

State of Maharashtra and Others

Vs

Man Singh Suraj Singh Padvi and Others

Civil Appeal No. 2212 of 1968

(CJI M. H. Beg, P. N. Bhagwati, V. D. Tulzapurkar, P. N. Singhal, Jaswant Singh, Syed M. Fazal Ali, V. R. Krishna Iyer JJ)

14.02.1978

JUDGMENT

BHAGWATI, J. -

1. This appeal by certificate is directed against a judgment of a Division Bench of the Bombay High Court invalidating a notification dated February 24, 1962 issued by the Governor of Maharashtra in exercise of the power conferred under sub-para (1) of Para 5 of the Fifth Schedule to the Constitution and the West Khandesh Mehwassi Estate (Proprietary Rights Abolition etc.) Regulation, 1961 issued by the Governor of Maharashtra under sub-para (2) of Para 5 of the Fifth Schedule of the Constitution after obtaining the assent of the President. These two legislative measures were struck down by the High Court on the ground that they violated the fundamental right of the first respondent under Article 19(1)(f) of the Constitution. The question whether there was any infringement of the fundamental right of the first respondent under Article 19(1)(f) as a result of these two legislative measures would have raised a highly debatable issue, but it is unnecessary to consider it in this appeal since, subsequent to the judgment of the High Court, the West Khandesh Mehwassi Estate (Proprietary Rights Abolition etc.) Regulation, 1961 has been included as Item 155 in the Ninth Schedule by the Constitution (Fortieth Amendment) Act, 1976. We shall briefly state the facts in so far as necessary for understanding how the question of validity of the notification dated February 24, 1962 and the West Khandesh Mehwassi Estate (Proprietary Rights Abolition etc.) Regulation, 1961 arose for consideration before the Court.

2. There were at all materials times six estates of Tribal Chiefs called Mehwassi estates in West Khandesh district. These Mehwassi estates were "scheduled area" under Article 244 read with the Fifth Schedule to the Constitution and were "partially excluded area" under Section 91 of the Government of India Act, 1935 and the first respondent was the owner of one such estate called Kathi Estate which comprised 99 villages in the State of Maharashtra. The Governor of Bombay, in exercise of the power conferred by sub-sections (1) and (2) of Section 92 of the Government of India Act, 1935, made a Regulation called the West Khandesh Mehwassi Estates Regulation, 1949 which applied to the Mehwassi Estates including the Kathi Estate belonging to the first respondent. The Bombay Land Revenue Code, 1879 was made applicable to the Mehwassi Estates subject to certain modifications by Section 3 of this Regulation and the effect of Section 4 was to make applicable to the Mehwassi Estates all other Acts passed by the Central or the State legislature which were in the force in other parts of West Khandesh District, which included inter alia the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Tenancy Act). The result of the application of the Bombay Land Revenue Code, 1879 to the Mehwassi Estates was that the first respondent, who was the holder of the Kathi Estate, became an occupant of the

agricultural land forming part of the Estate and the persons who were cultivating these lands under him became his tenants and by reasons of the applicability of the Tenancy Act, 1948, that Act governed the relationship between the first respondent and the tenants. The Tenancy Act, 1948 was amended by Bombay Act 13 of 1956 which came into force on August 1, 1956 and in exercise of the power conferred under Section 32H(2), the Government of Bombay issued an order on March 31, 1957 fixing the maximum purchase price payable by ordinary, i.e. non-permanent tenants for the deemed purchase of the lands cultivated by them inter alia in the villages forming part of the Mehwasssi Estates. The combined effect of Section 32 to 32R of the Tenancy Act and the order dated March 31, 1957 was that the tenants of the first respondent became the deemed purchasers of the lands held by them on April 1, 1957 and the first respondent ceased to be the owner and became entitled to receive from his permanent tenants a purchase price equal to six times the rent of the lands and from his ordinary tenants, a purchase between twenty to eighty times the assessment.

3. Thereafter on February 24, 1962 the Governor of Maharashtra issued a notification under sub-para (1) of Para 5 to the Fifth Schedule to the Constitution and by this notification, the Governor was pleased to direct that Bombay Act, 13 of 1956, which amended the Tenancy Act, 1948, shall apply to Mehwasssi Estates, and also added Section 88D in the Tenancy Act, 1948 which provided that, save as otherwise provided in any other enactment for the time being in force, nothing in Section 32 to 32R shall apply to any Mehwasssi land and these directions were given retrospective effect from August 1, 1956. The effect of this notification was to restore the relationship which existed between the first respondent and his tenants immediately prior to April 1, 1957, so that the tenants did not become deemed purchasers of the lands held by them and the first respondent did not cease to be the owner of such lands. The Governor of Bombay issued on the same day, i.e., February 24, 1962, the West Khandesh Mehwasssi Estate (Proprietary Rights Abolition etc.) Regulation, 1961 in exercise of the power conferred under sub-para (2) of Para 5 of the Fifth Schedule to the Constitution after obtaining assent of the President. This Regulation conferred occupancy rights on inferior holder and tenants and abolished the proprietary rights of the holders of the Mehwasssi Estates. The result was that the tenants of the first respondent became occupants of the lands held by them and the first respondent was deprived of all his rights and he ceased to be entitled to receive anything from his inferior holders, the purchase price receivable by him from his permanent tenants was reduced from six times the rent to three times the assessment and from his other tenants, he became entitled to receive only purchase price at six times the assessment instead of twenty to eighty times the assessment. The first respondent was seriously affected by the notification dated February 24, 1962 and the West Khandesh Mehwasssi Estate (Proprietary Rights Abolition etc.) Regulation, 1961 and he, therefore, filed a petition in the High Court challenging the constitutional validity of these two legislative measures. The High Court, as we have already pointed out, struck down these two pieces of legislation on the ground that they violated the fundamental right of the first respondent under Article 19(1)(f) and they were not protected by Article 31A of the Constitution. This view taken by the High Court is assailed in the present appeal filed by the State after obtaining certificate from the High Court.

4. Now, it appears that subsequent to the judgment of the High Court and whilst the appeal was pending in this Court, the Ninth Schedule was amended by the Constitution (Fortieth Amendment) Act, 1976 by the inclusion of the West Khandesh Mehwasssi Estate (Proprietary Rights Abolition etc.) Regulation, 1961. The effect of the inclusion was that the West Khandesh Mehwasssi Estate (Proprietary Rights Abolition etc.) Regulation, 1961 was immunised from challenge on the ground that it was inconsistent with or took away or abridged any of the rights conferred by Part III of the Constitution and hence its constitutional validity could no longer be assailed on the ground that it violated Article 19(1)(f). Article 1B and the Ninth Schedule cured the defect, if any, in the West

Khandesh Mehwasssi Estate (Proprietary Rights Abolition etc.) Regulation, 1961 as regards any unconstitutionality alleged on the ground of infringement of fundamental rights and by the express words of Article 31B, such curing of the defect took place with retrospective operation from the date on which the Regulation was enacted by the Governor. This Regulation, even if inoperative or void at the time when it was issued by the Governor on account of infringement of Article 19(1)(f) of the Constitution, assumed full force and vigour from the date of its enactment by reasons of its inclusion in the Ninth Schedule, (vide *Jagannath v. Authorised Officer Land Reforms* ((1972) 1 SCR 1055, 1070 : (1971)2 SCC 893)) and it must accordingly be held to be constitutionally valid. Now, it was not disputed on behalf of the first respondent that if the West Khandesh Mehwasssi Estate (Proprietary Rights Abolition etc.) Regulation, 1961 is free from any constitutional blemish, the Notification dated February 24, 1962 cannot, standing by itself, be successfully assailed as invalid, for, far from taking away any rights of the first respondent, it restored his original rights as occupant. It was a legislative measure to his advantage and not to his detriment. The challenge to the constitutional validity of the Notification dated February 24, 1962 must also, therefore, be rejected.

5. We accordingly allow the appeal, set aside the judgement of the High Court and declare the Notification dated February 24, 1962 and the West Khandesh Mehwasssi Estate (Proprietary Rights Abolition etc.) Regulation, 1961 to be constitutionally valid. There will be no order as to costs.

6. We are told by learned Counsel appearing on behalf of first respondent that the land forming part of his estate have been included in his assessment of wealth tax and also the income has been assessed to income-tax. We do not know how far this is true. But, in case it is so, the Central Government may sympathetically consider whether any such tax recovered from the first respondent from and after the date of coming into force of the West Khandesh Mehwasssi Estate (Proprietary Rights Abolition etc.) Regulation, 1961 may in all fairness be refunded to him.

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