

Jaila Singh and Another

Vs

State of Rajasthan and Others

Civil Appeal Nos. 1704-1705 of 1974

(A. Alagiriswami, P. N. Bhagwati, P. K. Goswami JJ)

02.05.1975

JUDGMENT

ALAGIRISWAMI, J. -

1. These appeals raise the question of the validity of certain rules made under the Rajasthan Colonisation Act, 1954. The facts necessary for the decision of this case are as follows :

2. Jaila, Singh, the appellant in Civil Appeal No. 1704 of 1974, was allotted 50 bighas of 'uncommand land' in the years 1956-57 and 1957-58 in the Ganganagar district of the Rajasthan State. The area in which the land is situate was declared colony area of the Rajasthan Canal Project under the Act in 1960. In 1967 the Rajasthan Colonisation (Rajasthan Canal Project Government Land Allotment and Sale) Rules, 1967 were promulgated and applications were invited for allotment of land under those rules. Jaila Singh's application were invited for allotment was disposed of on December 27, 1969 by allotting 14 bighas and 14 biswas of land on permanent basis. These 1967 Rules were the subject-matter of certain writ petitions before the Rajasthan High Court which ended with the decision of that Court in State of Rajasthan v. Ramdhan (AIR 1973 Raj 71), striking down certain of those Rules. Thereafter two set of rules called respectively Rajasthan Colonisation (Rajasthan Canal Project Pre-1955 Temporary Tenants Government Land Allotment) Conditions, 1971 and the Rajasthan Colonisation (Allotment of Government land to Post-1955 Temporary Cultivation Lease Holders and Other Landless Persons in the Rajasthan Canal Project Area) Rules, 1971 were promulgated. Applications were again invited for allotment of land under the post-1955 Rules and Jaila Singh was allotted another 10 bighas of land. The rest of the land originally allotted to him reverted to the State. He filed a writ petition before the Rajasthan High Court challenging the post-1955 Rules as violative of Article 14 of the Constitution. He prayed that the Rajasthan Colonisation Act, 1954 may be declared to be illegal or in the alternative the post-1955 Rules may be declared to be violative of Article 14 of the Constitution and for an appropriate order in respect of the lands allotted to him.

3. Sahi Ram, the husband of the appellant in Civil Appeal No. 1705 of 1974, had been allotted 24 1/2 bighas of land for temporary cultivation in Rajasthan Canal Area in Ganganagar district. He had also been allotted 12 1/2 bighas of 'command land' in the year 1952 on a permanent basis and 6 bighas and 12 biswas of 'command land' and 4 bighas and 11 biswas of 'uncommand land' for permanent cultivation. These lands were included in colony area of the Rajasthan Canal Project in 1960. After the post-1955 Rule came into force the 24 1/2 bighas of land was ordered to be resumed on the ground that Sahi Ram was not a landless person. In the writ petition filed by the appellant the contentions and prayers were the same as in Jaila Singh's case. We shall deal with them at the appropriate places in so far as they relate to matters raised in the appeal.

4. In both the writ petitions the contention on behalf of the State of Rajasthan was that owing to the insertion of Section 15A in the Rajasthan Tenancy Act, 1955 khatedari rights could not accrue to the tenants under Section 15(1) of the said Act and :

the possession of such tenants was given protection who were holdings since October 15, 1955 and thereafter upto the commencement of the pre-1955 Conditions by making permanent allotment under the pre-1955 Conditions.

The various impugned rules were contended not to be discriminatory.

5. Justice Gupta of the Rajasthan High Court who heard the two writ petitions filed by Jaila Singh and Dhapi Bai, in a batch of 340 writ petitions, upheld the validity of the pre-1955 Conditions as well as the post-1955 Rules. He took the view that the question of discrimination can arise only in respect of persons who are similarly situated, that the pre-1955 tenants cannot be said to stand on the same footing as the post-1955 tenants inasmuch as the two classes of tenants came into temporary cultivation at different periods of time and cannot be said to be similarly situated. The fact that the pre-1955 tenants had been continuously in possession for a longer period was held to make them a separate class from the temporary cultivators who came into possession after October 15, 1955. The contention of the Rajasthan State on the basis of Section 15A of the Rajasthan Tenancy Act was also accepted. On appeal against the decision of Justice Gupta a Division Bench of the Rajasthan High Court dismissed the appeals even at the admission stage.

6. Before we proceed to consider the various contentions it is necessary to set out certain important provisions of the Act and the Rules.

7. The Rajasthan Colonisation Act, 1954 came into force on December 17, 1954. It defined 'tenant' as meaning any person holding land in a colony and including his predecessors and successors-in-interest and transferees. 'Colony' was defined as meaning any area to which the Act shall be applied. Section 7 of the Act reads :

7. Issue of statement of conditions of tenancy. - (1) The State Government may grant land in a colony to any person on such conditions as may be prescribed.

(2) The State Government may issue a statement or statements of the conditions on which it is willing to grant land in a colony to tenants.

(3) Where such statement of conditions have been issued, the collector may, subject to the control of the State Government, allot land to any person, to be held subject to such conditions contained in the statement issued under sub-section (2) of this section as the Collector may, by written order declare to be applicable to the case.

(4) No person shall be deemed to be a tenant or to have any right or title in the land allotted to him until such a written order has been passed and he has taken possession of the land with the permission of the Collector, and after possession has been so taken, the grant shall be held subject to the conditions declared applicable thereto.

Section 28 reads :

28. Power to make rules. - The State Government may, by notification in the Official Gazette make rules generally for carrying into effect the provisions and purposes of

this Act and in particular for all matters which are prescribed thereunder.

It would be noticed that there is practically no guidance provided in the Act with regard to the principle to be applied in the matter of allotment of land.

8. Under the provisions of that Act the Rajasthan Colonisation (Bhakra Project Government Land Allotment and Sale) Rules, 1955 were made and came into effect on December 25, 1955. The extent of land which could be allotted to those cultivating government lands since before December 31, 1947 was 50 bighas if the joint family consists of adult male members not exceeding five and 15 bighas of additional area per additional member if the number of members is in excess of five. In the case of those cultivating lands since after December 31, 1947, 25 bighas could be allotted for a joint family consisting of three adult male members and 15 bighas for every adult male members in excess of three. Thus the difference between pre-1947 and post-1947 tenants is negligible.

9. Under the Rajasthan Colonisation (Gang Canal Lands Permanent Allotment and Sale) Rules, 1956 the scale of allotment is uniform without any discrimination between various classes of persons to whom land may be allotted.

10. Under the Rajasthan Colonisation (Rajasthan Canal Project Government Land Allotment and Sale) Rules, 1967 all post-1955 temporary cultivation leases in the colony areas were terminated and all the lands covered by such leases reverted to the Government. Rule 16 reads :

16. A joint family shall, for the purposes of existing holdings and of allotment of land under these Rules, be deemed to be one person and dealt with accordingly. No separation or partition effected after the 15th October, 1955 will be taken into consideration.

Under Rule 19 Bhakra landless persons were entitled to 15 bighas in each case; so also landless tenants. Tenure tenants who held land less than 15 bighas in their khatas and the whole or part thereof was with a sub-tenant, not liable to ejection, were entitled to allotment of so much of government land as would render their khatas equal to 15 bighas. Here again there was no discrimination in the matter of allotment of land among the various classes of persons to whom land may be allotted. After Rules 16 and 19 read with Rule 7(x) and (xi) were struck down by the Rajasthan High Court these Rules were repealed and the pre-1955 Conditions and post-1955 Rules were promulgated.

11. The Rajasthan Colonisation (Rajasthan Canal Project Pre-1955 Temporary Tenants Government Land Allotment) Conditions, 1971 came into effect on February 3, 1971. A 'pre-1955 temporary tenant' was defined as a person who is resident of Rajasthan since before the first day of April, 1955 and who has been holding and been in possession of temporary cultivation land continuously since before the fifteenth day of October, 1955, up to the date of commencement of these Conditions (portion not necessary for the purposes of this case omitted). All temporary leases of government lands of pre-1955 temporary tenants were cancelled. A temporary tenant holding more than 25 bighas of command temporary cultivation land could be allotted up to the ceiling limit, the ceiling limit being 50 bighas. A temporary tenant holding less than 25 bighas may be allotted the land in his possession as well as further extent of land making the total upto 25 bighas. In the case of persons having more than 25 bighas no price was chargeable for allotment upto 25 bighas. But person having less than 25 bighas had to pay the price for lands allotted to them to make up 25 bighas, that is, land in excess of what they already had. The effect of these provisions was, to take a concrete

example, that if a man had 30 bighas of land the whole of it would be allotted to him. If he had 60 bighas of land 10 bighas will be taken away. He will have to pay the value of the land in excess of 25 bighas. Where a person had less than 25 bighas - whether it is 14 or 16 bighas - he will be given another 11 or 9 bighas as the case may be and he need not make any payment for the land he already had but need pay only for the land newly allotted. Thus a person holding lands in excess of 25 bighas was at a distinct advantage in that he could keep the land in excess of 25 bighas and up to 50 bighas by the value only for the excess, compared to the man who had less than 25 bighas who could be given land upto 25 bighas. The discrimination between the two classes is obvious and no justification has been put forward nor can be put forward for this discrimination.

12. The Rajasthan Colonisation (Allotment of Government Land to post-1955 Temporary Cultivation Leases Holders and Other Landless Persons in the Rajasthan Canal Project Area) Rules 1971, which came into effect on May 4, 1971 described a landless person in Rule 2 (1)(xiii) as follows :

"Landless Person" means a person who is resident of Conditions since before the 1st day of April, 1955 and is by profession a bona fide agriculturist or bona fide agricultural labourer and whose primary source of income is agriculture :

Provided that such person neither holds any tenure land anywhere in excess of 15 bighas nor is he a sub-tenant of any such land (in excess of 15 bighas) from which he is not liable to ejection under the provisions of the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955) or under any other law for the time being in force in the area in which the land is situated; nor he is entitled for permanent allotment of 15 bighas or more land anywhere under any other rules, conditions or law.

A landless person coming under these rules could be allotted up to 25 bighas provided that is such person holds or is a sub-tenant of any land anywhere, he will be allotted only so much government land as together with his existing holding does not exceed 25 bighas. There is a proviso that such land shall be allotted to him only if such land is available adjacent to his existing holding or in the same village. The result of this rule read with the definition of landless person is that if he holds land anywhere in excess of 15 bighas he will not get any further allotment. In other words if he had 14 bighas of land he may be allotted 11 bighas whereas if he has got 16 bighas of land he will not be allotted any further land. The discrimination against him as against the pre-1955 tenant who had less than 25 bighas is apparent. The latter will get 9 bighas even if he had already 16 bighas. The word 'any where' in the definition of the term 'landless person' as well as in the rule relating to eligibility for allotment has been the subject-matter of some controversy but it is not necessary to resolve it for the purpose of these cases. The contract between the pre-1955 Conditions and the pre-1955 and post-1955 Rules is thus apparent. The only justification put forward on behalf of the Government before the High Court was that Section 15A of the Rajasthan Tenancy Act, 1955 made a difference and the learned Single Judge of the Rajasthan High Court held that the length of the occupation of the lands by the pre-1955 and post-1955 tenants provided a basis for classification.

13. Before us the only question argued were regarding the discrimination between the pre-1955 and post-1955 tenants based on the fact that -

1. In the case of the former, persons having more than 25 bighas could keep all the lands they had up to the ceiling limit and had to pay only for the land in excess of 25 bighas.

2. Even among them persons having less than 25 bighas, whether below 15 or above 15 bighas could get land to enable them to have 25 bighas and they need pay only for the excess over what they had.

3. Post-1955 tenants could not get anything if they had over 15 bighas and they had to pay for the land allotted to them to make up 25 bighas.

These contentions are so substantial and the discrimination so striking and the justification attempted so feeble that we have no hesitation in accepting them. We have already referred to some of them.

14. We are unable to see the nexus between the pre-1955 Conditions and post-1955 Rules and the Rajasthan Tenancy Act which came into force on October 15, 1955. In these cases we are concerned with the validity of the rules relating to the allotment of government land which had been given on temporary leases to various persons whether before 1955 or after 1955. Both sets of leases had been cancelled by the relevant pre-1955 Conditions and post-1955 Rule and there is no dispute that the pre-1955 leases cannot be cancelled while post-1955 leases could be cancelled. The Rajasthan Tenancy Act is not concerned with that question. Proviso to Section 15 of that Act specifically provides that no khatadari rights shall accrue under the section to any tenant, to whom land is or has been let out temporarily in Gang Canal, Bhakra, Chambal or Jawai project area, or any other area notified in that behalf by the State Government. Admittedly the Rajasthan Canal areas has been included within the scope of this proviso by a notification. To make matters more clear Section 15A also provides that the land in the Rajasthan Canal areas leased out on any terms whatsoever shall be deemed to have been let out temporarily within the meaning of the proviso earlier mentioned and no khatadari rights shall accrue or shall be deemed ever to have accrued in any such land leased out as aforesaid. This provision thus applies to both pre-1955 as well as post-1955 leases. Both these leases stand on the same footing and therefore do not form different classes.

15. The reference to Sections 15 and 15A of the Rajasthan Tenancy Act in deciding the questions that arise in these cases is therefore wholly irrelevant. Nor are we satisfied that the length of occupation of the lands provides any proper criterion for the distinction between pre-1955 and post-1955 tenants. There is nothing to show how long before October 15, 1955 pre-1955 tenants were given temporary leases and in the absence of such material, it is impossible to see how any differentiation can be made between pre-1955 and post-1955 tenants in the matter of permanent allotment of land. Even in 1967 when the 1967 Rules were made no distinction was sought to be made between pre-1955 and post-1955 tenants. By that time many of post-1955 tenants would have been in possession for about 12 years and in 1971 they would have been in possession for about 16 years. It is difficult to appreciate how it should make any difference from the point of view of allotment of land, whether a tenant has been in occupation for 16 years or 18 or 20 years and why differentiation should be made with reference to the date when the Rajasthan Tenancy Act came into force. The 1967 Rules no doubt provide for cancellation of all post-1955 temporary cultivation leases but in actual effect it made no difference. Under those Rules persons eligible for allotment were landless tenants. 'Landless tenant' was defined as a bona fide agriculturist who is a resident of Rajasthan since before April 1, 1955 and who cultivates or can reasonably be expected to cultivate land personally but who does not hold any land in his own name or in the name of any member of his joint family and who is not a sub-tenant of any land, owner or land holder holding tenure khatas under proprietary, mauroosee or khatadari rights and is not liable to ejection under the provisions of the Rajasthan Tenancy Act, 1955 or under any other law for the time being in force in the area in which the land is situate or who holds only a fragment or (sic of) land measuring 15 bighas. No

distinction was made between pre-1955 and post-1955 tenants in the matter of allotment. Provided an agriculturist had less than 15 bighas he was entitled to allotment of land. The allotment was also to an extent sufficient to make up 25 bighas of 'command land'. Here again no distinction was made between post-1955 and pre-1955 tenants. Nor was there any difference in the sale price to be paid by the different classes of allottees.

16. In *State v. Ramdhan* (supra) only the latter part of Rule 16 and Rule 19(a)(iii) read with Rule 7(x) and (xi) were struck down. Rule 7(x) reserved land for allotment to landless tenants belonging to Scheduled Castes and Scheduled Tribes up to one lakh acres to be allotted at the rate of 15 bighas per family and Rule 7(xi) for other landless tenants upto 50,000 acres to be allotted at the rate of 15 bighas per family. They were struck down only on the ground that both the Bhakra Canal Project Rules and the Rajasthan Canal Rules had been framed under the Rajasthan Colonisation Act, 1954 but they treated the unit of family differently and cannot therefore be justified. By the same reasoning no distinction can be made between pre-1955 and post-1955 tenants by rules made under the same Act.

17. One of the arguments attempted before us, though it was not pleaded before the Rajasthan High Court, was that in the case of the post-1955 tenants a smaller area had to be allotted because of the pressure for land. We have already pointed out that the difference in the period of occupation between the pre-1955 and post-1955 tenants could not be of such an extent as to justify allotment of larger extent of land to the pre-1955 tenants than to the post-1955 tenants nor for the discrimination even among the pre-1955 tenants between those holding more than 25 bighas and those holding less than 25 bighas. If the Rajasthan Government wanted to act fairly by all classes of residents of Rajasthan they could very well have omitted portions in the 1967 Rules found objectionable by the Rajasthan High Court and therefore struck down and there would have been nothing more to say. The striking down of Rules 16 and 19 of the 1967 Rules did not necessitate the promulgation of two wholly new sets of rules. In that case only 15 bighas of land would have been available to each allottee and there would have been no discrimination between one class of persons and another. There would also have been greater extent of land available for allotment to a larger number of persons at the rate of 15 bighas each. One of the justifications pleaded on behalf of the State of Rajasthan for the definition of the landless tenants in the post-1955 Rules as persons holding less than 15 bighas of land was that 15 bighas was a viable unit. In that case it is all the more reason why all allottees whether pre-1955 or post-1955 should get 15 bighas. We are unable to see any justification for treating the pre-1955 and post-1955 tenants differently. What prompted the Rajasthan State to do so in 1971 when they did not do so in 1967 and the decision of the Rajasthan High Court in regard to the 1967 Rules did not compel them to do so is beyond our comprehension. We are not able to accept the contention that they belonged to two different classes. By that standard any arbitrary difference could be fixed and it could be said that the persons who got temporary leases before that date belonged to one class and the persons who had been allotted land after that date formed another class. We have already shown that the Rajasthan Tenancy Act has no relevance at all to the decision of this question and therefore October 15, 1955, the date on which it came into force, has no relevance to the classification attempted by pre-1955 and post-1955 tenants. The classification must have a nexus with the object sought to be achieved. We can see no such nexus in this case. We thus find that the definition of the 'landless tenants' as well as the rules for allotment in the post-1955 Rules as compared to the pre-1955 Conditions are discriminatory and unjustifiable.

18. As regards the discrimination in the matter of payment of price between the pre-1955 and post-1955 tenants, it was urged on behalf of the State of Rajasthan that this was not urged in the writ petitions of the two appellants and so cannot be gone into by this Court. The question of price has

been raised in the two writ petitions but it was on a different aspect and not on the question that the pre-1955 tenants did not have to pay any price while post-1955 tenants had to do so. But it has been argued before the learned Single Judge, and he has dealt with it apparently without any objection being taken to it on the part of the State of Rajasthan. This question of price is not mentioned as one of the matters which were raised before the Division Bench which heard the appeal. We find it difficult to conceive of the appellants having given up that plea before the appellate Bench having argued it before the learned Single Judge. It is urged on behalf of the State of Rajasthan that there may be reasons why pre-1955 tenants are treated differently in the matter of payment of price. If there were any, they were not put forward before the learned Single Judge. But as material regarding it are not available before us, we propose to say nothing about it. But we may point out that, as the rules stand, there seems to be some discrimination in the matter of price between pre-1955 and post-1955 tenants, in that pre-1955 tenants, who hold land exceeding 25 bighas, have to pay nothing for land upto 25 bighas, while post-1955 tenants, who hold land less than 15 bighas, have to pay price for land which may be allotted to them so as to make up 25 bighas. We are mentioning this only so that the State may look into the matter of price and set it right to avoid any discrimination. There seems to be no difficulty at all in all this because none of the tenants, whether they are pre-1955 or post-1955 tenants, have any vested rights. It is duty of the State to treat fairly all classes of tenants in the Rajasthan Canal area whether pre-1955 or post-1955 tenants.

19. No arguments were advanced regarding the validity of the Act and we think rightly so. The arguments were confined to Condition No. 3 and proviso to Condition No. 9 of pre-1955 Conditions and Rules 2(1)(xiii) and 3(2) of the post-1955 Rules. In effect appellants had no objection to paying for extra land to be allotted to them. The object only to the discrimination against them as compared to the pre-1955 tenants.

20. In the result we hold that Condition No. 3 of the pre-1955 Conditions and the definition of landless person as contained in Rule 2(1)(xiii) as well as Rule 3(2) of the post-1955 Rules are void as they are discriminatory under Article 14 of the Constitution and they are struck down. It is open to the State to frame new rules applying to both pre-1955 and post-1955 tenants without any discrimination between them.

21. The appeals are allowed to the extent indicated above. The appellants will get their costs from the respondents, hearing fee one set.

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