

(1975) 11 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9257 of 1975

Rajesh Pachauri

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 14-11-1975

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 31, 31A, 31A(1)
Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 — Section 2, 5(6)
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 11, 12, 12A, 17, 4(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 153
Constitution of India, 1950 — Article 14, 19, 31, 31A, 31A(1)
Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 — Section 2, 5(6)
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 11, 12, 12A, 17, 4(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 153
Constitution of India, 1950 — Article 14, 19, 31, 31A, 31A(1)
Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 — Section 2, 5(6)
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 11, 12, 12A, 17, 4(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 153

Citation : (1975) AWC 606

Hon'ble Judges : K.N. Seth, J;G.C. Mathur, J

Bench : Division Bench

Advocate : Birendra Dixit and S.C. Khare, for the Appellant;

Judgement

G.C. Mathur, J.—The following four questions have been referred to us for opinion:

1. Whether the acquisition of land under personal cultivation as surplus after ignoring sale deed u/s 5(6) of the U.P. Imposition of Ceiling on Land Holdings Act is violative of second proviso to Article 31A(1) of the Constitution?

2. Whether ignoring transfers made after 24th January, 1971, other than those excepted under Proviso to Section 5(6) of the Act, both in relation to the determination of ceiling and surplus area, would amount to acquiring any portion of land under personal cultivation within the ceiling limit applicable to a person under the ceiling law for the time being in force?

3. Whether, inspite of the protection afforded by Article 31B of the Constitution by virtue of inclusion of U.P. Act 1 of 1961 and the two Amending Acts, namely, U.P. Act No. 18 of 1973 and U.P. Act No. 2 of 1975, in the IX Schedule to the Constitution, compliance would still be necessary of the provisions of second Proviso to Article 31A(1) of the Constitution?

4. Whether, inspite of protection having been given under Article 31C of the Constitution to U.P. Act No. 18 of 1973 and U.P. Act No. 2 of 1975 by virtue of a declaration made in Section 2 of each of these Acts that these Acts are for giving effect to the policy of the State towards securing the principles specified in Clauses (b) and (c) of Article 39 of the Constitution, is it still necessary to comply with the provisions of the Second Proviso to Article 31A(1) of the Constitution?

2. The U.P. Ceiling on Land Holdings Act, 1960, came into force on January 31, 1961. The Act, as originally enacted (hereinafter referred to as the Principal Act), laid down in Section 4(2) that the ceiling area of a tenure-holder shall be 40 acres of the fair quality land. If the family of the tenure holder consisted of more than five members, the ceiling area was to be 40 acres plus 8 acres for each additional member of the family subject to a maximum of 24 such acres. The Principal Act was placed in the IX Schedule to the Constitution by the Constitution (Seventeenth Amendment) Act, 1964. It thereupon became immune from all attacks on the ground of inconsistency with any provision contained in Part III of the Constitution. The Act was amended several times but we are not concerned with all the Amending Acts. Substantial amendments were introduced by the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 (U.P. Act No. 18 of 1973). A number of sections of the Principal Act were substituted by new sections by this Amending Act. Sub-section (3) of the substituted Section 5 provides that, in the case of a tenureholder having a family of not more than five members, the ceiling area shall be 7.30 hectares of irrigated land. It then provides for addition to the ceiling area for additional members of the family. In substance, the Amending Act lowered the ceiling area from 40 acres to about 18 acres. Some more amendments were introduced by the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1974 (U.P. Act No. 2 of 1975) but the ceiling area was not further lowered. Both these Amending Acts were placed in the IX Schedule by the Constitution (Thirty ninth Amendment) Act, 1975.

3. Clause (1) of Article 31A of the Constitution saves five categories of laws from being declared void on the ground that they are inconsistent with or take away or abridge any of the rights conferred by Articles 14, 19 or 31. The second proviso to this clause reads thus:

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

4. The contention before the learned Single Judge was that Sub-section (6) of Section 5 of the Amended Act, which empowers the Prescribed Authority to ignore and not to take into account certain transfers of land made after January 24, 1971, results, in some cases, in lowering the ceiling area of tenureholders below the ceiling limit. Since the amended Act does not provide for the payment of compensation at a rate not less than the market value of the land for the portion of the land acquired within the ceiling limit, the acquisition of such land WAS in contravention of the second proviso to Article 31A(1) and was void. This contention was sought to be met on the ground that, since the Principal Act as well as the Amending Acts have been placed in the IX Schedule, they are immune from the attack on the ground of violation of any provision of Part III, including the second proviso to Article 31A(1). It also seems to have been urged before the learned Single Judge that Article 31C also saves these laws from an attack on the ground of violation of the second proviso to Article 31A(1). It is these rival contentions which have led to this reference.

5. The first two questions referred can conveniently be dealt with together. The prohibition of the second proviso to Article 31A(1) is attracted to the acquisition of land by the State if the following conditions obtain:

- (i) That the acquisition is under a law which makes provision for the acquisition of any estate;
- (ii) that the land sought to be acquired is comprised in an estate and is under the personal cultivation of the tenureholder;
- (iii) that the land sought to be acquired is within the ceiling limit applicable to the tenureholder under the law; and
- (iv) that the law does not provide for the payment of compensation at a rate which is not less than the market value of the land sought to be acquired.

The U.P. Imposition of Ceiling on Land Holdings Act, 1960, is a law in which conditions Nos. (i), (ii) and (iv) obtain. Questions Nos. (1) and (2) are directed towards finding out whether condition (iii) also obtains under this Act or not. In other words, the question is whether, in particular cases, some land of the tenureholder within the ceiling limit will be acquired and whether thereby the tenureholder will be left with land below the ceiling limit.

6. Sub-section (6) of Section 5 of the amended Act is in the following terms:

5(6). In determining the ceiling area applicable to a tenureholder, any transfer of land made after the twenty-fourth day of January, 1971, which, but for the transfer, would have been declared surplus land under this Act, shall be ignored and not taken into account;

Provided that nothing in this Sub-section shall apply to-

(a) a transfer in favour of any satisfaction of the prescribed authority to be in good faith and for adequate consideration and under an irrevocable instrument not being a Benami transaction or for the immediate or deferred benefit of the tenureholders or other members of his family.

Explanation I.- For the, purposes of this sub-section, the expression "transfer of land made after the twenty-fourth day of January, 1971", includes-

(a) a declaration of a person as a co-tenureholder made after the twenty-fourth day of January 1971, in a suit, irrespective of whether such was pending on or was instituted after the twenty-fourth day of January, 1971;

(b) any admission, acknowledgement, relinquishment or declaration in favour of a person to the like effect, made in any other deed or instrument or in any other manner.

Explanation II.- The burden of proving that a case falls within Clause (b) of the proviso shall rest with the party claiming its benefit.

This Sub-section affects all transfers made after January 24, 1971, which are not covered by the proviso. All such transfers have to be ignored and not taken into account in determining the ceiling area. If there are any sham transfers, they do not really amount to transfers and ignoring them does not affect the area of the land in possession of the tenureholder or the determination of the ceiling area; but where a genuine transfer, under which property has passed, is ignored on the ground that it was not made in good faith, or on the ground that it was for inadequate consideration, it is bound to result in the acquisition of some land of the tenureholder within the ceiling limit applicable to him. This consequence flows from the provisions of Clause (d) of Section 12-A. Section 12-A is in these words:

12-A. In determining the surplus land u/s 11 or Section 12, the Prescribed Authority shall, as far as possible, accept the choice indicated by the tenureholder to the plot or plots which he and other members of his family, if any, would like to retain as part of the ceiling area applicable to him or them under the provisions of this Act, whether indicated by him in his statement u/s 9 or in any subsequent proceedings:

Provided that-

(a)....

(b)....

(c)....

(d) where any person holds land in excess of the ceiling area including land which is the subject of any transfer or partition referred to in Sub-section (6) or Sub-section (7) of Section 5, the surplus land determined shall, as far as possible, be land other than the land which is the subject of such transfer or partition, and if the surplus land includes any land which is the subject of such transfer or partition, the transfer or partition shall, in so far as it relates to the land included in the surplus land, be deemed to be and always to have been void, and-

(i) it shall be open to the transferee to claim refund of the proportionate amount of consideration, if any, advanced by him to the transferor, and such amount shall be charged on the compensation payable to the transferor u/s 17 and also on any land retained by the transferor within the ceiling area, which shall be liable to be sold in satisfaction of the charge, notwithstanding anything contained in Section 153 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950;

(ii) any party to the partition (other than the tenureholder in respect of whom the surplus land has been determined) whose land is included in surplus land of the said tenure-holder shall be entitled to have the partition re-opened.

Under this provision, the Prescribed Authority has to include, the land, which is the subject of transfer, as far as possible, in the ceiling area to be retained by the tenure holder and only when, even after that inclusion some land out of the land transferred remains, it is to be included in the surplus area. Thus if the ceiling limit of the the tenureholder is 18 acres, it will include either all or part of the land which is the subject of the transfer. It is important to note that the transfers, which are ignored, have not been declared to be void, except to the extent of the land comprised therein which falls in the surplus areas. Therefore, the transfer in respect of the land, which is included in the ceiling area of the tenureholder, remains a good and effective transfer and the transferee thereof remains the owner or tenureholder thereof. This means that, in effect, the tenureholder is really left with an area of land which is 18 acres minus the land included in his ceiling area out of the transferred land. Two illustrations will clarify the position. Suppose a tenureholder, under the Principal Act, was left with 40 acres of land. He, after the relevant date, transfers 5 acres of land. He is thus left with 35 acres. If this transfer is ignored, then the land in his possession will be deemed to be still 40 acres, the surplus land will be 22 acres and the ceiling area will be 18 acres. These 18 acres will include the five acres which were the subject of the transfer. Since the transfer is still binding between the tenureholder and the transferee the tenure holder will really get only 13 acres of land. The result is that the State will acquire not only the 17 acres surplus (35 acres actually in the possession of the tenure holder minus 18 acres, the ceiling limit) but also another 5 acres within the ceiling limit. Take a second case,; suppose the tenure holder has 20 acres of land. He transfers, after the relevant date, two acres of land, thereby retaining with him 18 acres of land which is just the ceiling limit. If

this transfer is ignored then the tenure holder will be deemed to, be still possessed of 20 acres of land. He will be given 18 acres as his ceiling area which will include the two acres transferred by him. The surplus land will consist of two acres of land taken from the 18 acres which he actually had in his possession. Clearly two acres of land within the ceiling limit will be acquired by the State as a surplus land. The same result inevitably follow in every case where a genuine and effective transfer is ignored.

7. Since the Act does not provide for the payment of compensation at a rate which is not less than the market value of the land acquired within the ceiling limit, the acquisition will be violative of the second proviso to Article 31A(1). The first two questions referred have to be answered in the affirmative.

8. The third question is whether the inclusion of the Act in the IX Schedule removes the restriction placed by the second proviso to Article 31A(1). Article 31B, which gives protection to laws placed in the IX Schedule, is in these terms:

31B. Validation of certain Acts and Regulations - Without prejudice to the generality of the provisions contained in Article 31A, more of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions there 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 Act and Regulations shall subject to the power of any competent Legislature to repeal or amend it, continue in force.

The protection afforded by this Article to laws placed in the IX Schedule is only in respect of inconsistency with other provisions of Part III of the Constitution. A law can be inconsistent only with a provision which places restrictions on legislative power. Therefore, Article 31B protects laws placed in the IX Schedule from restrictions placed upon the legislative action by any provision contained in Part III. If the second proviso to Article 31A(1) places any restriction on legislative action, then the provisions of Article 31B may protect the law from invalidity on the ground of violation of that restriction. Upon a plain reading of the second proviso it appears that it is directed only against executive action and not against legislative action. It prohibits the acquisition of land by the Executive in certain circumstances. It does not purport to place any restriction upon the power of the legislature.

9. The main part of Article 31A(1) lifts the ban placed by Articles 14, 19 and 31 upon legislative action in respect of the categories of laws specified in Clauses (a) to (e) thereof. The first proviso lays down that such a law if made by a State Legislature can be saved by Article 31A only if it has received the assent of the President. The second proviso is not at all concerned with the saving of any laws and as such is not a real proviso to Article 31A(1). It is a provision according protection to persons in respect of acquisition of their land by the State within

the ceiling limit. The provision was made to give some protection to holders of land in view of the validation of the Ceiling, laws by Article 31B and of the enlargement of the definition of the word "estate" in Clause (2) of Article 31A. The language of the second proviso does not manifest any intention, after the lifting of the bans of Articles 14, 19 and 31 by the main provision, to impose a new ban on legislative power. If Parliament had intended to put a new ban on legislative power, the second proviso would have run somewhat as follows:

Provided further that no law making provision for the acquisition by the State of any estate where any land comprised therein is held by a person under his personal cultivation shall authorise the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force unless it provides for payment of compensation at a rate which shall not be less than the market value thereof.

10. The learned Advocate General has, however, contended that the second proviso does, in effect, place a restriction on legislative action. According to him, it is inconceivable that executive action taken in consonance with the provisions of a valid law should be "unlawful". A provision, which seeks to make such executive action unlawful, in reality and in effect, makes the law itself unlawful. He has further contended that Article 31A deals with the saving of laws and the second proviso carves out an exception to the main provision in that a law not providing for compensation at market value shall not be valid. We are unable to accept these contentions. The language of the second proviso is plain and admits of only one interpretation. It places restriction only upon the executive action of acquiring certain land and not upon legislative action. The word "State", which has been used twice in the second proviso, means in the context the "Executive". This proviso assumes the existence of a valid law and, under such valid law, it prohibits acquisition of certain land if the law does not provide for payment of compensation at the rate of market value. Merely because this provision has been introduced as a proviso to Article 31A(1), it cannot be held to deal with legislative power. Article 31A(1) is not a provision placing fetters on legislative power but is a provision removing such fetters. A proviso in such a provision cannot be construed to place fetters on legislative power unless the language compels that construction. The language, as we have indicated earlier does not support the contention that the second proviso places restrictions upon legislative power. Further, we are not aware of any legal principles upon which it can be held that, if executive action in consonance with a valid law is rendered unlawful, the law itself must be held to be unlawful. No authority has been cited in support of such a proposition.

11. The explanation added to the IX Schedule by the Constitution (Seventeenth Amendment) Act, 1964, also belies the contention of the learned Advocate General. It has to be kept in mind that the second proviso to Article 31A(1) was also introduced by the Constitution (Seventeenth Amendment) Act, 1964. This Amending Act placed the Rajasthan Tenancy Act, 1955 (Rajasthan Act III of

1955) in the IX Schedule. It then added the following explanation at the end of the IX Schedule:

Any acquisition made under the Rajasthan Tenancy Act, 1955 (Rajasthan Act III of 1955) in contravention of the second proviso to Clause (i) of Article 31A shall, to the extent of the contravention, be void.

Before the enactment of the Constitution (Seventeenth Amendment) Act when the second proviso had not been introduced in Article 31A(1), acquisition of land under the Rajasthan Act could not be said to have contravened the second proviso. On its language, the second proviso is prospective. Therefore, acquisitions of land made under the Rajasthan Act before the 17th Amendment were unaffected by the second proviso but the explanation makes these acquisitions void on account of inconsistency with the second proviso. What is important to notice is that the Rajasthan Act has by being placed in the IX Schedule, been validated from its inception and that executive action taken under it of acquiring land in consonance with its provisions has been invalidated by the explanation. This cuts across the argument of the learned Advocate General that executive action in consonance with a valid law cannot be unlawful.

12. On its language, the explanation also relates to executive action and indicates that the second proviso does likewise. It virtually extends the prohibition of the second proviso to executive action taken under the Rajasthan Act at a time when the second proviso was not even enacted. It thus appears that the second proviso to Article 31A(1) places restriction only on executive action and not upon legislative action. Article 31B validates laws placed in the IX Schedule but not the executive action taken under those laws. The placing of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, and the Amending Acts in the IX Schedule does not affect the restrictions placed by the second proviso to Article 31A(1) on the power of the State to acquire land in the circumstances set out therein. The third question has also to be answered in the affirmative.

13. The fourth question is easily answered. Article 31C provides:

31C- Saving of laws giving effect to certain Directive Principles - Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in Clause (b) or Clause (c) of Article 39 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, Article 19 or Article 31; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.

Provided that where such law is made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

It protects laws which violates the provisions of Articles 14, 19 and 31 if they

have been made to give effect to the policy of the State towards securing the principles specified in Clause (b) or Clause (c) of Article 39. This Article is not concerned with giving any protection against the violation of the provisions of the second proviso to Article 31A(1). That being so, even if the Acts have the protection of Article 31C the provisions of the second proviso to Article 31A(1) will remain operative and it will still be necessary to comply with its provisions.

14. All the four questions referred are answered in the affirmative. The case will now be listed again before the learned Single Judge with our opinion.