

Smt. Jasodabai and Smt. Ramchandrabai

Vs

The State of Maharashtra and Another

Civil Appeal Nos. 1554-1555 of 1966

(CJI M. Hidayatullah, A.N. Grover, A.N. Ray, P. Jagmohan Reddy, I.D. Dua JJ)

26.11.1969

JUDGMENT

HIDAYATULLAH, C.J. -

1. This order will govern the disposal of Civil Appeal Nos. 1554 and 1555 of 1966.
2. The two appellants, seeking to appeal against the common judgment and order of the Bombay High Court (Nagpur Bench), September 10, 1965, in proceedings under Article 226 of the Constitution, applied to the Division Bench of the High Court for a certificate under Articles 132 and 133(1)(a) or (5) and/or (c) of the Constitution. Their applications were summarily dismissed on December 6, 1965. The present two appeals (consolidated for hearing) are by special leave and are against the order refusing certificate. The appellants contend that they were entitled to a certificate as of right as laid down in Ramesh and Another v. Seth Gendalal Motilal Patni and Other. ((1966) 3 SCR 198) The other side opposes.
3. The appellants and 3 others had, by their several petitions under Article 226 of the Constitution, asked that certain notices issued under Section 17(2) of the Act for declaration of lands in excess of the ceilings as surplus and requiring that they be surrendered, be quashed on the ground that the Maharashtra Agricultural Lands (Ceilings on Holdings) Act, 1961 (27 of 1961) offended Articles 14, 19 and 31 and was therefore void under Article 13. The Divisional Bench disposed of the five petitions by a common judgment and order on September 10, 1965 dismissing them. It was held that barring Section 28, the Act was already held to be validly enacted in a decision of the High Court in another petition decided on October 25, 1968. The earlier case had laid down that the Act was saved by Article 31-A. The Divisional Bench also pointed out that the Act was included in the 9th Schedule to the Constitution and enjoyed protection of Article 31-B. That too was held in yet another petition. The learned counsel attempted to urge some new grounds but was not allowed to do so. The petitions were dismissed but without costs.
4. In pressing the applications for certificate the petitioners pointed out that 1976 acres of dry crop lands were involved and were likely to be declared surplus and asked to be surrendered and that at a valuation of Rs. 1,000 per acre, the value of the subject matter in the High Court and on appeal to this Court was well over the mark. They claimed a certificate as of right. The High Court refused the certificate but gave no reasons for the refusal.
5. In these appeals it is submitted that in view of the decision of this Court in Ramesh and Another v. Seth Gendalal Motilal Patni and Others, (supra) the certificate ought to have been granted because the order was made in the exercise of extraordinary original jurisdiction in a civil proceeding and

the valuation of the claim was well over Rs. 20,000. It is submitted that the appeals satisfied all the tests laid down by this Court in the earlier case.

6. There is considerable force in the submissions. As pointed out in the earlier case Article 133 is wide enough to take in civil proceedings decided in the High Court in the exercise of the extraordinary jurisdiction provided some civil right of the party is decided. The appellants before the High Court were attempting to save their property by challenging the validity of the Act and the decision of the Court that the Act was valid directly affected the civil rights of the parties in properties well over the mark in value. In these circumstances the High Court could not refuse the certificate. We would have, therefore, seriously considered remanding the case to the High Court for the grant of a certificate but for two things. Special leave was granted on May 5, 1966. Since then on April 10, 1968, in *State of Maharashtra, etc. v. Madhavrao Damodar Patilchand and others, etc.*, ((1968) 3 SCR 712) this Court has held the Act to be *intra vires* and the Act is also included in the 9th Schedule and is protected by Article 31-B of the Constitution. It will be an exercise in futility to ask the High Court to certify the cases when the appeals that will follow must necessarily and inevitably fail. It is better to save circuitry of action and to dismiss the appeals before us. We order accordingly but make no order about costs.

7. We may say here that it is desirable to state in brief why the certificate is refused since much depends on whether the civil rights of the parties are passed on or not by the judgment proposed to be appealed against. Again, if the Court refuses to exercise jurisdiction under Article 226 without deciding the civil rights claimed, it is better to say so while refusing the certificate.

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