ORISSA HIGH COURT

Nityananda Guru

Vs

State (Orissa)

Original Jurn. Cases Nos. 262 and 266 of 1977

(R.N. Misra, C.J., J.K. Mohanty and R.C. Patnaik, JJ.)

13.12.1982

JUDGEMENT

Patnaik, J.

1. Reference of these two applications, one by the father Nityananda (O.J.C. No. 262 of 1977) and the other by his sons Prakash Guru and others (O.J.C. No.266 of 1977), has been made to resolve if the lands allotted to members of the erstwhile Hindu joint family on partition can be clubbed for the Purpose of determining the ceiling area under Chapter IV of the Orissa Land Reforms Act, 1960 (hereinafter referred to as the 'Act').

2. Admittedly Nityananda has three sons and three daughters. Admittedly none of the sons was major and married on 26-9-1970, the appointed day under Section 37(b) of the Act. By a registered deed of partition dated 31-12-1965/13-1-1966, the lands in village Gunderpur were allotted to the shares of the sons and the daughters.

3. A suo motu proceeding under Section 42 of the Act was started by the Revenue Officer against Nityananda and the draft statement was published on 30-9-1975 in O.L.R. Ceiling Case No. 98 of 1975. Nityananda filed his objection stating that the lands in village Gunderpur were not available for being proceeded against in the ceiling proceeding started against him as by then by the above mentioned partition, the lands had been allotted to the shares of the sons and the daughters. He contended that since the partition, the lands were no longer held by him, but by his sons and daughters and the latter being the holders of the lands in their individual status, in the ceiling proceeding started against him, the lands so partitioned and allotted to the shares of the sons and the daughters were not available for inclusion. He submitted that the lands in village Pardhiapalli which had been allowed to him were the only lands held by him. The Revenue Officer, however, aggregating all the lands, both in Gunderpur and Pardhiapalli and' treating the sons, the daughters and Nityananda as members of one family for the purpose of Chapter IV of the Act, finalised the proceeding. Appeal and revision filed by the father and the sons being unsuccessful, these writ applications were filed.

4. The Division Bench of this Court which heard these matters was of the view that the

provisions contained in Chapter IV of the Act shall have effect notwithstanding the partition and having regard to the importance of the question involved, the matter should be heard by a larger Bench and this Full Bench has been constituted to resolve the controversy.

5. Mr. S.S. Basu, learned counsel appearing for the petitioners in both the writ applications, contended that by the partition the family came to an end and the lands which felt to the shares of the sons and the daughters were no longer available to be treated as lands held by the father. The effect of the partition was that the members became absolute owners of the lands allotted to them individually. The lands which were joint prior to the partition acquired different character and became the absolute property of the individual allottees and each allottee who so became absolute owner of the lands allotted to him was to be treated as a person under Chapter IV. He referred us to various provision in Chapter IV to contend that the view taken by the Revenue Authorities was illegal and absurd.

6. The learned Additional Government Advocate contended that the provisions of the Orissa Land Reforms Act were a special law and would have overriding effect over any other law, custom, usage, agreement, decree or order of court. He did not dispute that there was a partition as alleged by the petitioners.

7. We have to keep our sights clear by keeping the object of the legislation in the forefront. The Act was enacted manifestly with a view to imposing ceiling on agricultural holdings and acquisition and distribution of the surplus area to landless and weaker sections of the society and is in substance and reality an enactment relating to agrarian reforms. The statute has been intended to strike at vast concentration of land in the hands of a few and to act as a great equaliser by reducing inequality in holding of land between the haves and the have-nots (vide Thumati Venkaiah's case, AIR 1980 Supreme Court 1568 and Nand Lal's case, AIR 1980 Supreme Court 2097).

8. Understanding of the provisions would be facilitated if we keep in our mind the provisions contained in Section 3 which runs thus :-

> "3. Save as otherwise provided the provisions of this Act shall have effect, notwithstanding anything to the contrary in any other law, custom or usage or agreement, decree or order of Court."

The Act has received the Presidential assent Competency of the State Legislature to enact the provision is indisputable and has not been disputed.

9. We refer to the provisions contained in Section 3 at the thresholdd so that our notions and concepts of other laws do not hinder us in rendering the correct meaning and interpretation to the provisions. The special law (the provisions contained in the Act) shall have effect notwithstanding the general law. The contentions of Mr. Basu are based on concepts of general law which for Section 3 have to withdraw and leave the field for the operation of the provisions contained in the Act so that the agrarian reforms provisions are implemented for the ultimate benefit of the overwhelming have-nots of the State. Chapter IV contains the provisions relating to ceiling and disposal of surplus lands. For the purpose of the Chapter, the most important part

relating to agrarian reforms in the whole Act, two expressions have been defined in Section 37 :-

> "37. In this Chapter,-
> (a) "person" includes a company, family, association or other body of individuals, whether incorporated or not, and any institution capable of owning or holding property;
> (b) "family" in relation to an individual, means the individual, the husband or wife, as the case may be, of such individual and their children, whether major or minor, but does not include a major married son who as such had separated by partition or otherwise before the 26th day of September, 1970."

The other two sections with which the present case is concerned are Sections 37-A and 37-B which run thus :-

> "37-A. The ceiling area in respect of a person shall be ten standard acres:
> Provided that where the person is a family consisting of more than five members, the ceiling area in respect of such person shall be ten standard acres increased by two standard acres for each member in excess of five, so, however, that the ceiling area shall not exceed eighteen standard acres.
> 37-B. On and from the commencement of the Orissa Land Reforms (Amendment) Act, 1973, no person shall, either as land-holder or raiyat or as both, be entitled to hold any land in excess of the ceiling area.
> Explanation.- For the purposes of this section all lands held individually by the members of a family or jointly by some or all the members of a family shall be deemed to be held by the family."

10. The definition of 'family' in Section 37(b) is an artificial one; but the State Legislature was competent to do so. The meaning given to the expression 'family' in Section 37(b) is for the special purpose of the Chapter and shall have effect notwithstanding our notions of family or the meaning given to the expression in any other law. The Legislature thought in its wisdom that unless an artificial meaning was given to the expression, concentration of lands in the hands of a few cannot be done away with and it was not possible to level down the haves and level up the have-nots. The courts exist to give effect to the will of the people expressed through their representatives and legislature, the said will not being inconsistent with or repugnant to the fundamental law, the Constitution. This should silence any criticism as to the injustice or inequitable result that might ensue in some cases. As we read the provision, the meaning is plain and clear and the command is to cast our notions of general law aside and follow the law as contained in this Chapter. We do not make law but interpret it.

11. The point was first mooted in *Bhikari Sahu v. State of Orissa*[1], (the leading judgment rendered by one of us, R.N. Misra, J. as his Lordship then was). Vires of
Section 37 was challenged therein. Their Lordships opined :-

> "It is contended that the definition of 'family' is an artificial one. Implementation of the provisions of the Act on the basis of this definition will work out confiscation of land of

> persons without their knowledge and without payment of compensation. Counsel have contended that the definition is so wide in one sense and so indefinite in another that at the time of making of the return as required under the statute and at the time of determining the ceiling, great confusion is bound to be the resultant. Persons brought into the fold of the definition are bound to lose their proprietary rights and even in some cases may lose their own residence..... Petitioner's counsel placed the definitions of similar terms before us from other sister legislations in different States and claimed that while definitions in other States were more liberal keeping the purpose of such legislation in view the impugned provisions were very restrictive, ex-proprietary and prejudicial, inasmuch as, the effect is to limit the land holding and draw out more as surplus area. We have not been able to appreciate this line of attack, The Legislatures have been entrusted with the duty of law-making and as long as they make their laws within the limits set by the Constitution it is not for the Court to question any legislation on the ground of propriety and/or utility..... Within the permissible field of legislation the choice is of the Legislature and the Court does not come into the picture at all..... The inclusion of these in the definition of 'family' or exclusion of them from it is a matter of policy and to act one way or the other is the outcome of the wisdom of the Legislature....."

12. Mr. Basu for the petitioners drew our attention to the provisions contained in Sections 39(b) and (bb), 40(3) and 40-A and submitted that to club the lands which fell to the share of a son who is a minor or a major but unmarried was unjust and inequitable. He drew our attention to various situations in which grave injustice would result by a literal implementation of the provisions. Such were also the grievances before the Constitution Benches of the Supreme Court in Thumati Venkaiah's case (AIR 1980 Supreme Court 1568) and Nand Lal's case (supra). The attention of the Supreme Court was drawn to various hypothetical situations giving rise to inequitable and anomalous positions. The Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 contained almost similar artificial definitions and a provision for clubbing of lands held by members comprised in the 'family unit'. The Constitution Bench speaking through Bhagwati, J. repelling the arguments advanced, observed (at pp. 1574-75) :-

> "The next contention urged on behalf of the land-holders was that on a proper construction of the relevant provisions of the Andhra Pradesh Act, a divided minor son was not liable to be included in "family unit" as defined in Section 3(f) of that Act. The argument was that sub-section (2) of Section 7 did not invalidate all partitions of joint family property but struck only against partitions effected on or after 2nd May, 1972 and thus, by necessary implication, recognised the validity of partitions effected prior to that date. If therefore a partition was effected prior to 2nd May, 1972 and under that partition a minor son became divided from his father and mother, the divided minor son could not be included in the "family unit" and his property could not be clubbed with that of his father and mother, because otherwise it would amount to invalidating the partition, notwithstanding that Section 7 sub-section (2) clearly recognized such partition to be valid. This argument is clearly fallacious in that it fails to give due effect to the definition of "family unit" in Section 3(f) and the provisions of Section 4. It is undoubtedly true that

> a partition effected prior to 2nd May, 1972 is not invalidated by the Andhra Pradesh Act and therefore any property which comes to the share of a divided minor son would in law belong to him and would not be liable to be regarded as part of joint family property. But, under the definition of 'family unit' in Section 3(f) the divided minor son would clearly be included in the 'family unit' and by reason of Section 4, his land, whether self-acquired or obtained on partition, would be liable to be clubbed with the lands held by the other members of the 'family unit'. The land obtained by the divided minor son on partition would be liable to be aggregated with the lands of other members of the family unit not because the partition is invalid but because the land held by him, howsoever acquired, is liable to be clubbed with the lands of other members for the purpose of applying the ceiling area to the 'family unit'. We do not therefore see how a divided minor son can be excluded from the 'family unit'. That would be flying in the face of Section 3(f) and 4 of the Andhra Pradesh Act."

Another Constitution Bench in NandLal's case (supra) was seized with the provisions contained in Haryana Ceiling on Land Holdings Act, 1972, which also contained an artificial definition of 'family' and provision for clubbing. Grievance was made on grounds of inequity and hardship. All such contentions were, however, turned down keeping the objects of the legislation in view. Their Lordships, however, expressed a wish that the State of Haryana should consider sympathetically (of course by way of legislation) the case of unmarried major daughters and divorced daughters living with the family.

13. It is a moot question, however, if lands held by a married daughter, major or minor, or by a divorced daughter living with the parent/parents, can be clubbed with the lands held by the parent/parents, as the case may be. Is it a case of casus omissus? A daughter on marriage gets transplanted to the family of her husband and becomes a member of the family as defined in Section 38(b) as wife. Can the lands held by her be clubbed twice, as the spouse while determining the ceiling area of the husband and as daughter while determining the ceiling area of the parent?

14. In view of the pronouncements of the Supreme Court on *pari materia* provisions, there is no force in the submissions made by the counsel for the petitioner. Lands held by a person coming within the ambit of the definition of 'family' contained in Section 37(b) would get aggregated or clubbed with the lands held by the parent or spouse, as the case may be, in a determination of the ceiling area under the provisions contained in Chapter IV of the Act, notwithstanding partition prior to the appointed day, i.e., 26-9-1970.

15. In view of our present pronouncement as to what the law is, it is unnecessary to give opinion on the earlier decisions of this Court which have become final between the parties. There were also certain special facts and circumstances in those cases.

16. In the result, there is no merit in the writ applications which are accordingly dismissed. In the circumstances, there would be no order as to costs.

16-A. R.N. Misra, C.J. (concurring with Patnaik J.) :- have read the judgment proposed by my

learned brother Patnaik, J. I agree that Judges "do not make law but interpret it". In doing so, as pointed out by learned Hand, J. in *Lehigh Valley Coal Co. v. Yensavage*[2], statutes "should be construed not as theorems of Euclid, but with imagination of purpose behind them". Mukherjea, J. (as the learned Judge then was) in *Popatlal Shah v. State of Madras*[3]. observed "Each word, phrase or sentence is to be construed in the light of the general purpose of the Act itself." To the same effect are the observations of the Supreme Court in *Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate*[4], *R.L. Arora v State of Uttar Pradesh*[5] and *Sheikh Gulfan v Sanat Kumar*[6],

17. The undisputed purpose of the Act is to make "progressive legislation relating to agrarian reforms and land tenures" and with a view to implementing the Directive Principle in Article 39 of the Constitution "that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment", the Act seeks to provide a scheme for fixing a ceiling for land to be possessed by a family and the surplus to vest in the State Government on payment of a small compensation for settlement of such land with persons belonging to the Scheduled Tribes or Scheduled Castes and failing them, with people of economically backward classes. To meet this purpose for which the Legislature has plenary powers to legislate, the Act has evolved a scheme and the definition of 'family' in Section 37(b) of the Act, which is very much different from what that word in common parlance means, has been adopted. The Legislature as the law-maker seeks to implement a definite policy through its laws and providing definitions for terms to be found in the Statute is a well-known way of adding certainty to the legislative intention and avoiding repetition of all the words that the definition stands for. And once the Legislature has jurisdiction to legislate, it enjoys wide freedom within which it can operate. Challenge to the definition of 'family' before us has not been based upon vires but upon grounds of being mechanical, inapt and unjust. These are aspects within the legislative domain, and challenge before us cannot succeed. Besides, the basic structure of the Act (excepting the subsequent amendments) enjoys the umbrella of protection of Article 31-B of the Constitution having been included in the Ninth Schedule of the Constitution.

18. My learned brother has in paragraph 13 of his judgment touched upon an aspect which should catch every scrutinizing eye. After Independence came, the architects of free India drew of up our Constitution after due deliberation. The big policy of ours became a Sovereign Democratic Republic. Reforms of the type with which we are concerned here could be through legislation by the State Legislatures in view of that
item being a part of the State List in the Seventh Schedule. The Central Government and the Planning Commission provided general guidelines for carrying out the purpose relevant to our discussion. In many States a more or less uniform type of scheme was adopted. The ceiling area was fixed at higher limits in other States, but the Orissa State Legislature in its wisdom fixed ten standard acres as the basic unit. Many States treated major sons as separate units whether married or not. In some States, partition before the appropriate date was recognised, but the definition of 'family' in Section 37(b) sought to overlook completed partitions unless the members partitioning were major and married before the appointed date. This was the aspect which has been canvassed before us most, but that as Patnaik, j. has so succinctly put, is a matter for the Legislature to take note of and not for the Court to accept and act upon. I concur with the order of Patnaik, J. that the writ applications should be dismissed with no direction for costs.

J.K. Mohanty, J. (Concurring with Patnaik, J.)

19. I agree with the order of my learned brother Patnaik, J. that the writ applications should be dismissed with no direction for costs. but would like to add the following few lines.

20. Mr. Basu, learned counsel appearing for the petitioners, vehemently contended that since the partition was before the appointed date, i.e., 26-9-70 there is no family in existence as contemplated under Section 37(b) of the Act and the effect of the partition was that the members became absolute owners of the land allotted to them individually. As already observed by learned brother Patnaik, J. definition of 'family' in Section 37(b) is an artificial one, but the State Legislature was competent to do so. The meaning given to the expression 'family' in Section 37(b) is for the special purpose of the Chapter and shall have effect notwithstanding our notions of family or the meaning given to the expression in any other law.

21. It has been made clear in Section 37(b) of the Act that 'family' in relation to an individual does not include a major married son who as such had separated by partition or otherwise before the 26th day of September, 1970. The Courts are not concerned with the actual implementation of the schemes envisaged by the Act, but what the Courts are concerned with is the competence of the Legislature to pass the impugned Act. The Legislatures have been entrusted with the duty of lawmaking and as long as they make their laws within the limits set by the Constitution it is not for the Courts to question any Legislation on the ground of propriety and/or utility. No doubt the partition effected by registered partition deed as far back as in 1966 is going to be unsettled and would cause great harassment to the petitioners. However sympathetic we may be to the Petitioners, we cannot impose our own views contrary to the intention of the legislature. These are matters for the Legislature to take note of and not for the Courts who can only interpret the law.
Petition dismissed.

Cases Referred.

[1] ILR (1975) Cut 843
[2](1914) 235 US 705
[3] AIR 1953 SC 274
[4] AIR 1958 SC 353
[5] AIR 1964 SC 1230
[6] AIR 1965 SC 1839