

# ALLAHABAD HIGH COURT

Govindi

Vs.

State of U. P

Writ Appln. No. 3451 of 1951

(Sapru and C.B. Agarwala, JJ.)

09.07.1951

## JUDGMENT

### **C.B. Agarwala, J.**

1. This is one out of numerous writ applications filed in this Court questioning the validity of the U. P. Zamindari Abolition and Land Reforms Act, No. 1 of 1951, hereinafter referred to as "the Act" or "the impugned Act". The validity of the Act has been upheld in a recent decision of a Full Bench of this Court, vide '*Suryapal Singh v. Government of the State of Uttar Pradesh*',
2. Sri Prem Mohan Verma, learned counsel for the applicant, however, urges that there are several points that arise in the case which were not argued before the Full Bench and hence were not dealt with by that Bench. He contends that the Act is invalid for several reasons.
3. The first ground argued is that apart from the provisions of Article 31 (2), the State Legislature was incompetent to legislate with regard to the acquisition of the property of the intermediaries on condition of payment of compensation by means of bonds. It is urged that the condition of payment of compensation by bonds is no payment of compensation at all, inasmuch as a bond is merely a promise to pay in future and is not equivalent to payment in cash. It is further urged that the State Legislature under the powers given to it, under entry 36 of list II of the 7th schedule, can only legislate with regard to acquisition of property, if there had been an enactment laying down principles of cash payment under entry 42 of list III; and as the principles of payment of compensation laid down in the impugned Act are not principles of payment of cash compensation, they are no principles at all and consequently the State Legislature could not pass the Act.
4. No doubt, Section 68 of the Zamindari Abolition Act makes it possible for the State Government to prescribe that compensation shall be payable entirely in bonds and it may be

assumed that a bond is a promise to pay in future and that it does not amount to payment in cash 'in praesenti.' That, however, does not mean that there is no payment of compensation whatsoever. But assuming, for the sake of argument, that no payment of

<sup>1</sup>1951 ALJ 365

compensation is provided for in the Act, the question still remains whether the State Legislature had the power to pass the Act. The argument is based upon the words "subject to" that appear in entry 36 of list II and upon the word "compensation" appearing in entry 42 list III. This argument was considered by the Pull Bench and it was held that

"the words 'subject to the provisions of entry 42 of list III' do not by themselves mean that the State Legislature cannot legislate with respect to the acquisition of property unless there is a public purpose and only on payment of compensation."

It may be added that the various entries are not powers of legislation but fields of legislation. Where one entry is made subject to another entry, all that it means is that out of the scope of the former entry a field of legislation covered by the latter entry has been reserved to be specially dealt with by the appropriate legislature. The subject-matter of entry 36 of list II is acquisition or requisitioning of property except for the purposes of the Union. The subject-matter of entry 42 of list III is the principles on which compensation for the property acquired or requisitioned is to be determined and the form and manner in which such compensation is to be given. Out of the field of legislation on the subject-matter of acquisition or requisition of property except for the purpose of Union, the subject-matter concerned with the principles of compensation and form and manner in which it is to be given is taken out and reserved to be legislated upon by the Union or the State. If there is no legislation under entry 42 of list III, there is nothing to prevent the State Legislature from making any enactment with respect to the subject of acquisition or requisitioning of property. The power to legislate is given in Article 246. Under that Article a State Legislature has power to legislate "with respect to" matters enumerated in the various entries in list II and also with respect to matters mentioned in list III subject to any legislation by Parliament. Since there is no parliamentary legislation under entry 42 of list III, the State could legislate upon the subject matter of that entry. It could legislate with respect to principles of compensation etc. The expression "with respect to" is of wide import and any legislation can be made so long as it is with respect to the subject-matter of a particular entry (provided of course it is not inconsistent with the other provisions of the Constitution).

The Legislature could, therefore, enact under entry 42 of List III in respect of the property acquired, that compensation shall be paid in bonds or even that there shall be no compensation, (not taking into account the effect of Article 31 (2) for the present).

5. In '*United Provinces v. Atiqa Begam*<sup>2</sup>' the question was whether legislation with regard to remission of rent could be made in the entry under the heading 'land, including collection of

rents.' It was held :

"If a Provincial Government can legislate with respect to the collection of rents, it must also have power to legislate with respect to any limitation on the power of a landlord to collect rents, that is to say, with respect to the remission of rents as well as to their collection."

6. On the same principle legislation with respect to payment of compensation includes

<sup>2</sup>1940 FCR 110

legislation with respect to non-payment of compensation.

7. Article 31 (2) provides the limitation on the power of the State to legislate with regard to acquisition of property and no property is to be acquired unless it is for public purposes and the amount of compensation or the principles of payment of compensation are laid down. But, the Full Bench has held that any contravention of this provision is cured by the provisions of Article 31 (4).

8. It was next argued that under Section 68 the Legislature has delegated the power to fix the proportion of compensation payable in cash or in bonds to the executive and that this the Legislature had no power to do. This question was specifically dealt with by the Full Bench and it was held that delegation of power under Section 68 of the Act was justified and lawful.

9. Then it was urged that the State Legislature had no power to acquire the rights and interests of the intermediaries in part. It was contended that under the Act the sir and khudkasht lands of the intermediaries have been allowed to be retained by them and this shows that their rights have not been acquired in their entirety. It is contended that under Article 31 of the Constitution the Legislature had power to acquire the entirety of the rights of a person in any property, moveable or immovable, but it had no right to acquire some only of his rights. This argument again has no substance. Under the Act all the proprietary rights of the intermediaries have been acquired. No doubt sir and khudkasht lands have been allowed to be retained by them in their capacity as Bhumidhars. This is a new tenure created by the Act. Bhumidhars are not proprietors. The proprietary rights under the Act vest in the State. It cannot, therefore, be said that the entire proprietary rights of the intermediaries have not been acquired under the Act.

10. It was next urged that the Act was confiscatory and was culmination of a series of confiscatory Acts preceding it. It was urged that because of its confiscatory nature, the Legislature had no power to enact the Act. In the Full Bench decision it has been pointed out that it could not be stated that the Act was confiscatory. There was provision for payment of compensation and, although compensation paid to the bigger zamindars was low and may be very low, it could not be said that there was no compensation whatsoever. Assuming, however, that the Act was of a confiscatory nature, the provisions of the Act, as held by the Full Bench, are

protected by Article 31 (4) of the Constitution.

11. It was next urged that the State Legislature had no power to enact the Act because there was already in existence an Act of the Central Legislature, namely, the Land Acquisition Act, the provisions of which regarding compensation are inconsistent with the provisions of the Act. It is pointed out that the provisions with regard to compensation under the Land Acquisition Act fall under entry 42 of list III of the Constitution and, since there is Central legislation with regard to compensation, no State Legislature has power to provide for a different mode of payment of compensation for acquisition of property. This argument is fallacious. It is overlooked that the impugned Act was reserved for the consideration of the President and it received his assent and, as such, under the provisions of Article 254 (2) the Act is valid and so far as the State of Uttar Pradesh is concerned, the provisions of the Act prevail over the provisions of the Land Acquisition Act.

12. It was next urged that Article 31 (4) merely bars a remedy but does not cure the illegality of the Act. This argument was considered by the Full Bench and rejected.

13. It was next urged that there was no public purpose behind the Act inasmuch as it could not be that the land acquired was needed for the purpose of the State when the Act itself provided that the State would transfer the land acquired from the intermediaries to tenants. The Full Bench has dealt with the question of public purpose and has held that the Act was for a public purpose. This argument, therefore, has no force.

14. Lastly, it was urged that Article 31 (4) does not cure the invalidity of the Act because there was no Bill which could be said to be pending in the Legislature of a State at the commencement of the Constitution. It is pointed out that at the commencement of the Constitution, that is, on the 26th January 1950, no Legislature was in existence in the State of Uttar Pradesh. Reference is made in this connection to Article 395 under which Indian Independence Act, 1947, and the Government of India Act, 1935, are repealed. It is urged that Legislatures created under the Government of India Act, 1935, ceased to exist when that Act was repealed. Article 382, however, provides,

"Until the House or Houses of the Legislature of each State specified in Part A of the 1st Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the House or Houses of the Legislature of the corresponding Province functioning immediately before the commencement of this Constitution shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of such State."

14-a. Article 389 provides,

"A Bill which immediately before the commencement of this Constitution was pending in

the Legislature of the Dominion of India or in the Legislature of any Province of Indian State may, subject to any provision to the contrary which may be included in rules made by Parliament or the Legislature of the corresponding State under this Constitution, be continued in Parliament or the Legislature of the corresponding State, as the case may be, as if the proceedings taken with reference to the Bill in the Legislature of the Dominion of India or in the Legislature of the Province or Indian State had been taken in Parliament or in the Legislature of the corresponding State."

15. On the 26th January 1950 the old Legislature in the State of Uttar Pradesh continued to function and the Bill, which ultimately was enacted as the impugned Act and which was pending before the 26th January 1950 was continued in the new Parliament when it came into existence sometime in May 1950. It cannot, therefore, be said that the Bill which ultimately was enacted as the Zamindari Abolition Act was not pending on the date of the commencement of the Constitution. No other point was urged.

16. For the reasons given in the decision of the Full Bench we reject this application.

17. We certify that substantial questions of law as to the interpretation of the Constitution are involved in the case.

18. We make no order as to costs.

Application rejected.