HULAS NARAIN SINGH AND OTHERS

1943

April 15.

v.

DEEN MOHAMMAD MIAN AND OTHERS.

[SIR MAURICE GWYER C. J., SIR SRINIVASA VARADACHARIAR AND SIR MUHAMMAD ZAFRULLA KHAN, JJ.]

Government of India Act, 1935, Sch. VII, List II, entry No. 21, List III, entry No. 10—Permanent Settlement Regulation (II of 1793), Art. I—Bihar Tenancy Act (VIII of 1885, as amended by Act VIII of 1937), s. 178-B—Provincial legislation fixing rate of rent realisable by zamindars in permanently settled estates—Validity—Effect of permanent settlement.

Section 178-B of the Bihar Tenancy Act as amended by the Bihar Tenancy (Amendment) Act (VIII of 1937) was within the competence of the Bihar Legislature and was validly enacted, and is operative as much in respect of lands comprised within permanently settled estates as in respect of lands outside these estates. The subject-matter of the said section is fully covered by entry No. 21 of List II of the Seventh Schedule to the Government of India Act, 1935, and does not fall within the purview of entry No. 10 of List III of the said Schedule.

The declaration contained in the Permanent Settlement Regulation that the zemindars would be full owners and proprietors of their estates does not exclude or in any manner restrict or cut down the authority of the appropriate Indian Legislature in respect of such lands.

The concluding portion of Art. I of Regulation II of 1793 only means that the privileges which had been conferred upon and secured to the landholders would not be liable to encroachment by revenue officers.

Hulas Narain Singh v. *Province of Bihar* (1942, 5 F.L.J. F.C. 1) applied.

APPEAL from the High Court of Judicature at Patna. (Case No. XIV of 1942.)

The appellants who were zamindars holding a permanently settled estate in the Province of Bihar instituted a suit against the respondents for recovery of rent in respect of an occupancy holding at the rate of one-half share of the crops. The defendants contended that by virtue of s. 178-B of the Bihar Tenancy Act as amended by the Bihar Tenancy (Amendment) Act (VIII of 1937) the plaintiffs were not entitled to claim rent at a higher rate than 9/20ths of the produce. It was contended on behalf of the plaintiffs that s. 178-B of the

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Bihar Tenancy Act was *ultra vires* the Bihar Legislature and that, in any event, it was inoperative in respect of permanently settled estates. The High Court at Patna held that s.178-B was *intra vires* and applied to permanently settled estates also.

The plaintiffs appealed.

Notice was issued to the Advocate-General of Bihar.

Radhey Mohan Lal (*M. N. Pal* and *G. C. Das* with him) for the appellants.

Jafar Imam, Advocate-General of Bihar, (*Rai Parasnath* with him) for the Province of Bihar.

The respondents did not appear.

Cur. adv. vult.

April 15. The Judgment of the Court was delivered by

ZAFRULLA KHAN, J.—This is an appeal against an appellate judgment of a Division Bench of the High Court of Judicature at Patna. The appellants are *zamindars* holding a permanently settled estate in the district of Patna in the Province of Bihar. They instituted a suit against defendants-respondents for recovery of rent in respect of an occupancy holding at the rate of half share of the crops. Defendants contended that by virtue of s. 178-B of the Bihar Tenancy Act, enacted by the Bihar Tenancy (Amendment) Act (VIII of 1937), plaintiffs were not entitled to claim rent at a rate higher than nine-twentieths of the produce. Plaintiffs' case was that s. 178-B was for various reasons *ultra vires* the Bihar Legislature and was in any case inoperative in respect of permanently settled estates. The High Court repelled plaintiffs' contentions, and, holding that the section in question was within the competence of the Bihar Legislature and was validly enacted, gave effect to its provisions in respect of plaintiffs' claim for rent against defendants.

In appeal before us the attack upon the validity of s. 178-B was confined to two main grounds: (i) that the section contravened the provisions of s. 299 (2) of the Constitution Act; and (ii) that the subject-matter of the section fell within the purview of entry No. 10

of the Concurrent List, and that the section itself not having received the assent of the Governor-General or of His Majesty and being repugnant to the provisions of the Bengal Tenancy Act, 1885, and the Permanent Settlement Regulation, I of 1793, was void on account of such repugnancy.

Counsel failed utterly to explain in what manner the impugned section was in conflict with sub-s. (2) of s. 299 of the Constitution Act. There is no question here of the compulsory acquisition for public purposes of any land, etc., within the meaning of the sub-section; but it was contended that the impugned section in some way contravened the *spirit* of the sub-section. We are unable to see any force in this contention and need not pursue it any further.

As regards the second ground of objection, it was argued that the Permanent Settlement, in addition to settling the *jama* which the *zamindar* was liable to pay to Government, incorporated a contract between the *zamindar* and the ryot, charging the latter with liability to pay rent at the rate of 22½ seers out of every maund of produce. It was contended that the impugned section purported to modify this contract which was a "special form of contract" within the meaning of that expression as used in entry No. 10 of the Concurrent List. The entry runs as follows:—

"Contracts, including partnership, agency, contracts of carriage, and other special forms of contract, but not including contracts relating to agricultural land."

The reasons advanced by counsel for describing the contract with regard to the rate at which rent was payable by the tenant to the landlord (assuming that such a contract was incorporated in the Permanent Settlement Regulation) as a special form of contract, were (a) that there were three parties to the contract, *viz.*, the Government, the landlord, and the tenant, instead of the usual two, *viz.*, the landlord and the tenant, and (b) that the contract was in writing and was embodied in the Regulation. We do not consider that these reasons would in any event be sufficient to

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convert a contract for payment of rent into a special form of contract. The distinction drawn in entry No. 10 is between contracts (whether special forms of contract or not) relating to agricultural land and contracts not relating to agricultural land. There can be no question that a contract between a landlord and a tenant for payment of rent in respect of agricultural land, irrespective of the form in which it might be clothed, is a contract relating to agricultural land and is excluded from the scope of that entry. It follows that the subject-matter of s. 178-B of the Bihar Tenancy Act, even in respect of permanently settled estates, does not fall within the purview of entry No. 10 and no question of repugnancy to the provisions of any existing Indian law can thus arise.

The subject-matter of the impugned section is fully covered by entry No. 21 of the Provincial List, which comprises "land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents, etc.". It was argued that the effect of the Permanent Settlement Regulation was to convey permanently settled estates to the *zamindars* in fee simple and that such lands were not subject to the legislative authority of Indian Legislatures, whether Central or Provincial, the British Parliament alone being competent to legislate with respect to them. We were in other words invited to construe the expression "land" in entry No. 21 of the Provincial List as "land other than permanently settled lands". As held by this Court in *Hulas Narain Singh* v. *Province of Bihar*(1) the Permanent Settlement Regulation is an ordinary piece of Indian legislation and did no more than give an assurance to the *zamindars* that the *jama* assessed upon their lands was to remain fixed in perpetuity and would not be liable to enhancement. It is true that the Regulation declared that the *zamindars* would be full owners and proprietors of their estates, but this declaration could not possibly be construed as excluding or in any manner restricting or cutting down the authority of the appropriate Legislature in respect of these lands.

(1) [1942] 5 F. L. J. F.C. 1.

Nor can we discover in the provisions of the Constitution, Act any warrant for the proposition advanced before us.

Our attention was invited to the concluding portion of Article I of Regulation II of 1793, where it is stated, "No power will then exist, in the country, by which the rights vested in the landholders by the Regulation can be infringed or the value of landed property affected". It was suggested that this amounted to a declaration that among other matters the right of the *zamindar* to collect rent at the rates prevailing at the date of the Regulation would not at any subsequent date be adversely affected by any exercise of executive or legislative authority. Having regard to the context in which this sentence occurs we do not think that it is capable of bearing that interpretation. The regulation is described in the title as one "for abolishing the Courts of Maal Adawlut or Revenue Courts, and transferring the Trial of the Suits which were cognizable in those Courts to the Courts of Dewanny Adawlut; prescribing Rules for the conduct of the Board of Revenue and the Collectors". Article I sets out the object of the Regulation at considerable length. After stating that for the purpose of securing improvement in agriculture, the property in the soil had been declared to be vested in the landholders and the revenue payable to Government from each estate had been fixed for ever, the Article goes on to describe the procedure that had theretofore been followed in making assessment, determining the share of the landholder in the produce of the lands and for the settlement of disputes relating to these matters. It then declares that henceforth revenue officers would no longer be competent to exercise judicial functions for the purpose of determining disputes of this kind. "Government must divest itself of the power of infringing, in its executive capacity, the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders. The revenue officers must be deprived of their judicial powers". It is in this context that the sentence relied upon by counsel occurs. It obviously means no more than that the privileges which had been conferred upon and secured

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to the landholders would not be liable to encroachment by revenue officers, and that any disputes concerning them that might arise would be determined by courts of judicature and not by the revenue officers themselves.

It was also contended that the indirect effect of the impugned section was to affect adversely the landholders' capacity to meet their obligation under the Permanent Settlement in respect of the payment of the *jama* and that this amounted to an abrogation of the Permanent Settlement. The short answer is that even if the impugned section had this effect, that would be no reason for holding that the section was either *ultra vires* the Provincial Legislature or was invalid. We do not however consider that the impugned section has in any manner affected assurances given to the landholders by the Permanent Settlement Regulation. Indeed, the first part of Article VII of the Regulation itself contemplates the possibility of legislation of the kind to which objection is now being taken. It is there declared, "It being the duty of the ruling power to protect all classes of people, and more particularly those who from their situation are most helpless, the Governor-General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependent talookdars, ryots, and other cultivators of the soil; and no zamindar, independent talookdar, or other actual proprietor of land, shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay". It has been suggested that the "protection of ryots" contemplated in this passage is only against the imposition of *abwabs* and other illegal exactions. We see no reason for thus limiting the general reference to the "protection and welfare" of ryots. Indeed *abwabs* and illegal exactions have been expressly dealt with in Articles LIV and LV of Regulation VIII of 1793 of the same date. The impugned section is thus not only not in conflict with any provision of the Permanent Settlement Regulation but is in consonance with the intention and spirit of Article VII of the Regulation.

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We hold that s. 178-B of the Bihar Tenancy Act was within the competence of the Bihar Legislature and was validly enacted and is operative as much in respect of lands comprised within the permanently settled estates as in respect of lands outside these estates. This appeal is dismissed.

Defendants-respondents did not enter an appearance in this Court. The Advocate-General of Bihar appeared and addressed us on behalf of the Province of Bihar in response to a notice issued by this Court. In these circumstances, and in accordance with the usual practice of this Court, we make no order as to costs:

Appeal dismissed.

Agent for the Appellants: *Tarachand Brijmohanlal.*

Agent for the Province of Bihar: *S. P. Varma.*

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VENUGOPALA REDDIAR AND ANOTHER

v.

KRISHNASWAMI REDDIAR *alias* RAJA CHIDAMBARA REDDIAR AND ANOTHER.

[SIR MAURICE GWYER C. J., SIR SRINIVASA VARADACHARIAR AND SIR MUHAMMAD ZAFRULLA KHAN, JJ.]

Government of India Act, 1935, ss. 46 (2), 205—Interpretation Act, 1898, s. 38—Government of India (Adaptation of Indian Laws) Order, 1937, Art. 10—Civil Procedure Code, 1908, s. 17—Burma—Separation of Burma—Suit instituted in Court in South India in 1932 regarding properties situated in Burma and South India—Separation of Burma in 1937—Jurisdiction of Indian Court to proceed with trial regarding properties situated in Burma.

Where a suit, the subject-matter of which comprised immoveable properties situated partly in Burma and partly within the jurisdiction of a Court in South India, was duly instituted in the South Indian Court, and during the pendency of the suit the Government of India Act, 1935, came into force and Burma ceased to be part of India from 1st April 1937: