Inder Singh & Anr.

Vs

State of Punjab & Ors.

Civil Appeal No. 92 of 1966

(CJI K. Subha Rao, M. Hidayatullah, R. S. Bachawat, J. M. Shelat, C. A. Vaidialingam JJ)

10.04.1967

JUDGMENT

SHELAT, J.

The appellants are members of a Hindu undivided family of which the first appellant is the Karta. Prior the August 21, 1956, the family owned 64.35 standard acres of land in village Kurali, District Patiala. The land stood in the revenue records in the name of the first appellant. On December 23, 1957, the first appellant transferred 26 standard acres to one Babu Singh by a registered deed. According to them, they had planted an orchard in 10 acres of land. Their contention was that the said 26 standard acres and the said 10 standard acres could not be taken into account while ascertaining surplus land under the Pepsu Tenancy and Agricultural Lands Act, XIII of 1955. Both these claims were rejected by the authorities. By his order dated January 20, 1961, respondent No. 3 declared 34.35 standard acres out of the said 64.35 standard acres as surplus land. The appeal filed by the appellants against the said order was rejected. They then filed a revision application before respondent No. 1. While that was pending they filed a writ petition in the High Court. During the pendency of that writ petition, the Punjab Legislature passed the Amendment Act, XVI of 1962 inserting s. 32-KK in the principal Act. The learned Single Judge, who heard the writ petition, held (1) that the finding that the appellants had not planted the said orchard within the statutory period was one of fact and could not be challenged in the writ petition and (2) that the said transfer of 26 standard acres was hit by s. 32-FF and therefore was rightly ignored while ascertaining the surplus land. The main contention urged before the High Court, however, was that each of the three appellants who constituted the said family was entitled to retain 30 standard acres, that as the total holding was only 64.35 standard acres, there was no surplus land liable to acquired under the Act and, therefore, the order declaring 34.35 standard acres as surplus land was illegal. The High Court following its earlier decision in Bhagat v. State of Punjab dismissed the writ petition. A Letters Patent Appeal against that judgment was dismissed in limine. The present appeal by certificate is directed against the dismissal of the said writ petition.

Mr. Mani's contentions were : (1) that under Hindu Law every coparcener in a Hindu undivided family acquires right in the property of such coparcenery on birth and is entitled to a right of joint possession and enjoyment of its entire property, that s. 32-kk deprives such a coparcener of his rights of property in that that it takes away the rights of the descendants of the landowner to claim for themselves the permissible area and vest them in the head of the family alone so that there is not only an infringement of the right to hold property under Art. 19 (1) (f) but also discrimination in favour of the head of the family infringing thereby Art. 14; (2) that the effect of s. 32-KK is that where an undivided family is possessed of land, instead of each of the descendants getting a ceiling area of 30 standard acres, the head of the family alone gets 30 standard acres and therefore the

section is violative of Art 31; (3) that the section, being applicable only to Hindu undivided families infringes Art. 15(1) inasmuch as it discriminates by reason only of religion such families as against other undivided families in Punjab amongst communities other than Hindus and (4) that the section cannot be said to be legislation whose object is agrarian reform and, therefore, is not protected by Art. 31-A.

Section 32-kk, the validity of which is impeached in this appeal, reads as follows :-

> "Notwithstanding anything contained in this Act or in any other law for the time being in force :-
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> (a) where, immediately before the commencement of this Act, a landowner and his descendants constitute a Hindu undivided family, the land owned by such family shall, for the purposes of this Act, be deemed to be the land of that landowner and no descendant shall as member of such family, be entitled to claim that in respect of his share of such land he is a landowner in his own right."

The section first lays down a fiction and then its result. The fiction is that where a landowner and his descendants form a Hindu undivided family, the land owned by such a family shall be deemed to be the land of that landowner. The fiction so enacted is limited only for the purposes of the Act. The result of the fiction again for the purposes of the Act is that no descendant shall, as a member of such family, be entitled to claim that in respect of his share of such land he is a landowner in his own right. There is no doubt that the section has a direct adverse effect on the rights of the descendants of a landowner. It treats such a family as one unit equating the landowner. It treats such a family as one unit equating the landowner and his descendants with an individual landowner depriving by such equation the descendant of the right to hold a ceiling area for himself. Prima facie, such a provision would infringe Art. 19(1) (f) and Art. 31 and would be hit by Art 13. Article 31-A, however, provides that notwithstanding anything contained in Atr. 13, 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 Arts. 14, 19 or 31. If, therefore, s. 32-KK falls within the scope of Art. 31-A, it is obviously protected thereunder and the validity of the section is placed beyond any challenge on the ground of its infringing any of the rights under Arts. 14, 19 or 31.

In K. K. Kochuni v. The State of Madras, this Court laid down that Art. 31-A properly construed envisages agrarian reform and provides 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 and must be limited to it. The Court held that the Act impugned there did not contemplate any agrarian reform or seek to regulate the rights inter se between the landlords and tenants or modify or extinguish any of the rights appertaining to janmam right leaving all the characteristics intact and, therefore, did not come with the purview of Art. 31-A. In Ranjit Singh v. The State of Punjab, this Court considered the scope of that decision and held that the word 'estate' in Art. 31-A should be given a liberal meaning and that the changes proposed by the Punjab Consolidation Acts passed since 1948 and onwards were included in the general scheme of planning of rural areas and the productive utilisation of vacant and waste lands, that if agrarian reforms were to succeed, mere distribution of land to the landless was not enough, that there should be a proper planning of rural economy and conditions and that a scheme which makes villages self-sufficient cannot but be regarded as part of larger reforms which consolidation of holdings, fixing of ceilings on lands,

distribution of surplus lands and utilising of vacant and waste lands contemplate. It is not necessary to refer to other decided cases as this decision clearly points out that the fixing of ceiling on lands and provisions relating to it would form part of and constitute agrarian reform and, therefore, such provisions would have the protection of Art. 31-A.

A brief outline of the provisions of the Act will show the objects and the policy the legislature had in mind in passing the Act and while amending it from time to time. The Act declares that it was passed to amend and consolidate law relating to tenancy and agricultural lands and to provide for certain measures of land reforms. Section 3 defines "permissible limit" as meaning 30 standard acres of land. Section 5 entitles every landowner owning land exceeding the permissible limit to select for personal cultivation from the land held by him any parcel or parcels of land not exceeding in aggregate the permissible area. Chapter III provides for the rights of tenants and section 7 therein lays down that no tenancy shall be terminated except in accordance with the provisions of the Act or except on any of the grounds therein set out. Section 7-A lays down additional grounds for termination of tenancy in cases such as where the land comprising the tenancy has been reserved by the landowner for his personal cultivation or where the landowner owns 30 standard acres or less of land and the land falls within the permissible limit. Section 9 provides the maximum amount of rent payable by a tenant on such tenant paying compensation determined in accordance with the principles set out in section 26. Chapter IV-A, which was added by Act 15 of 1956, deals with ceiling on lands and acquisition and disposal of surplus land. Section 32-A provides that no person shall be entitled to own or hold as landowner or tenant land exceeding the permissible limit. Section 32-B obliges a person owning or holding as landowner or tenant land which exceeds the permissible limit to furnish to the Collector a return giving particulars of all his land and stating therein his selection of land not exceeding the permissible limit which he desires to retain and of lands in respect of which he claims exemption from the ceiling. Section 32-D directs the Collector to prepare a draft statement on the basis of the information given in the said returns showing the total area of land owned or held by such person and the land selected by him by way of permissible limit the exemption claimed by him and the surplus area. Section 32-E provides that in the case of surplus area of a landowner or a tenant which is not included within the permissible limit such area shall on the date on which possession thereof is taken by the State Government, be deemed to have been acquitted by the State Government for a public purpose. Section 32-F unathorises the Collector to direct the landowner or the tenant in possession of the surplus area to deliver possession thereof within the prescribed time. Section 32-FF provides that no transfer or other disposition of land made after August 21, 1956 shall affect the right of the State Government to the surplus area to which it would be entitled to but for such transfer or disposition. Section 32-G lays down principles on which compensation in respect of surplus area is to be determined. Section 23-J deals with disposal of such surplus area. Section 32-KK already recited above was inserted in the Act by Punjab Act XVI of 1962.

It is clear from these provisions that the objects of the Act are : (a) to secure the rights of tenants, (b) to provide for acquisition of proprietary rights in the land to the tenant, (c) to provide for permissible limit of 30 standard acres, (d) to acquire surplus areas and distribute them amongst certain classes of persons including landless persons, and (e) to provide for compensation at prescribed rates payable by tenants and by Government on its acquiring surplus land. The principle laid down by the Act is that no person, whether a landowner or tenant, should hold land more than the permissible area so that the surplus land can be distributed amongst the more needy sections of society. In following this principle the Act lays down two corollaries, namely, (1) not to recognise any transfer or disposition made by a landowner after a certain date as otherwise the scheme of distribution of surplus land would be frustrated, and (ii) to equate an individual landowner and a

Hindu undivided family consisting of a landowner and his descendants so that both the units are entitled to hold only the permissible area of 30 standard acres. In our view, it cannot be gainsaid that section 32-KK deals with an estate within the meaning of Art. 31-A and is concerned with agrarian reform. The decision in Kochuni's case cannot, therefore, avail the appellants.

In Pritam Singh v. The State of Punjab, this Court upheld the validity of s. 32-FF and held that that section was protected by Art. 31-A against any challenge under Art. 19. If a transfer or a disposition of land can validly be ignored under s. 32FF for the purpose of ascertaining surplus land and acquisition of such surplus land by the State and that section is protected by Art. 31-A, it is difficult to say why s. 32-KK which, as aforesaid, equates a Hindu undivided family with an individual landowner for the limited purpose of the Act without affecting the other rights of its members is not equally protected by that Article. The object of enacting s. 32-KK was to prevent the landowner and his descendants by reason of their constituting a Hindu undivided family from each of them claiming in his own right the permissible area from the joint holding of the family and thus retain for themselves in the aggregate area larger than 30 standard acres and preventing thereby distribution of surplus area. As to the pros and cons of such a provision much can be said on either side. The appellants could have perhaps contended that such a provision amounted to an unreasonable restriction. But such a contention is debarred by Art. 31-A and a challenge to the validity of that Article is no longer possible in view of the recent decision in I. C. Golak Nath v. The State of Punjab.

The contention that the section is not one relating to agrarian reform is hardly sustainable in view of the above-mentioned objects of the Act in general and of s. 32-KK in particular. Similarly, the contention that the section has the affect of defeating the rights of a member of a Hindu undivided family from the family property also cannot be sustained because his rights in the permissible area retained by the landowner and his right to compensation in respect of the surplus area are not touched by the section. Nor is it possible to say that the section results in the transfer of rights of the descendants of a landowner in the permissible or surplus area in favour of such landowner. The section does not effect any change in the rights of the descendants as members of a Hindu undivided family or the relationship of the family inter se except to the extent of depriving the descendants of their right to claim the ceiling area for each of them. The contention as to the validity of s. 32-KK, therefore, must fail.

The next connection was that the section infrignes Art. 15 inasmuch as by limiting it only to Hindu undivided families it discriminates against descendants forming such families on the ground of religion only. It was argued that the customary law in Punjab recognises joint and undivided families amongst non-Hindu persons also and since the section affects only the Hindu undivided families, it violates Art. 15. In support of this contention passages from Rattigan's Digest of Customary Law, 14th Ed. pp. 35 to 36 were relied on to show that the institution of undivided family exists amongst certain classes of Muslims in certain districts of Punjab. Support was also sought from the decisions in Banarsi Das v. Wealth Tax Officer and Mannad Kevi v. Wealth Tax Officer. The former was concerned with the question whether a Hindu undivided family is embraced within the term 'individuals in Entry 56 of List I of the Seventh Schedule to the Constitution for purposes of the Wealth Tax Act, 1957. The latter decision does not ouch the question under Art. 15. Neither of the two decisions, therefore, can assist. On the other hand, in the case of Bhagat v. State of Punjab the High Court of Punjab has held that section 32-KK does not create any discrimination on the ground of religion. In the present case, it is not possible to give any concluding answer to the contention raised by Mr. Mani firstly because such a point was not raised in the writ petition and secondly because the appellants have not placed before us sufficient data to enable us to go into the

question. We, therefore, refrain from examining that contention.

The appeal fails and is dismissed with costs.

Appeal dismissed.

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