

(1964) 08 CAL CK 0023
In the Calcutta High Court
Case No : Civil Rule No. 1685 of 1964

Phanindra Kumar Senyal and Others	APPELLANT
Vs	
State of West Bengal	RESPONDENT

Date of Decision : 18-08-1964

Acts Referred:

Constitution of India, 1950 — Article 31B
Government of India Act, 1935 — Section 299(2)
West Bengal Land Development and Planning Act, 1948 — Section 8

Citation : AIR 1965 Cal 177

Hon'ble Judges : H.K. Bose, C.J.;G.K. Mitter, J

Bench : Division Bench

Advocate : Priti Bhusahan Burman, Ranjit Kumar Ghosh and Tapa Prasad Chatterjee, for the Appellant; Bankim Chandra Dutt and Manindra Chandra Chakraborty, for the Respondent

Judgement

Muter, J.—A rule was issued upon the respondent to show cause why Reference Case No. L.R.A. 20 of 1963 pending in the Court of the Special Land Acquisition Judge, 24 Parganas, should not be transferred to this Court for disposal or in the alternative the questions of law formulated in paragraph 21 or the petition should not be determined by this Court and the case returned to the said Land Acquisition Judge for disposal in infirmity with the decision of this Court. In order to dispose of the said Rule, it is necessary to take note of the relevant facts in the next succeeding paragraph. For this purpose, the reference is treated as transferred to and heard by this Court.

2. The petitioners were owners of about seven bighas of land in Mouza Satgachi, P.S. Dum Dum within the Municipal Area of South Dum Dum Municipality. After the West Bengal Estates Acquisition Act came into force, they claimed to retain the said lands and held the same as tenants under the State of West Bengal paying rent to the latter. Sometime in April 1950, some people including refugees from East Pakistan took forcible possession of the said lands. In July 1951 the petitioners applied before the competent authority under the Rehabilitation of

Displaced Persons and Eviction of Unauthorised Occupation of Land Act 1951 for eviction of the said persons. During the pendency of this case the State of West Bengal proceeded to acquire the said land's under a notification and declaration under the provisions of the West Bengal Land Development and Planning Act of 1948. The notification u/s 4 of the Act dated January 12, 1957 was published in the Calcutta Gazette and the declaration u/s 6 dated May 22, 1958 was published in the said Gazette, on June 5, 1958. The petitioners' case is that they knew nothing about this before March 1959. On March 27, 1962 a notice u/s 12(2) of the Land Acquisition Act 1894 was served upon the petitioners intimating that a sum of Rs. 19,174.57 nP. had been awarded to them in respect of the acquisition of the said lands for a squatters colony. On May 1, 1962 the petitioners filed their objection to the said acquisition and the award alleging various grounds including one relating to the inadequacy of the compensation which according to them should not have been less than Rs. 1,60,000/-. The petitioners prayed for reference u/s 18 of the, Land Acquisition Act, 1894 in which they charged that as the plots of land in question had already been wrongfully and illegally occupied by certain persons pretending to be immigrants the acquisition could not be said to be for any public purpose and that acquisition of land to regularise the criminal trespass cannot be described as for a public purpose. Thereafter the petitioners filed a statement of claim before the Special Land Acquisition Judge, 24-Parganas urging that the acquisition purported to have been made was based on provisions which were ultra vires the Constitution of India and for a purpose which could not be described as a public purpose, the compensation of award was illusory and amounted to a fraud on the Constitution.

3. The petitioners' main grievance, is that the provisions contained in Section 8 (i) of the West Bengal Land Development and Planning Act, 1948 in so far as they provide that if the market value of any land acquired for the public purpose specified in Section 2(d)(i) exceeds the market value of five land on the 31st December, 1946, then amount of such excess shall not be taken into consideration, does not specify any principle on which or the manner in which the compensation is to be determined and the same was therefore ultra vires the provisions of Section 299 of the Government of India Act, 1935 and of Article 31(2) of the Constitution of India, The said provisions of West Bengal Act XXI of 1948 being ultra vires Section 299 of the Government of India Act, 1935 cannot be saved under Articles 31, 31A, 31-B of the Constitution of India. The petitioners further contend that the amendment of the proviso (b) to Section 8 (i) of the West Bengal Land Development and Planning Act, 1948 made in 1955 does not make the said Act and the said proviso valid inasmuch as it was void when enacted in 1948 and could not be saved or revived by the Constitution Fourth Amendment Act of 1955. The petitioners further submitted that the then provincial legislature having no competence to enact any law in violation of Section 299 of the Government of India Act, 1935, the said Act XXI of 1948 and/or the said proviso was not an existing law as defined in Article 366(10) and as referred to in Article 31(5) of the Constitution of India and did not continue in

forte by virtue of the Constitution. In the premises the petitioners submitted that the following questions as to the interpretation of the Constitution arose for determination by this Court:

(a) Whether Articles 31, 31A, and 31B of the Constitution save and/or revive a law viz., West Bengal Act XXI of 1948 which was void when enacted;

(b) Whether the said West Bengal Land Development and Planning Act, 1948 and the proviso (b) to Section 8 (i) can be said to be an existing law under Article 366(10) and Article 31(5) of the Constitution;

(c) Whether the subsequent amendment in 1955 of the proviso can save and/or revive the said Act and proviso under the Constitution;

(d) Whether the said Act and the proviso (b) to Section 8(i) of the Act can be said to be a law in force under Article 372 of the Constitution.

(e) Whether the inclusion of the said Act in the Ninth Schedule by the Constitution Fourth Amendment Act, 1955 can validate an Act which was invalid when enacted and what is the effect of the said inclusion in the Ninth Schedule and Article 31B;

(f) Whether the West Bengal Land Development and Planning Act, 1948 and/or the proviso (b) of Section 8 (i) of the said Act when enacted in 1948 was a valid piece of legislation.

4. The West Bengal Act XXI of 1948 came on the statute Book on October 7, 1948. The Preamble to the Act shows that its object was to provide for the acquisition and development of land for public purposes. u/s 2 (d) "public purpose" includes,

(i) the settlement of immigrants who have migrated into the State of West Bengal on account of circumstances beyond their control.

The other sub-clauses are not material for our present purpose. Section 4 provides for notification in the official Gazette by the State Government for declaring any area specified in the notification to be a notified area if it is satisfied that any land in such area was needed or likely to be needed for any public purpose. Section 4A provides, for hearing of objections to the acquisition, of land by persons interested therein. Section 5 provides for the preparation and sanctioning of development schemes i.e. schemes for the development of land for any public purpose. Section 6 provides for issue of a declaration by the State Government to the effect that land was needed for the public purpose. Section 8 enabled the State Government to acquire the land after making a declaration u/s 6 whereupon- the provisions of the Land Acquisition Act 1894 were to apply as far as may be applicable. Under proviso (b) to Section 8 (i) as it stood prior to the amendment of 1955 "in determining the amount of Compensation to be awarded for land acquired in pursuance of the Act the market value referred to in clause first of Sub-section (1) of Section 23 of the said Act shall be deemed to be

the market value of the land on the date of publication of the notification under Sub-section (1) of Section 4 for the notified area in which the land is included subject to the following condition, that is to say,

"If such market value exceeds by any amount the market value of the land on the 31st December, 1946, on the assumption that the land had been at that date in the state in which it in fact was on the date of publication, of the said notification, the amount of such excess shall not be taken into consideration."

The West Bengal Act was amended In 1951 but such amendment is not material for our purpose.

5. By the amendment introduced on September 29, 1955 the last portion of proviso (b) was amended to read "if such market, value in relation to land acquired for the public purpose specified in Sub-clause (i) of Clause (d) of Section 2 exceeds by any amount the market value of the land on the 31st day of December, 1946 on the assumption that the land had been at that date in the state in which it in fact was on the date) of publication of the said notification, the amount of such excess shall not be taken into consideration."

6. The effect of the amendment is that the proviso which was attracted before to all cases of acquisition of land for public purpose within the meaning of clause as given in Section 2(d) was limited to acquisition of land afterwards only to cases where it was required for settlement of immigrants who had migrated in the State of West Bengal on account of circumstances beyond their control.

7. The first contention urged before us was that the West Bengal Act of 1948 was a still-born Act to start with and was not in force in January 1950 when our Constitution came on the scene. Reference was made to Section 299 (1) and (2) of The Government of India Act, 1935 and it was argued that inasmuch as the West Bengal Act did not fix the amount of compensation or specify any principle on which the same was to be determined it was void ab initio as beyond the law making powers of the provincial legislature. Secondly, it was contended that it was not a "law in force" before the commencement of the Constitution and further being inconsistent with the provisions of Part III of the Constitution was void. It was void because it infringed Article 31(2) of the Constitution as originally framed or subsequently amended by the Constitution Fourth Amendment Act which received the assent of the President on April 27, 1955. The West Bengal Act which was enacted within 18 months before the commencement of the Constitution was not certified by the President under the provisions of Clause (6) of Article 31. Being a law other than one to which the provisions of the said Clause (6) applied it was affected by Clause (2) of Article 31. As such even after the amendment of Article 31(2) it was open to challenge on the ground that no principle for fixing the amount of compensation was contained therein.

8. It was next argued that Article 31B when first inserted in the Constitution by the First Amendment Act of 1951 did not seek to protect the West Bengal Act as

the same was not included in the Ninth Schedule to the Constitution. It was said that the inclusion of the West Bengal Act as amended by West Bengal Act 29 of 1951 by the Constitution Fourth Amendment Act of April 27, 1955 protected the Act, if at all, in the form in which it was up to 1951 and could not give it any immunity when the West Bengal Act was further amended by the West Bengal Act 23 of 1955 which came into force in September 1955. It was submitted that although the West Bengal Legislature might have the competence to amend any Act notwithstanding that it was included in the ninth Schedule to the Constitution it was not competent to the West Bengal Legislature to alter or vary any provision relating to compensation which would attract the provisions of Part III of the Constitution. It was argued that as proviso (b) to Section 8 (1) of the West Bengal Act had been amended after the date of the Constitution Fourth Amendment Act the West Bengal Legislature was trying to alter the Constitution by affecting the Ninth Schedule which it was not competent to do.

9. The first contention was developed in the following manner. It was said that as the West Bengal Legislature was not competent to make any law providing for the acquisition of land in derogation of Section 299(2) of the Government of India Act, 1935 the West Bengal Act of 1948 was void ab initio and not a "law in force" within the meaning of Article 13(1) of the Constitution of India on January 26, 1950. Also it could not be an "existing law" as defined in Article 366(10) of the Constitution for the same reason. The Act was tested on the anvil of the Constitution by this Court as early as February 1951 and by the Supreme Court in appeal therefrom in December 1953 in the case of *The State of West Bengal Vs. Bela Banerjee and Others*, , the High Court judgment being reported in *The West Bengal Settlement Kanungoe Cooperative Credit Society Ltd. Vs. Mrs. Bella Banerjee and Others*, . The Supreme Court referred to Entry 42 of List III of the Seventh Schedule as it stood before the amendment and said that "the fixing of an anterior date, which might have" no relation to the value of the land when it is acquired, may be, many years later cannot but be regarded as arbitrary, "and accordingly held that the latter part of proviso (b) to Section 8 of West Bengal Act which fixed the market value on December 31, 1946 as, the maximum compensation for lands acquired under it offended against the provisions of Article 31(2) and was unconstitutional and void. Article 31(2) as it stood before its amendment by the Fourth Constitution Amendment Act was practically of the same effect as Section 299(2) of the Government of India Act 1935. The contention though attractive cannot be accepted for reasons hereinafter given.

10 Reference was made to certain passages in the Judgment of the Supreme Court in *The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others*, where certain provisions of the Behar Land Reforms Act of 1950 came up for consideration and in particular to paragraph 59 where Section 23(f) of the Behar Act was described as a colourable piece of legislation. Section 23 of the Act laid down the method of computation of net income for the assessment of compensation payable. The different sub-clauses of this section contained provisions for deduction of various sums from the gross asset of a

proprietor. Clause (f) of this section provided for deduction of costs of works of benefit to the raiyats of estates or tenures at rates varying from four to twelve and a half per cent, the rate of four per cent being applicable where the gross asset did not exceed Rs. 5,000/- and the higher limit being applicable if the gross asset exceeded Rs. 25,000/- The Court observed that this calculation of the cost of works of benefit to the raiyats at a flat rate without any reference to the actual expenses that might have been incurred was a provision of 3 confiscatory character. According to the Court the provision was designed to deprive a number of people of their property without payment of compensation. It was argued before us that the same objection can be levelled against the West Bengal Act The later judgment of the Supreme Court in *Dhirubha Devisingh Gohil Vs. The State of Bombay*, more fully dealt with hereinafter shows that the challenge to the Behar Act was allowed because the majority of the Court were of the opinion that the provisions were in the nature of fraud on the exercise of legislative power. See *Dhirubha Devisingh Gohil Vs. The State of Bombay*, .

11. The West Bengal Act came under the protection of Article 31B of the Ninth Schedule by the Constitution Fourth Amendment Act. Under this article, the Acts and regulations specified in the Ninth Schedule were to be deemed not to be void or ever to have become void on the ground that such Act or regulation was Inconsistent with or took away or abridged any of the right conferred by any provisions of Part III and were to continue in force notwithstanding any judgment, decree or order of any Court to the contrary. The language used is as wide as possible. No doubt there is no express reference to Section 299 of the Government of India Act but many of the Acts referred to in the ninth Schedule are Acts which were passed by the legislatures concerned before the commencement of the Constitution and It would. In my opinion, not be right to hold that those Acts were saved only if they were found not to be void before the commencement of the Constitution and ceased to be so by reason of any provision in Part III thereof. in any event, the matter is now put beyond controversy by a series of decisions of the Supreme Court. The first of these is *Dhirubha Devisingh Gohil Vs. The State of Bombay*, . There, the vires of the Bombay Taluqdari Tenure Abolition Act, 1949 which was first passed by the Bombay Legislature in the year 1949 receiving the assent of the Governor General on January 18, 1950 and being gazetted on January 24, 1950, was SB question. u/s 3 of the Act all taluqdari tenures were to be deemed to have been abolished with effect from the date on which the Act came into force. u/s 5(1)(a) all taluqdari lands were to be liable to the payment of land revenue in accordance with the provisions of the Bombay Land Revenue Code and the rules made thereunder. u/s 6 all the items of property comprised within the taluqdari and belonging to the taluqdar were to vest In the Government as Its property and all rights held by the taluqdar in such property were to be deemed to have been extinguished. Section 7 provided for payment of compensation in respect of the property so vested and rights so extinguished. It also specified the principles for and the manner of assessing and granting that compensation. Section 14

provided for compensation with reference to the provisions of Land Acquisition Act being payable in respect of any of the rights extinguished but not covered by the provisions of Section 7 or any other section of the Act. It was contended before the Bombay High Court that the Act was not immune from the challenge of unconstitutionality since, it had not received the certificate of the President under Clause (6) of Article 31. The Bombay High Court without going into the question whether or not under any of the provisions of the Constitution the Bombay Act was immune from attack of the kind put forward, dealt with the merits of the challenge and held that the Act was for a public purpose and the compensation provided for was neither illusory nor unfair and accordingly there was no violation of Section 299 of the Government of India Act; The Supreme Court held that notwithstanding that the Act had not been certified by the President being included in the Ninth Schedule of the Constitution it attracted the immunity given in Article 31-B. Before the Supreme Court it had been contended that the protection under the said article was confined to a challenge based on the violation of the provisions of Section 299 of the Government of India Act. The argument based on the difference in language between Article 31-B and Clause (6) of Article 31 which in terms referred to contravention of the provisions of Sub-section (2) of Section 299 of the Government of India Act was turned down and the Court held that this was too narrow a view of Article 31-B. According to the unanimous judgment of Mahajan C. J., Mukherjea, Bose, Jagannadhas and Venkatarama Ayyar, JJ., "What Article 31-B protects is not mere contravention of the provisions of Part III of the Constitution but an attack on the grounds that the impugned Act is inconsistent with or takes away or abridges any of the rights conferred by any provisions of this Part. One of the rights secured to a person by Part III of the Constitution is a right that his property shall be acquired only for public purposes and under a law authorising such acquisition and providing for compensation which is either fixed by the law itself or regulated by principles specified by the law. That is also the very right which was previously secured to the person u/s 299 of the Government of India Act. The challenge now made to the validity of the impugned Act is based on the alleged violation of that right. Nor does this challenged cease to be in substance anything other than a challenge in respect of the violation of the said right notwithstanding that u/s 299 of the Government of India Act the right is secured in terms which restricts the power of the Legislature and operates as a restraint on its competency. What under the Government of India Act was a provision relating to the competency of the Legislature was also clearly in the nature of a fundamental right of the person affected. But it is urged, that even so, Article 31-B protects only the violation of the fundamental right in so far as it was conferred by Part III of the Constitution and that this right cannot be said to have been conferred by the Constitution. We cannot agree with this contention. This is clearly a case where the concerned right which was secured u/s 299 of the Government of India Act in the form of a fetter on the competency of the Legislature and which in substance was a fundamental right, was lifted into the formal category of a fundamental right along with other fundamental rights recognised in the present

Constitution What is important to notice in the phraseology of Article 31-B is that the protection is not merely against the contravention of certain provisions but an attack on the ground of unconstitutional abridgment of certain rights. It will be illogical to construe Article 31-B as affording protection only so far these rights are taken away by an Act in violation of the provisions of the new Constitution but not when they are taken away by an Act in violation of Section 299 or the Government of India Act which has been repealed. The intention of the Constitution to protect each and everyone of the Acts specified in the Ninth Schedule from any challenge on the ground of violation of any of the fundamental rights secured under Part III of the Constitution irrespective of whether they are pre-existing or new rights, is placed beyond any doubt or question, by the very emphatic language of Article 31-B which declares that none of the provisions of the specified Acts shall be deemed to be void or over to have become void on the ground of the alleged violation of the rights indicated and notwithstanding any judgment, decree or order of any court or tribunal".

12. In *Rajah Velugoti Venkata Sesha Varda Raja Gopala Krishna Yachandra Bahadur Kumar Rajah, Venkatagiri Vs. The State of Andhra Pradesh*, , the Court had to examine the Madras Estate (Abolition and Conversion into Ryotwari) Act, 1948 which was included in the Ninth Schedule to the Constitution. The object of the Act was to provide for the Acquisition of the rights of landholders and the policy of the Act was to interfere with the rights of other persons in the estate. Tho High Court held however that this assumption was not borne out by the substantive provisions of tire Act itself inasmuch as it was clear from Section 3 of the Act that on an estate being notified the entire estate was to stand transferred to the Government and all rights and interests created in or over the estate before the notified date by the principal or any other landholder must, as against the Government, cease and determine. It was argued that as the Abolition Act was enacted in exercise of the legislative, power conferred by the Government of India Act, 1935 the Court must assume that the Madras Legislature had acted properly and within the limits of the powers conferred on it and must therefore interpret the provisions of the Abolition Act on the footing that it was a valid piece of legislation and that its provisions did not offend Section 299 of the Government of India Act, 1935. The Court observed that normally this was the correct approach to the problem, but the argument lost much of its force, when one adverted to the provisions of Articles 31(6) and 31-B of the Constitution of India read with the ninth schedule thereto. According to Supreme Court,

"those provisions proceed on the assumption that certain laws passed under the Government of India Act, 1935 did offend Section 299 of the Act and expressly says those Acts. The Abolition Act is one of the Acts included in the ninth schedule and is protected by Article 31-B. In the circumstances, the Court must interpret the Abolition Act as it finds it by giving the ordinary and natural meaning to the words used by the Madras Legislature and uninfluenced by any pre-conceived notion as to validity of the Abolition Act."

13. The above goes to show that the idea behind Article 31-B and the ninth schedule was that certain Acts of different State Legislatures required to be protected notwithstanding that they offended Section 299 of the Government of India Act, 1935 and also infringed the provisions of Part III of the Constitution of India.

14. The West Bengal Act came up for consideration again by the Supreme Court in *The State of West Bengal and Others Vs. Naba Kumar Seal*, . In this case it was not the provision for payment of compensation which was attacked but it was argued that the provision for Government proceeding under Sec. 7 of the Act without framing any scheme of development was beyond the powers of the State Government. A further contention was raised that Sec. 7 of the Act, was ultra vires as offending against Articles 14, 19(1)(f) and 31(2) of the Constitution. The Court held that the attack based on Article 19(1)(b) and 31(2) was futile in view of the provisions of Article 31-B and its inclusion in the ninth schedule which rendered the Act immune from all attacks based on the provisions of Part III of the Constitution.

15. On the basis of certain observations made by a majority of three Judges of the Supreme Court in *Deep Chand v. State of Uttar Pradesh*, All 1959 SC 648, it was argued that if the West Bengal Act was beyond the legislative competence of the legislature, to start with it could not be re-vivified by any amendment of Constitution and the doctrine of eclipse which had been adopted in *Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another*, could not be called in aid to protect the Act. In *Deep Chand Vs. The State of Uttar Pradesh and Others*, the facts were as follows: The appellants had been carrying on business as stage carriage operators for many years on different routes in U. P. under permits issued under the Motor Vehicles Act, 1939 along with buses owned by Government. After obtaining the assent of the President on April 23, 1955 the U.P. Legislature passed the U. P. Motor Vehicles Act. The State Government issued a notification dated May 17, 1955 whereby it was directed that the aforesaid routes along with others should be exclusively served by the stage carriages of the Government. On November 12, 1955 the State Government published a notification u/s 4 of the U. P. Act formulating a scheme for the aforesaid routes. The appellants received notices u/s 5 requiring them to file objections to the scheme. After hearing them the Regional Transport Authority informed the appellants that the Transport Commissioner had ordered them to ply their stage carriages on other routes. The appellants filed writ petitions and in appeal wanted to include a ground that by reason of the coming into operation of the Motor Vehicles (Amendment) Act, No. 100 of 1956 passed by Parliament the impugned U. P. Act had become void and secondly that by reason of Article 254 of the Constitution the impugned U. P. Act being repugnant and inconsistent with the Central Act No. 100 of 1956 had become void since the coming into operation of the Central Act. Das C. J. and Sinha, J. agreed with the conclusions of the other three Judges that (1) the U. P. Transport Service Act 1955 did not, on the passing of the Motor Vehicles (Amendment) Act (Central Act of 1956)

become wholly void under Article 254(1) of the Constitution but continued to be a valid and subsisting law supporting the scheme already framed under the U. P. Act, (2) that, even if the Central Act was construed as amounting under Article 254(2) to a repeal of the U. P. Act, such repeal did not destroy or efface the scheme already framed under the U. P. Act and that the U. P. Act did not offend the provisions of Article 31 of the Constitution as it stood before the Constitution Fourth Amendment Act. The majority judges considered the question raised by the advocate general of (J. P. as to whether the amendment of the Constitution removing a constitutional limitation on a legislature to make a particular law had the effect of validating the Act made by it when its power was sublet to that limitation. They observed that under Clause (1) of Article 13 a pre-constitution law subsisted except to the extent of its inconsistency with the provisions of Part III whereas no post-constitution law could be made contravening the provisions of Part III and therefore the law, to that extent, though made, was a nullity from its inception. After referring extensively to American authorities and the earlier Supreme Court cases *Subba Rao J.*, said that the doctrine of eclipse developed in *Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another*, where it was held that the theory that a pre-constitution law validly made "existed for certain purposes even during the post-constitution period had no application to post-constitution laws infringing the fundamental rights as they would be void ab initio in toto. Reference was also made by the learned Judge to the case of *Saghir Ahmad Vs. The State of U.P. and Others*, where it was held that the U. P. Road Transport Act (II of 1951) was unconstitutional when passed and therefore it was still-born and could not be vitalised by the subsequent amendment of the Constitution removing the constitutional objections but must be re-enacted.

16. Taking his stand on these observations the learned advocate for the petitioner argued that once it is held that the West Bengal Act was void because it contravened Section 299(2) of the Government of India Act 1935 it must be taken to be a still-born Act which could not be vitalised by Article 31-B or the Ninth Schedule to the Constitution. It must here be noted that in *Deep Chand Vs. The State of Uttar Pradesh and Others*, the Court was considering a post Constitution law which would be void from the very beginning if it infringed any rights conferred by Part III of the Constitution, whereas under Article 13(1) pre-constitution laws were only to become void in so far as they were inconsistent with the provisions of that Part. However, that may be, we are bound by the decisions of the Supreme Court bearing directly on the applicability of Article 31B read with Ninth Schedule to the Constitution to certain pre-constitution Acts in the three cases already mentioned and in my opinion, Article 31-B read with the Ninth Schedule to the Constitution would be a dead letter if it were to be held that they would protect Acts which did not infringe Section 299 of the Government of India Act but contravened any provisions of Part III of the Constitution after the same came into force.

17. Reliance was placed on the decision of the Madras High Court in *D.*

Namasivaya Mudaliar and Others Vs. The State of Madras and Others, , where an Act of the Madras Legislature namely, Act XI of 1953 was held to be bad because it contravened Article 31(2) of the Constitution. The object of this Act was to prevent speculative dealings in the lignite bearing lands in South Arcot District by taking power for the Government to acquire these lands at the price prevailing on April 28, 1947 (when the first mining operations were started in the area) providing at the same time for the payment of the value of any agricultural improvements effected on the land after that date upto the date of notice of acquisition. Even before the passing of the Act the Madras Government had issued a press note on October 6, 1948 informing the public generally that Government proposed to undertake legislation with the object mentioned and advised owners of lignite bearing lands not to dispose of their lands to speculators. By the Bill published on January 7, 1953 the public were warned that payment would not be made for buildings or improve merits other than agricultural improvements. The Bill was duly passed by the State Legislature and after receiving the assent of the President on June 2, 1953 it came into force on August 20, 1953. The Act amended the Land Acquisition Act in two important respects. Section 11 of the Act directed the Collector to ascertain the value of the land on the date of the publication of the notification u/s 4 i.e. the date on which the Government notified that they had considered that the land was deemed or likely to be needed for a public purpose. The Act substituted the date April 28, 1947 for the date of the notification u/s 4(1) of the Land Acquisition Act. The other change was that the Act directed that compensation was payable only for agricultural improvements commenced or made after April 28, 1947 and before the date of the publication of the notification u/s 4(1) of the Land Acquisition Act. Compensation was thus denied for every other kind of improvement regardless of value and regardless of whether they had been lawfully made or not. It was held by the Madras High Court that the date April 28, 1947 had no bearing on the value of the land at the time it was acquired since the value leaving out all speculative elements--may have gone up owing to quite legitimate causes and to deprive a person of the value that has accrued to his property owing to natural and lawful causes was unconstitutional. Reference was made to the judgment of the Supreme Court in The State of West Bengal Vs. Bela Banerjee and Others, and it was said that the principle therein expressed as to what constituted compensation was still good law and the rule there laid down that it was not competent to a legislature, to direct that the value of property acquired for a public purpose shall be ascertained with reference to an anterior and irrelevant date was still applicable. Further the amendment to the Constitution by the Fourth Amendment Act in 1955 did not preclude the Courts from considering whether what was called compensation was really so and whether what were claimed to be principles on the basis of which compensation was to be computed were really principles of the kind envisaged in Article 31(2) of the Constitution.

18. In my opinion, the decision in the above Madras case cannot help the petitioners. The Madras High Court was examining the vires of a post-

constitution Act which had to satisfy the test laid down in Article 31 but received no special protection under Article 31-B or the Ninth Schedule to the Constitution.

19. The further argument that the West Bengal Act because of its amendment in September, 1955 after the constitution Fourth Amendment Act and after the inclusion of the Act as amended up to 1951 in the Ninth Schedule, lost the protection given to it by Article 31-B and the Ninth Schedule cannot be accepted. The inclusion of an Act in the Ninth Schedule would give it protection against the inroads on the Constitution made, upto the time of its finding a place in the said schedule. But if the Act is amended further so as to make fresh inroads on the fundamental rights guaranteed in Part III of the Constitution it would lose the protection of the Ninth Schedule. To uphold such an Act would in substance be defending the amendment of the Constitution at the instance of a State Legislature. The judgment of the Bombay High Court in Abdul Rahiman Jamaluddin Vs. Vithal Arjun and Others, which met with the approval of the Supreme Court in Sri Ram Ram Narain Medhi Vs. The State of Bombay, is in point, it was said by Shah J, in delivering the judgment of the Bombay High Court that "evidently Article 31-B has been, enacted with a view to protect from challenge the provisions of the specified Acts. But the protection in our judgment can only apply to the Acts as they stood at the date when the Constitution (First Amendment) Act, 1951 was enacted. If any other interpretation of Article 31-B were permissible, it would in effect confer upon a subordinate legislature the power of amending the Constitution. There is nothing in Article 31-B which confers upon the legislatures which had originally passed these Acts the power to amend them inconsistently with the provisions of the Constitution or to take away or abridge the rights conferred by the Constitution. If the provisions of the Acts specified in the Ninth Schedule have to be amended, the amendments must either be consistent with the provisions of the Constitution or be saved under Article 31-B of the Constitution.

20. The reasoning of the judgment of the Bombay High Court was also adopted in a Full Bench decision of Jammu and Kashmir High Court in S. Sant Singh v. State of Jammu and Kashmir, AIR 1959 J. and K. 35 (FB).

21. We have therefore to consider the nature of the amendment effected by the West Bengal Legislature in September 1955 and find out whether there was any further curtailment of the rights guaranteed by Part III of the Constitution. In my opinion, nothing of the kind was done here. The only alteration relevant for our present purpose in regard to which complaint was made relates to the proviso (b) to Section 8 (i). Before its amendment the market value of the land sought to be acquired in excess of that prevailing on December 31, 1946 was not to be taken into account in all cases, i.e. irrespective of the question whether the purpose behind the acquisition was the settlement of immigrants or the establishment of towns and model villages or the creation of better living conditions in urban and rural areas or the improvement and development of agriculture, forestry etc. After the amendment this disregard of the excess in

value after December 31, 1946 was to be limited to the case of a public purpose relating to the settlement of immigrants and no others. In the result, the position of a person whose lands were sought to be acquired for the settlement of immigrants remained the same as before. To that extent, the amendment in the West Bengal Land Development and Planning Act 1948 effected in September 1955 has not affected the appellants in any way and they are not entitled to challenge the vires of the Act on the ground that the amendment infringes further any rights guaranteed under Part III of the Constitution;

22. In the result, it must be held that the West Bengal Land Development and Planning Act 1948 as amended up to 1955 is covered by the protection given to it by Article 31-B and the Ninth Schedule to the Constitution and the petitioners are not entitled to challenge the vires of the Act for the purpose of the acquisition of their land as they have sought to do. It is not necessary to answer the questions which have been formulated by the appellants in detail as the Land Acquisition case can be disposed of on life basis that the West Bengal Act as amended is a valid piece of legislation.

23. The answers to the questions are as follows:-

(a) and (e) The questions are framed on the assumption that the West Bengal Act XXI of 1948 was void when enacted. There is no decision of any Court to that effect in any event it is saved by Article 31-B and the Ninth Schedule to the Constitution.

(b) and (d) It is not necessary to dilate on the question whether the West Bengal Act XXI of 1948 or the proviso (b) to Section 8(i) of the said Act was an existing law under Article 356(10) or Article 31(5) of the Constitution or whether it was a law in force under Article 372 of the Constitution at the time of its commencement. The said Act and the said proviso must be held to be valid provisions of law under the protection of Article 31-B and the Ninth Schedule to the Constitution even if they contravened any provision of Part III of the Constitution in 1950.

(c) The subsequent amendment of proviso (b) to Section 8(i) of the West Bengal Act XXI of 1948 in the year 1955 is valid.

(f) it would appear that the West Bengal Act XXI of 1948 and in particular proviso (b) to Section 8(i) of the Act contravened the provisions of Section 299(2) of the Government of India Act of 1935 as it did not fix the amount of compensation or lay down any principle for determining the compensation for lands proposed to be acquired.

The parties must pay and bear their own costs of this reference. Certificate tendered under Article 132(1) of the Constitution is asked for and refused.

Bose, C.J.

24. I agree.