
(1977) 01 SC CK 0061

In the Supreme Court Of India

Case No : Civil Appeal No. 1387 of 1976

State of U.P. through the Collector and Others

APPELLANT

Vs

Rajesh Pachauri

RESPONDENT

Date of Decision : 27-01-1977

Acts Referred:

Constitution of India, 1950 — Article 31A, 31A(1), 31B, 31C, 39
Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1971 —
Section 5(6)
Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act,

Citation : (1977) AWC 180 : (1977) RD 160

Hon'ble Judges : A. N. Ray, C.J; P. N. Shingal, J; P. N. Bhagwati, J; M. Hameedullah Beg, J

Bench : Full Bench

Final Decision : Allowed

Judgement

P.N. Bhagwati, J.—This appeal by the State of Uttar Pradesh is directed against a judgment delivered by a Division Bench of the High Court of Allahabad answering four questions referred to it for its opinion by a Single Judge of that High Court in Civil Miscellaneous Writ Petition No. 9257 of 1975. These four questions arise out of challenge to the Constitutional validity of certain provisions of U.P. Act No. 1 of 1971 as amended by U.P. Act No. 18 of 1973 and U.P. Act No. 2 of 1975 (hereinafter referred to as the amended U.P. Imposition of Ceiling on Land Holdings Act) and they are in the following terms:

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 transfer 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 1971 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 of the Constitution?

2. The first two questions were answered by the High Court against the State by holding that Section 5, Sub-section (6) of the amended U.P. Imposition of Ceiling on Land Holdings Act is violative of the second proviso to Clause (1) of Article 31A of the Constitution, inasmuch as it provides for ignoring all transfers of land made after 24th January, 1971 save these excepted under the proviso to that sub-section and thereby authorises acquisition of land held by a person under personal cultivation within the ceiling limit applicable to him. The High Court also answered the third question against the State on the view that Article 31B does not dispense with the requirement that an acquisition made by the State even if it be under an enactment specified in the Ninth Schedule, should conform with the second proviso to Clause (1) of Article 31A and if the acquisition is violative of that proviso, it would be void, notwithstanding that the enactment under which it is made is included in the Ninth Schedule. The fourth question was also answered in the same way by holding that the protection given under Article 31C of the Constitution does not extend to violation of the second proviso to Clause (1) of Article 31A. The answer given by the High Court to the fourth question is not challenged in the present appeal but the correctness of the answers given to the first three questions is seriously assailed before us by the State.

3. We will first deal with the third question since it is obvious that if the answer to that question is in favour of the State and it is held that Article 31B protects an enactment included in the Ninth Schedule even from attack on the ground of violation of the second proviso to Clause (1) of Article 31A, it would become unnecessary to consider the first two questions which raise the issue whether Section 5, Sub-section (6) of the amended U.P. Imposition of Ceiling on Land Holdings Act is violative of that proviso, for even if it is it would be protected by Article 31B in view of the fact that U.P. Act No. 1 of 1971 as also the two subsequent amending Acts, namely, U.P. Act No. 18 of 1973 and U.P. Act No. 2 of 1975, are included in the Ninth Schedule to the Constitution. Now so far as the third question is concerned, we have already held, in a judgment delivered today in Civil Appeals 1132-1164 of 1976 arising under the Maharashtra Agricultural Lands (Ceiling of Holdings) Act, 1961, that Article 31B affords complete immunity

to an enactment included in the Ninth Schedule against violation of the second proviso to Clause (1) of Article 31A and such an enactment is protected from invalidation on that ground. Having regard to this decision, the answer to the third question must be given in favour of the State and it must be held that Section 5, Sub-section (6) of the amended U.P. Imposition of Ceiling on Land Holdings Act, even if it contravenes the second proviso to Clause (1) of Article 31A a matter on which we do not wish to express any opinion since it is unnecessary to do so, is validated under Article 31B.

4. We accordingly allow the appeal, set aside the order of the High Court in so far as it answers the first three questions against the State and held that Section 5, Sub-section (6) of the U.P. Imposition of Ceiling on Land Holdings Act is void and its Constitutionality cannot be assailed by reason of the immunity enacted in Article 31B. The Respondent will pay the costs of the appeal to the State.