

Munjushree Plantation Ltd., and Others

Vs

State of Tamil Nadu and Others.

Civil Appeals Nos. 367-75 of 1977, 1344-45 of 1976 and 2457 of 1977 with Cmp Nos. 5556-66 of 1988 and Wp Nos. 199, 242 of 1988

(G. L. Oza, K. N. Saikia JJ)

17.02.1989

ORDER

OZA, J. –

1. In these appeals questions pertaining to the effect of certain laws on the rights of landholders in different capacities in Gudalur Taluk of Nilgiris District are raised.
2. It appears that in the erstwhile State of Madras, Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 was passed but later for this area the Tamil Nadu Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 was passed. This Act received the assent of the President on December 6, 1969 but the Act was to come into force on a date which was to be notified by the government under Section 1 (4) of the Act but it appears that even before the Act was brought into force the constitutional validity of the Act was challenged by various Janmies and the plantation lessees from Janmies in the Madras High Court on the ground that the Act violated Articles 14, 19 and 31 of the Constitution of India. The Madras High Court upheld the validity of the Act by its judgment dated October 26, 1970 and on appeal this Court by its judgment dated April 19, 1972 upheld the validity of the Act in all respects but it held that Section 3 (vesting section) insofar as it relates to the forests area it could not be regarded as a measure pertaining to agrarian reforms and could not therefore get the protection of Article 31-A of the Constitution and it is only to this limited extent that the Act was declared unconstitutional by this decision in Balmadies Plantations Limited v. State of Tamil Nadu ((1972) 2 SCC 133 : (1973) 1 SCR 258).
3. A day after the aforesaid judgment of this Court i.e. on April 20, 1972 the Constitution (Twenty-fifth Amendment) Act came into force by which Article 31-C was introduced in the Constitution. On September 7, 1974 the Janmam Act of 1969 as it was, was included in the Ninth Schedule of the Constitution by the Constitution (Thirty-fourth Amendment) Act and thereafter from November 20, 1974 by a notification under Section 1 (4) the Act was brought into force.
4. During the period this Act was challenged and was not brought into force, the Tamil Nadu Land Reforms Act, 1961 which had already been passed but was not applied to this area was also made applicable and in pursuance of that Act certain proceedings had started in respect of determination of ceiling of the land held by either the Janmies or the lessees. In these appeals the only question which mainly was raised was that as the Land Reforms Act was brought into force and proceedings under that Act had started this Act could not be applied to this territory and on such contention writ petitions were filed before the High Court and against the judgment of the High Court these appeals are before us. But these appellants also filed writ petitions under Article 32 of the Constitution

challenging the vires of the provisions of this Act in view of the fact that this Act was put in the Ninth Schedule after the decision in *Kesavananda Bharati v. State of Kerala* ((1973) 4 SCC 225 : 1973 Supp SCR 1). The constitutional validity of this Act could be challenged on the touchstone of basic structure of the Constitution. The Act is challenged on the ground that it affects Articles 14 and 19, therefore it affects the basic structure of the Constitution and therefore could not be given effect to. By filing applications for permission to raise additional grounds similar grounds have also been raised in these appeals and it is in view of these additional grounds that now in these appeals as well as the writ petitions the contentions advanced are that as this Act was put in the Ninth Schedule after the decision in *Kesavananda Bharati* case ((1973) 4 SCC 225 : 1973 Supp SCR 1) in spite of the fact that it is put in the Ninth Schedule still as it affects the basic structure of the Constitution it will be open to challenge as regards constitutional validity.

5. Learned counsel contended that Section 8 deals with Janmies and Section 9 deals with tenants. In Section 8 so far as Janmies are concerned they will get ryotwari patta if they were in cultivating possession of the lands for a continuous period of three years immediately before June 1, 1969. Similar provision is made in Section 9 for the tenant from the Janmies but by insertion of Explanation 1 in Section 8 it was contended that so far as plantations crops are concerned they will be included in the word 'cultivate' but such explanation was not added in Section 9. On the contrary Section 17 provided that wherever Janmies have created lease for the purpose of plantation in favour of some persons, the government may if it so choose in public interest, after notice, terminate those leases and take back the possession although compensation has been provided in cases where action is taken under Section 17. It was therefore contended that so far as Janmies are concerned even if they were in actual cultivating possession of plantation crops for a period of three years immediately before June 1, 1969 they will get ryotwari patta and will continue to hold the land and the State Government cannot even if it so chooses take any action under Section 17 against the janmies but so far as the tenants or lessees of Janmies are concerned they have not been given the same right and if they are even in actual cultivating possession for the prescribed period but it is a plantation crop they will not have the right to get ryotwari patta and it was contended that for this there is no justification on the basis of which this discrimination could be justified. It was contended that equality is one of the rights which has been considered as the basic structure of the Constitution and in view of this in spite of the fact that this Act was put in the Ninth Schedule by Thirty-fourth Amendment of the Constitution but still it could be held to be ultra vires. According to the learned counsel there are other reasons also which point to inequality and which were placed before us at length. Learned counsel also referred to various decisions of this Court in regard to this and ultimately contended that under Article 145 (3) it will not be proper for this bench of two Judges to consider this question as it is a substantial question of law pertaining to interpretation of the Constitution.

6. In fact initially when one of the learned counsel for the appellant argued it was suggested that if the provisions of this Act are given a rational interpretation as suggested by him the question of constitutional validity of the Act may not arise and it is on this basis it appears that the matter went on and unfortunately at the fag end of the arguments it was contended that under Article 145 (3) it will not be proper for this bench to consider and decide these questions. It was contended by learned counsel that although in Section 9 the explanation pertaining to plantation crops which has been especially included in Section 8 is not there, the Act should be so interpreted that the Janmies as well as the tenants or lessees even in respect of plantation crops are treated alike and it was in this context an attempt was made to interpret Section 17 also. It is no doubt an attractive argument and it also appears that if this argument was accepted the basis of discrimination which is raised in view of difference of language used in Sections 8 and 9 will lose all its strength but it could not be doubted

as contended by learned counsel appearing for the State of Tamil Nadu that such an interpretation of Sections 8 and 9 is not possible. The legislature with a clear intention has added an explanation in Section 8 so as to include in the word 'cultivate' also plantation crops. This inclusion made specifically in Section 8 makes it clear that without this in the scheme of the Act 'cultivate' will not include cultivation of plantation crops and it is therefore not possible to read in Section 9 what has not been specifically included in Section 9. It is in this view that the learned counsel for the State contended that the constitutional question which is raised in these matters has to be decided as there is no other alternative as regards the interpretation of the provisions of Sections 8, 9 and 17 are concerned. The learned counsel appearing for the State contended that in fact this is not the stage when these questions of interpretation should be raised and decided by the apex court as it appears that proceedings for grant of ryotwari patta either in the case of Janmies under Section 8 or in the case of tenants under Section 9 have not been taken. Similarly the interpretation of Section 17 also at this stage is merely academic and in none of these cases that stage has reached.

7. It is therefore clear that as the writ petitions have raised the question of constitutional validity of this Act and additional grounds have also been included in the appeals as rightly pointed out by the learned counsel for the State of Tamil Nadu, question of constitutional validity has to be decided.

8. It was contended by the learned counsel for the State that in the two decision of this Court in *Minerva Mills Ltd. v. Union of India* ((1980) 3 SCC 625 : (1981) 1 SCR 206), and *Waman Rao v. Union of India* ((1981) 2 SCC 362 : (1981) 2 SCR 1), it has been observed that if the enactment could be saved within the scope of Article 31-A or 31-C then merely because it has been put in the Ninth Schedule under Article 31-B the challenge of the constitutional validity is of avail and on this basis it was contended that although the question involved is an important question of law pertaining to interpretation of the Constitution but in view of these decisions it does not involve the question of interpretation of the Constitution and therefore it is not necessary to make a reference to a five Judges bench as required under Article 145 (3).

9. It could not be disputed that the question which is involved is a substantial question of law with regard to the interpretation of Articles 31-A, 31-B and 31-C of the Constitution of India. It is also clear that this Act so far as it pertains to the forests land is concerned was declared unconstitutional and it appears that it was because of this that the Act was put in the Ninth Schedule by Thirty-fourth Amendment of the Constitution so that it is protected by Article 31-B.

10. It is also not disputed that Section 3 which partly was declared unconstitutional remained as it is and in this view of the matter in our opinion it is a case which would involve a substantial question of law pertaining to interpretation of the Constitution and in our opinion therefore it will be proper that the matter be placed before a bench of five Judges as provided for in Article 145 (3) of the Constitution.

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