State Of Uttar Pradesh vs Raja Anand Brahma Shah on 16 September, 1966

Equivalent citations: 1967 AIR 661, 1967 SCR (1) 362, AIR 1967 SUPREME COURT 661, 1967 ALL. L. J. 115, 1967 (1) SCR 362, 1967 (1) SCWR 260, 1967 2 SCJ 871, ILR 1967 1 ALL 538

Author: S.M. Sikri

Bench: S.M. Sikri, K. Subba Rao, M. Hidayatullah, V. Ramaswami, J.M. Shelat

PETITIONER:
STATE OF UTTAR PRADESH

Vs.

RESPONDENT:
RAJA ANAND BRAHMA SHAH

DATE OF JUDGMENT:
16/09/1966

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
RAO, K. SUBBA (CJ)
HIDAYATULLAH, M.
RAMASWAMI, V.
SHELAT, J.M.

CITATION:
1967 AIR 661 1967 SCR (1) 362
CITATOR INFO :
F 1967 SC1081 (24)
R 1972 SC2027 (17)
D 1972 SC2240 (19)
RF 1972 SC2301 (66)
R 1973 SC2734 (16,33)
F 1974 SC1522 (3)
R 1975 SC2299 (607)

ACT:
U.P. Zamindari Abolition and Land Reforms Act (1 of 1951), as amended by U.P. Act (14 of 1958) and U.P. Act (1 of 1964) s. 3(8) "Estate" -If covered by Art. 3 1A (2) (a) (i) and (iii) of the ConstitutionConstitution of India, 1950, Art. 31A-If saves Act.

HEADNOTE:
The State of Uttar Pradesh issued two notifications in 1953, by one of which the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, was extended to certain areas, in which, Pargana Agori which was owned by the respondent was situate, and by the other, it was directed that all " estates" in the area including the Pargana should vest in the State. The respondent challenged the notifications by a writ petition on the ground that the Pargana was not an estate within s. 3 (8) of the Act. While the matter was pending in the High Court, the definition in s. 3 (8) was amended by U.P. Act 14 of 1958, and while appeals were pending in this Court, by U.P. Act 1 of 1964, by which, the Pargana was deemed to be an "estate". The amendments had retrospective effect from 1st July 1952.
The appellant-State contended that Act 1 of 1964 could not be impugned because, the Pargana was an "estate' either within Art. 3 1A(2) (a) or (iii).
HELD : The forest land or waste land in the Pargana could not be deemed to be an estate within Art. 3 1A(2) (a) (iii) unless it was held or let for purposes ancillary to agriculture. But the entire Pargana is la grant in-the nature of a jagir or inam, having been held by the respondent's ancestor under sanads granting the land and the land revenue to him for services rendered to the British, and consequently, is an "estate, within Art. 31A(2) (a) (i) of the Constitution. [368 D, 370 G-H; 371 F-H]
Thakur Amar Singhji v. State of Rajasthan [1955] 2 S.C.R. 303, followed.
The acquisition of the Pargana was a necessary step in the implementation of agrarian reforms contemplated by Art. 31A. Therefore, U.P. Act 1 of 1964 can claim the protection of Art. 31A, and the two notifications must be upheld. [372 A-C}

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 653 to 655 of 1964.

Appeals from the judgment and decree dated November 1, 1962 of the Allahabad High Court in Special Appeals Nos. 267 and 292 of 1957.

C. K. Daphtary, Attorney-General, Shanti Bhushan, AdvocateGeneral, U.P. and 0. P. Rana, for the appellants (in C.As. Nos. 653 and 654 of 1964) and the respondents (in C.A. No. 655 of 1964).

A. K. Sen, B. R. L. Iyengar, V. P. Misra, S. K. Mehta and K.L. Mehta, for the respondent (in C.As. Nos. 653 and 654 of 1964) and the appellant (in C. A. No. 655 of 1964).

The Judgment of the Court was delivered by Sikri, J. These appeals by certificates granted by the High Court of Judicature at Allahabad raise one principal question: Whether the amendment of the definition of the word "estate" in clause (8) of S. 3 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the Reforms Act) made by s. 2 of the Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1963, hereinafter called the impugned Act, is within the definition of the word "estate" in Art. 31A(2) of the Constitution?

These appeals arise out of a petition filed by Raja Anand Brahma Shah of Agori Barhar-Raj under Art. 226 of the Constitution. The State of Uttar Pradesh had issued a notification No. 3549/1/A-499 dated June 30 1953, extending the provisions of Reforms Act, 1950, to apply to the areas to the South of Kaimur Range. It then issued another notification No. 3949/(1)-A-4991949 dated July 1953, directing the vesting of all "estates" situated to the south of Kaimur including the Pargana Agori, owned by the petitioner. The Pargana Agori is comprised of 123 villages. At the time the petition was filed and the judgment of the Single Judge, dated November 8, 1957, was delivered, s. 3(8) of the Reforms Act stood as follows-.-

> " 'Estate' means the area included under an entry in any of the registers prepared and maintained under clause (a), (b),
>
> (c) or (d) of s. 32 of the United Provinces Land Revenue Act, 1901, or in the registers maintained under clause (e) of the said section in so far as it relates to a permanent tenure-holder and includes share in or of an estate."

The case of the petitioner in short was that Pargana Agor was not an estate within S. 3(8) of the Reforms Act because nor ecords were prepared and maintained under the provisions of s. 32 of the Land Revenue Act, 1901, in respect of Pargana Agori, and the records alleged to have been prepared between 1840 to 1843 under the Bengal Regulations were unauthorised and the Government itself did not approve these records at any time. The learned Single Judge, keeping in view the definition in s. 3(8) of the Reforms Act, came to the conclusion that the whole of 81 villages, including the cultivated. area, the forest, the hill and everything else would vest in the State of Uttar Pradesh. He held that the Raja's name alone was entered in the khewats of 64 villages, and in the khewats of 17 villages although the names of under-proprietors were written, the Raja was the proprietor of the entire villages because the Raja's name was mentioned as "Malik Ala". With respect to the remaining 42 villages he held that only the areas mentioned in the khewats of the different villages and not the forests and hills attached to them Sup.C.I/66-10 fell within s. 3(8). In the result he allowed the petition in part and issued a writ of mandamus directing the respondents not to take possession nor to interfere with the possession of the petitioner over the hills and jungle appertaining to the said 42 villages as distinguished from the areas mentioned in the khewats of these villages at the time the vesting order was issued. He dismissed the rest of the claim. The petitioner and the State of Uttar Pradesh both filed appeals, the petitioner claiming that the petition should be allowed in entirety, the State claiming that the petition should be dismissed.

During the pendency of the appeals (U. P. Act XIV of 1958) substituted the following new s. 3(8) in the Reforms Act, with retrospective effect from July, 1952:

> "3(8) "Estate" means and shall be deemed to have always meant the area under one entry in any of the registers described in clause (a),
>
> (b), (c) or (d) and, in so far as, it relates to a permanent tenure-holder in any register described in clause (e) of section 32 of the U. P. Land Revenue Act, 1901, as it stood immediately prior to the coming into force of this Act, or, subject to the restriction mentioned with respect to the register described in clause(e) in any of the registers maintained under section 33 of the said Act or in a similar register described in or prepared or maintained under any other Act, Rule, Regulation or Order relating to the preparation or maintenance of record of rights in force at any time and includes share in or of an "estate'.

Explanation : The Act, Rule, Regulation or order referred to in this clause shall include Act, Rule, Regulation or order made or promulgated by the erstwhile Indian State whose territories were merged or absorbed in the State of Uttar Pradesh prior to the date of vesting notified under section 4 of this Act."

In the light of this definition the Division Bench came to the conclusion that only the areas expressly mentioned in the Khewats vested in the State. It accordingly dismissed the appeals filed by the State and partly allowed the appeal of the petitioner.

The State filed two petitions for leave to appeal, one against the judgment in Special Appeal No. 267/1957 and the other against the judgment in Special Appeal No. 292/1957. The Raja filed a petition for leave to appeal against the judgment in Special Appeal No. 267/1957. The High Court granted three certificates on August 16, 1963, and three appeals are now before us, all arising out of the one petition under Art. 226 filed by the petitioner Raja. On January 1, 1964, the English translation of the impugned Act (U. P. Act No. 1 of 1964) was published, it having received assent of the President on December 31, 1963. The relevant portion of the impugned Act reads as follows:-

> "Section 2. In the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter called the principal Act), in clause (8) of Section 3, the following proviso shall, with effect from the first day of July, 1952, be added before the explanation, and the notifications issued under the principal Act (including sections 2 and 4 thereof) or the U. P. Land Reforms (Amendment) Act, 1954 (including section I thereof) or the U. P. Land Reforms (Amendment) Act, 1956 (including section I thereof) or the U. P. Land Reforms (Amendment) Act, 1958 (including section I thereof) shall, notwithstanding any judgment, decree, determination or order of any Court be so construed as if the said proviso had, since the said date, formed part of the principal Act, as also of the definition of the word 'estate' as given in the Uttar Pradesh Zamindari abolition and Land Reforms (Amendment) Act, 1958:

Provided that in Mirzapur District each of the areas bounded as given in Schedule VII shall, notwithstanding anything contained in the foregoing definition, be deemed to be an estate.

3. After Schedule VI of the principal Act, the following new Schedule shall be added and be deemed to have been so added with effect from the first day of July, 1952.

Schedule VII [See proviso to clause (8) of section 3]

1. The area known as Pargana Agori in district Mirzapur bounded in the North by the Kaimur Range confining with the villages Padaunian (also known as Parhwanian), Chingauri, Guraul (also known as Gurwal) Karaundia, Barauli, Dumkari Khirhata, Gadman, Khajraul (also known as Khajuraul) Dugauli, Baragaon, Jurauli, Jurauli Kulani, Rajpur, Raipura, Senduri, Raghunathpur, Bahawar, Basauli, Baghuwari, Lodhi, Raunp, Musahi, Churk and Urauli (also known as Arauli) of Pargana Barhar and villages Biranchuwa, Makri Bari, Pokhraundh, Lauwa, Cherui, Baghma, Markundi of Pargana Bijaigarh of district Mirzapur as far as the Western boundary of village Sasnai of Pargana Bijaigarh which then forms the boundary between Parganas Agori and Bijaigarh upto the point opposite the junction of the rivers Kanhar and Son and thence onward the River Son, forms its northern boundary.

in the east and south-east by the territory of the State of Bihar;

in the South by Tehsil Dudhi of District Mirzapur;

in the South-West and West by the territory of Madhya Pradesh (erstwhile Rewa State); but excluding village Kishun Chak, which is a separate estate within Pargana Agori and is bounded on the North, East and South by village Kon Khas and in the West by village Mohiuddinpur of District Mirzapur."

The learned counsel for the State has raised three points before us in the two appeals filed by the State:

(1) In view of the impugned Act, Pargana Agori is an "estate within the Reforms Act;
(2) The High Court was in error in holding that on account of the mention of a wrong area in the khewat the entry cannot be said to be in respect of the entire area;

(3) Naksha Pattidaris prepared by Rai Manak Chand in 1843 in connection with settlement operations constituted record of rights.

On the first point M On the first point Mr. A. K. Sen, the learned counsel for the Raja, contends that the impugned Act cannot be saved under Art. 31A because it has not been passed for agrarian reforms and, secondly, that the impugned Act includes an area within the definition of "estate" in the Reforms Act which is not an "estate" within Art. 31A(2). He says that the validity of the acquisition under the Reforms Act must be judged in the light of Art. 31 and Art.

19. Art. 31A(2) as enacted by Constitution (Seventeenth Amend- ment) Act, 1964, reads as follows:-

> "31A(2) In this article-
>
> (a) the expression 'estate' shall in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include-
>
> (i) any jagir, inam or muafi or other similar grant and in the States of Madras and Kerala any janmam right;
>
> (ii) any land held under ryotwari settlement;
>
> (iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;
>
> (b) the expression 'right' in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raivat, under raivat or other intermediary and any rights or privileges in respect of land revenue."

It is apparent from the definition that as far as the first part of clause (a) is concerned, we have to look to the meaning given to the expression "estate" or its local equivalent in an existing law relating to tenures. We cannot have recourse to the meaning given in a law which is not existing law. Existing law is defined in art. 366(10) thus:

> "'Existing law' means any law, ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation;"

Therefore, if the State desires to invoke Art. 31A and rely on the definition contained in the first part of clause (a) it must show that the area sought to be acquired is an "estate" within the definition contained in a law relating to land tenures passed before the commencement of the Constitution. The relevant definition for our purposes is contained in s. 4(4) of the U.P. Land Revenuie Act 1901. It is not necessary to decide whether Pargana Agor ails within the definition of "Mahal" as we have come to the conclusion that Pargana Agori is a Jagir or Inam or a grant of a similar nature within clause (a) (i) of Art. 31A(2). But before giving our reasons for this conclusion we will dispose of the contention of the learned counsel that Pargana Agori is an estate within cl. (a) (iii) of that Article.

According to the learned counsel for the State any waste land or forest land would fall within clause (a)(iii) He says that it is not necessary that it should be held or let for purposes of agriculture or for purposes ancillary thereto. In other words, he would rewrite clause (a)(iii) as follows:-

> Clause (a) (iii) (A) any land held or let for purposes of agriculture or for purposes ancillary thereto, (B) any waste land, forest land for pasture, (C) sites of building and other structures occupied by cultivators of land, agricultural labourers and village artisan.

We are unable to read clause (a)(iii) in this way. It seems to us that if this was the intention, cl. (a)(iii) would have been split up and waste-land, forest land and land for pasture would have figured separately in a separate clause. There are vast areas of forest land and waste land in India and it is not to be expected that these would be included in the definition indirectly by expanding the word "land". If this was the intention at least the word "including" would have been omitted and substituted by "any". Further the whole object of Art. 31A is to carry out agrarian reforms and it 'is difficult to see how agrarian reforms can be furthered by the acquisition of every parcel of forest land or waste land.

In our opinion the word "including" is intended to clarify or explain the concept of land held or let for purposes ancillary to agriculture. The idea seems to be to remove any doubts on the point whether waste land or forest land could be held to be capable of being held or let for purposes ancillary to agriculture.

We must, therefore, hold that forest land or waste land in the area in dispute cannot be deemed to be an estate within cl.(a)(iii) unless it was held or let for purposes ancillary to agriculture. There is no dispute that the cultivated portion of Pargana Agori would fall within clause (a)(iii). The next point is whether Pargana Agori is a Jagir, Inam or other similar grant within Art. 31A(2)(a)(i). The learned counsel for the State relies on the following facts. About the year 1744 A. D. Shambu Shah the then Raja of Agori was dispossessed of his domains by Raja Balwant Singh and he brought the estate to his own use. It appears from Robert's report that Raja Balwant Singh and his successor Chet Singh remained in possession for about 40 years. During the insurrection of Chet Singh, Adil Shah, grandson of Shambu Shah, attended on Warren Hastings and made himself so useful that the Governor General gave him a sanad restoring him the Zamindari of Agori Barhar (vide Sherring Hindu Tribes Caste Vol. 1, pages 182-183)reproducedin Baijnath Prasad Singh v.Taj Bali Singh(1) He helped the British in the military operations against Chet Singh thus:

> "Meanwhile the information of Chet Singh's flight reached the Governor-General at Chunar and a strong force was sent under Major Popham to take possession of Latifpur and then to reduce Bijaigarh. The GovernorGeneral, after visiting Patita, returned to Ramnagar on September 28th, and after restoring confidence by the issue of proclamations of amnesty, formally installed Mahip Narayan Singh, the daughter's son of Balwant Singh, as (1) A.I.R. 1917 All. 191.

successor to Chet Singh. Major Popham and his forces reached Latifpur without opposition and having garrisoned the place with two companies of sepoys under Captain Palmer, proceeded towards Bijaigarh, which he reached after a difficult and trying march. A survey of the height of the fort immediately dispelled all idea of capturing it by escalade. But the Raja of Agori, who had been expelled by Balwant Singh and was now seeking restoration to his ancestral domains, pointed out

that the adjoining hill of Lowa Koh commanded the fort and was undefended. Accordingly a battery was at. once thrown up on Lowa Koh, as also on another hill to the north of the fort. On the following day fire was opened from these batteries and resulted in the speedy silencing of the guns of the enemy, which were very ineffectively served." (vide District Gazetteer of Mirzapur-page 237) The sanad is dated October 9, 1781, and the translation reads as follows:-

> "Be it known to Azzat Asar (respected) Adal Singh, Zamindar Pargana Agori.
>
> That on the basis of his application it has been learnt that the Zamindari of the aforesaid Pargana is his ancient hereditary property and that some years ago Raja Balwant Singh forcibly dispossessed him therefrom and himself took possession thereof Therefore, in view of Bargadam Haqeeq, he should be restored to his own rights so that he may carry on the settling and management of the aforesaid Pargana under the authority of the Amil and Rafat Wa Awali Martabat Raja Mahip Narain Bahadur (?). It be considered as very urgent and be complied with accordingly. Dated the 20th of Shawalul Mukarram, 1195 Hijri Qudsi, corresponding to the 9th of October, 1781, A. D. Qalmi."

Another translation appears in Baijnath Prasad Singh v. Tej Bali Singh:(1) "Be it known to Adil Shah, respectable zamindar of Pergana Agori, that on a petition having been made, it is known that the zamindari in the pargana aforesaid is his old ancestral property. Several years ago Raja Balwant Singh forcibly dispossessed him and brought it to his use. Therefore, in lieu of former rights he should remain in proprietary possession of his share as heretofore. He should make arrangements as regards the cultivation of the land and population of the pargana aforesaid in accordance with the directions of the Revenue Officer (1) A.I.R. 1917 All. 191.

and Raja Mohit Narain Bahadur of high rank. He is insisted on doing as directed above." On October 15, 1781, a sanad was granted to the petitioner's ancestor Adil Shah granting him an Ultmagah Jagir of Rs. 8,001/from Fasli year 1189. Adil Shah obtained possession of the Pargana with the assistance of the British troops. On November 4, 1803, a sanad was granted to the petitioner's ancestors granting a Jagir of Rs. 8,001/- per annum. Mr. A. K. Sen contends that the sanad was set aside by resolution of the Governor-General in Council dated April 1788 (see paragraph 16 of the G.O. No. 3824 of August 30, 1845 printed on page 97 of the Thomason Despatches). He relies on this statement contained in the judgment of the High Court in Writ Petition No. 454/1955 dated November 2, 1962. But this statement refers to the sanad dated October 15, 1781, and not to the sanad dated October 9, 1781, or the later sanad dated November 4, 1803. It appears from the District Gazetteer (page 255) that as soon as Adil Shah obtained possession of the zamindari, Adil Shah really forfeited his claim to the assigned villages, the revenue of which was Rs. 8001/- and as possession had been obtained at the time of the general settlement in 1788 the Governor- General in Council ordered the assignment to be resumed. Adil Shah died in 1794 and the New Raja became involved in monetary difficulties. Mr. Barton, the then Collector, made certain proposals and they were accepted at Calcutta and orders were issued to him to revise the assessment of Agori- Barhar in such a way as to give the Raja a net profit of Rs. 8,001/- per annum or to allot him, in lieu thereof, a certain number of villages assessed to that amount. Accordingly the revision of certain revenue

paying villages took place, and in addition to the villages assigned by Mr. Duncan, certain others assessed to a sum of Rs. 4,000/- were made over to the Raja. This arrangement brought taluqas Agori and Singrauli into the Raja's possesssion, with the result that he became in 1804 both zamindar and jagirdar, or assignee of the Government demand, in taluqas Kon and Agori, Singrauli and 28 villages in Barhar. Paras 11 to 15 of Robert's report dated January 1, 1847, are to the same effect.

It seems to us clear from the above facts that Pargana Agori is still held under the sanad dated October 9, 1781, and the sanad dated November 4, 1803. The second sanad is a grant of land revenue. That is definitely a Jagir. The learned counsel for the State contends that the fact that Adil Shah asserted a prior title may have been one of the reasons for the restoration of the zamindari, but it was in essence a new grant made on political considerations. He further points out that conditions are also laid down in the Sanad. Adil Shah was enjoined to make arrangements regarding cultivation and population of the pargana and had to obey the directions of the revenue officer and Raja Mohit Narain]Bahadur in this behalf.

As stated by this Court in Thakur Amar Singhji v. State of Rajasthan(1) "we do not find any sufficient ground for putting a restricted meaning on the word 'Jagir' in Art. 31A. At the time of the enactment of that Article the word had nearly acquired both in popular usage and legislative practice a wide connotation, and it will be in accord with sound canons of interpretation to ascribe that connotation to that word rather than an archaic meaning to be gathered from a study of ancient tenures."

An inam is explained in Wilsons' Glossary thus "A gift, a benefication in general, a gift by a superior to an inferior. In India, and especially in the south, and amongst the Marathas, the term was especially applied to grants of land held rent-free, and in hereditary and perpetual occupation; the tenure came in time to be qualified by the, reservation of a portion of the assessable revenue, or by the exaction of all proceeds exceeding the intended value of the original assignment; the term was also vaguely applied to grants of rent free land, without reference to perpetuity or any specified conditions. The grants are also distinguishable by their origin from the ruling authorities, or from the village communities and are again distinguishable by peculiar reservations, or by their being applicable to different objects."

In our opinion a grant by the British of lands for services. rendered to them would be a grant falling within cl. a(i). It seems to us that on the facts of the case the grant was in thenature of a grant similar to a Jagir or inam. The fact that Balwant Singh and Chet Singh held possession of this Pargana for 40 years, cannot be ignored. This shows that to all intents and purposes Adil Shah had lost the pargana and it was in effect a fresh grant in the nature of Jagir or inam for services rendered to the British. Adil Shah's assertion to title had not been verified. Although it may be one of the reasons for the grant, it is clear that if it had not been for the grant and its enforcement by the British troop&, Adit Shah would not have been able to recover the possession of the Pargana. His title to the pargana would rest on the grant and not. the alleged previous title.

If it is held, as we do hold, that the area in dispute is a grant in the nature of Jagir or inam and consequently an estate within (1) [1955] 2 S.C R. 303.

Art. 3 1A(2), the impugned Act can claim the protection of Art. 3 1A. The notifications dated June 30, 1953, and July 1953, must therefore be upheld.

Mr. A. K. Sen further urges that the acquisition of the estate was not for the purposes of agrarian reforms because hundreds of square miles of forest are sought to be acquired. But as we have held that the area in dispute is a grant in the nature of Jagir or inam, its acquisition like the acquisition of all Jagirs, inams, or similar grants, was a necessary step in the implementation of the agrarian reforms and was clearly contemplated in art. 3 1 A. In this view it is not necessary to decide whether the area in dispute is a Mahal or covered by s. 3(8) of the Reforms Act as it existed in 1958 or earlier or any other question which was raised before us.

In the result the appeals filed by the State are accepted, the appeal filed by the petitioner Raja is dismissed and the petition under Art. 226 filed by the Raja is dismissed. In the circumstances of the case there will be no order as to costs.

V.P.S.

Appeals Nos. 653 and 654 allowed
Appeal No. 655..... dismissed