

Shree Vinod Kumar & Others

Vs

State of Himachal Pradesh

Petitions Nos. 120-122, 164, 199, 213, 255, 260, 363, 378, 402 & 407 of 1955, 6, 7, 43, 120, 126, 142, 153, 154, 198, 216 & 223 of 1956, 32, 49, 60, 61, 141 & 143 of 1957, 3, 7 & 104 of 1958,

(CJI S.R. Dass, N. H. Bhagwati, B.P. Sinha, K. Subha Rao, K. N. Wanchoo JJ)

10.10.1958

JUDGMENT

DAS, C.J. -

By each of these 32 petitions under Article 32 of our Constitution, which have been heard together, the respective petitioners challenge the constitutional validity of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 (Himachal 15 of 1954) which is said to have been passed by the Legislative Assembly of the State of Himachal Pradesh created by the Himachal Pradesh and Bilaspur (New State) Act (32 of 1954).

On November 23, 1954, the President of India gave his assent to the Bill which on being so assented to became the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953, (Himachal 15 of 1954) (hereinafter called the Abolition Act). On January 26, 1955, this Abolition Act was brought into force by a notification issued under section 1(3) thereof. It will be convenient at this stage of refer to some of the relevant sections of the Abolition Act. Section 11 confers a new right on the tenants to acquire the interests of the land-owners. According to this section notwithstanding any law, custom, or contract to the contrary a tenant other than a sub-tenant shall, on application made to the compensation officer at any time after the commencement of the Act, be entitled to acquire, on payment of compensation, the right, title and interest of the land-owner in the land of the tenancy held by him under the landowner subject to certain terms and conditions therein mentioned. Section 14 permits the acquisition by the tenant of the rights of the landowner in a portion of the lands of the tenancy in certain specified circumstances on the surrender of the rest of the lands. Section 15 sanctions the acquisition by the State Government of the rights of the landowners by notification in the Gazette declaring that, as from such date and in respect of such area as may be specified in the notification, the right, title and interest of the landowner in the lands of any tenancy held under him by a tenant shall stand transferred to and vest in the State Government free from all encumbrances created in such lands by the landowner. Section 16 provides for the payment to the landowner, whose right, title and interest in lands, would be acquired by the State Government under section 15, of compensation to be calculated, as far as practicable, according to the provisions of sections 12 and 13. Section 27 provides that notwithstanding anything contained in the provisions of the foregoing sections of that Chapter, a landowner who holds land, the annual land revenue of which exceeds Rs. 125 per year, the right, title and interest of such owner in such land shall be deemed to have been transferred and vested in the State Government free from all encumbrances. Sub-section (3) of this section lays down that the landowner whose right is acquired under sub-section (1) by the State Government, shall be entitled to receive compensation which shall be determined by the Compensation Officer having regard to

sections 17 and 18 of this Act, in accordance with the provisions of Schedule II, but in the case of such occupancy tenant who is liable to pay rent in terms of land revenue or the multiple of land revenue, the compensation payable to his landowner shall be computed in accordance with Schedule I. The compensation provided in Schedule II to the Abolition Act may in certain cases work out to no more than twice the land revenue. Section 39 fixes the maximum rent at one fourth of the crop which, it is apprehended, may not even cover the land revenue and the local rates and cesses. Section 80 provides for the State management of lands in certain cases therein mentioned. It is not necessary for our present purpose to refer to any of the other provisions of the Abolition Act.

On a cursory perusal of the foregoing sections one may well understand the natural apprehension of the landowners that the provisions thereof are much too drastic and are inconsistent with and take away or at any rate substantially abridge the right to their respective properties conferred on and guaranteed to them by Part III of our Constitution and thereby infringe the provisions of Articles 14, 19 or 31. It is, therefore, not surprising that the petitioners in all these petitions, all of whom are landowners, have moved this Court by separate petitions under Article 32 for the enforcement of their fundamental rights to their respective properties. In each of the several petitions which have been heard together two broad points have been taken, namely :-

- (i) That the Abolition Act is entirely void by reason of its not having been passed by a duly constituted legislature; and
- (ii) That, in any event, the provisions of Ch. III and of Ch. VIII are repugnant to the Constitution.

Re (i) : In the First Schedule to the Constitution, as it was originally passed, were set out under the heading "Part C States" the names of 10 States. In that list of Part C States Bilaspur was shown as item 3 and Himachal Pradesh as item 7. The two States were quite separate, having separate territories respectively described at the foot of the said list in that Schedule as "territories which, by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately before the commencement of this Constitution being administered as if they were a Chief Commissioner's Province of the same name."

The Government of Part C States Act (49 of 1951), hereinafter referred to as "the Part C. States Act", provides for Legislative Assemblies, Councils of Ministers and Councils of Advisers for Part C. States. By section 2(1)(g), however, "State" is defined to mean any State specified in Part C of the First Schedule to the Constitution other than Bilaspur. Therefore, the Part C State of Bilaspur was excluded from the operation of that Act and was dealt with separately. The Part C State of Himachal Pradesh, as it then was, which is hereinafter called the old Himachal Pradesh was, however, governed by the Part C States Act. Section 3 of that Act provides that there shall be a Legislative Assembly for each State and that the allocation of the seats in the Legislative Assemblies of the 6 States therein mentioned shall be as set out in the Third Schedule. According to the Third Schedule, as it stood originally, the total number of seats allocated to the old Himachal Pradesh was 36 including 8 seats reserved for scheduled castes. Section 4 authorises the President to determine by order the constituencies into which such State shall be divided, the extent of such constituencies, the number of seats allotted to each such constituency and the number of seats reserved for the scheduled castes or scheduled tribes. Section 5 prescribes the duration of the Legislative Assemblies. According to that section the Legislative Assembly, unless sooner dissolved, is to continue for five years from the date appointed for the first meeting and no longer. Section 8 makes

the provisions of Part I and Parts III to XI of the Representation of the People Act, 1951 and of any rules and orders made thereunder applicable in relation to an election to the Legislative Assembly of a Part C State as they applied in relation to an election to the Legislative Assembly of a Part A State, subject to such modification as the President may, after consultation with the Election Commission, by order direct. Section 9 authorises the Chief Commissioner to summon the Legislative Assembly from time to time but provides that six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session. Under section 10 the Legislative Assembly must, as soon as may be, choose two of its members to be respectively the Speakers and the Deputy Speaker thereof. Section 14 enjoins that every member of the Legislative Assembly shall, before taking his seat, make and subscribe before the Chief Commissioner or some person appointed in that behalf by him an oath or affirmation according to the form set out for the purpose in the Fourth Schedule. The form set out in the Fourth Schedule ends by affirming that such member "will faithfully discharge the duty upon which I am about to enter", which is in consonance with the provision of the section that oath is to be taken "before taking his seat". Section 16 provides for vacation of seats on the happening of certain events therein mentioned. Section 18 provides penalty for sitting and voting before making and subscribing the oath or affirmation which may extend to Rs. 500 for each day. According to section 35 the validity of any proceedings in the Legislative Assembly of a State cannot be called in question on the ground of any alleged irregularity of procedure. It is not necessary, for our present purpose, to refer to any other section of the Part C States Act.

In exercise of the powers conferred on him by section 4 of the Part C States Act, the President duly made an order determining the constituencies into which the old Himachal Pradesh would be divided and thereafter in 1952 elections were duly held and 36 members were elected by the voters of the different constituencies so delimited. Presumably the results of the general elections to the Legislative Assembly of the old Himachal Pradesh and the names of the members elected for the various constituencies at the said election were duly published under section 74 of the Representation of the People Act, 1951, in the Official gazette by the proper authority as soon after the date or the last of the dates fixed for the completion of the said elections as was possible. There is no dispute that, in exercise of the powers conferred on him by section 9 of the Part C States Act, the Chief Commissioner summoned the Legislative Assembly of the old Himachal Pradesh thus constituted to meet at the appointed time and place. There is also no dispute that every member of that Legislative Assembly before taking his seat made and subscribed the usual oath or affirmation under section 14 of the Part C States Act and elected one of the members Shri Jaiwant Ram as the Speaker and that the first session of the Assembly so constituted commenced functioning as the Legislative Assembly of the old Himachal Pradesh. It was in this first session of this Legislative Assembly of the old Himachal Pradesh that in 1953 a Bill (Himachal 15 of 1953) which became the Abolition Act was introduced.

Pending the passage of that bill into an Act parliament, on May 8, 1954, enacted an Act called the Himachal Pradesh and Bilaspur (New State) Act (32 of 1954), hereinafter referred to as "the New State Act". This Act received the assent of the President on May 28, 1954, and was brought into force by a notification, dated July 1, 1954, issued by the Government of India in the official gazette under section 1(2) of the Act. It will be convenient at this stage to set out the relevant provisions of this Act on which our decision on this point largely depends. Section 3 of the New State Act says :

"3. As from the commencement of this Act there shall be formed by uniting the existing States a new Part C State to be known as the State of Himachal Pradesh (hereafter in this Act referred to as the "new State")."

Section 12 provides as follows :

"12. (1) There shall be a Legislative Assembly for the new State.

(2) The total number of the seats in that Legislative Assembly which shall be filled by direct election shall be 41."

Section 14, which is very important, is expressed in the following terms :-

"14. (1) The new State shall, until other provision is made by law, consist of the following Assembly constituencies, namely :-

(i) the constituencies shown at the commencement of this Act in the Delimitation of Assembly Constituencies (Himachal Pradesh) Order, 1951; and

(ii) the constituencies into which the part of the new State comprising the existing State of Bilaspur shall be divided.

(2) The President shall, as soon as may be after the commencement of this Act, after consulting the Election Commission of India, amend the Delimitation of Assembly Constituencies (Himachal Pradesh) Order, 1951, so as to include therein the constituencies into which the part of the new State comprising the existing State of Bilaspur, shall be divided and the said Order as so amended, shall, until superseded, be the Order relating to the delimitation of constituencies of the new State".

Sections 15 and 16 may also be set out :

"15. (1) Every sitting member of the Legislative Assembly of the existing State of Himachal Pradesh representing a constituency of the said State shall, on and from the commencement of this Act, represent the constituency of the same name in the new State and shall be deemed to have been elected to the Legislative Assembly of the new State by that constituency.

(2) As soon as may be after the commencement of this Act, there shall be held elections to fill those seats of the Legislative Assembly which have been allotted to the constituencies into which the part of the new State comprising the existing State of Bilaspur shall be divided"

"16. The period of five years referred to in section 5 of the Government of Part C States Act, 1951 (XLIX of 1951) shall, in the case of the Legislative Assembly of the new State, be deemed to have commenced on the date on which the said period in the case of the Legislative Assembly of the existing State of Himachal Pradesh actually commenced."

Subsequently, in exercise of powers conferred on him by section 14(2) the President made an order for the delimitation of the constituencies for the area that previously formed the territories of the then Part C State of Bilaspur and which after the commencement of the New State Act formed a part of the new Part C State of Himachal Pradesh created thereby and hereinafter called the new Himachal Pradesh. Thereafter, on May 13, 1955, five members were elected by the voters of the constituencies of that area so delimited so as to bring up the total number of members of the new

Legislative Assembly of the new Himachal Pradesh to 41 as prescribed by section 12 of the New State Act.

In the meantime, on July 7, 1954, to be precise, the following notification was issued in the official Gazette :-

"Legislative Assembly

NOTIFICATION##

Simla - 4, the 7th July, 1954.

No. L.A. - 109-28/54 - The Lieutenant Governor, in exercise of the powers conferred by section 9 of the Government of Part C States Act, 1951 (XLIX of 1951), has been pleased to direct that the Second Session, 1954, of the Himachal Pradesh Legislative Assembly will commence from Monday, the 16th August, 1954, at 9-30 a.m. in the Council Chamber, Simla - 4.

By order, of the Lieut.-Governor Mahesh Chandra (Judicial) Secretary"##

It is worthy of note that the notification, ex facie convened the second session of the Legislative Assembly of Himachal Pradesh. It is not in dispute that, prior to the date of the aforesaid notification summoning the Legislative Assembly, no notification was issued by the appropriate authority declaring the 36 persons who had been the members of the old Legislative Assembly of the old Himachal Pradesh as members of the new Legislative Assembly of the New Himachal Pradesh or formally constituting and bringing into being the new Legislative Assembly of the new Himachal Pradesh created by and under the New State Act. Nor is it in dispute that the 36 members of the old Legislative Assembly of the old Himachal Pradesh did not, in point of fact, make or subscribe any fresh oath or affirmation as members of the new Legislative Assembly of the new Himachal Pradesh as required by section 14 of the Part C States Act, which is on the same lines as Articles 99 and 108 of the Constitution or that they elected a Speaker under section 10 of that Act. There can be no getting away from the fact that the New State Act did create and bring into being a new State, also called the Himachal Pradesh. It is not the case of the respondent that some additional territory which formerly belonged to the Part C State of Bilaspur was added to or merged into the territories of the old Himachal Pradesh and that the old Himachal Pradesh continued to exist. The true legal position admittedly is that as a result of the New State Act the old Himachal Pradesh as well as the old State of Bilaspur both ceased to exist and there sprang to life a new Himachal Pradesh having for its territory the aggregate of the separate territories of the two defunct States, namely, the old Himachal Pradesh and the old Bilaspur. Under section 12(1) of the New State Act, as under section 3(1) of the Part C States Act, this new Himachal Pradesh has to have a Legislative Assembly of its own the total number of members whereof, under section 12(2) of the New State Act shall consist of 41 of be filled by direct election. The learned Additional Solicitor General takes his stand on section 15 of the New State Act which has already been quoted in full. According to sub-section (1) of that section every sitting member of the Legislative Assembly of the existing State of Himachal Pradesh (that is to say, the old Himachal Pradesh) that existed immediately prior to the commencement of the New State Act representing a constituency of the said State shall, on and from the commencement of this Act, represent the constituency of the same name in the new Himachal Pradesh and shall be deemed to have been elected to the Legislative Assembly of the new Himachal Pradesh by that constituency. Sub-section (2) of that section provides for the holding of elections, as soon as may be after the commencement of that Act, to fill those seats of the

Legislative Assembly which would under section 14(2) be allotted to the constituencies into which that part of the new Himachal Pradesh which was formerly comprised in the old State of Bilaspur would be divided. The learned Additional Solicitor General also relies on section 16 of the New State Act which prescribes the life of the Legislative Assembly by making the period of five years mentioned in section 5 of the Part C States Act, for the purposes of computation, to run from the date when the old Legislative Assembly of the old Himachal Pradesh came into being. His contention is that the result of these sections clearly is that the 36 members who had been elected previously as members of the old Legislative Assembly of the old Himachal Pradesh were, by the New State Act itself, constituted the new Legislative Assembly of the new Himachal Pradesh and that provision was made for the addition to this new Legislative Assembly of five members as and when elected by the voters of the constituencies into which the area formerly comprised in the territory of the old State of Bilaspur shall be divided. In other words, his argument is that immediately on the commencement of the New State Act the Legislative Assembly of the new Himachal Pradesh was duly constituted and came into being with 36 members as *persona designata* and that only five more members had to be brought in as and when elected so as to bring the total strength to 41. According to the learned Additional Solicitor General, the position in law is that there was a Legislative Assembly of the new Himachal Pradesh then consisting of 36 members and that it was that Legislative Assembly that had been summoned by the Lieutenant Governor. The learned Additional Solicitor General maintains that the fact that five members had not been elected from the constituencies of the area which was formerly comprised in the territories of the State of Bilaspur did not vitiate the proceedings, for the Legislative Assembly had, under section 15(3) of the Part C States Act, power to act notwithstanding any vacancy in the membership thereof. He has referred us to Webster's Dictionary and Oxford Dictionary for the meaning of the words "vacant" and "vacancy". He has also referred us to section 147(2) of the Representation of the People Act, 1951 and section 25 of the States Reorganisation Act, 1956, in support of his proposition that a post or place may be as appropriately said to be vacant when after its creation it had never been filled as it can be said to be vacant in the case of a post or place which after its creation had been filled and had then been vacated. The learned Additional Solicitor General concedes that strictly speaking the 36 members of the old Legislative Assembly of the old Himachal Pradesh who, by the fiction created by section 15(1) of the New State Act had become members of the new Legislative Assembly of the new Himachal Pradesh, should have made and subscribed a fresh oath or affirmation but that the absence of that formality is a mere irregularity which, by virtue of section 15(3) of the Part C States Act corresponding to Articles 100(2) and 189(2) of the Constitution, did not vitiate the proceedings of the Legislative Assembly which had passed the Abolition Act, which is under challenge in these petitions.

Section 15(1) of the New State Act only provides that each of the 36 sitting members of the old Legislative Assembly of the old Himachal Pradesh shall on and from the commencement of the Act represent the constituency of the same name in the new Himachal Pradesh and shall be deemed to have been elected by that constituency. The purpose of this section is to obviate the necessity for going through the entire process of a fresh election so far as these 36 members were concerned. In other words, these 36 members were exempted from seeking election or from being elected and were, by a statutory fiction, taken as having been elected to the Legislative Assembly of the new Himachal Pradesh. By the operation of the deeming provision embodied in section 15(1) the 36 members have been placed in the same position as they would have been placed in had they gone through the entire process of election and had been returned elected. The requirements of law to be followed after the election is completed have yet to be followed. For the section to say that these 36 members shall represent the constituencies of the same name in the new Himachal Pradesh and shall

be deemed to have been elected to the Legislative Assembly of the new Himachal Pradesh by the same constituencies is not to say that these 36 persons alone constitute the Legislative Assembly of the new Himachal Pradesh. It only lays down that these 36 persons shall be deemed to have been elected without going through the actual process of election. Apart from providing that these 36 persons shall represent the several constituencies and shall be deemed to have been elected by the voters of those constituencies, section 15(1) does not go further and say that these 36 persons shall, without more, constitute the Legislative Assembly. Therefore, the requirements of Law applicable to the further stages after the election is over have still to be complied with. In other words the purpose of section 15(1) is not to constitute and bring into being the Legislative Assembly. For that a notification under section 74 of the Representation of the People Act, 1951, has to be issued. That notification gives life to the Legislative Assembly as section 73 of the amended section clearly indicates.

What did the Lieutenant Governor do or intend to do by issuing the notification dated July 7, 1954, quoted above ? The fact that the Lieutenant Governor did not intend to summon a meeting of the new Legislative Assembly of the new Himachal Pradesh is made clear by the fact that by the notification in question he convened what he described as the second session of the Legislative Assembly. After the creation of the new Himachal Pradesh there had been no previous session of its Legislative Assembly at all and the session convened, if it was to be a session of the new Legislative Assembly of the new Himachal Pradesh, was to be its very first session. It was, therefore, wholly inappropriate and utterly incorrect to describe the session thus convened as the second session. The provision of section 16 of the new State Act which computes the period of five years' duration from the date of the commencement of the old Legislative Assembly of the old Himachal Pradesh cannot affect the fact that the old Legislative Assembly as well as the old Himachal Pradesh had ceased to exist and that the meeting of the new Legislative Assembly of the new State after the commencement of the New State Act must be its first session and not the second. It may well be that the Lieutenant Governor took the view that the new Legislative Assembly of the new Himachal Pradesh would not be constituted and brought into being until five members from the Bilaspur area had been elected so as to bring the total number of members of 41 as prescribed by section 12 and that until then the old Himachal Pradesh and the old Legislative Assembly would remain alive and that, therefore, the Bill which had been introduced in the first session of the old Legislative Assembly of old Himachal Pradesh had not lapsed under section 25 of Part C States Act. The Lieutenant Governor in such a situation may well have thought that as under section 9 of the Part C States Act more than six months must not intervene between its last sitting in one session and the date appointed for its first sitting in the next session, and accordingly may have thought fit to convene the second session of the old Assembly. This conclusion is further re-inforced by the fact that no oath or affirmation was administered to the 36 persons when they assembled in pursuance of the summons as required by section 14 of the Part C States as well as by the further fact that the Legislative Assembly which was summoned by the Lieutenant Governor under section 9 of the Part C States Act did not choose any of the members to be the Speaker of that Legislative Assembly. Indeed the printed resume of the work done by the Himachal Pradesh Legislative Assembly during the second session 1954, as published by its Secretary, shows that the house granted leave of absence from the House to Sri Jaiwant Ram, Speaker, for the duration of that session. Sri Jaiwant Ram is no other than the person who had been elected the Speaker of the old Legislative Assembly of the old Himachal Pradesh. The discussion whether these irregularities can or cannot be cured under section 15(3) and section 35 of Part C States Act is not relevant at this stage. Assuming that the word "vacancy" as used in the section has the wide connotation contended for by the learned Additional Solicitor General and without, for our present purpose, adverting to the obviously

possible abuse such a wide meaning may lead to, it must be noted that the section clearly contemplates that there is a Legislative Assembly duly constituted and brought into existence and that it is subsequently discovered that "some persons" have sat and voted without making and subscribing an oath or affirmation. The section postulates the existence of a duly constituted Legislative Assembly. It does not apply to a case where the Legislative Assembly has not at all been constituted and brought into being by a notification issued by the appropriate authority and then duly summoned by the Lieutenant Governor. Whether absence of such a notification will vitiate the proceedings even if all the members properly elected to the Legislative Assembly are summoned and they take part in the proceedings after taking the oath and electing a Speaker need not be considered on this occasion. The present discussion is for the purpose of ascertaining as to what was in the mind of the Lieutenant Governor when he issued the notification convening the second session of the Legislative Assembly and what he purported to do. The fact that he summoned the Legislative Assembly to a second session signifies that he had in mind the Legislative Assembly of the old Himachal Pradesh which already had a sitting before and summoned it to a second session. The fact that no oath or affirmation was administered to any member and that there was no election of a Speaker also quite clearly indicates that the Lieutenant Governor was not summoning the new Legislative Assembly of the new Himachal Pradesh. This is made further clear by the fact that the Lieutenant Governor must have known that the old Himachal Pradesh having ceased to exist its Legislative Assembly had also gone with it, and that a bill pending in the Legislative Assembly thus dissolved would have lapsed under section 25 and the first sitting of the new Legislative Assembly of the new State of Himachal Pradesh could not proceed with the lapsed Bill. In this context the question whether the irregularity can be cured under section 15(3) of the Part C States Act or is made immune from challenge under section 35 does not arise at all. The problem before us is to determine which Assembly the Lieutenant Governor had convened. In our opinion the so called Legislative Assembly which was convened and which purported to pass the Abolition Act was not the Legislative Assembly of the new Himachal Pradesh created by the New State Act, therefore, the impugned Act cannot be regarded as a piece of validly enacted legislation. That being the position the interference with the rights of the petitioners in and to their respective properties cannot be for a moment be justified or permitted and the first question raised on behalf of the petitioners must be answered in their favour.

In the view we have taken it is not necessary for us to go into the second question sought to be raised before us.

The result, therefore, is that we issue in each of the petitions a mandamus directing the respondent to forbear from giving effect to or acting in any manner under or on the basis of the said impugned Act and also restraining the respondent, its servants and agents, from taking any action on the basis of the said Act or interfering in any way with the petitioners' properties or their rights in respect of their properties or from disturbing or affecting the petitioners' possession thereof. The petitioners will be entitled to the general costs of each of these petitions, but the respondent will pay only three sets of costs for the hearing, namely, one set each to the petitioners represented by Shri Achhru Ram, Shri D. R. Prem and Shri Y. Kumar respectively and also one set of hearing fees for each of the advocates-on-record.

Petitions allowed.

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