**ALLAHABAD HIGH COURT**

H.P. Khandewal

Vs.

State of U.P

Civil Misc. Writ Nos.7810, 7840, 7841, 7842, 7888 and 7976 of 1951

(Mootham and M.L. Chaturvedi, JJ.)

04.02.1954

**JUDGMENT**

**Mootham, J.**

1. These are six petitions under Article 226 of the Constitution in which common questions of law arise and which can conveniently be dealt with in a single judgment. The petitioners challenge the validity of certain sections of the U.P. Land Acquisition (Rehabilitation of Refugees) Act, 1948 (U.P. Act 26 of 1948).

2. That Act came into force on 5-6-1948. The purpose of the Act, as stated in the preamble is to enable land to be acquired for the rehabilitation of refugees from Pakistan and to prescribe an expeditious procedure for the determination of the compensation to be paid on account of such acquisition. The Act in fact makes provision both for the requisition and acquisition of land, but it is only with the latter that we are concerned in these petitions. Section 5 of the Act provides that a "builder" (as defined in the Act) may ask the State Government to acquire specified land for the purpose of erecting buildings, shops and workshops for the rehabilitation of refugees and for the provision of amenities connected therewith. Section 6 provides that if the State Government is then satisfied, after such enquiries as it may consider necessary, that the land is needed and is suitable for any of these purposes it shall require the builder to enter into an agreement with it with regard to a number of matters, including the payment to the State Government of the cost of the acquisition and the transfer on such payment of the land to the builder. Section 7 makes provision for the actual acquisition of the land. Sub-section (1) of this section provides that after the agreement mentioned in Section 6 has been made and the builder has deposited such amount as the State Government shall require, the State Government may acquire the land by publishing in the official gazette a notice to the effect that it has decided to do so, and sub-section (2) enacts that upon publication of such notice the land so acquired shall vest absolutely in the State Government. Section 11 is an important section for it makes provision for

the payment of compensation. The relevant part thereof is sub-section (1) which reads as follows:

> 11. (1) Whenever any land is acquired under Section 7 or 9 there shall be paid compensation the amount of which shall be determined by the Compensation Officer, in accordance with the principles set out in clauses first, second and third of sub-section (1) and sub-section (2) of Section 23 of the Land Acquisition Act, 1894:
> Provided that the market value referred to in clause first of the said sub-section shall be deemed to be the market value of such land on the date of publication of the notice under Section 7 or 9, as the case may be, or on the first day of September, 1939, 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 in the decree for pre-emption, as the case may be."

3. The petitioners are all owners of land in the district of Agra. Early in 1950 the Agra Improvement Trust, a statutory body constituted under the U.P. Town Improvement Act, 1919 made an application to the State Government under Section 5 of the Act in respect of an area of land which included the several pieces of land owned by the petitioners. On 28-4-1950, the State Government declared the Trust to be a "builder" under Section 2 (viii) of the Act. Thereafter on various dates in 1950 and early in 1951 it entered into agreements with the Trust with regard to the matters specified in Section 6 of the Act in respect of several portions of the area proposed to be acquired, and on 11-7-1951, the State Government acquired the land by issuing a Notification under Section 7 of the Act. Notices were thereafter issued to the petitioners requiring them to appear before the District Land Acquisition Officer on 31-8-1951; for the purpose of determining the amount of compensation to them for it. The compensation payable to the petitioners under the Act has not however yet been determined.

4. In these petitions the prayer is that the Court may be pleased

> "to grant a writ, direction or other suitable order prohibiting the State Government from acquiring the petitioners' land or interfering with their rights in any other manner, and to grant such other suitable relief as the Court may deem fit."

At the hearing, however, learned counsel for the petitioners stated more specifically that the relief which the petitioners sought was a writ in the nature of certiorari to quash the State Government's Notification under Section 7 of the Act made on 11-7-1951 or, in the alternative, the issue of a writ of mandamus directing the Compensation Officer in calculating the compensation payable to them under the Act to disregard the two provisos of sub-section (1) of Section 11 of the Act.

5. The argument has covered a wide field. The principal submission made on behalf of the petitioners is that the Act contravenes the provisions of Article 31(2) of the Constitution and is not saved by the provisions of Article 31(5); secondly it is argued that the Act infringes Article 14, and thirdly that the Act has in the circumstances no application as (a) there was no public purpose and (b) the Agra Improvement Trust could not be a "builder" within the meaning of the Act.

6. On the first question it is argued, and in our opinion lightly, that the Act does not make provision for the payment of compensation within the meaning either of Clause (2) of Article 31 or sub-section (2) of Section 299, Government of India Act 1935. In - *'Suryapal Singh v. U.P. Govt.*[1]*',* a Full Bench of this Court held that compensation in Section 299 (2) means the monetary equivalent of the property taken or acquired, and that the same meaning must be attached to that word in Art 31(2) subject to the qualification that such equivalent need not be paid in money; the relevant date in each case being the date of acquisition. Assuming that the amount of compensation determined in accordance with the provisions of the first paragraph of Section 11(1) of the impugned Act represents the monetary equivalent of the property on the date of acquisition (an assumption the correctness of which it is not necessary for us to examine in the present petitions), it is clear from the provisos to that sub-section that in the case of property acquired by an owner before 1-9-1939, or after 31-3-1948, the amount payable cannot exceed the. market value of the property on the first of these dates. In the case of property purchased by the owner after 1-9-1939, and before 1-4-1948, the amount payable is the purchase price actually paid. The properties in dispute of five of the petitioners were acquired by them after 1-4-1948, and therefore the compensation payable to them under the Act is limited to the market value of the property on 1-9-1939. It needs we think no argument to show that such a payment is not compensation within the meaning of Article 31(2) or Section 299(2). The date upon which the remaining petitioner purchased his property is not clear, but it is not in dispute that he will not, under the Act, receive compensation equal to the market value of the property at the date upon which it was acquired thereunder.

7. It is however said by the State that the Act cannot now be challenged as it is an existing law to which Clause (2) of Article 31 has no application in view of the terms of Clause (5) (a) thereof. That clause provides that

> "Nothing in Clause (2) shall affect the provisions of any existing law other than a law to which the provisions of Clause (6) apply."

It is common ground that the Act is not a law to which the provisions of Clause (5) apply, and the question is whether it is an 'existing law' within the meaning of Clause (5) (a). The petitioners say it is not, and they rely on the definition of 'existing law', in Article 368 (10). The expressions specified in that Article have however the meanings therein assigned to them only if the context does not otherwise require, and it is the contention of the respondents that 'existing law' as used

in Clause (5) (a) has a meaning which can be ascertained from the context and that reference to the definition in Article 366 is consequently unnecessary. The argument is that 'existing law' in Clause (5) (a) and "law of the State" in Clause (6) mean the same thing, and that as it is clear that Clause (6) applies (in certain circumstances) to a law which would otherwise be invalid under Section 299 (2) of the 1935 Act the expression 'existing law' in Clause (5) (a) must be construed as including a law which was invalid at the commencement of the Constitution. This argument in our opinion breaks down at more than one point.

8. Article 31(2) lays down the broad principle that no property can be taken possession of or acquired by the State unless it be for a public purpose and under a law which makes provision for compensation, but this general rule is subject (so far as we are here concerned) to the provisions of Clauses (5) (a) and (6). The effect of these provisions is we think this: Article 31(2) has no application to a law made more than 18 months before

[1] AIR 1951 All 674

the Constitution, provided it is an existing law; whereas a law enacted within that period, provided it is certified by the President, cannot be called in question if either (i) it contravenes the provisions of Article 31(2), or (ii) it has contravened the provisions of Section 299(2) of the 1935 Act Clause (6) appears therefore to embrace two categories of law, namely certain laws which upon being certified by the President cannot be challenged on the ground that they contravene the provisions of Article 31(2), and also certain other laws which upon certification cannot be challenged on the ground that they contravene the provisions of Section 299(2). There is nothing in Clause (6) to show that both categories must be 'existing law', but it is said that the phrase used in Clause (5) (a) - "existing law other than a law to which the provisions of Clause (6) apply" - means that the law to which Clause (6) applies must be existing law. We do not think this is so, for in our opinion the phrase which we have quoted should, and can without any straining of the language, be construed to mean any of those laws for which provision is made in Clause (6) which come into the category of existing laws.

9. We see therefore no reason to hold that the context requires a special meaning to be given to the expression 'existing law' as used in Article 31(5)(a), and hold that that expression must be given the meaning assigned to it in Article 366(10).

10. The second question is whether the Land Acquisition (Rehabilitation of Refugees) Act, 1948, is an 'existing law' as defined in that Article. 'Existing law' is there defined as meaning

> "any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation."

11. The learned Standing Counsel contends that the effect of the insertion of a comma after the word 'Legislature' is to limit the application of the words "having power to make such a law,

Ordinance, order, bye law, rule or regulation" to the immediately preceding words "authority or person", and has drawn our attention to the case of - '*State of Bombay v. Heman Santlal Alreja*[2]', in which it was held that in order that a law should be an "existing law" the only qualification laid down by the Constitution is that it should have been passed before the commencement of the Constitution.

12. Grammatically we do not think that learned counsel's contention is well-founded, for we are of opinion that the comma after the word 'Legislature' is merely a substitute for the word 'or', and that the concluding words of the definition apply no less to an enactment passed by a Legislature than to one made by an authority or person. Article 366 (10) appears to be no more than an adaptation of the definition of "existing India law" in Section 311(2), Government of India Act, 1935. "Existing Indian law" was there defined as meaning

> "any law, ordinance, order, bye-law, rule or regulation passed or made before the commencement of Part III of this Act by any Legislature, authority or person in any territories for the time being comprised in British India, being a Legislature, authority or person having power to make such a law, ordinance, order bye-law,

[2] AIR 1952 Bom 16

> rule or regulation,"

a definition which makes it abundantly clear that a law passed by a Legislature would not come within the definition of an "existing Indian law" unless such Legislature had power to make the law in question.

13. Now sub-section (2) of Section 299 of the 1935 Act, so far as it is relevant, reads as follows:

> "Neither the Federal nor a Provincial Legislature shall have power to make any law authorizing the compulsory acquisition for public purposes of any kind.....unless the law provides for the payment of compensation for the property acquired....."

14. As we are of opinion that the Land Acquisition (Rehabilitation of Refugees) Act does not provide for the payment of compensation in respect of the property acquired within the meaning of Section 299(2), it appears to us on a plain reading of this section that the Act was not an Act which the Provincial Legislature had power to make; and if it had not the power to make the Act then that Act was not, prior to the commencement of the Constitution, an "existing Indian Law" nor was it, after the commencement of the Constitution, an "existing law". It does not therefore come within the ambit of Article 31 (5)(a).

15. This conclusion is we think in accordance with the intention of the framers of the Constitution, for it appears to us that the purpose of Article 31 (5) (a) is to exempt from the application of the provisions of Article 31(2) a law which, although it contravenes the provisions of the latter clause was nevertheless a valid law immediately prior to the Constitution coming

into force. We do not think that it was the intention of the Constituent Assembly, in effect, to validate a law which a Provincial Legislature had no power to make, save in the exceptional case for which special provision is made in Clause (6) of Article 31.

16. It is then contended that the impugned Act contravenes the provisions of Article 14 in two ways. In the first place it is said that the procedure laid down in the Act for the acquisition of property by the State contrasts unfavorably, from the stand-point of the land-owner, with that which has to be followed when land is to be acquired under the provisions of the Land Acquisition Act, 1894; and that as the decision as to which of these two Acts shall be applied rests in the unfettered discretion of the Government there is a denial of the equal protection of the laws. The second contention is that there is no rational basis for discriminating, as regards compensation, either between different persons whose property has been acquired under the impugned Act, or between persons whose property is acquired under that Act and persons whose property is acquired under the Land Acquisition Act.

17. There is no doubt that the impugned Act omits some of the provisions to be found in the Land Acquisition Act. No preliminary notification is needed as is required under Section 4 (1) of the latter Act, there is no provision for the filing of objections such as is to be found in Section 5A, nor is there any provision, such as is to be found in Section 9 of the earlier Act, requiring notice to be given to persons interested before the land is acquired. There are certain other minor variations, but these are the more substantial differences to which counsel have drawn our attention.

18. The question as to what constitutes discrimination has been considered in a number of cases, it is sufficient we think to refer to what Mr. Justice S.R. Das said in - *'Lachmandas v. State of Bombay*[3]*',* where at page 244 that learned Judge said:

> "It is how well established that while Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the Act. What is necessary is that there must be a nexus between the basis of classification and the object of the Act."

19. Now the impugned Act lays down a procedure which is less advantageous to the owner of property than that provided by the Land Acquisition Act. The question is whether there is, in the words of Fazl Ali J. in - '*Kathi Raning Rawat v. State of Saurashtra*[4]*',* a "principle to be found in the Act to control the application of the discriminatory provisions or to correlate those provisions to some tangible and rational objective." In that case the principal question was whether the

Saurashtra State Public Safety Measures (Third Amendment) Ordinance, 1949, was void under Article 13(1) on the ground that it violated the provisions of Article 14. The Ordinance empowered the State Government by notification to constitute Special Courts of criminal jurisdiction for such area as may be specified in the notification, it further provided that a Special Judge shall try such offences, or classes of offences or such cases or classes of cases as the State Government may direct, and it also laid down a form of procedure which differed in a number of matters of importance from that for which provision is made in the Code of Criminal Procedure. It was argued for the appellant that Section 11 of the Ordinance was invalid because it, in effect, vested in the executive government an unfettered discretion as to what persons should be tried by the Special Judge. The Supreme Court, by a majority, rejected this contention on the ground that it was possible to discover in the Ordinance a guiding principle, which would have the effect of limiting the application of the special procedure to a particular category of offences and thus establish a connection between offences of that category and the object for which the Ordinance was promulgated. The majority held that the preamble to the Ordinance indicated a definite objective, and that so long as the State Government applied the special procedure only to those cases or offences which have a rational connection with that objective, the legislation was not discriminatory.

> "If the legislature" Mr. Justice Mukherjea said "indicates a definite objective and the discretion has been vested in the State Government as a means of achieving that object, the law itself .....cannot be held to be discriminatory, though the action of the State Government may be condemned if it offends against the equal protection clause, by making an arbitrary selection."

[3] AIR 1952 SC 235

[4] AIR 1952 SC 123

20. In our opinion a guiding principle can readily be discovered in the impugned Act. The object of an Act if not fully stated in the preamble can be ascertained from the provisions of the Act itself, and in our opinion it is clear that one of the purposes of the impugned Act was not only, as stated in the preamble, to acquire land for the rehabilitation of refugees from Pakistan but to acquire such land expeditiously. We think therefore that it is not correct to say that the State Government has an unfettered discretion as regards the application of the Act. It appears clear that the special procedure for acquiring property for which provision is made in the Act is intended, and indeed can be applied only, where property is required for a special purpose, namely, the rehabilitation of refugees from Pakistan. It is also clear that in any case in which land is required for this purpose the State Government will seek to apply the provisions of this Act rather than those of the Land Acquisition Act, not only because the procedure is simpler but because the compensation payable is less. In our opinion this objection fails.

21. The second argument is more substantial, but it is necessary to consider a preliminary question whether, in view of the decision of the Full Bench of this Court in - ' AIR 1951 Allahabad 674 (FB), it is open to the petitioners to raise the question of discrimination in the matter of compensation. In our opinion this case is not a bar to their doing so. In ' AIR 1951

Allahabad 674 (FB), this Court held that a provision in an Act with regard to the payment of compensation which contravened the provisions of Article 14 because it was discriminatory, necessarily contravened the provisions of Article 31(2); and that, therefore, if the Act could not be challenged under Article 31(4) because it contravened Article 31(2) it could not be challenged because it also contravened Article 14.

22. Article 31 (5) (a) is, however, worded differently to Article 31(4); for instead of providing that an existing law cannot be challenged because it contravenes Article 31(2) it provides, in effect, that Article 31(2) shall not apply at all to such a law (other, of course, than a law to which the provisions of Clause (6) apply). But if Article 31(2) does not apply to an existing law the bar which that clause constituted to a challenge under Article 14 disappears, and an existing law can be called in question on the ground that it denies equality before the law. Article 31(4) presupposes the existence of a law which contravenes the provisions of Article 31(2); Article 31 (5) (a) makes Article 31(2) inapplicable to an existing law.

23. The impugned Act can therefore in our opinion be called in question both on the ground that, as regards compensation, it discriminates (a) between different persons whose property has been acquired there under and (b) between persons whose property has been so acquired and persons whose property has been acquired under the Land Acquisition Act. The question in each case is whether the provisions for payment of compensation, which are admittedly discriminatory, can be correlated to the object of the impugned Act. We find it difficult to hold that is so in either case.

24. Whether the purpose of the Act be the expeditious acquisition of property for the rehabilitation of particular refugees or the speedy settlement of claims for compensation therefore, we can find no nexus between such purpose and the payment of an amount of compensation which depends on whether the owner of the property acquired it before 1-9-1939, between that date and 1-4-1948 or at a later date. As (in our view) Article 31(2) has no application, compensation could have been based on the market price of the property at any specified date, but a method which adopts what appears to us to be a purely arbitrary classification divorced from the purpose of the Act cannot in our opinion be sustained.

25. The second ground of complaint is more debatable but is, we think, well founded. We do not doubt the desirability of making provision for the rehabilitation of refugees and for the avoidance of unnecessary delay. Land will not however be acquired any quicker by paying less for it, and there seems to be no justification for a classification the effect of which appears to be to throw on the shoulders of one section of the community - those persons whose land is acquired for the rehabilitation of refugees - a burden which should be shared by all. The owner of property which is acquired by the State for the purpose of erecting a school will receive therefore compensation under the Land Acquisition Act; but a person whose property is acquired for erection of a shop for the rehabilitation of refugees will under the impugned Act receive compensation at a lower

rate. We can find no rational basis for holding that a man whose property is required for the one purpose should receive by way of compensation a sum less in amount than the man whose property is required for the other.

26. Two further points were raised.

27. The Agra Improvement Trust was, by a Notification dated 28-4-50 issued under Section 2(VIII) of the Act, declared to be a 'builder' within the meaning of that Act, but it is contended that such notification was ineffective in law as the powers which a builder can exercise under the Act are in excess of those conferred upon an Improvement Trust by the Town Improvement Act. We are not satisfied that a scheme for the erection of houses, shops and workshops for the use of refugees may not be an improvement scheme which comes within the ambit of Ch. IV of the Town Improvement Act, but it is not necessary for us to consider whether this is the case for in our opinion the effect of a declaration that an Improvement Trust is a 'builder' within the meaning of the impugned Act is, in law, to constitute it a 'builder' for the purposes of that Act, and if necessary statutorily to enlarge its objects to enable it to perform its functions there under.

28. It was further submitted that the requisition was bad as it was not for a public purpose, the argument being that the property acquired under the impugned Act was acquired in the interest of individuals - the refugees - as opposed to the general interest of the community, reliance being placed on the well known case of - *'Hamabai Framjee Petit v. Secretary of State*[5]*',* As has however been pointed out by the Supreme Court the concept of public purpose is not fixed and unalterable, and is regarded at the present time as more nearly meaning a purpose useful to the public rather than use by the public. This view was expressed by Das, J. in - *'State of Bihar v. Kameshwar Singh*[6]*',* when he said that

> "whatever furthers the general interests of the community as opposed to the particular interest of the individual must be regarded as a public purpose",
> and a similar view was stated by Mahajan J., as he then was, in - 'Raja Surya Pal Singh's case', AIR 1952 Supreme Court 252 at pp.306, 311 (F). Indeed Mr. Kirty with great fairness drew the Court's attention to a passage in the judgment of Mr.

[5] AIR 1914 PC 20

[6] AIR 1952 SC 252 at p.290

> Justice Mukerjea in - *'Province of Bombay v. Khushaldas S.Advani*[7]*',* when that learned Judge gave it as his opinion on the same ground, that the housing of refugees may certainly be a public purpose. In our opinion this general submission must fail.

29. It was, however, argued by Mr. Khare (Kirty?) on behalf of the petitioners in petition Nos. 7840, 7841 and 7842 that on the particular facts, it was apparent that there was no public purpose. Learned counsel relied on two resolutions of the Agra Improvement Trust, dated respectively the 24th February and 31st March 1951 and a letter dated 13-4-1951 sent by the Trust to these petitioners (copies of which are attached to the affidavit in support of the petitions

as Annexures D, E and F) in which the Trust stated its willingness, in certain circumstances, to release the petitioners' land from acquisition. Apart however from the fact that these documents do not necessarily exclude the existence of a public purpose at the time of acquisition, the argument is not based on any ground disclosed in the petition, and the learned Standing Counsel, properly in our opinion, submits that if it is to be considered he should have an opportunity of filing a further counter affidavit stating the circumstances in which the resolutions were passed and the letter written. In the circumstances we are of opinion that we should not allow this point to be raised at this late stage.

30. For the reasons which we have given earlier in this judgment we are of opinion that the provisions with regard to compensation when land is acquired to be found in the two provisos to sub-section (1) of Section 11 of the Act are invalid. We are not called upon to express any opinion with regard to the first paragraph of this sub-section as its validity was not challenged in these petitions. The question which remains to be considered is the order which should be made, and this in fact depends on whether the invalid provisions can be severed from the remainder of the Act. On this point we entertain no doubt, and indeed it is common ground that this can be done. Denuded of the offending provisos to Section 11(1), and the first paragraph of that subsection not being called in question in these proceedings the Act must be held to make provision for compensation within the meaning of Article 31(2). Consequently the order of the State Government of 11-7-1951 was a valid order, and the prayer for a writ of certiorari fails.

31. Nor do we think that we should order the issue of a mandamus directing the Compensation Officer in determining the compensation payable to the petitioners to ignore the provisos to Section 11 (1). We have held these provisos to be invalid.
The Compensation Officer, for some reason of which we are not aware, has not yet embarked on the task of determining the compensation, but when he does so we assume that he will be guided by the opinion we have expressed : we cannot assume that he will act otherwise.

32. In the result, therefore, these petitions must be dismissed, but in the circumstances we consider that the petitioners are entitled to their costs which we assess at Rs. 100/- in each case.
Petitions dismissed.

[7] AIR 1950 SC 222 at p.246