Supreme Court of India

Biswambhar Singh And Ors vs State Of Orissa on 16 November, 1962

PETITIONER:
BISWAMBHAR SINGH AND ORS.

Vs.

RESPONDENT:
STATE OF ORISSA

DATE OF JUDGMENT:
16/11/1962

BENCH:

ACT:
Sovereign-Zamindar whether sovereign-Etates-Intermediaries-Constitutionality of Act XVII of 1954-The Orissa Estates Abolition Act, 1952 (Orissa 61 of 1952), ss. 2 (g), 2 (h).

HEADNOTE:
When the Orissa Estates Abolition Act came into force in February 1952, the appellants along with another person moved the High Court under Art. 226 of the Constitution challenging the constitutionality of the Act. The High Court held that the Act was valid and the lands of the appellants could be taken over by the State. When the case came to this Court in appeal, it held that the Act did not apply to the proprietors of Hemgir and Sarpgarh as they were not intermediaries as defined in s. 2 (h) of the Act. The Zamindar of Nagra was held to be an intermediary as he had acknowledged overlordship of the Raja of Gangpur. The Orissa legislature passed Act XVII of 1954 and changed the definitions of estate' and intermediary' to cover the cases of the proprietors of Hemgir and Sarpgarh.
The appellants, the Zamindars of Hemgir and Sarpgarh, moved the High Court for a writ of mandamus against the State of Orissa and the Collector of Sundargarh. The appellants claimed sovereign status and contended that the Amending Act did not apply to them. Their petitions were dismissed
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by the High Court which held that as a result of historical process the appellants had lost all vestiges of their sovereignty and become subject to the laws promulgated by ruler of Gangpur and when that ruler merged his State with the State of Orissa, the appellants 'were not better than mere subjects and had absolutely no claims to sovereign power. The other contentions raised by the appellants regarding discrimination etc. were also rejected by the High Court. The appellants came to this Court after securing the

certificate.
Held, that the appellants or their ancestors had ceased to be sovereigns on the eve of the merger of the State of Gangpur with the State of Orissa and their position was that of intermediaries who held or owned interests in land between the Raiyat and the State and their interests in their lands could be acquired by the State under the Act. Although there was no evidence of actual conquest of the territory of the appellants by the Raja of Gangpur or the active imposition of the sovereignty of the Raja over the territories in question, as a matter of fact the former rulers of those territories had submitted to the sovereignty of the Raja as a result of a continuous process. The Raja of Gangpur exercised sovereign authority over those territories. The outward symbols of sovereignty were that the laws of Gangpur State were in force in Hemgir and Sarpgaph. The whole of the administrative control was in the hands of the Raja of Gangpur. Neither in fact nor in law was there any vestige left of the sovereignty of the appellants when the Raja merged his State with the State of Orissa.
Biswambhar Singh v. State of Orissa, [1954] S. C. R. 842, Promod Chandra Deb v. State of Orissa [1962] Supp. I S. C. R. 405, Thakur Amar Singhji v. State of Rajasthan, [1955] 2 S. C. R. 303 and Amarsarjit Singh v. State of Punjab, [1962] Supp. 3 S. C. R. 346, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 11 2 and 11 3 of 1960.

Appeals from the judgment and order dated April 25, 1957, of the Orissa High Court in 0. J. C. Nos. 164 and 181 of 1954. N. C. Chatterjee, M. S. Mohanty, A. N. Singh and B. P. Maheshwari, for the appellants.

C. B. Agarwala, R. Gopalakrishnan and R. H. Dhebar, for the respondents Nos. 1 and 2 (in C. A. No. 112/60) and for the respondents (in C. A. No. 113/60).

1962. November 16. The judgment of the Court was delivered by SINHA, C. J.-These two appeals on certificates of fitness granted by the High Court of Orissa raise the question of the constitutionality of the Orissa Estates Abolition (Amendment) Act (Orissa XVII of 1954) amending the main Act, the Orissa Estates Abolition Act (Orissa 1 of 1952), which hereinafter will be referred to as the Act. As the questions raised in the High Court and in this Court are the same in both the appeals, they have been heard together and this judgment will govern them both.

It appears that the two Zamindars of Hemgir and Sarpgarh moved the High Court of Orissa under Art. 226 of the Constitution for a writ of mandamus against the State of Orissa and the Collector of

Sundargarh, which is a district formed after Merger. Previously it was part of the feudatory State of Gangpur. The two petitioners' Zamindaries covered about 540 sq. miles between them. The petitioners in the High Court in their petitions, claimed a sovereign status and referred to a mass of historical literature, including references to the Imperial Gazetteer by W. W. Hunter, Sir Richard Temple's Treaties, Zamindaries, Chieftainships in Central Provinces, and other official records. The High Court has found that the remote ancestors of the petitioners were Bhuiyan Chiefs, who were the original settlers and who had in course of time become the chieftains of the place, exercising sovereign powers. Subsequently, when the Rajput Rulers of Gangpur settled in that area, these Bhuiyan Chiefs accepted the suzerainty of those Rulers and gradually surrendered their sovereign rights. They used to pay annual "Takolis", which they originally paid as tributes to the suzerain, but which later became indistinguishable from land revenue. Their status vis-a-vis the Ruler of Gangpur remained undefined, though in successive revenue settlements made by the Ruler of Gangpur, with the concurrence of the then political Department, of the Government of India, they were described as Zamindars, and 'Khewats' were issued to them. The High Court, on an examination of the relevant evidence, came to the conclusion that these Zamindars ultimately lost all vestiges of their sovereignty, and as a result of historical process became subject to the laws promulgated by the Ruler of Gangpur, and that when the Ruler merged his State with the State of Orissa, with effect from January 1, 1948, these petitioners were no better than mere subjects and had absolutely no claims to sovereign power. The High Court also found that considerable forest areas formed part of the land which belonged to them, and that these forest areas had no separate and distinct existence in the eye of law. The High Court repelled the petitioners' contention that their lands were not restates' as defined in Art. 31A(2)(a) of the Constitution. The High Court also rejected the contention that the Act, in so far as it applies to the petitioners, was discriminatory. The High Court thus held that Art. 14 of the Constitution had not been contravened. It also held that the Act was not void under Art. 254(1) of the Constitution. It further held that the so called violation of Art. 17(2) of the "Universal Declaration of Human Rights" promulgated by the General Assembly of the United Nations on December 10, 1948, to which India was a party, was not justiciable. In that view of the matter, these petitions were dismissed and both parties were directed to bear their own costs. The petitioner, in each case, moved the High Court and obtained the necessary certificate for coming up in appeal to this Court. That is how these appeals are before us.

This is not the first time that these petitioners, now appellants in this Court, have figured as litigants in the High Court and in this Court in respect of their respective lands. When the Orissa Act 1 of 1952, the main Act, was enacted and came into force in February 1952, the Government of Orissa notified the petitioners' property also as coming within the purview of the Act. The appellants along with another person claiming the same rights, belonging to Nagra, moved the High Court under Art. 226 of the Constitution challenging the constitutionality of the Act. Those applications were heard by the High Court, and by majority it was held that the Act was valid and that the lands belonging to the petitioners could be taken over by the State, as a result of the operation of the Act. The petitioners in the High Court preferred an appeal to this Court. The judgment of this Court is reported as Biswambhar Singh v. State of Orissa(1) This Court allowed the appeal of the proprietors of Hemgir and Sarpgarh on the ground that they were not 'Intermediaries' as defined in s. 2(h) of the Act. As regards the proprietor of Nagra Zamindari, by a majority judgment, it was decided that he came within the definition of an 'intermediary', and that, therefore, his land would come within

the definition of an 'estate', as defined in s. 2(g) of the Act. This Court distinguished the case of Nagra from that of the other two on the ground that the Zamindar of Nagra had acknowledged the overlordship of the Raja of Gangpur. As a result of the decision of this Court, allowing the appeals of the Zamindars of Hemgir and Sarpgarh and prohibiting the State of Orissa from taking over possession of those two zamindaries under the Act, the Orissa Legislature passed the Amending Act (XVII) of 1854 recasting the definition of the two terms 'estate' and ,intermediary'. The amended definition of these two terms is as follows :-

"(g) 'estate' includes a part of an estate and (1) [1954] S.C.R. of 842.

means any land held by or vested in an Inter-

mediary and included under one entry in any revenue rolls or any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law relating to land revenue for the time being in force or under any rule, order, custom or usage having the force of law, and includes revenue-free lands not entered in any register or revenue-roll and all classes of tenures o f under-tenures and any jagir, inam or muafi or other similar grant ;

Explanation I-Land Revenue means all sums and payments in money or in kind, by whatever name designated or locally known, received or claimable by or on behalf of the State from an Intermediary on account of or in relation to any land held by or vested in such Intermediary ;

Explanation II-Revenue-free land includes land which is, or but for any special covenant, agreement, engagement or contract would have been liable to settlement and assessment of land revenue or with respect to which the State has power to make laws for settlement and assessment of land revenue;

Explanation III-In relation to merged terri- tories, 'estate' as defined in this clause shall also include any mahal or village or collection of more than one such mahal or village held by or vested in an Intermediary which has been or is liable to be assessed as one unit to land revenue whether such and revenue be payable or has been released or compounded for or redeemed in whole or in part."

(h) 'Intermediary' with reference to any estate means a proprietor, sub-proprietor, landlord, land-holder, malguzar, thekadar, gaontia, tenure-holder, under-tenure-holder and includes an inamdar, a jagirdar, zamindar, Ilaquedar, Khorposhdar, parganadar, Sarbarakar and Muafidar including the Ruler of an Indian State merged with the State of Orissa and all other holders or owners of interest in land between the raiyat and the state;

Explanation 1 Any two or more intermediaries holding a joint interest in an estate which is borne either on the revenue-roll or on the rentroll of another Intermediary shall be deemed to be one Intermediary for the purposes of his Act;

Explanation II-The heirs and successors-in interest of an Intermediary and where an Intermediary is a minor or of unsound mind or an idiot, his guardian, Committee or, other legal curator shall be

deemed to be an Intermediary for the purposes of this Act. All acts done by an Intermediary under this Act shall be deemed to have been done by his heirs and successors-in-interest and shall be binding on them."

In the statement of objects and reasons for amending the Act, it was indicated that these wide definitions of those two terms were enacted so that the decision of this Court with particular reference to these two properties may not stand in the way of acquiring them.

Though the arguments in the High Court occupied a every large field, on these appeals Mr. Chatterjee, on behalf of the appellants, has confined his submissions, in the ultimate analysis. to only one point, namely, that even after the amendment of the Act the legislature has failed to achieve its objective of bringing the land of these two petitioners within the mischief of the Act. In other words, the contention is that the appellants were sovereign rulers whose States could not be taken over by the State of Orissa even after the amendment of the Act, as aforesaid. The definition of 'intermediary' in s. 2 (h) as amended, the argument proceeds further, would not take in the appellants' properties so as to entitle the State to acquire them, nor does the definition of 'estate' in the amended s. 2 (g) cover the interest of the appellants in their respective lands. It is, therefore, necessary to find whether the interest of the appellants, in order to be liable to acquisition under the Act, could come within the purview of the definition of in termediary'. It is difficult to accede to the argument that the all inclusive definition of "intermediary', as given in the amended cl. (11) of s. 2 would not cover the interest of the appellants. If it is held, as we must hold in agreement with the High Court, as will presently appear, that the appellants were not holders of sovereign States, then the inference is clear that they held or owned an 'interest in land between the Raiyat and the State.' As admitted on all hands, they are not Raiyats. Then, whatever their interest may be, whether as proprietors or tenure-holders or Inamdars or Jagirdas or Khorposhdars, etc. etc., specifically mentioned in the definition, they would come within the purview of the last clause and their interest would be that of an intermediary, because they stand in between the state at the apex and the cultivating Raiyat at the base. If the interest of these appellants is not that of a sovereign State, they hold their property as intermediaries and the payment which they used to make to the Raja of Gangpur, and later to the State of Orissa, would be in the nature of land revenue.

The main argument, therefore, of Mr. Chatterjee was directed to showing that the appellants held the lands as sovereign power, and that the Takoli which they paid to the Raja of Gangpur was only in the nature of tribute and not land revenue. In our opinion, there is no substance in this contention. It is true that there is no evidence of an act of State in the nature of a conquest by the Raja of Gangpur or that the Raja imposed his sovereignty on these principalities by force of arms or by express agreement. It was, therefore, argued that there was no scope for applying the doctrineof "act of State" to these principalities. There is a fallacy in this argument. It was pointed out by this Court in Promod Chandra Deb v. Stateof Orissa(1) that an act of State may be the taking over of sovereign powers either by conquest or by treaty or by cession or otherwise. It may have happened on a particular date by a public declaration or proclamation, or it may have been the result of a historical process spread over many years, and sovereign powers including the right to legislate in that territory and to administer it may be acquired without the territory itself merging in the new State. It has been found by the High Court that the various laws which were in force in Gangpur State were

in force in Hemgir and Sarapgarh also, by their own force and not as a result of any agreement between sovereign States. Furthermore the various departments of administration were also in the hands of the staff maintained and supervised by the Ruler of Gangpur. Hence, at the date of the merger of the Gangpur State in the State of Orissa, not even a vestige of sovereignty was left with these appellants. It is, therefore, not necessary to refer to a large mass of historical evidence which shows that at one time in the ancient past these appellants or their ancestors were sovereign chiefs. They may have occupied that position in the remote past, but as a result of historical process spread over many years, those rights became vested in tile Ruler of Gangpur not necessarily by express agreement but impliedly, by (1) [1962] Supp. 1 S.C. R. 405, 434.

conduct, over a series of years. We are concerned with the year 1947, and in that there is no evidence on behalf of the appellants that they had any sovereign authority left in them. Their position is analogous to that of the Bhomicharas of Rajasthan, dealt with by this Court in Thakur Amar Singhji v. State of Rajasthan (1) and that of the Cis- Sutlej jagir in Punjab, dealt with by this Court in Amarsarjit Singh v. State of Punjab (2). Hence, even though there is no evidence of actual conquest of the territory of the appellants by the Raja of Gangpur, nor of active imposition of the sovereignty of that Raja over the territories in question, the fact remains that as a result of a continuous process, the erstwhile rulers of these territories submitted to the sovereignty of the Raja with the result that the Ruler of Gangpur became, in effect, the sovereign power exercising his sovereign authority over those territories also, and the outward symbols of sovereignty were that the laws of Gangpur State were in force in Hemgir and Sarpgarh areas also not by virtue of any orders of the appellants but by their own force, as has been pointed out by the High Court on a consideration of all the relevant evidence, which need not be recapitulated here. The administrative control also had passed into the hands of the Ruler of Gangpur. Hence, neither in fact nor in law was there any vestige left of the sovereignty of the appellants by 1947 though it may not be possible to determine by what exact process and by what exact date, this transition was complete. Apparently it was spread over many years. We know only this much that at the relevant date, i. e., at the end of 1947, and on the eve of the integration of the State of Gangpur with the State of Orissa, the territories in question were not sovereign states and had become part of the territory of the Ruler of Gangpur. The law does not know any tertium quid between a sovereign State and a State which is partly sovereign and partly not so. The erstwhile rulers of these, (1) (1955) 2 S.C.R. 303. (2) [1962] Supp. 3 S.C.R. 346.

territories were either sovereigns in their own rights or had become subjects of the Ruler of Gangpur, and all indications are that the appellants had become subjects of the Ruler of Gangpur before the latter's territory merged with the State of Orissa.

On the finding that the petitioners, or their ancestors, had ceased to be sovereign States, on the eve of the merger of the State of Gangpur with the State of Orissa, the petitioners' position would be that of intermediaries who held or owned "interest in land between the Raiyat and the state", within the meaning of s. 2 (h) of the Act, and the 'Takoli' paid by them to the Ruler of Gangpur and later to the State of Orissa was land revenue within Explanation I read with Explanation III to s. 2 (g) which defines "'estate". There is, thus, no escape from the conclusion that their interest in their lands was liable to be acquired under the Act.

No other point was urged before us in support of the appeals, and as the only point urged in this Court has no substance in it, the appeals must be held to be without any merit. They are accordingly dismissed with costs, one set of hearing fees.

Appeals dismissed.