

Mahant Ram Kishan Dass

Vs

State of Punjab and Others

Civil Miscellaneous Petitions Nos. 3590-3591 of 1980 In Special Leave Petition (Civil) No. 3914  
Of 1979

(V. R. Krishna Iyer, R. S. Pathak JJ)

06.03.1980

ORDER

KRISHNA IYER, J. –

1. Shri Lal appearing for the petitioner in the special leave petition has raised a for formidable number of points, although we are unable to agree with any of them. Earlier this special leave petition had been disposed of by a certain limited direction which is not being interfered with by this Order but counsel perhaps rightly pointed out that he had more to say then was covered by that order and, therefore, should be accorded a fuller hearing. We have heard him exhaustively butt remain unconvinced about any of the points.

2. Shri Lal contended that the land sought to be acquired from his clients, though extensive in area, was continues with a 'samadhi' an, therefore, under the standing orders which have a statutory flavor (in his submission) could not be acquired without going through the exercise provided for. Since that procedure had not been followed the acquisition was bad in law. Counsel for the respondent Trust had consented to the exclusion of two survey plots, namely, 3668 on which the 'Samadhi' actually stood. However, the contiguous, was acquired for development purposes. The contention is that continuity with the 'samadhi' is inhibitive of compulsory acquisition. Maybe, that the plot strictly necessary for the survival of the 'samadhi' as such, is covered by the rule but all the lands that may lie contiguous, however, abundant or extensive, cannot be immunsied against compulsory acquisition. Moreover, what is integral to or a necessary part of the 'samadhi', is a question of fact. Thee objection on this question has been considered by the Punjab Improvement Trusts Act, 192222 as provided by the petition at the threshold. Under Article 136 we cannot be lured into considering a question of fact lied this. We negative the contention.

3. The second objection, grounded on a decision of this Court and using a constitution missile, is that the freedom guaranteed under Article 26 (c) of the Constitution to own and acquire property by a religious denomination is imperiled on account of his acquisition, and also has no basis. It is not as if a religious denomination cannot own land. It can under our Constitution hold properties. But such a right is not an absolute one nor unlimited altogether. Thee decision of this Court relied on by counsel has made the proposition clear :

One thing is, however, clear that Article 26 guarantees interalia the right to own and acquire movable and immovable property for managing religious affairs. This right, however, cannot take away the right of the State to compulsorily acquire property in accordance with the provisions of Article 31 (2). If, on the other hand, acquisition of

property of a religious denomination by the State can be proved to be such as to destroy or completely negate its right to own and acquire movable and immovable property for even the survival of a religious institution the question may have to be examined in a different light.

Counsel drew our attention to another part of the judgment where Mr. Justice Goswami, speaking for the Court, observed : (SCC p. 20)

Right guaranteed under Article 26 (c) not being absolute and unqualified is consistent with reasonable regulations made by the State provided the substance of the freedom is not affected. The Act does not make any inroad in such a way as to affect directly the substance of that freedom. Particular fundamental right cannot exist in isolation in a watertight compartment. One fundamental right of a person may have to co-exist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interests of social welfare as a whole. The court's duty is to strike a balance between competing claims of different interests.

These very passages are sufficient to demonstrate the untenability of the submission. In the present case the survival of the 'samadhi' is not imperiled. Nor is there a total or substantial loss of the religious denomination or institution. Land that is essentially necessary is left intact. What is beyond it but is needed for development purposes, is taken away and compensation paid therefor. Thus there is no infringement of the fundamental right covered by Article 26 (c) of the Constitution. We are not impressed with the submission that hundreds of sadhus will through on occasions and they have to be fed and housed and, therefore, all the lands lying in proximity all over the institution should not be touched even though for development necessity. As pointed out by this Court Article 26 is qualified and co-exists with other rights.

4. The third contention put forward by Shri Lal is that part of the land lies beyond the municipal limits. There is no foundation laid for such a contention, and bears purely on facts which we cannot adjudicate in this court. Few other contentions similarly urged also do not have any basis in admitted fact. Therefore, invocation of Article 136 is misleading. However, while rejecting the contention raised and argued we maintain intact the earlier order that the two plots-3667 and 3668 shall not be acquired. We dismiss the special leave petition subject to the above reservation.

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