Shri Kishan Singh and Others

Vs

The State of Rajasthan and Others

Petitions Nos. 621, 655 and 678 of 1955

(CJI S. R. Dass, Sayed Jafar Imam, T. L. Venkatarama Ayyar, N. H. Bhagwati, N. Chandrashekar Aiyar JJ)

27.09.1955

JUDGMENT

VENKATARAMA AYYAR J. -

These are applications under article 32 of the Constitution by certain jagirdars of Marwar, challenging the constitutionality of sections 81 to 86 of the Marwar Land Revenue Act No. XL of 1949 (hereinafter referred to as the Act) on the ground that they infringe the fundamental rights of the petitioners under article 14, article 19(1)(f) and article 31(2) of the Constitution. These sections provide for fixing fair and equitable rent payable by the tenants and prescribe the procedure to be followed therefore. Section 81 of the Act provides that when any local area has been brought under settlement operations by a notification under section 64, the Settlement Officer or an Assistant Settlement Officer shall inspect every village in the local area, divide it into-soil-classes and assessment circles, select rent-rates for the area and publish them in such manner as may be prescribed. If objections to these proposals are received, he has to consider them, and submit his report to the Board of Revenue. The Board has the power to sanction the proposals with or without any modifications, and it has also the power to direct further enquiry into the matters. With a view to arriving at fair and equitable rates, the Settlement Officer is required under section 82 to have regard to the collection of rent and cesses in the nature of rent during the ten years preceding the settlement excluding such years as the Government may, by notification in the Official Gazette, declare to be abnormal, the average of the prices of agricultural produce during the same period, the nature of the crops grown and the quantity of the produce and their value. Section 82(2) provides that the rent rates shall not exceed one-third of the value of the produce of unirrigated lands and one-fourth of the value of the produce of irrigated lands. Under section 84, the Settlement Officer shall determine rents whether by way of abatement, enhancement or commutation payable for all holdings in the occupation of tenants on the basis of the rates sanctioned by the Board of Revenue. Section 86 enacts that any rent fixed by order of the Settlement officer shall be payable from the first day of July next following the date of such order, "unless the Settlement Officer thinks fit for any reasons to direct that it shall be payable from some earlier date."

Acting under section 81 of the Act, the Settlement Officer formulated certain proposals with reference to the rent rates in the villages comprised in the jagirs of the petitioners, and they were published in the Gazette on 12th December, 1953. Objections to those rates were filed by the petitioners on the 12th January, 1954. On 13th October 1954 the Additional Settlement Commissioner submitted his final proposal to the Settlement Officer, who forwarded the same to the Board of Revenue for sanction. After making further enquiry, the Board passed an order on 4-12-1954 determining the rent rates payable. Subsequent to this, an order was also passed under section

86 of the Act bringing the sanctioned rate into operation from 1-7-1954. This order is not itself the subject of attack in these proceedings, and it cannot be, seeing that Petition No. 621 of 1954 was filed on 24th November 1954 before that order was passed, and Petitions Nos. 655 and 678 of 1954 merely repeat verbatim the allegations in Petition No. 621 of 1954. Before us, the petitioners conceeded that they were not impugning the correctness of the order passed under section 86 in so far as it give operation to the rates of rent from 1st July, on its merits, but that they were attacking the section as bad only as a step in establishing that the scheme of the Act, of which section 86 is an integral part is, taken as a whole, an infringement of their fundamental rights under article 14, 19 and 31(2). We have now to consider whether sections 81 to 86 of the Act are bad as infringing the above provisions of the Constitution.

The contention that sections 81 to 86 of the Act are void as being repugnant to article 14 is sought to be made out on two grounds. It is stated firstly that the Act applies only to what was prior to its merger the State of Marwar, that the present State of Rajasthan comprises Marwar, and 17 other States which have merged in it, and that as the Act, as it stands, is directed against the jagirdars in one area of the State and not the whole of it, it has become discriminatory and void. This contention is clearly untenable. What article 14 prohibits is the unequal treatment of persons similarly situated, and therefore before the petitioners can claim the protection of that article, it is incumbent on them to establish that the conditions which prevail in other areas in the State of Rajasthan are similar to those which obtain in Marwar. But of this, there has been neither allegation nor proof. On the contrary, it is stated by the respondents in para 10 of their statement that the tenants in the jagirs of Marwar were paying much more by way of rent and that cesses than those in the Khalsa area of the State, that with a view to remove the inequality between the two classes of tenants within the State, a law was passed in 1943 providing for settlement of rent, and that again on 10-1-1947 another law was passed abolishing all cesses (lags) and fixing the maximum share of rent payable in kind. These special features, it is argued, form sufficient justification for a separate legislation for this area. It is also stated that the other States had their own rent laws suited to their conditions. There are no materials on which we could hold that the impugned Act is discriminatory in character, and we cannot strike it down merely on the ground that it does not apply to the whole of the State of Rajasthan.

A similar question arose for decision in Bowman v. Lewis ([1879] 101 U.S. 22 : 25 Law. Ed. 989). There, some of the areas in the State of Missouri were governed by a judicial procedure different from that which prevailed in others. Repelling the contention that this differentiation offended the equal protection clauses of the Fourteenth Amendment, the Court observed :

> "Each State has the right to make political sub-divisions of its territory for municipal purposes, and to regulate their local government. As respects the administration of justice, it may establish one system of courts for cities and another for rural districts; one system for one portion of its territory and another system for another portion. Convenience, if not necessity, often requires this to be done, and it would seriously interfere with the power of a State to regulate is internal affairs to deny to it this right.....
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> If a Mexican State should be acquired by a treaty and added to an adjoining State or part of a State in the United States, and the two should be erected into a new State, it cannot be doubted that such new State might allow the Mexican laws and judicature

> to continue unchanged in the one portion and the common law and its corresponding judicature in the other portion. Such an arrangement would not be prohibited in any fair construction of the Fourteenth Amendment. It would not be based on any respect of persons or classes, but on municipal considerations alone and a regard to the welfare of all classes within the particular territory or jurisdiction".

This Court has also repeatedly held that classification might properly be made on territorial basis if that was germane to the purposes of the enactment. Having regard to the fact that the conditions of tenants vary from locality to locality, we have no hesitation in holding that a tenancy legislation restricted to a portion of a State cannot be held on this ground alone to contravene article 14.

The second ground urged in support of the contention that article 14 has been infringed is that discrimination must result from the settlement of rent being taken up only with reference to portions of the area to which the Act applies and not to the whole of it, because the rent is to be fixed on the basis of the average of the ten years preceding the settlement; and if the proceedings are stared for different areas on different dates, that might result in different rates being fixed, and that would make for inequality such as is prohibited by article 14. We are unable to agree with this contention. Settlement operations can be conducted only by a specialised staff having technical knowledge and administrative experience, and it might be beyond the capacity of the State to undertake them for the whole area at one and the same time. To accede to the contention of the petitioners would, in effect, be to prevent the States from carrying on settlement operations. It was held by this Court in Biswambhar Singh v. The State of Orissa and others ([1954] S.C.R. 842, 845) and in Thakur Amar Singhji v. State of Rajasthan ([1955] 2 S.C.R. 303) that a provision authorising the taking over of estates on different dates was not repugnant to article 14, and the principle of those decisions would apply to the present case as well. The contention that the impugned provisions are in contravention of article 14 must, therefore, be rejected.

It is then contended that the provisions in question are repugnant to article 19(1)(f) of the Constitution, because they deprive landlords of their right to realise rents from the tenants freely and without hindrance, and are an encroachment on their right to hold property. The provision in section 82 that the Settlement Officer should, in determining the average collection for the previous ten years, exclude from considerations abnormal years as notified by the Government was particularly attacked as a device to reduce the rent payable to the landlord and an invasion of his rights to the property. We are unable to agree with this contention. The fundamental right which a citizen has to hold and enjoy property imports only a right to recover reasonable rent when the lands are cultivated by a tenant, and therefore a legislation whose object is to fix fair and equitable rent cannot be said invade that right. The contention that the provision in section 82(1)(a) that abnormal years as notified in the Gazette should be excluded in determining average collections is calculated to reduce the rent, and is therefore unreasonable is unfounded, because a declaration that a year is abnormal is made not only when there are bumper crops but also when the yield is very low, and the provision is intended equally for the benefit of the tenant and of the landlord. A provision of this kind is usual in all tenancy legislation, and there is nothing unreasonable or unfair about it.

It was next contended - and this was the contention most pressed on us - that section 86 is bad as it confers on the Settlement Officer a power to bring the rent rates into operation from a date earlier than the succeeding year and even retrospectively from a date prior to the settlement, and that such a power was repugnant to both article 19(1)(f) and article 31(2). The argument with reference to Article 19(1)(f) is that section 86 is an encroachment on the rights of a person to hold property, and can be valid only if it falls within article 19(5), that it is only a law of a regulatory character that is

protected by article 19(5), that there could be regulation only with reference to rights to be exercised in future, and that a law giving retrospective operation is consequently outside article 19(5). This contention rests on an assumption for which there is no basis. The question whether a law is valid under article 19(5) can arise only when there is a violation of the fundamental right declared in article 19(1)(f), and if the right to hold property imports, as we have held it does, only a right to recover reasonable rent from cultivating tenants, that right cannot be held to have been invaded by a law fixing reasonable rent, even when it is retrospective in operation. If the rent fixed is reasonable with reference to a period subsequent to the settlement, it must be reasonable for the period prior to it as well, and if the settlement is not an encroachment on the rights of the holder as regards the future - and that is conceded - it cannot be encroachment as regards the past. A consideration, therefore, of the question whether a law under article 19(5) should be regulatory, and whether a law with retrospective operation could be said to be regulatory would be wholly irrelevant for the purpose of the present controversy.

The argument in support of the contention that section 86 is repugnant to article 31(2) is that to the extent that it gives retrospective operation, it deprives the landlord of the right to rent which had accrued prior to the settlement, and that is taking property without payment of compensation. But it is well settled that a law which regulates the relation of landlord with his tenant is not one which takes property within article 31(2), even though it has the effect of reducing his rights. In Thakur Jagannath Baksh Singh v. United Provinces ([1943] 6 F.L.J. 55; A.I.R. 1943 F.C. 29), the question arose for decision whether the provisions of Act XVII of 1939, United Provinces, under which the rent payable to a landlord became diminished were obnoxious to section 299(2) of the Government of India Act, 1935. It was held by the Federal Court that they were not, and in affirming this decision on appeal, the Privy Council in Thakur Jagannath Baksh Singh v. United Provinces ([1946] L.R. 73 I.A. 123) observed :

> "The appellant relies on certain express provisions of the Government of India Act. Thus he relies on section 299 of the Act, which provides that no person shall be deprived of his property in British India save by authority of law, and that neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition of land for public purposes save on the basis of providing for the payment of compensation. But in the present case there is no question of confiscatory legislation. To regulate the relations of landlord and tenant and thereby diminish rights, hitherto exercised by the landlord in connection with his land, is different from compulsory acquisition of the land".

It was finally urged that section 86 in so far as it conferred authority on the Settlement Officer to give retrospective operation to the rent rates was bad, because the exercise of that authority was left to his arbitrary and uncontrolled discretion, that the Act laid down no rules and prescribed no conditions under which the discretion had to be exercised, and that the power conferred in those terms must be held to be unconstitutional. The decision in Thakur Raghubir Singh v. Court of Wards, Ajmer and another ([1953] S.C.R. 1049) was relied on, in support of this contention. There, the question was as to the validity of a power conferred on the Court of Wards to take over the management of an estate "if a landlord habitually infringes the right of a tenant". Under the Act, the decision whether the condition aforesaid was satisfied depended on the subjective satisfaction of the Chief Commissioner, and that was final and not liable to be questioned in civil courts. It was held that a power which could be exercised at the absolute discretion of the authority was an encroachment on the rights of a citizen to hold property under article 19(1)(f), and that it was not saved by article 19(5). But, in the present case, section 86 of the Act expressly lays down that if a

Settlement Officer decides to bring rates into operation from a date earlier than the following 1st of July, it must be for reasons. There is no force in the contention that section 86 does not lay down under what circumstances such an order could be passed, because the very nature of the thing requires that a large discretion should be left to the authority. Discretion which is wide is not necessarily arbitrary. It was said that under section 233 of the Act the civil courts are debarred from enquiring into the reasonableness of the order; but that is because matters concerning revenue and settlement are within the exclusive jurisdiction of revenue courts, and under section 62 of the Act, the Board of Revenue has revisional jurisdiction over all orders passed in connection with settlement. We think that the power conferred on the Settlement Officer to fix an earlier date for giving operation to the rent rate is reasonable and valid, and that it invades no fundamental rights of the landlord.

For the reasons given above, we must hold that the scheme embodied in sections 81 to 86 of the Act does not transgress any of the Constitutional limitations, and is valid.

In the result, the petitions are dismissed but in the circumstances, without costs.

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