Chander Sekhar Singh Bhoi

Vs

State of Orissa

The State of Orissa

Vs

E. Kantamma, etc., K. Ratanmala, etc., P. Venkatama

Civil Appeals Nos. 854, 1028, 1033 and 1097 of 1968 and 1865 to 1867 and 2487 of 1969

(CJI S.M. Sikri, J.M. Shelat, G.K. Mitter, I.D. Dua, S.C. Roy, JJ)

05.11.1971

JUDGMENT

SIKRI, C.J. -

1. The appellant, Chander Sekhar Singh Bhoi, in Civil Appeal No. 854 of 1968, filed a petition under Article 226 of the Constitution (No. O.J.C. 329 of 1965) in the Orissa High Court, challenging the Orissa Land Reforms Act of 1960, hereinafter referred to as the principal Act (Act XVI of 1960), as amended by the Orissa Land Reforms Act, 1965 (Act XIII of 1965), hereinafter referred to as the Amending Act. He alleged that he owned about 220 acres of self-cultivated land and that he had about 5 acres of Bhagchar land.

2. This petition was heard alongwith a number of other petitions by the High Court, and the High Court by its common judgment, dated January 30, 1967, disposed of all these petitions. The High Court came to the conclusion that "Chapter III of the Amending Act is a valid piece of legislation or in other words, it does not suffer from any invalidity; but Chapter IV of the Amending Act is unconstitutional and invalid accordingly it is struck down". The High Court accordingly allowed the petitions in part and directed the State not to give effect to the provisions of Chapter IV of the Amending Act.

3. The State filed a number of appeals against the judgment and this Court (Shah and Vaidialingam, JJ.), allowed the appeal and set aside the order passed by the High Court declaring Chapter IV of Act XIII of 1965, Amending Act XVI of 1960, ultra vires, State of Orissa v. Chander Sekhar. [1969(2) SCC 334 : (1970) 1 SCR 593 : AIR 1970 SC 398 : (1970) 1 SCJ 375.] Civil Appeals Nos. 1028, 1033 and 1097 of 1968, 1865-67 and 2487 of 1969, are by the State of Orissa (hereinafter referred to as the State appeals), but these could not be heard by this Court (Shah and Vaidialingam, JJ.). The present appeal (C.A. No. 854 of 1968), was also not heard with the other appeals.

4. In Civil Appeal No. 854 of 1968, the appellant urged :

(1) That the High Court erred in holding Chapter III of the Act as inserted by Act XIII of 1965, in Act XVI of 1960, intra vires; and

(2) That Chapter IV as inserted by Act XIII of 1965, Act XVI of 1960, is ultra vires the provisions of the second proviso to Article 31-A(1) of the Constitution.

5. In the other appeals the State urged that the previous decision be followed and the judgment of the High Court set aside. On behalf of the respondent in C.A. No. 1867 of 1969, it is urged that the judgment of this Court is erroneous and needs reconsideration. We may mention that the respondents in the other appeals have not entered appearance.

6. The Orissa Land Reforms Act, 1960, received the assent of the President on October 17, 1960, and was published first in the extraordinary issue of the Orissa Gazette, dated November 11, 1960. The object of the legislation is given in the preamble which reads :

> "Whereas it is necessary to enact a progressive legislation relating to agrarian reforms and land tenures consequent on the gradual abolition of intermediary interest;
>
> And whereas it is expedient to confer better rights on agriculturists to ensure increase in food production in the manner hereinafter appearing."

Section 1(3) of the Act provides :

> "It shall come into force in whole or in part, on such date or dates as the Government may from time to time by notification appoint; and different dates may be appointed for different provisions of this Act."

7. On June 20, 1964, by virtue of Constitution (Seventeenth Amendment) Act, 1964, the Orissa Land Reforms Act, 1960, was included in the Ninth Schedule to the Constitution as Entry 52. On August 11, 1965, the Orissa Land Reforms Amending Act, 1965 (Act XIII of 1965), received the assent of the President and was first published in the Extraordinary issue of the Orissa Gazette, dated August 17, 1965. By the Amending Act various provisions of the Principal Act were amended in particular for the original Chapters III and IV of the Principal Act new Chapters III and IV were substituted.

8. On September 25, 1965, a notification under Section 1(3) Of the Principal Act was issued bringing the Act into force except Chapters III and IV. A further notification was issued under Section 1(3) of the Act bringing Chapter III of the Act as amended into force. No notification has as yet been issued under Section 1(3) of the Act bringing the provisions of Chapter IV into force. The fact was also noticed in the judgment of this Court in State of Orissa v. Chander Sekhar (supra), but the Court nevertheless went into the question of validity of Chapter IV of the Act as amended because the High Court held Chapter IV to be ultra vires.

9. It seems to us that the Courts ordinarily ought not to go into the question of the validity of an Act or a provision of an Act unless it has been brought into force. Till then, such a question would be academic. No body can be aggrieved by a provision of law which is dormant and which cannot be enforced. The Constitution has provided for an advisory opinion being given by the Supreme Court, when the question is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court. The High Court should not have embarked upon an academic question. In view of this we are not inclined to go into the question whether the provisions of Chapter IV were rightly held to be intra vires by this Court. The respondents in the State appeals can raise this question if so advised when the notification is issued under Section 1(3) of the Act

bringing Chapter IV into force. However, the appellant Chander Shekhar Singh was a party to the decision in State of Orissa v. Chander Sekhar (supra), and that judgment is binding on him. He cannot ask us to review the judgment in this manner.

10. In order to appreciate the contentions of the learned counsel on the question of the validity of the provisions of Chapter III of the Act it is necessary to notice the relevant provisions of the Act bearing on this question. The following definitions were brought to our notice :

> "2(5) 'Ceiling area' means an extent of land equivalent to twenty standard acres;
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> 2(17) 'Landlord' means a person immediately under whom land is held by a raiyat or a tenant;
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> Explanation I. - A raiyat or a tenant shall be deemed to be a landlord in relation to the tenant or tenants immediately under him;
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> Explanation II. - Government shall be deemed to be the landlord in respect of the lands held directly under them either by a raiyat or a temporary lessee or a tenant;
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> 2(22) 'Personal cultivation' with its grammatical variations and cognate expressions means to cultivate on one's own account -
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> (a) by one's own labour; or
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> (b) by the labour of any member of one's family; or
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> (c) by servants or hired labour on wages, payable in cash or in kind, but not in crop share, under one's personal supervision or the personal supervision of any member of one's family;
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> 2(30) 'standard acre' means the unit of measurement of land equivalent to one acre of Class I land, or one acre and a half of Class II land, or three acres of Class III land, or four acres of Class IV land;
>
> 2(31) 'tenant' means a person who has no rights in the land of another but under the system generally known as Bhag, Sanja or Kata or such similar expression or under any other system, law, contract, custom or usage personally cultivates such land on payment of rent in cash or in kind or in both or on condition of delivery to that person -
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> (a) either a share of the produce of such land; or
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> (b) the estimated value of a portion of the crop raised on the land; or
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> (c) a fixed quantity of produce irrespective of the yield from the land; or
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> (d) produce or its estimated value partly in any of the ways described above and partly in another."

11. Chapter II deals with raiyats and tenants. The heading of Chapter III is "Resumption of Land for

Personal Cultivation". Section 24(1) gives right to the landlord and the tenant to have the resumable and non-resumable lands determined in accordance with the provisions of the Chapter. The expression "resumable land", by virtue of the Explanation, refers to land which can be resumed for personal cultivation by a landlord from a tenant. We are not concerned with Section 24(2). Section 25 fixes the extent of the resumable land which shall not be more than one-half of the lands in respect of each tenant, measured in standard acres only. Section 26 enables the landlord to make a selection under Section 25 and apply on the basis of the selection to the Revenue Officer in the prescribed manner and form. It also enables a tenant to apply to the Revenue Officer within the period of three months in the prescribed form and manner. Under Section 27 of Revenue Officer determines the particulars of the resumable lands and the non-resumable lands. Section 28 provides that while deciding matters under Section 27 the Revenue Officer shall determine the compensation in respect of the non-resumable lands payable in the prescribed manner by the tenant which shall be determined in accordance with sub-sections (2) and (3) of Section 28. Sub-section (2) enables the compensation to be fixed and paid in annual instalments mentioned therein. Sub-section (3) provides for compensation for wells, tanks and structures of a permanent nature at the market value thereof to be paid alongwith the compensation under sub-section (2). Under Section 29, after the disposal of appeal, if any, the Revenue Officer has to issue a certificate in the prescribed form to the landlord and also to the tenant specifying all matters to be determined under Section 27 and 28. He is further directed to send a copy of such certificate to the authority competent to maintain the record-of-rights. Section 30 provides that the tenant shall with effect from the beginning of the year next following the date of the issue of the certificate under Section 29 become a raiyat in respect of the land for which compensation has been determined under Section 28. Sub-section (2) provides that the instalments of the compensation amount together with interest due thereon shall remain a first charge on the land to which it relates and shall be recoverable to the Revenue Officer by the person entitled thereto. Section 31(1) deals with the persons entitled to receive compensation, and under sub-section (2), with effect from the date the tenant becomes a raiyat under Section 30, he holds the land free from all encumbrances, and the rights of all persons (not being Government or a land-holder) mediately or immediately under whom the land was being held shall stand extinguished and the encumbrances, if any, created by such persons in respect of the land shall thereafter attach to the other lands of the landlord. Section 32 provides that the certificate issued the Section 29 shall be conclusive proof of the correctness of the contents thereof in respect of all disputes between the tenant and the persons whose rights stand extinguished in pursuance of Section 31. Section 33 provides for determination of fair and equitable rent for non-resumable land and the persons to whom it is payable. Section 34 provides that on the determination of the resumable lands the tenant on such land shall cease to have the right to continue in cultivation thereof with effect from the date of expiry of the year next following the date of issue of the certificate under Section 29. Section 35 provides for the contingency when both the landlord and the tenant in respect of any land fail to apply in accordance with the provisions of Section 26, and enables the Revenue Officer to determine resumable and non-resumable lands and other matters required to be determined under Sections 27 and 28. Section 36 provides for eviction of a landlord and a tenant who fail to personally cultivate the land without sufficient cause.

12. The learned counsel challenged the provisions of Chapter III on the ground that they are not protected by the provisions of Article 31-A(1) because they do not provide for the acquisition by the State of any estate or of any rights therein or the extinguishment of modification of any such rights. He said that the creation of a similar and identical right in another person does not amount to extinguishment of such rights. According to him, a right must vanish by the provisions of the Act before it can be said to be extinguished.

13. We see no force in this contention. A similar argument was addressed to this Court in Atma Ram v. State of Punjab. [1959 Supp 1 SCR 748, 753, 769 : AIR 1959 SC 519.] This Court was then dealing with the provisions of the Punjab Security of Land Tenure Act, 1953. The provisions of the Punjab Act were summarised by this Court thus :

> "Thus, the Act seeks to limit the area which may be held by a land-owner for the purpose of self-cultivation, thereby, releasing 'surplus area' which may be utilized for the purpose of resettling objected tenants, and affording an opportunity to the tenant to become the land-owner himself on payment of the purchase-price which, if anything, would be less than the market value."

14. The argument addressed to us was answered by Sinha, J., as he then was, thus :

> "In this connection, it was further argued that extinguishment of a right does not mean substitution of another person in that right, but total annihilation of that right. In our opinion, it is not necessary to discuss this rather metophysical argument, because, in our opinion, it is enough for the purpose of this case to hold that the provisions of the Act, amount to modification of the land-owner's rights in the lands comprised in his 'Estate' or 'holding'. The Act modifies the land-owner's substantive rights, particularly, in three respects, as indicated above, namely, (1) it modifies his right of settling his lands on any terms and to any on he chooses; (2) it modifies, if it does not altogether extinguish, his right to cultivate the 'surplus area' as understood under the Act; and (3) it modifies his right of transfer in so far as it obliges him to sell lands not at his own price but at a price fixed under the statute, and not to any not to any one but to specified persons, in accordance with the provisions of the Act, set out above. Thus, there cannot be the least doubt that the provisions of the Act, very substantially modify the land-owner's rights to hold and dispose of his property in any estate or a portion thereof. It is, therefore, clear that the provisions of Articles 31-A save the impugned Act from any attack based on the provisions of Articles 14, 19 and 31 of the Constitution."

15. It seems to us that this Act also modifies the landlord's substantive rights in various respects in as much as it enables the determination of resumable land which the land-owner would be entitled to cultivate himself and regarding the non-resumable land the tenant is given the right to acquire it on payment of compensation. This falls within the protection given by Article 31-A(1).

16. The learned counsel then referred to the second proviso to Article 31-A(1) which reads :

> "Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure provides for payment of compensation at a rate which shall not be less than the market value thereof."

17. Relying on the majority judgment in Ajit Singh v. State of Punjab, [(1967) 2 SCR 143: AIR SC 856.] he said that the provisions of Chapter III amounted to acquisition and accordingly the market

value was payable as compensation under the second proviso and not the compensation as fixed in Section 28. He urged that five acres of Bhag-char land are lands under his personal cultivation within the meaning of the words "personal cultivation" in the second proviso. He further said that although no notification under Section 1(3) of the Act had been issued bringing the provisions of Chapter IV, which dealt with ceiling, the ceiling limit applicable to him would be the ceiling limit as provided in Chapter IV.

18. It seems to us that there is no ceiling limit applicable to him within the meaning of the proviso because till a notification under Section 1(3) is issued it cannot be said that there is any ceiling limit applicable to him under any law for the time being in force. Further it does not seem to us that the five acres of land motioned above are under his personal cultivation. We have already set out the definition of the words "personal cultivation". Mr. C. B. Agarwala has drawn our attention to similar definitions in various Acts.

19. In the United Provinces Tenancy Act, 1959, "Khudkasht" means land (other than Sir) cultivated by a landlord, as under-proprietor or a permanent tenure-holder as such either himself or by servants or by hired labour.

20. In the Delhi Land Reforms Act, 1954, "Khudkasht" has been defined thus :

> "'Khudkasht' means land (other than Sir) cultivated by a proprietor either by himself or by servants or by hired labour, -
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> (a) at the commencement of this Act, or
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> (b) at any time during the period of five years immediately before the commencement of this Act, whether or not it was so cultivated at such commencement, provided that it has not, at any time after having been so cultivated, been let out to a tenant."

21. In the Bihar Land Reforms Act, 1950, "Khas possession" means :

> "'Khas possession' used with reference to the possession of a proprietor or to tenure-holder of any land used for agricultural or horticultural purposes means the possession of such proprietor or tenure-holder by cultivating such land or carrying on horticultural operations thereon himself with his own stock or by his own servants or by hired labour or with hired stock."

22. In our view the words "personal cultivation" in the Second proviso to Article 31-A(1) must bear similar meaning. The essence of "personal cultivation" seems to be cultivation by or on behalf of the owner of the land. It is quite clear that under the tenure known as Bhagchar, the cultivator shares his crop with the owner. So, when he grows the crop he grows it in his own right and not on behalf of any person. Therefore, it is difficult to hold that a crop-sharer cultivates on behalf of the landlord.

23. In the result we hold that the High Court was right in holding that Chapter III of the Act is valid. We further hold that the High Court should not have gone into the question of the validity of Chapter IV and we accordingly set aside that part of the judgment.

24. In the result, Civil Appeal No. 854 of 1968 is dismissed, but there will be no order as to costs. The other appeals are allowed, and the Writ Petitions filed by the respondents in the State appeals

are dismissed. There will be no order as to costs in these appeals.

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