

Ram Nath and Others

Vs

Union of India

Civil Appeals Nos. 922-23 of 1971

(D. A. Desai, A. N. Sen, R. B. Misra JJ)

25.04.1984

JUDGMENT

DESAI, J. -

1. A hangover of the heyday of Article 31 permeates the controversy in these two appeals. The attempt is to salvage something from the debris of replaced Article 31 by the Constitution (Forty-fourth Amendment) Act, 1978.

2. In Re Civil Appeal No. 922/71 : Ramnath, the appellant, who is now dead took on lease a plot of land bearing No. 64 Block L, Daryaganj, Delhi admeasuring 590 sq. yards from Delhi Improvement Trust under Ex A-4 dated February 10, 1942. The period reserved under lease was 90 years. The appellant paid Rs 10,253 as initial premium and had to pay recurring half-yearly rent in the amount of Rs 102-8-6 under the agreed terms and conditions of the lease. On payment of Rs 10,253, the initial payment, the appellant was put in possession.

3. In Re Civil Appeal No. 923/71 : Appellant R. S. Ram Pershad since deceased took on lease two plots of land bearing No. 66-67 in Block L, Daryaganj, Delhi from the Delhi Improvement Trust. The appellant executed a registered lease deed dated March 9, 1943 in respect of Plot No. 66 and with respect to Plot No. 67, the transaction was through an oral sale dated May 1, 1942. Each plot admeasured 590.1 sq. yards. The appellant was put in possession on the both plots.

4. The Chief Commissioner of Delhi issued the notification No. F. 6(3) 50 R & R dated December 15, 1950 under Section 3 of the Resettlement of Displaced Person (Land Acquisition) Act, 1948 ('1948 Act' for short) for acquiring the plots of both the appellants. An arbitrator was appointed as envisaged by Section 7(1)(b) of the 1948 Act to assess the compensation. Both the appellant and the Union of India appeared before the arbitrator and the compensation was determined by the arbitrator.

5. Both the appellant preferred two separate appeals against the award of the arbitrators in the then High Court of Punjab at Delhi. On the formation of the High Court of Delhi both the appeals came up before the Division Bench on two different dates. The Division Bench following the decision of the Full Bench in the Union of India a Mohinder Kaur (ILR 1969 Del 1154) dismissed the appeals but granted a certificate under Article 133(1)(c) of the Constitution. Hence both these appeals by certificate.

6. The only contention canvassed before the High Court was that the first and second proviso to sub-clause (e) of sub-section (1) of Section 7 of the 1948 Act are violative of Section 299(2) of the

Government of India Act, 1935 as it then stood and the compensation awarded by the arbitrator in consonance with the provisos is illusory and therefore both the provisos are constitutionally invalid. A Full Bench of the High Court in the decision herein above noticed negated this contention but granted the certificate under Article 133(1)(c) on the ground that the decision in Union of India v. Mohinder Kaur (ILR 1969 Del 1154) was pending in appeal before the Supreme Court and as the High Court in rejecting the appeals of the present appellant followed the same decision, it was imperative that the certificate should be granted.

7. When the appeal came up before us for hearing, we enquired from Mr K. C. Dua, learned counsel for the appellant as to what happened to the appeal referred in Mohinder Kaur case (ILR 1969 Del 1154) which enabled the appellants to obtain the requisite certificate under Article 133(1)(c). There was no clear or straight answer to the query and it appears that there was no such appeal and therefore on this sort ground the certificate could have been cancelled. But as even the other side was not in a position to shed light on the question whether any appeal at all was preferred against the decision of the High Court in Mohinder Kaur case (ILR 1969 Del 1154) and if so what fate it met, we persuaded ourselves not to cancel the certificate.

8. Mr K. C. Dua, learned counsel, who appeared for the appellants in both the appeals, was rather on uncertain ground when he first stated that he does not wish to challenge the constitutionality of Section 7 and/or the provisos to Section 7(1)(e) and then later on stated that he does challenge the two provisos to sub-clause (e) of sub-section (1) of Section 7 on the ground that these two provisos are violative of Section 299(2) of the Government of India Act 1935.

9. Section 7(1)(e) and the two provisos read as under :

7. (1) Where any land has been acquired under this Act, there shall be paid compensation, the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say, -

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(e) the arbitrator, in making his award, shall have due regard to the provisions of sub-section (1) of Section 23 of the Land Acquisition Act, 1894 (I of 1894) :

Provided that the market value referred to in clause first of sub-section (1) of Section 23 of the said Act shall be deemed to be the market value of such land on the date of publication of the notice under Section 3, or on the first day of September, 1939, with an addition of 40 per cent., whichever is less :

Provided further that where such land has been held by the owner thereof under a purchase made before the first day of April, 1948, but after the first day of September, 1939, by a registered document, or a decree for pre-emption between the aforesaid dates, the compensation shall be the price actually paid by the purchaser or the amount on payment of which he may have acquired the land and in the decree for pre-emption, as the case may be.

10. The 1948 Act was enacted to acquire land for resettlement of displaced persons. As an aftermath of the partition of India thousands of persons were uprooted from their habitats and they had to be resettled. Urgent necessity was to acquire the land and that too at reasonable price. In order to circumvent the prolix and time-consuming procedure under the Land Acquisition Act,

1894, a special act was enacted. Section 7 broadly provides for payment of compensation for the land to be acquired for carrying out the purposes of the Act and the manner and method of computation of compensation. Sub-clause (e) provides for determining the compensation having due regard to the provision of sub-section (1) of Section 23 of the Land Acquisition Act, 1894, that is the market price of the land on the date of the acquisition. The two provisos carve out an exception. The first part of the first proviso is in consonance with Sections 4 and 6 of the Land Acquisition Act namely that the market value shall be determined as on the date of the publication of the note under Section 3. Notice under Section 3 served the purpose of a notification under Section 4 of the Land Acquisition Act. It is the second part of the first proviso that really affects the compensation, when it says that either the market value referred to in the first clauses of sub-section (1) of Section 23 of the said Act shall be deemed to be the market value of such land on the date of publication of the notice under Section 3 or market value of the land on the first day of September, 1939, with an addition of 40 per cent., whichever is less. The second proviso caters to the situation where land acquired has been held by the owner thereof under a purchase made before the first day of April, 1948 but after the first day of September, 1939 which is not the question herein.

11. Mr Dua urged that reducing the compensation to the market value plus 40 per cent. as on first day of September, 1939 is thoroughly irrelevant to the payment of compensation and arbitrarily selects the date much earlier to the date of the acquisition and ignores the escalation of price of the land. It was urged that the situation is not improved by adding 40 per cent. to the market value as determined on first day of September, 1939. The choice of the date September 1, 1939 does not appear to be arbitrary but has a real nexus to the object sought to be achieved by the 1948 Act. We are of the opinion that the choice of the date as September 1, 1939 is very relevant and cannot be struck down as arbitrary because one cannot overlook the historical fact that the Second World War was declared on September 2, 1939 and India was dragged into it by a foreign power on September 3, 1939 and the war situation contributed to the escalation in price of the land. It is however not necessary to examine in depth this aspect.

12. The 1948 Act is admittedly inserted in the Ninth Schedule by the Constitution (First Amendment) Act, 1951 which also simultaneously added Article 31-B. The Act finds its place at placitum 16 in the Ninth Schedule. Once an act is placed in the Ninth Schedule, Article 31-B provides that either the act or any provision thereof shall not be deemed to be void or ever to have become void on the ground that such act or any provision thereof is inconsistent with, or takes away or abridges any of the rights conferred by any provision of Part III of the Constitution. Once the act is brought under the umbrella of protection of Article 31-B by inserting it in the Ninth Schedule, the act is not open to the challenge that it as a whole or any provision thereof violates or contravenes any of the fundamental rights contained in Part III of the Constitution. The allegation here is that the two provisos violated the guarantee of fair compensation and therefore it constitutes deprivation of property without just compensation, a relic of Article 31(2) lifted from Section 299(2) of the Government of India Act, 1935.

13. The 1948 Act is a pre-Constitution statute. It was therefore urged that it does not qualify for the protection of Article 31-B inasmuch as when enacted it was violative of Section 299(2) of the Government of India Act, 1935 and as it was void ab initio, it was not an existing law within the meaning of expression in Article 366(10) and therefore is not qualified for umbrella of protection enacted in Article 31-B.

14. Section 299 of the Government of India Act, 1935 is almost in pari materia with repealed Article 31(2). A Constitution Bench of this Court in *Dhirubha Devisingh Gohil v. State of Bombay*

(1955 SCR 691 : AIR 1955 SC 47 : 1955 SCJ 1) while upholding the constitutional validity of the Bombay Talukdari Tenure Abolition Act, 1949 on the ground that it was not covered by the umbrella of protection of Article 31-B and the Ninth Schedule held that Section 299(2) of the Government of India Act was in substance a fundamental right which was lifted bodily as it was from the Government of India Act, 1935 and put into the Part III of the Constitution. Accordingly repelling the contention that the Bombay Act violated Section 299(2) and was not qualified for the protection of Article 31-B, it was held that the marginal difference in the language of Section 299 and Article 31-B does not make any difference because what Article 31-B protects is not a mere "contravention of the provisions" of Part III of the Constitution but an attack on the grounds that the impugned act is "inconsistent with, or takes away or abridges any of the rights conferred by any provision of Part III". It was accordingly held that even though the Bombay Talukdari Tenure Abolition Act, 1949 was a pre-Constitution statute, it would nonetheless be covered by the umbrella of protection of Article 31-B. In this connection it was observed as under :

It will be illogical to construe Article 31-B as affording protection only so far as these rights are taken away by an Act in violation of the provisions of the new Constitution but not when they are taken away by an Act in violation of Section 299 of the Government of India Act which has been repealed. The intention of the Constitution to protect each and every one of the Acts specified in the Ninth Schedule from any challenge on the ground of violation of any of the fundamental rights secured Part III of the Constitution, irrespective of whether they are pre-existing or new rights, is placed beyond any doubt or question by the very emphatic language of Article 31-B which declares that none of the provisions of the specified Acts shall be deemed to be void or ever to have become void on the ground of the alleged violation of the rights indicated and "notwithstanding any judgment, decree or order of any court or tribunal". That intention is also emphasised by the positive declaration that "each of the said Acts or Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force".

15. This very question again surfaced in *State of U.P. v. H.H. Maharaja Brijendra Singh* ((1961) 1 SCR 362 : AIR 1961 SC 14 : (1961) 1 SCJ 622) in which constitutional validity of U.P. Land Acquisition (Rehabilitation of Refugees) Act, 1948 was questioned. The title of the Act impugned in that case clearly shows that it was in pari materia with the 1948 Act, both being enacted with a view to acquire power to acquire land for rehabilitation of refugees and that too in the same year. It may as well be mentioned that U.P. Act XXVI of 1948 is also inserted in the Ninth Schedule. The entry just precedes the 1948 Act. The High Court while upholding the validity of Section 11 which is in pari material with Section 7 of 1948 Act struck down the two provisos to Section 11 similarly worded as the two provisos to Section 7(1)(e). Both the provisos are in pari material with the impugned provisos. This Court, reversing the decision of the High Court and following the decision in *Dhirubha Devisingh Gohil* case (1955 SCR 691 : AIR 1955 SC 47 : 1955 SCJ 1) while upholding the constitutional validity of the Act held that the protection under Article 31-B against the violation of the fundamental rights mentioned therein must extend to the rights under Section 299 of the Government of India Act also. The reasons which weighed with the Constitution Bench of this Court while upholding the validity of the U.P. Act will mutatis mutandis apply here and we must uphold the validity of the two provisos on parity of reasoning.

16. It is thus satisfactorily established that in view of the insertion of the 1948 Act in Ninth Schedule it enjoys the umbrella of protection of Article 31-B and therefore it is immune from the challenged as violating any of the provisions in Part III of the Constitution. In fact this should end

the controversy.

17. Mr Dua however urged that in view of the decision of this Court in *N.B. Jeejeebhoy v. Assistant Collector, Thana Prant, Thana* ((1965) 1 SCR 636 : AIR 1965 SC 1096) wherein this Court struck down the Land Acquisition (Bombay Amendment) Act, 1948 as constitutionally invalid, would necessitate re-examination of the decision in *Dhirubha Devising Gohil case* (1955 SCR 691 : AIR 1955 SC 47 : 1955 SCJ 1) and *Maharaja Brijendra Singh case* ((1961) 1 SCR 362 : AIR 1961 SC 14 : (1961) 1 SCJ 622). It was submitted that the decision in *Jeejeebhoy case* ((1965) 1 SCR 636 : AIR 1965 SC 1096) comes later in point of time both to the decision in *Dhirubha Gohil* (1955 SCR 691 : AIR 1955 SC 47 : 1955 SCJ 1) and *Maharaja Brijendra Singh case* ((1961) 1 SCR 362 : AIR 1961 SC 14 : (1961) 1 SCJ 622), and therefore the later decision should prevail with this Court. In *Jeejeebhoy case* ((1965) 1 SCR 636 : AIR 1965 SC 1096), this Court repelled the contention that the Amendment Act is saved by Article 31-A of the Constitution. The argument of the learned Attorney-General that Section 299 of the Government of India Act, 1935 declared a fundamental right of a citizen, that it is bodily lifted and introduced by the Constitution in Article 31(2) thereof and that if Article 31-A saved an attack against the Amending Act on the ground that it infringed Article 31(2) thereof, it would equally save the attack based on the infringement of Section 299(2) of the Government of India Act, 1935 was disposed of by merely observing that the argument is far fetched. It may however be mentioned that in this later decision, the decisions of the Constitution Bench in *Dhirubha Devising Gohil case* (1955 SCR 691 : AIR 1955 SC 47 : 1955 SCJ 1) and the *Maharaja Brijendra Singh case* ((1961) 1 SCR 362 : AIR 1961 SC 14 : (1961) 1 SCJ 622) were merely referred to but not overruled. They were distinguished on the ground that the statutes impugned in those cases enjoyed the protection of Article 31-B. That is a fact and would make all the difference. The impugned Act in *Jeejeebhoy case* ((1965) 1 SCR 636 : AIR 1965 SC 1096) did not enjoy the protection of the Ninth Schedule and Article 31-B, and therefore the decision in *Jeejeebhoy case* ((1965) 1 SCR 636 : AIR 1965 SC 1096) is hardly of any assistance.

18. It was lastly urged that the decision of the larger Bench in *Rustom Cavasjee Cooper v. Union of India* ((1970) 3 SCR 530 : (1970) 1 SCC 248 : AIR 1970 SC 564) would clearly show that the decision of this Court in *State of Gujarat v. Shantilal Mangaldas* ((1969) 3 SCR 341 : (1969) 1 SCC 509 : AIR 1969 SC 634) is no more good law and therefore it is open to the Court to examine where the compensation offered by the relevant provisions of the statute is illusory or prescribe principles well-recognised for valuation of land. In our opinion, this aspect is hardly relevant because once the impugned statute or the impugned provisions of the statute enjoy the protection of Article 31-B, it is not open to the Court to examine whether the principles for valuation therein prescribed are relevant to the land valuation because that question arises where a complaint as to the contravention of the fundamental rights enacted in repealed Article 31 can be entertained and examined. That complaint has to be rejected at the threshold as soon as it is pointed out that the impugned statute or the impugned provisions of statute enjoy the protection of Article 31-B. It may be mentioned that in *Mohinder Kaur case* (ILR 1969 Del 1154), a Full Bench of Delhi High Court examined and upheld the constitutional validity of the two provisos to Section 7(1)(e) of the 1948 Act. We agree with the view taken by the High Court and upheld the same.

19. Constitutional validity of the two provisos to Section 7(1)(e) of the 1948 Act was the only point canvassed in these two appeals and as there is no merit in it, both the appeals fail and are dismissed without any order as to costs.

20. In Civil Appeal No. 922 of 1971 the appellant died pending the appeal and substitution is sought by one Kumari Abha Gupta basing her claim on the will dated July 27, 1980 of the deceased. The

will has neither been probated nor anywhere its validity is determined. It is not necessary for us to undertake this exercise here. We grant the substitution limited to the purposes of the appeal but if in any appropriate proceeding, the question of the validity of the will arises, the same could not be said to have been concluded by this Court granting the substitution. Subject to this condition, the substitution is granted.

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