Raja Jagannath Baksh Singh

Vs

State of Uttar Pradesh and Another

Petition No. 327 of 1960

(P. B. Gajendragadkar, A. K. Sarkar,

K.C. Das Gupta, N. Rajgopala Ayyangar, J. R. Mudholkar JJ)

04.04.1962

JUDGMENT

GAJENDRAGADKAR J. –

The petitioner, Raja Jagannath Baksh Singh, was a Taluqadar of Rehwan Estate in District Rai Bareli. Under the U.P. Zamindari Abolition and Land Reforms Act (U.P. Act 1 of 1951), the petitioner's Zamindari property vested in the State Government, and the groves and other agricultural land were left with the petitioner as a bhumidar under the said Act. In 1957, the U.P. Legislature passed the U.P. Large Land Holdings Tax Act (XXXI of 1957) (hereinafter called the Act) and under section 7(2) of the Act the petitioner was served with a notice along with a provisional assessment of the annual value of the land in his possession for the year 1365 fasli. Similar notices were served on the petitioner subsequently for the years 1366 and 1367 fasli. In response to the said notices, the petitioner filed his returns and objected to the annual value of the land calculated by the assessing authority. After the petitioner received notices for the years 1365 and 1366 fasli, he filed a writ petition in t

On the 22nd November, 1960, the petitioner filed three petitions in this court under article 32 of the Constitution. These petitions were Nos. 325, 326 and 327 of 1960. These three petitions were directed against the notices served on the petitioner for the year 1365, 1366 and 1367 fasli respectively. Out of these petitions, the first two were dismissed on the ground that they were barred by res judicata. It is common ground that after the Allahabad High Court dismissed the petitioner's writ petitions, he applied for and obtained a certificate from the said High Court to appeal to this court, but he failed to deposit the necessary security for printing charges as required by the Rules of the Allahabad High Court, and, in consequence, on the 9th August, 1960, the certificate granted to him was cancelled. That is how the two writ petitions which purported to challenge the validity of the notices served on the petitioner for the two years 1365 and 1366 fasli were held to be barred by res judicata. On the petiti

It appears that for the relevant year a notice has been served on the petitioner under section 7(2) of the Act and a tax of Rs. 15,838.92 nP was assessed on his total holding of 1152A-11B-1B with a valuation of Rs. 44,464.88 nP. After hearing the petitioner, the assessing authority has decided that the amount recoverable from the petitioner by way of tax for the relevant year is 14,882.86 nP. The petitioner contends that since the Act is unconstitutional, it is not open to respondent No. 1, the State of U.P., and respondent No. 2, the assessing authority, to claim the said tax from him of his holding.

The petitioner's case is that the relevant provisions of the Act are unconstitutional because the U.P. Legislature was not competent to pass the Act. He also contends alternatively that the said Act violates the fundamental rights guaranteed by articles 14, 19 and 31 and as such, is void. According to him, the rates fixed by the State Government in pursuance of the authority conferred on it by section 5(1) of the Act, are invalid because in fixing the said rates, the State Government has not complied with the provisions of the said section. Broadly stated, it is on these three grounds that the validity of the Act is challenged. These grounds are denied by the respondents and it has been alleged by them that the U.P. Legislature was competent to pass the Act, that the Act does not violate the fundamental rights guaranteed by articles 14, 19 and 31 and that the rates have been fixed in accordance with the provisions of section 5(1) of the Act.

Before dealing with these contentions, it is necessary to consider briefly the scheme of the Act.

The Act has been passed because the Legislature thought it expedient to provide for the imposition and collection of a tax on large land- holdings. Section 28 of the Act repeals the earlier U.P. Agricultural Income-tax Act, 1948. It may be pointed out that this Act itself has been subsequently repealed by section 45 of the U.P. Imposition of Ceiling on Land Holdings Act, 1961 (1 of 1961), as from the 30th June, 1961, so that as from the 30th June, 1961, this Act is no longer in force.

Under the Act, "land" means land, whether assessed to land revenue or not, which is held or occupied for a purpose connected with agriculture, horticulture, animal husbandry, pisciculture or poultry farming and includes uncultivated land held by a landholder as such [section 2(15)]; and according to section 2(16), "land-holder" means (i) an intermediary, where the land is in his personal cultivation or is held as sir, khudkasht or grove and (ii) any other person who holds or occupies land otherwise than as - (a) an asami, (b) a sub-tenant, (c) a tenant of sir, or (d) a sirtan, and includes a manager or a principal officer, as the case may be. These two definitions give an idea as to the property over which the Act purports to impose a tax and as to the person from whom the tax is recoverable. Section 4 defines a "land-holding". It provides that "land-holding" means the aggregate of all land held or occupied on the first day of July each year by a land-holder, whether in his own name or in the name of any mem

Section 5(1) provides for the determination of the annual value. It lays down that the annual value of a land-holding shall be deemed to be an amount equal to the rent payable for the land or lands included therein multiplied by such multiple not exceeding 12 1/2 as may be prescribed and different multiples may be prescribed for different districts or portions of districts or for different classes of lands included in a land-holding. Section 5(2) provides that for the purposes of sub-section (1), the rent payable shall be deemed to be an amount calculated at the sanctioned hereditary rates applicable to the land or lands included in the land-holding and where there are no sanctioned hereditary rates, on such principles as may be prescribed, provided that the State Government may, where such rates were sanctioned prior to the first day of July, 1927, enhance the rates by such percentage not exceeding fifty as may be specified by notification in the Official Gazette and different percentages may be specified f

Chapter III consists of sections 6 to 16 which are concerned with the procedure prescribed for the assessment of holding tax. Section 6 deals with the assessing authority. Section 7 requires notice regarding return of land-holdings to be served on the assessee. Section 8 deals with the levy of the assessment and prescribes an enquiry in connection therewith. Section 9 provides that proceedings may be taken against the legal representative of the assessee. Section 10 deals with notice of demand. Section 11 allows and appeal against the assessment of holding tax. Section 12 permits a

revision to be preferred to the Board of Revenue and section 13 makes the order passed by the Board of Revenue final. According to section 14, the procedure prescribed by the relevant provisions of the U.P. Land Revenue Act, 1901, are made applicable to the proceedings before the Board of Revenue under section 12. Section 15 deals with cases of land-holdings that escaped assessment and section 16 empowers the appropriate authority

The first contention which has been raised by Mr. Goyal before us is that the Act is unconstitutional and void inasmuch as it is beyond the legislative competence of the U.P. Legislature, and this contention raises the question about the construction of entry 49 in List II of the Seventh Schedule of the Constitution. This entry relates to taxes on lands and buildings. The argument is that "lands" in the context does not include agricultural lands and so, the U.P. Legislature was not competent to levy the tax. In considering the merits of this argument, it is necessary to bear in mind that we are interpreting the words used in the Constitution and it is an elementary cardinal rule of interpretation that the words used in the Constitution which confer legislative power must receive the most liberal construction and if they are words of wide amplitude, they must be interpreted so as to give effect to that amplitude. It would be out of place to put a narrow or restricted construction on words of wide amplitude i

It is, however, urged that since entry 46 in List II refers to taxes on agricultural income, it follows that agricultural income is not included in entry 49. That no doubt, is true; if the State legislature purports to impose a tax on agricultural income, it would be referable to entry 46 and not entry 49. But it must be remembered that both entries 46 and 49 are in List II and it would make no difference whether the State legislation imposing taxes on agricultural income is sustained by reference to entry 46 rather than by reference to entry 49. Therefore, the fact that agricultural income having been specifically provided by entry 46 cannot be deemed to be included in entry 49, does not justify the argument that the word "lands" in the latter entry does not include agricultural lands.

It is then argued that when the Constitution wanted to refer to agricultural land, it has used the expression "agricultural land "as, for instance, entries 86, 87 and 88 in List I. This argument is entirely fallacious. The three entries in which agricultural land has been specifically mentioned clearly indicate that agricultural land had to be excluded from their purview and so, it was necessary to describe the land as agricultural land in the context. The fact that the necessity of the context required the use of the expression "agricultural land" the said three entries, cannot possibly lead to the conclusion that whenever the word "land" is used, it should mean non-agricultural land. We have, therefore, no hesitation in rejecting the argument that entry 49 in List II does not take in agricultural lands. If agricultural lands are included in the said entry, the validity of the Act would be beyond challenge, as in substance and in fact, it imposes a tax on land-holding and as such, is within the competence o land. Thus there can be no doubt that the Act was within the legislative competence of the U.P. legislature and so, the challenge to its validity on the ground that it has been passed without legislative competence must be rejected.

Mr. Goyal then contends that the multiple prescribed by the State Government is invalid because it has been prescribed in a manner contrary to the mandatory requirement of section 5(1). This argument proceeds on the assumption that section 5(1) imposes an obligation on the State Government to adopt different multiples in different districts and in reference to different classes of land included in the land-holding. Mr. Goyal suggests that when section 5(1) provides that the rent may be multiplied by such multiple not exceeding 12 1/2 as may be prescribed and different multiples may be prescribed for different districts or portions of districts or for different classes of land included in a land-holding, the legislature intended that different multiples must be prescribed

as therein indicated. In other words, "may" in the context means "must" and since different multiples have not been prescribed for different districts and in reference to different classes of land, the multiple value of the petitioner's land

In fact, the notification issued by the State Government on the 23rd April, 1958, shows that it has complied with the provisions of section 5(1). Under this notification, the multiple of 12 1/2 has been fixed for determining the annual value throughout U.P for agricultural lands, but in respect of different kinds of groves planted before 1st July, 1957, the multiple is prescribed at 5 for the whole of the State. Then there is a variation made in respect of Kumaun Division and the district of TehriGarhwal. In respect of groves planted on or after the 1st July, 1957, the multiple is prescribed at 4 for the 1st year, 2 for the second year and nil for the 3rd and subsequent years. The notification further provides for reduced multiples as specified in it in respect of banjar or user land newly brought under cultivation subject to the conditions therein specified. It would thus be seen that in prescribing the multiple the State Government has classified lands and has varied the multiple accordingly. Therefore, th

Mr. Goyal then contends that if the word "may" is construed as giving discretion to the State Government and not imposing an obligation on it, then section 5(1) contravenes article 19(1)(f) as well as article 14 and his argument is that the charging section also contravenes the said two articles as well as article 31. This contention raises the familiar problem as to whether a taxing statute is subject to the provisions of part III of the constitution or not; and it arises in regard to a statute which has been passed for the purpose of only raising revenue. The power of taxation is, no doubt, the sovereign right of the State; as was observed by Chief Justice Marshall in McCulloch v. Maryland :" The power of taxing the people and their property is essential to the very existence of Government, and may be legitimately exercised on the objects to which it is applicable to the utmost extend to which the Government may choose to carry it". In that sense, it is not the function of the court to enquire whether the

A taxing statute can be held to contravene article 14 if it purports to impose on the same class of property similarly situated an incidence of taxation which leads to obvious inequality. There is no doubt that it is for the legislature to decide on what objects to levy what rate of tax and it is not for the courts to consider whether some other objects should have been taxed or whether a different rate should have been prescribed for the tax. It is also true that the legislature is competent to classify persons or properties into different categories and tax them differently, and if the classification thus made is rational, the taxing statute cannot is found to contravene article 14, it would be open to courts to strike it down as denying to the citizens the equality before the law guaranteed by article 14.

Similarly, if a taxing statute makes no specific provision about the machinery to recover tax and the procedure to make the assessment of the tax and leaves it entirely to the executive to devise such machinery as it thinks fit and to prescribe such procedure as appears to it to be fair, an occasion may arise for the courts to consider whether the failure to provide for a machinery and to prescribe a procedure does not tend to make the imposition of the tax an unreasonable restriction within the meaning of article 19(5). An imposition of tax which in the absence of a prescribed machinery and the prescribed procedure would partake of the character of a purely administrative affair can, in a proper sense, be challenged as contravening article 19(1)(f). Therefore, whenever the validity of a taxing statute is challenged on the ground that it contravenes article 14 or article 19, the challenge cannot be thrown out on the preliminary ground that a tax is beyond such challenge, but its merits must be carefully exam

The position, however, is different when the challenge is made on the ground that the Act is inconsistent with article 31. So far as article 31(1) is concerned, all that it requires is that no person can be deprived of his property save by authority of law, and as we have just observed, the authority of law postulated by article 31(1) is obviously the authority of a valid law. If the law is not valid because it offends against article 14 or article 19 or some other fundamental right guaranteed by Part III, then the imposition of tax levied by it cannot be said to meet the requirements of article 31(1). But if the Act in question is otherwise valid, then, the article 31(1) is complied with. Article 31(2) would be inapplicable to a taxing statute because the taxing statute does not purport to acquire or requisition any property. It may be that the imposition of the tax levied by the statute is excessive and may ultimately lead to the loss of the assessee's property, but even so it cannot be said that by virtue

Let us now turn to the merits of the argument that section 5(1) contravenes articles 14 and 19(1)(f). It is urged that since discretion has been left to the State Government to prescribe the multiple without any guidance, the prescription of the necessary multiple by the State Government as its own sweet will, will amount to an unreasonable restriction under article 19(5) and so article 19(1)(f) must be held to have been contravened. On the same ground, it is said that article 14 has also been contravened. We are not impressed by this argument. It is clear that the policy of the Act is to augment the revenues of the State and for that purpose the tax has been levied on land-holdings, subject to the important proviso that holdings the area whereof does not exceed thirty acres would not be taxed. In other words, it is only big holders whose land-holdings are subjected to tax by this Act. Even so, the basis adopted for levying the tax ultimately the rent payable for the land or lands in question and taking the

Then it is urged that the rates fixed by the Schedule contravene article 14 and 19. It is not easy to appreciate this argument. Section 5(1) makes it clear that the rent is to be taken as the basis for fixing the annual value and section 5(2) provides for the method of calculating the said rent. Thus, the rent being determined, the annual value has to be ascertained by adopting a suitable multiple and it is on the annual value thus determined that the Schedule prescribes a grading scale of rates for holding tax. The tax being on land-holding, the measure of the tax is thus fixed in the light of the annual value of the land-holding. In other words, the land-holding is taxed on the basis of its annual value and it is difficult to understand how the Schedule can be successfully changed as being inconsistent with articles 14 and 19(1)(f).

That leaves one more question to be considered. Mr. Goyal argues that the Act is confiscatory in character and must be struck down as being a colourable piece of legislation, and in support of this argument he suggests that the rates prescribed by the Schedule are so heavy that the assessees would virtually have to part with their properties within a short time in order to bear the burden of the tax. This plea rises the question as to whether a taxing statute can be challenged on the ground that the burden of tax imposed by it is unreasonably high or excessive. We have already seen that the provisions of article 31(2) cannot that the tax levied is unreasonably high and we have also noticed that if the taxing statute does not contravene any other fundamental right guaranteed by Part III, it would normally be treated as a valid law by whose authority tax can be collected without infringing article 31(1). Though the validity of a taxing statute cannot be challenged merely on the ground that it imposes an unreas

As an illustration of such a colourable statute, we may refer to the decision of this court in K.T. Moopil Nair v. State of Kerala. In that case, the provisions of section 4 and 7 of the Travancore-Cochin Land Tax Act (XV of 1955) as amendment by Act X of 1957, were declared to be

unconstitutional in view of the provisions of articles 14 and 19(1)(f) of the Constitution. These provisions along with the provisions of section 5A which was held to contravene article 19(1)(f), were the main provisions of the At and as such as soon as the said provisions were struck down as unconstitutional the whole Act inevitably became void. In dealing with the validity of the said Act, this court had occasion to consider also the confiscatory character of its operative provisions. On making calculations, it was found that the petitioner who challenged the validity of the said Act in that case was making an income of Rs. 3,100 per cent year out of his forests and his liability for taxation in respect of the forest land amounte o Rs. 54,000. So, it was held that the provisions of the Act were confiscatory. It would thus be noticed that the main sections of the Act were found to be discriminatory and were also found to have imposed unreasonable restrictions on the citizens' right to hold property. Besides, it appeared that in their effect they were confiscatory in character. In other words, careful examination of the material provisions of the Act disclosed a design to impose a discriminatory tax and make its realisation amenable to an executive fiat. Consistently with this design, the Act had levied an impost which was confiscatory in character. The judgment of this court shows that the confiscatory character of the levy imposed by the Act proved to be the proverbial last straw on the camel's back. It is in this light of these facts that the whole of the Act was struck down. This decision illustrates how a taxing statute, though ostensibly passed in exercise of the legislative powers conferred on the legislature can be struck down

Let us now see what the petitioner has proved in the present case in support of his plea that the Act is confiscatory and should, therefore, be struck down as a colourable piece of legislation. It appears that when the petition was first filed, it had not clearly made out a case on this point. The petitioner had, no doubt, alleged that approximately 3/5th of the income had to be utilised for the cost of production in terms of raw materials, labour, capital and the risk taken by the farmer, and so, according to the petitioner, only 1/5th of the gross agricultural income can be termed to be the net agricultural income of the farmer. On this basis, the Act was described as confiscatory. Later on, an application for amendment of the petition was filed on the 30th January, 1961, and in this application, some additional facts were alleged in support of the plea that the Act is confiscatory. In paragraph 6 of this amendment petition, it was sought to be shown that 14% of the gross produce had to be spent in purchas

The allegations made by the petitioner have been denied by the respondents in their counter-affidavit. The calculations made in the counter-affidavit show that the gross income of the petitioner is Rs. 1,07,362. according to the counter-affidavit, cost of cultivation would not exceed 40% and that amounts to about Rs. 42,000. Deducting this total cost of cultivation from the gross income, the petitioner would be left with a net income of Rs. 65,362 and on this net income of Rs. 65,362 he is called upon to pay a tax of Rs. 14,882.86 nP. If the facts stated in the counter-affidavit are accepted as true, it is obvious that the tax imposed on the petitioner cannot by any stretch of imagination be deemed to be confiscatory.

In this connection, it is significant that in his amendment petition, the petitioner has not stated the extent of the rent which he is required to pay for his land-holdings. He holds the lands as bhumidar and the respondents contend that the recovered from bhumidars is very low. It was even suggested during the course of argument by Mr. Aggarwal that the rent recovered from the bhumidars would not exceed 1% of the gross income and in some cases it may even be less. Unfortunately, the petitioner has not made any statement about this important particular. The operation of the rates prescribed by the Schedule is based on the annual valuation of the lands, and the said valuation is known, the extent of the impost cannot be adequately judged. Therefore, in our opinion, on the material adduced by the petitioner before us, it is impossible to accept the argument that the tax

levied by the Act is confiscatory. Besides, as have already seen, the scheme of the present Act does not disclose any constitutional infirmity

In the result, the petition fails and is dismissed with costs.

Petition dismissed.

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