

Mrs. A. Cracknell vs State Of Uttar Pradesh And Ors. on 2 April, 1952

Equivalent citations: AIR1952ALL746, AIR 1952 ALLAHABAD 746

JUDGMENT

Bind Basni Prasad, J.

1. This is an application under Article 226 of the Constitution by one Mrs. A. Cracknell directed against the State of Uttar Pradesh, the Collector of Meerut and the Court of Wards arising under the following circumstances.

2. The petitioner is the owner of what was formerly known as Dasna estate comprising of about twenty three thousand bighas in the district of Meerut spread over nine villages. Her complaint is that "without any notice, warning or any opportunity to show cause, and without any hearing or any reference of any kind whatsoever to the petitioner, the Court of Wards, at the instance of the Collector, Meerut, assumed superintendence of her estate on the morning of 5th September, 1951."

The notification dated 10-9-1951 published in the U. P. Gazette dated 15-9-1951 in Part I-A at page 601 shows that the superintendence of the estate has been taken over under Clause (b) of Sub-section (1) of Section 8, U. P. Court of Wards Act, 1912. The petitioner's suggestion is that her mother Mrs. A Coppinger is against her, as she wanted the petitioner to be her "unpaid companion, house-keeper and manager" and was opposed to the petitioner's marriage to anyone, and when the petitioner married, the relations between the two became strained and she turned against the petitioner's husband also, "who, to her way of thinking was the cause of the deprivation of the comfort and the personal services of the petitioner in her old age." There has been litigation between the mother on the one hand and the daughter and son-in-law on the other and it is suggested that the Collector was friendly with the mother.

3. The reliefs claimed are: "(i) a direction, order, or writ, in the nature of a writ of certiorari be issued against the opposite parties requiring them to produce the records of the proceedings relating to the petitioner's estate and after perusal thereof the proceedings and orders of the opposite parties be quashed; (ii) an interim direction, order or writ be issued against the opposite parties requiring them to restore the management of the petitioner's estate to her in the meanwhile."

4. When the petition came up for hearing before a Division Bench, notice was ordered to be issued, but the interim direction was refused.

5. A preliminary objection has been taken by Shri Gopalji Mehrotra, learned Standing Counsel, on

the ground that the action taken by the opposite parties under Section 8 (1) (b), or under Section 12, U. P. Court of Wards Act, 1912 was not of a judicial or quasi-judicial nature and as such no writ of certiorari can be issued, as prayed.

6. In the case of 'AVADESH PRATAP SIN-GH V. STATE OF UTTAR PRADESH,' AIR 1952 ALL 63, after review of authorities, Agarwala, J. observed:

"Upon a consideration of the whole matter, it appears to me that a quasi-judicial act requires that a decision is to be given not arbitrarily or in the mere discretion of an authority, but according to the facts and circumstances of the case, as determined upon an enquiry held by the authority after giving an opportunity to the party to be affected of Being heard and whenever necessary leading evidence in support of his contentions. Whenever the authority is bound to make a decision in this way, it acts judicially or quasi-judicially. The essential difference between an administrative or executive act on the one hand & a judicial and quasi-judicial act on the other is that while in the former case, the authority vested with the power to give a decision affecting the rights of others, may be bound to enter upon an enquiry, he is not bound to give a decision as a result of the enquiry, but may act in his discretion, in utter disregard of the result of the enquiry, in the latter case, such authority is bound by law to act on the facts and circumstances, as determined upon the enquiry, in which a person to be affected is given full opportunity to place his case before the authority, even though the decision of such authority, whether right or wrong, may be final and may not be liable to be challenged in a Court of law.

In order to determine whether a body is required to act quasi-judicially, the whole statute has to be considered and the decision has to be based upon a consideration of all the relevant provisions. When the right to be affected is a natural or common law right of a person, there is a presumption that an authority vested with the power to affect such right must act quasi-judicially. 'COOPER v. WANDSWORTH BOARD OF WORKS', (1863) 14 C B N S 180. But this presumption may be rebutted by an examination of the provisions of the statute. When the right to be affected is a creation of the statute itself, no such presumption arises at all."

On the above reasoning the learned Judge observed:

"When a notification by which the superintendence of the estate of a person was assumed by the Court of Wards, was one which affected the common or natural right of the applicant, there was presumption that the Government was acting quasi-judicially."

This case was followed later in 'RAVI PRA-TAP NARAIN SINGH v. THE STATE OF UTTAR PRADESH', AIR 1952 All 99. It is true that in both the cases the estates were taken over by the Court of Wards under Section 8(1) (d) and not under Section 8(1) (b), but the observations in Avadesh Pratap Sing's case are general and apply also to the assumption of an estate under Section 8(1) (b) of

the Act.

7. Learned Standing Counsel has invited our attention to 'PROVINCE OF BOMBAY v. KHUSHALDAS S. ADVANI', A. I. R. 1950 SC 222, in which it was discussed as to what is a judicial or quasi-judicial act as opposed to an administrative act. That was a case in which the Government of Bombay issued an order requisitioning a flat under Section 3 of the Bombay Land Requisition Ordinance. The question was whether the order issued by the Government was of a quasi-judicial nature. Section 3 of the Ordinance empowered the Government to requisition any land for any public purpose. The issue before the court was whether the determination by the Government that a public purpose existed was a judicial or a quasi-judicial act? It was held that such a determination was not of a judicial or quasi-judicial nature. This case was considered by Agarwala, J. in his judgment in 'AVADESH PRATAP SINGH v. STATE OF UTTAR PRADESH', (AIR 1952 All 63) and even so he held the view stated above. The facts in 'KHUSHALDAS'S CASE', were different and the law to be considered was quite different. As has often been stated, the observations in a case have to be read along with the facts thereof.

8. In view of the decisions of this Court in 'AVADESH PRATAP v. STATE OF UTTAR PRADESH', (AIR 1952 All 63) and 'RAVI PRATAP NARAIN v. STATE OF UTTAR PRADESH', (AIR 1952 All 99), I hold that the declaration of the State Government under Section 8 (1) (b), U. P. Court of Wards Act 1912 was a quasi-judicial act and as such it is possible for this Court to issue a writ of certiorari in respect of it. The preliminary objection falls to the ground.

9. The contention of the applicant is that Section 8 (1) (b), U. P. Court of Wards Act 1912 has become void under Article 13 of the Constitution as it infringes Articles 14, 15 and 19(1)(f) of the Constitution.

Section 8 of the Court of Wards Act provides:

"Proprietors when to be deemed disqualified.-

(1) Proprietors shall be deemed to be disqualified to manage their own property when they are-

(a) minors;

(b) females declared by the Provincial Government to be incapable of managing their own property;

(c) persons adjudged by a competent Civil Court to be of unsound mind and incapable of managing their own property;

(d) persons declared by the Provincial Government to be incapable of managing or unfitted to manage their own property-

(i) owing to any physical or mental defect or infirmity unfitting them for the management of their own property;

(ii) owing to their having been convicted of a non-bailable offence and being unfitted by vicious habit or bad character for the management of their own property;

(iii) owing to their having entered upon a course of extravagance;

(iv) owing to their failure without sufficient reason to discharge the debts and liabilities due by him;

(v) owing to such mismanagement as has caused general discontent among the tenants:

Provided that no such declaration shall be made under Sub-clause (iii) or (iv) unless the Provincial Government is satisfied-

(a) that the aggregate annual interest payable at contractual rate on the debts and liabilities due by the proprietor exceeds one-third of the gross annual profits of the property, and

(b) that such extravagance or such failure to discharge the said debts and liabilities is likely to lead to the dissipation of the property.

Provided further that no declaration made under Sub-clause (v) shall remain in force for more than two years from the date of such declaration.

(2) No declaration under Clause (d) of Sub-section (1) shall be made until the proprietor has been furnished with a detailed statement of the grounds on which it is proposed to disqualify him and has had an opportunity of showing cause why such declaration should not be made."

The argument is that inasmuch as Clause (b) of Sub-section (1) of Section 8 discriminates against a female it is void. I see force in this contention. If a male proprietor is incapable of managing his property, then his estate can be taken over by the Court of Wards only on one or more of the five grounds mentioned in Clause (d) of Sub-section (1) of Section 8, and that also, according to Sub-section (2), only after the proprietor has been furnished with a detailed statement of the grounds on which it is proposed to disqualify him and has had an opportunity of showing cause why such declaration should not be made. On the other hand, under Clause (b) of Sub-section (1) of Section 8 which applies only to a female proprietor, her estate can be taken over without giving an opportunity to show cause against the proposed action. There can be no doubt that a female proprietor has been placed in a more disadvantageous position under Section 8 than a male proprietor. While the superintendence of her estate can be assumed by the Court of Wards at the sweet will of the Government, it is not possible to do the same in the case of a male proprietor. She can be declared to be incapable of managing her estate even for reasons other than those mentioned

under Clause (d). In fact, in the present case it has been sworn in the affidavit and this has not been controverted by the opposite party, that the petitioner was not aware of the action proposed against her till the evening of the 4th September 1951, that is to say, a day before the Court of Wards took over the charge of the estate. Her efforts to find out the real cause why she was going to be declared incapable of managing her property were fruitless. She has asserted in her affidavit that she has been managing her property efficiently and there was no occasion to declare her as incapable of managing her property. It has not been shown to us as to what acts or omissions on her part were responsible for her being declared under Clause (b) of Sub-section (1) of Section 8 as incapable of managing her property. The suggestion on behalf of the applicant is that the act of the Government was capricious.

10. Learned Standing Counsel contends that the provision about female proprietors in Section 8 (1) (b) is not a discrimination against them, but only a classification which is permissible according to law and in this connection he relies upon 'THE STATE OF WEST BENGAL v. ANWAR ALI, A. I. R. 1952 SC 75. It was held in that case that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of Article 14. To get out of its reach, it must appear that not only the classification has been made but also that it is based upon a reasonable ground on some difference which bears a just and proper relation to the attempted classification and is not a mere arbitrary selection. In the present case the classification is based only on the ground of sex--a classification which is not permissible now in a matter like this, in view of the provisions of Article 15 of the Constitution. Classification on the ground of sex may be permissible in the case of labour laws. Under the very nature of things, it is necessary to grant female workers certain special privileges, e.g., maternity benefits. That would be a reasonable classification. But it would be no reasonable classification to place a proprietor under a more disadvantageous position in respect of the assumption of the superintendence of the estate) on the ground of sex alone.

11. The point was also considered by a Full Bench of this Court in the 'ASIATIC ENGINEERING CO. v. ACHHRU RAM', 1951 All L. J. 576. It was held in that case that the expression "equality before the law" does not imply that the same laws should apply to all persons in the same state. It does not refuse to take note of differentiations in economic and social functions. The guarantee of equal protection is not to be understood as requiring that every person in the land shall possess precisely the same rights and privileges as every other person. But the classification must be based upon reasonable grounds. It cannot be a mere arbitrary selection. Whatever may have been the position prior to the commencement of the Constitution, Section 8 (1) (b), Court of Wards Act, classifies female proprietors in an arbitrary manner and places them in a more disadvantageous position than the male proprietors, who cannot be declared incapable of managing their property without their being given an opportunity of showing cause and whose incapacity to manage the property is confined to the five reasons specified in Clause (d) of that sub-section. Article 15 of the Constitution provides that:

"The state shall not discriminate against any citizen on the ground of sex."

As Section 8(1) (b) makes a discrimination on the ground of sex, it is void under Article 13 of the Constitution.

12. Learned Standing Counsel has argued also that the U. P. Court of Wards Act is a piece of legislation for the benefit of proprietors and it is intended to prevent the dissipation of the estates. It is not a hostile legislation against the proprietors and as such the petitioner is not entitled to raise any objection as to the validity of any portion of it. This Act may have been framed in the interests of the proprietors of the Zamindari but in its actual working it is liable to cause hardship to individual proprietors whose estate is taken over by the Court of Wards. The intention with which a law is made is hardly relevant for the consideration of the contentions raised by the petitioner. We have to see whether any particular provision of the Act infringes any provision of the Constitution. If it does, then whatever may be the intention of the legislature it must be held to be void.

13. It remains to be considered whether Article 19(1)(f) of the Constitution is also infringed by the impugned Section 8(1) (b) of the Court of Wards Act. This must be read with Clause (5) of Article 19 which provides that:

"Nothing in Sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe."

14. The argument on behalf of the petitioner is that she has been deprived of the right to hold and enjoy her property only on the ground of her sex and a law under which such a deprivation has been effected is no reasonable restriction. After the enactment of Article 15 of the Constitution this must be held to be an unreasonable restriction upon the right of a citizen to hold his or her property.

15. Learned Standing Counsel has raised the objection that the notification by which the estate was taken over relates to the properties of five proprietors and only one of them, the petitioner, has come to this Court and others evidently have no objection to the Court of Wards taking over their estates. This Court cannot declare the action of the Court of Wards as illegal qua the properties owned by persons who are no party to these proceedings. We can see no objection to grant relief to the applicant so far as her interests are concerned. In the affidavit filed by the petitioner she has stated in sub-para 11 of para 2 that in March 1949 a perfect partition took place between the co-sharers of the Dasna estate and from that date Dasna estate as such ceased to exist and became split up into five absolutely separate Zemindaris comprising of whole villages to each share. It is stated in that paragraph that to the petitioner Dasna Khewat 3, Ikla, Inayatpur, Arifpur and Dhorie were allotted at the said partition. As other co-sharers are no party to the present proceedings it is not possible for us to determine if these specific villages are in the share of petitioner alone. It would serve the ends of justice if the order of the assumption of the Dasna estate by the Court of Wards is quashed to the extent it concerns the petitioner's share. If the opposite party and other persons interested in the matter accept the allegation contained in sub-para 11 of para (2) of the affidavit, then the villages mentioned therein as having been allotted to the petitioner shall be released in her favour. If however, that position is not accepted then the order will be quashed to the extent that it concerns the petitioner's interest in the property taken over by the Court of Wards under the notification dated 10-9-1951.

16. For the reasons given above, I would declare Section 8(1) (b), U. P. Court of Wards Act, 1912 as void and would grant the relief prayed for to the petitioner to the extent of her share in the property, the superintendence of which was assumed by the Court of Wards under the notification No. CW3640/II-269(1)-51 dated 10-9-1951. I would allow further a sum of Rs. 400 as costs to the petitioner against the opposite party.

Gurtu, J.

17. I agree and have nothing to add.

18. BY THE COURT--The application is allowed. The assumption of the petitioner's estate by the Court of Wards under Notification No. CW3640/II-269(1)-51 dated the 10-9-1951, is quashed. This order relates only to the petitioner's share in what was known as the Dasna Estate in the district of Meerut. If the opposite party and other persons interested in that estate accept the petitioner's allegation about a perfect partition as contained in sub-para (xi) of para 2 of the affidavit then only the villages mentioned therein shall be released from the superintendence of the Court of Wards; but if that partition is not accepted then the release will be to the extent of the petitioner's share in the estate. A sum of Rs. 400/- is allowed as costs to the petitioner against the opposite party.

19. We certify under Article 132 of the Constitution that the case involves a substantial question of law as to the interpretation of the Constitution.