



CASES AND COMMENTS

Constitution of India : Article 31(2) : Namasivaya Mudaliar v. State of Madras*

Almost six years since the decision of the Supreme Court in the *Bela Banerjee* case,¹ the attention of the Indian constitutional lawyers is again focussed on the decision of the Madras High Court in the *Namasivaya Mudaliar* case which deserves a close study.

Article 31 of the Constitution which deals with deprivation of private property for public purpose received a new interpretation in the hands of the Madras High Court in this case which in effect nullifies the radical change brought about by the Constitution (Fourth Amendment) Act, 1955. The Amendment stripped the judiciary of its power to go into the question of adequacy or otherwise of the compensation provided by the legislature.

The facts, in brief, are these: The Government of Madras acquired certain lands in Cuddalore District under enactment—Madras Act XI of 1953—for excavating lignite deposits. The Act stipulated two principles according to which compensation was to be paid to the owners deprived of their lands. First, the market value of the land on April 28, 1947, and second, the cost of agricultural improvements effected to the lands commenced or made after the above date. Prior to this date, some buildings were in existence on the lands in question and some others were raised thereafter. The Act was impugned on the ground that no provision was made for awarding any compensation to the buildings existing on the lands and as such the principles laid down in the Act for computing compensation hit against article 31(2) of the Constitution. The court upheld the plea of the petitioners and declared the Act *ultra vires*.

The judges, *inter alia*, based their conclusions on the literal meaning of the word 'compensation', and the decisions of the Supreme Court and the Patna High Court in the *Bela Banerjee* case² and the *Chhaya Devi*³ respectively. The main question for consideration in the *Chhaya Devi* case—whether the Constitution (Fourth Amendment) Act, 1955, was retrospective—was answered by the court in the negative. The impugned Act—the Kosi Area (Restoration of Lands to Raiyats)

* A.I.R. 1959 Mad. 548, (Rajagopalan and Balakrishna Ayyar, JJ.).

1. *State of West Bengal v. Bela Banerjee*, A.I.R. 1954 S.C. 170.
2. *Op. cit.*
3. *Chhaya Devi v. State of Bihar*, A.I.R. 1957 Pat. 44.



Act—fixed compensation at the prices mentioned in the sale proclamations plus the cost of improvements effected on the holdings.

Ramaswamy, C. J., held :

“...my concluded opinion is that Bihar Act 30 of 1951 was revived and revitalised with effect from the date of passing of the Constitution (Fourth Amendment) Act and the Bihar Act 30 of 1951 became constitutionally valid and operative with effect from April 27, 1955, on which date the Constitution (Fourth Amendment) Act, 1955, was passed”.

The Madras High Court sought to derive support from this case by observing :

“On behalf of the Government it was argued in that case [the Chhaya Devi case] that the Act was saved by the amendment made to the Constitution in 1955. But that contention was also overruled”.⁴

Reliance by the court on this case does not seem to be well founded. By categorically asserting that the Patna High Court had rejected the contention that the impugned Act was not saved by the Constitution (Fourth Amendment) Act, the Madras High Court seems to have misread the Patna decision. With due respect, it is submitted that if the court had followed the Patna decision closely, it would have held that the impugned Madras Act XI of 1953 in the *Namasivaya Mudaliar* case, though unconstitutional at the time of its coming into force, was saved by the Constitution (Fourth Amendment) Act, 1955, and the acquisition made under it perfectly valid and constitutional as the lands in question were acquired in 1957 after the Amendment Act was passed.

The court next relied on the *Bela Banerjee* case,⁵ in which the Supreme Court had interpreted the word ‘compensation’ in article 31(2) to mean “...a just and equivalent of what the owner has been deprived of”. Soon after this authoritative pronouncement by the Supreme Court, the Constitution (Fourth Amendment) Act, 1955, was brought into being for the reason that if this “interpretation was allowed to stand many of the social problems which we want to solve will be incapable of being solved in the near future”.⁶

Doubts were expressed about the wisdom of the Supreme Court’s ruling on the ground that the framers of the Constitution did not mean

4. A.I.R. 1959 Mad. 552.

5. *Op. cit.*

6. See the Speech of Shri H. V. Pataskar, Minister in the Ministry of Law, while moving the Bill (Constitution, Fourth Amendment) for reference to a joint Committee of Houses. *Lok Sabha Debates*, Vol. II, No. 30, 1955 Part II, Col. 1998.



by compensation a 'just' or 'adequate' compensation.⁷ It has also been argued that if the court had gone into the preparatory work of the Constitution, it "could have found grounds for the interpretation of article 31 that they applied to the facts of the case."⁸ Prime Minister Nehru, speaking on the Fourth Amendment (Constitution) Bill in the Lok Sabha, however, observed: "...when we passed this article in the Constituent Assembly, we had made it perfectly clear that Parliament would fix either the quantum of, or the rules governing, compensation and after that there would be no change at all". In view of this any further comment as to the intention of the Constitution-makers as to the Fourth Amendment would only be superfluous.

In its amended form article 31 stripped the judiciary of its power to review the adequacy of compensation provided in any legislative measure for expropriation. This is reflected in the following words of clause (2): "...no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate".

The court, however, held that the views of the Supreme Court in the *Bela Banerjee* case as to what constitutes compensation "still very fully and firmly occupies the field". But at the same time they conceded that the "effect of the amendment was to substitute the discretion of the legislature for the discretion of the courts in deciding the question whether the compensation provided for was adequate or not. Whereas, prior to the amendment, courts could rule that the compensation provided in the Act was inadequate, they could not do so thereafter".⁹ After explaining the literal meaning of the word 'compensation' and its retention in article 31 even after the amendment, the court concluded: "the amendment did not do away with the idea of an equal return" and "it was for the legislature to determine what the exact equivalent should be". Read together, the views of the court come into clash with each other resulting in incongruity. When the court accepted the fact that the legislature should decide 'what the exact equivalent should be', where does the judiciary come in?

The court's view that the compensation offered should be a 'fair equivalent' and this 'has not been abrogated by the amendment made to the Constitution in 1955' appears to be irreconcilable both with the text of article 31(2) of the Constitution and the intention of its

7. Alexandrowicz, *Constitutional Developments in India*, p. 89.

8. Merillat, "Compensation for the taking of property—A historical foot-note to *Bela Banerjee's* case", 1 *J.I.L.I.*, p. 393.

9. A.I.R. 1959 Mad. at 554.



framers. The proviso to article 31(2) reads: "...no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate". The Constitution thus does not envisage the judiciary to play the role of a 'final arbiter' to review the adequacy of compensation provided by legislation. This was the position even before the Constitution (Fourth Amendment) Act, 1955, but due to the judiciary's strict literal interpretation of the Constitution, the Amendment Act was brought into being only to make the language of article 31(2) 'more precise'.¹⁰ The Constitution vested the power of fixing the quantum of compensation in the legislature and 'none else'.¹¹ The very idea behind the amendment was that it would not always be possible to pay the full market value of the property as compensation.¹² This factor which was very essential in the present case seemed to have been overlooked and the court stuck to the Supreme Court's ruling in the *Bela Banerjee* case. Such an interpretation of the Constitution in disregard of its text and the background in which it was drafted carries with it, it is submitted, a corroding effect on the harmonious relations between the legislature and judiciary.

Regarding the principles according to which compensation was to be determined under the impugned Act, the court observed:

"Legislation which, in fixing the principles of compensation, refuses to take into account valuable accretion to the property or which fixes dates which are not appropriate to the matter would come perilously close to a fraudulent exercise of power".¹³

Thus the judges seemed to have read into the principles an element of fraud. The facts of this case, it is submitted, do not lend support to such an observation. The allegation of fraud could be of help to the judiciary in striking down a legislation only if it is "a colourable device, a contrivance to outstep the limits of the legislative power".¹⁴ As early as October 6, 1948, the Government of Madras warned the land owners against any manoeuvres to boost up the prices of the lands and made known its intention of expropriating the lands for mining operations which undoubtedly was a public purpose. The court also did not dispute the purpose of the acquisition. One of the principles

10. Prime Minister Nehru on the Constitution (Fourth Amendment) Bill, *Lok Sabha Debates*, 1955, Vol. II, Part II, Col. 1951.

11. H. V. Pataskar, Minister, in the Ministry of Law. *Lok Sabha Debates, Op. cit.*, Col. 2007.

12. See Keising's Contemporary Archives, 1955, p. 14268.

13. A.I.R. 1959 Mad. at 555.

14. *Constituent Assembly Debates*, Vol. IX, No. 32, p. 1271.



in accordance with which compensation was to be ascertained was the market value of the lands on April 28, 1947. Was this in the nature of an illusory compensation? Did this measure come 'perilously close to a fraudulent exercise of power'? Did the legislature of Madras pass this Act only to perpetrate a fraud on the Constitution? Controversial situations like the present one were anticipated by the framers of the Constitution.

M. N. R.

Anyone or Everyone — The Mines Act, 1952, Section 76 : Chief Inspector of Mines v. K. C. Thapar¹ and Banwarilal v. State of Bihar²

*The Chief Inspector of Mines v. K. C. Thapar*¹ and *Banwarilal v. State of Bihar*,² decided by the Supreme Court the same day, offer an interesting comparative study. By interpreting the expression "anyone" in section 76 of the Mines Act, 1952, to mean "everyone" and "everyone" to mean "all", the court sustained the prosecution of "all the directors" in the *Thapar* case and "only one" out of several of the shareholders in the *Banwarilal* case, without, however, hurting the susceptibilities of article 14 of the Constitution.³

In the *Thapar* case an accident occurred in the Amlabad Colliery, in Bihar State on February 5, 1955, resulting in the loss of life of fifty-two persons and in an injury to one person. The Mines Act and the regulations made thereunder impose criminal responsibility on the owner of the mines as well. Section 76⁴ of the Mines Act, 1952,

1. A.I.R. 1961 S.C. 838.
2. A.I.R. 1961 S.C. 849.
3. The court considered in these cases many other points as well, but they are not relevant for the purpose of this comment.
4. Section 76 of the Mines Act, 1952 : "Determination of owner in certain cases :—Where the owner of a mine is a firm or other association of individuals, anyone of the partners or members thereof or where the owner of a mine is a public company, any one of the directors thereof, or where the owner of a mine is a private company, any one of the shareholders thereof, may be prosecuted and punished under this Act for any offence for which the owner of a mine is punishable—

Provided that where a firm, association or company has given notice in writing to the Chief Inspector that it has nominated,

- (a) in the case of a firm, any of its partners,
- (b) in the case of an association, any of its members,