Sriram Narayan Medhi vs State Of Maharashtra on 4 May, 1971

Equivalent citations: 1971 AIR 1992, 1971 SCR 661, AIR 1971 SUPREME COURT 1992, 1972 MAH LJ 168

Author: P. Jaganmohan Reddy

Bench: P. Jaganmohan Reddy, S.M. Sikri, G.K. Mitter, C.A. Vaidyialingam, A.N. Ray

PETITIONER:
SRIRAM NARAYAN MEDHI

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT04/05/1971

BENCH:
REDDY, P. JAGANMOHAN
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REDDY, P. JAGANMOHAN
SIKRI, S.M. (CJ)
MITTER, G.K.
VAIDYIALINGAM, C.A.
RAY, A.N.

CITATION:
1971 AIR 1992 1971 SCR 661

ACT:
Bombay Tenancy & Agricultural Lands (Amendment) Act, 1964 (Maharashtra Act 31 of 1965)-Validity of amendments challenged under Arts. 19 and 31 of the Constitution-Act whether protected from such challenge by Art. 31A.

HEADNOTE:
The Bombay Tenancy & Agricultural Lands Act, 1948 was passed in furtherance of the State's policy of social welfare and to give effect to agrarian reform. By the Constitution First Amendment Act 1951 the said Act was included in the Ninth Schedule and came within the purview of Art. 31B of the Constitution. In 1956 the State Legislature in order to implement the Directive Principles of State Policy passed the Bombay Tenancy and Agricultural Lands (Amendment) Act

which came into force on 1st August 1956. The main effect of the amendments made by the 1956 Act was that on 1st April 1957 every tenant was subject to other provisions deemed to have purchased from his landlord free of all encumbrances, the land held by him as a tenant. The erstwhile landlord remained entitled only to recover the price fixed under the provisions of the Amendment Act in the manner provided therein i.e. by a tribunal. The Amendment Act was challenged by a petition under Art. 32 but this Court held that it was protected by Art. 31A. Further changes in the Act were made by the impugned Act, namely, the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1964. In a petition under Art. 32 of the Constitution it was contended that these changes had affected the petitioner's right to property in that he had neither the right to recover the price of the land deemed to be purchased by the tenant nor any hope of recovering it through the procedure prescribed by the impugned Act within a reasonable time. It was urged that there was no time fixed for the tribunal to determine that it had failed in the efforts to recover the amount under the Revenue Recovery Act so that the tenant purchaser could be evicted. The provisions of the Act were also attacked as unreasonable. The question that fell for consideration was whether the impugned Act was protected by Art. 31A.

HELD: Once it has been held that Art 31A applies to an Act the petitioner cannot complain that his rights under Arts. 14, 19 and 31 of the Constitution have been infringed. The protection is available not only to Acts which come within its terms but also to Acts amending such Acts to include new items of property or which change some detail of the scheme of the Act provided firstly that the change is not such as would take it out of Art. 31A or by itself is not such as would not be protected by it and secondly that the assent of the President has been given to the amending statute. So long as the amendment also relates to a scheme of agrarian reform providing for the acquisition of any estate or of any right thereunder or for extinguishment or modification of such right the mere transfer of the tenure from one person to another or the payment of the price in instalment or even the postponement of payment by a further period cannot be challenged under Arts. 14, 19 and 31. [666H]

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In the present case the impugned legislation had merely amended the Provision which related to the recovery of the amounts from the tenant who had become purchaser and the postponement of the time of ineffectiveness of sale till the tribunal has tried and failed to recover the amount from the tenant purchaser., This had not in any way affected the main purpose of the Act or the object which it seeks to achieve nor did the amendments effected thereby take the provision out of the protection given to it under Art. 31A of the

Constitution. [667B-C]
The petition must accordingly be dismissed..
Sri Ram Ram Narain Medhi v. State of Bombay, 119591 1 Supp. S.C.R. 489, referred to and held inapplicable.

JUDGMENT:

ORIGINAL JURISDICTION: WRIT PETITION No. 254 of 1968. Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights.

V. M. Tarkunde, V. M. Limaye and S. S. Shukla for the petitioners.

V. S. Desai, M. C. Bhandare and S. P. Nayar, for the res- pondent.

The Judgment of the Court was delivered by P. Jagamohan Reddy, J.-The petitioner challenges the vires of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1964 (Maharashtra Act XXXI of 1965) (hereinafter referred to as the 'impugned Act'). The parent Act is the Bombay Tenancy and Agricultural Lands Act 1948 (Bombay Act XLVII of 1948) (hereinafter referred to as 'the parent Act'). In 1956 the State Legislature amended the parent Act by Bombay Tenancy and Agricultural Lands (Amendment) Act 1956 (Bombay Act XIII of 1956) (hereinafter referred to as 'the Amendment Act') which came into force on 1st August 1956.

The State of Bombay undertook legislation in furtherance of its policy of social welfare and to give effect to agrarian reform. The parent Act was passed by the Bombay State Legislature in order to amend the law which governed the relationship between the landlord and tenants of agricultural lands, the object sought to be achieved being as indicated in its preamble that "on account of the neglect of a landholder or disputes between the landlord and his tenants, the cultivation of his estate has as a result suffered or for the purposes of improving the economic and social conditions of peasant or ensuring the full and efficient use of land for agriculture, it is expedient to assume management of estates held by the landholders and to regulate and impose restrictions on transfer of agricultural lands, dwelling houses, sites and lands appurtenant thereto belonging to or occupied by agriculturists, agricultural labourers and artisans in the province of Bombay and to make provisions for certain other purposes".

By the Constitution first Amendment Act 1951 the parent Act was included in the Ninth Schedule and came within the pur- view of Art. 31B of the Constitution. In 1956 the State Legislature in order to implement the directive principles of the State Policy set out in Aft. 38 and 39 of the Constitution of India by seeking to promote the welfare of the tenants, the landless peasants and labourers and to enable them to acquire land and with a view to bring about equitable distribution of ownership of land, passed the amendment Act which received the assent of the- President on March 16, 1956. This Act made further changes in the relationship of landlord and tenants which were more drastic. The main effect of the amendments of Section 32 to 32-B was that on the 1st April 57 (hereinafter referred to as the tiller's day) every tenant was, subject to the other provisions deemed to have purchased from his landlord free of all encumbrances subsisting thereon, on the said day, the land

held by him as a tenant subject to certain conditions (vide Section 32). The tenant under Section 32-A was deemed to have purchased the land up to the ceiling area. It was further provided by Section 32-B that if a tenant held the land partly as owner and partly as tenant, but the area of the land held by him as owner is equal to or exceeds the ceiling area he shall not be deemed to have purchased the land held by him as a tenant under Section 32. Section 32-E provided that the balance of any land after the purchase by the tenant under Section 32 shall be disposed of in the manner laid down in Section 15 as if it were land surrendered by the tenant. Section 32-F further provided that in the case of disabled landholders namely minors, widows or persons subject to any mental or physical disability or where the tenants are equally disabled as aforesaid or where they are members of the Armed Forces, the tiller's day was postponed by one year after the cessation of disability.

As a result of the Amendment Act, on the 1st of April, 1957 the relationship of landlord and tenant came to an end, the landholder ceased to be a tenure-holder and the title thereto was vested in the tenants defeasible only on certain specified contingencies. The relationship of landholder and tenant was thus transformed into a relationship of a creditor and debtor, the erstwhile landlord being entitled only to recover the price fixed under the provisions of the Amendment Act in the manner provided therein under Section 32G read with 32H, the price which. was to be paid by the tenant Was to be determined by the tribunal as soon as may be after the tiller's day and in the manner provided thereunder subject however to the amount so determined not being less than 20 times and not more than 200 times of the assessment. An appeal against the decision of the Tribunal was provided to the State Govt. under Section 32-J. The mode of payment by the tenant of the price fixed by the Tribunal is prescribed under Section 32-K which shall be payable in annual instalments not exceeding 12, with simple interest at 4-1/2% per annum, on or before the said dates as may be prescribed by the Tribunal and 'the tribunal shall direct that the amount deposited in lumpsum or the amount of instalments deposited shall be paid to the former landlord. The landlord however did not have the right to recover the amount by recourse to a Court of law. The only way in which he could recover it if the instalments were not duly paid by the tenant voluntarily was by an application to the concerned authorities under the Revenue recovery Act to recover it as arrears of land revenue (Section 32-L) which provision it may be stated was subsequently deleted by the impugned Act under Section 32-M. On the payment of the price either in lumpsum or of the last instalment of such price the tribunal was required to issue a certificate in the prescribed form to the tenant purchaser in respect of the land, which certificate shall be the conclusive evidence of purchase. If the tenant fails to pay the lumpsum within the period prescribed for, or is at any time in arrears of four instalments the purchase was to be ineffective and the land was to be put at the disposal of the Collector and any amount deposited by such tenant towards the price of the land was to be refunded to him. It 'is important to note that Section 32-P provides that if the tenant fails to exercise his right to purchase or the sale becomes ineffective on account of default of payment of purchase price the tenant shall be evicted and the land shall be surrendered to the former landlord. Sections 32-Q and 32-R provide that the amount of purchase price was to be applied towards the satisfaction of debts and the purchaser was to be evicted from the land purchased by him as aforesaid if he fails to cultivate the land personally.

The Amendment Act was challenged by a petition under Art. 32 but this Court held that it is protected by Art. 31A of the Constitution and is therefore valid. We shall presently refer to that

decision but the petitioner's grievance is against the changes that have been affected by the impugned Act in the law as it stood after Amendment Act. It is the contention of the learned Advocate for the Petitioner that he changes that transgress the fundamental rights of the petitioner are (1) that if the tenant does not pay the instalments by the end of twelve years but before the end of the period he makes an application that he is at the time incapable of paying the arrears within the time and pays one instalment together with the interest on the total amount of one year's instalment, the period of payment is extended by another 12 years. (2) where he fails to pay the price in lumpsum or is in arrears of four instalments where the number of instalments fixed is four or more and the purchase has thereby become ineffective even then if he was in possession of the land on the 1st of May '65 and files an application within six months therefrom or from the date of default of the payment of price in lumpsum or of the last instalment whichever is later and applies to the tribunal to condone the default on the ground that there being sufficient reason as he was incapable of paying the price in lumpsum or the instalment within the time, the tribunal can if it is satisfied condone the default and allow further time, in the case of payment of lumpsum one year and for payment of arrears in the case where payment is by instalments by increasing the total number of instalments to sixteen. (3) Even when the arrears are not paid as required under the law during the extended period and sale becomes ineffective and the tenant purchaser has nevertheless continued in possession, the landlord has no right to have the tenant purchaser evicted, till the tribunal admits that it has failed to recover the amount of the purchase price. Shri Tarkunde contends that these changes have effected the petitioner's right to property in that he has neither the right to recover the amount through a Court of law nor has he any hope of recovering it through the procedure prescribed by the impugned Act within any reasonable time; that in spite of the fact that under the previous law the sale had become ineffective under 32-H or 32-G by the default of the tenant purchaser to pay the price the Collector under 32-P was required to give possession to the landlord but under the impugned Act that right has become illusory because the landholder has no effective remedy either to recover the amount or to recover the land and that all that the tenant has to do is to sit tight, he need not apply for extension nor need he pay the instalment nor is there any time fixed for the tribunal to determine that it has failed in the efforts to recover the amount under the revenue recovery Act. No distinction in fact, it is said, has been made between a person who is unable to pay and one who will not pay.

In view of these contentions 'it is necessary to point out that this very petitioner had challenged the constitutionality of the Amendment Act in Sri Ram Ram Narain Medhi v. State of Bombay (1) on the ground that it was beyond the competence of the legislature; that legislation not being protected by Art. 31(A) had infringed Arts. 14, 19 and 31 of the Constitution; and that it was a piece of colourable legislation vitiated in part by excessive (1) [1959] 1 Suppl. S. C. R. 489.

delegation of legislative power to the State. On behalf of the Respondent, it was urged that the impugned legislationfall within entry 18 in List II of the Seventh Schedule to the Constitution, that it provided for the extinguishment or modification of rights to estates and was as such protected by Art. 31-A of the Constitution and that there was no excessive delegation of legislative power. This Court held (1) that the legislation fell within entry 18 of List II and therefore the legislature was competent to enact the Amendment Act; (2) that the word estate applied to landholders as defined by Section 2(5) of the Bombay Land Revenue Code which is equally applicable to tenure holders and

occupants of unalienated lands; (3) that the word 'landholder' as defined in Section 2(9) of the parent Act made no distinction between alienated and unalienated lands and showed that the interest of the landholder fell within the definition of 'estate' contained in Section 2(5) of the Bombay Land Revenue Code ; (4) that there was no warrant for the proposition that extinguishment or modification of any rights in estates as contemplated by Art. 3 1 A(.1) (a) of the Constitution must mean only what happened in the process of acquisition of any estate or of any rights therein by the State. The language of the Article was clear and unambiguous and showed that it treated the two concepts as distinct and different from each other, and (5) that Sections 32 to 32-R of the Amendment Act contemplated the vesting of title in the tenure on the tiller's day defeasible only on certain specified contingencies and intended to bring about an extinguishment or modification of rights in the estate within the meaning of Art. 31A(1)(a) of the Constitution. For the aforesaid reasons it was held that the Amendment Act was not vulnerable as being violative of Arts. 14, 19 and 31 of the Constitution.

This decision concludes the most important question whether the petitioner's fundamental rights are infringed under Arts. 14, 19 and 31 as the parent Act as well as the amending Act is now protected by Art. 31A of the Constitution. Neither the question of discrimination nor of compensation or its adequacy can be gone into nor can the unreasonableness of the provisions under which the landlords title has been extinguished nor the manner in which the price is to be paid can be challenged. Once it has been held that Art. 31A applies the petitioner cannot complain that his rights under Arts. 14, 19 and 31 of the Constitution have been infringed. This protection is available not only to Acts which come within its terms but also to Acts amending such Acts to include new items of property or which change some detail of the scheme of the Act provided firstly that the change is not such as would take it put of Art. 31A or by itself is, not such as would not be protected by it and secondly that the assent of the President has been given to the amending statute. To put it differently as long as the amendment also relates to a scheme of agrarian reforms providing for the acquisition of any estate or of any right thereunder or for extinguishment or modification of such right the mere transfer of the tenure from one person to another or the payment of the price in instalment or even the postponement of payment by a further period cannot be challenged under Arts. 14, 19 and 31. In this case we have noticed that the impugned legislation has merely amended that provision which related to the recovery of the amounts from the tenant who has become purchaser and the postponement of the time, of ineffectiveness of sale till the tribunal has tried and failed to recover the amount from the tenant purchaser. The only way under which the petitioner could have recovered the amounts under the Amendment Act was by an application to the Collector under the Revenue Recovery Act for collecting it as arrears of land revenue but that provision under Section 32-L has now been deleted. While the vesting of the title of the tenure in the erstwhile tenant is still defeasible only on certain specified contingencies as was before the impugned Act it only modified the previous provisions to the extent that the erstwhile tenant has been given the benefit of having the payment postponed or instalments increased by requiring the tribunal to make an enquiry as to whether there were sufficient reasons for the tenant purchaser making a default and if it is satisfied to condone the delay and extend the period of payment. It also vested in the tribunal instead of the Collector the power to make the recovery on behalf of the landholder. It may also be noticed that under the impugned Act the sale still becomes ineffective as was under

the amendment Act when the amount is not recovered with this difference that under the former it has to be shown that the tenant purchaser was not in a position to pay. No doubt before the impugned Act, if the tenant-purchaser did not pay, the Collector could take action under the revenue recovery Act to recover the amount and if he did not recover it the sale became ineffective and the landlord could be put in possession by evicting the tenant purchaser provided he was entitled to get possession of it under the Act, as when his holdings do not come within the ceiling. The basic position still remains the same after the impugned Act and there is nothing in the Amendment Act which is destructive of the scheme of agrarian reform which the legislation seeks to implement and which is protected under Art. 31A of the Constitution.

This view of ours is amply borne out also by the statement of objects and reasons which impelled the legislature to state the difficulty that was being felt in the implementation of the agrarian land reforms and indicate how it sought to find a remedy and got over it. This is what was stated "According to provisions of Section 32-K, 32-L and 32-M of the Bombay Tenancy Agricultural Land Act 1942; it is left to the tenant to deposit with the tribunal the purchase of the land which is deemed to have been purchased by him under Section 32 of that Act. If he fails to deposit the price in lumpsum or instalments the purchase becomes ineffective and under Section 32-P the tenant can be summarily evicted from the land. It has been brought to the notice of the Government that in the case of an Act a large number of tenants specially belonging to the Scheduled Caste and Scheduled Tribe, the purchase is in danger of being ineffective for failure to deposit the sale price on due dates. It is noticed that these tenants being illiterate and socially backward have failed to deposit the amount more out of ignorance than willful default. Unless therefore immediate steps are taken to provide for recovery of purchase price through Government agency a large number of tenants are likely to be evicted from their lands due to purchase becoming ineffective. This will result in defeating the object of the tenancy legislation. To avoid this result, it is therefore considered that the agricultural lands tribunal showed be empowered to recover the, purchase price from tenants as arrears of land revenue and until the tribunal has failed to recover the purchase price, the purchase should not become ineffective. It is also considered that the benefit of these provisions should be given to tenants whose purchase has already become ineffective but who have not yet been evicted from their lands under Section 32-P. This bill is intended to achieve these objects".

We do not therefore think that the impugned Act has in any way affected the main purpose of the Act or the object which it seeks to achieve nor do the amendments effected thereby take the provisions out of the protection given to it under Art. 31A of the Constitution.

Shri Tarkunde has referred us to the case of Maharana Shri Jayvantsinghji Ranmalsinghji etc. v. The State of Gujarat (1) in support of his contention that the

> impugned Act infringes Art. 19(1)(f) of the Constitution and is not saved by clause 5 thereof as the provisions of the said Act are unreasonable in that the indefinite postponement of the recovery of the price makes the payment thereof illusory, and even after the sale has become ineffective the landholder is not entitled to recover the land.

What fell for determination in the case referred to was whe- ther as a result of the provisions of the Bombay Land Tenure (1) [1966] Supp. S.C.R. 411.

Abolition Laws (Amendment) Act 1958, particularly under Sec- tions 3 and 4 read with Section 6 thereof certain non- permanent tenants were deemed to have become permanent tenants as from the commencement of the Bombay Taluqdari Tenure Abolition Act 1949 and thereby became entitled to acquire the tenure on payment of 6 times the assessment or 6 times the rent instead of atleast the minimum of 20 times to 200 times the assessment which right infringed the fundamental right of the landlord to acquire hold and dispose of property. This result it was contended had substantially deprived the petitioners of the right which they acquired on the tiller's day by reason of the provisions contained in Section 32 and other provisions in the parent Act as amended from time to time. The majority held that the provisions of Sections 3, 4 and 6 of the Bombay Land Tenure Abolition Laws (Amendment) Act, 1958 insofar as they deemed some tenants as permanent tenants in possession of Taluqdari land were unconstitutional and void in that under the guise of changing the definition of a permanent tenant and changing a rule of evidence, it really reduced the purchase price that the petitioners were entitled to receive from some of their tenants on the 'tiller's day' under Section 32-H of the parent Act. It would appear from the Judgment of S. K. Das, J. speaking for himself and Sinha C.J., that the constitutional validity of the relevant provisions of the Taluqdari Abolition Act 1949 and the parent Act read with the Amendment Act had not been challenged before them. The decision of Dhirubha Devisingh Gohil v. The State of Bombay (1) and Shri Ram Ram Narain Medhi v. The State of Bombay (1) were cited as upholding the constitutionality of the relevant provisions of those 2 Acts. After pointing out that what has been challenged before them was the constitutional validity of the Bombay Act LVII of 1958 particularly the provisions 3, 4 and 6 of that Act, and referring to the earlier decision that this Court had held that Sections 32 to 32-R of parent Act read with the Amendment Act were designed to bring about an extinguishment or in any event a modification of the landlords rights in the estate within the meaning of Art. 31A(1)(a) of the Constitution, it was observed that the right which the petitioners got of receiving the purchase price was undoubtedly a right to property guaranteed under Art. 19(1)(f) of the Constitution and was not saved by clause 5 thereof nor are the cases before them protected by Art. 31A. S. K. Das, J. gave the following reasoning for the aforesaid conclusion at page 438-439 :

> "The petitioners have three kinds of tenants--permanent tenant protected tenants, and ordinary tenants. On (1) [1955] 1 S.C.R. 691. (2) [1959] Suppl. 1 S.C.R. 489.

April 1, 1957, the petitioners ceased to be tenure holders in respect of all tenants other than permanent tenants and became entitled only to the purchase price under' s. 32H. If any tenant claimed on that date that he was a permanent tenant, he had to establish his claim in accordance with s. 83 of the Revenue Code. Such a claim could be contested by the tenure-holder whenever

made by the tenant. But by the impugned Act 1958, all this was changed, and unless the tenure holder made an application within six months of the commencement of the impugned Act, 1958, he was not in a position to say that a particular tenant who was in possession of tenure land for continuous period aggregating twelve years on and before August 15, 1950, was not a permanent tenant. We are unable to hold that the six months' limit imposed by s. 5 of the impugned Act, 1958, is in the circumstances, a reasonable restriction within the meaning of Art. 19(5) of the Constitution."

The decision in the above case is clearly inapplicable to the facts and circumstances of the case before us and consequently in the view we have taken this petition is dismissed with costs.

G.C. Petition dismissed.