



Constitution, Article 31(2)—Compensation—Fourth Amendment whether retrospective—State of Madras v. Namasivaya Mudaliar and Others.

Every one will feel sympathy for Mr. Pilgrim who committed suicide when he found that the local authority was acquiring his property compulsorily and he was to be paid only the existing use value.² But the sponsors of the Constitution Fourth Amendment will certainly register their disapproval of the Supreme Court's sympathy for Namasivaya Mudaliar.

The Madras Lignite (Acquisition of Land) Act, 1953, amended the Land Acquisition Act, 1894, to provide that compensation for acquisition of lignite bearing lands was to be assessed at the market value of land on April, 1947, and not on the date on which the notification to acquire land was issued. The Act also provided that no compensation need be paid for improvements other than agricultural improvements effected after 1947. The Act came into force in 1953, before the Fourth Amendment,³ but the notification to acquire Namasivaya Mudaliar's land was issued only in 1957. The Madras High Court struck down the Act as unconstitutional. It held that the Act did not provide for any principles at all on which compensation could be determined and that they were more in the nature of devices to refuse compensation. The Court further held that the

1. Civil Appeals Nos. 6 to 12 of 1963. Decided March 3, 1964.

2. An incident explained by Jackson in "*Judicial Review of Legislative Policy*", 18 *Mod. L. Rev.* 571, at p. 574.

Perhaps to prevent the recurrence of such tragedies the Committee on Administrative Tribunals and Enquiries of the United Kingdom recommended that compensation for property compulsorily acquired should be assessed at market value (1957 Cmnd. 218 para. 278). The Committee's recommendation has since been implemented by suitable amendments.

3. The interpretation of the word "compensation" in Art. 31(2) as "just compensation" in *State of West Bengal v. Bela Banerjee* (A.I.R. 1954 S.C. 170) resulted in the amending of Art. 31(2) by the Constitution Fourth Amendment Act, 1955. For details of the events leading to this Amendment see elsewhere in this Number; Errabi, "*Constitutional Developments pertaining to property and the Seventeenth Amendment Act.*" Article 31(2) after the Fourth Amendment reads: No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned 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; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.



question whether the Fourth Amendment was retrospective or not did not arise at all because this Amendment did not “preclude the courts from considering whether what is called compensation is really compensation and whether what are claimed to be principles on the basis of which compensation is to be computed are really principles of the kind envisaged in Art. 31(2) of the Constitution.”⁴ On appeal the Supreme Court took the view that since Art. 31(2) as amended by the Fourth Amendment had no retrospective operation the validity of the Madras Act had to be tested in the light of the constitutional provision before the Amendment. Relying on the *Bela Banerjee* case⁵ the Court held that the Madras Act was wholly arbitrary and inconsistent with the letter and spirit of Art. 31(2) as it stood before the Amendment. The result was Namasivaya Mudaliar had his way in both the courts.

But did the question really turn on whether Art. 31(2) as amended was retrospective or not? The test would have been relevant if the acquisition was made before the Amendment. When the Act came into force before the Amendment and the acquisition under the Act was made after, the view that any restrictions imposed by the Amendment had to be ignored in judging the validity of the Act does not square with the clear wording of the Article. The first part of the Article is an injunction against the executive, *i.e.*, compulsory acquisition or requisition can be made only under the authority of a law which provides for compensation and either fixes the amount of compensation or lays down the principles on which compensation is to be determined. The second part precludes judicial review of the adequacy of compensation by providing that *such a law* shall not be called in question in any court on the ground that the compensation provided is not adequate. If, after the Fourth Amendment, compulsory acquisition of land is made under a law which satisfied the requirements of the first part of the Article, can *such a law* be challenged in a court on the ground of inadequacy of compensation? The answer to this, at any rate, does not depend on whether the Act came into force before or after the Amendment. This can be illustrated if a situation is assumed where Art. 31(2) was not in the Constitution in any form before but was newly introduced by the Fourth Amendment and further that there was a law passed before the Amendment which did not make any

4. *Namasivaya Mudaliar v. State of Madras*, A.I.R. 1959 Mad. 553.

5. A.I.R. 1954 S.C. 170.



provision for compensation. Is it possible to argue that notwithstanding the Fourth Amendment the executive can make compulsory acquisition of land under this law without payment of compensation? Certainly the Amendment does not lend itself to such an interpretation. After the Amendment, acquisition or requisition of property can be made only under the authority of a law which satisfied the requirements of the first part of the Article. The law in the situation assumed above, though valid when enacted, would become bad because it will not satisfy the requirement of compensation. If the law satisfied this requirement the latter part of the Article would prohibit any challenge of the adequacy of compensation. In *Namasivaya Mudaliar* the acquisition was under a law which did lay down the principles for determining compensation. The Supreme Court evidently applied the test: was this law constitutional or unconstitutional when it was passed? The Fourth Amendment prohibits any such enquiry, for, the purport of the amendment is to save laws passed before but under which acquisitions are made after the Amendment, from being challenged on the ground of adequacy of compensation.

The Court seems to have left open the question whether even after the Fourth Amendment compensation must be a fair equivalent or whether the principles for assessing compensation should be reasonable principles. If the *Burrakur Coal Co.*, case is any indication the bold view of the Madras High Court should be taken as not having the approval of the Supreme Court.⁶

The Fourth Amendment may witness tragedies like Mr. Pilgrim's. But the intention of the framers cannot altogether be ignored in interpreting the Constitution.

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6. In *Burrakur Coal Co. v. Union of India*, A.I.R. 1961 S.C. 954 at 963 the Supreme Court held:

"[T]he Act specifies the principles on which and the manner in which compensation should be determined and given. This is all that is required of a law relating to the question of property by Article 31(2) of the Constitution. Where provisions of this kind exist in a law that article lays down that such laws cannot be called in question in any court on the ground that the compensation provided by that law is not adequate. Here compensation is specifically provided for the land which is to be acquired under the Act. The contention that the provisions made by Parliament for computing the amount for compensation for the land do not take into account the value of the minerals is in effect a challenge to the adequacy of the compensation payable under the Act. The concluding words of Art. 31(2) preclude such a challenge being made."