

State Of Maharashtra vs Mumbai Upnagar Gramodyog Sangh on 15 October, 1968

Equivalent citations: 1970 AIR 1157, 1969 SCR (2) 392

Author: J.C. Shah

Bench: J.C. Shah, G.K. Mitter, K.S. Hegde, A.N. Grover

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
MUMBAI UPNAGAR GRAMODYOG SANGH

DATE OF JUDGMENT:
15/10/1968

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
MITTER, G.K.
HEGDE, K.S.
GROVER, A.N.

CITATION:
1970 AIR 1157 1969 SCR (2) 392
CITATOR INFO :
RF 1973 SC1461 (2130)
RF 1981 SC 873 (79)

ACT:
Bombay Municipal Corporation Act (3 of 1888), as amended by Act 14 of 1961, ss. 372(g) and 385--Owner of dead animal to deposit carcass in specified place without selling--Corporation having right to dispose of carcass--If fundamental rights of owners and skimmers affected.

Constitution of India, 1950, Arts. 19(1)(f) and 31(1), (2) and (5)--Taking and destroying carcasses--If owner entitled to compensation.

HEADNOTE:

To ensure against the grave nuisance which may be caused to the residents of a locality if carcasses of dead animals

are allowed to remain on the premises within the city, 'a duty is imposed by ss. 367, 372 and 385 of the Bombay Municipal Corporation Act, 1888, as amended by Act 14 of 1961, upon the owner of the animal or the person having charge of the animal or the occupier of premises in which the animal dies, to remove the carcass at his own expense with the permission of the Commissioner of the City of Bombay. or, to have. it removed through the agency of the Corporation, for which he was required to pay a fee of Rs. 20. It was further enacted that after it was removed it shall be deposited in 'a receptacle, depot or other place set apart for the purpose, either by the owner or the Corporation. Thereupon, the owner lost his property in the carcass and' it became the property of the Corporation. Under the Act it was the duty of the Corporation to arrange for its disposal causing the least practicable nuisance.

The second respondent was the owner of a stable of filch cattle in Bombay. He was selling the carcasses of animals dying in his stable for a price. The first respondent was a purchaser of carcasses and carried on the business of skinning the dead animals and utilising the products for industrial uses. The Corporation prohibited the first respondent from removing carcasses and resolved to grant the contract for the disposal of carcasses deposited under the provisions of the Act to Harijan Workmen's Cooperative Labour Society.

The respondents challenged the provisions and the High Court declared them ultra vires.

In appeal to this Court, on the questions: (1) Whether the obligation not to sell the carcass but to dispose it of as per the provisions of the Act infringe the fundamental rights of the respondents under Art. 19(1)(f); (2) Whether there was infringement of the fundamental right because of the obligation on the second respondent to incur expenditure for its removal; (3) Whether fee of Rs. 20 was excessive; (4) Whether the second respondent's loss of ownership and property in the carcass on depositing it as per the provisions of the Act violated the respondents' fundamental right under Art. 31; and (5) Whether the granting of the contract to the Harijan Society destroyed the business of the first respondent and infringed its fundamental right to carry on business.

HELD: (1) The second respondent had a right of ownership in the carcasses of his animals. But he was only entitled to constitutional protection against unreasonable restriction on his right to sell the carcasses.

393

Reasonableness of restrictions imposed by a law has to be adjudged in the light of the nature of the right, danger or injury which may be inherent in the unbridled exercise of the right and the necessity of protection against danger which may result to the public by the exercise of the right. In each case the test is whether the restriction is

commensurate with the need for protection of public interest against the exercise of the right. [400 C; 402]

A mere imposition of an injunction to remove a carcass only abates the nuisance arising from a dead animal remaining on the premises: it does not eliminate the graver hazard caused by the adulteration of food of the people from its products. Meat and fat from carcasses are used by unscrupulous persons for adulterating the food of the community. Even by imposing stringent supervision upon persons carrying on the business of skinning carcasses,, protection of the community against food adulteration cannot be effectively secured, because, a purchaser who was not subject to the Corporation control could remove it beyond the Corporation limits and bring back contaminated meat and fat. Therefore, the Legislature has devised a scheme by which reasonable restrictions are placed upon a citizen's right to dispose of the carcass. Under the Act, the Corporation has to set apart a place for depositing the carcass and it is implicit in the scheme of the Act that the Corporation shall provide a suitable place for skinning it. The Corporation has control over the contractors entrusted with the disposal of carcasses and has supervision over the disposal of the products. A law which compels the removal of a carcass to an appointed place and its disposal under the supervision of the Corporation which has the duty to take steps for maintaining public health, cannot be regarded as arbitrary or excessive. The Corporation, has to arrange for effectively disposing of the carcass and it would be necessary for effectuating that purpose to provide that the title of the owner in the carcass should be extinguished. Such a provision is not beyond' the legitimate purpose for which it was intended, and the fact that the owner is unable to sell for a price the carcass does not render a provision, which is essentially conceived in the interest of the general public,unreasonable.[401 E-H;402 B--D; 403 E; 404 D]

Restriction upon the right of the owner to sell the carcass does not directly infringe the fundamental right of the purchaser. who, but for the restriction may have been able to purchase it. Assuming however, that the imposition by law of the restriction upon the owner of the carcass involves also a restriction upon the right of the first respondent having regard to the character of the legislation and its avowed object,the restriction upon the first respondents right to carry on his occupation or business is a reasonable one within the meaning of Art 19(5) and (6). [409 E--G]

Chintaman Rao v. State of M.P. [5950] S.C.R. 759 and State Row, [1952] S.C.R. 597, followed.

(2) If the carcass is likely to be deleterious to public health and its removal from the place where it is lying being in the interests of the public health, imposition of an obligation upon the owner to remove the carcass at his

own expense or to Pay for its removal cannot be regarded as unreasonable, even if the charge which falls upon the owner is in addition to the loss which he suffers by reason of the extinction of his title in the carcass. [404 B--D]

(3) Whether the fee of Rs. 20 levied on the owner of a carcass for its removal was in excess of the expenditure which the Corporation may go. Cll69--s

394

have to incur. was not investigated into by the High Court. and therefore the question could not, be raised for the first time in this Court. [404 A--B]

(4) (a) In the present case, the restrictions imposed by the impugned law upon the right of the owner satisfy the test of reasonableness under Art. 19(5) and (6). Therefore, though there is a deprivation of property, it is by a valid law and hence there is no violation of Art. 31(1). [406 C--D]

Smt. Sitabati Debi v. State of West Bengal, [1967] 2 S.C.R. 949, followed.

Kavalappara Kottarathil Kochuni v. State of Madras, [1960] 3 S.C.R. 887. referred to.

(b) A law which provides for extinction of the ownership and creation of an interest in the Corporation for the purpose of disposal of the carcass is not a law for acquisition of property for a public purpose: its primary purpose is destruction of a carcass in the public interest, and not its utilisation for a public purpose. The case does not, therefore, fall within the terms of Art. 31(2). [406 F--G]

(c) In any case the statute is squarely protected by Art. 31 (5) (b) (ii) and on that account the owner is not entitled to compensation for loss of his property. Where the State acquires property and seeks to utilize it for promotion of public health or prevention of danger to life or property the State is liable to pay compensation. But a law which directive and immediately seeks to promote public health or to prevent danger to life or property falls within the exemption of cl. (5)(b)(ii) even if thereby, the owner's interest in the property is extinguished and is vested in the State for purposes of destruction. [406 G--H; 407 A--B]

(d) Article 31(5)(b)(ii) is not confined to 'temporary occupation of property. In the case of acquisition of immovable property, to have the protection of the clause the occupation of the property must be temporary. But in the case of movable property, even if its possession is taken with a view to destroying it, if such destruction is in the interests of general public, that is. for the prevention of danger to life or property, it need not be temporary. Even such taking of movable property will be protected by cl. (5) (b) (ii) and the guarantee of Art. 31(2) would not be attracted. [408 E--G]

Deputy Commissioner and Collector, Kamrup v. Durganath Sarma, A.I.R. 1968, S.C. 394, explained.

The first respondent cannot claim the protection of Art. 31(2), because, until it purchases the carcasses from the owner it has no right in the property, and it cannot set up a grievance for loss of property which it does not own. [409 H]

(5) Whether by virtue of the contracts given by the Corporation to other persons who are claimed to be rivals in business of the first respondent unreasonable restrictions may be deemed to be placed upon the first respondent's fundamental right is a matter on which no argument was advanced before the High Court. In any event, it cannot affect the validity of the statute or its provisions. [410 B-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1654 of 1966.

Appeal from the judgment and order, dated March 8, 1963 of the Bombay High Court in Appeal No. 7 of 1963.

and Civil Appeals Nos. 1019 and 1020 of 1967.

Appeals from the judgment and order, dated August 20, 1964 of the Bombay High Court in Appeals Nos. 53 and 55 of 1963.

C.K. Daphtary, Attorney-General, N.S. Bindra, R. Gopalakrishnan and S.P. Nayar, for the appellant (in C.A. No. 1654. of 1966).

Niren De, Solicitor-General, G.L. Sanghi, and 1. B. Dadachanji, for the appellants (in C.As. Nos. 1019 and 1020 of 1967) and respondents Nos. 3 and 4 (in C.A. No. 1654 of 1966).

Sen and 1. N. Shroff, for respondents Nos. 1 and 2 (in C.A. No. 1654 of 1966)-

K.K. Singhvi, S.C. Agarwala, R.K. Garg, D.P. Singh and K. Gupta, for the respondents (in C.A. No. 1020 of 1967). The Judgment of the Court was delivered by Shah, J. The High Court of Bombay has declared s. 372(g) and a part of s. 385 of the Bombay Municipal Corporation Act 3 of 1888 as amended by Act 14 of 1961 ultra vires because in their view these provisions infringe the guarantee of Arts. 19 (1) (f) & (g) of the Constitution. The State of Maharashtra and the Municipal Corporation of Greater Bombay have appealed to this Court. The first respondent in Appeal No. 1654 of 1966 is a society registered under the Societies Registration Act, 1860, and carries on, within the limits of Greater Bombay, the business of skinning carcasses of dead animals and utilising the products for industrial uses. The second respondent is an owner of a stable of milch-cattle at Andheri within the limits of Greater Bombay. By Act 14 of 1961 the Legislature of the State of Maharashtra amended, amongst others, ss. 367, 372 and 385 of Act 3 of 1888 enacting that an owner of the carcass of a dead

animal shall deposit it at the place appointed in that behalf by the Corporation, and entrusted the Corporation with power to arrange for disposal of the carcasses. On October 14, 1961 the Assistant Head Supervisor of the Municipal Corporation called upon the first respondent to stop removing carcasses from the "K" Ward of the Corporation. On November 27, 1961, the Corporation published a notification inviting the attention of the public concerned to the provisions of s. 385 and other provisions of the Act and warned the persons concerned that violation of the provisions was liable to be punished. On January 10, 1962, the Corporation resolved to grant a contract authorising removal and disposal of carcasses under s. 385 of the Act in respect of Wards, H, K, L, M, E, P, B & T to the Harijan Workmens Co- operative Labour Society Ltd., and declared that no other person or agency was authorised to remove and dispose of carcasses under the provisions of s. 385 of the Act. Respondents Nos. 1 & 2 to this appeal moved a petition in the High Court of Bombay for an order canceling or setting aside the notice dated October 14, 1961, and the notification dated November 27, 1961, for an order restraining the Corporation from demanding fee for removal of such carcasses, from taking any steps or proceedings against the respondents for enforcement of the provisions of ss. 366, 367(c), 372(g) and 385 of the Act and from claiming ownership in the carcasses of the dead animals of private owners. The State of Maharashtra was later impleaded as a party-respondent to the petition. Kantawalla, J., dismissed the petition. He held that ss. 366, 367(c) and 385 of the Act were "enacted for the promotion of public health and for the prevention of danger to life of the community and in the larger interest of the public", and that the restrictions upon the rights of the owners of cattle and persons carrying on business in carcasses were, because of the special protection granted by Art. 31(5)(b)(ii) not inconsistent with or repugnant to the fundamental rights guaranteed under Art. 31(2) of the Constitution, and since the impugned provisions were protected, the second respondent could not claim that his fundamental right guaranteed by Art. 19(1)(f) of the Constitution was infringed. The learned Judge also held that the restrictions imposed by the impugned provisions were reasonable and in the interest of the general public and were on that account not within the protection of Art. 19(1)(g) of the Constitution.

In appeal under the letters patent the High Court modified the order passed by Kantawalla, J., and declared s. 372(g) and a part of s. 385 of the Act invalid. The High Court did not pass any order consequential on the declaration. Against that order the State of Maharashtra has preferred this appeal with certificate granted by the High Court. Section 3 (z) defines 'nuisance': it includes any act, omission, place, or thing which causes or is likely to cause injury, danger, annoyance or offence to the sense of sight, smelling or hearing, or which is or may be dangerous to life or injurious to health or property.' Section 61 sets out the obligatory and discretionary duties of the Corporation. It is thereby incumbent upon the Corporation to make adequate provision, inter alia, for scavenging, removal and disposal of excrementitious and other filthy matters, and of all ashes, refuse and rubbish, reclamation of unhealthy localities, removal of noxious vegetation and generally the abatement of all nuisances. By ss. 365, 366, 367, 368, 372 and 385 it was provided that--

S. 365--"For the purposes of securing the efficient scavenging and cleansing of all streets and premises. the Commissioner shall take measures for securing--

(a).....

(b) the removal of the contents of all receptacles and depots and of the accumulations at all places provided or appointed by him under section 367 or 368 for the temporary deposit of any of the matters specified in the said sections."

S. 366---"All matters collected by municipal servants or contractors in pursuance of the last preceding section and of section 369 and carcasses of dead animals deposited in any public receptacle, depot or place under section 367 shall be the property of the Corporation."

S. 367--"The Commissioner shall provide or appoint in proper and convenient situations public receptacles, depots and places for the temporary deposit or final disposal of-

(a) dust, ashes, refuse and rubbish;

(b) trade refuse;

(c) carcasses of dead animals and excrementitious and polluted matter;

Provided that-

(i) the said matters shall not be finally disposed of in any place or manner in which the same have not heretofore been so disposed of, without the sanction of the corporation or in any place or manner which the State Government think fit to disallow;

(ii) any power conferred by this section shall be exercised in such manner as to create the least practicable nuisance." S. 368--"(1) It shall be incumbent on the owners and occupiers of all premises to cause all dust, ashes, refuse, rubbish and trade refuse to be collected from their respective premises and to be deposited at such times as the Commissioner, by public notice, from time to time prescribes in the public receptacle, depot or place provided or appointed under the last preceding section or the temporary deposit or final disposal thereof.

S. 372--"No person--"

(a) who is bound, under section 368 or section 370, to cause the removal of dust, ashes, refuse, rubbish and trade refuse or of excrementitious or polluted matter, shall allow the same to accumulate on his premises for more than twenty-four hours or neglect to cause the same to be removed to the depot, receptacle or place provided or appointed for that purpose;

..."

(g) shall deposit the skin or otherwise dispose of the carcass of any dead animal at a place not provided or appointed for this purpose under section 367."

S. 385--"(1) It shall be the duty of the Commissioner to provide for the removal of the carcasses of all animals dying within Greater Bombay;

(2) The occupier of any premises in or upon which the animals shall die or in or upon which the carcass of any animal shall be found, and the person having the charge of any animal which dies in the street or in any open place, shall within three hours after the death of such animal, or if the death occurs at night, within three hours after sunrise, report the death of such animal at the municipal health department office of the division of the Greater Bombay in which the death occurred or in which the carcass is found and shall not unless authorised by the Commissioner in this behalf, remove or permit to be removed the carcass of any animal dying in or upon any place within Greater Bombay;

"(3) For every carcass so removed by municipal agency, a fee for the removal of such amount as shall be fixed by the Commissioner, shall be paid by the owner of the animal or, if the owner is not known, by the occupier of the premises in or upon which, or by the person in whose charge, the said animal died."

The provisions are manifestly enacted with the object of ensuring expeditious removal of carcasses of dead animals which, if allowed to remain, are likely to constitute a grave nuisance and are likely to endanger public health. The carcass of a dead animal is a noxious thing, which in the hot and humid climate of Bombay petrifies within a short time after the death of the animal and defiles the place and atmosphere with foul smells, and is likely to spread disease if immediate and proper steps for removal and disposal are not taken. The Municipal Corporation is entrusted with authority to take steps to 'protect the health of the residents within the municipal area. To ensure against a grave nuisance to the residents, duty is imposed by the Act upon the owner of the animal or occupier of the premises in or upon which the animal dies or the person having charge of the animal to remove the carcass with the permission of the Commissioner in that behalf at his own expense, or to have it removed through the agency of the Corporation. If it is removed by the Corporation, the owner is required to pay the prescribed fee for such removal. After it is deposited by the owner or by the Corporation in a receptacle, depot or place which is set apart for that purpose, the carcass may be disposed of by the Corporation in a manner which is likely to cause the least public nuisance. For that purpose the carcass is at the disposal of the Corporation. The Act does not make any provision relating to the manner in which the Corporation is to dispose of the carcass, but it is implicit in the scheme of the Act that the Corporation will provide a place removed from the inhabited localities where the carcasses may be disposed of without involving any danger to public health. To facilitate this object it is enacted by the Legislature that the carcasses of dead animals deposited in any public receptacle, depot or place shall be the property of the Corporation. Unquestionably it is in the interest the residents of the Municipal Corporation and for promotion of public health and for prevention of danger to the community that carcasses of the dead animals shall be removed expeditiously and shall be disposed of in a manner which is likely to cause the least nuisance.

The carcass of a dead animal is private property and belongs to the owner of the animal, and the carcass on sale by the owner, when it is of a bull, cow or buffalo, fetches a small price. Counsel for the second-respondent urged that the provisions of the Act which place restrictions upon the right of the owner to dispose of the carcass and compel him to incur expenditure for removal or to pay a fee for that removal to the appointed place, and extinguish his ownership in the carcass when it is deposited in the place appointed, infringe the fundamental right to property guaranteed under Art.

19(1)(f) and Art. 31 (2) of the Constitution. Counsel for the first respondent urged that by the impugned provisions the first respondent is deprived of his right to carry on business, and on that account infringe the right guaranteed by Art. 19(1)(g) of the Constitution. Counsel for the Corporation conceded that a carcass is property which is capable of being owned. Counsel, however, submitted that a carcass is not commercial property and the first respondent could not claim to carry on business in disposal of carcasses. The judgment of the Supreme Court of the United States in *Gerrit W. Clason v. State of Indiana*(1) on which reliance was placed by counsel for the Corporation merely decided that a State statute requiring the owner of a dead animal not slaughtered for food to bury or burn such body on his premises or to deliver it to the representative of a disposal plant licensed to do business within the State, and prohibiting transportation over the high ways of the State of the body of such animal except to a licensed disposal plant and with certain sanitary precautions, did not unduly discriminate against and burden interstate commerce. The judgment does not support the plea that a citizen carrying on the business in the disposal of the carcasses is not entitled to the constitutional protection against unreasonable restrictions on the carrying on of any lawful business or occupation. The second respondent is not a dealer in carcasses. He has a right of ownership in the carcass. He claims that before the enactment of the impugned provisions he was accustomed to sell the carcass of an animal dying in his/stable for a price; he is under the Act enjoined to deposit the carcass in an appointed place and for that purpose to incur expenditure for removal of the carcass or to pay a fee to the Corporation for arranging for its removal. On account of the impugned provisions he says that he cannot sell the carcass, and when he deposits the carcass in the appointed place his ownership in the carcass ceases and he has to pay for removal of the carcass. Article 19(1)(f) of the Constitution confers upon all citizens the right to acquire, hold and dispose of property. Carcass of an animal belonging to a person is his property and he has the right of disposal of the carcass. But that fundamental right, like all other rights in Art. 19(1), is not absolute: it is subject to reasonable restrictions. By el. (5) it is enacted that:

"Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said subclauses either in the interests of the general public or for the protection of the general public or for the protection of the interests of any Scheduled Tribes."

the Municipal agency with the least practicable delay is conceived in the interests of the general public and no serious argument to the contrary was advanced before us.

A law designed to abate a grave nuisance and for protection of public health is *prima facie* one enacted for the protection of the interests of the general public. But that alone is not sufficient: the restriction imposed by the law must be reasonable, i.e., the restriction must not be arbitrary or excessive, and must not place upon the right of the citizen a limitation which is not calculated to ensure protection of the interests of the general public. In the view of the High Court the law which compels the owner to deposit the carcass in the appointed place and thereby prevents him from selling it, and involves him in expenditure for removing it, or in the payment of a fee for removal, imposes an unreasonable restriction. The High Court also observed that a law which declares that as soon as the carcass--which is a valuable property--is deposited, it becomes the property of the

Corporation makes an unreasonable provision since "it makes no difference whether the carcass is disposed of by a purchaser from the owner of the carcass or by a contractor who purchased it from the Corporation". But in so holding, in our judgment, the High Court ignored the hazard to the public health arising from adulteration of the food of the people. There is evidence on the record which is not controverted that meat and fat from the carcasses are used by unscrupulous persons for adulterating the food of the community. Mere imposition of an injunction to remove the carcass within the prescribed period abates the nuisance likely to result from the carcass remaining on the premises of the owner: it does not eliminate grave hazard to public health by the adulteration of the food of the people by the products from carcasses. By merely enacting that the carcass will be removed expeditiously, the second object cannot be served. The Corporation has control over the contractor to whom the carcasses are entrusted for disposal. It has set apart a place for skinning and has supervision over the disposal of the products. Even by imposing stringent supervision upon persons carrying on the business of skinning carcasses protection of the community against adulteration of its food cannot be effectively secured, because it would not be difficult for a purchaser not subject to the control of the Corporation to remove the carcasses beyond the Corporation limits and then to bring contaminated meat and the fat back into the Corporation area. The Legislature has designed a scheme by which reasonable restrictions are placed upon the right of a citizen to dispose of his property:

possibility of an alternative scheme which might have been but has not been designed, will not justifiably expose the first scheme to the attack that it imposes unreasonable restrictions.

Reasonableness of restrictions imposed by a law has to be adjudged in the light of the nature of the right, danger or injury which may be inherent in' the unbridled exercise of the right and the necessity of protection against danger which may result to the public by the exercise of the right. In each case the test is whether the restriction is commensurate with the need of protection of the interest of the public against the exercise of the right. But the fact that the owner is unable to sell for a price the carcass and required to pay a fee for removal of the carcass does. not, in judgment, render a provision which is essentially conceived in the interests of the general public, as indicated .earlier, unreasonable. The Corporation has to arrange for effectively disposing of the carcass, and it would be necessary for effectuating that purpose to provide that the title of the owner in the carcass should be extinguished. Unless the title of the owner in the carcass is extinguished, various complications may arise in the way of disposal of the carcass. We are unable to agree with the High Court, that for/he purpose of ensuring proper disposal, transfer of ownership to the Municipal Corporation was not necessary or that the provisions went "far beyond the legitimate purpose of making them."

In determining the extent of the right which a citizen may claim to exercise, the Court is concerned to deal with the reasonableness of the restriction imposed upon the exercise of the right. As observed by Patanjali Sastri, C.J., in *State of Madras v. If. G. Row(1)*--"the test of reasonableness, wherever prescribed, should be applied to each

individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the: evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at' the time, should all enter into the judicial verdict." As stated by Mahajan, I., in *Chintamanrao v. State of Madhya Pradesh*(2) at p. 763:

The word 'reasonable' implies intelligent care and deliberation. that is the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Art. 19(1) (g) and the social control permitted by clause (6) of Art. 19 it must be held to be wanting in that quality."

The High Court was of the view that looking to the object intended to be achieved it was not necessary to impose "such wholesale restriction on the owner of carcasses as also on those who carry (1) [1952] S.C.R. 597 607. (2) [1950] S.C.R. 759.

on the trade as has been imposed." We do not think, however, that the provisions incorporated by Act 14 of 1961 were arbitrary or excessive. Reasonableness of the restriction imposed upon the right to acquire, hold and dispose of property must be evaluated in the light of the nature of the commodity and its capacity to be detrimental to the public weal. The power of the State to impose reasonable restrictions may extend to prohibiting acquisition holding or disposal of a commodity if the commodity is likely to involve grave injury to the health or welfare of the people. In adjudging the reasonableness of restrictions imposed upon the holding or disposal of a carcass which is noxious, maintenance of public health is the paramount consideration. Restriction imposed upon the right of an owner of a carcass to dispose it of in the manner indicated, in the Act, being enacted solely in the interest of the general public, cannot be deemed arbitrary or excessive merely because they involve the owner into a small financial burden. Under the Constitution a proper balance is intended to be maintained between the exercise of the right conferred by Art. 19(1)(f) and (g) and the interests of a citizen in the exercise of his right to 'acquire, hold or dispose of his property or to carry on occupation, trade or business. In striking that balance the danger which may be inherent in permitting unfettered exercise of right in a commodity must of necessity influence the determination of the restrictions which may be placed upon the right of the citizen to the commodity. The law which compels the removal of the carcass expeditiously from the place where it is lying is not contended to be arbitrary or excessive. The law which compels removal to the appointed place and disposal of the carcass under the supervision of the Corporation to which is entrusted the power and duty to take steps to maintain the public health cannot also be regarded as arbitrary or excessive, merely because the enforcement of the law involves some pecuniary loss to the citizen. We are unable to agree that by compelling disposal of carcasses by leaving to the owner of the carcass to dispose it in any manner he thinks fit, danger to the public health could be effectively avoided. was faintly argued that the levy of Rs. 20 as fee for removal of each carcass was excessive. But there is no evidence before the Court about the expenses which the Corporation is

required to incur in performing the service relating to the removal of carcasses of all animals some of which may yield in the disposal valuable by-products and others not. Evidently in a large and crowded metropolitan city it would be necessary to maintain covered wagons for removal of carcasses, to maintain an inspecting staff. to, make adequate arrangements for deposit of carcasses at certain places. and for their disposal under the supervision of the Municipal staff. Whether the fee levied from the owner of the carcass of an animal in excess of the expenditure which the Corporation will have to incur for the maintenance of the service is not commensurate is a matter on which no investigation appears to have been made and this Court cannot enter upon that question for the first time. It was, however, urged that a provision which not only extinguishes the title of the owner in the carcass thereby involving him in the loss of the value which he would have obtained by sale of the carcass, but' simultaneously imposes upon him a liability to remove the carcass at his own expense is per se unreasonable. We do not think so. If the carcass is likely to be deleterious to public health and its removal from the place where it is lying being in the interests of the public health, imposition of an obligation upon the owner to remove the carcass at his own expense or to pay for its removal, cannot be regarded as unreasonable, even if the charge which falls upon the owner is in addition to the loss which he suffers by reason of the extinction of his title in the carcass.

If the owner's right to dispose of his property is by the enactment of the impugned section subjected to reasonable restrictions, it must follow that the right of the skinner, assuming that he has a right in the carcass, is also subjected to reasonable restrictions, imposed in the interests of the general public.

The impugned provisions do not infringe the guarantee of freedom under Art. 19(f) of the Constitution. But even if it be established that the law which imposes a reasonable restriction upon the right of a citizen to acquire, hold and dispose of property, is not on that account free from the challenge that it infringes the guaranteed freedom under Art. 31. Article 31, after it was amended by the Constitution (Fourth Amendment) Act, 1955, provides:

"(1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the com-

pulsory acquisition Or requisitioning of property, notwithstanding that it deprives any person of his property.

- (3)
- (4)
- (5) Nothing in clause (2) shall affect-

(a) the provisions of any existing law other than a law to which the provisions of clause (6) apply, or

(b) the provisions of any law which the State may hereafter make---

(i)

(ii) for the promotions of public health or the prevention of danger to life or property, or (6)

Before the Constitution (Fourth Amendment) Act, 1955, the prevailing opinion in this Court was that Arts. 31(1) & (2) dealt with the same subject-matter and were not mutually exclusive in their scope and content, and should be read together and understood as dealing with the same subject, namely, the acquisition or taking possession of property referred to in cl. (2) of Art. 31, and that Art. 31 (before amendment) is a self-contained Article providing for a subject different from that dealt with in Art. 19. But since the enactment of the Constitution (Fourth Amendment) Act, 1955, clauses (2) & (2A) of Art. 31 and cl. (1) of Art. 31 deal with different subjects: Clauses (2) & (2A) deal with acquisition and requisitioning of property; and cl. (1) with deprivation of property by authority of law:

Kavalappara Kottarathil Kochuni and Ors. v. The State of Madras and Ors.(x) It was also held in that case that the word 'law' used in Art. 31 (1) indicates its limitation and refers back to Art. 19 and any law made under Art. 31 (1) can be sustained only if the restrictions it imposes are reasonable and in the interest of the general public, and that the correct approach should be first to ascertain the fundamental right and then to see whether the law infringes that right. If ex facie it does so, it has to stand the test of Art. 19(5). In certain circumstances, however, deprivation of fundamental right to property may also amount to a reasonable restriction under that Article. It was also observed that the word 'law' in Art. 31 (1) must mean a valid law, and such a law must satisfy two tests-(1) that the legislature is competent to enact it; and (2) that it (1) [1960] 3 S.C.R. 887. 916.

does not infringe any fundamental right. A law that deprives a citizen of his property may, therefore, be invalid if it infringes Art. 19(1) (f) of the Constitution, unless it is protected by cl. (5) of Art. 19. It was however ruled by a unanimous decision of this Court in Smt. Sitabati Debi and Anr. v. State of West Bengal and Anr.(1) that the decision in Kavalappara Kottarathil Kochuni's case(2) was not concerned with a law of requisition or acquisition and a law relating to acquisition and requisition of property falling within the terms of Art. 31(2) of the Constitution need not stand the test of reasonableness under Art. 19 (5).

In the present case the restrictions imposed by the impugned law upon the right of the owner however satisfy, for reasons already stated, the test of reasonableness under Art. 19(5). The question still remains whether the impugned law is void because it does not provide for payment of

compensation for the loss occasioned to the owner of the carcass resulting from the extinction of his title thereto. Since the amendment by the Constitution (Fourth Amendment) Act, 1955, cls. (2) & (2A) of Art. 31 deal with the acquisition or requisitioning of property--movable or immovable--for a public purpose. The protection of cl. (2) is attracted only if there is acquisition or requisitioning of the property for a public purpose i.e., for using the property for some purpose which would be beneficial to the public. The right guaranteed by Art. 31(2) is that property shall not be compulsorily acquired or requisitioned for a public purpose save by authority of law which provides for compensation for the property so acquired or requisitioned. The expression "acquired or requisitioned for a public purpose means acquired or requisitioned for being appropriated to or used for a public purpose. But the law which provides for extinction of the ownership and creation of an interest in the Corporation for the purpose of disposal of the carcass is not a law for acquisition of property for a public purpose: its primary purpose is destruction of the carcass in the public interest, and not utilisation of the property for a public purpose. The case would not, therefore, fall within the terms of Art. 31 (2). In any case the statute is squarely protected by cl. (5)(b)(ii) of Art. 31 and on that account the owner is not entitled to compensation for loss of his property. The words of Art. 31 (5) (b) (ii) are express and specific. Nothing in cl. (2) shall affect the provisions of any law which the State may hereafter make for the promotion of public health or the prevention of danger to life or property. If a law is enacted directly for the promotion of public health or for the prevention of danger to life or property, then, notwithstanding that it may incidentally (1) [1967] 2 S.C.R. 949. (2) [1960] 3 S.C.R. 887.

fall within the terms of cl. (2), no compensation is payable. Where the State acquires property and seeks to utilise it for promotion of public health or prevention of danger to life or property, the State is liable to pay compensation. But a law which directly and immediately seeks to promote public health or to prevent danger to life or property falls within the exemption under cl. (5)(b)(ii) even if thereby the interest of the owner in property is extinguished and interest in that property is vested in the State for destruction of that property.

Reliance was placed by counsel for the respondents upon a recent judgment of this Court in *The Deputy Commissioner and Collector, Kamrup and Ors. v. Durganath Sarma*(1). In this case the Government of Assam took possession of lands belonging to a citizen. Thereafter the Assam Acquisition of Land for Flood Control and Prevention of Erosion Ordinance 2 of 1955 was promulgated by the Governor which authorised the State Government to acquire lands for works or other development measures in connection with flood control or prevention of erosion. The Ordinance was with the assent of the President replaced by the Assam Acquisition of Land for Flood Control and Prevention of Erosion Act 6 of 1955. Under the Act the owner of the land was not entitled to the market value of the land at the date of acquisition. The owner of the land moved a petition in the High Court Assam for a declaration that the Act 6 of 1955 was invalid, and for an order directing the State Government to forbear from giving effect to the notices of acquisition of his land issued thereunder. Act 6 of 1955 was enacted before the Constitution (Fourth Amendment) Act, 1955, which came into force on April 29, 1955. The High Court held, inter alia, that Act 6 of 1955 was a law for acquisition of property and was not protected by cl. (5)(b)(ii) of Art. 31. This Court confirmed the order passed by the High Court. It was observed by this Court (p. 402):

"It is to be noticed that cl. (5)(b)(ii) saved laws for the promotion of public health or the prevention of danger to life or property. It did not save laws for the acquisition of property. We are satisfied that cl. (5) (b) (ii) was not intended to except laws for the acquisition of property from the purview of el. (2)A law for promotion of public health or for prevention of danger to life or property sometimes has to provide for destruction and impairment of value of private property and the taking of temporary possession of the property by the State. It may be necessary to destroy contaminated food or to burn plague-infested buildings for the promotion of public health, to pull down a building to prevent a fire from spreading and consuming other (1) A.I.R. [1968] S.C. 394.

buildings in the locality, to demolish a building in a ruinous condition endangering the safety of its occupants and other persons in its vicinity. The destruction and .the temporary taking of property for such purposes, though necessary for promoting public health or preventing danger to life or property, mounted to taking of property within cl. (2). But for cl. (5)(b)(ii), a law authorising such a taking of property would have been invalid unless it provided for compensation. Clause (5)(b)(ii) saved such laws from the operation of cl. (2) and those laws were not invalid because they authorised such a taking without payment of compensation. A law authorising the abatement of a public menace by destroying or taking temporary possession of private properties if the peril cannot be abated in some other way can be regarded as a law for promotion of public health or prevention of danger to life or property within the purview of cl.

(5)(b)(ii)."

Counsel for the second respondent, however, invited our attention to the following passage in the judgment of the Court:

"Clause 5(b)(ii) will protect laws providing for requisitioning or temporary occupation of property strictly necessary for promotion of public health or prevention of danger to life or property. The law may authorise the State to requisition the property temporarily for abating the public menace without payment of compensation if the menace cannot be abated in some other recognised way.", and contended that el. (5)(b)(ii) only applies where there is "temporary occupation of property"; where there is deprivation of property with a view to destroy it, el. (5)

(b) (ii) has no application. But evidently the expression is used in dealing with the claim to compensation for acquisition of immovable property. Where possession of movable property is under the authority of law taken with a view to destroy it in the interest of the general public i.e., for prevention of grave danger to life or property, the guarantee of Art. 31(2) is not attracted.

The law enacted by the Legislature extinguishing the interest of the owner in the carcass and creating an interest in the Corporation being a law directly enacted for _prevention of grave danger to the health of the community fell within the terms of cl. (5) (b) (ii) and no compensation was

_payable in respect thereof, Art. 31(2) notwithstanding. We may observe that this Court in Deputy Commissioner Kamrup's case(1) _proceeded to observe that even though since the amendment by the Constitution (1) A.I.R. 1968 S.C. 394.

(Fourth Amendment) Act, cls. (1) & (2) of Art. 31 dealt with separate. subject-matters, since el. (5) (b) (ii) of Art. 31 has not been amended, its connotation could not be deemed to have been altered. If originally it was intended to be a restriction on the right to property as delineated by cls. (1) and (2) of Art. 31, it continued to have the same operation. In Deputy Commissioner, Kamrup's case(1), however, the Court was not directly called upon to declare the precise inter-relation between cl. (5) (b) (ii) and 'el. (2) as amended for the impugned Assam Act was enacted before the amendment of the Constitution by the Constitution (Fourth Amendment) Act.

It is sufficient for the purpose of this case to hold that a law declaring extinction of the right of the owner in movable property not with a view to use it for a public purpose but to destroy it for abating nuisance and preventing danger to public health and vesting it in the Corporation entrusted with power to take steps to maintain public health is not a law for acquisition of property for a public purpose. In any event the law is not, because of the exemption contained in el. (5)(b)(ii) of Art. 31 of the Constitution, invalid. even if It does not provide for payment of compensation for deprivation of the right to property. The owner of the carcass is, therefore, unable to sustain his plea that Art. 19(1)(f) or Art. 31(2) were infringed by the impugned provisions.

The claim of the first respondent who. would, but for the law have been able to purchase carcasses from the second respondent does not require any elaborate discussion. The first respondent is carrying on business as a skinner of carcasses and claims protection of its fundamental right under Art. 19(1)(g) of the Constitution. Evidently it has no right in the carcass until it purchases the carcass. Restriction upon the right of the owner to sell the carcass does not directly infringe the fundamental right of the purchaser, who, but for the restriction, may have been able to purchase it. Assuming, however, that the imposition by law of the restriction upon the owner of the carcass involves also a restriction upon the right of the first respondent, we are of the view, having regard to the character of the legislation and its avowed object that it imposes reasonable restrictions upon the right to carry on occupation or business within the meaning of Art. 19 (6) of the Constitution. The first respondent cannot claim the protection of Art. 31(2) of the Constitution, because until it purchases the carcasses from the owner it has no right in the .property, and it cannot set up a grievance for loss of property which it does not own.

(1) A.I.R. 968 S.C. 394.

Sup. CI/69--9 It was urged that the Corporation instead of disposing of the carcasses under its own supervision had given contracts to the rivals in business of the first respondent and the law which authorised the Corporation, by exercise of legislative authority, to destroy the business of the first respondent must be regarded as imposiag unreasonable restrictions upon the right of the first respondent to carry on business. The Act, however, contains no provisions about the manner in which the Corporation shall dispose of the carcasses which may come into its possession; it leaves it to the Corporation to take adequate and effective steps for the purpose of disposal. Whether by

virtue of the contracts given by the Corporation to other persons who are claimed to be rivals in business of the first respondent unreasonable restrictions may be deemed to be placed upon their fundamental right is a matter on which no argument was advanced at any stage before the trial Court or the High Court, though it was strenuously urged before us. Prima facie, the argument has no substance: in any case, it cannot affect the validity of the statute or the provisions which have been declared to be invalid by the High Court. The facts which give rise to the two other appeals are the same and for reasons already stated the claim made by the respondents must be The appeals are allowed and the orders passed by the High Court set aside. The petitions shall stand dismissed. No order as to costs throughout.

V.P.S.

Appeals allowed.