Rani Ratna Prova Devi Rani Saheba of Dhenkenal

Vs

State of Orissa and Another

Writ Petitions Nos. 79 and 80 of 1963 and 140 of 1962

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

23.01.1964

JUDGMENT

GAJENDRAGADKAR J. –

The petitioners in these three petitions have moved this Court under Art. 32 of the Constitution and claimed a declaration that the operative provisions of the Orissa Private Lands of Rulers (Assessment of Rent) Act. 1958 (hereinafter called 'the Act') and the Rules framed thereunder are unconstitutional and ultra vires. The private lands in the possession and enjoyment of the three respective petitioners have been assessed by the Revenue Officers in conformity with the Rules framed under the Act. The petitioners claim a writ or direction, or order in the nature of certiorari quashing the said orders of assessment.

The petitioner in Writ Petition No. 140/1962 is the Patrani Saheba of Keonjhar and is in possession and enjoyment of eight villages, viz., Mangalpur; Barigan; Nua Rampas; Nilung; Ghutru; Mohadijore; Patang and Anara in the district of Keonjhar. These villages were granted to her for maintenance a long time ago and as such, they have been recorded in the village papers as Khoraki Posaki (Maintenance Grant) Lands since the last settlement of 1918. She has held these lands without paying assessment; and her case is that the relevant provisions of the Act which authorise the levy of assessment in respect of her lands are unconstitutional and invalid. In her petition, she has referred to the fact that from time to time, the Government of the day had refrained from, levying any assessment in respect of her lands and thereby recognised her right to hold the said villages on assessment-free basis. The Revenue Officer of Keonjhar levied an assessment in respect of the said villages purporting to act under the Rules framed under the provisions of the Act. The petitioner then preferred appeals to the Board of Revenue against the said assessment orders but these appeals were dismissed. The assessment levied against the petitioner in respect of these lands is of the order of Rs. 9,000 and odd and it has to be paid by her from 1958 retrospectively.

The petitioner in W.P. No. 79/1963 is Smt. Rani Ratna Prova Devi who is the wife of Raja Sankar Pratap Singh Deo Mahindra Bahadur, ex-Ruler of Dhenkanal State in Orissa. At the time when the State of Dhenkanal merged with India, the petitioner was in possession and enjoyment of lands in five villages as a proprietor. In respect of these lands, assessment had never been levied; but purporting to give effect to the relevant provisions of the Act, the Revenue Officer Dhenkanal assessed rent in respect of all the lands which are in possession and enjoyment of the petitioner. The appeals preferred by the petitioner against the said order of assessment failed; and so, the petitioner filed the present writ petition challenging the validity of the Act as well as the validity of the assessment order.

The petitioner in W.P. No. 80 of 1963 is the ex-Ruler of Dhenkanal. On the date of merger he held and was in possession of 89 acres 18 dec, and 5 kadis of land in Nizgarh Town as his private lands. These lands were never subjected to the payment of rent and yet the Revenue Officers assessed rents in respect of these lands under the provisions of the Act. The petitioner failed in persuading the Appellate Authority to set aside the order of assessment, and so, has filed the present writ petition challenging the validity of the Act and the order of assessment. Thus, the facts on which the three petitions claim relief are substantially similar and they have raised common points of law for our decision. That is why the three petitions have been heard together and would be disposed of by a common judgment.

The Act which is challenged in the present proceedings was passed by the Orissa Legislature because "it was thought expedient to provide for assessment of rent with respect to the private lands of Rulers in the State of Orissa." It received the assent of the Governor on the 21st May, 1958 and was published in the State Gazette on the 6th June, 1958. It consists of 15 sections and the main object of the Act is to authorise the levy of rent in respect of the private lands of persons included in the definition of the word "Ruler" prescribed by s. 2(h) of the Act. Section 2(e) defines 'private land' as meaning any land held on the date of merger by a Ruler free from payment of rent, while s. 2(h) defines a "Ruler" as meaning the Ruler of a merged territory in the State of Orissa and includes his relatives and dependants. Thus, the definition of the word "Ruler" is an inclusive definition and takes within its sweep the relatives of the Ruler and his dependants, with the result that private lands held by such relatives or dependants by virtue of the grant made by the ruling Prince or otherwise come within the mischief of the operative provisions of the Act. Section 2(i) provides that all other expressions used and not defined in the Act shall have the same meaning as are respectively assigned to them under the tenancy laws in force in the concerned areas. Section 3 contains the main operative provision and it lays down that notwithstanding anything contained in any other law, custom, contract or agreement to the contrary, the private lands held by a Ruler shall, with effect from the date of commencement of this Act, be liable to assessment and levy of rent as provided in the Act. Thus, the effect of this provision is that private lands held by Rulers which till then were not liable to pay rent or assessment, were made liable to pay the same. In other words the exemption from the payment of assessment or rent which the private lands of Rulers enjoyed till then ceased to be operative, and the said lands were treated like other lands in the State liable to pay assessment and rent.

Section 4 provides for the appointment of Revenue Officers, and sections 5 and 6 deal with the classification of lands and prescribe the maximum rates of rent, and the procedure in determining the rent respectively. Under s. 5, the lands have to be classified as irrigated - wet land, rain-fed-wet land, and dry land; this section provides that subject to the provisions of s. 6, the rates at which the fair and equitable rent shall be assessed with respect to the said three categories of land shall not exceed the amount as may be prescribed from time to time by the State Government. The proviso to s. 5 deals with the special category of case where the tenants of the Ruler have already acquired rights of occupancy, and lays down that the rent payable by the Ruler in respect of such lands shall be such proportion of the rent received by him from the tenants as may be prescribed. Under s. 6, the considerations which have to be borne in mind in determining the rates of fair and equitable rent are specified by clauses (a) to (e), viz., the nature of the soil and general productivity of such land; the class under which the land in assessable; market value of the land; the prevailing rates of rent obtaining for similar lands in the neighbourhood; and such other matters relating thereto as may be prescribed. It is thus clear that whereas s. 5 requires the classification of the Ruler's private lands to be made and provides for the prescription of the maximum of the rent which may be levied in respect of them, s. 6 indicates the factors which have to be borne in mind in determining the rates of

fair and equitable rent. Clause (e) shows that in addition to the factors mentioned in clauses (a) to (d), other matters may also be specified by the Rules. The rest of the sections deal with matters relating to the levy and recovery of assessment with which we are not concerned in the present petitions.

The first contention which has been raised before us by the petitioners is that the provisions contained in sections 5 and 6 are invalid inasmuch as they contravene Art. 14 of the Constitution. It is convenient to refer to some facts set our in W.P. No. 79/1963 in support of this argument. We have already noticed that under s. 6 certain considerations which the Act considers to be relevant have been prescribed, and so, the Revenue Officer has to bear those considerations in mind in determining the fair and equitable rent in respect of given land. W.P. No. 79/1963 points out that as a result of the consideration of the relevant factors mentioned in s. 6, the rates fixed by the preliminary pattas in respect of the petitioner's lands are in every case higher than the rates of rent which are in operation in respect of the Revisional Settlement Khatain. Basing themselves on the fact that in the calculation of the rent made by the Revenue Officers in respect of the private lands of Rulers they have arrived at a figure of rent which is generally higher than the rent which would be determined in case the rates current under the Settlement prevailing in respect of the other lands were applied, the petitioners contend that in their operation the relevant provisions of the Act have introduced an illegal discrimination as between their lands and the other lands liable to assessment of rent in the State of Orissa. It is also urged in support of this argument that it would not be a valid consideration for levying higher assessment in respect of the private lands of Rulers that they were not required to pay assessment until the Act was passed. The legislature may in its authority make the private lands of Rulers liable to assessment of rent, but when these lands are brought within the class of assessable lands, they should be treated in the same way as the other assessable lands are treated in Orissa. That, briefly stated, is the contention on which the validity of the Act is challenged under Art. 14. Prima facie, there is some force in this contention. But, on the whole we are not satisfied that the plea thus raised by the petitioners can be said to displace and rebut the initial presumption of constitutionality in favour of the impugned statute.

In dealing with the question raised before us, it is necessary to bear in mind the fact that in regard to other assessable lands, a survey settlement which had already been made was in operation and was expected to continue in operation for a certain specified period; usually, when a settlement has been made and assessment levied in pursuance of it, it cannot be revised merely by an executive order during the stipulated period, though, of course, the legislature can, if it so desire, make a law prescribing for a fresh assessment even during the said specified period. But, in the present case, the legislature appears to have taken the view that it was not necessary or expedient to introduce a fresh settlement in regard to all the other assessable lands, and so, it has passed the present statute only in regard to the private lands of Rulers. That is relevant and historical fact which cannot be ignored.

Proceeding to deal with the private lands of Rulers on this basis, the legislature had to prescribe the method of determining the rent payable by the said lands; and the relevant factors specified by s. 6 appear to be just and substantially similar to the considerations which are generally taken into account at the time of survey settlement for determining the proper revenue assessment on ryotwari lands. There has been some argument at the Bar before us as to whether the market value of the land which has been prescribed as a relevant consideration by s. 6 was also treated as relevant on the occasion of the earlier settlement. No material has, however, been placed before us in that behalf, and so, it is not possible to decide whether this consideration was taken into account on the earlier occasion or not, and if it was not, what the effect of the said circumstance would be on the validity of the impugned statute. Having regard to the relevant factors prescribed by s. 6, it would, however,

not be unreasonable to take the view that fair and equitable tests have been laid down for determining the rent which should be assessed in respect of the private lands of the Rulers, and in the absence of any proof any that there has been a material departure in that behalf, we find it difficult to uphold the plea that s. 6 can be attacked on the ground that it has contravened Art. 14 of the Constitution.

The problem posed by the requirement to levy assessment on these private lands had to be dealt with by the legislature on an ad hoc basis. The settlement of rent and assessment introduced by the Act had been made applicable to these lands for the first time, and so, strictly speaking, these lands cannot be treated as comparable in every respect with the lands which were governed by the rates prescribed under the previous settlement and that may help to meet the argument that the impugned Act contravenes Art. 14. If the two categories of lands do not constitute similar lands in all particulars, no valid complaint can be made on the ground that there has been discrimination as between them. That is another aspect which may be relevant.

There is yet another factor which may be mentioned in this connection. It appears that in 1959, the Orissa Legislature has passed an Act, No. 3 of 1959 with a view to consolidate and amend the laws relating to survey, record of right and settlement operations in the State of Orissa, and so, it appears that after the settlement operations are duly conducted and completed under the relevant provisions of this latter Act, assessment in regard to all the assessable lands, including the private lands with which we are concerned in the present proceedings would be made on the basis prescribed by it. The operation of sections 3, 5 and 6 of the impugned Act is, therefore, limited to the period between June, 1958 when the Act came into force and the date when the assessment determined under the provisions of the subsequent Act actually come into operation in respect of all the lands. That is another factor which has to be considered in dealing with the question about the validity of the impugned Act.

The allegations made by the petitioners, in challenging the validity of the Act are somewhat vague and the materials placed by them in support of their challenge are insufficient, inadequate and unsatisfactory. The reply made by the State is also not very helpful or satisfactory. It is precisely where a challenge to the validity of a statute is made by a party under Article 14 and he fails to adduce satisfactory evidence in support of his challenge that the task of the Court to decide the issue becomes very difficult. In considering the validity of a statute under Art. 14, we cannot ignore the well-established principle that the legislature can make class legislation, provided the classification on which it purports to be based is rational and has reasonable nexus with the object intended to be achieved by it, and so, on the failure of the party to show that the said classification is irrational, or has no nexus with the object intended to be achieved by the impugned Act, the initial presumption of constitutionality would help the State to urge that the failure of the party challenging the validity to rebut the initial presumption goes against his claim that the Act is invalid. In all cases where the material adduced before the Court in matters relating to Art. 14 is unsatisfactory, the Court may have to allow the State to lean on the doctrine of initial presumption of constitutionality and that is precisely what has happened in these cases. On the whole therefore we must hold that the petitioners have failed to show that the impugned Act contravenes Art. 14 of the Constitution.

It is then argued that the Act is invalid because the definition of the expression "Ruler" is inconsistent with the definition of the said word prescribed by Art. 366(22) of the Constitution. Art. 366(22) defines a "Ruler" in relation to an Indian State as meaning the Prince, Chief, or other person by whom any such covenant or agreement as is referred to in clause (1) of Art. 291 was entered into and who for the time being is recognised by the President as the Ruler of the State, and

includes any person who for the time being is recognised by the President as the successor of such Ruler. There is no doubt that the definition of the word "Ruler" prescribed by s. 2(h) of Act is wider than that prescribed by Art. 366(22). The dependants of the Ruler and his relatives are not included in the latter definition though they are expressly included in the former. But it must be remembered that the definitions prescribed by Art. 366 are intended for the purpose of interpreting the articles, in the Constitution itself, unless the context otherwise requires, and so, the argument that the definition of the word "Ruler" prescribed by the Act is inconsistent with the definition prescribed by Art. 366(22), has really no substance or meaning. Besides, it is fallacious to assume that the Act has made any provision in respect of Rulers as such; what the Act has purported to do is to authorise the levy of assessment and rent in respect of lands situated in Orissa; these lands are the private lands of the Rulers as defined by s. 2(h), and so, there is no doubt that the whole object of defining the word "Ruler" is to specify and describe the lands in respect of which the operative provisions of the Act would come into play. The subject-matter of the levy consists of the private lands and the compendious way adopted by the legislature in describing the said lands is that they are the private lands of the Rulers. It is in that connection that the word "Ruler" has been broadly defined in an inclusive manner. If the legislature had said that the private lands of the Rulers as well as the private lands of the dependants and relatives of Rulers were liable to the levy permitted under s. 3, the petitioners would not have been able to raise any objection because, then, it would have been unnecessary to define the word "Ruler" in a comprehensive way. Once it is conceded, as it must be, that the Orissa Legislature was competent to pass the Act under Entry 18 of List II of the Seventh Schedule, it is idle to suggest that the method adopted by the Act in describing the lands which are made liable to pay assessment, introduces any infirmity in the Act itself. Therefore, we are satisfied that the contention that the definition of the word "Ruler" is inconsistent with Art. 366(22) and that makes the whole Act void, is without any substance.

The third argument which was faintly urged before us is that the Act contravenes the provisions of Art. 31 of the Constitution. This argument is wholly misconceived. Art. 31(1) deals with the deprivation of property save by authority of law, and cannot obviously be invoked against any of the provisions of the Act; and Art. 31(2) deals with compulsory acquisition or requisition which also is entirely inapplicable to the present Act. What the Act has purported to do is to authorise the levy of assessment in respect of lands which till then had been exempted from the said levy, and as Art. 31(5)(b)(i) provides nothing contained in clause (2) shall affect the provisions of any law which the State may make for the purpose of imposing or levying any tax or penalty. If the Orissa Legislature has imposed a tax in the form of the assessment of the private lands of Rulers, clearly it has not purported either to deprive the Rulers of their property, or to acquire or requisition the said property; it is a simple measure authorising the levy of a tax in respect of agricultural lands and as such, it is entirely outside the purview of Art. 31. It appears that in Pratap Kessari Deo v. The State of Orissa & Ors., (A.I.R. 1961 Orissa, 131) the validity of the Act was challenged before the Orissa High Court, and the said High Court has repelled the challenge and upheld the validity of the Act. In our opinion, the view taken by the Orissa High Court is right.

There result is, the petitions fail and are dismissed with costs. One set of hearing fees.

Petition dismissed.

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