Dibyasingh Malana

Vs

State of Orissa and Others

And

Trivikram Malana and Another

Vs

State of Orissa and Others

And

Dr. Saktidhar Jena and Another

Vs

State of Orissa and Others

Civil Appeal Nos. 2436, 2437 and 2438 of 1989

(N. D. Ojha, E. S. Vankataramiah JJ)

19.04.1989

JUDGMENT

OJHA, J. –

1. Special leave granted.

2. These three appeals raise a common question about the interpretation of the term "family" in Section 37(b) of the Orissa Land Reforms Act, 1960 (hereinafter referred to as 'the Act'). According to clause (a) of Section 37 of the Act the term "person" includes inter alia family. Clause (b) of Section 37 being the clause under consideration may usefully be reproduced. It reads :

> "(b) "family" in relation to in individual, means the individual, the husband or wife, as the case may be, of such individual and their children, whether major or minor, but does not include a major married son who as such had separated by partition or otherwise before the 26th day of September, 1970."

3. According to the appellants in these three appeals partition in their respective families had taken place in the year 1965. The Act except Chapters III and IV came into force on October 1, 1965. Chapter IV of the Act which contains the provisions relating to ceiling and disposal of surplus land came into force on January 7, 1972. Suo motu proceedings under Section 42 of the Act for declaration of surplus land and consequential purposes were initiated in the year 1974. Objections were filed asserting inter alia that in view of the partition in the families of the appellants in the year

1965 the land in the ancestral properties which fell in the share of the appellants could not be clubbed with those of their father. This contention, however, was not accepted on the definition of the term "family" contained in Section 37(b) of the Act. Such of the major married sons who as such had separated by partition before September 26, 1970 as contemplated by the definition of the term "family" were allotted separate ceiling units but so far as the appellants are concerned their shares were clubbed with those of their father and only one ceiling unit was allotted as contemplated by the relevant provision of the Act.

4. The appellants having failed to get relief in the appeals and revisions filed by them under the Act challenged the orders passed by the various authorities under the Act in writ petitions before the High Court of Orissa. These writ petitions were dismissed relying on the decision of a Full Bench of that court in Nityananda Guru v. State of Orissa (AIR 1983 Ori 54 : (1983) 55 Cut LT 41 (FB). It is these orders of the High court which have been challenged in these appeals. The validity of Section 37(b) of the Act does not appear to have been challenged before the High court nor has it been seriously challenged even before us except by making a faint submission that even if by virtue of the said provision being incorporated in the Ninth Schedule, it may be immune from challenge in view of Article 31-B of the Constitution, the protection under Article 31-C would not be available to it and it would be hit by Article 14 unless it was established that it had nexus with the policy of the State towards securing any of the principles laid down in Part IV of the Constitution. This submission even if it is permitted to be raised for the first time in this Court has obviously no substance in view of the undisputed position that the Act aims at agrarian reform and the provisions with regard to declaration of surplus land and its distribution among the have-nots namely landless persons is apparently to give effect to the policy of the State towards securing the principle laid down in Article 39(b) of the Constitution occurring in Part IV thereof and Section 37(b) has a clear nexus with that policy. The aforesaid submission has, therefore, no substance.

5. At this place it may also be pointed out that validity of analogous provisions dealing with laws for declaration and distribution of surplus land framed by the States of Andhra Pradesh, Haryana and Maharashtra has already been upheld by this Court after rejecting challenges to them on various grounds in Thumati Venkaiah v. State of Andhra Pradesh ((1980) 4 SCC 295 : AIR 1980 SC 1568 : (1980) 3 SCR 1143), Seth Nand Lal v. State of Haryana (1980 Supp SCC 574 : AIR 1980 SC 2097 : (1980) 3 SCR 1181) and Waman Rao v. Union of India ((1981) 2 SCC 362 : AIR 1981 SC 271 : (1981) 2 SCR 1).

6. The main attack against the judgment of the Full Bench of the Orissa High Court in the case of Nityananda Guru (AIR 1983 Ori 54 : (1983) 55 Cut LT 41 (FB)) relying on which the writ petitions filed by the appellants were dismissed by the High Court has been on the ground that partition in the respective families of the appellants in the year 1965 having been accepted, Section 37(b) of the Act had to be read in such a manner as to exclude the land which had fallen to the share of the appellants even though they did not fall within the category of "a major married son who as such had separated by partition or otherwise before the 26th day of September, 1970" as contemplated by the definition of the term "family" in the said section. It was urged that this purpose could be achieved by adding the word "or" between the words "major" and "married". According to learned counsel if that is done the term "individual" would not include a major son who had married prior to that date. We find it difficult to take recourse to this mode of interpretation of Section 37(b) in view of its plain language. In British India General Insurance Co. Ltd. v. Captain Itbar Singh (AIR 1959 SC 1331 : (1960) 1 SCR 168 : 29 Comp Cas 60) sub-section (2) of Section 96 of the Motor Vehicles Act, 1939 was sought to be interpreted by the learned Solicitor General in a manner which involved addition on certain words. The submission was repelled and it was held :

> "The learned Solicitor General concedes this and says that the only word that has to be added is the word "also" after the word "grounds". But even this the rules of interpretation do not permit us to do unless the section as it stands is meaningless or of doubtful meaning, neither of which we think it is."

7. On a plain reading of the definition of the term "family" in Section 37(b) of the Act we are of the view that the said definition as it stands is neither meaningless not of doubtful meaning. In this connection, it may be pointed out that keeping in view the agrarian reform which was contemplated by the Act and particularly the provisions of Chapter IV relating to ceiling and disposal of surplus land which were calculated to distribute the surplus land of big tenure holders among the overwhelming have-nots of the State the legislature in its wisdom gave an artificial meaning to the term "family". The main provision containing the definition of the term is to be found in the first part of Section 37(b) namely "family in relation to an individual means the individual, the husband or wife as the case may be of such individual and their children whether major or minor". The later part of Section 37(b) namely "but does not include a major married son who as such had separated by partition or otherwise before the 26th day September 1970" does not on the face of it contain a matter which may in substance be treated as a fresh enactment adding something to the main provision but is apparently and unequivocally a proviso containing an exception. This admits of no doubt in view of the words "but does not include". In CIT v. Indo Mercantile Bank Limited (1959 Supp 2 SCR 256 : AIR 1959 SC 713 : (1959) 36 ITR 1) it was held :

> "Ordinarily the effect of an excepting or a qualifying proviso is to carve something out of the preceding enactment or the qualify something enacted therein which but for the proviso would be in it and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect."

8. That apart the submission made by learned counsel for the appellants would also lead to an anomalous situation if the word "or" is added between the words "major" and "married". Not only a major unmarried son who had separated by petition before September 26, 1970 would get excluded from the definition of the term "family" even a minor married son would get so excluded. The result would be that even though marriage of a minor son is prohibited by law such son would be placed at an advantageous position to a minor son who was law-abiding and had not married. Further the submission made by learned counsel for the appellants completely ignores the words "as such" used in the later part of Section 37(b) which contains the exception refereed to above. Given its proper meaning the words "as such" can only be interpreted to mean that it is only such son who would get the benefit of the exception who had separated by partition or otherwise before September 26, 1970 as "major married son".

9. The submission by counsel for the appellants that the words "as such" qualify only "son" and not "major married son" and are meant to distinguish son from brother or uncle etc. is misconceived on the plain language of Section 37(b) which contemplates clubbing of land of spouse and children only and not of brother and uncle etc. So, the question of using the words "as such" to distinguish son from brother or uncle etc. does not arise. Further, for accepting this submission the words "major married" will have to be omitted as superfluous which cannot be done in the garb of interpretation.

10. Learned counsel for the appellants also urged that a son who had separated by partition or otherwise from his father was himself an "individual" and if his land was clubbed with that of his

father, he will be subjected twice to the provisions relating to declaration of surplus land. This submission too is equally untenable. Land of such son alone who does not fall within the exception is to be clubbed with that of his father and with regard to land which has been so clubbed the son obviously cannot be treated as another "individual" in his own right for purposes of declaration of surplus land. Only such son who falls within the exception declaration of surplus land. Only such son who falls within the exception will be liable to be dealt with as an "individual" in his own right, as his land has not been clubbed with that of his father. Even on the facts of these appeals nothing has been brought to our notice to indicate that the land of the appellants which was clubbed with that of their father was subjected twice to the provisions relating to declaration of surplus land treating the appellants also as individuals.

11. It was then urged by learned counsel for the appellants that according to the definition of the term "family" as contained in Section 37(b) of the Act, land of a married daughter is liable to be clubbed twice; firstly, with that of her father and secondly, with that of her husband. According to him it is again the spirit of the law dealing with the question of declaration of surplus land. Suffice it to say, so far as this submission is concerned that none of the appellants in these appeals is a married daughter and as such we do not find it necessary to go into this question. We may also point out that dealing with an almost similar submission with regard to interpretation of Section 123(7) of the Representation of the People Act, 1951 it was held by a Constitution Bench of this Court in Rananjaya Singh v. Baijnath Singh ((1955) 1 SCR 671, 676 : AIR 1954 SC 749 : 10 ELR 129) :

> "The learned advocate, however, contended that such a construction would be against the spirit of the election laws in that candidates who have rich friends or relations would have an unfair advantage over a poor rival. The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act and the rules made thereunder. If all that can be said of these statutory provisions is that construed according to the ordinary, grammatical and natural meaning of their language they work injustice by placing the poorer candidates at a disadvantage the appeal must be to Parliament and not to this Court."

12. In view of the foregoing discussion we are of the opinion that the Full Bench of the Orissa High Court in the case of Nityananda Guru (AIR 1983 Ori 54 : (1983) 55 Cut LT 41 (FB)) lays down the correct law.

13. One more submission has been made by learned counsel for the appellants in the civil appeal No. 2438 of 198 (arising out of S. L. P. (Civil) No. 9079 of 1989). It has been urged that certain homestead urban land of the appellants not connected with agriculture lying inside Udala Notified Area Council has wrongly been included as agricultural land in the draft statement. This submission does not appear to have been made either before the High Court or before the authorities under the Act. In the counter-affidavit filed by the Additional District Magistrate (Land Reforms), Mayurbhanj, Orissa it has been stated in reply to paragraphs 21 to 24 of the S.L.P. that there is no homestead land and no non-agricultural land belonging to the appellant-landholders in the Notified Area Council of Udala. It has also been stated in paragraph 3(c) of the said counter-affidavit that no notification as contemplated by Section 73(c) of the Orissa Land Reforms Act has been made by the State Government. It has further been stated therein that the Urban Land (Ceiling and Regulation) Act, 1976 has not been made applicable so far to the Udala Notified Area Council. In this view of the matter it is not possible for us to record any finding with regard to this submission, and consequently we express no opinion in this behalf.

14. In the result, we find no merit in any of these appeals and they are accordingly dismissed but in the circumstances of the case there shall be no order as to costs.

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