State of Bihar

Vs

Rameshwar Pratap Narain Singh and Others

Civil Appeal No. 27 of 1960 with Civil Appeals Nos. 574, 92, 411 and 285 of 1960, 351 of 1959 and Petitions Nos. 20 and 106 of 1960

(B. P. Sinha, A. K. Sarkar, K. C. Das Gupta, N. Rajagopala Ayyangar, J. R. Madholkar JJ)

25.04.1961

JUDGMENT

DAS GUPTA, J. -

The common question which arises for decision in this group of cases is as regards the validity of the Bihar Act No. XVI of 1959 (Bihar Land Reforms Amendment Act, 1959), in so far as it amends with retrospective effect sections 4 and 6 of the Bihar Land Reforms Act, 1950, to be indicated later, and inserts the new sections, s. 7B and s. 7C in that Act. It appears that sometime after the Bihar Land Reforms Act became law and action was taken under section 3 thereof by the State Government issuing notifications, declaring that the estates or tenures of proprietors or tenure-holders, specified in the notifications had passed to and become vested in the State, the Revenue authorities started interfering with the rights of those ex-proprietors and ex-tenure-holders to hold Melas on lands of which they were thereafter in occupation as occupancy raiyats under the State and started settling rights to realise tolls from such Melas on behalf of the State Government. Aggrieved by this action taken by the Revenue authorities on behalf of the State Government applications were made by several of these erstwhile intermediaries - now occupancy raiyats - to the High Court to Patna for writs restraining the Government and its officers from such interference with their rights.

Five such applications have given rise to the five appeals which are numbered as C.A. No. 351 of 1959, C.A. No. 27 of 1960, C.A. No. 92 of 1960, C.A. No. 285 of 1960 and C.A. No. 411 of 1960. The High Court held that in view of the provisions of s. 6 of the Bihar Land Reforms Act (before its amendment) and the fact that the provisions made in s. 4(a) of the Act about the consequences that would ensue on the vesting of an estate or tenure in the State were "subject to" the provisions of s. 6, the State had no right to hold Melas on the Bakasht lands of the ex-intermediaries - now occupancy raiyats. Accordingly the High Court allowed the applications and issued writs as prayed for. Against these orders of the High Court the State of Bihar and its officers have preferred the five appeals mentioned above, after obtaining special leave from this Court.

Some time after special leave was obtained by these appellants the Bihar Legislature enacted in 1959, the Bihar Land Reforms Amendment Act, 1959, (Bihar Act XVI of 1959). This Act amended inter alia section 4, cl. (b) of the Bihar Land Reforms Act, 1950, by adding the word "Mela" after the words "jalkars, hats, and bazars" and by omitting the words "subject to the subsequent provisions of this Chapter" in cl. (a) of section 4. It also amended section 6 of the 1950 Act by substituting for the words "Notwithstanding anything contained in this Act" the words "subject to the provisions of sections 7A and 7B". Of these s. 7B provides that "Where on any land deemed to be settled with the intermediary under the provisions of section 5, section 6 or section 7, a Mela was

being held by the intermediary at any time within 3 years of the date of vesting, the right to hold such Mela on such land shall, with effect from such date, vest in the State and notwithstanding anything contained in any law, the State shall have and the intermediary shall not, except with the consent of the State Government have the right to hold such Mela on such land or to do anything which may prejudicially affect such Mela". Section 7C contains provisions as regards settlement of hats, bazars or melas referred to in s. 7A and section 7B and provides inter alia that settlements will be made with the outgoing intermediary or his heir after application is received from him and if there are several of them who apply for settlement, with the most suitable of them. The Amending Act made the amendments mentioned above, except the insertion of s. 7C, retrospective, with effect from the date of enactment of the parent Act. The Amending Act had already been passed, when several other applications under Art. 226 of the Constitution for similar relief against the interference by the Government with the intermediaries' right to hold Melas came up for consideration before the High Court. The High Court rejected these applicants' attack against the validity of the Amending Act and held that in view of the provisions now made the applicants were not entitled to any relief. Civil Appeal No. 574 of 1960 has been preferred by one of such applicants on a certificate granted by the High Court.

The two applications under Art. 32 of the Constitution were filed in this Court for writs of mandamus against the State of Bihar and its officers restraining them from interfering with the applicant's right to hold melas on their lands. Both of these were filed after the Bihar Land Reforms Amendment Act, 1959, had become law.

It is obvious that if the Amending Act is valid legislation, in so far as it amends with retrospective effect s. 4 and s. 6 of the 1950 Act as mentioned above and inserts section 7B, the ex-intermediaries have not and the State has the right to hold melas on the Bakasht lands. The main question therefore is whether this is a valid legislation. To answer this question we have to examine in the first place whether the Bihar Legislature which enacted the Amending Act had on that date the legislative competence under Art. 246 of the Constitution to do so; and secondly, whether the law was void because of the provisions of Art. 13 of the Constitution. The Amending legislation was clearly within Item 42 of the Concurrent List, being a law as regards acquisition of property.

Mr. Tarkeshwar Dayal, who appeared on behalf of one of the ex-intermediaries submitted that this was really not a matter of land reform; the purpose of the Amending legislation being only to augment the revenue of the State. It is true that the law by taking the right to hold melas from certain persons and giving it to the State is likely to augment the revenues of the State. It may well be that this object of augmenting the revenues was one of the main purposes behind the Amending legislation. That however is no reason to think that this legislation is not also concerned with land reform. It is however unnecessary for us to consider this question further, for whether it is a law as regards land reform or not, it is clearly and entirely as regards acquisition of property. The question of the legislature having attempted legislation not within its competence by putting it into the guise of legislation within its competence does not even arise. The conclusion that necessarily follows is that the amending legislation was within the legislative competence of the Bihar Legislature under Art. 246 of the Constitution.

This brings us to the main question in controversy, viz., whether the amending legislation is void on the ground that it violates Arts. 31, 19 and 14 of the Constitution. A complete answer to this question is furnished in favour of the State if this is a law within the saving provisions of Art. 31A. Art. 31A was enacted in the Constitution by the Constitution (First Amendment Act) with retrospective effect from the commencement of the Constitution. It was further amended by the

Constitution (Fourth Amendment) Act, also with retrospective effect from the date of the commencement of the Constitution. This Article provides inter alia, that notwithstanding anything contained in Art. 13, no law providing for the acquisition by the State of any estate or of any rights therein ..... 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 Arts. 19, 31 and 14 of the Constitution. Is the amending legislation a law "providing for the acquisition by the State of any estate or of any rights therein ?" Two arguments have been advanced on behalf of the ex-intermediaries to convince us that it is not such a law. The first argument is that what the amending legislation provides for is not "acquisition" at all within the meaning of Art. 31A as it is not "acquisition" for a public purpose. It has been urged that the purpose is a mere augmentation of revenue.

It does not appear to us that when the right of holding the Mela is taken over by the State the only purpose is the augmentation of revenue. There is scope for thinking that the legislature believed that melas would be better run and be more in the interests of the general public when run by the State than when they are left without control in the hands of private individuals with whom the profit motive is likely to be the sole guiding principle. It is unnecessary however to answer this question for, in our opinion, a law, may be a law providing for "acquisition" even though the purpose behind the acquisition is not a public purpose.

It is important to notice that the Constitution (Fourth Amendment) Act made important alterations in Art. 31 also. One of the amendments of Art. 31 was that clause 2 now provides that no property shall be compulsorily acquired, (1) save for a public purpose and (2) save by authority of a law which contains provisions for compensation for the property acquired and either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined and given. Then, Art. 31A provides inter alia that a law providing for "acquisition" will not be void on the ground that it is inconsistent with or takes away or abridges a right conferred by Art. 31. Reading the two articles together as they stand after the fourth amendment of the Constitution it becomes obvious that when Art. 31A speaks of a law of "acquisition" it contemplates a law which may be for acquisition, though not for a public purpose and lays down that even though this will be in violation of the fundamental right guaranteed by the first part of Art. 31(2) the law will not be void because of such violation.

The question whether the validity of a law for compulsory acquisition of property by the State can be challenged on the ground that the "acquisition" is not for a public purpose had to be considered by this Court even before the amendment of Art. 31(2) as mentioned above in The State of Bihar v. Sir Kameshwar Singh. [[1952] S.C.R. 889] Art. 31(2) as it then stood did not in so many words provide that no acquisition can be made save for a public purpose; but it was argued on behalf of the State that such a provision was implicit in the words of Art. 31(2). This argument was rejected by Mahajan and Chandrasekhara Aiyar, JJ., but it was accepted by Patanjali Sastri, C.J., and Das, J., both of whom held that the requirement of public purpose being a condition for compulsory acquisition laid down by Art. 31(2) the law was saved in spite of the violation of such condition by Art. 31(4) and also Art. 31A. Mukherjea, J., also said that the requirement of public purpose was a condition implied in the provisions of Art. 31(2). His Lordship then added : "For my part, I would be prepared to assume that cl. (4) of Art. 31 relates to everything that is provided for in clause (2) either in express terms or impliedly and consequently the question of the existence of a public purpose does not come within the purview of an inquiry in the present case." It was in this state of judicial opinion that Act. 31(2) was amended by the Constitution (Fourth Amendment) Act as mentioned above and the requirement of public purpose was expressly made a condition for compulsorily acquisition by the State. The basis for the argument that the question whether there

was a public purpose or not is open to judicial review in spite of Art. 31A has therefore disappeared.

It is worth noticing in this connection that in Sir Kameshwar Singh's case [[1952] S.C.R. 889] the argument that quite apart from anything in Art. 31(2) as it then stood no law of acquisition could be made except for a public purpose was sought to be reinforced by the words in Item 36 of the State List and Item 42 of the Concurrent List. These items read as follows :-

> "36. Acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of entry 42 of List III."
>
> "42. Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given."

The argument on the basis of these entries was that the State legislatures had no power to make a law for acquisition of property without fulfilling the condition of public purpose. The Constitution (Seventh Amendment) Act which came into force on the 1st day of November, 1956, deleted Entry 36 of the State List and substituted for the former phraseology of Item 42 of the Concurrent List the words "acquisition and requisition of property". It is quite clear that after its amendment the legislative list permits the State legislature to enact a law of acquisition even without a public purpose; and that the only obstacle to such a law being enacted without a public purpose is the provisions of Art. 31(2). That obstacle also disappears if the law in question is one within Art. 31A.

It was next contended that the acquisition of the right to hold the Mela, for which the amending Act provides is not acquisition, in any case, of "rights" "in any estate" within the meaning of Art. 31A as defined in cl. 2(b) of the same Article. It was argued that this definition includes only rights of persons who are intermediaries and unless the raiyat whose rights are being acquired is an intermediary, that is, a person between the State and the tiller of the soil, his rights are not rights within the definition of "rights in relation to an estate"; and consequently, a law providing for acquisition of the rights of such a raiyat is not a law within the saving provisions of Art. 31A. It is pointed out that on the date the Amending Act was passed the ex-intermediaries had ceased to exist as intermediaries and had become occupancy raiyats under s. 6 of the parent Act. What were being acquired therefore, it is argued, were not rights of intermediaries but rights of raiyats who had ceased to be intermediaries. It has to be noticed that the impugned provisions amending s. 4 and s. 6 and s. 7(b) have been given retrospective effect so that the parent Act of 1950 has to be read as containing on the very date of its enactment provisions in these sections not as originally enacted but as they stood after the amendment of 1959. In deciding whether rights of raiyats were being acquired or not we have to forget what happened in consequence of the unamended s. 6. Projecting ourselves to the date September 25, 1950, when the President's assent to the Bihar Land Reforms Act, 1950, was published in the Gazette and reading the Act as containing s. 4 and s. 6 as amended and also s. 7(b) it cannot but be held that what were being acquired by means of these provisions of the amending legislation giving retrospective effect were certain rights of the intermediaries. These intermediaries had not on September 25, 1950, ceased to be intermediaries and the fact that under the unamended provisions of section 6 they later on became occupancy raiyats should not be allowed to confuse the fact that the acquisition of certain properties by the amending legislation being itself with effect from September 25, 1950, what was being provided for was acquisition of intermediaries' rights.

Even if it be assumed that what the amending legislation provided for was the acquisition of raiyats' rights, there is no justification for holding that these rights were not "rights in any estate" within the definition of cl. 2 of the Art. 31A. Clause 2(b) is in these words :-

> "the expression 'rights' in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue."

The contention on behalf of the ex-intermediaries is that the rights of raiyats who are not intermediaries, in the sense of being middlemen between the State and the tiller of the soil, are not within this definition. This contention does not however stand a moment's scrutiny, for the simple reason, that it is well known that ordinarily at least, a raiyat or an under-raiyat is not a person, who can be called an intermediary. It is reasonable to think that the word "raiyat" was used in its ordinary well-accepted sense, of the person "who holds the land under the proprietor or a tenure-holder "for the purpose of cultivation" and the word "under-raiyat" used in the equally well-accepted and ordinary sense of "a person who holds land under a raiyat for the purpose of cultivation." It is necessary to remember in this connection that Art. 31A as first enacted by the Constitution (First Amendment) Act did not contain these words "raiyat, under-raiyat"; and that after the First Amendment the definition ran thus :-

> "the expression 'rights', in relation to an estate shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder or other intermediary and any rights or privileges in respect of land revenue."

It was the Fourth Amendment which in the year 1956 inserted the words "raiyat, under-raiyat "immediately after the words "tenure-holder". At that time laws had already been passed in most of the States for the acquisition of the rights of intermediaries in the estates; rights of raiyats or under-raiyats who might answer the description "intermediary" were also within the definition because of the use of the word "or other intermediary". The only reason for specifically including the rights of "raiyats" and "under-raiyats" in the definition could therefore be to extend the protection of Art. 31A to laws providing for acquisition by the State Governments of rights of these "raiyats" or "under-raiyats". In the circumstances and in the particular setting in which the words "raiyat" or "under-raiyat" were introduced into the definition, it must be held that the words "or other intermediary" occurring at the end, do not qualify or colour the meaning to be attached to the tenures newly added.

Another contention raised in support of the argument that the impugned law is not for acquisition of a right in an estate is that the right to hold a Mela is not a right in the lands at all. This contention is wholly unsound. Holding a hat, or bazar or mela is only a mode of user by the owner of his land. Just as he can enjoy the land belonging to him in other ways, he can use it for the purpose of having a concourse of people - buyers and sellers and others for a hat, or bazar or mela - subject, as in the case of other user to the requirement that no nuisance is created and the legal right of others are not infringed. Consequently, the right to hold a Mela has always been considered in this country to be an interest in land, an interest which the owner of the land can transfer to another along with the land or without the land. There can be no doubt therefore that the right of the proprietor of an estate to hold a Mela on his own land is a right in the "estate, being appurtenant to his ownership of the land; so also the right of a tenure-holder, who it has to be remembered is the owner of the land subject only to the payment of rent to the proprietor, to hold a mela on land forming part of the tenure. It is true that a licence to hold a Mela on another's land in which no interest is transferred is

not an interest in land; but there is no question here of the acquisition of any licence to hold a Mela at another person's land. The argument that the impugned law was not a law for acquisition of a right in the "estate" because the right to hold a mela was not a right in the land must therefore be rejected.

Lastly, it was contended that long before the date of the amending Act the "estates" had ceased to exist as a consequence of the notifications issued under s. 3 of the Parent Act and consequently whatever was being acquired in 1959 could not be a right in an "estate". Here also we have to take note of the fact that the impugned provisions of the Amending Act were made retrospective with effect from the date of the original enactment so that we have to project ourselves to September 25, 1950, the date of the original enactment, and consider whether on that date the law provided for acquisition of a right in an "estate". Undoubtedly the "estates" did exist on that date and so the acquisition retrospectively provided for from that date was acquisition of a right in an estate.

Even if we ignore the fact that the impugned provisions of the Amending Act were given retrospective effect there is no warrant for saying that what was being acquired was not a right in an "estate"."Estate" was defined in the Bihar Tenancy Act to mean "any land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a District". It is not disputed before us that in spite of the fact that in consequence of notifications under section 3 of the Act the "estates" had become vested in the State, these registers continued to be maintained at least up to the date of the Amending Act and even later. The position therefore is that the "estates" have become vested in the State but have still not ceased to be "estates".

We have therefore come to the conclusion that the impugned provisions of the Amending Act is a law providing for the acquisition by the State of rights in an "estate" within the meaning of Art. 31A of the Constitution and consequently even if we assume that they are inconsistent with or take away or abridge any of the rights conferred by Arts. 14, 19 and 31 they are not void on that ground. The conclusion cannot therefore be escaped that the ex-intermediaries have not and the State has the right to hold melas on the Bakasht lands of which they have become occupancy raiyats under the provisions of s. 6.

We therefore allow the appeals by the State and set aside the order of the High Court for the issue of writs and order that the applications under Art. 226 made before the High Court be dismissed. We also dismiss the two petitions under Art. 32 of the Constitution filed in this Court, and also Civil Appeal No. 574 of 1960.

In the circumstances of the case, we make no order as to costs.

Appeals by the State allowed.

C.A. No. 574 of 1960 and Petitions under Art. 32 dismissed.

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