SUPREME COURT OF INDIA

Society of ST. Josephs College

Vs.

Union of India

C.A.No.7751 of 2001

(Syed Shah Mohammed Quadri CJI., N. Santosh Hegde, S.N. Variava and Shivaraj V. Patil JJ.)

20.11.2001

JUDGMENT

Bharucha, CJI. :

1. In this writ petition, the Court is called upon to interpret for the first time the provisions of clause (1A) of Article 30 of the Constitution of India. Clause (1A) was introduced in the Constitution by the *Constitution (Forty-fourth Amendment) Act, 1978*. Article 30, subsequent to the forty-fourth amendment, reads thus: 30. Right of minorities to establish and administer educational institutions.

> "(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
>
> (2) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause
>
> (3), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.
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> (4) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language."

2. The writ petitioner is a religious minority institution founded by the members of the Society of Jesus, which is a religious congregation in the Catholic Church. The petitioner has established and is administering an educational institution called the St. Josephs College in Tiruchirappally, Tamil Nadu. The college was established more than 150 years ago. It has been accorded autonomous status by the University of Madras in April, 1978. Within the campus of the college is a building owned by the petitioner. The said building was let out in

1910 to the Post & Telegraph Department of the Government of India and has since then been used as a Post Office. On 26th October, 1974 the petitioner wrote to the Senior Superintendent of Posts, Tiruchirappally Division, seeking an enhancement of the rent of Rs. 830/- per month of the said building. There was no response. On 30th October, 1974 the fourth respondent, the Revenue Divisional Officer, Tiruchirappally, issued to the petitioner a notice under Section 3(1) of the Madras Requisition and Acquisition of Immovable Property Act, 1956 to commence the acquisition of the said building. On 11th December, 1974 the petitioner objected to such action. Nothing happened over five years. Then, on 3rd May, 1979 a notification was issued under Section 4(1) of the Land Acquisition Act, 1894 in respect of the said building. On 24th February, 1980, the petitioner filed objections to the proposed acquisition. On 17th February, 1982 the Section 6 notification was gazetted. On 4th June, 1982 the fourth respondent issued to the petitioner notices under Section 9(3) and Section 10 directing the petitioners to appear before him in regard to their claim to compensation. On 9th September, 1982 the petitioner filed a writ petition in the High Court at Madras challenging the said acquisition. The writ petition was dismissed, and a writ appeal was filed by the petitioner. The writ appeal was dismissed on 18th April, 1984. In the meantime, on 6th April, 1984 an award of Rs. 1,56,377/- was made in favour of the petitioner, being the amount payable to it upon the acquisition of the said building. A Special Leave Petition was filed against the order of the writ appeal and also this writ petition under Article 32. The writ petition seeks a declaration that the provisions of the Land Acquisition Act do not apply to and empower the acquisition of the properties of minority educational institutions and the quashing of the notifications under Sections (4) and (6) of the Land Acquisition Act in respect of the said building.

3. On behalf of the petitioner, Mr. Bobde submitted that a provision identical to clause (1A) of Article 30 was inserted by the same Constitution Amendment Act which deleted Article 31 and Article 19(1)(f) from the Constitution and added Article 300A. In his submission, the provision was inserted because Parliament, acting as a constituent body, was aware to the fact that while removing the right to property from the chapter on Fundamental Rights in the Constitution, it was of the utmost importance in secular India to preserve that right in a suitable form in relation to the property of minority educational institutions. It was realised that the right of the minorities to establish and administer educational institutions could be seriously undermined and even abrogated by the expedient of acquiring the property of such educational institutions under the Land Acquisition Act or any other law made by Parliament or by a State legislature under Entry 42 of List III. It should be assumed that the following was borne in mind by Parliament : The Land Acquisition Act did not itself acquire any property but was an enabling law enabling the State to acquire property in accordance with the procedure provided therein. Section 4 thereof froze the date of computing compensation and the award came years later. By the time compensation was received, perhaps after appeals up to the stage of this Court, it represented only a fraction of the value of the property. A law made for a particular property or for a class of properties was required to provide only for an amount which might be fixed by such law or which might be determined in accordance with such principles and given in such manner as might be specified in such law and no such law could be called in question on the ground that the amount was not adequate or the whole or part of such amount was to be given otherwise then in cash. Article

300A, which had been added by the forty-fourth Amendment, only provided the safeguard that the deprivation of property be done by the authority of law. Clause (1A) of Article 30 required Parliament or a State legislature to make a law for the specific purpose of acquiring a specified property of a minority educational institution. After the introduction of clause (1A), the State could not act under the general law as, for example, the Land Acquisition Act. In making the special law, Parliament and the State legislatures had to apply their mind to the situation of the particular educational institution whose property was being acquired; as for example, to its financial condition, the number and nature of its property, its location, the impact of the acquisition of the property on the institution, the feasibility of replacing that property by a similarly situated property and the like. All relevant factors had to be taken into account for fixing or providing for such amount as would ensure that the right under Article 30 was not restricted or abrogated. The special law would itself have to acquire the property or specially authorise its acquisition by the State and fix the compensation amount or provide for the determination thereof. Such amount should be such that the educational institution could replace the acquired property with similar property or an asset of an equivalent real value. In the absence of such a special law in the instant case, the acquisition of the said building was bad in law.

4. The learned Attorney General pointed out that a provision identical to clause (1A) of Article 30 had been first introduced in Article 31 by the Constitution (Twenty-fifth) Amendment Act, which had also altered the position as to the payment of compensation for compulsory acquisition by requiring the payment of an amount. The learned Attorney General submitted that it was settled law that the Constitution did not prohibit the acquisition of property belonging to a minority educational institution but, by reason of the introduction of the aforementioned safeguard provision, the question might have to be examined in a different light if such acquisition could be proved to be such as to destroy property for even the survival of the educational institution. The twenty-fifth amendment empowered the State inter alia to acquire property by a law for a public purpose on payment of an amount instead of the payment of compensation and no such law could be called in question in any court on the ground that the amount so fixed or determined was not adequate or that the whole or any part thereof was to be given otherwise than in cash at the same time. The twenty-fifth amendment carved out an exception in favour of minority educational institutions by inserting the safeguard provision. The rationale for the safeguard provision was to preclude Parliament and the State legislatures from taking a cue from the twenty-fifth amendment and making a law which awarded only an amount and not compensation for the acquisition. In the learned Attorney Generals submission, it was only in respect of legislation enacted after the twenty- fifth amendment that the State was required to ensure that the amount fixed or determined under such law for the acquisition of the property of a minority educational institution was such as would not restrict or abrogate the right guaranteed by Article 30. Property could be acquired prior to the twenty-fifth amendment on payment of compensation on the principles laid down in the acquisition statutes, for example, the Land Acquisition Act. There was, therefore, no need to make any safeguard provision therein in respect of minority education institutions. In the alternative, the learned Attorney General submitted that the requirement of the safeguard provision should be read into the provisions of the Land Acquisition Act so that that Act was in conformity with the constitutional mandate. In the

further alternative, the learned Attorney General submitted that pending proceedings and acquisitions effected under the Land Acquisition Act should not be quashed for such time as the Court deemed reasonable to enable Parliament to effect the necessary change in the Land Acquisition Act; he submitted that a period of six months should be given for the purpose.

5. Article 30 is a part of the chapter on Fundamental Rights in the Constitution. It guarantees a right to the minorities, religious and linguistic, to establish and administer educational institutions of their choice. Clause (1A) thereof requires that the State shall, in making a law that provides for the compulsory acquisition of any property of a minority educational institution, ensure that the amount, either fixed or determined under such law, that is payable to the educational institution for the acquisition of its property is such as would not either restrict or abrogate the right aforementioned. Clause (1A), therefore, requires the State, that is to say, Parliament in the case of a Central legislation or a State legislature in the case of State legislation, to make a specific law to provide for the compulsory acquisition of the property of minority educational institutions, the provisions of which law should ensure that the amount payable to the educational institution for the acquisition of its property will not be such as will in any manner impair the functioning of the educational institution.

6. It is not necessary that a statute should be enacted exclusively for the compulsory acquisition of the property of minority educational institutions, but it is necessary that in a law that provides, in general, for the compulsory acquisition of property, there should be enacted, by amendment thereof, a provision that relates specifically to the acquisition of the property of minority educational institutions. That provision must ensure that the amount payable for such acquisition will not in any manner impair the right conferred upon the minorities by Article 30. Plainly, Parliament in its constituent capacity apprehended that minority educational institutions could be compelled to close down or curtail their activities by the expedient of acquiring their property and paying them inadequate amounts in exchange. To obviate the violation of the right conferred by Article 30 in this manner, Parliament introduced the safeguard provision in the Constitution, first in Article 31 and then in Article 30. We cannot accept the submission of the learned Attorney General that the provisions of a statute that provides for the acquisition of property in general, as for example, the Land Acquisition Act, are adequate for the compulsory acquisition of the property of minority educational institutions because what is payable thereunder is compensation, or that the provisions of clause (1A) of Article 30 should be read into such statute. Clause (1A) clearly states that after the date of its introduction there must be a law that specifically relates to the compulsory acquisition of the property of minority educational institutions and that that law must make provisions that ensure that the amounts that are fixed or determined thereunder for the acquisitions are such as do not restrict or abrogate the right guaranteed under Article 30. Necessarily, such law must require the taking into account of factors that do not come into play in the determination of amounts payable in relation to the acquisition of the properties of others and are, therefore, not set out in the general acquisition statutes.

7. We think, however, that it is appropriate that Parliament and the State legislatures should have time upto 31st May, 2002 to make such laws, if they so choose, and that pending and uncompleted acquisitions of the properties of minority educational institutions should lapse

only if at the end of such time the statutes under which the acquisitions have been commenced have not been duly amended. On the other hand, if they are duly amended, the amounts payable for such acquisitions shall be determined thereunder.

8. This will apply as well to the acquisition of the said building of the petitioner under the Land Acquisition Act. Order on the writ petition accordingly. The Civil Appeal No. 7751 of 2001 shall stand disposed of in the above terms.

No order as to costs.