

(1960) 05 CAL CK 0020
In the Calcutta High Court
Case No : A.F.O.D. No's. 141 and 142 of 1956

The State of West Bengal	Vs	APPELLANT
Bon Behari Mondal		RESPONDENT

Date of Decision : 16-05-1960

Acts Referred:

Constitution of India, 1950 — Article 31(5), 31(6)
Government of India Act, 1935 — Section 299(2)
West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 7(1)

Citation : AIR 1961 Cal 112 : 64 CWN 722 : (1961) 1 ILR (Cal) 824

Hon'ble Judges : G.K. Guha, J; B.N. Banerjee, J

Bench : Division Bench

Advocate : N.C. Chakravarty, Government Pleader, for the Appellant; Rebati Nath Sarkar, for the Respondent

Final Decision : Dismissed

Judgement

Banerjee, J.—A single point of law arises for our consideration in both these appeals, namely, whether the Collector was right in valuing the compensation payable for certain plots of land acquired under the West Bengal Land (Requisition and Acquisition) Act (West Bengal Act II of 1948) in accordance with the provisions of the second proviso to Section 7(1) of the said Act and whether the Court below was wrong in treating the aforesaid provisions as ultra vires;

2. West Bengal Act II of 1948 came into operation on March 11, 1948. Section 7(1) of the Act, as it originally stood, is hereinbelow set out:

"7(1) Wherever any land is acquired u/s 4 there shall be paid compensation the amount of which shall be determined by the Collector in the manner and in accordance with the principles set out in Sub-section (1) of Section 23 of the Land Acquisition Act 1894:

Provided that the market value referred to in clause first of Sub-section (1) of Section 23 of the said Act shall, in respect of any land acquired under this Act, be

deemed to be the market value of such land on the date of publication of notice referred to in Sub-section (1) of Section 4,

Provided further that if such market value exceeds by any amount the market value of the land on the 31st day of December, 1940 on the assumption that the land had been on that date in the state in which it in fact was on the date of publication of the notice referred to in Sub-section (1) of Section 4, the amount of such excess shall not be taken into consideration."

3. The Act was amended by West Bengal Act VII of 1951, which came into operation on March 21, 1951, and in Section 7(1) of the Act, after the words and figures "Section 23 of the Land Acquisition Act, 1894", the words, "so far as they may be applicable" were added.

4. The Act was again amended by the West Bengal Act VIII of 1954, which came into operation on March 30, 1954. By Section 8 of the amending Act, Section 7 of the original Act was amended in the following manner:

(a) In Sub-section (1) of Section 7, after the word "paid", the words, "to every person interested", were added.

(b) In the first proviso to Sub-section (1) of Section 7, for the words "Sub-section (1) of Section 4" the words "Sub-section (1a) of Section 4" were substituted.

(c) The second proviso to Sub-section (1) of Section 7 was omitted.

5. The Act as originally passed had a limited life and was to remain in force upto the 31st day of March, 1951. By West Bengal Act VII of 1951, its life was extended upto the 31st of March, 1954. Again by West Bengal Act VIII of 1954 its life was extended upto the 31st day of March, 1957. Lastly, by West Bengal Act XII of 1957, the life of the Act was extended upto the 31st day of March, 1962.

6. It is necessary for us to refer in brief to the facts of each of the two cases, so as to see, how the point of law arises for our consideration.

7. In F. A. 141 of 1956, certain plots of land belonging to the respondent Bonbehari Mondal, were acquired for a public purpose, namely Myrakshi-Dwarka Branch Canal Project. The lands were acquired by publication of a notification in the Calcutta Gazette of February 8, 1951, in exercise of the power vested in the State Government u/s 4 of the West Bengal Land (Requisition and Acquisition) Act 1948. The Collector had made an award for Rs. 840-2-5 to the respondent, There is no dispute that the Collector had proceeded on the basis of the market value of the land as on December 31, 1946. The respondent did not accept the valuation and prayed for a reference to the Land Acquisition Court. The Collector made a reference as prayed for. The learned Land Acquisition Judge enhanced the valuation by a further sum of Rs. 1114-15-7 and passed a decree in favour of the respondent.

8. In F. A. 142 of 1956, certain plots of land, belonging to the respondent, Satkari Das, were acquired for the same public purpose by publication of a Notification in the Calcutta Gazette of February 8, 1951, in exercise of the power vested in the State Government u/s 4 of the West Bengal Land (Requisition and Acquisition) Act, 1948. The Collector had made an Award for Rs. 375/- in favour of respondent. There is no dispute that the Collector had proceeded on the basis of the market value of the land as on December 31, 1946. The respondent did not accept the valuation and prayed for a reference to the Land Acquisition Court. The Collector made a reference as prayed for. The learned Land Acquisition Judge enhanced the valuation by a further sum of Rs. 909-6-0 and passed a decree in favour of the respondent.

9. The two cases were tried before the same Land Acquisition Court. Land Acquisition Case No. 333 of 1954 out of which F.A. 141 of 1956 arises, was tried by Mr. S. M. Banerjee, Additional District Judge. The learned Judge observed as follows :

"Under Section 7(1) first proviso the market value referred to in clause first of Sub-section (1) of Section 23 of Act 1 of 1894 shall, in respect of any land acquired under Act II of 1948 be deemed to be the market value of such land on the date of the publication of the notice. From the record, it appears that notice was published in the Calcutta Gazette on 8th February, 1951. There was another proviso, which was the second proviso to Section 7(1) of West Bengal Act II of 1948, which had laid down that if such market value exceed by any amount the market value of the land on the 31st day of December, 1946, on the assumption that the land had been on that date in the state in which it in fact was on the date of the publication of the notice amount of such excess shall not be taken into consideration. In The West Bengal Settlement Kanungoe Cooperative Credit Society Ltd. Vs. Mrs. Bella Banerjee and Others, it has been laid down that the provision that in case of land acquired under the Act the maximum sum payable as compensation is to be the market value of the land on 31st December, 1946 is ultra vires. This decision was no doubt given with reference to the West Bengal Land Development and Planning Act of 1948. However, the principle laid down there applies to this Act as well. This decision was affirmed by the Hon'ble Supreme Court in The State of West Bengal Vs. Bela Banerjee and Others, . By Act VIII of 1954 was omitted the second proviso to Section 7, Sub-section (1). That being the position, the question is whether the law laid down in the superseded proviso to Section 7 would still apply in view of the fact that the case was filed on 11th November, 1953, when the proviso was still in force. I am of opinion that when the law of the nature as contained in the superseded proviso was declared ultra vires by the Hon'ble Supreme Court it must be taken that that was never the law of the land. The constitution of the Country was changed by the constitution (4th Amendment Act of 1955) dated 27th April, 1955. By that change it has been laid down that no property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property, so acquired or requisitioned and

either fixes the amount of the compensation or specifies the principles on which and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any Court on the ground that the compensation provided by that law is not adequate. No doubt, by the amendment the second proviso to Section 7(1) would be valid law but substantive law as it is, it cannot be said to have retrospective effect unless so directly contained in the Act itself. There is "nothing in the Amending Act to show that it has any retrospective effect. Hence in view of the above, I am of opinion that the market value is to be ascertained as on the date of the publication of the notice and not as on 31st December, 1946".

10. Land Acquisition Case No. 338 of 1954, out of Which F.A. 142 of 1956 arises was heard and decreed one week later by the same learned Judge on identical grounds.

11. The propriety of the decrees in both the aforesaid cases is being disputed before us, at the instance of the State Government.

12. Mr. Nirmal Chandra Chakravartti, the learned Government Pleader, contended before us that the two judgments of the court below were erroneous on a three-fold ground :

(a) Proviso (b) to Section 8(1) of the West Bengal Land Development and Planning Act, 1948, containing almost identical provision as to payment of compensation as in the second proviso of Section 7(1) of the Act was declared ultra vires by the Supreme Court, in *The State of West Bengal Vs. Bela Banerjee and Others*, because although passed within 18 months before the commencement of the Constitution, it was not certified by the President, as provided in Article 31(6) of the Constitution. In the instant case the Act, passed on March 11, 1948, had been enacted beyond 18 months of the commencement of the Constitution and was not hit by Article 31(6) of the Constitution. He, therefore, contended that *The State of West Bengal Vs. Bela Banerjee and Others*, , had no application to the point in dispute.

(b) The Supreme Court had struck down the provisions in the proviso (b) to Section 8(1) of the West Bengal Land Development and Planning Act, 1948, as contravening Article 31(2) of the Constitution, because the aforesaid provision was contained in a permanent enactment. The West Bengal Land (Requisition and Acquisition) Act of 1948 was a temporary enactment and the reasons which actuated the Supreme Court in declaring the provision of Proviso (b) to Section 8(1) of the West Bengal Land Development and Planning Apt, 1948, a permanent enactment, ultra vires the Constitution, would not be attracted against Section 7(1) second proviso of the Act in question.

(c) Assuming for the sake of argument that Section 7(1) second proviso of the Act became unconstitutional and was not saved as an existing law under Article 31(5) of the Constitution, the aforesaid provision merely became eclipsed when the Constitution came into operation but the shadow removed itself with the

passing of the fourth Amendment to the Constitution, on April 28, 1955, and the land acquisition proceedings started on February 8, 1951 would be and would continue to be governed by the second proviso of Section 7(1) of the Act.

13. At the time when the impugned provision of the Act was enacted, the Government of India Act, 1935 was the Constitution Act in force. Section 299(2) of that Act was as follows:

"Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, it is to be determined."

14. That being the state of legislative limitation at the time when West Bengal Act II of 1948 was passed, a legislative enactment providing for acquisition of property, in order to be valid, had to provide for payment of compensation to the expropriated owner to the extent of the just equivalent of what the owner had been deprived of, Mr. Chakravartti, in his wisdom, did not dispute that it was just compensation, or the fair market value of the property at the date of the acquisition, what was contemplated by Section 299(2) of the Government of India Act, 1935. In that light the market value of the acquired property in December, 1946, irrespective of the date of acquisition thereof, would not be compensation within the meaning of Sec, 299(2) of the Government of India Act, 1935. Therefore, the second proviso to Section 7(1) of West Bengal Act II of 1948, offended as it did against Section 299(2) of the Government of India Act, 1935, was beyond the competence of the West Bengal Legislature to enact and as such was a void provision. Nothing contained in Article 31(5) of the Constitution validated it and the "void provision was no part of the existing law at the date when the Constitution came into operation.

15. The West Bengal Settlement Kanungoe Cooperative Credit Society Ltd. Vs. Mrs. Bella Banerjee and Others, was decided by the Calcutta High Court on August 14, 1951 and did declare a provision contained in proviso (b) to Section 8(1) of the West Bengal Land Development and Planning Act, 1948, similar to the provision in the second proviso to Section 7(1) of West Bengal Act II of 1948, ultra vires. That decision was affirmed by the Supreme Court in The State of West Bengal Vs. Bela Banerjee and Others, on December 11, 1953. The West Bengal Legislature took notice of the warning contained in the two-decisions above referred to and by West Bengal Act VIII of 1954, which came into operation on March 30, 1954, omitted the second proviso to Section 7(1) of West Bengal Act II of 1948.

16. Within a month thereafter the Fourth Amendment to the Constitution came into operation, which amended Article 31(2) of the Constitution and put the

question of inadequacy of compensation beyond question in any Court of law. The Fourth Amendment also amended Article 31A of the Constitution and provided that the acquisition by the State of any estate or any of the rights therein shall not be deemed to be void on the ground that it was inconsistent with or took away or abridged any of the rights conferred by Article. 14, 19 or 31.

17. The Fourth Amendment of the Constitution had no effect on the Second proviso to Section 7(1) of the West Bengal Act II of 1948. That provision, for reasons hereinbefore stated, was as if a still-born child on the date when the Act came into operation and was given a decent burial, before the Fourth Amendment of the Constitution brought into operation. The aforesaid provision, not being a valid part of any existing law, was not saved by Article 31(5) of the Constitution nor saved by anything contained in the Fourth Amendment of the Constitution. Therefore, although not hit by Article 31(6) of the Constitution, as in the case of the West Bengal Land Development and Planning Act, 1948, the impugned provision of Act II of 1948 was void, because it offended against Section 299(2) of the Government of India Act, 1935, from its very inception. We, therefore, repel the first branch of argument advanced by Mr. Chakravartti.

18. We now turn to the second branch of argument advanced by Mr. Chakravartti. Mr. Chakravartti strongly relied on the following observations by Patanjali Sastri, J. in the case of *The State of West Bengal Vs. Bela Banerjee and Others*, ;

"Considering that the impugned Act is a permanent enactment and lands may be acquired under it many years afterwards it came into force, the fixing of the market value on December 31, 1946, as the ceiling on compensation, without reference to the value of the land at the time of the acquisition is arbitrary and cannot be regarded as due compliance in letter and spirit with the requirement of Article 31(2). The fixing of an anterior date for the ascertainment of value may not, in certain circumstances, be a violation of the Constitutional requirement as, for instance, when the proposed scheme of acquisition becomes known before it is launched and prices rise sharply in anticipation of the benefits to be derived under it, but the fixing of 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.""

19. Mr. Chankravatti contended that West Bengal Act II of 1948, unlike the West Bengal Land Development and Planning Act 1948, was a temporary statute and therefore, beyond the mischief of Article 31(2) of the Constitution or for the matter of that of its predecessor Section 299(2) of the Government of India Act of 1935. This argument in our opinion is based on a misreading of the judgment of the Supreme Court in *The State of West Bengal Vs. Bela Banerjee and Others*, . The permanent character of the West Bengal Land Development and Planning Act, 1948, was taken into account, by the Supreme Court in considering the gross inadequacy in valuation, if based on December, 1946 figures, against the foreground of eternity. The Supreme Court never meant to lay down a

general proposition that temporary statutes can never be hit by the provision of Article 31(2) of the Constitution or for the matter of that by Section 299(2) of the Government of India Act, 1935.

20. Mr. Chakravartti argued further that the proposed scheme of acquisition of land for "Mayura-kshi Dwaraka Canal Project" became known to everybody and there was a sharp rise in the land value in or about the area to be covered by the canal, in anticipation of the benefits to be derived from this irrigation. He contended that it would be competent on the part of the Legislature to enact laws to avoid payment of the inflation over and above the just compensation due to the speculative rise in the land value. On two-fold grounds we cannot accept this contention of Mr. Chakravartti. In the first place there is no evidence to show that there was an inflatory rise in valuation due to the irrigation project becoming known to the public. In the next place the West Bengal Legislature did not think it necessary to legislate or to keep alive a legislative provision so as to avoid the inflation in valuation, otherwise, it would not have omitted the second proviso to Section 7(1) of Act II of 1948, on March 30, 1954, by West Bengal Act VIII of 1954. We have therefore to overrule the second branch as well of the argument of Mr. Chakravartti.

21. We have now to consider the argument of Mr. Chakravartti based on the "eclipse theory". There are three decisions of the Supreme Court, dealing with this theory.

22. The first one is the decision of the Supreme Court in Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another, . In that case Das A.C.J. observed as follows :

"The meaning to be given to the word Void" in Article 13 is no longer "res Integra", for the matter stands concluded by the majority decision of this Court in Keshavan Madhava Menon Vs. The State of Bombay, . We have to apply the ratio decidendi in that case to the facts of the present case. The impugned Act was an existing law at the time when the Constitution came into force. That existing law imposed on the exercise of the right guaranteed to the citizens of India by Article 19(1)(g) restrictions which could not be justified as reasonable under Clause (6) as it then stood and consequently under Article 13(1) that existing law became void "to the extent of such inconsistency." As explained in Keshavan Madhava Menon Vs. The State of Bombay, the law became void not in toto or for all purposes or for all times or for all persons but only "to the extent of such inconsistency", that is to say, to the extent it became inconsistent with the provisions of Part III which conferred the fundamental rights on the citizens. It did not become void independently of the existence of the rights guaranteed by Part III. In other words, On and after the commencement of the Constitution the existing law, as a result of its becoming inconsistent with the provisions of Article 19(1)(g) read with Clause (6) as it then stood, could not be permitted to stand in the way of the exercise of that fundamental right. Article 13(1) by reason of its language cannot be read as having obliterated the entire operation

of the inconsistent law or having wiped it out altogether from the statute book. Such law existed for all past transactions and for enforcement of rights and liabilities accrued before the date of the Constitution, as was held in *Keshavan Madhava Menon Vs. The State of Bombay*, . The Law continued in force, even after the commencement of the Constitution, with respect to persons who were not citizens and could not claim the fundamental right. In short Article 13(1) had the effect of nullifying or rendering the existing law which had become inconsistent with Article 19(1)(g) read with Clause (6) as it then stood ineffectual, nugatory and devoid of any legal force or binding effect only with respect to the exercise of the fundamental right on and after the date of the commencement of the Constitution. Therefore, between the 26th January 1950 and the 18th January, 1951 the impugned Act could not stand in the way of the exercise of the fundamental right of a citizen under Article 19(1)(g). The true position, is that the impugned law became, as it were, eclipsed, for the time being, by the fundamental right. The effect of the Constitution (First Amendment) Act, 1951 was to remove the shadow and to make the impugned Act free from all blemish or infirmity. If that were not so, then it is not intelligible what "existing law" could have been sought to be saved from the operation of Article 19(1)(g) by the amended Clause (6) in so far as it sanctioned the creation of State monopoly, for, ex hypothesi, all existing laws creating such monopoly had already become void, at the date of the commencement of the Constitution in view of Clause (6) as it then stood. The American authorities refer only to post-Constitution laws which were inconsistent with the provisions of the Constitution. Such laws never came to life but were still-born as it were. The American authorities therefore, cannot fully apply to pre-Constitution laws which were perfectly valid before the Constitution. But apart from this distinction between pre-Constitution and post-Constitution laws on which, however, we need not rest our decision, it must be held that these American authorities can have no application to our Constitution. All laws, existing or future, which are inconsistent with provisions of Part III of our Constitution are, by the express provision of Article 13 rendered void to the extent of such inconsistency." Such laws were not dead for all purposes. They existed for the purpose of pre-Constitution rights and liabilities and they remained operative, even after the Constitution, as against non-citizens. It is only as against the citizens that they remained in a dormant or moribund condition. In our judgment, after the amendment of Clause (6) of Article 19 on the 18th June, 1951 the impugned Act ceased to be unconstitutional and became revived and enforceable against citizens as well as against non-citizens. It is true that as the amended Clause (6) was not made retrospective the impugned Act could have no operation as against citizens between the 26th January, 1950 and the 18th June, 1951 and no rights and obligation could be founded on the provisions of the impugned Act during the same period whereas the amended Clause (2) by reason of its being expressly made retrospective had effect even during that period. But after the amendment of Clause (6) the impugned Act immediately became fully operative even as against the citizens."

23. The next one is the decision of the Supreme Court in the case of Purshottam Govindji Halai Vs. Shree B.M. Desai, Additional Collector of Bombay and Others, . In that case also Das A.C.J. reiterated the point of view expressed in Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another, in the following language :

"Assuming, then, but not deciding, that Section 13 of the Bombay City Land Revenue Act, 1876 became inconsistent with the fundamental right guaranteed by Article 14 and therefore, became void to the extent of such inconsistency, it was not, as decency explained by this Court in Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another, , obliterated from the statute book for all times or for all purposes or for all people.

The effect of Article 13(1) is that the law could not stand in the way of the enjoyment of fundamental rights. The law was not dead. Further, the law was amended on 8-10-1954 when the proviso to Section 13 quoted above was replaced by the following proviso;

"Provided that such imprisonment shall cease at any time upon payment of the sum due and that it shall in no case exceed :

(i) A period of six months when the sum due is more than Rs. 50/-; and

(ii) A period of six weeks in any other case."

This amendment is nothing less than an enactment of a new provision. It lays down a new law which is similar to the law laid down by Section 157 of the Bombay Land Revenue Code, 1879. Therefore, the disparity that prevailed between the original proviso to Section 13 of the Bombay City Land Revenue Act, 1876 and the proviso to Section 157 of the Bombay Land Revenue Code, 1879 is now removed.

The disparity between the two provisions as they originally stood being thus eliminated, the vice of unconstitutionality is also removed and Section 13 of the Bombay City Land Revenue Act, 1876, as it now stands, cannot be assailed as repugnant to Article 14 of the Constitution."

24. The last case on the point is that of Deep Chand Vs. The State of Uttar Pradesh and Others, wherein Subba Rao, J. observed as follows:

"To the facts in Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another, , the principle laid down in Keshavan Madhava Menon Vs. The State of Bombay, is attracted. But it is said that the observations of the learned Judges are wide enough to cover the case falling under Article 13(2) of the Constitution and further that a logical extension of the principle laid down would take in also a case falling under Article 13(2). The 6th contention is based upon the following passage :

"But apart from this distinction between pre-Constitution and post-Constitution laws, on which however we need not rest our decision it must be held that these

American authorities could have no application to our Constitution. All laws existing or future which are inconsistent with the provisions of Part III of our Constitution, are by express provisions of Article 13 rendered void to the extent of such inconsistency. Such laws were not dead for all purposes. They existed for the purpose of Pre-Constitution rights and liabilities and they remained operative, even after the Constitution, as against non-citizens. It is only as against the citizens that they remained in a dormant or moribund condition."

The first part of the said observation states nothing more than the plain import of the provisions of Article 13(1) and (2), namely, that they render laws void only "to the extent" of Such inconsistency. The second part of the observation directly applies only to a case covered by Article 13(1), for the learned Judges say that the laws exist for the purposes of pre-Constitution rights and liabilities and they remain operative even after the Constitution as against non-citizens; The said observation could not obviously apply to post-Constitution laws. Even so, it is said that by a parity of reasoning the post-Constitution laws are also told to the extent of their repugnancy and therefore the law in respect of non-citizens will be on the statute hook and by the application of the doctrine of eclipse, the same result should flow in its case also. There is some plausibility in this argument, but it ignores one vital principle, viz., the existence or the non-existence of legislative power or competency at the time the law is made governs the situation. There is no scope for applying the doctrine of eclipse to a case where the law is void ab initio in whole or in part."

25. We are of the opinion that the trilogy of cases referred to above, are of no assistance to Mr. Chakravortti. The impugned provision of West Bengal Act II of 1948 was beyond the competence of the West Bengal Legislature to enact, falling as it did within the mischief of Section 299(2) of the Government of India Act, 1935 and therefore, void and of no effect. It was no part of the existing law, namely, West Bengal Act II of 1948, when the Constitution came into operation and therefore, not saved by Article 31(5) of the Constitution. On March 30, 1954, the offending provision was omitted from the Statute by an amending Act being West Bengal Act VIII of 1954. There was, therefore, nothing which stood eclipsed by the Constitution and the Fourth Amendment to the Constitution had no shadow to remove or re-vivify any moribund provision.

26. In the view that we take, we are also supported by an unreported decision by P. N. Mookerji and P. K. Sarkar, JJ., in F.A. Nos. 18 and 19 of 1953 State of West Bengal v. Murari Mohan, decided on November 17, 1958. Their Lordships referred to Section 299(2) of the Government of India Act, as the Constitution enactment in force when West Bengal Act II was enacted and compared the language thereof with the language in Article 31(2) of the Constitution as it originally stood and came to the conclusion that:

"Having regard to the terms of the two provisions and their nature, the same meaning must be given to the word "compensation" in both Section 299(2) of the Government of India Act, 1935, and Article 31(2) of the Constitution, as set

out above. Viewed in that light, the market value in December, 1946, no matter when the acquisition which, in the present case, was in the year 1949, would not be compensation within the meaning of either Section 299(2) of the Government of India Act, 1935, or Article 31(2) of the Constitution. The impugned proviso to "Section 7(1) of the West Bengal Act II of 1948 would, therefore, be invalid prior to the Constitution also unless it is saved or to be more accurate, validated by some other provision."

The point, therefore, is whether the proviso is saved or validated by Clause (5). To that, in our opinion, the answer must be in the negative. Clause (5) saves an existing law. "Existing law" is defined in the Constitution itself subject, of course, to certain prefatory words, to which we shall duly refer hereinafter as follows:

"Existing law" means any law, ordinance, order, by-law, rule or regulation passed or made before the commencement of this Constitution by any Legislative authority or person having power to make such a law, ordinance, order, bye-law, rule or regulation (Vide Article 366(10)). To be an existing law, therefore, the particular provision must have been enacted by a Legislature or authority, having power to make the same. As, however, as stated above, the impugned Act was in contravention of Section 299(2) of the Government of India Act, 1935, which was the constitutional enactment then in force, and under which no Legislature had power to make a law contrary to its terms, the Provincial Legislature, which enacted the Act in question namely, West Bengal Act II of 1948, had no power to enact the impugned proviso. That proviso, therefore, cannot be regarded as an existing law for purposes of Article 31(5) and the protection under that clause would not be attracted to it.

It is true that the definition in the Article (Article 366) opens with the words "In this Constitution unless the context otherwise requires", so that the definitions that follow are not absolute and the defined expressions may have other meanings if the context so requires. But we do not think that, on such consideration, it is necessary to give a different meaning to the expression "Existing law" as used in Article 31(5). Acquisition of property without providing for payment of compensation is prima facie unjust, being tantamount to deprivation of property, and Section 299(2) of the Government of India Act, 1935, was directed to prevention of that injustice. In that context, it is reasonable to hold that Article 31 of the Constitution of India did not intend to validate an enactment which was invalid before the Constitution, being in contravention of Section 299(2), except to the limited extent as expressly mentioned in Clause (6) of the Article. Such an enactment would be invalid before the Constitution and would remain so except where it was passed not more than eighteen months before the Constitution and was submitted to and certified by the President as required by Clause (6) of Article 31. It would not be an "existing law" for purposes of Clause (5) of that Article but it would still come within the expression "law of the State" as used in Clause (6), that expression

being, in our opinion, wider than "existing law" as used in Clause (5). In that view, we do not think that the context not excluding Clause (6) requires a different meaning to be given to the expression "existing law" in Clause (5) so as to justify a departure from its ordinary connotation as attributed to it by the Constitution in the definition Clause (Art. 366(10)). It is to be remembered also in the above connection that Article 31(2) of the Constitution as its language shows is wider in scope than its predecessor Section 299(2) of the Government of India Act, 1935, and that lends further support to the above point of view.

Construed as above, Clause (5) of Article 31 of the Constitution would give no validity or protection to the impugned proviso which is otherwise plainly invalid in view of Section 299(2) of the Government of India Act, 1935."

27. We therefore, hold that the second proviso to Section 7(1) of West Bengal Act, 1948 was void from its very inception. Nothing contained in the Constitution validated it. The West Bengal Legislature did the right thing in omitting this void provision from the Statute by Act VIII of 1954. Since the provision was void from its inception, the present land acquisition proceeding, even though started before the omission of the void provision, by West Bengal Act VIII of 1954, was not governed nor liable to be governed by the said void provision. The learned Land Acquisition Judge was therefore, right in valuing compensation payable for the acquired property, in the manner that he did,

28. All the arguments advanced by Mr. Chakravartti fail and we dismiss these two appeals with costs.

29. Let a copy of the judgment and the two decrees be sent down to the court below at an early date.

Guha, J.

30. I agree.