

Narayanibai

Vs

State of Maharashtra and Others

Writ Petition No. 256 of 1968

(J.C. Shah, J.M. Shelat, C.A. Vaidialingam, K.S. Hegde, A.N. Ray JJ)

29.10.1969

JUDGMENT

SHAH, J. -

1. Narayanibai is the holder of 142 acres and 8 gunthas of dry crop land in village Teosa, District Amravati in the State of Maharashtra. By notice, dated March 12, 1968, under Section 17(1) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act 27 of 1961, the Sub-Divisional Officer, Chanduri, called upon, Narayanibai to show cause why land held by her in excess of the "ceiling area" shall not be deemed surplus land and shall not vest in the State. Narayanibai filed a petition in this Court claiming a declaration that Maharashtra Act 27 of 1961, is ultra vires the State Legislature in that it violated the fundamental rights guaranteed under Articles 14, 19(1) (f) and (g) and 31 in Part III of the Constitution, and for an order restraining the State of Maharashtra and the Sub-Divisional Officer, Chanduri, from dispossessing the petitioner from the land in question or any part thereof.

2. Maharashtra Act 27 of 1961 is by the Constitution (Seventeenth Amendment) Act, 1964, incorporated in the Ninth Schedule to the Constitution. Article 31-B of the Constitution enacts that the Acts and Regulations in the Ninth Schedule and the provisions thereof shall not be deemed to be void or ever to have become void on the ground that the Act, Regulation or any provision thereof is inconsistent with or takes away or abridges any of the rights conferred by Part III of the Constitution. Articles 14, 19(1)(f) & (g) and 31 fall in Part III of the Constitution and guarantee certain fundamental rights, but by virtue of incorporation of the Act in the Ninth Schedule protection in respect of infringement of any of the fundamental rights by the Maharashtra Act 27 of 1961 or any provision thereof is not claimable.

3. Mr. Setalvad for the petitioner contends that in view of the judgment of this Court in I. C. Golak Nath & Others v. State of Punjab & Another((1967) 2 SCR 762.) action sought to be taken in pursuance of an Act in the Ninth Schedule to the Constitution infringing any fundamental rights is liable to be declared void, if that action is taken subsequent to the date on which the judgment of this Court in that case was delivered. Counsel submitted that in I. C. Golak Nath's case (supra) it was held that all Acts in the Ninth Schedule and action taken pursuant thereto were to be regarded as valid only till February 27, 1967, by the declaration made by this Court, and that action taken after February 27, 1967 pursuant to any of the Acts in the Ninth Schedule, must, to the extent they infringe any of the fundamental rights, be deemed void. Counsel said that the effect of the "doctrine of prospective over-ruling" as understood by the American Courts and adopted by this Court in I. C. Golak Nath's case (supra) is to regard as valid acts done prior to the date on which the Court delivered the judgment in I. C. Golak Nath's case (supra) but acts done which are inconsistent with

the law declared by this Court are invalid.

4. In our judgment, that is not the effect of I. C. Golak Nath's case (supra). In that case Wanchoo, Bhargava and Mitter, JJ., held that the word 'law' in Article 13 (1) does not include any law in the nature of a constitutional provision, and Article 13(2) when it speaks of the State making any law, refers to the law made under the provisions contained in Chapter I of Part XI of the Constitution it has no reference to the constituent power of amendment under Article 368. Bachawat and Ramaswami, JJ., substantially agreed with that view. They therefore regarded all the Acts in the Ninth Schedule as beyond challenge on the plea that the Acts or provisions infringed any of the fundamental rights under Part III of the Constitution.

5. Subba Rao, C. J., who spoke for himself and four of his colleagues observed that Article 13(3) gives an inclusive definition of "law" which does not, prima facie, exclude "constitutional law" and proceeded to enunciate certain propositions, of which the following are, for the purposes of the present case, relevant :

"(2) Amendment is 'law' within the meaning of Article 13 of the Constitution and, therefore, if it takes away or abridges the rights conferred by Part III thereof, it is void.

(3) The Constitution (First Amendment) Act, 1951, Constitution (Fourth Amendment) Act, 1955, and the Constitution (Seventeenth Amendment) Act, 1964, abridge the scope of the fundamental rights. But, on the basis of earlier decisions of this Court, they were valid.

(4) On the application of the doctrine of 'prospective over-ruling', X X X our decision will have only prospective operation and, therefore, the said amendments will continue to be valid.

(5) X X that the Parliament will have no power from the date of this decision to amend any of the provisions of Part III of the Constitution so as to take away or abridge the fundamental rights enshrined therein."

Applying those propositions he held that since the Constitution (Seventeenth Amendment) Act could not be declared void, validity of the Punjab Security of Land Tenures Act X of 1953, and the Mysore Land Reforms Act X of 1962, as amended by Act XIV of 1965, challenged in that case could not be questioned on the ground that those Acts offended Articles 13, 14 or 31 of the Constitution.

6. Hidayatullah, J., also held that the expression "laws" in Article 13(2) did include within itself constitutional law. But he held that though the Seventeenth Amendment which extended the definition of 'estate' to include ryotwari and agricultural lands was an inroad upon the fundamental rights, the Acts were protected from challenge under Article 31-A(I)(a) of the Constitution.

7. It is clear from this analysis that the Court (except Hidayatullah, J.) opined, though for different reasons, that the Act incorporated in Seventeenth Amendment to the Constitution were not liable to be challenged as infringing the fundamental rights. Hidayatullah, J., was of the view that the challenge to the two Acts which were impugned in that case was unsuccessful, because of the provisions of Articles 31(1), (2), (2-A), 31-A(I) of the Constitution.

8. Mr. Setalvad contended that this interpretation of the judgment of the Court in I. C. Golak Nath's case (supra) is inconsistent with the basic concept of the "doctrine of prospective over-ruling" as enunciated in the Courts of its origin, and it must on that account be held that the Court intended to give effect to the traditional concept of the doctrine in all its implications. But Subba Rao, C. J., used the expression "doctrine of prospective overruling" as a convenient mode of describing the power which the Court exercised in I. C. Golak Nath's case (supra). . He has not expressly or by implication sought to incorporate in the stream of our jurisprudence, "the doctrine of prospective overruling" in all its manifold implications as understood by the American Courts. Again, the ten Judges who agreed in upholding the Seventeenth Amendment were equally divided : five relied upon the "doctrine of prospective overruling" five upon the power of the Parliament to exclude from the pale of challenge the Acts and Regulations in the Ninth Schedule, notwithstanding that they infringe any of the fundamental rights in Part III of the Constitution.

9. Mr. Setalvad contended that to uphold the validity of the Acts in the Ninth Schedule, and action taken thereon after February 27, 1967, involves a basic inconsistency. Counsel submitted that an Act cannot be both valid and invalid at the same time. He submitted that with a view to avoid chaos in the body politic the wheel of time was not reversed till the date of the Constitution first Amendment, but the majority of the Court still denied to the Parliament power to incorporate in the Ninth Schedule Acts and Regulations removed from the pale of judicial scrutiny on the plea that the fundamental rights of the people were infringed thereby. If that be the true effect of the judgment said Mr. Setalvad, it must logically follow from the judgment in I. C. Golak Nath's case (supra) that the Seventeenth Amendment has no validity after February 27, 1967. We are unable to agree with that interpretation for more reasons than one. The first and the most obvious is that the majority of the Court expressly held that by virtue of Article 31(b) the Acts incorporated in the Ninth Schedule were not exposed to challenge on the ground that they infringed the fundamental rights of the people. The second is that even the judges for whom Subba Rao, C. J., spoke did not accept the "doctrine of prospective overruling" in all its implications as understood by the American Courts. It merely denied to the Parliament power after February 27, 1967 to amend the Constitution so as to take away any of the fundamental rights of the people, but amendments made prior to that date and action taken under the amendments, both before and after February 27, 1967, were not to be deemed invalid, on the ground that they infringed the guarantee of fundamental rights. That being the true effect of the judgment in I. C. Golak Nath's case (supra) the petitioner cannot be permitted to challenge the validity of the action taken under the provisions of the Maharashtra Act 27 of 1961 on the ground that the action had been taken after February 27, 1967.

10. In a later judgment of this Court in State of Maharashtra, etc. v. Madhavrao Damodar Patilchand & Others, etc.² the validity of the Maharashtra Act 27 of 1961 as amended by Act 13 of 1962 was challenged and this Court upheld the validity of the Maharashtra Act 27 of 1961 as originally enacted and also the amendment made by Act 13 of 1962.

11. The petition fails and is dismissed. There will be no order as to costs.

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