(1962) 12 AHC CK 0008

Allahabad High Court

Case No: Civil Miscellaneous Writ No. 1058 of 1958

Sucha Singh		APPELLANT
	Vs	
Administrative Officer, Afzalgarh Colonization Scheme, Bijnor and Others		RESPONDENT

Date of Decision: Dec. 21, 1962

Acts Referred:

- Constitution of India, 1950 - Article 14
- Uttar Pradesh Public Land (Eviction and Recovery of Rent and Damages) Act, 1959 - Section 16, 17

Citation: AIR 1963 All 528

Hon'ble Judges: M.C. Desai, C.J; S.D. Singh, J; G. Oak, J

Bench: Full Bench

Advocate: Shanti Bhushan, for the Appellant; S.N. Kakkar, for the Respondent

Final Decision: Dismissed

Judgement

M.C Desai, C.J.

This petition has been laid before this bench at the instance of our brother Broome who was of the view that the decision of this Court in Bir Pratap Singh v. State of Uttar Pradesh 1960 All LJ 52 required reconsideration in view of the pronouncements of the Supreme Court in Manna Lal and Another Vs. Collector of Jhalawar and Others, and Nav Rattanmal and Others Vs. The State of Rajasthan, .

2. The petition is for certiorari to quash certain orders of the Additional Collector, Bijnor, and the District Judge Bijnor, and mandamus requiring them and others to refrain from interfering with the possession of the petitioner and his partners over certain land in village Azamullah Nagar, or, in the alternative, to restore possession over it to them. It arises in the following circumstances. The land in dispute in the

petition, measuring about 343 bighas, is a portion of land measuring about 800 acres in village Azamullah Nagar of Bijnor district in respect of which the proprietors of the village had executed a registered lease for 20 years on 27-3-1950 in favour of two persons, Ravi Khanna and Harbans Singh. The lessees took the petitioner and the pro forma opposite parties, Randhir Singh etc., as their partners. In September 1951 the entire land of the village was acquired under the Land Acquisition Act by the State of U.P. for settling thereon demobilised personnel and possession over it was taken by the Colonisation Department of the State in November 1951. The land in dispute is said to have been lying fallow in the end of June 1951, though in possession of the petitioner and the pro forma opposite parties. On 2-2-1957 a notice u/s 4(1) of the U.P. Government Land (Eviction and Recovery of Rent) Act of 1953 was issued on behalf of the State alleging that possession of the petitioner (and the pro forma opposite parties) over the land in dispute was unauthorised and calling upon them to vacate it within a month. The petitioner etc. replied to the notice contending that they were in cultivatory possession, that after the notification u/s 4(1) of the Land (Eviction and Recovery of Rent) Act had been issued a compromise was reached between the Colonisation Committee and the petitioner and others, that by virtue of if the land in dispute was released in their favour and that consequently their possession was not unauthorised. The Additional Collector dismissed their objection on 21-5-1957, holding that their possession was unauthorised and on 7-6-1957 ordered their eviction and passed a decree for damages against them. The petitioner and others appealed to the District Judge, who dismissed the appeal in December 1957. The State took formal possession on 7-1-1958. On 31-3-1958 the petitioner presented the petition. The orders of the Additional Collector and the District Judge referred to above are the orders sought to be quashed. The petitioner denied that he has lost actual possession, but in view of the formal delivery of possession taken by the State on 7-1-1958 claimed in the alternative the relief of possession. He attacked the Government Land (Eviction and Recovery of Rent) Act of 1953 (to be referred to as ''the Act of 1953'') as unconstitutional on account of its infringing his Fight to equal protection of the law and equality before the law guaranteed by Article 14 of the Constitution, claimed adhivasi rights under the U.P. Land Reforms (Supplementary) Act, 1952, which matured into sirdari rights under the Zamindari Abolition (Amendment) Act of 1954 and contended that the land in dispute had been released from acquisition under the Land Acquisition Act. The petition was opposed on behalf of the opposite parties, barring the pro forma opposite parties. They denied that any land was released from acquisition proceedings in favour of the petitioner and others and contended that actual possession was taken on 7-1-1958.

3. The Act of 1953 was enacted to provide for speedier process for eviction from Government land of persons occupying it without authority. By Section 4(1)(b) the competent authority was authorised to require a person in unauthorised occupation of any Government land by a notice to vacate it within 30 days. If the person failed

to comply with the requisition, the competent authority was authorised by Sub-section (2) to order his eviction in accordance with the provision of Section 7(2) of the Government Premises (Rent Recovery and Eviction) Act, 1952, (to be referred to as ''the Act of 1952'') to evict him. This Act of 1952 was enacted to provide for eviction of persons in unauthorised occupation of Government buildings. By Sub-section (1) of Section 7 of it the competent authority is authorised to require a person in unauthorised occupation of Government buildings to vacate within 30 days, and, on his failure, to order his eviction from them.

4. The Act of 1953 was declared unconstitutional by Gurtu and Rov. JJ. in the case of Bit Pratap Singh, 1960 All LJ 52 referred to above. The gist of the decision is as follows:

There is a material difference between procedure for eviction of an ordinary trespasser through a suit in a regular civil Court and that for eviction of a trespasser on Government land under the Act of 1953 and this difference is to the prejudice of the trespasser. The reason given by the legislature for making the distinction is the necessity for a speedier process for eviction of trespassers on Government land. Though it was stated in the prefatory note of the Bill that the existing procedure for eviction of trespassers involves delay to the detriment of public interest and continued occupation of trespassers of Government land interferes with its planned use, the preamble of the Act contains no reference to interference with planned use of Government land or the public interest and the Act contains no provision to suggest that it was meant to be applied only to land, possession over which was immediately required for planned use or in public interest. Consequently the procedure prescribed in the Act is to be applied to all land, including land immediate possession over which is hot required for planned use or in public interest. The classification of trespassers into those on Government land and others, is, therefore, hit by Article 14, as held in The State of West Bengal Vs. Anwar Ali Sarkar, The necessity of speedier eviction from Government land does not justify the division of trespassers into two classes made by the Act of 1953. Hence the Act of 1953 infringes Article 14 of the Constitution and is ultra vires the Constitution.

5. In view of the above decision the legislature enacted the Uttar Pradesh Public Land (Eviction and Recovery of Rent and Damages) Act, 1959 (to be referred to as the Act of 1959), which came into force on 5-9-1959. It is called an Act "to provide for the eviction of unauthorised occupants from public land and for certain other incidental matters", and its preamble is to the effect that delay in recovery of possession of public land capable of being used for agricultural purposes and immediately required for planned use, rehabilitation of displaced persons, distribution amongst landless agricultural labourers, co-operative farming and other public purposes with a view to ensure greater food production and more equitable distribution of the land is detrimental to the achievement of the aforementioned public purposes. Section 3 of it provides that when the public authority is of the

opinion that public land is in unauthorized occupation of any person and is required for one or more public purposes of the Act, it may, by notice in writing, require him to show cause why an order of his eviction may not be passed. By Sub-section (2) the notice is required to specify the grounds on which the order of eviction is proposed to be made. Section 4 provides that if the person fails to show cause the public authority may order him to vacate the public land. If he fails to comply with it force may be used by the public authority to compel him to vacate. Section 5 gives him a right of appeal and Section 6, other incidental rights. If while showing cause, he alleges that the land is not public land the question is required by Section 7 to be referred to the Civil Judge having jurisdiction. By Sub-section (1) of Section 16 the Act of 1953 is repealed. Section 17, which is important, lays down that notwithstanding the repeal of the Act of 1953 "(a) all actions taken, orders passed, proceedings initiated in all cases..... whether disposed of or pending, shall be deemed to be actions taken ..... under and in accordance with the provisions of this Act (b) all proceedings and appeals under the aforesaid Act ..... shall be continued, heard and decided, as the case may be, as proceedings under and in accordance with the provisions of this Act; as if this Act had been in force on all material dates".

6. A doubt on the correctness of the decision in Bir Pratap Singh''s case 1960 All LJ 52 (supra) has been cast by observations made by the Supreme Court in Manna Lal and Another Vs. Collector of Jhalawar and Others, . In that case a notice was issued against Manna Lal under the Rajasthan Public Demands Recovery Act, 1952, to recover from him a public demand due on account of loan taken by him from the Jhalawar State Bank. The bank was started in 1932 in Jhalawar, which was a ruling State when the present State of Rajasthan was formed. The assets of the Jhalawar State Bank vested in the State of Rajasthan and the money to be recovered from Manna Lal became money recoverable as a public demand within the meaning of the Rajasthan Public Demands Recovery Act. The procedure prescribed in the Act for the recovery of public demands was simpler than the procedure to be followed by a Court in a suit for recovery of money. It was contended on behalf of Manna Lal that the Rajasthan Public Demands Recovery Act was hit by Article 14 of the Constitution, because it made a distinction between money due to the State Bank and money due to other banks and persons. This contention was repelled by the Supreme Court, which, speaking through Sarkar, J., observed at page 831:

"the Government, even as a banker, can be legitimately put in a separate class. The dues of the Government of a State are the dues of the entire people of the State. This being the position, a law giving special facility for the recovery of such dues cannot, in any event, be said to offend Article 14 of the Constitution."

I think the same principle applies in the present case. The petitioner tried to distinguish between Manna Lal and Another Vs. Collector of Jhalawar and Others, and the present case on the ground that Manna Lal and Another Vs. Collector of Jhalawar and Others, was concerned with money and there is no distinction

between money and money, while the instant case is concerned with land and all lands are not of the same utility and importance. It is true that when a State receives monies from various sources, such as taxes, revenue, business carried on by it as a banker etc. they get mixed up and lose their identities and the same cannot be said about lands owned by Government, because they differ in their utility and importance. -But this difference between money and land does not mean that the principle applied in Manna Lal and Another Vs. Collector of Jhalawar and Others, cannot be applied in the instant case. The essential question before us is whether the distinction between, Government carrying on banking business and private persons carrying on banking business is so different from the distinction between persons trespassing upon Government land and persons trespassing upon private land that if the former distinction is said to be not offending against Article 14, the latter distinction may be held to be offending against Article 14. The ultimate value of land lies in money that it produces. If a person trespasses upon Government land, Government lose money which they would have realised otherwise from its use. Just as Government can be constitutionally differentiated from other people in respect of claim to money, so also Government can be differentiated from other people in respect of claim to recover possession over land illegally occupied. Land belonging to Government is land belonging to the entire public of the State and a law made in the interest of the entire public of the State cannot be said to be discriminatory. It cannot be discriminatory unless there is somebody against whom it is discriminated, and when it is made in the interest of all people of the State there is left nobody against whom it can be said to be discriminatory.

7. In the other case of Nav Rattanmal and Others Vs. The State of Rajasthan, the constitutionality of Article 149 of the Limitation Act prescribing a much larger period of limitation for suits to be brought by Government was attacked as offending against Article 14 of the Constitution. The Supreme Court held that the Article was not unconstitutional. Ayyangar, J. delivering the judgment of the Court observed:

"in the case of the Government if a claim becomes barred by limitation, the loss falls on the public, i.e., on the community in general and to the benefit of the private individual who derives advantage by the lapse of time. This itself would appear to indicate a sufficient ground for differentiating between the claims of an individual and the claims of the community at large. Next, it may be mentioned that in the case of governmental machinery, it is a known fact that it does not move as quickly as in the case of individuals."

Same arguments can be advanced in the instant case. The ordinary procedure for evicting a trespasser is highly dilatory and it is a notorious fact that litigation remains pending for years and that a person does not really succeed in evicting a trespasser from his land until the matter has passed through several Courts, each taking years to decide the dispute. With suits giving rise to first appeals, second appeals and revisions and then petitions for writs with special appeals and orders

staying execution of decrees, a person would be fortunate if he succeeds in getting possession back from a trespasser in less than ten years. It would be the public that will suffer and it would be a private individual -- the trespasser -- who will gain. In the case of a trespasser on private land, it is only one individual who suffers on account of the delay. A distinction made by the legislature between loss caused to an individual and loss caused to the whole public by enacting a special procedure to be followed by Government in evicting trespassers upon Government or public land is a rational one.

8. In the case of Bir Pratap Singh 1960 All LJ 52 (supra) the learned Judges stressed the fact that the preamble contained no reference to interference with planned use of Government land of public interest; but this was not essential at all. The legislature when making a rational distinction between one class and another is not required to state the basis for the distinction in the preamble, for it is well settled that a law will be held to be constitutional if on a reasonable hypothesis it can be thought to be constitutional. Every presumption is in favour of the constitutionality of an Act and the onus lies upon one who assails it to show that it is unconstitutional. McKenna, J in Rast v. Van Deman and Lewis Co. (1915) 60 Law Ed 679 at p. 687 observed :

"It is established that a distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it, and the existence of that state of facts at the time the law was enacted must be assumed."

Stone, J. observed in Metropolitan Casualty Insurance Co. v. Brownell (1934) 79 Law Ed. 1070 that the burden of establishing the unconstitutionality of a statute rests on him who assails it and that Courts may not declare a legislative discrimination invalid unless, viewed in the light of facts made known or generally assumed, it is of such a character as to preclude the assumption that the classification rests upon some rational basis within the knowledge and experience of the legislators, To the same effect are the observations of C. J, Hughes in Borden''s Farm Products Co. v Baldwin (1934) 79 Law Ed 281 (288). Among the latest decisions of the Supreme Court of U.S.A. on this point is Morey v. Doud (1957) 1 Law Ed 24, 1485 (1490) where it was laid down that when the classification can be sustained by a state of facts to be reasonably assumed the state of facts must be assumed. Here the case was stronger far upholding the constitutionality of the statute because the facts stated in the prefatory note of the bill themselves made out a rational distinction between trespassers upon public land and trespassers upon private land; the basis for the distinction was not even left to be imagined. With great respect to the learned Judges I cannot subscribe to the view that Government have not the same necessity for being immediately restored to possession over land of every description illegally occupied and that the legislature ought to have distinguished between land over which immediate restoration of possession was necessary and remaining land and should have applied the provisions of the statute only to land of the former class.

"That a law may work hardship and inequality is not enough. Many valid laws, from the generality of their application, necessarily do that, and the legislature must be allowed a wide field of choice in determining the subject-matter of its laws, what shall come within them, and what shall be excluded" (Per Day, J. in Jeffrey Manufacturing Co. v. Blagg (1914) 59 Law Ed 364 at p. 369).

As pointed out in Great Atlantic and Pacific Tea Co. v. A. L. Grosjean (1936) 81 Law Ed 1193 a legislature is not required to make meticulous adjustments in an effort to avoid incidental hardships, it being enough that the classification has reasonable relation to the differences. The reason is that Article 14 restrains not the normal exercise of governmental power but only abuse in the exertion of their authority (see Louisville and Nashville Railroad Co. v. S. Melton (1909) 54 Law Ed. 921 at p. 938. A state is not bound by any rigid equality and the only limitation on its power is that it must not be exercised in clear and hostile discriminations between particular persons and classes (see Citizens'' Telephone Co. v. Fuller (1912) 57 Law Ed. 1206). I am unable to find any such abuse of power and hostile discrimination in the Act of 1953. Acquiring possession over any land amounts to acquiring money and it was conceded that in respect of acquisition of money a State Government can be discriminated from an individual. Since acquiring any land means acquiring money, there can hardly be any question of distinguishing between land and land; even if Government do not need a certain piece of land urgently for planned use, they always need it urgently for acquiring money. As there is always justification for speed in Government''s acquiring money due to them, there is always justification for speed in their acquiring possession over their land illegally occupied. It has been customary to distinguish between Government and an individual, vide Sections 80 and 89, C. P.C., provisions in the Land Revenue Act and other Acts regarding recovery of Government dues, Article 149 of the Limitation Act, provisions in the Land Acquisition Act, etc. and Article 14 is not to be a greater hamper upon the established practices of the States; see Interstate Consolidated Street Railway Co. v. Commonwealth of Massachusetta. (1907) 52 Law Ed. 111. I am of opinion that the law laid down in Bir Pratap Singh''s case 1960 All LJ 52 should not be accepted as correct law.

9. Sri Shanti Bhushan contended that in this case we are no longer concerned with the constitutionality of the Act of 1953 and that the validity of the impugned orders is to be judged in the light of the provisions of the Act of 1959. This contention exposes a lurking fear in the mind of Sri Shanti Bhushan that the Act of 1953 might not be unconstitutional. He now wants the validity of the orders to be judged in the light of the Act of 1959, because the formalities prescribed by it have not been carried out in the instant case, for the simple reason that it came into force much later after the orders were passed. Not only were the orders passed but even possession was taken by Government before the Act was enacted in 1959. Even this petition was filed before the Act was enacted. The contention of the learned counsel must be rejected. The orders are impugned on the ground that the Act of 1953 was

unconstitutional and not on the ground that they are not valid according to the provisions of the Act of 1959. The orders are in accordance with the provisions of the Act of 1953 and, if that Act is held to be constitutional, the attack on the orders must fail, even though they may not be in accordance with the Act of 1959. If they are valid according to the Act of 1953 it is not necessary at all to go into the question whether they are valid according to the Act of 1959, because the later Act was enacted with the sole object of validating invalid orders passed under the earlier Act. Certainly it was not the object of the later Act to invalidate valid orders passed before its enactment. There is nothing in the provisions of Section 17 of the Act of 1959 to prevent the validity of the impugned orders being judged on the basis of the provisions of the Act of 1953. Since all proceedings were complete before the Act of 1959 was enacted, the case would be governed, if at all, by Clause (a) of Section 17 of the Act of 1959 and the only effect would be that all orders passed and all actions taken shall be deemed to be orders passed & actions taken under, and in accordance with, its provisions. The constitutionality of the Act of 1959 has not been challenged before us and once orders passed and actions taken in the instant case are deemed to be orders passed and actions taken in accordance with the provisions of it, there is nothing left on the basis of which they can be attacked. Whether the formalities prescribed by it were gone through or not, they are deemed to have been gone through. In view of the provisions in Clause (a) of Section 17 there cannot arise any question of non-compliance with the provisions of the Act of 1959. Clause (b) of Section 17 is not applicable, because what was pending when the Act of 1959 came into force was only this petition, which is not a proceeding or appeal under the Act of 1953.

10. The case may be sent back to the bench concerned with the answer that the U.P. Land (Eviction and Recovery of Rent) Act of 1953 was constitutional, that 1960 All LJ 52 does not lay down the correct law and that the impugned orders are valid also according to the Uttar Pradesh Public Land (Eviction and Recovery of Rent and Damages) Act, 1959, the constitutionality of which is not in question.

S.D. Singh, J.

11. I agree.

V.G. Oak, J.

12. I agree that the U.P. Land (Eviction and Recovery of Rent) Act of 1953 was constitutional, and that 1960 All LJ 52 should be overruled.

13. I express no opinion as to whether the impugned orders are valid under the Uttar Pradesh Public Land (Eviction and Recovery of Rent and Damages) Act, 1959 also.