(1969) 07 SC CK 0011

Supreme Court of India

Case No: Civil Appeal No''s. 854, 1017 to 1027, 1029 to 1032, 1034 to 1037 and 1901 to 1906 of 1968

State of Orissa — APPELLANT

Vs

Chandrasekhar Singh Bhoi, etc. — RESPONDENT

Date of Decision: July 15, 1969

Acts Referred:

- Constitution of India, 1950 - Article 31A
- Orissa Land Reforms (Amendment) Act, 1965 - Section 45
- Orissa Land Reforms Act, 1960 - Section 1(3)

Citation: AIR 1970 SC 398 : (1969) 2 SCC 334 : (1970) 1 SCR 593

Hon'ble Judges: J. C. Shah, J; C. A. Vaidyialingam, J

Bench: Division Bench

Advocate: C.B. Agarwala and R.N. Sachthey, for the Appellant; H.R. Gokhale, Santosh Chatterjee and G.S. Chatterjee, for the Respondent

Final Decision: Allowed

Judgement

J.C. Shah, J.

The State of Orissa has appealed to this Court against the judgment of the State High Court declaring "unConstitutional and invalid" Chapter IV of the Orissa Land Reforms (Amendment) Act 15 of 1965.

2. The Orissa Land Reforms Act 16 of 1960 (hereinafter called the principal Act) received the assent of the President on October 17, 1960. By Section 1(3) of the principal Act it was provided that the Act shall come into force in whole or in part, on such or date or dates as the Government may from time to time by notification appoint and different dates may be appointed for different provisions of the Act. By a notification issued on September 25, 1968 certain provisions of the principal Act other than those contained in Chs. III and IV were brought into force. By a notification dated December 9, 1965 Ch. III (Sections 24 to 37 dealing with

resumption for personal cultivation of any had held by a tenant and related matters) was brought into force. But Ch. IV (Sections 38 to 52 dealing with ceiling of holdings of land and disposal of excess land) was not brought into operation. The Legislature of the State of Orissa amended the principal Act by Act 13 of 1965. By Act 13 of 1965 amendments were made in the principal Acts : the expressions "ceiling area" and "privileged raiyat" were defined by Clauses (5) & 24 of Section 24 and the expression "classes of land" was defined in Section 2(5-a). The original Chs. III and IV of the principal Act were deleted and were substituted by fresh provisions. Nothing need be said about the amendments made in Ch. III because in these groups of appeals the validity of these provisions is not in issue. It may suffice to say that Ch. III (Sections 24 to 36) as amended deals with the right of the landlord to resume land for personal cultivation, the extent of that right, and the proceedings for resumption of land. Chapter IV as amended deals with ceilings and disposal of excess land. By Section 37 it is provided :

(1) No person shall hold after the commencement of this Act lands as landholder or raiyat under personal cultivation in excess of the ceiling area determined in the manner hereinafter provided.

...

By Section 38 the Government is authorised to grant exemption from the operation of the ceiling in respect of certain classes of land. Section 39 deals with the principles for determining the ceiling area. Sections 40, 41 & 42 deal with the filing of returns in respect of lands in excess of the ceiling area on the date of commencement of the Act and the consequences of failure to submit the return. Section 43 provides for the preparation and publication of draft statements showing ceiling and surplus lands by the Revenue Officer and Section 44 provides for the publication of the final statement of ceiling and surplus lands after hearing objections, if any, received and after making enquiries as the Revenue Officer may deem necessary. Section 45 provides that :

With effect from the beginning of the year next following the date of the final statement referred to in Sub-section (3) of Section 44 the interests of the person to whom the surplus lands relate and of all landholders mediately or immediately under whom the surplus lands were being held shall stand extinguished and the said lands shall vest absolutely in the Government free from all encumbrances.

Section 46 provides for determination of compensation. Section 47 sets out the principles for determining compensation. It provides that the compensation in respect of the interest of the landholders mediately or immediately under whom the surplus lands are being held as a landholder or raiyat shall be fifteen times the fair and equitable rent. It also provides for payment of market value of tanks, wells and of structures of a permanent nature situate in the land, determined on the basis of fair rent in the manner prescribed therein. Sections 48 and 49 deals with the

preparation and publication of draft compensation assessment roll and the final compensation assessment roll. By Section 51 provision was made for settlement of surplus lands vested in the Government u/s 45 with persons as raiyats in the order of priority mentioned therein and Section 52 imposes a ceiling on future acquisitions. It is provided thereby :

The foregoing provisions of this Chapter shall, mutatis mutandis, apply where lands acquired and held under personal cultivation subsequent to the commencement of this Act by any person through inheritance, bequest, gift, family settlement, purchase, lease or otherwise, together with the lands in his personal cultivation at the time of such acquisition exceeds his ceiling limit.

...

By the amendments made in the Constitution by the 17th Amendment Act the principal Act is incorporated in the Ninth Schedule to the Constitution with effect from June 20, 1964. The Act is therefore not liable to be attacked on the plea that it is inconsistent with or takes away or abridges any of the fundamental rights conferred by Part III of the Constitution. But the power of the competent Legislature to repeal or amend the Act incorporated in the Ninth Schedule is not thereby taken away. The amending Act passed after the enactment of the Constitution (Seventeenth Amendment) Act, 1964 does not therefore qualify for the protection of Article 31-B. See 290926 , Sri Ram Ram Narain Medhi v. The State of Bombay [1959] Supp. 1 S.C.R. 489. This position is not disputed.

3. Chapter IV incorporated in the principal Act by Orissa Act 13 of 1965 when brought into force is liable to be challenged on the ground that it is inconsistent with or takes away or abridges any of the fundamental rights conferred by Part III of the Constitution. It was urged however, and that plea has found favour with the High Court, that Section 47 incorporated by Act 13 of 1965 which provided for compensation not based on the market value of the land but at fifteen times the fair and equitable rent is inconsistent with Article 31-A, proviso 2, and is on that account void. To appreciate the contention the Constitutional provisions relating to protection guaranteed by the Constitution against compulsory acquisition of property may be noticed. By Article 31(2) as amended by the Constitution (Fourth Amendment) Act, 1955, insofar as it is material, it is provided :

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;

...

Clause (2A) of Article 31 which in substance defines the expression "law" providing for compulsory acquisition enacts that :

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.

By Article 31(2) read with Article 31(2A) property may be compulsorily acquired only for a public purpose and by authority of a law which provides for compensation for the property so 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. In order that property may be validly acquired compulsorily the law must provide for the transfer of ownership or right to possession of any property to the State or to a corporation owned or controlled by the State.

4. By virtue of Section 45 of the principal Act "the interests of person to whom the surplus lands relate and of all land-holders mediately or immediately under whom the surplus lands were being held ... stand extinguished and the lands ... vest absolutely in the Government free from all encumbrances." This is clearly compulsory acquisition of land within the meaning of Article 31(2) of the Constitution and the compensation determined merely at fifteen times the fair and equitable rent may not, prima facie, be regarded as determination of compensation according to the principles specified by the Act. But Article 31A which applies to the statute in question provides by the first clause :

Notwithstanding anything contained in Article 13 no law providing for-

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) ...

(c) ...

(d) ...

(e) ...

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 :

...

The principal Act 16 of 1960 and the amending Act 13 of 1965 were both Acts enacted for ensuring agrarian reform, and the lands held by the petitioners were "estates" within the meaning of Article 31-A. By Section 45 the rights of the

land-holders were sought to be extinguished or modified. But to the operative part of Article 31-A by Section 2 of the Constitution (Seventeenth Amendment) Act, 1964, the second proviso was added. The second proviso enacts :

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the tune being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

By the Constitution (Seventeenth Amendment) Act, 1964, it was clearly enacted that under any law which provides for the acquisition of any land in an estate under the personal cultivation of the holder, compensation shall not be less than the market value of the land if such land be within the ceiling limit applicable to the holder under any law for the time being in force.

5. Before the High Court it was urged on behalf of the landholders that when the principal Act was enacted it became law in force, and the ceiling limit prescribed thereby became effective, even though Ch. IV was not extended by a notification u/s 1(3) of the Act, and since the subsequent legislation seeks to restrict the ceiling limit and to vest the surplus land in the Government u/s 45 as amended, there is compulsory acquisition of land which may be laid only if the law provides for payment to the landholder for extinction of his interest, the market value of that part of the surplus land which is within the ceiling limit under the principal Act. This argument found favour with the High Court. In their view the expression "law in force" must be "construed only in the Constitutional sense and not in the sense of its actual operativeness", and on that account it must be held that "there was a ceiling limit already provided by the principal Act as it was ''law in force'' within the meaning of that expression as used in the second proviso to Article 31-A". They proceeded then to hold that Section 47 of the Act as amended provided for payment of compensation at a rate which is less than the market value Of the land falling within the ceiling limit as originally fixed under Act 16 of 1960, and the guarantee of the second proviso to Article 31-A of the Constitution is on that account infringed. We are unable to accept this process of reasoning. The right to compensation which is not less than the market value under any law providing for the acquisition by the State of any land in an estate in the personal cultivation of a person is guaranteed by the second proviso only where the land is within the ceiling limit applicable to him under any law for the time being in force. A law cannot be said to be in force unless it is brought into operation by legislative enactment, or by the exercise of authority by a delegate empowered to bring it into operation. The theory of a statute being "in operation in a Constitutional sense" though it is not in fact in

operation has, in our judgment, no validity.

6. Again Ch. IV of the principal Act was repealed by the Amending Act 15 of 1965. Article 31-A proviso 2 guarantees to a person, for compulsory acquisition of his land, the right to compensation which is not less than the market value, when the land is within the ceiling limit applicable to him under a law for the time being in force. On the plain words of the proviso the law prescribing the ceiling limit must be in force at the date of acquisition. In the present case the law relating to the ceiling limit viz. Ch. IV of the principal Act was never made operative by a notification, and was repealed by Act 15 of 1965. The ceiling limit u/s 47 of the principal Act was on that account inapplicable to the landholders who challenged the validity of Section 45 of the amending Act.

7. The decision of this Court 282244 . on which the High Court relied lends no support to the views expressed by them. In that case the Travancore State Legislature enacted Act 14 of 1124 M.E. to provide for investigating cases of evasion of tax. The Act was to come into force by Section 1(3) on the date appointed by the State Government by notification. The States of Travancore and Cochin merged on July 1, 1949 and formed the United State of Travancore and Cochin. By Ordinance 1 of 1124 M.E. all existing laws of the Travancore State were to continue in force in the United State. By a notification the Government of the United State brought the Travancore Act 14 of 1124 (M.E.) into force, and referred cases of certain tax-payers for investigation to the Commission appointed in that behalf. The tax-payers challenged the authority of the Commission to investigate the cases. They contended that the Travancore Act 14 of 1124 (M.E.) not being a law in force when the United State was formed, the notification bringing the Act into force was ineffective. The Court rejected that plea. Section 1(3) of Travancore Act 14 of 1123 (M.E.) was existing law on July 1, 1949, and continued to remain in force by virtue of Ordinance 1 of 1124 (M.E.). The notification issued in exercise of the power u/s 1(3) of the Travancore Act 14 of 1124 (M.E.), the reference of the cases of the petitioners, the appointment of the authorised officials and the proceedings under the Act could not be questioned because Section 1(3) was existing law on July 1, 1949.

8. In 282244 the contention that Travancore Act 14 of 1124 (M.E.) was not law in force until a notification was issued bringing into operation the provisions of the Act, authorising the appointment of a Commission, and referring the cases of tax-payers to the Commission, was rejected. The Court held that Section 1(3) was in operation on July 1, 1949 and the power to bring into force the provisions of the Travancore Act was exercisable by the successor State. It was not held that the other provisions of the Act were in force even before an appropriate notification was issued. In the case in hand Section 1(3) of the principal Act was in force, but Ch. IV of the Act was not brought into force. The argument that provisions of the Act which by a notification could have been but were not brought into force, must still be deemed to be law in force, derives no support from the case relied upon.

9. Section 1(3) of Act 16 of 1960 is undoubtedly a law in force, but until the power is exercised by the State Government to issue an appropriate notification, the provisions of Ch. IV could not be deemed to be law in force, and since no notification was issued before Ch. IV of the principal Act was repealed, there was no ceiling limit applicable to the landholders under any law for the time being in force which attracted the application of the second proviso to Article 31-A.

10. The appeals must, therefore, be allowed, and the order passed by the High Court declaring Ch. IV of Act 13 of 1965 amending Act 16 of 1960 ultra vires, be set aside. The State will get its costs in this Court from the respondents. There will be one hearing fee. There will be no order as to costs in the High Court.