

(2014) 08 GUJ CK 0092

In the Gujarat High Court

Case No : Special Civil Application No. 16103 of 2013

Pushaben and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19, 21, 254(2)
Securities and Exchange Board of India Act, 1992 — Section 11AA

Citation : AIR 2015 Guj 31

Hon'ble Judges : J.B. pardiwala, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Shalin Mehta, Sr. Advocate and P.Y. Divyeshvar, Advocates for the Appellant; Kamal Trivedi, Adv. General and S.K. Vishen, A.G.P, Advocates for the Respondent

Judgement

Akil Abdul Hamid Kureshi, J.—Petitioners have challenged the vires of the Gujarat Agricultural Lands Ceiling Act, 1960 ("the Act" for short) as being ultra vires the Constitution of India. Consequently, they have prayed for quashing the proceedings undertaken by the competent authority under the Act qua the petitioners' agricultural land of village Ladvi, Taluka Kamrej, Dist: Surat. Few facts may be noted at the outset.

2. The petitioners hold agricultural lands situated in village Ladvi, Taluka Kamrej. Since the land held by the petitioners was in excess of the ceiling limit prescribed under the Act, necessary declaration in this respect was made before the competent authority. The Mamlatdar and ALT held certain lands to be in excess of ceiling limit. The petitioners lost in further appeal and revision before the Gujarat Revenue Tribunal when the revision petition was dismissed on 20th June, 1993. Such decision of the GRT was challenged by the petitioners by filing Special Civil Application No. 10507 of 1993 which was dismissed by a judgment dated 21-3-2007 against the said judgment of the learned Single Judge, the petitioners preferred Letters Patent Appeal No. 52/09 which was dismissed on 17th February, 2009. SLP filed by the petitioners before the Supreme Court also came

to be dismissed on 27th August, 2010. The petitioners thereafter sought review of the said order which also came to be dismissed by the Supreme Court on 1st February, 2011. We are informed that a curative petition has been filed before the Supreme Court which is pending. At that stage, the petitioners have filed this petition and challenged the vires of the said Act.

3. Learned counsel Shri Mehta for the petitioner raised following contentions:

(1) That no assent and at any rate no separate assents were obtained from the President, one as required under Article 31-A of the Constitution and another under Article 254(2) of the Constitution. The first assent was necessary because the Act was in abrogation of the fundamental rights. Assent under Article 254(2), would be necessary because the State was enacting a law with reference to the entry in the concurrent list where the Union legislation was already in existence.

(2) Counsel further submitted that the said Act made provisions divesting the petitioners and other agricultural land-holders of their properties without payment of any compensation. Such provisions would be opposed to Articles 14, 19 and 21 of the Constitution. He, therefore, argued that the same affects the basic features of the Constitution. He contended that Articles 14, 19 and 21 form a triumvirate and any law which abridges these articles would be opposed to the basic structure of the Constitution and therefore should be declared as null.

4. Faced with the situation that the said Act is placed in the Ninth Schedule right from the year 1964, the counsel contended that many provisions were added to the said Act subsequently. Significant changes were made by the amendments brought into by Gujarat Act No. 2 of 1974 with effect from 23rd February, 1974. He, therefore, submitted that as held by the Supreme Court in the case of I.R. Coelho (Dead) By LRs. Vs. State of Tamil Nadu and Others, such amended provisions would be open to challenge on the limited ground of destroying the basic features of the Constitution.

5. On the other hand, learned Advocate General Shri Kamal Trivedi appearing for the respondents opposed the petition on the ground that the petitioners having failed in the proceedings under the said Act now cannot at a belated stage challenge the vires of the Act. He submitted that the challenge to the validity of the Act is an afterthought and it would not be open to the petitioners to challenge the same at this stage. In this respect, he relied on a decision of the Supreme Court in the case of P.G.F. Limited and Others Vs. Union of India (UOI) and Another, .

6. The learned Advocate General further contended that the said Act was placed in the Ninth Schedule way back in the year 1964. By virtue of the judgment of the Supreme Court in the case of I.R. Coelho (Dead) By LRs. Vs. State of Tamil Nadu and Others, , challenge to the validity of the Act even on the limited ground of destroying the basic features therefore would not be available. With respect to the amendments made post the decision of His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, he submitted that there is nothing pointed

out to suggest that any of the amendments are opposed to the basic features of the Constitution.

7. He relied on the affidavit in reply filed by the State Government to contend that the assent of the President was obtained at the relevant time. He further placed on record certain documents in this respect. One of them is a copy of a communication received from the Government of India by the Governor of Gujarat conveying the assent of the President to the said Act.

8. As noted above, the petitioners lost at all stages in their litigation under the said Act. Having failed up to the level of the Gujarat Revenue Tribunal, their petition and LPA came to be dismissed by this Court. SLP and Review Petition were also dismissed by the Supreme Court. At that stage, we have serious doubt whether the petitioner can file an independent petition calling in question the vires of the Act under which such action was initiated. In this respect, we may refer to the decision of the Supreme Court in the case of P.G.F. Limited and Others Vs. Union of India (UOI) and Another, in which following observations have been made by the Supreme Court:

"31. Before advertng to the various contentions raised in challenging the vires of Section 11AA of the SEBI Act, we feel that it is worthwhile to state and note certain precautions to be observed whenever a vires of any provision of law is raised before the Court by way of a writ petition. It will be worthwhile to lay down certain guidelines in that respect, since we have noticed that on very many occasions a challenge to a provision of law, as its constitutionality is raised with a view to thwart the applicability and rigour of those provisions and as an escape route from the applicability of those provisions of law and thereby create an impediment for the concerned authorities and the institutions who are to monitor those persons who seek such challenges by abusing the process of the Court. Such frivolous challenges always result in prolongation of the litigation, which enables such unscrupulous elements who always thrive on other peoples money to take advantage of the pendency of such litigation preferred by them and thereby gain, on the one side, unlawful advantage on the monitory aspect and to the disadvantage of innocent victims, and ultimately, gain unlawful enrichment of such ill-gotten money by defrauding others. In effect, such attempts made by invoking the extraordinary jurisdiction of the writ Courts of many such challenges, mostly result in rejection of such challenges. However, at the same time, while taking advantage of the long time gap involved in the pending proceedings, such unscrupulous litigants even while suffering the rejection of their stand at the end as to the vires of the provisions, always try to wriggle out of their liabilities by stating that the time lag had created a situation wherein those persons who were lured to part with huge sums of money are either not available to get back their money or such unscrupulous petitioners themselves are not in a position to refund whatever money collected from those customers or investors. It is, therefore, imperative and worthwhile to examine at the threshold as to whether such challenges made are bona fide and do require a

consideration at all by the writ courts by applying the principle of "lifting the veil" and as to whether there is any hidden agenda in perpetrating such litigation. With that view, we lay down some of the criteria to be kept in mind whenever a challenge to a provision of law is made before the Court.

32. The Court can, in the first instance, examine whether there is a prima facie strong ground made out in order to examine the vires of the provisions raised in the writ petition. The Court can also note whether such challenge is made at the earliest point of time when the statute came to be introduced or any provision was brought into the statute book or any long time gap exist as between the date of the enactment and the date when the challenge is made. It should also be noted as to whether the grounds of challenge based on the facts pleaded and the implication of provision really has any nexus apart from the grounds of challenge made. With reference to those relevant provisions, the Court should be conscious of the position as to the extent of public interest involved when the provision operates the field as against the prevention of such operation. The Court should also examine the extent of financial implications by virtue of the operation of the provision vis-a-vis the State and alleged extent of sufferance by the person who seeks to challenge based on the alleged invalidity of the provision with particular reference to the vires made. Even if the writ Court is of the view that the challenge raised requires to be considered, then again it will have to be examined, while entertaining the challenge raised for consideration, whether it calls for prevention of the operation of the provision in the larger interest of the public. We have only attempted to set out some of the basic considerations to be borne in mind by the writ Court and the same is not exhaustive. In other words, the Writ Court should examine such other grounds on the above lines for consideration while considering a challenge on the ground of vires to a Statute or provision of law made before it for the purpose of entertaining the same as well as for granting any interim relief during the pendency of such writ petitions. For the above stated reasons it is also imperative that when such writ petitions are entertained, the same should be disposed of as expeditiously as possible and on a time bound basis, so that the legal position is settled one way or the other."

Otherwise also, we do not find that the petitioners have made any case for the declaration as prayed for.

9. Article 31-A of the Constitution pertains to saving of laws providing for acquisition of assets, etc. Clause (1) of Article 31-A provides that notwithstanding anything contained in Article 13, no law providing for, besides, others, the acquisition by the State of any estate or any rights therein or the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or Article 19. First proviso to clause (1) of Article 31A provides that where such law is a law made by the Legislature of a State, the provisions of the Article shall not apply thereto unless such law, having been

reserved for the consideration of the President, has received his assent. It is in this context, counsel for the petitioners raised the question of Presidential assent.

10. We may also notice that Article 254(2) of the Constitution requires assent of the President where the law made by the legislature of a State with respect to one of the matters enumerated in Concurrent List contains any provisions repugnant to the provisions of an earlier law made by the Parliament or an existing law with respect to that matter.

11. Such assent was duly obtained at the relevant time as is apparent from the affidavit in reply of the State Government as well as the documents produced before us by the respondents. We have no reason to doubt the official version. Especially in absence of any contrary material, we proceed on the basis that the assent of the President as required under Article 31A was obtained.

12. The question can be looked from a slightly different angle.

13. The question of assent under Article 31-A of the Constitution arises when such law seeks protection of the said Article being inconsistent with or in any manner abridging the rights conferred by Articles 14 and 19 of the Constitution. Article 31-B on the other hand pertains to validation of certain Acts and Regulations. It reads as under:

"31. B Validation of certain Acts and Regulations -- 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."

14. Accordingly, none of the Acts and Regulations specified in the Ninth Schedule would be void on the ground that the same takes away or abridges any of the rights conferred in Part III of the Constitution. Article 31-B starts with the expression "without prejudice to the generality of the provisions contained in Article 31A.....". Thus this immunity against constitutional invalidity to laws placed in the Ninth Schedule is without prejudice to the generality of the provisions contained in Article 31A. In other words, if Article 31A is applicable, the law framed by the Legislature for the purposes mentioned in sub-clauses (a) to (e) to clause (1) would not be deemed to be void as being inconsistent with or taking away or abridging any of the rights conferred by Articles 14 and 19 as long as in case of State Legislation, Presidential assent has been obtained. However, Article 31B travels much beyond and grants immunity to any law placed in Ninth Schedule against being declared void as being opposed to any of the fundamental rights.

15. Under the circumstances, when the Act in question has already been placed in the Ninth Schedule since 1964, the question of any of the provisions being framed with the assent of the President in order to save the law against unconstitutionality on the ground of being inconsistent with or taking away or abridging any of the rights under Articles 14 and 19 would pale into insignificance.

16. We notice that the Supreme Court in the case of *I.R. Coelho (Dead) By LRs. Vs. State of Tamil Nadu and Others*, examined the various issues pertaining to the Ninth Schedule of the Constitution and the question whether any of the laws placed in the Ninth Schedule could be called in question as being ultra vires. In conclusion, it was held as under:

"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 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 *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, read with *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, , 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's* 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 24th April, 1973, such a violation/infraction 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."

17. Accordingly, the law which has been placed in the Ninth Schedule prior to 24.4.73 would not be open to challenge. However, if any law is placed in the Ninth Schedule after 24.4.73, same may be open to challenge on the limited ground that it destroys the basic features of the Constitution. It was in this context that the learned counsel for the petitioners contended that the law taking away the private property without any compensation was wholly arbitrary and was thus opposed to Articles 14, 19 and 21 of the Constitution. It was in this context, he argued that the law breaches the basic structure of the Constitution.

Preamble to the said Act reads as under:

"Whereas the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVII of 1948) imposes a restriction upon holding agricultural land in excess of certain limits in the Bombay area of the State of Gujarat:

And Whereas it is expedient in the public interest to make a uniform provision for the whole of the State of Gujarat in respect of restrictions upon holding agricultural land in excess of certain limits and it is also expedient for so securing the distribution of agricultural land as best to sub-serve the common good to provide for the acquisition of surplus agricultural land for the allotment thereof to persons who are in need of lands for agriculture (including co-operative farming societies, landless persons, agricultural labourers and small holders) or for the allotment of such surplus agricultural lands the integrity of which is maintained in compact blocks to a department of Government or to cooperative farming societies or corporations owned or controlled by the State, for ensuring the full and efficient use thereof and to provide for other consequential and incidental matters hereinafter appearing: It is hereby enacted in the Eleventh year of the Republic of India as follows:-"

18. The Act was thus enacted for equitable distribution of agricultural land as best to sub-serve the common good to provide for the acquisition of surplus

agricultural land for the allotment thereof to persons who are in need of lands for agriculture. With this object in mind, various provisions have been made in the Act under which a land holder who owns land in excess of the ceiling limit has to surrender such land to the State Government, which in turn would be distributed amongst different categories of cultivators. We do not see how such Act breaches the provisions of Articles 14, 19 and 21 of the Constitution. An agriculturist who holds agricultural land in excess of the ceiling limit specified under the Act forms a distinct and separate class as against those who hold agricultural land less than the said limit. Divesting agricultural lands of such agriculturists who hold land in excess of the ceiling limit therefore cannot be termed as an act of inequality. From the early days of the Constitution it has been recognized that Article 14 prohibits class legislation but not reasonable classification. Reference in this regard be made to the decision of the Constitution Bench of the Supreme Court in the case of *Budhan Choudhry and Others Vs. The State of Bihar*, . The agriculturist concerned is not prevented from carrying on his trade or business. It merely restricts his land holding which is found to be in excess of ceiling area prescribed. Such ceilings are prescribed for different areas depending on its fertility and the nature of land use. Different units are provided for dry-crop lands, seasonally irrigated lands and perennially irrigated lands. What the Act thus seeks to achieve is more equitable distribution of agricultural lands to agriculturists. Instead of allowing a single agriculturist to own and possess vast tracks of land far in excess of agricultural area which he can personally cultivate and would be required for his sustenance, the land is sought to be distributed amongst landless labourers, poor agriculturists and agriculture co-operative societies.

19. We fail to understand how such provisions can be said to be opposed to the petitioners' right to life and liberty. It is true that right to life and liberty flowing from Article 21 contains various features. It includes right to live with dignity. Right to basic education, to clean environment, freedom from noise pollution are all considered part of right to life. But to live in luxury is not a part of right to life. The argument that the Act being opposed to Articles 14, 19 and 21 of the Constitution therefore opposed to basic features of the Constitution must fail. In the result, the petition is dismissed.