PUNJAB AND HARYANA HIGH COURT

Jagat Singh Didar Singh

Vs

State Of Punjab

(D.Falshaw, J.)

10.11.1961

JUDGEMENT

D.Falshaw, J.

- (1.) IN this case we are called upon to consider the vires of the East Punjab holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948) as amended by Punjab Act No. XXVII of 1960. The Act was considered by a Full bench of this Court in Kishan Singh v. State, 1960-62 Pun L. R. 840: (AIR 1961 punj 1) (FB). Then the present matter camp up before Dua, J. , sitting singly, counsel for the petitioners cited before him the Supreme Court decision in K. K. Kochuni v. States of Madras and Kerala, AIR 1960 SC 1080 and argued that the full Bench decision of this Court could no longer be considered good law in view of what the Supreme Court had said. Dua, J. , accordingly referred the matter to a larger Bench. It then came up before my Lord Grover and myself sitting in Division bench and as the correctness of the Full Bench decision in Kishan Singh's case 62 pun LR 840: (AIR 1961 Punj 1) (FB) was being questioned we considered it advisable to suggest that a Bench larger than the Full Bench, which had given the previous decision, should consider the matter afresh. In this manner the case has now been argued before a Bench of five Judges.

(2.) THE facts of the case are given in the Division Bench order dated the 7th of august, 1961 and may be briefly recapitualted. In the course of consolidation proceedings in village Bhagiari, district Hoshiarpur, 20 acres of land owned by private individuals were set aside to provide income for the Gram Panchayat. This act of the Consolidation authorities was challenged on the ground that the law which authorised the transfer of proprietary rights to Gram Panchayat for the purpose of providing income to them was ultra vires Article 31 of the Constitution. The sole question for our decision, therefore, is whether it is permissible to set aside land owned by private individuals for providing income to the Gram panchayat. The argument raised on behalf of the State is that the law is saved by the provisions of Article 31-A (1) (a) inasmuch as the act of setting aside this land is nothing more than acquisition by the State of an estate and such acquisition is not hit by the provisions of Article 81 and the law under which this can be done need not make a provision for the calculation or the award of compensation in respect of the land acquired. On behalf of the petitioners, on the other hand it is argued that acquisition by the State of an estate is only justified if the aim and object of the acquisition is agrarian reform. It was

further argued that the setting aside of these 20 acres does not amount to acquisition, but amounts to the modification of rights in this property because the land has been transferred from owners to the Gram panchayat and any modification of proprietary rights must have for its aim agrarian reform or the removal of intermediaries. The learned counsel appearing on behalf of the petitioners relied upon a number of decisions and pointed out that no other conclusion was possible from a study of the matter in which Article 31a (1) (a) came to be enacted. He drew our attention to the statement of objects and reasons prepared when the Constitution (Fourth Amendment) Act, 1955, was introduced in Parliament. Reference was made to these objects and reasons by their Lordships of the Supreme Court in Kochuni's case AIR 1960 SC 1080 while considering the vires of Madras Act No. 32 of 1955. Their Lordships of the Supreme Court, however, referred to the statement of objects and reasons for a very limited purpose and indeed it would be extremely dangerous to interpret a statute of which the words are quite clear by referring to the statement of objects and reasons prepared by the introducer of the Bill. In the present case we find that there is nothing whatever in the wording of Article 31a (1) (a) to warrant the suggestion that acquisition must be only for the purpose of promoting agrarian reform. The word 'agrarian reform' nowhere occurs in the article. When a promoter of a Bill introduce it in the Legislature he gives the statement of objects and reasons, which according to him are good reasons for enacting the Bill into law. The matter is then discussed by the Legislature and other aspects of the case are considered and brought before the Legislature. Other individuals and groups put forward their own views about the matter. The wording of the Bill may well go on changing by modifications or additions and it is only after these have been embodied in the Bill that we find that an Act can be said to express the views and desires of the Legislature. With regard to this final shape, the original statement of objects and reasons may be irrelevant or relevant only to a limited extent. For instance, it may be that during the course of the debate a member points out the desirability of changing the phraseology of a certain section so that the section may cover cases other than those contemplated by the introducer. Another member may point out that whatever may be contained in the statement of objects and reasons, the wording of the section was clear enough and wide enough to cover even those cases which were not in contemplation of the introducer, and when this is considered by the entire House, the wording may be allowed to stand because it covers all possible cases which the Legislature wishes it to cover. To limit the scope of the interpretation by anything contained in the statement of objects and reasons would be to do violence to the wording of the statute and to fail to take into account the Parliamentary procedure by which a Bill finally assumes the dignity of an Act. Also, if the statement of objects and reasons is to be looked at, we must also look at the reports of the debates in order to rind out what interpretation was accepted by the various members, and if any amendments were made what were the reasons behind them. Their Lordships of the Supreme Court were alive to this aspect of the matter and as far back as 1952 expressed in similar terms their views upon the matter in aswini *Kumar Ghose v. Arabinda Bose*[1], Patanjali Sastri, C. J. , observed:-- "as regards the propriety of the reference to the Statement of objects and reasons, it must be remembered that it seeks only to explain what reasons induced the mover to introduce the Bill in the House and what objects he sought to achieve. But those objects and reasons may or may not correspond to the objective which the majority of members had in view when they passed it into law. The Bill may have undergone radical changes during its passage through the House or Houses, and there is no guarantee that the reasons which led to its introduction and the object thereby sought to be achieved have remained the same throughout till the Bill emerges

from the House as an Act of the legislature for they do not form part of the Bill and are not voted upon by the members. We, therefore consider that the Statement of objects and reasons appended to the Bill should be ruled out as an aid to the construction of a statute" . This dictum by a former Chief Justice of India is binding upon us and I feel that it would not be safe to refer to the statement of objects and reasons for the purposes of determining whether the acquisition by the State mentioned in Art. 31-A (1) (a) must be for the purpose of promoting agrarian reform only before it can be held to be valid. As regards the decision of the Supreme Court in Kochuni's case AIR 1960 SC 1080, that case is completely distinguishable from the matter before us. The petitioners in that case were the holders of a sthanam to which was attached an estate. There was a dispute between the holder of the sthanam and the junior members of the family, who claimed a share in the estate on the ground that the Madras Act (No. 22 of 1932) gave all members of the family or tarwad the right to enforce partition of tarwad properties. The matter went up to the Privy council and it was held that the estate in this particular instance was impartible and the junior members had no interest in the property held by the petitioner who is described in the report as the sthanee. The Madras Government then passed Act No. 32 of 1955. By this Act the properties belonging to the sthanee were converted as the properties of the tarwad, and the junior members of the family, whose claim had been repelled by the Privy Council were now able to appeal once again for a share in the properties. The sthanee challenged the validity of the Act of the ground that it infringed Article 31 of the Constitution. This was clearly not a case of acquisition by the State and all that the Act had done was to modify the rights in the estate and transfer the sthanee's interest to the junior members of his family. This argument was repelled by the junior members, who contended that Article 31 A saved the Act. Their lordships of the Supreme Court while considering the matter referred to the statement of objects and reasons and held that the Act was not saved. They said that modification of this type must have for its object agrarian reform or agricultural economy and as the Act merely confers rights on the junior members of the family, the Act was bad Reliance was placed by Mr. Gujral on a sentence contained in paragraph 15 of this report- "the object was, therefore, to bring about a change in the agricultural economy but not to recognize or confer any title in the whole or a part of an estate on junior members of a family. " From this however it cannot be said that their Lordships were striking down even a law providing for acquisition by the State on the ground that the object of the acquisition was not agricultural economy. They had under consideration only the madras Act (32 of 1955) and they held that Act to be bad because it modified rights in an estate for reasons other than that of promoting agrarian reform. It will be importing too much into the decision of the Supreme Court to hold that even an acquisition by the State of an estate is permissible only for the purpose of promoting agrarian reform. A Division Bench of this Court consisting of Falshaw, j. , and my Lord Tek Chand, who is a member of the present Bench had occasion to consider the scope of the Supreme Court decision, in State of Punjab v. Lakha singh LPA No. 167 of 1960. The learned Judges were considering the vires of this very Act and it was argued before them that since the Madras Act (Act 32 of 1955)was held ultra vires and not saved by Article 31a (1) (a) of the Constitution, the present Act also must be declared ultra vires. Falshaw J. , who wrote the judgment and with whom my Lord Tek Chand agreed, observed.--"as I have said, these remakrs have been made in consideration of a totally different kind of Act, which merely had the effect of giving other members of a family an interest in property which hitherto had been the sole property of a hereditary successor'" referring to our own Full Bench case 62 Pun LR 850: (AIR 1961 Punj 1) (FB), falshaw J. went on to say.-"i am, however, of the opinion

that the legislation which has been considered by the Full Bench of this Court was of the kind contemplated and protected by Article 31-A of the Constitution. " Another decision of the Supreme Court, which was cited before us, is gangadharrao Narayanrao v. State of Bombay, AIR 1961 SC 288. In this case the supreme Court held inter vires the Bombay Personal Inams Abolition Act 1953. Their Lordships of the Supreme Court did not base their decision on the ground that the Act was aimed at agrarian reform. The only point considered by their lordships was that the Inams were estates within the meaning of clauses (a) of article 31a (1). This decision was given on the 3rd of October 1960 by a Bench of which B. P. Sinha C. J. , and Subba Rao, J. , were members. It would be impertinent of me to suggest that these two learned Judges did not have in their mind the previous decision in AIR 1960 SC 1080 by a Bench of which both of them were members. They could have declared the Bombay Act ultra vires on the ground that it was not aimed at agrarian reform just as they had struck down the madras Act but because the Bombay Act authorised acquisition of an estate and not modification of estates, it may safely be inferred that their Lordships did not in the earlier Madras case lay down that even acquisition of estates would be bad unless it was aimed at agrarian reform. Similarly, there is another decision of the Supreme Court in The *State of Bihar v. Rameshwar Pratap Narain Singh*[2] This case was argued before a Bench of which Sinha C. J. and Sarkar J. were members and these two Judges were on the Bench which had considered the madras case. In Civil Appeal No. 27 of 1960: (AIR 1961 SC 1649) their Lordships, while considering the competence of the Bihar Legislature to enact Bihar Act No. XVI of 1959, observed- "it is however unnecessary for us to consider this question further, for whether it is a law as regards land reform or not, it is clearly and entirely as regards acquisition of property. The question of the legislature having attempted legislation not within its competence by putting it into the guise of legislation within its competence does not even arise. " again they observed.-"in our opinion, a law may be a law providing for 'acquisition' even though the purpose behind the acquisition is not a public purpose. " The Bihar law was held by them to be intra vires even though it did not aim at agrarian reform, because it was a law providing for acquisition of estates. We, therefore, find that in all cases, which were decided by the Supreme Court, where there was a question of acquisition, the aim of agrarian reform had not been deemed a condition precedent to the Act being declared intra vires and the observations of their Lordships in the Madras case do not go beyond the scope of the case which they had under consideration, namely the case not of an acquisition of an estate but the modification of rights therein. The matters, however does not in my view, rest there. When we come to examine the Act and its objects closely, we find that it is a part of the pattern of legislation aimed at agrarian reform. The Act authorises the reservation income to the Gram Panchayat. The functions of the Gram Panchayat are to promote the well-being of farmers in all possible ways. The Village Common Lands (Regulation)Act, the Punjab Gram Panchayat Act and the Consolidation of Holding Act, as amended recently, are all parts of the same picture. The village Panchayat is charged with a number of duties which are set out in Section 19 of the Punjab gram Panchayat Act, 1952. These include.-" (j) the improvement of the breeds of animals used for agricultural or domestic purposes; (n) the development of agriculture and village industries, and the destruction of weeds and pesis; (o) starting and maintaining a grain fund for the cultivators and lending them seed for sowing purposes; (q) allotment of places for preparation and conservation of manure; (t) framing and carrying out schemes for the improved methods of cultivation and management of land to increase production; (2) (c) the promotion of agricultural credit. " these and numerous other matters, which are set out in Section 19, are clearly aimed at agrarian reform and to

improve the economy of villages. Mr. Gujral tried to argue that agrarian reform must be accompanied by the removal of intermediaries. There is, however no warrant for this assumption, and a law may further agrarian reform even though there is no question of removing intermediaries as in the present case. Where the law provides for the acquisition of land, there is ordinarily no question of removing any intermediaries. I am therefore, of the opinion that the impugned Act has for its objects agrarian reform and as such it cannot be declared invalid by anything contained in the decision of their Lordships of the Supreme Court in AIR 1960 SC 1080.

(3.) THERE is thus no force in this petition and it must be dismissed, but as the matter was referred by a Division Bench for the consideration of a Full Bench, I would make no order as to costs. Grover, J. : I agree that the impugned Act is valid as its object generally was to bring about a change in the village and agricultural economy rendering it immune from attack by virtue of Article 31a (1) (a) of the Constitution. But on a true and correct appraisement of the observations made and decision given in the majority judgment in Kochuni's case, AIR 1960 SC 1080 I find it difficult to subscribe to the view that legislation enacted to acquire and "estate" would be protected by that article even if its object and purpose were completely divorced from what may be called agrarian or land reform. To do so would mean following the view laid down in the minority judgment in preference to the decision of the majority, which cannot be done. Sarkar J. , who delivered the judgment of the minority, founded his decision on the absence of any mention in Article 31a, of agrarian reform and repelled the contention that the Act contemplated by the Article was "ac Act passed with the object of effecting agrarian reform. " the judgment of the majority delivered by Subba Rao J. lays down in unequivocal terms that the object of amendment made in Article 31a by the Constitution (Fourth Amendment) Act, 1955 was "to bring about a change in the agricultural economy. " After referring to the decision in AIR 1952 SC 369 that the statement contained in the objects and reasons was not admissible as an aid to construction of a statute. It was observed that the statement contained in the objects and reasons was being referred to only for the limited purpose of ascertaining the conditions prevailing at the time the Bill was introduced and the purpose for which amendment was made. Subba Rao J. proceeded to examine at length the scope and ambit of sub-clause (a) of Article 31a (1) which provides for the acquisition by the State of any estate or any rights therein or extinguishment or modification of any such rights. Sub-clauses (a) and (b) of clause (2) defined the expressions "estate" and "rights". The learned Judge proceeded to lay down that if an estate to defined was acquired by the State, no law enabling the State to acquire any such right could be questioned as being inconsistent with the rights conferred by Article 14, 19 and 31. Similarly, any law extinguishing or modifying any such right mentioned in clause (1) (a) and defined in clause (2) (b) could not be questioned on the said ground. He made no distinction between a law by which the State was given the power to acquire an estate or a statute by which there would be extinguishment or modification of rights in an estate. What Subba Rao J. was considering was the scope of Article 31a (1) (a) in its entirety and not merely of that part of sub-clause (a) which related to acquisition by the State of any estate. Therefore, whatever has been laid down in this judgment would cover legislation relating to acquisition by the State of any estate or of any rights therein as also of the extinguishment and modification of any such rights in the estate. At page 1087 of the report it has been observed--"it is, therefore manifest that the said Article deals with a tenure called 'estate' and provides for its acquisition or the extinguishment or modification of the rights of the

landholder or the various subordinate tenure-holders in respect of their rights in relation to the estate. The contrary view would enable the State to divest a proprietor of his estate and vest it in another without reference to any agrarian reform. " another principle was taken into consideration namely, that Article 31a deprives citizens of their fundamental rights and it cannot be extended by interpretation to overreach the object implicit in the Article. With respect to certain other decisions of their Lordships in Sri Ram Ram Narain v. State of Bombay, AIR 1959 SC 459 and Atma Ram v. State of Punjab, AIR 1959 SC 519 which appear to have been pressed into service by counsel in support of the view accepted in the minority judgment, Subba Rao J. distinguished them on the ground that the impugned legislation and facilitate agrarian reforms. It was observed at page 1088-"this Court has, therefore, recognised that the amendments inserting article 31a in the Constitution and subsequently amending it were to facilitate agrarian reforms. . . . . .

> . . . . " article 31a was held not to apply for the reason that the impugned Act did not affectuate any agrarian reform and regulate the rights inter se between landlords and tenants. The question which was hotly debated before us was whether according to the majority judgment in Kochuni's case, AIR 1960 SC 1080, it was essential that in order to claim protection under Article 31a (1) (a) agrarian reform should be the sine qua non or the object or purpose of a particular legislation. The answer in the majority judgment is clearly in the affirmative whereas the minority gave a contrary decision. The reason given in the minority judgment was that apart from the objects and reasons found in the Bills, there was nothing on which the contention that the law contemplated by Article 31a (1) (a) was a law intended to achieve agrarian reform, could be based. The ratio of that decision was that the rights, which clearly fell within the definition of an estate in Article 31a (2) (a) and therefore, the Act was one contemplated by Article 31a. A careful perusal of the two judgments in Kochuni's case, AIR 1960 SC 1080, shows that a good deal of argument was addressed to their Lordships as to whether in such cases it became necessary to find out whether the Legislation had as its object agrarian reform or whether that matter was altogether irrelevant in the context of Article 31a (1) (a) and sub-clause (2) of that Article. The majority, as stated before accorded recognition to taking into consideration the question whether certain legislation had been enacted for the purpose of bringing about agrarian reform. If that principle had not been accepted, then the view of the minority would have prevailed and the dissent would not have revolved round the question of agrarian reforms, apart from other matters. ;

Cases Referred.

1AIR 1952 SC 369
2Civil Appeal No. 27 of 1960: (AIR 1961 SC 1649)