SUPREME COURT OF INDIA

STATE OF ANDHRA PRADESH & ORS.

Vs.

NALLAMILLI RAMI REDDI & ORS.

29/08/2001

(S. Rajendra Babu & Brijesh Kumar)

Appeal (civil) 3694-3748 of 1996

JUDGMENT

RAJENDRA BABU, J. :

In a batch of writ petitions filed in the High Court of Andhra Pradesh the constitutional validity of Section 82 of the Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Act, 1987 [hereinafter referred to as the Act] was challenged. The learned Single Judge who heard these matters held that sub-section (1) of Section 82 of the Act is arbitrary and ultra vires of Articles 14 and 21 of the Constitution to the extent of lessees who are marginal or small farmers, are not excluded from its effect while sub-section (2) was declared to be unconstitutional in its entirety. The matter was carried in appeal to the Division Bench. The Division Bench concluded that Section 82(1) of the Act is violative of equal protection clause of the Constitution inasmuch as the provisions of Section 82 singles out the tenants of the lands held by religious institutions or endowments resulting in putting an end to their tenancy rights; that the said classification was not only unreasonable but also it had no nexus to the object sought to be achieved (i) as to payment of rent or augmentation of the revenue of the religious institutions inasmuch as the rents stood frozen by reason of the Tenancy Acts in force in the State of Andhra Pradesh; (ii) that sale of lands is not a feasible proposition; (iii) that there is no exclusion of application of the tenancy Acts and the lands held by religious institutions or endowments in treating the tenants in question differently suffers from the vice of discrimination by putting an end to their leases. For the aforesaid reasons, sub-section (1) of Section 82 was declared void as violative of Article 14 of the Constitution. While the question as to the enforceability of Section 82(2) of the Act is concerned, the Division Bench observed that sub-section (2) puts an end to tenancy rights of the landless poor persons too though in name sub-section (2) purports to save them from the cancellation. The learned Judges of the Division Bench proceeded to illustrate that if the land is held by two persons A and B who do not own any land of their own and A is a tenant of a land of an extent of Ac.2-50 cents. wet., B is also a tenant of a land of an extent of Ac.2.60 cents. wet. While A is a landless poor person and is saved from cancellation, B would not be such a landless person. To avoid discrimination between these persons, the Legislature ought to have provided that in the case of B his lease would not stand terminated to the extent of Ac.2-50 cents wet and that he would be entitled to purchase to the extent of Ac.2-50 cents in accordance with sub-section (2) and not providing for such a situation amounts to discrimination between two similarly placed persons. The learned Judges thereafter proceeded to hold what we have adverted to earlier that the object of augmentation of revenue of the institutions and endowments is not realistic. However, the learned Judges did not go into the question as to the

meaning of marginal or small farmers and did not find it necessary to examine the contention of the State that the learned Single Judge had, in fact, legislated to the extent of introducing the concept of marginal or small farmers into Section 82 inasmuch they have held the entire sub- section (1) to be void. The Division Bench also noticed that though there is no appeal by writ petitioners inasmuch as the constitutionality of the enactment was involved and when the learned Single Judge had struck down certain provisions, their reasons were sufficient to sustain the same. The Division Bench also did not consider it necessary to express any opinion as to whether it is competent for the Legislature to put an end to the tenancy rights and whether such cancellation is violative of Article 19(1)(g) of the Constitution or not. On that basis, after making a declaration of law in the manner stated above, the Division Bench dismissed the appeals filed by the State. Hence these appeals by special leave.

The Division Bench of the High Court found that the classification is unreasonable inasmuch as all tenants except those who are defined to be landless poor tenants are covered by Section 82 and such classification has been made which has no nexus to the object to be achieved, namely, augmentation of income to the institutions in question and better management of the properties. One of the reasons given by the Division Bench of the High Court to reach this conclusion is that the tenancy Acts, namely, the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 [hereinafter referred to as the Andhra Act] and Andhra Pradesh (Telangana Area) Tenancy and Agricultural Land Act, 1950 [hereinafter referred to as the Telangana Act] are still in force. These enactments have not been excluded in the application to lands held by tenants of the agricultural lands of the institutions in question. Therefore, the view of the High Court is that the rents are frozen and eviction of the tenants are not possible and unless the operation of the Tenancy Acts are excluded insofar as the lands held by the institutions in question are concerned, the objectives cannot be fulfilled. It would only result in displacing one tenant by another tenant and would not achieve the objectives of the Act. Thus there is no nexus in making the classification.

Smt. K.Amreshwari, learned Senior Advocate appearing for the appellants, strongly contended that this approach of the High Court is plainly unsustainable in view of the fact that the law on the matter is very clear that charitable or religious institution or endowment fall into a separate category and form a class by themselves. She submitted that such tenants coming under them also form separate class and they can be treated differently from others; secondly, she submitted that in striking down the provisions of Section 82 of the Act, the High Court has unnecessarily relied upon far too much on the tenancy laws in force in the State to fetter the legislature in cancelling the existing agricultural leases and lands belonging to charitable or religious institution or endowment. The High Court, she complained, has speculated on the outcome of the impugned legislation and proceeded to hold that there is no reasonable connection with the object of the enactment in the absence of any material other than the laws in force in the State which would not indicate as to the type of tenants who are holders of leases under consideration, the rent payable by them, what rent the lands would fetch after the lands are resumed by the charitable or religious institution or endowment, possibility of sale or self cultivation. The judgment of the High Court is based on conjectures and surmises unsustainable in law and they are not strong reasons to invalidate a law.

Shri L.Nageswara Rao, learned Senior Advocate appearing for the respondents, however, urged that the view taken by the High Court gives recognition to the ground realities by reference to the appropriate legislations in force in the State such as tenancy laws and we should not ignore the same and interfere with the order of the High Court. He submitted that all tenants covered by the tenancy laws in the State of Andhra Pradesh fall into one category and to distinguish them on the basis that the lands are held by religious institutions will lead to hostile discrimination particularly when the object of classification is not fulfilled. He pointed out that there are about 40,000 tenants holding

about 3,20,000 acres of land and the measure adopted in enacting Section 82 of the Act is drastic resulting in deprivation of their leases without practical benefit to the institutions as noticed by the High Court. Hence, he very forcefully urged that we should not interfere with the order of the High Court. He submitted that we should take note of every circumstance available such as matters of common knowledge, history, antecedent legislation, social conditions, impact of other law on the impugned law in judging whether the same would be violative of Article 14 of the Constitution.

The legislation in question is preceded by a report made by a Commission headed by Justice C.Kondaiah, former Chief Justice of the Andhra Pradesh High Court. It was noticed in para 1.18.1 of the said report as under:

It is stated that all concerned who are interested in the charitable or religious institutions have stated that the temple authorities are facing innumerable difficulties in the management of the landed properties of the institutions, the income is very meagre, not worth-mentioning, and in some cases it is nil, although the institution owns large extent of lands. Reasons thereof is the provisions of the Tenancy Act, attitude of the persons in possession and enjoyment for several years, the lands belonging to these institutions are mostly in the hands of the rich and powerful sections against whom the concerned authorities are experiencing difficulties to dispossess them from the lands. The trustees or archakas are in enjoyment of the lands kept Benami in the names of their relations, etc. The authorities also are in the collusion with them. The rents paid by the tenants are nominal fixed decades back. The Estimates Committee also expressed the same opinion.

It is thereafter the Act in question was brought in force and in the Statement of Objects and Reasons, inter alia, it was stated as follows:

A provision is also made to terminate the lease held by persons other than landless poor persons and to enable landless persons to purchase the lands already held by them on lease.

Section 82 has the effect of cancelling all leases of agricultural lands belonging to the institutions subsisting on the date of commencement of the Act notwithstanding any other law in force. However, such cancellation will not affect leases held by landless poor persons. Landless poor person is identified by the Act as a person whose total land held by him, either as owner or as cultivating tenant or as both, does not exceed two and a half acre of wet land or five acres of dry land. In respect of leases held by landless poor persons for not less than six years continuously such persons are given the right to purchase such land on payment of 75% of prevailing market value being payable in four equal instalments as may be prescribed. If, however, such landless poor persons fail to purchase the land as aforesaid or is unwilling to purchase the land, the lease shall be deemed to have been terminated. Rules have to be made providing for the authority competent to sanction the lease or licence in respect of properties belonging to charitable and religious institutions/endowments and also provide for other terms and conditions. This provision has no effect upon leases or licences of immovable properties other than agricultural lands.

What Article 14 of the Constitution prohibits is class legislation and not classification for purpose of legislation. If the legislature reasonably classifies persons for legislative purposes so as to bring them under a well-defined class, it is not open to challenge on the ground of denial of equal treatment that the law does not apply to other persons. The test of permissible classification is two fold : (i) that the classification must be founded on intelligible differentia which distinguishes persons grouped together from others who are left out of the group, and (ii) that differentia must have a rational connection to the object sought to be achieved. Article 14 does not insist upon

classification, which is scientifically perfect or logically complete. A classification would be justified unless it is patently arbitrary. If there is equality and uniformity in each group, the law will not become discriminatory, though due to some fortuitous circumstance arising out of peculiar situation some included in a class get an advantage over others so long as they are not singled out for special treatment. In substance, the differentia required is that it must be real and substantial, bearing some just and reasonable relation to the object of the legislation.

We may notice the effect of the two Tenancy Acts in force in the State of Andhra Pradesh. Under Section 18(2) of the Andhra Act provisions of Sections 3 to 7 are made inapplicable to leases of lands belonging to or given or endowed for the purpose of any charitable or religious institution or endowment falling within Section 74(1) of the A.P.Act 17 of 1966. Section 18(2) of the Andhra Act further provides that rent payable by the tenants in respect of such property will be the rent in force at the commencement of the Andhra Tenancy (Amendment) Act, 1974 and where reasonable rent has been fixed under Section 74(1)(e) of the A.P.Act 17 of 1966, such reasonable rent. Sections 3 to 7 of Andhra Act provide for maximum rent payable by tenants, prescribe the form of agreement of tenancy, provide for determination of rent, and also for deposit of rent during the pendency of proceedings for fixation of fair rent. All other provisions including Sections 8 to 16 of the Andhra Act do apply to leases in question.

Insofar as the Telangana Act is concerned, it exempted from its operation inams held by charitable or religious institution or endowment as well as service inam lands. Inams were abolished in the Telangana area of the State in 1955 and that process was completed in 1973. By Amendment Act of 1985, all such inams have also been brought within the purview of the Act and abolished and that resultant position is that none of the charitable or religious institution or endowment in the Telangana area are exempt from the operation of Hyderabad Act 21 of 1950.

The Division Bench in reaching the conclusion that Section 82 is unconstitutional held that the two tenancy Acts in force in the State of Andhra Pradesh are still applicable to the institutions covered by the Act and, therefore, the object of the enactment of Section 82 will not be fulfilled. The Division Bench also noticed that there is no overriding effect given to the Act. In effecting the agrarian reforms, the major programme of the Government has been to protect the tenants by securing them a permanent tenure of the land and freezing the rent or conferring a right upon them to purchase the land at certain sum which is far below the market rate and the right of the landlord to evict them would be severely restricted and that too by initiating proceedings before special Tribunals. Under the Telangana Act, the rent does not exceed five times of the land revenue and in case of wet lands irrigated by wells it is only three times the land revenue, while in case of dry lands it is four times the land revenue. Though a maximum rent had been prescribed under the Andhra Pradesh Act, the same will not be applicable in view of Section 18(2) of the Act to which we have already adverted to. The Andhra Pradesh Tenancy Act had granted perpetuity in so far as leases were concerned. The Division Bench was impressed by the fact that Section 82 is the first attempt to undo the right of tenants in respect of agricultural lands held by institutions or endowments governed by the Act. The learned Judges stated that protecting the right of tenants is equally important just as protecting the interest of the institutions or the endowments. Cancellation of the tenancy, by itself, will not achieve the ends. First, the High Court considered whether augmentation of income is possible in view of the rents having been frozen which was obtained on the date of the commencement of the Andhra Pradesh Tenancy Act, 1974. They felt that it is not possible to augment the income of the institutions at all. Except referring to the enactments arising under the tenancy Acts, there is no material before the High Court to support the view as to what are the rents payable at present and what would be the rent that becomes payable after the leases are put to an

end in terms of Section 82 of the Act and fresh tenancies commence if the lands are leased to others as provided under the provisions of the Act. When the material is not clear before the court, the court cannot hazard a guess as to the manner in which the enactment would operate. How the tenancy Acts will have effect upon the new tenancies would be a matter to be worked out appropriately. Therefore, at the stage of enacting Section 82 or examining its constitutional validity, the High Court could not have proceeded to hold that unless the operation of the tenancy Acts are excluded the objectives of enactment cannot be achieved. It is possible under the new Rules to be framed that the Government may proceed to grant leases or licences only to small or marginal holders of lands as may be found by them suitable to cultivate the land thereby freeing the lands from the grip of rich and powerful persons. Therefore, at this stage, again to state that the purpose of the enactment of freeing the lands from the grip of rich and powerful persons cannot be achieved is not correct. The learned Judges have felt that it is possible for the old tenants themselves to get back the possession of the lands in question. But, that is as good a guess as against other possibilities, which we have suggested. Therefore, that will not be a permissible ground to strike down the law. Wherever possible, some of these lands which are not within the manageable limits of the concerned religious institutions may be sold in the manner prescribed in Section 80 of the Act or may be leased out by them, as the case may be, like a prudent owner or manager of the property. The High Court proceeded to consider further that cultivation of these lands by these institutions would not be feasible. We fail to understand as to how it can be stated so. It is certainly possible if the institutions hold large holdings of land to have a department in the institutions to get the lands cultivated and to expect that the very same incidence and consequences will follow as were applicable earlier prior to coming into force of Section 82 of the Act does not, therefore, appeal to us. Whether a tenancy Act should be applicable to a religious institution or should be kept out of it is not a matter for the court to decide. How far a tenancy Act is applicable to a religious institution and to what extent it should be limited is a matter for the legislature to decide. But such a policy should not be irrational. We do not think on that basis, we can interfere with the validity of the Act.

It is plain that religious institutions fall into a separate class and lands held by them have a special character in respect of which tenancies had been created and these tenancies are sought to be put to an end to for resumption of lands for better management thereof. It is clear that the tenants under the religious institutions form a special class by themselves and such classification is made, so far as tenants are concerned, to achieve the object of protecting the interests of the religious institutions. Therefore, we do not think, any of the principles which result in hostile discrimination would be applicable to the present case.

So far as the validity of Section 82(1) in classifying the landless poor persons is concerned, the High Court felt that the provisions themselves are inconsistent and that the illustration given by them, to which reference has already been made earlier, will show how discrimination will result. It is settled law that it is open to the legislature to state as to who should be exempt from the application of the law and, in the present case, there is definition of landless poor person whose total extent of land held by him either as owner or as cultivating tenant or as both does not exceed two and half acres of wet land or five acres of dry land having been identified as landless poor person and he is enabled to purchase the land at 75% of the prevailing market value by paying in four equal instalments as may be provided under the Rules. Therefore, that aspect of saving the small land holders cannot be objected to nor can the meaning of landless poor person be enlarged, as has been sought to be done by the learned Single Judge. If, however, the said landless poor persons are not willing to purchase the land or fail to purchase such land, the lease would lapse. This latter provision cannot be held to be inconsistent with the earlier provisions as has been held by the High Court because that is a consequence flowing from the fact that such landless poor person is either not anxious to purchase

the land or fails to do so. The validity of an enactment cannot be judged by fortuitous circumstance arising out of peculiar circumstances. Therefore, that reasoning of the Division Bench is also faulty.

None of the learned counsel appearing in the case supported the view taken by the learned Single Judge. Therefore, we do not propose to examine the same.

We may sum up the upshot of our discussion:

1. That charitable or religious institution or endowment fall into a separate category and form a class by themselves. If that is so, tenants coming under them also form separate class. Therefore, they can be treated differently from others;

2. In operation of the Act it is possible that it may result in hardship to some of the tenants but that by itself will not be a consideration to condemn the Act;

3. The manner in which the charitable or religious institution or endowment would deal with the properties that are resumed after the provisions of Section 82 of the Act come into force by cancelling the existing leases is in the region of speculation.

4. Fresh tenancy can be entered into and there is no material before the court as to what was the rent paid by tenants at the time when the Act came into force in terms of Section 18(2) of the Act or as provided under the Andhra Act or under the Telangana Act. In the absence of a such material, it would be hazardous for the court to reach any conclusion one way or the other to state that the tenants would be frozen and, therefore, there is no likelihood of charitable or religious institution or endowment getting higher rents. If there is no material one way or the other, the presumption that the Act is good should prevail.

5. It is a matter of policy with the legislature as to whether all provisions of the tenancy Acts should be exempt in its application to the charitable or religious institution or endowment in their entirety.

6. The identification of landless poor persons and protection given to them is justified as enunciated earlier.

7. It will be very difficult to predict at this stage that the result of Section 82 of the Act would be so hazardous as not to achieve the object for which it was enacted. It would not only result in displacing the old tenants by new tenants, it may also achieve other social objectives in another manner. If appropriate provisions are made under the Rules and if the leases are given to small holders of land, another social objective could be achieved.

8. In what manner charitable or religious institution or endowment would deal with matters of this nature is a mere guess work at this stage. On some hypothetical approach the High Court could not have declared a law to be invalid.

In the light of the discussion made above, we hold that the tenants of the institutions in question fall into a separate class which is identifiable. If that is so, what is to be next considered is whether the cancellation of the lease in their favour would achieve the objectives of the Act. We have demonstrated that there is no material before the court to show that such cancellation would not carry out the purposes of the Act, whether the legislature should have gone ahead to exclude the applicability of the Tenancy Acts in their application to the charitable or religious institution or endowment is another matter.

Thus, the order under appeal shall stand set aside and the writ petitions filed by the parties shall stand dismissed. However, it is made clear that the undertaking given to the Court that while the writ proceedings were pending no steps would be taken for evicting the tenants holding the lands at present until appropriate Rules are framed shall be binding on the appellants and will hold good even now.

Subject to these observations, the appeals stand allowed. However, in the circumstances of the case, there shall be no order as to costs.

W.P. (C) NOS. 1429/1987 AND 120/2988

Certain additional contentions have been raised on behalf of the petitioners in the other two writ petitions to the effect that Section 80 would not be applicable to agricultural lands while Section 82 refers only to agricultural lands and whether the lands in question could be sold by the charitable or religious institution or endowment themselves would be doubtful. The learned counsel also contended that cancellation of leases of all tenancies is arbitrary inasmuch as the protection given under the Andhra Act and the Telangana Act being different, the tenants could not have been classed into one category. He next contended that tenancies are inheritable and in such a situation without paying compensation could not have deprived the rights to the same. He also submitted that Section 38-E of the Telangana Act provides for conferment of ownership rights to tenants in question and this aspect has not been considered by the High Court. He further contended that the livelihood of the tenants being deprived, the provision is violative of Article 21 of the Constitution. He also drew our attention to Article 31A of the Constitution to contend that the tenants in question are entitled to compensation.

We need not delve deep into the operation of Section 80 of the Act and whether it is applicable to the lands in question or not and as to the manner the lands would be dealt with by the charitable or religious institution or endowment on resumption thereof after cancellation of the leases. It is possible to read that Section 80 of the Act is an independent provision though falling under Chapter X with the heading Alienation of any Immovable Property and Resumption of Inam Lands and contention advanced on behalf of the Petitioners is that there is a discernable difference between the applicability of the Act which is for agricultural lands and other properties and Section 80 of the Act which is applicable to only other properties. Prima facie, Section 80 of the Act does not appear put such a restriction. The tenants covered either by the Andhra Act or the Telangana Act may fall into two different categories but insofar as their holdings with reference to the institutions are concerned, they fall into the same category. Therefore, the aspect that they had different kinds of rights arising under different enactments and make them distinct class in the present circumstance will not be of much relevance. Therefore, this contention also does not hold water. The question of tenancy being inheritable or not would arise if the leases are maintained but if the leases are themselves cancelled, such a question will not arise at all. Conferment of ownership under Section 38E of the Telangana Act has no relevance to the present case at all inasmuch as if the proper procedure has been adopted and the proceedings have reached the logical end, the tenant would become the owner of the land. Therefore, Section 82 would not be attracted to such a situation but if the proceedings have not been terminated and a tenancy continues to be in force, Section 82 of the Act would be attracted to such a case. This contention based on Section 38-E of the Telangana Act is untenable.

The arguments relating to livelihood also have no legs to stand. The object of the Act is to resume lands in the hands of existing tenants for better management. After resumption some tenants may be dependent on the land leased to them by the charitable or religious institution or endowment but it

cannot be said that was the only land held by them and that was the only avocation carried on by them, the objectives of the cancellation of the land is not to deprive anyone of his livelihood but, on the other hand, it is the better management of the properties belonging to the charitable or religious institution or endowment. The incident that the same may result in hardship to some of the tenants will not be a ground to say that it deprives them of their livelihood.

The next argument of the learned counsel based on Article 31A of the Constitution, in our view, is entirely unfounded. Article 31A provides for granting certain enactments immunity from attack under Articles 14 and 19 of the Constitution. That is not relevant in the present context at all inasmuch as no such exercise has been undertaken by the State.

Therefore, we find no merit in any one of the contentions raised on behalf of the petitioners. The writ petitions, therefore, stand dismissed. No costs.