

Tejuma! Bhojwani And Ors vs State Of U.P on 26 August, 2003

Equivalent citations: AIR 2003 SUPREME COURT 3791, 2003 (10) SCC 525, 2003 AIR SCW 4335, 2003 ALL. L. J. 2288, (2003) 6 ANDH LT 17, 2003 (5) SLT 138, (2003) 11 ALLINDCAS 747 (SC), 2003 (9) SRJ 457, (2003) 3 UPLBEC 2775, (2004) 1 ANDHWR 91, (2004) 1 RAJ LW 28, (2004) 1 MAD LJ 11, (2004) 1 MAD LW 87, (2003) 4 RECCIVR 551, (2003) 10 INDLD 282, (2003) 4 ALL WC 3392, (2003) 4 CURCC 31, (2003) 7 SCALE 38, (2004) 1 UC 46, (2003) 2 LACC 608, (2003) 3 LANDLR 717, (2003) 53 ALL LR 426, (2003) 6 SUPREME 538

Author: S.B. Sinha

Bench: S.B. Sinha

CASE NO.:

Appeal (civil) 6365-6382 of 1999

PETITIONER:

Tejuma! Bhojwani and Ors.

RESPONDENT:

Vs.

State of U.P.

DATE OF JUDGMENT: 26/08/2003@

CJI & S.B. Sinha.

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ORDER

With C.A. Nos. 6383-6398 of 1999 The appellants herein (in C.A. Nos. 6365-6382 of 1999) were the owners of large tract of land situate in village Chhauni Gora Barik and/or Chhauni Qadim, Pargana Khairabad, Tehsil and District Sitapur in the State of Uttar Pradesh. The respondent herein (in C.A. Nos. 6365-6382 of 1999) is the State of U.P., through the Collector, [Land Acquisition Officer, Avas Evam Vikas Parishad (hereinafter referred to as 'the Parishad')], established and constituted under the provisions of U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 (for short 'the Adhiniyam'). Under the Adhiniyam, the Parishad is entrusted with certain functions and duties for preparing and executing housing schemes. For the aforesaid purpose in mind, the Parishad issued a notification dated 1st of November, 1974 under Section 28 of the Adhiniyam, which is equivalent to Section 4 of the Land Acquisition Act, 1894. By the aforesaid Notification a large tract of land was sought to be

acquired pursuant to a Housing Scheme for construction of houses for the public. The said notification was followed by a Notification dated 11th November, 1978, under Section 32 of the Adhiniyam, which is equivalent to Section 6 of the Notification.

The Land Acquisition Officer gave three different Awards on three different dates. In the case of appellants herein, the Land Acquisition Officer offered compensation for the acquired land @ Rs. 2/- per square feet in first two Awards and Rs.3/- per square feet in the last Award. It is pertinent to mention here that the Land Acquisition Officer offered separate compensation for the structure standing on the land as well as to the existing Tube Well. The claimants were not satisfied by the compensation and, therefore, they sought compensation before the Civil Court. The Civil Court enhanced the compensation to Rs.7.75, Rs. 12/- and Rs.15/- per square feet respectively and also enhanced the compensation awarded for the Tube Well as well as the structure standing on the land. Aggrieved, the parties preferred appeals and cross appeals before the High Court. The High Court after considering the matters, modified the judgment of the Reference Court awarding compensation @ Rs.10/- per square feet. However, it declined to award separate compensation for the Tube Well and the structure standing on the Land. The High Court, however, held that there would be further deduction @ 10% towards the development of the land. The claimants, (appellants in C.A. Nos. 6365-6382 of 1999 and the U.P. Avas Evam Vikas Parishad and appellants in C.A. Nos. 6383-6398 of 1999) not satisfied, preferred separate appeals by way of special leave petition.

This Court, while entertaining the special leave petitions, restricted the notice on the following three questions:

(1) Whether solatium and interest should have been awarded as per the Land Acquisition (Amendment) Act, 1984 as laid down by this Court in U.P. Avas Evam Vikas Parishad Vs. Jainul Islam and Anr. (1998 (2) S.C.C. 467); (2) Whether appropriate compensation should have been awarded for structures and tube wells situated on the land concerned; and (3) Whether the offer regarding payment of compensation for trees given by the Land Acquisition Officer could be withdrawn in Section 18 proceedings.

So far Civil Appeal Nos. 6365-6382 of 1999 are concerned, the grounds challenged were limited as indicated above.

Mr. S. Ganesh, learned senior counsel appearing for the appellants, urged that in view of the latest decision of this Court in the case of Savitri Cairae Vs. U.P. Avas Evam Vikas Parishad and Anr., reported in 2003 (6) SCC 255, the claimants whose land were acquired by the Parishad and whose proceedings are pending in the year 1984, are entitled to solatium as provided under the Land Acquisition (Amendment) Act, 1984. We find merit in the submission. In view of the decision in Savitri Cairae's case (supra), it must be held that each of the appellants are entitled to solatium @ 30%, interest and additional compensation.

Next submission of learned senior counsel is that the claimants were entitled to separate compensation for the Tube Well as well as for the structure standing on the land and the High Court

committed error while denying compensation for the above items, although the Land Acquisition Officer has granted compensation for those items. We find substance in the argument. However, learned counsel appearing for the Parishad argued that the claimants were not entitled to compensation for value of land and building separately and for that purpose cited a decision of this Court in Ratan Kumar Tandon and Ors. Vs. State of U.P., reported in 1997 (2) SCC 161. We find that the said decision is distinguishable. In that case we find that there was capitalisation of the value of land and structure and, therefore, the claimants were not given separate compensation for land and building. Here we find that there was no capitalisation of value of land and structure by the Land Acquisition Officer in his award. On the other hand, Land Acquisition Officer has given compensation separately for the land, building and Tube Well. In that view of the matter claimants are entitled to separate compensation for land, Tube Well and structure. Learned counsel appearing in C.A. Nos. 6383-6398 of 1999 urged that the High Court, while deducting the development charges @ 10% from compensation, acted erroneously, and in fact the deduction ought to have been between 30 to 40% and for that purpose he relied on the decision in Shimla Development Authority and Ors. Vs. Smt. Santosh Sharma and Anr., reported in AIR 1997 SC 1791. It is true that the deduction for development charges ought to be adequately provided for, but it varies from place to place, area to area and amount of developments which are required to be carried out and thus there cannot be any fixed amount of deduction towards development charges. In the present case, we find that the total land acquired was about 27 acres. We are, therefore, of the view that it would be appropriate if the development charges @ 25% is deducted from the compensation awarded to the claimants.

For the aforesaid reasons, the orders and judgment under challenge are modified and the appeals are disposed of in the aforesaid terms. No costs. + 5 659 2003 ! Punit Rai Vs. Dinesh Chaudhary @ August 19, 2003.

BENCH:

S.B. Sinha JUDGMENT:

J U D G M E N T S.B. SINHA, J :

Matter relating to castes, races and tribes of a person is governed by Articles 341 and 342 of the Constitution of India. Article 341 reads thus:

"341 SCHEDULED CASTES.

(1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

The object of Clause (1) of Article 341 is to provide preferential right by way of protection to the members of the Scheduled Caste having regard to the economic and educational backwardness from which they suffer. It is in relation thereto the President has been authorised to limit the notification to parts or groups within the castes. The notification issued in terms of the said provision is exhaustive.

How the caste or tribe of the person is to be determined depends upon several factors including the customary laws. The President of India in exercise of his power conferred under Article 341(1) of the Constitution of India notified Constitution (Scheduled Castes) Order, 1950. The tribe 'Pasi' admittedly finds place in the said notification whereas 'Kurmi' does not. By reason of Articles 341 of the Constitution, a legal fiction is created which is to be given its full effect.

Caste has been defined in Collins English Dictionary as "any of the four major hereditary classes, namely, the Brahman, Kshatriya, Vaisya and Sudra into which Hindu society is divided". The caste system in India is engrained in Indian mind. A person, in the absence of any statutory law, would inherit his caste from his father and not his mother even in a case of inter-caste marriage. In 'the caste system in India - Myth and Reality' by Dr. Rajendra Pandey, the different attributes of the caste as unit mentioned by various writers has been stated thus :

"1. Basic (pivotal) attributes: Endogamy.

2. Sufficiently relevant attributes :

(i) Membership by birth

(ii) Common occupation

(iii) Caste Council.

3. Peripheral attributes :

(i) Name

(ii) Diacritical signs.

Following the same pattern of attribute- hierarchy, the attributes that characterize caste as system have been drawn up and set in as follows :

1. Basic attribute: Plurality of interacting endogamous groups.

2. Sufficiently relevant attribute:

Hierarchy.

3. Peripheral attribute : Traditional division of labour.

Besides these, Ghurye among others, has also mentioned segmental division of society, hierarchy, restriction on feeding and social intercourse, and civil and religious disabilities and privileges of the different sections as characteristics of the caste. Above them all, Nagendra has made mention of the principle of individual freedom as one of the attributes of the caste, which seems to have been omitted by most of the authors.

In summary, then, hierarchy, restricted commensality and connubium, hereditary occupation and a clear-cut differentiation of functions, ritual observance, and the principle of individual freedom are characteristics of the caste system till today."

In 'Caste in Modern India and other Essays' by M.N. Srinivas at page 3, it is stated :

"A sociologist would define caste as a hereditary, endogamous, usually localized group, having a traditional association with an occupation, and a particular position in the local hierarchy of castes. Relations between castes are governed, among other things by the concepts of pollution and purity, and generally, maximum commensality occurs within the caste."

In 'Caste and the Law in India' by Justice S.B. Wad at page 30 under the heading 'Sociological Implications', it is stated :

"Traditionally, a person belongs to a caste in which he is born. The caste of the parents determines his caste but in case of re- conversion a person has the liberty to renounce his casteless status and voluntarily accept his original caste. His caste status at birth is not immutable. Change of religion does not necessarily mean loss of caste. If the original caste does not positively disapprove, the acceptance of the caste can be presumed. Such acceptance can also be presumed if he is elected by a majority to a reserved seat. Although it appears that some dent is made on the classical concept of caste, it may be noticed that the principle that caste is created by birth is not dethroned. There is also a judicial recognition of caste autonomy including right to outcaste a person."

If he is considered to be a member of Scheduled Caste, he has to be accepted by the community. (See C.M. Arumugam Vs. V.S. Rajgopal and Others (1976) 1 SCR 82 and Principal, Guntur Medical College v. V. Y. Mohan Rao – (1976) 3 SCR 1046).

A Christian by birth when converted to Hinduism and married a member of Scheduled Caste was held to be belonging to her husband's caste on the evidence that she had not only been accepted but

also welcomed by the important members, including the President and Vice- President of the community. [See Kailash Sonkar vs. Smt. Maya Devi [AIR 1984 SC 600].

In the instant caste there is nothing on record to show that the Respondent has ever been treated to be a member of Scheduled Caste. In fact evidence suggests that he has not been so treated. He as well as his brothers and other members of his family are married to persons belonging to his own caste i.e. 'Kurmi'.

There was no attempt on the part of the respondent herein to bring on records any material to the effect that he was treated as a member of 'Pasi' community. Furthermore, no evidence has been brought on record to show that the family of the respondent had adopted and had been practising the customary traits and tenets of 'Pasi' community. The question as to whether a person belongs to a particular caste or not has to be determined by the statutory authorities specified therefor.

In B.Basavalingappa Vs. D.Munichinnappa [(1965) 1 SCR 316], a Constitution Bench of this Court considered the scope of Article 341(1) and (2) (which is in pari materia with Article 342(1) and (2)), and held that it is not open to any person to lead evidence to establish that the caste to which he belongs to is the same as and/ or part of another caste, which is included in the Constitution (Scheduled Castes) order, it was observed:

"It may be accepted that it is not open to make any modification in the Order by producing evidence to show (for example) that though caste A alone is mentioned in the Order, caste B is also a part of caste A and therefore must be deemed to be included in caste A. It may also be accepted that wherever one caste has another name it has been mentioned in brackets after it in the Order [see Aray (Mala) Dakkal (Dokkalwar) etc.]. Therefore, generally speaking it would not be open to any person to lead evidence to establish that caste B (in the example quoted above) is part of caste A notified in the Order.

(See also Parsram Vs. Shivchand AIR 1969 SC 597 paras 38 & 39) In Kumari Madhuri Patil Vs. Addl. Commissioner, Tribal Development and Other [(1994) 6 SCC 241], this court denounced the practice of persons claiming benefits conferred on STs by producing fake, false and fraudulent certificates observing:

"The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the

guardian who may play fraud claiming false status certificate."

Similar observations have also been made in Director of Tribal Welfare Vs. Laveti Giri [(1995) 4 SCC 32]. A person in fact not belonging to Scheduled Caste, if claims himself to be a member thereof by procuring a bogus caste certificate, would be committing fraud on Constitution. No court of law can encourage commission of such fraud.

This Court in Kumari Madhuri Patil and Another Vs. Addl. Commissioner Tribal Development, Thane and Others (Second) [(1997) 5 SCC 437] laid down the law thus:

"3. As regards prayer (b) read with direction No. (iv) of the Order of this Court, we too appreciate the inconvenience caused due to vast area of the State. Therefore, instead of one committee of three officers, there will be three Scheduled Tribe/Caste Scrutiny Committees comprising of five members with quorum of three members, as suggested in para 4 of the directions, to take a decision. At Pune, Nasik and Nagpur, six Caste Scrutiny Committees for SCs, Denotified Tribes, Nomadic Tribes, Other Backward Classes and the Special Backward Category in existence at Mumbai, Pune, Nasik, Aurangabad, Amaravati and Nagpur would continue to scrutinise the certificates issued by the respective officers and take a decision in that behalf. In this regard, it is also suggested by Shri Dholakia, learned Senior Counsel for the applicant, that in case any certificate has been wrongfully refused by the certificate issuing authority, the aforesaid Committees also would go into the question and decide in that behalf, whether refusal was wrongful and in case it finds that the refusal was wrongful, they are at liberty to direct the authority to grant the certificate.

5. With regard to prayer (d), along with the Vigilance Cell, one Research Officer/Tribal Development or Social Welfare Officer would be associated in finding the social status of eligibility of the officers."

Determination of caste of a person is governed by the customary laws. A person under the customary Hindu Law would be inheriting his caste from his father. In this case, it is not denied or disputed that the respondent's father belonged to a 'Kurmi' caste. He was, therefore, not a member of Scheduled Caste. The caste of the father, therefore, will be the determinative factor in absence of any law. Reliance, however, has been placed upon a circular dated 3.3.1978 said to have been issued by the State of Bihar which is in the following terms:

"Subject: Determination of caste of a child born from Non-Schedule Caste Hindu father and Schedule Caste mother.

Sir, In the aforesaid subject as per instruction I have to state for the determination of a child born from Non-Schedule Caste father and schedule caste mother, upon deliberation it has been decided that child born from such parents will be counted in the category of schedule caste.

2. In such cases before the issue of caste certificate there will be a illegible enquiry by the block development officer/ circle officer/ block welfare officer."

The said circular letter has not been issued by the State in exercise of its power under Article 162 of the Constitution of India. It is not stated therein that the decision has been taken by the Cabinet or any authority authorized in this behalf in terms of Article 166(3) of the Constitution of India. It is trite that a circular letter being an administrative instruction is not a law within the meaning of Article 13 of the Constitution of India. (See Dwarka Nath Tewari and Others Vs. State of Bihar and Others AIR 1959 SC 249) A person can take the benefit of a reserved category candidate if he satisfies the test laid down by the Constitution of India, the Representation of the People Act, 1950 and the guidelines issued by the Election Commission, if any.

In our opinion, the State has no jurisdiction to reserve a Constituency for a person who does not belong to the reserved category for whose benefit it was constituted except by way of a legislation. If a customary law is to be given a go-bye for any purpose whatsoever and particularly for the purpose of enlarging the scope of a notification issued by the President of India under Clause (1) of Article 341 of Constitution of India, the same must be done in terms of a statute and not otherwise.

The High Court itself noticed that the caste certificate of the Respondent was found to be forged by the Returning Officer and a criminal case is pending. It was held:

"Definitely, if a person is born of a Kurmi father or in a Kurmi family then the presumption goes that the child is Kurmi by caste. But here the respondent could make out a special case that, although, he has been born of a Kurmi father but mother being a Pasi, he is a Scheduled Caste and as such, a competent person to contest from the Reserved Constituency."

The High Court, therefore, erred in so far as it failed to consider that for the purpose of determination of caste, the Respondent could not have relied upon the circular letter dated 3.3.1978 in absence of any law. In any event, it has not been shown by the Respondent as to what enquiry was made for determination of his caste. If he had taken part in some enquiry, he had special knowledge in respect thereof within the meaning of Section 106 of the Evidence Act. He, therefore, was bound to prove the same by bringing on records relevant evidence which was in his power or possession. If a special case is to be made out, the same has to be done in accordance with law. It must meet the legal requirement. Unfortunately, this aspect of the matter has not been considered by the High Court. The impugned judgment, therefore, cannot be sustained. Subject to aforementioned, I respectfully agree with the opinion of my learned brother.