

Mahant Ram Kishan Dass vs State Of Punjab And Ors. on 6 March, 1980

Equivalent citations: AIR1981SC1576, (1983)1SCC377, AIR 1981 SUPREME COURT 1576, 1983 (1) SCC 377, AIRONLINE 1980 SC 51, (1980) LANDLR 182

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Bench: R.S. Pathak, V.R. Krishna Iyer

ORDER

V.R. Krishna Iyer, J.

1. Shri Lal appearing for the petitioner in the Special Leave Petition has raised a formidable number of points, although we are unable to agree with any of them. Earlier this Special Leave Petition had been disposed of by a certain limited, direction which is not being interfered With by this Order but Counsel perhaps rightly pointed out that, he had more to say than was covered by that Order and, therefore, should be accorded a fuller hearing We have heard him exhaustively but remain unconvinced about any of the points.

2. Shri Lal contended that the land sought to be acquired from his clients, though extensive in area, was contiguous with a 'samadhi' and, therefore, under the standing Orders which have a statutory flavour (in his submission) could not be acquired without going through the exercise provided for. Since those procedures had not been followed the acquisition was bad in law. Counsel for the respondent-Trust had consented to the exclusion of two survey plots, namely, 3667 and 3668 on which the 'samadhi' actually stood. However, the considerable extent which was owned by the institution and lay contiguous, was acquired for development purposes. The contention is that contiguity with the 'samadhi' is inhibitive of compulsory acquisition. May be, that the plot strictly necessary for the survival of the 'samadhi' as such, is covered by the Rule but all the lands that may lie continuous or contiguous, however abundant or extensive, cannot be immunized against compulsory acquisition. Moreover, what is integral to or a necessary part of the 'samadhi', is a question of fact. The objection on this question has been considered by the Punjab Improvement Trust Act, 1922 as provided by the statute. The High Court having heard the petitioner had dismissed the petition at the threshold. Under Article 136 we cannot be lured into considering a question of fact like this. We negative the contention.

3. The second objection, grounded on a decision of this Court and using a Constitution missile is that the freedom guaranteed under Article 26(c) of the Constitution to own and acquire property by a religious denomination is imperilled on account of this acquisition, and also has no basis. It is not

as if a religious denomination cannot own land. It can under our Constitution hold properties. But such a right is not an absolute one nor unlimited altogether. The decision of this Court relied on by counsel has made the proposition clear AIR 1974 SC 2098 at p. 2103:

One thing is, however, clear that Article 26 guarantees inter alia the right to own and acquire movable and immovable property for managing religious affairs. This right, however, cannot take away the right of the State to compulsorily acquire property in accordance with the provisions of Article 31(2). If, on the other hand, acquisition of property of a religious denomination by the State can be proved to be such as to destroy or completely negative its right to own and acquire movable and immovable property for even the survival of a religious institution the question may have to be examined in a different light.

Counsel drew our attention to another part of the Judgment where Mr. Justice Goswami, speaking for the Court observed (at p. 2105):

Right guaranteed under Article 26(c) not being absolute and unqualified is consistent with reasonable regulations made by the State provided the substance of the freedom is not affected. The Act does not make any inroad in such a way as to affect directly the substance of that freedom. A particular fundamental right cannot exist in isolation in a watertight compartment. One fundamental right of a person may have to coexist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interests of social welfare as a whole. The Court's duty is to strike a balance between competing claims of different interests.

These very passages are sufficient to demonstrate the untenability of the submission. In the present case the survival of the 'samadhi' is not imperilled (nor is there a total or substantial annihilation of the religious denomination or institution). Land that is essentially necessary is left intact. What is beyond it but is needed for development purposes, is taken away and compensation paid therefore. Thus there is no infringement of the fundamental right covered by Article 26(c) of the Constitution. We are not impressed with the submission that hundreds of sadhus will throng on occasions and they have to be fed and housed, and, therefore, all the lands lying in proximity all over the institution should not be touched even though for development necessity. As pointed out by this Court Article 26 is qualified and co-exists with other rights.

4. The third contention put forward by Shri Lal is that the part of the land lies beyond the municipal limits. There is no foundation laid for such a contention, and bears purely on facts which we cannot adjudicate in this Court. A few other contentions similarly urged also do not have any basis in admitted fact. Therefore, invocation of Article 136 is misleading. However, while rejecting the contention raised and argued we maintain intact the earlier Order that the two plots- 3667 and 3668 shall not be acquired. We dismiss the Special Leave Petition subject to the above reservation.