

Manali Ramakrishna Mudaliar

Vs

State of Madras and Another

Civil Appeal No. 168 of 1967

(JCI M. H. Beg, Y. V. Chandrachud, P. N. Bhagwati, V. R. Krishn Iyer, N. L. Untwalia, Syed M. Fazal, P. S. Kailasam JJ)

02.03.1971

JUDGMENT

VAIDIALINGAM, J. -

1. This appeal on certificate, issued under Articles 132(1) and 133(1)(a) and (c), is directed against the judgment and order dated June 24, 1966 of the Madras High Court in Writ Petition No. 1958 of 1965.
2. The Madras Leaseholds (Abolition and Conversion into Ryotwari) Act, 1963 (Madras Act 27 of 1963), hereinafter to be referred as the Act, received the assent of the President on December 12, 1963 and was published in the Gazette on January 1, 1964. The Act extends to the leaseholds specified in the schedule to the Act. In exercise of the powers under Section 1(3) of the Act, the State of Madras in G.O. Press No. 311, Revenue, dated February 9, 1965 notified that the Act shall come into force on February 15, 1965. Under Section 4 of the Act, with effect on and from the appointed day, namely February 15, 1965, the lease of leasehold shall cease and every leaseholds including all communal lands and parambores, etc., stood transferred and vested in the Government free of all encumbrances. The Madras Irrigation Cess Act and all other enactments applicable to Ryotwari lands were also to apply to the leasehold. The expression "leasehold" was defined as any village specified in the first Schedule. Under Section 9, on and from the appointed day, every ryot was entitled ryotwari patta in respect of all his owned lands and the lessee was also entitled to a ryotwari patta in respect of his owned lands. A "lessee" was defined in the Act as a person to whom the lease was granted by the Government and included his heirs, legal representatives and assigns. Grant Lyon in Saidapet taluk of Chingleput district was one of the leasehold villages specified in the first Schedule to the Act and as such on and from February 15, 1965 it stood transferred to the Government and vested in them free from all encumbrances as provided under Section 4 of the Act. The Tahsildar, Saidapet, issued a notice to the appellant on April 9, 1965 calling upon him to keep ready all documents, accounts, registers, pattas, muchilikas, etc., relating to the leasehold in respect of Grant Lyon in Saidapet taluk. The notice also mentioned that the Tahsildar will take possession of those items on April 17, 1965.
3. On receipt of the notice on April 20, 1965, issued by the Tahsildar, the appellant filed the writ petition in the Madras High Court praying for the issue of a writ of certiorari to quash the notification of the Government of Madras G.O. Press No. 311, Revenue, dated February 9, 1965 on the ground that the provisions of the act are illegal and unconstitutional. The appellant also prayed for an order restraining the State of Madras and its officers from giving effect to the provisions of the Act and the notification issued thereunder relating to Grant Lyon village.

4. According to the appellant the lands in the Grant Lyon village had been granted on a lease on December 2, 1904 by the Secretary of State for India in Council to his paternal-grandfather. The lease was for a period of 99 years and the appellant's family as lessees were entitled to be in possession of the property paying to the Government every year a sum of Rs. 2,100/- as lease amount. The appellant claimed that he and his predecessors in title were in continuous possession and occupation of the lands in accordance with the lease and have been paying the lease amount to the Government regularly. While so the Act was passed by the State of Madras providing for termination of leases of certain leaseholds granted by the Government and the acquisition of the rights of lessees in such leaseholds and for introduction of ryotwari settlements. The appellant pleaded that the Act, if implemented, affects his fundamental right to hold and enjoy property in accordance with the lease deed and that the provisions for payment of compensation as provided in the Act were illusory and contrary to the provisions of the Constitution. The Act, according to the appellant, violates the provisions of Articles 19 and 31 of the Constitution. As the Government had been attempting to enforce the provisions of the Act in pursuance of the notice issued by the Tahsildar on April 9, 1965, the appellant had to approach the High Court under Article 226 seeking relief to strike down the Act. The appellant further stated that all the lands in village have been notified for acquisition under the Land Acquisition Act, 1894 (Central Act 1 of 1894). The notification under Section 4 had been issued on April 4, 1963 and the declaration has also been made in January, 1964. In view of this the appellant further raised a contention that his right to receive the market value under the Land Acquisition Act was also sought to be interfered with by enforcing the provisions of the Act.

5. The State of Madras opposed the writ petition and contended that the Act does not violate any fundamental right of the appellant and that the Act is saved by Article 31-A of the Constitution. The State further contended that the mere fact that a notification under Section 4 and a declaration under Section 6 had been issued under the Land Acquisition Act, does not debar the State from enforcing the provisions of the Act.

6. The High Court by its order attack upheld the validity of the Act. The High Court further held that as an award has not been made under the Land Acquisition Act and as the land has not vested in the State under Section 16 of the Land Acquisition Act, the State was entitled to enforce the provisions of the Act. In this view it upheld the validity not only of the Act but also of the Government order dated February 9, 1965 bringing into force the provisions of the Act as also the legality of the notice issued by the Tahsildar on April 9, 1965.

7. In this appeal before us, Mr. P. Ram Reddy, learned Counsel for the appellant raised two contentions : The first contention related to the unconstitutionality of the Act on the ground that it affects the fundamental rights guaranteed to the appellant under Articles 19 and 31 of the Constitution. The second contention related to the enforceability of the Act in view of the proceedings under the Land Acquisition Act, already initiated.

8. So far as the first contention regarding the constitutional validity of the Act is concerned, it is now concluded against the appellant by the decision of this Court in *Khajamian Wakf Estates v. The State of Madras*. ((1970) 3 SCC 894) The Act, as well as the two other enactments, were attacked as violating the fundamental rights guaranteed under Articles 14, 19 and 31 of the Constitution. The Constitution Bench rejected this contention and held that the Act, as well as the other two enactments referred to in the decision, are completely protected by Article 31-A of the Constitution. It has been further held that the impugned Act provides for acquisition by the State of an 'estate' as contemplated by Article 31-A and it seeks to abolish all intermediate holders and to establish direct

relationship between the Government and the occupants of the concerned lands. It is further held that the Act is a piece of legislation undertaken as a part of agrarian reform and that the provisions relating to the acquisition on the extinguishment of the rights of the intermediate holders fall within the meaning of Article 31-A. Though this decision of this Court was not available to the High Court, nevertheless, its conclusion that the Act is not invalid, is correct. Therefore, the first contention will have to be rejected.

9. So far as the second contention is concerned, in our opinion, the fact that proceedings under the Land Acquisition Act, 1894, have been, taken is no bar to applying the provisions of the Act to the village in question. The dates given earlier show that no award under the Land Acquisition Act has been passed and the lands have also not vested in the State under Section 16 of the said Act. The provisions of the Land Acquisition Act and the Act operate on different fields. The appellant will be entitled to ryotwari patta under Section 9 of the Act. The proceedings taken under Land Acquisition Act seek to acquire the entire interest of every one in the lands and there is no restriction in the right sought to be acquired. The appellant will be entitled only to that portion of compensation which is relatable to his right; and other people interested in the land will be entitled to the other portion of compensation. If the appellant is granted, under Section 9 of the Act a ryotwari patta, then in respect of those lands, he will be entitled to get compensation under Land Acquisition Act. In this view the application of the Act to the village in question will not affect his other rights in any manner. We are of the opinion that the stand taken by the State before the High Court in paragraph 7 of its counter-affidavit in the writ petition, is correct. Hence the second contention also fails.

10. The appeal fails and is dismissed. In view of the fact that the decision of this Court regarding the constitutional validity of the Act was given only after the decision of the High Court, there will be no order as to costs.

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