State of Bihar and Another

Vs

Umesh Jha

Civil Appeal No. 42 of 1957

(J. L. Kapur, M. Hidayatullah, J. C. Shah, K. Subha Rao, Raghuvar Dayal JJ)

03.05.1961

JUDGMENT

SUBBA RAO, J. -

This appeal by certificate raises the question of the construction of s. 4(h) of the Bihar Land Reforms Act, 1950 (Act 30 of 1950) (hereinafter referred to as the Act), as amended by the Bihar Land Reforms (Amendment) Act, 1959 (Bihar Act 16 of 1959) (hereinafter called the Amending Act).

The facts giving rise to the appeal lie in a small compass. Plots Nos. 383 and 1033 are tanks in village Lakshmipur alias Tarauni in the District of Darbhanga. The respondent claims to have taken settlement of the said plots in the year 1943 from the land-lords of Raghopur Estate of which the said plots formed a part. After the coming into force of the Act, the said Estate vested in the State of Bihar. Thereafter, one Sheonandan Jha and some other villagers of Lakshmipur filed a petition before the Collector alleging that the alleged settlement was not true, and that in fact the settlement was nominally effected only after January 1, 1946. The Additional Collector, Darbhanga, in exercise of the powers conferred on him under s. 4(h) of the Act, held that the said settlement was actually made after January 1, 1946, and that it was only a paper transaction; having annulled the said settlement, the Additional Collector, by his order dated January 18, 1955, called upon the respondent to give up possession of the said plots by January 30, 1955. Aggrieved by the said order, the respondent filed a petition in the High Court of Judicature at Patna under Art. 226 of the Constitution for a rule in the nature of a writ of mandamus or any other appropriate writ cancelling the order of the Additional Collector dated January 18, 1955, and restraining the appellants from interfering with his possession of the said two plots. That petition came to be decided by a division bench of the High Court; and the learned Judges by their order dated February 21, 1956, held that the Additional Collector had no jurisdiction to entertain and decide the question whether the settlement, which was prima facie shown to have been made before January 1, 1946, was actually made after that date. On the basis of that finding, the order of the Additional Collector was set aside. The State of Bihar and the Additional Collector of Darbhanga have preferred the present appeal against the said order.

Learned counsel for the State contends that s. 4(h) of the Act has been amended with retrospective effect, that under the amended section the Collector has power to decide whether a transfer is made before 1946 or thereafter, and that, therefore, the order of the High Court can no longer be sustained.

Learned counsel for the respondent, while conceding the retroactivity of the amendment, relies upon

the second proviso added by the amendment to s. 4(h) and contends that under the said proviso the order of the Collector cannot take effect nor possession taken thereunder, unless the said order has been confirmed by the State Government and that in the instant case there has not been any such confirmation. Further he questions the constitutional validity of the said section on the ground that it infringes the fundamental right of the respondent under Arts. 14, 19 and 31 of the Constitution and is not saved by Art. 31A thereof.

The second contention of learned counsel for the respondent may be disposed of first. Under Art. 31A of the Constitution, 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. The question is whether s. 4(h) of the Act is such a law as to be hit by Art. 31A of the Constitution. Section 4(h) of the Act confers power on a Collector, inter alia, to make inquiries in respect of any transfer of any land comprised in an estate and to cancel the same if he is satisfied that such transfer was made any time after January 1, 1946, with the object of defeating any provisions of the Act or causing loss to the State or obtaining compensation thereunder. It is said that the section ex proprio vigore does not provide for acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such rights and, therefore, is not protected by Art. 31A of the Constitution. This argument in effect disannexes s. 4(h) of the Act from the setting in which it appears and seeks to test its validity independently of its interaction on the other provisions of the Act. Section 4(h) is an integral part of the Act, and taken out of the Act it can only operate in vacuum. Indeed, the object of the section is to offset the anticipatory attempts made by landlords to defeat the provisions of the Act. Suppose the Collector cancels a transfer of land by the owner of an estate under the said section; the said land automatically vests in the State, with the result that the rights of the transferor and the transferee therein are extinguished. The said result accrues on the basis that the said land continued to be a part of the estate at the time the Act came into force. That apart, the section is a part of the Act designed to extinguish or modify the rights in an estate, and the power conferred on a Collector to cancel a transfer of any land in an estate is only to prevent fraud and to achieve effectively the object of the Act. This question was directly raised and answered by this Court in Thakur Raghubir Singh v. State of Ajmer [[1959] Supp. 1 S.C.R. 478, 482.]. There, the constitutional validity of the Ajmer Abolition of Intermediaries and Land Reforms Act, 1955 (Ajmer III of 1955) and s. 8 thereof was attacked. Section 8 of the said Act conferred a power on the Collector to cancel a lease or contract, if he was satisfied that it was not made or entered into in the normal course of management, but in anticipation of legislation for the abolition of intermediaries. Repelling the said contention, Wanchoo, J., speaking for the Court, observed thus:

> "The provision is not an independent provision; it is merely ancillary in character enacted for carrying out the objects of the Act more effectively ..... Such cancellation would sub-serve the purposes of the Act, and the provision for it therefore be an integral part of the Act, though ancillary to its main object, and would thus be protected under Art. 31A(1)(a) of the Constitution."

The same reasoning applies to s. 4(h) of the Act, and for the same reasons we hold that s. 4(h) of the Act is likewise protected by Art. 31A of the Constitution.

The first question turns upon the interpretation of the relevant provisions of the Amending Act. To appreciate the argument it would be convenient to read the material provisions of the said Act.

Section 3. Amendment of section 4 of Bihar Act XXX of 1950. - In section 4 of the said Act, -

(iv) in clause (h) -

(a) the words, figures and commas "made at any time after the first day of January, 1946," shall be omitted and shall be deemed always to have been omitted;

(b) after the words "if he is satisfied that such transfer was made," the words, figures and commas "at any time after the first day of January, 1946," shall be inserted and shall be deemed always to have been inserted; and

(c) the words "and with the previous sanction of the State Government" shall be omitted;

(v) to clause (h) as amended above, the following provisos shall be added, namely :-

"Provided that an appeal against an order of the Collector under this clause, if preferred within sixty days of such order, shall lie to the prescribed authority not below the rank of the Collector of a district who shall dispose of the same according to the prescribed procedure :

Provided further that no order annulling a transfer shall take effect nor shall possession be taken in pursuance of it unless such an order has been confirmed by the State Government."

After the said amendment the relevant part of the section reads :

The Collector shall have power to make inquires in respect of any transfer including the settlement ..... if he is satisfied that such transfer was made at any time after the first day of January, 1946, with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder, the Collector may, after giving reasonable notice to the parties concerned to appear and be heard and with the previous sanction of the State Government annual such transfer, dispossess the person claiming under it and take possession of such property on such terms as may appear to the Collector to be fair and equitable.

The main differences material to the present enquiry between the section as it was before the amendment and thereafter are that under the unamended section it was a moot point whether the Collector had the power to set aside a transfer, whether it was effected before or after January 1, 1946; whereas under the amended section such a power is clearly and expressly conferred on him : while under the original section, the Collector had to take the previous sanction of the State Government before he made the order annulling a transfer and dispossessing the person claiming under it, under the amended section the order made by the Collector shall neither take effect nor can he take possession before his order is confirmed. The short question is whether the second proviso, added by the Amending Act, is retrospective in operation, that is, whether the order of the Collector made before the Amending Act, though made with the previous sanction of the State Government, would still require for its taking effect a subsequent confirmation by the State Government.

Learned Counsel for the State contends that the amendments made by s. 3(iv)(a) and (b) are retrospective, but the amendment made by s. 3(v) of the Amending Act is prospective. This

contention appears to be sound, both in letter as well as in spirit. The different phraseology used in cls. (a) and (b) of sub-s. (iv) of s. 3 of the Amending Act in the matter of omissions supports it. While in cl. (a) the omission shall be deemed always to have been omitted, in cl. (c) the words mentioned therein shall only be omitted indicating by contrast that the omission in the former is expressly made retrospective while in the latter it in necessarily prospective. If that be the true construction, the condition of previous sanction would continue to operate in respect of the Collector's order made before the amendment came into force. If the proviso be given a retrospective operation, it directly comes into conflict with the result brought about by cl. (c) of sub-s. (iv) of s. 3 of the Amending Act. An order with the previous sanction of the Government may have been passed and possession also taken by Collector, yet a further confirmation by the Government should be sought for to revalidate it. This construction would not only attribute to the Legislature redundancy but would also enable a party to seek for restoration of the land taken possession of by the Collector on the basis of a technicality. Even in a case where possession has not been taken by the Collector, the said anomaly would persist, for two sanctions would be required. The alternative construction makes the working of the section smooth and avoids the introduction of the said incongruity and, therefore, we prefer to accept it, particularly when it is consistent with the plain meaning of the words used in the section. The result is that in respect of an order already made by the Collector before the Amending Act, the previous sanction obtained would suffice, and in respect of an order made after the Amending Act, a subsequent confirmation by the State Government is required.

Even so, it is argued by learned counsel for the respondent that the High Court, presumably in view of its acceptance of the respondent's preliminary point, did not consider the question whether the inquiry had been made by the Collector in strict compliance with the provisions of the section, and whether the previous sanction of the State Government was obtained before he made the said order. In the affidavit failed in support of the petition in the High Court there is no specific allegation that no such inquiry has been made or that no such sanction has been obtained. Nor did the counsel for the appellant raise the said question in the arguments before the High Court. In the circumstances we do not think that this Court is justified in allowing the respondent to raise the said question for the first time before us. We, therefore, reject this plea.

In the result we set aside the order of the High Court and allow the appeal. But, in the circumstances of this case, we direct the parties to bear their own costs here and in the High Court.

Appeal allowed.

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