Tej Singh Rao

Vs

State of Maharashtra

Civil Appeal No. 608 of 1982

(Kuldip Singh, K. Ramaswamy JJ)

19.08.1992

JUDGEMENT

KULDIP SINGH, J.:-

1. Tej Singh Rao is a lineal male descendant of Pratap Rao Gujar who was one of the Generals of Shivaji the Great. He is holding 294-61 acres of land which is situated in the Bhiwapur Taluk of the erstwhile Nagpur State. He filed return under section 12 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (the Act) without prejudice to his claim that the lands are covered by a sovereign legislative grant-flowing from the sovereign authority of Raghoji II , the Bhosle Ruler of Nagpur State, and as such did not come within the purview of the Act. The Special Deputy Collector (Land Reforms) declared 176-91 acres of the land as surplus. The land owner preferred appeal before the Maharashtra Revenue Tribunal under Section 33 of the Act. The Tribunal dismissed the appeal. Tej Singh Rao challenged the order of the Special Deputy Collector and of the Tribunal before the Nagpur Bench of Bombay High Court by way of writ petition under Article 226/227 of the Constitution of India. The High Court dismissed the writ petition with costs. This appeal by Tej Singh Rao by way of special leave petition is against the judgment of the High Court.

2. The lands in question. were subject matter of the grant which was made in the year 1793 by Raghoji II, the then ruler of Nagpur State, at the time of marriage of his daughter Banubai to Vyankatrao alias Nanasaheb son of Ramrao, a male descendant of Pratap Rao Gujar. As both Vyankatrao and Banubai were minor, the grant was made in the name of Ramrao. All villages in Bhiwapur Taluq and six villages in other Taluqs and annual cash allowance of Rs. 17,415/- were the subject matter of the grant.

3. Raghuji II died in the year 1816. It is not necessary for us to trace the history of Bhonsale family and Gujar family as the same is not relevant for deciding the question which has survived for our consideration.

4. The orders of the Special Deputy Collector and of the Maharashtra Revenue Tribunal were challenged before the High Court on two grounds. The first was that the appellant being the direct descendant of a sovereign ruler, the lands held by him for his personal use could not be the subject matter of ceiling laws. The second ground was that the grant in question was a sovereign legislative grant made by Raghuji II who was then the full sovereign ruler of Nagpur State and the said grant constituted a special law in favour of Gujar family which could not be affected by any general legislation like the Act.

5. The High Court decided both the points against the appellant. The learned counsel appearing for the appellant has not challenged before us the findings of the High Court on the first point. The only question raised by the learned counsel before us is that the grant in question was sovereign legislative grant made by a sovereign ruler, it was recognised and continued by the British Government, it is thus a special law in favour of Gujar family, and as this law was existing on the date of the commencement of the Constitution of India it is protected by Article 372 of the Constitution and shall be deemed to be in force and cannot be abrogated except by an Act of the legislature specially made in that respect.

6. The question whether a grant made by a sovereign ruler amounts to law and if so under what circumstances, was examined by the High Court at length. The High Court referred to the decisions of this Court in Umaid Mills Ltd. v. U.O.I., AIR 1963 SC 953, State of Gujarat v. Vora Fidda Ali, AIR 1964 SC 1043, Raj Kumar v. State of Orissa, AIR 1964 SC 1793, Union of India v. Gwalior Rayon Silk Manufacturing Company, AIR 1964 SC 1903 and State of Madhya Pradesh v. Lal Bhargavendra Singh, AIR 1966 SC 70 and came to the conclusion that even in the case of a ruler who combined in himself both executive and legislative powers of his Government and was undisputed head of the State, the jurisprudential distinction between legislative enactment and executive action has not been obliterated and the question, whether a particular grant is a legislative grant or not, depends on the facts and circumstances of each case.

7. The High Court examined the evidence on the record in detail and finally came to the conclusion that the grant in question was a gift pure and simple and was not a legislative Act on the part of the ruler. The High Court reasoning is as under:

> "So far as the grant in question is concerned, the exact manner in which the grant was conferred, the procedure followed for that purpose and the exact words in which it was couched are not known and cannot be ascertained from the material on records .... The only evidence about the grant is the entries in the settlement register, styled as Register of Mafi Holdings for the years 1866-1894 and 1913-14. The entries in the registers of Maufi Holdings of the year 1866 show that the grant was made by Raghuji II in 1783 in favour of Ramrao Gujar. In Column No. 10 detailed account of the State and termsof occupancy is given as follows:
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> 'Original grantee Ramrao, the father-in-law of Bannobai, the daughter of Raghuji II from whom it descended, to her husband, then Banubai's own son having been adopted by Pursoji Bhonsla as heir to the throne, she adopted her grandson Chitkojirao as her heir, he then came into possession of all the villages forming the Taluq Bhiwapur and has held them ever since.'

The remarks made by the Investigation Officer with whom the Settlement Commissioner concurred finds place in column 12 of the register and they read as follows:

> Old record show that in 1203 Fausli A.D. 1793, this village with several villages forming the talooka of Bhiwapur were granted to grantee and that they have been held in the family eversince. The grantee holds in addition to this talooks, the Mokassa village of Kodamendhi and Kundala in the Ramtek Tahsil and the Mukta villages of Deolee Bhamdalee, Peethechha its Dakhilee and Peepra in the Nagpur Tahseelee and receives besides a cash allowance of Rs. 17,415/- per annum. The grant is for support of a member of the ruling family, and I recommend that this

village be continued revenue free in perpetuity to present holder and his heirs.'

Entries in Maufi register for the years 1894-95 are practically the same. The entries in Maufi register of 1913-14 are also not very much different, except that in the entry for the year 1866, it is mentioned that the grant was for support of a member of the ruling family, while in the entries of later years the grant is considered to be for the support of the ruling family. It will also be seen from all these entries that the proposal that the grant should be continued in perpetuity revenue free to the claimant and his lawful heirs was accepted by the Settlement Commissioner and the Chief Commissioner. There is nothing in these entries to suggest that it was a legislative grant. It was a gift pure and simple made by Raghuji II at the time of his daughter's marriages. It was made in the name of Ramrao because both Banubai and her husband were minors.

Relying on the letter dated 16-12-1867 from the India Office, London, to the Governor General, it was sought to be urged on behalf of the petitioner that a fresh grant was made by her Majesty's Government, in exercise of its legislative function, in favour of Chitkojirao Gujar in respect of the subject matter of the grant of 1793. The letter reads as follows:

> 'Having considered in Council your Excellency's letter of the 23rd of May No. 94-A, Foreign Department (Political) with the enclosed correspondence. I have much satisfaction in recommending to you the sanction of her Majesty's Government to the recommendation of your Excellency in Council in favour of the proposed Grant to Chitkojirao, Babasahib Gujar, of the Bhosla Family of Nagpur and its continuance to his adopted son Kooshanjee and his lineal male issues in each generation as an act of special indulgence.'There is nothing in this letter a fresh grant was made in respect of the subject matter of grant of 1793 or that the said grant was allowed to be continued. Except this letter no other record is available to the petitioner to establish the connection of the proposed grant sanctioned by His Majesty's Government and the grant in question, Moreover, there is nothing in this letter to indicate that the sanction to the proposed grant was accorded by her Majesty's Government in exercise of her legislative functions. There is no enactment of the British Parliament sanctioning the said grant. It is, therefore, difficult to accept the contention that the grant in question was a sovereign legislative grant and that it was an existing, law as defined by Article 366(10) of the Constitution, which continued to be operative till this date by virtue of Article 372(1) of the Constitution."

8. We find no infirmity in the High Court judgment. We agree with the reasoning and the conclusions reached therein.

9. The appeal is dismissed with costs.   Appeal dismissed.

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