

B. Shankara Rao Badami & Others

Vs

The State of Mysore & Another

Writ Petitions Nos. 188 and 189 of 1968

(CJI M. Hidayatullah, J. C. Shah, V. Ramaswami-I, A. N. Grover G. K. Mitter JJ)

04.12.1968

JUDGMENT

RAMASWAMI, J. -

In these writ petitions under Article 32 of the Constitution a common question of law arises for determination, viz., whether the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 (Mysore Act 1 of 1955), is constitutionally valid.

The villages of Debur and Kappasoge in Mysore District were Inam grants made to Bakshi Bhima Rao, the ancestors of the petitioners. The Inam grants were made by the Ruler of Mysore State in recognition of the military services of Bakshi Bhima Rao. The Inam included not only the income from the lands but from every kind of revenue including excise and the right to treat all lands newly brought into cultivation as the personal property of the Inamdars. The Mysore (Personal and Miscellaneous) Inam Abolition Act, 1954 (Mysore Act 1 of 1955), (hereinafter called the impugned Act), was passed by the Mysore Legislature and received the assent of the President on the 18th March, 1955 and published in the Mysore Gazette on 19th March, 1955. The Act was subsequently amended by Mysore Act 7 of 1956, which received the assent of the President on 28th June, 1956, and which was published in the Mysore Gazette on 5th July, 1956. By virtue of a notification, dated 2nd October, 1956, under Section 1, clause (iv) of the impugned Act, the two Inam villages vested in the State of Mysore under Section 3 of the impugned Act. Compensation of the various items was the subject matter of dispute between the petitioners and the Special Deputy Commissioner who was appointed to assess compensation under the machinery of the Act. Awards of compensation were made under Section 17 and 20 of the impugned Act by the Special Deputy Commissioner. The petitioners preferred Miscellaneous Appeal Nos. 89 and 130 in there High Court of Mysore under Section 31 of the impugned Act. These appeals were heard and decided by the Mysore High Court by a consolidated order of the 27th October 1960. Against that decision two appeals were brought to this Court in Civil Appeals 196 and 197 of 1965. These appeals were heard on 25th October, 1967. It was then pointed out by the Court that the constitutional validity of the provisions of the Act cannot be challenged in the statutory appeals in view of the decision of this Court in K. S. Venkataraman and Co. v. State of Madras. ((1966) 2 SCR 229) The petitioners thereafter filed these writ petitions challenging the constitutional validity of the Act.

The main contention raised by the petitioners is that the impugned Act does not provide for adequate compensation for the property acquired, that the compensation provided for was not a "just equivalent", in other words the market-value of the property at the time of acquisition and there was hence a violation of the guarantee under Article 31(2) of the Constitution. The impugned Act is entitled as an Act to provide for the "abolition of personal Inam and certain miscellaneous Inams in

the State of Mysore except Bellary District".

The preamble state that it is expedient in the public interest to provide for the abolition of personal Inams and certain miscellaneous Inams in the State of Mysore except Bellary District and for other matters connected there-with. Section 1(4) enacts that this section and Sections 2, 27, 38 and 40 shall come into force in respect of any Inam village, or minor Inam in an unalienated village, on such date as the Government may by notification appoint. Section 3 provides for the consequences of the vesting of an Inam in the State and States as follows :-

"(1) When the notification under sub-section (4) of Section 1 in respect of any Inam has been published in the Mysore Gazette, then notwithstanding anything contained in any contract, grant or other instrument or in any other law for the time being in force, with effect on and from the date of vesting, and save as otherwise expressly provided in this Act, the following consequences shall ensue namely :-

(a) the provisions of the Land Revenue Code relating to alienated holding shall, except as respects minor Inams to which this Act is not applicable, be deemed to have been replaced in their application to the Inam; and the provisions of the Land Revenue Code and all other enactments applicable to unalienated villages shall apply to the said Inam;

(b) all rights, title and interest, vesting in the Inamdar including those in all communal; lands, cultivated lands, uncultivated lands, whether assessed or not, waste lands, pasture lands, forests, mines and minerals, quarries, rivers and streams, tank and irrigation works, fisheries and ferries, shall cease and be vested absolutely in the State of Mysore, free from all encumbrances;

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Section 9 enacts :

"Lands and building to vest in the Inamdar : (1) Every Inamdar shall, with effect on and from the date of vesting, be entitled to be registered as an occupant of all lands other than -

(i) communal lands, waste lands, gomal lands, forest lands, tank beds, mines, quarries, rivers, streams, tanks and irrigation works;

(ii) lands in respect of which any person is entitled to be registered under Section 4, 5, 6, 7 or 8; and

(iii) lands upon which have been erected building owned by any person other than the Inamdar.

(2) Every building situated within the limits of the Inam which was owned immediately before the date of vesting by the Inamdar shall, with effect on an from such date, vest in the Inamdar.

Explanation : In this section 'Inamdar' means an Inamdar other than a holder of a minor Inam referred to in Section 7."

Section 17 provides as follows :-

"Amount of compensation payable : (1) Save as otherwise provided in Section 26, the total compensation payable in respect of any Inam shall be the aggregate of the sums specified below :

(i) a sum equal to twenty times the amount of land revenue payable in respect of land held by Kadim tenants and permanent tenants entitled to be registered under Section 4 and Section 5, respectively.

Explanation : Where the land revenue is paid in kind, the amount of land revenue for purposes of this clause shall be determined on the basis of the market-value prevailing on the 1st day of January, 1954, of the crop or crops paid as land revenue;

(ii) a sum equal to seventy-five per centum of the amount payable by the quasi-permanent tenants of the Inamdar under sub-section (2) of Section 6 in respect of lands of which they are entitled to be registered as occupants under sub-section (1) of the said Section 6;

(iii) a sum calculated at the rates specified below in respect of lands referred to in clause (iii) of sub-section (1) of Section 7 or of Section 9, -

(a) seventy-five rupees per acre within the municipal limits of the cities of Bangalore, Mysore and Devangere and within an area of one mile from such limits;

(b) forty rupees per acre within the municipal limits of the towns of Kolar, Tumkur, Chitaldrug, Shimoga, Bhadravati, Chickmagalur, Hassan and Mandya and the limits of the Kolar Gold Fields Sanitary Board Area, and within an area of one mile from such limits; and

(c) twenty rupees per acre in all other areas;

(iv) a sum equal to twenty times the Jodi, quit-rent or other amount, if any, of like nature, derived by the Inamdar concerned from persons holding minor Inams under such Inamdar; and

(v) a sum equal to ten times the average net annual income derived by the Inamdar during a period of five years immediately proceeding the date of vesting, from lands other than lands referred to in clause (iii) and lands in respect of which any person is entitled to be registered under Sections 4, 5, 6, 7, 8 and 9 :

Provided that -

(a) the income from sandal wood or any other forest produce shall not be included in the annual income from forests unless the right thereto was expressly conferred on the Inamdar by a competent authority;

(b) the income from royalty on minerals or from mining lease shall not be included in the annual income unless the right to such minerals or mines was expressly conferred on the Inamdar by a competent authority and such right was recognised

under Section 38 of the Land Revenue Code;

(c) the income from ferries shall not be included unless the right to such ferries was expressly granted to the Inamdar by a competent authority.

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On behalf of the petitioners learned counsel stressed the argument that the Inamdar of the estate was completely deprived of any sort of compensation in regard to the category of lands mentioned in Section 9(1)(i). It was said that in regard to the permanent tenants, the compensation was fixed at 20 times of the land revenue, but in the case of quasi-permanent tenants the compensation is 75 per cent. of the value payable by the quasi-permanent tenants under Section 6(2). That is to say, the Government recovers a premium under Section 6(2) at 40 times the land revenue and hands over 75 per cent. as compensation to the holder of the Inam estate. It was contended that compensation was not fixed on the basis of the market-value on the date of acquisition and that the guarantee embodied in Article 31(2) of the Constitution has been violated.

In support of this argument reference was made to the decision of this Court in *The State of West Bengal v. Mrs. Bela Banerjee and others* ((1954) SCR 558), in which this Court observed that while under Entry 42, List III the Legislature was given discretionary power to lay down the principles which should govern determination of the amount to be given to the owner of the property appropriated. Article 31(2) of the Constitution required that such principles must ensure what is determined as payable must be 'compensation', i.e., a just equivalent of what the owner has been deprived. Whether such principles take into account all the elements which make up the true value of the property appropriated and exclude matters which are to be neglected is a justiciable issue to be adjudicated by the Court. The Court, therefore, held in that case that the West Bengal Land Development and Planning Act, 1948, which was enacted primarily for the settlement of immigrants who had migrated into West Bengal due to communal disturbances in East Bengal and which by Section 8 provided that the compensation to be awarded for compulsory acquisition to the owner of the land was not to exceed the market-value of the land on 31st December, 1946, was ultra vires of the Constitution and void under Article 31(2) of the Constitution. At page 564 of the report the Court observed as follows :

"Turning now to the provisions relating to compensation under the impugned Act, it will be seen that the latter part of the proviso to Section 8 limits the amount of compensation so as not to exceed the market-value of the land on December 31, 1946, no matter when the land is acquired. Considering that the impugned Act is a permanent enactment and lands may be acquired under it many years after it came into force, the fixing of the market-value on December 31, 1946, as the ceiling on 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)."

In our opinion, this principle cannot apply in testing the validity of the impugned Act in the present case. Article 31(2) before its amendment by the Constitution (4th Amendment) Act reads as follows :-

"(2) No property, movable or immovable, including any interest in, or in any company, owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of

such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired 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."

But Article 31-A was added in the Constitution with retrospective effect by Section 4 of the Constitution (1st Amendment) Act, 1951, which provides as follows :-

"4. After Article 31 of the Constitution, the following article shall be inserted, and shall be deemed always to have been inserted namely :

31-A. Saving of laws providing for acquisition of estates etc. - (1) Notwithstanding anything in the foregoing provisions of this Part, no law providing for the acquisition by the State of any estate or of any rights therein or for 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, any provisions of this Part :

Provided that where such law is a law 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.

"(2) In this Article -

(a) the expression "estate" shall, in relation to any local area, have the meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any Jagir, Inam or Muafi or other similar grant;

(b) the expression "rights" in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder or other intermediary and any rights or privileges in respect of land revenue."

Article 31-A was amended again by Section 3 of the Constitution (4th Amendment) Act, 1955 with retrospective effect. Section 3 of the Constitution (4th Amendment) Act reads as follows :

"(a) for clause (1), the following clause shall be, and shall be deemed always to have been substituted, namely :-

(1) Notwithstanding anything contained in Article 13, no law providing for -

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers or corporations, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or taken away or abridges any of the rights conferred by Article 14, Article 19 or Article 31 :

Provided that where such is a law 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; and

(b) in clause (2), -

(i) in sub-clause (a), after the word "grant" the words "and in the States of Madras and Travancore-Cochin, any janmam right" shall be, and shall be deemed always to have been inserted.

(ii) in sub-clause (b), after the word "tenure-holder" the words "Raiyat, under-Raiyat" shall be, and shall be deemed always to have been, inserted."

In the present case, it is plain that under Article 31-A as introduced by the 1st Amendment to the Constitution or as altered by the 4th Amendment, the impugned Act is protected from attack in any Court on the ground that it contravenes the provisions of Article 31(2) of the Constitution. The reason is that the impugned Act is a law providing for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of such rights as contemplated by Article 31-A of the Constitution. The impugned Act provides for acquisition of the rights of Inamdars in Inam estate in Mysore State and it is intended to abolish all intermediate holders who were termed as superior holders and to establish direct relationship between the Government and occupants of land in the Inam villages in respect of which notifications had been issued. The legislation was undertaken as a part of agrarian reform which the Mysore State Legislature proposed to bring in the former which the Mysore State Legislature proposed to bring about in the former State of Mysore. The impugned statute, therefore, falls under the protection of Article 31-A of the Constitution and cannot be challenged on the ground that Article 31 has been violated, that no principle of compensation has been provided or that the compensation provided for is illusory or inadequate.

On behalf of the petitioners Mr. Krishnamurthi in support of his argument referred to the decision of this Court in State of Madras v. D. Namasiyaya Mudaliar and others ((1964) 6 SCR 936), in which Madras Lignite (Acquisition of Land) Act (Madras Act XI of 1953), was held invalid on the ground that the provisions of the Act relation to compensation violated Article 31(2) of the Constitution as it stood before the Constitution (4th Amendment) Act, 1955 and that the principle laid down in The State of West Bengal v. Mrs. Bela Banerjee and others ((1954) SCR 558) (supra) was applicable. Reference was also made to another decision of this Court in P. Vajravelu Mudaliar v. Special Deputy Collector, Madras and another ((1965) 1 SCR 614), in which the question was raised with

regard to the validity of Land Acquisition (Madras Amendment) Act, 1961 (Madras Act 23 of 1961). In that case the petitioners' lands were notified for acquisition for the purpose of housing schemes and the object of the acquisition was slum clearance. In that case also it was held by this Court that the principle of *Bela Banerjee's case* (supra) should be applied and by virtue of Article 31(2) the Legislature in making the law of acquisition must provide for a "just equivalent" of what the owner has been deprived of on specify the principles for the purpose of ascertaining such "just equivalent". It was pointed out that the comparative study of the principle Act and the Amending Act, showed that if land was acquired for a housing scheme under the Amending Act, the claimant would get a lesser value than what he would get for the same or similar land acquired for some public purpose under the Principle Act. The discrimination between persons whose lands were acquired for housing schemes and those whose lands were acquired for other public purposes could not be sustained on the principle of reasonable classification and the Amending Act clearly violated Article 14 of the Constitution and was void. In our opinion, the ratio of the two decisions in *State of Madras v. D. Namasiyaya Mudaliar and others* ((1964) 6 SCR 936), and *P. Vajravelu Mudaliar v. Special Deputy Collector, Madras and another* ((1965) 1 SCR 614), (supra) has no application to the present case because those cases related to legislation not dealing with agrarian reform and the protection of Article 31-A of the Constitution was not available to either of the statutes challenged in those cases.

We pass on to consider the next question raised on behalf of the petitioners, namely, whether the impugned Act was beyond the legislative competence of the Mysore Legislature under Entry 36 of List II to the 7th Schedule and Entry 42 of List III as those entries stood before the 7th Amendment of the Constitution. The argument may be summarised thus : Entry 36 of List II, read with Article 246(3) of the Constitution was obviously intended to authorise the State Legislature to exercise the right of eminent domain, i.e., right of compulsory acquisition of private property. The exercise of such power has been recognised in Anglo-Saxon Jurisprudence as conditioned by public necessity and payment of compensation. All legislation in this country authorising such acquisition of property from Regulation 1 of 1834 to Land Acquisition Act, 1894, proceeded on that footing. The existence of public purpose and the obligation to pay compensation are, therefore, necessary concomitants of compulsory acquisition of private property, and so, the term "acquisition" must be construed as importing by necessary implication the aforesaid two conditions. It is also a recognised rule for the construction of statutes that, unless the words of the statute clearly so demand, a statute is not to be construed so as to take away the property of a subject without compensation : *Attorney-General v. De Keyser's Royal Hotel*. ((1920) AC 508, 542) The power to take compulsorily raises by implication a right to payment : *Central Control Board v. Cannon Brewery*. ((1919) AC word "subject to the provisions of Entry 42 in List III" in Entry 36 reinforce the argument, as these words must be taken to mean that the power to make a law with respect to acquisition of property should be exercised subject to the condition that such law should also provide for the matters referred to in Entry 42, in other words, a two-fold restriction as to public purpose and payment of compensation (both of which are referred to in Entry 42) is imposed on the exercise of the law making power under Entry 36. Entry 36 at the material time read as follows :-

"Acquisition or requisition of property, except for the purposes of the Union, subject to the provisions of Entry 42 of list III."

Entry 42 was to the following effect :-

"Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be

determined, and the form and the manner in which such compensation is to be given."

By the Constitution (7th Amendment) Act, 1956, Entries 36 of List II, 33 of List I, were omitted and Entry 42 of List III, was altered and the altered entry reads as follows : "Acquisition and requisitioning of property". It was however pointed out on behalf of the petitioners that the amendment was not retrospective and the validity of the impugned Act must be tested by the language of Entries 36 of List II and 42 of List III as they stood at the material time.

In our opinion, there is no substance in the argument. It is true that under the common law of eminent domain as recognised in Anglo-Saxon Jurisprudence the State cannot take the property of its subject unless such property is required for a public purpose and without compensating the owner for its loss. But, when these limitations are expressly provided for in Article 31(2) and it is further enacted that no law shall be made which takes away or abridges these safe-guards, and any such law, if made, shall be void there can be no room for implication, and the words "acquisition" of property in Entry 36 must be understood in their natural sense of the act of acquiring property, without importing into the phrase an obligation to pay compensation or a condition as to the existence of a public purpose. In other words, it is not correct to treat the obligation to pay compensation as implicit in the Legislative Entry 33 of List I or Legislative Entry 36 of List II for it is separately and expressly provided for in Article 31(2). The well known maxim *expressum facit cessare tacitum* is indeed a principle of logic and commonsense and not merely a technical rule of construction. The express provision in Article 31(2) that a law of acquisition in order to be valid must provide for compensation will therefore necessarily exclude all suggestion of an implied obligation to provide for compensation sought to be imported into the meaning of the word "acquisition" in Entry 36 of List II. In the face of the express provision of Article 31(2), there remains no room for reading any such implication in the legislative heads. The entries in the Lists of the Seventh Schedule are designed to define the delimit the respective areas of legislative competence of the Union and State Legislatures. Such a context is hardly appropriate for the imposition of implied restrictions on the exercise of legislative powers, which are ordinarily matters for positive enactment in the body of the Constitution.

It was said that words "subject to the provisions of Entry 42 of List III" must be taken to mean that the law making power under Entry 36 could be exercised subject to the two conditions as to public purpose and payment of compensation both of which are referred to in Entry 42. In our opinion, the contention is unsound. The two entries are merely heads of legislation and are neither interdependent nor complementary to each other. These words in Entry 36 mean no more that any law made under Entry 36 by a State Legislation can be displaced or overridden by the Union Legislation making a law under Entry 42 of List III. It is important to notice that similar words do not occur in Entry 33 of List I which confers on Parliament the power to make laws with respect to acquisition of property for the purpose of the Union. For if these restrictive conditions as to public purpose and payment of compensation are to be derived only from those words, then it must follow that in the absence of those words, Parliament can make law, authorising acquisition of property without a public purpose and without a provision for compensation. No reason was suggested why Parliamentary Legislation with respect to such acquisition of property is to be free from such restrictive condition, while State Legislation should be subject to them. The true inference is that the power to make law belonging to both Parliament and the State Legislatures can be exercised only subject to the aforesaid two restrictions not by reason of anything contained in the legislative entries themselves but by reason of positive provisions contained in Article 31(2). But as legislation falling within Article 31-A cannot be called in question in a Court of law for non-compliance with those

provisions such legislation cannot be struck down as unconstitutional and void. In our opinion, counsel on behalf of the petitioners is unable to make good his argument that the impugned Act was beyond the legislative competence of the Mysore Legislature at the time when it was enacted.

For these reasons we hold that the petitioners have made out no case for grant of relief under Article 32 of the Constitution. These writ petitions accordingly fail and are dismissed with costs. There will be one set of hearing fee.

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