Har Naraini Devi . vs Union Of India on 20 September, 2022

Author: Vikram Nath

Bench: Vikram Nath, Hemant Gupta

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 22957 OF 2017

HAR NARAINI DEVI & ANR …APPELLANT(S)

VERSUS

UNION OF INDIA & ORS. …RESPONDENT(S)

JUDGMENT

Vikram Nath, J.

1. This civil appeal by the original writ petitioners before the High Court, assails the correctness of the judgment and order dated 11.09.2009 passed by the Division Bench of the Delhi High Court dismissing Writ Petition (Civil) No. 2887 of 2008 whereby challenge was made to declare Section 50(a) of the Delhi Land Reforms Act, 19541 unconstitutional being ultra vires Articles 14, 15, 254 and 21 of the Constitution of India.

Hereinafter referred to as “1954 Act” FACTS:

2. Genealogy (pedigree) relevant for the case is as follows:

> Shri Mukhtiar Singh (Died On 06.06.1997) Son (1) Son (2) Shri Jagdish Son (3) Ishwar Shri Mahinder Singh (Died in 1976) (Died in 1985) (Died in 1975)
>
> 1. Kuldeep(Son) 2. Kulbeer (Son) Widow Daughter Son Son (Petitioner No.1) (Petitioner No.2) Jaidev Amit (Respondent No.3) (Respondent No.4) From the above pedigree it is clear that the appellants are the widow and daughter of Ishwar Singh whereas the contesting respondent nos. 3 and 4 are the sons of Ishwar Singh. The dispute relates to the agricultural property held by Mukhtiar Singh. He had three sons viz Mahinder Singh, Jagdish Singh and Ishwar Singh.

All of them pre-deceased him. Mukhtiar Singh died on 06.06.1997 and his inheritance relating to the branch of Ishwar Singh was succeeded by his grandsons (sons of Ishwar Singh i.e. Jaidev and Amit - respondent nos. 3 and 4) under Section 50(a) of the 1954 Act. Revenue records were corrected accordingly.

3. It would be appropriate to reproduce Section 50 of the 1954 Act:

"50. General order of succession from males. - Subject to the provisions of Section 48 and 52, when a Bhumidhar or Asami being a male dies, his interest in his holding shall devolve in accordance with the order of the succession given below:

a) Male lineal descendants in the male line of the descent:

Provided that no member of this class shall inherit if any male descendant between him and the deceased is alive:

Provided further that the son or sons of a predeceased on how low so ever shall inherit the share which would have devolved upon the deceased if he had been then alive:

b) Widow

c) Father

d) Mother, being a widow;

e) Step mother, being a widow;

f) Father's father

g) Father's mother, being a widow;

h) Widow of a male lineal descendant in the male line of descent;

i) Brother, being the son of same father as the deceased;

j) Unmarried sister;

k) Brother's son, the brother having been a son of the same father as the deceased;

l) Father's father's son;

m) Brother's son's son;

n) Father's father's son's son;

o) Daughter's son."

4. The appellants by way of a petition under Article 226 of the Constitution of India challenged the validity of Section 50(a) of the 1954 Act as they were denied any rights in the inheritance along with respondent Nos.3 and 4.

5. The relief as claimed before the High Court in the writ petition is reproduced below:

> "a) To declare clause (a) of S.50 of the Delhi Land Reforms Act, 1954 unconstitutional being ultravires Articles 14, 15, 254 and 21 of the Constitution of India;
>
> (b) To declare the Petitioners "bhumidhar" having equal rights of succession at par with the respondent Nos. 3-4 in the property inherited by them detailed in Annexure P-3;
>
> (c) To grant any other relief in the interest of justice.;
>
> (d) To grant cost of litigation."

6. The challenge before the High Court was on the grounds of:

> (i) violation of Article 14; (ii) women being discriminated despite world over the rights of women were being empowered; (iii) Hindu Succession Act, 19562 would prevail over the 1954 Act.

7. Division Bench of the High Court considered the various submissions advanced and placing reliance on the fact that 1954 Hereinafter referred to as the "1956 Act" Act had been placed in the Ninth Schedule to the Constitution much prior to the judgment in the case of Kesavananda Bharati vs. State of Kerala3, and also in view of Article 31(B) of the Constitution of India extending immunity to such legislation, dismissed the writ petition by the impugned judgment dated 11.09.2009. Aggrieved by the same, the present appeal has been preferred.

8. Initially, respondent Nos.3 and 4 had put in appearance. It is thereafter an I.A. was filed by the Advocate on Record to seek discharge from the case. Such I.A. was allowed on 05.05.2022. Shri Anand Yadav, Advocate was appointed as Amicus Curiae to assist the Court.

9. We may briefly note the submissions advanced by the learned counsel for the appellants as also the learned Amicus. Appellant's arguments:

10. Briefly stated the following arguments were raised on behalf of appellants:

a. Succession provided in 1956 Act will prevail over the succession provided in 1954 Act in view of Article 254 of 1973 (4) SCC 225 the Constitution, as there is clear repugnancy.

b. Section 4(2) of the 1956 Act having been deleted by an amendment in 2005, there would be no justification to apply the provisions of succession given in the 1954 Act as the same would now be governed by the 1956 Act.

c. After the judgement in the case of Vineeta Sharma vs. Rakesh Sharma & Ors.4, the repeal of Section 4(2) of 1956 Act would relate back being retrospective and also that the amendment in Section 6 of 1956 Act would be held to be retrospective.

d. The provisions of Section 50(a) of the 1954 Act are violative of Articles 14 and 15 of the Constitution of India as there is clear discrimination on the ground of sex.

e. Reliance was placed upon the judgment in the case of Babu Ram vs. Santokh Singh and others5 for the proposition that provisions of 1956 Act will apply.

(2020) 9 SCC 1 (2019) 14 SCC 162 Respondent's (Amicus) arguments:

11. On behalf of the respondents, learned Amicus made the following submissions, which are briefly recorded herein:

a. Sections 51 to 53 of the 1954 Act cannot be challenged being violative of Articles 14 and 15 of the Constitution in view of the Articles 31(A) and 31(B) of the Constitution and the 1954 Act falling in the Ninth Schedule to the Constitution since 1964.

b. The provisions in the 1954 Act are in consonance with the settled succession of agricultural land throughout the country for various reasons laid down in the preamble and the Statement of Objects and Reasons of the statute.

c. Provisions of the 1954 Act are not at all affected by deletion of Section 4(2) of the 1956 Act.

d. 1956 Act is a general law whereas 1954 Act is a special law and therefore, 1954 Act will govern the succession in respect of agricultural land.

e. The succession provided under the 1954 Act is a move toward the Uniform Civil Code inasmuch as the succession applies across the board to all land holders irrespective of religion, caste or creed and personal laws of any religion do not carve out any exception.

f. A settled law for decades should not be disturbed.

12. Before the High Court the validity of Section 50(a) of the 1954 Act was challenged on the ground that it ultra vires Articles 13, 14, 19, 21 and 254 of the Constitution.

13. In support of the submissions, the appellants who were the petitioners before the High Court relied upon the judgments in the cases of (i) Kesavananda Bharati (ii) Waman Rao and Ors. vs. Union of India6 and (iii) I.R. Coelho (Dead) by Lrs. Vs. State of Tamil Nadu & Ors.7 . The High Court dealt with the judgments in detail and its ultimate analysis was that none of the judgments relied upon were of any help to the appellants. The consistent stand of this Court was that all the legislations included in the Ninth Schedule to the Constitution before the Judgment in the case of Kesavananda Bharati that is 24.04.1973, would stand protected under Article 31B of the Constitution and, therefore, the 1981 2 SCC 362 (2007) 2 SCC 1 challenge to the validity of provisions of the 1954 Act must fail.

14. The reasoning given by the High Court, as stated above, is the correct interpretation of the judgments of the Court referred to above and as such does not warrant any interference. We may also make a note that, before us learned counsel for the appellants has neither raised this argument nor there is any challenge to the aforesaid reasoning of the High Court. It may also be pertinent to note that before the High Court other arguments were not addressed. However, as the same have been raised, they are being dealt with hereinafter.

15. We will now deal with the arguments raised by the counsel for the appellants and the respondents in response thereto. I. Repugnancy - Article 254 of the Constitution

16. Learned counsel for the appellants has vehemently urged that the 1954 Act would be hit by Article 254 of the Constitution for the reason that the 1956 Act is enacted by the Parliament whereas the 1954 Act is a State Act. It is also submitted that the 1956 Act is a special law and the 1954 Act a general law.

17. Article 254 of the Constitution reads as follows:

> "254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

> Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

18. The question of repugnancy arises only if both the Parliament and the State legislature have made law with respect to any one of the matters enumerated in the Concurrent list (List III). In the present case two enactments of 1956 and 1954 are relatable to Entries in List III and List II respectively. The relevant Entries in List III is Entry Nos.5 and 7 whereas relevant Entry of List II is Entry No.18. The said Entries are reproduced below:

> "List II – State List Entry 18: Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.
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> List III – Concurrent List Entry 5: Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.
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> xxx xxx xxx Entry 7: Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land."

19. Apart from the fact that a bare reading of Article 254 reflects that it refers to repugnancy in law made with respect to matters enumerated in the Concurrent list (List III), this Court has also laid down that question of repugnancy would not come into existence unless it is first established that both enactments are under the Concurrent list (List III). In this respect it would be appropriate to refer to the law laid down by this Hon'ble Court in the case of M/s. Innoventive Industries Ltd. vs. ICICI Bank and Ors.8. It is held therein that the question of examining repugnancy would not apply at all unless it is first established that both enactments under the Central and the State are with respect to matters enumerated under the Concurrent list (List III). Consequently, it is submitted that Article 254 would have no application to the present case at all. Paragraph 51 lays down the propositions after discussing in detail the law on the point. For the present case, the proposition 51.1 is relevant which reads as follows:

> "51. The case law referred to above, therefore, yields the following propositions:
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> 51.1. Repugnancy under Article 254 arises only if both the Parliamentary (or existing law) and the State law are referable to List III in the Seventh Schedule to the Constitution of India." In the present case, 1954 Act is not referable to any matter enumerated in List III but it is referable to Entry 18 of List II. Thus, no question of repugnancy would arise in view of Article 254 of the Constitution.

(2018) 1 SCC 407, page 450, para 50-51.

20. The other part of the argument relating to 1956 Act being a special law and 1954 being a general law is completely misconceived. In a series of judgments, not only of this Court but also of different High Courts, it has been expressed that any State enactment relating to Agricultural land tenures is a special law. Reference may be had to a judgment of this Court in the case of Parshanti Vs. Deputy Director of Consolidation9. II. Deletion of Section 4(2) of the 1956 Act:

21. Section 4(2) of the 1956 Act read as follows:

> "4. Overriding effect of Act:
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> (1) …….. (2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings."

22. Till 2005, to be specific 09.09.2005, when the Hindu Succession (Amendment) Act of 2005 was enacted, the aforesaid provision remained on the statute. It is not in dispute that the (1997) 11 SCC 157 property in question is agricultural property, and therefore, in 1997 at the time when Mukhtiyar Singh died, the devolution of interest (inheritance) would be determinable on the said date, in accordance with the law existing at that time. In 1997 Section 4(2) of the 1956 Act, was very much on the statute, its subsequent deletion would not have any impact on the rights of inheritance, which had already accrued and crystallised, prior to the amendment. Therefore, on facts deletion of Section 4(2) of the 1956 Act would not help the appellants.

23. It is well settled that all amendments are deemed to apply prospectively unless expressly specified to apply retrospectively or intended to have been done so by the legislature. Reference may be had to the following decisions:

> [L.R. Brothers Indo Flora Ltd. v. Commissioner of Central Excise10; Hitendra Vishnu Thakur v. State of Maharashtra11; Union of India v. Zora Singh12.] In the present case there is no such intention reflecting from the amending Act.
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> (2020) SCC Online SC 705, para 27;
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> (1994) 4 SCC 602 para 26;
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> (1992)1 SCC 673, para 12;

24. By virtue of Section 6 of the General Clauses Act, the repeal of an enactment would not affect the previous operation of such an enactment. In Shree Bhagwati Steel Rolling Mills v. CCE13, this Court has held that repeal is to be treated similarly as an omission and Section 6 of the General Clauses

Act would apply equally to an omission as it would apply to a repeal. On account of Sections 6(b) and 6(c) of General Clauses Act, the omission of Section 4(2) of 1956 Act cannot affect the previous operation of the said Section 4(2). Paragraphs 12 and 13 of the aforesaid report are reproduced below:

> "12. From this it is clear that when Section 6 of the General Clauses Act speaks of the repeal of any enactment, it refers not merely to the enactment as a whole but also to any provision contained in any Act. Thus, it is clear that if a part of a statute is deleted, Section 6 would nonetheless apply. Secondly, it is clear, as has been stated by referring to a passage in Halsbury's Laws of England in Fibre Board judgment, that the expression "omission" is nothing but a particular form of words evincing an intention to abrogate an enactment or portion thereof. This is made further clear by the Legal Thesaurus (Deluxe Edition) by William C. Burton, 1979 Edition. The expression "delete" is defined by the Thesaurus as follows:
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> "Delete:- Blot out, cancel, censor, cross off, cross out, cut, cut out, dele, discard, do away with, drop, edit out, effect, elide, eliminate, eradicate, erase, excise, expel, expunge, extirpate, get rid of, leave (2016) 3 SCC 643, para 12.

out, modify by excisions, obliterate, omit, remove, rub out, rule out, scratch out, strike off, take out, weed, wipe out." Likewise the expression "omit" is also defined by this Thesaurus as follows:

> "Omit:- Abstain from inserting, bypass, cast aside, count out, cut out, delete, discard, dodge, drop, exclude, fail to do, fail to include, fail to insert, fail to mention, leave out, leave undone, let go, let pass, let slip, miss, neglect, omittere, pass over, praetermittere, skip, slight, transire." And the expression "repeal" is defined as follows:
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> "Repeal:- Abolish, abrogare, abrogate, annul, avoid, cancel, countermand, declare null and void, delete, eliminate, formally withdraw, invalidate, make void, negate, nullify, obliterate, officially withdraw, override, overrule, quash, recall, render invalid, rescind, rescindere, retract, reverse, revoke, set aside, vacate, void, withdraw."
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> 13. On a conjoint reading of the three expressions "delete", "omit", and "repeal", it becomes clear that "delete" and "omit" are used interchangeably, so that when the expression "repeal" refers to "delete" it would necessarily take within its ken an omission as well. This being the case, we do not find any substance in the argument that a "repeal" amounts to an obliteration from the very beginning, whereas an "omission" is only in futuro. If the expression "delete" would amount to a "repeal", which the appellant's counsel does not deny, it is clear that a conjoint reading of Halsbury's Laws of England and the Legal Thesaurus cited hereinabove both lead to the same result, namely, that an "omission' being tantamount to a "deletion" is a form of repeal."

25. The deletion of Section 4(2) took place w.e.f 09.09.2005. Therefore, the effect of the deletion can only be in respect of successions which opened on or after 09.09.2005. This is because under Section 6(b) and 6(c) of the General Clauses Act repeal cannot affect the previous operation of any enactment so repealed and cannot affect the previous operation of any enactment so repealed and cannot affect any right which may have been acquired or accrued. In the present case, it is to be held that succession has opened prior to 09.09.2005, the rights of the descendants in terms of Section 50 became crystallized on account of the said Section read with Section 4(2) of the 1956 Act. Therefore, the deletion of Section 4(2) cannot have retrospective effect.

26. There is one more reason, why the existence of Section 4(2) in the 1956 Act and its deletion will not have any impact in the present case. The reason is that the 1954 Act, as held above is a special law, dealing with fragmentation, ceiling, and devolution of tenancy rights over agricultural holdings only, whereas the 1956 Act is a general law, providing for succession to a Hindu by religion as stated in Section 2 thereof. The existence or absence of Section 4(2) in the 1956 Act would be immaterial.

III. Effect of the judgment given in the case of Vineeta Sharma:

27. The argument advanced by the learned counsel for the appellants is that the applicability of amendment in Section 6 and the deletion of Section 4(2) from the 1956 Act would have retrospective effect, which is also of no help to the appellants. Once we are holding that succession in the present case with respect to the property in question is governed by the 1954 Act, any amendment even if it has a retrospective effect in the 1956 Act will have no bearing or impact on the provisions of succession governed by the 1954 Act. Moreover, this Court in the judgment of Vineeta Sharma has given retrospective application only to Section 6 of the 1956 Act as amended in 2005. There is no declaration regarding deletion of Section 4(2) being retrospective. This argument, therefore, also fails.

IV. Gender bias/ women empowerment:

28. Once it is upheld that there can be no challenge to the 1954 Act as the said legislation is included in the Ninth Schedule of the Constitution of India, this argument also has no legs to stand. V. Effect of the judgment in the case of Babu Ram:

29. Reliance placed upon the judgment in the case of Babu Ram is of no help to the appellant. The case of Babu Ram related to State of Himachal Pradesh where there is no State enactment legislated covering the matters mentioned in Entry 18 of List II that is to say that the State of Himachal Pradesh has no local enactment covering agricultural land tenures. It was in such circumstances that this Court held that succession of agricultural land would be governed by the 1956 Act. It would be worthwhile to mention that in the judgment of Babu Ram itself this Court clarified that had there been a state enactment covering the field of Entry 18 List II of Seventh Schedule, the rights over agricultural land would have been governed by the same. Paragraphs 21 and 22 which are relevant are reproduced hereunder:

"21. In the present case, it is nobody's case that the matter relating to succession to an interest in agricultural lands is in any way dealt with by any State legislation operating in the State of Himachal Pradesh or that such legislation must prevail in accordance with the principles under Article 254 of the Constitution of India. The field is occupied only by Section 22 of the Act insofar as the State of Himachal Pradesh is concerned. The High Court was, therefore, absolutely right in holding that Section 22 of the Act would operate in respect of succession to agricultural lands in the State.

22. Though, succession to an agricultural land is otherwise dealt with under Section 22 of the Act, the provisions of Section 4(2) of the Act, before its omission, had made it clear that the provisions of the Act would not apply in cases inter alia of devolution of tenancy rights in respect of agricultural holdings. Thus, the effect of Section 4(2) of the Act before its deletion was quite clear that, though the general field of succession including in respect of agricultural lands was dealt with under Section 22 of the Act, insofar as devolution of tenancy rights with respect to agricultural holdings were concerned, the provisions of Section 22 would be inapplicable. The High Court of Bombay was, therefore, absolutely right in its conclusion. However, with the deletion of Section 4(2) of the Act, now there is no exception to the applicability of Section 22 of the Act. But we are not called upon to consider that facet of the matter."

30. For all the reasons recorded above, the appeal fails and is accordingly dismissed. No order as to costs.

.....J. [HEMANT GUPTA] .....J. [VIKRAM NATH] NEW DELHI SEPTEMBER 20, 2022.