

ORISSA HIGH COURT

Pratap Kesari Deo

Vs

State of Orissa

O.J.C. No. 185 of 1959

(R.L. Narasimham, C.J. and G.C. Das, J.)

27.07.1960

JUDGMENT

R.L. Narasimham, C.J.

1. This is an application under Article 226 of the Constitution of India against the appellate order of the Board of Revenue, Orissa, confirming with some modifications the assessment of rent on the Nazul lands and the Palace Compound of the petitioner made by the Additional District Magistrate of Kalahandi.

2. The petitioner was the former Ruler of Kalahandi State which was one of the Feudatory States which merged with the Province of Orissa by the well known Merger agreement on the 1st January, 1948. In accordance with that merger agreement entered into between the petitioner as the Ruler of the State on the one hand and the Government of India, on the other some of the properties within the State were recognized as his private properties. It is admitted that the disputed plots consisting of 2.33 acres in village Kasinga form part of the Nazul lands which were recognized as the private property of the petitioner. It is further admitted that 36.2 acres of land in Mouza Bhowanipatna which was the head-quarters of the Kalahandi State was also recognised as the petitioner's private property. Within that area is situated the palace of the petitioner. It is further admitted that by virtue of the merger agreement the petitioner was conferred full rights over his private property. There was some discussion between the Rulers and the Government of India regarding the personal privileges of the Rulers of Merged States and on the question of exemption from focal taxation, the decision given by the Government of India was as follows :-

"12. Exemption from local taxation : This is primarily the concern of the Provincial and Union Government. It is hoped however that as far as possible the practice prevailing before the 15th August, 1947, will be continued. The Government of India desires that in the event of house tax being levied in or extended to areas formerly constituting States the main residential palaces of the Rulers should be exempted from this tax."

3. On the 21st May, 1958, was brought into force the Orissa Private Lands of Rulers (Assessment of Rent) Act, 1958 (Orissa Act 13 of 1958 - hereinafter referred to as the Act), by which all the private lands of the former Rulers in Orissa were classified into three groups viz. (i) irrigated wet land; (ii) rain-fed wet land; and (iii) dry land, and power was conferred on the appropriate authorities to assess all these classes of land to rent after following the procedure prescribed in the Act and in the Rules framed under the Act. In these Rules detailed instructions were given for the mode of assessment of these classes of private lands and the maximum rate of rent assessable was also fixed. There is no controversy about strict compliance with the provisions of the Act and the Rules framed thereunder, by the Board of Revenue when it confirmed the assessment of rent in respect of the aforesaid lands with some modifications.

4. Mr. Misra on behalf of the petitioner contested the validity of the assessment to rent of the disputed lands on two grounds :-

(i) The Act is unconstitutional.

(ii) The Act applies only to agricultural lands and, does not apply to the Nazul lands or the Palace compound of the petitioner.

5. On the constitutional question, the main argument of Mr. Misra was that in the merger agreement "full ownership, use and enjoyment" of the private properties was granted to the Ruler and that consequently such properties were exempted from assessment to rent. Reliance was also placed on Article 361 of the Constitution which enjoins on the legislature of a State to have regard to the guarantee given to the Rulers at the time of the Merger Agreement. Some reliance was also placed, on the Memorandum of Agreement (quoted above) regarding the privileges of Rulers wherein it was mentioned that by the Union Government (who had exempted these properties of the Rulers from income-tax) also desired that house tax should not be levied on the main residential Palace of the Rulers.

6. But these assurances cannot have the effect of depriving the Orissa Legislature of its power to legislate in respect of these properties. It is open to the Legislature either to honour or not to honour these assurances, but even if it does not honour them its competence to legislate on the subject will not be affected in any way. This question has been concluded by two leading decisions of the Supreme Court reported in *State of Bihar v. Kameshwar Singh*¹ and *Jaganath Behera v. Harihar Singh*², where it was held that notwithstanding the guarantee of "full ownership, use and enjoyment" of the private properties, the Ruler's position in respect of those properties was merely that of a private owner and his rights were always subject to the laws that may be made by the competent Legislature imposing burdens on him. The competence of the Orissa Legislature to legislate for the purpose of assessing these lands to fair rent is therefore beyond question (see item 18 of List II in the seventh schedule). Even if the Legislature chooses not to implement the assurance given to a Ruler at the time of the merger, the law passed by a Legislature cannot, on that account, be struck down as unconstitutional.

7. I may notice two other minor constitutional objections raised in the petition. It was urged that the Act was expropriatory and that it offended Article 31 of the Constitution. This argument is fallacious. Merely by directing the owner of certain properties to pay a fair and equitable rent to the Government as the superior landlord, there cannot be said to

be any "acquisition of land for a public purpose" so as to attract the provisions of this Article. Similarly, Mr. Misra's reliance on Art 14 of the Constitution is also futile. The private properties of the former Rulers formed a class by themselves. They had all along been completely exempt from payment of any rent to Government. It is however open to the Legislature to classify them separately and pass a law for the purpose of assessing them to fair and equitable rent, because there is a reasonable nexus between the basis of that classification on the one hand and the object sought to be achieved on the other.

8. The main argument of Mr. Misra however deals with the second question, namely whether the Act applies to 'non-agricultural' lands. There is however no material on record to show that these lands are 'non-agricultural' lands. It is true that they have been described as 'Nazul' and "palace compound" but even these lands may be fit for cultivation purposes especially for cultivation of dry crops and it is entirely left to the choice of the owner to either utilize the lands for agricultural purposes or not. Moreover neither Kesinga nor Bhowanipatna is a municipality and the Act does not expressly say that it does not apply to the private lands of the Rulers which are not actually used for agricultural purposes. All the private lands have been classified into the three aforesaid groups and the maximum rate of assessment for each group has been prescribed in the Rules. The definition of "dry land" in Section 2(b) of the Act is very wide and includes all lands other than lands which are 'irrigated wet' or 'rain-fed wet'. On a strict construction of this definition it must be held that even 'Nazul' lands and lands situated within the Palace compound of the Ruler are 'dry lands' within the meaning of the Act.

9. Mr. Misra then referred to some provisions of the Act which seem to indicate that the Legislature was really contemplating only lands used for agricultural purposes while passing the said Act. Thus Section 2 (a) defines "agricultural year". Section 2(i) says that all the expressions not defined in the Act shall have the same meaning, as are respectively assigned to them in the Tenancy laws in force in the concerned areas.

The Tenancy laws in Orissa namely the Orissa Tenancy Act, the Madras Estates Lands Act and the Central Provinces Tenancy Act - all deal with lands used primarily for agricultural purposes. Again, Section 6 (a) of the Act says that in estimating the fair and equitable rent payable, the Revenue officer shall have regard to "the nature of the soil", and the "general productivity" of the land. This clause seems to indicate that only agricultural lands were under contemplation.

10. Mr. Misra is perhaps right in his contention that the Act was primarily intended to apply to agricultural lands but from this it does not necessarily follow that even other lands which may now be used for non-agricultural purposes but which have the potentiality of being used for agricultural purposes at the choice of the owner are intended to be wholly excluded from the operation of the Act. No such intention is clearly deducible from any of the provisions of the Act. The implication of clause (i) of Section 2 of the Act may be that the Act was intended to supplement the existing tenancy laws in force in Orissa but it is not correct to say that the tenancy laws do not apply to those classes of lands which are classed as homestead. Even in the Orissa Tenancy Act, a separate section, namely Section 236, has been provided, dealing with the incidents of tenancy of homestead lands of a tenant. By virtue of the impugned Act the Ex-Rulers became the tenants of Government so far as their private lands were concerned and it is entirely left to the Government as the landlord either to exempt their homesteads from assessment to fair and equitable rent or else to insist on such "tenants" paying rent for these homesteads also. Hence in the absence of express provisions in the Act all lands which are

included in the category of "private lands" of the Ruler must be held, as a matter of construction, to come within the scope of the Act.

11. For these reasons, I dismiss this petition with costs. Hearing fee Rs. 100/- (one hundred only).

Das, J.

12. I agree.

Petition dismissed

Cases Referred.

¹ AIR 1952 SC 252

² AIR 1958 SC 239