State of Maharashtra Etc.

Vs

Madhavrao Damodar Patilchand and Others Etc.

Civil Appeals Nos. 2239 to 2250 of 1966

(CJI M. Hidayatullah, R. S. Bachawat, C. A. Vaidialingam, K. S. Hegde, S. M. Sikri, J. C. Shah, G. K. Mitter JJ)

10.04.1968

JUDGMENT

SIKRI, J. -

This judgment will dispose of Civil Appeal No. 694 of 1967 and Civil Appeals Nos. 2239-2250 of 1966.

In September 1963, the appellants in Civil Appeal No. 694 of 1967 filed a petition under Arts. 226 and 227 of the Constitution (Special Civil Application No. 1642 of 1963) in the High Court of Judicature at Bombay challenging the validity of the Maharashtra State Agricultural Lands (Ceiling on Holdings) Act, 1961 (Maharashtra Act XXVII of 1961) as amended by Maharashtra Act XIII of 1962 - hereinafter referred to as the impugned Act. The first appellant is a public limited company and owns two factories for the manufacture of sugar and allied products situate at Taluka Kopergaon in Ahmednagar District of the State of Maharashtra. The first appellant also held large areas of land in several villages in Taluka Kopergaon for the purpose of cultivation of sugarcane for its factories. In the proceedings under the impugned Act large areas held by the first appellant were declared surplus.

Various persons had earlier filed similar petitions in the High Court challenging the validity of the impugned Act. The High Court by its judgment dated October 25, 1963, disposed of them. The High Court held that "the Maharashtra Agricultural Lands (Ceilings on Holdings) Act, 1961, is a valid piece of legislation and within the competence of the State Legislature to enact, except that the provisions of s. 28 thereof offend Art. 14 of the Constitution and are void. The effect of our decision however would not be entitle petitioners to get any declaration that their lands which are held by an industrial undertaking are exempt from the operation of the Act nor that the orders passed by the first respondent on the 28th of February 1963 are null and void and have no legal effect. The lands will vest in the State but they will not be entitled to deal with the lands under any of the provisions of s. 28." The High Court, subject to the above declaration, dismissed the petitions. The State having obtained certificates of fitness under Art. 132(1) of the Constitution filed appeals No. CA 2239 - 2250 of 1966 against the above mentioned judgment.

After this judgment, the Constitution was amended by the Constitution (Seventeenth) Amendment Act, 1964 - hereinafter referred to as the Seventeenth Amendment - which came into force on June 20, 1964. This amendment included 44 more Acts, as items 21 to 64, in the Ninth Schedule of the Constitution. Item 34 in the Schedule as amended reads :

"Maharashtra Agricultural Lands (Ceilings on Holdings) Act, 1961 (Maharashtra Act XXVII of 1961).

The petition of the appellant in Civil Appeal No. 694 of 1967 (Special Civil Application No. 1642 of 1963) was dismissed by the High Court by its judgment dated March 10, 1965. The High Court held that the Seventeenth Amendment had put s. 28 and other provisions of the impugned Act beyond challenge on the ground that they were inconsistent with or take away or abridge any fundamental rights. The High Court also held that the impugned Act was not rendered inoperative because of the Defence of India Act, 1962, and the Rules made thereunder.

The appellants having obtained certificate of fitness under Art. 133(1)(a) have appealed.

Mr. F. S. Nariman, who appears for the appellants in Civil Appeal No. 694 of 1967 and for the respondents in Civil Appeals Nos. 2239 - 2250 of 1966 submits the following points before us :

(1) That Art. 31B does not protect from challenge on the ground of violation of fundamental rights the provisions of Acts amending the Maharashtra Agricultural Lands (Ceilings on Holdings) Acts, 1961, as originally enacted :

(2) That the Seventeenth Amendment in spite of the decision of this Court in I. C. Golak Nath v. State of Punjab [[1967] 2 S.C.R. 762.] is invalid;

(3) That the State Legislature was not competent to enact the impugned Act in so far as it affects sugarcane farms held by Industrial undertakings and lands on which sugarcane is grown; and

(4) That the Defence of India Act (LI of 1962) and the Rules made thereunder override or render ineffective s. 28 of the impugned Act.

In order to appreciate the points raised before us it is necessary to notice the scheme of the impugned Act and set out the relevant provisions.

The preamble of the impugned Act gives broadly the general purpose of the Act. It reads :

"Whereas, for securing the distribution of agricultural land as best to subserve the common good, it is expedient in the public interest to impose a maximum limit (or ceiling) on the holding of agricultural land in the State of Maharashtra; to provide for the acquisition of land held in excess of the ceiling, and for the distribution thereof to landless and other persons; and for matters connected with the purposes aforesaid; it is hereby enacted ...."

The provisions of the impugned Act carry out these objectives by imposing a ceiling on holding of land (Chapter II) and determination, declaration and vesting of surplus land (Chapter IV). Chapter V deals with determination and payment of compensation. Chapter VI deals with distribution of surplus land. Chapter VII is concerned with procedure and appeal, and in Chapter VIII various miscellaneous provisions are made. We may notice s. 21, s. 27 and s. 28 in detail. Under s. 21 the Collector makes a declaration stating therein his decision, inter alia, on the area, description and full particulars of the land which is delimited as surplus land. Under sub-s. (2) the Collector notifies this area, and under sub-s. (4) after a lapse of a certain time the Collector take possession of the land which is delimited as surplus. The effect of thus taking possession, in brief, is that "the surplus land

shall be deemed to be acquired by the State Government for the purposes of the Act and shall accordingly vest in the State Government." Section 27 directs distribution of surplus land in the order of priority set out in sub-ss. (2), (3), (4) and (5). For instance, sub-s. (2) gives priority to a tenant who was rendered landless because the person to whom the surplus land belonged had resumed land from his tenant for personal cultivation under any tenancy law. Sub-s. (5) provides :

> "(5) Thereafter all surplus land (including surplus land which has not been granted under sub-section (2) or (3) or (4)) shall be offered in the following order of priority, that is to say, -
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> (i) a person from whom any land has been resumed by his landlord for personal cultivation under any tenancy law and who in consequence thereof has been rendered landless, provided that such person is a resident of the village in which the surplus land for distribution is situate, or within five miles thereof;
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> (i-a) severing members of the armed forces, and ex-servicemen;
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> (i-b) a joint farming society or a farming society, the members of which answer to any of the following descriptions, namely :-
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> (i) serving members of the armed forces,
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> (ii) ex-servicemen,
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> (iii) agricultural labourers,
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> (iv) landless persons, or
>
> (v) small holders;
>
> Provided that the majority of members of such society are serving members of the armed forces or ex-servicemen;
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> (ii) a joint farming society, the members of which answer to the one or more of the following descriptions, namely :-
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> agricultural labourer or
>
> landless person or
>
> small holder;
>
> (iii) a farming society, the members of which answer to be the one or more of the following descriptions, namely :-
>
> agricultural labourer or
>
> landless person or
>
> small holder;".

Section 28 which is the subject matter of special attack provides :

> "28(1) Where any land held by an industrial undertaking is acquired by, and vest in, the State Government under section 21, such land being land which was being used for the purpose of producing or providing raw material for the manufacture or production of any goods, articles or commodities by the undertaking, the State Government shall take particular care to ensure that the acquisition of the land does not affect adversely the production and supply of raw material from the land to the undertaking.
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> (2) Notwithstanding anything contained in section 27, but subject to any rules made in this behalf, for the purpose of so ensuring the continuance of the supply of such raw material to the undertaking, and generally for the full and efficient use of the land for agriculture and its efficient management, the State Government -
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> (a) May, if it is in the opinion of that Government necessary for the purpose aforesaid (such opinion being formed after considering the representation of persons interested therein) maintain the integrity of the area so acquired, in one or more compact blocks; and
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> (b) may, subject to such terms and conditions (including in particular, conditions which are calculated to ensure the full and continuous supply of raw material to the undertaking, at a fair price), grant the land, or any part thereof, to a joint farming society (or a member thereof) consisting as far as possible, of -
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> (i) persons who had previously leased such land to the undertaking,
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> (ii) agricultural labour (if any) employed by the undertaking on such land,
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> (iii) technical or other staff engaged by the undertaking on such land, or in relation to the production of any raw material,
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> (iv) adjoining landholders who are small holders,
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> (v) landless persons :
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> Provided that, the State Government may -
>
> (a) for such period as is necessary for the setting up of joint farming societies as aforesaid, being not more than three years in the first instance (extensible to a further period not exceeding two years) from the date of taking possession of the land, direct that the land acquired, or any part thereof, shall be cultivated by one or more farms run or managed by the State, or by one or more corporations (including a company) owned or controlled by the State;
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> (b) grant to the landlord so much of the surplus land leased by him to the undertaking, which together with any other land held by him does not exceed the ceiling area (but if the landlord be a public trust and and major portion of the income from the land is being appropriated for purposes of education or medical relief, grant the entire land to the public trust) on condition that the landlord, or as the case may

be, the public trust lease the land to a farm or corporation described in clause (a) aforesaid, and thereafter, in the case of a landlord (not being a public trust) that he becomes a member of the joint farming society, and in the case of a public trust, that it lease the land to a joint farming society.

(3) The State Government may provide that, -

(a) for the breach of any term or condition referred to in clause (b) of sub-section (2), or

(b) if the landlord to whom the land is granted fails to lease the land to the farm or corporation or to become a member of a joint farming society; or

(c) if it considers after such inquiry as it thinks fit, that the production and supply of raw material to the undertaking is not maintained at the level or in the manner which, with proper and efficient management it ought to be maintained, or

(d) for any other reason it is undesirable in the interest of the full and efficient cultivation of the land, that the joint farming society should continue to cultivate the land,

the grant shall, after giving three months' notice of termination thereof and after giving the other party reasonable opportunity of showing cause, be terminated, and the land resumed. Thereafter, the State Government may make such other arrangements as it thinks fit for the proper cultivation of the land and maintenance of the production and supply of raw material to the undertaking."

Regarding the first point raised by the learned counsel for the appellant, it seems to us that the High Court was right in holding that Art. 31B does protect the impugned Act from challenge on the ground of violation of fundamental rights. There is no doubt that Art. 31B should be interpreted strictly. But even interpreting is strictly, the only requirement which is laid down by Art. 31B is that the Act should be specified in the Ninth Schedule. Now the question arises whether the impugned Act has been specified in the Ninth Schedule or not. It is true that what is mentioned in entry 34 of the Ninth Schedule is "The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (Maharashtra Act XXVII of 1961)" which may be referred to as the Principal Act, and no mention is made of the Amending Act, namely, Maharashtra Act XIII of 1962. Ordinarily if an Act is referred to by its title, it is intended to refer to that Act with all the amendments made in it unto the date of reference. For instance, the Constitution refers to the General Clauses Act, 1897, in Art. 367. This Article provides that "unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India." If the contention of the learned counsel for the appellant is accepted it would mean that for the purposes of the interpretation of the Constitution the General Clauses Act, as originally enacted in 1897, would alone be taken into consideration. We can hardly imagine that this was the intention of the Constitution makers. Further, when one refers to the Code of Civil procedure or the Criminal Procedure Code or the Indian Penal Code one ordinarily means to refer to them as amended up to date. There is no reason why this ordinary manner of referring to Acts should not be borne in mind while interpreting the Ninth Schedule.

It is true that some amending Acts are mentioned in the Ninth Schedule apart from the principal Acts. For example, the Madras Estate (Abolition and Conversation into Ryotwari) Act, 1948 (Madras Act XXVI of 1948) is mentioned in item 9, while the Madras Estates (Abolition and Conversion into Ryotwari) Amendment Act, 1950 (Madras Act I of 1950) is mentioned in item 10. Further item 20 specifically mentions the West Bengal Land Development and Planning Act, 1948 (West Bengal Act XXI of 1948), as amended by West Bengal Act XXIX of 1951. But then there are many other Acts which had been amended before they were inserted in the Ninth Schedule, and we can hardly imagine that Parliament intended only to protect the Acts as originally passed and not the amendments made up to the date of their incorporation into Ninth Schedule. The reason for this express insertion of certain amending Acts seems to be that some States, out of abundant caution, recommended that their amending Acts be specifically inserted in the Ninth Schedule. It is true that for some purposes an amending Act retains its individuality, as observed by Jagannadhadas, J., in Shri Ram Narain v. The Simla Banking and Industrial Co. Ltd. [[1956] S.C.R. 603, 614.] :

> "In the present case what we are concerned with is not the meaning of any particular phrase or provision of the Act after the amendment but the effect of the amending provisions in their relation to and effect on other statutory provisions outside the Act. For such a purpose the amendment cannot obviously be treated as having been part of the original Act itself so as to enable the doctrine to be called in aid that a later Act overrides an earlier Act."

These observations, however, do not lead to the conclusion that when an Act is referred to by its title it is not intended to include the amendments made in it.

Accordingly we must overrule the first submission made by the learned counsel for the appellant and hold that Art. 31B protects the impugned Act including the amendments made in it unto the date of its incorporation into the Ninth Schedule. The impugned Act cannot, therefore, be challenged on the ground that it violates Arts. 14, 19 and 31 of the Constitution. We, accordingly, agree with the High Court that s. 28 which was originally held by the High Court to violate Art. 14 of the Constitution is now protected under Art. 31B from attack on the ground that it infringes Art. 14.

Coming to the second point, the learned counsel merely mentions the point. He says that there was no majority for any particular ratio as five Judges held the Seventeenth Amendment to be void because it contravened Art. 13(2), but by applying the doctrine of "prospective overruling" they declared that their decision would not affect the validity of the Seventeenth Amendment. Hidayatullah, J., as he then was, on the other hand did not apply the doctrine of "prospective overruling", but held s. 3(2) of the Seventeenth Amendment to be bad. The other five Judges held that the Seventeenth Amendment was a valid amendment of the Constitution. We are, however, bound by the result arrived at by this Court in that decision and the result that the Seventeenth Amendment is valid is binding on us. We may mention that Mr. Mani, appearing for one of the interveners, also raised this point but ultimately asked for permission to be allowed to withdraw the point.

Coming to the third point, the learned counsel for the appellant contends that s. 28 is a law with respect to entry 52 of List I, and therefore beyond the competence of the State Legislature. The entry reads thus :

> "52. Industries, the control of which by the Union is declared by Parliament by law

to be expedient in the public interest."

He points out that one of the industries specified in the Schedule to the Industries (Development and Regulation) Act, 1951 (LXV of 1951) is "sugar". He says that the whole object of s. 28 of the impugned Act with regard to lands held by industrial undertakings who were producing sugarcane was to ensure the production of sugarcane and its supply to the sugar factories and this object falls squarely within entry 52, List I. In the alternative he urges that the State Legislature had no authority to legislate adversely on matters falling within item 52. There is no doubt that the impugned Act, apart from s. 28, is a law with respect to entry 18 of List II and entry 42 of List III. These entries read as follows :

"Entry 18, List II :

Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents, transfer and alienation of agricultural land, land improvement and agricultural loans; colonization.

Entry 42, List III :

Acquisition and Requisition of Property."

It is no tseriously dispute that apart from s. 28 the rest of the impugned Act is a law with respect to entry 18, List II and entry 42 List III.

It is not necessary to consider whether s. 28 can be sustained on the ground that it is an ancillary or subsidiary matter to the law made under entry 18 List II and entry 42, List III, for, in our opinion, s. 28 falls within entry 35 list II, which reads :

"Works, lands and buildings vested in or in the possession of the State."

It will be noticed that s. 28 only deals with lands which have vested in the State. There cannot be any doubt that the State Legislature is competent to enact provisions regarding the production and supply of raw materials from land which has vested in the State and for the full and efficient use of such land and its efficient management.

Coming now to the last point, the learned counsel for the appellants urges that by virtue of Art. 251 of the Constitution s. 28 can no longer be effective as it is repugnant to the Defence of India Act and the Rules made thereunder. He says that under s. 3(2)(26) of the Defence of India Act, 1962, the Central Government is enabled to make orders providing for "the control of agriculture (including the cultivation of agricultural land and crops to be raised therein) for the purpose of increasing the production and supply of foodgrains and other essential agricultural products." By notification dated October 30, 1963, the Government of Maharashtra made an order whereby it "reserved each of the areas specified in column (3) of the Schedule hereto annexed for the factory respectively specified against it in column (2) thereof", and made other provisions regarding the purchase and export of sugarcane. In the Schedule the following areas were made reserved areas for the appellant, the Godavari Sugar Mills Limited :

"Areas comprised within the limits of the following talukas.

(i) Kopergaon of Ahmednagr District.

(ii) Shrirampur of Ahmedabad District."

This order was made by the Government of Maharashtra in the exercise of its powers under r. 125-B of the Defence of India Rules.

The learned counsel is right that to the extent valid orders made under the Defence of India Rules conflict with the provisions in s. 28, the orders would override s. 28 of the impugned Act. But it has not been shown to us on the material available here how the order dated October 30, 1963, is in conflict with s. 28. The order first reserves certain areas for the factories mentioned in the Schedule, and then prohibits the working of certain power crushers and also prohibits the export of sugarcane from the reserved areas except in accordance with a permit issued by the Collector of the District. It further prohibits the purchase of sugarcane for crushing or for manufacture of gur, gul or jaggery by a khandsari unit or by a crusher not belonging to a grower or body of growers of sugarcane except under and in accordance with a permit issued by the Collector. Section 28, inter alia, is concerned with ensuring sons to whom the land is granted also supply it at fair price. It seems to us that the provisions of s. 28 can stand together with the order dated October 30, 1963. In our opinion there is no force in the point raised by the learned counsel.

In the result Civil Appeal No. 694 of 1967 is dismissed. The other appeals (Civil Appeals Nos. 2239 - 2250 of 1966) are allowed, judgment of the High Court, insofar as it declared s. 28 void, set aside and the petitions out of which these appeals arose dismissed. There will be no order as to costs in all the appeals.

C.A. No. 694 of 1967 dismissed, other appeals allowed.##

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