

State Of Rajasthan vs Mukanchand And Others on 26 February, 1964

Equivalent citations: 1964 AIR 1633, 1964 SCR (6) 903

Author: S.M. Sikri

Bench: S.M. Sikri, P.B. Gajendragadkar, K.N. Wanchoo, J.C. Shah, N. Rajagopala Ayyangar

PETITIONER:
STATE OF RAJASTHAN

Vs.

RESPONDENT:
MUKANCHAND AND OTHERS

DATE OF JUDGMENT:
26/02/1964

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
SHAH, J.C.
AYYANGAR, N. RAJAGOPALA

CITATION:
1964 AIR 1633 1964 SCR (6) 903

CITATOR INFO :

RF	1970 SC 564	(78)
F	1972 SC1053	(3,4)
RF	1974 SC2009	(23)
RF	1980 SC1789	(36)
RF	1981 SC1744	(23)
D	1985 SC 257	(12)
RF	1986 SC1541	(9)
RF	1988 SC1136	(10)
R	1989 SC2105	(4)

ACT:
Jagirdar's Debt Reduction Act (Rajasthan Act 9 of 1937)-
Mortgages decree against ex-Jagirdar-Whether executable-ss.
2(e) and 7(2) Validity of--Constitution of India, Art. 14.
904

HEADNOTE:

Respondent No. 1 obtained a mortgage decree for Rs. 1,14,581/14/6 against one Rao Raja Inder Singh (the judgment debtor). The mortgage money was advanced under three mortgages, and the mortgaged properties consisted of Jagirs and some non-Jagir immovable property. The latter property was sold in execution and Rs. 33,750/- paid to the decree holder in partial satisfaction of the decree. Then the decree holder filed an execution petition in the Court of the District Judge for the balance amount i.e. Rs. 99,965/3/6, praying for attachment of the amount of compensation and rehabilitation grant which would be paid to the judgment debtor on account of resumption of his Jagir. The judgment debtor submitted two applications in which he claimed relief under ss. 5 and 7 of the Rajasthan Jagirdars' Debt Reduction Act. The decree holder, in his reply, to those petitions urged that the provisions relied in were ultra vires the Constitution of India, being in contravention of Arts. 14, 19 and 31 of the Constitution. Thereafter the decree holder moved a petition under Art. 228 of the Constitution before the High Court, praying that the execution case pending in the Court of the District Judge, be withdrawn from that court to the High Court. The High Court transferred the case to its file. By its judgment the High Court could held that apart from the later part of s. 2(e) excluding certain debts and s. 7 (2) of the Act, the rest of the Act was valid. The High Court granted a certificate under Art. 133(1)(c) of the Constitution to the State of Rajasthan to file an appeal to this Court. Hence the appeal:-

Held:- (i) That the impugned part of s. 2(e) infringes Art. 14 of the Constitution for the reason that no reasonable classification is disclosed for the purpose of sustaining the impugned part of s. 2(e). It is now well-settled that in order to pass the test of permissible classification, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentiation which distinguishes persons or things that are to be put together from others left out of the group, and (2) that the differential must have a rational relationship to the object sought to be achieved by the statute in question. The said condition No. 2 above has clearly not been satisfied in this case. The object sought to be achieved by the impugned Act was to reduce the debts secured on the Jagir lands which had been resumed under the provisions of the Rajasthan Land Reforms and Resumption of Jagirs Act. The fact that the debts are owed to a Government or local authority or other bodies mentioned in the impugned part of s. (2) (e) has no rational relationship with the object sought to be achieved by the Act. Further,

no intelligible principle underlies the exempted categories of debts. The reason why a debt advanced on behalf of a person by the Court of Wards is clubbed with a debt due to a State or a scheduled bank and why a debt due to a non-scheduled bank is not excluded from the purview of the Act is not discernible.

Manna Lal v. Collector of Jhalwar. [1961] 2 S.C.R. 962, Nand Ram Chhotey Lai v. Kishore Raman Singh, A.I.R. (1962) All 521 and 905

Jamnalal Ramlal Kimtee v. Kishendas and State of Hyderabad, A.I.R. (1955) Hyd. 194, distinguished.

(ii) Section 7(2) is valid as it imposes reasonable restrictions, in the interests of general public. on the rights of a secured creditor. This sub-section has been designed with the object of rehabilitating a Jagirdar whose Jagir properties have been taken over by the State for a public purpose at a low valuation. If this provision was not made, the Jagirdar would find it difficult to start life afresh because his future income and acquired properties would be liable to attachment and sale for the purpose of satisfying the demands of such creditors.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 507 of 1961. Appeal from the judgment and order dated February 18, 1959 of the Rajasthan High Court in Civil Misc. Case No. 10 of 1959.

S. K. Kapur and B. R. G. K. Achar, for the appellant. The respondent did not appear.

February 26, 1964. The Judgment of the Court was delivered by SIKRI J.-This is an appeal directed against the judgment of the Rajasthan High Court, which granted a certificate under Art. 133(1)(c).

One Mukanchand, respondent No. 1 in this appeal (hereinafter referred to as the decree-holder) obtained a mortgage decree on February 12, 1954, for Rs. 1,14,581-14-6, with future interest at 6 per cent per annum, against one Rao Raja Inder Singh (hereinafter referred to as the judgment-debtor). The mortgage money was advanced under three mortgages, and the mortgaged properties consisted of 2 Jagirs and some non-jagir immovable property. The latter property was sold in execution and Rs. 33,750/- paid to the decree-holder in partial satisfaction of the decree. On December 14, 1956, the decree-holder filed an execution petition in the Court of the District Judge, Jodhpur, for Rs. 99,965-3-6, praying for attachment of the amount of compensation and rehabilitation grant which would be paid to the judgment debtor on account of resumption of his jagir. This case was registered as Execution Case No. 12/57. On July 29, 1957, the judgment-debtor made an application before the District Judge, Jodhpur, to the effect that the decretal amount should be reduced in accordance with s. 5 of the Rajasthan Jagirdars' Debt Reduction Act (Rajasthan Act IX of 1957). On July 31, 1957, the judgment-debtor submitted another application claiming that only half of his total jagir compensation and rehabilitation grant money was liable to attachment under s. 7 of

the said Act. The decree-holder, in his reply to those petitions, urged that the provisions relied on were ultra vires the Constitution of India being in contravention of Arts. 14, 19 and 31 of the Constitution.

On December 3, 1957, the decree-holder filed a petition under Art. 228 of the Constitution, praying that the execution case No. 12 of 1957, pending in the Court of the District Judge, Jodhpur, be withdrawn from that Court to the Rajasthan High Court. The High Court transferred the case to its file, and thereafter issued notice to the State of Rajasthan, as the constitutionality of the said Act had been challenged. By its judgment, the High Court held that apart from the latter part of s. 2(e) excluding certain debts- hereinafter referred to as the impugned part and s. 7(2) of the Act, the rest of the Act was valid. The State applied for leave to appeal to the Supreme Court, and so did the decree-holder. On the certificates being granted, two appeals were filed in this Court. The appeal of Mukhanchand (Civil Appeal No. 508/61) was, by order dated April 23, 1962, of this Court, held to have abated. Therefore, we are not concerned with the validity of the other provisions of the Act.

Although the validity of the other provisions is not now in question, it is necessary to set out the relevant provisions of the Act, because they have a bearing on the question of the validity of the impugned part of s. 2 (e) and s. 7 (2) of the Act; and these are reproduced below:

"Preamble-To provide for the scaling down of debts of jagirdars whose jagir lands have been resumed under the provisions of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952.....

S. 2(e)-"debt" means an advance in cash or in kind and includes any transaction which is in substance a debt but does not include an advance as aforesaid made on or after the first day of January. 1949 or a debt due to: -

- (i) the Central Government or Government of any State;
- (ii) a local authority;
- (iii) a scheduled bank;
- (iv) a co-operative society; and
- (v) a waqf, trust or endowment for a charitable or religious purpose only; or
- (vi) a person, where the debt was advanced on his behalf by the Court of Wards...

S. 3. Reduction of secured debt at the time of passing of decree.-(1) Notwithstanding anything in any law, agreement or document, in any suit to which this Act applies relating to a secured debt, the court shall, after the amount due has been ascertained, but before passing a decree, proceed as hereinafter stated.

(2)(a) Where the mortgaged property consists exclusively of jagir lands and such lands have been resumed under the provisions of the Act, the court shall first ascertain whether the mortgagor had the right, under the jagir law in force at the time the mortgage-deed was executed, to mortgage the jagir lands, or failing that, whether specific permission for effecting the mortgage was obtained from the competent authority, and whether the mortgage was validly subsisting on the date of resumption of the jagir lands.

(b) if the mortgage was legally and properly made and was validly subsisting on the aforesaid date, the court shall reduce the amount due in accordance with the formula given in Schedule 1.

(3) Where the mortgaged property consists partly of jagir lands as aforesaid and partly of property other than such lands, the court shall after taking action in accordance with the provisions of subclause (a) of sub-section (2), proceed to distribute the amount due on the two properties separately in accordance with the principles contained in section 82 of the Transfer of Property Act, 1882 (IV of 1882) as if they had been properties belonging separately to two persons with separate and distinct rights of ownership; and after the amount due has been so distributed, reduce the amount due on the jagir lands in accordance with the formula given in Schedule 1.

S. 4-Powers to reduce secured debt after passing of decree.-

(1) Notwithstanding anything in the Code of Civil Procedure, 1908 (V of 1908) or any other law, the court which passed a decree to which this Act applies relating to a secured debt shall, on the application either of the decree-holder or judgment-debtor, proceed as hereinafter stated.

(2) Where the mortgaged property charged under the decree consists exclusively of jagir lands and such lands have been resumed under the provisions of the Act, the court shall reduce the amount due in accordance with the formula given in Schedule 1.

(3) Where the mortgaged property charged under the decree consists partly of jagir lands and partly of property other than jagir lands, the court shall determine the amount due on the first day of January, 1949, and distribute the same on the two properties separately in accordance with the principles contained in section 82 of the Transfer of Property Act, 1882 (IV of 1882), as if they had been properties belonging to two persons with separate and distinct rights of ownership and after the amount due as respect the jagir lands has been so calculated, reduce it in accordance with the formula given in Schedule 1.

S. 6-Satisfaction of the decree-after the amount due has been reduced under and in accordance with the provisions of section 4, the decree shall, to the extent of the reduction so effected, be deemed, for all purposes and on all occasions, to have been duly satisfied.

S. 7(2)-Notwithstanding anything in any law, the reduced amount found in the case of a mortgagor or judgment-debtor as the case may be, under section 3 or section 4 as respects mortgaged jagir lands shall not be legally recoverable otherwise than out of the compensation and rehabilitation grant payable to such mortgagor or judgment debtor in respect of such jagir lands."

We may mention that respondent No. 1 has not entered appearance in this Court. The learned counsel for the State, Mr. S. K. Kapur, has urged that the High Court erred in holding that these two provisions, i.e. impugned part of s. 2(e) and s. 7(2), were void. Regarding the impugned part of s. 2(e), he contended that the debts mentioned in sub-cls. (i) to (vi) of s. 2(e) have been placed on a different footing from debts due to other creditors, because the bodies and the authorities mentioned therein serve a public purpose or a public cause. He urged that this provided a reasonable basis for differentiating between private creditors and creditors mentioned in cls. (i) to (vi) above. Regarding s. 7(2), he urged that it imposed reasonable restrictions, in the interest of general public, on the creditors.

Before examining the validity of the impugned provisions, it is necessary to examine the scheme of the Act. As the preamble states in plain terms, the object of the Act is to scale down debts of Jagirdars whose jagir lands have been resumed under the provisions of the Rajasthan Land Reforms and Resumption of Jagirs Act. Clause (e) of s. 2 defines 'debt' to mean an advance in cash or in kind. The definition does not embrace dues of Government or a local authority in respect of taxes, land revenue, etc. The definition then excludes from the purview of the Act debts due to Central Government and other authorities and bodies mentioned in the clause. We shall advert to them later when discussing the validity of this exclusion.

Section 3 provides for reduction of secured debts in accordance with the formula given in Schedule 1 at the time of passing a decree, and their apportionment where necessary, between jagir and non-jagir property. Section 4 provides for reduction of secured debts after a decree has been passed. Section 5 directs a court to pass a fresh decree after reduction of the secured debts. Section 6 provides that after reduction of the secured debt in accordance with the provisions of s. 4, the decree shall, to the extent of the reduction so effected, be deemed for all purposes and on all occasions to have been duly satisfied. Clause (1) of s. 7 provides for the execution of the decree against the compensation and rehabilitation grant payable in respect of the jagir lands of the judgment-debtor. Clause (2) of s. 7, which has been struck down by the High Court, prohibits the recovery of the reduced amount with respect to jagir property from any property other than the compensation and rehabilitation grant payable to a jagirdar. The effect of this provision is that the other properties of the jagirdar, existing or which he may acquire hereafter, are immune from being proceeded against in execution or otherwise.

We think that the High Court was right in holding that the impugned part of s. 2(e) infringes Art. 14 of the Constitution. It is now well-settled that in order to pass the test of permissible classification, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentiation which distinguishes persons or things that are to be put together from others left out of the group, and (2) that the differentia must have a rational relationship to the object sought to be achieved by the statute in question. In our opinion, condition No. 2 above has clearly not been satisfied in this case. The object sought to be achieved by the impugned Act was to reduce the debts secured on jagir lands which had been resumed under the provisions of the 'Rajasthan Land Reforms and Resumption of Jagirs Act. The Jagirdar's capacity to pay debts had been reduced by the resumption of his lands and the object of the Act was to ameliorate his condition. The fact that the debts are owed to a government or local authority or other bodies

mentioned in the impugned part of s. 2(e) has no rational relationship with the object sought to be achieved by the Act. Further, no intelligible principle underlies the exempted categories of debts. The reason why a debt advanced on behalf of a person by the Court of Wards is clubbed with a debt due to a State or a scheduled bank and why a debt due to a non-scheduled bank is not excluded from the purview of the Act is not discernible. In this connection, Mr. Kapur has relied on the decision of this Court in *Manna Lal vs. Collector of Jhalwar* (1). This case is clearly distinguishable because there a law giving special facility for the recovery of dues to a bank owned by the Government was held not to offend Art. 14 of the Constitution. It is clear that the government can be legitimately put in a separate category for the purpose of laying down the procedure for the recovery of its dues. Mr. Kapur further relied on *Nand Ram Chhotey Lal vs. Kishore Raman Singh* (2). The judgment of the High Court undoubtedly supports him, but, with respect, we are unable to agree with the ratio of the case. The High Court was concerned with the U.P. Zamindars Debt Reduction Act (U.P. Act XV of 1953), which is substantially similar to the impugned Act. The ratio of the High Court is: "It appears to us that the legislature had to make a distinction between debts due from the ex-zamindars to private individuals and the debts due to scheduled banks or to Government or semi-Government authorities. The obvious reason appears to be that the private money-lenders were considered to be a bane to rural economy and perpetrating agricultural indebtedness. It was to save the cultivators from such unscrupulous moneylenders that such laws had to be enacted, the last in series being the Zamindars Debt Reduction Act." We consider there is no force in these observations. No such reason is apparent from the terms of the Act. Non-scheduled banks (1) [1961] 2 S.C.R. 962.

(2) AIR (1962) All. 521.

and all other private creditors cannot be said to be a bane to rural economy.

The third case relied on by Mr. Kapur—*Jamnial Ramlal Kimtee v. Kishendas and State of Hyderabad* (1) does not contain any discussion. The High Court supported the exclusion on the ground that "exclusion of certain class of debts under s. 3 of the impugned Act also is not without substantial justification for public demands do not stand in the same position as ordinary demands." Apart from the fact that all the exempted categories are not public demands, the High Court does not seem to have considered whether the differentia had any rational relationship sought to be achieved by the Act.

In conclusion, agreeing with the High Court, we hold that no reasonable classification is disclosed for the purpose of sustaining the impugned part of s. 2(e). Now, coming to the question of the validity of s. 7(2), we consider that this sub-section is valid as it imposes reasonable restrictions, in the interest of general public, on the rights of a secured creditor. A secured creditor, when he advanced money on the security of jagir property, primarily looked to that property for the realisation of his dues. Further, this sub-section has been designed with the object of rehabilitating a jagirdar whose jagir properties have been taken over by the State for a public purpose at a low valuation. If this provision was not made, the jagirdar would find it difficult to start life afresh and look to other avocations, for not only his existing non-jagir property but his future income and acquired properties would be liable to attachment and sale for the purpose of satisfying the demands of such secured creditors. Accordingly, we hold that s. 7(2) imposes reasonable restrictions in the

interest of general public. The appeal is accordingly partly accepted, the decision of the High Court in regard to s. 2(e) is confirmed and that in regard to s. 7(2) is reversed. As the respondent was not represented and that appeal has only partly succeeded, we order the parties to bear their own costs in this Court. Appeal partly allowed.

(1)AIR-(1955) Hyd. 194.