(1954) 09 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ Application No''s. 4/5 and 6/5 of 1953

Venkat Munga Bai and others APPELLANT

Vs

State of Hyderabad RESPONDENT

Date of Decision : 30-09-1954

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(f), 19(1)(f), 226, 31
Pensions Act, 1871 — Section 4

Citation : (1954) 09 AP CK 0018

Hon'ble Judges : Misra, C.J;Mohd. Ahmed Ansari, J

Bench : Division Bench

Advocate : Mir Akbar Ali Khan, Sadashiv Rao, Vinayakrao Vaidya, J.V. Narsing Rao and V.S. Ashoka, for the Appellant; N.S. Raghavan, Advocate General and Anant Saroop Choudhry for the State, for the Respondent

Final Decision : Allowed

Judgement

1. These two Writ applications filed under Art. 226 of the Constitution attack the constitutionality of the Hyderabad (Abolition of Cash Grants) Act, No. XXXIII of 1952, on the ground that it contravenes the fundamental rights of the petitioners enjoyed by them under Art. 14 and the mode prescribed for acquisition of property by Art. 31. The applicants further claim, that the Act is ultra vires inasmuch as it is not covered by the law-making power of the State as enumerated in Lists II and III of the seventh schedule of the Constitution.

2. According to the case set up by Venkat Munga Bai, petitioner in Writ Appln. No. 4/5 of 1953, her husband''s ancestors were the Sardeshmukhs and Desmukhs for collection of land revenue of certain areas and they were granted in lieu of their services the ''makhtas'', ''seriat'' (inam lands) and under grants by the Kutubshahi Rulers and the Mughal Emperors. She avers'' that the aforesaid grants were continued to them by the Nizams; that after the services of Sardesmukhs and Desmukhs relating to collection of revenues were dispensed with they were given fixed ''rusums'' or percentage of the revenues in

consideration of their investments and past services and that their right to receive these ''rusums'' from the lands in the ''Diwani'' (State lands) was recognised generation after generation by Inam Enquiry Commission on the death of each holder of the grant.

She claims that by the Sanad of Jamadi-us-sani 20, 1238 H. and later by an award her ancestors were given ever since the grant of village Vimalwarah as a jagir to the temple situated in that village 12? per cent, of the ''abwab'' (miscellaneous sources of income) of the temple; that the petitioner''s title to the ''rusums'' or cash grants was certified by the ''muntakhab'' (Inam Certificate) of Shehrewar 19, 1305 F., corresponding to 26-7-1896, and that though certain grantees are still in enjoyment of cash grants other than those mentioned in the Schedule appended to the Hyderabad (Abolition of Cash Grants) Act, her right the ''rusums'' specified in the aforesaid Schedule has been unconstitutionally taken away by the State under colour of the Act which according to her, as already stated, transgresses the petitioner''s fundamental right to hold property and is not only discriminatory as well as confiscatory in its character but also beyond the law making power of the State.

3. The case of Pandurang Rao, petitioner Writ Appln. No. 6/5 of 1953, is substantially the same. He claimed that his ancestors were Desmukhs and Deshpandyas of certain areas under the Sanads of the earlier Rulers of this State; that when the services of these officers were terminated they were granted certain percentages out of the revenue of the areas over which they had previously functioned; that the aforesaid ''rusums'' were given to the petitioner''s ancestors and were confirmed by the State from one generation to another; that the stoppage of cash grants without, compensation under colour of the impugned Act amounts to confiscation of property in contravention of Art. 31, and that the Act is discriminatory inasmuch as it operates to extinguish only some of the cash grants and leaves the others untouched. The petitioner died during the pendency of the application and his legal representatives, who were duly brought on the record, are now prosecuting the application.

4. The Hyderabad (Abolition of Cash Grants) Act came into force from 30-7-1952. It consists of five sections. Sections 2 and 3 and the Schedule appended to the Act have since been amended by the Hyderabad (Abolition of Cash Grants) (Amendment) Act, No. 23 of 1954, which came into force before the hearings of these Writ applications on 9-8-1954. These amendments, however, do not materially affect the petitioner''s contentions. Section 2(1) , as it stood initially, provided that the Act shall apply to 5 ''rusums'' enumerated in the Schedule, namely, the ''rusums'' enjoyed by Sardeshpandyas, Deshmukhs, Deshpandyas and Dastbandars. These are now classed as Part-A of the amended Schedule. Two further classes of ''rusums'' were added to the Schedule under the amendment and were placed in Part-B and C. By S. 3(1) all such cash grants payable during the financial year 1952-53 or in subsequent years were abolished, and they ceased to be payable from the date of the enactment.

Section 3 of the amending Act subsequently added a new sub-s. (2) to the existing S. 3. Under it cash grants specified in Part-B of the Schedule were abolished from 1-7-1954, subject to the compensations being paid in a lump sum or in annual instalments not exceeding twelve. This compensation was fixed at six times amount of the ''rusum'' payable to the grantee. The sub-section also provided that the cash grants included in newly added Part C of the Schedule shall be discontinued from 1-7-1954, but only in the case of such grantees whose ages on 1-4-1954, are less than 60 years and such grantees of this class as have attained sixty years on the aforesaid date shall continue to receive the ''rusums'' for their life time only. Sections 2 and 3 do not pretend to give any compensation in respect of the cash grants specified in the original Schedule which is now styled as Part A. It draws a distinction between the grantees of the classes enumerated in the present Act and those to whom it was extended by amendment. We need not refer in detail to Ss. 4 and 5 of the original Act which relate to the powers of the Government to frame rules and to remove difficulties.

5. The State maintains that the cash grants of the applicants were only gratuities, that even before the Act they were resumable by the State at its pleasure, and that their abolition does not amount to deprivation of property within the meaning of Art. 19(1)(f) or confiscation under Art. 31. It is also pleaded that the holders of ''rusums'' covered by Part A of the Schedule constitute a distinct and separable class and the abolition of their rights without compensation does not contravene the equality right conferred by Art. 14 of the Constitution.

6. The controversy resolves itself under two heads:

(i) Whether the ''rusums'' with which we are concerned, are covered by the word ''property'' as used in Art. 31 of the Constitution and were incapable of abolition without compensation; and

(ii) Whether their abolition falls within the inhibition Of Art. 14.

In the view that we take of these cases, the matter can be disposed of by the determination of the first point only and it is unnecessary to examine the parties'' submissions on second contention.

7. Before entering on the merits of the controversy we would like to give briefly the history of these grants. Prior to the Fasli year 1275 (1865-66 A.D.), the Hyderabad State was divided for the purposes of revenue administration into several ''Sarkars''; each ''Sarkar'' consisted of several ''Mahals'' and each ''Mahal'' of several ''Parganas'' and ''Pattis''. For the collection of the land revenue the ''Parganas'' were entrusted to the Deshmukhs and the ''Mahals'' to the Sardeshmukhs. The applicants allege that these Sardeshmukhs and Desmukhs had invested monies in the development of the areas and they had interests other than their shares in the collected revenues which were allowed to them by the State. For the purposes of determining whether or not these ''rusums'' which allowed a percentage of the revenue to the grantees constitute ''property'' and

attract to themselves the provisions of Art. 31, it is unnecessary to enter into the rights which might spring from the alleged investments on the improvements, for if the ''rusums'' cannot be classed as ''property'' it would be difficult to invest those ''rusums'' with the character of ''property'' merely because certain improvements were made in them during the period that the ''rusums'' were enjoyed by the grantees of the right.

The Sardeshpandyas and Deshpandyas constituted, as it were, the accounting branch ox the collection side of revenue administration of the areas entrusted to the Sardesmukhs and Desmukhs. They were entrusted with keeping accounts of all collections in the ''Parganas'' and were entitled to, as their remuneration, a fixed percentage of the revenue collections. This form of administration continued till 1282 H. (1864-65 A. D.), when Nawab Salar Jung introduced the system of Zillabandi or the divisions of the State into districts. Thereafter the collection of revenue and the maintenance of accounts were directly taken over by the Government, but the percentages given to the Desmukhs etc., were continued to them either in lieu of their past services or investments or both. The earlier ''rusums'' were thenceforward classified into 2 categories: those that were above 5 per cent and those that were below 5 per cent. The Desmukhs were allowed 5 per cent of the revenue receipt and the Deshpandyas 2? per cent. The recipients of the second category were allowed what they were already enjoying.

8. These new cash grants were treated by the revenue authorities and later accepted by law Courts as a class of Crown grants. The incidents of such grants, namely, their being non-alienable, non-justiciable and not-heritable became attached to the ''rusums'' also. As stated in -- ''Venkatrama Reddy v. Venkatdharma Rao''. 25 Deccan LR 318 (A), the cash grants to Sardeshmukhs and Deshpandyas had long been treated as Crown grants; they were terminable on the death of each grantee and could be given to the heirs at the sole discretion of the grantor. All grants were classified into those where the grantees had a life estate in land such as jagirs, and those other where cash alone was being received by the grantees. The ''rusums'' fell in this latter category and as they were Crown grants, they were subject to resumption at the pleasure of the Crown. If the Crown prerogatives disappeared with the introduction of the Constitution the right to resume the cash grants disappeared with them. The Advocate-General''s arguments overlook this aspect of the case. According to him prior to the commencement of the Constitution the resumption or the stoppage did not give rise to a cause of action enforceable in a Court of law and the immunity which the sovereign then enjoyed devolved on the State after the inauguration of the Constitution. It is said that the inams and "rusums'' were mere grants made by the sovereign and their continuance to the successor of the grantee postulated a fresh grant by the sovereign in the latter''s favour on the recommendation of the Atiyat Courts.

Reliance was placed in this connection on two Firmans of the Nizam. One of them dated Rabi-us-sani 5, 1347 H. (20-9-1928 A. D.), says that notwithstanding the principle upon which the Atiyat Courts Act the powers of the grantor to confer the grant on a person of his choice other than the lawful successor of the grantee are preserved. The other Firman dated Moharum 30, 1359 H. (10-3-1940 A. D.) reiterates the same principle. This basic conception of the grants has been recognized judicially and Courts of law have on that ground refused to entertain suits for deciding claims of rival successors to the inam lands. Reference may on this point be made to the case of -- ''East India Co. v. Syed Ali'', 7 Moo Ind App 555 (PC) (B), wherein it was laid down that the resumption by the Madras Government of a, jagir granted by the former Nawabs and re-grant of it to another for life was an act of sovereign power by the East India Company and it precluded the Supreme Court at Madras from taking cognizance of a suit by the heirs of the original grantee in respect of such resumption. Since the inauguration of the Constitution and the consequent disappearance of arbitrary power of the sovereign, the exercise of the grantor''s rights enjoyed by the Nizam is no longer permissible. As was held in - Virendra Singh and Others Vs. The State of Uttar Pradesh, the absolute ''Muafi'' grants by the rulers of the acceding States prior to the accession were not resumable by the Governor of the State into which the erstwhile territory of the rulers had been merged.

9. The Advocate-General tried to distinguish ''Virendra Singh''s case (C)'' on the ground that there the Government had resumed land tenures which on his submission stand on a different footing from the cash grants with which the Hyderabad Act is concerned. We find it difficult to appreciate the distinction. If the cash grants in favour of the applicants be held to be properties with which Question we shall presently deal, the stoppage of these grants would at once attract Art. 31 of the Constitution. It need hardly be emphasized that the word ''property'' occurring in that article is not confined to immovable property and resumption of land as well as cash grants without compensation would Be equally hit by it. The fact that the Supreme Court was concerned in the above case with the executive action of the State would also scarcely be a point of distinction since the constitutional injunctions contained in Art, 31 are equally binding on the legislature of the State. In our judgment the earlier rule which governed the resumption of the grants and which was closely associated with the personal prerogative of the Nizam is no longer available to the State and if the ''rusums'' with which we are concerned, constitute ''property'' within the meaning of Art. 31 relied upon by the petitioners, their resumption by the impugned statute must be held to be unwarranted.

10. For the contention that the cash grants were mere bounties which cannot be regulated by Art. 31, reliance was placed on behalf of the State on -- ''Vasudev Sadashiv v. Collector of Ratnagiri'', 4 Ind App 119 (PC) (D), where it was held that a suit to recover from the Government certain emoluments as the Desmukh did not lie as it was excluded under S. 4, Pensions Act, 1871. The case of -- Madhavrao Moreshwar Bhadanekar Vs. Secretary of State for India, was also cited for the proposition that the Courts were debarred from entertaining suits to recover emoluments of ''Sardesmukhi''. It appears to us that the mere disability

to get redress from a Court of law would not by itself justify our excluding cash grants from the ambit of ''property''. In ''In re Huggins'', (1882) 21 Ch D 85 (F), it was held that the pension of a retired Judge of a Crown Colony in case of the bankruptcy of the Judge is ''property'' which vested in the trustee in the bankruptcy.

The following observation of Jessel, M. R., at pp. 90 and 91 may be reproduced here:

........The mere fact that you cannot sue for the thing does not make it not property. I am not going to attempt to define ''property''; that would be too dangerous. But there can be no doubt that these foreign bonds both in common language and in the language of lawyers, are properties. Nor can I doubt that if a man had a bond for ? 10,000 of the British Government it would be property. The annuities which were granted by the Kings in England in former days, charged on the tonnage and poundage, were always dealt with as property, and they formed subject of numerous decisions of the Courts. But you could not sue the Crown for them, and they could not even be made the subject of petition of Rights because they were granted out of the voluntary bounty of the Crown. But still they were properties and they were assignable.

11. So also in -- ''Bank of N. S. W. v. Commonwealth'', (1948) 78 CLR 1 (G), Dixon J. says at page 349:

..........S. 51 (XXXI) is not to be confined pedantically to the taking of title by the Commonwealth to some specific estate or interest in land recognised at law or in equity, or to some specific form of property in a chattel or chose in action similarly recognised. But that it extends to in nominate and anomalous interests and includes the assumption and indefinite continuance of exclusive possession and control for the purposes of the Commonwealth of any subject of property.

12. In dealing with Art. 31 of the Constitution observations of similar nature have been made by the Supreme Court regarding the connotation of the word ''property''. We may mention here that co-extensive scope has been given to the expression ''property'' occurring in Art. 19 (1) (f) and Art. 31 and while discussing the former Article in -- The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., , Mukherjea. J., remarked that:

There is no reason why the word ''property'' as used in Article 19(1) (f) of the Constitution should not be given liberal and wide connotation, and should not be extended to those well recognised types of interests which have the insignia and characteristics of proprietary rights.

13. Likewise Ghulam Hasan J. in -- Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others, observed:

Having regard to the setting in which Art. 31 is placed the word ''property'' used in the Article must be construed in the widest sense as connoting a bundle'' of rights exercisable by the owner in respect thereof and embracing within its purview both corporeal and incorporeal rights. The word ''property'' is not defined in the Constitution and there is no good reason to restrict its meaning.

It cannot be denied that the cash grants which the applicants received prior to their stoppage, had the essential characteristics of proprietary rights. After 1865 they were no longer burdened by any condition of service and the rights between them and their co-sharers were often adjudicated upon by our Courts of law.

There is the further fact that important legal changes in the character of the rights which were favourable to the grantees, were made by the Hyderabad Atiyat Enquiries Act, 10 of 1952, which came into operation on 14-3-1952, i.e., prior to the enforcement of the impugned Act. Section 3 of the former Act provides that all Atiyat grants held prior to the commencement of the Act shall continue to be held by the holders and after them by their successors, but subject to the conditions in their ''mantakhabs'' or Inam Certificates. The phrase ''holder of an Atiyat grant'' was defined by S. 2(1) (a) of the Act as a person actually holding the grant and the phrase ''holding the grant'' was, further defined as in enjoyment of the grant. Thus after the Act and as a direct result of it the cash grants enjoyed by the applicants ceased to be terminable on death of the holder and the attribution of heritable property attached to them. The succession was thereafter by force of S. 7 governed by personal law of the holder and we are unable to conceive how in these circumstances the grants can be deemed to be personal or otherwise than heritable. No doubt S. 5 preserves to the Government the right to resume the grants, yet it makes such a right exercisable only in the prescribed manner. It is true that these ''rusums'' under the Enquiry Act were still inalienable, but so are the shares of a coparcener in joint family under the Hindu Law as admitted in Bengal and Uttar Pradesh. The elements of hereditability and enjoyment of the benefit without any rendition of services seem to us to be sufficient insignia of property to invest the cash grants with the characteristic of ''property'' as used in Art. 31.

14. The Advocate-General at the time of the hearing of these applications tried to urge that the impugned Act was passed in exercise of powers under item 42 of List II of the Seventh Schedule. The legislative competency under item 42 is of course subject to the guarantees contained in Part III of the Constitution and the deprivation of property must, therefore, be subject to the payment of compensation under Art. 31: See in this connection the majority view of their Lordships of the Supreme Court in -- The State of West Bengal Vs. Subodh Gopal Bose and Others, , and in Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others, In the Bengal case it was laid down that it is the legislature alone that can interpose and compel the individuals to part with their property and the limitation which the framers embodied in Cl. (1) and Cl. (2) of Art. 31, imposes two further limitations on the legislature, namely, that the expropriation must be for public purposes and it cannot be made except on payment of compensation for the injury sustained by the owner. They further

held that these important limitations on the power of the State acting through the executive and legislative organs are designed to protect the owner against arbitrary deprivation of property. Clauses (1) and (2) are not mutually exclusive in scope and content, but should be read together and be understood as dealing with the same subject, viz., the protection of the right to property by imposition of limitations on the State power.

In -- ''Dwarka Das''s case (I)'', Mahajan J., had occasion to observe that Art. 31 gives complete protection to owners of properties and by virtue of it no person can be deprived of possession of property without payment of compensation and that too if there was a public purpose behind the action. Bose, J., also held that the ''possession'' and ''acquisition'' referred to in Cl. (21 mean the sort of possession and acquisition that amounted to deprivation of property within the meaning of Cl. (1). He added that no hard and fast rule can be laid down, that if there is substantial deprivation then Cl. (2) is attracted, and that by substantial deprivation is meant the sort of deprivation which substantially robs a man of those attributes of enjoyment which normally accompany rights to property. So also Ghulam Hasan J. held that Art. 31(1) and (2) should be read together as embodying a categorical declaration regarding the right of a citizen to own and possession of property. He further held that when it can be shown that the statute substantially interferes with the right of enjoyment of property it will be hit by Art. 31(2) in absence of a provision for compensation.

15. From what has been said above, it must be held that expropriation of properties of all kinds has under the Constitution been made subject to the payment of compensation and it is immaterial whether the property is movable or immovable. The absence of any compensation in S. 3 (1) of the impugned Act is in our judgment, fatal to its constitutionality. We hold accordingly. As already mentioned this sub-section only covers cash grants mentioned in Part-A of the Schedule which includes the ''rusums'' payable to Sardesmukhs, Deshmukhs, Sardeshpandyas and Deshpandyas.

16. As stated above, in view of our decision on the first point, it is unnecessary to enter on examination of the second ground of invalidity based on Art. 14.

17. We allow the applications and declare that the applicants shall be entitled to receive the ''rusums'' which were stopped by S. 3, sub-sec. (1) of the aforementioned Act. The petitioners will get costs of these applications from the respondents which for the purposes of these cases are assessed at Rs. 50 in each application.

18. This judgment will govern both petitions.