

(1961) 10 AHC CK 0023

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2048 of 1956

Jagdatt Singh and Others

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 06-10-1961

Acts Referred:

Constitution of India, 1950 — Article 226, 31, 31(2), 31A

Government of India Act, 1935 — Section 299

Uttar Pradesh Acquisition of Property (Flood Relief) Temporary Powers Act, 1948 — Section 9(1)

Citation : AIR 1962 All 606

Hon'ble Judges : Jagdish Sahai, J; B.D. Gupta, J

Bench : Division Bench

Advocate : Sripat Narain Singh, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Jagdish Sahai, J.—This case has come to us on a reference made by our brother Oak by his order dated 29-1-1958. The petitioners are bhumidars of certain plots of land situate in village Naithi, pargana Mohammadabad, district Azamgarh. In respect of those plots proceedings for acquisition have been started under the provisions of the Acquisition of Property (Flood Relief) Temporary Powers Act (U. P. Act No. XXXIX of 1948). It is not necessary to narrate all the facts mentioned in the petition, the affidavit filed in support of it, the counter affidavit and the rejoinder affidavit, because the point raised before us is a short one and is one essentially of law. The prayer in the petition is that a writ of mandamus be issued directing the respondent No. 2, the Requisition Officer of Flood Relief, to cancel his order dated 23-3-1956 acquiring the plots in dispute.

2. The only submission that has been made before us is that inasmuch as the first proviso to Section 9(1) of the Acquisition of Property (Flood Relief) Temporary Powers Act (hereinafter referred to as the Act) provides that the market value referred to in the first clause of Sub-section (1) of Section 23 of the

Land Acquisition Act shall be deemed to be the market value of such land on the date of publication of the notice or on the 1st day of September, 1959, whichever is less, the said proviso is invalid because it infringes Section 299 of the Government of India Act, 1935 (hereinafter referred to as the 1935 Act.) The submission is that the word "compensation" means the market value of the property acquired or sought to be acquired. For this proposition reliance has been placed upon *Raja Suryapalsingh and Others Vs. The U.P. Govt., and The State of West Bengal Vs. Bela Banerjee and Others*, . It is true that, except when the Legislature otherwise provides, the word "compensation" means the full value of the property sought to be acquired. That is the general principle of the law of Eminent Domain. Section 299 of the 1935 Act reads as follows:--

"299. (1) No person shall be deprived of his property in British India save by authority of law.

(2) Neither the Federal nor the Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land or any commercial or industrial undertaking, or any interest under or in any company owning any commercial or industrial undertaking, unless the law provides for the payment or compensation for the property acquired and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, it is to be determined.

(3) No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification or rights therein, including rights or privileges in respect of land revenue, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General, in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(4) Nothing in this Section shall affect the provisions of any law in force at the date of the passing of this Act.

(5) In this section "land" includes immovable property of every kind and any rights in or over such property, and "undertaking" includes part of an undertaking."

3. In that Act the word "compensation" has not been treated to be a term of art and no special meaning has been assigned to it. Therefore we have to give it its normal dictionary meaning. The effect of the provisions of Section 299 of the 1935 Act is that no law could be framed by any of the Legislatures functioning under that Act with respect to acquisition of property in which there was no provision for compensation, i.e. adequate compensation because compensation means adequate compensation. We are, therefore, clearly, of the opinion that in so far as the first proviso to Section 9(1) of the Act provides that the value of the land either on the date of publication or on the first day of Sept. 1939, whichever is less, be treated to be the value of the property acquired, there is no provision providing adequate compensation or the full market value. The Irresistible

conclusion, therefore, is that the provision is in the teeth of the provisions of Section 299 of the 1935 Act. In *The State of West Bengal Vs. Bela Banerjee and Others*, the Supreme Court struck down a similar provision in a Bengal Act of 1948 and on the same ground. In that case their Lordships emphasised the fact that the Act being of a permanent nature, between the date of acquisition and the date of the passing of the Act there may be a very long interval during which time prices may have considerably risen and therefore the compensation had got to be determined on the basis of the prices as prevailing on the date of acquisition and not on the date on which the statute is passed. Their Lordships were also impressed by the principle that if there had been an increase in the value of the land the subject and not the State was entitled to its benefit. There is no distinction on principle between the case decided by the Supreme Court and the one before us. In our opinion, therefore, it was not competent for the U. P. Legislature to have enacted the first proviso to Section 9(1) of the Act.

4. Mr. Singh has strenuously contended firstly that in an Act framed under the provisions of the 1935 Act either the whole of the Act is valid or it is invalid and it cannot be treated to be valid in part and invalid for the rest, and secondly that in any case the proviso cannot be separated from the rest of Section 9 of the Act and by severing the proviso the remainder of Section 9 cannot be declared valid. It is a well known principle of interpretation of statutes that if the impugned part of the Act can be severed from the rest of it and the impugned provision is ultra vires it would save the rest of the Act and only the offending part would go. This was the view taken by their Lordships of the Federal Court in AIR 1939 74 (Federal Court)

5. It was next contended that by the nature of the provision it is not possible to separate the first proviso from Section 9(1) of the Act. We are unable to accept this argument as correct. A proviso is nothing but an exception to the enacting clause. If the proviso is taken away the enacting clause is not affected. Having carefully examined the language of Section 9(1) of the Act we are satisfied that the first proviso to Section 9(1) can be separated from the rest of that provision. Section 9(1) provides that compensation shall be determined in accordance with the principles set out in Clauses (i) to (iv) of Sub-section (1) of Section 23 of the Land Acquisition Act. This is the general rule provided by the Legislature. By means of the proviso an exception is sought to be created, the exception being that the market value referred to in the first clause of Section 23(1) of the Land Acquisition Act shall be deemed to be either the value as determined on the date of acquisition or on the 1st of September, 1939, whichever is less. The words "deemed to be" mean one which in reality is not. Therefore the effect of the proviso was to bring in a legal fiction by which it was intended to pay something less than what the real market value was. Even without the proviso Section 9(1) of the Act can function properly and there would be no difficulty in its being administered. We are, therefore, not in agreement with the learned counsel that it cannot be severed.

6. An argument was advanced by Mr. Shambhu Prasad the Senior Standing Counsel that the provisions of Article 31A of the Constitution would save the impugned provision. Amongst other objections to the applicability of Article 31A of the Constitution to the facts of the present case, one that stares in the face is that before that Article can apply the land belonging to the petitioners which is acquired must be an estate. Article 31A(2)(a) defines "estate" as follows:--

"In this article, the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or muafi or other similar grant; and in the States of Madras and Travancore-Cochin, any "janmam" right."

So far as this State is concerned the existing laws were the U. P. Tenancy Act and the U. P. Land Revenue Act. The word "estate" has not been used in either of those two Acts. The Land Revenue Act, however, uses the word "mortal" for any local area. In the U. P. Zamindari Abolition and Land Reforms Act Clause (8) of Section 3 defines the word "estate" as follows:--

""estate" means and shall be deemed to have always meant the area included under one entry in any of the registers "described in Clauses (a), (b), (c) or (d) and, in so far as it related to a permanent tenure holder, in any register described in Clause (e) of Section 32 of the U. P. Land Revenue Act, 1901, as it stood immediately prior to the coming into force of this Act, or subject to the restriction mentioned with respect to the register described in Clause (e), in any of the registers maintained u/s 33 of the said Act or in a similar register described in or prepared or maintained under any other Act, Rule, Regulation or Order relating to the preparation or maintenance of record of rights in force at any time and includes share in, or of an estate".

It is, therefore, obvious that the word "estate" has relation to the mohal mentioned in Section 32 of the U. P. Land Revenue Act. The word "mohal" has always been used in connection with a proprietary right and in the Land Revenue Act that word means "any local area held under a separate arrangement for the payment of land revenue." Therefore the meanings which we have to give to the word "estate" have got to be the same which were given to the word "mohal" and inasmuch as the word "mohal" was used only in respect of proprietary rights it is obvious that the word "estate" as used in Article 31A contemplates proprietary rights i.e., the rights of intermediaries and not the rights of tenants. The view that we are taking finds support from a Division Bench decision of this Court in *Ajab Singh Vs. State of U.P. and Others*, . It is common case of the parties that in the present case what is being acquired are bhumidari plots. It was held by the Supreme Court in *S. C. A. No. 301 of 1960 Rana Sheo Ambar Singh Vs. Allahabad Bank Ltd., Allahabad*, , that bhumidari rights are not proprietary rights. In fact the entire scheme of the U. P. Zamindari Abolition and Land Reforms Act leads to the same conclusion. Therefore the conclusion is inescapable that the property that is being acquired in the present case cannot

be comprehended in the expression, "estate" occurring in Article 31A of the Constitution. We are unable to accept Mr. Shambhu Prasad's contention that inasmuch, as the expression "tenure holder" finds a place in Clause (8) of Section 3 of the U. P. Zamindari Abolition and Land Reforms Act and the same word has been used in Section 129 headed as "Classes of Tenure" and Includes as item No. 1 bhumidar, a bhumidari plot is also an estate. It would be noticed that the words used in Section 3 are not "tenure holder" but "permanent tenure holder". That clause contemplates a permanent tenure holder who has got proprietary rights and whose name could be entered or was entered in the khewat. We have already said above that a bhumidar is not a permanent tenure holder. Before a person can be the holder of a mahal and consequently the holder of an estate he must be entitled to have his name recorded in the record-of-rights prepared u/s 32 of the U. P. Land Revenue Act. That section reads as follows:

"32. There shall be a record-of-rights for each mahal or if a mahal consists of two or more villages, or portions of villages, the record may be prepared for each such village or portion separately.

The record-of-rights shall include the following registers:

- (a) a register of all the proprietors in the mahal, including the proprietors of specific areas specifying the nature and extent of the interest of each;
- (b) In Oudh, for ail mahals or pattis held in sub-settlement or under a heritable non-transferable lease, the rent payable under which has been fixed by the Settlement Officer or other competent authority, a "register of all the under-proprietary co-sharers or co-lessees, specifying the nature and extent of the interest of each of them;
- (c) in Oudh, a register of all other under-proprietors in a mahal, and all other lessees whose rents have been fixed by a Settlement Officer or other competent authority, specifying the nature and extent of the interest of each of them;
- (d) a register of all persons holding land revenue-free-specifying the nature and extent of the interest of each;
- (e) a register of all persons cultivating or otherwise occupying land specifying the particulars required by Section 55.

Until a new record-of-rights is framed u/s 53, the existing record-of-rights shall be the record-of-rights prescribed by this section. Explanation.--In this section the words "proprietor" and "under proprietor" include a person in possession of proprietary or under proprietary rights under a mortgage or lease."

Clauses (a) to (d) cannot obviously apply to a bhumidar and Mr. Shambhu Prasad could not fall back upon those clauses in support of his argument. The only clause in respect of which an argument could be made was Clause (e) which provides for a register of all persons cultivating or otherwise occupying land

specifying the particulars required by Section 55. Section 55 opens with the words

"The register of persons cultivating or otherwise occupying land prescribed by Clause (e) of Section 32 shall specify as to each tenant the following particulars:"

The scheme of Section 55 would disclose that what is recorded under Clause (e) of Section 32 is not in respect of proprietary rights but only in respect of tenancy rights. Entries under that clause are meant only for tenants. It is, therefore, obvious that the persons to whom that entry related were not proprietors. Even if the name of the bhumidar were to be entered therein the bhumidar would not become a proprietor or underproprietor. It is, therefore, obvious that a bhumidari plot cannot be held to be an estate. It may also be noticed that Section 27 of the U. P. Zamindari Abolition and Land Reforms Act provides that compensation shall be paid to all the intermediaries whose estates have been acquired. The provisions in Chapter V which deal with compensation clearly show that the word "estate" has been used in the sense of the right of an intermediary, and compensation has to be paid only to intermediaries and not to bhumidars. We are, therefore, unable to agree with Mr. Shambhu Prasad that bhumidari land is included in the expression "estate" occurring in Article 31A of the Constitution.

7. It was also contended by Mr. Shambhu Prasad that by virtue of the provisions of Clause (2) of Art 31 of the Constitution a law relating to acquisition of land cannot be called in question in any Court of law on the ground that the compensation provided by that law is not adequate. The answer to this submission is furnished by Clause (5) of that Article. That clause clearly provides that nothing in Clause (2) shall affect the provisions of any existing law other than a law to which the provisions of Clause (6) applied. In other words, the effect of Clause (5) is that Clause (2) will not apply to any existing law except to those which are covered by Clause (6) of Article 31. The Act was passed in 1948. Therefore it could not be a law which had been enacted not more than 18 months before the commencement of the Constitution. It was not necessary that this Act should have been submitted to the President for certification within three months from the commencement of the Constitution. It is obvious that Clause (6) of Article 31 does not cover the Act. There is thus no substance in this submission of Mr. Shambhu Prasad also.

8. In the end Mr. Shambhu Prasad has contended that it has nowhere been stated either in the petition or in the affidavit filed in support of it that the compensation which is being paid to the petitioners is one computed on the basis of the prices existing on the 1st of September, 1939, or that what is being paid to them is less than the value of the property on the date of acquisition. He has supplemented his submission by saying that no orders in respect of compensation adverse to the petitioners have so far been passed or, at any rate, the petitioners do not complain that they have been passed; therefore, the petition should be dismissed. It was held by the Supreme Court in the case of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, , while dealing

with an application under Article 32 of the Constitution, as follows:

"To make out a case under this Article, it is Incumbent upon the petitioner to establish not merely that the law complained of is beyond the competence of the particular Legislature as not being covered by any of the items in the legislative lists, but that it affects or invades his fundamental rights guaranteed by the Constitution; of which he could seek enforcement by an appropriate writ or order A proceeding under this Article cannot really have any affinity to what is known as a declaratory suit. The first prayer made in the petition seeks relief in the shape of a declaration that the Act is invalid and is inappropriate to an application under Article 32."

It cannot be denied that we cannot grant a declaratory relief while exercising powers under Article 226 of the Constitution and what their Lordships of the Supreme Court said about Article 32 applies equally to Article 226. Mr. Singh has however, contended that there is a potential threat to the invasion of his rights inasmuch as the likelihood is that compensation would be determined on the basis of the value of the property on the 1st of September 1939. A similar submission was made before the Calcutta High Court in the case of Anumati Sadhukhan Vs. Assistant Regional Controller, Procurement, Alipur, , and the Calcutta High Court repelled the submission on the ground that a potential threat cannot be the cause of action for a petition under Article 226 of the Constitution, and the appropriate time for such a petition can only be after the right has actually been invaded. One of us (Jagdish Sahai, J.,) in the case of Smt. Shama Bai and Another Vs. State of Uttar Pradesh, Lucknow and Others, , took a similar view. Inasmuch as no right of the petitioners has so far been infringed, the petition appears to us to be premature and, in our Judgment, should be dismissed on that ground. We have, however, expressed our views on the merits of the case also because arguments were addressed at the bar and we thought it proper to record our findings on the points raised before us.

9. For the reasons mentioned above the petition is dismissed but the parties are directed to bear their own costs. The stay order is vacated.