Smt. Sitabati Debi & Another

Vs

State of West Bengal & Another

Civil Appeal No. 322 of 1961

(K. Wanchoo, P. B. Gajendragadkar, K. C. Das Gupta, S. K. Das JJ)

01.12.1961

JUDGMENT

SARKAR, J. –

In this case the validity of the West Bengal Land (Requisition and Acquisition) Act, 1948 was questioned by the appellants by a petition moved under Art. 226 of the Constitution in the High Court at Calcutta. The High Court having dismissed the petition, the appellants have filed this appeal with special leave granted by this Court.

The Act provided for requisition and also for acquisition of land by the State Government "for maintaining supplies and services essential to the life of the community or for providing proper facilities for transport, communication, irrigation or drainage, or for the creation of better living conditions in rural or urban areas..... by the construction or reconstruction of dwelling places for people residing in such areas". The Act provided for payment of compensation in respect of requisition and acquisition made under it.

An order was made under the Act on July 22, 1957 requisitioning certain lands belonging to one of the appellants, the other appellant being a lessee thereof, and it was stated in the order that possession would be taken on August 2, 1957. Thereupon the appellants filed the petition.

The appellants challenged the validity of the Act in the High Court on various grounds. In this Court however only one ground was advanced in support of the appeal and that alone, therefore, we are called upon to discuss in this judgment.

It was said that the Act offended Art. 19(1)(f) of the Constitution as it put unreasonable restrictions on the right to hold property. The High Court had rejected this contention on the ground that this Court had decided in Babu Barkya Thakur v. The State of Bombay ([1961] 1 S.C.R. 128) that an Act providing for acquisition of property by the State could not be attacked for the reason that it offended Art. 19(1)(f). It also held that the decision in Kavalappara Kochuni v. The State of Madras ([1961] 3 S.C.R. 887) did not hold that Art. 31(2) of the Constitution does not exclude the applicability of Art. 19(1)(f). We think that the High Court was right on both these points. Obviously, what was said in Babu Barkya Thakur's case ([1961] 1 S.C.R. 128) about a law relating to acquisition of property by the State would apply to a law relating to requisition. It would follow that the validity of the Act cannot be questioned on the ground that it offends Art. 19(1)(f).

The learned advocate for the appellants contended that the decisions of this Court earlier mentioned were in conflict with each other and that the later decision, namely, that in Babu Barkya Thakur's

case ([1961] 1 S.C.R. 128) concerning the applicability of Art. 19(1)(f) to a law of requisition or acquisition by the State covered by Art. 31(2) had been based on two earlier decisions of this Court, namely, The State of Bombay v. Bhanji Munji ([1955] 1 S.C.R. 777) and Lilavati Bai v. The State of Bombay (1957] S.C.R. 721), both of which must, in view of the decision in Kavalappara Kochuni's ([1961] 3 S.C.R. 887), case be deemed to have lost their authority after the Constitution (Fourth Amendment) Act, 1955. It was pointed out that in Kavalappara Kochuni's case ([1961] 3 S.C.R. 887) it was said that Bhanji Munji's ([1955] 1 S.C.R. 777) case "no longer holds the field after the Constitution (Fourth Amendment) Act, 1955". The same observation, it was contended, would also apply to the case of Lilavati Bai v. The State of Bombay ([1957] S.C.R. 721).

It is true that Babu Barkya Thakur's case ([1961] 1 S.C.R. 128) in so far as it dealt with Arts. 19(1)(f) and 31(2), was based on Bhanji Munji's case ([1955] 1 S.C.R. 777) and Lilavati Bai's case ([1957] S.C.R. 721) both of which had been decided on Art. 31 as it stood prior to the aforesaid amendment of the Constitution. It is also true that both these cases dealt with a statute giving power to the State to requisition land and held that such a law if valid under Art. 31 as it stood before the amendment, would not be void on the ground that it infringed Art. 19(1)(f).

Now, before the amendment it had been held by this Court by a majority - Das J., as he then was, alone taking a different view - that both cls. (1) and (2) of Art. 31 dealt with a law giving power to the State to acquire or requisition property. Kavalappara Kochuni's case ([1961] 3 S.C.R. 887) held that after the amendment. cl. (2) of Art. 31 alone dealt with acquisition and requisition of property by the State and cl. (1) dealt with deprivation of property in other ways. This case did not deal with a law of acquisition or requisition of property by the State but was concerned with a law by which deprivation of property was brought about in other ways, which law, it held, had to satisfy Art. 19 and the principle in Bhanji Munji's ([1955] 1 S.C.R. 777) case which could have saved that law before the amendment could not save it after the amendment. The observation in Kavalappara Kochuni's case ([1961] 3 S.C.R. 887) that Bhanji Munji's case ([1955] 1 S.C.R. 777) "no longer holds the field" has, therefore, to be understood as meaning that it no longer governs a case of deprivation of property by means other than requisition and acquisition by the State. Kavalappara Kochuni's case ([1961] 3 S.C.R. 887) was not concerned with a law of requisition or acquisition. It was not directly concerned with the question whether Bhanji Munji's case ([1955] 1 S.C.R. 777) would not after the amendment, apply even to a law of requisition or acquisition of property governed by Art. 31(2), as it now stands, and did not decide that question.

Indeed it might be said that the reasoning in some passages of the judgment in the Kavalappara ([1961] 1 S.C.R. 128) decision would appear to suggest that a law providing for "acquisition" and "requisition" by the State as understood in the sense indicated by Art. 31(2)(a), does not fall within Art. 19(1)(f) and that the validity of such a law is not to be tested by the criterion in Art. 19(5). Otherwise the point made in it regarding the disseverance effected between the content of Art. 31(1) and of Art. 31(2) by the Fourth Amendment would lose all significance. It would therefore appear that there is nothing in that case which would bring it into any conflict with Babu Barkya Thakur's case ([1961] 1 S.C.R. 887). As the only ground on which the correctness of the decision in Babu Barkya Thakur's case ([1961] 1 S.C.R. 887) was challenged was that it was inconsistent with Kavalappara Kochuni's case ([1961] 1 S.C.R. 128), that argument must fail.

The appeal, therefore, fails and is dismissed with costs.

Appeal dismissed.

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