

DISTRICT COUNCIL OF UNITED KHASI & JAINTIA HILLS & ORS. ETC. A,

v.

MISS SITIMON SAWIAN-ETC.

August 25, 1971

[S. M. SIKRI, C.J., G. K. MITTER, C. A. VAIDIALINGAM,
P. JAGANMOHAN REDDY AND I. D. DUA, JJ.] B

Constitution of India 1950—Sixth Schedule—Para 3(1)(a)—Power of District Council to make law with respect to “allotment, occupation or use, or the setting apart of land”—It includes power to make laws with respect to transfer of land—United Khasi-Jaintia Hills District (Transfer of Land) Act, 1953—Section 3—Constitutionality of. C

By virtue of the Sixth Schedule to the Constitution the United Khasi-Jaintia Hills District has been constituted into an autonomous district with a District Council. Para 3(1)(a) of the Schedule authorises the District Council to make laws “with respect to” “the allotment occupation or use, or the setting apart, of land”, for the purposes mentioned therein. The District Council passed the United Khasi-Jaintia Hills District (Transfer of Land) Act, 1953 section 3 of which provided that “no land within the District shall be sold, mortgaged leased bartered gifted or otherwise transferred.....” The preamble to the Act recited that it was “necessary to make provisions in the Autonomous District of the United Khasi-Jaintia Hills with respect to the transfer, allotment, occupation or use of land for any purposes likely to promote the interests of the inhabitants thereof”. On the question whether para 3(1)(a) of the Sixth Schedule confers on the District Council power to make laws with respect to transfer of land, D

HELD : The subject of transfer is clearly beyond the scope of the law-making power conferred on the District Council by the Constitution and therefore, s. 3 of the impugned Act is void being beyond the jurisdiction of the District Council. E

The bracketing together of the words “allotment, occupation or use, or setting apart of land” for the purposes mentioned therein without using words like “transfer” or “alienation” is clearly indicative of the Constitution makers’ intention to restrict power of the District Council only to make laws with respect to actual use or occupation of the land allotted or set apart for the purposes stated therein. It was not intended to extend to “transfer of land”. Nor can the words used in para 3(1)(a) of the Schedule be read as implying transfer. The purpose, object and scheme of making such provision for the hill areas also goes against inclusion of the power of transfer. And the addition, in the preamble to the Act, of the word “transfer” to the words allotment occupation or use of land” used in para 3(1)(a) of the Schedule is indicative of an intent to enlarge the scope of the object and purpose of enacting the impugned Act beyond the limits of the power conferred by the Constitution. [404 G—H; 405 B, 404 B] F

It is clear from Para 12 of the Sixth Schedule read with para 3(1)(a) that the District Councils, unlike the Parliament and the State Legislatures are not intended to be clothed with plenary power of legislation. Their power to make laws is expressly limited by the provisions of the Sixth Schedule which has created them and they can do nothing beyond the G

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A limits which circumscribe their power. It is beyond the domain of the courts to enlarge constructively their power to make laws. [407 A—B]

B Further, the proviso to para 3(1)(a) merely serves to ensure that no law made by the Regional and District Councils with respect to allotment, occupation or use or setting apart, of land, as mentioned in that clause, shall have the effect of preventing compulsory acquisition of land for public purposes, by the Government of Assam in accordance with the law in force authorising such acquisition. The proviso does not in any way after the operative effect of clause (a). [407 C—E]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1546 and 1547 of 1968.

C Appeals from the judgment and order dated June 3, 1968 of the Assam and Nagaland High Court in Civil Rules Nos. 384 and 408 of 1965.

Niren De, Attorney-General and *D. N. Mukherjee*, for the appellants (in both the appeals).

D *A. K. Sen, P. K. Chatterjee* and *Rathin Das*, for the respondents (in both the appeals).

The Judgment of the Court was delivered by

E **Dua, J.** The short question requiring decision in these appeals on certificate of fitness granted by the High Court of Assam and Nagaland under Art. 132(1) of the Constitution relates to the validity of s. 3 of the United Khasi-Jaintia Hills District (Transfer of Land) Act (No. IV of 1953) (hereinafter called the impugned Act), passed by the United Khasi-Jaintia Hills District Council (hereinafter called 'the District Council'). The High Court struck down this section as beyond the competence of the District Council and also as offending Art. 14 of the Constitution. The facts giving rise to these appeals are not in dispute. It is, however, unnecessary to state them because the question of the constitutional validity of s. 3 of the impugned Act falls for determination solely on the interpretation of the relevant provisions of the Constitution without any reference to the facts.

G Part X of the Constitution dealing with the Scheduled and Tribal Areas consists of the solitary Art. 244 which provides for the administration of such areas. According to sub-Art. (2) of this Article the provisions of the Sixth Schedule of the Constitution apply to the administration of the tribal areas in Assam. By virtue of Para 1(1) read with Para 20 and Part A of the Table appended to this Schedule the United Khasi-Jaintia Hills District has been constituted into an autonomous District and under Para H 2(1) of the Schedule there has to be a District Council for each autonomous District with not less than three-fourths of its members to be elected on the basis of adult suffrage. Para 3(1)(a)

of the Schedule with which we are directly concerned in these appeals, reads as under :—

“3. Powers of the District Councils and Regional Councils to make laws.—

(1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—

- (a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest, for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purposes likely to promote the interests of the inhabitants of any village or town :

Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes by the Government of Assam in accordance with the law for the time being in force authorising such acquisition;”

As its preamble shows the impugned Act was enacted because it was considered “necessary to make provisions in the autonomous district of the United Khasi-Jaintia Hills with respect to the transfer, allotment occupation or use of land for any purposes likely to promote the interests of the inhabitants thereof”. Section 3 thereof provides as follows :

“No land within the District shall be sold, mortgaged, leased, bartered, gifted or otherwise transferred by tribal to a non-tribal or by a non-tribal to another non-tribal, except with the previous sanction of the District Council :

Provided that no sanction will be necessary in the case of lease of a building on rent :

Provided further—

- (a) That sanction shall not be accorded to the sale from a tribal to a non-tribal if the intended transferee either already holds one piece of house property or land in Shillong, within 5 miles from the Deputy Commissioner's Court

A either is his name or in the name or names of other members of his family or falls within the category (in the opinion of the Chief Executive Member) of the class of profiteering landlords;

B (b) That reason shall be recorded for any refusal of transfer from a tribal to a non-tribal or from a non-tribal to another non-tribal."

C The narrow question posed in the present controversy is whether para 3(1)(a) of the Sixth Schedule confers on the District Council power to make laws with respect to transfer of land; in other words whether the subject of transfer of land is covered by the expression "allotment, occupation or use or the setting apart of land."

D The High Court has held that Para 3(1)(a) of the Sixth Schedule does not empower the District Council to legislate with respect to transfer of land. According to that Court the expression "the allotment, occupation or use, or the setting apart of land..." does not take within its fold "transfer of land".

E The learned Attorney-General has questioned the correctness of this view and has submitted that bearing in mind the legislative history of the Sixth Schedule which reflects the real object and purpose of inserting in the Constitution a separate provision for the administration of tribal areas in the State of Assam, the expression in question as used in cl. (a) of para 3(1) must be given a wider meaning so as to include 'transfer of land'. The learned Attorney-General has in support of this submission drawn our attention to Art. 46 of the Constitution which embodies as one of the directive principles of State policy, requiring the State to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. Reference has also been made by him to certain portions of the report of the Sub-Committee on North-East Frontier (Assam) Tribal and Excluded Areas submitted in July, 1947 to the Advisory Committee on "fundamental rights, minorities, tribal areas etc." of the Constituent Assembly, entrusted with the task of framing the Constitution of India. The Advisory Committee accepted the recommendations to which reference has been made by the learned Attorney General. In that report, emphasis was laid on the anxiety of the Hill people of the North-Eastern Frontier areas about their land and fear of their exploitation by the people from the more advanced and crowded areas in the plains. The atmosphere of fear and suspicion prevailing in the hill areas even though considered by some to be unjustified, was felt to be a reality, and in order to allay those suspicions and fears the necessity of making

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requisite provisions by way of constitutional safeguards was emphasised. According to the report there was an emphatic unanimity of opinion among the hill people that there should be control of immigration of outsiders and of allocation of land to them, such control being already vested in the hill people themselves. In the areas where no right to private property or proprietary right of the hereditary chief was recognised, the land, including the forests, was regarded as the property of the clan. It was accordingly recommended in the report, to quote its own words :

"..... that the Hill Districts should have powers of legislation over occupation or use of land other than land comprising reserved forest under the Assam Forest Regulation of 1891 or other law applicable. The only limitation we would place upon this is to provide that the local councils should not require payment for the occupation of vacant land by the Provincial Government for public purposes or prevent the acquisition of private land, also required for public purposes, on payment of compensation."

According to the submission of the learned Attorney General para 3(1)(a) of the Sixth Schedule must be held to have been intended to carry out the above recommendation of the aforementioned sub-committee duly accepted by the Advisory Committee concerned.

Support for the construction of cl. (a) of para 3(1) of the Sixth Schedule as suggested by the learned Attorney General has been sought from the decision of the Federal Court in *Bhola Prasad v. The King-Emperor*⁽¹⁾ and from a recent decision of this Court in *Indu Bhusan Bose v. Rama Sundari Devi & anr*⁽²⁾. In *Bhola Prasad's* case⁽¹⁾ it was observed that the expression "with respect to" contained in s. 100(3) of the Government of India Act, 1935, which gives to a Provisional Legislature power to make laws for the Province or any part thereof should be given a wide construction. On this analogy the learned Attorney-General has contended that the expression "with respect to" contained in para 3(1) also deserves to be construed widely so as to include within the expression "the allotment, occupation or use" employed by the Constitution in cl. (a) "transfer of lands". In *Indu Bhusan Bose's* case⁽²⁾ this Court construed the word "regulation" in the expression "regulation of house accommodation" in Entry No. 3, List I, in the Seventh Schedule of the Constitution of India to be wide enough to include within it all aspects as to who is to make the constructions, under what conditions the

(1) [1942] F.C.R. 17.

(2) [1970] 1 S.C.R. 443.

- A constructions can be altered, who is to occupy the accommodation and for how long, on what terms it is to be occupied, when and under what circumstances the occupant is to cease to occupy it, and the manner in which the accommodation is to be utilised. On the analogy of these two decisions, the learned Attorney General has tried to persuade us to hold that the expression "the allotment, occupation or use" occurring in para 3(1)(a) must be deemed to have been intended to be used in a wide sense so as to include transfer of land.
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- C The proviso to cl. (a) of para 3(1) of the Sixth Schedule, according to the learned Attorney-General, should not be construed as indicative of the narrower construction, namely, that the expression "the allotment, occupation or use" as used in that clause did not cover transfer of land. According to his contention the proviso merely places a restricted limitation on the power of the District Council to make laws by providing that no law made by the Council shall prevent acquisition of land for public purpose.
- D by the Government of Assam in accordance with law. It has been argued that the meaning and scope of a proviso is to be determined according to the legislative intent, there being no fixed rule of universal application governing its function, and that in the present case the legislative intent does not go beyond the limitation suggested by the learned Attorney-General. He has cited *Commissioner of Commercial Taxes & ors. v. R. S. Jhaver & ors.*⁽¹⁾
- E in which it was explained that the question whether a proviso in a given case is by way of an exception or a condition to the substantive provision or whether it is in itself a substantive provision, must be determined on the substance of the proviso and not its form.

- F On behalf of the respondents Shri A. K. Sen has drawn our attention to certain passages from "Notes on Khasi Law" by Keith Cantlie of the Indian Civil Service, who was Deputy Commissioner of the Khasi and Jaintia Hills (1930-34). Those passages which are found in Ch. XIII dealing with "Land Tenures in the States" contributed by Mr. David Roy of Assam Civil Service, do not, in our view, usefully add to the information contained in the report of the Sub-Committee to which the learned Attorney-General has already drawn our attention.
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- H We have given full consideration to the arguments addressed by the learned Attorney-General, but we feel that the High Court was right in placing the construction it did on the scope and effect of cl. (a) of para 3(1) of the Sixth Schedule.

(1) [1968] 1 S.C.R. 148.

On the plain reading of para 3(1)(a) of the Sixth Schedule and of the preamble and s. 3 of the impugned Act the first *prima facie* difficulty which one faces in accepting the appellant's argument is created by the departure by the District Council from the language used in para 3(1)(a) of the Schedule in the language used in the preamble and s. 3 of the impugned Act. The addition in the preamble of the word "transfer" to the words "allotment, occupation or use of land . . ." used in para 3(1)(a) of the Schedule is indicative of an intent to enlarge the scope of the object and purpose of enacting the impugned Act beyond the limits of the power conferred by the Constitution. And then in s. 3 of the impugned Act we find that a completely different phraseology has been employed for prohibiting various kinds of transfers in express terms. This leaves no doubt about the great importance attached by the District Council to the addition of the word "transfer" in the preamble to the expression actually used in the Sixth Schedule for conferring legislative power on the District Council. No convincing explanation has been offered for this departure from the language used in the Constitution from which alone the District Council draws its power to make laws. If, as is forcefully contended on behalf of the appellant, the words used in para 3(1)(a) of the Sixth Schedule are comprehensive enough to include within their sweep "transfer of land" then it is not understood where was the necessity of adding the word "transfer" in the preamble and using a wholly different phraseology in s. 3 of the impugned Act. The law maker, it may be pointed out, may well be presumed ordinarily not to waste words by adding them as mere surplusage.

We now proceed to deal with the arguments relating to the meaning of the controversial words used in para 3(1)(a) of the Schedule. The word "allot" according to standard dictionaries means, distribute by lot, or in such a way that the recipients have no choice; to assign as a lot or apportion to; and the word "allotment" means, apportioning the action of allotting; share allotted to one; small portion of land let out for cultivation. The words "occupation" and "use" by themselves do not convey the idea of transfer of title. Similarly the "setting apart of land" for the purposes mentioned in cl. (a) cannot be read as implying transfer of title. The bracketing together of the words "allotment, occupation or use, or setting apart of land" for the purposes mentioned therein without using words like "transfer" or "alienation" is clearly indicative of the Constitution makers' intention to restrict power of the District Council only to make laws with respect to actual use or occupation of the land allotted or set apart for the purposes stated therein. It was not intended to extend to "transfer of land". Words like "transfer" or "alienation of land", it may be pointed out, have been used in the Seventh Schedule to

A the Constitution when describing the power of the State Legisla-
 ture to make laws vide Entry 18, List II. There is no cogent
 ground why such expression could not be used in para 3(1)(a)
 also, if power to make laws with respect to transfer of land was
 intended to be conferred on the District Council. In our opinion,
 the plain language of this sub-para does not admit of any ambiguity
 B and no compelling reasons have been brought to our notice why
 the language should be unduly stretched so as to include the
 power of transfer. The purpose, object and scheme of making
 such provision for the hill areas also goes against the appellant's
 contention.

C It therefore seems to us to be quite clear that the framers of
 the Constitution wanted to confine the power of the District Coun-
 cils to make laws under para 3(1)(a) to the distribution or
 setting apart, of the land mentioned therein only for the purposes
 of occupation or use as expressly stated therein, without intend-
 ing to extend that power to the transfer of land. This construc-
 D tion is not only in accord with the real sense discernible from the
 plain meaning of the language used in this clause, but it also serves
 more effectively to carry out the manifest purpose, policy and
 scheme underlying the provisions of the Constitution, namely,
 protection of the hill people in the North-Eastern Hills Districts
 against exploitation by the more sophisticated outsiders from the
 plains, than the construction which would extend the District
 E Councils' power of making laws to the transfer of land. The
 report of the Sub-Committee referred to earlier clearly supports
 this construction. The passages from the report to which our
 attention has been drawn do not show that power to make laws for
 transfer of land was recommended to be vested in the District
 Councils. On the other hand, the recommendations contained in
 the report were restricted to the power to control only use and
 F occupation of the land and it was this limited power which was
 recommended to be vested in the District Councils. This would
 be clear from the following passage in the report :

G "Accepting this then as a fundamental feature of the
 administration of the hills, we recommend that the Hill
 Districts should have powers of legislation over occupa-
 tion or use of land other than land comprising reserved
 forest under the Assam Forest Regulation of 1891 or
 other law applicable. The only limitation we would
 place upon this is to provide that the local councils
 should not require payment for the occupation of
 vacant land by the Provincial Government for public
 H purposes or prevent the acquisition of private land, also
 required for public purposes, on payment of compensa-
 tion."

The argument that in construing the provisions conferring power to legislate the words should be interpreted broadly and no narrow or pedantic interpretation should be placed upon them is, in our opinion, inapplicable to the case in hand. The power of legislation conferred on bodies like the District Councils, which concerns us, must be confined strictly within the limits prescribed by the plain language used and the doctrine of wide construction visions conferring plenary nature of legislative power on the Parliament or State Legislatures in which case the appellant's argument may be more appropriately accepted. We consider it proper at this stage to refer to para 12 of the Sixth Schedule which provides :

"12. Application of Acts of Parliament and of the Legislature of the State to autonomous districts and autonomous regions.—(1) Notwithstanding anything in this Constitution—

(a) no Act of the Legislature of the State in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State prohibiting or restricting the consumption of any non distilled alcoholic liquor shall apply to any autonomous district or autonomous region unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit;

(b) the Governor may, by public notification, direct that any Act of Parliament or of the Legislature of the State to which the provisions of clause (a) of this sub-paragraph do not apply shall not apply to any autonomous district or an autonomous region, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification.

(2) Any direction given under sub-paragraph (1) of this paragraph may be given so as to have retrospective effect."

A It is clear from this provision, read with para 3(1)(a) already reproduced, that the District Councils unlike the Parliament and the State Legislatures are not intended to be clothed with plenary power of legislation. Their power to make laws is expressly limited by the provisions of the Sixth Schedule which has created them and they can do nothing beyond the limits which circumscribe their power. It is beyond the domain of the courts to enlarge constructively their power to make laws.

B The proviso to para 3(1)(a) merely serves to ensure that no law made by the Regional and District Councils with respect to allotment, occupation or use or setting apart, of land, as mentioned in that clause, shall have the effect of preventing compulsory acquisition of land for public purposes, by the Government of Assam in accordance with the law in force authorising such acquisition. This proviso by no means enlarges the scope of the power conferred on the Regional and District Councils by cl. (a) and indeed it has not been so claimed by the learned Attorney-General. A proviso may undoubtedly be sometimes inserted to allay fears considered by some to be unfounded. But the question must ultimately come back to the point whether or not power to make laws conferred by cl. (a) includes the power to do so with respect to transfer of land and this must turn upon the exact language and its primary meaning. The simple words used in cl. (a) are incapable of bearing the construction suggested by the learned Attorney-General and the provision found in the proviso does not in any way alter the operative effect of this clause.

D The preamble of the impugned Act no doubt does speak of the necessity to make provisions with respect to "transfer, allotment, occupation or use of land for any purpose likely to promote the interests of the inhabitants thereof" but the subject of transfer is clearly beyond the scope of the law-making power conferred on the District Council by the Constitution and to that extent, therefore, the impugned Act which means s. 3 thereof is void being beyond the jurisdiction of the District Council.

E On the view we have taken of the plain meaning of para 3(1)(a) of the Sixth Schedule it is unnecessary to consider the other points relating to the violation of Art. 14 of the Constitution. This Court normally does not decide points which are not strictly necessary for disposing of the appeal before it.

This appeal accordingly fails and is dismissed with costs.