

personal liberty, private property and general national progress is the maintenance of efficient civil Government; and Government cannot exist without revenue. The tax payer too has to adjust his affairs and regulate the economy so as to arrange for his contribution towards the maintenance of civil Government. To speedy determination of such disputes is thus a matter of importance to the society as a whole. I have considered it necessary to elaborate this aspect because my experience shows that due attention has somehow not been paid to it. Cases of this nature deserve priority and it is hoped that this aspect would in future be kept in view.

R. P. KHOSLA, J.—I agree.

B. R. T.

APPELLATE CIVIL

Before R. S. Narula, J.

BARKAT RAM AND OTHERS.—*Appellants*

versus

UNION OF INDIA,—*Respondent*

F.A.O. No. 55-D of 1961.

April 26, 1966.

Resettlement of Displaced Persons (Land Acquisition) Act (XL of 1948)—Proviso to S. 7(1)(e)—Whether ultra vires S. 299 of the Government of India Act, 1935—Constitution of India (1950)—Arts. 31 and 366—Whether save the Act from being impugned.

Held, that both the provisos to clause (e) of sub-section (1) of section 7 of the Resettlement of Displaced Persons (Land Acquisition) Act, 1948 are *ultra vires* section 299(2) of the Government of India Act, 1935 and are, therefore, deemed to have never been on the statute book. The impugned provisos having been still-born cannot be brought within the definition of "existing law" as contained in Article 366(10) of the Constitution. Not being an existing law, Article 31(5) does not save the impugned provisions. Clause (6) of Article 31

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also does not apply to the Act as it was admittedly enacted more than 18 months before the commencement of the Constitution. The Act is mentioned at item No. 16 of the Ninth Schedule to the Constitution. But that does not save it from being *ultra vires* section 299(2) of the Government of India Act as the inclusion of the Act in the Ninth Schedule merely saves it from being declared to be void or from having become void on the ground of its being inconsistent with or taking away or abridging any of the fundamental rights contained in Articles 14 to 32 of the Constitution.

First Appeal from the order of Shri K. S. Sidhu, Arbitrator appointed under section 7 of the Resettlement of Displaced Persons (Land Acquisition) Act, 1948 dated 31st January, 1961, awarding the claimants a sum of Rs. 23,890 as compensation for the land acquired by the Union of India and further ordering that they shall also be entitled to interest on this amount at the rate of 4 per cent per annum from 19th December, 1952 to the date of actual payment.

H. HARDY AND S. P. AGGARWAL, ADVOCATES, for the Appellants.

S. N. SHANKER WITH DALJIT SINGH & N. SRINIVASA RAO, ADVOCATES, for the Respondents.

JUDGMENT

NARULA, J.—The only question that has ultimately to be decided in his case is about the *vires* of the first and second provisos to subsection (1) of section 7 of the Resettlement of Displaced Persons (Land Acquisition) Act, 40 of 1948 (hereinafter referred to as the Act).

The facts giving rise to this appeal may first be set out. The land in dispute was purchased by Chandu Lal for Rs. 6,001-15-0 on 27th December, 1941. Barkat Ram and others appellants acquired the property from Chandu Lal by a registered deed on December 17, 1950, for Rs. 24,500. Notice under section 3 of the Act was issued on 19th December, 1952. The Government offered to pay Rs. 23,890 as compensation to the appellants. They declined to accept the same. The land in dispute measures 1333.76 square yards comprised in plot No. 1 Block No. 54, Karol Bagh, New Delhi. The appellants claimed compensation amounting to Rs. 1,65,525 at the rate of Rs. 125 per square yard for the same besides interest at the rate of 6 per cent per annum on the amount of compensation with effect from 19th of December, 1952, till the date of payment. The appellants having

declined to accept the amount of compensation offered to them, the compensation could not be fixed by agreement. The Government, therefore, appointed Shri K. S. Sidhu as an arbitrator under section 7(1) (b) of the Act to determine the amount of compensation to which the appellants were entitled. By his award dated January 31, 1961, the learned arbitrator has held that the appellants' case fell within the second proviso to clause (e) of sub-section (1) of section 7 of the Act inasmuch as the land in question has been held by the predecessor-in-interest of the appellants under a purchase made by him between the 1st of September, 1939, and 1st of April, 1948, and that, therefore, the compensation payable to the appellants under that proviso is the price actually paid by Chandu Lal on the 27th of December, 1941. On that basis it has been held that the appellants would have been entitled to only Rs. 6,001-15-0. In the alternative it has been found that if the first proviso was to be applicable the appellants would be entitled to Rs. 7,469.5 nP., after adding 40 per cent permissible under the proviso, to the price of the land in 1941, i.e., Rs. 6,001-15-0. On that basis the arbitrator made an award in favour of the appellants for the admitted sum of Rs. 23,890 which the Government had offered to the appellants as compensation. In addition to that, the appellants have been allowed interest at the rate of 4 per cent per annum on the amount of compensation with effect from 19th December, 1952 to the date of the actual payment.

Mr. Hardayal Hardy, the learned counsel for the appellants has raised only one single point in this case. He has argued that both the provisos to clause (e) of sub-section (1) of section 7 of the Act are *ultra vires* section 299 of the Government of India Act and are, therefore, liable to be ignored. The Act was passed by the Central Legislature in September, 1948, when the powers, authority and jurisdiction of the Legislature were governed by the Government of India Act, 1935. Section 299(2) of the 1935 Constitution Act was in the following terms:—

“(2) Neither the Federal or 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.”

Any law passed during the time when sub-section (2) of section 299 of the 1935 Act was in force, which does not provide for payment of compensation for the property acquired, has to be struck down. “Compensation” in section 299 of the Government of India Act has been interpreted by their Lordships of the Supreme Court in *The State of West Bengal v. Mrs. Bela Banerjee and others* (1), as “a just equivalent of what the owner has been deprived of”. The conditions imposed by the two impugned provisos clearly violate the constitutional guarantee contained in section 299(2) of the Government of India Act as they enjoin on the arbitrator appointed under section 7 (1) (b) of the Act to award compensation which need not be just equivalent of what the owner had been deprived of. Keeping in view the well-known upward trend in the prices of land in Delhi since the commencement of the Second World War it is obvious that the value of the land in question in December, 1952, would have been several times the value of the same land in December, 1941. In fact this has been conceded by the Central Government in offering to the appellants Rs. 23,890 for land which was admittedly not of the value of more than about Rs. 6,000 in 1941. This is clearly contrary to the express intention of the British Parliament contained in section 299(2) of the Government of India Act, I, therefore, hold that both the provisos to clause (e) of sub-section (1) of section 7 of the Act are *ultra vires* section 299(2) of the Government of India Act, 1935, and are, therefore, deemed to have never been on the statute book. The impugned provisos having been still-born cannot be brought within the definition of “existing law” as contained in Article 366(10) of the Constitution. Not being an existing law, Article 31(5) does not save the impugned provisions. Clause (6) of Article 31 also does not apply to the Act as it was admittedly enacted more than 18 months before the commencement of the Constitution. The Act is mentioned at item No. 16 of the Ninth Schedule to the Constitution. But that does not save it from being *ultra vires* section 299(2) of the Government of India Act as the inclusion of the Act in the Ninth Schedule merely saves it from being declared to be void or from having become void on the ground of

(1) 1954 S.C.R. 558.

its being inconsistent with or taking away or abridging any of the fundamental rights contained in Article 14 to 32 of the Constitution. No such attack has been made on the impugned provisions of the Act by Mr. Hardy.

In almost similar circumstances the Supreme Court struck down section 8 of the West Bengal Land Development and Planning Act, 1948, by their Lordships' judgment in *the State of Bengal v. Mrs. Bela Banerjee and others* (1). The said West Bengal Act is also included in the Ninth Schedule at item No. 20. In *N. B. Jeejeebhoy v. The Assistant Collector, Thapa Prant, Thana* (2), the Land Acquisition (Bombay Amendment) Act, 24 of 1948, was struck down by their Lordships of the Supreme Court on similar grounds.

I, therefore, accept this appeal and set aside the award of the arbitrator, dated 31st January, 1961, which is solely and exclusively based on the two provisos which have been held by me to be unconstitutional and illegal and direct that the appropriate Government authority will now issue a proper notification re-appointing Mr. K. S. Sidhu or appointing any other competent and qualified officer as arbitrator under section 7(1)(b) of the Act to take evidence of both parties afresh and to make an award for the compensation to which the appellants may be found to be entitled in accordance with law. The appellants will have their costs of this appeal from the respondent.

B.R.T.

REVISIONAL CIVIL

Before Mehar Singh, J.

ATMA SINGH,—*Petitioner.*

versus

WARYAM SINGH AND OTHERS,—*Respondents.*

Civil Writ No. 12 of 1966.

May 2, 1966

Land Acquisition Act (I of 1894)—as amended by Land Acquisition (Punjab Amendment) Act, 1953 (II of 1954)—Ss. 3 (d), 18(3) and 53—Collector—Whether can review the orders passed by his predecessor—Clerical

(2) A.I.R. 1965 S.C. 1096.