PETITIONER:
KANWAR LAL

Vs.

RESPONDENT:
IIND ADDITIONAL DISTT. JUDGE, NAINITAL & ORS

DATE OF JUDGMENT20/04/1995

BENCH:
SAWANT, P.B.
BENCH:
SAWANT, P.B.
AGRAWAL, S.C. (J)

CITATION:
1995 AIR 2078 1995 SCC Supl. (2) 394
JT 1995 (4) 42 1995 SCALE (2)858

ACT:

HEADNOTE:

JUDGMENT:
SAWANT, J.:
1. Leave granted.
2. These four appeals arc directed against a common judgment dated 19th October, 1987 delivered by the High Court in four writ petitions filed before it by the four appellants. Since the questions of
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law which arise in these appeals arc common, it would be sufficient to refer to the 808 facts in one of the appeals viz civil appeal arising out of S.L.P. No. 3204 of 1988 since the High Court has taken the facts from it.
3. In 1920s, Government of India being anxious to develop the undeveloped, lands throughout the country including that in the district of Nainital offered to extend many concessions to those who agreed to develop the )and. Lala Khushi Ram Dusaj, predecessor of the appellant was one of the persons who accepted the offer and agreed to develop land in District Nainital. Government of India granted lease of 4805 acres of land to Lala Khushi Ram for development under the Crown Grants Act [later renamed as Government Grants Act, 1895 - hereinafter referred to as "the Grants Act"] by a registered lease deed dated 25.8.1920 which was executed by the Secretary of State for India in Council for a period extending upto 31st March, 2013. One of the conditions of the said lease with which we arc concerned here, was that the leased land would not be taken away except as specified by the clauses of the lease deed and that too for the purpose of land reforms. In case the land was taken away, compensation was payable to the lessee in accordance with the provisions of the Land Acquisition Act, 1894. Section 3 of the Grants Act provided that all provisions, restrictions, conditions and limitations contained in any such grant or transfer shall be valid and take effect according to their tenor, any rule of law, stat-ute or enactment of the legislature to the contrary

notwithstanding. After taking possession of the leased land, the lessee Lala Khush; Ram is alleged to have spent moneys to clear the jungle and level the uneven terrain and develop the land for agriculture.

4. In the year 1959, the State of U.P. passed U.P. Government Estates Thekedari Abolition Act, 1958 [hereinafter referred to as the "Principal Act"] and issued notifications under the said Act for taking over the leased lands granted under the Grants Act and issued notifications vesting all such lands in the State. In 1960, the State of U.P. amended the Grants Act. While retaining the provisions of Section 3 of the said Act the Amendment added a proviso to the said section which stated that nothing in the said section shall prevent, or be deemed ever to have prevented, the effect of any enactment relating to the acquisition of property, land reforms or the imposition of ceiling on agricultural land.

5. By its decision dated 25th October, 1967 the High Court declared the provisions of the Principal Act as ultra vires the Constitution and quashed the notifications issued under the said Act, taking over the lands leased under the Grants Act. In 1970, the State of U.P. passed the Uttar Pradesh Government Estates Thekedari Abolition [Re-enactment and Validation] Act, 1970 [for short the Validation Act'] with the result that the Principal Act and the notifications which had been issued thereunder were revived by adding a deeming clause. Under the amended Principal Act, the State issued notifications on 16th October, 1970 applying the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950 [for short the Z.A. Act] to the villages in question. In the year 1973, the appellant who is the successor of Lala Khushi Ram, the original lessee, received notices under the amended Principal Act and also received copies of com-

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sensation roll showing the compensation at less than Rs.3/- per acre. The appellant, therefore, filed his objection before the Collector who referred the matter to the respondent No.1-Additional District Judge. On 17th December, 1977, respondent No.1 partly accepted the reference. The appellant, therefore, moved the High Court by a writ petition. On 19th October, 1987 the High Court dismissed all the writ petitions before it by the impugned common judgment. Hence the present appeals.

6. The first contention raised in these appeals is that the State cannot amend the Grants Act, which is a pre-constitutional central statute by its own enactment, viz., the Principal Act so as to annul the provisions of Section 3 of the Central Act. The answer to this contention lies in the provisions of Article 372 of the Constitution. The relevant provisions of Article 372 arc as under:

> "372. Continuance in force of existing laws and their adaptation-(1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.
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> (2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this

Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, 'as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(3) Nothing in clause (2) shall be deemed-

(a) to empower the President to make any adaptation or modification of any law after the expiration of three years from the commencement of this Constitution; or

(b) to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the president under the said clause.

Explanation 1.- The expression "law in force" in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas."

Entry 18 of List II of the Seventh Schedule of the Constitution reads as under:

" 18. 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 and alienation of agricultural land; land improvement and agricultural loans; colonization." .

7. Article 246 [3] read with Entry 18 of List II of the Seventh Schedule gives power to the State Legislature to make law with regard to rights in or over land, land tenures including the relation of landlord and tenant and the collection of rents, transfer and alienation of agricultural land; land improvement and agricultural loans; colo-

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nization. Admittedly, the lands in question were under personal cultivation of the appellant and, therefore, they are agricultural lands. Hence the State legislature was competent to enact the Principal Act which concerns the rights in or over the land etc. which are all subjects covered by Entry 18 of List II. In view of the provisions both of clauses [1] and [3] (b) of Article 372 of the Constitution, therefore, the State Legislature being the competent legislature to enact such law could repeal or amend the Grants Act or any of its provisions including Section 3 thereof This would be true also of the State amendment of the Grants Act by the Government Grants [U.P. Amendment] Act, 1960. Hence the contention that the State Legislature could not amend the provisions of Section 3 of the Grants Act has to be rejected.

8. The next contention of the appellant is that in the absence of a fresh notification issued under the amended Principal Act, the leasehold rights of the appellant cannot be deemed to have been terminated, so as to enable the State to resume the lands.

9. As the facts in the present case reveal, the Principal Act was extended to the district of Nainital by notification dated 17th June, 1965 w.e.f 26th June, 1965. By notification dated 30th June, 1966, issued under Section 3

of that Act, the lease of the appellant was determined. The High Court declared as unconstitutional the provisions of that Act and hence the Act was amended and re-enacted w.e.f 20th June, 1964 by U.P. Government Estates Thekedari Abolition [Re-enactment and Validation] Act, 1970. Section 6 of the Validation Act validated anything done of purported to have been done and any action taken or purported to have been taken under the provisions of the Principal Act, viz., U.P. Government Estates Thekedari Abolition Act. That Section reads as follows:

> "6. Notwithstanding any judgment, decree or order of any court or Tribunal to the contrary, anything done or purporting to have been done and any action taken or purporting to have been taken under any provision of the principal Act before the commencement of this Act including, in particular, any notification under subsection (3) of section 1, any determination of lease under section 3, or the recovery of any rents or other dues under section 4 or the taking over of possession or charge of land or of books, accounts or other documents under section 6 of that Act, shall be deemed to be, and always to have been as valid as if the provisions of this Act were in force at all material times.

10.In view of the said express validating provision, the notifications which were issued under the Principal Act in terms revived with the revival of the Principal Act and hence the action taken under the said notifications also stood validated. It was not necessary to reissue the notifications after the enactment of the Validation Act. To argue to the contrary would render the provisions of Section 6 of the Validation Act otiose.

11.It is for this reason that we are unable to understand the reliance placed on behalf of the appellant on the decision of this Court in Mahendra Lal Jaini v. 7he State of Uttar Pradesh and Others [(1963] Supp. 1 SCR 9121. The question considered in that case was whether an Act which was invalid being ultra vires the provisions of the Constitution would stand re-

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vived automatically on amendment of the relevant provision of the Constitution. It was held that such a revival was not automatic and that the Act had to be re-enacted after the constitutional provision which it had infringed was amended. The ratio of that decision is, therefore, not applicable to the facts of the present case. The Principal Act has been re-enacted by amending the relevant provisions to bring them in conformity with the provisions of the Constitution and by the provisions of Section 6 of the Validation Act, as pointed out above, all acts done and purported to have been done under the principal Act have been expressly validated.

12. The next contention was that the Validation Act is violative of the second proviso to Article 31A [1] of the Constitution. Under the lease granted under the Grants Act, the rights of the lessee were heritable as well as transferable. As a result of the determination of the lease by the Thekedari Abolition Act, the right which have been conferred on the lessee are only heritable. They are not transfer able by virtue of the provisions of the U.P Tenancy Act, 1939. Hence, the lessee is entitled to full compensation.

13. The relevant provisions of Article 31A [1] of the

Constitution read as follows:

> "31A. Saving of laws providing for acquisition of estates, etc.- (1) Notwithstanding anything contained in Article 13, no law providing for -
> (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or
> x x x x
> shall be deemed to be void on the ground that it is inconsistent with, or take- away or abridges any of the rights conferred by Article 14 or Article 19:
> Provided that where such law is a law made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:
> Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof"

14.What is prohibited by the aforesaid provision is acquisition by the State of any portion of the land under personal cultivation which portion is within the ceiling limit, without payment of its market value as compensation. By virtue of the Principal Act, as amended, what is conferred permanently on the erstwhile lessees under the Grants Act is the hereditary tenancy. The Principal Act as amended, by itself does not restrict the right of the hereditary tenant to transfer the land. The restriction on the transfer by a hereditary tenant has been placed by the U.P. Tenancy Act, 1939. It is, therefore, not correct to say that it is the Principal Act as amended, which places the restriction on

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the right of the hereditary tenant to transfer the land. Further while under the old lease, which is abolished by the Principal Act, the lessee could hold the land only for the period of the lease which was in the present case, upto 2013, by virtue of the conferment of the hereditary tenancy under the Principal Act, the lessee can now hold such land permanently. It cannot be said that the conferment of the permanent hereditary tenancy on the erstwhile tenure-lessee is in any way inferior to the rights of the lessee under the old grant. Hence in the first instance, the question of payment of compensation does not arise. Secondly, a mere restriction on the incidence of the lease or owner.-,hip is not acquisition within the meaning of Article 31A.

15.Article 31A [1] (a) of the Constitution states that no law providing for the acquisition by the State of any estate or any rights therein or the extinguishment or modification of any such rights, shall be deemed to be void on the ground

that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19. The second proviso to Article 31A [1], however, states that where any law makes any provision for the acquisition by the State of any estate and where any land comprised in such estate is held by a person under his personal cultivation, it shall not be lawful for the State to acquire the portion of such land as is within the ceiling limit applicable to him under any law for the time being in force, unless the law relating to the acquisition of such land provides for payment of compensation at a rate which shall not be less than the market value thereof

16. Thus there is a clear distinction between the provisions of Article 31A [1] (a) and of the second proviso to the said Article. Whereas Article 31A[1] (a) holds valid the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, the second proviso carves out an exception to it by providing that [i] if any, estate is acquired by the State which comprises any land under personal cultivation and [ii] if such land is within the ceiling limit applicable to such person, such land as is within the ceiling limit will not be acquired without payment of compensation. In other words, the second proviso provides for compensation only if the land within the ceiling limit is wholly acquired by the State. If only some of the rights of the person concerned in such land are acquired or extinguished or are modified, the second proviso does not come into play. In the present case, instead of having the full rights as a lessee including the right to transfer the land, the appellant will be a hereditary tenant without the right to transfer the land. To that extent the rights of the appellant are modified or his right to transfer the land is extinguished. He has not been deprived of all his rights. It is not, therefore, a case of acquisition of his estate within the meaning of the second proviso to Article 31A [1]. Hence, the appellant is not entitled to compensation as provided by the said proviso. Further, as pointed out earlier, the appellant is conferred with the rights as the hereditary tenant permanently in place of his earlier rights as a tenure-lessee which were to expire after 2013. This is, therefore, a clear case of modification of the rights and. not of acquisition of all the rights. It cannot be contended further that this modification is less beneficial to the appellant On this account also the second proviso to Article

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31A[11 requiring compensation to be paid, does not come into play in the present case.

17.It was then urged that in any case the appellant has become Government lessee within the meaning of Section 133A of the U.P. Zamindari Abolition and Land Reforms Act, 1950 [hereinafter called 'the Z.A. Act'] and hence the land would stand excluded from the provisions of the Principal Act. The provision of Section 133A of the Z.A. Act reads as follows:

> "133A. Government lessees. Every person to whom land has been let out by the State Government shall be called a government lessee in respect of such land and shall notwithstanding anything to the contrary contained in this Act be entitled to hold the same in accordance with the terms and conditions of the lease relating thereto. "

18.Since it is not disputed that by notification dated 16th

October, 1970, the provisions of the Z. A. Act have been mad applicable to the said lands and Section 133A has also been made applicable the lands covered by the Principal Act, the land in question is excluded from the ambit of the Principal Act.

19.If the scheme of the amended Principal Act is examined, it would appear the the Act has been passed to provide for abolition of the thekedari system in Government estates and the "Government estate" has been defined in the Principal Act to mean land owned by the State Government in Uttar Pradesh which indicates that the Act is intended to deal with government lands as well. Moreover, Section of the amended Principal Act which provides for determination of the lease starts with a non obstante clause. It reads as follows:

> "3.Determination of leases. Notwithstanding anything in any law, contract or other document, it shall be lawful for the State Government by order published in the Official Gazette to determine with effect from a date (hereinafter called the date of determination) to be specified, any lease"

20. In view of this non obstante clause Section 133A of the Z.A. Act cannot have the effect of denying the State the power under the said Section 3 to determine the lease. Hence this contention must also fall

21. There was no other contention raised. The appeals, therefore, fail for the reasons given above and not for the reasons given by the High Court and are dismissed with costs.

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