Ranjit Singh and Others

Vs

State of Punjab and others (and connected appeals)

Civil Appeal No. 743 of 1963

(CJI P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah, K. C. Das Gupta JJ)

20.08.1964

JUDGMENT

HIDAYATULLAH J.

This judgment will dispose of Civil Appeal No. 743 of 1963 and Civil Appeals No. 553 and 554 of 1962. The appellants in Civil Appeal No. 743 of 1963 are owners of lands in village Virk Kalan, Tehsil and District Bhatinda. The appellants in the other appeals are owners of lands in villages Sewana and Mehnd of Tehsil Hansi in District Hissar. Proceedings for the consolidation of holdings are going on in these villages under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act 1948 (Act 50 of 1948). This Act was amended on many occasions but we are concerned with it as amended by the East Punjab Holdings (Consolidation and Prevention of Fragmentation) (2nd Amendment & Validation) Act (27 of 1960). In the present consolidation proceedings portions of lands from those commonly owned by the appellants as proprietors, have been reserved for the village Panchayat and given over to it for diverse purposes, and other portions have been reserved either for non-proprietors or for the common purposes of the villages. Without going into too much detail it is sufficient to indicate that in village Virk Kalan 270 kanals and 13 marlas been give to the village Panchayat for management and realisation of income, although the ownership is still shown in village papers as Shamlat Deh in the names of the proprietors and 10 kanals and 3 marlas have been reserved for abadi to be distributed among persons entitled thereto and 3 kanals and 7 marlas have been reserved for manure pits. Similarly, in village Sewana 400 kanals and 4 marlas have been set apart for the village Panchayat for extension of the abadi and to enable grants of 8 marlas of land to be made to each family of non-proprietors and 16 kanals have been reserved for a primary school and some more for a phirni. Similarly, in village Mehnd, land has been reserved for the village Panchayat, a school, tanning ground, hospital, cremation ground and for non-proprietors. The proprietors were not pad compensation for the lands and it is the taking away and allotment of these lands which are the subject of challenge in these appeals on grounds about to be stated. Before we do so we will set down some of the legislative measures which have relevance and mention some of the cases decided under them one of which led to the Second Amendment Act.

The Consolidation Act (50 of 1948) was passed to provide for the compulsory consolidation of agricultural holdings and for preventing the fragmentation of agricultural holdings. Section 18 of the Act provided that notwithstanding anything contained in any law for the time being in force, it shall be lawful for any Consolidation Officer to direct inter alia :

> "(a) that any land specifically assigned for any common purpose shall cease to be so assigned and to assign any other land it its place;

#(b) . . . . . .##

(c) that if in any area under consolidation no land is reserved for any common purpose including extension of the village abadi, or if the land so reserved is inadequate, to assign other land for such purpose."

Section 46 of the Consolidation Act conferred powers on the State Government to make rules for carrying out the purpose of the Act and in particular to provide for :

"(e) the manner in which the area is to be reserved under section 18 and the manner in which it is to be dealt with and also the manner in which the village abadi is to be given to proprietors and non-proprietors (including scheduled castes, Sikh back-ward classes, artisans and labourers) on payment of compensation or otherwise;"

On March 3, 1956 the Punjab Government, by a notification, added rule 16 to the Rules for reservation of the abadi for the proprietors as well as the non-proprietors and it read as follows :-

"The area to be reserved for the common purpose of extension of abadi for proprietors and non-proprietors under section 18(c) of the Act shall be reserved after scrutinizing the demand of proprietors desirous of building houses and of non-proprietors including Harijan families working as agrarian labourers who are in need of a site for house. The land reserved for extension of abadi shall be divided into plots of suitable sizes. For the plots allotted to proprietors area of equal value shall be deducted from their holdings but in the case of non-proprietors including Harijan families these shall be allotted without payment of compensation and they shall be deemed to be full owners of the plots allotted to them."

On April 9, 1957 the Punjab Government added rule 16(ii) which provided for reservation of lands for the Gram Panchayat. It read :

"16(ii) : In an estate or estates Where during consolidation proceedings there is no shamlat deh land or such land is considered inadequate, land shall be reserved for the village Panchayat, under section 18(c) of the Act, out of the common pool of the village at a scale prescribed by Government from time to time. Proprietary rights in respect of land, so reserved (except the area reserved for the extension of abadi of proprietors and non-proprietors) shall vest in the proprietary body of the estate or estate or estates concerned, and it shall be entered in the column of ownership of record of rights as (jumla malikan was digar haqdaran arazi hasab rasad raqba). The management of such land shall be done by the Panchayat of the estate or estates concerned on behalf of the village proprietary body and the Panchayat shall have the right to utilize the income derived from the land so reserved for the common needs and benefits of the estate or estates concerned."

Rule 16(ii) was declared ultra vires on November 5, 1959 by the Punjab High Court in Munsha Singh v. State of Punjab (I.L.R. [1960] 1 Punjab 589). After Munsha Singh's case the second amending Act (27 of 1960) was passed. It gave legal cover to rule 16(ii) by including in section 2 of the Consolidation Act (50 of 1948) the following :-

"2(bb) "Common Purpose" means any purpose in relation to any common need,

convenience or benefit of the village and includes the following purposes :- (i) extension of the village abadi;

(ii) provide income for the Panchayat of the village concerned for the benefit of the village community;

(iii) village roads and paths; village drains; village wells. ponds or tanks; village watercourses or water channels; village bus stands and waiting places; manure pits; hada rori; public latrines; cremation and burial grounds; Panchayat Ghar; Janj Ghar; grazing grounds; tanning places; mela grounds; public places, of religious or charitable nature; and

(iv) schools and playgrounds, dispensaries, hospitals and institutions of like nature, waterworks or tube-wells, whether such schools, play grounds) dispensaries, hospitals, institutions, waterworks or tube-wells may be managed and controlled by the State Government or not."

It also added a new section (s. 23-A) in the Consolidation Act as follows :-

"23A. 'As soon as a scheme comes into force, the management and control of all lands assigned or reserved for common purposes of the village under section 18, -

(a) in the case of common purposes specified in sub-clause (iv) of clause (bb) of section 2 in respect of which the management and control are to be exercised by the State Government, shall vest in the State Government; and

(b) in the case of any other common purpose, shall vest in the panchayat of that village;

and the State Government or the Panchayat, as the case may be, shall be entitled to appropriate the income accruing therefrom for the benefit of the village community, and the rights and interest of the owners of such lands shall stand modified and extinguished accordingly :

Provided that in the case of land assigned or reserved for the extension of village abadi or manure pits for the proprietors and non-proprietors of the village, such land shall vest in the proprietors and non-proprietors to whom it is given under the scheme of consolidation."

It also amended to preamble suitably. All the amendments were with retrospective effect.

Before we follow up the result of this amendment we may say something about three other Acts of the Punjab Legislature to which some reference will be necessary in the sequel. The Punjab Gram Panchayat Act, 1953 (4 of 1953) was passed to provide for better administration in the rural areas of Punjab by Panchayats. Section 19 of the Panchayat Act laid multifarious administrative duties on the Panchayat like sanitation, drainage, supply of water, looking after burial and cremation grounds, public health, providing schools, hospitals etc. and also emphasized -

"(f) pounds for animals;

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(n) the development of agriculture and village industries, and the destruction of weeds and pests;

(o) starting and maintaining a grain fund for the cultivators and lending them seed for sowing purposes on such conditions as the Gram Panchayat may approve.

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(q) allotment of places for preparation and conservation of manure;

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(t) framing and carrying out schemes for the improved methods of cultivation and management of land to increase production."

The last was added in 1954. In the same year the legislature enacted the Punjab Village Common Lands (Regulation) Act (I of 1954) with the object of regulating the rights in shamlat deh and abadi deh. The provisions of the Common Lands Regulation Act resulted in the vesting of all rights of management in the shamlat deh in the village Panchayat and in the land in the abadi deh under a house owned by a non-proprietor, in the non-proprietor (s. 3). Section 4 provided :

"All lands vested in a panchayat by virtue of the provisions of this Act shall be utilised or despised of by the panchayat for the benefit of the inhabitants of the village concerned, in the manner prescribed."

Section 6 provided :

"Any income accruing from the use and occupation of the lands vested in a panchayat shall be credited to the panchayat fund and shall be utilised in the manner prescribed."

Finally, section 7 provided :

"No person shall be entitled to any compensation for any loss suffered or alleged to have been suffered as a result of the coming into force of this Act."

The Common Lands Regulation Act was challenged in Hukam Singh v State of Punjab (I.L.R. [1955] Punjab 1334) but was upheld. The High Court, however, observed that Art. 31(2) would have rendered the Act void but for the enactment of Art. 31-A.

The last Act to which a brief reference may be made is the Punjab Security of Land Tenures Act, (10 of 1953) and its amendment by Act 57 of 1953 and Act 11 of 1955. By that Act security of land tenures, fixing of areas for "self-cultivation" was provided and there was conferment of rights on tenants to purchase lands under their cultivation from the land-holders. The validity of these Acts was challenged but they were upheld in Atma Ram v. State of Punjab ([1959] S.C.R. 1 Supp 748) to which we shall refer later.

The appellants in this appeal had filed a Civil Writ Petition (No. 319 of 1961) contending that the distribution of shamlat lands was illegal and such lands, if they had to be redistributed, could only be distributed among the proprietors but could not be given to non-proprietors. Grover J., who heard

the petition dismissed it on the authority of Jagat Singh v. Punjab State (1962 64 P.L.R. 241). Against his order special leave was granted by this Court and Civil Appeal No. 743 of 1963 is the result. The other two appeals arise from other writ petitions. Writ Petition No. 761 of 1957 (Civil Appeal No. 553 of 1962) was dismissed by Grover J. against whose decision a Letters Patent Appeal was filed. Writ Petition No 454 of 1958 (Civil Appeal No. 554 of 1962) was heard by the Bench which heard the said Letters Patent Appeal and both were dismissed on August 18, 1960. The High Court did not certify the judgments as fit for appeal but the appellants obtained special leave and Civil Appeals Nos. 553 and 554 of 1962 were filed.

These appeals were heard together and they challenge the correctness of the decision in Jagat Singh's case ((1962) 64 P.L.R. 241) and thus question the validity of the Amending Act 27 of 1960 because they contend it is in breach of Arts. 19(1)(f) and 31 of the Constitution. Rule 16(i) and (ii) are also challenged. They further challenge the Common Lands (Regulation) Act which is a part of the entire scheme. The High Court in Jagat Singh's case ((1962) 64 P.L.R. 241) has held that Act 27 of 1960 gives retrospective validity to rules 16(i) and (ii) and the position which existed when Munsha Singh's case (I.L.R. (1960) 1 Punjab 589) was decided does not obtain now. The High Court has also decided that Act 27 of 1960 is saved by Art. 31-A and the case of this Court in K. K. Kochuni v. State of Madras ([1960] 3 S.C.R. 887) which interpreted Art. 31-A, as amended by the Constitution (Fourth Amendment) Act, 1955, is not applicable. In the appeals before us the same points are raised and the Common Lands (Regulation) Act is also challenged.

These appeals were heard and closed for judgment on April 27, 1964 but as the Court went into vacation at the end of the first week of May, judgment had to be postponed till after the vacation. The Court reassembled on July 20, 1964 but on June 20, 1964 the Constitution (Seventeenth Amendment) Act, 1964, received the assent of the President. That amendment inter alia substituted retrospectively from January 26, 1950, a new sub-clause (a) in clause (2) of Art. 31-A and added a proviso to cl (1). These cases were decided in the High Court under Art. 31-A as it was formerly. The appeals were set down to be mentioned on July 20/23, 1964 before a different Bench, and counsel were asked if, in view of the amendment, they wished to say anything. Surprisingly enough none of the parties wished to argue the appeals and though we cannot now refer to sub-cl. (a) of cl. (2) of Art 31-A as it was formerly, because that sub-clause must be deemed to have never existed, we are in the unhappy position of not being able to express any opinion on Art. 31-A as it must be deemed to have been all the time. In view of the attitude of learned counsel the Bench before which the statements were made recorded the following order :-

> "These appeals were set down for hearing today to enable the learned counsel appearing for both the parties, to argue whether the provisions of Art. 31-A, as they have been amended by the Constitution (Seventeenth Amendment) Act, 1964, had any relevance and baring on the case which had been fully argued before another Bench before this Court closed for the summer vacation. The counsel appearing for both the parties made it clear that the amended provisions had no bearing and they wanted us to decide the said appeals without reference to the said amendment. The appeals will, therefore, be set down for judgment in due course."

The appeals thus remain to be decided on the old arguments though it is clear to us that the amendment of Art. 31-A, far reaching as it is, must have affected one or other of the parties. It seems that the implications of the amendment of the Constitution will have to be worked out in some other case.

The short point which we think arises is this : whether the transfer of Shamlat deh owned by the proprietors to the village Panchayat for the purposes of management in the manner described above and the conferment of proprietary rights on non-proprietors in respect of lands in abadi deh is illegal and the several provisions of law allowing this to be done are ultra vires Art. 31 inasmuch as no compensation is payable or whether the law and the action taken are protected by Art. 31-A ?

The argument of Mr. Bishan Narain in these appeals was that they were covered by the Kochuni case ([1960] 3 S.C.R. 887). In that case this Court observed that the Madras Marumakkathyam (Removal of Doubts) Act, 1955 was invalid by reason of Art. 19(1)(f) inasmuch as it deprived a sthanee of his properties and vested them in the tarwad contrary to Art. 19(1)(f). It was also held (as has been correctly summarized in the head-note) that it was not saved by Art. 31-A (as it then stood) because even if the sthnam properties held in janmam rights could be regarded as "estates", Art. 31-A did not protect them since, properly construed, the article envisaged agrarian reform only and provided for the acquisition, extinguishment, or modification of proprietary and various other kinds of subordinate rights in a tenure called the estate solely for that purpose. It was pointed out that although the statement of objects and reasons could not properly be looked into for purposes of interpretation, it could be referred for the limited purpose of ascertaining the conditions prevailing at the time of the Fourth Amendment. It was pointed out that Art. 31-A cl. (b) must be read with cl. (1)(a) and as the impugned Act did not contemplate any agrarian reform or seem to regulate the rights inter se between landlords and tenants or modify or extinguish any of the rights appertaining to janmam right, leaving all the characteristics intact, it did not come within the purview of Art. 31-A of the Constitution.

In Jagat Singh's case ([1962] 64 P.L.R. 241) the Full Bench of five Judges agreed that the impugned provisions did come within the conception of agrarian reforms but conflicting views were expressed regarding the ambit of Art. 31-A as expounded in the Kochuni case ([1960] 3 S.C.R. 887). A part of the statement of objects and reasons which accompanied the Fourth Amendment has been set out in the Kochuni case ([1960] 3 S.C.R. 887) but from the lines of operations which were in contemplation in the purposed amendment only one appears to have been quoted there. Perhaps No. (ii) is also important to consider in this connection and it reads :

> "(ii) The proper planning of urban and rural areas require the beneficial utilisation of vacant and waste lands and the clearance of slum areas."

Consolidation of holdings is really nothing more than a proper planning or rural areas and this planning must of necessity take note of vacant and waste lands. While we do note seek to interpret the impugned rules and Acts, nor even Art. 31-A of the Constitution with the aid of this statement of Objects and Reasons, for such a canon is not approved of in our practice, we have only completed the picture which to our minds emerges from these objects and statements, if they are at all considered relevant for any purpose.

In Kochuni case ([1960] 3 S.C.R. 887) reference was made Atma Ram v. State of Punjab ([1959] S.C.R. 1 Supp 748) and the following passage was quoted to show that agrarian reform was the core of Art. 31-A :-

> "Keeping in view the fact that Art. 31-A was enacted by two successive amendments - one in 1951 (First Amendment), and the second in 1955 (Fourth Amendment) - with retrospective effect, in order to save legislation effecting agrarian reforms, we have every reason to hold that those expressions have been used in their widest

amplitude, consistent with the purpose behind those amendments."

The expressions from Art. 31-A which were given such wide connotation were "any estate or of any rights therein" and "the extinguishment or modification of any such rights" occurring in Art. 31A(1). The Act there considered was the Punjab Security of Land Tenures Act (10 of 1953) as amended by Act 11 of 1955. It limited the area of land for "self cultivation", gave the tenants right to purchase lands with them and in this way "modified" the rights of landlords. It also released excess land for redistribution. This was regarded to be agrarian reform and thus within the protection of Art. 31-A. The observations of this Court in Thakur Raghubir Singh's case ([1953] S.C.R. 1049) were explained and were confined to the facts of that case. Article 31-A was apparently not then viewed from the angle later adopted in the Kochuni case ([1960] 3 S.C.R. 887), namely, that Art. 31-A was concerned with "tenures" as such. There is reason to think that the Kochuni case was regarded on other occasions too, as one decided on its own facts. In Gangadhar Narayanrao Majumdar v. State of Bombay ([1961] 1 S.C.R. 943) in considering the words "estate" and "rights in an estate", the right of an inamdar under Bombay Acts Nos. II, VII of 1863 to appropriate to himself the difference between the full assessment and the quit rent was treated as a right in an estate and its extinguishment, or modification, was considered to protected by Art. 31-A. Similarly, in Ram Narain Medhi v. State of Bombay ([1959] Supp 1 S.C.R. 489) the Bombay Tenancy and Agricultural Lands (Amendment) Act 1956 (which amended Bombay Act LXVII of 1948) was in question. It sought to distribute equitably the lands between the landlords and tenants by way of compulsory purchase of all surplus lands by tenants in possession thereof from April 1, 1957 (known as the Tillers' Day). The fundamental idea was the prevention of concentration of lands in the hands of a few landholders. It was pointed out that this was protected by Art. 31-A. No doubt the redistribution of lands so that a few may not monopolise the land is the cardinal principle on which agrarian economy in a socialistic pattern of society rests. But certain observations in the case show that abolishing intermediaries or modifications of the tenures was not the only objective open under Art. 31-A. It was observed :

> "With a view to achieve the objective of establishing socialistic pattern of society in the State within the meaning of Articles 38 and 39 of the Constitution, a further measure of agrarian reform was enacted by the State Legislature, being the impugned Act, hereinbefore referred to, which was designed to bring about such distribution of ownership and control of agricultural lands as best to subserve the common good thus eliminating concentration of wealth and means of production to the common detriment."

It is clear that in this passage a wider meaning to the expression "agrarian reforms" than that given in the Kochuni case ([1960] 3 S.C.R. 887) is discernible. We shall refer to one more case to illustrate our point. In Sonapur Tea Co. Ltd v. Must. Mazirunnessa ([1962] 1 S.C.R. 724) the validity of the Assam Fixation of Ceiling of Land Holdings Act, 1957 was considered and the question was whether the rights which were taken away or abridged by the Assam Act were "rights" in relation to an estate within the meaning of Art. 31-A(2)(b) of the Constitution. The Kochuni case ([1960] 3 S.C.R. 887) was decided on May 4, 1960 and the decision in the Assam case was given on April 4, 1961 but there is no mention of the dicta in the former case. It was held that the rights which were extinguished undoubtedly constituted "rights in relation to an estate" and Mr. N. C. Chatterjee who argued the case, conceded that this was so (see p. 730). The same conclusion regarding the meaning of the word "modification" was reached in Burrakur Coal Co. Ltd. v. Union of India ([1962] 1 S.C.R. 44, 61) without adverting to Kochuni case ([1960] 3 S.C.R. 887). See also State of Bihar v. Rameshwar Pratap Narain Singh ([1962] 2 S.C.R. 382) and State of Bihar v.

Umesh Jha ([1962] 2 S.C.R. 687). In the latter a provision of the Bihar Land Reforms Act 1950, as amended by the Bihar Land Reforms (Amendment) At, 1959 which empowered the Collector for to annual anticipatory transfers of land designed to defeat the object of the Act was held to be protected by Art. 31-A, though the section by itself did not provide for the "extinguishment or modification" of any rights in an estate. It was justified as an integral part of a statute which did so and thus received the protection of Art. 31-A along with the parent Act.

From a review of these authorities it follows that when the Punjab High court decided these cases on the authority of Jagat Singh's case ((1962) 64 P.L.R. 241) the view taken in this Court was in favour of giving a large and liberal meaning to the terms 'estate', 'rights in an estate' and 'extinguishment and modification' of such rights in an Art. 31-A. No doubt Kochuni's case ([1960] 3 S.C.R. 887) considered a bare transfer of the rights of the sthanee to the tarwad without alteration of the tenure and without any pretence of agrarian reform, as not one contemplated by Art. 31-A however liberally construed. But that was a special case and we cannot apply it to cases where the general scheme of legislation is definitely agrarian reform and under its revisions something ancillary thereto in the interests of rural economy, has to be undertaken to give full effect to the reforms. In our judgment the High Court was right in not applying the strict rule in Kochuni's case ([1960] 3 S.C.R. 887) to the facts here.

The High Court was also right in its view that the proposed changes in the shamlat deh and abadi deh were included in the general scheme of planning of rural areas and the productive utilisation of vacant and waste lands. The scheme of rural development today envisages not only equitable distribution of land so that there is no undue imbalance in society resulting in a landless class on the one hand and a concentration of land in the hands of a few on the other, but envisages also the raising of economic standards and bettering rural health and social conditions. Provisions for the assignment of lands to village Panchayat for the use of the general community, or for hospitals, schools, manure pits, tanning grounds etc. enure for the benefit of rural population must be considered to be an essential part of the redistribution of holdings and open lands to which no objection is apparently taken. If agrarian reforms are to succeed, mere distribution of land to the landless is not enough. There must be a proper planning of rural economy and conditions and a body like the village Panchayat is best designed to promote rural welfare than individual owners of small portions of lands. Further, the village Panchayat is an authority for purposes of Part III as was conceded before us and it has the protection of Art. 31-A because of this character even if the taking over of shamlat deh amounts to acquisition. In our opinion, the High Court was right in deciding as it did on this part of the case.

With respect to abadi deh the same reasoning must apply. The settling of a body of agricultural artisans (such as the village carpenter, the village blacksmith, the village tanner, farrier, wheelwright, barber, washerman etc.) is a part of rural planning and can be comprehended in a scheme of agrarian reforms. It is a trite saying that India lives in villages and a scheme to make villages self-sufficient cannot but be regarded as part of the larger reforms which consolidation of holdings, fixing of ceilings on lands, distribution of surplus lands and utilising of vacant and waste lands contemplate. The four Acts, namely, the Consolidation Act, the Village Panchayat Act, the Common Lands Regulation Act and the Security of Tenure Act are a part of a general scheme of reforms and any modification of rights such as the present had the protection of Art. 31-A. The High court was thus right in its conclusion on this part of the case also.

In our opinion these appeals must fail. We, however, make it clear that by reason of the circumstances which have supervened we have done on more than examine the correctness of the

decisions under appeal (particularly the Full Bench decision in Jagat Singh's case ((1962) 64 P.L.R. 241) which was followed in them) in the light of facts and law present to the mind of the Full Bench. For obvious reasons we have not strayed beyond that limit but if we have expressed any opinion which seems to bear on the Seventeenth Amendment, it should not be regarded as deliberate or binding. The appeals fail and will be dismissed but there will be no order about costs.

Appeals dismissed.

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