

Union of India

Vs

Jubbi and Dunia, Etc.

Civil Appeal No. 957 of 1964

(J. C. Shah, S. M. Sikri, J. M. Shelat JJ)

05.09.1967

JUDGMENT

SHELAT, J. -

The Himachal Pradesh State legislature passed the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act 1953 (hereinafter referred to as the Act) on June 17, 1953 and the Act was brought into force with effect from January 26, 1955. The validity of the Act was thereafter successfully impugned (of Shri Vinod Kumar v. State of Himachal Pradesh) ([1959] Supp. 1 S.C.R. 160). The parliament then passed the validating Act, 56 of 1958. That Act was itself then challenged in *Jadab Singh v. Himachal Pradesh Administration* ([1960] 3 S.C.R. 755) but the challenge was rejected and the Act since then remains on the statute book as a valid piece of legislation.

On June 4, 1959 the respondent made an application under s. 11 of the Act for acquiring proprietary rights in the lands set out therein claiming to be the cultivating tenant of those lands and produced a copy of Jamabandhi in support of his claim. He stated that he was the tenant of the Union of India in respect of the said lands that he was cultivating the said lands, that he was paying Rs. 35/5/- annually as rent and Rs. 23/8/- as annual land revenue and other rates and cesses assessed on the said lands and that he was willing to pay compensation as provided by the Act. On November 26, 1959 the Forest Department on behalf of the Union filed objections alleging that the application was incompetent, that the said lands formed part of the protected forest, that the relationship between the respondent and the Union was not that of landlord and tenant, that the Union being the paramount owner could not be characterised as a landlord qua the respondent, that a number of trees stood on the said lands, that the respondent was merely a lessee of the said lands which were a forest area, that the entries in the revenue record in respect of the said lands were incorrect and could not be relied on in application under section 11 and consequently the Compensation Officer, Mahasu, had no jurisdiction to grant it. The Compensation Officer held that the said area was not a forest area, that there were no trees on the said lands as alleged and that since the respondent was mentioned as an occupancy tenant in the Jamabandhi he was entitled to proprietary rights in the said lands on his paying compensation which he fixed at Rs. 76.40 np. The Forest Department thereupon filed an appeal before the District Judge, Mahasu principally on the ground that the Compensation Officer had not followed the procedure laid down in the Act and not given to the Forest Department reasonable opportunity to put forward its case. The Forest Department did not dispute in the said appeal that the appellant held the said lands as tends as of the Government. On July 26, 1960 the District Judge allowed the appeal and remanded the case to the Compensation Officer directing him to raise proper issues and decide the matter in accordance with law. Accordingly, the Compensation Officer raised four issues, viz., whether there were trees on the said lands, whether the lands formed part of the forest, whether the respondent was a tenant in respect of the said lands and whether there

was any impediment in the way of granting proprietary rights to him. The Compensation Officer held that the respondent was a tenant, that there was no impediment in granting proprietary rights to him and allowed once again the respondents application. The appeal by the Union against the said order before the District Judge failed. The District Judge held that the respondent was the tenant of the Union and that Act applied to the said lands as also to the Union. The Union filed a Second Appeal before the Judicial Commissioner challenging the correctness of the District Judge's said order. Both the Compensation Officer and the District Judge having held on the strength of the Jamabandhi that the respondent was the occupancy tenant in respect of the said lands, the only question raised in the Second Appeal were (1) that the Act did not bind the Union or the state Government and (2) that the respondent's application under s. 11 could not lie against the union in respect of lands owned by it. The Judicial Commissioner followed the ratio laid down in Director of Rationing v. Corporation of Calcutta ([1961] 1 S.C.R. 158) which was the law then prevailing and in view of that decision posed there question whether the Act applied to and was binding on the Union. He held that though the Act did not contain any express provision to that effect, an examination of sections 11, 15, 27 and 54 showed that the Act applied to Government land and was by necessary implication binding on the Union. He observed that the object of the Act and the acquisition of rights, title and interest of the landowner in the land of any tenancy held under him by a tenant was that such interest should ultimately be transferred to the tenant. He held that on a consideration of the relevant provisions of the Act "the conclusion to which I have been driven is that by necessary implication the Act binds the Government and an application under section 11 of the Act by a tenant is competent in respect of land held by him under the Government." In that view he dismissed the Union's appeal. The Union of India filed this appeal after obtaining certificate under Art. 133(1)(c) of the Constitution. After this appeal had gone on for some time we felt that as it involved a question of some public importance it was desirable that we should have the assistance of some senior counsel. We accordingly directed the Register to appoint a senior Counsel amicus curiae. Accordingly, Mr. D. R. Prem appeared before us. We gratefully acknowledge the assistance rendered by him.

Mr. Ganapathy Iyer for the Union of India took us through the different provisions of the Act and submitted that considering the scheme and the object of the Act the conclusion was inescapable that the legislature while enacting the Act did not intend that it should apply to the Government or to lands owned by the Government. To appreciate the contention it is necessary to examine some of the provisions of the Act. But before we do that it would be expedient to clear the ground regarding the question of the applicability of statutes on the State and its immunity, if any, from such statutes.

In Director of Rationing v. The Corporation of Calcutta ([1961] 1 S.C.R. 158) the majority judgment held that the law applicable to India before the Constitution was as authoritatively laid down in the province of Bombay v. Municipal Corp. of Bombay (73 I.A. 271) that the Constitution has not made any change in the legal position and that on the other hand it has clearly indicated that the laws in force before January 26, 1950, shall continue to have validity even in the new set up except in so far as they were in conflict with the express provisions of the Constitution. The majority also held that the rule of interpretation of statutes that the State was not bound by a statute unless it so provided in express terms or by necessary implication was still good law. Wanchoo J. (as he then was) in his dissenting opinion, however, held that the rule of construction which was based on the royal prerogative as known to the common law of England could not be applied to India now that there was no crown in India when the common law of England was not applicable and that therefore the State was bound by a statute unless it was exempted expressly or by necessary implication. The rule in that decision is no longer good law. In Supdt. & Legal Remembrancer, West Bengal v. State of the West Bengal ([1967] 2 S.C.R. 170) this Court considered the correctness of

that diction and disagreeing with the majority view accepted as correct the minority opinion. The Court held that the common law rule of construction that the crown was not, unless expressly named or clearly intended, bound by a statute was not accepted as a rule of construction throughout India and even in the Presidency towns it was not regarded as an inflexible rule of construction. It was not statutorily recognised either by incorporating it in different Acts or in any General Clauses Act; at the most it was relied upon as a rule of general guidance in some parts of the country. The legislative practice established that the various legislatures of the country provided specifically exemptions in favour of the crown whenever they intended to do so indicating there by that they did not rely upon any presumption but only on express exemptions. The Court also observed that the Privy Council in *Province of Bombay v. Corp. of Bombay* (73 I.A. 271) gave its approval to the rule mainly on concession made by Counsel. The Court then held that the archaic rule based on the prerogative and perfection of the crown could have no relevance to a democratic republic, that such a rule was inconsistent with the rule of law based on the doctrine of equality and introduced conflicts and anomalies. Therefore, the normal construction, that an enactment applies to citizens as well as to the State unless it expressly or by necessary implication exempted the State from its operation, steered clear of all the anomalies and was consistent with the philosophy of equality enshrined in the Constitution. The position now therefore is that a statute applies to State as much it does to a citizen unless it expressly or by necessary implication exempts the State from its operation.

It is conceded that neither s. 11 nor any other provision in the Act contains any express exemption. Broadly stated, if the legislature intended to exclude the applicability of the Act to the State it could have easily stated in section 11 itself or by a separate provision that the Act is not to be applied to the Union or to lands held by it. In the absence of such a provision, in a constitutional set up as the one we have in this country and of which the overriding basis is the broad concept of equality, free from any arbitrary discrimination, the presumption would be that a law of which the avowed object is to free the tenant of landlordism and to ensure to him security of tenure would bind all landlords irrespective of whether such a landlord is an ordinary individual or the Union.

The question then is whether in the absence of any express exemption the statute exempts the State by necessary implication? The preamble of the Act declares that its object is not only to abolish big landed estates but also to reform the law relating to tenancies. Section 2(3) provides that the expression "estate", "land-owner" and "holding" will have the meanings respectively assigned to them in the Punjab Land Revenue Act, 1887. Turning therefore to the Punjab Land Revenue Act, 1887 we find that section 3(1) of the Act defines "estate" as meaning any area for which a separate record-of-rights has been made or which has been separately assessed to land revenue or which the State Government may by general rule or special order declare to be an estate. Section 3(2) provides that "landowner" does not include a tenant or an assignee of land revenue, but includes a person to whom a holding has been transferred, or an estate or holding has been let in farm under the Act for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear and every other person not hereinbefore in this clause mentioned who is in possession of an estate or any share or portion thereof, or in the enjoyment of any part of the profits of an estate. "Holding" has been defined as meaning a share or portion of an estate held by one land owner or jointly by two or more landowners. Since the land in question is admittedly assessed to land revenue as is clear from the copy of the Jamabandhi produced by the respondent there can be no question that the land is estate and the Union of India is there landowner thereof. Reverting now to the Abolition Act section 2(5) defines "land" as meaning land which is not occupied as a site of any building in a town or village and is occupied or has been let for agricultural purposes or purposes subservient to agriculture, or for pasture. Section 2(6) defines "landlord" as a person under whom a tenant holds land and to whom the tenant is or but for a contract to the contrary would be liable to pay rent for that land.

Clause 13 defines "rent" as meaning whatever is payable to a landlord in money, kind or service by a tenant on account of the use or occupation of land held by him Clause 17 defines a "tenant" as meaning a person who holds land under another person, and is or but for a contract to the contrary would be liable to pay rent for that land to that other person and clause 19 defines "tenancy" as meaning a parcel of land held by a tenant of a landlord under one lease or one set of conditions. In view of these definitions there can be no doubt that the respondent was a tenant having a right of occupancy within the meaning of sections 3 and 4 of the Act. Indeed, all throughout the proceedings the position that he was a tenant and the Union was his landlord and the landowner of the land in question was accepted without any dispute. Section 3 defines a tenant as having a right of occupancy in the land and section 8 provides that a tenant who immediately before the commencement of the Act had a right of occupancy in any land under the Punjab Tenancy Act 1887, as applied to Himachal Pradesh shall on the commencement of the Act be held to have for all purposes a right of occupancy in the land. Chapter III of the Act deals with acquisition of proprietary rights by tenants. Sections 9 and 10 provide for the appointment of compensation officers to carry out the purposes of the Act and confer power on the state Government to exercise control and superintendence over such officers, to issue instructions for the guidance of compensation officers and to cancel or revise any of the orders, acts and proceedings of such officers other than those in respect of which an appeal lies under this Act. Section 11 deals with the right of a tenant to acquire the interests of a landowner and provides inter alia that a tenant shall on applications made to the compensation officer at any time after the commencement of this act be entitled to acquire on payment of compensation, the right, title and interest of the landowner in the land of the tenancy held by him under such landowner. Sub-section 2 contains certain exemptions with which we are not concerned in this appeal, sub-section 3 enjoins upon the compensation officer on a tenant making an application under sub-section (1) to determine the amount of compensation payable to the landowner in respect of the land in accordance with the provisions of sections 12 and 13. Under sub-section 5 the applicant has to deposit the amount of compensation in a Government treasury and thereupon the compensation Officer has to issue a certificate declaring the tenant to be the landowner in respect of the land specified in the certificate. Sub-section 6 provides that on and from the date of the grant of the certificate the tenant shall become the owner of the land comprised in the tenancy and the right title and interest of the landowner in the said land shall determine. Sections 12 and 13 deal, as aforesaid, with compensations payable by the tenant. Section 14 provides that a tenant holding a tenancy exceeding 12 acres of land can surrender 1/4th of such land to the landowner whereupon the tenant would become the owner of the rest of the land of his tenancy.

There is nothing in these sections which would indicate that they or any of them impliedly exempt the State or its lands from their apportionment. Sections 11 to 14 thus contain provisions whereunder the tenant, as a result of their operation, acquires the right, title and interest in the land held by him as a tenant on his paying compensation to the landowner as fixed by the Compensation Officer.

Under sections 15 to 24, notwithstanding the provisions of sections 11 to 14 the State Government is empowered on a declaration made by it to acquire the right, title and interest of the landowners in the lands of any tenancy held under him by a tenant in respect of such area or at such time as may be specified by it in a notification. They also provide that upon such declaration the right, title and interest of such landowner vests in the Government. Such a landowner is entitled to compensation as provided in section 16 and onwards on his rights vesting in the Government. In such cases the tenant becomes the tenant of the Government and has to pay rent directly to the Government and the landowner becomes henceforth exempt from payment of land revenue. Section 27 then provides that notwithstanding anything contained in section 11 and onwards a landowner who holds land the

annual land revenue of which exceeds Rs. 125, the right title and interest of such landowner in such land except such land which is under his personal cultivation shall be deemed to have been transferred and vested in the State Government. Such a landowner also is entitled to compensation determined having regard to sections 17 and 18 in accordance with the provisions of the Sch. II. Sub-section 4 of section 27 provides that the right, title and interest of the landowner conferred on the Government by sub-sections 1 and 2 shall be transferred by the State Government on payment of compensation in accordance with Sch. I to such tenant who cultivates such land. Sub-sec. 5 provides for rehabilitation grant payable to such small landowners whose right, title and interest have been extinguished and who do not have any other means of livelihood.

A reading of sections 11 to 27 reveals that they lay down three parts of the scheme of abolition of proprietary rights of landowners; (1) under s. 11 there would be a direct transfer to and vesting of the right, title and interest of the landowner in the occupancy tenant on his paying compensation as assessed by the compensation Officer, (2) under section 15 in respect of lands situate in an area specified by Government, there would be a transfer and vesting of ownership of such lands in the State Government and the tenants of such land becoming the tenants of the Government and (3) under s. 27 where the holding is large enough to have an annual assessment of over Rs. 125, the ownership in such lands would be first transferred and vested in the State Government and thereafter by the State Government in favor of the tenant.

The contention, however, was that these three ways of abolishing the landowners' interest and transferring in two out of these three methods of the proprietary rights to the tenants suggest that the Act was not intended to affect the land owned or held by the Union or the State Government. This concatenation cannot be accepted for, there is nothing in these provisions suggestive of their being not applicable to the State or of any distinction between of the lands owned and held by citizens and lands owned and held by the State. There can therefore be no room for any assumption that the legislature and in mind any such discrimination between the State and the citizens.

Mr. Ganapathy Iyer our attention to sections 48 and 54(1)(g) also but we fail to see how they can be relevant for finding out whether the State is by implication exempted from the operation of the Act.

It is clear that the object of the Act was to abolish big landed estates and alleviate the conditions of occupancy tenants by abolishing the proprietary rights of the landowner in them and vesting such rights in the tenants. That being the paramount object of the legislature it is hardly likely that it would make any discrimination between the State and the citizen in the matter of the application of the Act. This is especially so because if such a discrimination were to be brought about through a construction suggested by the State it would result in an anomaly in the sense that whereas occupancy tenants of lands owned by citizens would have the benefit of such a beneficent legislation occupancy tenants of lands owned and held by the State would not get such benefit. An intention to bring about such a discrimination against the latter class of tenants cannot be attributed to the legislature whose avowed object was to do away in the interest of social and economic justice with landlordism in the State. In view of the decision in *Supdt. & Legal Remembrancer v. Corp. of Calcutta* ([1967] 2 S.C.R. 170) the State cannot also claim exemption on the ground only that the Act does not expressly or by necessary implication make it binding on the State.

For the reasons aforesaid, we must hold that the conclusion arrived at by the Judicial Commissioner was correct. The appeal is dismissed. No order as to costs.

V.P.S.

Appeal dismissed.

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