

STATE OF MADHYA PRADESH

1962

May 4.

v.

YAKINUDDIN

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR and T. L. VENKATARAMA AIYAR, JJ.)

Abolition of Proprietary Rights—Consequence of vesting of such rights in the State—Transfer of interest by Proprietor—If enforceable against the State—Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (M.P. 1 of 1951), ss. 3, 4, 5, 6.

Section 4 (1) (a) of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, provides that “when the notification under s. 3 in respect of any areas has been published in the Gazette, then, notwithstanding anything contained in any contract, grant or document or in any other law for the time being in force, and save as otherwise provided in this Act, the consequences as hereinafter set forth shall...ensure, namely, (a) all rights, title and interest vesting in the proprietor or any person having interest in such proprietary right through the proprietor in such area including land (cultivable or barren), grass land, scrubjungle, forest, trees...shall cease and be vested in the State for the purposes of the State free of all encumbrances..” The respondents, by grants from and agreements with the proprietors, acquired the right to propagate lac, collect tendu leaves and gather fruits and flowers of Mahua leaves in certain estates. On the coming into effect of the Act and the issue of necessary notifications under s. 8, the State took possession of the estates and refused to recognise the rights claimed by the respondents. The High Court relying on the decision of this Court in *Chhotabhai Jethabhai Patel and Co. v. State of Madhya Pradesh*, (1953) S.C.R. 476, held the rights claimed by the respondents had not been affected by the Act. The State appealed. The case of the respondents was that their rights were saved by s. 6(1) of the Act which was as follows:—

“6(1) Except as provided in sub-section (2), the transfer of any right in the property which is liable to vest in the State under this Act made by the proprietor at any time after the 16th March 1950 shall, as from the date of vesting, be void.”

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Held, that whatever rights the respondents had acquired from the proprietors ceased to have effect by the operation of s. 4(1)(a) of the Act on the vesting of the estates in the State. It was not correct to say that s. 6(1) of the Act saved those rights. That section referred to those transaction of transfer of right which was liable to vest in the State and rendered them void. It did not lay down that a transfer made before March 16, 1950, was necessarily binding on the State.

The Act had for its object the acquisition by the State of all interests in the estate that the proprietor or an intermediary had in it except those of the actual tillers of the soil. Clauses (a) to (h) of s. 5 of the Act showed what interests were saved by the Act and the interests sought to be enforced by the respondent, were none of these. The rights claimed by them, therefore, could not be enforced against the State.

Chhotabhai Jethabhai Patel und Co. v. State of Madhya Pradesh, [1953] S.C.R. 476, overruled.

Shrimati Shantabai v. State of Bombay, [1959] S.C.R. 265 and *Mahadeo v. State of Bombay*, [1959] Supp. 2 S.C.R. 239, applied.

CIVIL APPELLATE JURISDICTION : Civil Appeals
Nos. 229 & 281 to 283/1961.

WITH

C. A. Nos. 281 to 283 of 1961.

Appeals from the judgment and orders dated February 20, 1958, of the Madhya Pradesh High Court in Miscellaneous Petitions Nos. 500 and 524 of 1954 and 419 of 1955.

I. N. Shroff, for the appellants.

S. N. Kherdekar, *R. N. Srivastava*, *N. K. Kherdekar* and *Ganpat Rai*, for the respondent (in C. A. No. 229/61).

G. C. Mathur, for the respondent (in C. A. No. 281/61).

H. N. Sanyal, *Additional Solicitor General of India* and *G. C. Mathur*, for the respondent (in C.A. No. 282/61).

W. S. Barlingay and *A. G. Ratnaparkhi*, for the respondent (in C. A. No. 283/61).

1962. May 4. The Judgment of the Court was delivered by

SINHA, C. J.—In these appeals the common question of law that arises for determination is whether the respective grants made by the outgoing proprietors in favour of the respondents convey any rights to them, which could be enforced against the appellant, the State of Madhya Pradesh, after the coming into effect of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (Madhya Pradesh Act I of 1951)—which will be referred to hereinafter as the Act.

It is not necessary to state the facts of each case in any detail because they are not disputed, and nothing turns on the difference in facts. In Civil Appeal No. 229 of 1961, the respondent obtained, by virtue of registered documents, the grant of 24 villages in Balaghat and Mandla Districts, for propagating lac, the lease to expire on July 31, 1955. In Civil Appeal No. 281 of 1961, by virtue of two unregistered agreements, the respondent obtained the right to collect *tendu* leaves in 37 villages upto July 31, 1963. In Civil Appeal No. 282 of 1961, the respondent obtained similar rights from the proprietor by virtue of registered agreements, extending up to the end of the year 1962. In Civil Appeal No. 283 of 1961, the respondent obtained the right to collect fruits and flower of *Mahua* trees from the proprietor, extending down to the year 1969, by virtue of three registered leases.

On the coming into effect of the Act and the issue of the necessary notifications under s. 3 of the Act, the appellant, the State of Madhya Pradesh, took possession of all the villages comprised in the respective estates of the proprietors, who were the grantors of the several interest indicated above

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in favour of the respondents. The State refused to recognise the rights claimed by the respondents by virtue of the transactions aforesaid in their favour.

In each case, the High Court relying upon the decision of this Court in *Chhotabhai Jethabai, Patel and Co. v. The State of Madhya Pradesh* ⁽¹⁾ granted the relief claimed by the respondents, and held that the several interests claimed by the respondents had not been affected by the coming into force of the Act. The High Court did not accept the contention raised on behalf of the State that as a result of the coming into operation of the Act, all these interests which were the subject matter of dispute in all these cases had been extinguished, in view of the provisions of s. 4 (1) (a) of the Act. Soon after the decision aforesaid of this Court, the matter was re-examined by this Court in the case of *Shrimati Shantabai v. State of Bombay* ⁽²⁾, and in the case of *Mahadeo v. The State of Bombay* ⁽³⁾.

The earliest decision of this Court with reference to the Act is a decision of the Division Bench of three Judges in *Chhotabhai Jethabai Patel and Co. v. The State of Madhya Pradesh* ⁽¹⁾. In that case, which was a petition under Art. 32 of the Constitution, the petitioners had entered into various contracts and agreements with the proprietors of the estates, before the dates on which the estates vested in the State, under the Act, under which they were entitled to pluck, collect and carry away *tendu* leaves and to cultivate, culture and acquire lac, as also to cut and carry away teak and timber. The petitioners had complained to this Court that the State of Madhya Pradesh had been interfering with their rights thus

(1) (1953) S.C.R. 476.

(2) (1959) S.C.R. 265.

(3) (1959) Supp. 2 S.C.R. 339.

acquired from the outgoing proprietors. This Court held, on a construction of the contracts, that the grants in essence and effect were licences to the petitioners who were neither proprietors, nor persons having any interests in the proprietary rights through the proprietors, nor were their interests 'encumbrances' within the meaning of that expression in s. 3 (1) of the Act. In that view of the matter, the Court granted the writs in favour of the petitioners. Naturally, the High Court granted appropriate reliefs to the respondents in this batch of cases, relying upon this decision of this Court.

In the case of *Shrimati Shantabai v. State of Bombay* (1) the same question came up to be re-examined by a Constitution Bench of this Court. The petitioner in that case had obtained from the proprietor the right to take and appropriate all kinds of wood from certain forests in his estate, by an unregistered document. On the coming into effect of the Act, the State authorities interfered with the petitioner's rights under the grant from the proprietor. The petitioner moved this Court under Art. 32 of the Constitution, complaining of interference by the State with those rights. This Court held that if the grant purported to transfer any proprietary interest in land, it would be ineffective because it was not evidenced by a registered document, and that under s. 3 of the Act all proprietary interest vested in the State. If it was a grant of *profits a prendre* it would partake of the nature of immovable property and would not be effective without a registered document evidencing the grant. If on the other hand it was a mere contract creating personal rights, the petitioner could not complain of any act on behalf of the State officials because

(1) (1959) S.C.R. 265.

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the State had not taken possession of the contract, which remained the petitioner's property. The State not being a party to that contract, would not be bound by it, and that, alternatively, if the State were bound by the terms of the contract, the petitioner's remedy lay by way of suit for the enforcement of the contract. Hence, it was held that there was no question of the infringement of any fundamental right in that case.

The provisions of the Act also came in for consideration in the case of *Mahadeo v. The State of Bombay* (1). In that case, the petitioners had obtained from the outgoing proprietors the right to collect *tendu* leaves and other forest produce in villages which formed part of the proprietors' estates, before the coming into effect of the Act. Some of the agreements were registered whereas others were not. The State did not respect those grants and put those rights to auction, after having taken possession of those estates, when they had vested in the State under s. 3 of the Act. The petitioners then moved this Court under Art. 32 of the Constitution complaining of the infringement of their rights to property. It was held by this Court that the agreements required registration, and in the absence of registered documents could not confer any rights, which were some interest in land. It was also held that rights conveyed to the petitioners under the agreements were proprietary rights which, under the provisions of ss. 3 and 4 of the Act became vested in the State. Alternatively, if the interests created by the agreements were not in respect of proprietary rights, it was held that in those interest the State was not interested, as the State was not bound by the agreements entered into by the outgoing proprietors.

It would thus appear that in view of this two later decisions of this Court, the High Court was in error in granting any relief to the respondents. But

(1) (1959) Supp. 2 S.C.R. 339.

it has been contended on behalf of the respondents that certain aspects of the controversy had not been brought to the notice of the Court on the previous occasion, and that the respondents were entitled to the benefit of s. 6 of the Act. It was contended that the respondents' right were not in the nature of mere licences, but were in the nature of *profits a prendre*, which were saved to them in view of the provisions of s. 6.

In our opinion, there is no substance in the contention raised on behalf of the respondent. Under s. 3 of the Act, from the date of the notification by the State, all proprietary rights in an estate vesting in a proprietor of such an estate or in a person having interest in such proprietary rights through the proprietor, shall vest in the State for the purposes of the State, free from all encumbrances. The consequences of such a vesting are laid down in s. 4, which runs into several clauses and sub-sections. Section 4(1)(a) is the relevant provision of the Act which determines this controversy entirely against the respondents. It provides that "when the notification under s.3 in respect of any area has been published in the Gazette, then, notwithstanding anything contained in any contract, grant or document or in any other law for the time being in force, and save as otherwise provided in this Act, the consequences as hereinafter set forth shall...ensue, namely, (a) all rights, title and interest vesting in the proprietor or any person having interest in such proprietary right through the proprietor in such area including land (cultivable or barren), grass land, scrubjungle, forest, trees...shall cease and be vested in the State for the purposes of the State free of all encumbrances..."(We have omitted the words which are not necessary for the purposes of the present appeals). It is clear on a bare reading of the provisions of cl. (a) of s. 4 (1) that whatever rights the proprietor, or a person claiming interest through

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him, had in the trees, scrubjungle, forest, etc., ceased on the vesting of the estate in the State.

But it was contended on behalf of the respondents that s. 6(1) saves their rights from the operation of s. 4(1)(a), because, it is argued, s. 4(1)(a) is subject to the provisions of s. 6(1). Section 6(1) runs as follows :

“6(1) Except as provided in sub-section (2), the transfer of any right in the property which is liable to vest in the State under this Act made by the proprietor at any time after the 16th March 1950 shall, as from the date of vesting, be void.”

In our opinion, there is no substance in this contention. Section 6 refers to those transactions of transfer of any right which is liable to vest in the State as being void. It does not lay down that a transfer made before March 16, 1950, shall be binding upon the State. The transfers which have been saved by s. 6(1) from being void may be recognised by the State for which the transferee may be entitled to claim some compensation in accordance with the provisions of the Act. But s. 6 does not save that interest from being vested in the State as a result of the notification under s. 3, read with s. 4(1)(a). The scheme of the Act is that it provides for the acquisition by the State of all interests in the estate of the proprietor himself or of an intermediary, except the tiller of the soil. This it does by vesting all proprietary rights in the State, of whatever grade, by issuing the notification under s. 3, vesting it in the State, for the purposes of the State free from all encumbrances. Section 4 lays down in great detail the rights which become extinguished on the vesting of the estate as aforesaid. What is saved to the proprietor or any other person claiming through him is set out in s. 5, cls. (a) to (h), on such terms and conditions as may be determined

by the State. Hence any person claiming some interest as a proprietor or as holding through a proprietor in respect of any proprietary interest in an estate has got to bring his interest within s. 5, because on the date of vesting of the estate, the Deputy Commissioner takes charge of all lands other than occupied lands and homestead, and of all interests vesting in the State under s. 3. Upon such taking over of possession, the State becomes liable to pay the compensation provided for in s. 8 and the succeeding sections. The respondents have not been able to show that their interest come under any of the clauses aforesaid of s. 5.

A great deal of argument was advanced on behalf of the respondents showing the distinction between a bare licence and a licence coupled with grant or *profit a prendre*. But, in our opinion, it is not necessary to discuss those fine distinctions because whatever may have been the nature of the grant by the outgoing proprietors in favour of the respondents, those grants had no legal effect as against the State, except in so far as the State may have recognised them. But the provisions of the Act leave no manner of doubt that the rights claimed by the respondents could not have been enforced against the State, if the latter was not prepared to respect those rights and the rights created by the transactions between the respondents and their grantors did not come within any of the saving clauses of s. 5.

In view of these considerations, it must be held that these cases are equally governed by the decisions aforesaid of this Court, which have overruled the earliest decision in the case of *Chhotabhai Jethabai Patel and Co. v. The State of Madhya Pradesh* (1). The appeals are accordingly allowed with costs throughout, hearing fee one set in this Court.

Appeal allowed.

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