Madhusudan Singh And Ors. vs Union Of India (Uoi) And Ors. on 22 November, 1983

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Author: S. Murtaza Fazal Ali

Bench: M.P. Thakkar, S. Murtaza Fazal Ali

JUDGMENT

S. Murtaza Fazal Ali, J.

1. True to the spirit and letter of our Constitution and in fulfilment of the promises made by our national leaders to the people of India, the Government sought to introduce agrarian reforms so as to reserve the lands to the tillers of the soil giving marginal relief or compensation to the erstwhile landlords or tenants-in-chief, through various statutes passed by almost all the States in the country. In order to hasten and safeguard the agrarian reforms the Constitution takes full care by virtue of the insertion of the directive principles of State policy contained in part IV, which are undoubtedly the heart and soul of our Constitution and have in fact been complied with in a variety of spheres. Ceaseless attempts made by the landlords to challenge the constitutional validity of the aforesaid reforms met with little success. Having failed in their attempts to undo the socialist reforms passed for the purpose of building an egalitarian society and bringing about marked improvement in the condition of the poor suffering tillers by the various Acts passed by the States, the landlords left no stone unturned and were always on the look out for an opportunity to seize the lands from the tenants on one pretext or the other through manpower, muscle-power or money-power. Nevertheless, the constitutional validity of most of the Acts came up for decision in the High Courts and in this Court and by and large each one of them was held to be constitutionally valid, thus setting at naught the attempts of the landlords to take back possession of the lands which should have been given to the tillers" of the soil long before. The landlords were thus unable to get hold of any opportunity to pounce upon the land which went and should have gone to the actual tillers of the soil.

2. Thereafter, some of the bigger landlords tried through their dextrous methods and legal ingenuity to defeat the laudable social endeavour of the Government by making a show of the so-called complete destruction of their assets and properties reducing them to starvation. This case is yet another glaring illustration of such an adroit attempt made by the tenants-in-chief to deprive the actual tillers of the rights conferred on them by the Land Reforms Acts of West Bengal passed from

1953 to 1977, In view, however, of the modern trends of the decisions of this Court, which always made a practical and pragmatic approach to any progressive step taken by the Parliament, the attempts of the landlords ultimately proved to be a grotesque failure.

3. Coming now to the facts of the case, a brief history of the admirable object of the agrarian reforms introduced by the Government of West Bangal may be necessary as a prelude to our discussion on the subject. In fact, all the contentions raised before us stand concluded by a recent decision of this Court as we shall show hereafter. Not content with the addition of Article 31C of the Constitution which was introduced by the Constitution (25 the Amendment) Act, 1971, the petitioners chose to call into aid the decisions of this Court in Minerva Mills Ltd. v Union of India and Ors. (1981) 1 SCR 206 and Waman Rao and Ors. v Union of India and Ors. (1981) 2 SCR 1 which also proved to be an exercise in futility because the ratio of these cases is in no way of any assistance to the petitioners.

4. In the instant case, we are concerned with agrarian reforms achieved from time to time by the Government of West Bengal in order to improve the lot of the tillers of the land by giving them as many facilities as could be possible within the framework of the law and the Constitution. Having realised that the West Bengal Estates Acquisition Act, 1953 (hereinafter referred to as the '1953 Act') could not be challenged the landlords waited for future litigations to swoop down on the validity of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as the '1955 Act') as amended by the West Bengal Land Reforms (Amendment) Act, 1972 and The West Bengal Land Reforms (Amendment) Act, 1977 (for facility, to be referred to as the 'Amendment Act of 1972' and 'Amendment Act, of 1977' respectively).

5. In the first round which was the subject matter of a decision of this Court in Sri Sri Kalimata Thakurani & Sri Sri Raghunath Jew and Ors. etc. v Union of India and Ors. (1981) 2 SCR 950 to which one of us (Fazal Ali, J.) was a party, this Court negatived the constitutional objections and contentions raised by the landlords against the reforms introduced by the 1955 Act and the 1972 and 1977 Amendment Acts. Unfortunately, however, there appears to be some small lacuna in the above judgment which was unhesitatingly exploited by the petitioners so as to attempt to destroy the progressive amendments of 1972 and 1977 particularly taking advantage of certain observations made in that case to which we shall come later.

6. To begin with, in the 1953 Act which was enforced with effect from 12th February, 1954, Section 4 introduced a more or less radical reforms for the benefit of the actual tillers by abolishing the rights of the intermediary (ex-landlords). By virtue of this section all estates and the rights of every intermediary was to vest in the State free from all encumbrances from a date mentioned in a notification issued by the Government. In order, however, to be just and fair to the erstwhile landlords they were conferred the status of raiyats or tenants. By virtue of Section 6 they were entitled to retain categories of lands like lands comprised in home-steads or appertaining to buildings and structures, etc., or non-agricultural land in khas possession. Section 6(d) expressly provided that so far as agricultural land in khas possession was concerned it would not exceed twenty five acres in area to be chosen by the landlord. No serious grievance was made before us regarding the provisions of Sections 4 to 6 excepting that the ceiling of twenty five acres was not sufficient for the landlords to make both their ends meet and enable them to earn their livelihood.

Such a plea has to be stated only to be rejected because the landlords who had huge lands comprising home-stead lands or those appertaining to buildings or structures and non-agricultural lands in khas possession were not at all touched by the 1953 Act. In these circumstances, therefore, we do not take any serious notice of this grievance which in fact was not pressed before us.

7. Realising the current trends in the social approach of the agrarian reforms made by the courts, the counsel for the petitioners confined his arguments to three infirmities from which the 1953 Act and the 1972 and 1977 Amendment Acts suffered. However, during the course of arguments the challenge remained confined only to certain specific amendments made by the 1972 and 1977 Amendment Acts and the points raised before us may be summarised thus:

> 1) that the total ceiling area allowed to be retained by the 1953 Act in respect of agricultural land in khas possession of the raiyats was drastically reduced.
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> 2) that although the status of raiyats was conferred on the erstwhile landlords which was heritable and transferable, the institution of bargardars was introduced in order to enable the raiyats to cultivate their lands on a 50:50 basis, and
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> 3) that while the Amendment Act of 1972 and given a right to the raiyats to resume the lands given to the bargardars for their personal cultivation, the subsequent amendments took away this right and made the right of the bargardar both heritable and transferable causing serious detriment and prejudice to the raiyats.

8. We now proceed to refer only to those provisions whose constitutional validity has been seriously challenged by the petitioners. It appears that by the 1972 Amendment Act certain changes were made and a reference was made particularly to Section 14M which may be extracted thus:

> 14M. Ceiling area--(1) The ceiling area shall be:
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> (a) in the case of a raiyat, who is an adult unmarried person, 2.50 standard hectares;
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> (b) in the case of a raiyat, who is the sole surviving member of a family, 2.50 standard hectares;
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> (c) in the case of a raiyat having a family consisting of two or more but not more than five members, 5.00 standard hectares;
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> (d) in the case of a raiyat having a family consisting of more than five members, 5.00 standard hectares, plus 0.50 standard hectare for each member in excess of five, so, however, that the aggregate of the ceiling area for such raiyat shall not, in any case, exceed 7.00 Standard hectares;
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> (e) in the case of any other raiyat, 7.00 standard hectares;

> (2) Notwithstanding anything contained in Sub-section (1), where, in the family of a raiyat, there are more raiyats than one, the ceiling area for the raiyat, together with the ceiling area of all the other raiyats in the family shall not, in any case, exceed:
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> (a) where the number of members of such family does not exceed five, 5.00 standard hectares;
>
> (b) where such number exceeds five, 5.00 standard hectares, plus 0.50 standard hectare for each member in excess of five, so, however, that the aggregate of the ceiling area shall not, in any case, exceed 7.00 standard hectares.
>
> (3) For the purpose of Sub-section (2), all the lands owned individually by the members of a family or jointly by some or all the members of such family shall be deemed to be owned by the raiyats in the family.

9. It was submitted that the drastic reduction of the area of the raiyat has been reduced to 2.50 standard hectares being the minimum and 7.00 standard hectares being the maximum according to the nature of cases mentioned in Clauses (a) to (e) of Section 14M(1) and Clauses (a) and (b) of Section 14M(2), as extracted above, which worked serious injustice to the tenants.

10. A strong exception was taken to the amendment of Section 17 of the 1955 Act particularly the substitution of Section 17(c) and the various provisos to that section. The validity of Section 17(6) was also challenged on the ground that the legislation was confiscatory.

11. The provisions of the proviso to Clause (8) of Section 2 added by the 1977 Amendment Act to the 1955 Act was seriously assailed. The said proviso runs thus:

> Provided that such person or member of his family resides for the greater part of the year in the locality where the land is situated and the principal source of his income is produced from such land.

12. A similar challenge was made to the addition of Section 21B in the 1955 Act by the 1977 Amendment Act. On similar grounds the aforesaid provisions were also challenged in the decision of this Court in Sri Sri Kalimata Thakurani's case (supra) which did not meet with any success. It was, however, pointed out by the counsel for the petitioners that this Court did not accept the arguments of the petitioners in that case because it was under an erroneous impression that the 1955 Act and the Amendment Acts of 1972 and 1977 were added to the Ninth Schedule in the Constitution of India and were, therefore, immune from challenge. To some extent the counsel is right in his statement that such an inadvertent mistake has crept in due to oversight because the 1955 Act and the Amendment Acts of 1972 and 1977 were added to the Ninth Schedule by the 40th Amendment of the Constitution of 1976 being entry numbers 181 to 185. Hence, it could be reasonably argued that the constitutional validity of the provisions, mentioned above, was justiciable and could be gone into. Before dealing with these arguments it may be necessary to extract certain portions of the decision of this Court in Sri Sri Kalimata Thakurani's case (supra) where this Court after dealing with the

various provisions observed thus:

> In the instant case, it is clear that the 1955 Act as also the Amendment Act of 1972 were added to the Ninth Schedule, being entry Nos. 60 and 81, prior to April 24, 1973. In these circumstances, it is manifest that the aforesaid Acts are completely immune from challenge on the ground that they are violative of any of the rights enshrined in Part III of the Constitution. The learned Counsel for the petitioner, therefore, was fully justified in making the concession before us.

13. This error is undoubtedly there but neither the counsel for the petitioners nor the counsel for the respondent drew our attention to this omission. Even if the Acts were not included in the Ninth Schedule their constitutional validity could not be questioned because this Court has clearly held in Sri Sri Kalimata Thakurani's case that the provisions are otherwise reasonable and give full effect to the pragmatic and socialistic approach, where the following observations were made:

> It would be seen that Section 17 permits the cultivator to terminate the cultivation of the land by a bargardar and resume possession under his own cultivation if the conditions mentioned in Clauses (a), (b) and (d) of Sub-section (1) of Section 17 are satisfied. Clauses (d) may be extracted thus:
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> That the person owning the land requires it bonafide for bringing it under personal cultivation.
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> Thus, the cultivator has a right to get back the land for personal cultivation if he requires it for his bona fide use and proves the same to the satisfaction of the authority appointed under Section 17(1).

14. Referring to some of the provisions of the 1972 Amendment Act this Court held that the provision by which the right of bargardar was protected and made heritable could not be challenged as being either unconstitutional, unreasonable or arbitrary. But this Court made some observations which were in favour of the petitioners and which may be extracted as follows:

> But when the Bargardar on his own volition surrenders or abandons the land, there is no reason why the tenant should not be allowed to resume cultivation and instead be compelled to get the land cultivated by some other person nominated by the authority concerned under Section 49 of the 1955 Act. This provision therefore appears to us to be extremely harsh and works serious injustice to the rights of the tenants particularly after the ceiling area of the tenant has been considerably reduced by the Amendment Act of 1972. Thus, the tenant having a small area guaranteed to him for his unit, he should have at least fuller and more effective rights to get that area cultivated by him or even by a bargardar of his choice subject to resuming the same, if the bargardar surrenders or abandons the land.... Unfortunately, however, though the provisions of Sub-sections (3), (4) and (5) of Section 20B, which is only a penal section) perilously border on arbitrariness and amounts to serious curbs on the

> fundamental right of the cultivator to pursue his occupation, we cannot however strike down these provisions because they are contained in the Amendment Act of 1972 which has been placed in the Ninth Schedule prior to April 24, 1973, and therefore fall within the protective umbrella and are immune from challenge.

15. A capital was therefore made out of the above observations in Sri Sri Kalimata Thakurani's case. Reliance was also placed on a decision of this Court in Sasanka Sekhar Maity and Ors. v Union of India and Ors. (1980) 4 SCC 716 where A.P. Sen, J., speaking for the Court, made the following observations:

> In order, therefore, to reconcile the fundamental rights of the community as a whole with the individual rights of the more fortunate section of the community, it was fundamentally necessary to make the impugned legislation to secure to a certain extent the rights of that part of the community which is denied its legitimate share in the means of livelihood.
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> The broad objectives or any legislation relating to agrarian reforms are materially four, viz., (1) to maximise the agricultural output and productivity, (2) a fair and equitable distribution of agricultural income, (3) increase in employment opportunities, and (4) a social or ethical order. Though the abolition of the zamindari system in the State of West Bengal was an important step forward, the feudal structure remained so far as the peasants were concerned. These objectives have been achieved through progressive legislation.

16. These observations put the petitioners completely out of court and demolish the contentions advanced before us. The four objectives mentioned by Sen, J. in the passage extracted above are clearly brought out and implemented by virtue of the impugned amendments in the 1955 Act.

17. So far as the decision in the case of Sri Sri Kalimata Thakurani (supra) is concerned, in view of the crystallisation of the law in Minerva Mills, Woman Rao (supra) and Sanjeev Coke Manufacturing Co. v. Bharat Coking Coal Ltd. and Anr. cases which have been followed and amplified in the recent decision of this Court in State of Tamil Nadu, etc v. L. Abu Kavur Bai and Ors. C.A. Nos. 957-966(N) of 1973 etc. decided on 31.10.83 the matter is no longer res integra and even if there was an inadvertent error in the observations of this Court in Sri Sri Kalimata Thakurani's case, the same has become redundant as the impugned provisions can be supported as squarely falling within the four corners of Article 39(b) of the Constitution as the intention of the Act is to secure and promote the objectives contained in Article 39(b). In this connection, we might extract a few observations from L. Abu Kavur Bai & Ors. (supra):

> In view of Article 31C, which gives protective umbrella against Article 31(2) also, the Court cannot strike down the Act merely because the compensation for taking over the transport services or its units is not provided for. The reason for this is that Article 31C was not merely a pragmatic approach to socialism but imbibed a theoretical aspect by which all means of production, key industries, mines, minerals,

> public supplies, utilities and services may be taken gradually under public ownership, management and control.

18. It was further argued by the petitioners that there was no clear nexus between the Act and the objectives contained in Article 39(b). We are, however, unable to agree with this argument because the question of nexus has been clearly expounded by this Court both in the Minerva Mills and Sanjeeve Coke Manufacturing Co.'s cases as also in the case of L. Abu Kavaur Bai & Ors. (supra) where a Constitution Bench of this Court, speaking through one of us (Fazal Ali, J.), made the following observations:

> Another important facet of Article 31C which has been emphasised by this Court is that there should be a close nexus between the statute passed by the legislature and the twin objects mentioned in Clauses (b) and (c) of Article 39. In approaching this problem and considering the question of nexus a narrow approach ought not to be made because it is well settled that the courts should interpret a constitutional provision in order to suppress the mischief and advance the object of the Act. The doctrine of nexus cannot be extended to such an extreme limit that the very purpose of Article 39(b)&(c) is defeated.... If the nexus is present in the law then the protection of Art, 31C becomes complete and irrevocable.

19. It was also argued that by virtue of the various amendments made by the 1972 and 1977 Amendment Acts no process of distribution is involved. This argument cannot be accepted in view of the observations of this Court by Krishna Iyer, J. in State of Karnataka v. Ranganatha Reddy and Anr. etc. where the learned Judge observed as follows:

> The next question is whether nationalisation can have nexus with distribution.... To 'Distribute'; even in its simple dictionary; meaning, is to allot, to divide into classes or into groups' and 'distribution' embraces arrangement, classification, placement, disposition, apportionment, the way in which items, a quantity, or the like, is divided or apportioned; the system of dispersing goods throughout a community.

20. The above observations were followed and amplified in L. Abu Kavur Bai's case (supra) thus:

> It is obvious, therfore, that in view of the vast range of transactions contemplated by the word 'distribution' as mentioned in the dictionaries referred to above, it will not be correct to construe the word 'distribution' in a purely literal sense so as to mean only division of a particular kind or to particular persons. The words, apportionment, allotment allocation, classification, clearly fall within the broad sweep of the word 'distribution'. So construed, the word 'distribution' as used in Article 39(b) will include various facets, aspects, methods and terminology of a broad-based concept of distribution.

21. In view of the aforesaid, observations, the challenge to the impugned provisions of the Acts no longer survives.

22. Moreover, what could have been a better mode of distribution contemplated by Article 39(b) than to take away the surplus agricultural lands from the landlords and distribute it amongst the poor suffering landless tillers of the soil who had suffered for centuries as vassals and slaves of the rich zamindars. The Acts have not touched the non-agricultural homestead lands or buildings standing thereon but has taken over only a major portion of the agricultural lands, leaving with the landlords a portion prescribed within the ceiling limit, and distributed the excess to the tillers of the soil which alone constitute their main source of sustenance and livelihood. The claim of the raiyats (erstwhile landlords) that the Acts amount to confiscation is absolutely untenable and, if we dare say, it amounts only to shedding of crocodile tears and an anathema or a taboo. We are therefore convinced that the impugned amendments were manifestly and pointedly made for the purpose of giving effect to and securing the objects of Article 39(b) because these Acts clearly intended to distribute the material resources of the community, viz., the agricultural lands to a large number of tillers of the soil in order to serve the common good of the aforesaid, people. The challenge to the impugned Acts and amendments must therefore fail as the amendments fall-within the letter and spirit of Article 39(b).

23. Finally, it was suggested that the provision of the amendment by which the raiyat is enjoined to reside in the village itself for a large part of the year seems to be harsh and arbitrary. This argument does not hold any water for two reasons:

> (1) that when once it is found that the Act is meant to promote and effectuate the objectives contained in Article 39(b), which is no doubt the case here, no other ground of challenge would survive because by virtue of Article 31C any Act which seems to secure the objects of Article 39(b) cannot be challenged being violative of Article 14, 19 or 31.
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> (2) Secondly, the provision that the land-owner should reside in the village is both salutary and beneficial, the object being that if raiyat wants to cultivate his own land he must give his whole- hearted attention to the said land instead of leaving the village and carrying on other avocations of life.

24. One of us, (Fazal Ali, J.) had clearly adverted to this aspect of the matter in Sri Sri Kalimata Thakurani's case (supra) and observed as follows:

> The dominant object of the proviso is to abolish the age-old institutions of absentee land-holder by insisting that the cultivator to whom land is allotted must give full and complete attention to the soil and as result of which there will be a maximum utilisation of the agricultural resources which would increase production.... It is obvious that the tenant has to remain in the village for the purpose of cultivating the lands, sowing the seeds, growing it and harvesting it. These processes would doubtless require the presence of the tenant for a greater part of the year which is what the proviso predicates. If the tenant is permitted to leave the village for more than half the year then the very purpose of giving such a vast area for cultivation to a tenant will be foiled. Moreover, the proviso merely insists that the tenant should

remain in the village or its periphery for 'greater part of the year' which appears to be not only reasonable but absolutely essential if the land has to be cultivated in a scientific manner in order to yield the maximum possible production, which would result in better and equitable distribution of agricultural products for the use of the people of the country.

25. For the reasons given above all the contentions raised by the petitioners fail and the writ petition is dismissed but without any order as to costs.