

ALLAHABAD HIGH COURT

Karam Singh

Vs.

Nihal Khan

Misc. Case No. 2 of 1954
(Randhir Singh and V.D. Bhargava, JJ.)

02.04.1957

JUDGMENT

Randhir Singh, J.

1. This appeal pending in the court of the District Judge Bahraich, has been withdrawn by an order of this Court under Article 228 of the Constitution for determination of the question whether Section 3 of U.P. Act XV of 1952, and Section 3 of U.P. Act XXXI of 1952 are valid.

2. It appears that the applicant no.1 Karam Singh obtained a lease from applicant no. 2 Sardar Karam Singh in respect of some plots of land with an aggregate area of 8.273 acres on 15-4-1952. This land was entered, according to the allegations of the applicants, as Khudkasht of applicant no. 2 in the papers. On 29-7-1952 after the vesting, a suit was instituted by applicant no. 1 against opposite party no. 1 for the possession of two plots of land nos. 1112/2 and 1115/1 on the allegations that opposite party no. 1 was in wrongful possession of these plots of land, which had been leased out to the applicant no. 1 by the applicant no. 2. who was before the vesting the landlord of the land in dispute.

3. The suit was resisted by opposite party no. 1 on two grounds. Firstly, it was alleged that opposite party no. 1 had been in possession of the land since 1947 and was in actual possession of it in the year 1359 Fasli. He was, therefore, not liable to ejection in view of the provisions of U.P. Act XXXI of 1952. It was also contended on behalf of opposite party No. 1 that the lease obtained by Karam Singh, applicant no. 1, was inoperative inasmuch as the registration of the lease was made on 9-6-1952 after the appointed date mentioned in Act XV of 1952, and the applicant did not obtain any rights under the lease relied upon by him.

4. Applicant no. 1, however, challenged the validity of both the Acts on which reliance was placed by opposite party no. 1, namely, Act no. XV of 1952 and Act no. XXXI of 1952. It was urged on behalf of applicant no. 1 that the defendant did not obtain any title in the disputed plots on the score of his possession in 1359 Fasli as the Act which granted opposite party no. 1 these rights was invalid and offended against the provisions of the Constitution. He also urged that Act

no. XV of 1952, which required the registration to be done before 21-5-1952, was also invalid and could not affect the validity of the lease relied upon by him.

5. The learned Munsif, who tried the suit, came to the conclusion that the Acts challenged by the applicant no. 1 as invalid were intra vires of the legislature and did not infringe the Constitution. Applicant no. 1 then went up in appeal before the District Judge and it was after the institution of the appeal that an application was made by the applicants to this Court for the withdrawal of this appeal from the court of the District Judge for the determination of the points referred above.

6. The main contention on behalf of the applicants is that Act XXXI of 1952 deprived the applicants of their rights in the property without any compensation having been given to them and any law of this nature would be void under the provisions of the Constitution. Reliance has been placed on the provisions of Article 31 of the Constitution as it stood before the Fourth Amendment to the Constitution was made and it has been argued that prior to the Fourth Amendment of the Constitution no law which did not provide for compensation or which did not lay down principles for the determination of compensation could be valid if it deprived a person of his property, or by means of which, acquisition or requisitioning of the property of a person could be made by the State. There is no doubt that under the law as interpreted before the Fourth Amendment to the Constitution, no distinction was made between a law which resulted in deprivation of property or by means of which acquisition or requisitioning could be made and in both these cases provision had to be made for payment of compensation. As a necessary corollary any law which did not provide for compensation but deprived a subject of his property, whether it was for the purposes of the State or for the purposes of anybody else, was void. This difficulty, however, was removed by the Fourth Amendment to the Constitution. The relevant part of Article 31 as it stands after the Fourth Amendment is as follows :

"31 (1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given and no such law shall be called in question in any Court on the ground that the compensation provided by that law is not adequate.

(2-A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President has received his assent."

7. A perusal of the amended article set out above clearly shows that compensation has to be

provided for, only if the property is compulsorily acquired or requisitioned for a public purpose, and that where a law does not provide for the transfer of the property or right to possession to the State or to a corporation owned or controlled by the State it shall not be deemed to provide for the compulsory acquisition or requisitioning of property notwithstanding that it deprives any person of his property. These words mean that while a law for acquiring or requisitioning property for the State has to provide for compensation, it need not make it obligatory for the State to provide for compensation in case of deprivation of property in favor of somebody else.

8. It is not disputed that in the present case the deprivation of property involved was not in favour of the State nor did it amount to a requisitioning or acquisition. No provision for compensation was, therefore, necessary under the Constitution and the validity of any law which has brought about such deprivation of property cannot be hit by the provisions of Article 31.

9. It would thus appear that even if the contention of the learned counsel for the applicants, that the grant of rights to persons in possession in 1359 Fasli be interpreted to mean a deprivation of property of the rightful owner, be accepted, Act XXXI of 1952 if enacted today would not be invalid or void under the Constitution. Another point which has been raised on behalf of the applicants is that the Fourth Amendment to the Constitution was made in 1955 and should not affect the rights of the plaintiff to the land in dispute which were acquired in 1952. In view of the various pronouncements of the Supreme Court it will not be necessary to discuss this point at length as the view of the Supreme Court, which has crystallized, is, that an Act, which may have been void to the extent to which it was inconsistent with the provisions of the Constitution would not be a non-existent law but would become a good law as soon as the shadow which was cast and on account of which it was void, was removed. There is a distinction between a law which does not exist and a law which exists but which cannot be operative for certain reasons. At one time the view taken seems to have been that only these Acts which were enacted before the Constitution came into force but which became void either in their entirety or in part after the coming into force of the Constitution and the recognition of fundamental rights, became good and valid as soon as the unconstitutionality was removed by a subsequent amendment of the Constitution. The observations of their Lordships of the Supreme Court in *Bhikaji Narain Dhakras v. State of Madhya Pradesh*¹, are as follows :-

"As explained in *Keshavan Madhava Menon v. State of Bombay AIR 1951 Supreme Court 128 (Supra)* the law became void not in toto or for all purposes or for all times or for all persons but only 'to the extent of such inconsistency', that is to say, to the extent it became inconsistent with the provisions of Part III which conferred the fundamental rights on the citizens. It did not become void independently of the existence of the rights guaranteed by Part III. In other words, on and after the commencement of the Constitution the existing law, as a result of its becoming inconsistent with the provisions of Article 19 (1) (g), read with clause (6) as it then stood, could not be permitted to stand in the way of the exercise of that fundamental right.

Article 13 (1) by reason of its language cannot be read as having obliterated the entire
1955-2 S.C. R. 589 : AIR 1955 SC 781

operation of the inconsistent law or having wiped it out altogether from the statute book. Such law existed for all past transactions and for enforcement of rights and liabilities accrued before the date of the Constitution, as was held in Keshavan Madhava Menon's case".

10. Even in respect of the Acts passed after the Constitution came into force the same view has been taken and such Acts also are not absolutely void for all times. They are unenforceable against the fundamental rights and are void to the extent of the inconsistency and if inconsistency is at any time removed the Act becomes revitalised and operative. It would thus appear that Act XXXI of 1952 even though it may have been void to the extent of the inconsistency with Part III of the Constitution became perfectly valid after the Fourth Amendment was made when the Constitution laid down that no compensation need be provided for deprivation of property. Act XV of 1952 was also challenged on the same grounds and it was argued that the law could not deprive a person, to whom lease has been granted, of his rights to the property by enacting a law when no compensation was provided in that law for payment to the person who has been deprived of his rights in property. The arguments which are applicable to the case of Act XXXI of 1952 fully apply to the case of Act XV of 1952 also and these Acts cannot, therefore, be said to be void to any extent after the Fourth Amendment has come into force.

11. It has further been argued that the enactment of these two laws contravened the provisions of Article 14 of the Constitution inasmuch as a discrimination had been made in favor of those who were in possession of lands in 1359 Fasli, even against rightful owners. It has been laid down in numerous cases, to which it is not necessary to refer, that it is always open for the Legislature to lay down a reasonable classification for application of a particular law and if no distinction or discrimination has been made within the members of a particular class the legislation cannot be said to be discriminatory. In the present case no discrimination has been made as amongst persons in possession in 1359 Fasli and the same provisions of law have been made applicable to all such persons. They are a class in themselves and the classification is based on good reasons. There is, therefore, no force in the contention that this Act denies equality before law or equal protection, of laws. Reference was also made by the learned counsel for the applicants to Article 19 (1) of the Constitution and it had been argued that the applicants were entitled to hold property and if they were entitled to acquire, hold and dispose of property which was their fundamental right it could not be taken away by any of the two Acts sought to be impugned. No doubt all citizens shall have the right to acquire, hold or dispose of the property but they can also be deprived of property under the Constitution by authority of law and if the enactment which deprives the person of a property is not unconstitutional it cannot be argued that the law militates against the fundamental rights of citizens guaranteed to them under Article 19 (1) of the Constitution. There is, therefore, no force in this contention also.

12. It would thus appear that Act XV of 1952 and Act XXXI of 1952 are perfectly good and valid today. We are not called upon to express any opinion as to whether Act XXXI of 1952 or XV of 1952 was void to any extent before the fourth amendment to the Constitution was made. Let a copy of this judgment be sent to the learned District Judge, for disposal of the appeal on other points. With regard to the two applications Nos. 774 of 1954 and 217 of 1956 none of these two applications are pressed and they are, therefore, dismissed. The parties shall bear their own costs in this Court.

Order accordingly. .