The Government of Mysore and Others

Vs

J. V. Bhat and Others

Civil Appeals Nos. 1736-1740 of 1967

(A. lagiriswmi, M. H. Beg, P. jagmohan Reddy JJ)

14.10.1974

JUDGMENT

ALAGIRISWAMI, J. -

1. These five appeals arise out of five writ petitions filed before the High Court of Mysore questioning three notification issued under the Mysore Slum Areas (Improvement and Clearance) Act, 1958. The notifications were (1) a declaration under Section 3 of the Act, dated November 17, 1960, (2) a declaration under Section 9 of the Act, dated April 20, 1961, and (3) a notification by the Government dated December 20, 1962 under Section 12 by which certain lands were to be acquired under the Act. The provisions of Sections 3, 9, 12 and 15, were also impugned as unconstitutional. The High Court struck down Sections 3 and 9 as violating Article 19(1)(f) of the Constitution and Section 12(1)(b) as violating Article 14. It did not consider it necessary to consider the constitutional validity of Section 15. It, however, held that the three notifications above referred to were not unconstitutional because in exercising their functions under Sections 3, 9 and 12 the authorities concerned were not exercising a quasi-judicial power. But the result of striking down the sections of the Act above referred to was that the notifications also fell along with them. The State of Mysore has filed these appeals under certificate granted by the High Court.

2. There are two possible approaches to this question. One is to hold that the provisions of the statute are themselves unconstitutional because they do not provide a reasonable opportunity for the affected parties to be heard; the other is to hold that as there is nothing in the statutory provisions which debar the application of the principles of natural justice while the authorities exercise the statutory powers under the Act, and as the principles of natural justice would apply unless the statutory provisions point to the contrary the statutory provisions themselves are not unconstitutional though the notifications issued under them may be struck down if the authorities concerned do not observe the principles of natural justice while exercising their statutory powers. As there is a presumption of constitutionality of statutes unless contrary is established it is the latter course that appears to us to be the proper approach.

3. This Court has made considerable advances in recent years in its attitude towards the question of the application of the principles of natural justice. The high Court referred to the decisions in Cooper v. Board of Works for the Wandsworth District (14 CB (NS) 180), King v. Electricity Commissioners ((1924) 1 KB 171) as well as Nakkuda Ali v. M.F. De S. Jayaratne (1951 AC 66), as also to the decision of this Court in Province of Bombay v. Khushaldas S. Advani (AIR 1950 SC 222 : 1950 SCR 621). It referred to the decision in Ridge v. Baldwin ((1963) 2 ALL 66) and considered that it had considerably shaken the foundations of King v. Electricity Commissioners (supra). It noticed the decision of this Court in Board of high School & Intermediate Education U.P.

Allahabad v. Ghanshyam Das Gupta (AIR 1962 SC 1110 : (1962) Supp 3 SCR 36). It did not however refer to the decision of this Court in State of Orissa v. Dr. (Miss) Binapani Dei ((1967) 2 SCR 625 : 1967 SC 1269) nor the decision in A. K. Kraipak v. Union ((1970) 1 SCR 457 : (1969) 2 SCC 262) as they were subsequent decisions of this Court.

4. In Binapani Dei's case (supra) this Court held : The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional setup that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed, it need not be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

In Kraipak's case (supra) it was held : (see SCC p. 272, para 20)

The rules of natural justice operate is areas not covered by any law validly made, that is, they do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose there is no reason why they should not be made applicable to administrative proceedings also, especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones, and an unjust decision in an administrative enquiry may have a more far-reaching effect that a decision in a quasi-judicial enquiry.

In is further observed : (see SCC p. 272, para 20)

The concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice had been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that enquiries must be held in good faith and without bias, and not arbitrarily or unreasonably, is now included among the principles of natural justice.

This Court also pointed out : (see SCC pp. 268-69, para 13)

The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised . . . . In recent yours the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power.

It also observed : (see SCC p. 270, para 14)

With the increase of the power of the administrative bodies it has become necessary to provide guidelines for the just exercise of their power. To prevent the abuse of that power and to see that it does not become a new despotism, Courts are gradually evolving the principles to be observed while exercising such powers. In matters like these, public good is not advanced by a rigid adherence to precedents. Now problems call for new solutions. It is neither possible nor desirable to fix the limits of a quasi-judicial power.

5. The audi alteram partem rule was held to be applicable by implication, to a case of deprivation of a right in property in Dauo Ahmed v. District Magistrate Allahabad ((1972) 3 SCR 405 : AIR 1972 SC 896, 899 : (1972) 1 SCC 655, 659) where this Court held (SCC para 12) :

It is the nature of the power and the circumstances and conditions under which it is exercised that will occasion the invocation of the principle of natural justice. Deprivation of property affects rights of a person. If under the requisition Act the petitioner was to be deprived of the occupation of the premises the district magistrate had to hold an enquiry in order to arrive at an opinion that there existed alternative accommodation for the petitioner or the District Magistrate was to provide alternative accommodation.

6. The Mysore High Court, in the judgment under appeal, seems to have been of opinion that the principle laid down in Cooper v. Board of Works for the Wandsworth District (supra) was departed from in King v. Electricity Commissioners (supra) and by the privy Council in Nakkuda Ali v. M. F. De S. Jayaratne (supra). The Electricity Commissioners' case was followed by this Court in Province of Bombay v. Khushaldas S. Advani (supra). The High Court's view seems to have been that this line of reasoning prevented the Court from inferring any procedure apart from that laid down in the statute. It seemed to have been of opinion that only what was laid down in the Constitution is the Constitutional law of the land. This is clear from the following passage in the judgment under appeal :

The principles of natural justice recognised in this country are largely if not wholly moulded by the decisions of the English Courts. In this country, as on England, though the principles of natural justice are of utmost importance in the administration of justice, they do not form part of the Constitutional law of our country except probably when we consider cases falling under Article 311 of the Constitution. Some of our statutes embody those principles; but largely they are the product of judicial decisions. Those principles do not over-ride specific provisions contained in any statute unless the same comes into conflict with any of the provisions in the Constitution.

7. We may point out that, in holding the impugned provisions void for contravention of Article 19(1)(f) of the Constitution, the High Court itself relied on a principle of natural justice inasmuch as it held that a procedure providing for due hearing to the party affected before a building was condemned to be demolished was not provided in the impugned Act. In other words, the High Court itself was treating rules of natural justice as part of requirements of our Constitutional law although they are not specifically conferred upon citizens under a separate heading.

8. We think that the Electricity Commissioners' case (supra), which was followed by this Court in Khushaldas S. Advani's case (supra), was not really a departure from the general principle laid down in Copper v. Board of Works for the Wands worth District (supra), but, it was an attempt to formulate the conditions under which the general principle laid down there by Erle, C.J., who quoted the Biblical story of how even God Himself had given Adam an opportunity of answering why he had eaten the forbidden fruit before expelling him from paradise, was applicable in the

circumstances of an increasingly complex economic and social order whose problems compelled the emergence of the welfare socialistic State with its many organs armed with extensive powers. Courts attempted, in the interests of justice, where its imperative demands were not met to control administrative action by assimilating it to judicial action over which courts could exercise supervision. In later cases, emphasis was more on the needs of justice and fairness rather than upon the distinction between the judicial and administrative action. Administrative action had, however, to be given free scope within its legitimate sphere without jeopardizing rights of individuals affected. Policies and schemes, framed under statutory provisions, which affected rights of individuals could impose the obligations upon the authorities taking what were essentially administrative decisions at points at which they begin to impinge on specific individual rights. It is only where there is nothing in the statute to actually prohibit the giving of an opportunity to be heard, but, on the other hand, the nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding that the "audi alteram partem" rule could be imported. The nature of the hearing would, of course, vary according to the nature of the function and what its just and fair exercise required in the context of rights affected.

9. We must, therefore, examine the nature of functions imposed by statute and the requirements they are designed to meet in applying the tests stated above. We think that the duty to hear those whose dwellings are to be condemned becomes imperative before deciding to demolish their particular buildings although we do not think that any quasi-judicial trial was called for. All that was necessary was to hear objections, checked by spot inspections, where needed, before taking a decision. This would have met with the requirements of natural justice in such cases where emergent action may sometimes be very necessary. We may point out that, in cases of demolition order, pursuant to schemes framed under the Housing Acts in England, the duty to hear before making them was held by the courts to be implied. The earliest of these cases was Copper v. Board of Words for Wandsworth District (supra). These duties are now imposed by statute (See : Sections 16 and 20 of Housing Act 1957).

10. Before proceeding to deal with the questions that arise it is necessary to set out the relevant statutory provisions.

11. Section 3 provides for declaration of slum areas. It reads :

(1) Where the competent authority upon report from any of its officers or other information in its possession is satisfied that -

> (a) any area is or may become a source of danger to the public health, safety or convenience of residents in that area or in its neighbour-hood, by reason of the area being lowlying, insanitary, squalid or otherwise; or
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> (b) the buildings in any area, used or intended to be used for human habitation -
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> (i) are in any respect unfit for human habitation; or
>
> (ii) are, by reason of dilapidation, overcrowding, faulty arrangement or design, narrowness or faulty arrangement of streets, lack of ventilation, light, or sanitation facilities, or any combination of these factors, detrimental to safety, health or morals;
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> it may, be notification in the official gazette, declare such area to be a slum area -

(2) In determining whether a building is unfit for human habitation for the purposes of this Act, regard shall be had to its condition in respect of the following matters that is to any -

(a) repair;

(b) stability;

(c) freedom from damp;

(d) natural light and air;

(e) water supply;

(f) drainage and sanitary conveniences;

(g) facilities for storage, preparation and cooking of food and for the disposal of waste water;

and the building shall be deemed to be unfit as aforesaid if and only if it is so far defective in one or more of the said matters that it is not reasonably suitable for occupation in that condition.

12. Once an area is declared as a slum area, the owner of every building in that area has to apply to the competent authority as required by Section 3-A (1) of the Act for the registration of the building owner by him in that area and also furnish to the said authority such particulars as may be required by it.

13. Section 3-B lays down :

Notwithstanding anything contained in any other law for the time being in force, no person shall -

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(ii) in respect of any area declared as a slum area under Section 3 after the commencement of the said Act, subsequent to the date of declaration of such area as a slum area,

erect any new building in such slum area, or make any addition to or any alteration in any building already existing on the said date in such slum area, except with the previous permission in writing of the competent authority and subject to such restrictions or conditions as may be imposed by the said authority.

14. Section 9 gives power to declare any slum area to be a clearance area. It reads :

(1) Where the competent authority upon a report from any of its officers or other information in its possession is satisfied as respects any slum area that the most satisfactory method of dealing with the conditions in the area is the demolition of all the buildings in the area, the authority shall be an order notified in the official Gazette, declare the area to be a clearance area, that is to say, an area to be cleared of all buildings in accordance with the provisions of this Act :

Provided that any building in the area which is not unfit for human habitation or dangerous

or injurious to health may be excluded from the declaration if the authority considers it necessary.

(2) The competent authority shall forthwith transmit to the State Government a copy of the declaration under this section together with a statement of the number of persons who on a date specified in the statement were occupying building comprised in the clearance area.

15. Section 12 gives power to the State Government to acquire land. It reads :

(1) Where on any representation from the competent authority it appears to the State Government that, in order to enable the authority to execute any work of improvement in relation to any building in a slum area or to form or widen lanes and roads therein or to redevelop any clearance area, or to rehabilitate slum dwellers it is necessary to acquire -

(a) any land within, adjoining or surrounded by any such slum area or clearance area; or

(b) any other land in any locality;

the State Government may acquire the land by publicising in the official Gazette a notice to the effect that the State Government has decided to acquire the land in pursuance of this section :

Provided that before publishing such notice the State Government may call upon the owner, or any other person who, in the opinion of the State Government may be interested in, such land to show cause why it should not be acquired, and after considering the cause, if any, shown by the owner or any other person interested in the land, the State Government may pass such order as it may deem fit.

(2) When a notice as aforesaid is published in the official Gazette, the land shall on and from the date on which the notice is so published, vest absolutely in the State Government free from all encumbrances.

16. Section 15 prescribes the basis for determination of compensation for the land acquired under Section 12. It reads :

(1) The amount payable as compensation in respect of any land acquired under this Act, shall be determined in the manner specified in sub-section (2).

(2)(a) In respect of any land within, adjoining or surrounded by any slum area or clearance area -

(i) the amount payable as compensation shall be the amount equal to sixty times the net average monthly income actually derived from such land during the period of five consecutive years immediately preceding the date of publication of the notice referred to in Section 12, and

(ii) the net average monthly income referred to above shall be calculated in accordance with the principles and in the manner set out in the Second Schedule.

(b) In respect of any other land, the amount payable as compensation shall be an amount

equal to the market value of such land on the date of publication of the notice under Section 12 :

Provided that the amount payable under clause (a) or clause (b) shall not be in excess of the market value of the land or similar land on the first day of July, 1959.

(3) The prescribed authority shall, after holding an inquiry in the prescribed manner, determine in accordance with the provisions of sub-section (2) the amount payable as compensation and publish a notice in the official Gazette specifying the amount so determined and calling upon the owner of the land and every person interested therein to intimate to it before a date specified in the notice whether such owner or person agrees to the amount so determined and if he does not so agree, what amount he claims to be the amount payable as compensation.

(4) Any person who does not agree to the amount of compensation determined by the prescribed authority under sub-section (3) and claims a sum in excess of that amount may prefer an appeal to the Court of the District Judge having jurisdiction within thirty days from the date specified in the notice referred to in that sub-section.

(5) On appeal, the Court of the district Judge shall determine the amount of compensation and its determination shall be final.

(6) Where there is any building on the land in respect of which the amount of compensation has been determined under clause (a) of sub-section (2), no separate compensation shall be paid in respect of such building.

Provided that where the owner of the land and the owner of the building on such land are different, the prescribed authority shall apportion the amount of compensation between the owner of the land and the owner of the building in such proportion as it considers reasonably :

provided further that the compensation in respect of the building shall not in any case exceed fifty per cent of the total amount of compensation which has been determined in accordance with the provisions of this section.

17. As pointed out by the High Court, no appeal is provided against the declaration made under Sections 3 and 9. Those declarations have far-reaching consequences. While acting under Sections 3 and 9 the possibility of arbitrary decisions cannot be ruled out. It must also be borne in mind that most of the owners of properties in the slum areas are likely to be poor persons with slender means. On the other hand it may also be necessary to bear in mind that quite often the persons who live in the slums may not be owners of the property but all the slum area might be owned by a rich person. In such cases the residents of slums themselves might be interested in the slums being declared as slums. Once an area is declared as a slum area the owners of every building therein have to apply for registration of their buildings. No owner of a property in the area can erect any new building or make any addition to, or alteration in any existing building without previous permission which may be subject to such restrictions or conditions as may be imposed by the competent authority. The authority concerned may also call upon the owners to carry out works of improvement and if such a direction is not complied with the authority may itself execute the works of improvement and recover the cost from him. Under Section 10 the owners of the buildings may be asked to vacate and

demolish them and on failure to do so the buildings may be demolished and the cost of demolition recovered from the owners.

18. A notification under Section 9 enables an area to be declared a clearance area on the ground that the most satisfactory method of dealing with the conditions in the area is the demolition of all the buildings in the area. But even in a slum area there may be buildings which may not have to be pulled down and they may be in quite good condition. The provision to sub-section (1) provides for such a contingency but if there is no provision for hearing the affected person he cannot bring to the notice of the concerned authority that his building is not unfit for human habitation or dangerous or injurious to health, and such person would go unheard. There can be no two opinions about the need to hear the affected persons before declaring an area to be a slum area under Section 3, or an area as a clearance area under Section 9 or before taking action under Section 10. All these difficulties will be removed if the affected persons are given an opportunity to be heard in respect of the action proposed.

19. With regard to Section 12(1)(b), however, we do not consider that that is a section which suffers from the same vice as the other sections. The validity of Section 12(1)(a) has been upheld by the High Court and as we agree with the High Court we do not think it is necessary to say anything more. As regards Section 12(1)(b), however, we do not agree with the High Court that the power to acquire any other land in any locality suffers from any constitutional objection. The power under Section 12(1) is exercisable to execute any work of improvement in relation to any building in a slum area or to form or widen lanes and roads therein or to redevelop any clearance area. The power under Section 12(1)(b) would be relatable to this purpose. But that section also enables acquisition of lands to rehabilitate slum dwellers. Such rehabilitation may not be in the original slum area itself. By its very nature a slum area is likely to be overcrowded and in redeveloping it not enough land may be available to house all persons formerly living in the cleared area. It may be necessary to acquire other lands for the purpose of rehabilitating them. Therefore, the power under Section 12(1)(b) is relatable to the purpose of slum clearance itself. Furthermore, that power is nothing more than the power available to a State Government under the Land Acquisition Act. As the section itself provides for calling upon the owner or any other person interested in the land to show cause why it should not be acquired, which provision corresponds to Section 5A of the Land Acquisition Act, we do not considered that this section suffers from any defect.

20. As regards Section 15 though the High Court considered that it was not necessary to go into its validity in view of its finding regarding the other sections, it may be necessary to consider the validity of this section in the view that we have taken holding that the sections themselves are not bad but only the notifications issued thereunder. But we were informed at the bar by the learned Advocate appearing on behalf of the State of Mysore that a subsequent amendment of the Act has made provision regarding compensation applicable to acquisitions under Section 12 of the Act on the same terms as under the Land Acquisition Act. We do not, therefor, consider it necessary to express any opinion on the validity of Section 15 :

21. In the result the appeals are allowed in part. We hold that Sections 3, 9 and 12(1)(a) and (b) are valid but the three notifications, already referred to, are bad as the affected persons were not given an opportunity of making representations against them. In the circumstances of this case there will be no order as to cost.

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