A

PREM NATH RAINA AND OTHERS

v.

STATE OF JAMMU AND KASHMIR AND OTHERS

August 4, 1983

B

[Y. V. CHANDRACHUD, C. J., R. S. PATHAK AND SABYASACHI MUKHARJI, JJ.]

C

Jammu and Kashmir Agrarion Reforms Act, 17 of 1976—a measure of agrarian reform—Saved by Article 31A from challenge under Articles 14, 19 and 31 of the Constitution.

The petitioners challenged the constitutional validity of Jammu and Kashmir Agrarian Reforms Act, 17 of 1976 on the ground that the Act violated Articles 14, 19 and 31 of the Constitution. The petitioners contended that as the Act contained certain provisions which were not co-related to agrarian welfare, the Act could not be said to be a measure of agrarian reform and therefore not saved by Article 31A of the Constitution.

D

Dismissing the petitions,

HELD: The Act is a measure of agrarian reform and is saved by Art. 31A from the challenge under Arts. 14, 19 or 31 of the Constitution. [541 D]

E

The question as to whether any particular Act is a measure of agrarian reform has to be decided by looking at the dominant purpose of that Act. In the instant case the dominant purpose of the statute is to bring about a just and equitable redistribution of lands, which is achieved by making the tiller of the soil the owner of the land which he cultivates and by imposing a ceiling on the extent of the land which any person, whether landlord or tenant, can hold. The matters which are dealt with by the Act are essential steps in any well conceived scheme of agrarian reform. The decision in *Kochuni* was treated in *Ranjit Singh* as a special case which cannot apply to cases where the general scheme of legislation is definitely agrarian reform and under its provisions, something ancillary thereto in the interests of rural economy has to be undertaken to give full effect to those reforms. [541 A-D, 541 D]

F

G

Ranjit Singh v. *State of Punjab*, [1965] 1 S.C.R. 82 and *Kavalappara Kottarathil Kochuni & Ors.* v. *State of Madras & Ors.*, [1960] 3 S.C.R. 887, referred to.

H

The circumstance that the Act is made applicable to agricultural lands situated within the limits of local authorities will not affect its character as a measure of agrarian reform. If any land situated in a developed area is used predominantly for the purpose of agriculture, it is open to the legislature to

include that land in a scheme of agrarian reform so as to make the tiller of that land its owner. The hypothetical possibility that after becoming statutory owners of agricultural lands situated in developed areas on payment of a paltry price, the tillers will part with those lands at a high price which lands in developed areas like urban areas fetch, cannot affect the basic position that the Act is conceived in the larger interest of agrarian reform. The payment of a larger compensation to land-holders under a land reform law than what would be payable under an Act like the Urban Ceiling Act does not lead to the conclusion that the former is not a measure of agrarian reform. [543 A-F]

Section 7(2)(b) of the Act creates an anomalous situation, especially in the context of the definition of 'personal cultivation' in section 2(12) of the Act. If it is permissible to cultivate a land through another person as specified in clauses (b) to (g) of section 2(12), there is no reason why residence in the village where the land is situated or in an adjoining village should be compulsory for all persons, even for minors, widows, insane persons and persons in detention. The exception made by the legislature in favour of the members of defence forces ought to be extended to these other persons also. The exclusion of a constitutional challenge under Articles, 14, 19 and 31 which is provided for by Article 31A does not justify in equity the irrational violation of these articles. [543 G, 544 B-D]

Waman Rao & Ors. v. *Union of India & Ors.* [1981] 2 S.C.R. 1, referred to.

ORIGINAL JURISDICTION : Writ Petition Nos. 4195 and 4445 of 1978, 8831, 8942 of 1981, 342-717, 803-804, 1005-1242, 6501-6746, 2860-3049, 3169-71, 3413-63, 7133-35 of 1982.

V.M. Turkunde and *Naunit Lal* for the petitioners in W.P. Nos. 4196/82, 6501-6746, 2860-3049, 342-717/82, and 8831/81.

S.S. Javali, B.P. Singh and *Ranjit Kumar* for the petitioners in W.P. Nos. 4445/78, 8942, 1005-1242, 3413-3463 and 7133-35/82.

Sanjay Kaul and *Ashok Panda* for the petitioners in W.P. No. 3169/82.

L.N. Sinha, Attorney General and *R.K.* Garg for the respondent in W.P. Nos. 4195/82 and 4445/78.

Altaf Ahmed for the respondents in all other matters.

The Judgment of the Court was delivered by

CHANDRACHUD, CJ ; By these Writ Petitions filed under Article 32 of the Constitution, the petitioners challenge the constitutional

validity of the Jammu & Kashmir Agrarian Reforms Act, 17 of 1976, on the ground that the Act violates the provisions of Articles 14, 19 and 31 of the Constitution. This challenge is met by the State of Jammu & Kashmir with the short answer that the impugned Act being a measure of agrarian reform, Article 31A of the Constitution precludes a challenge to its validity on the ground that it violates the provisions contained in Articles 14, 19 and 31.

The petitioners are mostly small land-holders owning agricultural lands in the State of Jammu & Kashmir. The Government of Jammu & Kashmir introduced several land reforms in the State, beginning with Tenancy Act VII of 1948. Jagirs and Muafis were abolished under that Act as a result of which, approximately 9000 owners of agricultural lands lost their proprietary interest in about 4.5 lakh acres of land. The State Legislature thereafter passed the Tenancy (Amendment) Act VII of 1948, the Tenancy (Amendment) Act of 1950, the Big Landed Estates Abolition Act of 1950, the Tenancy (Amendment) Acts of 1956, 1962 and 1965, the J & K Tenancy (Stay of Ejectment) Proceedings Act 1966, the Agrarian Reforms Act of 1972 and finally the impugned Act, 17 of 1976. The last named Act received the assent of the Governor on August 21, 1976. It was amended by the Amendment Act of 1978 which received the assent of the Governor on April 7, 1978.

We will presently explain in brief the nature of the provisions of the impugned Act but, before we do so, it will be useful to acquaint oneself with the various steps which the Government of Jammu & Kashmir took in the direction of land reforms, by passing the Acts to which we have referred earlier. After abolishing the Jagirs and Muafis by the Tenancy Act of 1948, restrictions were placed on the right of the landlord to eject the tenant, by the Tenancy (Amendment) Act of 1948. The landlord was, however, given the right to resume the land from his tentant if he required it *bona fide* for personal cultivation subject to ceiling on his right of resumption. The Big Landed Estates Abolitions Act of 1950 was quite a revolutionary piece of legislation in the context of those times. A ceiling was placed by that Act on the holding of properties at 182 Kanals, which comes roughly to 23 acres. The land in excess of the ceiling was expropriated without the payment of any compensation and the tiller of the soil became the owner of the excess land. By subsequent legislations, tenants were given protection in the matter of rents, certain classes of non-occupancy tenants came to be regarded as protected tenants and landlords were given

a further opportunity for making applications for the resumption of land. Thousands of applications were filed by the landlords under the provisions of the Tenancy Amendment Act of 1965 for resumption of lands from tenants but, later, further proceeding in those applications were stayed. The Janki Nath Wazir Committee pointed out anomalies in the various measures taken by the State Legislature by way of the land reforms and it made recommendations in order to remove the inequities from which the land reforms legislation undertaken by the State suffered. The State Government constituted a Land Commission under the Chairmanship of the then Revenue Minister, Syed Mir Kasim, in 1963 to examine the Wazir Committee's Report. In 1967, the Sate Government appointed another Commission of Inquiry, with Shri P.B. Gajendragadkar, retired Chief Justice of the Supreme Court, as its Chairman. The Gajendragadkar Commission made various recommendations by its Report dated December 1968. It also pointed out the defects from which the Land Legislation in the State of Jammu & Kashmir suffered and suggested ways and means for removing them. This long and empirical process ultimately culminated in the enactment of the Act of 1976 which is impugned in these proceedings.

It is impossible to accept the contention of Shri V.M. Tarkunde, who appears on be half of the petitioners, that by reason of certain provisions of the impugned Act which are not co-related to agrarian welfare, the Act cannot be said to be a measure of agrarian reform. The short title of the Act shows that it was passed in order to provide for transfer of lands to the tillers of the lands for the purpose of better utilisation of those lands Section 4 of the Act provides that all rights, titles and interests in lands, which were not cultivated personally in Kharif 1971, shall be deemed to have been extinguished and shall vest in the State, free from all encumbrances with effect from May 1, 1973. By section 5, all lands in excess of the ceiling area on September 1, 1971 vested in the State on May 1, 1973. Section 7 provides for the resumption of lands by the ex-landlords for *bona fide* personal cultivation, subject to the conditions mentioned in section 7 (2). Section 9 provides for payment of rent by the tillers of the soil to the State for lands which have vested in the State. Section 10 provides for payment of the amount due on the outstanding mortgages on lands. Section 11 provided that lands which vest in the State under the impugned Act shall be deemed to have been acquired by the State, for which payment shall be determined and made in accordance with the

provisions of Schedule III. Section 13 lays down restrictions on the utilisation of lands of which tillers become owners. Section 14 prescribes for the optimum retainable area of the land, section 15 deals with the manner of disposal of surplus land, while section 17 imposes a prohibition on the transfer of lands. Chapter III of the Act deals with the jurisdiction of several revenue officers and Tribunals appointed under the Act and lays down the procedure which they are required to follow. Chapter IV contains supplemental provisions. Chapter V provides for penalties for the infringement of the provisions of the Act, while Chapter VI provides for certain miscellaneous matters. Schedule III defines 'compensation' to mean the sum of money payble for land at the market value, while the word 'amount' is defined to mean the sum of money payable in lieu of extinguishment of rights in land at rates other than the market rate. The maximum amount payable for the extinguishment of the rights of the landlords is Rupees one thousand per kanal. These and other cognate matters which are dealt with by the Act are essential steps in any well-conceived scheme of agrarian reform.

It is urged by learned counsel led by Shri Tarkunde and by Shri Sanjay Kaul who appeared in person, that certain provisions of the impugned Act have no bearing upon agrarian reform and those provisions cannot have the protection of Article 31A. Section 7 of the Act is said to be one such provision. It provides by sub-section (1) for the resumption of lands for *bona fide* personal cultivation by ex-landlords but by sub-section (2) it imposes certain conditions on the right of resumption. One of those conditions is that the applicant for resumption, other than a member of the Defence Forces, must, within six months of the commencement of the Act, take up normal residence in the village in which the land sought to be resumed is situated or in an adjoining village, for the purpose of cultivating the land personally. The other provision of the Act on which special stress was laid by counsel for the petitioners is the one contained in clause (f) of section 7(2) which lays down certain criteria for determining the extent of land which may be resumed. Stated briefly, where a person was entitled to rent in kind from the tiller during kharif 1971, the extent of land resumable by such person has to bear the same proportion to the total land comprised in the tenancy as the rent in kind bears to the total produce; and where a person was entitled to rent in cash during Kharif 1971, the extent of land resumable by him has to be regulated by the extent of rent in kind to which such rent in cash can be

commuted in accordance with the provisions of sub-sections (3) and (8) of section 9. We are unable to hold that these and connected provisions of the impugned Act show that the Act is not a measure of agrarian reform. The question as to whether any particular Act is a measure of agrarian reform has to be decided by looking at the dominant purpose of that Act. In *Ranjit Singh* v. *State of Pnnjab*(1), it was held on a review of authorities that a large and liberal meaning must be given to the several expressions like 'estate', 'rights in an estate' and extinguishment and modification' of such rights which occur in Article 31A. The decision in *Kochuni*(1) to which our attention was drawn by Shri Tarkunde, was treated in *Ranjii Singh* as a special case which cannot apply to cases where the general scheme of legislation is definitely agrarian reform and under its provisions, something ancillary thereto in the interests of rural economy has to be undertaken to give full effect to those reforms. In our case the dominant purpose of the statute is to bring about a just and equitable redistribution of lands, which is achieved by making the tiller of the soil the owner of the land which he cultivates and by imposing a ceiling on the extent of the land which any person, whether landlord or tenant, can hold. Considering the scheme and purpose of the Act, we cannot but hold that the Act is a measure of agrarian reform and is saved by Article 31A from the challenge under Articles 14, 19 or 31 of the Constitution. Article 31 has been repealed by the 44th Amendment with effect from June 20, 1979 and for future purposes it ceases to have relevance. Reduced to a constitutional premise, the argument of the petitioners is that the particular provisions of the Act are discriminatory and are therefore violative of Article 14; that those provisions impose unreasonable restrictions on their fundamental rights and are therefore violative of article 19. This argument is not open to them by reason of article 31A.

A B C D E F

It may be mentioned that The Constitution (Application to Jammu and Kashmir) Order, 1954, which was passed by the President of India in exercise of his powers under article 370 of the Constitution, makes article 31A applicable to the State of Jammu and Kashmir with the modification that the proviso to clause (1) of that article stands deleted and for sub-clause (a) of clause (2) the following sub-clause is substituted :

G H

(1) [1965] 1 S.C.R. 82.

(2) [1960] 3 S.C.R. 887.

A "(a) "estate" shall mean land which is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes—

(i) sites of buildings and other structures on such land;

B (ii) trees standing on such land;

(iii) forest land and wooded waste;

(iv) area covered by or fields floating over water;

C (v) sites of jandars and gharats;

(vi) any jagir, inam, muafi or mukarrari or other similar grant, but does not include—

D (i) the site of any building in any town area or village abadi or any land appurtenant to any such building or site;

(ii) any land which is occupied as the site of a town E or village; or

(iii) any land reserved for building purposes in a municipality or notified area or cantonment or town area or any area for which a town F planning scheme is sanctioned."

The grievance of the petitioners is that not only do certain provisions of the Act militate against agrarian reform, but those provisions will involve the State Government into payment of con- G siderable 'amounts' to land-holders for the extinction and acquisition of their rights, which would be far greater than the amounts which the State Government would be liable to pay under Acts like the Urban Land (Ceiling and Regulation) Act, 1976. Agricultural lands which are situated within the limits of municipalities and Town Area Committees H are also comprehend within the scope of the Act and the apprehension of the petitioners is that, after the tillers become statutory purchasers of those lands, they will be free to dispose them of at urban prices which have escalated sky-high. Another facet of the same argument

is that no agrarian reform is involved in applying the impugned statute to lands situated in urban agglomerations. A

These arguments are not relevant for deciding the question as to whether the dominant purpose of the Act is agrarian reform. The payment of a larger compensation to land-holders under a Land Reform Law than what would be payable under an Act like the Urban Ceiling Act does not lead to the conclusion that the former is not a measure of agrarian reform. The extent and mode of payment of compensation for the extinction of a land-holder's right is a matter for the legislature to decide and the circumstance that the compensation or the amount fixed by the legislature in any given case is excessive, will not make the law any-the-less a measure of agrarian reform. In the same manner, the circumstance that the impugned statute is made applicable to agricultural lands situated within the limits of Local Authorities will not affect its character as a measure of agrarian reform. If any land situated in a developed area is used predominantly for the purpose of agriculture, it is open to the legislature to include that land in a scheme of agrarian reform so as to make the tiller of that land its owner. The apprehension expressed by the petitioners that, after becoming statutory owners of agricultural lands situated in developed areas on payment of a paltry price, the tillers will part with those lands at a high price which lands in developed areas like urban areas fetch, is hypothetical though not unreal. Not unreal, because the temptation to trade in immovable property is common to agriculturists and non-agriculturists alike. But the hypothetical possibility that the lands will be disposed of by to-day's tillers to-morrow, cannot affect the basic position that the Act is conceived in the larger interest of agrarian reform. Besides, section 13 which places restriction on utilisation of lands, section 17 which imposes restrictions to a limited extent on the transfer of such lands and section 14 which prescribes the optimum land which can be retained even by an erstwhile tenant are effective deterrents against profit-oriented disposal of high-priced lands. B C D E F G

Before parting with this case, we would like to observe that section 7(2) (b) of the Act creates an anomalous situation, especially in the context of the definition of 'personal cultivation' in section 2(12) of the Act. One of the conditions imposed by section 7(2) (b) on the right of a land-holder to resume land is that, unless he is a member of the defence forces, he must take his residence in the H

village in which the land is situated or in an adjoining village. "Personal cultivation" is defined in section 2(12) to mean cultivation by any member of one's family or by a khana-nishin daughter or a khana-damad or a parent of the person or by other relations like the son, brother or sister who are specified in the various clauses of section 2(12). Under clause (g) of section 2(12), a land-holder who is a minor, insane, physically disabled, incapacitated by old age or infirmity, a widow or a person in detention or in person can cultivate the land through a servant or hired labourer under the personal supervision of his or her guardian or agent. If it is permissible to cultivate a land through another person as specified in clauses (b) to (g) of section 2(12), it is difficult to understand why residence in the village where the land is situated or in an adjoining village should be compulsory for all persons, even for minors, widows, insane persons and persons in detention. The exception made by the legislature in favour of the members of defence forces ought to be extended to these other persons also, The exclusion of a constitutional challenge under Articles 14, 19 and 31 which is provided for by Article 31A does not justify in equity the irrational violation of these articles. This Court did observe in *Waman Rao*(1) that : "It may happen that while existing inequalities are being removed, new inequalities may arise marginally and incidentally" but the legislature has to take care to see that even marginal and incidental inequalities are not created without rhyme or reason. The Government of J & K would do well to give fresh consideration to the provisions contained in section 7 (2) and modify the provisions regarding residence in order that they may accord with reason and commonsense. Article 31A does not frown upon reason and commonsense.

For these reasons, we uphold the constitutional validity of the Jammu and Kashmir Agrarian Reforms Act, 1976 and dismiss these petitions. There will be no order as to costs.

H.S.K. *Petition dismssed.*

(1) [1981] 2 S.C.R. 1.