Privy Council Appeal No. 70 of 1944

Thakur Jagannath Baksh Singh - - - - - *Appellant*

v.

The United Provinces - - - - - - - - *Respondent*

FROM

THE FEDERAL COURT OF INDIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 1ST MAY, 1946

Present at the Hearing:
LORD MACMILLAN
LORD WRIGHT
LORD DU PARCQ
LORD JUSTICE MORTON
SIR JOHN BEAUMONT
[*Delivered by* LORD WRIGHT]

The appellant, who is the taluqdar of Bhawanshahpur, brought his action in the Court of the Civil Judge, Sultanpur, Oudh, claiming a declaration that the United Provinces Tenancy Act, 1939, is either *ultra vires* or not *intra vires* of the Provincial Legislature, either in its entirety or at least as regards the provisions, about 42 in number, scheduled to the complaint. His claim failed before the Judge; he then appealed to the Federal Court of India, which dismissed the appeal but granted leave to appeal to this Board.

The appellant is the direct descendant of Babu Sitla Baksh Singh, who was grantee of a Sanad from the Governor General after the Indian Mutiny of 1857. By this Sanad the Crown granted to the appellant's predecessor in title the full proprietary rights, the permanent heritable and transferable rights in the ancestral estate which were confirmed by the Oudh Estates Act (No. 1 of 1869). That Act contains entries of the name of the appellant's predecessor in lists I and II of the lists prepared under section 8 of the Act, the numbers of the entries being No. 241 and No. 108. List No. I contains a list of all persons who are to be considered taluqdars within the meaning of the Act. The position of the taluqdar is defined by section 3 of the Act to be that he should be deemed to have thereby acquired a permanent heritable and transferable right in the estate specified. The grant of the estate was under section 3 to be subject to all the conditions affecting the taluqdar contained in the orders passed by the Governor General of India on the 10th and 19th days of October, 1859, and republished in the first Schedule annexed to the Act and subject also to all the conditions contained in the Sanad under which the estate was held. These letters are set out in full in Chhail Bihari Lal's book on the taluqdari law of Oudh at p. 387 seq. It is enough here to quote the passage in the letter of the 19th October, 1859, which is specially relevant to the questions involved in this case. This passage, which is set out in the judgment of Gwyer, C.J., in the present appeal in the Federal Court, runs thus:—

" The Sanads declare that while, on the one hand, the Government has conferred on the taluqdars and on their heirs for ever the full proprietary right in their respective estates, subject only to the payment of the annual revenue that may be imposed from time to time, and to certain conditions of loyalty and good service, on the other hand, all persons holding an interest in the land under the taluqdars will be secured in the possession of

the subordinate rights, which they have heretofore enjoyed. The meaning of this is that, when a regular settlement of the Province is made, wherever it is found that zamindars or other persons have held an interest in the soil intermediate between the raiyat and the taluqdar, the amount or proportion payable by the intermediate holder to the taluqdar and the net jama finally payable by the taluqdar to the Government, will be fixed and recorded after careful and detailed survey and inquiry into each case, and will remain unchanged during the currency of the settlement, the taluqdar being, of course, free to improve his income and the value of his property by the reclamation of waste lands (unless in cases where usage has given the liberty of reclamation to the zamindar), and by other measures of which he will receive the full benefit at the end of the settlement. Where leases (pattas) are given to the subordinate zamindars, they will be given by the taluqdar, not by the Government. This being the position in which the taluqdars will be placed, they cannot, with any show of reason, complain if the Government takes effectual steps to re-establish and maintain in subordination to them the former rights, as those existed in 1855, of other persons whose connection with the soil is in many cases more intimate and more ancient than theirs; and it is obvious that the only effectual protection, which the Government can extend to these inferior holders, is to define and record their rights, and to limit the demand of the taluqdar as against such person during the currency of the settlement to the amount fixed by the Government as the basis of its own revenue demand ".

The original Sanad granted to the appellant's predecessor conferred the full proprietary right, title and possession of the estate specified in the Kuboolyut, on the grantee and his heirs for ever, subject to the payment of such annual revenue as might from time to time be imposed and to certain conditions as to loyalty to the Crown. There was also a further condition that the grantee would so far as is in his power promote the agricultural prosperity of the estate and that all persons holding under him should be secured in the possession of all the subordinate rights they formerly enjoyed. As long as the above obligations were observed by the grantee and his heirs in good faith so long would the British Government maintain the grantee and his heirs in their position as proprietors of the estate. The Sanad was signed and sealed by George Udney Yule, Officiating Chief Commissioner of Oudh.

It is not here necessary to trace in any detail the history of the land settlement in Oudh which found its culmination in the measures referred to above. That history has been most completely and accurately expounded in the judgment of Gwyer, C.J., in the Federal Court in this case, which will rank as the classic exposition of this important topic. It is enough to extract from the judgment a single passage. " From these documents [namely, certain despatches and a letter which the Chief Justice refers to] which are all on record and which we have not therefore thought it necessary to set out in full, it appears that Lord Canning's first and main preoccupation was to secure the pacification of the Province as speedily as possible; and this he did not feel able to do so long as the taluqdars and other landholders continued to be bitterly opposed to him. He was not disposed to take too harsh a view of their attitude during the Mutiny, since they had become subjects of the Crown only a few months before it broke out and by the introduction of British rule many ' had suffered a loss of property and all had experienced a diminution of the importance and arbitrary power that they had hitherto enjoyed '. He was disappointed that the proprietary village communities and the village zamindars had not taken the side of the Government during the Mutiny in spite of the policy which had instigated the first summary settlement in 1856. He had also begun to feel doubts about the views held by Lord Dalhousie's Government on the subject of land tenures in Oudh; and he recognised that many real injustices had been committed in the course of the settlement, which were calculated to alienate the taluqdars still further. Lastly, he had the predilection of an English nobleman of his generation for a territorial aristocracy of great families, who subject to safeguards and restrictions which had been absent during the time of the

nawabi, would form a stable and conservative element in a Province henceforward at peace. The confiscation Proclamation was therefore only a means to an end. It gave the Government a *tabula rasa* for the initiation of a new land policy. It enabled them to restore dispossessed proprietors and thus enlist their sympathy and support, but also to remove some of the more glaring evils of the former system. It enabled them to establish the taluqdars as a powerful territorial aristocracy, but at the same time to recognise rights formerly enjoyed by under-proprietors. It was in other words an important part of Lord Canning's policy of pacification; and if the strict legal rights of individuals had to yield in some measure to more practical considerations of administrative convenience and expediency, there can be no doubt that the immediate effect was to bring peace and order to a distracted Province. And it may well be that even those who suffered diminution in their legal rights have benefited in the long run by the restoration of the rule of law and a more settled system of Government ".

This being the general nature of the settlement embodied in the Sanads and in the Oudh Estates Act, 1869, it is now necessary to explain how the present dispute has arisen. In 1939 there was enacted the United Provinces Tenancy Act, 1939. The preamble states " Whereas it is expedient to consolidate and amend the law relating to agricultural tenancies and other matters connected therewith in Agra and Oudh, it is hereby enacted as follows ". The Act is an elaborate measure consisting of 296 sections. Its general scope is sufficiently clear from the short title and preamble. It regulates and secures the rights of the tenants in various respects on lines sufficiently familiar in modern agricultural legislation. It is not contested that in doing so it impinges on the powers which, but for such a measure, the taluqdars might have exercised within their estates. What is claimed by the appellant is that the Act creates rights and interests in land in favour of other persons contrary to the Sanad granted to the appellant (or his predecessor) by the Crown and thus derogates from the terms of the Crown grant, because it modifies or curtails the rights conferred by the Crown. It is not necessary to examine in detail the particulars set out in the Plaint, and it has been conceded on behalf of the respondent that " some of the provisions of the Act do undoubtedly cut down the absolute rights claimed by the taluqdars to be comprised in the grant of their estates as evidenced by Sanads such as we have set out above ". Their Lordships take the terms of this concession from the statement of its scope made by the Judges of the Federal Court and repeated before their Lordships. That relieves their Lordships from a precise consideration of what may have been the exact qualification of the taluqdars' rights embodied in the words of the Sanad quoted above which aims at the protection of subordinate holders of the land. It is enough for present purposes to observe that some infringement of the rights of taluqdars under the Sanad was in any event effected by the Act.

It is however clear that the claim put forward on behalf of the appellant is that the Court should declare *ultra vires* and void an Act of a sovereign parliament such as that of Oudh. Under the Government of India Act, 1935, the Provincial Legislatures (including that of the United Provinces) are given exclusive power to make laws for the province or any part thereof with respect to the matters enumerated in List II in the 7th schedule (section 100 of the Act.) Item 21 of List II enumerates as matters within the exclusive competence of the Provincial Legislature " 21. Land, that is to say rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; courts of wards; encumbered and attached estates; treasure trove ". This enumeration covers all the subjects dealt with in the Act of 1939. That Act was therefore within the express powers of the legislature which passed it. " It must always be remembered ", said Gwyer, C. J., in *United Provinces* v. *Musammat Atiqa Begum* (1941 F.L.J. III, p. 97, at p. 115), " that within their own sphere the powers of the Indian Legislatures are as large and ample as those of Parliament itself." It is many centuries since the Courts were invited to hold that an Act of Parliament

was *ultra vires* or invalid in law on the ground that it infringed the prerogative of the Crown. So startling a claim as that made in the present case cannot be upheld. That broad and general principle is sufficient to dispose of the claim. No Court can annul the enactment of a legislative body acting within the legitimate scope of its sovereign competence.

It is, however, desirable to examine the particular grounds on which it is sought to induce the Court to arrive at this paradoxical conclusion. Some of these are said to be based on the general principle of law that the Crown cannot derogate from its own grant, others are said to depend on particular provisions of the Government of India Act.

It has not been possible for the appellant to adduce any authority for the principle involved, which their Lordships apprehend to be that Parliament, whether Imperial, Federal or Provincial, in the absence of express prohibition, is debarred from legislating so as to vary the effect of a Crown grant. The appellant relies on certain express provisions of the Government of India Act. Thus he relies on section 299 of the Act, which provides that no person shall be deprived of his property in British India save by authority of law, and that neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition of land for public purposes save on the basis of providing for the payment of compensation. But in the present case there is no question of confiscatory legislation. To regulate the relations of landlord and tenant and thereby diminish rights, hitherto exercised by the landlord in connection with his land, is different from compulsory acquisition of the land. As to subsection 3 of section 299 it was rightly decided by the Chief Court that the provisions of the Subsection did not apply. That ruling was not questioned before or dealt with by the Federal Court. Furthermore, in the view of that Court the questions involved in the whole appeal were questions of legislative competence not merely of delay or precautionary safeguards. Their Lordships agree with that view. They completely concur in the opinion of the Federal Court that " if once it be found that the subject matter of a Crown grant is within the competence of a Provincial Legislature nothing can prevent that Legislature from legislating about it unless the Constitution Act itself expressly prohibits legislation on the subject either absolutely or conditionally." The appellant finally contended on this point that a sufficient prohibition is found in Section 300 (1) which provides that the executive authority of the Federation or a Province shall not be exercised save on an order of the Governor-General or Governor, as the case may be, in the exercise of his individual judgment, so as to derogate from any grant or confirmation of title of or to land. It is, however, clear on the face of this subsection that it is only dealing with executive action, whereas here it is not executive authority which is in question but legislative competence and authority and legislative action. These different categories, namely, executive order as distinguished from legislative enactment, are so completely disparate and dissimilar that it does not seem necessary to say any more on the point. Their Lordships are content simply to express their agreement with the Chief Court and the Federal Court in rejecting the contention as irrelevant. Section 50 (3) was also referred to in the course of the proceedings. But it is even more clearly irrelevant than section 300.

Support may be found (if support is needed) for the general proposition that the Crown cannot deprive itself of its legislative authority by the mere fact that in the exercise of its prerogative it makes a grant of land within the territory over which such legislative authority exists. So the proposition is stated by Luxmoore, J., in *North Charterland Exploration Co.* v. *The King* [1931] 1 Ch. 169 at p. 187. In that case the Crown which made the grant was also the supreme legislative authority in the Protectorate, but the two powers were separate and distinguishable. Luxmoore, J., at p. 186, observed " the doctrine of derogation from grant cannot be applied in the case of a grant by the Crown so as to deprive it of its paramount right [i.e., as the legislative authority] to legislate for the Protectorate in which the subject of the grant is situate. To do so would be to place the Crown with reference

to any land granted by it in an inferior position to that occupied by other owners of land within the same Protectorate." No principle relevant to this case can be extracted from *Burrard Power Company, Ltd.* v. *The King* [1911] A.C. 87, where it was held that the legislative competence there in question belonged to the Dominion of Canada, not to the Province of British Columbia.

Their Lordships ought to refer in passing to the Crown Grants Act, 1895, of which section 3 was relied on by the appellant. That section runs, " All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid [i.e., one made by the Crown] shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the legislature to the contrary notwithstanding." These general words cannot be read in their apparent generality. The whole Act was intended to settle doubts which had arisen as to the effect of the Transfer of Property Act, 1882, and must be read with reference to the general context and could not be construed to extend to the relations between a Sanad holder and his tenants. Still less could they be construed to limit the statutory competence of the Provincial Legislature under the Constitution Act.

In conclusion their Lordships desire to quote with approval the language in which the Federal Court sums up its view of the whole position:—

> " We desire however to point out that what they are now claiming is that no Legislature in India has any right to alter the arrangements embodied in their sanads nearly a century ago; and, for all we know, they would deny the right of Parliament itself to do so. We hope that no responsible Legislature or Government would ever treat as of no account solemn pledges given by their predecessors; but the readjustment of rights and duties is an inevitable process, and one of the functions of the Legislature in a modern State is to effect that re-adjustment, where circumstances have made it necessary, with justice to all concerned. It is however not for this Court to pronounce upon the wisdom or the justice, in the broader sense, of legislative acts; it can only say whether they were validly enacted, and in the present case we are satisfied that neither the United Provinces Tenancy Act, 1939, as a whole, nor any of those provisions of it which are set out in the schedule to the plaint, are open to challenge on any of the grounds which have been argued before us."

Their Lordships will humbly advise His Majesty that in their opinion the appeal should be dismissed.

The appellant will pay the costs of the appeal.

In dismissing the appeal their Lordships wish to make it clear that they express no opinion on two points mentioned in the case but not argued before their Lordships because neither party desired to raise them. Both parties in this appeal wished to have a decision on the merits. The points are (1) whether a suit lies under Section 42 of the Specific Relief Act for a declaration that a provincial statute is *ultra vires*, and (2) whether an appeal will lie from the judgment of a single judge of a High Court when the judgment is appealable to a Division Bench of the same High Court. In the circumstances of the particular case, their Lordships feel it is permissible to pass over these possible contentions without further comment, but their silence in that regard must not be taken to indicate that they have tacitly accepted either of them.

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DELIVERED BY LORD WRIGHT

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