1961

August 22.

MAHANT SANKARSHAN RAMANUJA DAS GOSWAMI ETC., ETC.

v.

THE STATE OF ORISSA AND ANOTHER.

(J. L. KAPUR, K. SUBBA RAO, M. HIDAYATULLAH, J.C. SHAH and RAGHUBAR DAYAL, JJ.)

Estates Abolition—Amending Act enlarging meaning of estate—Constitutionality of—Minor Inams—If estates—Orissa Estates Abolition Act, 1951, (Orissa 1 of 1951), as amended by Orissa Estates Abolition (Amendment) Act, 1954, Orissa XVII of 1954) s. 2(g)—Constitution of India Art. 31-A.

The appellants were holders of pre-settlement minor inams. The grants were not of whole villages but of certain lands and they comprised both the *melwaram* and *kudiwaram* rights in the lands. The definition of 'estate' in the Orissa Estates Abolition Act, 1951, did not include a minor inam. But by the Orissa Estates Abolition (Amendment) Act, 1954, the definition was enlarged to cover minor inams also. Both the Acts had received the assent of the President. The appellants contended (i) that the Amendment Act of 1954 was not a law for the compulsory acquisition of property for a public purpose and was not saved by Art. 31A of the Constitution and (ii) that the minor inams were outside the scope of the Abolition Act and could not be resumed.

Held, that the Amendment Act of 1954 was valid and was within the Protection of Art. 31A. In assenting to this Act, the President assented to new categories of properties being brought within the operation of the abolition Act of 1951, and he, in fact, assented to the law for the compulsory acquisition for public purpose of these new categories of property. Though the minor inams were not of whole villages and included both the *warams*, they were nevertheless "*inams*" and the Constitution defined an "estate" as including "any" inam and fell within the scope of Abolition Act of 1951 as amended in 1954.

The *ejusdem generis* rule cannot be applied to *Inam* in the definition of "estate" in Art. 31A(2)(a) because particular categories like "*jagir, inam* or *muafi*", are included in the definition expressly even though the rule may apply to "other similar grants" which expression may take its colour from the categories named. The *ejusdem generis* rule is applicable where a wide or general term has to be cut down with reference to the genus of the particular terms which precede the general words.

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CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 474 to 501, 503 to 505, 508 to 512, 514 and 515 of 1959.

Appeals from the judgment and orders dated November, 28, 1956, in O. J. C. No. 213 of 1955 and dated December 4, 1956, of the Orissa High Court in O. J. C. Nos. 214 to 216, 218, 236 to 241, 244 to 248, 251, 261 to 264, 268, 269, 271, 279 to 282, 304 to 306, 318, 323, 324, 353, 357, 363 and 372 of 1955.

A. V. Viswanatha Sastri and *M. S. K. Sastri,* for the appellants (in C. As. Nos. 474—487, 489—501 503—505 and 508—510 of 1959).

M. S. K. Sastri, for the appellant (In C. A. No. 488/1959).

G. C. Mathur, for the appellants (In C. As. Nos. 511, 512, 514 and 515 of 1959.)

C. K. Daphtary, Solicitor-General of India, B. R. L. Iyengar and *T.M. Sen,* for the respondents.

1961. August 22. The Judgment of the Court was delivered by

Hidayatullah J.

HIDAYATULLAH, J.—These are 38 appeals against the judgment and orders of the High Court of Orissa dated November 28, 1956, by which 42 petitions under Art. 226 of the Constitution filed by the present appellants and some others were dismissed. The High Court certified the cases as fit for appeal to this Court under Art. 132(1) of the Constitution.

The appellants are holders of pre-settlement minor inams in the State of Orissa. Their grants are different both in regard to the time when they were made and the lands involved in them. They were made for performance of services of deities and were classed as *Devadayam* grants in the revenue papers. The grants in all these cases were not of whole villages but of certain lands and hence their classification as minor inams, and they comprised both the *melwaram* and *kudiwaram* rights

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in the lands. It is not necessary to refer to these cases separately, since a single argument was addressed before us involving the consideration whether Notification No.4971-XV-2154-E.A. dated July 15, 1955, issued by the Orissa State Government, and the Orissa Estates Abolition Act, 1951 (Act 1 of 1952) as amended by the Orissa Estate Abolition (Amendment) Act, 1954 (Act XXVII of 1954) were respectively beyond the competence of the State and the Orissa State Legislature.

By the original Act, all estates of the intermediaries were abolished, and on a notification by the Government, such estates vested in Government. By the amending Act, the definition of "estate" was widened to cover even such minor inams, and then the impugned notification was issued. The appellants contend that the original Act and the amending Act were jointly or severally beyond the competence of the State Legislature, and that the notification above-mentioned was void without any effect.

The Bill resulting in the original Act was introduced on January 17, 1950, and the Act was passed by the Legislative Assembly on September 28, 1951. It was reserved for the consideration of the President, who gave his assent on January 23, 1952. In the Act, before its amendment in 1954, "estate" was defined as follows :

> "2(g) 'Estate' means any land held by an intermediary and included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes revenue-free lands not entered in any register and all classes of tenures or under-tenures, or an inam estate or part of an estate."

By the amending Act of 1954, this definition was substituted by another, which read :

"2(g) 'Estate' includes a part of an estate and means any land held by or vested in an intermediary and included under one entry in any revenue roll 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 or under tenures and any jagir, inam, or muafi or other similar grant."

In the original Act as well as in the Act as amended, there was a general provision in s.2(q) which may be read here :

"(q) All words and expressions used in this Act but not defined in it, shall have, with reference to any part of the State of Orissa, the same meaning as defined in the tenancy laws and rules for the time being in force and in the absence of written laws and rules, as recognised in the custom for the time being obtaining in that part of the State of Orissa."

In the original Act, a provision was inserted by s.3 of the amending Act to the following effect :

"3. For the purpose of removal of all doubts it is declared that such lands and such rights in relation thereto and such persons who hold such lands and such rights as were heretofore covered by the definitions of the words 'estate' and 'Intermediary' in the Orissa Estates Abolition Act, 1951, shall not cease "to be so covered merely on the ground that by virtue of the provisions of this Act the said definitions have been amended and widened in scope."

The meaning of the last provision is clear. It takes away nothing from the ambit of the old definition,

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but only adds thereto, as indeed the new definition of "estate" introduced by the amending Act shows only too plainly in its terms.

To complete the survey of the provisions which we may have to refer to in this judgment, we first set down the definition of "estate" as given in the Madras Estates Land Act, 1908, which was applied to Orissa. Section 3(2)(d) of that Act defined "estate" as:

> "Any inam village, of which the grant has been made, confirmed or recognised by the Government, notwithstanding that subsequent to the grant the village has been partitioned amongst the grantees or the successors in title of the grantee or grantees."

The argument in this case is based upon this definition, because in defining an 'estate', whole villages which were inam were contemplated and not minor inams of lands only. We shall refer to this later.

The amending Act was also reserved for the consideration of the President and was assented to by him. When the Constitution was brought into force, the Bill of the Original Act had already been introduced in the Assembly. On June 18, 1951, before the Act was passed by the Legislative Assembly, the Constitution (First Amendment) Act, 1951 had been enacted, and Art. 31A inserted with retospective operation in the Constitution. Article 31A provided:

> "31A.(1) Notwithstanding anything contained in article 13, no law providing for—
>
> (a) The acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights...
>
> shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights

conferred by article 14, article 19 or article 31;

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the "consideration of the President, has received his assent.

(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 any *jagir, inam,* or *muafi* or other similar grant....."

Article 31, before it was amended, by the constitution (Fourth Amendment) Act, 1955, provided *inter alia* that no property shall be acquired for a public purpose unless the law provided for compensation, and either fixed the compensation or specified the principles on which the compensation was to be determined and given. (Cl.2). By cl. (3), it was provided that no law such as was referred to in cl. (2) was to have effect unless such law having been reserved for the consideration of the President had received his assent. Clause (4) then provided :

"(4) If any Bill pending at the commencement of this constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2)."

The combined effect of these provisions of the Constitution was that there could be no compulsory acquisition of property for public purposes, unless the law provided for payment of compensation;

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but the law could not be called in question on this ground if it had been reserved for the consideration of the President and had been assented to by him. The assent of the President was a condition precedent to the effectiveness of the law. By the amendment of the Constitution and the addition of Art. 31A, no such law was to be deemed to be void on the ground that it was inconsistent with or took away or abridged any of the rights conferred by Art.14, Art.19 or Art.31, provided that it had been reserved for the consideration of the President and had received his assent. By the definition clause, Art. 31A(2)(a), the expression "estate" was to have the same meaning in any local area, which it or its equivalent had in the existing law relating to land tenures in force in that area but was to include among others any *'inam'*.

The contention of the appellants is really twofold. The first argument is that the benefit of Art. 31A might have been available to the original Act, as it was a law for the compulsory acquisition of property for public purposes but not to the amending Act, which was not such a law but only amended a previous law by enlarging the definition of "estate". The second argument is that the word "estate" as defined in s.2(g) before its amendment did not apply to pre-settlement minor inams of lands as it applied only to an "inam estate", and an "inam estate" had the meaning which the definition of "estate" had in the Madras Estates Land Act, viz., only whole "inam villages". This, it is urged, follows from the provisions of s.2(q) of the Estates Abolition Act quoted earlier.

The first argument is clearly untenable. It assumes that the benefit of Art.31A is only available to those laws which by themselves provide for compulsory acquisition of property for public purposes and not to laws amending such laws, the assent of the President notwithstanding. This means that the whole of the law, original and amending, must be passed again, and be reserved for the

consideration of the President, and must be freshly assented to by him. This is against the legislative practice in this country. It is to be presumed that the President gave his assent to the amending Act in its relation to the Act it sought to amend, and this is more so, when by the amending law the provisions of the earlier law relating to compulsory acquisition of property for public purposes were sought to be extended to new kinds of properties. In assenting to such law, the President assented to new categories of properties being brought within the operation of the existing law, and he, in effect assented to a law for the compulsory acquisition for public purposes of these new categories of property. The assent of the President to the amending Act thus brought in the protection of Art. 31A as a necessary consequence. The amending Act must be considered in relation to the old law which it sought to extend and the President assented to such an extension or, in other words, to a law for the compulsory acquisition of property for public purposes.

The argument that this was not an acquisition of an inam estate comprising a whole village and thus outside the Abolition Act itself has no substance. No doubt, these minor inams were not of whole villages but of lands and the grant included both the *warams* and there were thus no intermediaries. But they were inams nevertheless, and the Constitution defined and 'estate' an including 'any inam', and the amending Act merely followed that definition. The extended definition in the Constitution and a similar extended definition in the Act thus exclude resort to the general definition clause in s.2(q) of the Abolition Act and the definition of "estate" in the Madras Estates Land Act. The definition of "estate" introduced by the amending Act is sufficiently wide to cover such minor inams, and s.2(q) only applies, if a word or expression used in the Abolition Act is not defined therein.

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If the minor inams are already within the definition of the word "estate", there is no need to go to s.2(q) or to any local law defining the word. There can be no doubt that if the new definition of "estate" applies to minor inams, then they are affected by the Abolition Act. This, indeed, was conceded.

Learned counsel for the appellants also urged, through somewhat faintly, that the *ejusdem generis* rule should be applied to the definition of "estate" in Art. 31A(2)(a) as also to the corresponding new definition in the Abolition Act. This argument proceeds upon an assumption for which there is no foundation. The *ejusdem generis* rule is applicable where as wide or general term has to be cut down with reference to the genus of the particular terms which precede the general words. This rule has hardly any application where certain specific categories are 'included' in the definition. The *ejusdem generis* rule may be applicable to the general words "other similar grant", which would take their colour from the particular categories, "*jagir, inam,* or *muafi*", which precede them, but the word "inam" is not subject to the same rule. Once it is held that inams of *any kind* were included, it makes little difference if the inams were of lands and not of whole villages. So also the fact that the holders of such inams cannot be described as intermediaries, or that they comprised both the *melwaram* and the *kudiwaram* rights. Such a distinction would have significance, if the law abolished only intermediaries and not inams which it did. Section 3 of the Abolition Act says :

> "3(1) The State Government may, from time to time by notification, declare that the estate specified in the notification has passed to and become vested in the State free from all encumbrances."

If the definition of the word "estate" was wide enough to include a minor inam and a notification was issued, the consequences of s.3 of the Abolition

Act must follow. Such a law is not capable of being called in question on the ground that it abridges any fundamental right conferred by Arts.14, 19 and 31, if it has been assented to by the President. The notification was thus valid, if the law was valid.

In the result, the appeals fail, and are dismissed with costs, one set only.

Appeals dismissed.