Union Territory of Goa, Daman and Diu and Another

Vs

Lakshmibai Narayan Patil

And

Smt. Lakshmibai Narayan Patil

Vs

Union of India and Other

Civil Appeals Nos. 1314-1318 of 1979 and Writ Petition No. 864 of 1988

(L. M. Sharma. T. K. Thommen JJ)

23.07.1990

JUDGMENT

SHARMA, J :-

1. The Civil Appeal Nos. 1314-1318 of 1979 by certificate are directed against the decision of the Judicial Commissioner of Goa, Daman and Diu, declaring the Goa, Daman and Diu Agricultural Tenancy. (Fifth Amendment) Act, 1976, as unconstitutional. The respondents are landlords in Goa. The lands were in possession of the tenants who were cultivating the same and paying rent to the respondents. The respondent were in possession of the provisions of the impugned Act which came in force in 1976 vesting the same in the tenants. The respondents filed five writ applications in the court of the Judicial Commissioner challenging the validity of the Amendment Act. The writ petitions were allowed by the impugned judgment. It has been held that the Act violates Articles 14 and 19 of the Constitution and the protection of Article 31-A is not available as the scheme of the Act does not constitute agrarian reform.

2. It has been contended on behalf of the respondent-writ petitioners that the landlords in Goa are generally small landholders and their conditions is not better than that of the tenants and in that view the Act divesting the landlords of their title in the land and vesting the same in the tenants suffers from the vice of illegal discrimination. A similar Act was earlier passed by the Maharashtra legislature also which has been found to be constitutionally valid. The writ petitioners have, before the court below, successfully argued that the decision in that case is not applicable inasmuch as the Maharashtra Act contains provisions fixing ceiling to which the other provisions are subject to, while there is no such restriction in the present Act. The result is that although the Maharashtra Act had to be upheld as a measure of agrarian reform and thus protected by Article 31-A of the Constitution, the present Act cannot be so interpreted.

3. During the pendency of these appeals the impugned Amendment Act along with the main Act were included in the Ninth Schedule of the Constitution and the assent of the President was received on August 26, 1984. Smt. Lakshmibai Narayan Patil, the writ petitioner in the three of the cases in

the court of Judicial Commissioner (respondent in Civil Appeals Nos. 1314, 1315 and 1316 of 1979) has challenged the constitutional amendment as illegal and ultra vires by filing an application under Article 31 of the Constitution which has been numbered as Writ Petition No., 864 of 1988.

4. By the impugned Amendment Act, Chapter II-A has been included in the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (hereinafter referred to as 'the Act') Chapter III has bee deleted and some consequential changes have been made in some other sections. Chapter II-A deals with "Special rights and privileges of tenants" as indicated by the heading. Broadly speaking, by the provisions of Section 18-A of this chapter the land belonging to a landlord not in his cultivating possession on the tiller's day gets transferred to the tenant-in-possession for a price to be paid to the landlord. The expression 'tenant' has been given a larger meaning under the Act by Section 4. By the second proviso of Section 4 a sub-tenant cultivating any land on or after July 1, 1962 has to be deemed to be a lawfully cultivating tenant notwithstanding the fact that the creation of sub-tenancy might have been prohibited by any law, and the tenant prior to the creation of the sub-tenancy (Who may be referred to as intermediary tenant) is not to be treated as a tenant. The price of the land in question has to be determined and the payment made in accordance with the provisions of Chapter II-A. Separate previsions have been made with respect to special cases where tenant is a minor or has been evicted by the landlord before the tiller's day. The provisions of Section 18-J provide for the resumption and disposal of the land not purchased by the tenant by reason of the purchase being ineffective under Section 18-C or Section 18-H or due to the failure of the tenant to take steps under Section 18-B within time. A revenue officer described as Mamlatdar is vested with the power to dispose of such land in the manner provided in sub-section (2) of Section 18-J. Such land has to be disposed of in the order of Priority, where under 75 per cent of such land is to be disposed of by sale to persons belonging to Scheduled Castes or Scheduled Tribes and thereafter the remaining land to serving members of the Defence Forces of the country or ex-servicemen or freedom fighter who agree to cultivate the land personally. If the land still remains un-disposed of, it first goes to agricultural labourers and thereafter to land less persons. If some of the land still remains available it has to be sold to a co-operative farming society. Section 18-K puts a restriction on transfer of the land which the tenant acquires by purchase under the chapter. Only with the previous sanction of the Mamlatdar any transfer whether by sale, gift, exchange, mortgage, lease or assignment can be made.

5. If the landowner is himself cultivating it, there being no tenant or a deemed tenant be continues to be in possession without any curtailment of his rights. On the other hand, in a case where the tenant after getting a tenancy from the landlord inducts another person as a sub-tenant who cultivates the same, the benefits of the impugned provisions go to him and not to the tenant. The object of the Amending Act is thus clearly to vest the land in the tiller. The right of any person to receive merely rent is taken away for a price. The respondents who are landlords, have challenged the Amendment Act whereby Chapter II-A has been inserted in the Act on the ground of illegal discrimination. The argument is that in absence of provisions for ceiling the impugned Act bestows undeserved benefit on the tenants at the cost of the landlords without reference to the respective areas in their possession. The amendment was enforced as also the impugned judgment was delivered before the deletion of clause (f) of Article 19(1) from the Constitution and one of the grounds which ahs been successfully urged before the High Court is based on Article 19(1)(f). So far as Article 31-A of the Constitution is concerned, the case of the respondents which has found favour with the court below is that the provisions of the impugned Amendment Act can not be held to be a step by way of agrarian reform and, therefore, cannot have the protection of the article. This is the main thrust of the argument of Mr. R.F. Nariman in this Court also. He has strenuously contended that for extending the protection of Article 31-A(1)(a) to any particular law it is necessary that the law contains adequate measure against concentration of wealth in the hands of a few. It is claimed that

fixation of ceiling is the heart and soul of agrarian reform without which it does not survive.

6. It has been observed in the impugned judgment that from the transcripts of newspapers produced by the writ petitioners and the statement alleged to have been made by the late Chief Minister that there were very few big landholders in Goa, it can be assumed that the landlords in Goa are small holders of land. Certain statements made in the affidavit filed before the court where also referred to in this connection. An attempt was made in this Court also to urge that there could not be many big landlords in Goa, and, therefore, their deprivation of the lands cannot be deemed to be a step towards fair distribution. It was contended that in many a case a cultivating tenant in possession of lands under different landlords may be having far larger area of land than his landlords and there cannot be any justification in clothing such a tenant with title to the land at the cost of his comparatively poor landlords. The argument proceeded, that so far the holdings cannot be denied in view of the affidavit filed on behalf of the State stating that further legislation for that purpose was in contemplation. Mr. R. F. Nariman emphasised the fact that no such law has been brought in force till now. To the last part of the argument it was rightly pointed out by the learned counsel for the appellants that since the Amendment Act was struck down by the Judicial Commissioner's court as ultra vires, further amendment in the Act by way of introducing provisions for ceiling had to await this Court's judgement in the present civil appeals.

7. Before proceeding with the main argument of Mr. R. F. Nariman and the cases relied upon by him, it may be useful to briefly refer to the nature of the right of the landlords and the tenants under the Act before the insertion of Chapter II-A by the impugned Amendment Act. The rights of a tenant were heritable and Sections 8 and 9 prohibited the termination of his tenancy and his eviction except where he himself surrendered his right to the landlord or where the landlord established one of the grounds specified in this regard. By an Amendment in 1966, the tenant was given, by Section 13-A, the first option to purchase the land in case the landlord proposed to sell it. By Chapter III the landlord was permitted to resume the land, subject to the ceiling of an area of 2 hectares in case of paddy land and 4 hectares in other lands, on the ground of bona fide requirement of personal cultivation; but this right was also dependent on the fulfillment of certain conditions. This chapter was to come into force only on a notification for the purpose which was never issued. By the impugned Amendment Act this chapter was omitted from the Act. In effect the right of resumption contemplated by the Act never vested in the landlords before it disappeared from the statute book. It may be stated here that the 1964 Act is not under attack and the challenge is confined to its Fifth Amendment whereby Chapter II-A has been included and Chapter III deleted.

8. The statement of objects and reasons was placed before us wherein it has been mentioned that there was similar legislation in force in the neighbouring State of Maharashtra. The reference obviously is to the Bombay Tenancy and Agricultural Lands Act 1984. In Sri Ram Ram Narain Medhi v. State of Bombay[1] the validity of the Act was upheld by a Constitution Bench of this Court. It has been contended that the Maharashtra Amending Act included provisions fixing ceiling which effectively prevented accumulation of large areas of land in possession of the tenant; and since there is no similar safeguard in the present Fifth Amendment Act, the aforesaid decision does not come to its rescue and leads to the conclusion that in absence of similar provisions the Act cannot be sustained. The learned counsel for the respondents relied upon the observations of several decisions of this Court in support of his contention that provisions regarding ceiling are essential from a stature enacted as a measure of agrarian reform and in their absence the same cannot claim protection of Article 31-A of the Constitution.

9. Article 31-A (1)(a) declares that no law providing for "the acquisition by the State of any estate

of any rights therein or the extinction of modification of any such right", shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19. The Fifth Amendment Act has received the assent of the President as required by the first proviso. The expression 'estate' is undisputedly applicable in the present case in view of the provisions of clause (2) of the said article. Although Article 31-A (1)(a) does not be express language restrict its application to a particular nature of law, it is now well settled that the protection of the Article is limited to the laws which serve the purpose of agrarian reform, and Mr. R.F.Nariman is right in relying upon the observations at page 901-F of the judgment in Godavari Sugar Mills Ltd. v. S.B. Kamble[2]. The learned counsel has further urged that the other observations in this judgment support his main argument also that in absence of provisions for ceiling a statute cannot be held to be for agrarian reform. WE are unable to agree. In that case the constitutional validity of the Act amending certain provisions of the Maharashtra Agricultural (Ceiling and Holdings) Act, 1961 was under challenge and it was sought to be saved inter alia with the aid of Article 31-A. While discussing the scope of Article 31-A, the court at page 902-F relied upon the decision in Balmadies Plantations Ltd. v. State of Tamil Nadu in the following terms: (SCC p. 710, para 24)

> "In the case of Balmadies Plantations Ltd. v. State of Tamil Nadu[3] it was held while dealing with the provisions of Gudalur Janman Estates (Abolition and Conversion into Ryotwari) Act that the object and general scheme of the Act was to abolish intermediates between the State and the cultivator and to help the actual cultivator by giving him the status of direct relationship between himself and the State. The Act, as such, in its broad outlines was help to be a measure of agrarian reform and protected by Article 31-A."

At Page 903-H it was observed that in a sense agrarian reform is wider than land reform. At page 905 the conclusion was summarised under 8 heads, and Mr. R.F. Nariman strongly relied on the last proposition stating: (SCC p. 713, para 28)

> "(8) A provision fixing ceiling area and providing for the disposal of surplus land in accordance with the rules in a measure of agrarian reform."

It cannot be denied that the appropriately enacted statutes having provisions of fixing ceiling of holdings do fall in the category of legislation for agrarian reform, but the proposition relied upon, does not say and cannot be interpreted as holding that it is such an essential feature of agrarian reform without which allow con not be included in that category. The observations at page 902-F in respect of the judgment in Balmadies Plantations case3, quoted earlier rater negative such an assumption.

10. The case of Sri Ram Ram Narain Medhi[1] has not only been distinguished in the impugned judgment but has been relied upon for supporting the writ petitioner's arguments. Reliance has been placed on the observations at page 495 of the reported judgment to the effect that object of the Maharashtra Act, which was under consideration in that case, was to bring about such distribution of the agricultural lands as best to subserve the common good and this object was sought to be achieved by fixing ceiling area of land which can be held by a person is a basic and essential requirement of land reform. Since the challenge against the Maharashtra Act was being directed to the provisions fixing ceiling it become necessary to consider and decide the effect of those provisions pointedly. But on a careful consideration of the entire judgment, there does not remain nay element of doubt that a proper statute even without including provisions regarding ceiling may

be entitled to the protection of Article 31-A provided it is otherwise a measure of agrarian reform. As mentioned earlier, the court was deciding the question of constitutional validity of the 1956 Act which amended the Bombay Tenancy and Agricultural Lands Act enacted in 1948 Act did not contain the provisions of ceiling which were later introduced by the impugned amendment. If the stand of the respondents be assumed to be correct, the 1948 Act could not have been in absence of the provisions of ceiling, held to be a step in agrarian reform. But the court at page 492 stated that:

> "The 1948 Act had been passed by the State legislature as a measure of agrarian reform…"

With respect to the 1956 Amendment Act, it was said at page 493 that:

> "With a view to achieve the objective of establishing a socialistic pattern of society in the State within the meaning of Articles 38 and 39 of the Constitution, a further measure of agrarian reform was enacted by the State legislature, being the impugned Act, hereinbefore referred, to, which was designed to bring about such distribution of the ownership and control of agricultural lands as best to subserve the common good thus eliminating concentration of wealth and means of production to the common detriment."
>
> (Emphasis added)

The use of the expression "further measure" as mentioned above and the repetition of the said expression again at page 495 emphasise the fact that the original Act also was a measure of agrarian reform. Thus the decision, instead of helping the respondents lends support to the appellants' argument.

11. Mr. R.F. Nariman cited a number of other decisions dealing with the validity of provisions fixing ceiling and the court upheld those provisions on the ground that they were measures of agrarian reform, but they do not support the reverse proposition as put forward on behalf of the respondents. All these decisions are, therefore, clearly distinguishable and we will mention briefly some of them which were heavily relied on by Mr. Nariman.

12. In the case of Sonapur Tea Co. Ltd. V. Must. Mazirunnesa[4] writ petitions were filed in the High Court challenging the validity of the Assam Fixation of Ceiling on Land Holdings Act, 1957. The High Court in dismissing the petitions held that the impugned Act was protected by Article 31-A as it was a measure of agrarian reform and imposed limits on land to be held by persons in order to bring about its equitable distribution. The main question which was canvassed before this Court was whether the expression "the rights in relation to an estate" in the article could cover the impugned Act, and it was answered in the affirmative by holding that the said expression is of a very wide amplitude. At page 729 this Court observed thus:

> "This article has been construed by this Court on several occasions in dealing with legislative measures of agrarian reforms. The object of such reforms generally is to abolish the intermediaries between the State and the cultivator and to help the actual cultivator by giving him the status of direct relationship between himself and the State."

The Fifth Amendment Act impugned in the cases before us satisfies this test. Similar was the position in Purushothaman Nambudiri v. State of Kerala[5]. The case of Fida Ali v. State of Kerala[5].

The case of Fida Ali v. State of Jammu and Kashmir[6] was also considering a statute providing a scheme for agrarian reform which included provisions in respect of ceiling. While upholding the Act the provisions fixing ceiling were upheld but the other observations in the judgment clearly indicate that the same cannot be assumed to be a condition precedent. Personal cultivation by the holder of land was emphasised as an important aspect in the following words at page 345-G: (SCC p. 258, paras 12 and 13)

> "The golden wen, throughout the warp and woof of the Act, is the feature of personal cultivation of the land. The expression 'personal cultivation' which runs through Section 3,4,5,7 and 8 is defined with case under Section 2(7) in a detailed manner with a proviso and six explanations.
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> From a review of the foregoing provisions it is obvious that the Act contains a clear programme of agrarian reforms in taking stock of the land in the State which is not in personal cultivation is in excess of the ceiling area (Section 4)."

In the penultimate paragraph of the judgment it was pointed out that for framing a scheme for agrarian reforms it is not necessary or feasible to follow a set pattern in different parts of the country. It was observed: (SCC p. 259. Para 17)

> "On the other hand, the predominant object underlying the provisions of the Act is agrarian reforms. Agrarian reforms naturally cannot take the same pattern throughout the country. Besides the availability of land for the purpose, limited in scope in the nature of things, the scheme has to fit in with the local conditions, variability of climate, rainfall, peculiarity of terrain, suitability and profitability of multiple crop patterns, vulnerability to floods and so many other factors in formulating a scheme of agrarian reforms suitable to a particular state."

The decision, therefore indicates that a flexible approach has to be adopted in deciding as to the nature of agrarian reform to be taken, rather than laying down a strait-jacket rule for universal application. The observations in Dattatraya Govind Mahajan v. State of Maharashtra7 were also made while examining an Act fixing ceiling of holdings and in justification of the impugned provisions it was observed that the policy in this regard was initiated following the report of the Agricultural Labour Inquiry conducted in the 1960s and in implementation of this policy the Act under consideration was passed. The implication is that the Fixation of ceiling was not essentially involved in agrarian reform but it had to be resorted to in the State of Maharashtra following the conclusion arrived at in the Agricultural Labour Inquiry.

13. The learned counsel for the respondent also placed two cases wherein Article 31-A was held to be inapplicable. In K. K. Kochuni v. State of Madras[3] the question of Article 31-A did arise but in absolutely different context. The immediate predecessor of the petitioner K.K. Kochuni was the sthanee of the properties attached to the various sthanams held by him. On his death in 1925, the petitioner being the senior member became the sthanee and respondents 2 to 17 being the junior members of the tarwad did not get any interest in the properties. In an earlier litigation which was commenced following the passing of an Act in 1932, the petitioners' exclusive right was established up to the Privy Council state. It was held that the members of the tarwad had no interest therein. After the title of the sthanee was thus established, the Madras legislature passed the impugned Act in 1955, which declared that every sthanam satisfying certain conditions mentioned in the Act would be deemed and would always be deemed to have properties belonging to the tarwad. The

petitioner K.K. Kochuni challenged the Act as ultra vires before this Court by an application under Article 32 of the Constitution. Two other petitions were also filed, one by his wife and daughters with respect to certain other properties gifted to them and the other by his son. In support of the constitutional validity of the Act it was argued on behalf of the respondents that the petitioner's sthanam was an estate within the meaning of Article 31-A and, therefore, enjoyed the protection under that article. The argument was that a law relating inter se the rights of a proprietor in his estate and the junior members of his family was also covered by the wide phraseology used in clause (2)(b) of Article 31-A. This Court rejected the plea, holding that: (SCR p. 900)

> "The definition of "Estate" refers to an existing law relating to land tenures in a particular area indicating thereby that the article is concerned only with the land tenure described as an "estate". The inclusive definition of the rights of such an estate also enumerates the rights vested in the proprietor and his subordinate tenure holders. The last clause in that definition, viz, that those rights also include the rights or privileges in respect of land revenue, emphasizes the fact that the article is concerned with land tenure. It is, therefore manifest that the said article deals with a tenure called "estate" and provides for its acquisition or the extinguishment of modification of the rights of the landholder or the various subordinate tenure-holders in respect of the their rights in relation to the estate. The contrary view would enable the State to divest a proprietor of his estate and vest it in another without reference to any agrarian reform. It would also enable the State to compel a proprietor to divide his properties, though self-acquired, between himself and other members of his family or create interest therein in favour of persons other than tenants who had none before."

The court, thus held that Article 31-A (1)(a) will not apply to an Act which does not contemplate or seek to regulate the rights inter se between the landlords and tenants leaving all their characteristics intact. The court further considered the judgment in Sri Ram Ram Narain case[1] and distinguished it on the ground that under the Bombay Act certain rights were conferred on the tenants in respect of their tenements which they did not have before. The other case of Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Ltd.[9] relied upon by Mr. Nariman is also of no help as the same was dealing with certain legislation in regard to mines and minerals. The question of interpreting Article 31-A (1)(a) did not arise there at all.

14. As has been discussed above, the title to the land shall vest in the tiller and the landlord shall get the compensation. Earlier also his right to resume the land for personal cultivation was considerably restricted by the provisions of the 1964 Act. As a result of the impugned Amendment Act he has been divested of this limited right for a price, and the tiller shall no more be under a threat of dispossession. The impugned provisions must therefore be accepted as a measure of land reform. We reject the arguments of the respondents that in absence of provisions fixing ceiling on the area of land which can be held by a person a statute cannot be accepted as a measure of land reform. The Fifth Amendment Act is, therefore, entitled to the protection of Article 31-A and it cannot be struck down on the ground of violation of Articles 14 and 19 of the Constitution. The judgment of the Judicial commissioner declaring the Act as ultra vires in accordingly set aside and the writ petitions filed by the respondents are dismissed. Consequently it is not necessary to deal with the writ petition (W.P. No. 864 of 1988) filed in this Court under Article 32 challenging the inclusion of the impugned Act in the Ninth Schedule of the Constitution and the same is rejected.

15. In the result, Civil Appeals Nos. 1314-1318 of 1979 are allowed, but in the circumstance, the parties are directed to bear their own costs throughout.

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