Sonapur Tea Co., Ltd.

Vs

Must. Mazirunnessa

Civil Appeals Nos. 235 and 236 of 1960

(K. N. Wanchoo, P. B. Gajendragadkar, K. C. Das Gupta, N. Rajgopala Ayyangar, A. K. Sarkar JJ)

04.04.1961

JUDGMENT

GAJENDRAGADKAR, J. –

These two appeals arise out of two writ petitions Nos. 138 and 139 of 1958 filed respectively by the two appellants, Sonapur Tea Co. Ltd., of 15-D Sambhunath Pandi Street, Calcutta 9, and Musst. Mazirunnessa, wife of Abdul Gafur of Village Bhoknamari, District Kamrup, in which they challenged the validity of the Assam Fixation of Ceiling on Land Holdings Act I of 1957 (hereafter called the Act). The said writ petitions have been dismissed by the Assam High Court substantially on the ground that since the impugned Act falls within the protection of Art. 31A the challenge made by the two appellants to the several provisions of the Act under Arts. 14, 19(1)(f) and 31(2) cannot be entertained. Having dismissed the writ petitions principally on this ground the High Court granted certificates to both the appellants to come to this Court in appeal, and so it is with the said certificates that the two appeals have been brought to this Court.

It is not necessary to set out the material facts leading to the two writ petitions in any detail. It would be enough to say that under s. 5 of the impugned Act notices had been served on both the appellants by the respondent Deputy Commissioner and Collector of Kamrup calling upon them to submit a return giving the particulars of all their lands in the prescribed form and stating therein their selection of plot or plots of land (not exceeding in the aggregate the limits fixed under s. 4) which they desired to retain under the provisions of the Act. The appellants contended before the High Court that the impugned Act under which this notice had been served on them was invalid and ultra vires and so they wanted the notice issued under s. 5 to be quashed. That is the only relevant fact which needs to be stated for deciding the present appeals.

The Act received the assent of the President on December 7, 1956, and was published in the official State Gazette on January 16, 1957. Subsequently it was amended by the amending Act XVII of 1957 and assent was obtained to the amendment thus made on November 8, 1957. By a notification issued by the State Government on February 7, 1958, the amended Act came into force on February 15, 1958.

It is relevant to consider briefly the broad features of the Act. It has been passed because the Legislature deemed it necessary to make provision for the imposition of limits on the amount of land that may be held by a person in order to bring about an equitable distribution of land. That being the object of the Act the principal provision of the Act imposes a ceiling on existing holding by s. 4. The Act extends to the seven Districts specified in s. 1(2), and from its operation are excepted the lands specified in cls. (a) to (e) of s. 2. These clauses refer to lands belonging to any

religious or charitable institution of a public nature, lands held for special cultivation of tea or purposes ancillary thereto and lands exceeding 150 bighas utilised for large scale cultivation of citrus in a compact block by any person before January 1, 1955, lands utilised by efficiently managed farms on which heavy investments or permanent structural improvements have been made and whose break up is likely to lead to a fall in production, and lands held by a sugar factory or a co-operative farming society for cultivation of sugarcane for the purpose of such factory. It would thus be noticed that the measure of agrarian reform introduced by the Act has made exceptions in regard to lands which it thought should be left out of the operation of the Act in the interest of the economy of the State. Section 3 is the definition section. It defines land as meaning land which is or may be utilised for agricultural purposes or purposes subservient thereto and includes the sites of buildings appurtenant to such land. Under s. 3(g) the word 'landholder' has the meaning assigned to it in the Assam Land and Revenue Regulation, 1886 (Regulation I of 1886). 'Landlord' under s. 3(h) is a person immediately under whom a tenant holds but does not include the Government; and 'owner' under s. 3(i) includes proprietor, land-holder or settlement-holder as defined in s. 3 of the Assam Land and Revenue Regulation I of 1886 but it does not include Government. Section 3(o) defines 'tenant' as a meaning a person who holds land under another person and is, but for a special contract would be, liable to pay rent for that land to the other person, and includes a person who cultivates the land of another person on condition of delivering a share of the produce. These are the only definitions which are relevant for our purpose.

Section 4 which is the key section of the Act prescribes ceiling on existing holding. The limit prescribed is 150 bighas in the aggregate subject to its provisos. Section 5 empowers the appropriate authorities to call for submission of returns by persons holding lands in excess of the ceiling. Section 8 empowers the State Government to acquire such excess lands by publishing in the official gazette a notification to the effect that such lands are required for public purpose, and such publication shall be conclusive evidence of the notice of acquisition to the person or persons holding such lands. Acquisition of excess lands prescribed by s. 8 is followed by the vesting of the said lands in the State under s. 9. On publication of the notification under s. 8 all such excess lands shall stand transferred to the State Government from the date of the publication of the said notification free from encumbrances by their original owner or owners. Under s. 11 the Collector is authorised to take possession of the said lands. Section 12 prescribes the principles of compensation and provides the manner in which the said compensation should be apportioned between the owner and the tenant; and s. 13 provides for the manner of payment of such compensation. Under s. 14 ad interim payment of compensation can be made as specified. These are the relevant provisions in Chapter II which deals with ceiling on existing holding and acquisition of excess land.

Chapter III deals with the disposal of excess land. Under s. 16(1) if there is any cultivating tenant in occupation of the land acquired from an owner then he shall have the option of taking settlement of such land within a prescribed period on the following conditions, namely, (a) that the area of land so settled together with any other lands held by him or any member of his family either as tenant or as owner shall not exceed in the aggregate the limit fixed under s. 4, and (b) that he shall pay to the State Government in one or more equal annual instalments not exceeding five an amount fixed by it but not exceeding the compensation payable by the State Government for acquisition thereof, provided that he shall have the right to adjust any amount which he is entitled to receive as compensation under the provisions of the Act against an equal amount which he is liable to pay under cl. (b). Section 16(2) provides that on payment of full amount under sub-section (1) above the land shall be settled with a tenant with the status of a landholder. Under s. 18 it is provided that if a tenant in occupation of any land acquired under s. 8 does not take settlement of such land he shall acquire no right, title and interest in the land and shall be liable to be ejected. Chapter IV deals with

excess land under annual lease and provides for its taking over. Chapter V puts a ceiling on future acquisition, and Chapter VI provides for ceiling for resumption of land from tenants for personal cultivation by the landlord. Chapter VII provides for the establishment of a Land Reform Board, and lays down its functions, while Chapter VIII contains miscellaneous provisions. That briefly is the scheme of the Act.

The question which arises for our decision is whether this Act is protected under Art. 31A of the Constitution. This Article has been construed by this Court on several occasions in dealing with legislative measures of agrarian reforms. The object of such reforms generally is to abolish the intermediaries between the State and the cultivator and to help the actual cultivator by giving him the status of direct relationship between himself and the State. Article 31A(1)(a) provides that, notwithstanding anything contained in Art. 13, no law providing for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Art. 14, Art. 19 or Art. 31, provided that, where such law is a law made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received this assent. We have already seen that the assent of the President has been obtained both for the Act as it was originally passed and for the amending Act which subsequently modified some of the provisions of the original Act, and so the requirement prescribed by the proviso to Art. 31A(1)(a) is satisfied. That raises the question as to whether the rights of the appellants which are undoubtedly taken away or abridged constitute rights in relation to an "estate" as defined by Art. 31A(2)(b).

We have already seen the definitions of land, landholder, landlord and tenant prescribed by s. 3(f), (g), (h) and (o). It is common ground that the lands sought to be acquired fall within an "estate" as defined by Art. 31A(2). Do the rights vesting in the appellants amount to rights in relation to an "estate" ? For deciding this question it would be necessary to consider the provisions of the existing law relating to tenure in force in Assam at the relevant time. The existing law relating to land tenure is to be found in the provisions of the Assam Land and Revenue Regulations, 1886 (Regulation I of 1886). Section 3(g) of the said Regulation provides that a 'landholder' means any person deemed to have acquired the status of a landholder under s.8. Now, when we turn to s. 8 we find that it provides the manner in which the status of a landholder can be acquired; and s. 9 provides for the right of such landholders. Under s. 9 a landholder shall have a permanent, heritable and transferable right of use and occupancy in his land subject to the payment of revenue, taxes, cesses and rates from time to time legally assessed or imposed in respect of the land. The remaining two clauses of this section need not be considered. It would be noticed that the expression "rights in relation to an estate" is of a very wide amplitude and as such the context requires that it must receive a very liberal interpretation. Thus considered there can be no doubt that the rights of the appellants which have been extinguished undoubtedly constitute "rights in relation to an estate" as defined by Art. 31A(2)(b). Indeed this position is not seriously disputed by Mr. Chatterjee who fairly conceded that having regard to the decisions of this Court in Thakur Raghubir Singh v. The State of Ajmer (Now Rajasthan) [[1959] Supp. 1 S.C.R. 478.], Sri Ram Ram Narain Medhi v. The State of Bombay [[1959] Supp. 1 S.C.R. 489.] and Atma Ram v. The State of Punjab [[1959] Supp. 1 S.C.R. 748.] he would not be able to contend that the view taken by the High Court is erroneous.

Faced with this difficulty Mr. Chatterjee attempted to argue that the Act is a colourable piece of legislation and should be struck down as such. His argument is that though ostensibly it purports to be a measure of agrarian reform its principal object and indeed its pith and substance is to acquire the property covered by its provisions and make profit by disposing of the same in the manner

provided by Chapter III. Mr. Chatterjee seemed to suggest that the Legislature should not have made it necessary for the tenants to exercise an option for taking settlement under s. 16 because the exercise of the said option involves the liability to pay the prescribed amount though in five instalments, and that, according to Mr. Chatterjee, indicates that the State wanted to make profit out of the bargain. Mr. Chatterjee's grievance is against the provisions of s. 18 also under which a tenant who does not opt for settlement is liable to be evicted. We are not impressed by this argument. The doctrine of colourable legislation really postulates that legislation attempts to do indirectly what it cannot do directly. In other words, though the letter of the law is within the limits of the powers of the Legislature, in substance the law has transgressed those powers and by doing so it has taken the precaution of concealing its real purpose under the cover of apparently legitimate and reasonable provisions (Vide : K. G. Gajapati Narayan Deo v. The State of Orissa) [[9954] S.C.R. 1.]. This position is not and cannot be disputed.

Is Mr. Chatterjee, however, right when he contends that the pith and substance of the Act and indeed its main object is to acquire property and dispose of it at a profit ? That is the question which calls for our decision. In our opinion the answer to this question must obviously be against the appellants. The whole object of the Act which is writ large in all its provisions is to abolish the intermediaries and leave the lands either with the tiller or the cultivator. With that object ceiling has been prescribed by s. 4, provisions have been made for the acquisition of excess lands, and disposal of excess lands in favour of the tenants have been provided for. It is significant that in settling the lands upon the tenants it is expressly provided that the payment which the tenant may have to make - and that too in one or more easy instalments not exceeding five - will never exceed the compensation payable by the State Government for acquisition thereof. This provision clearly negatives the assumption made by Mr. Chatterjee that any profit is intended to be made in the matter of disposal of excess lands. The State is paying compensation to the persons dispossessed under the principles prescribed by s. 12; amongst the persons entitled to such compensation tenants are included, and when the State proceeds to settle lands on tenants in expects them to pay a fair amount of price for the land and puts a ceiling on this price that it shall never exceed the amount of compensation payable in respect of the said land. In our opinion this provision is very fair and reasonable and it would be idle to attack it as a piece of colourable legislation. We have already seen that the settlement of land on the tenants would make them landholders and that is the basic idea of the Act. If a tenant does not agree to take settlement it cannot be helped and so the land would then have to be taken from him and given over to somebody else who would be prepared to take settlement. It is thus clear that the object of putting ceiling on existing holding is to take over excess lands and settle them on actual cultivators or tenants and that is the essential feature of agrarian reform undertaken by several States in the country. The Act conforms to the pattern usually followed in that behalf and the attack against its validity on the ground that it is a colourable piece of legislation must therefore fail.

In the result we hold that there is not substance in the two appeals. They are accordingly dismissed with costs - one set of hearing.

Appeals dismissed.

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