

# BOMBAY HIGH COURT

Assistant Collector Thana Prant Thana

Vs.

Jamnadas Gokuldas Patel

Appeal No. 310 of 1954, (With First: Appeals Nos. 311 to 314 Cross with 612, 315 to 318 Cross with 611, 601, Cross with 564 502 Cross with 565, 503 Cross with 566 of 1954), against decision of Civil J., Senior Division. Thana in Ref. No. 49 of 1953

(Shah and Miabhoy, JJ.)

26.03.1958

## JUDGMENT

**Shah J.**

1. (After stating facts and dealing with matters not material for reporting his Lordship proceeded) : The next question, which falls to be determined, is whether the claimants are entitled to compensation at the market rate prevailing on 28th May 1948, the date on which the notification under section 4 of the Land Acquisition Act was issued, or at the rate prevailing on 1st January 1948, and whether the claimants are entitled to the 15 per cent solatium in addition to the market value of the lands. By Bombay Act IV of 1948 the Bombay Legislature has amended section 23 of the Land Acquisition Act 1894. Section 3 of Bombay Act IV of 1948 provides by the first sub-section :

"Where during the continuance of this Act and land is required under the Land Acquisition Act, 1894 .....for the purpose of a housing scheme the said Act shall have effect in relation to such acquisition as if -

(a) in clause (f) of section 3 after the words "such provision" the words and brackets 'and a housing scheme as defined in the Land Acquisition (Bombay Amendment) Act, 1948' had been inserted; \* \* \* \* \*

(c) in section 23 -

(i) in the first clause of sub-section (1), after the words, brackets and figures "section 4, sub-section (1)" the words "or at the relevant date, whichever is less" had been inserted; and

(ii) sub-section (2) had been omitted." The expression "relevant date" is defined, in section 2(ii) as meaning the first day of January 1948, and the expression 'housing

scheme" is defined in section 2(i) as meaning

"any housing scheme which the Government may from time to time undertake for the purpose of increasing accommodation for housing periods and shall include any such scheme undertaken from time to time with the previous sanction of the State Government by a local authority or company." Evidently the effect of section 3 of Bombay Act IV of 1948 is to deny to the owners of the lands compulsorily acquired the 15 per cent solatium awardable under section 23(2) of the Land Acquisition Act and the market value which is to be awarded under section 23; and in determining the amount of compensation the Court must ascertain the market value of the land at the date of the publication of the notification under section 4 and the market value on 1st January 1948 and to award to the owner of the land the smaller of the two amounts. In this case, there is no dispute that the land values in the locality were rising before 1st January 1948 and continued to rise even thereafter. If Bombay Act IV of 1948 applies, the claimants will be entitled to compensation without the additional solatium, and at the prevailing market rate on 1st January 1948 and not on 28th May 1948. The land Acquisition Officer and the learned trial Judge have awarded compensation to the claimants on the market value prevailing on 1st January 1948, and they have not awarded to the claimants the 15 per cent. solatium.

2. In this Court, the competence of the Bombay Legislature to enact Bombay Act IV of 1948 is challenged. In the trial Court, on behalf of the claimants in Reference No. 49 of 1953 it was submitted that Bombay Act IV of 1948 was "illegal and ultra vires" the Bombay Legislature. The contention was, however not pressed in the arguments, and the learned Judge held that the Act was not ultra vires the Bombay Legislature. In this court, however, all the claimants, who have either appealed or have sought to support the awards made by the Land Acquisition Officer in appeals filed by that Officer, have supported the contention that Bombay Act IV of 1948 is ultra vires the Bombay Legislature. We have issued notice to the Advocate General under Order 27 of the Civil Procedure Code to appear and to assist us in the determination of this question, and the learned Government Pleader has appeared before us on behalf of the Advocate-General.

3. The argument in support of the contention that Bombay Act IV of 1948 was ultra vires, was sought to be founded upon the terms of section 299 of the Government of India Act, 1935. By sub-section (1) of section 299 of the Government of India Act, it was provided that "no person shall be deprived of his property save by authority of law". By the second sub-section, on which strong reliance was placed, it was provided :

"Neither the Dominion Legislature nor a Provincial Legislature shall have power to make any law authorizing the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest, in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined".

Evidently, the form in which sub-section (2) is enacted imposes a fetter upon the power of the Legislature. The Parliament restricted the exercise of the Legislative power of the Dominion Legislature and the Provincial Legislature to enact laws authorizing compulsory acquisition for public purposes of any land or commercial or industrial undertaking or any interest therein without providing for payment of compensation for the property acquired and without fixing either the amount of the compensation or the principles on which, and the manner in which, it is to be determined. This provision was intended to strike at any attempt to enact expropriatory or confiscatory legislation denying to the owners of land or commercial or industrial undertakings their right to compensation. It is clear, therefore, that, though in form this was a fetter upon the legislative power, it was in substance an attempt at enacting a constitutional guarantee against expropriation of property otherwise than for public purposes and without payment of compensation. Legislation, which sought compulsorily to acquire for public purposes any land, or commercial or industrial undertaking, had, therefore, to make provision for payment of compensation and either to fix the amount of compensation or the principles on which, and the manner in which, the compensation was to be determined. That the Land Acquisition Act, 1894 even as amended by Bombay Act IV of 1948 provides for payment of compensation for compulsory acquisition of property and also specifies the principles on which, and the manner in which, the compensation has to be determined, is undisputed. But it is urged that the expression "compensation" as used in sub-section (2) of section 299 of the Government of India Act must mean full indemnity for loss suffered by an owner of land or commercial or industrial undertaking by reason of the compulsory acquisition for public purposes, and that such full indemnity can only be given if the owner is given the prevailing market value of the property compulsorily acquired at the date of acquisition. The vires of a statute can be adjudged only in the light of the authority of the Legislature which enacts that statute. The Central and the State Legislatures under the Government of India Act were within the ambit of their authority, sovereign legislatures. The question raised in this case being question of legislative competence and not of enforcement of precautionary safeguards for the benefit of the citizens the Court has to ascertain whether the Provincial Legislature has contravened the restrictions imposed by Section 299(2) of the Government of India Act that the intention of the parliament in enacting section 299 of the Government of India Act was to guarantee the right to property is, as we have already observed, evident. But in ascertaining whether the Legislature of the Bombay State was competent to enact Act IV of 1948 the primary question to be determined is whether the Bombay Legislature was competent, under the Government of India Act, to so amend the Land Acquisition Act as to enable the State to acquire land on payment of compensation which was less than the market value of the land acquired. By 9th item in the second list in the 7th Schedule to the Government of India Act, the Provincial Legislature was competent to enact legislation for compulsory acquisition of land. There was no restriction placed upon the power of the Legislature by the 9th item in the second legislative list. The legislation in connection with compulsory acquisition of land was, therefore, clearly within the competence of the Bombay Legislature.

4. That the Land Acquisition Act provides for acquisition of land for public purposes is also undisputed, and the only question which falls to be determined is whether the expression "compensation" means full indemnity for loss which may be suffered by an owner of property by its compulsory acquisition, the loss being equated to the market value of the land expropriated. It may be observed that even under the Land Acquisition Act, before it was amended by Bombay Act IV of 1948, compensation had to be paid to the claimants, not on the market value as prevailing on the date on which the owner was deprived of possession and his title in the land was extinguished, but as on the date on which the notification under Section 4 of the Land Acquisition Act was issued. Evidently compensation payable under the Act was related to a date which was not the date on which the title of the claimant was extinguished. Under the Land Acquisition Act, a notification under Section 6 alone expresses the final intention of the Provincial Government to acquire land, and the title of the owner in land notified for compulsory acquisition is extinguished only when the Collector makes an award under Section 11 and possession is taken. When possession of the land is taken by the Collector under an award already made or in exercise of emergency powers under Section 17 of the Land Acquisition Act the title of the owner is extinguished. If the expression "compensation" were to mean full indemnity for loss which is suffered by the owner, compensation must on the argument advanced by the claimants be related to the date on which the title of the owner is extinguished. But section 23 of the Land Acquisition Act provides for payment of compensation based on the market value on the date on which the notification under Section 4 of the Act is issued. Instances are not unknown in which as long as a decade has elapsed between the date of the issue of the notification under Section 4 and the date of deprivation of possession of the property acquired. But the claimant cannot obtain the value of the land prevailing on the date on which possession is taken. The compensation contemplated to be given even under the Land Acquisition Act is, therefore, not equated by the scheme of the Land Acquisition Act with the true market value of the land on the date on which the title of the owner is extinguished.

5. But Mr. Bhatt, who appears on behalf of of the claimants, strongly relies in support of his argument that Act IV of 1948 is ultra vires upon a judgment of their Lordships of the Supreme Court in *The State of West Bengal v. Mrs. Bela Bannerjee*<sup>1</sup>, In that case, the competence of the Bengal Provincial Legislature to enact Section 8 of the West Bengal Land Development and Planning Act, 1948, was challenged. That Act was passed by the Provincial Legislature for settlement of immigrants who had migrated into West Bengal due to communal disturbances in East Bengal, and the Act provided for acquisition and development of land for public purposes including the purpose of settlement of immigrants. "It was held by the Supreme Court that Section 8 of that Act, which made the declaration by the Government conclusive as to the public nature of the purpose for acquisition and the limitation of the amount of compensation so that it shall not exceed the market value of the land on 31-12-1946, was ultra vires the Constitution and void. It was observed that the impugned statute was a permanent enactment under which lands may be acquired many years after it came in force, and the law. which fixes the market value of

the land on 31-12-1946 as the ceiling of compensation without reference to the value of the land at the time of the acquisition, was "arbitrary and could not be regarded as due compliance in letter and spirit with the requirements of Article 31(2)" of the Constitution and that the Act was not saved by Article 31(5) from the operation of Article 31(2) as it was certified by the President as required by Article 31(6). This case is in our judgment not an authority for the interpretation of section 299(2) of the Government of India Act. As we have already observed, Section 299 imposes what is primarily a legislative fetter upon the powers of the Legislature. Article 31 of the Constitution, however, confers upon the citizens a fundamental right and, in effect, provides that he shall not be deprived of his property except by authority of law, and any deprivation shall be under the authority of law which authorizes such deprivation for public purposes and also provides for payment of compensation by fixing either the amount of the compensation or specifying the principles on which the compensation is to be determined. By Article 13 of the Constitution, any law in force in the territory of India immediately before the commencement of the Constitution, which was inconsistent with the constitutional guarantee, was to become, on the commencement of the Constitution, to the extent of the inconsistency, void; and Article 31 of the Constitution, effectuates the same guarantee of right to property which was intended to be guaranteed by section 299 of the

<sup>1</sup>1954 SCR 558

Government of India Act, 1935. But the context in which Article 31 of the Constitution occurs is entirely different from the context in which Section 299 of the Government of India Act occurred. Even if the two provisions have been made with the same object, the Court cannot ignore the circumstance that under Section 299 of the Government of India Act there was a restriction imposed upon the sovereign right of the legislature to enact legislation in matters of compulsory acquisition of land and that provision had to be strictly construed, whereas Article 31 of the Constitution, which has undergone various changes during the last eight years, is, in form and substance, a declaration of a right to property in favour of all persons and of the incidents of that right. As observed by Chief Justice S.K. Das of the Patna High Court in *Jageshwar Pd. Singh v. Bircha Chamar*<sup>2</sup>, "those clauses (i e., clauses (1) and (2) of Article 31) though they have a similarity to sub-sections (1) and (2) of Section 299 Government of India Act 1935, are not expressed in the same terms; for example the scope of clause (2) of Act, 31 is much wider than the scope of Sub-Section (2) of Section 299."

6. Section 299(2) of the Government of India Act required that the Act, which provided for compulsory acquisition of land, should provide for compensation and should either fix the amount of compensation or enact the principles and the procedure for assessing compensation. There is nothing in the section which suggests that compensation to be awarded must be equal to the market value of the property at the date on which the title of the owner in the property acquired is extinguished. Provided the compensation is real and not illusory and is intended reasonably to indemnify the owner for loss of his property in the larger interests of the community, for whose benefit the property is acquired compulsorily, in our judgment, the legislation which awards compensation which is less than the market value at the date of

expropriation is not inconsistent with section 299 of the Government of India Act.

7. Mr. Bhatt placed strong reliance upon the observations of their Lordships of the Supreme Court at page 563 (of SCR) in Mrs. Bela Bannerjee's case. It was urged before the Supreme Court that the term "compensation" in entry 42 of List III of the Seventh Schedule to the Constitution

"could not mean full cash equivalent, for then, the power conferred on the legislature to lay down the principles on which compensation is to be determined and the form and the manner in which such compensation is to be given would be rendered nugatory."

It was also urged that entry 42 showed that only such compensation was to be given as was determined on the principles laid down by the law enacted in exercise of the power, and, as the concluding words used in Article 31(2) were substantially the same as in the entry, the Constitution "left scope for legislative discretion in determining the measure of the indemnity." That argument was rejected by the Supreme Court. It was observed that the legislature was given

"the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner for the property appropriated"

<sup>2</sup> AIR 1956 Pat 149

but the principles "must ensure that what is determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of," and that

"within the limits of this basic requirement of full indemnification of the expropriated owner, the constitution allows free play to the legislative judgment as to what principles should guide the determination of the amount payable." It is evident from these observations that their Lordships of the Supreme Court held that the compensation to be paid under Article 31(2) of the Constitution (before it was amended by the 4th Constitution Amendment Act) was to be just equivalent of what the owner was expropriated; in other words, any legislation, which provided for compulsory acquisition of land for public purposes, was subject to the basic requirement of full indemnification. But, there is nothing in the judgment that "a just equivalent" or the "full indemnification" was to be the market value at the date of expropriation. That is clear from the observations made at p. 564 (of SCR) .

"The fixing of an anterior date for the ascertainment of value may not, in certain circumstances, be a violation of the constitutional requirement as, for instance, when the proposed scheme of acquisition becomes known before it is launched and prices rise sharply in anticipation of the benefits to be derived under it, but the fixing of an anterior date, which might have no relation to the value of the land when it is acquired, may be, many years later, cannot but be regarded as arbitrary."

The West Bengal Land Development and Planning Act, 1948, was evidently a permanent statute which enacted that land, whenever acquired during the life of the Act, was to be compensated for only by reference to the prevailing market value as on 31-12-1946; and this, their Lordships of the Supreme Court regarded as arbitrary fixation of compensation. Their Lordships also observed that

"any principle for determining compensation which denies to the owner this increment in value cannot result in the ascertainment of the true equivalent of the land appropriated." It is clear from this observation that the fact that the value of land had to be ascertained, by reference not to the date of expropriation, but by reference to another date fixed by the Legislature, does not by itself infringe the guarantee of right to property under Article 31(2) of the Constitution. Their Lordships of the Supreme Court were dealing with the content of a fundamental right and held that an arbitrary restriction of the fundamental right, which denied to the owner increment in value to which he was legitimately entitled, could not be upheld by the Courts as the owner was being given what was not compensation for the land expropriated. In our judgment, the observations made do not support the proposition that the expression "compensation" must be equated to the market value of the land at the date of the expropriation, and, in any event, these observations have been made in the context of a claim to enforce a fundamental right and not in the context of construing the validity of a statute which trespasses upon the legislative restriction imposed by Section 299 of the Government of India Act. We are also unable to agree with the contention that the expression "compensation" as used in Section 299 of the Government of India Act must have the same meaning as that expression has under Article 31(2) of the Constitution before it was amended by the Constitution (Fourth Amendment) Act.

8. It may also be pertinent to note that Article 31(2) of the Constitution has now been amended by the Constitution (Fourth Amendment) Act 1955. Whereas originally it was provided by Article 31(2),

"No property, movable or immovable, including any interest in, or in any company owning any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired 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."

The amended clause of the Article reads as follows :

"No property shall be compulsorily acquired or requisitioned save for a 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."

From the last part of clause (2) of Article 31 it is evident that the expression "compensation" is not intended to be the market value of the property compulsorily acquired at the date of acquisition. The courts have been prohibited from enquiring into the question whether the compensation, under the law which provides for compulsory acquisition, is not adequate. The Parliament has, therefore, clearly expressed its intention that the inadequacy of compensation is, by itself, not a ground on which the validity of the Act can be challenged. Whatever may have been the meaning of the expression "compensation" as used in Article 31(2) of the Constitution as it was enacted in 1950, by the subsequent amendment, the Parliament has made it abundantly clear that the expression "compensation" does not necessarily mean an equivalent in value to the owner of what he has been deprived of.

9. It was also urged that a Full Bench of the Allahabad High Court has taken the view in, *Suryapal Singh v. Government of the State of U. P.*<sup>3</sup>, that a law, which provides for payment of compensation for compulsory acquisition of land at a rate less than the market value prevailing on the date on which the property of the citizen is acquired, is void. The Court in that case had to consider whether the State Legislature was competent to enact the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951, and the Court held that the Act was not invalid as contravening any provision of the Constitution. The Act having been enacted after the Constitution of India was brought into force, the Court was not called upon to interpret Section 299 of the Government of India Act. But it was observed that the Government of India Act, 1952, was drafted by "Parliamentary draftsman" and that there could be no doubt that the expression "compensation" used in Section 299 of the Act was intended by Parliament to have the same meaning as in the English law. It was then observed.

<sup>3</sup>ILR (1952) 2 All 46 : AIR 1951 All 674

"If the Legislature uses a term which has a well settled meaning, that meaning, must, in the absence of any indication to the contrary, be given to it. The relevant provisions of Article 31(2) of the Constitution so closely follow those of Section 299 of the Government of India Act, 1952, the words being almost identical that it is impossible ..... to escape the conclusion that the word "compensation" was intended to have the same meaning in the Article as in the section."

The provisions of section 299(2) of the Government of India Act and Article 31(2) of the Constitution were then set out, and it was observed :

"The absence of the qualifying adjective "just," "fair," "adequate" is, to our minds, not of consequence; nor can we see any ground on principle or authority for attributing to the

word 'compensation' the meaning suggested by the State, namely such amount as the legislature itself considers reasonable. If it had been the intention to make so radical change in the meaning of the word compensation a change which wholly destroys the basis upon which it was previously understood that compensation would be determined it is reasonable to expect that fact to have been clearly stated in the constitution. If the amount of compensation was left entirely to the discretion of the legislature, and was not to be justifiable, Article 31(2), which is a restraint on legislative power, would cease to be of use to protect the fundamental right to property. Nor does the conferment of power to determine the principles on which compensation shall be given enable the legislature to depart from the basic rule. That provision is intended to enable the legislature to lay down rules for the assessment of compensation in cases where its determination may be difficult or where different persons may take divergent views as to what is the equivalent in value of the property acquired."

Their Lordships then referred to the case *In re, Lucas and Chesterfield Gas and Water Board*, (1909) 1 KB 16, in which it was held that the value of a piece of land which was peculiarly suited for the purposes for which the acquiring body desired it, namely the construction of a reservoir, had to be paid for on that basis. But evidently the question in dispute in 1909-1 KB 16 related to the basis for assessment of compensation for land compulsorily acquired in exercise of statutory authority, and no question either of the authority of the Parliament to acquire property without payment of adequate compensation or of the protection of a fundamental right arose in that case.

10. The view expressed in *Suryapal Singh's case* ILR (1952) 2 All 46 : AIR 1951 Allahabad 674 (FB) appears to be inconsistent with the view taken by this Court in *Dhirubha Devisingh Gohil v. State of Bombay*<sup>4</sup>. In that case, the authority of the Provincial Legislature to enact certain provisions of the Bombay Taluqdari Tenure Abolition Act, 1949, was challenged by an application in this Court. It was urged before this Court that even though the provisions of the Act contravened Article 31(2) of the Constitution, the constitutional amendment had validated the Act in so far as it contravened the provisions of Article 31(2) the Constitution but not in so far as it contravened Section 299 of the Government of India Act. It was also contended that the compensation provided by the Act was illusory compensation. In dealing with the second contention, it was observed that the Act provided that

<sup>4</sup>57 Bom LR 718 (719)

"when there is a law which provides for compulsory acquisition for public purposes of any land, etc., that law must provide for the payment of compensation for the property acquired and the compensation must be an amount fixed by the Legislature or by the principles laid down by the Legislature on which and the manner in which it should be determined."

In refuting the argument that the Act did not either fix the compensation or set out the principles on which the compensation was to be provided, it was observed that the legislature had directed

that in assessing the value of land to be fixed the principles of sections 23 and 24 of the Land Acquisition Act had to be observed and it had been further provided that a maximum was fixed beyond which compensation could not be paid to the taluqdar. In dealing with the plea that the compensation was illusory, the Court observed that even though the compensation may appear to be inadequate it could not be regarded as illusory. This Court, therefore, rejected the contention that the Bombay Taluqdari Tenure Abolition Act was ultra vires the Provincial Legislature. The case was then taken to the Supreme Court, (*Dhimbha Devisingh Gohil v. State of Bombay*<sup>5</sup>, and their Lordships of the Supreme Court held that the statute, which was expressly included in the 9th schedule by the 1st Amendment Act of the Constitution, was exempt from challenge by reason of Article 31-B of the Constitution. Their Lordships did not express any opinion on the question whether the provision for payment of compensation to the claimant which was not equal to the market value affected the vires of the Act.

11. Inasmuch as this Court appears to have taken the view that the expression "compensation" is not necessarily to be equated with the current market value at the date of expropriation, we are unable to accept the view taken by Allahabad High Court and the cases referred to therein.

12. Our attention was also invited to certain observations made by Mr. Justice Bhagwati in *Tan Bug Taim v. Collector of Bombay*<sup>6</sup> It was urged in that case that section 299(1) and (2) of the Government of India Act did not give statutory recognition to the general principles of jurisprudence. Mr. Justice Bhagwati negated that contention and observed that section 299(1) and (2) of the Government of India Act were not merely restrictions on the legislative powers of the Indian Legislature but were "in reality the statutory recognition of the fundamental principles of British jurisprudence enacted therein;" and that

"Section 299(1) gives a statutory recognition to the general principle of British Jurisprudence that no person shall be deprived of his property save by authority of law. That could only have reference to the proprietary rights enjoyed by an individual in respect of property of every kind or sort. Sub-section (2) of Section 299 makes this clearer still. It provides that if any law is enacted authorizing the compulsory acquisition for public purposes of any land, etc., that law should provide for payment of compensation for the property acquired."

We may at once observe that the observations relied upon have no direct bearing on the interpretation of the expression "compensation" as used in Section 299 of the Government

<sup>5</sup> AIR 1955 SC 47

<sup>6</sup>47 Bom LR 1010, at p. 1045 : (AIR 1946 Bom 216 at p. 246)

of India Act, and the Court in that case was primarily concerned to decide whether under the Government of India Act authority was conferred upon the legislature, by item No. 21 of List II of the Seventh Schedule to the Act, to requisition land. Mr. Justice Bhagwati held that there was no such power conferred upon the Legislature. It may be observed that in subsequent judgments of their Lordships of the Privy Council the interpretation of item No. 21 which

appealed to Mr. Justice Bhagwati has not been accepted (see *Meeh Raj v. Allahrakhia*<sup>7</sup> We do not think that there is anything in the observations made by Mr. Justice Bhagwati in Tan Bug Taim's case 47 Bom LR 1010 which is inconsistent with the view which we are willing to take.

13. Strong reliance was also placed upon a judgment in *H. P. Khandelwal v. State of the U. P.*<sup>8</sup>. In that case, the validity of the U. P. Land Acquisition (Rehabilitation of Refugees) Act, 1948, was challenged before the Allahabad High Court. It was held in that case that inasmuch as the impugned Act did not provide for compensation equivalent to the market value at the date on which it was acquired, the payment provided under the Act could not be regarded as compensation within the meaning of Article 31(2) of the Constitution or of Section 299 of the Government of India Act, and on that score the provision which put a restriction on the amount of compensation to be awarded for compulsory acquisition was void. The Allahabad High Court in *H. P. Khandelwal's* case AIR 1955 Allahabad 12 followed its earlier judgment in *Suryapal Singh's* case ILR (1952) 2 All 46 : AIR 1951 Allahabad 674. For reasons already set out by us we are unable to agree with the contention that section 299 of the Government of India Act required that a statute, which provides for compulsory acquisition of land for public purposes, must provide for compensation which is equivalent to the market value of the property at the date of compulsory acquisition.

14. Mr. Bhatt also contended that Bombay Act No. 4 of 1948 infringed the equal protection clause in Article 14 of the Constitution. It was urged that the Act No. 4 of 1948 permitted the State to make an arbitrary classification of lands and the amount of compensation payable to the owners of the land depended upon that arbitrary classification. It is true that if the land is acquired for purposes other than a housing scheme, full compensation which is equivalent to the market value of the land as on the date of the Notification under Section 4 of the Land Acquisition Act, is payable; but if the Government notifies the land for acquisition for a housing scheme, compensation is to be assessed as on the date 1-1-1948 or on the date of the issue of the Notification under Section 4, whichever is lower. The Act also deprives the owners of the statutory 15 per cent solatium in cases where the land is notified for acquisition for a housing scheme. The Act evidently makes discrimination between the persons whose property is acquired for a housing scheme and persons whose property is acquired for other purposes and prima facie it offends against the constitutional guarantee against discrimination by Article 14 of the Constitution. Article 14 of the Constitution undoubtedly permits classification founded on an intelligible differentia. But we are unable to hold that a discrimination between citizen whose property is notified for compulsory acquisition which depends solely upon the publication by the executive Government of its purpose in acquiring property can be justified on a reasonable nexus or correlation between the differentia and the object to be achieved by the Act. But Article 31A of the Constitution protects Act No.

<sup>7</sup>49 Bom LR 516

<sup>8</sup> AIR 1955 All 12

4 of 1948 from being declared invalid. In so far as it is material, Article 31A provides that notwithstanding anything contained in Article 13, no law providing for the acquisition by the

State of any estate or of any rights therein or the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 Or Article 31, and by clause (2) (a) of Article 31A, the expression "estate" shall in relation to any local equivalent has in the existing law relating to land tenure in force in that area. Under the Bombay Land Revenue Code, the expression "estate" is defined in clause (5) of Section 3, as meaning, "any interest in lands and the aggregate of such interest vested in a person or aggregate of persons capable of holding the same." As Article 31A protects Act No. 4 of 1948, even if it nullifies the fundamental right against discrimination under Article 14, the plea that it is void on that account, must also fail.

15. It is also urged that the right to 15 per cent solatium is a right to property and cannot be taken away without providing adequate compensation for loss thereof. We are unable to accept that contention. By Sub-Section (2) of Section 23 of the Land Acquisition Act, the legislature has provided that for lands compulsorily acquired, the owner shall in addition to the market value be entitled to a sum equal to 15 per cent of the market value, but a statutory right to receive the additional solatium on compulsory acquisition cannot in our judgment be regarded as a right to property. It was therefore open to the Legislature to deprive the owners of that right, by an adequate provision in that behalf. Even if the argument that the expression "compensation" as used in Sub-Section (2) of Section 299 of the Government of India Act meant the market value of the land at the date of expropriation, be accepted, the exercise of the power by the Legislature to deprive the owner of the property to receive a statutory addition to the market value cannot reasonably be challenged as ultra vires.

16. The learned Government Pleader submitted on two grounds that Bombay Act No. 4 of 1948 was not ultra vires : (1) that it was covered by the expression "existing laws" in Article 31(5) of the Constitution and was accordingly not open to challenge since the enactment of the Constitution, and (2) that it was within the legislative competence of the Provincial Government under the Government of India Act, 1935. Clause (5) of Article 31 of the Constitution, in so far as it is material, 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". - Clause (6) provides :

"Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any Court, on the ground that it contravenes the provisions of clause (2) of this article or has contravened the provisions of Sub-Section (2) of Section 299 of the Government of India Act, 1935."

It was urged that all existing laws, other than, those which fell within clause (6) of Article 31, were protected by clause (5), and that Bombay Act IV of 1948 having been enacted more than eighteen months before the date on which the Constitution came into force, it did not fall within

clause (6) of Article 31. The learned Government Pleader submitted that Section 299 of the Government of India Act as well as Article 31 of the Constitution, guaranteed a right to property, and by clause (5) of Article 31, provision was made protecting any existing law from the operation of clause (2) of Article 31, and notwithstanding the inconsistency of Act IV of 1948 with clause (2), it was intended by the Constitution that clause (5) was to protect the Act also from the vice of invalidity even if it contravened Section 299 of the Government of India Act. We are unable to agree with that contention. In terms, clause (5) of Article 31 protects only "existing laws" even if they conflict with clause (2) and if the legislature was incompetent to pass an Act by reason of the restriction placed upon its authority, it would be difficult to call that Act an "existing law." In any event, clause (5) of Article 31 only protects existing laws which infringe rights which have been conferred by clause (2). The content of the right to property even if it be assumed to be guaranteed in its full amplitude under the Government of India Act is not covered by clause (5) of Article 31 of the Constitution. In terms, clause (5) of Article 31 provides that nothing in clause (2) thereof shall affect any existing law. A law which would become invalid on the enactment of the constitution as being inconsistent with clause (2) is protected by clause (5), If, however, such a law was inconsistent with Section 299 of the Government of India Act, in our judgment, there is nothing in clause (5) which protects it.

17. But we agree with the contention of the learned Government Pleader that the expression "compensation" as used in Section 299 of the Government of India Act does not, for reasons already set out, mean the equivalent in money, at the date of expropriation, of the property which has been compulsorily acquired.

(The rest of the judgment is not material for reporting).

Order accordingly.