Dhirubha Devisingh Gohil vs The State Of Bombay.[With Connected ... on 11 October, 1954

Equivalent citations: 1955 AIR 47, 1955 SCR (1) 691, AIR 1955 SUPREME COURT 47

Author: B. Jagannadhadas

Bench: B. Jagannadhadas, Mehar Chand Mahajan, B.K. Mukherjea, Vivian Bose

PETITIONER:
DHIRUBHA DEVISINGH GOHIL

Vs.

RESPONDENT:
THE STATE OF BOMBAY.[WITH CONNECTED APPEALS]

DATE OF JUDGMENT:
11/10/1954

BENCH:
JAGANNADHADAS, B.
BENCH:
JAGANNADHADAS, B.
MAHAJAN, MEHAR CHAND (CJ)
MUKHERJEA, B.K.
BOSE, VIVIAN
AIYYAR, T.L. VENKATARAMA

CITATION:
1955 AIR 47 1955 SCR (1) 691
CITATOR INFO :
F 1961 SC 14 (6,7)
R 1962 SC 821 (10,19)
D 1971 SC1992 (16)
R 1976 SC1207 (60,77,159,464,538)
R 1977 SC1027 (29)
RF 1979 SC 25 (38,40)
R 1984 SC1178 (12,13,15,16)

ACT:
Constitution of India (First Amendment) Act, 1951 Art. 31-B -Government of India Act, 1935 (25 and 26 Geo. 5 CH. 42), s. 299-Bombay Taluqdari Tenure Abolition Act, 1949--(Bombay Act LXII of 1949)- Whether ultra vires the Constitution.

HEADNOTE:

Held, that the validity of the Bombay Taluqdari Tenure Abolition Act, 1949 (Bombay Act LXII of 1949) cannot be questioned on the ground that it takes away or abridges the fundamental rights conferred by the Constitution of India in view of enactment of art. 31-B which has been inserted in the Constitution by the First Amendment thereof in 1951 and in view of the Act having been specifticaIly enumerated as item No. 4 in the Ninth Schedule.

On the language used in art. 31-B of the Constitution of India the validity of Bombay Act LXII of 1949 cannot also be challenged under s. 299 of the Government of India Act, 1935.

The State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others ([1952] S.C.R. 889) distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 188, 188(A), 188(B) and 188(E) of 1952.

Appeals under article 133(1)(c) of the Constitution of India from the Judgment and Order dated the 6th December, 1951, of the High Court of Judicature at Bombay in Civil Applications Nos. 409, 410, 411 and 780 of 1951.

C.O. Shastri and Naunit Lal for the appellant in Civil Appeal No. 188 of 1952.

N.C. Chatterjee (Onkar Nath Srivastva and Rajinder Narain, with him) for appellants in Civil Appeals Nos. 188(A), 188(B) and 188(E) of 1952.

M. C. Setalvad, Attorney-General for India, and C. K. Daphtary, Solicitor-General for India (Porus A. Mehta and P. G. Gokhale, with them) for the respondents in all the appeals.

1954. October 1 1. The Judgment of the Court was delivered by JAGANNADH DAS J.-These are appeals by leave granted by the High Court of Bombay under article 133(1)(c) of the Constitution against its common judgment disposing of certain applications under article 226. The short point involved in these appeals is whether the Bombay Taluqdari Tenure Abolition Act, 1949, (hereinafter referred to as the Act) is valid in law. The impugned Act, as its very name indicates, was for' the purpose of abolishing Taluqdari tenures in Bombay. Section 3 of the Act enacts that with effect from the date on which the Act was to come into force the taluqdari tenure wherever it prevailed shall be deemed to have been abolished. Under section 5(1)(a) all taluqdari lands are and shall be liable to the payment of land revenue in accordance with the provisions of the Bombay Land Revenue Code and the rules made thereunder. Under section 6, broadly stated, all the items of property which are

comprised within the taluqdari and belong to the taluqdar vest in the Government as its property and all rights held by the taluqdar in such property shall be deemed to have been extinguished. Section 7 provides for payment of compensation in respect of the property so vested and rights so extinguished. It also specifies the principles for and the manner of assessing and granting that compensation. Section 14 provides for compensation with reference to the provisions of the Land Acquisition Act being payable in respect of any of the rights extinguished but not covered by the provisions of section 7 or any other section of the Act. These broadly are the main features of the impugned Act relevant for the present purpose.

The attack on the validity of the Act with reference to these provisions is that the Act is expropriatory, that it is not for any public purpose and that the compensation which it provides is illusory. Now so far as the requirement of a public purpose is concerned it is too late in the day to maintain the contention that the abolition of the kind affected by the Act is not for a public purpose. The only serious argument,therefore, is as to the alleged illusory character of the compensations provided by the Act. The Act, it may be noticed, was one passed by the Bombay Legislature in the year 1949. It received the assent of the Governor-General on the 18th January, 1950, and was gazetted on the 24th January, 1950. The attack in the High Court was accordingly based on the alleged violation of the provisions of section 299 of the Government of India Act, 1935, which is as follows:

> "(I) No, person shall be deprived of his property in British India save by authority of law.
>
> (2) Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which and the manner in which, it is to be determined."

It was contended before the High Court that this was an Act in respect of which a certificate could have been obtained from the President under clause (6) of article 31 of the Constitution in order to secure immunity from the challenge of unconstitutionality but since that has not been done, the liability to its challenge with reference to the alleged violation of section 299 of the Government of India Act remains. The learned Judges of the High Court without going into the question whether or not under any of the provisions of the present Constitution this piece of legislation was immune from attack of the kind put forward, dealt with the merits of the challenge and held that the Act was for a public purpose and that the compensation provided was neither illusory nor unfair and that accordingly there was no violation of the provisions of section 299 of the Government of India Act.

It is true that this is an Act which could have been submitted to the President for his certification under clause (6) of article 31 and that no such course has been adopted. But this Act is one of the Acts specified in the Ninth Schedule of the Constitution being item (4) thereof and article 31-B

which has been inserted in the Constitution by the First Amendment thereof in 1951 is as follows:

> "Without prejudice to the generality of the provisions contained in article 31-A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force."

By the above amendment therefore and by specifically enumerating this Act in the Ninth Schedule, it appears to us to have been clearly and unequivocally intended that the provisions of this Act should be immune from attack-of the kind put forward. Learned counsel for the appellants, however, strenuously contends before us to the contrary. He points out that the validity of the Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950) which is the very first item in the Ninth Schedule was allowed to be challenged in this Court after the enactment of the First Amendment of the Constitution and that this Court has in fact held certain of the provisions thereof to be invalid. The judgment of this Court doubtless shows that the challenge was allowed and given effect to notwithstanding the protection given by article 31 -B in respect of the alleged violation of the fundamental rights under the Constitution. A careful perusal of the judgment however shows that the challenge allowed was as to the competency of the Legislature to enact certain provisions of the impugned Act which, in the opinion of the majority of the Court, were in the nature of fraud on the exercise of the legislative power. (vide The State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Other8(1)). Learned counsel accordingly urges that the protection under article 31 -B is confined to a challenge based on the provisions of the Constitution and that it is therefore open to him to put forward a challenge based on a distinct ground, viz., in this instance violation of the provisions of section 299 of the Government of India Act. He relies on the difference in language between article 31 -B and clause (6) of article 31, which in terms refers to contravention also of the provisions of sub-section (2) of section 299 of the Government of India Act. It appears to us that takes too narrow a view of article 31-B. What article 31-B protects is not a mere "contravention of the provisions" of Part III of the Constitution but an attack on the grounds that the impugned Act is "inconsistent with or takes away or abridges any of the rights conferred by any provisions of this Part." One of the rights secured to a person by Part III of the Constitution is a right that his property shall be acquired only for public purposes and under a law authorising such acquisition and providing for compensation which is either fixed by the law itself or regulated by principles specified by the law. That is also the very right which was previously secured to the person under section 299 of the Government of India Act. The challenge now made to the validity of the impugned Act is based on the alleged violation of that right. Nor does this challenge cease to be in substance anything other than a challenge in respect of the violation of the said right Dotwithstanding that under section 299 of the Government of India Act the right is secured in terms which (1) [1952] S.C.R, 889.

restricts the power of the Legislature an operates as a restraint on its competency. What under the Government of India Act was a provision relating to the competency of the Legislature, was also clearly in the nature of a fundamental right of the person affected. This appears from the Report of the Joint Parliamentary Committee on Indian Constitutional Reform, Vol. 1, Part 1, paragraphs 366 and

369. But it is urged, that even so, article 31-B protects only the violation of the fundamental right in so far as "it was conferred by Part III of the Constitution" and that this right cannot be said to have been "conferred" by the Constitution. We cannot agree with this contention. This is clearly a case where the concerned right which was secured under section 299 of the Government of India Act in the form of a fetter on the competency of the Legislature and which in substance was a fundamental right, was lifted into the formal category of a fundamental right along with other fundamental rights recognised in the present Constitution. There is therefore nothing inappropriate in referring to this right which was pre-existing, along with the other fundamental rights for the first time secured by this Constitution, when grouping them. together, as fundamental rights "conferred" by the Constitution, What is important to notice in the phraseology of article 31`B is that the protection is not merely against the contravention of certain provisions but an attack on the ground of unconstitutional abridgement of certain rights. It will be illogical to construe article 31-B as affording protection only so far as these rights are taken away by an Act in violation of the provisions of the new Constitution but not when they are taken away by an Act in violation of section 299 of the Government of India Act which has been repealed. The intention of the Constitution to protect each and every one of the Acts specified in the Ninth Schedule from any challenge on the ground of violation of any of the fundamental rights secured under Part III of the Constitution, irrespective of 'Whether they are preexisting or new rights, is placed beyond any doubt or question by the very emphatic language of article 31-B which declares that none of the provisions of the specified Acts shall be deemed to be void or ever to have become void on the ground of the alleged violation of the rights indicated and "notwithstanding any judgment, decree or order of any court or tribunal." That intention is also emphasised by the positive declaration that "each of the said Acts or Regulations shall, subject to the power of any competent Legislature to repeal or, amend it, continue in force." We are, therefore, clearly of the opinion that the challenge to the validity of the Bombay Taluqdari Tenure Abolition Act, 1949 on the ground put forward was not open. The appeals must, therefore, be dismissed with costs. Costs one set.

Appeals dismissed.