

(2013) 06 SHI CK 0128
In the High Court Of Himachal Pradesh
Case No : CWP No. 257 of 2007-A

Prem Singh

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 13-06-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)(f), 21, 226
Himachal Pradesh Ceiling on Land Holdings Act, 1972 — Section 14, 3(f)

Citation : (2013) 06 SHI CK 0128

Hon'ble Judges : A.M. Khanwilkar, C.J.;Kuldip Singh, J

Bench : Division Bench

Advocate : J.L. Bhardwaj, for the Appellant; Shrawan Dogra, A.G. with Mr. Romesh Verma and Mr. A.K. Rattan, Addl. A.Gs., Mr. Parshant Sharma, Advocate, vice Mr. Sandeep Sharma, ASGI, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, C.J.—Heard counsel for the parties. This writ petition under Article 226 of the Constitution of India has been filed for the following reliefs:

(a) Pass an appropriate writ of certiorari or mandamus or any other appropriate writ or order/decreed directing the respondents to determine the compensation of the trees existing on the land that has been declared surplus.

(b) Pass an appropriate writ or order directing the respondents to give a reasonable opportunity to the petitioner for determining the compensation of trees on the surplus land. In the event if it is found that compensation of trees cannot be determined under the H.P. Ceiling on Land Holdings Act, 1972 then Section 14 of the H.P. Ceiling on Land Holdings Act, 1972 be declared to be unconstitutional as it violates Article 14, 19 and 21 of the Constitution of India.

(c) Quash the order dated 21.5.2005 marked Annexure P-6 passed by the Collector Chamba and quash the order dated 10.10.2006 passed by the Financial Commissioner (Annexure P-8) by appropriate writ of certiorari or mandamus or

any other appropriate writ or order/decreed directing the respondents to make enquiry for determining the compensation of the trees that have been declared surplus.

(d) Issue appropriate orders for determining the compensation and grant compensation amount to the petitioner in the interest of justice. In the case the respondent is not willing to grant compensation to the petitioner then the surplus land be restored to the petitioner.

2. We would first revert to the relief in prayer clause (b), whereby the petitioner is challenging the validity of Section 14 of the H.P. Ceiling on Land Holdings Act, 1972 being ultra vires to the Articles 14, 19 and 21 of the Constitution of India. In view of the indisputable fact that the said Act of 1972 has been included in the 9th Schedule of the Constitution, by virtue of Article 31B of the Constitution of India, the scope of challenge is circumscribed. The Constitution Bench of the Apex Court in the case of I.R. Coelho (Dead) By LRs. Vs. State of Tamil Nadu and Others, in paragraphs 75, 79, 95, 96, 97, 98 and 151, has summed up the situation thus:

75. To begin with, we find it difficult to accept the broad proposition urged by the petitioners that laws that have been found by the courts to be violative of Part III of the Constitution cannot be protected by placing the same in the Ninth Schedule by use of device of Article 31-B read with Article 368 of the Constitution. In His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, the majority opinion upheld the validity of the Kerala Act which had been set aside in Kunjukutty Sahib, etc., etc. Vs. The State of Kerala and Another, and the device used was that of the Ninth Schedule. After a law is placed in the Ninth Schedule, its validity has to be tested on the touchstone of basic structure doctrine. In State of Maharashtra and Others Vs. Man Singh Suraj Singh Padvi and Others, , a Seven-Judge Constitution Bench, post-decision in Kesavananda Bharati case upheld the Constitution (40th Amendment) Act, 1976 which was introduced when the appeal was pending in the Supreme Court and thereby included the regulations in the Ninth Schedule. It was held that Article 31-B and the Ninth Schedule cured the defect, if any, in the regulations as regards any unconstitutionality alleged on the ground of infringement of fundamental rights.

79. The real crux of the problem is as to the extent and nature of immunity that Article 31-B can validly provide. To decide this intricate issue, it is first necessary to examine in some detail the judgment in Kesavananda Bharati case, particularly with reference to 29th Amendment.

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95. On the issue of equality, we do not find any contradiction or inconsistency in the views expressed by Chandrachud, J. in Indira Gandhi case, by Krishna Iyer, J. in Bhim Singh case and Bhagwati, J. in Minerva Mills case. All these judgments

show that violation in individual case has to be examined to find out whether violation of equality amounts to destruction of the basic structure of the Constitution.

96. Next, we examine the extent of immunity that is provided by Article 31-B. The principle that constitutional amendments which violate the basic structure doctrine are liable to be struck down will also apply to amendments made to add laws in the Ninth Schedule is the view expressed by Sikri, C.J. Substantially, similar separate opinions were expressed by Shelat, Grover, Hegde, Mukherjea and Reddy, JJ. In the four different opinions six learned judges came to substantially the same conclusion. These judges read an implied limitation on the power of the Parliament to amend the Constitution. Khanna, J. also opined that there was implied limitation in the shape of the basic structure doctrine that limits the power of Parliament to amend the Constitution but the learned Judge upheld the 29th Amendment and did not say, like the remaining six Judges, that the Twenty-Ninth Amendment will have to be examined by a smaller Constitution Bench to find out whether the said amendment violated the basic structure theory or not. This gave rise to the argument that fundamental rights chapter is not part of basic structure. Khanna, J., however, does not so say in *Kesavananda Bharati* case. Therefore, *Kesavananda Bharati* case cannot be said to have held that fundamental rights chapter is not part of basic structure. Khanna, J. while considering Twenty-Ninth amendment, had obviously in view the laws that had been placed in the Ninth Schedule by the said amendment related to the agrarian reforms. Khanna, J. did not want to elevate the right to property under Article 19(1)(f) to the level and status of basic structure or basic frame-work of the Constitution, that explains the ratio of *Kesavananda Bharati* case. Further, doubt, if any, as to the opinion of Khanna, J. stood resolved on the clarification given in *Indira Gandhi* case, by the learned Judge that in *Kesavananda Bharati* case, he never held that fundamental rights are not a part of the basic structure or framework of the Constitution.

97. The rights and freedoms created by the fundamental rights chapter can be taken away or destroyed by amendment of the relevant Article, but subject to limitation of the doctrine of basic structure. True, it may reduce the efficacy of Article 31-B but that is inevitable in view of the progress the laws have made post-*Kesavananda Bharati* case which has limited the power of the Parliament to amend the Constitution under Article 368 of the Constitution by making it subject to the doctrine of basic structure.

98. To decide the correctness of the rival submissions, the first aspect to be borne in mind is that each exercise of the amending power inserting laws into the Ninth Schedule entails a complete removal of the fundamental rights chapter vis-?-vis the laws that are added in the Ninth Schedule. Secondly, insertion in the Ninth Schedule is not controlled by any defined criteria or standards by which the exercise of power may be evaluated. The consequence of insertion is that it nullifies entire Part III of the Constitution. There is no constitutional control on

such nullification. It means an unlimited power to totally nullify Part III insofar as the Ninth Schedule legislations are concerned. The supremacy of the Constitution mandates all constitutional bodies to comply with the provisions of constitution. It also mandates a mechanism for testing the validity of legislative acts through an independent organ viz. the judiciary.

151. In conclusion, we hold that:

(i) A law that abrogates or abridges rights guaranteed by Part III of the Constitution may violate the basic structure doctrine or it may not. If former is the consequence of the law, whether by amendment of any Article of Part III or by an insertion in the Ninth Schedule, such law will have to be invalidated in exercise of judicial review power of the Court. The validity or invalidity would be tested on the principles laid down in this judgment.

(ii) The majority judgment in *Kesavananda Bharati* case read with *Indira Gandhi* case, requires the validity of each new constitutional amendment to be judged on its own merits. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account for determining whether or not it destroys basic structure. The impact test would determine the validity of the challenge.

(iii) All amendments to the Constitution made on or after 24th April, 1973 by which the Ninth Schedule is amended by inclusion of various laws therein shall have to be tested on the touchstone of the basic or essential features of the Constitution as reflected in Article 21 read with Article 14, Article 19, and the principles underlying them. To put it differently even though an Act is put in the Ninth Schedule by a constitutional amendment, its provisions would be open to attack on the ground that they destroy or damage the basic structure if the fundamental right or rights taken away or abrogated pertains or pertain to the basic structure.

(iv) Justification for conferring protection, not blanket protection, on the laws included in the Ninth Schedule by Constitutional Amendments shall be a matter of Constitutional adjudication by examining the nature and extent of infraction of a Fundamental Right by a statute, sought to be Constitutionally protected, and on the touchstone of the basic structure doctrine as reflected in Article 21 read with Article 14 and Article 19 by application of the "rights test" and the "essence of the right" test taking the synoptic view of the Articles in Part III as held in *Indira Gandhi* case. Applying the above tests to the Ninth Schedule laws, if the infraction affects the basic structure then such a law(s) will not get the protection of the Ninth Schedule.

This is our answer to the question referred to us vide Order dated 14th September, 1999 in *IR Coelho (Dead) By Lrs. etc. Vs. The State of Tamil Nadu etc.,* .

(v) If the validity of any Ninth Schedule law has already been upheld by this

Court, it would not be open to challenge such law again on the principles declared by this judgment. However, if a law held to be violative of any rights in Part III is subsequently incorporated in the Ninth Schedule after 24.4.1973, such a violation/infracton shall be open to challenge on the ground that it destroys or damages the basic structure as indicated in Article 21 read with Article 14, Article 19 and the principles underlying thereunder.

(vi) Action taken and transactions finalized as a result of the impugned Acts shall not be open to challenge.

(Emphasis supplied)

3. No tangible argument is advanced as to how Section 14 of the Act violates the doctrine of basic structure of the Constitution. In our opinion, therefore, the challenge to Section 14 of the Act of 1972 cannot be taken forward.

4. The next relief claimed by the petitioner is to direct the respondents to determine the compensation of trees existing on the land that has been declared surplus. It is not in dispute that the petitioner has not taken exception to the order passed by the competent Authority declaring his land as surplus. The trees, in respect of which compensation is now claimed, were standing on the said land is also not in dispute. In view of the expansive meaning of expression "Land", as contained in Section 3(f) of the Act, defining the expression "Land" to include standing trees, it would necessarily follow that the competent Authority while declaring the land as surplus and while providing for compensation to the owner of the land for matters pertaining to that land, is obliged to reckon the value of the trees standing thereon. The definition of land u/s 3(f) of the Act reads thus:

3(f) "land" means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture and includes-

- (i) the sites of buildings and other structures on such land;
- (ii) orchards;
- (iii) ghasnies;
- (iv) banjar land; and
- (v) private forests.

5. It is not the case of the petitioner that the compensation provided to him did not include the relevant matters. The argument of the petitioner, however, is about the inadequacy of the compensation amount. That cannot be examined in the present writ petition, especially, when, admittedly, the petitioner has not challenged the order passed by the competent Authority declaring the land surplus and providing for compensation for the same to the land owner. The petitioner cannot be allowed to circumvent the said binding decision and ask for the relief under consideration directly before this Court, that too, in the year

2007 claiming compensation for trees standing on the land declared to be surplus. In any case, to examine the grievance regarding the inadequacy of compensation amount on that count would inevitably require the Court to enter upon disputed question of facts, which cannot be done in exercise of writ jurisdiction.

6. In the third relief, the petitioner has challenged the decision of the Collector, Chamba District, dated 21st May, 2005, and also order passed by the Financial Commissioner, dated 10th October, 2006. Those orders have been passed on the application preferred by the petitioner requesting the Collector, in the first instance, to reopen the claim of the petitioner for adequate compensation towards trees, which were standing on the land declared to be surplus belonging to the petitioner. The Collector, in our opinion, has rightly rejected that application on the ground that the petitioner has failed to challenge the order passed by the competent Authority providing for compensation in respect of surplus land. That order having attained finality, it was not open to the Collector to reopen the compensation claim for the trees, as requested by the petitioner. That view of the Collector has been upheld by the Financial Commissioner. In our opinion, even this relief cannot be countenanced, being devoid of merits.

7. The argument of the petitioner that the petitioner was justified in applying to the Collector in the year 2005 after the decision of the Supreme Court in Civil Appeal No. 130 of 1999, dated 22nd April, 2004 also does not commend to us. That cannot absolve the petitioner nor create any new right or cause of action, having failed to challenge the original order passed by the competent Authority providing for compensation for the land declared to be surplus. The decision of the Supreme Court, therefore, would not give rise to any new cause of action to the petitioner to reopen the claim for compensation for trees in the year 2005, as is sought to be contended. Accordingly, the petition ought to fail and the same is dismissed.