Chotey Lal vs The State Of Uttar Pradesh And Ors. on 16 January, 1951

Equivalent citations: AIR1951ALL228, AIR 1951 ALLAHABAD 228

JUDGMENT

Sankar Saran, J.

1. This is an appln. under Article 226, Const. Ind. for the issue of a writ of mandamus & a writ of prohibition.

2. The petnr. has come up to this Ct. with the allegation that he is a citizen of India & is the proprietor of a zamindari in the district of Allahabad & that he & his ancestors have held it for the last 200 years & that he continued to hold it on 26-1-1950. He has moved this Ct. because, according to him, the Zamindari Abolition & Land Reforms Bill is a proposed piece of legislation which completely deprives the appct. of the property which he has a right "to hold A dispose of" as he likes, that the opposite parties who are the State of Uttar Pradesh, the Minister of Revenue & the Chief Minister of Uttar Pradesh are legally not providing adequate & reasonable compensation & that the acquisition of his zamindari property is not "an acquisition but a scheme of nationalisation" which is not contemplated under the Constitution, nor can it be said to be an "acquisition for public purposes." According to the appct. this offends against the fundamental rights vested in him under chap. HI of the Constitution. His case further is that under Article 13(2) of the Constitution the opposite parties cannot make any law which takes away or abridges the right of the appct. under chap III, Article 19(f) to "acquire, hold & dispose of his property." According to the appct., the opposite parties are making the law in utter disregard of the Constitution. He has come up to this Ct. because there is no other speedy or alternative-remedy open to the appct. &, according to him, he is entitled to the relief of a writ of prohibition and mandamus against the opposite parties restraining them from bringing into existence any law which shall take away or abridge his rights.

3. His prayer is that this Ct. be pleased to issue a mandamus & a writ of prohibition against the State of Uttar Pradesh prohibiting them that "they shall not make the law in the name of Zamindari Abolition & Land Reforms Bill" & be further pleased to direct the opposite parties "by such suitable order or writ that they shall not make any substituted law which may take away or abridge the rights of the appct. in relation to his zamindari property."

There is also a further, prayer that an ad interim order be issued by this Ct. pending the examination by this Ct. of the terms of the "threatened law" so that this appln. may not become infructuous.

4. We have heard learned counsel in support of this appln. & have been taken through the Articles of the Constitution on which he places reliance. The first question that needs to be considered in this

appln. is whether it is open to this Ct; to interfere with any authority concerned with the making of laws during the formative period of an enactment. This case was first heard by us on 12-1 1951. In view of the extraordinary nature of the reliefs which he was claiming we asked learned counsel for the appct. to produce before us any authority or case in support of his startling contention that the Cts. can interfere with the progress of a bill before it actually becomes the law of the land. Today when the hearing was resumed learned counsel told us that, although he had looked into the Constitutions of several countries & the ease law on the subject, he has not been able to discover any authority directly bearing on the proposition he was advancing.

5. Learned counsel has advanced arguments to show that the terms of Article 13, specially Clause (2) do not find place in any of the Constitutions except the American Constitution & there it finds place because a limitation has been placed upon the powers of the judiciary. He has further argued that the words used in Article 13(2) "The State shall not make any law which takes away or abridges the rights conferred by this. Part."

include also a proposed enactment. I have given my careful consideration to the arguments advanced. I am, however, satisfied that the expression "shall not make any law" does not confer any jurisdiction upon this Ct. to interfere with the progress of any piece of legislation. It is unthinkable that the Constitution should have conferred upon the judiciary a function which is so repugnant to the spirit of democracy & the words "shall not make any law" mean anything other than that "no law shall be made." It is in the nature of a declaration of a fundamental right & nothing more.

6. Learned counsel has invited our attention to Article 361 of the Constitution & says that only certain specified individuals are not answerable to any Ct. for the exercise & performance of the powers & duties of their office & that the Legislature & the Ministers are not included in that list. What the rights of the subject are against individuals or against different States or officers holding offices of responsibility in the States is a matter which can be agitated on suitable occasions. So far as this piece of legislation is concerned, I am satisfied that the Cts. have no right to interfere at any stage anterior to the legislation becoming the law of the land.

7. Learned counsel for the appct. during the course of arguments invited our attention to the provisions of Article 37 of the Constitution which forms part of Part IV & is included among the directive principles of State policy. His argument was that if Article 13(2) were included in Part IV of the Constitution, then it could not be enforceable by any Ct. & as they were in Part III, they were enforceable. I am not impressed by this argument. As I have said above the point in this appln. is whether we can look into the proposed piece of legislation & go on giving directions to the different organs of the State, whose function it is to promulgate laws, what law they shall or shall not make.

8. Before dealing with the question which has directly arisen in the case it is necessary to have a clear concept of what is exactly the scope of the great constitutional remedies of the writs of mandamus & prohibition & the conditions which must be fulfilled before they are granted by this Ct. In the words of Lord Goddard, in Rex v. Dunsheath, (1950) 2 ALL. E. R. 741 at p. 743 :

> "... Mandamus is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty & specially affects the rights of an individual, provided there is no more appropriate remedy."

9. In its historical origin mandamus was a peremptory order issued out of the King's Bench Division of the H. C commanding a body or person to do that which is its or his duty to do. In other words the person or authority to whom it is issued must be either under a statutory or legal duty to do something or not to do something, the duty itself being of an imperative nature, (see Reg. v. Treasury Commissioner, (1872) 7 Q. B. 387 : (41 L. J. Q. B. 178) also Reg. v. Inland Revenue Comrs., (1891) 1 Q. B. 485 : (60 L. J. Q. B. 376).

10. Prohibition, on the other hand, was a writ which used to be issued by the King's Bench Division primarily to prevents a Ct. or tribunal or a quasi-tribunal from exceeding its jurisdiction or acting contrary to rules of natural justice. It is well known that frequent use of this writ has been made in Britain against the Ministers of the Crown or semi-public bodies of a non-judicial character in order to control the exercise of judicial & quasi-judicial function. It is well settled that the writ of prohibition can only lie against a body exercising public functions of a judicial or quasi, judicial Character & cannot in the very nature of things be utilised to restrain legislative powers.

11. In the well known case of King v. Legislative Committee of Church Assembly; Ex parte Haynes-Smith, (1927-1 K. B. 491) (see Wade and Phillips, p. 280), an appln. made to restrain by prohibition together with certiorari the National Assembly of the Church of England from proceeding with prayer book measure was unsuccessful on the very simple ground that neither the Committee was empowered to act nor had it in fact attempted to act judicially in matters which could be considered to affect the interest of the community. What was not permissible for the Cts. to do in the case of the Church Assembly in its legislative capacity in regard to a measure which its was enacting can surely not be permissible in the case of the Uttar Pradesh Legislature or the political functionaries who are responsible for advising the head of the State or the President of the Union to give his assent to a measure passed by two houses of the Legislature & awaiting assent in order to become the law of the land.

12. No authority is needed for the proposition that the State Legislature is a sovereign legislature within the limits assigned to it by the Constitution which was enacted by the Constituent Assembly of the people of India. Article 194 of the Constitution deals with the powers & privileges & immunities of the Legislature. From a perusal of its Sub-article (3), it is clear that the powers, privileges & immunities of the Legislature until so determined otherwise & subject to the other provisions of Article 194 shall be those of the House of Commons of the United Kingdom & of its members & committees. Article 168(1) makes it clear that the Legislature shall consist of the Governor & of both the houses of the Legislature so far as this State is concerned. In assigning to the Governor a place which makes him a component part of the Legislature the framers of the Indian Constitution have accepted the British principle. It is thus clear that the legislative process is not complete so far as this bill is concerned. It is still on the legislative anvil.

13. It is necessary to understand exactly how & in what circumstances Cts. declare laws invalid or unconstitutional. Until a bill has become law, the legislative process not being complete, Cts. do not come into the picture at all. It is not the function of any Ct. or Judge to declare void or directly annul a law the moment it has been promulgated. Courts are not a supervisory body over the Legislature. Their approval or disapproval is not needed for an Act passed by the Legislature to have the force of law. Their function is interpretative. In other words, upon any particular case coming before them in which the right of any party is involved they decide whether the Act or any part of it is to be disregarded on the ground of its incompatibility with the Constitution.

14. I think it is essential to understand clearly the functions of the Cts. & the mode in which they will interfere with legislations passed by either the Central or the State Legislatures. In the first place, it has to be borne in mind that the President is a part of the Union Legislature & the Governor is one of the component parts of the State Legislature. A reference to Article 79 of the Constitution will show that it lays down that "there shall be a Parliament for the Union which shall consist of the President & two Houses to be known respectively as the Council of States & the House of the People."

According to Article 168(1) of the Constitution "For every State there shall be a Legislature which shall consist of the Governor, and

(a) in the States of Bihar, Bombay, Madras, Punjab, the United Provinces & West Bengal, two Houses;

(b) in other States, one House."

It is, therefore, clear from this Article that the word "Legislature" includes the Governor also. In making the President & the Governor part of the Legislature the Indian Constitution makers have followed the precedent of the British Constitution. "Parliament" there, as the late Professor Dicey has explained "means, in the mouth of a, lawyer (though the word has often a different sense in ordinary conversation), the King, the House of Lords, & the House of Commons ; these three bodies acting together may be aptly described as the 'King in Parliament' & constitute Parliament."

It is thus clear that the legislative process so far as the bill in which it is sought to be assailed is concerned is not yet complete.

15. Article 200 of the Constitution lays down that after a bill has had a passage through both Houses of the Legislature of the State, it shall be presented to the Governor & that it shall be open to the Governor to declare at that stage that either he assents to the bill or that he would withhold assent therefrom or that he reserves the bill for the consideration of the President. What the Governor will do is a matter which is peculiarly within his discretion. So, in exercising it, he will no doubt feel bound to act on the advice of his Ministers. His constitutional advisers are the Chief Minister & the other Ministers who form the State Cabinet what is ordinarily termed "the Govt. of the day". Courts of law have no jurisdiction to enquire into or control the nature of the advice tendered by the Chief Minister or the Cabinet or a Minister to the Governor in regard to a proposed piece of legislation. This principle is so well established that no authority is needed in support of it.

16. Students of the British Constitution & of other Constitutions which are based on the principle of responsible Govt. or on the Presidential system which obtains in the United States know that the advice which a Minister or, in the United States, a Secretary responsible to the President tenders to the Crown, the Head of the State or the President is a matter of peculiarly confidential character. The position, therefore, as I see it, is that the bill, the further progress of which we are asked to arrest by this appln. for a writ of prohibition or mandamus, is awaiting assent & that it is not the function of the Cts. of law to advise the President, the Govt. of the day or the Chief Minister or any other Minister to do or refrain from doing any particular act that they have in contemplation in relation to that proposed legislation.

17. It strikes me that this writ appln. is based upon a misapprehension of the nature of the power which the Cts. have to exercise in declaring legislative acts void, invalid or ultra vires the Constitution. On this part of the case I rely upon the classical work of the late Professor Dicey on the Law of the Constitution. It is well known that Professor Dicey classifies Legislatures into sovereign and non sovereign bodies. The use of the terms "non sovereign" in relation to a Legislature possessing sovereign authority limited by the written texts of the Constitution has been objected to by certain writers & my own preference is for the expression "controlled Legislature". It is clear that Indian Parliament & the Union Parliament as also the State Parliament are controlled Legislatures in the sense that their powers are limited to those assigned to them by written instruments embodied in the Constitution framed by the Constituent Assembly.

18. I have referred to Professor Dicey in order to indicate clearly that (a) it is only after a bill has become the law of the land & (b) on a motion or suit for a writ appln. brought before a Ct. in a case in which the right of the party is affected that the Ct. declares a particular law or Act invalid for the purposes of that case. It is in this indirect manner that Cts. adjudicate upon the legality or constitutionality of Acts passed by the Legislature. It is clear that the stage when the proposed legislation can be challenged in Cts. of law has not yet arrived for it has yet to take a final shape & Cts. have no jurisdiction, before it takes that final shape to give any relief to any party. To do so would be to interfere with that freedom of speech, freedom of discussion, freedom of initiative & freedom to make or unmake laws which the Legislatures possess in Damocratic Constitutions.

19. In discussing the question as to who can raise constitutional questions, Prof. Willis, in his Constitutional Law, asserts that it is not enough that the statute is unconstitutional as to other persons or classes but the person attacking the statute must come within the class. The point to be noted is that there has to be a statute before it can be attacked by any person directly affected by it. This is exactly in accordance with what Prof. Dicey has pointed out in his Law of the Constitution, to which I have already invited attention. In enacting Article 13(2) the Indian Constituent Assembly has merely laid down the limits to which legislation can go & does not authorise the Cts. to interfere with that, legislation before its will has been ascertained.

20. The appln. is misconceived & nothing has been urged in support of it which would entitle this Ct. to grant the prayer asked for I would, accordingly dismiss it without any hesitation.

Agarwala J.

21. I agree. This appln. is wholly misconceived. The relief claimed in this appln. is that the Ct. be pleased to issue "a mandamus & a writ of prohibition against the State of Uttar Pradesh prohibiting them that they shall not make the law in the name of Zamindari Abolition & Land Reforms Bill & be further pleased to direct the opposite party by such suitable order or writ that they shall not make any substituted law which may take away or abridge the rights of the appct. in relation to his zamindari property."

Although the opposite party mentioned in the relief is the State of Uttar Pradesh, the opposite parties arrayed in the appln. are the State of Uttar Pradesh, the Hon'ble Minister of Revenue & the Premier of Uttar Pradesh. There is no Premier of Uttar Pradesh. Probably what the appct. means is the Chief Minister of Uttar Pradesh. Now the Hon'ble Minister of Revenue & the Chief Minister of Uttar Pradesh are merely two "members of the legislative body of the State & they cannot possibly be said "to make the law in the name of Zamindari Abolition & Land Reforms Bill."

22. The law is made by the Legislature as a whole by its members sitting in session. The two members of the Legislature may influence the opinion by their exposition of the provisions of any intended law, but they cannot be said to make the, law themselves.' It would be wholly futile for this Ct. to prevent the two Ministers from taking part in the formulation of any law. The State of Uttar Pradesh, when arrayed as a party in a case, means the Govt. of the State of Uttar Pradesh. It does not imply the Legislature of the State. In that view of the matter, even the Govt. of Uttar Pradesh cannot legislate or make an enactment. The relief, therefore, Sought against the three opposite parties is misconceived & cannot be granted.

23. If, however, the intention of the appct. is that we may restrain the Legislature of Uttar Pradesh from enacting the proposed law, the short answer to this contention is that the Cts. have no such jurisdiction. The legislative bodies in India are sovereign & supreme within the sphere of their powers. Within that sphere they can enact laws & those laws cannot be challenged or declared void by the Cts. If they transgress the legislative sphere assigned to them, the Cts. can certainly declare their Acts as void & of no legal effect. Before, however, an enactment is placed on the statute book, there is nothing before the Ct. upon which it may pronounce its judgment. Unless the provisions of an enactment are before the Ct. the Ct. is unable to declare that a certain provision or the whole of the enactment is against the provisions of the Constitution. This is one reason why the Ct. cannot interfere with an intended legislation. There is, however, another reason why the Cts. cannot interfere with an intended piece of legislation & that is based upon the inherent powers which legislative bodies must possess in order that they may discharge the functions which the Constitution has assigned to them. As was observed by Sir James William Colvile in relation to the powers of the House of Assembly, in Doyle v. Falconer, (1867) 1 L. R. P. C. 328 at p. 340 : (36 L. J. P. C. 33).

> "As the Common Law sanctions the exercise of the prerogative by which the Assembly has been created, the principle of the Common Law, which is embodied In the maxim "Quanda Lex aliquid concedit, concedere videtur at illud. sine quo res ipso esse non potest," applies to the body so created."

In other words; when a law commands a thing to be done, it authorises the performance of whatever, may be necessary for executing its command. Since the Legislature has been entrusted with the duty of legislating, it must have in the very nature of things the inherent power of preventing any outside interference with the exercise of its functions. The Cts., therefore, have no jurisdiction to interfere with the performance of its functions by the Legislature.

24. So far as the Indian Legislatures are concerned, the matter does not rest merely upon the doctrine of inherent powers. By Article 105(3), the Parliament, & by Article 194(3) the State Legislatures have been vested, subject to the other provisions of the Constitution, with the powers, privileges & immunities as denned by the Legislature by law, and, until so defined, with those of the House of Commons of the Parliament of the United Kingdom, & of its members & committees.

25. Now it is well recognised that one of the privileges of the House of Commons is "to decide what it will discuss & in what order," This privilege, though frequently a subject of dispute between the Crown & the Commons, was dually recognised by Article 9 of the Bill of Rights:

> "That the freedom of speech & debate in the Parliament ought not to be impeached or questioned in any Ct. or place outside the Parliament."
>
> This Article secures freedom of speech in a double form the collective right of the House to discuss subjects of their own choice without reference from the king, & the right of the individual Member in debate to speak his mind with impunity. (May's Parliamentary Practice p. 59).
>
> As Stephen J.

26. in Bradlaugh v. Gossett, (1884) 12 Q. B. D. 271 at p. 278 : (53 L. J. Q. B. 209) observed, "I think that the House of Commons is not subject to the control of Her Majesty's Cts. in its administration of that part of the statute-law which has relation to its own internal proceedings. ....

It seems to follow chat the House of Commons has the exclusive power of interpreting the statute, so fat as the regulation of its own proceedings within its own walls is concerned & that even if that interpretation should be erroneous, this Ct has no power to interfere with it directly or indirectly" (pp. 280-1) The learned Judge assimilated the jurisdiction of the House over its own internal concerns to that of a Ct. 'whose jurisdiction is not subject to appeal." vide (May's Parliamentary Practice p 61).

27. The Cts. in India, therefore, have not jurisdiction to interfere with the proceedings of the Legislature.

27a. It is contended before us that Article 13 of the Constitution gives the Cts. in India a special jurisdiction which may not be found in the Constitution of other countries. Reliance is placed upon the words of Clause (2) of the Article :

> "the State shall not make any law which takes away or abridges the rights conferred by this fart,"

and it is pointed out that this portion of the Article refers to the stage before the enactment has been actually placed upon the statute book It is urged that Article 361 of the Constitution prevents the Cts. from interfering with the duties of the President, or the Governor or Rajpramukh of a State & does not prevent the Cts. from interfering with the proceedings of the Legislature. It is further pointed out that the proviso to the Article expressly denies protection to the Govt. of India & the Govt. of a State. It is, therefore, argued that having regard to the first part of Article 13(2) & the proviso to Article 361, this Ct. has jurisdiction to issue a mandamus or some other direction or order against the Legislature in order to prevent it from enacting a law which is in contravention of the fundamental rights guaranteed by Part in of the Constitution.

28. This argument is fallacious. It is true that Article 361 does not in so many words lay down that the Legislature is immune from interference by the Cts. But the fact that protection is afforded by Article 361 only to the President, the Governor or the Rajpramukh of a State does not mean that the Legislature is not otherwise protected As pointed out already, the limitation on the power of a Ct. to interfere with the proceedings of the Legislature arises not only because of the inherent powers that a Legislature must possess in order to perform its functions, but also because of the express enactment in Articles 105 & 194.

29. Article 13(2) merely declares what the Legislature shall not do. If the Legislature does what it is directed by the Constitution not to do, its Acts may be declared void. But the Article does not confer a right upon a citizen to move the Ct. for the issue of a writ or direction to the Legislature not to proceed with a Bill.

30. It may be conceded that Article 13(2) itself along with other Articles of Part III constitutes one of the fundamental rights conferred by the Constitution. But the mode of enforcement of the fundamental rights is not necessarily the same in all cases.

31. In Article 13(3) the word "law" has been defined as including any order, bye-law, rule, regulation, notfn. or custom having in the territory of India the force of law. Apart from the question of interfering with the proceedings of the Legislature, the Ct. has power to issue an appropriate writ or direction to a person or body of persons having legal authority to determine questions affecting the rights of the citizens & having the duty to act judicially prohibiting him or them from acting in excess of their legal authority, & for that purpose to restrain him or them from promulgating any order, bye-law, rule, regulation or notfn. in contravention of the fundamental rights conferred by the Constitution. An illustration of the use of this power by the Ct. is to be found in the King v. Minister of Health, (1929) 1 K.. B. 619 : (98 L. J. K. B. 636), where a writ of prohibition was issued prohibiting a certain Minister from proceeding further in the matter of a certain scheme which had been presented to him with a petn. for its confirmation on the ground that the Act under which the scheme was prepared did not authorise the scheme & that prohibition to him lay at that stage because after his order of confirmation the scheme would have effect as if enacted in the Act. But the case of the Legislature including the Members of such Legislature acting in connection with the

proceedings before it stands on quite a different footing.

32. As pointed out already, the limitation on the power of a Ct to issue a writ or direction to a Legislature in connection with the tatter's proceedings arises from the provisions of the Constitution (Articles 105 & 194), & from the inherent powers possessed by the Legislature as discussed above. Legislative enactments which take away or abridge the rights conferred by Part III of the Constitution can only be declared void after they have been made & that is the only remedy in such cases for the enforcement of the rights conferred by Clause (2) of Article 13. I have no doubt that we have no power to issue the writ or direction prayed for.

33. I would, therefore, dismiss this appln.

34. By the Court.--The result is that this appln. is dismissed.