Union Of India vs Jubbi And Dunia, Etc on 5 September, 1967

Equivalent citations: 1968 AIR 360, 1968 SCR (1) 447, AIR 1968 SUPREME COURT 360

Author: J.M. Shelat

Bench: J.M. Shelat, J.C. Shah, S.M. Sikri

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
JUBBI AND DUNIA, ETC.

DATE OF JUDGMENT:
05/09/1967

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1968 AIR 360 1968 SCR (1) 447

ACT:
The Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act (15 of 1954)--If applicable to State as landlord.

HEADNOTE:
The Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953, lays down a scheme for the abolition of proprietary rights of landowners: (1) under s. 11 there would be a direct transfer of the rights of a landowner from the landowner to the occupancy tenant; (2) under s. 15, in respect of lands situate in an area specified by Government, there would be a transfer to the State Government, the tenants of such lands becoming the tenants of the Government; and (3) under s. 27, in the case of large holdings the ownership would be first transferred to the State Government and thereafter by the State Government in

favour of the tenant.
The respondent made an application under s. 11 of the Act for acquiring proprietary rights in certain lands as he was the occupancy tenant of those lands, the Union of India being the landowner.
On the question whether the Act was intended to affect land owned orheld by the Union or State Government,
HELD:There is nothing in the provisions of the Act suggesting,expresslyor by necessary implication that the Act was not applicable to the State, or any distinction between lands owned and held by citizens and lands owned and held by the State. [454C]
The object of the Act was to abolish big landed estates and alleviate the conditions of occupancy tenants by abolishing the proprietary rights of landowners in them and vesting such rights in the tenants. If discrimination between the State and the citizen in the matter of the application of the Act is made it would result in the anomaly that whereas occupancy tenants of lands owned by citizens would have the benefit of such a beneficent legislation, occupancy tenants of lands owned and held by the State would not get such benefit. An intention to bring about such a discrimination cannot be attributed to the legislature whose avowed object was to do away, in the interest of social and economic justice, landlordism in the State. [454-D-G]
Superintendent and, Legal Remembrancer V. Corporation of Calcutta, [1967] 2 S.C.R. 170, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 957 of 1964. Appeal from the judgment and order dated January 12, 1963 of the Judicial Commissioner's Court. Himachal Pradesh in Civil Misc. 2nd Appeal No. 15 of 1961.

R. Ganapathy Iyer, R. N. Sachthey and S. P. Nayar, for the appellant.

D. R. Prem and R. Thiagarajan, for the respondent.

The Judgment of the Court was delivered by Shelat, J. The Himachal Pradesh State legislature passed the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act 1953 (hereinafter referred to as the Act) on June 17, 1953 and the Act was brought into force with effect from January 26, 1955. The validity of the Act was thereafter successfully impugned (cf. Shri Vinod Kumar v. State of Himachal Pradesh)(1). The Parliament then passed the Validating Act, 56 of 1958. That Act was itself then challenged in Jadab Singh v. Himachal Pradesh Administration (2) but the challenge was rejected and the Act since then remains on the statute book as a valid piece of legislation. On June 4, 1959 the respondent made an application under s. II of the Act for acquiring proprietary rights in the lands set out therein claiming to be the cultivating tenant of those lands

and produced a copy of Jamabandhi in support of his claim. He stated that he was the tenant of the Union of India in respect of the said lands. that he was cultivating the said lands, that he was paying Rs. 35/5/- annually as rent and Rs. 23/8/- as annual land revenue and other rates and cesses assessed on the said lands and that he was willing to pay compensation as provided by the Act. On November 26, 1959 the Forest Department on behalf of the Union filed objections alleging that the application was incompetent, that the said lands formed part of the protected forest. that the relationship between the respondent and the Union was not that of landlord and tenant, that the Union being the paramount owner could not be characterised as landlord qua the respondent. that a number of trees stood on the said lands, that the respondent was merely a lessee of the said lands which were a forest area, that the entries in the revenue record in respect of the said lands were incorrect and could not be relied on in an application under section 11 and consequently the Compensation Officer. Mahasu, had no jurisdiction to grant it. The Compensation Officer held, that the said area was not a forest area, that there were no trees on the said lands as alleged and that since the respondent was mentioned as an occupancy tenant in the Jamabandhi he was entitled to proprietary rights in the said lands on his paying compensation which he fixed at Rs. 76.40 np. The Forest Department there upon filed an appeal before the District Judge, Mahasu. principally on the ground that the Compensation Officer had not followed the procedure laid down in the Act and had not given to the Forest Department reasonable opportunity to put forward its case. The Forest Department did not dispute in the said appeal that the appellant held the said lands as a tenant of the Government. On July 26, 1960 the District Judge allowed the appeal and remanded the case to the Compensation Officer directing him to raise proper issues and decide the matter in accordance with law. Accordingly. the Compensation Officer raised (1) [1959] Supp. 1 S.C.R. 160.

(2) [1960] 3 S.C.R. 755.

four issues, viz., Whether there were trees on the said lands, whetherthe lands formed part of the forest whether the respondent was a tenant in respect of the said lands and whether there was any impediment in the way of granting proprietary rights to him . The Compensation Officer held that the respondent was a tenant, there was no impediment in granting proprietary Tights to (him and allowed once again the respondents' application. The appeal by the Union against the said order before the District Judge failed. The District Judge held that the respondent was ,the tenant of the Union' and that the Act applied to the said lands as also to the Union. The Union filed a Second Appeal before the Judicial Commissioner challenging the correctness of the District Judge's said order. Both the Compensation Officer and the District Judge having held on the strength of the Jamabandhi that the respondent was the occupancy tenant in respect of the said lands, the only questions raised in the Second Appeal were (1) that the Act did not bind the Union or the State Government and (2) that the respondent's application under s. 11 could not lie against the Union in respect of lands owned by it. The Judicial Commissioner followed the ratio laid, down in Director of Rationing v. Corporation of Calcutta(1) which was the law then prevailing and in view of that decision posed the question whether the Act applied to and was binding on the Union. He held that though the Act did not contain any express provision to that effect, an examination of sections 11, 15, 27 and 54 showed that the Act applied to Government land and was by necessary implication binding on the Union. He observed that the object of the Act and the acquisition of right. title and interest of the landowner in the land of any tenancy held under him by a tenant was that such

interest should ultimately be transferred to the tenant. He held that on a consideration of the relevant provisions of the Act "the conclusion to which I have been driven is that by necessary implication the Act binds the Government and an application under section I I of the Act by a tenant is competent in respect of land held by him under the Government." In that view he dismissed the Union's appeal. The Union of India filed this appeal after obtaining certificate under Art. 133(1)(c) of the Constitu- tion. After this appeal had gone on for some time we felt that as it involved a question of some public importance it was desirable that we should have the assistance of some senior counsel. We accordingly directed the Registrar to appoint a Senior Counsel amicus curiae. Accordingly, Mr. D. R. Prem appeared before us. We gratefully acknowledge the assistance rendered by him.

Mr. Ganapathy Iyer for the Union of India took us through the different provisions of the Act and submitted that considering the scheme and the object of the Act the conclusion was inescapable that the legislature while enacting the Act did not intend that (1) [1961] 1 S.C.R. 158.

6SCI--3 it should to the Government or to lands owned by the Government. To appreciate the contention ;it is necessary to examine some of the provisions of the Act. But before we do that it,would be expedient to clear the ground regarding the question theapplicability of statutes on the State and its immunity,if any,'from such statutes. In Director of Rationing v. The Corporation of Calcutta(1) the majority judgment held that the law applicable to India ':before the Constitution was as authoritatively laid down in the Province of Bombay v. Municipal Corp. of Bombay(2) that the Constitution has not made any change in the legal position and that on the other hand it has clearly indicated that the laws in force before January 26, 1950, shall continue to have validity even in the new set up except in so far as they were in conflict with the express provisions of the Constitution. The majority also held that the rule of interpretation of statutes that the State was not bound by a statute unless it so provided in express terms or by necessary implication was still good law. Wanchoo J. (as he then was) in his dissenting opinion, however, held that the rule of construction which was based on the royal prerogative as known to the common law of England could not be applied to India now that there was no crown in India and when the common law ,of England was not applicable and that therefore the State was bound by a statute unless it was exempted expressly or by necessary implication. The rule in that decision is no longer good law. In Supdt. & Legal Remembrancer, West Bengal v. Stale of West Bengal(1) this Court considered the correctness of that decision and disagreeing with the majority view accepted as correct the minority opinion. The Court held that the common law rule of construction that the crown was not, unless expressly named or clearly intended, bound by a statute was not accepted as a rule of construction throughout India and even in the Presidency towns it was not regarded as an inflexible rule of construction. It was not statutorily recognised either by incorporating in indifferent Acts or in any General Clauses Act; at the most it was relied upon as a rule of general guidance in some parts of the -country. The legislative practice established that the various legislatures of the country provided specifically exemptions in favour of the crown whenever they intended to do so indicating thereby that they did not rely upon any presumption but only or ,express exemptions. The Court also observed that the Privy ,Council in Province of Bombay v. Corp. of Bombay (2) gave it approval to the rule mainly on concession made by Counsel. The Court then held that the archaic rule based on the prerogative an(perfection of the crown could have no relevance to a democrat, republic; that such a rule was

inconsistent with the rule of law (1) [1961] 1 S.C.R. 158.

(2) 73 I.A. 271.

(3) [1967] 2 S.C.R. 170.

based on the doctrine of equality and introduced conflicts and anomalies. Therefore, the normal construction, that an enactment applies to citizen as well as to the state unless it expressly or by necessery impliciter excepted the State from its operation, steered clear of all anomalies and consistent with the philosophy of equality enshrined in the Constitution. The position now therefore is that a statue applies to State as much it does to a citizen unless it expressly or by necessary implication exempts the State from its operation.

It is conceded that neither s. II nor any other provision in the Act contains any express exemption. Broadly stated, if the legislature intended to exclude the applicability of the Act to the- State it could have easily stated in section 11 itself or by a separate provision that the Act is not to be applied to the Union or to lands held by it. In the absence of such a provision, in a constitutional set up as the one we have in this country and of which the over,riding basis is the broad concept of equality, free from any arbitrary discrimination, the presumption would be that a law of which the avowed object is to free the tenant of landlordism and to ensure to him security of tenure would bind all landlords irrespective of whether such a landlord is an ordinary individual or the Union.

The question then is whether in the absence of any express exemption the statute exempts the State by necessary implication? The preamble of the Act declares that its object is not only to abolish big landed estates but also to reform the law relating to tenancies. Section 2(3) provides that the expression "estate", "land-owner" and "holding" Will have the meanings respectively assigned to them in the Punjab Land Revenue Act, 1887. Turning, therefore to the Punjab Land Revenue Act, 1887 we find that section 3(1) of the Act defines "estate" as meaning any area for which a separate record-of-rights has been made or which has been separately assessed to land revenue or which the State Government may by general rule or special order declare to be an estate. Section 3(2) provides that "landowner" does not include a tenant or an assignee of land revenue, but includes a person to whom a holding 'has been transferred, or an estate or holding has been let in farm under the Act for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear and every other person not hereinbefore in this clause mentioned who is in possession of an estate or any share or portion thereof. or in the enjoyment of any part of the profits of an estate.

> "Holding" has been defined as meaning a share or portion of an estate held by one land-owner or jointly by two or more landowners. Since the land in question is admittedly assessed to land revenue as is clear from the copy of the Jamabandhi produced by the respondent here can be no question that the land is estate and the Union of India is the landowner thereof. Reverting now to the Abolition Net, section 2(5) defines "land" as meaning land which is not occupied as a site of any building in a town or village and in occupied or has been let for agriculture purposes or purpose subservient to agriculture,or for pasture. Section 2(6) defines "land lord" as a person

under whom a tenant holds land and to whom the tenant is or but for a contract to the contrary would be liable .to pay rent for that land. Clause 13 defines "rent" as meaning whatever is payable to a landlord in money, kind or service be a tenant on account of the use or occupation of land held by him Clause 17 defines a "tenant" as meaning a person who holds land under another person, and is or but for a contract to the contrar would be liable to pay rent-for that land to that other pet-son an clause 19 defines "tenancy" as meaning a parcel of land held by tenant of a landlord. under one lease or one set of conditions. I view of these definitions there can be no doubt that the responder was -a tenant having a right of occupancy within the meaning of sections 3 And 4 of the Act. Indeed, all throughout the proceedings the position that he was a tenant and the Union was h landlord and the landowner of the land in question was accept without any dispute. Section 3 defines a tenant as having a right of occupancy in the land and section 8 provides that a tenant who immediately before the commencement of the Act had a right c occupancy in any land under the Punjab Tenancy Act 1887, a applied to Himachal Pradesh shall on the commencement of the Act be held to have for all purposes a right of occupancy in th land. Chapter III of the Act deals with acquisition of proprieter rights by tenants. Sections 9 and 10 provide for the appointment of compensation officers to carry out the purposes of the Act an confer power on the State Government to exercise control an superintendence over such officers, to issue instructions for the guidance of compensation officers and to cancel or revise any the orders, acts and proceedings of such officers other than those in respect of which an appeal lies under this Act. Section I idea with the right of a tenant to acquire the interests of a landown and provides inter alia that a tenant shall on application made the compensation officer at any time after the commencement this Act be entitled to acquire on payment of compensation. the right, title and interest of the landowner in the land of the tenant held by him under such landowner. Sub-section 2 contains certain exemptions with which we are not concerned in this appeal. Sub section 3 enjoins upon the compensation officer on a tenant meaning an application under sub-section (1). to determine the amount of compensation payable to the landowner in respect of the at in accordance with the provisions of sections 12 and 13. Under sub-section 5 the applicant has to deposit the amount of compensation in a Government treasury and thereupon the Compensation Officer has to issue a certificate declaring the tenant to be the landowner in respect of the land specified, in the certificate. Sub section 6 provides that on and from the date of the grant of the certificate the tenant shall become the owner of the land comprised in the tenancy and the right, title and interest, of the landowner in the said land -shall determine. Sections 12 and 13 deal, as aforesaid, with compensation payable by the tenant.

Section 14 provides that a tenant holding a tenancy exceeding 12 acres of land can surrender 1/4th of such land to the landowner whereupon the tenant would become the owner of the rest of the land of his tenancy.

There is nothing in these sections which would indicate that they or any of them impliedly exempt the State or its lands from their operation. Sections 11 to 14 thus contain provisions where, under the tenant, as a result of their operation, acquires the right, title and interest in the land held by him as a tenant on his paying compensation to the landowner as fixed by the Compensation Officer. Under sections 15 to 24, notwithstanding the provisions of sections 11 to 14, the State Government is empowered on a declaration made by it to acquire the right, title and interest of the landowners in the lands of any tenancy held under him by a tenant in -respect of such area or at such time as may be specified by it in a notification. They also provide that upon such declaration the right. title and interest of such landowner vests in the Government. Such a landowner is entitled to compensation as provided in section 16 and onwards on his rights vesting in the Government. In such cases the tenant becomes the tenant of the Government and has to pay rent directly to the Government and the landowner becomes henceforth exempt from payment of land revenue. Section 27 then provides that notwithstanding anything contained in section 11 and onwards a landowner who holds land,. the annual land revenue of which exceeds Rs. 125, the right, title and interest 'of such landowner in such land except such land which is under his personal cultivation shall be deemed to have been transferred and vested in the State Government. Such a landowner also is entitled to compensation determined having regard to sections 17 and 18 in accordance with the provisions of Sch. II. Sub-section 4 of section 27 provides that the right, title and interest of the landowner conferred on the Government by subsections I and 2 shall be transferred by the State Government on payment of compensation in accordance with Sch. 1 to such tenant who cultivates such land. Sub-sec. 5 provides for rehabilitation grant payable to such small landowners whose right, title and interest have been extinguished and who do not have any other means of livelihood.

A reading of sections 11 to 27 reveals that they lay down three parts of the scheme of abolition of proprietary rights of land,owners; (1) under s. II there would be a direct transfer to and -vesting of the right, title and interest of the landowner in the occupancy tenant on his paying compensation as assessed by the Compensation Officer; (2) under section 15 in respect of -lands situate in an area specified by Government, there would be a transfer and vesting of ownership of such lands in the State Government and the tenants of such land becoming the tenants of the Government and (3) under S. 27 where the holding is large enough to have an annual assessment of over Rs. 125, the ownership in such lands would be first transferred and vested in the State Government and thereafter by the State Government in favour of the tenant.

The contention, however, was that these three ways of abo- lishing the landowners' interest and transferring in two out of these three methods of the proprietary rights to the tenants suggest that the Act was not intended to affect the land owned or held by the Union or the State Government. This contention cannot be accepted, for, there is nothing in these provisions suggestive of their being not applicable to the State or of any distinction between the lands owned and held by citizens and lands owned and held by the State. There can therefore be no room for any assumption that the legislature had in mind any such discrimination between the State and the citizens.

Mr. Ganapathy Iyer drew Our attention to sections 48 and 54(1)(g) also but we fail to see how they can be relevant for finding out whether the State is by implication exempted from the operation of the Act.

It is clear that the object of the Act was to abolish big landed estates and alleviate the conditions of occupancy tenants by abolishing the proprietary rights of the landowners in them and vesting such rights in the tenants. That being the paramount object of the legislature it is hardly likely that it would make any discrimination between the State and the citizen in the matter of the application of the Act. This is especially so because if such a discrimination were to be brought about through a construction suggested by the State it would result in an anomaly in the sense that whereas occupancy tenants of lands owned by citizens would have the benefit of such a beneficent legislation occupancy tenants of lands owned and held by the State would not get such benefit. An intention to bring about such a discrimination against the latter class of tenants cannot be attributed to the legislature whose avowed- object was to do away in the interest of social and economic justice landlordism in the State. In view of the decision in Supdt. & Legal Remembrancer v. Corp. of Calcutta(1) the State cannot also claim exemption on the ground only that the Act does not expressly or by necessary implication make it binding on the State.

For the reasons aforesaid, we must hold that the conclusion arrived at by the Judicial Commissioner was correct. The appeal is dismissed. No order as to costs.

V.P.S. Appeal dismissed.

[1967] 2 S.C.R. 170.