

Peddinti Venkata Murali Ranganatha Desika Iyengar and Others

Vs

Govt. of A.P. and Another

Writ Petn. (Civil) No. 1459 of 1987

(K. Ramaswamy, B.L. Hansaria JJ)

12.01.1996

JUDGEMENT

-
K. RAMASWAMY, J:-

1. The petitioners are challenging the constitutionality of Explanation II to Section 2(22) and Section 76 of the Andhra Pradesh Charitable and Hindu Religious Institution and Endowments Act, 1987 (30 of 1987) (for short, "the Act") in this writ petition, apart from other provisions of the Act challenge to which is decided in other connected matters. In this case we confine our consideration to the validity of the above provisions. It is contended in the writ petition and argued by Shri R. Venugopal Reddy, their learned senior counsel, that ryotwari pattas having been granted under the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act (37 of 1956) (for short, "the Inams Abolition Act") and the same having attained finality, the legislature is devoid of power under the Act to set at naught the effect of the grant of ryotwari patta to the archakas, service holders or employees covered under the Act by a legislative side-wind. It is their case that by grant of ryotwari patta in favour of the aforesaid persons, they became absolute owners of the property. The legislature, therefore is devoid of competence to make the law, employing non obstante clause, to take away their vested rights without compensation. Shri. P. P. Rao, learned senior counsel for the State, contended that since the legislature abolished hereditary rights of archakas, service holders or other employees and introduced payment of salary for them, the legislature is competent to enact Section 76 and Explanation II to the definition of endowment under Section 2 (22), divesting their title and vesting the same in the endowment or institution as the case may be.

2. Section 2(22) of the Act defines religious endowment thus:

"2(22)- religious endowments means property (including movable property), and religious offerings whether in cash or kind, given or endowed for the support of a religious institution or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof.

Explanation II:- Any Inam granted to an archaka, service holder or other employee of a religious institution for the performance of any service or charity in connection with a religious institution shall not be deemed to be a personal gift to the archaka, service-holder or employee, notwithstanding the grant or ryotwari patta to all

archaka, service holder or employee under the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 but shall be deemed to be a religious endowment."

3. A reading of the section would show that religious endowment means property including movable property given or endowed for the support of a religious institution or given or endowed for the performance of any service or charity of a public nature connected there with or of any religious charity and includes the institution connected and also the premises thereof. Any inam granted to an archaka, service holders or other employees of a religious institution for the performance of any service or a charity in connection with the institution shall be deemed to be a personal gift to the archaka, service holders or employee, notwithstanding the grant of ryotwari patta to all archakas, service holders or employees under the Inams Abolition Act, but shall be deemed to be a religious endowment. Section 76 of the Act, reads thus:

"76. Prohibition of transfer of lands granted for rendering service to a religious or charitable institution or endowment:-

(1) Where, before or after the commencement of this Act, any person has been granted ryotwari patta in respect of any inam land given to a service holder or other employee of a charitable or religious institution or endowment for the purpose of rendering service to the institution or endowment then, notwithstanding to the contrary in any other law for the time being in force or in the deed of grant or of transfer or other document relating to such land it shall be and shall be deemed never to have been granted and the lands covered by such ryotwari patta shall not be transferred and shall be deemed never to have been transferred and accordingly no right or title in such land shall vest in any person acquiring the land by such transfer and a ryotwari patta in respect of such land shall be deemed to have been granted in favour of the institution or endowment concerned and thereafter the person in possession of such land shall be deemed as an encroacher and the provisions in Sections 84 and 85 and shall apply.

(2) No ryotwari patta holder in respect of the aforesaid land shall transfer any such land and no person shall acquire any such land either by purchase, gift, lease, mortgage, exchange or otherwise.

(3) Any transfer or acquisition made in contravention of the provisions in sub-section (1) or sub- Section (2) shall be deemed to be null and void.

(4) The provisions of Section shall apply to any transaction of the nature referred to in sub-Section (2) in execution of a decree or order of a Civil Court or any order for any other authority."

4. Section 76, as amplified by its marginal note indicates prohibition of transfer of land granted for rendering service to a religious or charitable institution or endowment. Sub-Section (1) adumbrates that where, before or after the commencement of the Act any person has been granted a ryotwari patta in respect of any inam land given to a service holder or other employee of a charitable institution or endowment for the purpose of rendering service to the institution or endowment, notwithstanding anything to the contrary in any other law for the time being in force or in the deed of grant or of transfer or other documents relating to such land and shall be deemed never to have been

granted and the lands covered by such ryotwari patta shall not be transferred and shall be deemed never to have been transferred. Accordingly, no right or title in such land shall vest in any person acquiring the land by such transfer and a ryotwari patta in respect of such land shall be deemed to have been granted in favour of the institution or endowment concerned. Thereafter, the person in possession of such land shall be deemed as an encroacher and the provisions of Sections 84 and 85 of the Act shall apply. Equally, sub-Section (2) issues an injunction against the holder of ryotwari patta to transfer such land. The purchaser or a person acquiring such land either by purchase, gift, lease, mortgage, exchange or otherwise acquires no title to such land. Such a transfer was declared null and void by operation of sub- Section (3). Even an order or decree of a Civil Court or any order of any other authority would also meet the same fate by operation of sub- Section (4) thereof.

5. The competency of the legislature to make this law, its deep impact on vested rights and its sweep would be properly gazed and appreciated when we would look into the provisions of the Inam Abolition Act which is a part of agrarian reform forming part of the scheme to abolish an estate and conferment of ryotwari patta on the tiller of the soil and the institution respectively and creation of direct relationship of him with the State paying revenue assessment thereof. The Inams Abolition Act was enacted under Entry 18 of List II of the Seventh Schedule of the Constitution, viz., "Rights in or over the land, land tenure including the relationship of the landlord and the tenant, transfer and alienation of agricultural lands etc." The preamble of the Inams Abolition Act envisages "an Act to abolish and convert certain inam lands into ryotwari lands." The title of the Act itself indicates abolition of the inam lands and conversion thereof into ryotwari lands. The Act had come into force on December 14, 1956 and it has been amended from time to time Similar provision is available in Telangana area of Andhra Pradesh. Section 2(c) defines "Inam lands" to mean any land in respect of which the grant in inam has been made, confirmed or recognised by the government etc. Section 2(e) defines institution to mean a religious or charitable or an educational institution. Section 3 authorises the Tehsildar either suo motu or on an application to determine the nature of the lands, after enquiring (i) whether a particular land in his jurisdiction is an inam land; (ii) whether such land is in ryotwari, zamindari or inam village; (iii) whether such land is held by any institution. The procedure in that behalf has been provided in sub-sections (2) and (3) of Section 3 and the aggrieved persons or institution has been given right of appeal under sub-section (4) against the decision of the Tehsildar to the Revenue Court within prescribed limitation therefor. Under sub-section (5) the decision of the Revenue Court shall be final. The decision of the Tehsildar or Revenue Court is required to be published in the District Gazette under sub-section (6) and also in any other prescribed manner. The decision of the Tehsildar and the Revenue Court shall be binding, by operation of sub-section (7) on all person and institutions claiming an interest in any such person or institution has not filed any application or a statement or adduced any evidence or appeared or participated in the proceedings before the Tehsildar or the Revenue Court, as the case may be. After publication, undersub-section (6) of Section 3 the Tehsildar has been invested with power under Section 4 to convert inam land into ryotwari land. The person or institution or the tenant in occupation is declared entitled to ryotwari patta in respect of that land. The institution is entitled to 2/3 and the tenant or a person or the inamdar is entitled to 1/3 rd share of ryotwari patta. Therefore, the person, inamdar or an institution who holds the land is entitled to 2/3 and 1/3 share of ryotwari patta respectively. It has been held by the Andhra Pradesh high Court that archakas in possession of land under terms of compromise to render service cannot be regarded as inamdar and cannot obtain patta vide Sri Janardhanaswamy Veru Temple, Koperapadu, Ongole Taluk, Guntur District, represented by its Managing Trustee v. Assistant Collector, Guntur District (1964) 2 Andh WR 139.

6. Section 5 empowers re-induction of tenants who were in occupation of the inam land in inam villages as on 7th January, 1948 but were evicted from such land before the commencement of the

Inams Abolition Act and were entitled to ryotwari patta. Section 6 deals with the determination of 1/3 share of inam land in the occupation of the tenants. Section 7 deals with the grant of ryotwari patta and has material bearing on the question under consideration. It reads thus.

"7, Grant of ryotwari patta:- (1) As soon as may be after commencement of this Act and subject to the provisions of sub-Section (4) the Tahsildar may suo motu and shall, on application by a person or an institution, after serving a notice in the prescribed manner on all the persons or institutions interested in grant of ryotwari pattas in respect of the inam lands concerned and after giving them a reasonable opportunity of being heard and examining all the relevant records, determine the persons or institutions entitled to ryotwari pattas in accordance with the provisions of Section 4 and grant them ryotwari patta in the prescribed form.

(2) Any person or institution aggrieved by the grant of a ryotwari patta by the Tahsildar under sub-Section (1) may appeal to the Revenue Court within sixty days from the date of such grant, and the Revenue Court may, after giving the parties to the appeal a reasonable opportunity of being heard pass such orders on the appeal as it thinks fit.

(3) The decision of the Revenue Court under sub-Section (2) and where no appeal is filed, the decision of the Tehsildar under sub-section (1) shall be final.

(4) Where the Revenue Court declares under sub-section (2) that a person or an institution different from the person or institution to whom a Tahsildar has granted a ryotwari patta under sub-section (1) is entitled to a ryotwari patta the Tahsildar shall cancel the ryotwari patta granted by him and grant a fresh ryotwari patta in accordance with the decision of the Revenue Court under sub-section (2).

(5) In the case of inam lands held by the inamdar other than an institution in an inam village, if an application is filed under sub-section (2) of Section 5 within the period specified in that sub-section, no tenant or inamdar shall be granted a ryotwari patta under sub-Section (1) until the decision of the Revenue Court under sub-Section (3) of Section 5 or of the Collector under subsection (5) of that Section, as the case may be, is given,"

7. Section 8 gives right of permanent occupancy to the tenant in inam land held by the institution in inam village with the words "said right shall be heritable and shall be transferable by sale, gift or otherwise." Sub-section (2) if Section 8 deals with eviction of permanent tenants for failure to pay the rent and the procedure thereof. Section 9 deals with procedure for evicting the tenant having right of permanent occupancy and re-grant of lease of lands taken from tenant under Section 9 is governed by Section 10. Section 10A deals with application of the Act of inam land in ryotwari or zamindari villages. Section 10B deals with conferment of ryotwari patta on transfers of unenfranchised inams. Section 11, makes the provisions of the Andhra Tenancy Act, 1956 or the Act amended thereafter, applicable to the lands held by the permanent tenant under the Act. Section 12 prescribes the procedure and imposes liability on every person or institution receiving ryotwari patta to pay to the Government ryotwari assessment in the manner specified thereunder. Section 14 bars jurisdiction of the Civil Court over the matters covered as enumerated therein and Section 13 gives power of the Civil Court to the Tahsildar, Revenue Court and the Collector as indicated therein. Section 14A provides a revisional jurisdiction to the Board of Revenue over the orders

passed by the Tehsildar, Revenue Court or the Collector, as the case may be. Sub-Section (2) prohibits exercise thereof except on compliance with the principles of natural Justice adumbrating that no order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representation. Section 15 also has a bearing on the question in issue which reads thus:

"Act to override other laws:-

Unless otherwise expressly provided in this Act the provisions of this Act and of any orders and rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

Section 16 gives power to the Government to remove difficulties and Section 17 accords rule making power.

8. It would thus be clear that the provisions of the Inams Abolition Act are a complete code in itself providing determination of the land whether held by the institution or the individual and declaration thereof, entitlement to ryotwari patta by the individuals or institution who hold the land and the grant of ryotwari patta under Section 7 shall become final unless the same is revised under Section 14A of the Act. The inam ceases to have effect from the date of grant of ryotwari patta. The conferment of ryotwari patta creates a vested right to the property held either by the institution of the individual to the extent of 2/3 and 1/3 respectively with absolute right, title and interest in the land. The tenant in occupation is also entitled to heritable occupancy rights with right to alienate, exchange, gift etc. Thereafter, the preexisting rights and liabilities of inam ceased.

9. In *Boppudi Punniah v. Sri Lakshmi Narasimhaswamy Varu* (1963) 2 Andh WR 214, the applicability of the Act to service inams held by Office holders enjoying the inams and the right to grant of ryotwari patta had fallen for consideration. The Division Bench, after an exhaustive review of the Act, held that service inams formed a considerable proportion of inams in the Andhra area, be it in ryotwari or zamindari area. There is no justification for attributing ignorance to the legislature of the existence of this class of inams. There is, therefore, no reason to suppose that the legislature thought of keeping out of the purview of the Inams Abolition Act this class of inams, especially when the intendment of the Act was to abolish and convert inam lands into ryotwari lands. The absence of a provision enabling the authorities concerned to insist upon performance of service could not lead to the conclusion that all service inams were excluded from the purview of the enactment. Service inams also must be held as inams governed by this enactment. The ryotwari patta should, therefore, be held to have been issued to the service holders.

10. Another Division Bench of the High Court to which one of us (K. Ramaswamy, J.) was a member in *Sri Bhavanarayanawami Vari Temple v. Chintapudi Rudraiah*, (1986) 1 Andh LT 444, after exhaustive consideration of the controversy, had held that a conjoint reading of Section 7 and Form VIII and Section 12 would posit that on and from the date of the grant of the ryotwari patta, the inam extinguishes. The grantee becomes absolute owner. He is liable only to pay ryotwari assessment to the Government. No condition has been fastened therein making the grantee render service to the respondents. There is presumptive evidence that the legislature is aware of the pre-existing law and it intended to bring about alteration in the pre-existing liability by putting an end thereto and created new rights under the Act. The Act intended to extinguish the pre-existing vestige of obligation to render service running with the land and relieved the holder of the land from

the said obligation. The vested rights, therefore, cannot be divested except in accordance with the procedure established by law. Section 15 gives overriding effect over the Act though it is inconsistent with any other law or any instrument having force of law by virtue of any such law.

11. The question that arises is: Whether the legislature, by a side-wind, without suitably amending the Inams Abolition Act, as interpreted by the High Court, or repealing it, could directly nullify the said law laid by the Court and divest, under section 76 of the Act, the vested right and declare that the land was not covered by said ryotwari patta or shall not be transferred or shall be deemed never to have been transferred thereunder and would treat such persons as encroachers? It is seen that the Inams Abolition Act is a complete code in itself and gives over-riding effect to any law inconsistent there with creating vested rights over the former inam lands which ceased to exist on the grant of ryotwari patta. Being a ryoti land held by a tenant, an archaka, a service holder or other employee after grant of ryotwari patta, holds the land with absolute right to the extent of 1/3 land as an independent and absolute owner. The pre-existing relationship, in relation to the land stood terminated and direct relationship with the Government was created by imposition of ryotwari assessment. Section 12 fastens the liability to pay ryotwari settlement to the Government. Thereby, the whole of inam service existing prior to the grant of ryotwari patta ceased to have any statutory effect. The liability to render service ceased. Thereby independently, the service holder became entitled to hold the land in his own right as a holder of land held by him with absolute right, title and interest in the said land and to enjoy the property with heritable rights or right to alienation, gift over, bequeath etc. The Act did not make any direct attempt to repeal the provisions of the Inams Abolition Act. It did not directly attempt to extinguish the right, title and interest of ryotwari settlement created under the Inams Abolition Act nor acquired the same under the Act.

12. The question, in that scenario, which emerges is whether Section 76 is a valid piece of legislation, indirectly repealing the Inams Abolition Act or the judgments of that High Court referred to hereinbefore. It is settled law that repeal of an Act divesting vested rights is always disfavoured. Presumption is against repeal by implication and the reason is based on the theory that the legislation, while enacting a law, has complete knowledge of the pre-existing law on the same subject matter. In the "Principles of Statutory Interpretation" by Justice G. P. Singh, (5th Edition) 1992 at pages 186-87 under the caption "Reference to other statutes "in Chapter IV (External Aids to Construction) it has been stated that " a legislation proceeding upon an erroneous assumption of the existing law without directly amending or declaring the law is ineffective to change the law. "The beliefs or assumptions of those who frame Acts of Parliament cannot make the law" and a mere erroneous assumption exhibited in a statute as to the state of the existing law is ineffective to express an "intention" to change the law, if, by such a statute, the idea is to change the law, it will be said that "the legislature has plainly missfired". The "legislation founded on a mistaken or erroneous assumption has not the effect of making that the law which the legislature had erroneously assumed to be so." The Court will disregard such a belief or assumption and also the provision inserted in that belief or assumption. A later statute, therefore, is normally not used as an aid to construction of an earlier one."

13. In *Sarwan Singh v. Kasturi Lal* (1977) 2 SCR 421:(AIR 1977 SC 265), the facts were that Section 19 of the Slum Area Improvement and Clearance Act, 1956, with a non obstante clause, provided overriding effect to any other law being enforced in slum area. No person except with the previous permission in writing of the competent authority could institute any suit or proceeding for obtaining any decree or order for eviction of a tenant from any building in slum area. The procedure in that behalf had been provided. Chapter IIIA of the Delhi Rent (Control) Act was enacted. Section 14A, 25A, 25B and 25C were brought on statute. Section 144 with non obstante clause, empowered

the landlord to require his own building for residential accommodation when he was asked to vacate the land allotted by the Government. The question arose: which of the two provisions occupying the same field, would prevail? At page 433, this Court held that speaking generally, the object and purpose of a legislation assume greater relevance, if the language of the law is obscure for resolving inter se conflicts. Another test may also be applied, though the persuasive force of such a test is one of the factors which combine to give a similar meaning to the language of the law. The test is that the latter enactment must prevail over the earlier one in the case of conflict. Accordingly, it was held that when two or more laws operate on the same field and each contains a non obstante clause, case of conflicts has to be decided with reference to the object and purpose of the law under consideration. In that case, the landlord who was in Government house was directed to vacate the house. Special procedure in Chapter IIIA was provided to mitigate the hardship to the landlord and to have eviction of his tenant from a premises situated in slum area for his personal occupation. To give effect to the legislative object, in view of the conflict by employing double non obstante clause in the respective provisions occupying the same field, this Court had given effect to legislative intention by harmonious interpretation of both provisions by reconciling the two inconsistent provisions and held that the landlord was entitled to evict his tenant under section 14A, despite the special protection given under the Slum Improvement Act.

14. The ratio has no application to the facts situation. The provisions in the Delhi Rent Act are procedural format for evicting a tenant from a building situated in a slum area covered by the Rent Act. But the Inams Abolition Act occupies an entirely different field and has given absolute right, title and interest over the land held by an archaka, service holder or employee etc. Section 76 of the Act by indirect process, without directing repeal of the Inams Abolition Act or divesting the title, which became final after conjunction into ryotwari land, attempted to defeat them.

15. In *Income-tax Officer, Kanpur v. Mani Ram* AIR 1969 SC 543 at 548 para 8, this Court had held that, generally speaking, a subsequent Act of Parliament affords no useful guide to the meaning of another Act which came into existence before the later one was framed. Under special circumstances, the law does, however, admit of a subsequent Act to be resorted to for this purpose but the conditions under which the later Act may be resorted to for the interpretation of the earlier Act are strict; both must be laws on the same subject, and the part of the earlier Act which is sought to be construed must be ambiguous and capable of different meanings. In *Inland Revenue Commissioners v. Dowdall, O'Mahoney and Co. Ltd* (1952 AC 401), Lord Redcliffe had held that the beliefs or assumptions of those who frame Acts of Parliament cannot make the law. In *Nalinikant Ambalal Mody v. Commr. of Income-tax, Bombay*, AIR 1967 SC 193 at 203, this Court further had reiterated that an Act of Parliament does not alter the law by merely betraying the erroneous opinion of it. In *Hariprasad Shivshanker Shukla v. A. D. Divelkar* AIR 1957 SC 121 at 131, a Constitution Bench construing the effect of two enactments and the meaning to be assigned to the word 'retrenchment' or a closure of an establishment on the point of Parliamentary exposition had held that the earlier enactment was preferred to the latter enactment covered under the Industrial Disputes Act; so, Industrial Disputes (Amendment and Miscellaneous Provisions) Act (36 of 1956) was preferred to the Industrial Disputes (Amendment) Act (41 of 1956).

16. It would thus be clear and we hold that without amending the law under Inam Abolition Act and without properly removing the foundation of the judgments rendered by the High Court, the legislature sought to destroy the effect of the law in Inam Abolition Act on erroneous belief or assumption that it did not bind the religion or charitable institutions or endowment or that the holder of land did not acquire title or no patta was granted to him and the land was still with the institution and treated the occupant as encroacher. The legislation founded on such an erroneous assumption

does not have the effect of depriving the holder of the land or their vested rights acquired under the Inams Abolition Act. The legislature has plainly misfired. Accordingly, we hold that Section 76 and Explanation II to Section 2(22) of the Act to that extent are invalid and unconstitutional.

17. The writ petition is accordingly allowed, but, without costs.

Petition allowed.