
(1954) 04 AHC CK 0023

In the Allahabad High Court

Case No : Special Appeal No. 84 of 1954, against judgment and order of M.L. Chaturvedi, J

Mst. Khairunnisa and others

APPELLANT

Vs

Ganga Prasad and others

RESPONDENT

Date of Decision : 14-04-1954

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 299, 299(2), 31
Government of India Act, 1935 — Section 19(1), 31

Citation : (1954) 04 AHC CK 0023

Hon'ble Judges : RAGHUBAR DAYAL, J and B.UPADHYA, J

Final Decision : Dismissed

Judgement

Raghubar Dayal, J.—This is a special appeal against an order of Mr. Justice Charurvedi dismissing the appellants petition under Art. 226 of the Constitution.

2. Mazhar Ali, the appellant, died during the pendency of the appeal and his heirs have been brought on the record.

3. Ganga Prasad, respondent No. 1, and the other respondents 2 to 4 were rejected by the zamindar Afzal Husain, respondent No. 5, in execution of a decree under Sec. 171 of the U.P. Tenancy Act on the 29th April 1942. On the 2nd August 1943 the land was let to Mazhar Ali who filed the writ petition. He built a well and planted a grove on the land in suit. He also put up some other constructions. This was permissible under the lease.

4. In 1947 the U.P. Tenancy (Amendment) Act X of 1947 came into force. Section 27 of this Act provided for the reinstatement of a tenant who had been ejected from his holding on or after the first day of January 1940 under Sec. 171 of the U.P. Tenancy Act, otherwise than on the ground of an illegal transfer by way of sale or gift. Such an ejected tenant had to apply within six months from the date of the commencement of the Act, i.e. the 14th June 1947, to the court which passed the decree for his ejectment for reinstatement. Ganga Prasad and others accordingly applied for their reinstatement Mazhar Ali raised objections against

that application. That application was allowed by the Revenue Officer but was dismissed by the Collector on appeal. The Board of Revenue, however, allowed the revision and directed the reinstatement of Ganga Prasad and other respondents.

5. Mazhar Ali thereafter filed a Civil Miscellaneous Application No. 205 of 1952 in this Court for setting aside, in the exercise of its powers under Art. 227 of the Constitution, the order of the Board of Revenue dated the 28th March 1952. He, however, later filed Misc. Application No. 411 of 1952 on the 2nd September 1952, praying thereby that his previous application be considered in the alternative to be an application under Art. 226 and that a writ in the nature of certiorari be issued. Subsequently the grounds on which the relief under Art. 226 was prayed were supplied. The grounds were :

"1. Because the U.P. Act X of 1947 and, in any case, Sec. 27 of that Act, was ultra vires the powers of the State Legislature as it conflicted with the provisions of Sec. 299 of the Government of India Act.

2. Because there is nothing in Act X of 1947 to show that the previous sanction of the Governor was obtained to the legislation as required by Sec. 299 of the Government of India Act, 1935, and, actually, no such sanction was obtained.

3. Because Sec. 27 of the U.P. Act X of 1947 had no application to the facts of the humble applicants case.

4. Because the provisions of Sec. 27 of the U.P. Act X of 1947 also became void and unenforceable in view of the provisions of Arts. 19 and 14 and 31 of the Constitution of India, and could not be enforced against the humble applicant on 28th March 1952 by the Honble Board of Revenue.

5. Because the Honble Board of Revenue, therefore, exceeded its jurisdiction in passing the order it passed on 28th March 1952."

6. Three points were, however, argued before the learned Judge. The first point was that no revision lay to the Board of Revenue from the order of the Collector. The second point was that the land in suit was no more a holding and even if it was a holding it was a holding different from the holding held by the respondents and that therefore the provisions of Sec. 27 of U.P. Act X of 1947 did not apply to it. The third point was that the U.P. Tenancy (Amendment) Act X of 1947 was ultra vires of the legislature as no previous assent of the Governor had been obtained to the bill as provided by Sec. 299(3) of the Government of India Act, 1935. All these contentions were rejected by the learned Judge. He, accordingly, dismissed the petition.

718. (After disposing of the first two points on which the court concurred with the lower court, the judgment proceeded :)

19. The next contention is that Sec. 27 of U.P. Act X of 1947 was void in view of Sec. 299 of the Government of India Act, 1935, as no compensation was given to

the appellant for the deprivation of his rights to property. It is further contended that in case it was a valid enactment when made in 1947 it became void on the coming into force of the Constitution in January 1950 in view of its infringing the provisions of Art. 31 and also of Art. 19(1)(f) of the Constitution.

20. Section 299 of the Government of India Act, 1935, is :

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

(2) Neither the Federal nor a 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 in or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of 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 of 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 GovernorGeneral 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."

21. The deprivation of his rights in the land held by the appellant was in accordance with the provisions of Sec. 27 of U.P. Act X of 1947 and was, therefore, by authority of law. It is, however, contended that this deprivation amounted to the compulsory acquisition of his tenancy land for public purposes within the import of that expression in SubSec. (2) of Sec. 299 of the Government of India Act and that, therefore, a law depriving the appellant of his property without the payment of compensation could not be made by the U.P. Legislature. This submission is based on the wider meaning which had been given to the expression "acquired

required or taken possession" in cl. (2) of Art. 31 prior to its amendment by the Constitution (Fourth Amendment) Act, 1955.

It is submitted for the appellant that the same liberal interpretation should be given to the expression "the compulsory acquisition for public purposes of any land" in SubSec. (2) of Sec. 299 even though a narrower interpretation had been given to it prior to the enforcement of the Constitution. We do not agree with this contention. There seems to be no justification for enlarging the scope of SubSec.

(2) of Sec. 299 on account of the interpretation of similar language in the Constitution. It is not laid down by the Supreme Court that the interpretation they were putting on the constitutional provision is to be put on the language of Sec. 299 of the Government of India Act. Even if this contention for the appellant be accepted, the present interpretation on a similar expression in cl. (2) of Art. 31 of the Constitution should be placed on the provisions of SubSec. (2) of Sec. 299 of the Government of India Act. At present the relevant provisions of Art. 31 of the Constitution are :

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

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

(3) * * * * *

(4) * * * * *

(5) Nothing in cl. (2) shall affect

(a) the provisions of any existing law other than a law to which the provisions of cl. (6) apply, or

(b) * * * * *

(i) * * * * *

(ii) * * * * *

(iii) * * * * *

(6) Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such Commencement be submitted to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of cl. (2) of this article or has contravened the provisions of SubSec. (2) of Sec. 299 of the Government of India Act, 1935".

22. According to cl. (2A) a law would be deemed to provide for the compulsory

acquisition of property only when it provides for the transfer of, the ownership of the property to the State or to a corporation owned or controlled by the State notwithstanding the fact that the law deprives any person of his property. Section 27 of U.P. Act X of 1947 does in provide for the transfer of ownership of the tenancy right which the appellant possessed in the holding to the State or to a corporation owned or controlled by the State and, therefore, the provisions of this section, even though they deprive the appellant of his tenancy rights, will not be deemed to be law for the compulsory acquisition of his rights and consequently will not be hit on account of their not providing for the payment of compensation to the appellant for the deprivation of his rights.

23. In *Jagannath Baksh Singh v. United Provinces*, AIR 1943 FC 29, the validity of the provisions of the U.P. Tenancy Act (17 of 1939) was considered. Gwyer, C.J. said at page 33 :

"First it is said that the provisions of the Act which are complained about in this case fall within Sec. 299(2), Constitution Act, which provides that a Provincial Legislature has no power to pass a law authorising the compulsory acquisition for public purposes of any land, unless the law provides for the payment of compensation for the property acquired. The answer to this is that a law which regulates the relations of landlord and tenant at thereby diminishes the rights which the landlord has hitherto exercised in connection with his land does not authorise the compulsory acquisition of the land for public or any other purposes; and, therefore, the question of compensation does not arise."

24. The aforesaid Federal Court case went to the Privy Council whose judgment is reported in *Jagannath Baksh Singh v. United Provinces*, AIR 1946 PC 127. Dealing with the contention based on Sec. 299 of the Government of India Act their Lordships of the Judicial Committee said at page 130 :

"But in the present case there is no question of confiscatory legislation. To regulate the relations of landlord and tenant and thereby diminish rights, hitherto exercise by the landlord in connection with his land, is different from compulsory acquisition of the land."

This means that the provisions of SubSec. (2) of Sec. 299 of the Government of India Act protect against confiscatory legislation. Confiscatory legislation can only mean a law by which a persons property is confiscated by the Government. It cannot refer to a law by which such property is not taken by the Government as owner but which deprives one of certain rights and creates similar rights in another in relation to that property.

25. What Sec. 27 of U.P. Act X ,of does is that it restores the previous holding of tenants who had been ejected therefrom under certain provisions of the Tenancy Act even though subsequent to their ejection that holding had been let to another person by the landlord. In one sense this means the depriving of the new tenant of his tenancy rights in the land. But this result is achieved by the law providing that the relationship of landlord and tenant between the landlord

and any tenant ceases in such circumstances and that the relationship between the landlord and his previous tenant revives. Both these steps amount to the regulating of the relations of the landlord and his

tenant. It follows, therefore, that such a law is not a law authorizing the compulsory acquisition of any land for public purposes.

25a. in *State of West Bengal v. Subodh Gopal*, AIR 1954 SC 92 Patanjali Sastri C.J. said at p. 99 :

"I see no sufficient reason to construe the words acquired or taken possession used in cl. (2) of Art. 31 in a narrow technical sense. The Constitution marks a definite break with the old order and introduces new concepts in regard to many matters, particularly those relating to fundamental rights, and it cannot be assumed that the ordinary word acquisition was used in the Constitution in the same narrow sense in which it may have been used in preConstitution legislation relating to acquisition of land. These enactments, it should be noted, related to land, whereas Art. 31(2) refers to movable property as well, as to which no formal transfer or vesting of title is necessary."

Again he said at the same page :

"The word acquisition is not a term of art, and it ordinarily means coming into possession of obtaining, gaining or getting ones own. It is in this general sense that the word has been used in Arts. 9, 11 and 19(1)(1) and not as implying any transfer or vesting of title."

Proceeding he said :

"I am of opinion that the word acquisition and its grammatical variations should, in the context of Art. 31 and the Entries in the Lists referred to above, be understood in their ordinary sense, .."

Finally he said :

"It is, however, unnecessary here to express any concluded opinion on the precise scope and meaning of the expression shall be taken possession of or acquired in cl. (2) except to say that it does not admit of being construed in the same wide sense as the word taken used in the Fifth Amendment of the American Constitution, but implies such an appropriation of the property or abridgment of the incidents of its ownership as would amount to a deprivation of the owner."

26. The same view about the content of the word acquisition was taken in *Dwarkadas Shrinivas v. Sholapur Spinning and Weaving Co., Ltd.*, AIR 1954 SC 119, wherein Mahajan, J. said at page 129 :

"In my judgment, the true concept of the expression acquisition in our Constitution as well as in the Government of India Act is the one enunciated by Rich, J. and the majority of the Court in *Minister of State for The Army v. Dalziel*.

(1944) 68 CLR 261. With great respect I am unable to accept the narrow view that acquisition necessarily means acquisition of title in whole or part of the property. It has been rightly said that a close and literal construction of constitutional provisions made for the security of person and property deprives them of half their efficacy and ends in a gradual depreciation of the right as if the right consisted more in sound than in substance. In other words, such provisions cannot be construed merely by taking a dictionary in hand. The word acquisition has quite a wide concept, meaning the procuring of property or the taking of it permanently or temporarily. It does not necessarily imply the acquisition of legal title by the State in the property taken possession of."

This observation may imply that Mahajan, J. was interpreting the expression acquisition in SubSec. (2) of Sec. 299 of the Government of India Act and gave it the same meaning as he gave to that expression in Art. 31 of the Constitution. In this connection it may be said that such an opinion is not expressed by the majority of Judges deciding that case. Patanjali Sastri, C.J. agreed with the final opinion of the majority. He in his judgment in the case of AIR 1954 SC 92 just contented himself by saying that the expression in the Constitution need not be given the narrow meaning it might have; had in the preConstitution days. Das, J. adhered to this opinion in the latter case, observing at page 114 :

"The word acquisition, therefore, has become, as it were, a word of art having a long accepted legislative meaning implying the transfer of title. It will be quite wrong, according to the correct principles of interpretation, not to give the word acquisition and its grammatical variations this technical and special meaning".

Rose and Ghulam Hasan, JJ. said nothing with respect to the interpretation of the word "acquisition in SubSec. (2) of Sec. 299 of the Government of India Act.

27. We, therefore, do not take this case as in authority for the appellants contention that the expression acquisition in SubSec. (2) of Sec. 299 of the Government of India Act should be given the same interpretation as the Supreme Court gave to that expression in Art. 31 of the Constitution prior to its amendment by the Constitution (Fourth Amendment) Act, 1935.

28. In Bhikaji Narain Dhakras v. State of Madhya Pradesh, (S) AIR 1955 SC 781, Das A.C.J. said at p. 786 :

"Learned counsel for the petitioners sought to raise the question as to the invalidity of the impugned Act even before the advent of the Constitution. Prior to the Constitution, when there were to fundamental rights Sec. 299 of the Government of India Act, 1935 which corresponds to Article 31 had been construed by the Federal Court in Lal Singh v. The Central Provinces and Berar AIR 1944 FC 62, and in other cases referred to in Rajah of Bobbili v. The State of Madras, AIR 1952 Mad 203 at p. 216, and it was held by the Federal Court that the word acquisition occurring in Sec. 299 had the limited meaning of actual transference of ownership and not the wide meaning of deprivation of any kind that has been given by this Court in AIR 1954 SC 92, to that word acquisition

appearing in Art. 31(2) in the light of the other provisions of the Constitution.

It is, therefore, not clear at all that the impugned Act was in conflict with Sec. 299 of Government of India Act, 1935."

It is clear from this observation that the liberal construction of the expression acquisition in Art. 31 of the Constitution is due to the effect of the other provisions of the Constitution in interpreting that word. Similar is the indication from the observations of Patanjali Sastri, C.J. in AIR 1954 SC 92.

28a. In view of what has been said above we, with respect, do not agree with the view expressed in Venkata Chalamayya v. State of Madras, AIR

1958 Andh Pra 173 to the effect that the expression "acquisition in subsec, (2) of Sec. 299 of the Government of India Act be given the same meaning as has been given to that expression in Art. 31 of the Constitution by the Supreme Court.

29. We are, therefore, of opinion that Sec. 27 of U.P. Act X of 1947 was not void when enacted by the U.P. Legislature.

30. It is next contended for the appellant that the provisions of Sec. 27 of U.P. Act X of 1947 became void on the coming into force of the Constitution in view of Art. 13 of the Constitution and in view of their infringing the provisions of Art. 31 of the Constitution as interpreted by the Supreme Court. U.P. Act X of 1947 comes within the expression existing law as defined in cl. (10) of Art. 366 of the Constitution, and means "any law, ordinance, order, byelaw, rule or regulation passed or made before the commencement of the Constitution by any Legislature, authority or person having power to make such a law, ordinance, order, byelaw, rule or regulation".

Clause (5) of Art. 31 of the Constitution 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) apply. Clause (6) of Art. 31 provides for the certification of a law enacted by the State not more than eighteen months before the commencement of the Constitution. U.P. Act X of 1947 came into force on the 14th June 1947, more than eighteen months before the commencement of the Constitution, and therefore the provisions of cl. (5) of Art 31 do not apply to it. It follows, therefore, that this Act being an existing law on the 26th January 1950 is not affected by the provisions of cl. (2). Further, as already mentioned, the provisions of this Act do not provide for the compulsory acquisition of property in view of cl. (2A) of Art. 31 of the Constitution and therefore, they do not fall within the purview of cl. (2) of that Article.

31. Article 19(1)(f) of the Constitution gives to all citizens the right to acquire, hold and dispose of property. When the provisions of Sec. 27 of U.P. Act X of 1947 take away the right the appellant possessed in the land in suit, no question of any restriction on his right to hold and dispose of property arises as such a restriction is the natural result of the taking away of the right itself, and this right could be taken away by the authority of law in view of cl. (1) of Art. 31 of the

Constitution. In this connection reference may be made to the distinction drawn between the provisions of Article 19(1)(f) and Art. 31 of the Constitution. Patanjali Sastri, C.J., in the case of AIR 1954 SC 92, said at page 95 :

"Subclause (f) of cl. (1) of Art. 19 seems analogous to cl. (1) of Art. 17 of the United Nations Declaration of Human Rights. Everyone has the right to own property alone as well as in association with others and Art. 31 to cl. (2) of Art. 17 No one shall be arbitrarily deprived of his property. I have no doubt that the framers of our Constitution drew the same distinction and classed the natural right or capacity of a citizen to acquire, hold and dispose of property with other natural rights and freedoms inherent in the status of a Free citizen and embodied them in Art. 19(1), while they provided for the protection of concrete rights of property owned by a person in Art. 31."

32. In AIR 1954 SC 119, Mahajan, J. said at page 126 :

"Under this scheme the fundamental right regarding property apart from personal and property freedoms has been dealt with in this part separately as a self contained provision and as a distinct subject from the various freedoms declared by Art. 19. In considering Art. 31 it is significant to note that it deals with private property of persons residing in the Union of India, while Art. 19 only deals with citizens defined in Art. 5 of the Constitution. It is thus obvious that the scope of these two articles cannot be the same as they cover different fields.. The true approach to this question is that these two articles really deal with two different subjects and one has no direct relation with the other, namely, Art. 31 deals with the field of eminent domain and the whole boundary of that field is demarcated by this article. In other words, the States power to take the property of a person is comprehensively delimited by this article".

Bose, J. said at page 137 :

"Article 19(1)(i) confers a certain fundamental freedom on all citizens of India, namely, the freedom to acquire, hold and dispose of property. Article 31(1) is a sort of a corollary, namely that after the property has been acquired it cannot be taken away save by authority of law. Article 31 is wider than Art. 19 because it applies to everyone and is not restricted to citizens. But what Art. 19(1)(f) means is that whereas a law can be passed to prevent persons who are not citizens of India from acquiring and holding property in this country no such restrictions can be placed on citizens. But in the absence of such a law noncitizens can also acquire property in India and if they do then they cannot be deprived of it any more than citizens save by authority of law."

33. The appellant has not been deprived of the right to acquire, hold and dispose of property. He is as free to do so now as he would have been in the absence of the provisions of Sec. 27 of U.P. Act X of 1947. There is no bar to his acquiring tenancy rights or any other rights to property. Section 27 simply meant his losing certain tenancy rights in a particular holding which according to law had to be

restored to the previous tenant who had been ejected therefrom.

34. We are, therefore, of opinion, that the provisions of Sec. 27 of U.P. Act X of 1947 do not in any way infringe the appellants rights under Art. 19(1)(f) of the Constitution.

35. In view of the above, the appeal has no force and we dismiss it with costs.

Appeal dismissed.