

(1980) 04 RAJ CK 0014

In the Rajasthan High Court

Case No : Special Appeal No's. 10, 15, 17 and 48 of 1970 and 292 of 1971

State of Rajasthan and Others

APPELLANT

Vs

Smt. Gayatri Devi and Others

RESPONDENT

Date of Decision : 02-04-1980

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 31B

Citation : AIR 1980 Raj 193

Hon'ble Judges : M.L. Shrimal, J;G.M. Lodha, J

Bench : Division Bench

Advocate : M.I. Khan, for the Appellant; H.P. Gupta and B.P. Agrawal, for the Respondent

Judgement

Shrimal, J.—These five appeals arise out of the same judgment and common questions of law are involved in them, as such they are being disposed of by a common judgment.

2. After the arguments were closed by both the parties and the judgment was being dictated, Mr. J.P. Joshi intervened and prayed for hearing. He states that he has a right to be heard, because the decision of these cases is likely to affect the interests of his client Maharaja Gaj Singh whose writ petition was also decided by the impugned judgment. He was, therefore, heard at length.

3. The Rajasthan Land Reforms and Acquisition of Land Owners' Estates Act, 1963 (Act No. 11 of 1964) (to be referred to hereinafter as "the Act") received the assent of the president on the 6th day of April, 1964 and was published in the Rajasthan Gazette, Part IV-A, Extraordinary dated April 13, 1964. It was passed in furtherance of the directive principles of State policy as embodied in Article 39 of the Constitution of India and in particular, Clauses (b) and (c) thereof, namely, 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 did not result in the concentration of wealth and means of production to the common detriment. The Act sought to achieve

this by acquiring landowners' estates in the State and distributing the same to the landless and other persons. This was attempted to be brought about by promulgating the Act.

4. The Scheme of the Act in a nutshell is that by Chapter II of the Act containing Sections 3 to 5 every estate was made liable to the payment of land revenue to the Government as from the 1st day of April, 1963. By Chapter III it made provision for acquiring Khatedari rights by all those persons who were recorded as tenants or tenants of Khudkasht. The estate holders were also declared Khatedar tenants. Chapter IV of the Act deals with acquisition of the estates. It vested a discretion in the Government to issue notification in the official Gazette appointing date for acquisition of landowners' estate in the State and for their vesting in the State Government. A Notification dated August 11, 1964 to that effect was published in the Rajasthan Gazette Part IV-C Ordinary dated August 13, 1964, which reads as under:--

"In exercise of the powers conferred by Section 7 of the Rajasthan Land Reforms and Acquisition of Landowners' Estates Act, 1963 (Rajasthan Act 11 of 1964) the State Government hereby appoints the 1st day of September, 1964 as the date for the acquisition and vesting in the State Government of the estates of all landowners situated anywhere in Rajasthan."

Under this notification the estate of the landowners stood vested in the State Government. Chapter V provides for the liability of the State Government to pay the compensation and Chapter VI provides the method of determination of compensation as well as the payment. Chapter VIII deals with delegation of powers to various officers to discharge the functions provided under the Act. The Schedule deals with principles governing determination of compensation payable to the landowner.

5. The Act was challenged by various writ petitions filed in this Court on the ground that its provisions violated Articles 14 19(1)(f) and 31 of the Constitution of India. A single Bench of this Court held that Chapters IV, VI and the Schedule to the Act, were ultra vires and violative of Articles 14 and 31 of the Constitution of India and any action taken under the Act to acquire the land will be deemed to be taken under the Act, which was not enforceable.

6. Being aggrieved with the declaration of Chapters IV and VI and the Schedule to the Act as void, the State Government has come up in appeal by filing special appeals Nos. 10, 15 and 17 of 1970, whereas H.H. Brijraj Singh and H.H. Maharaja Col. Bhawani Singh have come up in appeals against the same judgment, for getting the entire Act declared as void.

7. During the pendency of the appeal, the Act was amended vide the Rajasthan Land Reforms and Acquisition of Landowners' Estates (Amendment) Act, 1975 (Act No. .15 of 1975) (to be referred to hereinafter as "the Amendment Act"), which received the assent of the President on March 26, 1975. It was published in the Rajasthan Gazette Extraordinary Part IV-A dated March 26, 1975 at pp.

293 & 294. By this Amendment Act in the principal Act for the words "other measures of land reforms", the expression "other measures of agrarian reform, removal of intermediaries, allotment of land to landless persons, development of agriculture" were substituted and it was mentioned therein that these words shall be deemed always to have been substituted. Similarly in Section 2 of the Act the definition of "land" has been substituted. Chapter VI was also substituted and the Schedule annexed to the original Act was also substituted by the same Amendment Act. The Amendment Act has been given retrospective effect and all the amendments in the original Act have been introduced from the date of its inception i. e. from the date of coming into force of Act No. 11 of 1964. The Ninth Schedule to the Constitution was also amended and the Act No. 11 of 1964 has been included therein at entry 163. Vide 44th Amendment of the Constitution the property right has been abolished as a fundamental right.

8. In *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, Venkatarama Aiyer, J. speaking for the majority of the Court held as under:--

"In a Federal Constitution where legislative powers are distributed between different bodies, the competence of the Legislature to enact a particular law must depend upon whether the topic of that legislation has been assigned by the Constitution Act to that Legislature. Thus, a law of the State on an Entry in List I. Schedule VII of the Constitution would be wholly incompetent and void. But the law may be on a topic within its competence, as for example, an Entry in List II, but it might infringe restrictions imposed by the Constitution on the character of the law to be passed as for example, limitations enacted in Part III of the Constitution. Here also, the law to the extent of the repugnancy will be void. Thus, a legislation on a topic not within the competence of the Legislature and a legislation within its competence but violative of constitutional limitations have both the same reckoning in a court of law; they are both of them unenforceable. But does it follow from this that both the laws are of the same quality and character, and stand on the same footing for all purposes? This question has been the subject of consideration in numerous decisions in the American Courts, and the preponderance of authority is in favour of the view that while a law on a matter not within the competence of the Legislature is a nullity, a law on the constitutional prohibitions is only unenforceable. This distinction has a material bearing on the present discussion. If a law is on a field not within the domain of the Legislature, it is absolutely null and void, and a subsequent cession of that field to the legislature will not have the effect of breathing life into what was a still-born piece of legislation and a fresh legislation on the subject would be requisite. But if the law is in respect of a matter assigned to the Legislature but its provisions disregard constitutional prohibitions though the law would be unenforceable by reasons of those prohibitions, when once they are removed, the law will become effective without re-enactment."

9. The learned Judge drew support for this conclusion from Willoughby on the

Constitution of the United States, Vol. I, p. 11 and Cooley on Constitutional Law at p. 201, which reads as under:--

"a finding of unconstitutionality does not destroy the statute but merely involves a refusal to enforce it. In *Wilkerson v. Rahrer* (1890) 140 US 545: 35 Law Ed 572, the State of Kansas had enacted a law in 1889 forbidding the sale of intoxicating liquor. This was bad in so far as it related to sales in the course of inter-State trade, as it was in contravention of the Commerce Clause. But in 1890. the Congress passed a law conferring authority on the States to enact prohibition laws. The question was whether a prosecution under the law of 1889 in respect of a breach of that law subsequent to the Congress legislation in 1890 was maintainable. Repelling the contention that the statute of 1889 was a nullity when it was passed and could not be enforced without re-enactment, the Court observed:

"This is not the case of law enacted in the unauthorized exercise of a power exclusively confined to Congress, but of law which it was competent for the State to pass, but which could not operate upon articles occupying a certain situation until the passage of the Act of Congress. That Act in terms removed the obstacle, and we perceive no adequate ground for adjudging that a re-enactment of the State law was required before it could have the effect upon imported which it had always had upon domestic property."

10. In the *The State of Uttar Pradesh and Others Vs. H.H. Maharaja Brijendra Singh*, the respondent challenged the constitutionality of the U.P. Land Acquisition (Rehabilitation of Refugees) Act, 1948 by way of a writ petition to the High Court and though the Court dismissed the writ petition, it held that the provisions of Section 11 of the Act were invalid as they offended Section 299(2) of the Government of India Act. Subsequently the Constitution (Fourth Amendment) Act, 1955 included the U.P. Act in the Ninth Schedule as item 15. The State of U.P. contended that the inclusion of this Act in the Ninth Schedule protected it under Article 31B of the Constitution from any challenge u/s 299 (2) of the Government of India Act. The Court turned down the argument on behalf of the respondent that the amendment of the Constitution which came after the decision of the Allahabad High Court would not validate the earlier legislation which, at the time when it was passed was unconstitutional. Relying on the decision of the Supreme Court in *Saghir Ahmad Vs. The State of U.P. and Others*, it was said that the provisions of the Act have been specifically saved from any attack on their constitutionality as a consequence of Article 31B, read with the Ninth Schedule, the effect of which is that the Act cannot be deemed to be void or even to have become void on the ground of its being hit by the operation of the Government of India Act.

11. Keeping in view the above settled position of law as well as the 44th amendment in the Constitution the learned counsel appearing on behalf of respondents in Appeals Nos. 10, 15 and 17 of 1970 and for the appellants in Appeals Nos. 48 of 1970 and 292 of 1971 have submitted that after the

consideration of the changed position of law, the validity of this Act cannot be challenged on account of its inclusion in the Ninth Schedule. As regards the submission that in the changed circumstances of the case the consideration of the impugned judgment does not arise needs to be mentioned for being rejected.

12. We hold that on account of the Amendment Act No. 15 of 1975, which has been given retrospective effect and its inclusion in the Ninth Schedule, the validity of the original Act and the Amendment Act cannot be challenged and the appeals filed by the State Government must be accepted and the appeals filed by H.H. Brijraj Singh and H.H. Maharaja Col. Bhawani Singh must be dismissed without any costs.

13. Accordingly the judgment of the learned single Judge delivered in S.B. Civil Writ Petitions Nos. 1684 of 1964, 7 of 1965 and 1725 of 1964 is set aside. The Rajasthan Land Reforms and Acquisition of Land Owners' Estates Act, 1963 (Act No. 11 of 1964) as amended up to date is declared valid. The Rajasthan Land Reforms and Acquisition of Land Owners' Estates (Amendment) Act, 1975 (Act No. 15 of 1975) shall be deemed to have come into force since April 13, 1964 and the estates of the landowners shall be deemed to have vested in the State Government from September 1, 1964.

14. Before parting with these cases, we would like to observe that poverty is the most crucial problem of the country. Chronic poverty exists in rural India, where no less than 50 per cent of the population lives below the starvation level. The average per capita income there is not more than Rs. 300 per year. About 40 per cent of those engaged in agriculture have no land of their own. 60 per cent of the peasants own less than two acres or one hectare of land. It should not be forgotten that agriculture contributes about 50 per cent to the total national income. It provides 70 per cent of the population with livelihood. As early as on May 16, 1951, Pandit Jawaharlal Nehru, the then Prime Minister of this country in a debate on First Amendment Bill to the Constitution observed:--

".....a survey of Asia today will lead any intelligent person to swear that the basic and the primary problem is the land problem today in Asia, as in India. And every day of delay adds to the difficulties and dangers apart from being injustice in itself."

15. It is lamentable that the State Government and its authorities have been for about 16 years sleeping over this Act, which was basically introduced for the purpose of agrarian reform. Even after the coming into force of the Amendment Act No. 15 of 1975, they have not seriously endeavoured to get the cases decided and have been resorting to adjournments for one reason or the other. This exhibits a tragic state of affair and pathetic lethargy on the part of the State Government in implementing the land or agrarian reform by this legislation. What a poor homage the State functionaries are paying to Article 39 of the Constitution of India in a welfare State, committed to provide land to landless tillers?

16. It should not be given go-by that some of these landowners in expectation of the implementation of this Act might have resorted to part with their land holdings and transferring them piecemeal to other individuals, as Benami transactions on a very (large) scale with the result that the State Government may or may not be able to secure any land for being distributed amongst the poverty stricken people of this country. It is expected of a welfare State that the authorities concerned will be vigilant to give full effect to the provisions of this Act in accordance with the wishes of the legislators.

17. With these observations the special appeals were disposed of as indicated above. No order as to costs in the circumstances of the cases.