Pt. Bansgopal Tewari And Ors. vs State Of Uttar Pradesh And Ors. on 25 February, 1955

Equivalent citations: AIR1955ALL546, AIR 1955 ALLAHABAD 546

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Bench: V. Bhargava

ORDER

V. Bhargava, J.

1. This petition under Article 226 of the Constitution was originally filed by 19 persons who were all ex-intermediaries of the erstwhile Banaras State which merged with the State of Uttar Pradesh in November 1949. Subsequently the petition was amended and the names of 18 of the petitioners were removed leaving only one petitioner Markande Upadhya so that the petition has been heard on merits as a petition presented by him alone.

It appears that before the merger of the erstwhile Banaras State in the State of Uttar' Pradesh, the rights of zamindars and cultivators in the State of Banaras used to be governed by the Banaras State Tenancy Act (Act 3 of 1949) which came into force on 1-10-1949. When the Banaras State was merged in the State of Uttar Pradesh, this Banaras State Tenancy Act (3 of 1949) continued to remain in force under clause 6 of the Banaras State (Administration) Order, 1949, not having been repealed by the Banaras Application of Laws Orders, 1949, and replaced by any Act which was already in force in the rest of the State of Uttar Pradesh. The petitioner at the time of merger held 87 bighas and 5 biswas of sir, his zamindari rights being those of a "muafidar. He also had 2 bighas and 13 biswas of khudkasht.

It is contended by the petitioner that the local rate assessed on him was below the amount which would be assessed on a land revenue of Rs. 250/-.

The U. P. Zamindari Abolition and Land Reforms Act was extended to the area which was comprised in the erstwhile Banaras State on 30-6-1953, under Notification No. 1830/I-A-1060-53, with certain modifications. Amongst the provisions of the U. P. Zamindari Abolition and Land Reforms Act which were modified was Section 10. In Section 10 as it applied to the State of Uttar Pradesh, every tenant of land recorded as* sir of an intermediary who on the date immediately preceding the date of vesting was assessed in Uttar Pradesh to a land revenue of more than Rs. 250/- annually or where no land revenue was assessed, was assessed to a larger amount of local rate than would be payable on a land revenue of Rs. 250/-annually or in the case of an under-proprietor, sub-proprietor or permanent tenure-holder, the rent payable by whom was more than Rs. 250/-annually was to be

deemed to be a hereditary tenant thereof at the rate of rent payable by him on the said date and such land was not for the purposes of Section 18 to be deemed to be sir. Under this provision, if the holder of the sir on the date immediately preceding the date of vesting was assessed to land revenue of Rs. 250/- or less, or, if no land revenue was assessed, he was assessed to an amount of local rate equal to or larger than the amount which would be payable on a land revenue of Rs. 250 annually, or in the case of an under-proprietor, sub-proprietor or permanent tenure holder the rent payable by him was Rs. 250 or less, the tenant of the sir of such sirholder did not acquire the rights of hereditary tenant. The sirholder himself became the bhumidhar of that land under Section 18 and the tenant of such sir land became an adhivasi under Section 20.

When applying the U. P. Zamindari Abolition and Land Reforms Act to the areas which were comprised in the erstwhile Banaras State, the State Government amended Section 10 so as to do away with this limitation on the acquisition of rights of a hereditary tenant by the tenant of the sir land. The result was that in those areas, irrespective of the land revenue payable by or local rate assessed on the intermediary or the rent payable by the under-proprietor, sub-proprietor or permanent tenure-holder, the tenant of his sir land became a hereditary tenant, the result being that the sirholder lost his rights as such and did not acquire bhumidhari rights under Section 18.

This modification in Section 10 affected the rights of the petitioner who was a sirholder in the areas previously comprised in the Banaras State. If Section 10 had been applied without any modification, the petitioner would have acquired the rights of a bhumidhar in his sir, which, as mentioned above, comprised 87 bighas 5 biswas; but as a result of the modification he was unable to acquire those rights.

It has been contended by the petitioner that this modification of Section 10 when applying it to those areas which were comprised in the erstwhile Banaras State was beyond the scope of the powers of the Government of Uttar Pradesh under Section 2, U. P. Zamindari Abolition and Land Reforms Act and further that this modification was void as offending against Article 14 of the Constitution.

2. Learned Junior Standing Counsel attempted to justify the modification of Section 10 on the basis of three circumstances which, according to him, required that this modification be made. These three circumstances are that the intermediaries in the areas comprised in the erstwhile State of Banaras were assessed to land revenue on a principle which was different from that applicable to assessment of land revenue on intermediaries in the rest of Uttar Pradesh.

The second was that the rights of a sirholder could be acquired in those areas in a manner different from the manner in which such rights could be acquired in Uttar Pradesh. The third was that in those areas the khudkast rights were different in nature from the khudkasht rights in Uttar Pradesh, inasmuch as in those areas there could be tenants of khudkasht without the rights of the khudkasht-holder getting extinguished whereas in Uttar Pradesh the rights of a khudkrasht-holder ceased as soon as a tenant was admitted in khudkasht land.

3. There is no doubt that the differences pointed out in these three circumstances did exist but not in all cases. There were 'muafidars' in Uttar Pradesh as well as in the erstwhile Banaras State. The

other intermediaries in Uttar Pradesh were of various classes but in most cases land revenue was assessed at settlements by fixing the amount at about 40 per cent, of the assets of the property owned by the intermediary subject to variations in special cases so that the range was from 35 per cent, to 40 per cent.

The Settlement Reports of Banaras and Punnets Manual, which summarises the laws that were applicable in the Banaras State, show that in that State the majority of intermediaries who were known aw Manzuridars were assessed to land revenue at the rate of 80 per cent, of the assets. It thus appears that in Uttar Pradesh the majority of intermediaries were liable to pay between 35 to 45 per cent, of their assets as land revenue, whereas in the Banaras State they were liable to pay 80 per cent, of their assets as land revenue.

This distinction did exist, but learned counsel has failed to indicate how the particular modification in Section 10 became necessary as a result of tin's difference. In Uttar Pradesh sirholders paying Rs. 250 or less as land revenue were to retain their sir rights which were tp be Converted into the rights of bhumidhars. An intermediary in the State of Banaras would be almost in the same position as an intermediary in Uttar Pradesh paying Rs. 250 or less as land revenue if the land revenue payable by the former was Rs. 500 or less.

Consequently when applying Section 10, if the Government of Uttar Pradesh had changed the figure of Rs. 250 in Section 10 to Rs. 500 the modification would have been a modification required by the different circumstances prevailing in the two areas. Instead of increasing the figure, what the Government of Uttar Pradesh did was to do away altogether with the protection granted to the rights of sirholder .who were paying Rs. 250 or less as land revenue.

The remarks apply 'mutatis mutandis' to the cases of 'muafidars' also who instead of being assessed to land revenue were assessed to local rates. Learned Junior Standing Counsel contended that there was nothing to show that the people in the areas which were comprised previously in the erstwhile State of Banaras were assessed to local rate at all. The fact whether an intermediary was or was not assessed to local rate has to be judged with reference to the date on which the U. P. Zamindari Abolition and Land Reforms Act was applied to" those areas, which means 30-6-1953. Before that date, the U. P. District Boards Act had become applicable to those areas as also the U. P. Local Rates Act.

Section 109A had been introduced in the District Boards Act making provision for assessment of local rates in the areas which were comprised in the merged State of Banaras, and this provision of law had also amended the U. P. Local Rates Act, 1914, so as to make it applicable in those areas. Local rates were, therefore, assessed in any case in June 1953 and consequently, in applying Section 10 to 'muafidars' in those areas the clause relating to assessment of local rate could have been acted upon and, in case the rate of local rates assessed was markedly different from the rate at which the local rates were assessed in other areas of Uttar Pradesh, modification could have been made to make proportionate adjustments in the figure.

Once again the course adopted by the State Government in doing away with the protection granted to persons assessed to local rates to the extent of the amount assessable on land revenue of Rs. 250 or less must be held to be a modification which was not required by the different circumstances. It is, therefore, clear that this modification was in no way related to the difference in the manner of assessment of land revenue and local rates in the two areas.

4. So far as the second circumstance is concerned there is again no doubt that sir rights in the two areas could be acquired in different manner by some of the persons, but some other acquired sir rights in identically the same manner. For the intermediaries who acquired sir rights in exactly the same manner, no modification could be acquired by any circumstances as there were no different circumstances to which such modification could be related.

For this purpose it may be mentioned that acquisition of sir rights in Uttar Pradesh under Clause (c) of Section 4, Agra Tenancy Act, 1926, which sir rights were continued under Section 6, U. P. Tenancy Act, 1939, was in exactly the same manner as acquisition of sir rights under Clause (b) of Section 6, Banaras State Tenancy Act, 1949. Further, acquisition of sir rights under Clause (a) of S, 4, Agra Tenancy Act, 1926, was very similar in manner to that laid down in Clause (a) of Section 6, Banaras State Tenancy Act, 1949.

It is true that the manner of acquiring sir rights under Clause (c) of Section 6, Banaras State Tenancy Act, 1949, was not identical with any manner of acquiring sir rights laid down in Section 4, Agra Tenancy Act, and this difference in the manner of acquiring sir rights could legitimately have been made the basis of a modification in Section 10 when applying it to the areas comprised in tbe erstwhile State of Banaras. But that modification should have been such as was necessitated by this difference.

I fail to see how the doing away with the protection of the rights pf the sir-holders was in any way related to this difference. Some of the persons acquiring sir rights under Clause (c) of Section 6, Banaras State Tenancy Act, 1949, may have acquired rights in the same manner in which some persons might have acquired sir rights under Section 4, Agra Tenancy Act, 1926, whereas in the case of some others there might have been a difference.

If a modification was to be made in applying Section 10, it is only for the latter class that the modification could be said to be required by the circumstances and could be justified. The modification actually made has no relation at all to these differences in the circumstances. Learned counsel also drew my attention to the proviso to Clause (a) of Section 6, U. P. Tenancy Act, 1939, which placed a limitation on the extent of sir acquired under certain clauses of Section 4, Agra Tenancy Act, 1926. That proviso only applied to persons paying more than Rs. 25 as local rate. Those would.

therefore, generally be persons whose rights as sir-holders were not protected at all by Section 10, U. P. Zamindari Abolition and Land Reforms Act. The intermediaries covered by those provisos would be persons in whose cases all tenants of sir would acquire rights of hereditary tenants under Section 10 of the U. P. Zamindari Abolition and Land Reforms Act and therefore it is unnecessary to

consider this proviso when dealing with the modification in Section 10 which only relates to intermediaries not covered by this proviso.

5. Another point urged by learned counsel was that under the laws in force in the State of Uttar Pradesh if any intermediary held sir in excess of 50 acres in which there were tenants of sir, the sir to the extent of 50 acres would have to be demarcated in which the intermediary would retain his sir rights, whereas in the rest of the land the tenants of sir would acquire hereditary rights, and it was urged that there was no such provision in the Banaras State so that modification might have been necessary to make allowance for this difference.

Once again this argument fails because the particular modification made is not related to this circumstance. It is possible that if Section 10 had been so modified as to lay down that in the State pf Banaras also there would be demarcation of sir if a sir-holder held sir to the extent of more than 50 acres and hereditary rights would accrue in the area exceeding 50 acres, that modification might have been justified by the different circumstances.

The modification now made is entirely different. Under this modification a sir-holder in the areas of the erstwhile Banaras State loses his sir rights and hereditary rights accrue to the tenant of sir even if the total area of sir held by the sir holder was below 50 acres. It is clear, therefore, that the modification made by the Government of Uttar Pradesh when applying Section 10 was in no way required by the difference in the manner of acquiring or holding sir in the two areas.

6. So far as khudkasht is concerned, it appears to be quite unnecessary to enter into this question at all. Section 10 applies to sir alone and not to khudkasht and any modification made in it should be justified by difference in circumstances relating to sir rights paying no regard to khudkasht rights at all. Thus none of the three circumstances relied upon by learned Junior Standing Counsel show that any modification was required by the circumstances and obviously therefore the modification of Section 10 was beyond the scope of the powers granted to the Government of Uttar Pradesh by Section 2, U. P. Zamindari Abolition and Land Reforms Act.

7. The second ground that these modifications bring about discrimination between persons similarly situated and offend against Article 14 of the Constitution is also clearly applicable for holding that these modifications are void. Areas comprised in the erstwhile Banaras State had adjoining to them areas comprised in the district of Banaras which was part of the State of Uttar Pradesh. There can be cases where people may have fields in adjoining areas and the intermediaries in those lands might have acquired sir rights in identically the same manner.

The result of applying Section 10 with the modification made by the Government of Uttar Pradesh is that intermediaries holding sir land in the erstwhile Banaras State paying the same amount of land revenue or assessed to the same amount of local rate would not acquire bhumidhari rights in their land, whereas their counterparts in the areas comprised in the district pf Banaras would acquire such rights. This is clear discrimination between sets of persons similarly situated.

The classification of the persons as residents of the district of Banaras or residents of the erstwhile State of Banaras is in no way related to the purpose for which the discrimination has been made. The residence in these two different areas could not by itself be a ground for bringing about discrimination about protection of their sir rights and grant of bhumidnari rights in their sir lands.

Learned counsel also urged that as a result of the amendment of Section 20, U. P. Zamindari Abolition, and Land Reforms Act and the enforcement of U. P. Land Reforms (Amendment) Act, 1954 (U. P. Act 20 of 1954), even the intermediaries in the areas which were previously in the State of Uttar Pradesh have been brought to the same position to which were relegated the sir-holders of the erstwhile Banaras State.

But an examination of the provision of law shows that this is not so. Sir-holders of the erstwhile Banaras State areas paying Rs. 250 or less as land revenue or assessed to local rate assessable on land revenue of Rs. 250 or less in the erstwhile Banaras State did not acquire any bhumidhari rights at all 'in their sir land in which there were tenants of sir and lost those rights without any compensation by modification of Section 10. On the other hand, similar intermediaries in the State of Uttar Pradesh acquired bhurnidhari rights.

Their tenants of sir became adhivasis and subsequently if these adhivasis acquired bhumidhari rights or were granted rights of sirdar under the provisions of the U. P. Zamindati Abolition and Land Reforms Act or the U. P. Land Reforms (Amendment) Act, Act No. 20 of 1954, compensation was payable to the intermediaries for loss of their bhumidhari rights. These are the advantages that persons holding sir rights in the erstwhile Banaras State lost as a result of the modification.

This loss caused to them is in no way justified either on the ground that circumstances required the modification or on the ground that it was based on any reasonable classification related to the discrimination being brought about by the modification. In these circumstances it must be held that the Notification of the State of Uttar Pradesh to the extent that it applied Section 10 after modification to the areas comprised in the erstwhile State of Banaras is void and must be quashed.

Consequently Notification No. 1830/I-A-1060-53, dated 30-6-1953, is quashed to the extent that it applies Section 10 to the territories of the former Banaras State as defined in the Banaras State (Administration) Order, 1949, with the modifications made in that Notification. There is a further prayer for issue of a writ of mandamus directing the State of Uttar Pradesh not to realise rent from the tenants of the land which was recorded as sir of the petitioner.

No such writ appears to be necessary in view of the fact that the Notification on the basis of which such action was being taken by the State of Uttar Pradesh has been quashed. The petitioner shall be entitled to his costs from the opposite party No. 1 which I fix at Rs. 200.