1960

August 26.

# THE STATE OF UTTAR PRADESH AND OTHERS

*v.*

# H. H. MAHARAJA BRIJENDRA SINGH.

(S. K. DAS, J. L. KAPUR, K. SUBBA RAO, M. HIDAYATULLAH and N. RAJAGOPALA AYYANGAR, JJ.)

*Land Acquisition—Statute contravening provisions of Government of India Act—Subsequent inclusion in Ninth Schedule of Constitution—Constitutionality of—U. P. Land Acquisition (Rehabilitation of Refugees) Act, 1948 (U. P. XXVI of 1948), s. 11—Constitution of India, Art. 31-B and Ninth Schedule—Constitution (Fourth Amendment) Act, 1955, s. 5.*

The property of the respondent was acquired under the U. P. Land Acquisition (Rehabilitation of Refugees) Act, 1948. The respondent challenged the constitutionality of the Act by way of a writ petition and though the High Court dismissed the petition it held that the two provisos to s. 11 of the Act were invalid as they offended s. 299(2) of the Government of India Act. Subsequently the Constitution (Fourth Amendment) Act, 1955, included the U. P. Act in the Ninth Schedule as item No. 15. The appellant contended that the inclusion of the Act in the Ninth Schedule protected it under Art. 31-B of the Constitution from any challenge under s. 299(2) of the Government of India Act.

*Held*, that the U. P. Act could not be assailed on the ground of unconstitutionality based on a contravention of s. 299 of the Government of India Act. The provisions of the Act having been specifically saved by Art. 31-B read with the Ninth Schedule, the Act could not be deemed to be void or to ever have become void on the ground of its having contravened the provisions of the Government of India Act.

*Dhirubha Devisingh Gohil* v. *The State of Bombay*, [1955] 1 S.C.R. 691, relied on.

*Saghir Ahmad* v. *The State of U. P.*, [1955] 1 S.C.R. 707, not applicable.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 131 of 1956.

Appeal from the judgment and decree dated February 4, 1954, of the Allahabad High Court in Civil Misc. Writ No. 7976 of 1951.

*H. N. Sanyal, Additional Solicitor-General of India* and *C. P. Lal*, for the appellants.

*V. M. Limaye, Mrs. E. Udayaratnam* and *S. S. Shukla*, for the respondent.

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1960. August 26. The Judgment of the Court was delivered by

KAPUR J.—This is an appeal against the judgment and order of the High Court of Allahabad on a certificate granted under Arts. 132 and 133(1)(c) of the Constitution. The respondent herein was the petitioner in the High Court in one of the petitions which were filed in that Court covering the question which has been raised before us. The appellants before us were the respondents in the High Court.

The respondent was the Ruler of the State of Bharatpur, now a part of Rajasthan, and is the owner of the property in dispute known as 'Kothi Kandhari Jadid' in Agra. On January 28, 1950, the Agra Improvement Trust—hereinafter called the Trust—passed a resolution under s. 5 of the U.P. Land Acquisition (Rehabilitation of Refugees) Act, 1948, (U.P. XXVI of 1948)—hereinafter called the Act—for the acquisition of the property in dispute and expressed its willingness to act as "builder" within the meaning of the provisions of the Act. The Government declared the Trust as the "builder" on May 6, 1950, and an agreement was entered into on November 6, 1950, in terms of the Act, which was published on January 6, 1951. The Trust deposited a sum of Rs. 57,800 being the estimated cost of the acquisition on February 27, 1951, and a notification under s. 7 of the Act was published in the U.P. Gazette on July 21, 1951. By sub-s. (2) of s. 7, upon the publication of the notification, the land acquired was to vest absolutely in the State. After the respondent was served with a notice calling upon him to appear before the Compensation Officer at Agra, he filed certain objections challenging the propriety of the acquisition and the vires of the Act. It was also alleged that the Collector, without deciding the matter, proceeded to take possession. The respondent, thereupon, filed a petition under Art. 226 of the Constitution in the

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Allahabad High Court for a writ prohibiting the appellants from acquiring his land or interfering with his rights. This petition was dismissed by the High Court on February 2, 1954. But certain findings were given to which the appellants have taken objection. In its judgment the High Court observed :—

"In these petitions the prayer is that the Court may be pleased to grant a writ, direction or other suitable order prohibiting the State Government from acquiring the petitioners' land or interfering with their rights in any other manner, and to grant such other suitable relief as the Court may deem fit. At the hearing, however, learned counsel for the petitioners stated more specifically that the relief which the petitioners sought was a writ in the nature of certiorari to quash the State Government's Notification under section 7 of the Act made on 11th July, 1951, or, in the alternative, the issue of a writ of mandamus directing the Compensation Officer in calculating the compensation payable to them under the Act to disregard the two provisos of sub-section (1) of Section 11 of the Act".

The respondent submitted in the High Court that the Act contravened the provisions of Art. 31(2) and was not saved by the provisions of Art. 31(5) of the Constitution and that the Act infringed Art. 14 of the Constitution and several other contentions were also raised. The relevant provision of the Act which requires consideration is s. 11 which runs as follows :—

"11. (1) Whenever any land is acquired under section 7 or 9 there shall be paid compensation the amount of which shall be determined by the Compensation Officer, in accordance with the principles set out in clauses first, second and third of sub-section (1) and sub-section (2) of section 23 of the Land Acquisition Act, 1894:

Provided that the market value referred to in clause first of the said sub-section shall be deemed to be the market value of such land on the date of publication of the notice under section 7 or 9, as the case may be, or on the first day of September, 1939, whichever is less:

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Provided further that where such land has been held by the owner thereof under a purchase made before the first day of April, 1948, but after the first day of September, 1939, by a registered document, or a decree for pre-emption between the aforesaid dates, the compensation shall be the price actually paid by the purchaser or the amount on payment of which he may have acquired the land in the decree for pre-emption, as the case may be."

The High Court held that these two provisos were invalid and that devoid of these offending provisos, s. 11(1) of the Act was not invalid and consequently the order of the appellants was a valid order and thus the writ for certiorari was refused.

In regard to the prayer for a writ of *mandamus*, the High Court observed :—

"Nor do we think that we should order the issue of mandamus directing the Compensation Officer in determining the compensation payable to the petitioners to ignore the provisos to section 11(1). We have held those provisos to be invalid. The Compensation Officer, for some reason of which we are not aware, has not yet embarked on the task of determining the compensation, but when he does so we assume that he will be guided by the opinion we have expressed; we cannot assume that he will act otherwise".

The petition was therefore dismissed but the appellants were ordered to pay costs. It is against this judgment that the appellants have appealed to this Court on a certificate.

No objection was taken by the respondent to the competency of the appeal on the ground that the petition had been dismissed and the legality of the certificate has not been challenged before us.

The only question for decision is whether the two provisos to s. 11(1) of the Act are unconstitutional because of the provisions of s. 299(2) of the Government of India Act, 1935. The Constitution was amended by the Constitution (First Amendment) Act, 1951, and Art. 31-B was inserted in the Constitution which is as follows :

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"Without prejudice to the generality of the provisions contained in article 31A, 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 s. 5 of the Constitution (Fourth Amendment) Act of 1955, which was published on April 27, 1955, the Act was included in the Schedule and is item 15. It was argued on behalf of the appellants that by the inclusion of the Act in the Ninth Schedule, the ground of unconstitutionality of the Act because of s. 299(2) of the Government of India Act is no longer available to the respondent and that what was provided as safeguard in s. 299(2) of the Government of India Act has been incorporated in the Constitution and therefore any unconstitutionality arising as a result of contravention of s. 299(2) of the Government of India Act is cured by Art. 31-B of the Constitution. This question was raised and decided in *Dhirubha Devisingh Gohil v. The State of Bombay* (1). It was held that s. 299(2) of the Government of India Act was in substance a fundamental right which was lifted bodily as it were from the Government of India Act into Part III of the Constitution. Therefore the protection under Art. 31-B against the violation of the fundamental rights mentioned therein must extend to the rights under s. 299 of the Government of India Act also. The following passage from that judgment at page 695 is important and applicable to the facts of the present case:

"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

(1) [1955] 1 S.C.R. 691, 695.

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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 ".

In view of the judgment of this Court in *Dhirubha Devisingh Gohil's case* (1) the ground of unconstitutionality based on the contravention of s. 299 of the Government of India Act would not be available to the respondent. But it was argued on behalf of the respondent that the amendment of the Constitution which came after the decision of the Allahabad High Court cannot validate the earlier legislation which, at the time it was passed was unconstitutional and reliance was placed upon the judgment of this Court in *Saghir Ahmad* v. *The State of U. P.* (2). But in the present case the provisions of the Act have been specifically saved from any attack on their constitutionality as a consequence of Art. 31-B read with the Ninth Schedule, the effect of which is that the Act cannot be deemed to be void or ever to have become void on the ground of its being hit by the operation of the Government of India Act.

In the result, this appeal is allowed and that portion of the judgment of the High Court which declared the two provisos of s. 11(1) of the Act to be void, is set aside. The High Court awarded costs against the appellant. That order is also set aside. But in view of the fact that the appeal has succeeded because of a subsequent event, i.e., the incorporation of the Act in the Ninth Schedule, we order that the parties do bear their own costs in this Court.

*Appeal allowed.*

(1) [1955] 1 S.C.R. 691, 695.
(2) [1955] 1 S.C.R. 707 at pp. 727-728.