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S. P. WATEL AND OTHERS

v.

STATE OF U.P.

(with connected appeals)

March 28, 1973

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[S. M. SIKRI C. J., A. N. RAY, D. G. PALEKAR, S. N. DWIVEDI AND A. K. MUKHERJEA, JJ.]

U.P. Urban Areas Zamindari Abolition and Land Reforms Act, 1956—*Land leased for planting a grove, erecting buildings etc.—Does not fall exclusively under s.* 2(1)(*d*)—*Section* 2(1)(*d*) *must be interpreted as* C *relating to agricultural land only—Thus construed if protected by Art.* 31*A of the Constitution—Land in question not proved to be 'agricultural area'—Notification under s.* 8 *of Act cannot be issued in respect of it—Abatement of suits and appeals under Rule* 39 *of the U.P. Urban Areas Zamindari Abolition and Land Reforms Rules* 1957.

Plot No. 4635A (old number 5199) admeasuring 1 bigha and 2 biswas and located in the Meerut municipal area was leased by the Lala D Nanak Chand Trust to the predecessor-in-interest of the present respondents. According to the lease deed dated June 23, 1926 the lease was granted "for the purpose of planting a grove, erecting buildings and digging wells etc.". The period of the lease was 30 years but the lessor agreed that on the expiration of that period he would at the request of the lessee renew the lease for another 30 years. On the expiry of the initial period of 30 years on July 1, 1956 the lessor Trust instituted a suit for recovery of possession of the aforesaid land. The suit was dismissed E by the trial court but decreed by the first appellate court. The respondents thereafter, on permission granted by the said first appellate court instituted a suit for the specific performance of the agreement to re-let the land for another term of 30 years. The suit was dismissed on the ground of limitation by the trial court, as well as the first appellate court. In both the suits the present respondents filed second appeals in the High Court. While these appeals were pending the U.P. Urban Areas Zamindari Abolition and Land Reforms Act, 1956 was enforced in the city of F Meerut. The land in dispute was declared an 'agricultural area' under the Act and a notification under s. 8 of the Act vesting the land in the State was issued on July 16, 1964. Rule 39 of the Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Rules, 1957 provided for abatement of certain suits and appeals. Applying the rule the High Court abated the two aforesaid appeals filed by the respondents before it. The Trustees appealed to this Court by special leave. They also filed a writ petition under Art. 32 of the Constitution praying that the notifica- G tion under s. 8 of the Act dated July 16, 1964 be quashed as violative of Articles 14, 19(1)(f) and 31 of the Constitution. It was further contended that s. 2(1)(d) of the Act whereby land held on lease duly executed before the first day of July 1955 for the purposes of erecting buildings thereon was included in the term 'agricultural area' was protected by Art. 31-A of the Constitution.

H HELD : (i) The lease was not exclusively a building lease. Admittedly no building had been constructed. The respondents claimed to have planted a grove. If so, the land would be covered by s. 2(1)(c)(viii) The lease could not therefore be held to fall exclusively under s. 2(1)(d). [790B]

(ii) In *Durga Prasad's* case the Allahabad High Court has pointed out the history of cl. (d). The High Court has taken the view that s. 2(1)(d) is limited to lands which are being used for agricultural purposes. The conclusion must be held to be correct though for different reasons. On this construction of s. 2(1)(d) it cannot be said that this provision is not connected with agricultural reforms. It could accordingly receive the protection of Art. 31A and would be immune from attack on the ground of violation of Articles 14, 19 and 31. [792C]

Durga Prasad v. *Board of Revenue U.P. Allahabad and others*, A.I.R. 1970 All. 159, referred to.

(iii) The report of the Commission would not show that the land in dispute was a grove within the meaning of s. 2(6) of the U.P. Tenancy Act, 1939. As the appellants had given the old number of the plot in their petition the Government did not reply to the allegation in the petition. Accordingly it was not possible to express any concluded opinion on the question whether the land in dispute was an 'agricultural area' on the date specified under s. 2(1) and was being used for horticulture. The issue must be decided afresh by the appropriate authority under the Act. If it is held by him that the land in dispute is an 'agricultural area' and the State Government issues a notification under s. 8 of the Act with respect to the land, the appeals will be disposed of by the High Court in accordance with the provisions of the Act. [793C]

[Notification dated June 16, 1964 quashed, and orders of the High Court abating the appeals and suits set aside.]

ORIGINAL JURISDICTION : Writ Petition No. 105 of 1969.

Petition under Article 32 of the Constitution of India for the enforcement of fundamental rights and Civil and Appeals Nos. 1402 and 1403 of 1969.

Appeals by special leave from the judgment and order dated July 25, 1968 of the Allahabad High Court at Allahabad in Second Appeal Nos. 425 of 1960 and 1649 of 1962.

R. K. Garg and *S. C. Agarwal* for the petitioners (in writ petition) and for the appellants (in appeals)

G. N. Dikshit and *O. P. Rana*, for the respondents (in writ petition)

C. B. Agarwala and *M. M. Kshatriya*, for the respondents (in appeals).

The Judgment of the Court was delivered by

DWIVEDI, J.—These three cases have a common origin and are accordingly being disposed of by a common judgment.

The city of Meerut is a municipality in Uttar Pradesh. Plot No. 4635A (old number 5199) is located therein. It has an area of 1 bigha and 2 biswas. It formed part of the zamindari estate belonging to Lala Nanak Chand Trust. The trust is a charitable trust vested in the Treasurer of Charitable Endowments

A and is managed by the Collector of Meerut through a committee of trustees. On June 23, 1926, a lease deed was executed on behalf of the trust and in favour of one Bateshwar Dayal. By the deed the aforesaid plot was let to Bateshwar Dayal. The lease was granted "for the purpose of planting a grove, erecting buildings and digging wells etc." The yearly rent was fixed at B Rs. 12/8/-. The lease was a for a terms of 30 years with effect from June 1, 1926. The lessee agreed to surrender the land and all buildings standing thereon to the lessor on the expiry of the period of lease. The buildings would become the property of the lessor. He would have them without paying any compensation to the lessee. The lessor agreed that on the expiration of the period C of lease he would at the request of the lessee grant to the lessee a new lease for another term of 30 years.

The initial period of 30 years expired on July 1, 1956. Thereupon the trust instituted suit No. 690 of 1956 for recovery of possession over the aforesaid land from Bateshwar Dayal. During D pendency of this suit Bateshyar Dayal died on March 6, 1958. The suit was dismissed by the trial court on October 24, 1958. It was, however, decreed by the first appellate court on November 30, 1959. The appellate court granted six months' time to the defendants to institute a suit in the appropriate court for specific performance of the agreement to re-let for another term of 30 years.

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Bhagwat Dayal and others, heirs of Bateshwar Dayal, then instituted suit No. 34 of 1960 in the appropriate court for specific performance of the agreement to re-let the land for another term of 30 years. The Trust contested this suit, *inter alia,* on the ground that it was barred by limitation. This plea was upheld F by the trial court and the suit was dismissed on October 30, 1961. The first appellate court affirmed the decree of the trial court on March 23, 1962.

Bhagwat Dayal and others filed a second appeal in the Allahabad High Court against the judgment and decree passed in G the suit filed by the Trust on January 5, 1960. They also filed a second appeal against the judgment and decree in their own suit on April 23, 1962.

While those appeals were pending, the U.P. Urban Area Zamindari Abolition and Land Reforms Act, 1956 (hereinafter H called the Act) was enforced in the city of Meerut. The land in dispute was declared "agricultural area" under the said Act. Thereafter a notification was issued on June 16, 1964 under s. 8 of the Act vesting the land in the State.

Bhagwat Dayal then moved an application before the High Court for abating the two appeals as well as the two suits out of which those appeals had arisen in accordance with the provisions of the Act. The High Court passed an order abating both the suits and appeals. The order was made on July 25, 1968. Against this order the appellants have filed two appeals in this Court by special leave.

The appellants say that they have filed the writ petition No. 105 of 1969 by way of abundant caution. The prayer in the petition is that the notification issued under s. 8 of the Act should be quashed. It is alleged in paragraph 4 of the petition that the disputed plot is a part of Kothi Babu Wali. In paragraph 20 of the writ petition it is reiterated that the disputed plot forms part of a residential Kothi within the municipality of Meerut and is non-agricultural area. It is alleged that the impugned notification is violative of the provisions of Articles 14, 19(1)(f) and 31 of the Constitution and is accordingly unconstitutional.

Before mentioning the arguments of Shri R. K. Garg, counsel for the appellants, it is necessary to have a look at the relevant provisions of the Act. The preamble to the Act states that it is expedient to provide for the abolition of Zamindari system in agricultural areas situate in urban areas in Uttar Pradesh and "for the acquisition of the rights, title and interest of intermediaries between the tiller of the soil and the State in such areas and for the introduction of the land reforms therein.". Section 2 in the definition clause, Sub-section (1) of it defines the expression "agricultural area". As this provision is important for this case, we are setting out its relevant portion.

"Agricultural area" as respects any urban area means an area which, with reference to such date as the State Government may notify in that behalf, is—

"(a) in the possession of or held or deemed to be held by an intermediary as sir, khudkasht or an intermediary's grove;

(b) held as a grove by or in the personal cultivation of a permanent lessee in Avadh; or

(c) included in the holding of—

(i) a fixed-rate tenant,

(ii) an ex-proprietary tenant,

(iii) an occupancy tenant,

(iv) a tenant holding on special terms in Avadh,

(v) a rent-free grantee,

(vi) a grantee at a favourable rate of rent.

A (vii) a hereditary tenant,

(viii) a grove-holder,

(ix) a sub-tenant referred to in sub-section (4) of section 47 of the U.P. Tenancy Act, 1938, or

B (x) a non-occupancy tenant of land other than land referred to in sub-section (3) of Section 30 of the U.P. Tenancy Act, 1939,

and is used by the holder thereof for purposes of agriculture or horticulture :

C Provided always that land which on the date aforesaid is occupied by building not being "improvements" as defined in Section 3 of the U.P. Tenancy Act, 1939, and land appurtenant to such buildings shall not be deemed to be agricultural area.

D (d) held on a lease duly executed before the first day of July, 1955 for the purposes of erecting buildings thereon; or

(e) held or occupied by an occupier....."

Section 2(7) defines an "intermediary", *inter alia*, as a proprietor of an agricultural area. Section 2(12) defines "proprietor" E as a person owning whether in trust or for his own benefits an agricultural area. Section 2(16) states that the words and expressions, "grove", "grove-holder", "grove-land" and "holding" shall have the meaning assigned to them in the U.P Tenancy Act, 1939. Section 3 provides for demarcation of agricultural area in urban areas. Section 4 provides for publication of preliminary F proposals with respect to demarcation of agricultural areas. It provides also for inviting objections to the proposals. Final demarcation is made by the Commissioner under s. 5. Section 8 provides that after agricultural areas have been demarcated under s. 5, the State Government may, at any time by notification in the gazette, declare that as from a date to be specified all such areas G situate in the urban area shall vest in the State. From that date all such agricultural areas shall stand transferred to and vest in the State free from all encumbrances. Section 10 provides for the consequences of vesting. All rights, title and interest of an intermediary in an agricultural area cease and become vested in the State free from all encumbrances. All suits and proceedings of the nature to be prescribed by rules, and pending in any court, H on the date of vesting, shall be stayed.

Section 17(1) is important for our purposes, and we are quoting the material portion of it.

"Section 17. Settlement of certain lands with intermediaries or cultivators as bhumidhars—(1) subject to the provisions of Section 16 and 18—

(a) all lands in an agricultural area—

(i) in possession of, or held or deemed to be held by an intermediary as sir, khudkasht or an intermediary's grove,

(ii) held as a grove by, or in the personal cultivation of a permanent lessee in Avadh,

(iii) held by a fixed-rate tenant or a rent-free as such, or

(iv) held as such by—

(i) an occupancy tenant,
(ii) a hereditary tenant,
(iii) a tenant on patta dawami or istamrari or
(iv) held by a grove-holder

} possessing the right to transfer the holding by sale.

on the date immediately preceding the date of vesting, and

(b) all lands in an agricultural area held on lease duly made before the first day of July, 1955, for the purpose of erecting building thereon,

shall be deemed to be settled by the State Government with such intermediary, lessee, tenant, grantee or groveholder, as the case may be, who shall subject to the provisions of this Act, be entitled to take or retain possession as a bhumidhar thereof."

Section 19(j) provides that notwithstanding anything contained in the Act, every person who, on the date immediately preceding the date of vesting occupied or held land in an agricultural area as a sub-lessee from a person holding land under a lease referred to in cl. (b) of sub-section (1) shall be deemed to be an asami thereof. Section 20(1) provides that a bhumidhar of the land referred to in cl. (b) of sub-s.(1) of s. 17, may, within one year from the date of vesting, apply to the Assistant Collector, Incharge of the Sub-Division for ejectment of asami belonging to the class mentioned in s. 19(j) on the ground that he wants to use the land held by the asami for the purpose of erecting buildings thereon. If the Assistant Collector is satisfied after inquiry that the applicant intends to use the land for the purpose of erecting buildings thereon, he may order ejectment of the asami from such land. After ejectment of the asami, the applicant shall erect a building thereon within three years of the date of the order of ejectment. If the bhumidhar does not file an application for ejectment or if the order of ejectment passed on any application is not executed within the prescribed period of limitation, the asami shall become a sirdar of the land. The rights, title and

A interest of the bhumidhar shall be deemed to have been acquired under s. 10, "as if the bhumidhar were an intermediary on the date of vesting." If the bhumidhar fails to erect buildings within three years, he shall be liable to pay to the asami or any person claiming through him an amount equal to five times the rent payable by asami at the time of his ejectment.

B According to s. 24 an intermediary whose right, title or interest in any agricultural area is acquired under the Act shall be entitled to receive compensation as provided for therein.

Rules have been framed under the Act. They are known as the Uttar Pradesh Urban Areas Zamindari Abolition and Land C Reform Rules, 1957. Rule 38 provides for stay, *inter alia,* of suits and appeals arising under s. 180 of the U.P. Tenancy Act or of a similar nature pending in a civil court. Rule 39 provides for abatment of such suits and appeals. In the present case the second appeals and the suits from which they had arisen were abated under this rule by the High Court.

D Section 2(6) of the U.P. Tenancy Act, 1939 defines "grove-land" as meaning "any specific piece of land in a mahal or mahals having trees planted thereon in such numbers that they preclude, or when full grown will preclude the land or any considerable portion thereof from being used primarily for any other purpose, and the trees on such land constitute a grove." Section 2(7) E defines the word "holding". It means a parcel or parcels of land held under one lease. Section 2(10) defines the word "land" as meaning land which is let or held for growing of crops, or as grove-land or for pasturage. It does not include land for the time being occupied by buildings or appurtenant thereto other than the buildings which are improvements. The word "grove-holder" is F defined in s. 205 of the said Act. A person who has planted a grove on land which was let or granted to him by a landlord for the purpose of planting a grove is called a "grove-holder" of the grove.

The first argument of Shri Garg is that the lease involved in these cases was a lease for the purpose of erecting buildings and G that accordingly it falls within the purview of cl. (d) of sub-section (1) of s. 2 of the Act. It is urged that cl. (d) is violative of Articles 14, 19 and 31 of the Constitution and is invalid. On that premise being correct, it is further said that the land in dispute will not be an agricultural area within the meaning of the said expression under the Act. Consequently, the notification of the State Government acquiring the land in dispute is invalid.

H The lease is "for the purpose of planting a grove, erecting buildings and digging well etc." It may be observed that the lease is not an exclusively building lease. Instead of erecting buildings,

the lessee could plant a grove. Admittedly no buildings have been constructed. The case of the respondents was that Bateshwar Dayal had planted a grove. If Bateshwar Dayal had planted a grove and if the grove was existing on the date specified under s. 2 of the Act and was then being used by the respondents as a grove, the land in dispute would be covered by s. 2(1)(c)(viii) of the Act. In that event it will be out of the purview of s. 2(1)(d) of the Act. As the lease is liable to be placed under either of these two classes, it will not be correct to place it exclusively under cl. (d).

The Act as a whole is protected by Article 31A of the Constitution. Shri Garg's contention, however, is that as s. 2(1)(d) is not at all connected with agricultural reforms, it cannot receive the protection of Article 31A and will be open to challenge for violation of Articles 14, 19 and 31. In terms s. 2(1)(d) does not appear to be connected with the object of agricultural reform. But a close scrutiny of its context and the object of the Act would reveal that it is so connected.

All other clauses of s. 2(1) except cl. (d) are clearly connected with the object of agricultural reform. They include in an "agricultural area" only such land as is being used for growing crop or as a grove or as a pasture land on the date specified in s. 2(1). The proviso to s. 2(1)(c) expressly excludes from "agricultural area" land which is occupied by buildings, not being improvements, and land appurtenant to such buildings. Having regard to this proviso, it is difficult to believe that s. 2(1)(d) was intended by the legislature to apply to land which is not an agricultural area. "Agriculture" means "the science and the art of cultivating the soil; including the gathering in of the crops, and the rearing of live-stock; farming (in the widest sense)". (Shorter Oxford Dictionary, 3rd Edn. Vol. I, p.37). So, ordinarily "agricultural area" would mean an area used for cultivation or farming. Section 2(1) includes groves also. Clause (d) should take its colour from this inherent meaning of "agricultural area" which is being defined in s. 2(1).

Section 17(1) confers bhumidhari rights on certain classes of persons over certain kinds of lands. Section 17(1) has two clauses (a) and (b). Lands specified in cl. (a) are used for growing crops or as a grove. It is significant to observe the difference between the language of s. 2(1)(d) and s.17(1)(b). While section 2(1)(d) refers to "agricultural area", section 17(1)(b) is expressly limited to "lands in agricultural area held on lease.. for the purpose of erecting buildings thereon." As the subject matter of s. 2(1)(d) and s. 17(1)(b) should be identical, it appears to us that the expression "agricultural area" in s. 2(1)(d) should be construed as "lands in agricultural area". If the defini-

A tion of "land" in the U.P. Tenancy Act is applied to s.17(1), as it should be, section 17(1)(b) will confer bhumidhari rights on a lessee of land which is used for growing crops or as a grove or as a pasture land although the lease may have been granted for erecting buildings. The marginal note to the section supports this construction.

B Section 19(j) provides that a sub-lessee from a person "holding land under a lease referred to in cl. (b) of sub-section (1) of s. 17". shall be an asami. This provision also shows that the agricultural area referred to in s. 2(1)(d) should on the relevant date be used for growing crops or as a grove or as a pasture land.

C It is not possible to take the view that s. 2(1)(d) compasses a wider geography than s. 17(1)(b). Such a construction would create an anomaly. The lessee would become bhumidhar of only such portion of the land as is being used for growing crops or as a grove or as a pasture land. The rest of the agricultural area let out to him for the purpose of erecting buildings would vest in D the Government. But he would get no compensation for that portion, for under s. 24 compensation is payable only to an intermediary. But he is not an "intermediary" as defined in s. 2(7), nor a sub-intermediary as defined in s. 2(14). He is deemed to be an intermediary for a limited purpose under s. 20(4) but that provision is not material for our purpose. This anomaly will not result if "agricultural area" in s. 2(1)(d) and 'land in an agricul- E tural' area in s. 17(1)(b) are construed as perfectly over-lapping.

The preamble to the Act shows that the object of the Act is to acquire right, title or interest of intermediaries between the tiller of the soil and the State and for the introduction of land reforms therein. Having regard to the context already pointed out and this object of the Act it seems to us that s. 2(1)(d), F though apparently expressed in wide language, is limited to lands which are on the relevant date being used for growing crops or as grove or as pasture land. It does not apply to lands which are not being so used.

The history of the framing of s. 2(1)(d) fortifies this inference. G The Bill which consummated in the Act was introduced in the Legislative Assembly on August 6, 1955. It was referred to a Joint Select Committee. The Joint Select Committee's report and the Bill as amended by it were published in the Uttar Pradesh Gazette, dated February 4, 1956. Clause (d) of s. 2(1) was incorporated in the amended Bill by the Joint Select Committee. H It read as follows :

"held on a lease duly executed before the first day of July, 1955 for the purpose of erecting buildings thereon, but which is being used for the purposes of agriculture either by the holder thereof

or by any person claiming under him." Clause (d) was passed in this form by the Legislative Assembly on December 3, 1956. The Bill then went to the Legislative Council. But before reaching there it was pruned by the Secretary of the Assembly. He deleted the last part of cl. (d) as passed by the Legislative Assembly. The Legislative Council passed cl. (d) as pruned by the Legislative Secretary. Thereafter the Bill received the assent of the Governor and of the President. It seems that the Secretary thought that the deleted portion of cl. (d) was redundant; and so he eliminated it. In *Durga Prasad versus Board of Revenue U.P. Allahabad and others,*(1) the Allahabad High Court has pointed out this history of cl. (d). The High Court has taken the view that s. 2(1)(d) is limited to lands which are being used for agricultural purposes. We have come to the same conclusion though for different reasons.

On this construction of s. 2(1)(d) it cannot be said that this provision is not connected with agricultural reforms. It would accordingly receive the protection of Art. 31A and would be immune from attack on the ground of violation of Articles 14, 19 and 31.

It would follow from the foregoing discussion that only such lands as are being used for growing crops or as grove or as pasture land may be acquired under the Act. It is alleged in the writ petition that the land in dispute is a part of kothi Babu Wali and was not used for agricultural purposes. The petition mentions the old number of the plot which was 5199. The new number of the plot is 4635A. The State Government has filed a counter-affidavit. They have assumed that the petition refers to the plot now given the new number 5199. The counter-affidavit does not deal with the disputed plot now numbered 4635A. But the description of the plot in dispute given in the petition leaves no room for doubt about the identity of the plot. It is strange that the counter-affidavit did not squarely deal with the allegations in the petition. The appellants' allegation that the land in dispute is non-agricultural land and forms part of a residential kothi remains unanswered in the counter-affidavit.

In the suit the respondent's case was that Bateshwar Dayal, their predecessor-in-interest, had planted a grove on the land in dispute. The trial court had appointed a Commissioner for finding out whether there stood a grove on the land in dispute. On October 16, 1956, the Commissioner submitted his report to the trial court. It appears from his report that about a half of the plot towards the western side was then "quite vacant." On the western boundary of the plot there stood two sheesham and three mango trees; on the northern boundary of the plot there were four

(1) A.I.R. 1970 All 159.

A guava trees, one plum tree and a thorny tree. In the eastern half of the plot there were about 18 or 19 "scattered guava trees" Trees standing on the boundary of the plot will not prevent the use of the land for a purpose other than grove. The western half could be used for any other purpose. In the eastern half the 18 or 19 "scattered" guava trees could apparently not prevent the B use of the land for any other purpose. The report of the Commissioner would not show that the land in dispute was a grove within the meaning of s. 2(6) of the U.P. Tenancy Act, 1939. As the appellants had given the old number of the plot in their petition, the Government did not reply to the allegations in the petition. Accordingly, it is not possible to express any concluded C opinion on the question whether the land in dispute was an "agricultural area" on the date specified under s. 2(1) and was being used for horticulture. The issue should now be decided afresh by the appropriate authority under the Act.

In the result, we allow the writ petition and quash the Government notification under s. 8 of the Act, dated June 16, 1964 with D respect to the land in dispute. We direct the Government to proceed afresh with respect to the land in dispute in accordance with ss. 3, 4, 5 and 8 of th Act. If it is found in the course of enquiry under ss. 3, 4, and 5 that the land in dispute was an "agricultural area" and was being used for agriculture or horticulture on the relevant date, it will be open to the Government E to issue a notification with respect to it under s. 8. If, on the other hand, it is found in that enquiry that it was not an "agricultural-area" on the said date, no notification under s. 8 should be issued with respect to it. The appeals are also allowed. The orders of the High Court abating the appeals and the suits are set aside. The High Court will restore the appeals and the suits to their original numbers. The appeals will be decided on merits when F the appropriate authority under s. 5 of the Act has held that the land in dispute is not an "agricultural area". If it is held by him that the land in dispute is an "agricultural area" and the State Government issues a notification under s. 8 of the Act with respect to the land, the appeals will be disposed of in accordance with the provisions of the Act. In the circumstances of this case parties shall bear their own costs.

G.C. *Appeals allowed.*