ALLAHABAD HIGH COURT

Durga Prasad

Vs.

Board of Revenue

Civil Misc. Writ No. 3755 of 1966
(G.C. Mathur, J.)

09.12.1968

ORDER

G.C. Mathur, J.

The petitioner is the zamindar of plots Nos. 1616 and 1617 which lie within the municipal limits of Saharanpur. On August 13, 1946, he executed a registered lease of these two plots for 20 years at a yearly rent of Rs. 1,000 in favor of one Babu Ram. On a portion of these plots stood two Kothas and a pucca well. The lease was given for the purpose of construction of buildings on the land. Babu Ram transferred his lease rights in favor of Ram Singh and Pratap Singh who, in their turn, transferred the rights in favor of Hari Ram and Labh Chand. Labh Chand transferred his rights in favor of Gopal Das. The lessee constructed a rice mill and other pucca constructions on the land and these constructions still stand.

2. After the U. P. Urban Areas Zamindari Abolition and Land Reforms Act, 1956 (hereinafter referred to as the Act) came into force, a notification was published by the State Government under Section 3 of the Act for demarcating the agricultural area in district Saharanpur. In the original proposals issued by the Commissioner, these two plots were not included in the agricultural area. Respondents Hari Ram and Gopal Das, thereupon, filed objections under Section 4 (3) of the Act before the Demarcation Officer that these two plots should also be included in the agricultural area. The Demarcation Officer referred the matter to the Additional Commissioner. By order dated January 10, 1966, the Additional Commissioner held that the plots, even though buildings stood thereon, were agricultural area as contemplated by Section 2 (i) (d) of the Act and directed that they so demarcated. Against this order, the petitioner filed an appeal before the Board of Revenue. It was urged by the petitioner that, under Section 2 (1) (d), an area would be agricultural area only if buildings had not been erected on it. The Board did not accept this contention and, on September 19, 1966, dismissed the appeal. The petitioner now challenges these two orders.

3. The case has been ably argued by Sri G. N. Verma, learned counsel for the petitioner, and he

has also collected much useful material and placed it before the Court. In order to appreciate the arguments, it is necessary to set out the relevant provisions of the Act. Section 2 is the definition section and sub-section (1) thereof, which defines "agricultural area", is in these words :-

> "2(1) 'Agricultural area' as respects any urban area means an area which, with reference to such date as the State Government may notify in that behalf, is-
> (a) in the possession of or held or deemed to be held by an intermediary as sir, khudkasht or an intermediary's grove;
> (b) held as a grove by or in the personal cultivation of a permanent lessee in Avadh; or
> (c) included in the holding of-
> (i) a fixed-rate tenant,
> (ii) an ex-proprietary tenant,
> (iii) an occupancy tenant,
> (iv) a tenant holding on special terms in Avadh,
> (v) a rent-free grantee,
> (vi) a grantee at a favorable rate of rent,
> (vii) a hereditary tenant,
> (viii) a grove-holder,
> (ix) a sub-tenant referred to in subsection (4) of Section 47 of the U. P. Tenancy Act, 1939; or
> (x) a non-occupancy tenant of land other than land referred to in sub-section (3) of Section 30 of the U. P. Tenancy Act, 1939, and is used by the holder thereof for purposes of agriculture or horticulture:
> Provided always that land which on the date aforesaid is occupied by buildings not being 'improvements' as defined in Section 3 of the U. P. Tenancy Act, 1939, and land appurtenant to such buildings shall not be deemed to be agricultural area.
> (d) held on lease duly executed before the first day of July, 1955, for the purposes of erecting buildings thereon; or
> (e) held or occupies by an occupier.
> "Explanation- An area, being part of the holding of a tenant, shall not be deemed to have ceased to be agricultural area by reason merely that it has not been used, during the seven years preceding the commencement of this Act, for raising crops or other agricultural produce".

Section 3 provides that the State Government may, with a view to acquisition under the provisions of the Act of the rights, title and interest of intermediaries in urban areas, direct, by notification in the official Gazette, that the agricultural area situated in any such area be demarcated. It further provides that, on the publication of the notification, the Demarcation Officer shall made inquiries and shall determine and demarcate the agricultural area. Section 4 provides for the publication of preliminary proposals and for the filing of objections against those proposals. The final demarcation is provided for in Section 5. Section 8 provides that, after the

agricultural area has been demarcated, the State Government may, by notification in the official Gazette, declare that such area shall vest in the State. Section 10 provides for the consequences of vesting. Section 17 provides for the settlement of certain lands with intermediaries or cultivators as bhumidhars. Clause (b) of sub-section (1) of this section reads :-

> "17(1) Subject to the provisions of Sections 16 and 18-
> (a) .....
> (b) all lands in an agricultural area held on lease duly made before the first day of July, 1955, for the purpose of erecting building thereon, shall be deemed to be settled by the State Government with such intermediary, lessee..... who shall, subject to the provisions of this Act, be entitled to take or retain possession as a bhumidhar thereof".

Section 19 makes provision for the conferment of asami rights. Clause (j) thereof provides that notwithstanding anything contained in the Act, every person who, on the date immediately preceding the date of vesting, occupies or held land in an agricultural area as a sub-lessee from a person holding land under a lease referred to in Clause (b) of sub-section (1) of Section 17 shall be deemed to be an asami thereof. Section 20 (1) empowers a person who has become a bhumidhar under Section 17 (1) (b) to make an application for the ejectment of the asami under Section 19 (j) on the ground that he wants the land for purposes of erecting buildings thereon,

4. Learned counsel for the petitioner has contended that, if the words of Clause (d) of Section 2 (1) are literally construed as they stand and it is held that Clause (d) includes an area which is covered by buildings, then it would result in serious anomalies as well as discrimination. He further contends that such an interpretation would be against the object and intention of the Legislature. It is apparent that it would be doing violence to the ordinary meaning of the expression "agricultural area" to include built-up areas in it. One result of accepting the interpretation put on Clause (d) by the Board of Revenue and supported by the lessees would be that, under Section 17 (1) (b), bhumidhari rights, which are essentially cultivatory rights, will be conferred in respect of an area which is covered by buildings or which may be lying parti and is not under cultivation at all. It will also result in this inconsistency that whereas, under Clause (c) where admittedly agricultural plots in possession of agricultural tenants are occupied by buildings not being improvements, they will not be included in the agricultural area, whilst, admittedly non-agricultural plots, upon which buildings stand, will be included in the agricultural area. Lastly, such an interpretation will result in discrimination in two ways: First, such areas, on which buildings have been constructed by lessees holding under leases duly executed before July 1, 1955, will become agricultural areas, but areas, on which buildings have been constructed by the zamindar himself or by licensees or by lessees holding otherwise than on lease duly executed before July 1, 1955, will not be included in the agricultural area. Secondly, in the urban areas, the rights of landlords, who have granted similar leases but to whom the Act is not applicable, will remain intact, whilst the rights of the landlords (zamindars), to whom the Act applies, will be abolished.

5. The question is whether the Legislature intended such consequences. The long title of the Act is:

> "An Act to provide for the abolition of zamindari system in agricultural areas situate in urban areas in U. P., and for the acquisition of the rights, title and interest of intermediaries between the tiller of the soil and the State in such areas and for the introduction of the land reforms therein."

The preamble to the Act reads:

> "Whereas it is expedient to provide for the Abolition of Zamindari system in agricultural areas situate in Urban Areas in U. P. and for the acquisition of the rights, title and interest of intermediaries between the tiller of the soil and the State in such areas and for the introduction of the land reforms therein."

The long title and the preamble show that the Act deals only with agricultural areas falling within a municipality, a notified: area or a cantonment. "Agricultural area" here means agricultural area as commonly understood. The aim and object of the Act is to acquire the rights of intermediaries in the agricultural areas where they stand between the State and the tiller of the soil. The further object is to introduce land reforms in the agricultural area. None of these objects can be achieved by holding that agricultural area includes an area covered by buildings. In such areas, the zamindar does not stand, in the position of an intermediary between the State and the tiller of the soil. Equally, no land reforms can be introduced in such an area.

6. The history of the legislation shows unmistakably that it was never intended to abolish the rights of the zamindars in areas which were covered by buildings or which were parti. The U. P. Urban Areas Zamindari Abolition and Land Reforms Bill, 1955, was first published in the Extraordinary Gazette dated August 6, 1955. Para. 2 of the Statement of Objects and Reasons accompanying the Bill states:

> "2. This Bill provides for the acquisition of the rights of intermediaries in lands situate within urban limits and held either by tenants, rent-free grantees, grantees at favorable rates of rent and groveholders or by intermediaries as 'sir', khudkasht or groves and also for the introduction of land reforms similar to those that have been brought into force in the rural areas. The Bill does not seek to interfere with the possession and rights in the built-up or uncultivated areas. In order to obviate hardship to lessees who have taken leases of land for building purposes after a particular date, but 'have let it out temporarily for cultivation', it has been provided in the Bill that such lessees will be able to eject their subtenants and utilise the land for building purposes."

(Underlined (here into ' ') by me).

The Bill did not contain either Clause (d) or Clause (e) of Section 2 (1). It, however, contained Section 17 (1) (b) in the same form as it is in the present Act. Section 19 (j) was also in the same form in the Bill. But there was no provision in the Bill corresponding to the present Section 20 (1). The Bill was introduced in the Legislative Assembly on August 19, 1955. The Bill was referred to a Joint Select Committee. The Joint Select Committee made certain changes in the Bill The report of the Joint Select Committee and the Bill, as amended by it (hereinafter referred to as the Amended Bill) were published in the U. P. Gazette dated February 4, 1956. Clause (d) of Section 2 (1) and Section 20 (1) were incorporated in the Amended Bill by the Joint Select Committee. Clause (d) was introduced in the following form :- The Amended Bill was placed before the Legislative Assembly and was passed on September 3, 1956, in the same form in which it had been submitted by the Joint Select Committee. In paragraph 6 of the counter-affidavit of Sri Narain Prasad filed on behalf of the State Government, it is admitted that the Bill, as amended by the Joint Select Committee, was considered and passed by the U. P. Vidhan Sabha on September 3, 1956, without any amendment. After a Bill is passed by the Legislative Assembly, the Secretary of the Assembly is required to re-number the clauses, revise and complete marginal notes and to make purely formal, verbal or consequential amendments. In exercise of his power to make formal amendments, the Secretary deleted the following words from Clause (d) of Section 2 (1) :-

This fact is admitted in paragraph 8 of the counter-affidavit of Sri Narain Prasad. Thereafter Clause (d) read thus :-

The Secretary probably thought that, by introducing the word the implications of the word the as defined in Section 2 (9). will be brought in. The Bill, as passed by the Legislative Assembly and as formally amended by the Secretary, was moved before the Legislative Council on December 26, 1956. It may be mentioned that the Bill was moved by the Hon'ble Minister for Agriculture and he read out to the Council the same Statement of Objects and Reasons which accompanied the original Bill and para. 2 of which has been set out above. In paragraph 10 of the counter-affidavit of Sri Narain Prasad, it is admitted that the Legislative Council passed the Bill on December 26. 1956, without any amendment. Thereafter the Bill received the assent of the Governor and of the President. From these facts it is abundantly clear that the Legislature never intended to include areas, which were either parti or were covered by buildings, within the purview of the Act. The Legislature adopted Clause (d) of Section 2 (1) in the form in which it was introduced by the Joint Select Committee. At no stage did it manifest any intention to alter it. It appears that the Secretary of the Legislative Assembly made certain changes in Clause (d) apparently as he thought that those changes will not alter the substance or meaning of the clause as passed by the Legislative Assembly. He had no power to alter the substance or meaning of any provision passed by the Legislature. It appears to me that the Legislative Council also understood Clause (d) of Section 2 (1) as having the same content as the clause introduced by the Joint Select Committee. There is, to my mind, no doubt that the Legislature did not seek to interfere

with the possession and rights in the built-up or parti areas. It merely sought to give protection to those lessees who had taken land for purposes of erecting buildings thereon before July 1, 1955, but were themselves or through their sub-lessees using it for cultivation. There was no intention to touch any land which was not agricultural land and had merely been taken on a lease for erection of buildings, whether buildings were constructed on it or not. It thus appears that the Legislature intended that Clause (d) of Section 2 (1) should apply only to cases where the lessee or his sub-lessee was using the land for cultivation. It has been brought to my notice that, in the English version of the Bill, as amended by the Joint Select Committee, which was also published in the Gazette, Clause (d) was in the same form as it is today in the Act. The question is not as to whether the English version or the Hindi version is to prevail but as to what was the intention of the Legislature. It appears that the Joint Select Committee added Clause (d) in Hindi and the Hindi version of the Amended Bill was placed before the Legislative Assembly. There is no conflict in the Hindi and English version of the Act.

7. Now the question, which arises, is whether it is permissible to read or add words to Clause (d) of Section 2 (1) to give effect to the intention of the Legislature. It is the fundamental principle of construction that, ordinarily, words should not be added to a statute. Words should not be added by implication into a statute unless it is necessary to do so to give the language sense and meaning in its context. In *Syam Kishori Devi v. Patna Municipal Corporation*[1], the Supreme Court observed:

> "It is well known rule of construction that a Court must construe a section, unless it is impossible to do so, to make it workable rather than to make it unworkable. In the words of Lord Bramwell, the words of a statute never should in interpretation be added to or subtracted from, without almost a necessity."

In *Ramaswamy Nadar v. State of Madras*[2], the Supreme Court observed that if, in construing the section, the Court has to supply some words in order to make the meaning of the statute clear, it will naturally prefer the construction which is more in consonance with reason and justice. In this case, the Supreme Court added certain words to Section 423 (1) (a) of the Code of Criminal Procedure. In *Taffazzul v. Shah Mohammad*[3], it was observed by Seth, J. :-

> "It is a well recognised canon of construction that it is the duty of the Court to interpret a section as it exists without adding to it and without subtracting from it. It is only when a Court can be certain that the language employed by legislature does not represent its avowed intention, if interpreted literally and grammatically, that it can be justified in adding words to or taking out words from the language of the statute in Interpreting it."

In *Mohandas Issardas v. A. N. Sattanathan*[4], Shah, J. (as he then was) observed:

> "The intention of the Legislature in enacting a statute must be found from the words used

therein, and in the absence of overriding reasons inherent in the statute the Code is not justified in adding words thereto."

It was observed by Lord Mersey in *Thompson v. Goold and Co*[5]*.,*

"It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do". In *Vickers, Sons and Maxim, Ltd. v. Evans*[6]*,* Lord Loreburn observed:

[1] AIR 1966 SC 1678 [3] AIR 1949 All 261 [5]1910 AC 409
[2] AIR 1958 SC 56 [4] AIR 1955 Bom 113 [6]1910 AC 444

"We are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four comers of the Act itself."

In *Tinkham v. Perry*[7]*,* Evershed M. R. remarked:

"Words plainly should not be added by implication into a statute unless it is necessary to do so to give the language sense and meaning in its context." It is thus well settled that Courts can, in certain circumstances, read or add words into the provisions of a statute which are not there. Maxwell on Interpretation of Statutes states:

"Where the language of a statute, in Its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation or by rejecting them altogether under the influence, no doubt, of irresistible conviction that the legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. Nevertheless, the Courts are very reluctant to substitute words in a statute or to add words to it, and it has been said that they will only do so where there is a repugnancy to good sense".

In Jagdish Swamp's Legislation and interpretation, it is stated:

"It is only when a Court can be certain that the language employed by the Legislature does not represent its avowed intention. If interpreted literally and grammatically, or when there are adequate grounds to justify the inference that the Legislature intended something which it had omitted to express, that words can legitimately be added to or taken out from the language of the statute in interpreting it."

I fully agree with this statement of the law. The present is not a case where one has to speculate about the intention of the Legislature. It is clear beyond any doubt. The intention was to keep all parti and built-up areas outside the scope of the Act and to confine its operation to agricultural areas alone. The intention further was to give protection to a limited class of lessees, namely, those who had taken land for building purposes but were themselves or through their sub-lessees using it for cultivation. If the words "but is being used by the lessee or his sub-lessee for cultivation" are read in Section 2 (1) (d), it will not only give full effect to the clear intention of the Legislature but will also avoid the anomalies and the discrimination which result from a literal

[7]1951-1 KB 547

interpretation. The area covered by Section 2 (1) (d) will then be an agricultural area as ordinarily understood also and bhumidhari and asami rights under Section 17 (1) (b) and 19 (j) will be conferred in really agricultural areas and not in built-up areas. The discrimination, to which reference has been made above, will also not arise on this interpretation and the inconsistency between Clause (c) and Clause (d) of Section 2 (1) will also disappear. For these reasons, in my opinion, the words "but is being used by the lessee or his sub-lessee for cultivation" should be read in Section 2 (1) (d). It is not really a question of adding anything to Section 2 (1) (d) for it is quite clear what the intention of the Legislature was, and the omission of certain words that one would expect to find there is nothing more than the faultiness of expression. It appears that the Secretary of the Assembly, who made formal amendments to the Bill as passed by the Legislative Assembly as well as the Legislative Council understood the amended Section 2 (1) (d) to mean the same thing as the clause introduced by the Joint Select Committee in the original Bill.

8. My attention was drawn to the decision of a Division Bench of this Court in *Ishar Singh v. Board of Revenue* [8] where also Section 2 (1) (d) of the Act came up for interpretation. But the question, which arose in that case, was different, namely, whether the word "buildings' in Section 2 (1) (d) meant permanent buildings or include temporary buildings also. The Division Bench held that it did not include temporary buildings and therefore, the area in that case, which had been leased out for construction of temporary buildings, was held not to be agricultural area. So far as I can see, there is no conflict in the view which I am inclined to take and the view taken by the Division Bench. In either view, the area in the case before the Division Bench falls outside the ambit of Section 2 (1) (d).

9. I have, therefore, come to the conclusion that an area, which is held on a lease duly executed before July 1, 1955, for the purposes of erecting buildings thereon, can be included within the meaning of "agricultural area" as defined In Section 2 (1), only if the area is being used by the lessee or his sub-lessee for cultivation. It follows from this that, if the area is not being so used for cultivation but has been built upon, it does not come within the mischief of Clause (d) of Section 2 (1) of the Act and cannot be demarcated as agricultural area.

10. I accordingly allow this writ petition and quash the order of the Additional Commissioner dated January 10, 1966, and the order of the Board of Revenue dated September 19, 1966. Parties will bear their own costs of this petition.

Petition allowed.

[8]Special Appeal No. 5 of 1968, D/-9-9-1968 (All)