Maharaja Kumar Somendra Chand Nandy

Vs.

State of Uttar Pradesh

Civil Appeal No. 2239 (N) of 1970

(V. Balakrishna Eradi, Sabyasachi Mukharji JJ)

10.07.1985

JUDGMENT

BALAKRISHNA ERADI, J. -

1. This is an appeal by special leave against a judgment of a Division Bench of the Allahabad High Court dated March 22, 1966 dismissing Special Appeal 647 of 1961 and confirming the judgment of a learned Single Judge of the said High Court rejecting Civil Misc. writ 809 of 1958 filed by the appellant herein.

2. The appellant claims to be the descendant and successor-in-interest of one Dewan Krishna Kant Nandy in whose favour a Jagir of 41 villages situated in the destruct of Ballia had been conferred by Raja Mahip Singh of Banaras. This jagir grant was recognised by the East India Company and in token there of the Governor-General, by a fresh Sanad date January 10, 1785 assigned the said 41 villages as 'Altamga Jagir' in favour of Dewan Krishna Kant Nandy. The Sanad mentioned that the grant was being made for purpose of defraying the expenses of worship etc. of the deity in a temple. Subsequently, by a document of the year 1793, Dewan Krishna kant Nandy created a trust of the income of this jagir in favour of the deity. In the revenue settlement of 1841, Dewan Krishna Kant Nandy was entered as jagirdar of these villages entitled to realise the land revenue and the Zamindars of the villages entitled to realise the land revenue and the Zamindars of the villages were charged with the duty of paying the annual land revenue aggregating to Rs. 10,000 to the jagirdar. It is the case of the appellant that since 1785, Dewan Krishna Kant Nandy and his descendants have throughout been realising the land revenue of the said villages. When some of the zamindars defaulted in payment of the land revenue, suits for realisation of the outstanding arrears were filed against them and in execution of the decrees obtained in those suits the appellant's ancestors purchased the zamindari rights of the defaulting zamindars in respect of some of the villages. Thus, at the time when the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act 1 of 1951) - hereinafter called 'the Act' - came into force in 1952, the appellant claims to have two distinct rights namely, jagirdari rights in respect of 41 villages covered by the Sanad and additional Zamindari rights in respect of some of the villages acquired by purchase in execution of the decrees.

3. When the provisions of the Act were brought into force, the appellant was paid compensation in the form of annuity in respect of those villages over which he had acquired zamindari rights since the lands were held in trust for meeting the expenses of a religious institution. The State of Uttar Pradesh Claimed that the jagirdari rights of the appellant became vested in the State under Sections 4 and 6 of the Act. But this claim was disputed by the appellant who contended that his jagirdari rights fell outside the purview of the Act and hand not vested in the State. It was for resolving the said dispute that the appellant approached the High Court with the writ petition complaining that he

had been paid compensation in respect of his jagirdari rights over 41 villages and praying that a writ should be issued compelling over the said villages. The writ petition was dismissed by the learned Single Judge, whose judgment, as already noticed, was confirmed by a Division Bench of the High Court on appeal.

4. From the facts narrated above, it is clear that the appellant was having jagirdari rights over 41 villages under the Sanad issued to him in January 1785. As pointed out by this Court in State of U. P. v. Kunwar Sri Trivikram Narain Singh ((1962) 3 SCR 213 : AIR 1963 SC 799 : (1962) 2 SCJ 613), the intention of the Legislature as clearly disclosed by the scheme of the Act was to extinguish estates and all derivative rights in estates and to extinguish the interest of intermediaries between the State and the tiller of the soil. All grants and confirmation of title in respect of a right or privilege over land in an estate or its revenue, will stand automatically determined under the provisions of the Act.

5. The High Court has rightly negatived the contention of the appellant that the right conferred on him by the Sanad was in the nature of a right to pension amounting to a sum of Rs. 10,000. We have gone through the terms of the Sanad. Which is available at page 13 of the paper book. It clearly shows that was granted to the appellant and his predecessors was a jagir right in respect of the lands comprised in 41 villages entitling the grantee to collect and realise the land revenue due from the zamindars aggregating to Rs. 10,000 with possible future increases and utilise the same for "defraying the expense of the worship of the Thakoor." The Sanad expressly state that the grantee shall take and use the produce of the original lands and increase thereof without being liable to pay any Dewani contributions and Government demands. The appellant and his predecessors were entitled to take possession and hold control over the lands. The application made by the appellant, his predecessor, Dewan Krishna Kant Nandy for the grant of the Sanad is at page 15 of the paper book. That clearly shows that the request was for confirmation of the grant of 41 mouzas of land and for the issue of a Sanad evidencing such confirmation. Under the grant, the appellant and his predecessors acquired interest in the land and this interest in the hands of the appellant clearly constitutes an estate as defined in clause (8) of the Section 3 of the Act read along with clause (26) of the same section.

6. Section 4 of the Act provides that as from a date to be specified, all estates in Uttar Pradesh shall vest in the State free from all encumbrances. Section 6 lays down the consequences of the vesting of an estate in the State. Under clause (a) thereof, all rights, title and interest of all the intermediaries in every estate automatically cease and become vested in the State of Uttar Pradesh free from all encumbrances. Clause (b) of the said section, which deals with grants and confirmations of title is in the following terms :

> All grants and confirmations of title of or to land in any estate so acquired, or of or to any right privilege in respect of such land or its and revenue shall, whether liable to resumption or not, determine.
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> There cannot be any doubt that as a result of the combined operation of Sections 4 and 6 of the Act, the jagirdari rights, which the appellant originally possessed over the 41 villages as on the date of the coming into force of the Act automatically ceased and became vested in the State of Uttar Pradesh free from all encumbrances with effect from the specified date. Such being the position, the High Court was perfectly in holding that the appellant was not entitled to any of the reliefs in the writ petition.

7. This appeal accordingly fails and is dismissed but in the circumstances without any order as to costs.

SABYASACHI MUKHARJI, J. (Concurring) –

The facts of this case and the position in law have been discussed by my learned brother. The only doubt that I have entertained about this matter is whether the Sanad or the grant dated January 10, 1785 created any interest in the donee, Dewan Krishna Kanta Nandy, the predecessor-in-interest of the present appellant as contemplated under Section 3 of Section 6 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act 1 of 1951). The document is at page 13 of the paper book in this Court the material portion of which is as follows :

> To the present and future Mutsuddies of the affairs of Government and zamindars and Chowdharies and Kanongoes and Mokudduns and tenants and cultivators of pergunnah Gazipore purchased by Government situate in Qeela Allahabad be it known that jagir mouzas to the amount of ten thousand rupees are at present settled upon Dewan Krishna Kanta Nandy by way of an Altumga Donation to enable him to defray the expense of the worship of Thakoor from the commencement of the autumn season in Aodiyal 1189 one thousand one hundred and eighty nine Fusly according to the Zamin so that he may take possession thereof and hold control over same and he and his descendants apply the produce thereof and defray the necessary expenses of the worship of the Thakoor. It behoveth that you consider that aforesaid original mouzas and increase thereof to be agree and exempt from being liable to charge and alternation as well as from all the Dewani contributions and Government demands and not deviate from his advice for the welfare of the tenants and inhabitants and the cultivation of the land nor require a new Sanad every year the conduct that the above-named is to observe is this that he shall take and use the produce of the original lands and increase thereof he and his descendants without participation or parter and pray for the welfare of Government and continue the tenants and inhabitants pleased and thankful by adopting salutary measures an exert himself strenuously for the increase of cultivation and augmentation of duties and exercise no apprehension or injustice towards the inhabitants of that place by any means and take care of the public roads that passengers may pass and repass in full confidence and suffer no body to commit any prohibited act or drunkenness and refrain from levying any of the Branches of Revenue that have been discontinued.

9. It is entrustment of certain duties of worship of Thakoor and for this purpose providing for some expenses which will be met from the land indicated in the document or is it a grant of the interest in the land coupled with the obligation to perform the duty of worship to the deity ? Having regard to the expression used in the document to which my learned brother has referred and having regard to the fact that incidental powers of managing etc. as contained in the said document as set out hereinbefore, the view taken by my learned brother seems to be appropriate though two facts have caused me certain anxiety namely that there is no provision for any compensation for vesting of this right of property which belonged to the donee. I say this for this reason that though the Act has not been challenged on this ground as being ultra vires and though it is not necessary to provide for compensation in all cases after the amendment of the Constitution, this is, in my opinion, a factor which normally should be taken into consideration because taking away of right without some provision for compensation is normally not favoured unless one is so compelled by the language of the provision. The other factor which has caused me some hesitation is that for this obligation of worship, no provision has been made i.e. whether the worship would no longer be continued or

whether the State would carry on the worship. In our social background, this is also a factor which normally deters one from interpreting a document in a manner which has abolished worship of deity. But in spite of these doubts, in view of the language used in the document itself, I respectfully, though with certain amount of hesitation, agree with the view taken by my learned brother.

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