SUPREME COURT OF INDIA

Venkatrao Esajirao Limbekar

Vs.

State of Bombay

C.A.No.464 of 1966

(M. Hidayatullah, C.J.I., J. C. Shah, V. Ramaswami, G. K. Mitter and A. N. Grover, JJ.)

15.04.1969

JUDGEMENT

GROVER, J.:-

1. This is an appeal by special leave from a judgment of the Bombay High Court dismissing a petition under Article 226 of the Constitution which had been filed by the appellants. The validity of the Hyderabad Tenancy and Agricultural Lands (Re-enactment, Validation and Further Amendment) Act, 1961, hereinafter called the "Maharashtra Act", was challenged. It was also sought to restrain the respondents from proceeding with the enquiry under Section 38 (E) of the Hyderabad Tenancy and Agricultural Lands Act (Act XXI of 1950) as amended by the Hyderabad Tenancy and Agricultural Lands (Amendment) Act (Act III of 1954), read with the relevant rules.

2. The appellants are land-owners in Pathri Taluka of Parbhani District. This district was originally a part of the erstwhile State of Hyderabad and the provisions of the Hyderabad Act XXI of 1950 were applicable there. By amending Act No. III of 1954 which received the assent of the President on 31st January 1954 a number of amendments were made. Section 38 (E) was inserted. By that

section the Government could declare by notification that ownership of all lands held by protected tenants which they were entitled to purchase from their landholders under the provisions of chapter IV wereto of stand transferred to such tenants.

3. The district of Parbhani became a part of the erstwhile Bombay State on the enactment of the State Re-organisation Act, 1956. By means of Bombay (Hyderabad Areas) Adoption of Laws (State and Concurrent Subjects) Order 1956, the State of Bombay adopted and modified Hyderabad Act XXI of 1950. A notification was issued on May 21, 1957 by the Government of Bombay making a declaration under Section 38 (E) of Hyderabad Act XXI of 1950 in the district of Parbhani. The Agricultural Lands Tribunal and the Special Tehsildar, Parbhani District as also the Secretary, The Agricultural Lands Tribunal Pathri Taluka of the same District started an inquiry under Rule 54 of the Hyderabad Transfer of Ownership Rules and published a provisional list of those who were declared to be land-owners which included some of the tenants of the appellants. The appellants filed objections which were dismissed.

4. The Bombay Legislature passed Act XXXII of 1958 which was first published in the Bombay Government Gazette on April 10, 1958 after having received the assent of the President. By this Act further amendments were made in Hyderabad Act XXI of 1950. In July 1959 the appellants filed a writ petition in the High Court of Bombay assailing the vires of the provisions of Section 38E of Hyderabad Act XXI of 1950. The grounds of attack, inter alia, were that Arts. 19(1) (f) and 31 of the Constitution had been contravened and that the aforesaid Act had not been reserved for and had not received the assent of the President. The validity of the notification issued in May 1957 was also attacked. This petition was dismissed by the High Court in March 1960. In January 1961 this Court granted special leave to appeal against that judgment. In March 1961 during the pendency of the appeal the Andhra Pradesh High Court in Inamdars of Sulhanagar Colony. V. Government of Andhra Pradesh, AIR 1961 Andh Pra 523 struck down Hyderabad Act XXI of 1950 amended by Act III of 1054 on the sole ground that it had not received the assent of the President as required by Article 31 (3) of the Constitution. In February, 1961, the Maharashtra Act was enacted after the assent of the President had been obtained. It repealed and reenacted the Hyderabad Act XI of 1950 and declared that it shall be deemed to have come into force on 10th day of June 1950 as re-enacted. It also repealed the amending laws and re-enacted them and declared that as re-enacted they shall be deemed to have come into force on the day specified against each of them in the table given therein. It made certain further amendments. Thereupon the appeal pending in this court was withdrawn by the appellants with liberty to challenged the constitutionality of the Maharashtra Act. In November, 1962 the appellants filed a petition under Article 226 of the Constitution in the Bombay High Court challenging the Maharashtra Act. This petition was dismissed by the High Court in March 1964.

5. It appears that only two points were urged before the High Court. The first was that the State Legislature had no power to re-enact the provisions of the Hyderabad Acts (the parent Act and the amending Acts) with retrospective effect. This argument was repelled by a brief observation that the State Legislature was competent to give retrospective effect to the provisions enacted by it. The second point raised was that Sec. 38E which provided that protected tenants would be deemed to have become owners of the land held by them subject to certain conditions with effect from the date

notified by the Government was ultra vires Articles 19 and 31 of the Constitution. The High Court referred to its earlier decision in Special Civil Application No. 1128 of 1959 in which the same contention had been pressed but had not been accepted. The High Court also relied on a decision of this court in Sri Ram Narain v. State of Bombay, 61 Bom LR 811 = (AIR 1959 SC 459) in which the constitutional validity of similar provisions contained in Section 32 of the Bombay Tenancy and Agricultural Lands Act had been upheld.

6. The present appeal must fail. The provisions of the Maharashtra Act as also of the Hyderabad Act XXI of 1950 together with the amending Act are immune from any challenge on the ground of contravention of Articles 19 and 31 of the Constitution. By the Constitution (Seventeenth Amendment) Act 1964, after entry 20, entries 21 to 66 were inserted in the Ninth Schedule to the Constitution. Entries 35 and 36 relate to the Maharashtra Act and Hyderabad Act XXI of 1050 respectively. Article 31-B gives full protection to an Act and its provisions in the Schedule against any challenge on the ground of inconsistency with or abridging of any of the rights conferred by Part III of the Constitution. This would be so notwithstanding any judgment, decree or order of any court or Tribunal to the contrary. The amending laws and, in particular, Hyderabad Act III of 1954 which inserted Section 38E would also be covered by the same protection because the parent Act, namely, the Hyderabad Act XXI of 1950 was included in the Ninth Schedule in the year 1964 which was long after enactment of the amending Act.

7. In the above view of the matter no attempt was made on behalf of the appellants to raise the second question about the competency of the Legislature of the Maharashtra State to enact the Maharashtra Act with retrospective effect in respect of Parbhani District which became a part of the erstwhile Bombay State only after the enactment of the Bombay States Reorganisation Act, 1956. The reason apparently is that even on the assumption that the Maharashtra Legislature could not have validly enacted retrospective legislation with regard to Parbhani District, the Hyderabad Act XXI of 1950 as amended by Act III of 1954 was in force at the time when the notification was made in May 1957 pursuant to which proceedings were taken which were challenged by the appellants. As regards the decision of the Andhra Pradesh High Court. AIR 1961 Andh Pra 528 (supra) by which the Hyderabad Act XXI of 1950 was struck down as not having received the assent of the President under Article 31 (3) the position taken up in the writ petition was that such assent had been given to it on April 8, 1958 and till then the said Act was not valid and operative. According to the judgment of the Andhra Pradesh High Court, Hyderabad Act XXI of 1950 had never been assented to by the President although it had received the assent of the Rajpramukh of the erswhile Hyderabad State. Now the question of lack of assent of the President was never pressed before the High Court, nor have we been invited to examine it. We would, however, like to observe that, as noticed before, when Hyderabad Amending Act III of 1954 was enacted the assent of the President was duly obtained. Similarly when Bombay Act XXXII of 1958 which was meant for amending Hyderabad Act XXI of 1950 was enacted the assent of the President had been given. If the assent of the President had been accorded to the amending Acts, it would be difficult to hold that the President had never assented to the parent Act, namely, Hyderabad Act XXI of 1950. Even if such assent had not been accorded earlier it must be taken to have been granted when Amending Act III of 1954 was assented to.

8. For the above reasons this appeal is dismissed, there will be no order as to costs.

Appeal dismissed.