N. B. Jeejeebhoy vs Assistant Collector, Thana Prant, ... on 5 October, 1964

Equivalent citations: 1965 AIR 1096, 1965 SCR (1) 636, AIR 1965 SUPREME COURT 1096, 1965 MPLJ 114, 1965 (1) SCR 636, 1965 2 SCJ 457, 1964 2 SCWR 254, 1965 BOM LR 115

Bench: K.N. Wanchoo, M. Hidayatullah, Raghubar Dayal, S.M. Sikri

PETITIONER:
N. B. JEEJEEBHOY

Vs.

RESPONDENT:
ASSISTANT COLLECTOR, THANA PRANT, THANA

DATE OF JUDGMENT:
05/10/1964

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
WANCHOO, K.N.
HIDAYATULLAH, M.
DAYAL, RAGHUBAR
SIKRI, S.M.

CITATION:
1965 AIR 1096 1965 SCR (1) 636
CITATOR INFO :
F 1967 SC 637 (8)
R 1967 SC1110 (13)
R 1968 SC 377 (13,16)
R 1968 SC1138 (9)
R 1968 SC1425 (11)
R 1969 SC 634 (1,18,41,49)
RF 1970 SC 564 (96)
RF 1973 SC1461 (483,624,757,1075,1077,1342,15
D 1984 SC1178 (15,16)

ACT:
Government of India Act, 1935, s. 299-"Compensation", meaning of The Land Acquisition (Bombay Amendment) Act, 1948-Violative of s. 299(2) -If saved by Arts. 31(5)(a), 31-A and 31-B of the Constitution of India

HEADNOTE:

The appellant's lands were acquired for the purpose of a housing scheme. The requisite notification were issued under s. 4 of the Land Acquisition Act, 1894, in May 1948 and under s. 6 in July and August 1949, and possession of the lands was taken under s. 17 in December 1949.

In the course of proceedings for the ascertainment of compensation payable to the appellants, both the Land Acquisition Officer and the District Court, to which the matter was referred, awarded compensation in accordance with the provisions of the Land Acquisition (Bombay Amendment) Act, 1948, i.e., on the basis of the value of the lands as on January 1, 1948 and not upon the value on the date of the s. 4 notification.

On appeal it was held by the High Court that though the Bombay Amending Act was hit by Art. 14 it was saved byArt.

31 -A and that under s. 299 of the Government of India Act, 1935, which governed the statute, the compensation for compulsory acquisition did not necessarily mean equivalent in value to what the owner had been deprived of.

HELD: (i) Ascertainment of compensation on the basis of the value of the lands acquired as on the 1st January 1948 and not as on the date on which the s. 4 notification under the 1894 Act was issued, in the absence of any relevant circumstances requiring the fixing of an anterior date, was arbitrary. [643 A-B].

Therefore, the Land Acquisition (Bombay Amendment) Act, 1948, did not satisfy the requirements of s. 299(2) of the Government of India Act, 1935, in that it did not provide for "compensation" in the nature of "just. equivalent" of what the owner was deprived of, and was therefore void. [644 G-H; 645 A].

(ii) The provisions of Art. 31(2) and s. 299(2) relating to compensation were pari materia with each other and in the context of the payment or ascertainment of compensation there was no distinction between the two provisions justifying a different interpretation of each and for giving a more restricted meaning to s. 299(2). [641 E-F; 643 B-C; 644 A-B].

State of West Bengal v. Mrs. Bela Banerjee, [1954] S.C.R. 558, followed.

(iii) The decision in Mrs. Bela Banerjee's case was not based on the circumstance that the court, in that case, was dealing with a permanent Act. On principle, in the context of ascertainment of compensation, there was no jurisdiction for a distinction solely because once was a permanent and another a temporary Act. [644 C-D].

637

(iv) The Bombay Amend Act being void at the inception, was not an "existing law" within the meaning of Art. 31(5)(a) or Art. 31-A at the date of the commencement of the constitution and could not therefore be saved by either of

these provisions. [646 A, C-D, G].
H. p. Khandalwal v. State of U.P. A.I.R. 1955 All. 12, The Asstt. Collector, Thana Prant, Thana v. Jumnadas Gokuldas Patel, I.L.R. 1959 Bom. 98 and State of West Bengal v. Bon Behari Mondol, A.I.R. 1961 Cal. 112, referred to.
Dhiruba Devisingh Gohil V. State of Bombay. [1955] 1 S.C.R. 691 and State of U.P. v. H.H. Maharaja Brijendra Singh I.L.R. [1961] 1 All. 236. distinguished.
Article 31-B is not governed by Art. 31-A nor is it merely illustrative of cases that would otherwise fall under Art. 31-A. Article 31-B is a constitutional device to place the specified statutes beyond any attack on the ground that they infringe Part III of the Constitution. [648 E-H]
649 Al.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 775 and 776 of 1962.

Appeals from the judgment and decree dated March 26, 1958, of the Bombay High Court in First Appeals Nos. 318, 611 of 1954.

J. C. Bhat, and R. P. Bhat, for the appellant (in both the appeals).

C. K. Daphtary, Attorney-General, N. S. Bindra, R. H. Dhebar and B. R. G. K. Achar, for the respondent (in both the appeals).

N. A. Palkhivala, and R. A. Gagrat, for Interveners Nos. 1 and 2.

Purshottam Trikamdas, J. B. Dadachanji, Ravinder Narain, and K. R. Chaudhuri, for Interveners Nos. 3 and 4. The Judgment of the Court was delivered by Subba Rao J. These two appeals are directed against the judgment and decree of the High Court of Judicature at Bombay modifying those of the Civil Judge, Senior Division, Thana, in a reference arising out of land acquisition proceedings.

On May 28, 1948, the Government of Bombay issued, a notification under s. 4 of the Land Acquisition Act, 1894, notifying that certain lands belonging to the appellant, along with lands belonging to others, were likely to be needed for the Government Housing Scheme, a public purpose. Notifications under s. 6 of the Land Acquisition Act were issued on July 14, 1949, August 1, 1949, and August 11, 1949. On December 31, 1949, possession of the lands so notified was taken under s. 17 of the Land Acquisition Act. The Land Acquisition officer classified the said lands into six groups based upon certain criteria. Some of the lands of the appellant fell in group Nos. 4 and 5, and his khajan lands fell in group No. 6. He valued the khajan lands at Rs. 500 per acre, i.e., at anna 1 pies 7 1/2 per sq. yard, and the lands in group No. 4 at Rs. 1-6-0 per sq. yard, and. those in group No. 5 at Rs. 1-4-0 per sq. yard. Though the appellant claimed before the Land Acquisition Officer Rs.

44,02,858-8-0 as compensation for the land and Rs. 10,696-14-0 as loss of assessment, the said Officer awarded a total amount of Rs. 1,31,096-4-0 as compensation. The appellant filed an application under S. 18 of the Land Acquisition Act for a reference to the District Court questioning the correctness of the compensation awarded to him by the land Acquisition Officer. His reference was numbered as References No. 55 of 1953. The learned Civil Judge, Senior Division, Thana, heard that reference along with others made at the instance of different claimants and gave his award on November 30, 1953. The learned Civil Judge increased the compensation in respect of the khajan lands from 1 anna and 7 1/2 pies per sq. yard to as. 8 per sq. yard, and in respect of lands in groups 4 and 5 he increased the compensation by as. 2 per sq. yard : in the result, he awarded compensation in the sum of Rs. 2,97,676-15-0 instead of Rs. 1,31,096-4-0 awarded by the Land Acquisition Officer. The point to be noticed is that the learned Civil Judge valued the lands as on January 1, 1948, though the notification under s. 4 of the Land Acquisition Act was issued on May' 28, 1948, as under the provisions of the Land Acquisition (Bombay Amendment) Act, 1948 (Bombay Act IV of 1948), hereinafter called the Amending Act, the former date was the crucial date for awarding compensation. He further did not award the additional 15 per cent of the market value of the lands as solatium for compulsory acquisition, as under the Amending Act, unlike under the Land Acquisition Act, 1894, no solatium was provided for. Both the appellant and the respondent preferred appeals to the High Court against the said award, the appeal filed by the appellant being First Appeal No. 611 of 1954 and that filed by the respondent being First Appeal No. 318 of 1954. The High Court heard the said appeals along with the appeals filed by other claimants and delivered a common judgment on March 26, 1958. The High Court held that though the Act was hit by Art. 14 of the Constitution, it was saved by Art. 31-A thereof and that under s. 299 of the Government of India Act, 1935, which governed the statute, the compensation for compulsory acquisition did not necessarily mean equivalent in value to the owner of what he had been deprived and, therefore, the Amending Act was valid. In the result, it allowed the appeal filed by the respondent by restoring the award of the Land Acquisition Officer in respect of the khajan lands and dismissed the appeal filed by the appellant. Hence the, appeals.

We have heard the arguments of Mr. Bhat for the appellant, Mr. Palkhivala for the interveners, the Attorney-General for the respondents and the counsel representing the Advocates- General of some of the States to whom notices were issued by the Court.

Mr. Bhat, appearing for the appellant, raised before us the following points : (1) The Amending Act being a pre- Constitution Act, was governed by s. 299 of the Government of India Act, 1935, and as it did not provide for payment of compensation for property acquired in the sense the said expression was interpreted by this Court, the said Act was void. (2) The Act infringed Art. 14 of the Constitution. And (3) it was not saved under Art. 31-A of the Constitution, as, though the land acquired was an "estate" within the meaning of the said provision, the acquisition had no concern with agrarian reforms or even with the regulation of village economy as laid down by the decisions of this Court.

Learned Attorney-General appearing for the respondent contended that the said Act was covered by Art. 31-A of the constitution and, therefore, its validity could not be questioned on the ground that it contravened either Art. 14 or Art. 31 of the Constitution. Assuming that his contention was wrong,

he proceeded to argue that the Amending Act was saved by Art. 31 (5) (a) of the Constitution and, therefore, the question of the adequacy of the compensation could not be questioned in court, He further sought to ward off the attack based on Art. 14 of the Constitution on the foot of the doctrine of classification.

The first question is whether the Amending Act was void on the ground that it did not comply with the provisions of s. 299 of the Government of India Act, 1935. To appreciate the contentions of the parties it would be convenient to notice at the outset the provisions of the Amending Act. The impugned Act was passed for the purpose of acquiring lands for Housing Schemes. It is a short Act consisting of three sections. It extends to the whole of the State of Bombay. At the time of enactment its life was fixed at 5 years, but later on extended to 10 years, and by Bombay Act XXIV of 1958 it was extended further to 20 years. Under the Amending Act, "housing scheme" is defined to mean "any housing scheme which the Government may from time to time undertake for the purpose of increasing accommodation for housing persons 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." Section 3 makes some changes in the Land Acquisition Act. The expression "public purpose" in s.3 (f) of the Land Acquisition Act includes a housing scheme as defined in the Amending Act. By s. 3 (1) (c) of the Act in the first clause of sub-section (1) of s. 23 of the Land Acquisition Act, after the words, brackets and figures "section 4, sub-section (1)" the words "or at the relevant date, whichever is less" have been inserted. "Relevant date" is defined to mean the 1st day of January 1948, and subs. (2) of s. 23 has been omitted. The result is that under the Amending Act if a land is acquired for a housing scheme, the person whose land is acquired will not be entitled to the market value of the land at the date of the publication of the notification but only to the market value of the land at the date of the said notification or on January 1, 1948, whichever is less and he will not be entitled to a sum of 15 per cent on the market value as solatium in consideration of the compulsory nature of the acquisition. In short, the Amending Act provides for acquiring lands for housing schemes on the payment of compensation which is likely to be less than that payable if the land is acquired under the Land Acquisition Act. The Amending Act, being a pre-Constitution Act, was governed by s. 299 of the Government of India Act, 1935. Subsection (2) of s. 299 of the Government of India Act, 1935, read as follows :

> "Neither the Dominion Legislature nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, and, 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."

Under this sub-section the power to make any law by an appropriate legislature was subject to the conditions laid down therein.

The power thereunder could not be exercised unless the conditions were complied with. They were fetters on the legislative power. Section 299 of the Government of India Act in express terms said

that the appropriate legislature had no power to make any law authorising the compulsory acquisition for public purposes of any land etc. unless the law provided for the payment of compensation for the property acquired. If "compensation" was not so provided, it affected the competency of the appropriate Legislature to make the said law. If it did not have power, the law so made was a nullity. It is as if it did not exist on the statute book.

The question is whether the Act provides for compensation within the meaning of s. 299(2) of the Government of India Act, 1935. This Court had the occasion to construe the meaning of that expression in Art. 31(2) of the Constitution before it was amended by the Constitution (Fourth Amendment) Act, 1955. Under cl. (2) of Art. 3 1, no property shall be taken possession of or acquired for a public purpose unless the law provides for compensation for the property taken possession of or acquired and either fixer. the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined and given. Both under s. 299 of the Government of India Act, 1935, and Art. 31(2) of the Constitution, fixation of the amount of compensation or specification of the principles on which and the, manner in which it is to be determined are necessary conditions for a valid acquisition. Indeed, the relevant parts of the said two provisions are pari materia with each other. The scope of the said conditions fell to be considered in The State of West Bengal v. Mrs. Bela Banerjee(1). That case was dealing with the West Bengal Land Development and Planning Act, 1948, which was passed primarily for the settlement of immigrants who had migrated into West Bengal due to communal disturbances in East Bengal, and which provided for the acquisition and development of land for public purposes including the said purpose. Under that Act it was provided that the amount of compensation paid thereunder should not exceed the market value of the land on December 31, 1946; that is to say, even if the notification under s. 4 or under s. 6 of the Land Acquisition Act was issued long after the said date, the market value of the land acquired could only be the market value of the said land on the said date. After reading the (1) [1954] S.C.R. 558, 563-564.

relevant Articles of the Constitution, this Court proceeded to state :

> "While it is true that the legislature is 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, such 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. 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. Whether such principles take into account all the elements which make up the true value of the property appropriated and exclude matters which are to be neglected, is a justiciable issue to be adjudicated by the court."

Applying the said principles to the facts of the case before it, this Court held thus :

> "Considering that the impugned Act is a permanent enactment and lands may be acquired under it many years after it came into force, the fixing of the market value

> on December 31, 1946, as the ceiling on compensation, without reference to the value of the land at the time of the acquisition is arbitrary and cannot be regarded as due compliance in letter and spirit with the requirement of article 31 (2). 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."

This decision lays down the following principles : (1) The expression "compensation" in Art. 31(2) of the Constitution means "just equivalent" of what the owner has been deprived of; (2) the principles laid down by the Legislature shall be only for the determination of the compensation so defined; (3) whether the principles have taken into account the relevant elements to ascertain the true value of the property acquired is a justiciable issue; and (4) the fixation of an anterior date for the ascertainment of the value of the property acquired without reference to any relevant circumstances which necessitated the fixing of an earlier date for the purpose of ascertaining the real value is arbitrary. In our view, the principles laid down in this judgment directly govern the situation arising under s. 299 of the Government of India Act, 1935. In the context of the payment of compensation and prescribing of principles for ascertaining the amount of compensation, we cannot discover any relevant distinction between the two provisions so as to compel us to give a meaning to the expression "compensation" under s. 299 of the Government of India Act, 1935, different from that given to that expression in Art. 31(2) of the Constitution by this Court. The High Court refused to rely upon the said decision in construing s. 299 of the Government of India Act, 1935, for the following reasons :

> "But the context in which Art. 31 of the Constitution occurs is entirely different from the context in which s. 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 circum-stance that under s. 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 Art. 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."

We do not see how the said distinction between the two provisions would make any difference in the matter of construing the meaning of similar words and expressions used in both the provisions. It must also be remembered that the wording in the last part of s. 299 of the Government of India Act, 1935, was bodily lifted and introduced in Art. 31 (2) of the Constitution and, therefore, it is reasonable to assume that at any rate when the Constitution was originally framed the intention was not to give a different meaning to the said wording. If the intention of the Constitution- makers was to give a different meaning, they would have used appropriate words like "price", consideration' etc. to indicate that they were departing from the framework of S. 299 ,of the Government of India Act,

1935. We cannot, therefore, share the opinion of the High Court that the expression "compensation" in s. 299 of the Government of India Act, 1935, should be, given a meaning more restricted than that given by this Court to the said expression in Art. 31(2) of the Constitution. Both must bear the same meaning. If so, the expression " compensation" in s. 299 of the Government of India Act, 1935, means a "just equivalent" of what the owner has been deprived of. Learned Attorney- General contends that the said decision has relevance only to a permanent enactment and that, as the Amending Act, when enacted, was only for 5 years, the said decision is not applicable. It is true that this Court was considering an enactment which was permanent in character; but that ,only represented the factual position and this Court did not base its decision on that circumstance. On principle, in the context of ascertainment of compensation there cannot be any justification for drawing a line solely based on the distinction between a permanent Act and a temporary one. Suppose a temporary law passed for 15 years in the year 1948 prescribed that the compensation in respect of the land acquired thereunder should be ascertained on the basis of its market value in the year 1930. Can it be said that the circumstance that the Act was temporary would make the compensation fixed anything arbitrary? 'it is true that an earlier date may be fixed for ascertaining the value of the property acquired if it falls within the process of acquisition or for any other relevant reason. But these are all special circumstances which are not present in the instant case. That apart, the Amending Act though initially was only for 5 years, the life of the Act was being extended from time to time and the latest extension was for 20 years and it may have a further lease of life. In effect and substance the Amending Act has turned out to be as good as a permanent one.

The Amending Act in the matter of fixing compensation demonstrably contravened the provisions of S. 299 of the Government of India Act, 1935. Under the Amending Act, as we have already noticed, though a land May be acquired subsequent to the said Act, the compensation payable in respect thereof will be the value of it as on January 1, 1948. Under the Amending Act the said dating back has no relevance to the matter of fixing the compensation for the land. It is not a "just equivalent" of what the owner has been deprived of, for the value of the land on that date may be far less than that obtaining on the date of the notification under s. 4 of the Land Acquisition Act. We, therefore', hold that the Amending Act was void as the Legislature made it in contravention of the express provisions of s. 299 of the Government of India Act. It was a still bom law.

The attempt to save the Amending Act under Art. 31(5) (a) of the Constitution, in our view, cannot also succeed. The material part of Art. 31 (5) (a) reads :

> "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) of Art. 31 reads :

> "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."

A combined reading of these two provisions discloses that cl. (2) of Art. 31 of the Constitution shall not affect any existing law except a law of a State enacted not more than 18 months before the commencement of the Constitution unless such law was submitted within three months from such commencement to the President for his certification and the President certified it in the manner prescribed therein. The Amending Act does not fall under the exception. So, the only question is whether the Act was an existing law at the commencement of the Constitution. Learned Attomey-General contends that the expression "existing law" does not mean valid law and that if a law was factually made before the Constitution, it would be an existing law under the Constitution notwithstanding that it infringed cl. (2) of Art. 31 of the Constitution. Before cl. (5) of Art. 31 can be invoked there must be an existing law. "Existing law"

> under Art. 366(10) means, "any law, Ordinance, order, bye- law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such law, Ordinance, order, bye-law, rule or regulation". To have the status of an existing law, the law should have been made by a Legislature having power to make such law. We have held that the Amending Act was still-born and it was void at the inception. Therefore, it was not an "existing law" within the meaning of Art. 31(5) of the Constitution. Further, a comparison of the provisions of cls. (5) and (6) shows that in the latter the non-compliance of the provisions of s. 299 of the Government of India Act, 1935, was expressly saved, if the conditions laid down therein were satisfied. while in the former no such express protection was given and, therefore, no resuscitation of a dead law was possible thereunder.
>
> This argument was repelled by a Division Bench of the Allahabad High Court in H. P. Khandewal v. State of U.P.(1); by the Bombay High Court in The Assistant Collector, Thana Prant, Thana v. Jamnadas Gokuldas Patel(2); and by the Calcutta High Court in The State of West Bengal v. Bon Behari Mondal(3). For the reasons aforesaid, we hold that Art. 31(5) of the Constitution also does not save the amending Act.
>
> Nor can we hold that Art. 31-A of the Constitution saves the Act. The argument of the learned Attorney-General is that S. 299 of the Government of India Act, 1935, declared a fundamental right of a citizen, that it was bodily lifted and introduced by the Constitution in Art. 31 (2) thereof and that if Art. 31-A saved an attack against the An-lending Act on the ground that it infringed Art. 31(2) thereof it would equally save the attack based on the infringement of s. 299(2) of the Government of India Act, 1935. The argument is far-fetched. Article 31-A says that no law pro- viding 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, or takes away or abridges any of the rights conferred by Art. 14, Art. 19 or Art. 31. If a particular statute attracts Art. 31-A (1)(a), it cannot be invalidated on

the ground that it does not comply with the provisions of Art. 31(2) of the Constitution, namely, that the Act has not fixed the amount of compensation. But Art. 31 -A cannot have any bearing in the context of an Act which had no legal existence at the time the Constitution came into force. It does not purport to revive laws which were void at the time they were made. The analogy drawn between a fundamental right under Art. 31(2) and the conditions laid down in s. 299 of the Government of India Act, 1935, if it has any justification, is irrelevant in the context of a pre-Constitution void law. In this view, Art. 31 -A does not come into the picture at all. The (1) A.I.R. 1955 All. 12. (2) I.L.R. [1959] Bom. (3) A.I.R. 1961 Cal. 112.

learned Attorney-General relied upon two decisions of this Court, namely, Dhirubha Devisingh Gohil v. The State of Bombay(1), and The State of U.P. v. H. H. Maharaja Brijendra Singh (2). In the first case the validity of the Bombay Taluqdari Tenure Abolition Act, 1949 (Bombay Act LXII of 1949) was impugned on the ground that it took away or abridged the fundamental rights conferred by the Constitution. The said Act, was passed in the year 1949. It received the assent of the Governor-General on January 18, 1950, and was gazetted on January 24, 1950. It was contended that, as the conditions laid down in cl. (6) of Art. 31 of the Constitution were not complied with, the Act was void inasmuch as it was made in violation of the provisions of s. 299 of the Government of India Act, 1935. But as the Act was one of the Acts specified in the Ninth Schedule to the Constitution, being item 4 thereof, this Court held that on the language used in Art. 31-B of the Constitution the validity of the Act could not be questioned on the ground of infringement of s. 299 of the Government of India Act, 1935. In that context, this Court observed "This is clearly a case where the concerned right which was secured under section 299 of the Government of India Act in the form of a fetter on the competency of the Legislature and which in substance was a fundamental right, was lifted into the formal category of a fundamental right along with other fundamental rights recognised in the present Constitution.. There is, therefore, nothing inappropriate in referring to this right which was preexisting, along with the other funda- mental rights for the first time secured by this Constitution. when grouping them together, as fundamental rights conferred" by the Constitution. What is important to notice in the phraseology of Article 31-B is that the protection is not merely against the contravention of certain provisions but an attack on the ground of unconstitutional abridgement of certain rights. It will be illogical to construe Article 31-B as affording protection only so far as these rights are taken away by an Act in violation of the provisions of the new Constitution but not when they are taken away by an Act in violation of section 299 of the Government of India Act which has been repealed. The intention of the Constitution to protect each and every one of the Acts specified in the Ninth Schedule from any challenge on the ground Of (1) [1955] 1 S.C.R. 691, 696-697.

(2) I.L.R. (1961) 1 All. 236.

L2Sup./65 --16 violation of any of the fundamental rights secured under Part III of the Constitution, irrespective of whether they are pre-existing or new rights, is placed beyond any doubt or question by the very emphatic language of Article 31 -B which declares that none of the provisions of the specified Acts shall be deemed to be void or ever to have become void on the ground of the alleged violation of the rights indicated and "notwithstanding any judgment, decree or order of any court or

tribunal."

This judgment was followed by this Court in the second decision cited above. The said decisions turned upon the express provisions ,of Art. 3 1 -B of the Constitution. Though the observations therein appear to be wide, they have no bearing on the question whether the Act was void before the Constitution came into force. The question whether a particular Act was void before the Constitution came into force would not arise if the Constitution itself included the said Act in the Ninth Schedule and declared that the said Act should not be deemed to be void or even to have become void. It was possible to construe the expression "any rights conferred by any provisions of this Part" so as to include similar preexisting rights under the Government of India Act, 1935, but such a construction would be quite out of place in the context of the question whether the Legislature had the legislative competency to make the law before the Constitution came into force. The learned Attomey-General contended that Art. 31-A and Art. 3 1 -B should be read together and that if so read Art. 3 1 -B would only illustrate cases that would otherwise fall under Art. 31-A and, therefore, the same construction as put upon Art. 3 1 -B should also apply to Art. 3 1 -A of the Constitution. This construction was sought to be based upon the opening words of Art. 3 1 -B, namely, "without prejudice to the generality of the provisions contained in article 31- A". We find it difficult to accept this argument. The words, "without prejudice to the generality of the provisions", indicate that the Acts and regulations specified in the Ninth Schedule would have the immunity even if they did not attract Art. 3 1 -A of the Constitution. If every Act in the Ninth Schedule would be covered by Art. 3 1

-A, this Article would become redundant. Indeed, some of the Acts mentioned therein, namely, items 14 to 20 and many other Acts added to the Ninth Schedule, do not appear relate the estate as defined in Art 31-B is not governed by art .31

-A and that Art 31-B is a constitutional device to place the specified statutes beyond any attack on the ground that they infringe Part III of the Constitution. We, therefore, hold that, as the Amending Act was void from its inception, Art. 31 -A could not save it.

As we have held that the Amending Act is void, it is not necessary to express our opinion on the question whether it infringes the provisions of Art. 14 of the Constitution. We, therefore, hold that the Amending Act was void at its inception and that the lands acquired should be valued in accordance with the provisions of the Land Acquisition Act, 1894. In the result, the decree of the High Court is set aside and the appeals are remanded to the District Court with the direction that it should dispose them of in accordance with law. The respondents will pay to the appellants the costs of this Court and costs of the High Court. The costs of the District Court will abide the result.

Appeals remanded.