Shri Rajah Velugoti Venkata Sesha Varda Raja Gopala Krishna Yachandra Bahadur Kumar Rajah, Venkatagiri

Vs

The State of Andhra Pradesh

Civil Appeals Nos. 188 to 190 of 1958

(CJI S. R. Dass, S. K. Das, A. K. Sarkar, K. N. Wanchoo, M. Hidayatullah JJ)

14.08.1959

JUDGMENT

DAS C.J. –

These three appeals are directed against the judgment and order pronounced by a Bench of the Andhra Pradesh High Court on November 20, 1957, whereby three writ petitions, namely, No. 1 of 1956, No. 19 of 1957 and No. 470 of 1957, which had been filed by the appellant and were heard together, were dismissed with costs. These appeals have been filed with certificates granted by the High Court of Andhra Pradesh.

The circumstances under which the three writ petitions came to be filed by the appellant may now be narrated. It is alleged that on January 10, 1942, an agreement was entered into between the Rajah of Venkatagiri and one Sri Balumuri Nageswara Rao whereby the Rajah agreed to give annual leases in respect of certain slate quarries within his estate for five years in succession commencing from February 1942 if the Rajah was satisfied with the work carried on by the lessee during the preceding years. It was further stipulated that if the leases were given continuously for five years, then the lessee would be entitled at the end of the fifth year to obtain a lease from the Rajah for a period of 20 years commencing from the termination of the fifth year. On the expiry of the fifth year, however, the Rajah granted another lease to the said Balumuri Nageswara Rao for a short period commencing from February 1, 1947, and ending on November 30, 1947. On December 10, 1947 the said Balumuri Nageswara Rao is said to have assigned his right title and interest under the said agreement dated January 10, 1942, to the appellant, one of the sons of the Rajah. The Rajah on the same day granted a lease for twenty years to the appellant. On September 7, 1949, the Venkatagiri estate was notified under s. 3 of the Madras Estate (Abolition and Conversion into Ryotwari) Act 1948 (Madras Act XXVI of 1948), hereinafter referred to as the abolition Act. On the same date the appellant applied to the Collector for confirmation of the lease granted by the Rajah to him. Nothing appears to have happened until February 12, 1952, when a notice was issued from the office of the Board of Revenue (Andhra) calling upon the appellant to show cause within two months from the date of receipt of that notice as to why the lease should not be terminated without any compensation under the second proviso to s. 20(1) of the Abolition Act. The appellant showed cause which apparently did not satisfy said authorities. Instructions appear to have been issued to the manager of the Venkatagiri estate requiring him to take over possession of the slate quarries which were then being worked by the appellant immediately after the expiry of two months' notice issued to him. The appellant promptly filed a writ petition, No. 287 of 1952 in the Madras High Court praying for the issue of a writ in the nature of a writ of mandamus directing the Madras State to forbear from terminating the leasehold right of the petitioner in the slate quarries and from interfering with his

possession and working of the slate quarries and other ancillary reliefs. The writ petition having come up for hearing before Umamaheswaram, J., the learned Judge on July 18, 1955, made an order directing the Government to hold an enquiry under s. 20 of the Abolition Act and decide whether the lease had been granted prior or subsequent to July 1, 1945. The order required the Government to hold the enquiry and pass the appropriate orders within three months from the date of that order. The Board of Revenue caused an enquiry to made by the Director of Settlements who, after taking evidence, oral and documentary, made his report to the Board of Revenue. The Board of Revenue submitted a report to the Government on October 20, 1955, and the Government after considering the Board's report instructed the latter to dispose of the case on merits. Thereupon the Board of Revenue passed an order on December 27, 1955, declaring that the lease to the appellant had been granted subsequent to July 1, 1945, and that, as the lease was for a period exceeding one year, it was not enforceable against the Government, according the second proviso to s. 20(1) of the Abolition Act. On that finding the Board of Revenue declined to ratify the lease and terminated it under the powers delegated to it under the Rules farmed under the Abolition Act. The Board of Revenue also directed the Collector to take possession of the slate quarries from the appellant. The appellant promptly filed writ petition No. 1 of 1956 praying for the issue of a writ of mandamus directing the State of Andhra Pradesh to forbear from terminating his leasehold right in the slate quarries. He filed another petition, being writ petition No. 19 of 1957, for the issue of a writ of certiorari to quash the order made by the Board of Revenue on December 27, 1955.

In the meantime on September 21, 1955, the appellant had applied to the Board of Revenue, Andhra for renewal of the lease under r. 47 of the Mineral Concession Rules, 1949. That application was dismissed on May 23, 1957. The appellant thereupon filed a writ petition No. 476 of 1957 for quashing the last mentioned order passed by the Board of Revenue or, in the alternative, for the issue of a writ of mandamus directing the State of Andhra Pradesh to issue a fresh lease in accordance with r. 47 of the Mineral Concession Rules, 1949. All these writ petitions were heard together and were disposed of by a common judgment against which these appeals have been filed.

The principle question canvassed before us is that the termination of the appellant's lease by the order dated December 27, 1955, was bad as it did not give three month's notice to the appellant or provide for any compensation as required by s. 20 of the Abolition Act. The answer to the question depends on a true construction of that section which runs thus :-

> "20. (1) Saving of rights of certain lessees and others. - In cases not governed by sections 18 and 19, where before the notified date, a landholder has created any right in any land (whether by way of lease or otherwise) including rights in any forest, mines or minerals, quarries fisheries or ferries, the transaction shall be deemed to be valid; and all right and obligations arising thereupon, on or after the notified date, shall be enforceable by or against the Government :

Provided that the transaction was not void or illegal under any law in force at the time :

Provided further that any such right created on or after the 1st day of July 1945 shall not be enforceable against the Government, unless it was created for a period not exceeding one year :

Provided also that where such right was created for a period exceeding one year, unless it relates to the private land of the landholder within the meaning of section 3, clause (10), of the Estates Lands Act, the Government may, if, in their opinion, it is in the public interest to do so, by notice given to the person concerned, terminate the right with effect from such date as may be specified in the

notice, not being earlier than three months from the date thereof.

> (2) The person, whose right has been terminated by the Government under the foregoing proviso, shall be entitled to compensation from the Government which shall be determined by the Board of Revenue in such manner as may be prescribed having regard to the value of the right and the unexpired portion of the period for which the right was created. The decision of the Board of Revenue shall be final and not be liable to be questioned in any Court of law.

The long title and the preamble to the Abolition Act indicate, it is urged, that the object of the Act is to provide for the acquisition of the rights of landholders and that the policy of the Act is not to interfere with the rights of other persons in the estate. This assumption, however, is not borne out by the substantive provisions of the Act itself. Section 3 sets forth the consequences which ensure on the notification of an estate and it is clear that on an estate being notified the entire estate is to stand transferred to the Government and all rights and interests created in or over the estate before the notified date by the principle or any other landholder must, as against the Government cease and determine.

We are next reminded that the Abolition Act was enacted when s. 299 of the Government of India Act, 1935, was in force. Under that section no property could be acquired save for a public purpose and save by authority of a law which provides for compensation. The Abolition Act was enacted by the Madras Legislature in exercise of the legislative power conferred on it by the Government of India Act, 1935. According to learned counsel for the appellant, the Court must assume that the Madras legislature acted properly and within the limits of powers conferred on it. The Court must, therefore, interpret the provisions of the Abolition Act on the footing that it is a valid piece of legislation and that its provisions do not offend s. 299 of the Government of India Act, 1935. The Abolition Act is a law for the compulsory acquisition of property and, therefore, the court must put that interpretation on the relevant sections which will result in the payment of compensation to the person who is deprived of his property. It may be conceded that normally this is the correct approach to the problem, but the argument loses much of its force. When we advert to the provisions of Art. 31(6) and 31 B of the Constitution of India read with the Ninth Schedule thereto. Those provisions proceed on the assumption that certain laws passed under the Government of India Act, 1935, did offend s. 299 of that Act and expressly save those Act. The Abolition Act is one of the Acts included in the Ninth Schedule is protected by Art. 31B. In the circumstances, the court must interpret the Abolition Act as it finds by giving the ordinary and natural meaning to the words used by the Madras legislature and uninfluenced by any pre-conceived notion as to validity of the Abolition Act.

Provision for payment of compensation for the determination of rights created before the notified date is provided in sub-s. (2) of s. 20 of the Abolition Act. Under that sub-section a person can claim compensation only when his right is terminated by the Government under "the foregoing proviso". The words "foregoing proviso", It is conceded, refer to the third proviso to sub-s (1). The endeavour of learned counsel for the appellant, therefore, is to induce us to hold that the termination of the appellant's leasehold right which were created on or after July 1, 1945, could only be done under the third proviso, for otherwise the provisions of sub-s. (2) which provided for compensation will not be attracted. Action taken by the Government under the third proviso to sub-s. (1) can be supported only if the conditions laid down in that proviso can be shown to have been complied with, namely, that the Government had formed the opinion that it was in the public interest to terminate such lease and that three month's notice had been given before such termination. The argument is

that the second proviso is merely declaratory and the third proviso supplies the machinery for giving effect to the provisions of the of the second proviso. According to the argument the third proviso is not an independent proviso but is a sort of proviso to the second proviso. In other words, the third proviso, according to learned counsel for the appellant, merely enables the Government to exercise the right conferred on it by the second proviso and therefore, the Government, if it intends to avail itself of the right under the second proviso, must comply with the conditions laid down in the third proviso. It is said that the words "such right" in the third proviso relate to the rights mentioned in the second proviso, that is to say, rights created on or after July 1, 1945. The scheme of s. 20 of the Abolition Act is said to be to provide, firstly that rights created by way of lease or otherwise by the landholder prior to the notified date should deemed to be valid and all rights and obligations arising thereunder on or after the notified date should be enforceable by or against the Government. We start with this broad proposition. Then we come to the provisos. We may omit the first proviso, for it has no application to the facts of this case. The implications of the second proviso, learned counsel for the appellant points out, are two fold, namely, (a) that all rights created before the notified date but after July 1, 1945, for period not exceeding one year would be valid and enforceable both by and against the Government by the operation of the body of sub-s. (1) itself and (b) that rights created before the notified date but after July 1, 1945, for a period exceeding one year would also be valid and enforceable by the Government against the person in whose favour such right had been created by reason of s. 20(1). Then we have the express provision of the second proviso, namely, that rights created before the notified date but after July 1, 1945, for a period exceeding one year would not be enforceable against the Government. In other words, the true meaning of the second proviso is said to be that rights created after July 1, 1945, are only voidable at the instance of the Government and that that being the position, the Government must do some overt act to terminate the transaction. The machinery for such a termination, it is urged, is to be found in the third proviso and the conclusion is pressed upon us that such termination can be brought about only on the fulfilment of the conditions laid down in the third proviso. The final step in the argument is that the person whose right are terminated under the third proviso which is the "foregoing proviso" referred to in sub-s. (2) must, therefore, be entitled to compensation under sub-s. (2). We are unable to accept this line of argument as correct.

The provision of s. 20 of the Abolition Act has been considered and construed by a Bench of the Madras High Court. We may, with advantage, quote here a part of the views expressed by Venkatarama Ayyar, J., in delivering the judgment of that Bench in A.M.S.S.V.M. & Co. v. The State of Madras [I.L.R. (1953) Mad. 1175, 1195].

> "The argument of the petitioners is that the words "such rights" in the third proviso have reference to the rights created after the 1st July, 1945, mentioned in the previous proviso and on that construction, the lease in favour of the petitioner could be terminated only in accordance with that proviso by giving three months' notice. But this is to read the third proviso as a proviso not to the section, but to the second proviso and there is no warrant in law for such a construction. The words "such rights" refer in the second proviso only to the right dealt with in the body of the section and those words occurring in the third proviso, should also bear the same interpretation. That the third proviso does not govern the second proviso is also clear if the scope of the two provisos is examined. Under the second proviso, leases for a period exceeding one year and created after 1st July 1945, are not enforceable against the Government. That is to say, the Government can elect to disaffirm them and they become, on such disaffirmance, void. If the third proviso also applies to such leases, as the petitioners contend, then the lease, can be terminated only if the Government is

> satisfied that it is in the public interest that it should be terminated and that further, in such cases, the lessee will also be entitled to compensation adder s. 20(2). In other words, while under the second proviso the Government can terminate the lease at its option and unconditionally under proviso (iii) that can be done only if it is in public interest and, in that event, on payment of compensation, and this repugnancy can be avoided only by construing them as referring to different subjects. Then again, there is in proviso (iii) an exception with reference to rights created over private lands; there is nothing corresponding to it in the second proviso and that also shows that the scope of the two provisos is different. The true effect of the section can be stated in three proposition : (i) Rights validly created prior to 1st July, 1945, will be valid; (ii) such rights, however, may be determined under the third proviso if it is in the public interest to do so and in such cases, compensation will be payable under section 20(2); and (iii) rights created after 1st July, 1945, if they are for a period exceeding one year, are liable to be avoided under that second proviso. In this view, we are of opinion that the notice, dated 13th March 1951, falls under the second proviso and is valid."

It is pointed out that the attention of the Madras High Court was not drawn to the rule framed by the Governor of Madras in exercise of powers conferred on him by s. 67(1) and (2) of the Abolition Act. That rule runs as follows :-

> "Rule
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> In the case of any right in any land created by a landholder on or after the 1st day of July 1945 for a period exceeding one year and falling under the second proviso to section 20(1) of the said Act, the authority to decide whether the right should be terminated or allowed to continue shall be the Board of Revenue. Any order passed by the Board of Revenue under this rule shall be subject to revision by the Government."

We do not think that the rule in any way impairs the correctness of the Madras decision. It will be noticed that that rule only indicates the authority who is to decide whether the right falling under the second provise should be terminated or allowed to continue. It does not purport to lay down the manner in which such terminations to be brought about. In other words, that rule does not, in terms, attract the operation of the third proviso at all. Even if that rule has the effect contended for, it cannot, in our view, change the meaning of s. 20 which we gather on a true construction thereof.

In our view the scheme of the Act is to render ineffective all rights created after July 1, 1945, for a period exceeding one year. In one view of the matter it may well be taken as meaning that the creation of rights after July 1, 1945 is, by force of the second proviso itself, void as against the Government without any further necessity for any overt act to be done by the Government to avoid the same. In that sense the second proviso would be a self contained proviso and the aid of the third proviso would be wholly uncalled for. But assuming that the effect of the second proviso is to make the rights created after July 1, 1945, only voidable and not void, all that follows it that the Government must do something to avoid them. There is no warrant for saying that the avoidance must be under the terms of the third proviso. If the third proviso at all applied to right created after July 1, 1945, then the second proviso would be otiose and need not have been enacted at all. In our opinion the third proviso deals with the termination of rights created before July 1, 1945. The second proviso makes rights created after July 1, 1945, unenforceable as against the Government.

The reason for conferment of such an unconditional right on the Government is well known, for it was on that crucial date that the party which came into power later declared its intention to abolish all zemindaries and intermediary interest in land. The second proviso was enacted to nullify the creation of rights in anticipation of the impending legislation and hence it was made unconditional. If any conditions was intended to be super-imposed on the right of the Government to terminate the rights created after July 1, 1945, one would have expected those conditions to be mentioned in the second proviso itself. In our opinion, there is no substance in the principle point urged by learned counsel appearing for the appellant before us.

It was somewhat faintly argued by learned counsel for the appellant that the Government should have allowed the appellant's application for the revewal of his lease under r. 47 of the Mineral Concession Rules of 1949. The argument is wholly untenable. That rule provides that a mining lease granted by a private person shall be subject to certain conditions therein specified. The first conditions thus laid down is that the term of the lease should be renewed at the option of the lessee for one period not exceeding the duration of the original lease. The effect of this rule is, as it were, to insert statutorily some new terms in the lease itself. In other words, this rules does not do anything more than add some terms to the lease. When, however, the lease is determined under the second proviso, these terms must also fall with it.

No other point has been urged before us and for reason stated above, we think that these appeals should be dismissed with costs and we order accordingly.

Appeals dismissed.

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