3 of the Crown Grants Act, Gwyer C. J., delivering the

judgment in AIR 1943 29 (Federal Court) at pp. 34-35, observed as below:

"The preamble to that Act recites that doubts had arisen as to the extent and operation of the Transfer of Property Act, 1882, and as to the power of the Crown to impose limitations and restrictions upon grants and other transfers of land made by it or under its authority, which it was expedient to remove. Certain provisions of general application in the Act of 1882 had been found to conflict with provisions in the sanads, and the power of the Crown to impose limitations and restrictions other than those known to the general law had been challenged.

Accordingly, the Act first provided that every grant or transfer of land by or on behalf of the Crown should be construed and take effect as if the Act of 1882 had not been passed, and, secondly, that all provisions, restrictions, conditions and limitations over contained in any such grants or transfers should be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature notwithstanding. The words "provisions, restrictions, conditions and limitations over" must be construed with reference to the purpose of the Act, and plainly refer to the course of descent, inheritance, devolution and the like Nor could anything in the Crown Grants Act limit the power of a Legislature to pass such legislation as it thought fit thereafter."

Commenting on the contention that no Legislature in India has any right to alter the arrangements embodied in sanads nearly a century ago, the learned Chief Justice observed :

"We hope that no responsible Legislature or Government would ever treat as of no account solemn pledges given by their predecessors; but the readjustment of rights and duties is an inevitable process, and one of the functions of the Legislature in a modern State is to effect that readjustment, where circumstances have made it necessary, with justice to all concerned. It is, however, not for this Court to pronounce upon the wisdom or the justice, in the broader sense, of legislative Acts; it can only say whether they were validly enacted."

These observations were quoted with approval by the Privy Council in AIR 1946 127 (Privy Council) at p. 131, when the case came up before the Judicial Committee in appeal and were also affirmed by the Supreme Court in *Maharaj Umeg Singh and Others Vs. The State of Bombay and Others*, at p. 548.

The same view of Section 3 of the Crown, Grants Act was taken by a Full Bench of the late Judicial Commissioner's Court of the Central Provinces and Berar in *Laxmi Prasad v. Purushottam* 28 Nag LR 169 : (AIR 1932 Nag 75), in the previous suit of the present plaintiff, following the decision of the Privy Council in *Sheo Singh v. Raghubans Kunwar* ILR All 634, in which the right of primogeniture expressly created by the sanad was held to prevail over the rule of inheritance under the Hindu Law. In that case, the question was whether the relations between the plaintiff and his tenants could be regulated by statute, e.g., the Central Provinces Land Revenue and Tenancy Act. The same question arose in

the case of Jagannath Baksh.

It was contended in both the cases that having regard to Section 3 of the Crown Grants Act, the Legislature had no power to determine the status and rents of tenants. This contention was repelled on the ground that the power of the Legislature to enact laws on subjects within its jurisdiction was not affected by Section 3 of the Crown Grants Act. It cannot, therefore, be contended that Section 3 of the Crown Grants Act bars the operation of the Revocation Act. The question that really arises is whether the State Legislature had the power to enact the Revocation Act without making a provision fixing for each resumption of muafi an amount of compensation or specifying the principles on which, and the manner in which, it is to be determined.

The Revocation Act deals with the subject of land revenue, which was wholly within the competence of the Provincial Legislature vide item 39 of List II, seventh schedule, of the Government of India Act, 1935, as it is now under item 45 of List II, seventh schedule, of the Constitution of India. In *The State of Bihar Vs. Sir Kameshwar Singh*, , their Lordships of the Supreme Court quoted with approval the following observations of the Judicial Committee in the case of AIR 1946 127 (Privy Council) :

"It is, however, desirable to examine the particular grounds on which it is sought to induce the Court to arrive at this paradoxical conclusion. Some of these are said to be based on the general principle of law that the Crown cannot derogate from Crown its own grant, others are said to depend on particular provisions of the Government of India Act. It has not been possible for the appellant to adduce any authority for the principle involved, which their Lordships apprehend to be that Parliament, whether Imperial, Federal or Provincial, is debarred from legislating so as to vary the effect of a Crown grant."

Their Lordships further added :

"The Crown cannot deprive a legislature of its legislative authority by the mere fact that in the exercise of its prerogative it makes a grant of land within the territory over which such legislative authority exists, and no Court can annul the enactment of a legislative body acting within the legitimate scope of its sovereign competence. If therefore it be found that the subject-matter of a Crown grant is within the competence of a provincial legislature, nothing can prevent that legislature from legislating about it, unless the Constitution Act itself expressly prohibits legislation on the subject either absolutely or conditionally."

To the same effect are their observations in *(S) Maharaj Umeg Singh and Others Vs. The State of Bombay and Others*, , as regards the legislative competence of the State Legislature under the Constitution of India, which, it was held, can only be circumscribed by express prohibition contained in the Constitution itself. The power to legislate on a subject includes the power to repeal or modify any previous law on the subject.

The words "notwithstanding anything in any grant, contract or law or rule or instrument" clearly show that the provisions in the Crown Grants Act cannot have effect to the extent they are modified by the Revocation Act. It must, therefore, be held that the power of the Provincial Legislature to enact the Revocation Act was unfettered by the terms and conditions of the transfer in plaintiff's favour and the inhibition, if any, must be found in the Government of India Act itself.

Section 299 of the Government of India Act, so far as it concerns this case, is reproduced below :

"299.--(1) No person shall be deprived of his property in British India save by authority of law,

(2) Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, x x x x x, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.

(3) No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue, shall be introduced or moved in either Chamber xxxx without the previous sanction of the Governor in his discretion.

(4) x x x x x x

(5) in this section "land" includes Immovable property of every kind and any rights in or over such property x x x x x x."

It was contended that exemption from payment of land revenue as a term of transfer of land by the Crown is a right in or over Immovable property and accordingly must be deemed to be land" within the meaning of Sub-section (2). In this view, it was urged that Section 3 of the Revocation Act must be held to contravene Section 299(2) of the Constitution Act as it does not provide for payment of compensation for acquisition of the right.

It may be conceded that Sub-section (3) is not an exception to Sub-section (2) of Section 299 of the Government of India Act -- it only provides how a Bill or amendment affecting the matters enumerated therein may be introduced in a Legislature. Therefore, if any law contravenes Sub-section (2), it would be void to the extent of the repugnancy, even if it satisfies the condition of Sub-section (3). The question, however, is whether a transferee of land from the Crown under a condition exempting him from payment of land revenue creates in him a right in or over Immovable property, and whether it should be deemed to be acquired when the Government removes the exemption.

A similar question arose before the Federal Court in AIR 1944 62 (Federal Court) , in which the Government had increased the assessment of land revenue

under the Central Provinces Revision of Land Revenue of Estates. 1939, in derogation of the terms of the Kabuliyats granted to the appellant at the time of the settlement. It was contended in that case that the appellant had a contractual and statutory right to hold the estates on the old amount of the land revenue during currency of the Settlement and enhancement of the assessment involved compulsory acquisition of his rights in the land. Spens C. J., who delivered the judgment of the Court, observed on this point as below :

".....the case of the appellant is based on the view that under the Settlement of 1921, the Act of 1917, the Kabuliyats and orders referred to, he enjoyed a "right" to hold his estates subject only to the payment of the amounts of takoli fixed in 1921 and that the increase of the amount of takoli so payable on his estate on a higher figure involves the acquisition from him of a right in or over Immovable property to the extent to which his position is made worse by the increase of the amount of takoli payable.

In our judgment, this view is misconceived. His rights over his land or his rights in or over his immovable property remain exactly the same; only his liability for payment of takoli is increased. It is, we think, impossible to hold that the mere increase, of an assessment for land revenue involves any acquisition of the land or any rights in or over immovable property.

It further seems to us that the word "acquisition" implies that there must be an actual transference of, and it must be possible to indicate some person or body to whom is or are transferred the land or rights referred to. It is impossible, in our view, to suggest that when the land revenue is increased, there is any transference to the Provincial Government or any other person of any land or rights in or immovable property, which remain in the same, possession or ownership as immediately before the increase of the assessment. In our judgment the attempt to bring the case within, Section 299(2) must fail."

This restricted view of the meaning of "acquisition" in Section 299(2) of the Government of India Act was referred to by their Lordships of the Supreme Court in *The State of West Bengal Vs. Subodh Gopal Bose and Others*, at p. 99 Pr. 15, and recently in *Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another*, at p. 788) : 1955-2 SCR 589 at p. 602, and appears to have been held as justified on account of the difference in the contents and context of Section 299 of the Government of India Act vis-a-vis the corresponding provision in Article 31 of the Constitution. The same principle must obviously govern the case of resumption of muafi as we see no difference between an agreement not to enhance the land revenue during a specified period and a covenant not to charge it indefinitely, so far as the question whether any right is created thereby in or over Immovable property is concerned.

A distinction must in this connection be drawn between the case of a proprietor entitled to recover customary or hereditary huq or dues from an under-tenure holder, and the case of Government entitled to recover land revenue from a

proprietor. In the former, a right is created in the proprietor, which amounts to an interest in immovable property. Such was the case in *Mahnana Fattehsangji Jawantsangji v. Dessai Kallian Raiji* 1 Ind App 34 , where the hereditary right to toda giras payable by an Inamdar to the Girasia proprietor was held to be an interest in Immovable property. In the latter, the right vests in the State and a liability is created in the proprietor. This was the view of Bose J. (as he then was) in *Kunwar Lal Singh v. Provincial Govt., Central Provinces and Berar* ILR 1944 Nag 180: (AIR 1944 Nag 201), with which we are in respectful agreement.

It was, however, urged that while the State may enhance or impose land revenue in the case of a gratuitous grant, its power must be held to be restricted where it transfers property for valuable consideration. Reference was in this connection made to the observations of Cooley on Constitutional Law, 4th Edition, on page 380, under the heading "Essential Powers of Government". The question before us, however, is not whether the State can derogate from its own grant, but whether a sovereign Legislature, acting within its legitimate powers of legislation, can enact a law varying or abrogating the grant, gratuitous or for consideration. This question has already been discussed above. Even the State, as observed by the learned author, cannot by contract bargain away any of the essential powers of sovereignty, including the right to appropriate private property to public uses under the eminent domain. We are, therefore, of the opinion that Section 3 of the Revocation Act is intra vires and the action of the State Government in resuming the muafi cannot be questioned, by the plaintiff.

The result is that the appeal is allowed, the decree of the lower Court is set aside and it is directed that the suit shall stand dismissed with costs of both the Courts on the plaintiff.