Thakur Raghubir Singh and Others

Vs

The State of Ajmer (Now Rajasthan) and Others. (and Connected Petitions)

Petitions Nos. 230-239, 241, 249-251, 256, 257, 290, 303, 306-349, 351, 352, 355-357 of 1955 and Nos. 33 & 36 of 1956

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

14.11.1958

JUDGMENT

WANCHOO, J. -

These sixty-nine petitions under Article 32 of the Constitution by various land-owners in the former State of Ajmer attack the validity of the Ajmer Abolition of Intermediaries and Land Reforms Act, 1955 (Ajmer III of 1955) (hereinafter called the Act). The petitions disclose a large number of grounds on which the validity of the Act is impugned; but learned counsel, Mr. Achhru Ram and Mr. B. D. Sharma, appearing for various petitioners, have confined their arguments only to certain grounds raised in the petitions. We propose, therefore, to consider only the grounds urged before us.

The Act was passed by the Ajmer Legislative Assembly and received the assent of the President on May 29, 1955. Section 4 of the Act provided for vesting of all estates held by intermediaries, as defined in the Act, in the State Government from a date to be notified. The Act came into force on June 23, 1955, and August 1, 1955, was notified as the date on which the estates held by intermediaries would vest in the State Government. The present petitions followed on the fixing of this date.

It is not disputed that the Act is protected under Article 31-A(1)(a) of the Constitution inasmuch as it is a piece of legislation for acquisition by the State of any estate or of any rights therein. The arguments is that in spite of this protection, either the whole Act or certain provisions of it are invalid, for reasons urged by learned counsel on behalf of the petitioners. Mr. Achhru Ram attacks only sections 8 and 38 of the Act. Mr. Sharma attacks the competency of the Ajmer legislature to pass the Act and also urges that in any case it does not apply to the case of jagirdars, one of whom is a petitioner before us in Petition No. 33 of 1956. These four are the only grounds that have been urged before us, and we shall deal with them seriatim.

Re. section 8.

Section 8 is in these terms -

> "Where an intermediary has on or after the 1st day of June, 1950, (a) granted a lease of any land in the estate or any part thereof for any non-agricultural purposes other than mining for a period of three years or more; or
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> (b) granted a lease or entered into a contract relating to any forest, fishery or quarry

in his estate for a period of three years or more; or

(c) granted a lease for the cultivation of any area of bir or pasture or waste land;

and the Collector is satisfied that such lease or contract was not made or entered into in the normal course of management but in anticipation of legislation for the Abolition of Intermediaries, the Collector may, subject to any rules made under this Act, by order in writing, cancel the lease or the contract as the case may be."

It provides for cancellation of certain leases granted on or after June 1, 1950, where the lease is for a period of three years or more with respect to matters dealt with in clauses (a) and (b) and where the lease is for any period in respect of matters dealt with in clause (c). The Collector has been given the power to cancel such leases if they are not made in the normal course of management but in anticipation of legislation for abolition of intermediaries. The argument is that there can be no retrospective cancellation of leases granted at a time when the land-owner had a right to dispose of his property as he liked under Article 19(1)(f) and there was no restriction on such right. It is said that in certain contingencies the cancellation of a lease might expose the land-owner to the risk of paying compensation to the lessee, particularly in cases where the land-owner might have realised the entire lease-money in one lump sum for a lease of more than three year's duration. We are of opinion that there is no force in this contention. The legislature was certainly competent, under entry 18 of List II of the Seventh Schedule to the Constitution relating to Land, to make this provision. It cannot be disputed that the legislature has power in appropriate cases to pass even retrospective legislation. Provisions for cancellation of instruments already executed are not unknown to law; for example, the Insolvency Acts provide for setting aside transfers made by insolvents under certain circumstances. Therefore, the Ajmer Legislature certainly had the power to enact such a provision, and in the circumstances in which this provision has been made in Act, it cannot be said that it is not protected under Article 31-A. The provision is not an independent provision; it is merely ancillary in character enacted for carrying out the objects of the Act more effectively. The intention of the legislature was to give power to the Collector after the estates vested in the State Government to scrutinise leases of this kind made after June 1, 1950, which was apparently the date from which such legislation was under contemplation and to see whether the leases were such as a prudent land-owner would enter into in the normal course of management. Such leases would be immune from cancellation; but if the Collector found that the leases were entered into, not in the normal course of management but designedly to make whatever the land-owners could before the estate came to be transferred to the State Government, he was given the power to cancel the same, as they would obviously be a fraud upon the Act. Such cancellation would subserve the purposes of the Act, and the provision for it would therefore be an integral part of the Act, though ancillary to its main object, and would thus be protected under Article 31-A(1)(a) of the Constitution.

Re. section 38.

Section 38 reads as follows :-

"Notwithstanding any agreement, usage, decree or order of a court or any law for the time being in force, the maximum rent payable by a tenant in respect of the land leased to him shall not exceed one and half times the revenue payable in respect of such land."

This section provides for fixing the maximum rent at fifty per cent. above the land revenue, and it is urged that this is an unreasonable restriction on the right of the land-owner to let his holding. The object of this legislation is to do away with intermediaries, and for that reason the estates held by intermediaries have been made to vest in the State Government under section 4. Chapter VI of the Act, however, provides for allotment of lands for personal cultivation to intermediaries whose estates have been taken over upto a certain limit and the intermediaries who have been allotted lands under section 29 of the Act are called Bhuswamis or Kashtkars according to the nature of the lands allotted to them; (see section 30). Bhuswamis and Kashtkars hold land directly from the Government and pay revenue to the Government; (see section 32). The intention of the Act, therefore, is that intermediaries who have been allotted lands should cultivate them personally. But section 37 permits Bhuswamis to let the whole or any part of the land allotted to them, while Kashtkars are forbidden from letting any part of their land except in certain circumstances when they are suffering from some disability. In order, however, that the main object of the Act (namely, that the land should be cultivated by the person to whom it is allotted and that there should be no rackrenting) is attained, section 38 has been provided fixing the maximum rent at 50 per cent. above the land revenue. Thus the profit which a Bhuswami can make by letting his land is so reduced compared to what he would earn if he cultivated it himself as to discourage him from letting the land and becoming a new kind of intermediary. Section 38, therefore, is another ancillary section, like section 8, and is meant to subserve the purposes of the Act, namely, the abolition of all intermediaries and encouragement of self-cultivation of the land. We are, therefore, of opinion that section 38 is also protected under Article 31-A(1)(a) of the Constitution as an ancillary provision necessary for the purposes of carrying out the objects of the Act.

Re. The competency of the Ajmer Legislation.

The argument in this behalf is put in this way. The Act is a piece of legislation for the acquisition of estates. Before the Constitution (Seventh Amendment) Act, 1956, came into force on November 1, 1956, there were two entries relating to acquisition of property in the Seventh Schedule, namely, entry 33 of List I (acquisition or requisitioning of property for the purposes of the Union) and entry 36 of List II (acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of entry 42 of List III). The argument continues that the Act was passed by the Ajmer legislature under the power it was supposed to have under entry 36 of List II read with section 21 of the Government of Part C States Act, 1951 (XLIX of 1951). But entry 36 of List II only gives power to the State legislature to acquire property for purposes other than the purposes of the Union. As, however, the property acquired under the Act vested in the President and therefore the Union after its acquisition, the Act was really for the acquisition of property for the purposes of the Union and could not have been passed by the Ajmer legislature.

In support of this argument Mr. Sharma referred us to various Articles of the Constitution in Part XII thereof relating to Finance, Property, Contracts and Suits, and also Articles 73 and 239. He contends that these provisions show that before the Government of Part C States Act was passed, the legislative power with respect to the areas comprised in Part C States was in the Union which also through the President had executive power over the subjects over which the Parliament could legislate with respect to what were Part C States. After the passing of the Government of Part C States Act, by virtue of the power conferred on Parliament by Article 240, there was no change so far as the executive power in Part C States was concerned and it is sill vested in the President. Any property acquired for the purposes of Part C States vests in the President or the Union. Therefore, according to him, the Ajmer legislature would have no power to enact a law for acquiring estates under entry 36 of List II; for the property so acquired would really be for the purposes of the Union

and no law under that entry could be made for acquiring property for the purposes of the Union.

We are of opinion that the argument, though plausible, must be rejected. Assuming, without deciding, that even after the passing of the Government of Part C States Act, any property acquired for a Part C State vested in the Union Government by virtue of the provisions of Part XII of the Constitution, the question still remains whether the Ajmer legislature could make a law under entry 36 of List II acquiring estates even though the estates when acquired may legally vest in the Union Government. Now, entry 33 of List I refers to acquiring of property for the purposes of the Union. It does not lay down in whom the property should vest after it has been acquired. Similarly, entry 36 of List II speaks of acquisition of property, except for the purposes of the Union, and makes no mention in whom the property should vest after it has been acquired. Entry 42 of List III which deals with compensation for such acquisition as well as for acquisition for any other public purpose, also does not speak where the property should vest after acquisition. It is not necessary, therefore, to consider where the property should vest after acquisition in deciding the ambit of the competence of the legislature under those two entries. The key to the interpretation of these two entries is not in whom the property would vest after it has been acquired but whether the property is being acquired for the purposes of the Union in one case or for purposes other than the purposes of the Union in the other. It is in this context that the competency of the Ajmer legislature to enact this law under entry 36 of List II is to be judged.

Section 21 of the Government of Part C States Act created a Legislative Assembly for Ajmer and gave that legislative assembly power to make laws for the whole or any part of the State with respect to any of the matters enumerated in List II or List III of the Seventh Schedule to the Constitution. Ajmer legislature was thus given power to pass laws with respect to acquisition of property for purposes other than those of the Union. In other words, it had the power to make law to acquire property for the purposes of the State of Ajmer or for any other public purpose. The question then is whether the Act was passed acquiring estates in the State of Ajmer for the purposes of the State of Ajmer, irrespective of where the title may vest. The answer to this question to our mind can only be one; the Act was passed by the State legislature for acquiring estates within the State and it could only have been for the purposes of the State. There is no reason to limit the meaning of these general words, namely, 'the purposes of the State', by importing in them the idea of where the property would vest after its acquisition. That the purposes for which the estates were acquired were purposes of the State of Ajmer would be quite clear from the fact that now that the State of Ajmer is part of the State of Rajasthan, the estates acquired under the Act have gone to Rajasthan and have not been kept by the Union on the ground that the title vested in the Union. Therefore, as the estates were acquired in this case for the purposes of the State of Ajmer the Act would be within the competency of the Ajmer legislature as it falls within the plain words of entry 36 of List II.

Re. Jagirdars

The contention on behalf of the petitioner in petition No. 33 of 1956 is that under the Act the word 'intermediary' includes a jagirdar. The Act also provides that the definitions in the Ajmer Tenancy and Land Records Act, 1950 (Ajmer XLII of 1950), will be imported where the words used in it are not defined. The word 'jagirdar' is defined in the Ajmer Tenancy and Land Records Act as a person to whom the revenue of any land has been assigned under a sanad issued by the Chief Commissioner before the commencement of the Ajmer Land and Revenue Regulation, 1877; (see section 2(15)). It is not in dispute that a sanad was issued to a predecessor of the petitioner before 1877; but it is urged that a jagirdar is merely the assignee of land revenue and so far as that

assignment is concerned it may be said to have been acquired under the Act. But the petitioner besides being an assignee of land revenue is also owner of land and that interest of his has not been acquired under the Act. We are of opinion that there is no force in this argument. The word 'estate' is defined in section 2(v) of the Act as having the same meaning as assigned to it in the Ajmer Land and Revenue Regulation, 1877. The Ajmer Regulation does not define the word 'estate' as such, but it has defined the word 'Malguzar' as a person liable under section 64 for payment of the revenue assessed upon an estate, under section 2(d). Further, section 64 provides that all persons who are bound by the agreement prescribed by section 61 and their successors-in-interest shall, while they continue to be owners of land in the Estate to which such agreement relates, be jointly and severally liable for the payment of the whole amount of revenue assessed upon such estate. The Ajmer Regulation also defines particular types of estates like 'Istimrari Estate' and 'Bhum'; but the general meaning of the word 'estate' under the Ajmer Regulation is an area of land separately assessed to revenue, which is payable by the holder of the estate. 'Intermediary' as defined in section 2(viii) of the Act is a holder of an estate and includes a jagirdar. Under section 4 all the estates held by intermediaries vest in the State Government on the issue of a notification. Therefore, if the jagirdars are intermediaries, that is holders of estates, their estates will vest in the State Government under section 4 of the Act. The distinction which the learned counsel for this petitioner draws between the interest of the jagirdar as jagirdar and as land-owner is in our opinion wholly unfounded. A perusal of annexures B, C and D, filed by the petitioner himself, would make this clear. Annexures B and C are sanads with respect to the jagirs held by the petitioner. Entry in the remarks column of annexure B begins with the words "Grant of this estate lasts.....". Similarly, in annexure C the opening words in the remarks column are "The Grant is to the Dudhadhari for the time being. No part of the estate is transferable by sale or mortgage...". Therefore, the grants themselves designated these jagirs as estates. They were assessed to revenue, which was, however, remitted and the estates thus came to be known as revenue-free jagirs and the estate holder was designated as jagirdar. It was because of this remission of the land revenue that the word 'jagirdar' was defined in the Ajmer Tenancy and Land Records Act, 1950, as assignee of land revenue. Annexures B and C also show that when the grants were made before 1877 a large part of the area covered by the grant was uncultivated. Annexure D shows that disputes arose between the jagirdars and the Biswedars in these jagirs about these uncultivated lands, and one such dispute was decided as late as 1954. In that judgment (annexure D) history of jagir tenure was traced and it was held that the jagirdar was the owner of uncultivated land in his jagir and not the Biswedar. Therefore, the distinction which has been drawn by the learned counsel between the jagirdar as an assignee of land revenue based on the definition in the Ajmer Tenancy and Land Records Act, 1950, and the same person as the land-owner is unfounded. It appears that though the jagirdar may have been defined as assignee of land revenue because of the peculiar fact that in the case of a jagirdar there had been remission of land revenue by sanads granted before 1877, he was the proprietor of his jagir and the grantee of the estate given to him as jagir. There is no question, therefore, of separating the interest of jagirdar as the assignee of land revenue from his interest as the holder of jagir-estate by virtue of a grant before 1877. The petitioner therefore in petition No. 33 of 1956 is the holder of the jagir-estate and therefore his entire interest in the estate is liable to resumption under the Act. In the Ajmer Regulations, (Vol. H to L) at pp. 564-6, these two estates have been considered and their history is given, and they are called jagirs. The history of jagirs in Rajasthan was considered by this Court in Thakur Amarsinghji v. State of Rajasthan ([1955] 2 S.C.R. 303), at p. 330 onwards, and the word 'jagir' was held to connote all grants which conferred on the grantees rights in respect of land revenue. In the case of these two jagirs also, as annexures B and C show, land revenue was remitted and they were granted as estates for particular purposes. They are, therefore, clearly estates in view of the origin of the title of the holder of these estates who is called a jagirdar and therefore the State could take them over

under section 4 of the Act.

There is no force in any of the points raised on behalf of the petitioners, and the petitions fail and are hereby dismissed with one set of costs to the contesting respondent.

Petitions dismissed.

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