State of Gujarat and Another

Vs

Kamlaben Jivanbhai and Others

Civil Appeal No. 1357 of 1973

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

21.04.1989

JUDGMENT

VENKATARAMIAH, J. –

1. The question for consideration in this case is whether the hereditary right of the respondents to recover a sum of Rs. 3500 per annum under an agreement dated August 10, 1914 entered into between the predecessor-in-interest of the respondents and the former princely State of Junagadh came to an end by virtue of provisions contained in the Gujarat Surviving Alienations Abolition Act, 1963 (hereinafter referred to as 'the Act').

2. There was one Darbar Harsurvala of Mandavad in the former princely State of Junagadh. He had a hereditary right to collect certain quantities of grass, firewood and timber from the Gir Forest in the State of Junagadh and that right was recognised by a declaratory decree made by the Rajasthanik Court of Kathiawar in the year 1884. On the death of Harsurvala the said right was being enjoyed by his son Jiva Vala till the year 1914. On August 10, 1914 an agreement was entered into between Jiva Vala and the State of Junagadh under which the State of Junagadh agreed to pay every year (commencing with September 1 of the proceeding year and ending with August 31 of the succeeding year) in the month of January a sum of Rs. 3500 to Jiva Vala and after him to the heirs claiming under him in lieu of the right to collect grass, firewood and timber which was being exercised by Jiva Vala. Accordingly, Jiva Vala was receiving the sum of Rs. 3500 every year and on his death his son Kalubhai was receiving the said sum every year from the State of Junagadh and on the State of Junagadh becoming part of the Union of India from the Saurashtra State, then from the State of Bombay in which Saurashtra State was merged and thereafter from the State of Gujarat which came to be established under the Bombay Reorganisation Act, 1960 till his death. After his death respondent 1 - Kamlaben, the wife of Kalubhai and the other respondents, who were children of Kalubhai were receiving the amount due to them till the year 1964. However, in January 1965 the Mamlatdar of Visavadar issued notice under the orders of the Collector, Junagadh to the respondents stating that the right to receive the said amount had come to an end on the coming into force of the Act, i.e., the Gujarat Surviving Alienations Abolition Act, 1963, which had come into force on October 1, 1963 and threatening the respondents that measures such as attachment etc. would be taken if the amount paid for the year September 1, 1963 to August 31, 1964 was not refunded by them to the State Government. Thereupon the respondents instituted the suit before the Court of the Civil Judge, Junagadh out of which this appeal arises for a declaration that they continued to enjoy the right to receive the sum of Rs. 3500 per annum hereditarily and for an injunction restraining the appellants, the State of Gujarat and the Collector of Junagadh from taking any action to recover the amount which had already been paid to them. The trial court dismissed the suit. Aggrieved by the judgment and decree of the trial court, the respondents filed an appeal before the District Judge,

Junagadh in Civil Regular Appeal No. 135 of 1966. The District Judge allowed the appeal holding that the right to receive the amount had not come to an end on the coming into force of the Act. The decree passed by the learned District Judge was confirmed by the High Court of Gujarat in Second Appeal No. 93 of 1968 vide its judgment dated October 10, 1972. The appellants have filed this appeal by special leave against the judgment of the High Court.

3. There is no dispute about the facts involved in this case. The right of Harsurvala to take grass, firewood and timber from the Gir Forest belonging to the State of Junagadh had been declared in a decree (Ex. 21) passed by the Rajasthanik Court on April 14, 1884. By a further agreement dated August 10, 1914 (Ex. 24) which had been arrived at between Jiva Vala, descendant of Harsurvala and the State of Junagadh, the State of Junagadh had agreed to pay every year a sum of Rs. 3500 to Jiva Vala and his heirs in lieu of the right to collect grass,' firewood, timber from the Gir Forest, as stated above. That the State of Junagadh and then the State of Saurashtra, the State of Bombay and the State of Gujarat were paying the said amount annually to Jiva Vala and his successors till the year 1964. The only question which arises for consideration is whether the said right to receive Rs. 3500 per annum came to an end on the coming into force of the Act.

4. The Act was passed with the object of abolishing certain alienations which were not affected by the earlier enactments which had been enacted for the abolition of various kinds of alienations in the State of Gujarat and to provide for matters consequential and incidental thereto. The expression 'alienation', as defined in clause (3) of Section 2 of the Act reads thus :

> "(3) 'alienation' means -
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> (a) any right in respect of an aghat land enjoyed by an aghat holder immediately before the appointed day,
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> (b) any right in respect of a Taluqdari watan enjoyed by the holder thereof immediately before the appointed day,
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> (c) any right, with or without any condition of service, in respect of any other land, village or portion of a village and consisting of -
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> (i) any proprietary interest in the soil coupled or not coupled with exemption from the payment of the whole or part of the land revenue, or
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> (ii) a right only to the land revenue or a share of land revenue of the land, village or portion of a village,
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> enjoyed by the holder thereof for the time being and subsisting immediately before the appointed day in limitation of the right of the State Government to assess the land or village or portion of a village to land revenue in accordance with the Code, whether by virtue of an express grant or recognition as a grant by the ruling authority for the time being or otherwise, or
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> (d) any right to any cash allowance or allowance in kind, by whatever name called, payable by the State Government and enjoyed by any person immediately before the appointed day; ....."

5. Section 6 of the Act reads thus :

> "6. Abolition of alienations together with their incidents and alienated lands liable to payment of land revenue. - Notwithstanding any usage or custom, settlement, grant, agreements, sanad or order or anything contained in any decree or order of a court or any law for the time being applicable to any alienation, with effect on and from the appointed day -
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> (a) all alienations shall be and are hereby abolished;
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> (b) save as expressly provided by or under this Act, all rights legally subsisting on the said day under such alienations and all other incidents of such alienations (including any right to hold office, or any liability to render service appertaining to an alienation) shall be and are hereby extinguished;
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> (c) subject to the other provisions of this Act, all alienated lands shall be, and are hereby made liable to the payment of land revenue in accordance with the provisions of the Code and the rules made thereunder; and accordingly the provisions therein relating to unalienated land shall apply to all alienated lands."

6. On such abolition the alienee is entitled to compensation as provided in Section 13 of the Act, if the alienation is one covered by Section 2(3)(d) of the Act.

7. The right to receive a sum of Rs. 3500 per annum which the respondents were enjoying admittedly did not fall under sub-clauses (a), (b) and (c) of clause (3) of Section 2 of the Act. The question is whether the said right falls under sub-clause (d) of clause (3) of Section 2 of the Act and if it falls under that clause whether the payment of the said sum can be abolished constitutionally under the Act. Sub-clause (d) of clause (3) of Section 2 of the Act is very widely worded and refers to any right to any cash allowance or allowance in kind, by whatever name called, payable by the State Government and enjoyed by any person immediately before the appointed day.

8. The Act is included in the Ninth Schedule to the Constitution of India as Item 33 which reads thus :

> "33. The Gujarat Surviving Alienations Abolition Act, 1963 (Gujarat Act 33 of 1963), except insofar as this Act relates to an alienation referred to in sub-clause (d) of clause (3) of Section 2 thereof."

9. Sub-clause (d) of clause (3) of Section 2 of the Act having been specifically excluded, the said clause does not receive the protection of Article 31-B of the Constitution of India. The question which remains to be considered is whether the said sub-clause can be deemed to be protected by Article 31-A of the Constitution of India. Article 31-A of the Constitution of India refers to matters described in sub-clauses (a) to (e) of Article 31-A(1) of the Constitution of India. It is not claimed on behalf of the State Government that the present case falls under sub-clauses (b) to (e) of Article 31-A(1) of the Constitution of India. It is, however, urged that the present case falls under sub-clause (a) of clause (1) of Article 31-A of the Constitution of India, which reads thus :

> "(a) the acquisition by the State of any estate or of any rights therein or the extinguishment of modification of any such rights, or"

In other words it is urged that the provision in question should be treated as a part of a legislation intended for bringing about agrarian reform to which Article 31-A(1)(a) of the Constitution of India

is attracted. In the instant case the right which the family of the respondents possessed was the right to collect grass, firewood and timber etc. from the Gir Forest and that right had already been surrendered under the agreement dated August 10, 1914 by the said family in lieu of the annual payment of Rs. 3500. In an earlier decision in Civil Application No. 1399 of 1968 (decided on March 18/19, 1971) a Division Bench (J. M. Mehta and A. D. Desai, JJ.) of the Gujarat High Court had held that sub-clause (d) of clause (3) of Section 2 of the Act was not ultra vires so far as the alienation in question was by way of an agrarian reform. The judgment in that case had been delivered by J. M. Mehta, J. The judgment out of which the present second appeal arises was also rendered by J. M. Mehta, J. himself. Distinguishing his earlier decision from the present case J. M. Mehta, J. has observed thus :

> "In the present case the right of plaintiff has originated in the right to take forest produce of the Gir Forest belonging to the former Junagadh State and which had been enjoyed by the ancestor Shri Harsurvala. The right was recognised by the Rajasthanik Court of the then Kathiawad Agency. It was under the agreement, Ex. 24 dated August 10, 1914 that this right was commuted into a lump sum amount of Rs. 3500 and this was enjoyed hereditary by the plaintiffs' ancestor. Therefore, this alienation has nothing to do with any agrarian reform and this alienation would not fall within the Section 2(3)(d) so that it can have any immunity from the challenge. The State could only succeed if the term 'alienation' in Section 2(3)(d) is interpreted in such wide context which would make it ultra vires as per the settled legal position in the aforesaid Division Bench decision. That is why narrow interpretation was given by me confining to only those alienations which were incidental to the agrarian reform. The present alienation which consisted of cash allowance as per Ex. 24 is not incidental to any agrarian reform, and therefore, the Act would not abolish this alienation. The plaintiffs' rights are to take forest produce and on commutation of their rights by Ex. 24 they are property rights. When such allowance is being paid the right to this cash allowance could never be acquired by the State as per the aforesaid settled legal position ....."

10. In view of the foregoing the High Court held that Section 2(3)(d) of the Act should be read down and construed as not including payment of cash allowance of the type in question. It held that otherwise the said clause would be violative of Articles 14, 19 and 31 of the Constitution of India.

11. It is not disputed by the learned counsel for the State Government that unless the present case receives the protection of Article 31-A of the Constitution of India the action taken by the State Government to treat the right of the respondents as having come to an end would be unconstitutional since it would be violative of Articles 14, 19 and 31 of the Constitution of India.

12. It is, therefore, necessary to examine the nature of the transaction under which the amount of Rs. 3500 was payable every year to the respondents on the hereditary basis in order to find out whether the abolition of the said right can be considered as a part of agrarian reform which receives the protection of Article 31-A of the Constitution of India. An extract of the Records of Rights giving particular of the agreement dated August 10, 1914 entered into between Vala Jiva Harsur and the State of Junagadh is produced before the court. It shows that Vala Jiva Harsur, the predecessor-in-interest of the respondents had the right to remove from the Gir Forest every year (1) 75 cart loads of teak wood, (ii) 100 cart loads of grass, in addition to the right of grazing of cattle and removing two lakhs bundle of grass during the time of famine. It is clear from the above statement that certain rights which the family of respondents possessed in the land comprised in the Gir Forest were

agreed to be surrendered against payment of Rs. 3500 annually. It is no doubt true that long before the date on which the Act came into force the agreement had come into existence but it was a right which was originally annexed to land. It may be that the said land formed part of the said forest, but still it falls within the definition of the expression 'estate' in clause (a) of Article 31-A(2) of the Constitution of India. Article 31-A(2)(a)(iii) states that any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans is included in the expression 'estate' for purposes of Article 31-A of the Constitution of India. Article 31-A, as it stood on the date of the passing of the Act, provided that notwithstanding anything contained in Article 13, no law providing for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights shall be deemed to be void on the ground that it was inconsistent with or took away or abridged any of the rights conferred by Article 14 or Article 19 or Article 31 of the Constitution of India. The expression 'rights' is again defined in Article 31-A(2) of the Constitution of India as in relation to an estate, including any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue. It is an inclusive definition. The right which was being enjoyed by the predecessor-in-interest of the respondents was a right in a waste land or a forest land or a land for pasture. In order to treat a particular law as a part of an agrarian reform, it is not necessary that on the land which is the subject matter of the said law actual cultivation should be carried on. In the State of Kerala v. Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. ((1973) 2 SCC 713 : AIR 1973 SC 2734 : (1974) 1 SCR 671) the constitutionality of the Kerala Private Forests (Vesting and Assignment) Act, 1971 came up for consideration before this Court. In that case one of the questions which arose for consideration was whether the said Act which related to private forests envisaged a scheme of agrarian reform. In that case this Court held that even though the said legislation had the effect of extinguishing or modifying rights annexed to or arising out of the forest land it could be considered as part of agrarian reform because such forest lands also if prudently and profitably exploited could bring about relief to people engaged in agriculture. This Court further observed in that case that agrarian reform was more humanist than more land reform and scientifically viewed covered not merely abolition of intermediary tenures, zamindaris and the like but restricting of village life itself taking in its broad embrace the socioeconomic regeneration of the rural population. In the present case the extinguishment of the right to receive a certain amount in lieu of the right to remove timber, grass, etc. from a forest area, therefore, formed part of the process of agrarian reform as there was clear nexus between the agreement to pay the amount and the rights arising out of the forest area. It is significant that under the agreement of the year 1914 the State of Junagadh undertook to pay Rs. 3500 every year hereditary in lieu of the rights which the predecessor-in-interest of the respondents had in the forest area, thereby meaning that if the amount was not paid, the original right to carry timber, grass etc. from the forest area would revive. It cannot, therefore, be said that the extinguishment of the right to receive money alone unconnected with land was contemplated in the instant case. When once the above conclusion is reached then the legislation in question should be construed as having the effect of bringing about the extinguishment of the right in an estate for the purpose of better management of the forest area keeping in view the interest of the people of the State in general and of the people living in or around the Gir Forest in particular. Sub-clause (d) of clause (3) of Section 2 of the Act should be deemed to include the cash allowance of the type involved in this case and the act must be held to be valid even though it affects the rights of the respondents which undoubtedly originated from the land covered by the forest area. We, therefore, hold that the view taken by the High Court that if the transaction in question is construed as covered by sub-clause (d) of clause (3) of Section 2 of the Act, the Act would become void to that extent is

not correct. We are of the view that the legislation has the effect of validly extinguishing the right of the respondents to receive annually a sum of Rs. 3500 on a hereditary basis. The respondents are entitled to the payment of whatever compensation is payable under the Act notwithstanding the provisions of Articles 14 and 19 and Article 31 of the Constitution of India (as it existed prior to its deletion).

13. We, therefore, set aside the judgment of the High Court and dismiss the suit instituted by the respondents. We, however, make it clear that the dismissal of the suit does not come in the way of the respondents being paid whatever compensation they are entitled to under the Act. If such compensation has not been paid yet, the authority concerned shall proceed to compute the amount of compensation payable to the respondents and to disburse it within three months from today.

14. The appeal is accordingly allowed. No costs.

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