

CIVIL WRIT.

Before Bhandari, C.J. and Khosla, J.

S. RAGHBIR SINGH,—Petitioner.

versus

UNION OF INDIA AND OTHERS,—Respondents.

Civil Writ No. 278 of 1952.

1954

July, 19th

Evacuee Interest (Separation) Act (LXIV of 1951)—Section 9—Whether ultra vires the Constitution of India—Articles 14, 19 and 31 considered—Parliament, whether competent to enact Act LXIV of 1951—Entries 18 and 30 of the State List and Entry 41 of the concurrent Legislative List considered—Disposal—Whether covers extinguishment of a mortgage.

Held. that the provisions of section 9 of the Evacuee Interest (Separation) Act, 1951, are consistent with and not violative of the provisions of Articles 14, 19 and 31 of the Constitution of India.

Held, that Article 14 was designed to secure that all citizens of India shall have equal rights before the law, that they shall be treated alike in like circumstances and conditions and that no person shall be singled out for hostile or discriminatory treatment. A legislature has full power to classify the subjects of legislation and to make laws applicable to persons within a particular class provided the classification is reasonable, is based upon some natural principle of public policy, rests upon substantial differences among persons who are included in the class and those who are excluded therefrom and the differences have a rational relation to the object sought to be achieved by the legislation. This power of classification has not been taken away by the Constitution of India. The Act of 1951 declares that certain mortgages of the property belonging to Muslims who have migrated to Pakistan shall be extinguished in certain circumstances. It makes no discrimination between one person and another in the group and each one of them is treated alike under similar circumstances and conditions. The classification is neither capricious nor arbitrary; it is based on the fact that the situation and circumstances of persons who are mortgagees of evacuee property are different from the situation and circumstances of persons who are mortgagees of other property and there is a very clear and distinct connection between the classification and the object of the Act. As the tests of a valid classification have been fulfilled, the provisions of Article 14 have not been contravened by the Evacuee Interest (Separation) Act, 1951.

Held, that even if Article 19 of the Constitution applies to the present case, the restrictions imposed by the Legislature in Section 9 of the Evacuee Interest (Separation) Act, 1951, are reasonable and in the interest of the public.

Held, that the provisions of Article 31 of the Constitution cannot be attracted in the present case. The petitioner has not been deprived of his property; all that the Legislature has done is to reduce the rate of interest on the monies advanced by him.

Held, that the Parliament was competent to enact the Evacuee Interest (Separation) Act, 1951, as the Parliament had passed a resolution under Article 249 of the

Constitution on the 5th June 1951, empowering it to make laws for a period of one year from the 15th June, 1951, with respect to certain matters enumerated in entries 18 and 30 of the State List, viz, rights in or over land; transfer and alienation of agricultural land; money-lending and money-lenders and relief of agricultural indebtedness. The subject matter of section 9 of the Act is fully covered by entries 18 and 30 of the State List.

Held, that a law concerning the property of an evacuee cannot be made under entry 41, of the concurrent Legislative List, for this entry empowers a law to be made in respect of property which has been "declared by law to be evacuee property".

Held, that the expression 'disposal' appearing in Entry 41 of the concurrent Legislative List is wide enough to cover the extinguishment of a mortgage.

Sripati Lal Khan v. Parsupati Modak (1), *Megh Raj v. Allah Rakhia* (2), and *State of Punjab v. Ajaib Singh* (3) relied on.

Petition under Articles 226, 227 and 228 of the Constitution of India, praying as under :—

- (a) that this Hon'ble Court may be pleased to hold that the provisions of Section 9(2) in so far as they extinguish the mortgagee rights of the petitioner and his brothers on expiry of 20 years are ultra vires and unconstitutional ;
- (b) that a writ in the nature of a writ of prohibition may be issued to respondents (1) and (2) prohibiting them from giving effect to Section 9(2) of Act 64 of 1951 and from extinguishing the mortgagee rights of the petitioner and his brothers and from depriving him of the possession of his mortgaged property ;
- (c) that this Hon'ble Court may be pleased to pass such other orders or give such instructions either in the alternative or in addition which in the nature of the case may be deemed just and expedient ; and

(1) 1947 F.C.R. 12

(2) A.I.R. 1947 P.C. 72

(3) 1953 S.C.R. 254

(d) that pending the disposal of this petition this Hon'ble Court may be pleased to pass ad interim prohibitory order to respondent No. 2 not to proceed with the application of Maghar Singh and others which is the subject matter of the notice.

TEK CHAND, for Petitioner.

S. M. SIKRI, Advocate-General and K. C. NAYAR, for Respondents.

ORDER

Bhandari, C. J. BHANDARI, C. J. The question which falls to be determined in the present case is whether the provisions of section 9 (2) of the Evacuee Interest (Separation) Act, 1951, in so far as they extinguish the mortgagee rights of the petitioners are *ultra vires* the Constitution of India.

The facts of the case are simple and not seriously in dispute. On the 2nd December, 1913, Fazal-ud-Din and his two brothers executed a registered deed by virtue of which they mortgaged a plot of land measuring 202 *kanals* 19 *marlas* in favour of Mehar Singh, grandfather of the petitioner, for a sum of Rs. 13,900. The mortgagee was to assume possession of the property and the profits accruing therefrom were to counterbalance the interest on the mortgage money. The mortgaged property could be redeemed on the expiry of six years.

On the 21st November, 1916, the mortgagors created another mortgage on the same land for a sum of Rs. 11,860. On the 19th December, 1943, they brought a suit against the petitioner and his brothers for redemption of the mortgage and on the 23rd April, 1945, they obtained a decree for possession on payment of a sum of Rs. 20,000. This decree was later confirmed by the High

Court but the amount for which the land could be redeemed was increased from Rs. 20,000 to Rs. 24,760.

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It appears that in the meantime, that is, on the 18th November, 1927, the mortgagors mortgaged a portion of this property to Maghar Singh for a sum of Rs. 25,000 and agreed to deliver possession thereof to him after obtaining possession from the petitioner and his brothers. They also authorised Maghar Singh to have the land redeemed from the petitioner and his brothers and agreed that any amount paid by him would be a charge on the land mortgaged with him. As neither the mortgagors nor Maghar Singh paid the sum of Rs. 24,760 for which alone the land could be redeemed in pursuance of the decree of the High Court, the land continued to remain in possession of the petitioner and his brothers.

On the 11th June, 1952, Maghar Singh sold his mortgagee rights to Hans Raj and Diwan Chand and all three of them filed an application under section 6 of the Evacuee Interest (Separation) Act, 1951, in which it was stated that the mortgage in favour of the petitioner had been extinguished without payment by virtue of the provisions of subsection (2) of section 9 of the said Act. On the 22nd August, 1952, the Competent Officer issued a notice to the petitioner to appear before him on a certain day and to produce all the documents upon which he intended to rely in support of his claim. On the 9th September, 1952, the petitioner filed the present application under the provisions of Articles 226, 227 and 228 of the Constitution for a declaration that the provisions of section 9 (2) of the Act of 1951 are repugnant to the provision of the Constitution and for the issue of a writ of prohibition restraining the Competent Officer from giving effect to the provisions of the said section.

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The first point for decision in the present case is whether it was within the competence of Parliament to enact the Evacuee Interest (Separation) Act, 1951. As a result of the communal disturbances which broke out in the Punjab in the year 1947, several Muslim families migrated to Pakistan leaving behind them their immovable property consisting of lands, houses, shops and other structures. The evacuee laws which vested all evacuee property in the Custodian were difficult to operate and early in 1951, it became necessary to make laws for the separation of the interests of evacuees from those of non-evacuees. These laws were likely to relate to matters enumerated in the State List and on the 5th June, 1951, Parliament passed a resolution under Article 249 of the Constitution by which it was resolved that it was necessary in the national interest that Parliament should for a period of one year from the 15th June, 1951, make laws with respect to certain matters enumerated in entries 18 and 30 of the State List viz., rights in or over land; transfer and alienation of agricultural land; money-lending and money-lenders and relief of agricultural indebtedness. A few months later, i.e., on the 31st October, 1951, Parliament enacted the Evacuee Interest (Separation) Act, 1951, section 9 of which is in the following terms :—

“9. Certain reliefs in respect of mortgaged property of evacuees.—(1) Notwithstanding anything to the contrary in any law or contract or any decree or order of a civil Court or other authority, where the claim is made by a mortgagee, no mortgaged property of an evacuee shall, subject to the provisions of subsection (2), be liable for the payment of interest at a rate exceeding

five per cent. per annum simple on the principal money advanced or deemed to have been advanced.

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- (2) Where a mortgagee has taken possession on any terms whatsoever of any agricultural land and is entitled to receive profits accruing from the land and to appropriate the same, every such mortgage shall be deemed to have taken effect as a complete usufructuary mortgage and shall be deemed to have been extinguished on the expiry of the period mentioned in the mortgage deed or twenty years, whichever is less, from the date of execution of the mortgage deed ; and if the aforesaid period has not expired and the mortgage debt has not been extinguished, the competent officer shall determine the mortgage debt due having regard to the portion which the unexpired portion of that period bears to the total of that period."

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Mr. Tek Chand who appears for the petitioner contends that the subject-matter of the Act does not fall under entry 41 of the Concurrent Legislative List which empowers both the Union and the State to make laws concerning "the custody, management and disposal of property (including agricultural land) declared by law to be evacuee property". It is contended in the first place that as the Act of 1951 declares that in certain circumstances a mortgage shall be deemed to be extinguished, entry 41 cannot be said to be wide enough to embrace the subject matter of the statute, for the power to make laws concerning the custody, management and disposal of evacuee property cannot possibly include the power to extinguish certain mortgages. This contention appears to me to

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be devoid of force, for the expression 'disposal' appearing in entry 41 is wide enough to cover the extinguishment of a mortgage. In *Sripati Lal Khan v. Parsupati Modak* (1), it was held that under entry 21 of List 2 of the Seventh Schedule to the Government of India Act, 1935, a Provincial Legislature has power to make Laws providing that if a mortgagee has been in possession of the mortgaged land for a period of 15 years or more, the mortgage shall be deemed to have been extinguished. It is a well known rule of interpretation that the language used in a constitutional provision should receive a liberal construction so as to cover all contingencies. If, therefore, a particular word is capable of a narrow and restricted, or a broad and comprehensive, meaning it ought to be construed in the latter sense unless the context appears to indicate that a restricted meaning was intended. In *Megh Raj v. Allah Rakhia* (2), it was pointed out that entries appearing in one of the three Lists being a part of the Constitution should receive the widest construction.

Secondly, it is argued that the help of entry 41 can be invoked if, and only if, the property in question is declared by law to be evacuee property. The property to which a reference has been made in section 9, it is contended, is not property which has been declared to be evacuee property, but property of an evacuee. There appears to be some force in the contention that a law concerning the property of an evacuee cannot be made under entry 41,—for this entry empowers a law to be made in respect of property which has been "declared by law to be evacuee property". Be that as it may, the fact remains that even if the subject matter of section 9 does not fall within the ambit

(1) 1947 F.C.R. 12

(2) A.I.R. 1947 P.C. 72

of entry 41 of the Concurrent List, it is fully covered by entries 18 and 30 of the State List which relate to land, i.e., rights in or over land; transfer and alienation of agricultural land; money-lending and money-lenders and relief of agricultural indebtedness. In *Megh Raj v. Allah Rakhia* (1), their Lordships of the Privy Council observed that "rights in land must include general rights like full ownership or leasehold or all such rights" and that 'right over land' would include easements or other collateral rights, whatever form they might take. (See also *Sripati Lal Khan v. Parsupati Modak* (2).)

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Again it was contended that the provisions of Article 14 of the Constitution, which declares that the State shall not deny to any person equality before the law or the equal protection of the laws have been contravened by the provisions of section 9 which declares that every mortgage shall be deemed to have taken effect as a complete usufructuary mortgage and shall be deemed to have been extinguished on the expiry of the period mentioned in the mortgage deed or twenty years, whichever is less, from the date of the execution of the mortgage deed. It is contended that persons, who have interest in property which has been left behind by the Muslims have been treated differently from persons who have interest in property belonging to the citizens of India. This discrimination, it is argued, offends against the provisions of Article 14.

Article 14 was designed to secure that all citizens of India shall have equal rights before the law, that they shall be treated alike in like circumstances and conditions and that no person or class of persons shall be singled out for hostile or discriminatory treatment. A legislature has full

(1) A.I.R. (34) 1947 P.C. 77

(2) 1947 F.C.R. 12

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power to classify the subjects of legislation and to make laws applicable to persons within a particular class provided the classification is reasonable, is based upon some natural principle of public policy, rests upon substantial differences among persons who are included in the class and those who are excluded therefrom and the differences have a rational relation to the object sought to be achieved by the legislation. This power of classification has not been taken away by the Constitution of India. The Act of 1951 declares that certain mortgages of the property belonging to Muslims who have migrated to Pakistan shall be extinguished in certain circumstances. Now the mortgagees of property of Muslim evacuees are a group of persons who constitute a well-defined class for purposes of legislation. (Compare *State of Punjab v. Ajaib Singh* (1), where it was held that Muslim abducted persons constitute a well-defined class for the purposes of legislation : See also *Asiatic Engineering Co. v. Achhru Ram* (2), where the effect of Article 14 in relation to the Administration of Evacuee property Act has been considered with care). Even the Constitution appears to recognise this classification, for clause (5) of Article 31 declares that nothing in clause (2) shall affect the provisions of any law which the State may make in pursuance of an agreement between the Government of India and the Government of any other country with respect to property declared by law to be evacuee property. The Act of 1951 makes no discrimination between one person and another in the group and each one of them is treated alike under similar circumstances and conditions. The classification is neither capricious nor arbitrary : it is based on the fact that the situation and circumstances of persons who are mortgagees of

(1) 1953 S.C.R. 254

(2) A.I.R. 1951 All. 746

evacuee property are different from the situation and circumstances of persons who are mortgagees of other property ; and there is a very clear and distinct connection between the classification and the object of the Act. As the tests of a valid classification as laid down in *Lachhmandas Kewalram and others v. State of Bombay* (1), have been fulfilled, I am of the opinion that the provisions of Article 14 have not been contravened.

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Again, it is argued that the provisions of section 9 are void and of no effect as they violate the fundamental rights guaranteed by Article 19(1)(f) of the Constitution and as it is not open to the Legislature to violate the rights of disposal of property by legislative fiat transferring one man's property to another. This objection does not present any difficulty whatsoever. It is common ground that all property is subject to reasonable regulation by the State. It has always been in the interest of the public that the rate of interest charged by a creditor should not be excessive and, in its endeavour to keep the rate of interest within reasonable limits, the State has enacted measures such as the Usurious Loans Act and the Punjab Relief of Indebtedness Act. In Section 30 of the latter Act the Legislature declared that in any suit brought in respect of a debt advanced before the commencement of the said Act, no Court shall pass or execute a decree or give effect to an award in respect of the said debt for a larger sum than twice the amount of the sum found by the Court to have been actually advanced less any amount already received by a creditor in excess of the amount due to him under clause (e) of subsection (2) of section 3 of the Usurious Loans Act, 1918. It can scarcely be denied that it is within the power of a Legislature to enact a usury law to reduce the

(1) A.I.R.: 1952 S.C. 235

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rate of interest payable under a contract or to impose a more stringent or a less stringent penalty on a usurious contract. Section 9 of the Act of 1951 has done no more than declare (a) that no mortgaged property of an evacuee shall be liable to the payment of interest at a rate exceeding 5 per cent per annum simple on the principal money advanced or deemed to have been advanced ; and (b) that where a mortgagee has taken possession of agricultural land and is entitled to receive profits accruing from the land and to appropriate the same, every such mortgage shall be deemed to have taken effect as a complete usufructuary mortgage and shall be deemed to have been extinguished on the expiry of the period mentioned in the mortgage deed or twenty years whichever is less from the date of the execution of the mortgage deed. I am accordingly of the opinion that even if Article 19 applies to the present case the restrictions imposed by the Legislature are reasonable and in the interest of the public.

The provisions of Article 31 cannot possibly be attracted in the present case. The petitioner has not been deprived of his property ; all that the Legislature has done is to reduce the rate of interest on the monies advanced by him. When the validity of the Punjab Restitution of Mortgaged Lands Act, 1938, was challenged about ten years ago their Lordships of the Privy Council observed in *Megh Raj v. Allah Rakhia* (1), that the main object of the Act is to give relief to mortgagors by enabling them to obtain restitution of the mortgaged lands on terms less onerous than the mortgage deeds require. It was never alleged before or found by their Lordships that the terms

(1) A.I.R. 1947 P.C. 72

of that Act contravened the provisions of section 299 of the Government of India Act, 1935, which were analogous to the provisions of Article 31 of the Constitution of India.

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For these reasons I am of the opinion that the provisions of the Act of 1951 are consistent with and not violative of the provisions of the Constitution of India. The petition is wholly misconceived and must be dismissed with costs.

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KHOSLA, J. I agree.