S. P. Watel and Others

Vs

State of U.P.

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Vs

Bhagwat Dayal and Others

Writ Petition No. 185 of 1969 and Civil Appeals Nos. 1402 and 1403 of 1968

(A.N. Ray, D.G. Palekar, M.H. Beg JJ)

(C.A. Vaidialingam, A.N. Grover, S.N. Dwivedi JJ)

(CJI S.M. Sikri, A.N. Ray, D.G. Palekar, S.N. Dwivedi, A.K. Mukherjea JJ)

28.03.1973

JUDGMENT

DWIVEDI, J. -

1. These three cases have a common origin and are accordingly being disposed of by a common judgment.

2. The city of Meerut is a municipality in Uttar Pradesh. Plot No. 4635-A (Old No. 5199) is located therein. It has an area of one bigha and two biswas. It formed part of the Zamindari estate belonging to Lala Nanak Chand Trust. The trust is a charitable trust vested in the Treasurer of Charitable Endowments and is managed by the Collector of Meerut through a committee of trustees. On June 23, 1926, a lease deed was executed on behalf of the trust and in favour of one Bateshwar Dayal. By the deed the aforesaid plot was let to Bateshwar Dayal. The lease was granted "for the purpose of planting a grove, erecting buildings and digging wells, etc." The yearly rent was fixed at Rs. 12/8/-. The lease was for a term of 30 years with effect from June 1, 1926. The lessee agreed to surrender the land and all buildings standing thereon to the lessor on the expiry of the period of lease. The buildings would become the property of the lessor. He would have them without paying any compensation to the lessee. The lessor agreed that on the expiration of the period of lease he would at the request of the lessee grant to the lessee a new lease for another term of 30 years.

3. The initial period of 30 years expired on July 1, 1956. Thereupon the trust instituted suit No. 690 of 1956 for recovery of possession over the aforesaid land from Bateshwar Dayal. During pendency of this suit Bateshwar Dayal died on March 6, 1958. The suit was dismissed by the trial court on October 24, 1958. It was, however, decreed by the first appellate court on November 30, 1959. The appellate court granted six months' time to the defendants to institute a suit in the appropriate court for specific performance of the agreement to re-let for another term of 30 years.

4. Bhagwat Dayal and others, heirs of Bateshwar Dayal, then instituted suit No. 34 of 1960 in the

appropriate court for specific performance of the agreement to re-let the land for another term of 30 years. The trust contested this suit, inter alia, on the ground that it was barred by limitation. This plea was upheld by the trial court and the suit was dismissed on October 30 1961. The first appellate court affirmed the decree of the trial court on March 23, 1962.

5. Bhagwat Dayal and others filed a second appeal in the Allahabad High Court against the judgment and decree passed in the suit filed by the Trust on January 5, 1960. They also filed a second appeal against the judgment and decree in their own suit on April 23, 1962.

6. While those appeals were pending, the U.P. Urban Area Zamindari Abolition and Land Reforms Act, 1956 (hereinafter called the Act) was enforced in the city of Meerut. The land in dispute was declared "agricultural area" under the said Act. Thereafter a notification was issued on June 16, 1964, under Section 8 of the Act vesting the land in the State.

7. Bhagwat Dayal then moved an application before the High Court for abating the two appeals as well as the two suits out of which those appeals had arisen in accordance with the provisions of the Act. The High Court passed an order abating both the suits and appeals. The order was made on July 25, 1968. Against this Order the appellants have filed two appeals in this Court by special leave.

8. The appellants say that they have filed the Writ Petition No. 105 of 1969, by way of abundant caution. The prayer in the petition is that the notification issued under Section 8 of the Act should be quashed. It is alleged in Paragraph 4 of the petition that the disputed plot is a part of Kothi Babu Wali. In Paragraph 20 of the writ petition it is reiterated that the disputed plot forms parts of a residential Kothi within the municipality of Meerut and is non-agricultural area. It is a alleged that the impugned notification is violative of the provisions of Articles 14 19(1)(f) and 31 of the Constitution and is accordingly unconstitutional.

9. Before mentioning the arguments of Shri R. K. Garg, counsel for the appellants, it is necessary to have a look at the relevant provisions of the Act. The preamble to the Act states that it is expedient to provide for the abolition of Zamindari system in agricultural areas situate in urban areas in Uttar Pradesh and "for the Acquisition of the rights, title and interest of intermediaries between the tiller of the soil and the State in such areas and for the introduction of the land reform therein". Section 2 is the definition clause, sub-section (1) of it defines the expression "agricultural area". As this provision is important for this case, we are setting out its relevant portion.

10. "Agricultural area" as respects any urban area means an area which, with reference to such date as the State Government may notify in that behalf, is -

> "(a) in the possession of or held or deemed to be held by an intermediary as sir, khudkasht or an intermediary's grove;
>
> (b) held as a grove by or in the personal cultivation of a permanent lessee in Avadh; or
>
> (c) included in the holding of -
>
> (i) a fixed-rate tenant,
>
> (ii) an ex-proprietary tenant,

(iii) an occupancy tenant,

(iv) a tenant holding on special terms in Avadh,

(v) a rent free grantee,

(vi) a grantee at a favourable rate of rent,

(vii) a hereditary tenant,

(viii) a grove-holder,

(ix) a sub-tenant referred to in sub-section (4) of Section 47 of the U.P. Tenancy Act, 1938, or

(x) a non-occupancy tenant of land other than land referred to in sub-section (3) of Section 30 of the U.P. Tenancy Act, 1939,

and is used by the holder thereof for purposes of agriculture or horticulture :

Provided always that land which on the date aforesaid is occupied by buildings not being "Improvements" as defined in Section 3 of the U.P. Tenancy Act, 1939 and land appurtenant to such buildings shall not be deemed to be agricultural area.

(d) held on a lease duly executed before the first day of July, 1955, for the purpose of erecting buildings thereon; or

(e) held or occupied by an occupier....."

11. Section 2(7) defines an "intermediary" inter alia, as a proprietor of an agricultural area. Section 2(12) defines "proprietor" as a person owning whether in trust or for his own benefits an agricultural area. Section 2(16) states that the words and expressions, "grove", "grove-holder", "grove-land" and "holding" shall have the meaning assigned to them in the U.P. Tenancy Act, 1939. Section 3 provides for demarcation of agricultural area in urban areas. Section 4 provides for publication of preliminary proposals with respect to demarcation of agricultural areas. It provides also for inviting objections to the proposals. Final democration is made by the Commissioner under Section 5. Section 6 provides that after agricultural areas have been demarcated under Section 5, the State Government may, at any time by notification in the Gazette, declare that as from a date to be specified all such areas situate in the urban area shall vest in the State. From that date all such agricultural areas shall stand transferred to and vest in the State free from all encumbrances. Section 10 provides for the consequences of vesting. all rights, title and interest of an intermediary in an agricultural area cease and become vested in the State free from all encumbrances. All suits and proceedings of the nature to be prescribed by Rules, and pending in any court, on the date of vesting, shall be stayed.

12. Section 17(1) is important for our purposes, and we are quoting the material portion of it :

"17. Settlement of certain lands with intermediaries or cultivators as bhumidhars. - (1) subject to the provisions of Sections 16 and 18 -

(a) all lands in an agricultural area -

(i) in possession of, or held or deemed to be held by an intermediary as sir, khudkasht or intermediary's grove,

(ii) held as a grove by, or in the personal cultivation of a permanent lessee in Avadh,

(iii) held by a fixed rate tenant or a rent-free as such, or

(iv) held as such by -

(i) an occupancy tenant | | (ii) a hereditary tenant | Possessing the right to | transfer the holding by(iii) a tenant on patta | sale. dawami or istamrari | | Or | |(iv) held by a grove-holder##

on the date immediately preceding the date of vesting, and

(b) all lands in an agricultural area held on lease duly made before the first date of July, 1955, for the purpose of erecting building thereon,

shall be deemed to be settled by the State Government with such intermediary, lessee, tenant, grantee or grove-holder, as the case may be, who shall subject to the provisions of this Act, be entitled to take or retain possession as bhumidhar thereof."

13. Section 19(j) provides that notwithstanding contained in the Act, every person who, on the date immediately preceding the date of vesting occupied or held land in an agricultural area as a sub-lessee from a person holding land under a lease referred to in clause (b) of sub-section (1) shall be deemed to be an asami thereof. Section 20(1) provides that a bhumidhar of the land referred to in clause (b) of sub-section (1) of Section 17, may, within one year from the date of vesting, apply to the Assistant Collector, incharge of the sub-division for ejectment of asami belonging to the class mentioned in Section 19(j) on the ground that he wants to use the land held by the asami for the purpose of erecting building thereon. If the Assistant Collector is satisfied after inquiry that the applicant intends to use the land for the purpose of erecting buildings thereon, he may order ejectment of the asami from such land. After ejectment of the asami, the applicant shall erect a building there on within three years of date of the order of ejectment. If the bhumidhar does not file an application for ejectment or if the order of ejectment passed on any application is not executed within the prescribed period of limitation, the asami shall become a sirdar of the land. The rights, title and interest of the bhumidhar shall be deemed to have been acquired under Section 10, "as if the bhumidhar were an intermediary on the date of vesting". If the bhumidhar fails to erect buildings within three years, he shall be liable to pay to the asami or any person claiming through him an amount equal to five times the rent payable by asami at the time of his ejectment.

14. According to Section 24 an intermediary whose right, title or interest in any agricultural area is acquired under the Act shall be entitled to receive compensation as provided for therein.

15. Rules have been framed under the Act. They are known as the Uttar Pradesh Urban Area Zamindari Abolition and Land Reform Rules, 1957. Rule 38 provides for stay, inter alia, of suits and appeals arising therefrom under Section 180 of the U.P. Tenancy Act or of a similar nature pending in a civil court. Rule 39 provides for abatement of such suits and appeals. In the present case the second appeals and the suits from which they had arisen were abated under this rule by the

High Court.

16. Section 2(6) of the U.P. Tenancy Act, 1939, defines "grove-land" as meaning "any specific piece of land in a mahal or mahals having trees planted thereon in such numbers that they preclude, or when full grown will preclude the land or any considerable portion thereof from being used primarily for any other purpose, and the trees on such land constitute a grove". Section 2(7) defines the word "holding". It means a parcel or parcels or land held under one lease. Section 2(10) defines the word "land" as meaning land which is let or held for growing of crops, or as groveland or for pasturage. It does not include land for the time being occupied by buildings or appurtenant thereto other than the buildings which are improvements. The word "grove-holder" is defined in Section 205 of the said Act. A person who has planted a grove on land which was let or granted to him by a landlord for the purpose of planting a grove is called a "grove-holder" of the grove.

17. The first argument of Shri Garg is that the lease involved in these cases was a lease for the purpose of erecting buildings and that accordingly it falls within the purview of clause (d) of sub-section (1) of Section 2 of the Act. It is urged that clause (d) is violative of Articles 14, 19 and 31 of the Constitution and is invalid. On that premise being correct, it is further said that the land in dispute will not be an agricultural area within the meaning of the said expression under the Act. Consequently, the notification of the State Government acquiring the land in dispute is invalid.

18. The lease is "for the purpose of planting a grove, erecting buildings and digging well, etc." It may be observed that the lease is not an exclusively building lease. Instead of erecting buildings, the lessee could plant a grove. Admittedly no buildings have been constructed. This case of the respondents was that Bateshwar Dayal had planted a grove. If Bateshwar Dayal had planted a grove and if the grove was existing on the date specified under Section 2 of the Act and was then being used by respondent as a grove, the land in dispute would be covered by Section 2(1)(c)(viii) of the Act. In that even it will be out of the purview of Section 2(1)(d) of the Act. As the land is liable to be placed under either if these two classes, it will not be correct to place it exclusively under clause (d).

19. The Act as whole is protected by Article 31-A of the Constitution. Shri Garg's contention, however, is that as Section 2(1)(d) is not at all connected with agricultural reform, it cannot receive the protection of Article 31-A and will be open to challenge for violation of Articles 14, 19 and 31. In terms Section 2(1)(d) does not appear to be connected with the object of agricultural reform. But a close scrutiny of its context and the object of the Act would reveal that it is so connected.

20. All other clauses of Section 2(1) except clause (d) are clearly connected with the object of agricultural reform. They include in an "agricultural area" only such land as is being used for growing crop or as a grove or as a pasture land on the date specified in Section 2(1). The proviso to Section 2(1)(c) expressly excludes from "agricultural area" land which is occupied by buildings, not being improvements, and land appurtenant to such buildings. Having regard to this proviso it, is difficult to believe that Section 2(1)(d) was intended by the Legislature to apply to land which is not an agricultural area. "Agriculture' means "the science and the are of cultivating the soil including the gathering in of the crops, and the rearing of live-stock; farming (in the widest sense)". (Shorter Oxford Dictionary, 3rd Edn. Vol. 1, p. 37). So, ordinarily "agricultural area" would means an area used for cultivation or farming. Section 2(1) includes groves also. Clause (d) should take its colour from this inherent meaning of "agricultural area" which is being defined in Section 2(1).

21. Section 17 (1) confers bhumidhari rights on certain classes of persons over certain kinds of

lands. Section 17(1) has two clauses (a) and (b). Lands specified in clause (1) are used for growing crops or as a grove. It is significant to observe the difference between the language of Sections 2(1)(d) and 17(1)(b). While Section 2(1)(d) refers to "agricultural area", Section 17(1)(b) is expressly limited to "lands in agricultural area held on lease..... for the purpose of erecting buildings thereon". As the subject-matter so Sections 2(1)(d) and 17(1)(b) should be identical, it appears to us that the expression "agricultural "area" in Section 2(1)(d) should be construed as "lands in agricultural area", if the definition of "land" in the U.P. Tenancy Act is applied to Section 17(1), as it should be, Section 17(1)(b) will confer bhumidhari rights on a lessee of land which is used for growing crops or as a grove or as a pasture land although the lease may have been granted for erecting buildings. The marginal note to the section supports this construction.

22. Section 19(j) provides that a sub-lessee from a person "holding land under a lease referred to in clause (b) of sub-section (1) of Section 17" shall be an asami. This provision also shows that the agricultural area referred to in Section 2(1)(d) should on the relevant date be used for growing crops or as a grove or as a pasture land.

23. It is not possible to take the view that Section 2(1)(d) compasses a wider geography than Section 17(1)(b). Such a construction would create an anomaly. The lessee would become bhumidhar of only such portion of the land as is being used for growing crops or as a grove or as a pasture land. The rest of the agricultural area let out to him for the purpose of erecting buildings would vest in the Government. But he would get no compensation for that portion, for under Section 24 compensation is payable to an intermediary. But he is not an "intermediary" as defined in Section 2(7) nor a sub-intermediary as defined in Section 2(14). He is deemed to be an intermediary for a limited purpose under Section 20(14) but that provision is not material for our purpose. This anomaly will not result if "agricultural area" in Section 2(1)(d) and land in an agricultural area in Section 17(1)(b) are construed as perfectly over-lapping.

24. The Preamble to the Act shows that the object of the Act is to acquire right, title or interest of intermediaries between the tiller of the soil and the State and for the introduction of land reforms therein. Having regard to the context already pointed out and this object of the Act it seems to us that Section 2(1)(d), though apparently expressed in wide language, is limited to lands which are on the relevant date being used for growing crops as grove or as pasture land. It does not apply to lands which are not being so used.

25. The history of the framing of Section 2(1)(d) fortifies this inference. The Bill which consummated in the Act was introduced in the Legislative Assembly on August 6, 1955. It was referred to a joint Select Committee. The Joint Select Committee's report and the Bill as amended by it were published in the Uttar Pradesh Gazette, dated February 4, 1956. Clause (d) of Section 2(1) was incorporated in the amended Bill by the Joint Select Committee. It read as follows :

> "held on a lease duly executed before the first day of July, 1955, for the purpose of erecting buildings thereon, but which is being used for the purposes of agriculture neither by the holder thereof or by any person claiming under him."

Clause (d) was passed in this form by the Legislative Assembly on December 3, 1956. The Bill then went to the Legislative Council. But before reaching there it was pruned by the Secretary of the Assembly. He deleted the last part of clause (d) as passed by the Legislative Assembly. The Legislative Council passed clause (d) as pruned by the Legislative Secretary. Thereafter the Bill received the assent of the Government and of the President. It seems that the Secretary thought that

the deleted portion of clause (d) was redundant; and so he eliminated it. In Durga Prasad v. Board of Revenue U.P. Allahabad and Others (AIR 1970 All 159 : 1969 All WR 137 (HC) : 1969 All LJ 432.), the Allahabad High Court has pointed out this history of clause (d). The High Court has taken the view that Section 2(1)(d) is limited to lands which are being used for agricultural purposes. We have come to the same conclusion though for different reasons.

26. On this construction of Section 2(1)(d) it cannot be said that this provision is not connected with agricultural reforms. It would accordingly receive the protection of Article 31-A and would be immune from attack on the ground of violation of Articles 14, 19 and 31.

27. It would follow from the foregoing discussion that only such lands as are being used for growing crops or as grove or a pasture land may be acquired under the Act. It is alleged in the writ petition that the land in dispute is a part of Kothi Babu Wali and was not used for agricultural purposes. The petition mentions the old number of the plot which was 5199. The new number of the plot's is 4635-A. The State Government has filed a counter-affidavit. They have assumed that the petition refers to the plot now given the new Number 5199. The counter-affidavit does not deal with the disputed plot now numbered 4635-A. But the description of the plot in dispute given in the petition leaves no room for doubt about the identity of the plot. It is strange that the counter-affidavit did not squarely deal with the allegations in the petition. The appellants' allegation that the land in dispute is non-agricultural land and forms part of a residential Kothi remains unanswered in the counter-affidavit.

28. In the suit the respondent's case was what Bateshwar Dayal, their prodecessor-in-interest, had planted a grove on the land in dispute. The trial court had appointed a commissioner for finding out whether there stood a grove on the land in dispute. On October 16, 1956, the Commissioner submitted his report to the trial court. It appears from his report that about a half of the plot towards the western side was then "quite vacant". On the western boundary of plot there stood two sheesham and three mango threes; on the northern boundary of the plot there were four guava trees, one plum tree and a thorny tree. In the eastern half of the plot there were about 18 or 19 "scattered guava trees". Trees standing on the boundary of the plot will not prevent the use of the land for a purpose other than grove. The western half could be used for any other purpose. In the eastern half the 18 or 19 "scattered" guava trees could apparently not prevent the use of the land for any other purpose. The report of the Commissioner would not show that the land in dispute was grove within the meaning of Section 2(6) of the U.P. Tenancy Act, 1939. As the appellants had given the old number of the plot in their petition, the Government did not reply to the allegations in the petition. Accordingly, it is not possibly to express any concluded opinion on the question whether the land in dispute was an "agricultural area" on the date specified under Section 2(1) and was being used for horticulture. The issue should now be decided afresh by the appropriate authority under the Act.

29. In the result, we allow the writ petition and quash the Government notification under Section 8 of the Act, dated June 16, 1964, with respect to the land in dispute. We direct the Government to proceed afresh with respect the land in dispute in accordance with Sections 3, 4, 5 and 6 of the Act. If it is found in course of enquiry under Sections 3, 4 and 5 that the land in dispute was an "agricultural are" and was being used for agriculture or horticulture on the relevant date, it will be open to the Government to issue a notification with respect to it under Section 8 if, on the other hand, it is found in that enquiry that it was not an "agricultural area" on the said date, on notification under Section 8 should be issued with respect to it. The appeals are also allowed. The orders of the High Court abating the appeals and the suits are set aside. The High Court will restore the appeals and the suits to their original numbers. The appeals will be decided on merits when the appropriate

authority under Section 5 of the Act has held that the land in dispute is not an "agricultural area". If it is held by him that the land in dispute is an "agricultural area" and the State Government issues a notification under Section 8 of the Act with respect to the land, the appeals will be disposed of in accordance with the provisions of the Act. In the circumstances of this case parties shall bear their own costs.

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