

CIVIL MISCELLANEOUS SIDE.

Before Bhandari, C. J., and Dulat, J.

HUKAM SINGH AND OTHERS.—*Petitioners,*
versus

THE STATE OF PUNJAB AND OTHERS.—*Respondents.*

Civil Writ No. 242 of 1954

1955
May, 11th

Constitution of India, Article 31-A—Terms “Extinguishment” and “Estate”, meaning of—Punjab Village Common Lands (Regulation) Act (I of 1954)—Whether ultra vires the Constitution of India.

Held, that (1) the term “extinguishment” as used in Article 31-A of the Constitution covers a case where a person's rights in an estate have been taken away from him and given to another person.

(2) the term “estate” as used in Article 31-A of the Constitution includes the whole estate as well as a part of it.

Held further, that the Punjab Village Common Lands (Regulation) Act, 1954, does not offend against the provisions of the Constitution and is therefore valid.

Petition under Article 226 of the Constitution of India praying as under :—

- (i) That this Hon'ble Court may be pleased to hold that the Punjab Village Common Lands (Regulation) Act, 1 of 1954, in its entirety, or sections 3 and 7 are *ultra vires* of the Constitution of India in so far as they violate the fundamental rights of the petitioners.
- (ii) That this Hon'ble Court may be pleased to issue a Writ in the nature of *mandamus* or any other appropriate writ or pass such other orders and issue such other directions as in the circumstances of this case it may deem proper, calling upon the respondents to give effect to the provisions of the order of Revenue Officer dated the 24th June, 1954, sanctioning mutation No. 51 of village Anchla, Tehsil and District Karnal in favour of Gram Panchayat of the village.

- (ii) That pending the disposal of this petition delivery of possession of the land of the petitioners and other proprietors which is the subject matter of the mutation order dated 24th June, 1954, be stayed.

TEK CHAND and S. C. MITAL, for Petitioners.

S. M. SIKRI, Advocate-General, for Respondent.

JUDGMENT

DULAT, J.—Civil Writs Nos. 242, 307 and 311 of 1954 are connected and the only question we are considering in these cases is the constitutional validity of certain provisions of Punjab Act I of 1954 (The Punjab Village Common Lands (Regulation) Act.) This Act, as its preamble shows is designed to regulate the rights in *shamilat deh* and *abadi deh*. Section 3 of the Act says—

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“Notwithstanding anything to the contrary contained in any other law for the time being in force, and notwithstanding any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interest whatever in the land—

- (a) Which is included in the *Shamilat Deh* of any village, shall, on the appointed date, vest in a panchayat having jurisdiction over the village.
- (b) Which is situated in the *abadi deh* of a village and which is under the house owned by a non-proprietor, shall at the commencement of this Act vest in the said non-proprietor.”

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Section 4 then provides—

“All lands vested in a panchayat by virtue of the provisions of this Act shall be utilised or disposed of by the *panchayat* for the benefit of the inhabitants of village concerned, in the manner prescribed.”

and then section 6 says—

“Any income accruing from the use and occupation of the lands vested in a *panchayat* shall be credited to the *panchayat* fund and shall be utilised in the manner prescribed.”

Then comes section 7—

“No person shall be entitled to any compensation for any loss suffered or alleged to have been suffered as a result of the coming into force of this Act.”

It is clear from these provisions and the general scheme of the Act that the rights of the village proprietors in the *shamilat deh* of the village have been taken away from them and vested in a body called the village *panchayat* and no compensation has been provided for depriving the owners of the proprietary and other rights in that land. The same applies to the *abadi deh* in certain cases. The petitioners' case is that their property has by this Act been taken away from them without payment of any compensation and the Act is for that reason contrary to Article 31 of the Constitution and, therefore, invalid. Article 31 (2) of the Constitution says that no property, movable or immovable, including any interest in, or in any company owning, any commercial or 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. It is clear that if this Article of the Constitution had stood alone, the petitioners would have had an unanswerable case. Actually, however, another provision was subsequently inserted into the Constitution in the form of Article 31A and it is around this new Article that the entire argument in the present case revolved. This Article 31A runs—

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- “(1) Notwithstanding anything in the foregoing provisions of this Part, no law providing for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this Part:

Provided that where such law is a law made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

- (2) In this Article—

- (a) the expression ‘estate’ shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the

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existing law relating to land tenures in force in that area, and shall also include any *jagir, inam or Muafi* or other similar grant; and

- (b) the expression 'rights' in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenureholder or other intermediary and any rights or privileges in respect of land-revenue."

The impugned Act, it is admitted, was reserved for the consideration of the President and has received his assent. Quite clearly, therefore, the Act cannot be held void on the ground that it takes away the rights conferred by Article 31 which is in the same Part provided of course the Act otherwise falls within the terms of Article 31-A.

Mr. Tek Chand who argued the petitioners' case before us raised two arguments in this connection. He first contended that the Act in dispute does not fall within the terms of Article 31-A, it being, according to learned counsel, not a law providing for the extinguishment or modification of any rights in an estate. The term "extinguishment" appearing in Article 31-A of the Constitution, according to learned counsel, means the total abolition of a right known to law in the same manner as salary has been abolished in most civilized countries and does not merely mean the extinguishment of a particular person's right in certain property or the transfer of that right to another person. The argument is interesting but not in my opinion substantial. According to Mr. Tek Chand a law which provides for the total

abolition of the rights of ownership of landed property, for instance, would be constitutional as it would, according to him, fall under Article 31-A, but if the right of ownership of a person or a group of persons is merely extinguished *qua* those persons and the same right is vested in some other person that would not fall within the Article. I find it impossible to agree that the expression "extinguishment" has been used in Article 31-A of the Constitution in the special sense suggested by the learned counsel. It is significant that Article 31-A speaks of acquisition by the State of any estate or of any rights in an estate and then speaks of the extinguishment or modification of any rights in an estate and I can find no ground for thinking that if a person's rights in an estate have been taken away from him and given to another person this would not be extinguishing those rights. In my opinion, therefore, the impugned Act does fall within the meaning of Article 31-A of the Constitution as it provides for the extinguishment of certain rights in certain property belonging to the village proprietors and also for the modification of those rights.

Mr. Tek Chand's second argument was that in any case the impugned Act merely has the effect of extinguishing or modifying certain rights in certain pieces of land but it does not provide for the extinguishment or modification of any right in any estate, the contention being that an estate under the Punjab Land Revenue Act, section 3, means any area for which a separate record-of-rights has been made or which has been so assessed to land revenue, and that the extinguishment or modification must be of particular rights in the whole of such area and not merely in a part of it. Thus according to Mr. Tek Chand a part of an estate like the *shamilat deh* in a village would not be an estate and the extinguish-

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ment or modification of any right in such part of an estate would not be covered by Article 31-A. Once again, I am unable to agree. There are in an estate several kinds of rights owned by various persons and one of such rights is the right of proprietorship in the village *shamilat* and when, therefore, the impugned Act provides for the extinguishment of such ownership rights it clearly provides for the extinguishment or modification of certain rights in an estate. Mr. Tek Chand's argument that a part of an estate is not an estate appears to have been raised before a Full Bench of this Court in connection with the validity of another statute and it was on that occasion repelled by the Full Bench. Khosla, J. who delivered the main judgment in that case, *Bhagirath Ram Chand v. State of Punjab and others* (1), observed in connection with this argument—

“It is clear that the whole includes the part and where an Act provides for rights in an estate it provides for rights in part of an estate.”

We are, in my opinion, bound by the view of the Full Bench so clearly expressed in this respect.

In the course of arguments before us reference was made to a decision of the Supreme Court in *The State of Bihar v. Sir Kameshwar Singh* (2), in which the validity of the Bihar Land Reforms Act, 1950, was in question. The Act as such was found to be valid. Only a particular provision contained in it was held to be invalid but this was on the ground that it was a colourable piece of legislation made under Entry

(1) A.I.R. 1954 Punj. 167

(2) A.I.R. 1952 S.C. 252

No. 42 of List III of the Seventh Schedule to the Constitution. No such question arises in the present case because the Act impugned before us is not a piece of legislation under Entry No. 42 of the Third list at all, for the Act does not provide for the acquisition of any property by the State nor for any other public purpose. It is merely legislation concerning land falling under Entry No. 18 of the Second List. There is nothing else in the Supreme Court decision to lend support to the petitioners in the present case.

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To sum up I find that nothing in the Punjab Act 1 of 1954 is shown to offend against the provisions of the Constitution and the Act in question is, therefore, in my opinion valid. With this finding these petitions should go to a Single Bench for decision of other questions, if any, arising in the cases. I would, in view of all the circumstances, leave the parties to bear their own costs as far as present proceedings are concerned.

BHANDARI, C. J. I agree.

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LETTERS PATENT SIDE.

Before Bhandari, C. J., and Khosla, J.

MEHAR CHAND.—Appellant.

versus

SHIV LAL AND ANOTHER.—Respondents.

Letters Patent Appeal No. 113 of 1951

Civil Procedure Code (V of 1908)—Order XLV, rule 7—Deposit made by appellant—Deposit lost on account of the partition of the Country—Loss of deposit, whether to be borne by the appellant or the Respondent.

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Held, that where a party in obedience to an order of court makes a deposit of money in court, a loss thereof must, as between the parties to the proceeding, be borne by him who is found to be entitled ultimately to the fund.