1964

March, 3

STATE OF MADRAS

v.

D. NAMASIVAYA MUDALIAR AND OTHERS

(P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, J. C. SHAH, N. RAJAGOPALA AYYANGAR AND S. M. SIKRI, JJ.)

Madras Lignite (Acquisition of Land) Act (XI of 1953), ss. 2 and 3 —Acquisition of lignite lands—Compensation to be assessed on market value prevailing on April 28, 1947—Value of non-agricultural improvements after that date not to be taken into consideration—Act passed before Constitution (Fourth Amendment)—Validity of Act—Compensations now fixed—Constitution of India, Art. 31 Prior to the Constitution (Fourth Amendment) Act, 1955.

The respondents in the above appeals are owners of certain lands which are to be compulsorily acquired under Madras Lignite (Acquisition of Land) Act, 1953. This Act came into force on August 20, 1953 before Art. 31 of the Constitution was amended by the Constitution (Fourth Amendment) Act, 1955. By the said Act substantially two provisions which are material to the present appeals were made. The first was that compensation for acquisition of lignite-bearing lands under the Land Acquisition Act is to be assessed on the market value of the land prevailing on August 28, 1947 and not on the date on which notification is issued under s. 4(1) of the Land Acquisition Act. Secondly it was provided that in awarding compensation the value of non-agricultural improvements commenced since April 28, 1947 will not be taken into consideration.

In accordance with the above provisions, after issuing the notices as required under ss. 4(1) and 6 of the Land Acquisition Act the Land Acquisition Officer made awards regarding the lands of the respondents. The respondents thereupon filed petitions under Art. 226 of the Constitution before the High Court of Madras challenging the validity of the award on the ground that the provisions of the Act relating to the award of compensation violate Art. 31(2) of the Constitution [as it stood before the Constitution (Fourth Amendment) Act, 1955]. The High Court upheld the contention. In appeal,

Held: (i) The validity of the Act impugned in the present appeal has to be examined in the light of the provisions of Art. 31 of the Constitution as they stood before the Constitution (Fourth Amendment) Act, 1955.

Chiranjit Lal Chowdhuri v. *Union of India*, [1950] S.C.R. 869, *State of West Bengal* v. *Subodh Gopal Bose*, [1954] S.C.R. 587, and *State of West Bengal* v. *Mrs. Bela Banerjee*, [1954] S.C.R. 558, relied.

(ii) The principle laid down in *Bela Banerjee's* case, that the ceiling on the compensation without reference to the value of the land at the time of the acquisition is arbitrary and cannot be regarded as due compensation in letter and spirit within the requirement of Art. 31(2), would apply to the impugned Act. Fixation of compensation for compulsory acquisition of land notified many years after that date on the market value prevailing on the date on which lignite was discovered is wholly arbitrary and inconsistent with the letter and spirit of Art. 31(2) as it stood before the Constitution (Fourth Amendment) Act, 1955.

(iii) Any principle for determination of compensation denying to the owner all increments in value between a fixed date and the date of issue of the notice under s. 4(1) of the Land Acquisition Act must *prima facie*, be regarded as denying him the true equivalent of the land which is expropriated and it is for the State to show that fixation of compensation on the market value on an anterior date does not amount to a violation of the Constitutional guarantee. In the present appeals no materials have been placed by the State which would support any such case.

(iv) Denial of compensation for the value of non-agricultural improvements would be denying to him just compensation for the loss suffered by him on account of compulsory acquisition of his holding and would amount to infringement of Art. 31(2) of the Constitution.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 6 to 12 of 1963.

Appeals from the judgment and decree dated February 2, 1959 of the Madras High Court in Writ Petition Nos. 1, 2, 202, 203, 204, 309 and 373 of 1958.

A. Ranganadham Chetty and *A. V. Rangam*, for the appellants (in all the appeals).

R. Gopalakrishnan, for the respondent (in C.A. No. 11/63).

S. V. Gupte, Additional Solicitor-General and *R. H. Dhebar*, for interveners Nos. 1 and 2.

M. C. Setalvad, N. S. Bindra and *R. H. Dhebar*, for intervener No. 3.

G. C. Kasliwal, Advocate-General, Rajasthan, R. H. Dhebar and *B. R. G. K. Achar*, for intervener No. 4.

1964

State of Madras
v.
D. Namasivaya Mudaliar

Shah J.

March 3, 1964. The Judgment of the Court was delivered by

SHAH, J.—"Whether ss. 2 and 3 of the Madras Lignite (Acquisition of Land) Act XI of 1953 which seek to amend the Land Acquisition Act I of 1894 in their application to acquisition of lignite-bearing lands are invalid because they infringe the fundamental right under Art. 31 of the Constitution of owners of lands whose property is to be compulsorily acquired is the only question which falls to be determined in this group of appeals.

Investigations conducted by the Geological Survey of India in 1947 revealed deposits of lignite in the South Arcot District of the State of Madras, and exploratory mining operations were commenced by the Government of Madras. Discovery of deposits of lignite led to speculation in lands. On October 6, 1948, the Government of Madras issued a "Press-Note" announcing that the Government proposed to undertake legislation reserving power to compel any person who had purchased land on or after a date to be prescribed in 1947 in the lignite-bearing areas to sell such lands to the Government at the rate at which it was purchased. The Government also advised the owners of the lignite-bearing lands in the Vriddhachalam and Cuddalore taluks not to sell their lands to speculators. On January 7, 1953, the Government of Madras published a Bill to amend the Land Acquisition Act I of 1894 in certain respects. The Bill was duly passed by the State Legislature on June 2, 1953 and received the assent of the President. It was published as an Act on June 10, 1953 and came into force on August 20, 1953. By this Act substantially three provisions are made:

(1) that compensation for acquisition of lignite-bearing lands under the Land Acquisition Act as amended, is to be assessed on the market value of the land prevailing on April 28, 1947, and not on the date on which the notification is issued under s. 4(1) of the Land Acquisition Act;

(2) power is reserved under s. 17 of the Land Acquisition Act to take possession in cases of urgency of lands for the purpose of working lignite mines in the areas in which the Madras Lignite (Acquisition of Land) Act XI of 1953 extends; and

(3) in assessing the market value of the land on April 28, 1947, value of any non-agricultural improvements on the land commenced, made or effected after that date are not to be taken into account, even if such improvements were made before the date of publication of the notification under s. 4(1) of the Land Acquisition Act.

Pursuant to this Act, notifications under s. 4(1) of the Land Acquisition Act were issued between the months of January and May 1957 notifying for acquisition certain lands in Vriddachalam taluk of the South Arcot District. These notifications were followed by notifications under s. 6 of the Land Acquisition Act. Between the months of May and November 1957 the Land Acquisition Officer made his awards under s. 11 of the Land Acquisition Act assessing compensation on the basis of market value of the lands on April 28, 1947 and ignoring in the computation of compensation the value of houses built or other non-agricultural improvements made on the land since that date. The owners of the lands affected by these awards submitted petitions under Art. 226 of the Constitution to the High Court of Judicature at Madras challenging the validity of the awards on the ground that the provisions of Madras Act XI of 1953 violated the fundamental right of the owners of the lands under Art. 31(2) of the Constitution. They claimed that the Land Acquisition Officer was bound to award compensation for acquisition of their lands and buildings at the market value prevailing on the respective dates of the notifications under s. 4(1), and that awards valuing the lands at the market rate prevailing on April 28, 1947, and excluding the value of buildings constructed after that date and trees thereon were without jurisdiction. The petitioners accordingly claimed that writs of *mandamus* be

1964

State of Madras v. D. Namasivaya Mudaliar

Shah J.

issued directing the State of Madras and the Land Acquisition Officers to refrain from taking possession of the lands and buildings from the petitioners without payment of adequate compensation and for other appropriate relief. The High Court upheld the contention of the petitioners and declared that the awards made on the basis of the provisions of Madras Act XI of 1953 could not be sustained. Against the order passed by the High Court, these appeals have been preferred by the State of Madras, with certificate of fitness granted by the High Court under Art. 132 of the Constitution.

The Madras Act XI of 1953 makes an important departure from the scheme of the Land Acquisition Act I of 1894. Under the Land Acquisition Act I of 1894, a person interested in any land compulsorily acquired is entitled to the market value of his interest in the land at the date of the publication of the notification under s. 4(1), and this compensation includes the value of all improvements agricultural and non-agricultural made in the land upto the date of the notification. By Madras Act XI of 1953, compensation made payable for compulsory acquisition of land is the value of the land on April 28, 1947, together with the value of any agricultural improvements made thereon after that date and before publication of the notification under s. 4(1). The result of the Madras Act is therefore to freeze for the purpose of acquisition the prices of land in the area to which it applies, and the owners are deprived of the benefit of appreciation of land values since April 28, 1947, whenever the notification under s. 4(1) may be issued and also of non-agricultural improvements made in the land after April 28, 1947. Departure from the provisions of the Land Acquisition Act is challenged as illegal on the ground that it deprives the owner of the land of just compensation for compulsory acquisition of his property.

Madras Act XI of 1953 was passed before the Constitution (Fourth Amendment) Act, 1955 was enacted, and we have to deal with the question of the validity of the Act in the light of the constitutional provisions contained in Art. 31 before the constitutional amendment. We may

make it clear that for the purpose of this judgment, we express no opinion on the question whether it is possible by enacting legislation after the amendment of Art. 31(2) by the Constitution (Fourth Amendment) Act, 1955 (which is not given any retrospective operation) to provide that compensation for compulsory acquisition of land may be fixed on the basis of market value prevailing on a date anterior to the date of the issue of the notification under s. 4(1). Article 31 before it was amended by the Constitution (Fourth Amendment) Act 1955, by its cls. (1) and (2) provided :

> "(1) No person shall be deprived of his property save by authority of law.
>
> (2) 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 was held by this Court in *Chiranjit Lal Chowdhuri* v. *Union of India and others*(1) and *The State of West Bengal* v. *Subhodh Gopal Bose and others*(2) that cls. (1) and (2) of Art. 31 relate to the same subject of "eminent domain". By Art. 31 therefore every person was protected against deprivation of his property save by authority of law, and the law authorising taking possession or acquisition of property for public purposes had to fix the quantum of compensation, or to specify principles on which compensation was to be determined for the property taken possession of or acquired. Power to legislate in respect of compensation for acquisition and requisitioning of property was

(1) [1950] S.C.R. 869.
(2) [1954] S.C.R. 587.

1964

State of Madras
v.
D. Namasivaya Mudaliar

Shah J.

contained in Entry 42 List III of the Seventh Schedule and read as follows:

> "Principles on which compensation for property acquired or requisitioned for the purpose of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given."

The Constitution therefore conferred by Art. 31(2) a fundamental right upon every person, protecting his property against compulsory acquisition otherwise than by authority of law, and without just indemnification for loss suffered by him. In *The State of West Bengal* v. *Mrs. Bela Banerjee and others*(1) this Court observed that when under Entry 42 List III the Legislature was given discretionary power to lay down the principles which should govern determination of the amount to be given to the owner of the property appropriated, such principles must ensure that what is determined as payable must be a just equivalent of what the owner has been deprived of, and that subject to this basic limitation the Constitution allowed free play to the legislative judgment as to what principles should guide the determination of the amount payable. The Court therefore held that the West Bengal Land Development and Planning Act, 1948, which was enacted primarily for the settlement of immigrants who had migrated into West Bengal due to communal disturbances in East Bengal and which by s. 8 provided that the compensation to be awarded for compulsory acquisition to the owner of the land was not to exceed the market value on December 31, 1946, was *ultra vires* the Constitution and void under Art. 31(2) of the Constitution. It was observed at p. 564:

> "Turning now to the provisions relating to compensation under the impugned Act, it will be seen that the latter part of the proviso to section 8 limits the amount of compensation so as not to exceed the market value of the land

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

on December 31, 1946, no matter when the land is acquired. Considering that the impugned Act is a permanent enactment and lands may be acquired under it many years after it came into force, the fixing of the market value on December 31, 1946, as the ceiling on compensation, without reference to the value of the land at the time of the acquisition is arbitrary and cannot be regarded as due compensation in letter and spirit with the requirement of article 31(2)."

That principle must apply in adjudging the validity of Madras Act XI of 1953. It may be assumed that April 28, 1947, was the date on which lignite deposits were discovered in the areas to which the Act is extended. But there is no true relation between the acquisition of the lands in these cases and fixation of compensation based on their value on the market rate prevailing on April 28, 1947. Fixation of compensation for compulsory acquisition of lands notified many years after that date, on the market value prevailing on the date on which lignite was discovered is wholly arbitrary and inconsistent with the letter and spirit of Art. 31(2) as it stood before it was amended by the Constitution (Fourth Amendment) Act, 1955. If the owner is by a constitutional guarantee protected against expropriation of his property otherwise than for a just monetary equivalent, a law which authorises acquisition of land not for its true value, but for value frozen on some date anterior to the acquisition, on the assumption that all appreciation in its value since that date is attributable to purposes for which the State may use the land at some time in future, must be regarded as infringing the fundamental right.

Counsel for the State of Madras relying upon the following observation of Patanjali Sastri, C.J., in *Mrs. Bela Banerjee's* case(1) at p. 564:

"The fixing of an anterior date for the ascertainment of value may not, in certain circumstances, be

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

1964

State of Madras v. D. Namasivaya Mudaliar

Shah J.

a violation of the constitutional requirement as, for instance, when the proposed scheme of acquisition becomes known before it is launched and prices rise sharply in anticipation of the benefits to be derived under it, but the fixing of an anterior date, which might have no relation to the value of the land when it is acquired, may be, many years later, cannot but be regarded as arbitrary",

submitted that a law which merely fixes the market value on a date anterior to the date on which the owner is expropriated of his land, as determinative of the market value on which the compensation is to be based, cannot without further enquiry be regarded as infringing Art. 31(2) of the Constitution. In our view this observation cannot assist the State of Madras in saving the provisions of Madras Act XI of 1953 from the vice of infringing the constitutional guarantee under Art. 31(2) of the Constitution. The right which is guaranteed is undoubtedly the right to a just indemnification for loss, and appreciation in the market value of the land because of the proposed acquisition may in assessing compensation be ignored. Even the Land Acquisition Act provides for assessment of compensation on the basis of market value of the land not on the date on which interest of the owner of land is extinguished under s. 16, but on the basis of market value prevailing on the date on which the notification under s. 4(1) is issued. Whether this rule in all cases irrespective of subsequent developments ensures just indemnification of the expropriated owner so as to be immune from attack, does not call for comment in this case. But any principle for determination of compensation denying to the owner all increments in value between a fixed date and the date of issue of the notification under s. 4(1), must *prima facie*, be regarded as denying to him the true equivalent of the land which is expropriated and it is for the State to show that fixation of compensation on the market value on an anterior date does not amount to a violation of the constitutional guarantee No materials have been placed by the State before this Court which would support any such case.

It is true that the Province of Madras had issued a "Press-Note" in 1948 announcing that the Government proposed to undertake legislation reserving the power to compel any person who had purchased land in the lignite bearing areas to sell such land to them at the rate at which it was purchased. The only intimation given thereby to the owners of lands was that the Government may undertake legislation for the purpose of purchasing lands at the price at which the speculators in land may have purchased them. There is no evidence that any scheme for acquisition of land for mining of lignite was prepared in 1947 by the Government of Madras. The mining operations in 1947 must, in the very nature of things, have been exploratory. The statement of objects and reasons for the Act clearly discloses that initially mining operations were started by the Government on a small area. Assuming that in appropriate cases, fixation of a date anterior to the publication of the notification under s. 4(1) for ascertainment of market value of the land to be acquired, may not always be regarded as a violation of the constitutional guarantee, in the absence of evidence that compensation assessed on the basis of market value on such anterior date, awards to the expropriated owner a just monetary value of his property at the date on which his interest is extinguished, the provisions of the Act arbitrarily fixing compensation based on the market value at a date many years before the notification under s. 4(1) was issued, cannot be regarded as valid. It is a matter of common knowledge that since the termination of hostilities in the last World War there has been an upward tendency in land values resulting in appreciation in some areas many times the original value of lands. No attempt has been made by the State to prove that appreciation in the market value of lands in the area since April 1947 was solely attributable to a scheme of land acquisition of lignite bearing lands. To deny to the owner of the land compensation at rates which justly indemnify him for his loss by awarding him compensation at rates prevailing ten years before the date on which the notification under s. 4(1) was issued amounts in the circumstances to a flagrant infringement of the fundamental right of the owner of the land under Art. 31(2) as it stood when the Act was enacted.

1964

State of Madras v. D. Namasivaya Mudaliar

Shah J.

The validity of the provision relating to fixation of compensation had to be adjudged in the light of the constitutional protection guaranteed at the date when the Act was brought into operation, and any restriction of the constitutional protection by subsequent amendment of Art. 31(2) which has not been given retrospective effect, must be entirely ignored.

The provision which denies to the owner of land compensation for non-agricultural improvements made by him since April 28, 1947, also infringes the protection of Art. 31(2). Under s. 3(a) of the Land Acquisition Act "land" is defined as including benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth, and when under s. 4(1) land is notified for acquisition, the acquisition is of the entirety of the interest of the owner in the land including underground rights if any, crops, trees and superstructures. By the Madras Act the owner is deprived of the value of all non-agricultural improvements including the value of non-agricultural buildings, erected on the land after April 28, 1947. It is not clear whether the non-agricultural buildings constructed after the specified date are forfeited to the State on acquisition, or the owner is entitled to remove them. In either case the owner is deprived of just value of his land including the superstructure, of which he is expropriated. Denial to the owner of the land of the value of the structures constructed by him (even of those put up after April 28, 1947, with the knowledge that the Government may undertake legislation for the purpose of compulsory acquisition of the land) would still be denying to him just compensation for the loss suffered by him on account of compulsory acquisition of his holding, and would amount to infringement of Art. 31(2) of the Constitution.

We are therefore of the view that the provisions which require the Land Acquisition Officer and the Court to assess compensation of the land compulsorily acquired only on the market value of the land on April 28, 1947, together with the value of agricultural improvements on the land commenced, made or effected after that date, and before the date of the publication of the notification under s. 4(1),

without taking into consideration the value of non-agricultural improvements made after that date, must be regarded as invalid.

We are not called upon to express any opinion on the question whether the power reserved under s. 17 of the Land Acquisition Act as amended by s. 2 of Madras Act XI of 1953 to take possession of lands under the emergency clause for the purpose of working lignite mines in the areas to which the Madras Lignite (Acquisition of Land) Act, 1953, extends is invalid. No argument has been advanced by either side before us on this question. Nor was the High Court called upon to consider the validity of that provision.

The appeals therefore fail and are dismissed. The respondents in this group of appeals, except in appeal No. 11 of 1963, have not appeared in this Court. Therefore in appeal No. 11 of 1963 alone, the State of Madras will pay the costs of the respondent. There will be no order as to costs in other appeals.

Appeals dismissed.

THE TOWN MUNICIPAL COMMITTEE, AMRAVATI

v.

RAMCHANDRA VASUDEO CHIMOTE AND ANOTHER

1964

March 3

(P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, K. C. DAS GUPTA, J. C. SHAH AND N. RAJAGOPALA AYYANGAR, JJ.)

Terminal Tax—Imposition of terminal tax by Municipality on silver and silver jewellery, gold and gold jewellery and precious stones in 1960—*These taxes not levied before by Municipality—Whether saved by Art.* 277 *of the Constitution—"Continue to be levied and to be applied to the same purposes"—Meaning of—C.P. and Berar Municipalities Act,* 1922, *s.* 55—*Government of India Act,* 1935, *s.* 143(2)—*Constitution of India, Art.* 277.