

(1965) 04 GAU CK 0007
In the Gauhati High Court
Case No : Civil Rules No's. 58 and 59 of 1963

Jiban Chandra Sarma and Another	Vs	APPELLANT
The State of Assam and Others		RESPONDENT

Date of Decision : 17-04-1965

Acts Referred:

Assam Fixation on Ceiling of Land Holdings Act, 1956 — Section 11, 13, 15, 16, 17
Constitution (Seventeenth Amendment) Act, 1964 — Section 2
Constitution of India, 1950 — Article 14, 19, 20, 26, 31

Citation : (1965) 04 GAU CK 0007

Hon'ble Judges : G. Mehrotra, C.J.; S.K. Dutta, J

Bench : Division Bench

Advocate : S.M. Lahiri, N.M. Lahiri, J.P. Bhattacharjee and R.C. Bhattacharjee, for the Appellant; B.C. Barua, General and M.C. Pathak, Sr. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G. Mehrotra, C.J.—By these two petitions giving rise to Civil Rules Nos. 58 of 1963 and 59 of 1963 the Petitioners have challenged the constitutionality of the Assam State Acquisition of Lands Belonging to Religious or Charitable Institution of Public Nature Act, 1959-Assam Act IX of 1961 (hereinafter called the "impugned Act"). This Act received the assent of the President on the 2nd April 1961. Rule No 58 arises out of an application filed by one Jiban Chandra Sarma Doloi and Rule No. 59 arises out of an application filed by Praiuatha Nath Surma Doloi and Barada Kanta Sarnia Doloi, of Kamalchya Temple. In both these petitions notices have been issued to the Petitioners under the impugned Act for submission of particulars of the land held by them in the prescribed form.

2. The validity of the impugned Act has been challenged mainly on three grounds. Firstly it is urged that the impugned Act-abridges the fundamental rights guaranteed under Articles 14, 19, 20 and 31 of the Constitution and secondly that the impugned Act is a colourable piece of legislation. The impugned

Act exceeds the purpose for which it purports to have been enacted. Lastly it is urged that the impugned Act is an excessive delegation of legislative function.

3. Certain provisions of the impugned Act may be referred to In order to appreciate the points requiring decision. The object of the Act is to provide for the acquisition by the State of lands belonging to religious or charitable institutions of public nature. Section 3(1) lays down that the State Government may, from time to time, by notification in the official Gazette declare that all rights in land belonging to a Religious or Charitable Institution of Public Nature shall vest in the State free from all encumbrances, with effect from the first day of the agricultural year next following the date of publication of such notification. Section 4 enumerates the consequences which follow on the issue of the notification Section, 5 specifies the land which the religious or charitable institution can retain in its possession after the acquisition of the rest of its lands Section 6 provides for the taking of possession of the land which vests in the State Government on acquisition. Sections 7 and 8 deal with the method of ascertaining the compensation. Section 11 provides for claims for compensation. Section 13 provides for the claim by the creditors of the institution to the compensation amount. Section 15 provides:

15 Subject to the limitation prescribed u/s 4 of the Assam Fixation of Ceiling on Land Holdings Act, 1956 where the land acquired under this Act is in occupation of a raiyat on the date of notification u/s 3, it shall be settled with him, with the following status:

(a) if he has acquired. the status of a privileged raiyat under the Assam (Temporarily-settled Districts) Tenancy Act, 1935 then the land in his holding as privileged raiyat shall he settled with him with the status of a landholder as defined in the Assam Land and Revenue Regulation, 1886 and he shall, upon such settlement be absolved from the obligation, if any of rendering services or making payment of "bhog" to the institution concerned in respect of his holding. Provided however that notwithstanding anything contained in the Assam Land and Revenue Regulation, 1886 his right of transfer of such holding-shall extend only to persons belonging to the same religion as the institution in which the ownership of the land was vested before the date of notification u/s 3 of this Act;

(b) If he has acquired the right of occupancy under any law for the time being in force, then the land shall be settled with him with the status of a land-holder as defined in the Assam Land and Revenue Regulation, 1886 or of an occupancy raiyat as defined in the Goalparn Tenancy Act, 1929 or the Sylhet Tenancy Act, 1936, as the case may be;

(c) if he has not acquired the status of privileged raiyat or the right of occupancy, then the land shall be settled with him with the status of a settlement-holder (other than the land-holder) as defined in the Assam land and Revenue Regulation, 1886 or of a non-occupancy tenant under the Goalpara Tenancy Act, 1929 or the Sylhet Tenancy Act, 1936, as the case may be.

Section 16 deals with the settlement of the land which at the time of acquisition was not in occupation of any tenant. Section 17 provides for the assessment of the land acquired. Sections 18 to 20 deal with the determination and assessment of compensation. Section 30 gives power to frame rules. There is thus a complete code providing for the acquisition of the land belonging to the religious institutions and for settlement of the land which is so acquired and after that vests in the Government.

4. The contention of the Petitioner is that the Act does not provide for compensation and violates Article 26 of the Constitution. Article 26 of the Constitution reads as follows:

26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

- (a) to establish and maintain institutions for religious, and charitable purposes;
- (b) to manage its own affairs in matters of religion:
- (c) to own and acquire moveable and Immovable property: and
- (d) to administer such properly in accordance with law.

The argument of Mr. Lahiri on behalf of the Petitioner is that the effect of acquiring the property of the institution is that the institution will not have sufficient income to maintain itself and to perform its religious obligations. The impugned Act, therefore, contravenes the provisions of Article 26. It is also urged that people were given lands by the institutions as they undertook to perform certain services and as under the impugned Act after the acquisition they have no obligation to perform those services, the institutions cannot be maintained and their own affairs in matters of religion cannot be managed. Thus the impugned Act contravenes Article 26. It is also urged that a very valuable property belonging to the Petitioners has been acquired and the restrictions imposed are not reasonable within the meaning of Article 19 of the Constitution

5. It is not necessary for us to examine the contentions raised by Mr. Lahiri. By the Constitution (First Amendment) Act, 1951 Article 31B was inserted in the Constitution. Article 31B reads as follows:

Without prejudice to the generality of the provisions contained in Article 31 A. none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall subject to the power of any competent Legislature to repeal or amend it, continue in force.

When Article 31B was introduced in the Constitution, the Ninth Schedule did not contain the impugned Act. By 17th Constitutional Amendment Act Schedule 9 of

the Constitution was amended and the impugned Act was added to the list of the Acts in respect of which the challenge on the ground of violation of the fundamental rights embodied in Part. III of the Constitution was barred. Thus when the Ninth Schedule as amended under the Constitution (Seventeenth Amendment) Act 1964 is read along with Article 31B, it is clear that the Petitioners are debarred from challenging the constitutionality of the impugned Act on the ground that it contravenes any of the provisions of Part III of the Constitutions.

6. Mr. Lahiri has made two fold arguments in this connection. His first contention is that the scope of Article 31 B is the same as that of Article 31A and as Article 31 A debars the challenge of the impugned Act only on the ground that the Act abridges any of the rights conferred by Article 14, Article 19 or Article 31. It is open to the Petitioners to challenge the validity of the impugned Act on the ground that it contravenes Article 26. This argument is based on the opening words "Without prejudice to the generality of the provisions contained in Article 31A" in Article 31B. This argument has no substance. The words "without prejudice to the generality of the provisions contained in Article 31A" only mean that irrespective of the general words used in Article 31 A the Acts which are specified in the Ninth Schedule cannot be challenged on the ground of breach of the fundamental rights ensbriued in Part III, in one sense the scope of Article 31A is wider than that of Article 31B. Article 31A may be affricated in cases of some Acts which are not covered by Article 31B and in that sense the scope of Article 31A is wider than that of Article 31B. In other respects Article 31B may be considered to be narrower in its ambit and scope than Article 31A, because Article 31A prohibits a challenge of the impugned Act only on the ground that it abridges the rights conferred by Article 14, Article 19 or Article 31 while Article 31B debars the challenge of the impugned Act of the ground that it takes away or abridges any of the rights conferred by Part III of the Constitution.

7. It was then urged that the 17th Constitutional Amendment Act expressly makes Section 2 of that Act retrospective and thus the other parts cannot be held to be retrospective and as the impugned Act was passed prior to the Constitution (Seventeenth Amendment) Act, 1964, the amendment will not save the impugned Act. This argument is not sound. Article 31B has been made retrospective and the Seventeenth Constitutional Amendment Act by adding the impugned Act to the list of the Acts given in the Ninth Schedule has only made Article 31B applicable to it and thus as soon as Article 31B is attracted the bar will be operative in respect of the Acts which were passed prior to the coming in force of the Seventeenth Constitutional Amendment Act. The Impugned Act thus cannot be challenged on the ground that it abridges the right conferred under Article 26 of the Constitution of the Petitioners.

8. The next point urged also, in our opinion, has no substance. The scope and the ambit of the doctrine of colourable legislation has been authoritatively laid down by their Lordships of the Supreme Court in the case of K.C. Gajapati

Narayan Deo and Others Vs. The State of Orissa, The following observation at p. 379 of the report is apposite:

It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of "bona fides" or "mala fides" on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motives does not arise at all. Whether a statute is constitutional or not is thus always a question of power ** ** *

If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression "colourable legislation" has been applied in certain judicial pronouncements. The idea conveyed by the expression is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears on proper examination, to be a mere pretence or disguise.

The courts can examine the substance of the Act in order to find out whether under the guise of the exercise of a valid power, the legislature has exercised a power which it did not possess, a power which is now conferred on it under any of the items of the List or is contrary to the fundamental rights conferred to a citizen under Part III. Essentially thus it is a question of power. Entry 42 List III of the Seventh Schedule to the Constitution is "acquisition and requisitioning of property". Thus this entry gives ample power to the State Legislature to enact a law providing for acquisition of the land and unless it can be said that though the impugned Act purports to be one enacted in the exercise of its power under entry 42 List III of the Seventh Schedule, in effect it is the exercise of power under some other entry in respect of which the State legislature is not competent to enact or that the item is not covered by entry 42 or that it infringes any of the fundamental rights, it cannot be struck down. The ground that it infringes any of the fundamental rights is not open to the Petitioner in view of the provision of Article 31B. It cannot be said that the impugned Act comes either ostensibly or actually under any entry other than entry 42 List III of the 7th Schedule. The argument of Mr. Lahiri is that the purpose of the impugned Act was really to deprive the Petitioners of their rights to manage the religious institution properly, though ostensibly the impugned Act purports to be the acquisition of the lands

belonging to the Petitioners

9. There are two fold answers to the Petitioners' argument. Firstly, even assuming that the object of the Act is to interfere with the right of the Petitioners to administer the institutions, it will only be violation of Article 26 of the Constitution and thus it is not open to the Petitioners to attack the validity of the Act on that ground and secondly, it may be the indirect effect of the working of the impugned Act but it cannot be said to be the object of the impugned Act.

10. It was then urged that the impugned Act has been enacted to implement the policy of agrarian reform. Its object is to provide for acquisition of agricultural land and confer rights on the tillers of the soil. But the language of the impugned Act is wide enough to cover the acquisition of town lands. Thus the scope of the Act is wider than the object of the Act and that being so, the Act must be struck down as a colourable piece of legislation. We do not think that there is any substance in this contention. The object of the impugned Act is the acquisition of the land. So long as the legislature was competent to enact a law, it cannot be said that the law is a colourable piece of legislation, merely because the impugned Act in its ambit is wider than the supposed object or purpose of the Act.

11. The other argument is that item 42 only provides for acquisition and the word "acquisition" itself excludes the idea of confiscation. Unless the acquisition is for a public purpose on payment of compensation, it is confiscation. There are two-fold answers to this contention. Firstly the ground that the impugned Act does not provide for payment of adequate compensation and thus it is confiscatory, is in effect attacking the validity of the impugned Act on the ground that it abridges the right conferred under Article 31 of the Constitution which cannot be agitated by the Petitioners. Secondly on a careful reading of the provisions of the impugned Act it cannot be said that the impugned Act does not provide for compensation or that it is not for a public purpose. The institutions have been given a permanent annuity on the basis of net income. After the land has vested in the State, the State as the owner has got right to deal with the property in any proper manner and if the impugned Act provides for settlement of the land with the persons who are in occupation, or in the case of the lands not in occupation of any tenant with persons who are landless, it cannot be said that the object of the impugned Act is to make profit out of the land and the legislature has resorted to this indirect method of making such a profit. There were some lands which were given to persons who performed Seva and Puja and if those lands have been acquired and they are settled with persons in occupation of the lands on payment of certain rent, it was absolutely necessary that the tenants should be relieved of their obligation to perform the services and it cannot be said that by this either the compensation of the Petitioners has been affected or that the rights of the tenants who were given lands in lieu of performing certain services have at all been affected. The same argument applies in cases of lands which though given to Dolois for performing certain Seva and

Puja were sublet to the tenants by them.

12. Reliance was placed on the following passage in the case of Sonapur Tea Co., Ltd. Vs. Must. Mazirunnessa,

Faced with this difficulty Mr. Chatterjee attempted to argue that the Act is a colourable piece of legislation and should be struck down as such. His argument is that though ostensibly it purports to be a measure of agrarian reform its principal object and indeed its pith and substance is to acquire the property covered by its provisions and make profits by disposing of the same in the manner provided by Chapter III. Mr. Chatterjee seemed to suggest that the legislature should not have made it necessary for the tenants to exercise an option for taking settlement u/s 16 because the exercise of the said option involves the liability to pay the prescribed amount though in five instalments, and that, according to Mr. Chatterjee, indicates that the State wanted to make profit out of the bargain. Mr. Chatterjee's grievance is against the provisions of Section 18 also under which a tenant who does not opt for settlement is liable to be evicted. We are not impressed by this argument. The doctrine of colourable legislation really postulates that legislation attempts to do indirectly what it cannot do directly. In other words, though the letter of the law is within the limits of the powers of the Legislature, in substance the Law has transgressed those powers and by doing so it has taken the precaution of concealing its real purpose under the cover of apparently legitimate and reasonable provisions * * * * *

Is Mr. Chatterjee, however, right when he contends that the pith and substance of the Act and indeed its main object is to acquire property and dispose of it at a profit?

From this passage it is contended that if the Petitioners are able to show that the real object of the enactment was to acquire the land and dispose of it on profit, the impugned Act is a colourable, piece of legislation. If the law was not so, their Lordships should not have considered the provisions of that Act in order to satisfy themselves whether any such hidden intention was discernible. There are two answers to this contention. Firstly the observation does not extend to the doctrine of colourable legislation. Even assuming that the hidden purpose of the impugned Act is different from the ostensible purpose, unless it can be said that the hidden purpose makes the impugned Act beyond the competence of the legislature, it cannot be struck down on the ground that it is a colourable legislation. Moreover on (sic) close examination of the provisions of the impugned Act, it cannot be said that the object of the impugned Act was to acquire land for the purpose of making profit out of it.

13. Reference is then made to the case of Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, and reliance is placed on the following passage at 1086:

the object of the amendment relevant to the present enquiry was only to enable

the state to implement its next objective in the and reform namely, the fixing of limits to the extent of agricultural lands that may be owned or occupied by any person, the disposal of my land held in excess of the prescribed maximum and the further modification of the rights of land owners and tenants in agricultural holdings. The object was, therefore, to during about a change in the agricultural Economy but not to recognize or confer any title in the whole or a part of an estate on junior members of a family.

That case was one in which the provisions of Article 31-A were interpreted and in order to find out whether the Act related to the acquisition of an estate within the meaning of Article 31-A, the objects of the Act were taken into consideration.

14. There is no substance in the last point urged that the impugned Act is hit by (sic) delegation. No part of the impugned Act provides for delegation of any essential legislative function to the executive. Reference has been made to Section 25 of the impugned Act which lays down that the State Government may, by notification in the official Gazette, delegate any of its powers or functions under this Act, other than those specified in Section 3 and Sub-section (4) of Section 20, to such officer or authority subordinate to it, and subject to such conditions, restrictions and limitations, as may be specified in the notification This section only gives power to the Government to delegate its functions to any of its officers Wherever under the Act the Government has to perform certainty. it has to do it through some of its officers and thus such a provision had to be made in he impugned Act under which the Government could delegate such powers to its officers, But this is neither a delegation by the legislature of its legislative function to the executive, or a delegation of any essential legislative function. In. the result, therefore, there is no force in these petitions and they are rejected to orders as to the costs of these petitions.