STATE OF WEST BENGAL

v.

SUDHIR CHANDRA GHOSE & ORS.

November 9, 1976

[H. R. KHANNA AND V. R. KRISHNA IYER, JJ.]

West Bengal Estates Acquisition Act 1953—Section 2(h)—Ss. 3, 4, 5—Encumbrance—Meaning of Interpretation of statutes construction of land reforms statute—Whether amplitude can be cut down.

Certain estate in a village was acquired under the West Bengal Estates Acquisition Act, 1953. Section 3 of the said Act provides that the provisions of that Act shall have effect notwithstanding anything to the contrary contained in any other law or contract expressed or implied or any instrument or any usage or custom. Section 4 authorises the State Government by a notification to declare that all estates and the rights of every intermediary in each such estate shall vest in the State free from all encumbrances. Section 5 provides that on publication of such a notification the estates to which the declaration applies shall vest in the State free from all encumbrances. Section 2(h) defines an encumbrance as under :

> " 'incumbrance' in relation to estates and rights of intermediaries therein does not include the rights of a raiyat or of an under-raiyat or of a non-agricultural tenant, but shall, except in the case of land allowed to be retained by an intermediary under the provisions of section 6, include all rights or interests of whatever nature, belonging to intermediaries or other persons, which relate to lands comprised in estates or to the produce thereof."

The respondents, some of the villagers, filed a suit against the appellant in a representative action claiming that the agrarian community in the village has always been enjoying the right of pasturage over the suit estate and that the said right survived in spite of the notification under the Act. The appellants contended that no such right survived after the publication of the notice and in any event, even if such a right amounted to an incumbrance it came to an end by virtue of section 5 of the Act. According to the respondents the said right was not an incumbrance within the meaning of the said Act and according to the appellant it was an incumbrance. The suit and the appeal filed by the respondents were dismissed. The High Court, however, allowed the Second Appeal filed by the respondents.

Allowing the appeal by Special Leave,

HELD : (1) The great socio-economic objective of the Act if it is to be successful as a land reform measure requires that all the rights must vest fully in the State. [74A-C]

(2) From the perspective of land reform objective, a specious meaning is derived by the definition of incumbrance. Ordinarily the court cannot cut down the definitional amplitude given in the statute and there is no reason for departing from the said golden rule. The Legislature used the expression incumbrance in its widest amplitude to cast the net wide so as to catch all rights and interest whatever be their nature. [74C-G]

(3) There is no substance in the contention of the respondent that the collective, though uncertain body of villagers cannot be brought within the expression "or other persons". The expression "intermediaries or persons other than intermediaries" embraces all persons, and the villagers who seek to exercise the right of grazing over the intermediaries' lands are plainly "other persons". [73-G-H]

(4) The conclusion of the High Court that the grazing right is a customary right does not carry the case of the respondents any further because the provisions of section 3 operate notwithstanding any usage or custom to the contrary. [76-D-F]

A The Court observed that the present appeal raises a human problem and as 'grazing' right is an important aspect of agrestic life the State should try to provide alternative grazing grounds to villagers when such rights are taken away. [76A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1753 of 1968

B Appeal by Special Leave from the Judgment and Order/Decree dated the 6th September, 1967 of the Calcutta High Court in Appeal from Appellate Decree No. 689 of 1964)

S. C. Majumdar and *G. S. Chatterjee* for the Appellant.

Sukumar Ghose for Respondents 1-3.

C The Judgment of the Court was delivered by

KRISHNA IYER, J. This appeal, by special leave, from the judgment of a Single Judge of the Calcutta High Court, raises a single legal issue with human overtones. The State of West Bengal is the appellant at this the fourth and final deck of the judicial pyramid, having won the case as the 5th defendant at the earlier stages of the litigation but lost in the High Court. The question, shortly put, is whether the vesting of estates in the State under ss.3, 4 and 5 of the West Bengal Estates Acquisition Act, 1953 (West Bengal Act I of 1954) (abbreviated for reference hereinafter as the Act) extinguishes the right of cattle grazing enjoyed by villagers in the grasslands of such estates on the ground that such right amounts to 'incumbrance' within s.2(h) of the Act.

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The facts

An estate in village Vadurerpati Madhabpur in the district of Hooghly was among those vested in the State on a notification under s.4 of the Act, free from all encumbrances as provided in ss.4 and 5. The Plaintiffs-respondents are some of the denizens of the said village and, in this representative action, claim that the agrarian community there have always enjoyed the right of pasturage over the suit estate and pray for the relief of injunction restraining the 5th defendant-appellant from interfering with the exercise of the right to graze, as enjoyed before. The State, however, denies the survival of such a right even if it did exist on the score that the fatal impact of s.5 has terminated all incumbrances on the estate and the right to graze cattle belonging to the villagers is but an "incumbrance' as defined in s.2(h) of the Act. Thus the bone of contention between the parties is whether the collective claim of the villagers to graze their cattle on an estate vested in the State under the Act falls within the definition of 'incumbrance'. If it does, the suit deserves to be dismissed but, if it does not, the High Court's view is correct and the case has to be sent back for consideration on the merits. We may mention, for completeness' sake. that defendants 1 to 4 are persons in whom the estate has been allegedly settled by the State, although this position is not clear or perhaps is denied by the State itself.

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The issue, in a nut-shell, is as to what is an 'incumbrance'. But this question, in the light of the definition which we will presently reproduce, resolves itself into two issues which will be self-evident as we read the provision:

> " 2(h) In this Act unless there is anything repugnant in the subject or context.—
>
> x x x
>
> (h) 'incumbrance' in relation to estates and rights of intermediaries therein does not include the rights of a raiyat or of an under-raiyat or of a non-agricultural tenant, but shall, except in the case of land allowed to be retained by an intermediary under the provisions of section 6, include all rights or interests of whatever nature, belonging to intermediaries or other persons, which relate to lands comprised in estates or to the produce thereof."

And so the two gut questions are :

(i) whether a right to graze cattle in the estate of another falls within the sweep of the comprehensive expression 'all rights or interests of *whatever nature'*; and

(ii) whether the members of a village as a collective, though fluctuating body, are covered by the words 'intermediaries or other persons'.

While the two courts at the ground and first-floor level decided the two points above-mentioned in favour of the State, the High Court, after a long and discursive discussion, the labyrinthine course of which need not be traversed by us, reached the conclusion that the right in question was a public right belonging to an unspecified and varying group—not a specific private interest vesting in specified persons—and therefore left untouched by ss. 3 to 5 and uncovered by s.2(h). Is that view sustainable on a correct construction of the provision?

Putting a literal and teleological construction on the definition of 'incumbrance' we have hardly any doubt that the legislature has used language of the widest amplitude to cast the net wide and to catch all rights and interests whatever be their nature. Indubitably, the right to graze cattle in an estate is a restrictive interest clearly falling within the scope of the provision. Indeed, so designedly limitless an area of rights and interests of whatever nature is included in the special definition of 'incumbrance' for the purposes of the Act, that to deny the familiar rurally enjoyed right of pasturage as covered by it is to defeat, by judicial construction, the legislative intendment. Likewise, there is no substance in the contention that the collective, though uncertain, body of villagers cannot be brought within the expression 'or other persons'. The connotation of those words in the context is 'intermediaries or persons other than intermediaries'. This embraces all persons other than intermediaries and the villagers

A who seek to exercise the right of grazing over the intermediaries' lands are plainly 'other persons'. There is no warrant for the limited signification imputed to those words by counsel for the respondent when he argues that they refer to particular, definite and known individuals. An unwarranted narrowing of meaning cannot be attributed where there is no contextual compulsion or fulfilment
B of statutory purpose thereby gained. On the other hand, the great socio-economic objective of the Act argues itself. If it is to be successful as a land reform measure, the pre-condition is that the estates must vest the intermediaries' entire rights fully—not moth-eaten by carving out many little interests out of the plenary ownership of the State. This intendment is further manifest from ss. 4 and 5 which we set out below along with s. 3 :

C "s.3. The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law or in any contract express or implied or in any instrument and notwithstanding any usage or custom to the contrary:

x x x x

D "s.4.(1) The State Government may from time to time by notification declare that with effect from the date mentioned in the notification, all estates and the rights of every intermediary in each such estate situated in any district or part of a district specified in the notification, shall vest in the State free from all incumbrances.

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"s.5(1) Upon the due publication of a notification under section 4, on and from the date of vesting-

(a) the estate and the rights of intermediaries in the estates, to which the declaration applies, shall vest in the State free from all incumbrances; in particular and without prejudice
F to the generality of the provisions of this clause, every one of the following rights which may be owned by an intermediary shall vest in the State, namely:—

x x x x

According to ss.4 and 5, the vesting shall be 'free from alt incumbrances'. In short, from the perspective of land-reform objectives, a specious meaning is derived by the definition in s.2(h).
G Ordinarily, the Court cannot cut down the definitional amplitude given in the statute and we see no valid reason for departing from this golden rule.

The end product of this discussion is that the appeal must be allowed and the suit dismissed. Even so, we have been taken on a conducted tour by counsel on both sides more or less covering and
H controverting the points which have appealed to the High Court.

Shri Ghose, for the respondent, pressed before us a contention based on rural economics which has considerable force in a general

way, but has none from the legal angle. India lives in her villages- not in her cities. This truth has been highlighted by the Father of the Nation, but insufficiently remembered by our law-makers. The agrarian community, with a cattle economy, rates high in the agrestic scheme the right of pasturage and so it is a human problem for the villagers and their very life if the State snatches the valuable right of pasturage which makes the village economy viable, in the name of estate abolition, without providing alternative village commons. While we are moved by this submission and feel that this is an unintended consequence of comprehensive vesting of estates in the State, we have only to observe that the State, in our expectation, should, mindful of its welfare obligation, consider this facet of the problem and try to provide grazing grounds in villages where the impact of the Act has deprived the community of the right of pasturage. Even if the consequence of abolition of intermediary rights leads to a baneful by product from the economic point of view, we, as Judges, are functionally committed to construction of the statute in the terms the legislature has cast it.

In this context our non-legal reaction to the loss of grazing rights by the villagers is reinforced by the observations of Sarada Charan Mitra in his Tagore Law Lectures, 1895, on the Land Law of Bengal. He observed at p.495 (II Edition):

> "Pasturage is, in the large majority of cases in this country, public, in the sense that they belong to or are capable of being used by a community or classes of individuals in a village. Such rights are necessary for the preservation of society."
>
> x x x x
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> "To an agricultural population, pasture land is of the utmost importance and there is seldom a village in Bengal which has not a large piece of land attached to it for the grazing of cattle belonging to its inhabitants."

The High Court judgment comments :

> "He (Justice Sarada Charan Mitra) then refers to Verse 237, Chapter VIII in Manu and also refers to Yajnavalkya. Hence such customary right has been recognised in India from very early times."

Our conclusion cannot therefore be deflected by the unfortunate deprivation, especially because we part with this judgment hopefully, counsel for the appellant having assured the Court that these observation will be communicated to his client.

This simplistic disposal of the disputed points may not be fair to the High Court, especially because the learned Judge has, in an avoidably erudite survey of Indian and English authorities considered two vital issues. He has discussed at some length the plurality of legal issues: What is the nature, in terms of well-known interests or rights in or over property, of the right of pasturage ? Is it an easement under the Indian Easements Act or the Indian Limitation Act ? Is it *profit a prendre* and, if so, does it become a right or in-

A terest within s. 2(h) of the Act ? Can an easement or right of common pasturage be claimed by a fluctuating body of persons—the villagers ? Is such a customary right recognised in Indian Law ? The learned Judge has followed up the discussion on these points with a further eloborate examination of one other principal issue and two subsidiary points which may be expressed in his own words :

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> "The question is whether customary right 'enjoyed' by the villagers is a right belonging to other *persons relating* to the land compensed in the estate or to the produce thereof. This leads to the consideration of two matters : (a) whether the villagers are other persons within the meaning of section 2(h) of the Estates Acquisition Act; and (b) whether such customary right 'belongs' to the villagers or to any individual in the village."

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We have been taken on a lengthy tour (as we have already mentioned) of these areas of law by counsel on both sides but we do not think it necessary to cover them in this judgment at any length. The conclusion of the learned Judge is that a grazing right or right of pasturage subject to the local requirements of a valid custom, is local law in India. English and Indian decisions and other text book citations have D been referred to by the High Court and read before us, but whether such a customary right is law or not it cannot affect the question before us for the simple reason that s.3 of the Act expressly says that the provisions of the Act 'shall have effect notwithstanding anything to the contrary contained in any other law....and notwithstanding any usage or custom to the contrary.' Undoubtedly, the plenary vesting of the entire rights of the intermediary under ss. 4 and 5 E is cut down by a customary right which reduces the ambit of the intermediary right and therefore is contrary to the provisions of s.5. Moreover, when ss.4 and 5 declare unmincingly that the vesting shall be free from all incumbrances, a customary right of grazing which clearly is an incumbrance runs counter to this clause. Certainly the definition of 'incumbrance' cannot take in a right or interest unless it is in favour of intermediaries or *other persons.* The learned F Judge has considered whether villagers constitute a corporation or person, whether fishermen in a body living in a village can be said to be *persons.* He has also reasoned that since no compensation is paid by the State under the Act for the taking of the customary rights 'such provision for vesting would be void under the Constitution'. Section 161, 183 of the Bengal Tenancy Act and ss.2(p), 5(aa) and G 6(h) have all been considered in a learned chain of reasoning. Reliance has also been placed on rulings and text-books. As earlier stated, we are disinclined to delve into the details of this discussion.

The villagers are clearly 'other persons' and none of the rulings cited before us or referred to by the learned Judge has considered this point, especially in the context of the extremely wide language used in s. 2(h) of the Act. It is inconsequential to say that the customary H right is law. Equally unhelpful is the finding that the right to graze vested in villagers is a public or quasi-public right. Even if it is, once it falls within the definition of 'incumbrance' paring down the totally of intermediaries' rights. s. 3 hits it down.

The conclusion is irresistible that the State's defence is impregnable. A
The appeal therefore deseves to be allowed and the suit dismissed-
which we do, directing the parties to bear their costs through out.

Once again we hark back to the human factor of taking away an invaluable right of humble villagers viz., the right of pasturage and feel confident that a Welfare State, deeply concerned with preservation of village economy, will not hesitate to provide fresh pastures B
for the preservation of agrestic life and agricultural prosperity.

P.H P. *Appeal allowed*