

Ziaullah Khan And Anr. vs State Of Uttar Pradesh And Anr. on 11 April, 1955

Equivalent citations: AIR1955ALL554, AIR 1955 ALLAHABAD 554

JUDGMENT

Agarwala, J.

1. This is a petition under Article 228 of the Constitution by two jagirdars of certain villages in the territories formerly forming part of the State of Rampur and now part of the State of Uttar Pradesh. The jagirdars had to pay no land revenue to the State and paid only a cess called the Chau-kidara Tax. They were proprietors of the land comprised within their respective jagirs.

2. The State of Uttar Pradesh passed an Act, called the U. P. Zamindari Abolition and Land Reforms Act, 1950 (Act I of 1951) which came into force on 26-1-1951. The Act did not apply in the first instance to the territories formerly forming part of the State of Rampur, now the District of Rampur, but Section 2 of the Act empowered the State Government to extend the Act to the district of Rampur "subject to such exceptions or modifications, not affecting the substance" as the State Government may, by notification, specify in this behalf. The proviso to Section 2 lays down:

"Provided that, when this Act or its provisions are so extended to such areas or estates, with or without exceptions or modifications, so much of any Act or Regulation in force therein as is consistent with this Act or the provisions so extended or with any modifications made therein, shall be deemed to have been repealed."

In exercise of the powers thus conferred upon the State Government by Section 2 of the Act, the State Government issued two notifications: (1) No. 3168, dated 30-6-1954, whereby the U. P. Zamindari Abolition and Land Reforms Act was extended, subject to the modifications and amendments mentioned in a Schedule appended to the notification, to the Rampur district and (2) No. 3169 dated 1-7-1954, whereby the vesting order under Section 4, Zamindari Abolition and Land Reforms Act 1 of 1951 was made in exercise of the powers conferred by Sub-section (1) of Section 4 of the Act.

The result was that all the estates situate in the former Rampur State excluding the estates owned by the State Government and certain other estates became vested in the State of Uttar Pradesh free from all encumbrances.

3. The main point for consideration in this petition is whether the Notifications mentioned above are ultra vires the State Government and are invalid or not.

4. The validity of Notification No. 3168 is challenged on two grounds:

(1) that the modifications made by it (as specified in the schedule) in the original U. P. Zamindari Abolition and Land Reforms Act, as extended to the former Rampur State, affect the "substance" of the enactment, and (2) that the provisions in the aforesaid schedule whereby certain laws already in force in Rampur have been repealed are ultra vires on the ground that the power of repeal could not be delegated by the Legislature nor could be exercised by the delegate.

5. As regards the second notification it is alleged that if the first is invalid, this also must be held to be invalid.

6. As regards the first objection, it was at first urged that most of the amendments as set out in the schedule in the notification were of substance, but later on learned counsel confined his arguments to three amendments only, namely those made in Section 3(8), Section 44 and Section 32 of the original Act. Before we deal with these amendments it is desirable to examine the scope of the expression "not affecting the substance" occurring in Section 2(1) of the Act. Section 2(1) runs as follows:

"The State Government may by notification in the Gazette apply the whole or any provision of this Act to any of the following areas or estates subject to such exceptions or modifications, 'not affecting the substance', as the circumstances of the case may require,"

'Substance' means "essential nature, essence; that which constitutes an essence of a thing; the essential part", (see the New English Oxford Dictionary). Therefore the restriction imposed upon the exceptions and modifications which the State Government is authorised to make is that the modifications and restrictions should not amount to an alteration of the essential nature of the enactment or the provision in question.

7. We now consider the amendments objected to on behalf of the applicants. We begin with Section 3(8) which defines the word 'estate'.

8. The definition of the word 'estate' in that section is as follows :

" 'estate' means the area included under one entry in any of the registers prepared and maintained under clause (a), (b), (c), or (d) of section 32 of the United Provinces Land Revenue Act, 1901 or in the registers maintained under clause (e) of the said section in so far as it relates to a permanent tenure holder and includes a share in or of an estate."

The meaning of the word "estate" as amended by Notification No. 3168 is as follows :

" 'estate' means the area included under one entry in any of the registers prepared and maintained under clause (a) or (b) of section 27 of the Qanun Malguzari Arazi Riyasat Rampur, 1932.

other than one in respect of a rent free grant, and includes a share in or of an estate."

It will be noticed that the only modifications are (1) that in place of the registers mentioned in Clauses (a), (b), (c) or (d) of Section 32, U. P. Land Revenue Act, 1901, the registers mentioned in clauses (a) and (b) of Section 27 of the Qanun Malguzari Arazi Riyasat Rampur, 1932, have been substituted, (2) that rent free grants have been excluded, and (3) that permanent tenure holders who are mentioned in the registers mentioned in Clause (e) of Section 32 of the U. P. Land Revenue Act, 1901 are not mentioned in the modified Section 3(8).

9. These three modifications are really consequential modifications and not of any substance. Clauses (a) to (d) of Section 32 of the U. P. Land Revenue Act correspond to clauses (a) and (b) of Section 27 of the Rampur Land Revenue Act. Revenue free grantees will not fall under Clauses (a) and (b) of Section 27 of the Rampur State Act but they have been mentioned in the modified section by way of precaution and involve no change in the original section. The permanent tenure holders mentioned in Clause (e) of Section 32 of the U. P. Land Revenue Act do not seem to exist in Rampur and therefore mention of them has been omitted in the modified section.

10. We next take up the amendments in Section 44 of the original Act. Section 44 deals with the method of calculating the net assets of an intermediary whose estate has vested in the State. Under the original section one of the items of expenditure to be deducted out of the gross income of an estate is the cost of management and irrecoverable arrears of rent which together are taken to be equal to fifteen per centum of the gross assets.

By the Notification in question this has been changed in to "twenty five per cent of the difference between the gross assets and the deduction to be made under Clause (a)." The deduction to be made in el. (a) of the original section refers to the land revenue or rent payable to the superior land-holder on account of land revenue or rent and cesses or local rates. This amendment does involve some change but not a change to the detriment of the intermediary. Whatever change it involves is for his benefit.

Fifteen per cent of the gross assets is very nearly the same as twenty-five per cent of the gross assets minus the land revenue or rent payable to the superior landlords, and cesses and local rates. The land revenue in U. P. amounts to between 40 to 50 per cent of the gross assets. Now if the land revenue is 40 per cent of the gross assets, then 25 per cent of 60 per cent is equal to 15 per cent of the gross assets. If land revenue is 50 per cent then 25 per cent of the balance will be 12 1/2 per cent. Cesses or local rates are usually 10 per cent of the land revenue.

If this amount is further deducted from the gross assets, the cost of management and irrecoverable arrears of rent will be still less, with the result that the amount payable to the intermediary will increase. A change which is for the benefit of the applicants themselves cannot be made a ground of

attack against the validity of the Notification.

11. Let us now take up Section 132. This section describes land in which sirdari rights shall not accrue to erstwhile tenants. The petitioners are not tenants but are jagirdars or proprietors, and being intermediaries have acquired 'bhumidhari' rights and not 'sirdari' rights. The provisions regarding 'sirdari' rights do not affect them. It is, therefore, not necessary to consider whether the modification made in Section 132 are substantial or riot.

12. At one stage of the arguments a grievance was made to the effect that the Notification makes a change in certain dates mentioned in the original Act. By Section 22 of the original Act, a variation in rent on or after 1-7-1948, was not to be recognised; in Section 23 of the original Act, a transfer by way of sale or gift made after 1-7-1948, was not to be recognised, in Section 37 a partition made on or after 8-8-1946, and in Section 77 a waqf, trust or endowment created on or after 8-8-1946 are not to be recognised. Both these dates have been altered to 1-12-1949.

This modification was necessary because it was on 1-12-1949 that the States' Merger (United Provinces) Order which amended the States' Merger (Governor's Provinces) Order was passed. By the amendment Rampur was included in the list of States to which the latter order became applicable. Obviously, it was the intention that nothing done before the State of Rampur was merged in a Governor's Province should be invalidated and the continuance of the dates 1-7-1948 and 8-8-1946 would have been most inequitable so far as the territories included in the former State of Rampur were concerned.

A change in the dates is not, therefore, a change of substance within the meaning of Section 2 of the original Act but is a change which was necessitated by the circumstances affecting the territories to which the Act has been extended.

13. This brings us to the point whether the provision regarding the repeal of certain laws already in force in the former territories of Rampur is unconstitutional or not. The Notification repeals the following Acts ;

1. Qanun Malguzari Arazi Riyasat Rampur 1932,
2. Qanun Kabza Arazi Riyasat Rampur 1937, and
3. Qanun Tahaffuz Jagir Wa Muafiyat 1938.

The repeal of these Acts became necessary because of the extension of the U. P. Abolition of Zamindari and Land Reforms Act to the territories to the former Rampur State. These Acts could not be retained after the aforesaid Act had been extended to those territories, as they were wholly inconsistent with the latter Act. Even if the Notification had not expressly repealed these Acts, they would have been deemed to have been repealed by the very fact of the extension of the U. P. Abolition of Zamindari and Land Reforms Act to the said territories.

This kind of repeal has been expressly provided for in the proviso to Section 2 of the Act already quoted. The notification in repealing the Acts mentioned above does nothing more than express what was implicit in the situation. A repeal of this nature is not in reality a repeal by any act of the delegate but by the act of the legislature itself. As was observed by the Supreme Court in *Harishanker Bagla v. State of Madhya Pradesh* AIR 1954 S.C. 465(A) with reference to Section 6 of the Essential Supplies (Temporary Powers) Act, 1946:

"The repeal is not by any act of the delegate, but the repeal is by the legislative act of the Parliament itself. By enacting Section 6V Parliament itself has declared that an Order made under Section 3 shall have effect notwithstanding any inconsistency in the Order with any enactment other than this Act. This is not a declaration made by the delegate but by the legislature which has declared its will that way in Section 6.

Parliament being supreme it certainly could make a law abrogating or repealing by implication provisions of any pre-existing law and no exception could be taken on the ground of excessive delegation to the act of the Parliament itself. There is thus no delegation involved in the provisions of Section 6 at all and that section could not be held to be unconstitutional on that ground."

The above observations apply, 'mutatis mutandis', to the proviso to Section 2 of the U. P. Abolition of Zamindari and Land Reforms Act and the repeal made by means of the notification aforesaid.

14. On general principles it may be stated that the very fact that the legislature has permitted the delegate to extend the Act to a specified particular area implies the repeal or amendment of those existing laws which would be in conflict or inconsistent with the Act so extended. A repeal or alteration of existing laws which is necessitated by the extension of a new Act to a particular area is not by the Act of the delegate but by the legislature itself which authorized the extension, and this sort of delegation was not prohibited by the Supreme Court in -- *In re, Article 143, Constitution of India and Delhi Laws Act, 1912 etc.* AIR 1951 S.C. 382 (B).

In that case by Section 2 of the Part 'C' States (Laws) Act, 1950, Parliament had authorised the Government to extend to any part 'C' State, with such restrictions and modifications which it thought fit.

"any enactment which is in force in a Part A State at the date of the notification and provision may be made in any enactment so extended for the repeal or. amendment of any corresponding law (other -than a Central Act) which is for the time being applicable to that Part 'C' State."

It will be observed that in Section 2 of the Part 'C' States Laws Act, 1950, the power of repeal or amendment of any corresponding law was not restricted to a consequential repeal or amendment, or in other words it was not restricted to any repeal or amendment which would impliedly occur on the ground that it was inconsistent with the newly extended law. The power conferred on the Central Government was wide enough to cover a case in which the Central Government could repeal or

amend any corresponding law whether the repeal or amendment was consequential or not.

15. Moreover in the Delhi Laws Act case it was considered that the Legislature had not made clear its legislative policy in respect of repeal of existing laws, but had invested the executive with the power to replace any of the laws in force in a particular territory by bringing in any of the laws prevalent" in other territories. As Mukerjee J. observed in this connection.

"To repeal or abrogate an existing law is the exercise of an essential legislative power, and the policy behind such act must be the policy of the legislature itself. If the Legislature invests the executive with the power to determine as to which of the laws in force in a particular territory are useful or proper and if it is given to that authority to replace any of them by laws brought from other provinces with such modifications as it thinks proper, that would be to invest the executive with the determination of the entire legislative policy and not merely of carrying out a policy which the legislature has already laid down..... The Executive Government is given the authority to alter, repeal or amend any laws in existence at that area under the guise of bringing in laws there which are valid in other parts of India."

It was in these circumstances that it was held by the majority of Judges constituting the Bench of the Supreme Court which decided the Delhi Laws Act case (B) that the power of repeal or amendment was ultra vires.

16. In the present case, however, the legislature had laid down its entire legislative policy. It has enacted a law complete in itself and has merely empowered the executive to extend that particular law and no other to a specified locality (with consequential exceptions and modifications suitable to the locality) and the power of repeal vested in the executive is limited to consequential "repeals only. In a case of this kind, therefore, it cannot be said that the Legislature has invested the executive with the power to determine the entire legislative policy.

17. In our judgment the rule laid down in the Delhi Laws Act case (B) cannot be applied to cases where the legislature has passed an Act and empowered a responsible authority to extend that particular Act to a specified locality with such modifications and alterations as the necessities of the situation may require and to repeal those existing laws only which would impliedly stand repealed when the Act is so extended.

The delegation of the power to repeal existing laws in these circumstances cannot be said to be ultra vires.

18. We are, therefore, of opinion that the modifications in question cannot successfully be challenged by the petitioners as ultra vires. This petition accordingly fails and is dismissed with costs.