Smt. Sitabati Debi &.Anr vs State Of West Bengal & Anr on 1 December, 1961

PETITIONER:
SMT. SITABATI DEBI &.ANR.

Vs.

RESPONDENT:
STATE OF WEST BENGAL & ANR.

DATE OF JUDGMENT:
01/12/1961

BENCH:

ACT:
Constitution of India, 1950. Arts. 19 and 3,1(1) and (2)-Law under Art. 31(2)-If subject to Art. 19(1)(f).

HEADNOTE:
Before the Constitution (Fourth Amendment) Act, 1955, it had been held by this Court in Bhanit Munji's case [1955] 1 S.C.R. 777 and other earlier cases, that both clauses (1) and (2) of the, Art. 31 of the Constitution dealt with a law giving power to the State 'to acquire or requisition property I , and that, Art. 19 (1) (f) was not attracted to such a law. After the Amendment, in Kochuni's case [1960] 3 S.C.R. 887, this Court held that of the Art.- 31 alone dealt with acquisition and requisition of property by the, State., that cl. (1) dealt with, deprivation of property in other ways, and that, a law under cl. (1) had to satisfy the test of reasonablenss under Art. 19(1). The court also observed that Bhanji Munii's case "no longer holds the field". This Court, in Babu Barkva Thakur's case, [1961] 1 S.C.R. 128, decided after Kochuni's case held that an Act providing for acquisition or requisition of property by the State could not be attacked for the, reason that it, offended Art. 1.9 (I.) (f).
The appellant's land was requisitioned under the West Bengal Land (Requisition and Acquisition) Act, 1948 and she questioned the validity of the Act by a writ petition in the High Court on the ground that it offended Art.19(1) (f). The High court followed the decision in Barkvao Thakur's case and dismissed the petition.
In appeal to this Court it was contended, that Barkva Thakur's case Was based on Bhanj Munji's case which had lost its authority in view of Kochuni's case and that therefore, should not have been followed.

HELD:Kochuni's. case was not concerned with a law of requisition or acquisition- Therefore, the observation in that case has to be understood as only meaning that Bhanii Munji's case no longer,govems.a case of deprivation of property by means other than requisition and acquisation by the State. There is thus no conflict between Birkva Thaur's case and kochuni's case with respect to acquisition and requisition of property by the State under Art.-, 31(2) and; therefore the validity of an Act relating to acquisitioa or requisition cannot be questioned on the ground that it offends Art. 19(1) (f) and need not be tested by the criterion in Art. 19(5).[951 F-H; 952 B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 322 of 1961.

Appeal by special leave from the judgment and Order dated January.31, 1961 of the Calcutta High Court, in Civil Rule No. 2112 of 1957.

Arun Kumar Dutta and D. N. Mukherjee, for the 'appellants.

S. M. Bose,Advocate-General for the State of West Bengal, S. C. Bose andP. K. Bose, for the respondents. The Judgment of the Court was delivered by Sarkar, J. In this case the validity of the West Bengal Land .(Requisition and Acquisition) Act, 1948 was questioned by the ,appellants by a petition moved under Art. 226 of the Constitution in the High Court at Calcutta. The High Court having dismissed the petition, the appellants have filed this appeal with special leave granted by this Court. The Act provided for requisition and also for acquisition of ,land by the . State Government "for maintaining supplies and services essential to the life of the,community or for providing ,proper facilities for transport, communication, irrigation or drain.age,, or-for the creation of better living conditions in rural or ,urban areas..... by the construction or reconstruction of. dwelling places for, people residing in such areas." The Act ;provided for payment of 'compensation in respect of requisition and acquisition made under it.

An, order was made under, the Act on July 22, 1957 requi- tioning certain lands belonging to one of the appellants, the other ,appellant being, a lessee thereof, and it was stated in the order that possession would be taken on August 2, 1957. Thereupon the apperants filed the petition. The appellants challenged the validity of Act in the High

-Court on various grounds. In this Court however only , one ground was advanced in support of the appeal and that alone, therefore, we are called upon to discuss in this judgment. It was said that the Act offended Art. 1 9 (I) (f) of the ConsTitution as it put unreasonable restrictions on the right to hold property. I The High Court had rejected this contention on the round- that this Court had decided in Babu Barkya Thakur v. The State of Bombav(1) that an Act providing for acquisition of property by the State could not be attacked for the reason that it offended Art. 19(1) (f). It also held

that the decision in Kavalappara Kochuni v. The State of Madras(2) did not bold that Art. 31(2) of the Constitution does not exclude the applicability of Art.:

> 19(1)(f). We think that the High Court was right on both these points. Obviously, what was said in Babu Barkya Thakur's case(1) about a law relating to acquisition of property by the State would apply t lo a law relating to requisition. It would follow that the validity of the Act cannot be questioned ,on the ground that it offends Art. 19(1) (f).
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> (1)[1961] 1 S.C.R.128.
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> (2) [1961]3 S.C.R. 887.

The learned advocate for the appellants contended that the decisions of this Court earlier mentioned were in conflict with each other and that the later decision, namely, that in Babu Barkya Thakur's case(1) concerning the applicability of Art. 19 (I) (f) to a law of requisition or acquisition by the State covered by Art. 31(2) had been based on two earlier decisions of this Court, namely, The State of Bombay v. Bhanii Munji(1) and Lila-vati Bai v. The Siate of Bombay(',), both of which must, in view of the decision in Kavalappara Kochuni's(4) case, be deemed to have lost their authority after the Constitution (Fourth Ai-nendmerit) Act, 1955. It was pointed out that in Kavalappara Kochuni's case (4) it was said that Bhanji Alunji's(2) case "no longer holds the field after the Constitution, (Fourth Amendment) Act, 1955 The same observation, it was contended, would also apply to the case of Lilavati Bai v. The State of Bombay(- ').

It is true that Bdbu Barkya Thakur's, case(1) in so far as it dealt with Arts. 19(1) (f) and 31(2), was based on Bhanji Munji's case(2) and Lilavati Bai's case(3) both of which had been decided on Art. 31 as it stood prior to the aforesaid amendment of the, Constitution.. It is also true that both these cases dealt with a statute giving power to the, State to requisition land and held that such a law if valid under Art. 31 as it stood before the amendment, would not be void on the ground, that it infringed Art. 19(1)(f). Now, before the amendment it had been held by this Court by a majority-Das J., as he then was, alone taking a different view-that both cls. (1) and (2) of Art. 31 dealt with a law giving power to the State to acquire or requisition property. Kavalappara Kochuni's case(4) held that after the amendment, cl. (2) of Art. 31 alone dealt with acquisition and requisition of property by the State and cl. (1) dealt with deprivation of property in other ways. This case did not deal with a law of acquisition or requisition of property by the State but was concerned with a law by which deprivation of property was brought about in other ways, which law, it held, had to satisfy Art. 19 and the principle in Bhanji Munji's(2) case which could have saved that law before the amendment could not save it after the amendment. The observation in Kavalappara Kochuni's(4) case that Bhanji Miinji's (2) case "no longer holds the field"'has, there- fore, to be understood as meaning that it no longer governs a case of deprivation of property by means other than requisition and acquisition by the State. Kavalappara Kochuni's case(4) was not concerned with a law of requisition or acquisition. It was not directly concerned with the question whether Bhanji Munji's (1) [1961] 1 S.C.R. 128. (2) [1955] 1 S. C.R. 777. (3) [1957] S.C.R. 721. (4) [196]1 3 S. C.R . 887.

case(1) would not after the amendment, apply even to a law requisition or acquisition of Property governed by Art. 31(2) as it now stands, and did not decide that question. Indeed it might be said- that the reasoning 'in so I me passages of the judgment in the Kavalappara(2) decision would appear to suggest that a law providing for "acquisition" and "requisition" by the State as understood in the sense indicated by Art. 31(2) (a), does not fall within Art. 19(1) (f) and that the validity of such a law is not to be tested by the criterion in Art. 19(5). Otherwise the point made in it regarding the disseverance effected between the content 'of Art. 31(1) and of Art. 31(2) by the Fourth Amendment would lose all significance. It would therefore appear that there is nothing in that case which would bring into any conflict with Babu Barkya Thakur's(3) case. As the only ground on which the correctness- of the decision in Babu Barkya Thakur's, case(3) was challenged was that it was inconsistent with Kavalappara Kochuni's case(2), that argument must fail.

The appeal, therefore, fails and is dismissed with costs.

V.P.S. Appeal dismissed.

(1) [1955] 1 S.C.R. 777. (2) [1961]1 S.C.R. 128., (3)[1960] 3 S.C.R. 887.

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