Mohammad Raza Ali Khan vs The State Of Uttar Pradesh And Anr. on 5 September, 1952

Equivalent citations: AIR1953ALL92, AIR 1953 ALLAHABAD 92

JUDGMENT

Sapru, J.

1. This is an application under Article 226 of the Constitution for the various writs detailed in para. 22 of the petition. It is necessary to set forth the reliefs claimed in order to make my position clear in regard to this ease. The reliefs claimed are :

> (a) That a writ in the nature of mandamus be issued on the opposite parties restraining them from acting in any manner by virtue of, or under the provisions of the U.P. Zamindari Abolition and Land Reforms Act (1 of 1951), and interfering with the petitioner's exercise of his proprietary rights by any action taken through its servants and agents.
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> (b) That a writ or such other direction or order as the Court may deem proper be issued quashing the notification issued by the opposite party No. 1 under Section 4 of the said U.P. Act, 1 of 1951, and published in the State Gazette Extraordinary dated 1-7-1952, and directing the said opposite party to restore the petitioner back to his proprietary possession, and restraining it by means of a permanent injunction order from compulsorily acquiring the petitioner's property under the provisions of the said U.P. Act, 1 of 1951.
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> (c) That an interim injunction bo issued restraining the opposite parties from acting in any manner by virtue of, or under the provisions of, the U.P. Zamindari Abolition and Land Reforms Act (1 of 1951), and issuing any coercive processes under the said Act against the petitioner for the recovery of the arrears of revenue in respect of Rabi 1359-F. in pursuance of the writ of demand dated 22-7-1952 served upon the petitioner by the opposite party No. 2 by any action taken through their servants and agents.
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> (d) That such further or, other writs, directions or orders be issued as this Court may deem fit and proper.

2. I have quoted at length the reliefs claimed in this case in order to indicate unmistakably that what the applicant is seeking in effect today by this application, under Article 226 of the Constitution, is to invite this Court to go into matters which were finally disposed of by the Supreme Court. As a well

known, the law, as laid down by the Supreme Court, is binding on this Court. The questions, which are the subject-matter of this application, were considered at length both by the Supreme Court and a Full Bench of this Court. Suffice it to say that the arguments, which have been advanced could, and probably most of them were actually advanced have been advanced before the Supreme Court and the Full Bench. Learned counsel for the applicant has referred in an argument, which has taken a good deal of the time of this Court, at length to various points but I do not consider it necessary to discuss them.

3. I indicated to learned counsel that we would bo prepared to consider the question of notice on its merits if ho was prepared to confine his attack to statutory rules made under the U.P. Zamindari Abolition and Land Reforms Act (hereinafter called the Act) and not to the main Act itself. Learned counsel rejected that suggestion. Indeed, learn, ed counsel frankly concedes that his case is that the Act is incapable of being put into force and that it must be deemed to be an invalid piece of legislation. It is quite obvious from the reliefs claimed and the affidavit filed that what the applicant is seeking to do is to challenge the validity of an Act which has been declared to be intra vires the Constitution by the Supreme Court. Learned counsel has told us clearly that his purpose will not be served by challenging the validity of statutory rules and indeed according to his contention the vesting order passed by the Uttar Pradesh Government is null and void.

4. As far as I have been able to understand the somewhat complicated argument which has been advanced by learned counsel for the applicant, the position seems to be this. The Act was passed by what Shri Varma calls the provisional Legislature which lasted until 19-5-1932, when the Legislature set up under the provisions of the Constitution framed by the Constituent Assembly came into existence. Shri Verma's point is that all legislation passed by the provisional Legislature came automatically to an end when it (the provisional Legislature) was dissolved on 19-5-1952, and the Legislature set up by the Constituent Assembly came into existence. The proposition is of a most startling character. It may be conceded that the Constituent Assembly represented a complete break with the past. The Constituent Assembly was not bound to preserve the laws which were existing in this country before the Constitution framed by it came into force. It, however, decided to do so and for that purpose enacted Article 372. Article 372(1) of the Constitution lays down that :

> "Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the Law in force in the territory of India, immediately before the commencement of this Constitution shall continue in force therein until altered or repelled or amended by a competent Legislature or other competent authority."

5. I agree with Shri Verma that Article 372 of the Constitution cannot cover the Act as the Act was not a law in force in the territory of India immediately before the commencement of the Constitution.

6. Temporary and transitional provisions were, however, made under part 21 of the Constitution for tiding over the transitional period. Article 332 of the Constitution allowed the Houses of the Legislature functioning in this State to continue as a provisional legislature. The Act which was

pending as a bill at the commencement of the Constitution in the Uttar Pradesh legislature, was passed by the provisional legislature of Uttar Pradesh. From the mere fact that the State legislature was a 'provisional legislature,' the inference cannot he drawn that the laws passed by it were only of a temporary nature, i. e. of a nature which could last only up to the time that the regular legislature contemplated by the Constitution came into existence after elections, for let it be remembered that the provisional legislature was itself a creature of the new Constitution. It was vested with all the powers enjoyed by a State legislature. Clearly the laws passed by it could operate beyond the time, until repealed, when it ceased to exist. The analogy between it and the legislature which was swept away by the Constituent Assembly is misleading. Unlike the legislature which had been set up by the Indian Independence Act read with the Government of India Act, 1935, the provisional legislature owed its origin to the Constituent Assembly. It came to an end when the new legislature was elected under the Constitution. Laws passed by it did not cease to be operative on the date that the provisional legislature gave place to the newly elected legislature under the Constitution framed by the Constituent Assembly. The provisional legislature did not represent a break with the past. It was intended to facilitate the transition to the new order and it would have been, therefore, quite unnecessary for the Constituent Assembly to enact a provision analogous to Article 372 of the Constitution declaring that the laws passed by it shall continue in force until altered, repealed, or amended by a competent legislature or other competent authority.

7. I hope I have given sufficient reasons to indicate clearly that there is no merit in the argument which was ingeniously built up on this point by Shri Verma. I would also point out that the argument of Shri Verma ignores the provisions of Article 31(4) of the Constitution which were the subject-matter of interpretation by this Court and the Supreme Court. That Article is :

> "31 (4). If any Bill pending at the commencement of this Constitution in the Legislator of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any Court on the ground that it contravenes the provisions of Clause (2)."

8. Now undoubtedly after the U.P. Zamindari Abolition and Land Reforms Bill was passed by the provisional legislature it was submitted for the certification of the President. It received his assent. It follows, therefore, that, notwithstanding anything to the contrary the bill having been reserved at the commencement of the Constitution and having been passed and being assented to by the President, was not liable to be questioned in any Court on the ground that it contravenes the provisions of Clause (2) of Article 81 of the Constitution. That Article has been the subject-matter of interpretation by the Supreme Court as also a Full Bench of this Court. As far as I can see, the Supreme Court has held that the Uttar Pradesh Zamindari and Land Beforms Act is protected under that Article from attack in any Court on the ground that it contravenes the provisions of Article 31(2). We cannot, therefore, go into the question of the adequacy or otherwise of the compensation contemplated by the Act. That question has been finally decided by the Supreme Court and the controversies in regard to it have been set at rest by the recent amendments to the Constitution,

9. In regard to the argument that the compensation paid should have been in accordance with the principles of the Land Acquisition Act and that the compensation is illusory, I would like to say that the principles which govern land acquisition and acquisition of property wider Article 31(2) of the Constitution are and were, perhaps, intended to be somewhat different. Sub-article (2) of Article 31 of the Constitution enables Government to acquire any movable or immovable property on what might be called a mass scale for public purposes and in such a case it is open to the legislature to fix the amount of compensation and lay down the principles and the manner in which the compensation is to be determined and given. As I see it, the question whether the acquisition under the Act was or was not for a public purpose was agitated both before this Court and the Supreme Court. Both the Courts held that there was a public purpose behind the Act. Further both the Courts held that it was within the competence of the legislature to fix the amount of compensation or specify the principles on which, and the manner in which, the compensation is to be determined and given.

The question whether the principles underlying compensation in the Act could be different, having regard to the provisions of Article 14 of the Constitution, from those to be found in the Land Acquisition Act could be raised before the Supreme Court or the Full Bench of this Court. It cannot be allowed to be reagitated again. As far as I can see, the point was actually raised before those Courts. Reading Article 31 as a whole the position would seem to be that there is no force whatsoever in the contention of learned counsel that inasmuch as the provisions of the Act are different from the principles laid down in the Land Acquisition Act, the Act contravenes the letter and spirit of Article 14, into the intricacies of which it is unnecessary to enter.

10. I am not impressed with the argument that it was not competent for Government to direct that vesting of properties shall take place on the very date on which the vesting order was passed. It was not, in my opinion, incumbent upon Government to fix a future date for that purpose.

11. The general conclusion, which I have arrived at after listening to the long and ingenious argument of Shri Verma, is that the points which he seeks to agitate are not new points. They are covered by the authority of the Supreme Court as well as a Full Bench of this Court.

12. For this reason I do not think it necessary to consider seriatim some, other arguments which were urged by Shri Verma in support of the many startling propositions with which he came out.

13. For the reasons given above, this application is dismissed.

Bind Basni Prasad, J.

14. I agree with my learned brother and desire to add a few words.

15. Learned counsel for the applicant was given a hearing for more than three hours and although he said that he did not question the validity of the U.P. Zamindari Abolition and Land Reforms Act nevertheless when he was asked to confine his argument to the rules and not to the Act he said he was unable to do so. It was clear from his argument as well from a perusal of the petition that the

object of the petitioner is to make the U.P. Zamindari Abolition and Land Reforms Act inoperative. All the points which have been raised in the petition could have been advanced before the Fall Bench of this Court or the Supreme Court which considered the validity of the Act and if any of them was not advanced it is not possible for us to entertain it now. After a protracted litigation the U.P. Zamindari and Land Reforms Act was held a valid piece of legislation and the Supreme Court pronounced to that effect. It is not open to us now to declare that Act invalid or inoperative. In para. 3 of the application certain quotations from the judgment of the Supreme Court have been made. A perusal of those quotations will show that what the Supreme Court said was that if the Government made any rules and prescribed that compensation would be payable at some remote time and not within a reasonable period then it would be open to the parties affected to challenge the validity of the rules on the ground of abuse of power. The Supreme Court did not leave the door open to question the effectiveness or the operation of the U.P. Zamindari Abolition and Land Reforms Act when they held that the Act was valid.

16. The vesting order passed under Section 4 of the Act has been questioned on the ground that according to that section the date of the vesting hag "to be specified" and it could not be on the same day as the date of the publication of the notification. I am unable to interpret Section 4 of the Act in that way. There are no words in it to indicate that the date to be specified should be a future date. All what Sub-section (1) of that section provides is that the date must be specified and the persons affected must be in no doubt as to from what date they are going to be divested of their estates. It is in public knowledge that long before the notification was issued the public knew that the date of vesting would be 1-7-1952. It cannot be said that the applicant or those belonging to his class were taken by surprise when the notification of 1-7-1952, was issued.

17. The argument that the impugned Act came to an end when the new legislature came into being on 19-5-1952, has no force. The contention is that as the power of the provisional legislature set up under Article 332 lapsed by the new legislature coming into existence, laws made by the provisional legislature lapsed, and in this connection reliance has been placed upon Watson v. Winch, (1916) 1 K.B. 688. It was held in that case that when a by-law is made under an Act of Parliament the repeal of the Act abrogates the by-law, unless the by-law is preserved by the repealing Act by means of a saving clause or otherwise. This authority is hardly of any help to the petitioner for in the present case there has been no repeal of the law in exercise of which the provisional legislature made the U.P. Zamindari Abolition and Land Reforms Act. The provisional legislature from its very nature was sot up to tide over the transitional stage and nowhere it is provided in the Constitution that the laws made by the provisional legislature would cease to be operative when the new legislature is set up in accordance with the provisions of the Constitution. Watson v. Winch is not at all applicable to the facts of the present case.

18. Reliance has also been placed upon Article 14 of the Constitution. It is contended that the provisions in the impugned Act in regard to the payment of compensation are discriminatory inasmuch as they are different from those contained in the Land Acquisition Act. This is a matter which could have been urged before the Full Bench of this Court and the Supreme Court. Learned counsel has not been able to point out to us whether this point was urged in those Courts. It is too late now to contend this point. But apart from these considerations I can see no force in it. There is

Article 31A in the Constitution which provides that notwithstanding anything contained in part 3 of the Constitution no law providing for the acquisition by the State of any estate or of any rights therein for the extinguishment or modification of any such rights 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 any provisions of this Part. Article 31B of the Constitution also validates this Act.

19. No point urged by learned counsel has appealed to me in view of the decision of the Full Bench of this Court and of the Supreme Court. I want to make it clear that it is only the validity of the U.P. Zamindari Abolition and Land Reforms Act, 1951, and its effectiveness and operation that I uphold. I express no opinion now as to the validity or otherwise of any statutory rules framed thereunder.

By the Court.

20. This application is dismissed.