

Khajamian Wakf Estates Etc.

Vs

State of Madras and Another

Civil Appeals Nos. 2480-2509, 2543-2546, 2547-2553, 2559, 2575, 2576 and 2602 and 1966, 214-217, 672-674, 1053, 1054, 1055, 1062, 1063, 1457 and 1458 of 1967 and 162, 672, 673 and 1000 of 1968

(A. N. Ray, J. C. Shah, K. S. Hegde, A. N. Grover, G. K. Mitter JJ)

18.11.1970

JUDGMENT

HEGDE, J. -

1. In this batch of appeals, the validity of the Madras Inam Estate (Abolition and Conversion Into Ryotwari) Act, 1963 (Madras Act 26 of 1963); the Madras Lease-holds (Abolition and Conversion into Ryotwari) Act, 1963 (Madras Act 27 of 1963) and the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (Madras Act 30 of 1963) is challenged on the ground that the material provisions in those Acts are violative of Articles 14, 19(1)(f) and 31 of the Constitution. The provisions in these Acts reducing the tenants' liability to pay the arrears of rent are also challenged on the ground that the Legislature had no competence to enact those provisions. A few other minor contentions are also raised in these appeals to which reference will be made in the course of the judgment. All these contentions had been unsuccessfully urged before the High Court. Dealing with the allegations of infringement of Articles 14, 19 and 31, the High Court in addition to holding that there has been no infringement of those articles has further held that the challenge to the validity of these Acts on the basis of those articles is precluded in view of Article 31-A. Dealing with the contention relating to the reduction of rent the High Court came to the conclusion that the Legislature had power to enact the impugned provisions. The High Court also has given reasons for rejecting the other contentions advanced before it. Aggrieved by the decision of the High Court these appeals have been brought by special leave.

2. The impugned statutes deal with agrarian reforms. They purport to deal with Inam lands. It is profitless to go to the origin of Inam or about their early history. Suffice it to say that the Urdu word "Inam" means a "gift". The Inam grants were made by the Rules for various purposes. Some of them were granted to institutions and some to individuals. Broadly speaking there were three types of Inams. The first type consisted of the grant of the Melwaram right alone. The second category consisted of the grant of both the Melwaram as well as the Kudivaram right. In addition to these two Inams, there were what are known as Minor Inams. Sometime prior to 1862, the Government took up the question of enfranchising the Inams. The Inams Commissioner went into the rights of various persons claiming to be Inamdars. Thereafter the Madras Enfranchised Inams Act, 1862 (Madras Act IV of 1862) was passed for declaring and confirming the title of the Inamdars. Section 2 of that Act provided that the title deeds issued by the Inams Commissioner or an authenticated extract from the register of the Commissioner or Collector shall be deemed sufficient proof of the Enfranchisement of land previously held on Inam tenure. By Madras Inams (Assessment) Act, 1956 (Madras Act 40 of 1956), full assessment was levied on all Inam lands

except Melwaram Inams granted on service tenure, without affecting in any way the rights as between the Inamdar and other persons, if any, in possession or enjoyment of the Inam land.

3. Where the Inam comprised the entire village, the same was treated as an "estate" in the Madras Proprietary Estates' Village Service Act, 1894 (Madras Act 2 of 1894) and the Madras Hereditary Village Officers Act, 1895 (Madras Act 3 of 1895) as well as in Madras Estates Land Act, 1908 (Madras Act 1 of 1908). Madras Estates Land Act, 1908 recognised the Ryots permanent tenure. That Act secured a permanent right of occupancy to every Ryot who at the commencement was in possession of "Ryoti" land or who was subsequently admitted to the possession of such land. Then came the Madras Estates Land (Third Amendment Act), 1936 (Madras Act 18 of 1936). That Act amplified the definition of the "estate" in the Madras Estates Land Act, 1908, so as to bring within its scope all Inam villages, of which the grant was made, confirmed or recognised by the Government. It also provided that when a question arises whether any land was the land-holder's private land or not, the land should be presumed not to be Inamdar's private land until the contrary was proved. In 1937 the Madras Government appointed the Prakasam Committee to enquire into and report the conditions which prevailed in the Zamindari and other proprietary areas in the State. That committee submitted its report together with a draft bill on the lines of its recommendations, but no action was taken on that report as the Congress Ministry which appointed it resigned. Then we come to the Madras Estates (Abolition and Conversion Into Ryotwari) Act, 1948 (Madras Act 26 of 1948). This Act applies to all estates i.e., Zamindari and under-tenure estates and all Inam villages in which the grant consisted of Melwaram alone. That Act as its preamble says is an Act to provide for the repeal of the permanent settlements, the acquisition of the rights of landholders in permanently settled and certain other estates in the Province of Madras and the introduction of the Ryotwari settlement in such estates. To complete the agrarian reform initiated by this Act, the impugned Acts appear to have been enacted. The Preamble to Madras Act 26 of 1963, says that it is an Act to provide for the acquisition of all rights of land-holders in Inam estates in the State of Madras and the introduction of the Ryotwari settlement in such estates. That Act follows by and large the provisions in Act 26 of 1948. In Act 26 of 1963 name estates are divided into two categories namely : (1) existing Inam estate, and (2) a new Inam estate. The existing Inam estate refers to the estate consisting of the whole village and the 'new Inam estate' means a part village Inam estate of Pudukkottai Inam estate. The "New Inam estate" was not an estate known to law earlier. It is merely a name given to part village Inam estate or a Pudukkottai Inam estate for drafting convenience. Act 27 of 1963, is an Act to provide for the termination of the leases of certain lease-holds granted by the Government, the acquisition of the rights of the lessees in such lease-holds, and the introduction of the Ryotwari settlement in such leaseholds. Act 30 of 1963 is an Act to provide for the acquisition of the rights of the Inamdars in minor Inams and the introduction of the Ryotwari Settlement in such Inams.

4. We do not think it necessary to go into the contention that one or more provisions of the impugned Act are violative of Article 14, 19 and 31, as in our opinion these Acts are completely protected by Article 31-A of the Constitution which says that :

"Notwithstanding anything contained in Article 13, no law providing for -

(a) 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 Article 14, Article 19 or Article 31."

5. The expression "estate" is defined in sub-Article (2) of Article 31-A. That definition includes not merely Inams but also land held under Ryotwari Settlement as well as land held or let for the purpose of agriculture or for purposes ancillary thereto, including waste land, forest, land, land for pastures or site or buildings and other structures occupied by the cultivators of land, agriculturists and village artisans.

6. The impugned Acts are laws providing for the acquisition by the State "estate" as contemplated by Article 31-A. They seek to abolish all intermediate holders and to establish direct relationship between the Government and the occupants of the concerned lands. These legislations were undertaken as a part of agrarian reform. Hence the provisions relating to acquisition or the extinguishment of the rights of the intermediate holders fall within the protective wings of Article 31-A - See *B. Shankara Rao Badami and Others v. State of Mysore and Another.* ((1969) 3 SCR 1.)

7. It is next contended on behalf of the appellants that the lands on which full assessment was levied under Act 40 of 1956 ceased to be Inams and therefore provisions of the Madras Act 26 of 1963 cannot be applied to the same. We have not thought it necessary to go into the question whether as a result of Madras Act 40 of 1956, certain Inams have ceased to be Inams, as in our opinion, whether they continue to be Inams or not they are still "estate" within the meaning of Article 31-A because they fall either under sub-clause (i) or (ii) or (iii) of clause (a) of Article 31-A (2) and that being so the provisions of the impugned Acts cannot be challenged on the ground that they infringe Articles 14, 19 and 31. The contention that as the State purported to abolish Inams and not other intermediaries the law cannot be held to be valid, if the intermediaries sought to be removed are not Inamdars is an untenable one. If the impugned legislation can be traced to a valid legislative power, the fact that the Legislature wrongly described some of the intermediaries sought to be removed does not make the law invalid. From the above observations, it should not be understood that we have come to the conclusion that the intermediaries concerned were not Inamdars. We have not gone into that question. From the provisions of the impugned Acts, it is quite clear that the intention of the Legislature was to abolish all intermediaries including the owners of those "estates" that were subjected to full assessment by Act 40 of 1956.

8. It was next urged that Article 31-A does not protect a legislation where no compensation whatsoever has been provided for taking the "estates". We do not think we need go into that question. This contention bears only on the provisions of the Madras Act 26 of 1963. Section 18 of that Act provides that compensation shall be determined for each Inam as a whole and not separately for each of the interests in the Inams. The validity of this section was not challenged before us. All that was urged was that for some of the properties included in the Inam, no compensation was provided. Even if we assume this contention to be correct, it cannot be said that no compensation was provided for the acquisition of the Inam as a whole. Hence Article 31-A bars the plea that there was contravention of Article 31(2) in making the acquisition in question. One of the contentions taken on behalf of the appellants is that the impugned Acts to the extent they purport to acquire mining lands are outside the purview of Article 31-A. It is not known whether the lands in which mining operations are going on were let or held as "estates". There is also no evidence to show that the owners of those lands are entitled to the mines. Hence it is not possible to uphold the contention that lands concerned income of the appeal have been acquired without paying compensations.

9. In order to avoid the bar of Article 31-A, a curious plea was put forward. It was urged that when the concerned bills were submitted to the President for his assent as required by the first proviso to Article 31-A, the President was not made aware of the implications of the bills. This contention is a

wholly untenable one. There is no material before us from which we could conclude that the President or his advisers were unaware of the implications of those bills. We must proceed on the basis that the President had given his assent to those bills after duly considering the implications of the provisions contained therein.

10. It was next urged that the provisions in the impugned Acts reducing the liability of the tenants in the matter of payment of arrears of rent, whether decreed or not was beyond the legislative competence of the State Legislature. This contention is against untenable. Those arrears are either arrears of rent or debts due from agriculturists. If they are treated as arrears of rent then the State Legislature had legislative power to legislate in respect of the same under Entry 18 of List II of the VII Schedule. If they are considered as debts due from the agriculturists then the State Legislature had competence to legislate in respect of the same under Entry 30 of the same List.

11. In regard to the Inams belonging to the religious and charitable institutions, the impugned Acts do not provide for payment of compensation in a lump sum but on the other hand provision is made to pay them a portion of the compensation every year a *Tasdik*. This is only a mode of payment of the compensation. That mode was evidently adopted in the interest of the concerned institutions. We are unable to agree that the method adopted is violative of Article 31(2). At any rate that provision is protected by Article 31-A.

12. It was next urged that by acquiring the properties belonging to religious denominations, the Legislature violated Article 26(c) and (d) which provide that religious denominations shall have the right to own and acquire movable and immovable property and administer such property in accordance with law. These provisions do not take away the right of the State to acquire property belonging to religious denomination. Those denomination can own, acquire properties and administer them in accordance with law. That does not mean that the property owned by them cannot be acquired. As a result of acquisition they cease to own that property. Thereafter their rights to administer that property ceases because it is no longer their property. Article 26 does not interfere with the right of the State to acquire property.

13. Mr. S. V. Gupta appearing for some of the appellants urged that the impugned Act contravenes the second proviso to Article 31-A. From the material before us it is not possible to hold that any property under the personal cultivation of any of the appellants had been acquired. Further there is no material to show what ceiling is? Hence it is not possible for us to examine the correctness of that contention. If in any particular case, the second proviso to Article 31-A has been breached, then to that extent, the acquisition will become invalid.

14. It was urged by Mr. Sastri appearing for some of the appellants that the impugned Acts do not acquire the lands concerned in some of the appeals. This contention was not gone into by the High Court. Dealing with that contention, the High Court in its judgment observed :

"But the applicability of the impugned acts to the Inams in question cannot be conveniently investigated in the present writ proceedings. The question will have to be determined with reference to the terms of the grant, the extent of the grant has to be ascertained by reference to the relevant materials. Section 5 of Madras Act XXXI of 1963 makes special provisions for determination of the question whether any non-Ryotwari area is or is not an 'existing Inam Estate' or 'part village Inam Estate' or a minor Inam or whole Inam village in Pudukkottai. It is stated at the bar that in most of the cases not before us the parties have applied under the provisions of the said Act for determination of the character of the Inams

respectively held by them. It is needless to point out that the tribunal constituted under the act will be entitled to decided that a particular property is neither an 'existing Inam Estate' nor a part village Inam estate not a whole Inam village in Pudukkottai and completely out of the coverage of Acts XXVI and XXX of 1963. We also make it clear that the disposal of these writ petitions now does not preclude the Inamdars from agitating the question that a particular property is not an Inam at all and does not under any of the aforesaid four categories or falls under one or other of the categories as may be urged for the Inamdars."

15. We agree with the High Court that the contention in question can be more appropriately gone into in the manner suggested by the High Court.

16. In the result these appeals fail and they are dismissed. But under the circumstances, we make no order as to costs in these appeals.

</html