Venkatarao Esajirao Limbekar & Ors vs The State Of Bombay & Ors on 15 April, 1969

Equivalent citations: 1970 AIR 126, 1970 SCR (1) 317, AIR 1970 SUPREME COURT 126, 1969 MAH LJ 643, 1970 (1) SCJ 292, 1970 (1) SCR 317

Author: A.N. Grover

Bench: A.N. Grover, M. Hidayatullah, J.C. Shah, V. Ramaswami, G.K. Mitter

PETITIONER:
VENKATARAO ESAJIRAO LIMBEKAR & ORS.

Vs.

RESPONDENT:
THE STATE OF BOMBAY & ORS.

DATE OF JUDGMENT:
15/04/1969

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
HIDAYATULLAH, M. (CJ)
SHAH, J.C.
RAMASWAMI, V.
MITTER, G.K.

CITATION:
1970 AIR 126 1970 SCR (1) 317
1969 SCC (2) 81
CITATOR INFO :
E&D 1976 SC 714 (31,42,78)

ACT:
Constitution of India, Ninth Schedule-Hyderabad Tenancy and Agricultural Lands (Re-enactment, Validation and further amendment) Act, 1961 included in Ninth Schedule-If open to challenge under Arts. 19 & 31 of the Constitution.

HEADNOTE:
By amending Act 3 of 1954, s. 38(E), by which the Government could declare by notification that ownership of all lands held by certain protected tenants were to stand transferred

to such tenants, was inserted in the Hyderabad Tenancy and Agricultural Lands Act (21 of 1950). Parbhani District of the erstwhile State of Hyderabad became part of the erstwhile Bombay State, and the State of Bombay after adopting the Hyderabad Act 21 of 1950, issued a notification under s. 38(E) of the Hyderabad Act 21 of 1950, declaring the tenants of the appellants to be the landowners. The Bombay Legislature passed Act 32 of 1958 after having received the assent of the President, making further amendments in the Hyderabad Act 21 of 1950. The appellants-landowners in Parbhani District filed a writ petition in the High Court assailing the vires of s. 38(E) of the Hyderabad Act 21 of 1950, as contravening Arts. 19(f) and 31 of the Constitution, and as not validly enacted on the ground that that Act had not 'received the assent of the President. The High Court dismissed the petition, and this Court granted special leave. While the appeal was pending, the Andhra Pradesh High Court in another case struck down Hyderabad Act 21 of 1950 as amended by Act 3 of 1954 on the sole ground that it had not received the assent of the President as required by Art. 31(3) of the Constitution. Thereupon State of Maharashtra enacted the Hyderabad Tenancy and Agricultural Lands (Re-enactment, Validation and 'further amendment) Act, 1961, after the assent of the President had been obtained. The Maharashtra Act of 1961 repealed and re-enacted the Hyderabad Act 21 of 1950 and the amending laws and declared that they shall be deemed to have come into force on an anterior date specified therefore. The appellants, withdrew their appeals from this Court and filed a writ petition in the High Court challenging the Maha-rashtra Act of 1961 on the grounds that the State Legislature had no power to reenact the provisions of the Hyderabad Acts with retrospective effect and that the Government notification declaring the tenants to be land-owners was ultra vires Arts. 19 and 31 of the Constitution. The High Court dismissed the petition. In appeal, 'by special leave, this Court

HELD:The appeal must fail.

The provisions of the Maharashtra Act of 1961 as also of the Hyderabad Act 21 of 1950 together with the amending Act were immune from any challenge on the ground of contravention of Arts. 19 and 31 of the Constitution. By the Constitution (Seventeenth Amendment) Act, 1964, after entry 20, entries 21 to 66 were inserted in the Ninth Schedule to the Constitution. Entries 35 and 36 relate to the Maharashtra Act of 1961 and Hyderabad Act 21 of 1950, respectively. Article 31(B) gives full protection to an Act and its provisions in the schedule against any challenge an the ground of inconsistency with or abridging of any of the

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rights conferred by Part III of the Constitution. This would be so notwithstanding any judgment, decree or order of any court or Tribunal to the contrary. The amending laws

and, in particular, Hyderabad Act 3 of 1954 which inserted s. 38(E) would also be covered by the same protection because the parent Act, namely, the Hyderabad Act 21 of 1950 was included in the Ninth Schedule in the year 1964 which was long after the enactment of the amending Act. [320 D]
Obiter : If the assent of the President had been accorded to the amending Acts, it would be' difficult to hold that the President had never assented to the parent Act, namely, Hyderabad Act 21 of 1950. Even if such assent had not been accorded earlier it must be taken to have been granted when Amending Act 21 of 1954 was assented to. [321 D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 464 of 1966. Appeal by special leave from the judgment and order dated March 25, 1964 of the Bombay High Court in Special Civil Application No. 1882 of 1962.

A. K. Seri and K. P. Gupta, for the appellants. M. S. K. Sastri and R. H. Dhebar, for the respondents. The Judgment of the Court was delivered by Grover, J. This is an appeal by special leave from a judg- ment of the Bombay High Court dismissing a petition under Art. 226 of the Constitution which had been filed by the appellants. The validity of the Hyderabad Tenancy and Agricultural Lands (Re-enactment, Validation and further amendment) Act, 1961, hereinafter called the "Maharashtra Act", was challenged. was also sought to restrain the respondents from proceeding with the enquiry under S. 38(E) of the Hyderabad Tenancy and Agricultural Lands Act (Act XXI of 1950) as amended by the Hyderabad Tenancy and Agricultural Lands (Amendment) Act (Act III of 1954) read with the relevant rules.

The appellants are land owners in Pathri Taluka of Parbhani District. This district was originally a part of the erstwhile State of Hyderabad and the provisions of the Hyderabad Act XXI of 1950 were applicable there. By amending Act No. III of 1954 which received the assent of the President on 31st January 1954 a number of amendments were made. Section 38(E) was inserted. By that section the Government could declare by notification that ownership of all lands held by protection tenants which they were entitled to purchase from their land-holders under the provisions of Chapter IV were to stand transferred to such tenants.

The district of Parbhani became a part of the erstwhile Bom- bay State on the Enactment of the States Re-Organisation Act, 1956. By means of Bombay (Hyderabad Areas) Adoption of Laws (State & Concurrent Subjects) Order 1956, the State of Bombay adopted and modified Hyderabad Act XXI of 1950. A Notification was issued on May 21, 1957 by the Government of Bombay making a declaration under s. 38(E) of Hyderabad Act XXI of 1950 in the district of Parbhani. The Agricultural Lands ,Tribunal and the Special Tehsildar, Parbhani District as also the Secretary' The Agricultural Lands Tribunal Pathri Taluka of the same District started an inquiry under rule 54 of the Hyderabad Transfer of Ownership Rules and published a provisional list of those who were declared to be land owners which included some of the tenants of the appellants. The appellants

filed objections which were dismissed.

The Bombay Legislature passed Act XXXII of 1958 which was first published in the Bombay Government Gazette on April 10, 1958 after having received the assent of the President. By this Act further amendments were made in Hyderabad Act XXI of 1950. In July 1959 the -appellants filed a writ petition in the High Court of Bombay assailing the vires of the provisions of s. 38(E) of Hyderabad Act XXI of 1950. The grounds of attack, inter alia, were that Arts. 1 9 (f) and 3 1 of the Constitution had been contravened and that the aforesaid Act had not been reserved for and had not received the assent of the President. The validity of the notification issued in May 1957 was also attacked. this petition was dismissed by the High Court in March 1960. In January 1961 this Court granted special leave to appeal against that judgment. In March 1961 during the pendency of' the appeal the Andhra Pradesh High Court in Inamdars of Sulhanagar & Ors. v. Government of Andhra Pradesh & Anr.(1) struck down Hyderabad Act XXI of 1950 as amended by Act III of 1954 on the sole ground that it had not received the assent of the President as required by Art. 31(3) of the Constitution. In February, 1961, the Maharashtra Act was enacted after the assent of the President had been obtained. It repealed and reenacted the Hyderabad Act XXI of 1950 and declared that it shall be deemed to have come into force on 10th day of June 1950 as reenacted. It also repealed the amending laws and reenacted them and declared that as re- enacted they shall be deemed to have come into force on the day specified against each of them in the table given therein. It made certain further amendments. Thereupon the appeal pending in this Court was withdrawn by the appellants with liberty to challenge the constitutionality of the Maharashtra Act. In November, 1962 the appellants filed a petition under Art. 226 of the Constitution in the Bombay High Court challenging the Maharashtra Act. This petition was dismissed by the High Court in March 1964. (1) A.I.R. 1961 Andhra Pradesh 523.

It appears that only two points were urged be -fore the High Court. The first was that the State Legislature had no power to re-enact the provisions of the Hyderabad Acts (the parent Act ,and the amending Acts) with retrospective effect. This argument was repelled by a brief observation that the State Legislature was competent to give retrospective effect to the provisions enacted by it. The second point raised was that s. 38(E) which provided that protected tenants would be deemed to have become owners of the land held by them subject to certain conditions with effect from the date notified by the Government was ultra vires Arts. 19 and 31 of the Constitution. The High Court referred to its ;earlier decision in special Civil Application No. 1128 of- 1959 in 'which the same contention had been pressed but had not been accepted. The High Court also relied on a decision of this Court in Sri Ram Narain v. State of Bombay(1) in which the constitutional validity of similar provisions contained in s. 32 of the 'Bombay Tenancy and Agricultural Lands Act had been upheld. The present appeal must fail. The provisions of the Maha- rashtra Act as also of the Hyderabad Act XXI of 1950 together 'with the amending Act are immune from any challenge on the .ground of contravention of Arts. 19 and 31 of the Constitution. By the Constitution (Seventeenth Amendment) Act 1964, after entry 20, entries 21 to 66 were inserted in the Ninth Schedule to -the Constitution. Entries 35 and 36 relate to the Maharashtra Act and Hyderabad Act XXI of 1950 -respectively. Article 31(B) .gives full protection to an Act and its provisions in the schedule against any challenge on the ground of inconsistency with or abridging of any of the rights conferred by Part III of the Constitution. This would be so notwithstanding any judgment, decree or order of any, court or

Tribunal to the contrary. The amending laws and, in particular, Hyderabad Act III of 1954 which inserted s. 38(E) would also be covered by the same protection 'because the parent Act, namely, the Hyderabad Act XXI of 1950 was included in the Ninth Schedule in the year 1964 which was long after the enactment of the amending Act. In the above view of the matter no attempt was made on behalf of the appellants to raise the second question about the competency of the Legislature of the Maharashtra State to enact the Maharashtra Act with retrospective effect in respect of Parbhani District which became a part of the erstwhile Bombay State only after the enactment of the Bombay States Reorganisation Act, 1956. The reason apparently is that even on the assumption that the Maharashtra Legislature could not have validly enacted retrospective legislation with regard to Parbhani District, (1) 61 Bom. L. R, 811.

the Hyderabad Act XXI of 1950 as amended by Act III of 1954. was in force at the time when the notification was made in May 1957 pursuant to which proceedings were taken which were challenged by the appellants. As regards the decision of the Andhra Pradesh High Court (supra) by which the Hyderabad Act XXI of 1950 was struck down as not having received the assent of the President under Art. 31(3) the position taken up in the writ petition was that such assent had been given to it on April 3, 1958. and till then the said Act was not valid and operative. According to the judgment of the Andhra Pradesh High Court, Hyderabad Act XXI of 1950 had never been assented to by the President although it had received the assent of the Rajpramukh of the, erstwhile Hyderabad State. Now the question of lack of assent. of the President was never pressed before the High Court, nor have we been invited to examine it. We would, however, like. to observe that, as noticed before, when Hyderabad Amending Act III of 1954 was enacted the assent of the President was duly obtained. Similarly -when Bombay Act XXXII of 1958 which, was meant for amending Hyderabad Act XXI of 1950 was enacted the assent of the President had been given. If the assent of the. President had been accorded to the amending Acts, it would be. difficult to hold that the President had never assented to the parent Act, namely, Hyderabad Act XXI of 1950. Even if such assent had not been accorded earlier it must be taken to have been granted when Amending Act III of 1954 was assented to.

For the above reasons this appeal dismissed. There will be,. no order as to costs.

Y.P. Appeal dismissed.,