

## THAKUR JAGANNATH BAKSH SINGH

v.

## THE UNITED PROVINCES.

[SIR PATRICK SPENS C.J., SIR SRINIVASA VARADACHARIAR  
and SIR MUHAMMAD ZAFRULLA KHAN JJ.]

*Federal Court—Leave to appeal to His Majesty in Council—  
Practice—Grant of leave depends on the facts and circumstances  
of each case.*

The question of grant of leave to appeal to His Majesty in Council must be dealt with on the facts and circumstances of each case and it is neither possible nor desirable to crystallize the rules relating to the exercise of the Court's discretion in the matter.

Their Lordships granted leave as the case involved not only a question as to the interpretation of the Constitution Act but broader questions relating to a controversy which had long been agitated in the Courts in India, namely, the nature and extent of the rights secured to Taluqdars by the Oudh Settlement and the extent of the immunity thereby secured to them from legislative interference, pecuniary interests of very large value were also involved, and a very large number of people were vitally interested in the decision of these questions.

*Prabhatchandra Barua v. King Emperor* ( <sup>1</sup> ) referred to.

APPLICATION for leave to appeal to His Majesty in Council.

This was an application for leave to appeal to His Majesty in Council under s.208 (b) of the Government of India Act, 1935, from the judgment of the Federal Court dated the 22nd April, 1943, in Case No. XI of 1942, *Thakur Jagannath Baksh Singh v. The United Provinces*. The applicant alleged that the question involved in the suit and the appeal, namely, the validity of the United Provinces Tenancy Act (XVII of 1939) was of great importance to a great mass of people of the province and involved a substantial question of law relating to the interpretation of the Government of India Act, 1935. The applicant desired to appeal on the following grounds :—

(<sup>1</sup>) [1930] I. L. R. 58 Cal. 430; 57 Ind. App. 228.

1943

*Thakur  
Jagannath  
Baksh  
Singh  
v.  
The  
United  
Provinces*

1943

*Thakur  
Jagannath  
Baksh  
Singh  
v.  
The  
United  
Provinces.*

“(1) As it was admitted by counsel on behalf of the Government and assumed by the Federal Court that the provisions of the Act did cut down the absolute rights granted to the Taluqdars by the Sanads it should not have been held that the impugned legislation fell within entry No. 21 of the Provincial Legislative List, as any legislation in order to be within that List should have recognized as beyond the scope of any further legislation the rights already granted, and the Legislature could only legislate keeping in view as fixed points what had already been granted by the Sovereign power.

(2) It was the Taluqdars' contention that the Provincial Legislature could only regulate or legislate on the relations between landlord and tenant in so far as they were open matters, capable of being adjusted and under guise of legislating on the relations between landlord and tenant the legislature had no right to entrench upon what at the time were the recognized rights of the Taluqdars in the lands covered by their Sanads.

(3) The provisions of s. 299(2) are a sufficient indication of the limitations on the power of the legislature and are not confined to the acquisition of land for public purposes and it is not a sufficient answer to the spirit of the section to point out that the impugned Act was merely regulating the relation of landlord and tenant, and only incidentally diminishing thereby the rights which the landlord had hitherto exercised for, in fact and in effect, it was the confiscation of the rights of the Taluqdars and the granting of them to others who had no such rights.

(4) Section 300 of the Constitution Act warrants the view that Parliament did not intend the executive action of the Crown to be questioned by legislation, and whatever may be the general rule as to the right of the Crown in its legislative capacity to derogate from a grant in its executive capacity, s. 300 was intended to form an exception to the general rule if there is any such, and the cases relied

on are not authority for the extreme proposition that in no case can the doctrine of derogating from one's own grant be applied against the exercise of legislative action contrary to an executive grant.

(5) The British Parliament when granting legislative powers to the different Legislatures in British India may, as a matter of policy, have decided not to make grants made hitherto subject to modification or extinction by any of the legislatures, and this is a very important question that arose for decision and has not been given the full consideration that it deserved.

(6) The Constitution Act by expressly reserving to the Executive the power to derogate from a Crown grant, must be taken to have excluded legislative interference with it.

(7) The decision with regard to the effect of the Crown Grants Act does not take into consideration many of the arguments based on its provisions, and in particular the argument that any legislation contrary to its provisions would be ineffectual and void, and the Federal Court has erred in holding that nothing in the Crown Grants Act could limit the power of a Legislature to pass such legislation as it thought fit thereafter if by that is meant that the force and effect of a Crown grant could be nullified by an Act of the Provincial Legislature.

(8) The pith and substance of the impugned Act, is the confiscation of rights granted by the Crown and it is only a colourable exercise of jurisdiction to invoke entry No. 21 of the Provincial List.

(9) The Federal Court has not decided in detail certain specified sections impugned as *ultra vires* and in particular those sections that empowered the Local Government to do certain acts which according to s.300 could only be done by the Governor in the exercise of his individual judgment".

1943. Nov. 1. *Pyare Lall Banerji* (K. K. Raizada with him) for the applicant. This is an application for leave to appeal to the Privy Council. There is

1943.

*Thakur  
Jagannath  
Baksh  
Singh  
v.  
The  
United  
Provinces.*

1943  
 Thakur  
 Jagannath  
 Baksh  
 Singh  
 v.  
 The  
 United  
 Provinces.

difference between certifying a case as fit for appeal and merely granting leave to appeal. There are no conditions to be fulfilled before leave to appeal could be granted. There are several cases where leave has been granted under the Administration of Justice Appeals Act, 1934, of the United Kingdom. Whenever there is a question of law, leave is granted. The granting of leave is more or less a formality. There is no necessity to certify that the case is a fit one for appeal as in the case of appeals under s. 205 of the Government of India Act.

[VARADACHARIAR J. There are important questions in this case other than the interpretation of the Constitution Act or the Rules.]

*Attorney-General for Alberta v. Attorney-General for Canada* (<sup>1</sup>), a ruling which has an important bearing on this case, was not cited at all at the previous hearing. It was held in this case that curtailing rights of reversion to the Crown is *ultra vires* even though the legislature has power to legislate in respect of succession. Altering succession is one thing and depriving Crown of the rights of reversion is a different thing. The Legislature has in this case confiscated the rights of Taluqdars under the Sanads in the guise of legislating in relation to landlord and tenant. The case is not covered by entry No. 21 of the Provincial Legislative List. The Indian Legislature has no power to take away rights conferred by Government Sanads.

*Dr. Narain Prasad Asthana, A.-G. of the United Provinces* (Sri Narain Sahai with him) for the respondent. The Act came into force long ago, in 1940. It has not been attacked by other Taluqdars and rights have been settled and adjusted in several instances in accordance with the Act. It should not be disturbed now. The practice of the Court is not to grant leave unless difficult questions of law are involved: *Subrahmanyam Chettiar v. Muttuswami Goundan* (<sup>2</sup>). The only relief claimed in the case was that the Act was *ultra vires*.

(<sup>1</sup>) [1928] A.C. 475.

(<sup>2</sup>) A. I. R., 1941 F. C. 69.

VARADACHARIAR J. This case comes under the second category mentioned in that case, namely, 'cases which are likely to affect a large number of interests'. We are aware of the local difficulties. The question raised is of great importance to the province.

ZAFRULLA KHAN J. In the matter of leave it is what we think on the whole case that counts.

SPENS C. J. Leave will be granted. Judgment will be pronounced tomorrow.

Nov. 2. The judgment of the Court was delivered by SPENS C. J. This is an application by one of the Taluqdars of Oudh for leave to appeal to His Majesty in Council against the decision of this Court, dated the 22nd of April, 1943, in what may be conveniently referred to as the United Provinces Tenancy Act litigation. In 1939, the United Provinces Legislature enacted a comprehensive law (United Provinces Tenancy Act, 1939, No. XVII of 1939) dealing with the rights of landholders and tenants in that Province. The Taluqdars contended that several of the provisions of that Act seriously curtailed their pre-existing rights under sanads issued to them at the time of the Oudh Settlement and one of them filed the suit for a declaration that the Act or at least certain of its provisions were *ultra vires*, invalid and inoperative. It was urged in support of this claim that this legislation did not fall under entry No. 21 of List II of the Seventh Schedule to the Constitution Act and that some of the impugned provisions were opposed to the spirit, if not the letter, of ss. 299(2) and 300(1) of the Constitution Act. Reliance was also placed on the broader ground that the doctrine that a grantor might not derogate from his own grant applied even to limit legislative powers and it was lastly contended that in view of the provisions of s. 3 of the Crown Grants Act, 1895, the rights of the Taluqdars must be held to be unaffected by the provisions of the tenancy Act. These contentions

1943.

*Thakur  
Jagannath  
Baksh  
Singh  
v.  
The  
United  
Provinces.*

1943  
 Thakur  
 Jagannath  
 Baksh  
 Singh  
 v.  
 The  
 United  
 Provinces.

were overruled by the trial court as also by this Court. Hence this application for leave to appeal to His Majesty in Council.

Oposing the application, the Advocate-General of the United Provinces maintained that the circumstances of the present case differed in no material respect from some of the previous cases in which this Court had declined to grant leave and he drew our attention to the reasons given in some of those cases. Those very judgments make it clear that the question of grant of leave to appeal must be dealt with on the facts and circumstances of each case and that it is neither possible nor desirable to crystallize the rules relating to the exercise of the Court's discretion in the matter. The present litigation involves not only a question as to the interpretation of the Constitution Act, but broader questions which bear on a controversy which has long been agitated in the courts in India, namely, the nature and extent of the rights secured to Taluqdars by the Oudh Settlement and the extent of the immunity thereby secured to them from legislative interference. The affidavit accompanying the present petition for leave makes it clear that the decision in this case must affect pecuniary interests of very large value. The number of people (Taluqdars and tenants) vitally interested in the decision of this question is undoubtedly very large and it is inevitable that this controversy which has been acute in this country for some years must arise again and again every time that the legislatures in India attempt to deal with the rights of landholder and tenant in some of the Indian Provinces. The judgment of the Lordships of the Judicial Committee in *Prabhatchandra Barua v. King Emperor* (1) has not touched upon the questions raised in the present litigation. All these circumstances make this a case in which in our judgment leave should be granted. Leave is accordingly granted.

*Leave granted.*

Agent for the applicant: *B. Banerji.*

Agent for the respondent: *Sumair Chand Jain.*

(1) [1930] 57 Ind. App. 228; I.L.R. 58 Cal. 430.