Deputy Commissioner And Collector, ... vs Durga Nath Sarma on 15 September, 1967

Equivalent citations: 1968 AIR 394, 1968 SCR (1) 561

Author: R.S. Bachawat

Bench: R.S. Bachawat, K.N. Wanchoo, V. Ramaswami, G.K. Mitter, K.S. Hegde

PETITIONER:
DEPUTY COMMISSIONER AND COLLECTOR, KAMRUP& ORS.

Vs.

RESPONDENT:
DURGA NATH SARMA

DATE OF JUDGMENT:
15/09/1967

BENCH:
BACHAWAT, R.S.
BENCH:
BACHAWAT, R.S.
WANCHOO, K.N. (CJ)
RAMASWAMI, V.
MITTER, G.K.
HEGDE, K.S.

CITATION:
1968 AIR 394 1968 SCR (1) 561
CITATOR INFO :
RF 1969 SC 634 (23)
RF 1970 SC1157 (19)
RF 1972 SC2205 (17,18,26)
RF 1972 SC2301 (61)
RF 1975 SC1389 (21,23)
RF 1980 SC1789 (36)

ACT:
The Assam Acquisition of Land for Flood Control and Prevention of Erosion Act (6 of 1955) and the Assam Acquisition of Land for Flood Control and Prevention of Erosion (Validity) Act (21 of 1960)-If violative of Arts. 14 and 31(2) of the Constitution.
Constitution of India, 1950, Art. 31(5)(b)(ii)-Scope of.

HEADNOTE:

The Assam Acquisition of Land for Flood Control and Prevention of Erosion Act, 1955, was passed before the Constitution was amended by the Constitution (Fourth Amendment) Act. As the Act did not apply to the lands which were taken possession of before it came into force, the Assam Acquisition of Land for Flood Control and Prevention of Erosion (Validation) Act, 1959, Act XXI of 1960 was passed, validating the acquisition of lands of which such possession had been taken. Under s. 2 of the 1960 Act any land taken over for the construction of embankments before the 1955 Act came into force unless the acquisition was validly made under any other law for the time being in force shall be deemed to have been validity acquired under the 1955 Act and is deemed to have vested in the State Government from the date the land was actually taken possession of; and compensation was payable in accordance with the principles in s. 6 of the 1955 Act. Under s. 6(1) of the 1955 Act the owner of the land shall get compensation for land including standing crops and trees, if any, but excluding buildings or structures, a sum not. exceeding 40 times the annual land revenue in case of periodic patta land and 15 times the annual land revenue in case of annual patta land. Under s. 6(2) the owner shall get compensation for the building or structure, if any, a sum equivalent to the sale proceeds of the materials plus fifteen per cent thereof.

In 1954. the Assam Government took possession of the lands of the respondent for the construction of an embankment and the respondent was asked to submit his claim for compensation under the 1955 and 1960 Acts after the 1960 Act was passed. He then filed a writ petition challenging the validity of both the Acts and prayed for a direction prohibiting the State Government from taking action under those Acts as the compensation payable was illusory and inadequate. The High Court held that the 1955 Act was violative of Art. 31(2), as it stood before the Fourth Amendment Act, that it was not protected by Art. 31A, and that, the 1960 Act was not independent of the 1955 Act and fell with it.

In appeal by the State Government to this Court the appellant submitted that the two Acts were not violative of Arts. 14 and 31(2) and were in any event protected by Arts. 31A and 31 (5) (b) (ii).

HELD: (1) The constitutional validity of the 1955 Act must be judged by Art. 31(2) as it stood before the Fourth Amendment Act.Since the assessment of land. revenue in Assam many years ago. the market value of the lands has increased by leaps and bounds. Under s, 6(1) of the Act, the Collector, in determining the compensation,

L/J(N)6SCI-10

562

should take into account the value of the land as at the date of the acquisition and other factors, but this is meaningless because under the first part of s. 6(1) the compensation cannot exceed a fixed multiple of the annual land revenue. The State made no attempt to show that a multiple of land revenue payable for the land -is a just equivalent of or has any relation to the market value of the land ,on the date of the acquisition. The sale proceeds under s. 6(2) can not be regarded as a just equivalent of the value of the building and it stood at the time of the acquisition. The Act, therefore, does not ensure payment of just equivalent of the land appropriated and is violative of Art. 31(2) as it stood before the Fourth Amendment. [576H; 577F-H-, 578A-C]

State of West Bengal v. Bela Banerjee, [1954] S.C.R. 558 and State of Madras v. D. Namasivaya Mudaliar, [1964] 6 S.C.R. 936, followed.

(2) The Act is a purely expropriatory measure. It provides for acquisition of lands both urban and agricultural for executing works in connection with flood control or prevention of erosion. A piece of land acquired under the Act need not be an estate or - part of an estate. The Act is not a law concerning agrarian reform and hence is not protected by Art. 31A of the Constitution. [568G-H]

Kochuni v. State of Madras, [1960] 3 S.C.R. 887; Ranjit Singh v. State of Punjab, [1965] 1 S.C.R. 82 and P. V. Mudaliar v. Special Deputy Collector, Madras, [1965] 1 S.C.R. 641 followed.

(3) The Act is a law for the acquisition of property and not a law for preventing danger to life or property, and so, it is not protected by Art. 31 (5) (b) (ii). Article 31 (5) (b) (ii); provides that nothing in Art. 31(2) would affect the provisions of any law which the State might make after the commencement of the Constitution for the promotion of public health or the prevention of danger to life or property. 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 the value of private property and the taking of temporary possession of the property by the State. Any substantial abridgment of the right of ownership of property including its destruction or injuriously affecting it or taking away its possession and enjoyment from the owner, amounted to a taking of property within the purview of Art. 31(2), before it was amended by the Fourth Amendment Act. But for Art. 31(5)(b)(ii) a law authorising such a taking of property would have been invalid unless it provided for compensation. The clause saved such laws from the operation of cl. (2) and these 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). But it is not possible to say that a law for permanent acquisition of property is such a law. The object of the acquisition may be the opening of a public park for the improvement of public health or the erection of an embankment to prevent danger to life or property from flood. As the acquired property belongs to the State, the State is free to deal with it as it chooses after the acquisition. It may close the public park and use the property for other purposes, or the river may recede or change its course so that it may no longer be necessary to keep the embankment. The State may then sell the property and appropriate the sale proceeds to its own use. Acquistions of property for the opening of a public park or for the erection of dams and embankments were always made under the

563

Land Acquisition Act and it could not have been intended that such acquisition could be made under laws coming within the Purview of el. (5)(b)(ii) without payment of compensation. Cl. 5(b)(11) did not protect laws for acquisition of property from the operation of Art. 31(2) as it stood before the Constitution (Fourth Amendment) Act [574C-H; 575A-D]

State of West Bengal v. Subodh Gopal Bose, [1954] S.C.R. 587, and Dwarkadas Shriniwas of Bombay v. Sholapur Spinning and Weaving Co. Ltd. [1954] S.C.R. 674, referred to.

(4) The effect of the Constitution (Fourth Amendment) Act is that a deprivation of property, short of the transfer of the ownership or the right to possession of any property to the State, is not within the purview of Art. 31(2). A law, made after the Fourth Amendment Act providing for destruction of property or impairment of its value, is not invalid on the ground that it does not provide for payment of compensation, because, it is no longer within the purview of Art. 31(2), and, it is not necessary to invoke cl. (5) (b) (ii) to save it. It cannot therefore be contended that laws for permanent acquisition of property for the promotion of public health or prevention of danger to life or property, should be held to be saved by Art. 31 (5) (b) (ii) and that otherwise the clause would be otiose. Even now the clause 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. But as the Fourth Amendment did not amend cl. (5)(b)(ii) and did not change its original meaning, the clause will not save laws for the Permanent acquisition of property, from the operation of Art. 31(2). [575G-H; 576A-C]

(5) There is unjust discrimination between owners of land similarly situated by the mere accident of some land being required the purposes mentioned in the 1955 Act and some land being required or other purposes, and therefore, the

Act is violative of Art. 14. In the State of Assam, some land may be taken under the 1955 Act for the purpose of works and other measure in connection with flood control and prevention of erosion on payment of nominal compensation while, an adjoining land may be taken for other public purposes under the Land Acquisition Acton payment of adequate compensation. Article 14 permits reasonable classification and differential treatment based on substantial differences having reasonable relation to the object sought to be achieved. It is not possible to hold that the differential treatment of the land acquired under the Land Acquisition Act, 1894, and those acquired under the Assam Act of 1955 has any reasonable relation to the object of the acquisition by the State. [578E-G; 579C-E]
P. Vajravelu Mudaliar v. Dy. Collector, [1965] 1 S.C.R. 614, followed.
[Whether the Act is ultra vires on the ground that the State may acquire lands at its option either under the 1955 Act or under the Land Acquisition Act, left open.] [579H]
(6) The core of the 1960 Act is the deeming provision of s, 2, under which, certain lands are deemed to be acquired under the earlier Act. The 1960 Act is entirely dependent upon the continuing existence and validity of the earlier Act of 1955. As the earlier Act is unconstitutional and has no legal existence the deemed acquisition tinder the 1960 Act is equally invalid. As this deeming provision is invalid all the ancillary provisions fall to the ground along with it and the provisions of the 1960 Act are incapable of enforcement and are invalid. The State Legislature has no power to enact that an acquisition made under a constitutionally invalid Act is valid. [580D F-H]
564

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1100 of 1966. Appeal from the judgment and order dated November 26, 1962 of the Assam High Court in Civil Rule No. 489 of 1961. S. V. Gupte, Solicitor-General and Naunit Lal, for the appellants.

B. R. L. Iyengar, for the respondent.

The Judgment of the Court was delivered by Bachawat, J. In 1954, the Assam Government took possession of the lands of the respondent and several other persons situated in the District of Kamrup for the construction of the Pagdalia embankment. In 1.955, the Assam Acquisition of Land for Flood Control and Prevention of Erosion Ordinance. 1955 (Assam Ordinance No. 2 of 1955) was passed enabling the State Government to acquire lands for works or other development measures in connection with flood control or prevention of erosion. The Ordinance was replaced by the Assam Acquisition of Land for Flood Control and Prevention of Erosion Act, 1955 (Assam Act No. 6 of 1955)

which was passed on April 11, 1955 with the assent of the President. In April 1956, the State Government passed an order in writing acquiring the lands taken over in 1954 for the construction of the Pagdalia embankment under s. 3 of Ordinance No. 2 of 1955. It seems that the reference to the Ordinance was a mistake and the acquisition was made under Act No. 6 of 1955. On April 26, 1956, the respondent was served with the notice of the acquisition. By an order dated September 10, 1959, the Deputy Commissioner, Kamrup acting on behalf of the State Government quashed the Order dated April 19, 1956 and directed that fresh acquisition proceedings under- the Land Acquisition Act, 1894 should be started. Pursuant to this order, some of the lands required for the Pagdalia embankment were acquired under the Land Acquisition Act on payment of full compensation. A draft notification for the acquisition of the respondent's lands under the Land Acquisition Act was sent by the Collector of Kamrup to the Assam Government for approval, but this proposal was eventually dropped. On May 27, 1960. the Assam Acquisition of Land for Flood Control and Prevention of Erosion (Validation) Act, 1959 (Assam Act No. 21 of 1960) was passed with the assent of the President. In November 1960. the State Government passed an order for the acquisition of the respondent's lands under s. 3 of the Assam Acquisition of Land for Flood Control and Prevention of Erosion Act. It was common case before the High Court that this acquisition was made under s. 3 of Act No. 21 of 1960. On November 6, 1960, the Collector of Kamrup served a notice upon the respondent informing him of the acquisition order and asking him to submit his` claim for compensation. On September 30, 1961, the respondent filed a writ petition in the Assam High Court asking for an order declaring Act No. 6 of 1955 and Act No. 21 of 1960 to be invalid and directing the State Government to forbear from giving effect to the notices issued thereunder. The High Court allowed the petition and issued a writ of mandamus.directing the State Government not to give effect to the notices issued under Act No. 21 of 1960. The present appeal has been filed under a certificate granted by the High Court.

It is convenient at this stage to refer to the provisions of the impugned Acts. The preamble to Act No. 6 of 1955 shows that it was passed to make provision for the speedy acquisition of lands necessary for works or other development measures connection with flood or prevention of erosion. Section 3 gives power to the State Government to acquire land for those purposes by an order in writing. It is in these terms:

> "3. Power to acquire land-If, in the opinion of the, State Government or such officer as is empowered in this behalf by the State Government it is necessary or expedient to acquire speedily any land for works or other development measures in connection with flood control or prevention of erosion, the State Government or such officer, may by, an order in writing, acquire any land stating the area and boundaries of the land."

Section 4 provides for the service and publication of the order of acquisition.' Under s. 5, on such service or publication the land vests in the State Government and may be taken possession of by the Collector. Section 46 as amended by Act No. 17 of 1959 which provides for compensation is in these terms:

"6. Compensation-The owner of the land which has vested in the Government under section 5(1) shall get compensation at the following rates,-

(1) for land including standing crops and trees, if any but excluding,building or structure, a sum not exceeding forty times the annual land revenue in case of Periodic Patta Land and fifteen times the annual land revenue in case of Annual Patta land:-

Provided that in case of revenue free land and land paying revenue at concessional rate the compensation will be assessed on the basis of the revenue of similar revenue paying land of the neighbourhood.

In determining this sum, the Collector shall take the following into consideration:-

(a) The value of the land, as at the date of acquisition,

(b) the, adverse effect on the value of the land due to. possible floods, on the land or danger of erosion of such land,,

(c) The benefit the owner is likely to derive in respect ,of his other lands in the area due to the control measures,,

(d) The damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector taking possession thereof (2) For building or structure, if any, a sum equivalent to the sale proceeds of the materials of the same plus 15 per cent thereof:-

Provided that if in lieu of this compensation the owner chooses to take away the materials the Collector shall allow him to do so within such time as specified by him and the cost of the shifting of the buildings or structures as the case may be, as may be approved by the Collector in the manner prescribed shall be borne by the Government, which cost however, shall not exceed 20 per cent of the value of the buildings or structures as the case may be as determined by the Collector."

Section 7 provides for payment of interim compensation. Under s. 8, the Collector is required to make an award of the compensation allowable for the land and its apportionment among the persons interested in the land. Under s. 9, on the application of any person aggrieved by the award, the Collector is required to refer the matter to the decision of an arbitrator appointed by the State Government. Section 10 empowers the Collector to use such force as may be necessary to evict any person from the land. Section II imposes. penalties on persons obstructing the taking of possession of the land by the Collector. Section 12 gives protection for action taken in good faith under the Act. Section 13 bars the jurisdiction of the Courts to question the legality of actions taken or orders made under the Act. Section 14 empowers, the State Government to make rules. Section 16 repeals Ordinance No. 2 of 1955.

Ordinance No. 2 of 1955 contained similar provisions, and it is not necessary to repeat them.

The preamble to Act No. 21 of 1960 shows that its object is to validate the acquisition of lands taken over for flood, control and prevention of erosion. Section 2 is in these terms:

> "2. (1) Notwithstanding anything contained in the Assam Acquisition of Land for Flood Control and Prevention of Erosion Act, 1955 (hereinafter referred to as the 'said Act'), any land taken over for the purposes of construction of embankments or carrying out works or other development measures in connection with flood control or prevention of erosion before this Act came into force, except where acquisition was made validly under any other law for the time being in force, shall be deemed to have been validly acquired under the provisions of the 'said Act' and the land shall absolutely vest and shall always be deemed to have been vested in the State Government from the date the land was actually taken possession of.
>
> (2) The Collector shall, as soon as may be, after the commencement of this Act, publish, by notification in the official Gazette, the description of land deemed to have been acquired under sub-section (1)."

Section 3 provides for payment of compensation. It is in these terms:

> "3. The Collector shall, within a period of six months from the date of commencement of this Act, assess the value of land deemed to have been acquired under section 2 in accordance with the principles contained in section 6 and make an award under Section 8 of the said Act respectively. The owner of the land shall further be entitled to an interest at the rate of 6 per cent per annum on the value of the award, for the period from the date the land was actually taken possession of to the date of the award."

Section 4 gives protection for action taken in good faith in connection with the land deemed to have been acquired under section 2.Section 5 provides:

> "Except as otherwise provided in this Act, the provisions of the said Act shall apply, mutatis mutandis in respect of the acquisition of the land deemed to have been acquired under Section 2 of this Act."

Section 6 provides that if any question arises as to the interpretation of the provisions of the Act or the applicability of any of its provisions in respect of any land the matter shall be referred to the Governor of Assam whose decision shall be final.

The respondent challenged the validity of Act No. 6 of 1955 and Act No' 21 of 1960 on the ground that they contravened Arts. 14 and 31(2) of the Constitution. The High Court held that (1) Act No. 6 of 1955 was violative of Art. 31(2) of the Constitution as it stood before the Constitution (Fourth Amendment) Act and was not protected by Art. 31A and (2) s. 3 of Act No. 21 of 1960 declaring that

certain lands would be deemed to be validly acquired under the earlier Act was not a law providing for acquisition of land independently of the earlier Act and as the earlier Act was invalid, the later Act fell with it. The High Court did not express any opinion on the question whether the two Acts were I violative of Art. 14.

Before us, counsel 'forthe appellants submitted that the two Acts were not violative of Arts. 14 and 31(2) and were, in, any event, protected' by Arts,31A and 31(5)(b)(ii). The respondent was not represented by counsel, but 'we have had the advantage of the argument of Mr. lengar who assisted as amicus curiae'.

The validity of both the Acts is in issue in this appeal. On the question of the validity of Act No. 6 of 1955 the following points arise for decision: (1) is the Act protected by Art. 31A;(2) is it protected by Art. 31(5)(b)(ii); (3) does it infringe Art. 31(2); (4) is it violative of Art. 14? With regard to the validity, of Act No. 21 of 1960, the following points arise for decision: (1) is it a law providing for acquisition of lands independently of Act No. 6 of 1955, and if not, is it valid? (2) If it is an independent piece of legislation, (a) is it protected by Art. 31A; (b) is it protected by Art. 31(5)(b)(ii); (c) does it contravene Art. 31(2). and (d)is it violative of Art. 14? Counsel for the appellants submitted that Act No. 6 of 1955 is a law providing for the acquisition of estates and is protected by Art. 31A(1)(a). We are unable to accept this contention. It is now well settled that Art. 31A(1)(a) envisages only laws concerning agrarian reform. In Kochuni's case(1), the Court by a majority decision held that the Madras Marumakkathayam (Removal of Doubts) Act, 1955 which deprived a sthanee of his properties and vested- them in the tarwad contravened Art. 19(1)(f) and was not protected by Art. 31A and that Art. 31A saved laws for agrarian reform only and did not enable the State to divest a proprietor of his estate and vest it in another without reference to any agrarian reform. In Ranjit Singh v. State of Punjab(2), the Court held that the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 as amended by Act No. 27 of 1960 was protected by Art. 31A, as the general scheme of the Act was definitely agrarian reform and under its provisions something ancillary thereto in the interests of rural economy had to be un- dertaken to give full effect to the reforms. In P. V. Mudaliar v. Special Deputy Collector, Madras(3), the Court held that the Land Acquisition (Madras Amendment) Act, 1961 providing for the acquisition of lands for housing scheme was not a law with reference: to any agrarian reform and was not protected by Art. 31A. In the light of these decisions, we must bold that Act No. 6 of 1955 is not a law concerning agrarian reform and -is not protected by Art. 31A. The Act is a purely expropriatory measure. It provides for acquisition of lands both urban and agricultural for executing works in connection with flood control. or prevention of erosion- A piece of. land acquired under the Act need not be an estate or part of an estate. It has no relation to agrarian reform, land tenures or the elimination of intermediaries. We may (1) [1960] 3 S.C.R. 887, 897-905.

(2) [1965] 1 S.C.R. 82.

(3) [1965] 1 S.C.R. 614.

add that there is nothing' on', the record to,' show that the respondent's lands are estates or parts of estates. Counsel for the, appellants next submitted that nothing in Art. 31(2) can affect Act No, 6; of

1955 as it is a law for, the prevention of danger to life or property within the purview of Art. 31(5) (b)(ii) This, contention is somewhat novel, and requires close examination.

Our attention has been drawn to certain opinions expressed in our earlier decisions that Art. 31(2) occupies, the field of eminent domain and Art. 31(5)(b)(ii) contains a saving clause with regard to the police powers of the State. The concepts of eminent domain and police powers are borrowed from: American law. The constitutional guarantee of the due process clause, in the United States Constitution requires that no private property shall be taken for public use without just compensation. In the exercise of its police power, the State may pass regulations designed to ensure public health, public morals, public safety as also public convenience or general prosperity, see Chicago, Burlington & Quincy Railway Company v. People of the State of Illinois(1). In the exercise of its eminent domain power, the State may take any property from the owner and may appropriate it for public purposes The police and eminent domain powers are essentially distinct.Under the police power many restrictions may be imposed and the property may even be destroyed without compensation being given, whereas under the power of eminent domain, the property may be appropriated to public use on payment of compensation only. The distinction between the two powers is brought out clearly in the following passage in American Jurisprudence, 2nd End, Vol. 16, Art. 301,. p. 592:

> "The state, under the police power, cannot in any manner actually take and appropriate property for public use without compensation, for such action is repugnant to the constitutional guaranty that where private property is appropriated for public use, the owner shall receive reasonable compensation. Thus, there is a vital difference, which is recognised by the authorities, between an act passed with exclusive reference to the police power of the state, without any purpose to take and apply property to public uses, and an act which not only declares the existence of a nuisance created by the condition of particular property, but in addition, and as the best means of accomplishing the end in view, authorizes the same property to be appropriated by the public."

In Sweet v.Rechel(2) the validity of an Act to enable the City of Boston to abate a nuisance existing therein and for the preservation of the public health in the City by improving the drainage of (1) 200 U.S. 561 :50 L.Ed. 596, 609.

(2) 159 U.S. 380:40 L.Ed. 188.

the territory was sustained on the ground that the Act provided for payment of just compensation. The Court pointed out that private property the condition of which was such as to endanger the public health could not be legally taken by the Commonwealth and appropriated to public use without reasonable compensation to the owner. In Delaware L. & W. R. Co. v. Morristown(1) an Ordinance establishing a public hack stand on private property without payment of compensation was struck down on the ground that assuming that the creation of the public hack stand would be a proper exercise of the police power it did not follow that the due process clause would not safeguard to the owner just compen- sation for the use of the property. In United States v. Caltex

(Philippines)(2), the Court held that no compensation was payable by the United States for the destruction by its retreating army of private property to prevent its falling into enemy hands. But the Court recognised that compensation would be payable for the army's requisitioning of private property for its subsequent use. The Court said that in times of imminent peril-such as when fire threatened a whole community-the sovereign could, with immunity, destroy the property of a few that the property of many and the lives of many more could be saved. Indeed, it would be folly not to destroy some building so that an entire town may be saved from the conflagration, as will appear from the following historic incident referred to in Respublica v. Sparhawk(3):

> "We find, indeed, a memorable instance of folly recorded- in the 3 vol. of Clarendon's History, where it is mentioned,, that the Lord Mayor of London in 1666. when the city was on fire, would not give directions for, or consent to, the pulling down forty wooden houses or to removing the furniture, etc. belonging to the lawyers of the temple, then on the circuit, for fear he should be answerable for a trespass; and in consequence of this conduct, half that great city was burnt."

If Art. 31(5)(b)(ii) is regarded as a saving clause with regard to the police power of the State, it is clear that under a law designed to promote public health or to prevent danger to life or property the State may in cases of imminent peril destroy or impair the value of private property without any obligation to pay compensation, but it cannot arrogate to itself the power to acquire and appropriate to its own use private property without payment of compensation.

We shall now examine our earlier decisions in The State of West Bengal v. Subodh Gopal Bose and Other(1) and Dwarkadas Shrinivas of Bombay v. The SholapurSpinning and Weaving Co.

(1) 276 U.S. 182:72 L.Ed. 523, 527.

(2) 344 U.S. 149:97 L.Ed. 157.

(3) 1 Dall. 357, 363: 1 L.Ed. 174.

(4) [1954] S.C.R. 587.

Pd., and others(1), where reference was made to the concepts of' eminent domain and police power in relation to cls. (1) and (2) of Art. 31 before the Constitution (Fourth Amendment) Act and Art. 31(5)(b)(ii). The decision of Patanjali Sastri C. J., Mahajan, Bose, Ghulam Hasan, JJ. in those two cases (Das and Jagannadhadas, JJ. dissenting) was that cls. (1) and (2) of Art. 31 were not mutually exclusive in scope but should be read together and understood as dealing with the same subject, namely, the protection of the right to property by means of limitations on the State power to take away private property, the deprivation contemplated' by cl. (1) being no other than the acquisition or taking possession of the property referred to in cl. (2). The effect of the majority, decision was that a substantial abridgment of the rights of ownership which withheld the property from the possession and enjoyment of the owner or seriously impaired its use or enjoyment by him or materially reduced its value amounted to a taking of property within the purview of Art. 31(2). On the subject of

eminent. domain and- police power in relation to cls. (1), (2) and (5)(b)(ii) the learned Judges expressed different opinions. Patanjali Sastri, C. J. at pp. 605, 606, 610, 612 and 614 said that (a) the power of' eminent domain was the subject of express grant in Entry No. 33: of List I and Entry No. 36 of List II and Art. 31 defined the limitation on the exercise of this power, (b) cl. (5)(b)(ii) of Art. 31 showed that but for that clause compensation would be payable even for the exercise of the State's power in an emergency to, demolish an intervening building to prevent a conflagration from spreading and it was because of that clause that such destruction did not entail liability to pay compensation,

(c) the American doctrine of police power as a distinct and specific legislative power was not recognised in our Constitution, (d) the power of' social control and regulation was implicit in the entire legislative field, it was not conferred by cl. (1) nor did cl. (5) define it exhaustively in relation to property rights. Mahajan, J. at pp. 695 to697 and 700 said that (a) cl. (2) defined the powers of the legislature in the field of eminent domain and

(b) cl. (5)(b)(ii) was$ not inserted by way of abundant caution but was a comprehensivesaving clause defining the classes of deprivation of property without payment of compensation, as for instance in cases of emergency in order to prevent a fire from spreading. Bose, J. at p. 734 deprecated the use of doubtful words like police power and eminent domain in construing our Constitution. Das, J at pp. 638, 643, 645, 647-650 said, that (a) cl. (1) dealt with police power and Art. 31(2) dealt with the power of eminent domain, (b) cl. (5)(b)(ii) did not exhaustively define the police power; it was inserted by way of abundant caution to except from the purview of cl. (2) some instances of the exercise of police power superficially resembling the exercise of the power of eminent domain and (1) [1954] S.C.R. 674.

(c) acquisition of land for any' of the purposes mentioned in cl.the (5)(b)(ii) 'was 'precisely the kind of acquisition which was always made on payment of compensation under the Land Acquisition. Act, 1894 and a construction of cl. (5)(b)(ii) which took out of -Art. 31 (2) a I law made 'really and essentially in exercise of the power of eminent domain could not readily be accepted as cogent -or correct. Jagannadhadas, J. at pp. 669, 670 and 672 said that (a) cl. (1) was not a declaration of the American doctrine of police power nor had it reference only to the power of eminent domain,(b) with respect to matters enumerated in the legislative lists the legislature could exercise every power including the police power-if it was necessary to import this concept-in so far as it was not provided in Arts. 19(2) to 19(6), 31(5)(b)(ii) or other specific provisions, (c) an acquisition under cl. (2) did not necessarily involve transfer of title or possession and this was indicated by cl. (5)(b)(ii) which more often than not would cover cases of destruction of property.

From the 'Several conflicting opinions expressed in those two cases it is difficult to say that the Court or a majority of Judges held that cl. (5)(b)(ii) saved the police power of the State in the ,strict technical sense as understood in American law. All we need say is that if cl. (5)(b)(ii) is construed as saving the police power of the State, such police power must be exercised subject to the constitutional restriction as evolved by the American judicial decisions that private property cannot be appropriated, to public use without payment of compensation. But we prefer to construe Art. 1 an cl. (5)(b)(ii) uninfluenced by the American concepts of eminent domain and police power.

We shall endeavour to ascertain the meaning of Art. 31(5)(b)

(ii) in the context of Art. 31 as it stood before the Constitution (Fourth Amendment) Act and thereafter in the context of Art. 31 as it stands after the Fourth Amendment. Article 31 as it stood before the Constitution (Fourth Amendment) Act was in these ,terms:

> "31(1). No person shall be deprived of his property save by authority of law.
>
> (2) No property, movable or immovable, including any interest in, or in any company owning, any commercial of industrial undertaking shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired 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.
>
> (3)No such law as is referred to in clause (2) made by the legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent.
>
> (4) If any Bill pending at the commencement of this Constitution in the Legislature 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).

(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) for the purpose of imposing or levying any tax or penalty, or

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

(iii) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property.

(6) Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be

called in question in any court on the ground that it contravenes the provisions of clause (2) of this article or has contravened the provisions of sub-section (2) of section 209 of the Government of India Act, 1935."

Clauses (1) and (2) of Art. 31 were limitations on the executive and the legislative powers of the State to deprive any person of his property. Clause (2) imposed the limitation that the law authorising the taking of property for public purposes must provide for compensation for the property. Clause (3) imposed the additional limitation that if such a law was made by the legislature of a State. it must have received the assent of the President. Clauses (4) and (6) saved certain laws from the operation of cl. (2) and those laws could not be called in question in any Court on the ground that it contravened cl. (2). Clause (5)(a) provided -that nothing in cl. (2) would affect any existing law other than a law to which the provisions of cl. (6) applied. Under cls. (5)(b)(i) .and (5)(b)(iii) nothing in cl. (2) would affect the provisions of laws .made for the purpose of imposing or levying any tax or penalty :and certain laws with respect to evacuee property. We are not concerned in this appeal with the interpretation of cls. (4), (5)(a), (5)(b)(i), (5)(b)(iii) and 6. We express no opinion on their interpretation. Clause (5)(b)(ii) provided that nothing in cl. (2) would .affect the provisions of any law which the State might make after the commencement of the Constitution "for the promotion of public health or the prevention of danger to life or property." 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 cl. (2). Any substantial abridgment of the rights of ownership including destruction and injurious affection of the property and taking away its possession and enjoyment from the owner amounted to a taking of property within the purview of cl. (2) as interpreted in Subodh Gopal's case(1) and Dwarkadas Shrinivas's case(1). 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 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, amounted 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). But it is not possible to say that a law for permanent acquisition of property is such a law. The object of the acquisition may be the ,opening of a public park for the improvement of public health or (1) [1954] S.C.R. 587. (2) [1954] S.C.R. 674.

the erection of an embankment to prevent danger to life or property from flood,. Whatever the object of the acquisition may be, the acquired property belongs to the State. The State is free to deal

with the property as it chooses after the acquisition. It may close the public park and use the property for other purposes. The river may recede or change its course so that it may no longer be necessary to keep the embankment and the State may then sell the property and appropriate the sale proceeds to its own use. Clause (5)(b)(ii) was intended to be an exception to cl. (2) and must be ,strictly construed. Acquisitions of property for the opening of a public park or for the erection of dams and embankments were always made under the Land Acquisition Act, and it could not have been intended that such acquisitions could be made under laws coming within the purview of cl. (5)(b)(ii) without payment (of compensation. We have come to the conclusion that cl. (5)(b) (ii) did not protect laws for acquisition of properties from the (operation of cl. (2) as it stood before the Constitution (Fourth Amendment) Act. The Constitution (Fourth Amendment) Act amended cl. (2) and inserted a new clause (2A). The amended cl. (2) and the new cl. (2A) are in these terms:

> "31(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 speci fies 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 compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property."

The effect of the Constitution (Fourth Amendment) Act is that a deprivation of property short of transfer of the ownership or the right to possession of any property to the State is not within the purview of cl. (2). A law made after the Constitution (Fourth Amendment) Act providing for destruction of property or impairment of its value is not invalid because it does not provide for payment of compensation. But we have seen that in the context of Art. 31 as it stood before the Constitution (Fourth Amendment) Act, cl. (5)(b)(ii) was not intended to save laws for the acquisition of property from the operation of cl. (2). The Fourth Amendment did not amend cl. (5)(b)(ii) nor change its original meaning. Cases of destruction of property or impairment of its value are no longer within the purview of cl. (2) and it is.., not necessary to invoke cl. (5)(b)(ii) to save laws made after the Fourth Amendment providing for such forms of taking of property. But even now, cl. (5)(b)(ii) is not wholly otiose. 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. We hold that a law for acquisition of property is not protected by cl. (5)(b)(ii) of Art. 31 as it now stands after the Constitution (Fourth Amendment) Act. In our opinion, Act No. 6 of 1955 is a law for acquisition of property and not a law for preventing danger to life or property and is not protected by cl. (5)(b)(ii) from the operation of cl. (2).

The Assam Embankment and Drainage Act, 1941 (Assam Act No. 7 of 1941) which is in force in the State of Assam shows that flood control, drainage and construction of embankments are possible without acquisition of private property. The Act recognises both private and public embankments. Section 4 of the Act authorises the Embankment Officer to remove obstructions endangering the stability of embankments and drains, to remove and alter embankments and drains endangering safety to any town or village or likely to cause loss of property and to construct embankments and drains the absence of which endangers the safety of any town or village. In case of grave and imminent danger to life or property he may forthwith commence the execution of any such work. Sections 7 to 9 contemplate the preparation and execution of schemes for improvement of drains, embankments and flood protection. The scheme may provide for the charge of an annual rate on all lands benefited by the scheme. Section 10 provides for payment of compensation for any loss arising inter alia from the carrying out of works under ss. 4 and 9. This Act is in operation in Assam for the last 25 years and necessary measures for flood control and construction of embankments have been carried out under this Act. This Act shows that it is possible for the State to take all necessary measures for flood control and construction of embankments without arrogating to itself the power of acquiring private property without payment of adequate compensation.

It follows that Act No. 6 of 1955 is not protected from the operation of Art. 31(2) either by Art. 31A or by Art. 31(5)(b)(ii). The next question is whether Act No. 6 of 1955 contravenes Art. 31(2). The constitutionality of the Act must be judged by Art. 31(2) as it stood before the Constitution (Fourth Amendment) Act. In The State of West Bengal v. Bela Banerjee and Others(1) (1) [1954] S.C.R. 558.

the Court held that while the legislature had a discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner for the property appropriated, such principles must ensure that what is determined as payable was a just equivalent of what the owner was deprived of and that subject to this basic requirement of full indemnification for the expropriated owner, the Constitution allowed free play to the legislative 'judgment as to what principles should guide the determination of the amount payable. The Court decided that West Bengal Land Development and Planning Act, 1948 passed primarily for the settlement of immigrants from East Bengal fixing the market value on December 31, 1946 as the ceiling on compensation without reference to the value of the land at the time of the acquisition which might be made many years later offended Art. 31(2) as it did not ensure payment of the just equivalent of the land. The Act was not saved from the operation of Art. 31(2) by Art. 31(5) as it was not certified by the President as provided for by Art. 31(6). In West Ramnad Electric Distribution Co. Ltd., v. State of Madras,(1), the Court rejected the contention that the Madras Electricity Supply Undertakings (Acquisi- tion) Act No. 19 of 1954 was violative of Art. 31(2), as the appellant did not furnish any material to show that the compensation payable under the Act was not a just equivalent of the property acquired. In State of Madras v. D. Namasivaya Mudaliar(2), the Court held that the Madras Lignite (Acquisition of Land) Act No. 21 of 1953 providing for assessment of compensation on the basis of the market value of the land prevailing on August 28, 1947 and not on the date on which notification was issued under s. 4(1) of the Land Acquisition Act and providing that in awarding compensation the value of non-agricultural improvements com- menced since April 28, 1967 would not be taken into consideration did not ensure payment of just equivalent of the land appropriated and was in contravention of Art. 31(2). Now, Act No. 6 of 1955 by s. 6(1) provides that

the owner of the land shall get compensation for land including standing crops and trees, if any, but excluding buildings or structure a sum not exceeding 40 times the annual land revenue in case of periodic patta land and 15 times the annual land revenue in case of annual patta land. The respondent in his petition definitely charged that the compensation payable under the Act was illusory and inadequate. The State of Assam made no attempt to show that a multiple of land revenue payable for the land is a just equivalent of or has any relation to the market value of the land on the date of the acquisition. It is well known that since the assessment of land revenue in Assam many years ago the market value of lands has increased by leaps ,and bounds. The latter part of s. 6(1) makes a pretence of saying that in determining the compensation the Collector shall take (1) [1963] 2 S.C.R. 747. (2) [1964] 6 S.C.R. 936. L/J(N)6SCI-11 into account the value of the land as at the date of the acquisition and other factors, but this is meaningless considering that under the first part of s. 6(1) the compensation cannot exceed a fixed multiple of the annual land revenue. Section 6(2) provides that the owner shall get compensation for the building or structure, if any, a sum equivalent to the sale proceeds of the materials of the same plus 15 per cent thereof. The sale proceeds of the materials cannot be regarded as a just equivalent of the value of the building as it stood at the time of the acquisition. In our opinion. Act No. 6 of 1955 does not ensure payment of a just equivalent of the land appropriated and is violative of Art. 31(2) as it stood before the Fourth Amendment.

The next question is whether Act No. 6 of 1955 offends Art. 14 of the Constitution. The Land Acquisition Act, 1894 is in force in the State of Assam and under it private property may be acquired for any public purpose on payment of market value of the land at the date of the publication of the notification under s. 4(1). Section 17 of the Act makes special provision for the speedy acquisition of waste or arable land in cases of emergency. While that Act is in force in the State of Assam, the State Legislature passed Act No. 6 of 1955 providing for speedy acquisition ,of land for the public purpose of carrying out works or other deve- lopment measures in connection with flood control or prevention of erosion on payment of compensation assessed on the basis of a multiple of the annual land revenue. The result is that in the State ,of Assam some land may be taken under Assam Act No. 6 of 1955 for the purpose of works and other measures in connection with flood control and prevention of erosion on payment of nominal compensation while an adjoining land may be taken for other public purposes under the Land Acquisition Act on payment of adequate compensation. The question is whether this differential treatment of land acquired under the two Acts is permissible under Art. 14. The constitutional guarantee of Art. 14 requires that all persons shall be treated alike in like circumstances and conditions. The Article permits reasonable classification and differential treatment based on substantial differences having reasonable relation to the objects sought to be achieved. It is not possible to hold that the differential treatment of the lands acquired under the Land Acquisition Act, 1894 and those acquired under 'Assam Act No. 6 of 1955 has any reasonable relation to the object of acquisition by the State. In P. V. Mudaliar v. Dy. Collector(1), the Court held that the Land Acquisition (Madras Amendment) Act, 1961 providing for the acquisition of lands for housing schemes and laying down principles for fixing compensation different from those prescribed in the Land Acquisition Act was violative of Art. 14. Discrimination between persons whose lands were -acquired under housing schemes and those whose lands were ;acquired for other purposes could not be sustained, under Art. 14. [1965] 1 S.C.R. 614.

Although it was contended that the amending Act was passed to meet an urgent demand to clear up slums, the Act as finally evolved was not confined to any such problem and land could be acquired under the amending Act for housing schemes and other objectives. The Court said at p. 634:

> Out of adjacent lands of the same quality and value, one may be acquired for a housing scheme under the Amending Act and the other for a hospital under the principal Act; out of two adjacent plots belonging to the same individual and of the same quality and value. one may be acquired under the principal Act and the other under the Amending Act. From whatever aspect the matter is looked at. the alleged differences have no I reasonable relation to the object sought to be achieved." In our opinion, the classification of land required for works and other measures in connection with flood control and prevention of erosion and land required for other public purposes has no reasonable relation to the object sought to be achieved. viz., acquisition of the land by the State. In either case, the owner loses his land and in his place, the State becomes the owner. There is unjust discrimination between owners of land similarly situated by the mere accident of some land being required for purposes mentioned in Assam Act No. 6 of 1955 and some land being required for other purposes. We hold that Assam Act No. 6 of 1955 is violative of Art. 14.
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> On behalf of the respondent it was contended that Act No. 6 of 1955 is violative of Art. 14 on the additional ground that it is open to the State to acquire property in connection with flood control or prevention of erosion either under the Land Acquisition Act or under Assam Act No. 6 of 1955 at its sweet will. There is considerable force in this contention. The record shows that even after the passing of Act No. 6 of 1955 the State of Assam has acquired other lands for erecting embankments in connection with flood control and has paid full compensation to owners of those lands under the Land Acquisition Act. However, Counsel for the appellants con-tends that in view of Art.

254(2) of the Constitution Assam Act No. 6 of 1955 supersedes the Land Acquisition Act, 1894 in so far as the later Act enables acquisition of property for the purposes of works and other development measures in connection with flood control or prevention of erosion. We have not 'heard full arguments on this new contention realised by counsel for the appellants. We, therefore, do not propose to decide it or to strike down Act No. 6 of 1955 on the ground that the State may acquire lands at its option either under Assam Act No. 6 of 1955 or under the Land Acquisition Act. For the purposes of this case it is sufficient to say that Assam Act No. 6 of 1955 is violative of Art. 14 on The ground mentioned in the earlier paragraph.

it follows that Assam Act No. 6 of 1955 is violative of Arts. 14 and 31(2) of the Constitution and must be struck down. The next question is whether Assam Act No. 21 of 1960 is valid. This Act provides that any land taken over for the purposes of construction of embankments or carrying out works or other development measures in connection with flood control or prevention of erosion before it came into force shall be deemed to have been validly acquired under the provisions of Assam Act No. 6 of 1955 unless the acquisition was validly made under any other law for the time being in

force. By force of Assam Act No. 21 of 1960 the land so taken over is deemed to be. acquired under Assam Act No. 6 of 1955. As Assam Act No. 6 of 1955 is invalid, the deemed acquisition under Assam Act No. 21 of 1960 is equally invalid. The State legislature has no power to enact that an acquisition made under a constitutionally invalid Act is valid.

Counsel submitted that Assam Act No. 21 of 1960 is a piece of legislation providing for acquisition of land independently of the earlier Act and the validity of this Act must be judged by reference to Art. 31(2) as it stood after the Constitution (Fourth Amendment) Act. We are unable to accept this contention. In support of his contention. counsel drew our attention to the provisions of ss. 2, 3, 4 and 5. Under s. 2, the land deemed to be acquired under the earlier Act vests and is deemed to have vested in the State Government from the date the land was actually taken possession of. Under s. 3, the Collector is enjoined to assess the value of the land deemed to have been acquired under s. 2 in accordance with the principles laid down in s. 6 and to make an award under s. 8 of the earlier Act and the owner is entitled to claim certain interest. Section 4 protects action taken in good faith in connection with the land deemed to have been acquired under s. 2. Under s. 5, except as otherwise provided under the Act, the provisions of the earlier Act shall apply mutatis mutandis in respect of the acquisition of land deemed to have been acquired under s. 2. It is to be seen that the core of Assam Act No. 21 of 1960 is the deeming provision of s. 2 under which certain lands are deemed to be acquired under the earlier Act. As this deeming provision is invalid, all the other ancillary provisions fall to the ground along with it. The later Act is entirely dependent upon the continuing existence and validity of the earlier Act. As the earlier Act is unconstitutional and has no legal existence, the provisions of Act No. 21 of 196O are incapable of enforcement and are invalid. In view of this- conclusion, the other questions with regard to the validity of Act No. 21 of 1960 do not arise. The Assam High Court rightly held that the notices of acquisition issued under Assam Act No. 21 of 1960 are invalid.

In the result, the appeal. fails and is dismissed.

V.P.S. Appeal dismissed.