Jagannath Behera and Others

Vs

Raja Harihar Singh Mardaraj Bhramarbara Roy

Civil Appeal No. 309 of 1955

(N. H. Bhagwati, B. P. Sinha, Syed Jafar, J. L. Kapur, P. B. Gjendragadkar JJ)

06.12.1957

JUDGMENT

BHAGWATI J. -

This appeal with a certificate under Arts. 132 and 133(1)(c) of the Constitution arises out of a writ petition filed by the respondent in the High Court of Orissa under Art. 226 seeking to quash the proceedings taken by certain tenants of his private lands under the provisions of the Orissa Tenants' Protection Act, 1948 (Orissa III of 1948), hereinafter referred to as the 1948 Act.

The respondent was the ruler of the erstwhile Khandapara State which merged with the Province of Orissa under the States' Merger (Governor's Provinces) Order, 1949 with effect from August 1, 1949. The respondent had on December 14, 1947 entered into an agreement with the Governor-General of India art. 3 whereof provided that :

> "The Raja shall be entitled to full ownership, use, and enjoyment of all private properties (as distinct from State Properties) belonging to him on the date of the agreement."

That article further provided that if any dispute arose as to whether any item of property was the private property of the Raja or State property, it shall be referred to such officer with judicial experience as the Dominion Government might nomininate and the decision of that officer shall be final and binding on both parties. The respondent claimed a number of properties and the matter was referred to the Adviser for Orissa States for determining whether all the items claimed by him could be regarded as his private properties. On June 10, 1949, the Adviser communicated his decision that the respondent was entitled to 1,643 acres as his Khamar lands and 29 and odd acres as lands settled with his tenants. The lands comprised in the present proceedings taken under the 1948 Act as aforesaid were declared to be the private properties of the respondent.

On March 3, 1950, the Orissa Legislature passed the Orissa Merged States' (Laws) Act, 1950 (Orissa IV of 1950) hereinafter referred to as "the 1950 Act". Section 4 of that Act extended inter alia the 1948 Act to the areas merged in the absorbing Province of Orissa. Section 7 provided for the modification of tenancy laws in force in the merged States. The relevant provisions of that section so far as they are material for the purposes of this appeal may be set out herein :

> "Notwithstanding anything contained in the tenancy laws of the merged States as continued in force by virtue of article 4 of the States Merger (Governor's, Provinces) Order, 1949 :

(a) all suits and proceedings between landlord and tenant as such shall be instituted and tried in revenue courts.

Explanation : In this clause the expression "landlord" shall mean a person immediately under whom a tenant holds land, and the expression "tenant" shall mean a person who holds land under another person and is or, but for a special contract, would be liable to pay rent for that land to that person :

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(h) when a person holds Khamar, nij-jote or any other private lands of a Ruler, which has been recognised as such by the Provincial Government, he shall not be liable to ejectment but shall be liable to pay such fair and equitable rent as may be fixed by any competent authority appointed in this behalf by the Revenue Commissioner or the Commissioner, Northern Division, as the case may be and thereupon he shall acquire right of occupancy in respect of such lands :"

On April 14, 1951, the State Legislature passed the Orissa Tenants Protection (Amendment) Act, 1951 (Orissa XVII of 1951) whereby the date the "1st day of September, 1947" wherever it was used in the 1950 Act, was substituted by the "1st day of August, 1949" for the purposes of the merged States areas and it was further provided that in such areas where neither the Madras Estates Land Act, 1908, nor the Orissa Tenancy Act, 1913 was in force the special laws or customs prevailing therein shall be taken into consideration for the application of that Act.

It appears that certain tenants who were in occupation of the private lands of the respondent were evicted by him during the year 1951 and other tenants were inducted by him and put in possession of the lands. The tenants who were thus evicted applied to the Revenue Officer some time in 1952 for being restored to possession of their tenancy lands under the provisions of the 1948 Act, alleging that the respondent was their landlord and that he had unlawfully evicted them from their lands. These were numbered as O.T.P. Act Cases Nos. 21 to 25 of 1952, 26 to 28 of 1952, 29 to 32 of 1952 and 33 to 41 of 1952. Notice was issued to the respondent but it appears that he did not care to enter appearance before the Revenue Officer or to contest the applications. On the ex parte evidence of the Applicants the Revenue Officer directed restoration of possession to them holding that they were in possession of the lands as tenants on the 1st day of August, 1949, and as such were entitled to the benefits conferred by the 1948 Act, as amended in its application to the merged States.

The respondent thereupon filed a writ petition under Art. 226 of the Constitution in the High Court seeking to quash the entire proceedings on the ground that in respect of the disputed lands he was not a "landlord" within the meaning of the 1948 Act. The petition as filed averred that the fundamental right conferred upon the respondent by Art. 19 of the Constitution was infringed, that the provisions of the 1948 Act which were inconsistent with that article were void as being ultra vires the Constitution and the orders passed thereunder by the Revenue Officer were illegal and liable to be set aside.

This petition was filed by the respondent on August 11, 1952. A further petition was thereafter filed on February 26, 1953 invoking art. 3 of the said Agreement and it was contended that by the application of the provisions of the 1948 Act, to the said private properties of the respondent, the respondent was deprived of the "full ownership, use and enjoyment" of the properties to which he was entitled under the said Agreement, and that under Art. 363 of the Constitution, no Court had jurisdiction to deal with any dispute arising out of any provisions of the said Agreement. The

decision of the Revenue Officer was thus called in question and it was contended that he had no jurisdiction to decide the dispute as to whether the tenants had any right to the dispute as to whether the tenants had any right to the personal properties of the respondent and as such the proceedings were liable to be quashed as being without jurisdiction.

The High Court accepted these contentions of the respondent and allowed the writ petition. It accordingly directed the issue of a writ declaring that the proceedings under the 1948 Act taken by the Revenue Officer were void as being without jurisdiction and that they should be quashed.

The tenants then filed an application before the High Court asking for a certificate under Arts. 132 and 133(1)(c) of the Constitution which was granted by the High Court. The State of Orissa asked for leave to intervene in the appeal which leave was granted by this Court and the learned Solicitor-General has appeared before us in support of the appeal, both on behalf of the tenants who are the appellants herein, and the State of Orissa, the Intervener.

It may be noted at the outset that no question has been raised in regard to the vires of the 1950 Act, which extended inter alia the 1948 Act to the areas merged in the absorbing Province of Orissa. That being so, s. 7(h) of the 1950 Act in terms would apply to the appellants before us and they would not be liable to ejectment.

The answer of the respondent, however, is that (1) the Revenue Court had by virtue of Art. 363 of the Constitution no jurisdiction in the disputes between the appellants and him arising out of the provisions of the said Agreement dated December 14, 1947, (2) that the full ownership, use and enjoyment of the properties which was guaranteed to him under art. 3 of the said Agreement was affected by the application of the provisions of the 1948 Act, to the said lands and (3) that, he was not a "landlord" and the appellants were not the "tenants" within the meaning of the terms as defined in the 1948 Act, and, that in any event, these lands were not recognised as such by the Provincial Government which recognition was a condition precedent to the application of s. 7(h) of the 1950 Act to these lands and that therefore the appellants were not entitled to the protection thereof.

The first two contentions are inter-related and can be disposed of together. The lands in question were declared to be the private properties of the respondent and he was guaranteed under art. 3 of the said Agreement full ownership, use and enjoyment the thereof. Article 363 only ousted the jurisdiction of the courts in regard to the disputes arising out of any provisions of the Agreement entered into by the Rulers of Indian States with the Government of India. The dispute which had arisen between the appellants and the respondent in the present case could hardly be said to be a dispute arising out of any provisions of the said Agreement. The full ownership, use and enjoyment of the properties which were declared to be enjoyment of the properties which were declared to be the private properties of the respondent was not sought to be affected by extending the 1948 Act, to the merged State of Khandapara. The properties which had been declared to be the private properties of the respondent were not claimed as State properties but the whole legislation proceeded on the basis that the respondent was the owner of these properties wherein he had inducted tenants and what was sought to be done was to enact a measure for the protection of those tenants. A measure for the protection of the tenants inducted by the respondent could hardly be said to affect the full ownership, use and enjoyment of these properties by the respondent. It no doubt imposed certain restrictions on the absolute rights which the respondent claimed in regard to the user and enjoyment of the said properties; but these measures were imposed upon him in common with all the citizens of the Union and the justification for the same could be sought under cl. 5 of Art. 19 of the Constitution.

Similar contentions which had been raised on behalf of the erstwhile Rules, whose States had merged with the Provinces, were answered by this Court in The State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga [[1952] S.C.R. 889, 915] and in Visweshwar Rao v. The State of Madhya Pradesh [[1952] S.C.R. 1020, 1041, 1054]. Patanjali Sastri C.J. observed in the former case at page 915 :

> "But a short and obvious answer is that there was no contravention of any guarantee or assurance given by the Government under the covenant of merger, as the estates in question are sought to be acquired only as the "private property" of the Rulers and not otherwise. The compensation provided for, such as it is, is in recognition of their private proprietorship, as in the case of any other owner."

Mahajan J. (as he then was) observed in the latter case at page 1041 :

> "It is true that by the covenant of merger the properties of the petitioner became his private properties as distinguished from properties of the State but in respect of them he is no better position than any other owner possessing private property. Article 362 does not prohibit the acquisition of properties declared as private properties by the covenant of merger and does not guarantee their perpetual existence. The guarantee contained in the article is of a limited extent only. It assures that the Rulers' properties declared as their private properties will not be claimed as State properties. The guarantee has no greater scope than this. That guarantee has been fully respected by the impugned statute, as it treats those properties as their private properties and seeks to acquire them on that assumption. Moreover, it seems to me that in view of the comprehensive language of article 363 this issue is not justiciable."

Das J. (as he then was) also observed in that case at page 1054 :

> "The guarantee or assurance to which due regard is to be had is limited to personal rights, privileges and dignities of the Ruler qua a Ruler. It does not extend to personal property which is different from personal rights. Further, this article does not import any legal obligation but is an assurance only. All that the covenant does is to recognise the title of the Ruler as owner of certain properties. To say that the Ruler is the owner of certain properties is not to say that those properties shall in no circumstances be acquired by the State. The fact that his personal properties are sought to be acquired on payment of compensation clearly recognises his title just as the titles of other proprietors are recognised."

It is clear therefore that neither Art. 363 nor Art. 362 of the Constitution would avail the respondent and the courts would have jurisdiction to entertain the dispute between the appellants and him which arose out of his action in ejecting them from his private lands. The provisions of the said Agreement only protected his rights in the properties declared to be his private properties so that they could not be claimed at any time thereafter as State properties. The 1948 Act did not dispute his ownership over the same but proceeded on the basis that they were his private properties and sought to impose upon him certain obligations in order to protect the rights of the tenants whom he had inducted therein and there was no infringement of the guarantee or assurances which had been given to him under art. 3 of the said Agreement. It could not also be urged that by imposing reasonable restrictions in the interests of the tenants on his right to acquire, hold and dispose of properties under cl. 5 of Art. 19 of the Constitution, the 1948 Act affected his rights of full ownership, use and

enjoyment of those properties. If anything was done by extending the 1948 Act to the merged State of Khandapara, it was done in the interests of the tenants and it was done for the protection of the tenants who were inducted by him and such restrictions did not affect the full ownership, use and enjoyment of his private properties, any more than they did in the case of other owners of lands. As a matter of fact, under the terms of the 1950 Act which extended the 1948 Act to the merged State of Khandapara, he was entitled to the payment by the tenants of such fair and equitable rent as may be fixed by any competent authority appointed in this behalf by the Revenue Commissioner or the Commissioner of the Northern Division as the case may be and so long as the tenants continued to pay such rent he was no worse off than were other proprietors of lands. The tenants would no doubt acquire rights of occupancy in respect of such lands but the acquisition of the occupancy rights by the tenants would not be calculated to affect his right to full ownership, use and enjoyment of his lands, because he would be entitled to eject the occupancy tenants also if the tenants used the lands comprised in their holdings in any manner which rendered them unfit for the purposes of the tenancy or committed a breach of conditions consistent with the provisions of the tenancy laws in force in the merged State concerned on breach whereof they were under the terms of the contract between themselves and the landlord liable to be ejected. As already stated these restrictions were for the protection of the tenants who were inducted on the lands by the erstwhile Rulers themselves and by the extension of the 1948 Act to the merged State of Khandapara, the respondent was treated in the same manner as any other citizen of Union. If at all there was any infringement of his rights to full ownership, use and enjoyment of his properties that was also in accordance with the provisions of the Constitution itself and whatever may have been the guarantee or assurance given to him under the terms of the said Agreement, it could not be absolute but would only be co-extensive with the right to acquire, hold and dispose of property which is guaranteed to all the citizens of the Union under Art. 19(1)(f) of the Constitution. These contentions of the respondent therefore are of no avail.

If, then, the provisions of the 1950 Act could be validly applied to the merged State of Khandapara in spite of art. 3 of the said Agreement thus attracting the operation of the 1948 Act to his private lands it remains to consider whether the respondent was a landlord and the appellants were his tenants within the meaning of the terms as defined in that Act.

The contention of the respondent, in the first instance, is that under the terms of s. 2(ii) of the Orissa Tenants Protection (Amendment) Act, 1951 (Orissa XVII of 1951) which added sub-s. 5 to s. 1 of the 1948 Act, in such areas where neither the Madras Estates Lands Act, 1908, nor the Orissa Tenancy Act, 1913, was in force - and the State of Khandapara, was such an area - the special laws or customs prevailing therein shall be taken into consideration for the application of that Act. It is urged that the relationship between the respondent and the tenants whom he had inducted on his private properties was governed by special laws and customs and that therefore the application of the Act was excluded. It is, however, to be observed that no such contention was ever taken in the proceedings before the Revenue Officer or before the High Court and it was urged for the first time in the course of the arguments before us. The question is one of fact, whether any such special laws or customs were prevailing in the merged State of Khandapara, and we cannot allow the respondent to urge this contention for the first time before us. We shall, therefore, proceed on the basis that the 1948 Act was quite properly extended to the merged State of Khandapara.

It is next contended that the definition of landlord and tenant given in s. 2(c) and (g) of the 1948 Act did not apply to the relationship between the parties. The definitions of these terms are as under :

> Section 2(c). - "landlord" means a person, whether a proprietor, sub-proprietor,

tenure-holder or raiyat or under-raiyat, either in the raiyatwari area or in the zamindari area or land-holder or permanent undertenure-holder, whose land a person, whether immediately, or mediately cultivates as a tenant;

Section 2(g). - "tenant" means a person who, under the system generally known as Bhag, Sanja, Kata or such similar expression, cultivates the land of another person on condition of delivering to that person -

(i) either a share of the produce of such land, or

(ii) the estimated value of a portion of the crop raised on the land, or

(iii) a fixed quantity of produce irrespective of the yield from the land, or

(iv) produce or its estimated value partly in any one of the ways described above and partly in another; but shall not include......."

It is urged that the tenants who were inducted by the respondent on these lands did not fulfil the terms of this definition and they were therefore not tenants and, as a logical corollary to that, the respondent could not be a landlord qua them. It is also contended that even though these lands were declared to be the private properties of the Respondent under the decision of the Adviser for the Orissa States, that was a recognition of the lands as such by the Dominion Government and not by the Provincial Government; which recognition was a condition Provincial Government; which recognition was a condition precedent of the application of s. 7(h) of the 1950 Act to these lands. Here also, the respondent is confronted with this difficulty that these questions were not mooted either before the Revenue Officer or the High Court in the manner in which it was sought to be done before us. It was all along assumed that the appellants had been the tenants of the respondent but had been ejected by him in the year 1951 and other tenants were inducted in their place some time in 1952. The lands in question were also assumed to have been recognised as the private lands of the respondent by the Government without making any distinction between the Dominion Government and the Provincial Government as was sought to be done before us. Reliance was mainly placed by the respondent in the High Court on his plea that the jurisdiction of the Revenue Officer was barred under Art. 363 of the Constitution and it was nowhere urged that the appellants were not the tenants and he was not the landlord within the terms of the definitions contained in the 1948 Act or that in the absence of recognition of these private lands of his as such by the Provincial Government, the condition precedent to the application of s. 7(h) of the 1950 Act was not fulfilled and that section has no application at all to these lands. The determination of these questions also requires evidence in regard to the same and it would not be legitimate to allow these questions to be agitated for the first time at this late stage.

The matter is, however, concluded by the provisions of s. 7(a) of the 1950 Act. That section enacts a statutory extension of the definition of the terms landlord and tenant and provides that the expression 'landlord' shall mean a person immediately under whom a tenant holds land, and the expression 'tenant' shall mean a person who holds land under another person and is or, but for a special contract, would be liable to pay rent for that land to that person. Whatever may have been the definitions of the terms landlord and tenant in s. 2(c) and (g) of the 1948 Act, this definition contained in the explanation to s. 7(a) of the 1950 Act makes the appellants 'the tenants' and the respondents 'a landlord' in regard to the lands in question. This statutory extension of the definition of the terms 'landlord' and 'tenant' therefore is sufficient, in our opinion, to repel the last contention

urged on behalf of the respondent before us.

The respondent further contends that in spite of s. 7 of the 1950 Act, enacting that all suits and proceedings between landlord and tenant as such shall be instituted and tried in revenue courts, the provisions of the 1948 Act in regard to the hierarchy of revenue courts and the procedure and the penalties provided therein are not attracted to the merged State of Khandapara. The contention is that the provisions contained in the 1950 Act are special provisions which eliminate the operation of the general provisions contained in the 1948 Act, and in so far as nothing more is stated in regard to how the revenue courts are to act in the matter of the institution and trial of all suits and proceedings between landlord and tenant, there is a lacuna and the revenue courts as envisaged by the 1948 Act, have no jurisdiction to entertain the proceedings in question.

The simple answer to this contention of the respondent is that both these Acts have to be read together. The 1950 Act is an Act to extend certain Acts and regulations to certain areas administered as part of the Province of Orissa. The merged State of Khandapara is one of such areas. By virtue of s. 4 of the Act the 1948 Act is inter alia extended to the merged State of Khandapara and the provisions thereof are made applicable in that area. The other sections of this Act enact further provisions which are applicable to these merged States including the merged State of Khandapara and s. 7, in particular, enacts the modification of the tenancy laws in force in those merged States. These provisions are therefore supplementary to those contained in the 1948 Act, and it follows that not only the provisions of the 1948 Act but also the provisions of the 1950 Act are applicable to the merged State of Khandapara. If both these Acts are thus read together, as they should be, there is no inconsistency between the provisions of these Acts and it is clear that the provisions of sub-s. (a) and (h) of s. 7 of the 1950 Act which applied to the dispute which arose between the appellants and the respondent read together with the relevant provisions in regard to the procedure, penalties, etc., contained in the 1948 Act did give jurisdiction to the Revenue Officer to entertain the dispute between the parties. This contention of the respondent also therefore fails.

We are therefore, of opinion that the judgment of the High Court was clearly wrong and is liable to be set aside.

We accordingly allow the appeal, set aside the order made by the High Court, and restore the orders passed by the Revenue Officer in the O.T.P. Act Cases Nos. 21 to 25 of 1952, 26 to 28 of 1952, 29 to 32 of 1952 and 33 to 41 of 1952. The respondent will pay the appellants' costs of this appeal as also of the writ petition in the High Court. The State of Orissa will, of course, bear and pay its own costs.

Appeal allowed.

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