(1954) 07 BOM CK 0020

Bombay High Court

Case No: Special Civil Application No''s. 122, 462 and 463 of 1954

Champrajbhai Harsurbhai		APPELLANT
	Vs	
The State of Bombay		RESPONDENT

Date of Decision: July 27, 1954

Acts Referred:

- Constitution of India, 1950 - Article 31, 31A, 81

Citation: (1954) 56 BOMLR 1072

Hon'ble Judges: M.C. Chagla, C.J; Dixit, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

M.C. Chagla, C.J.
This is a petition by the Mulgirasias of the Amreli district and by this petition they challenge the validity of Act XLV of 1953. In substance, the effect of the Act is to deprive the petitioners of their estate, to convert them into occupants within the meaning of the Land Revenue Code and to make them liable to pay land revenue. Now, the Act is challenged on. the same grounds that were urged in challenging the Bombay Personal Inams Abolition Act, 1953, in Gangadharrao Narayanrao Muzumdar and Others Vs. State of Bombay, (Special Application No. 393 of 1954). and we have dealt at some length with the constitutional challenge to that Act. The constitutional challenge is repeated by Mr. Purshottam, but he has urged that various considerations were not examined in that judgment and, therefore, he has sought to elaborate the argument which was urged in that application.

2. Now, in the first place Mr. Purshottam has urged that it is erroneous to talk of a Mulgiras estate or tenure. He contends that the expression "Mulgiras" is descriptive of status and not of an interest in land. He says that his clients'' ancestors were independent chieftains and they got possession of the lands not by any grant from the sovereign or from the State but by annexation and, therefore, they do not hold

these lands from any superior holder. Therefore, a contention is put forward that Article 31A does not apply to the peculiar interest which the petitioners had in the lands which belonged to them. Now, a similar argument was advanced in Jhalamsing Dungarbhai v. State of Bombay (1954) Spl. Appln. No. 419 of 1954, decided by Chagla C.J., and Dixit J., on July 26, 1954. (Unrep.) which challenged Act No. XLVIII of 1953 which was for the purpose of abolishing matadari tenure. In this case also there cannot be the slightest doubt that the Legislature intended to abolish whatever interest the petitioners might have in their lands because not only does the Act refer to Mulgiras tenure but in the schedule annexed to the Act the Mulgiras villages in the District of Amreli arc described and it is not disputed that the first six villages described in the schedule are the villages belonging to the petitioners. Therefore, apart from the constitutionality of the Act and the competency of the Legislature, one fact is clear that the Legislature intended to do away with the particular interest in the lands which the petitioners had, to reduce them to the same position as that of occupants under the Land Revenue Code and to compel them to pay land revenue. Therefore, we do not see much materiality in the contention that the "Mulgiras estate" is not a proper expression to apply to the interest which the petitioners had in their lands. Whether it is a proper expression or not, whether it can be said of the petitioners that they have an estate, whether it can be said that they have a tenure, the fact remains-and that fact is sufficient-that the specific villages which the petitioners own and hold were sought to be affected by the legislation which is challenged.

3. It is urged by Mr. Purshottam that the expression "estate" in Article 31A does not apply to any and every interest in land. We have had occasion to point out in Gangadharrao Narayanrao v. State of Bombay that the expression "estate" has the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and we pointed out. that under the Land Revenue Code "estate" is defined as any interest in land. Mr. Purshottam has attempted to argue that the Land Revenue Code has not been applied to these villages and, therefore, the meaning of the expression appearing in the Land Revenue Code cannot be made applicable to the interest which the petitioners have in the lands. We cannot accept that argument. It is not disputed that the Land Revenue Code applies to the whole State of Bombay except the City of Bombay and the mere fact that certain provisions of the Land Revenue Code are not made applicable to these villages does not deprive the Land Revenue Code either of its validity or of its operation. A law may be applied to a particular local area and at the same time all its provisions may not be in force. But because certain provisions are not in force one cannot say that the law as such is not in force in that local area. It would be erroneous to contend that the Land Revenue Code does not apply to these villages in Amreli. The Advocate General has pointed out that when the merger took place, the Land Revenue Code was made applicable to Baroda including this part of the Baroda State. In our opinion-an opinion which we have expressed in

Gangadharrao''s case-the whole object of Parliament when it amended the Constitution was to give to the expression "estate" the widest meaning. Parliament was not concerned with the niceties of tenures or the question whether land was held by one person from a superior holder. The legislation with which the Parliament was dealing was in its very nature intended to be confiscatory, and when confiscatory legislation has to be brought within the ambit of the Constitution, there is no point in making fine distinctions between one tenure and another and one estate and another. Therefore, we adhere to the view that we took in Gangadharrao''s case with regard to the meaning of estate and in our opinion inasmuch as the petitioners had an interest in land within the meaning of the Land Revenue Code, it is an estate covered by Article 81A.

4. Mr. Purshottam has again attempted to argue a point which we fully considered in the other application with regard to public purpose being still justiciable if Article 31A applied. He has pointed out the distinction between Article 81(4) and Article 81A and he says that whereas Article 81(4) refers to the provisions of Clause (2) of Article 31, Article 81A refers to the rights conferred by any provisions of Part III and therefore he says that although the decision of the Supreme Court on which we have relied may be correct as far as Article 31(4) is concerned, the reasoning of that judgment would not apply when we come to Article 31A. In our opinion, there is no substantial difference between the expression "the provisions of Clause (2)" and the rights conferred by that clause. Now, the distinction that Mr. Purshottam has sought to make is that compensation is a right to which a citizen is entitled on acquisition of his property, which right is safeguarded by Article 81(2), public purpose, according to Mr. Purshottam is a condition precedent to any legislation for acquisition of property and therefore, according to him, whereas the question of compensation may not be justiciable if Article 31A applies, public purpose would still be justiciable, because it is not a right contemplated by Article 31A. In our opinion, that argument also is not tenable. There are two ways of looking at the same question. It may be said that public purpose and compensation are conditions precedent to any valid legislation with regard to acquisition of property. We fail to see why only public purpose is a condition precedent and not compensation. If one looks at the same matter from another point of view, it would be equally true to say that the fundamental rights guaranteed to a citizen under Article 31(2) are that his property cannot be taken away without compensation being given to him and without the property being acquired for a public purpose. Therefore, in one sense public purpose and compensation are both rights guaranteed to a citizen; in another sense they are conditions precedent to the validity of any legislation on the question of acquisition. In one sense the expression "condition precedent to legislation" is not a very precise expression because, as we have had occasion to point out, the competency of legislation is to be determined by the powers conferred upon the Legislature under the 7th Schedule, and the view which we took, and which is now confirmed by the Supreme Court, was that under entry 86 of List II, the State

Legislature had the competence to acquire or requisition property even when no public purpose was subserved. But if it passed such a legislation which would be competent legislation it would be void because it would contravene the provisions of Article 31(2), Therefore, a competent legislation with regard to acquisition of property must respect the fundamental rights guaranteed to the citizen under Article 81(2) and the two fundamental rights are his right to receive compensation and his right not to have his private property taken away except for a public purpose. Mr. Purshottam has tried to paint a very gruesome picture of the terrible results that might follow upon our interpretation that the Legislature is no longer bound to subserve public interest in acquiring property if that property falls under Article 31A. We see no such danger as envisaged by Mr. Purshottam. What the amendment to the Constitution has done is to take away from the purview of the judiciary the question whether a particular purpose for which property is acquired is public purpose or not. It does not mean that the Legislature is left at large to acquire private property in order to benefit other private individuals. In doing what the amendment has done, Parliament has expressed its confidence in the good sense of the Legislature. It has prevented legislation which, as we have already said, is obviously of a confiscatory nature from being assailed and attacked in Courts of law on the ground of the legislation not being for public purpose. But because public purpose is not justiciable, it does not follow that the Legislature would legislate and acquire property for a purpose which does not subserve the larger interest of society. Mr. Purshottam says that it is not always safe to trust Legislatures, that our interpretation may result in oppression and in methods being adopted which are more known to dictatorial countries than to democracies. We do not understand why it is a greater oppression to a citizen to have his property taken away without compensation than when his property is taken away for a purpose which is not a public purpose. To the ordinary man who is not interested in high principles of public life what is of more importance is that he should get a proper compensation for his property. If he receives proper conpensation, he is not interested as to what is done to that property. Mr. Purshottam thinks that the average citizen is more interested in seeing that his property is acquired for public purpose and not that he should receive proper compensation because admittedly-and even Mr. Purshottam concedes it-if Article 31A applies, the question of compenation is no longer justiciable. But if Parliament could take away from the Courts their jurisdiction to decide questions of compensation, it is difficult to understand why they could not equally take away the jurisdiction of the Courts to decide questions of public purpose. In our opinion, from the point of view of the ordinary citizen the question of compensation is much more important than the question of public purpose. Therefore, the challenge to this Act must also fail as the challenge both to the Personal Inams Abolition Act and to the Act dealing with the Matadari estates on the grounds which we have dealt with in Gangadharrao v. State of Bombay and Jhalamsinq Dungarbhai v. State of Bombay.

5. The petition is dismissed with costs. The same order on the other petitions. Taxed costs in the first petition and Rs. 80 each in the rest.