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The only other point that was argued at the bar was a question of fact, namely, whether the corrupt practice alleged had been proved. On that point I am in perfect agreement with the view expressed by my learned brothers and have nothing to add.

Appeal dismissed.

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THE STATE OF VINDHYA PRADESH (NOW MADHYA PRADESH)

v.

MORADHWAJ SINGH AND OTHERS

(B. P. SINHA, C. J., JAFER IMAM, A. K. SARKAR, K. N. WANCHOO AND J. C. SHAH, JJ.)

Jagirs, Abolition of—Constitutional validity of enactment—Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952 (XI of 1952), ss. 22(1), 37, Schedule cl. (4)(e)—Code of Civil Procedure (Act V of 1908), s. 9—Constitution of India, Art. 31 A.

These appeals raised the question of constitutional validity of the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952 (XI of 1952). Applications were made before the Judicial Commissioner under Art. 226 of the Constitution on the ground that various provisions of the Act placed unreasonable restrictions on the exercise of the fundamental rights guaranteed by the Constitution. The Judicial Commissioner held that the Act, excepting s. 22(1), s. 37 and cl. (4)(e) of the Schedule to the Act, was constitutionally valid. The State appealed against that part of the order which declared the three provisions unconstitutional and one of the petitioners appealed against the order declaring the rest of the Act constitutional.

Held, that the appeal of the State must be allowed and that of the petitioner dismissed.

It was not correct to say that s. 22 of the Act, which lays down the scheme for giving effect to s. 7(a) of the Act which permits the Jagirdars to remain in possession of certain lands even after the abolition of their jagirs, is a piece of colourable legislation and, therefore, *ultra vires* the Legislature. That section cannot be said to discriminate as between jagirdars on the one hand and other occupants of land, to whom s. 28(1) applies, on the other, since they belong to distinct and different classes.

Even assuming that they belong to the same class and s. 22 is discriminatory, that section is protected by Art. 31A of the Constitution.

The question as to colourable legislation is really one relating to legislative competency and there can be no doubt that the Vindhya Pradesh Legislature was perfectly competent to enact the impugned provisions under Entry 18, List II of the Seventh Schedule to the Constitution.

K. C. Gajapati Narayan Deo v. *The State of Orissa.* [1954] S.C.R. 1 and *Raghubir Singh* v. *The State of Ajmer* (*Now Rajasthan*). [1959] Suppl. (1) S.C.R. 478, relied on.

There was no substance in the contention that s. 37 of the Act is repugnant to s. 9 of the Code of Civil Procedure and consequently ultra vires the State Legislature. The Vindaya Pradesh Legislature had undoubtedly the power under Entry 3, List II of the Seventh Schedule to make a provision like s. 37 of the Act and, once it did so, the last part of s. 9 of the Code would apply and the jurisdiction of the Civil Courts would be barred by s. 9 of the Code read with s. 37 of the Act.

Nor was it correct to say that cl. (4)(e) of the Schedule deprives the Jagirdar of his proprietory interest without compensation. Although he may have to pay rent for the land remaining with him, no revenue for such land was any longer payable by him and the revenue is taken into account in assessing compensation.

The entire Act, therefore, falls within the protection of Art. 31A of the Constitution and, in view of the decisions of this Court, its constitutional validity is beyond question.

Case-law referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 40 to 110 of 1955.

Appeals from the judgment and order dated November 12, 1953, of the former Judicial Commissioner's Court, Vindhya Pradesh, Rewa, in Misc. Applications (Writ) Nos. 51 to 119 and 121 of 1953.

C. K. Daphtary, Solicitor-General of India, M. Adhikari, Advocate-General for the State of Madhya Pradesh and *I. N. Shroff*, for the appellant (in C.As. Nos. 40 to 109 of 55) and respondent (in C.A. No. 110/55).

K. B. Asthana, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and *P. L. Vohra*, for the respondents (in C.As. Nos. 40, 51, 52, 54, 65 and 100/55) and appellant (in C.A. No. 110/55).

1960. February, 24. The Judgment of the Court was delivered by

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WANCHOO, J.—These sevety-one appeals on certificates granted by the Judicial Commissioner of Vindhya Pradesh arise out of seventy petitions under art. 226 of the Constitution filed before that Court challenging the constitutionality of the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, No. XI of 1952, (hereinafter called the Act). They were disposed of by a common judgment by the Judicial Commissioner. We shall also dispose of these appeals, by a common judgment. Seventy (Nos. 40 to 109), out of these appeals, are by the State of Vindhya Pradesh (now Madhya Pradesh) while one (No. 110) is by the Brijindar Singh, a jagirdar.

The case of the petitioners in the Court of the Judicial Commissioner was that the Act was unconstitutional as various provisions in it placed an unreasonable restriction on the exercise of the fundamental rights guaranteed to the petitioners under Part III of the Constitution. The Judicial Commissioner held that the Act was constitutional, except for three provisions thereof, namely, s. 22(1), s. 37 and cl. (4) (e) of the Schedule to the Act. The seventy appeals by the State are with respect to this part of the order declaring these three provisions unconstitutional. The appeal of Brijindar Singh is against that part of the order by which the rest of the Act was held constitutional.

We shall first deal with the appeal of Brijindar Singh. Learned counsel for Brijindar Singh was unable—and in our opinion rightly—to challenge the constitutionality of the Act as a whole in view of art. 31-A of the Constitution and the decisions of this Court in *The State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh* (1), *Visweshwar Rao* v. *The State of Madhya Pradesh* (2), *Raja Suriya Pal Singh* v. *The State of U.P.* (3), *K. C. Gajapati Narayan Deo* v. *The State of Orissa* (4), *Thakur Amar Singhji* v. *The State of Rajasthan* (5), *Raja Bhairebendra Narayan Bhup* v. *The State of Assam* (6), *Sri Ram Ram Narain* v. *The State of Bombay* (7), *Raghubir Singh* v. *The State of Ajmer (now Rajasthan)* (8) and *Atma Ram* v. *The State of Punjab* (9), relating to similar legislation in the

(1) [1952] S.C R. 889. (2) [1952] S.C R. 1020. (3) [1952] S.C.R. 1056.
(4) [1954] S.C.R. 1. (5) [1955] 2 S.C.R. 303. (6) [1956] S.C.R. 303.
(7) [1959] Suppl. (1) S.C R. 489 (8) [1959] Suppl. (1) S.C.R. 478
(9) [1959] Suppl. (1) S.C.R. 748.

States of Bihar, Madhya Pradesh, Uttar Pradesh Orissa, Rajasthan, Assam, Bombay, Ajmer and Punjab. It is not necessary therefore to examine the provisions of the Act in detail. In the circumstances, Appeal No. 110 is dismissed; but as it was not pressed we think it right that the parties should bear their own costs of this appeal.

Now we turn to the appeals by the State. The object of the Act is to resume jagir-lands. Sec. 5 provides for the appointment of a date for the resumption of any class of jagir-land by notification and power is given to the State Government to fix different dates for different classes of jagir-lands. Sec. 6 provides for the consequences of such resumption. Sec. 7, however lays down that notwithstanding anything contained in s. 6, certain lands will remain in possession of jagirdars and cl. (a) thereof is material and may be quoted here—

> "The jagirdar shall continue to remain in possession of his *sir* and *khudkasht* to the extent and subject to the conditions and restrictions specified in Ch. IV."

Sec. 10 and the subsequent sections appearing in Ch. III of the Act provide for compensation and the Schedule provides the manner in which the compensation shall be computed. Then comes Ch. IV, which deals with *sir* and *khudkasht* lands. Sec. 20 provides for an application by the jagirdar for allotment of land for personal cultivation. Sec. 21 provides for an enquiry by the Tahsildar on such application in the prescribed manner, and the allotment of land and the issue of a *patta* thereof to the jagirdar having regard to the remaining provisions of the Chapter. Then comes s. 22, which may be quoted in full—

> "(1) A jagirdar shall be allotted all *sir* and *khudkasht* lands which he was cultivating personally for a continuous period of three years immediately preceding the date of resumption.
>
> "(2) A jagirdar whose jagir-lands have been resumed under this Act—
>
> (a) who is not allotted any *sir* or *khudkasht* land under sub-section (1), or

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(b) who had been allotted any such land which is less than the minimum area,

may if he applies in this behalf, be allotted any other *sir* or *khudkasht* land in his personal cultivation at the date of resumption or where there is no such land or sufficient area of such land any unoccupied cultivable waste land in the jagir-land subject to availability of such land, so that—

(i) in a case falling under cl. (a), the total area allotted to him under this sub-section is equal to the minimum area, and

(ii) in a case falling under cl. (b), the area allotted to him under this sub-section together with the area allotted under sub-section (1) is equal to the minimum area.

Explanation—In this sub-section, the expression 'minimum' means ten per cent. of the total cultivated land in the jagir-land at the date of resumption or 30 acres whichever is greater:

Provided that in no case the minimum area shall exceed 250 acres."

Chapter V deals with rights of tenants, grove holders and occupants in jagir-land and confers certain benefits on them. Chapter VI provides for the machinery and the procedure for carrying out the purposes of the Act. The last section (42) gives power to the State Government to make rules to carry out the purposes of the Act.

The learned Judicial Commissioner has held that s. 22(1) is a colourable piece of legislation. The scheme of s. 22 is to give effect to s. 7(a) by which certain lands were allowed to remain in the possession of the jagirdar. Section 22(1) lays down that all *sir* and *khudkasht* lands which a jagirdar was cultivating personally for a continuous period of three years immediately preceding the date of resumption shall be allotted to him by the Tahsildar. Sub-section (2) provides for those cases where there is no land which can be allotted to a jagirdar under sub-s. (1) or where the land, which can be allotted to him under sub-section (1) is less than the minimum area as defined in the section. In such a case the jagirdar can be allotted any other *sir* or *khudkasht* land in his personal culti-

vation at the date of resumption upto the minimum area. Where, however, the minimum is not reached even after such allotment, the jagirdar can be allotted under sub-s. (2) any unoccupied cultivable waste land in the jagir subject to availability of such land upto that area. The minimum area means ten per cent. of the total cultivated area in the jagir at the date of resumption or 30 acres whichever is greater subject to the proviso that in no case the minimum area shall exceed 250 acres. In other words, s. 22 (1) provides that in the first instance the jagirdar will get all his *sir* and *khudkasht* land which he had been cultivating for three years continuously before the date of resumption. If, however, there is no such land or if the land of this kind allotted to a jagirdar is less than the minimum area he will be entitled to further allotment out of the *sir* or *khudkasht* land in his possession for less than three years to make up the minimum area. Lastly if the minimum area is not made up even by allotment of such land which has been in the jagirdar's possession for less than three years he will be entitled to allotment of unoccupied cultivable waste land subject to availability of such land to make up the minimum area; but the provisions of sub-s. (2) are subject to a minimum of 250 acres. We have not been able to understand how these provisions can be called a piece of colourable legislation. The learned Judicial Commissioner seems to be of the view that as a period of three years' continuous cultivation is made a condition of allotment under s. 22(1), there is discrimination between jagirdars and other occupants of land in whose case s. 28(1) provides that every person who is entered in the revenue record as an occupant of any jagir-land at the date of resumption, shall be deemed to be *pattadar* tenant in respect of such land which shall be assessed at the village rate. The learned Judicial Commissioner was not unconscious of the provisions of art. 31-A which lays down that no such legislation would be struck down on the ground of discrimination under art. 14. He however thought that this was an extra condition which had been imposed so that the jagirdar might be deprived of as much *sir* and *khudkasht* land as possible subject

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to the minimum and that this was done to create inconvenience to the jagirdars whom the legislature did not like. He therefore thought that such legislation was altogether outside the power of the legislature and was invalid as a colourable piece of legislation.

In the first place we cannot see how any discrimination can arise in circumstances like this, for the jagirdars are obviously one class while the occupants of lands other than jagirdars belong to another class. Secondly, even if it could be held that jagirdars and other occupants of land stood in the same class and there was discrimination under s. 22(1) as compared to s. 28(1), such discrimination could not be a ground for striking down s. 22(1) in view of the specific constitutional provision in art. 31-A. It was because of this difficulty that the learned Judicial Commissioner did not strike down s. 22(1) on the ground of discrimination but held that it was a colourable piece of legislation. What is a colourable piece of legislation has been laid down by this Court in *K. C. Gajapati Narayan Deo* v. *The State of Orissa* (1). It was pointed there that :—

> "The question whether a law was a colourable legislation and as such void did not depend on the motive or *bona fides* of the legislature in passing the law but upon the competency of the legislature to pass that particular law, and what the courts have to determine in such cases is whether though the legislature has purported to act within the limits of its powers, it has in substance and reality transgressed those powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise. The whole doctrine of colourable legislation is based upon the maxim that you cannot do indirectly what you cannot do directly."

Applying this principle it is obvious that the Vindhya Pradesh legislature in this case had full competence to make this provision under Entry 18, List II of the Seventh Schedule. There is no question here of transgressing those powers and veiling the transgression under a pretence or disguise. We do not think it was proper for the Judicial Commissioner to

(1) [1954] S.C.R. (1)

ascribe motives to the legislature as he seems to have done by saying that the provision was made for creating inconvenience to a class whom the legislature did not like. Nor do we think that there is any force in the argument that art. 31-A has no application to provisions dealing with allotment of land, for ss. 7 and 22 of the Act work out the scheme of acquisition of estates and are incidental provisions which are equally protected under that Article along with the main provisions contained in ss. 5 and 6 of the Act; (see *Raghubir Singh* v. *The State of Ajmer (now Rajasthan)* [1]). The provisions of s. 22 as a whole provide a scheme for carrying out the intention of the legislature expressed in s. 7(a) of the Act and are in our opinion perfectly constitutional.

We now turn to s. 37 of the Act. That section appears in the procedural part of the Act and is as follows:—

"(1) No civil court shall have jurisdiction to settle, decide or deal with any question which is, by or under this Act, required to be settled, decided or dealt with by the Tahsildar, the Deputy Commissioner, the Land Reform Commissioner, or the Board of Revenue.

(2) Except as otherwise provided in this Act no order of a Tahsildar, a Deputy Commissioner, the Land Reform Commissioner, or the Board of Revenue under this Act shall be called in question in any court."

Sub-s. (1) thus takes away the jurisdiction of the civil court to decide any matter which under the Act is to be decided by the Tahsildar, the Deputy Commissioner, the Land Reform Commissioner or the Board of Revenue. Sub-s. (2) provides that no order passed by any of these authorities shall be called in question in any court. The learned Judicial Commissioner has held this section invalid on the ground that it is repugnant to s. 9 of the Code of Civil Procedure, inasmuch as it takes away the jurisdiction of the civil court which it has under that section. Sec. 9 lays down that the civil courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

(1) [1959] Suppl. (1) S.C.R. 478

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Sec. 9 therefore gives jurisdiction to civil courts to try all suits of a civil nature excepting those which are expressly or impliedly barred by any other law. The provision of s. 37 is an express bar to the matters dealt with in the Act being agitated in civil courts. The learned Judicial Commissioner seems to think that s. 9 takes away the power of the legislature of a Part C State like Vindhya Pradesh to legislate with respect to the jurisdiction of courts. The power to the legislature is given by Entry 3, List II and cannot be affected by s. 9 of the Code of Civil Procedure. As a matter of fact s. 9 recognises that if a competent legislature passes a law barring the jurisdiction of a civil court, the jurisdiction of the civil court to take cognizance of such suit, even though of a civil nature, is ousted. It was in our opinion unnecessary to go into s. 22 of the Government of Part C States Act, No. XLIX of 1951 and compare it with art. 254 of the Constitution in this connection. Sec. 37 does not in any way affect s. 9. All that it provides is that civil courts shall have no jurisdiction to hear certain matters of a civil nature; and s. 9 expressly recognizes that if such a provision is made by any law, the jurisdiction of the civil courts will disappear. There is thus no question of any repugnancy between s. 9 of the Code of Civil Procedure and s. 37 of the Act. The legislature in this case had power to make a provision like s. 37 and once it did so, the last part of s. 9 will apply and the jurisdiction of the civil courts will become barred by virtue of s. 9 read with s. 37 of the Act. The decision of the Judicial Commissioner therefore that s. 37 is *ultra vires* the powers of the Vindhya Pradesh legislature is not correct.

Lastly we come to cl. (4)(e) of the Schedule. The Schedule provides for the method of computing compensation. Clause (3) lays down the manner in which the gross income of a jagirdar shall be arrived at. Clause (4) lays down how net income will be arrived at after making certain deductions. One of these deductions is in sub-cl. (e) of this Clause, which is as follows:—

"Where the jagirdar is allotted any *sir* or *khud-kasht* or other land or any grove under this Act an

amount equal to the valuation of rent for such land or grove for the basic year at the current settlement rates (less the land revenue paid by him in respect of such land and grove in the basic year to be ascertained in such manner as may be prescribed)."

This sub-clause is in fact a contra entry to sub-cl. (b) (i) of cl. (3). The method of calculation provided by these two clauses is that the gross income is first arrived at without taking into account the land which remains with the jagirdar under s. 7 (a). Thereafter in order to arrive at the net income for the purpose of compensation the rent for *sir* and *khudkasht* land which remains with the jagirdar is taken into account and its value determined under cl. (3) (b) (i) minus the revenue payable in respect thereof. This is then deducted from the gross income, for the reason that this land remains with the jagirdar. The learned Judicial Commissioner thinks that the arithmetical result of this provision is that so far as these lands are concerned the landlord has lost his proprietary interest and has to pay rent to the government, but at the same time gets no compensation. It should however be noted that though the landlord may have to pay rent in future for the land remaining with him, he does not pay any revenue which was payable by him so far with respect to such land. In the circumstances, it cannot be said that he has been deprived of the proprietary interest without any compensation, for he is relieved of the charge of paying land revenue which has also been taken into account in arriving at the net assets for that purpose, and that is all that he can expect considering that the land remains in his possession for all other purposes. We are therefore of opinion that there is nothing unconstitutional in cl. (4) (e) of the Schedule.

We therefore dismiss Appeal No. 110 but order parties to bear their own costs. We allow Appeals Nos. 40 to 109 and hold that s. 22 (1), s. 37 and cl. (4) (e) of the Schedule are valid and constitutional. As the respondents in these appeals have not seriously contested them we order parties to bear their own costs.

Appeal No. 110 *dismissed.*
Appeals Nos. 40 *to* 109 *allowed.*