Raghubar Sarup Nawab Jamshed Ali Khan vs State Of U.P on 18 December, 1958

Equivalent citations: AIR 1959 SUPREME COURT 909

Bench: S.K. Das, P.B. Gajendragadkar, K.N. Wanchoo

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           CASE NO.:
Writ Petition (civil)  202 of 1955

PETITIONER:
RAGHUBAR SARUP NAWAB JAMSHED ALI KHAN

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT: 18/12/1958

BENCH:
S.R. DAS CJI & S.K. DAS & P.B. GAJENDRAGADKAR & K.N. WANCHOO & M.
HIDAYATULLAH

JUDGMENT:
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JUDGMENT AIR 1959 SC 909 WANCHOO, J. : These petitions under Article 32 of the Constitution and appeals on certificates granted by the Allahabad High Court question the action taken by the State of Uttar Pradesh under the U. P. Zamindari Abolition and Land Reforms Act, No. I of 1951, (hereinafter called the Abolition Act) and the Rampur Thekedari and Pattedari Abolition Act No. X of 1954, (hereinafter called the Thekedad Act). We propose to deal with them by one judgment as they raise common points and in the case of some petitioners lands covered by both the Acts are involved.

2. The former State of Rampur was an independent State under the paramountcy of the British Crown before 1947. When India became a Dominion on the passing of the Indian Independence Act of 1947, the State of Rampur acceded in August, 1947, to the Dominion of India by means of an instrument of accession. This was followed by a merger agreement between the Ruler of the Rampur State and the Dominion of India on May 15, 1949, by which the Ruler agreed to transfer the entire administration of the State to the Dominion as from July 1, 1949. The Governor General then passed an order on July 1, 1949, known as the Rampur (Administration) Order by which a Chief Commissioner was appointed to administer the area of the former Rampur State under the Government of India. This was followed on November 29, 1949, by the States Merger (United Provinces) Order, 1949, promulgated by the Governor General by which the administration of the former State of Rampur was transferred to the Government of Uttar Pradesh and Rampur thereafter became a district in the State of Uttar Pradesh. In 1951 the State of Uttar Pradesh passed the Abolition Act. It was, however, not applied to the district of Rampur initially; but power was reserved under S. 2 to apply the whole or any provisions of the Act to Rampur as defined in the

Rampur (Administration) Order, 1949, subject to such exceptions or modifications, not affecting the substance, as the circumstances of the case may require. By virtue of this power, notification No. 3168/1-A-559/ 1951 was issued on June 30, 1954, applying the Abolition Act to Rampur. This was followed by another notification No. 3169/1-A559/1951 on July 1, 1954, declaring that all estates situate in Rampur vested in the State of Uttar Pradesh. These notifications are the target of attack in the petitions and appeals relating to jagirs, zamindaris and muafis in Rampur.

3. The system of land tenure in the former Rampur State was this. In a portion of the State known as Ileqz Jadid, which was ceded by the Government of India to the former Rampur State in 1857, there were intermediaries called Zamindars who were in all respects similar to the Zamindars in the State of Uttar Pradesh. Secondly, some lands had been conferred by the Ruler of the State on certain persons as jagirs or muafis. The holders of these estates did not pay any land revenue which was payable by the Zamindars; they only paid a local rate or abvab. Thirdly, the rest of the land in the State consisted of Ehau villages, i. e. lands belonging to the State in which there were no intermediaries between the State and the tillers of the soil. In this class of lands, there were villages which were almost uninhabited and very little land in these villages was under

> cultivation. The Ruler of Rampur decided in March 1949 to lease out some of these villages to persons who were called Thekedars or Pattedars in order that these persons might settle tenants and invest money in the villages so that lands lying uncultivated might be brought under cultivation and the production of food grains might increase. These leases were to be in the first instance for a period of ten years with a right to the State to extend the period by another ten years. The leases provided what the Thekedars were to do in order to bring lands in villages leased to them under cultivation and also provided what percentage of the profits was to be paid to the State as revenue. The leases further provided for a review after three years, six years and ten years whether the conditions had been carried out and for increase of the State's share of the profit after each review. It was also provided that in case the conditions were not carried out, the leases would be terminated and the villages taken under direct management by the State. Many petitioners and appellants before us are Thekedars or Pattedars to whom such leases were granted and the initial period of ten years has yet to run out.

4. The Abolition Act did not obviously apply to these leases. In 1954 the State of Uttar Pradesh decided to abolish this system of thekedari and pattedari prevalent in Rampur with a view to facilitating the introduction of land reforms therein. Consequently, the Thekedari Act was passed and received the assent of the President on April 18, 1954 and was to come into force from July 1, 1954. Section 2(6) of the Thekedari Act defines the word lease in terms to cover these leases Section 3 provides for determination of such leases and section 4 for the consequence of such determination. Sections 7 to 17 lay down the principles and procedure for payment of compensation to the lessees. The vires of this Act has also been challenged.

5. We shall first deal with the cases relating to jagirs, zamindaris and muafis. The contention in these cases was two-fold. In the first place, reliance was placed on the agreements entered into

between the Ruler of Rampur and the Dominion Government and it was urged that in view of these agreements it was not open to the State of Uttar Pradesh to abolish estates in Rampur. In the second place, it was contended that S. 2(1) of the Abolition Act was ultra vires as it amounted to excessive delegation of essential legislative functions to the executive, and in any case the notification of June 30, 1954, was bad inasmuch as it effected substantial changes in the definition of the word 'estate' in the said Act.

6. We are of opinion that there is no force in these contentions. The petitioners and the appellants in these cases cannot in the first place rely on the provisions of the agreement between the Ruler of Rampur and the Dominion of India and raise any dispute on the basis of this agreement in view of the bar of Art. 363 of the Constitution; (see. Maharaj Umeg Singh v. State of Bombay, 1955-2 SCR 164: ((S) AIR 1955 SC 540). In any case even if one looks at clauses (iii) and (x) of the collateral letter which are the basis of this argument, it is found that there is nothing in this argument even on merits. Clause (iii) reads as follows:-

> "All contracts and agreements entered into by your Highness before the date on which the administration is made over to the Government of India will be honoured except in so far as any of these contracts or agreements may either be repugnant to the provisions of a law made applicable to the State or inconsistent with any general policy of the successor Government."

Assuming that the jagirs, zamindaris and muafis with which we are concerned here are the result of some contracts or agreements entered into by Ruler of Rampur, clause (iii) makes it clear that these contracts and agreements would only be honoured except where they become inconsistent with any general policy of the successor Government. As soon therefore as the State of Uttar Pradesh which is the successor Government for present purposes decided to abolish the jagirs, zamindaris and muafis in pursuance of a general policy to abolish all estates in the whole of Uttar Pradesh, these contracts and agreements must fall and those deriving benefits from these contracts and agreements cannot put them forward against the general policy of the successor Government.

7. Clause (x) is in these terms---

> "The present grants and allowances to the Rulers mothers, brothers, sisters, and other members of the Ruling family, list attached, will be continued during their life time and, will be charged on the revenue of the State."

Nawabzada Zafar Ali Khan is a brother of the Ruler and he falls back on this clause. It is enough to say, as pointed out by the High Court, that this clause deals with cash allowances to the relations of the Ruler, which will be clear from the list attached and also from the fact that the clause provides that these grants and allowances would be charged on the revenue of the State. Nawabzada Zafar Ali Khan's name does not appear in the list attached, and, therefore, he cannot take advantage of this clause. The contention based on the agreement, therefore, fails. Our attention was also drawn to Articles 7 and 8 of the States Merger (Governors' Provinces) Order 1949, which also applied to the States Merger (United Provinces) Order 1949. Those Articles have no relevance so far as jagirs,

zamindaris and muafis are concerned. They transfer the liability in respect of loans, guarantees and other financial obligations of the Dominion Government arising out of the governance of the merged State to the absorbing provinces and lay down that any contract made before the appointed day on behalf of the Dominion of India for the purposes connected with the governance of the merged State shall have effect as if it had been made by or on behalf of the absorbing State unless it is wholly or in part for central purposes. These provisions therefore have no earing on the questions canvassed before us.

8. The second contention relates to the vires of S. 2(1) of the Abolition Act and the notification, of June 30, 1954. We are of opinion that it is unnecessary to go into this question now, in view of the amendment made in the Abolition Act by U. P. Zamindari Abolition and Land Reforms (Amendment) Act, No. XIV of 1958. The main attack originally was that even if power of delegation under S. 2(1) of the Abolition Act was not excessive, the notification of June 30, 1954, by changing the definition of the word "estate" while applying the Abolition Act to Rampur made a change of substance therein. This argument now falls because U. P. Act No. XIV of 1958 has retrospectively amended the definition of the word "estate" in section 3(8) of the Abolition Act. Section 1(2) of the U. P. Act XIV of 1958 provides that the Act shall be deemed to have come into force from the 1st of July, 1952. Section 2 provides that the following shall be and shall be deemed to have always been substituted for clause (8) of S. 3 of the Abolition Act. The new definition of the word "estate" begins with the words "estate means and shall be deemed to have always meant". By this amendment the change made in the notification of June 30, 1954 in the definition of the word "estate" in the Abolition Act has now been made a legislative provision in force from July 1, 1952. It is not disputed that with this change in the definition of the word "estate" from July 1, 1952, all jagirs, zamindaris and muafis in Rampur would be covered by the word "estate" as now defined. So far as the power given to the State Government to extend the Abolition Act to other areas in the State of Uttar Pradesh to which it was not initially applied is concerned, it cannot be said that this power amounts to excessive delegation, for it is well settled that the legislature may leave it to the executive to apply the provisions of an Act to different geographical areas at different times depending on various considerations. This point, therefore, also fails in view of U. P. Act XIV of 1958. The contention that pending litigation is saved is not sound because the new law applies to all estates and no saving in respect of pending litigation can be implied; (see K. C. Mukherjee, v. Mt. Ramratan Kuer, 63 Ind App 47 : (AIR 1936 PC 49). No other points were urged before us. All the petitions and appeals relating to jagirs, zamindaris and muafis must therefore be dismissed. But it is only proper that parties should bear their own costs as the amendment came in 1958.

9. This brings us to the petitions and appeals relating to thekedari and pattedari. In these cases also, reliance was placed on the agreements between the Ruler of Rampur and the Dominion of India. We have dealt with that already in the earlier part of this judgment and we reject the contention based on these agreements.

10. Then it was urged that the leases given to the thekedars and pattedars could not be determined under the Thekedari Act, because a perusal of the terms of the leases shows that in substance the person to whom the leases were granted was only a 'manager'. We find it difficult to appreciate this argument. We have already briefly summarised the terms of these leases. Those terms indubitably

show that the persons to whom these leases were granted were not mere managers of these villages on behalf of the State. In the first place, the instruments show that they were in terms called leases and the persons to whom they were granted were called lessees. These persons were not managers in the sense of being employees of the State. They certainly had interest in the lands leased to them. As a matter of fact, three of the terms show that if certain conditions were not fulfilled the lease was to be determined and the management taken over directly by the State. The lessees were to invest their own money, and had to pay what was called revenue and their interest was heritable. In the face of these terms the lessees can in no circumstances be called mere managers, and they cannot, therefore, say that the Thekedari Act which applies to lessees of these leases does not apply to them. The Thekedari Act in terms becomes applicable to leases of this kind under the definition in S. 2(6) and the lessees are directly hit by it. It is not disputed that the U. P. Legislature had power to enact this law under Entry 18 of List II of the Seventh Schedule to the Constitution. Further, no argument was addressed before us against the adequacy of compensation provided in the Thekedari Act. In the circumstances, the Thekedari Act being within the powers of the legislature and complying with the provisions of Art. 31(2) is a valid piece of legislation to which no exception can be taken. No other point was urged before us in this connection. There is no force, therefore, in these petitions and appeals relating to thekedari and pattedari lands, and they must be dismissed.

11. We, therefore, dismiss all the petitions and appeals relating to jagirs, zamindaris and muafis; but in the circumstances pass no order as to costs in them.

12. We further dismiss all the petitions and appeals relating to thekedari and pattedari lands and order one set of costs to the State of Uttar Pradesh in them.

13. C. As. Nos. 530, 540, 569, 600, 601 and 617 of 1957 have abated and are hereby dismissed.

14. C. As. Nos. 547, 553, 555, 578, 595 and 598 of 1957 are dismissed for non prosecution.