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STATE OF MAHARASHTRA & ORS.

v.

MAN SINGH SURAT SINGH PADVI & ORS.

February 14, 1978

B

[M. H. BEG, C. J., P. N. BHAGWATI, V. R. KRISHNA IYER,
S. MURTAZA FAZAL ALI, P. N. SHINGHAL, JASWANT SINGH
AND V. D. TULZAPURKAR, JJ.]

West Khandesh Mehwasli Estate (Proprietary Rights Abolition etc.) Regulation, 1961 included in the Ninth Schedule as Item 155—Constitutional validity is no longer open on the ground of violation of Art 19(1)(f), when once it is included in the protective umbrella of the Ninth Schedule.

C

There were six estates of Tribal Chiefs called (Mehwasli Estates in West Khandesh district. The Bombay Land Revenue Code, 1879 was made applicable to the Mehwasli Estates by s. 3 of the West Khandesh Mehwasli Estates Regulation, 1949, and Section 4 of this Regulation also made applicable all other Acts passed by the Central or the State Legislatures which were in force in other parts of West Khandesh District. This included, *inter alia*, the Bombay Tenancy and Agricultural Lands Act, 1948, which was

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amended from time to time. Respondent No. 1 the owner of one such Estate, namely, Kathi Estate became an occupant of the agricultural lands forming part of the Estates as a result of the application of the Bombay Land Revenue Code and the persons who were cultivating these lands under him became his tenants, and their relationship was governed by the Tenancy Act, 1948. By virtue of ss. 32 to 32R of the Tenancy Act as amended by Bombay Act 13 of 1956 and the order dated 31st March, 1957, the tenants of the 1st respondent became the "deemed purchasers" of the lands held by them on 1st April, 1957 and the 1st respondent ceased to be the owner and became entitled to receive from his permanent tenants a purchase price equal to six times the rent of the lands and from his ordinary tenants, a purchase price between twenty to eighty times the assessment. By reason of a later amendment to the Tenancy Act, adding s.88D, with retrospective effect from 1st August, 1956 the old relationship was restored so that the tenants did not become deemed purchasers" of the lands and the first respondent did not cease to be the owner of such lands. As a result of the passing of West

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Khandesh Mehwasli Estate (Proprietary Rights Abolition etc.) Regulation 1961 and a Notification of the Governor of Bombay dt. 24th February, 1962, conferring occupancy rights of inferior holders on the tenants and abolishing the proprietary rights of the holder of the Mehwasli Estates, the tenants of the 1st respondent became the occupants of the land held by them and the 1st respondent was deprived of all his rights and he ceased to be entitled to receive anything from his inferior holders, the purchase price receivable by him from his permanent tenants was reduced from six times the rent to three times the assessment and from his other tenants, he became entitled to receive only purchase price at six times the assessment instead of twenty to eighty times the assessment.

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The 1st respondent challenged the constitutional validity of these legislative measures and the High Court struck them down on the ground that they violated the fundamental right of the 1st respondent under Art. 19(1)(f) and they were not protected by Art. 31A of the Constitution. During the pendency of the said appeal by certificate, the 1961 Regulation was included in the Ninth Schedule, as Item No. 155.

H

Allowing the appeal by certificate the Court

HELD: The effect of the inclusion in the Ninth Schedule was that the West Khandesh Mehwasli Estate (Proprietary Rights Abolition etc.) Regula-

tion, 1961 was immunised from challenge on the ground that it was inconsistent with or took away or abridged any of the rights conferred by Part III of the Constitution and hence its constitutional validity could no longer be assailed on the ground that it violated Art. 19(1)(f). Article 31B and the Ninth Schedule cured the defect, if any, in the West Khandesh Mehwasai Estate (Proprietary Rights Abolition etc.) Regulation Act 1961 as regards any unconstitutionality alleged on the ground of infringement of fundamental rights and by the express words of Art. 31B, such curing of the defect took place with retrospective operation from the date on which this regulation was enacted by the Governor. This Regulation, even if inoperative or void at the time when it was issued by the Governor on account of infringement of Art. 19(1)(f) of the Constitution assumed full force and vigour from the date of its enactment by reason of inclusion in the Ninth Schedule [859 A-H]

Jagannath v. Authorised Officer, Land Reforms [1972] 1 SCR 1056 at 1070 referred to.

[The Court directed the Central Government to sympathetically consider, if lands forming part of his Estate have been included in his assessment of wealth tax and if the income therefrom has been assessed to income-tax, whether any such tax recovered from him for the period from and after the date of coming into force of the Regulation may in all fairness be refunded to him.]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2212 of 1969.

From the Judgment and Order dated 1st, 2nd and 3rd of April 1968 of the Bombay High Court in Special Civil Application No. 1452 of 1964.

H. R. Gokhale, A. R. Antule and M. N. Shroff for the Appellant.

R. P. Bhatt, B. R. Agarwala and P. B. Agarwala for Respondent No. 1.

V. N. Ganpule for Respondents Nos. 6-9.

P. P. Rao and A. K. Ganguli for Respondents Nos. 10-13.

T. V. S. Narasimhachari for the Intervener.

The Judgment of the Court was delivered by

BHAGWATI, J.—This appeal by certificate is directed against a judgment of a Division Bench of the Bombay High Court invalidating a notification dated 24th February, 1962 issued by the Governor of Maharashtra in exercise of the power conferred under Sub-Para (1) of Para 5 of the Fifth Schedule to the Constitution and the West Khandesh Mehwasai Estate (Proprietary Rights Abolition etc.) Regulation, 1961 issued by the Governor of Maharashtra under Sub-Para (2) of Para 5 of the Fifth Schedule to the Constitution after obtaining the assent of the President. These two legislative measures were struck down by the High Court on the ground that they violated the fundamental right of the 1st respondent under Article 19(1)(f) of the Constitution. The question whether there was any infringement of the fundamental right of the 1st respondent under Article 19(1)(f) as a result of these two legislative measures would have raised a highly debatable issue, but it is unnecessary to consider it in this appeal since, subsequent to the judgment of the High Court, the West Khandesh Mehwasai Estate (Proprietary Rights Abolition etc.) Regulation, 1961 has been included

A as Item No. 155 in the Ninth Schedule by the Constitution (40th Amendment) Act, 1976. We shall briefly state the facts in so far as necessary for understanding how the question of validity of the notification dated 24th February, 1962 and the West Khandesh Mehwassi Estate (Proprietary Rights Abolition etc.) Regulation, 1961 arose for consideration before the Court.

B There were at all material times six estates of Tribal Chiefs called Maswassi estates in West Khandesh district. These Mehwassi estates were "scheduled area" under Art. 244 read with the Fifth Schedule to the Constitution and were "partially excluded area" under section 91 of the Government of India Act, 1935 and the 1st respondent was the owner of one such estate called Kathi Estate which comprised 99 villages in the State of Maharashtra. The Governor of Bombay, in exercise of the power conferred by sub-section (1) and (2) of section 92 of the Government of India Act, 1935, made a Regulation called the West Khandesh Mehwassi Estates Regulation, 1949 which applied to the Mehwassi estates including the Kathi Estate belonging to the 1st respondent. The Bombay Land Revenue Code, 1879 was made applicable to the Mehwassi Estates subject to certain modifications by section 3 of this Regulation and the effect of section 4 was to make applicable to the Mehwassi Estates all other Acts passed by the Central or the State legislature which were in force in other parts of West Khandesh District, which included *inter alia* the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Tenancy Act). The result of the application of the Bombay Land Revenue Code, 1879 to the Mehwassi Estates was that the 1st respondent, who was the holder of the Kathi Estate, became an occupant of the agricultural lands forming part of that Estate and the persons who were cultivating these lands under him became his tenants and by reason of the applicability of the Tenancy Act, 1948, that Act governed the relationship between the 1st respondent and the tenants. The Tenancy Act, 1948 was amended by Bombay Act 13 of 1956 which came into force on 1st August, 1956 and in exercise of the power conferred under section 32H(2), the Government of Bombay issued an order on 31st March, 1957 fixing the maximum purchase price payable by ordinary, i.e., non-permanent tenants for the deemed purchase of the lands cultivated by them *inter alia* in the villages forming part of the Mehwassi Estates. The combined effect of sections 32 to 32R of the Tenancy Act and the order dated 31st March, 1957 was that the tenants of the 1st respondent became the deemed purchasers of the lands held by them on 1st April, 1957 and the 1st respondent ceased to be the owner and became entitled to receive from his permanent tenants a purchase price equal to six times the rent of the lands and from his ordinary tenants, a purchase price between twenty to eighty times of the assessment.

H Thereafter on 24th February, 1962 the Governor of Maharashtra issued a Notification under Sub-para (1) of Para 5 to the Fifth Schedule to the Constitution and by this Notification the Governor was pleased to direct that Bombay Act 13 of 1956, which amended the Tenancy Act, 1948, shall apply to Mehwassi Estates, and also added section 88D in the Tenancy Act, 1948 which provided that, save as otherwise provided in any other enactment for the time being in force, nothing in sections 32 to 32R shall apply to any Mehwassi land and these

directions were given retrospective effect from 1st August, 1956. The effect of this notification was to restore the relationship which existed between the 1st respondent and his tenants immediately prior to 1st April, 1957 so that the tenants did not become deemed purchasers of the lands held by them and the 1st respondent did not cease to be the owner of such lands. The Governor of Bombay issued on the same day, i.e., 24th February, 1962, the West Khandesh Mehwassee Estate (Proprietary Rights Abolition etc.) Regulation, 1961 in exercise of the power conferred under Sub-Para (2) of Para 5 of the Fifth Schedule to the Constitution after obtaining assent of the President. This Regulation conferred occupancy rights on inferior holders and tenants and abolished the proprietary rights of the holders of the Mehwassee Estates. The result was that the tenants of the 1st respondent became occupants of the lands held by them and the 1st respondent was deprived of all his rights and he ceased to be entitled to receive anything from his inferior holders, the purchase price receivable by him from his permanent tenants was reduced from six times the rent to three times the assessment and from his other tenants, he became entitled to receive only purchase price at six times the assessment instead of twenty to eighty times the assessment. The 1st respondent was seriously affected by the Notification dated 24th February, 1962 and the West Khandesh Mehwassee Estate (Proprietary Rights Abolition etc.) Regulation, 1961 and he, therefore, filed a petition in the High Court challenging the constitutional validity of these two legislative measures. The High Court, as we have already pointed out, struck down these two pieces of legislation on the ground that they violated the fundamental right of the 1st respondent under Article 10(1)(f) and they were not protected by Article 31A of the Constitution. This view taken by the High Court is assailed in the present appeal filed by the State after obtaining certificates from the High Court.

Now, it appears that subsequent to the judgment of the High Court and whilst the appeal was pending in this Court, the Ninth Schedule was amended by the Constitution (Fortieth Amendment) Act, 1976 by the inclusion of the West Khandesh Mehwassee Estate (Proprietary Rights Abolition etc.) Regulation, 1961. The effect of the inclusion was that the West Khandesh Mehwassee Estate (Proprietary Rights Abolition etc.) Regulation, 1961 was immunised from challenge on the ground that it was inconsistent with or took away or abridged any of the rights conferred by Part III of the Constitution and hence its constitutional validity could no longer be assailed on the ground that it violated Article 19(1)(f). Article 31B and the Ninth Schedule cured the defect, if any, in the West Khandesh Mehwassee Estate (Proprietary Rights Abolition etc.) Regulation, 1961 as regards any unconstitutionality alleged on the ground of infringement of fundamental rights and by the express words of Article 31B, such curing of the defect took place with retrospective operation from the date on which this Regulation was enacted by the Governor. This Regulation, even if inoperative or void at the time when it was issued by the Governor on account of infringement of Article 19(1)(f) of the Constitution, assumed full force and vigour from the date of its enactment by reason of its inclusion in the Ninth Schedule, (*Vide : Jagannath v. Authorised Officer, Land*

- A** *Reforms.*⁽¹⁾ and it must accordingly be held to be constitutionally valid. Now, it was not disputed on behalf of the 1st respondent that if the West Khandesh Mehwasssi Estate (Proprietary Rights Abolition etc.) Regulation, 1961 is free from any constitutional blemish, the Notification dated 24th February, 1962 cannot, standing by itself, be successfully assailed as invalid, for, far from taking away any rights of the 1st respondent, it restored his original rights as occupant. It was a legislative measure to his advantage and not to his detriment. The challenge to the constitutional validity of the Notification dated 24th February, 1962 must also, therefore, be rejected.
- B**

We accordingly allow the appeal, set aside the judgment of the High Court and declare the Notification dated 24th February, 1962 and the West Khandesh Mehwasssi Estate (Proprietary Rights Abolition etc.)

- C** Regulation, 1961 to be constitutionally valid. There will be no order as to costs.

We are told by learned counsel appearing on behalf of first respondent that the lands forming part of his estate have been included in his assessment of wealth tax and also the income has been assessed to income-tax. We do not know how far this is true. But in case it is so the Central Government may sympathetically consider whether any such tax recovered from the first respondent from and after the date of coming into force of the West Khandesh Mehwasssi Estate (Proprietary Rights Abolition Etc.) Regulation, 1961 may in all fairness be refunded to him.

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S.R.

Appeal allowed.

(1) [1972] 1 S.C.R. 1056 at 1070.