1955
October 28

RAJA BAHADUR KAMAKSHYA NARAIN SINGH AND OTHERS

v.

THE COLLECTOR AND DEPUTY COMMISSIONER OF HAZARIBAGH AND OTHERS.

[S. R. DAS, ACTING C.J., VIVIAN BOSE, JAGANNADHADAS, JAFER IMAM and CHANDRASEKHARA AIYAR JJ.]

Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950), ss. 3(1), 4(a), 4(h), 5, 7—Buildings standing on the land comprised in the estate—Transfer after the first day of January, 1946—Estate notified as having become vested in the State—Notice to the transferee under s. 4(h)—Notification purporting to vest in the State the transferred properties—Validity—S. 4(h), whether ultra vires.

On the 29th of December, 1947, petitioner No. 1 executed a lease to C (a company) of certain properties consisting of lands and buildings comprised in the estate belonging to him. Subsequently, in 1949 he executed a deed of settlement whereby he transferred the properties to three trustees, namely, himself and petitioners 2 and 3. Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950) came into force on the 25th of September, 1950, and on the 3rd of November, 1951, the State of Bihar issued a notification under s. 3(1) of the Act declaring that the estate of petitioner No. 1 had passed to and become vested in the State. A notice under s. 4(h) of the Act was issued by the Collector to C and on the 4th of March, 1954, the State Government issued a notification under s. 3(1) purporting to vest in the State the properties in question. It was contended for the petitioners that the buildings standing on the land comprised in the notified estate did not vest in the State, on the ground (1) that the estate of the petitioner No. 1 did not vest in the State under s. 3 of the Act but by virtue of the provisions of s. 4, (2) that the definition of "estate" in the Act speaks of land only and not of any building on it, (3) that on the date of vesting, the buildings were not used as office or *cutchery* for the collection of rent of the notified estate within the meaning of s. 4(a), and (4) that s. 4(h) is *ultra vires* the Constitution as it imposes an unreasonable restriction on the fundamental right of the petitioners to realise rent from the company.

Held, that (1) whether the estate of petitioner No. 1 vested in the State by reason of the publication of the notification under s. 3 or by virtue of the provisions of s. 4 was of little consequence as in either case a vesting took place;

(2) although in the definition of "estate" the word land is used and there is no mention of the word building, the provisions of ss. 4, 5 and 7 show the intention of the legislature to include some-

thing more than merely the land of a notified estate as vesting in the State. Under s. 4(a), buildings of a certain description and other things vest in the State absolutely on the publication of a notification under s. 3. Under ss. 5 and 7, the buildings mentioned therein are deemed to be settled by the State with the intermediary and this could only be on the supposition that the buildings vested in the State, the intermediary being a settlee under the State;

(3) ss. 4(a) and 4(h) must be read together. Under. s. 4(h), the use to which the building was put previous to its transfer after the first day of January, 1946, and not thereafter was what the Collector was concerned with and not to what use it had been put after its transfer after the first day of January, 1946. If a transfer was made after the first day of January, 1946 of a building comprised in the notified estate which was used immediately previous to the date of transfer primarily as office or *cutchery* for the collection of rent of such estate the transfer would be liable to be annulled under s. 4(h) and the building would vest absolutely in the State on the publication of the notification and the provisions of s. 4(a) must be read accordingly; and

(4) the Collector's powers under s. 4(h), wide as they are, are not quite so absolute or arbitrary as suggested. S. 4(h) is a part of a validly enacted law of acquisition of estates and is an integral part of the machinery by which acquisition of an estate takes place. The Act or s. 4(h) of it imposing any unreasonable restriction on the fundamental right of the petitioners, therefore, does not arise. The Act including s. 4(h) of it, is protected by Art. 31-A of the Constitution.

ORIGINAL JURISDICTION: Petition No. 217 of 1955.

Under article 32 of the Constitution of India for the enforcement of Fundamental Rights.

N. C. Chatterjee, (Vir Sen Sawhney and *Ganpat Rai,* with him), for the petitioners.

Lal Narain Sinha, (Bajrang Sahai and *S. P. Verma,* with him), for respondent No. 2.

1955. October 28. The Judgment of the Court was delivered by

IMAM J.—The petitioners have filed this application under article 32 of the Constitution claiming that the buildings and lands as set out in the Schedule annexed to the petition and marked "A" (hereinafter referred to as the disputed properties) did not vest in the State of Bihar under the provisions of the

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Bihar Land Reforms Act, 1950 (hereinafter referred to as the Act). Petitioner No. 1 in his individual capacity was at one time the owner of the disputed properties which lie within Touzi No. 28 of the Collectorate of Hazaribagh. On the 29th of December, 1947 petitioner No. 1 as owner leased out the disputed properties to a Company known as Mineral Development Ltd. (hereinafter referred to as the Company). The company took possession of the disputed properties and has been paying rent. On the 7th of April, 1949 petitioner No. 1 in his individual capacity executed a deed of settlement whereby he transferred the disputed properties to three trustees, namely, himself and petitioners 2 and 3. The Company has been paying rent to the trustees since then. The Act came into force on the 25th of September, 1950. On the 3rd of November, 1951 the State Government issued a notification under section 3(1) of the Act declaring that the estate of petitioner No. 1 in his individual capacity specified therein had passed to and become vested in the State. On the 26th of October, 1953 a notice under section 4(h) of the Act was issued by the Collector to the Company, and on the 4th of March, 1954 the State Government issued a notification under section 3(1) of the Act purporting to vest in the State the properties covered by the above-mentioned deed of settlement and another deed of settlement with which we are not concerned. The Company instituted a title suit No. 33 of 1951 against the State of Bihar in the Court of the Subordinate Judge, Hazaribagh basing its claim on a mining lease executed by petitioner No. 1 in his individual capacity the genuineness of which was challenged by the State. Petitioner No. 1 in his individual capacity was made a party to this suit. The Company also instituted a title suit No. 9 of 1954 against the State of Bihar to which petitioner No. 1 in his individual capacity was made a party challenging the legality of the issue of notice dated 26-10-1953 under section 4(h) of the Act. On the 11th of November, 1954 the State of Bihar filed title suit No. 53 of 1954 to which the Company,

petitioner No. 1 in his individual capacity, the three trustees and others were made parties. By this suit the State of Bihar challenged the genuineness of the lease in favour of the Company and the deed of settlement in favour of the trustees.

The real question for determination is, what vested in the State on the publication of the notification under section 3 and by virtue of the provisions of section 4(a) of the Act? According to Mr. Chatterjee the disputed properties did not vest in the State, whatever else may have. Having regard to the definition of "estate" in the Act, if anything vested in the State on the publication of a notification it was the land comprised in the notified estate. Although the disputed properties stood on the land in the notified estate, they did not vest in the State, because the definition of "estate" speaks of land only and not of any building on it. The notification under section 3 was a mere declaration and actual vesting took place under section 4(a). On the date of vesting the disputed properties were not used as office or cutchery for the collection of rent of the notified estate of petitioner No. 1, who had parted with his right, title and interest therein long before the Act was enacted and the publication of the notification under section 3. Mr. Sinha on behalf of the State of Bihar, on the other hand, contended that on a perusal of the provisions of sections 4, 5 and 7 of the Act, it would appear that the Act contemplated something more than the land in an estate vesting in the State and the disputed properties could and did vest in the State on the publication of the notification under section 3.

In our opinion, it is of little consequence in the present case whether the notified estate vested in the State by reason of the publication of the notification under section 3 or by virtue of the provisions of section 4 of the Act, because in either case a vesting did take place. Although the word land is used in the definition of "estate", the provisions of sections 4, 5 and 7 show the necessary intention to include something more than the land when an estate vests in the State. Under section 4(a) it is not only the

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estate but also buildings of a certain description and other things which vest in the State absolutely on the publication of a notification under section 3. Under sections 5 and 7 the buildings mentioned therein also vest in the State, because the buildings in question are deemed to be settled by the State with the intermediary in possession. This could only be on the supposition that these buildings vested in the State and the person in possession held the same as settlee under the State.

In the present case on the date of the publication of the notification under section 3 the disputed properties were said to be in the possession of the Company as lessee and the petitioner No. 1 had no right, title or interest therein as he had transferred his lessor's reversion to trustees by a deed of settlement. We may assume, therefore, that on the date of publication of the notification the disputed properties were not used primarily as office or cutchery for the collection of rent of the notified estate of petitioner No. 1. It becomes, therefore, necessary to interpret the word "used" occurring in section 4(a). It is to be noticed that this clause of section 4 does not expressly state that a building used primarily as office or cutchery for the collection of rent must be so used at the date of the publication of the notification. In this clause the words "used primarily as office or cutchery for the collection of rent of such estate" must be read in the light of the provisions of section 4(h) where similar words are employed. Under section 4(h) the Collector has the power to make inquiries in respect of any transfer of any kind of interest in any building used primarily as office or cutchery for the collection of rent of such estate, if the transfer had been made at any time after the first day of January, 1946. If on due inquiry the Collector is satisfied that such transfer was made with the object of defeating the provisions of the Act or causing loss to the State or obtaining higher compensation, then the Collector may, after giving notice to the parties concerned and hearing them and with the previous sanction of the State Government, annul the transfer and dis-

possess the person claiming under it. These provisions clearly indicate that if any building was used primarily as office or cutchery for the collection of rent and such building had been transferred after the first day of January, 1946, the transfer could be annulled if the circumstances mentioned in section 4(h) had been established. That is to say, under these provisions the use to which the building was put previous to its transfer after the first day of January, 1946 and not thereafter was what the Collector was concerned with and not to what use it had been put after its transfer after the first day of January, 1946. To hold otherwise would be to make the provisions of section 4(h) meaningless. When a proprietor transfers any such building, it necessarily follows that the building thereafter was not used by him as office or cutchery for the collection of rent of his estate. If the transfer was made before the first day of January, 1946 the provisions of section 4(h) would not apply and such a transfer would not be liable to be annulled and the building so transferred would not vest in the State on the date of the publication of the notification covering the estate on which such building stands. If, on the other hand, this transfer was made after the first day of January, 1946, a building comprised in a notified estate, which was used immediately previous to the date of the transfer primarily as office or cutchery for the collection of rent of such estate the transfer would be liable to be annulled under section 4(h) and it would vest absolutely in the State on the publication of the notification and the provisions of section 4(a) must be read accordingly. It would be unreasonable to construe the provisions of section 4(a) in the way suggested by Mr. Chatterjee. The scheme of the Act has to be borne in mind and the provisions of sections 4(a) and 4(h) have to be read together. The petitioners had not asserted in their petition that the disputed properties were not used as office or cutchery for the collection of rent of the notified estate of petitioner No. 1 before the first of January, 1946 or before the lease in favour of the Company. On behalf

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of the State, on affidavit, it has been stated that the disputed properties were all along used as cutchery before the creation of the lease and that they were not being used in connection with any mining operation. In our opinion, if as a result of the inquiry under section 4(h) the transfer of the disputed properties by the petitioner No. 1 is annulled the disputed properties must be regarded as having vested in the State, because they were used as office or cutchery for the collection of rent previous to the transfers made by the petitioner No. 1.

It was next contended that section 4(h) is *ultra vires* the Constitution, because it imposed an unreasonable restriction on the fundamental right of the petitioners to realize rent from the Company, as the transfer in its favour was imperilled by the notice issued to it under section 4(h). No appeal or review was provided in the Act against the order of the Collector issuing notice or an order of annulment made by him. The Collector was left with absolute power to annul a transfer and to dispossess a person in possession thereunder. Section 4(h), however, does direct the Collector to give reasonable notice to the parties concerned and to hear them. Such annulment or dispossession which he may order, must be with the previous sanction of the State Government and he is compelled to do so on terms which may appear to him fair and equitable. The power is, therefore, not quite so absolute or arbitrary as suggested. Assuming, however, that the Collector has very wide powers, it is to be remembered that section 4(h) is a part of the law of acquisition of estates as enacted by the Act and is an integral part of the machinery by which acquisition of an estate takes place. The Act is a valid law of acquisition and its whole purpose may be defeated unless there was some such provision as contained in section 4(h). The Act being a law for acquisition of estate the question of it or section 4(h) of it imposing any unreasonable restriction on the fundamental rights of the petitioners does not arise. In any event the Act including section 4(h) is protected by article 31-A of the Constitution.

The petition is accordingly dismissed with costs.