Smt. Padmini Kunwar Ju Sahiba

Vs

State of Vindhya Pradesh (now Madhya Pradesh)

Civil Appeal No. 250 of 1956

(K. N. Wanchoo, P. B. Gajendragadkar, K. C. Das Gupta JJ)

21.02.1961

JUDGMENT

WANCHOO, J. -

This is an appeal on a certificate granted by the Judicial Commissioner of Vindhya Pradesh. The brief facts necessary for present purposes are these : The appellant filed a petition under Art. 226 of the Constitution praying that the order of the Deputy Commissioner, Panna, issued on December 29, 1953, to the effect that the appellant's rights in certain villages would be resumed from January 1, 1954, in pursuance of the notification of the Government of Vindhya Pradesh dated December 20, 1953, under s. 5 of the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, No. XI of 1952 (hereinafter called the Act) resuming all jagirs with a gross annual income of Rs. 1,000/- or above, be quashed. The appellant's case was that she was granted as a special case a Lambardari lease in certain villages by His Highness the Maharaja of Panna on December 7, 1945, for a period of thirty years and had been in possession thereof in accordance with the terms of the lease. The appellant contended that she was not a jagirdar within the meaning of the Act and thus the said notification did not apply to her lands and the order issued by the Deputy Commissioner under the said notification was therefore without the authority of law and liable to be quashed. She contended further that she was not a jagirdar under any law, rules, regulations or orders governing jagirdars in force in any part of the State, and therefore her lands could not be resumed in the manner in which the resumption had been made.

The petition was opposed on behalf of the State and it was contended that the appellant was a jagirdar within the meaning of that term in the Act. The learned Judicial Commissioner held that the appellant was an Ijaredar and therefore a jagirdar within the meaning of s. 2(1)(c) of the Act. In consequence he dismissed the petition. An application was then made for a certificate to appeal to this Court, which was granted and that is how the appeal has come up before us.

The only question that falls for our decision is whether the appellant can be said to be an Ijaredar within the meaning of s. 2(1)(c) of the Act. A "jagirdar" is defined in s. 2(1)(c) as meaning "any person recognised as a Jagirdar under any law, rules, regulations or orders governing Jagirdars in force in any part of the State and includes an Ilakedar, a Pawaidar, a sub-Pawaidar (in direct relation with the Government or otherwise), an Ijaredar, an Ubaridar, a Zamindar, a Muafidar and a Grantee of Jagir land from a Jagirdar." "Jagir land" is defined in s. 2(1)(d) as meaning "any land in which or in relation to which any jagirdar has rights as such in respect of land revenue or any other kind of revenue." Under s. 5 of the Act it is provided that "as soon as may be after the commencement of this Act, the State Government may, by notification in the Official Gazette, appoint a date for the resumption of any class of jagir lands and different dates may be appointed for different classes of

jagir-lands." It was under this provision that the notification reassuming jagir-lands with a gross annual income of Rs. 1,000/- or above issued.

It is not in dispute that the lands were not granted to the appellant by the Ruler of Panna as a jagir. It is also not in dispute that the appellant was not recognized as a jagirdar under any law, rules, regulations or orders governing jagirdars in force in any part of the State. The contention on behalf of the State was that the appellant is included in the inclusive part of the definition of the word "jagirdar" in s. 2(1)(c) as she was an Ijaredar. Now the words used in the inclusive part of the definition have not been defined anywhere in the Act. It appears that some of those words are words of common use while others are not. For example, the Rewa Land Revenue and Tenancy Code deals with a Pawaidar, a sub-Pawaidar and Ilakedar who is a big Pawaidar. It is not clear whether the other words used in the inclusive part of the definition of "jagirdar" appear in any other laws in force in the various States which amalgamated to form the State of Vindhya Pradesh, though the word "Ubaridar" appears to be somewhat uncommon and must have some special local significance. It will therefore be not unreasonable to hold that where these words used in the inclusive part of the definition appear in any law in force in any part of the State, they must have that meaning; but if they do not appear in any such law they must be given their ordinary meaning. The Judicial Commissioner in his judgment says that "an Ijaredar as such has not been defined under any law relating to land revenue and tenancy in force in any part of Vindhya Pradesh." Therefore, the word "Ijaredar" must be given its ordinary meaning. Now the ordinary meaning of the word "Ijara" from which the word "Ijaredar" is derived is a lease or farm of land revenue or other proprietary right as distinguished from a patta or lease of land for cultivation, though sometimes it is used to indicate just a lease of land of any kind. The question then is what meaning should be given to the word "Ijaredar" in s. 2(1)(c) of the Act. We are of opinion that considering the setting in which the word "Ijaredar" has been used in the section, it must take colour from it and cannot be held to mean any lease of land of whatever kind. In the setting in which the word is used it should in our opinion be confined to a person holding an Ijara which is a lease or farm of land revenue or other proprietary right as distinguished from other kinds of leases of land.

The next question is whether the lease in this particular case is a lease of land revenue or other proprietary right as distinguished from lease of land of other kinds. The lease in the present case is called a Lambardari lease, though it appears that the system of Lambardari leases was abolished in the State of Panna long ago as appears from paragraph (2) of Chap. II of the Revenue Administration Manual of the Panna State prepared by J.E. Goudge, Settlement Officer, Bundelkhand States, in 1907. It has been stated in that paragraph that "the system of Lambardari leases has been abolished and rents will in future be realised by the Darbar direct from each tenant through the zamindars of the village." Zamindar in that area is a petty village official for the purpose of collecting rents and has no interest in the land from which he collects rent. It does appear from this paragraph that a Lambardari lease originally was a kind of lease of land revenue; but such leases were abolished in the area from which this case comes long ago. It is true that this lease is called a Lambardari lease but the mere name will not matter and we have to see whether this was a lease of land revenue.

This brings us to the terms of the lease. The lease starts by saying that the villages given in lease have an average annual income of Rs. 1,242/4/- payable in two instalments in the months of June and December. The lease is to last for thirty years and the lessee has to pay the entire amount (namely, Rs. 1,242/4/-) as lease money which will remain the same for the whole period of thirty years. The lease also provides that if within this time any settlement is made and the revenue is increased or the Lambardar increases the income by inhabiting the villages, the Lambardar herself

will be entitled to reap this additional benefit. The lease further provides that if for any reason the rent of land is decreased then the Lambardar will not be entitled to any decrease in the lease money. It is clear from these terms that the Lambardar stood to gain nothing by this lease and no part of the land revenue was left to her except where there was an increase in revenue on account of a future settlement. The lease further provides that if during the period of lease the Lambardar makes any improvements, i.e., plants, groves and orchards, makes bandhs and bandhis (i.e., large and small dams) she will be entitled at the end of the lease to sell or mortgage them and the benefit of the improvements will go to her. Lastly - and this is an important term of the lease - it is provided that the lessee's right to mortgage and sell the lands will be governed by the laws of the State and if the law is amended afterwards it will be governed by the amended laws. These clauses in the lease clearly show that what the appellant was getting was not merely a lease of land revenue but actual rights in the lands including the right to cultivate them herself. Reading therefore the lease as a whole it does not appear that it is a mere lease of land revenue or other proprietary right. It is something more and actually gives the lesser the right to all lands which were not in the actual cultivation of tenants at the time of the lease. The lessee was entitled to make improvements, to plant groves and orchards and to make dams - large and small. She was also entitled to mortgage and sell the lands which she might bring into her own cultivation in accordance with the laws of the State. It is difficult under the circumstances to hold that this was a mere Ijara and the appellant was a mere Ijaredar within the meaning of that words as mentioned above. There is a certain element of lease of land revenue in this lease though that was not likely to bring any profit to the appellant; but the lease is much more than a mere Ijara of this kind and actually confers on the appellant rights in land not in the actual cultivation of the tenants at the time of the lease. In the circumstances we cannot agree with the learned Judicial Commissioner that the transaction evidenced by this lease is a mere Ijara in the sense explained above and the appellant is a mere Ijaredar who comes within the meaning of that word in s. 2(1)(c). The lease in our opinion confers rights in lands and is much more than an Ijara. In the circumstances the appellant cannot to held to be a mere Ijaredar covered by the definition of that word as used in s. 2(1)(c). The case of the appellant in our opinion is similar to the case put forward in Petition No. 392 of 1954 with respect to Khandela estate (see Thakur Amar Singhji v. State of Rajasthan [[1955] 2 S.C.R. 303, 367]). There also was an Ijara or lease on payment of an annual assessment of Rs. 80,001 and it was held that it was not covered by the terms of the Rajasthan Land Reforms and Resumption of Jagirs Act. The present case in our opinion is similar and we are of opinion that the lease granted in this case cannot make the appellant a mere Ijaredar within the meaning of that word in s. 2(1)(c). We therefore allow the appeal and set aside the order of the Deputy Commissioner resuming the appellant's villages. The appellant will get her costs from the State of Madhya Pradesh, which is the successor to the State of Vindhya Pradesh.

Appeal allowed

</html