

## HASMUKHALAL DAHAYABHAI &amp; ORS. ETC. ETC.

v.

## STATE OF GUJARAT

August 4, 1976

[A. N. RAY, C.J., M. H. BEG AND JASWANT SINGH, JJ.]

*Constitution of India—Article 31A(1) Second Proviso—Art. 31B—Meaning of right conferred—9th Schedule—Whether different ceiling can be imposed for different persons—Whether second proviso to Art. 31A(1) imposes a fetter on the legislative competence—Gujarat Agricultural Land Ceiling Act 1961 (Gujarat Act 27 of 1961)—Section 2(21), 6.*

*General Clauses Act 1897—Section 3(42)—Meaning of person—Whether legislature bound to follow definition in General Clauses Act.*

The appellants challenged the constitutional validity of the Gujarat Agricultural Land Ceiling Act 1961 by filing writ petitions in the High Court of Gujarat. The Preamble of the Act states that the Act was enacted for securing the distribution of agricultural land as best to sub-serve the common good. Section 6(1) of the Act provides that no person shall hold either as owner or tenant land in excess of the ceiling area. Section 6(2) provides that where an individual who holds land as a member of a family, not being a joint family, then the spouse and the children excluding major sons shall be grouped together for the purposes of the Act and the provisions of the Act shall apply to the total land so grouped together as if such land had been held by one person. The ceiling area is fixed depending on the classes of land, nature of irrigation facilities and productivity. The said statute has been put in the 9th Schedule by the Parliament. The Gujarat High Court dismissed the writ petitions filed by the appellants but granted certificate of fitness under Art. 133(1) of the Constitution to the appellant.

The appellants contended that (1) Second proviso to Art. 31A of the Constitution provides that where any law makes provision for the acquisition by the State of any estate which is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force unless the law provides for payment of compensation at a rate which is not less than the market value. Apart from variations in the ceiling area imposed by a statute, there cannot be a deprivation of rights of individuals holding property separately in exercise of their separate individual rights by grouping them as members of one family.

(2) The concept of "person" adopted by the statute is unnatural and legally untenable. The concept of the term 'person' having been fixed by the Central General Clause Act, this concept and no other must be used for interpreting second proviso to Art. 31A of the Constitution.

(3) The second proviso to Art. 31A(1) does not confer any right upon any person but only imposes a limit upon legislative competence so that the inclusion of the Act in the 9th Schedule will not validate a provision which the Legislature was not competent at all to enact.

HELD : The term 'person' is not defined in the Act. Section 2(21) merely states that person includes a joint family. Under s. 3(42) of the General Clauses Act 1897, a person is defined as including any company or association or body of individuals whether incorporated or not. In the absence of s. 6(2) each individual member of a family would have been entitled to hold land upto the ceiling limit if it was his or her legally separate property. The Act does not debar spouses and minor children from holding their separate rights to land. There is no fixed concept of 'person' anywhere. Section 6(2) does not either disable a husband or a wife from holding their separate properties separately. It does not merge or destroy their separate legal personalities. It

- A** merely requires their separate holdings to be grouped together as through they were held by one person only for the purpose of determining the ceiling limit. Each holder of such separate rights above the ceiling limit is permitted to select the property he or she wishes to continue to hold in such a way that the lands selected for such continuance shall be in the same proportion in which lands were held by each spouse. The reduction in their holding will, therefore, be proportionate to the areas of lands held separately. But, they are grouped together only for the purpose of determining the ceiling limit for the family and, as a result of a specific provision to that effect. It is not denied by the appellants that the ceiling limit could have been lowered by the statute. Article 31A does not prohibit the legislature from fixing ceiling limits for various individuals or the classes of individuals differently situated, nor does the second proviso to Art. 31A(1) prescribe any particular or direct mode of imposing different ceilings for individuals differently circumstanced. [106 G-H, 109 A-E]

*Pritam Singh v. State of Punjab & Ors.* [1967] (2) S.C.R. 536 distinguished.

- C** (2) Article 31B provides a complete answer to any attack directed against the provisions of the Act based upon violation of any of the rights conferred by the provisions of Part III of the Constitution. To read any limit into the second proviso to Art. 31A(1) that there can be only single ceiling limit for all persons would be to accept a novel restriction on legislative competence. There is nothing in the Constitution to bar any statute from receiving a dual protection. In the present case, the statute in question is fully protected by Art. 31B. Since the second proviso to Article 31A confers certain rights upon individuals, the protective umbrella of Art. 31B shields the impugned provision against any attack based upon the alleged violation of such rights as well. [110 G-H, 111 A-C]

(3) There is no question of legislative competence in the present case. The proviso protects and confers certain rights upon individuals to an amount of compensation. That is the direct effect. [111 B-C]

- E** CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 374-375 & 457-462 of 1976.

(From the Judgment and order dated 12-3-76 of the Gujarat High Court in S.C.A. Nos. 1784/73 and 650/74, 1125, 1118, 1123, 1124, 1835, 1836/74 respectively.)

*A. K. Sen, S. J. Sorabjee, M. V. Chinubhai and B. R. Agarwala*, for the appellants in CAs 374-375/76.

- F** *S. J. Sorabjee, Mrs. Chinubhai, S. H. Sanjanwala, P. H. Parekh and Miss Manju Jetley*, for the appellants in CAs 457-462/76.

*J. M. Thakere, Adv. General, J. P. Nanavati and M. N. Shroff*, for respondent No. 1 in all the appeals.

The Judgment of the Court was delivered by

- G** **BEG, J.** The eight Civil Appeals before us by certificates of fitness of the cases for appeals to this Court raise common questions involving the interpretation of Articles 31A and 31B of the Constitution of India in relation to the Gujarat Agricultural Land Ceiling Act XXVII of 1961 (herein-after referred to as 'the Act').

The preamble of the Act says that it was enacted because :

- H** "xxx it is expedient in the public interest to make a uniform provision for the whole of the State of Gujarat in respect of restrictions upon holding agricultural land in excess of certain limits and it is also expedient for so securing the

distribution of agricultural land as best to subserve the common good to provide for the acquisition of surplus agricultural land for the allotment thereof to persons who are in need of lands for agriculture (including cooperative farming societies, landless persons, agricultural labourers and small holders) or for the allotment of such surplus agricultural lands the integrity of which is maintained in compact blocks to a department of Government or to cooperative farming societies or corporations owned or controlled by the State, for ensuring the full and efficient use thereof and to provide for other consequential and incidental matters hereinafter appearing?"

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The part of section 6 of the Act with which we are especially concerned provides :

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"6(1) Notwithstanding anything contained in any law for the time being in force or in any agreement, usage or decree or order of a Court, with effect from the appointed day, no person shall, subject to the provisions of sub sections (2), (3), (3A) and (3B) be entitled to hold, whether as owner or tenant or partly as owner and partly as tenant land in excess of the ceiling area.

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(2) Where an individual, who holds land, is a member of a family, not being a joint family which consists of the individual and his spouse (or more than one spouse) and their minor sons and minor unmarried daughters, irrespective of whether the family also includes any major son, and land is also separately held by such individual's spouse or minor children, then the land held by the individual and the said members of the individual's family, excluding major sons, if any shall be grouped together for the purposes of this Act and the provisions of this Act shall apply to the total land so grouped together as if such land had been held by one person.

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(3)     xxx             xxx             xxx

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(3A) xxx             xxx             xxx

(3B) Where a family or a joint family consist of more than five members comprising a person and other members belonging to all or any of the following categories, namely :—

(i) Minor son,

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(ii) widow of a pre-deceased son,

(iii) minor son or unmarried daughter of a pre-deceased son, where his or her mother is dead,

Such family shall be entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five, so however that the total holding of the family does not exceed twice the ceiling area; and,

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**A** in such a case, in relation to the holding of such family, such area shall be deemed to be the ceiling area :

Provided that if any land is held separately also by any member of such family, the land so held separately by such member shall be grouped together with the land to such family for the purpose of determining the total holding of such family :

**B** Provided further that where, in consequence of any member of such family holding any land in any other part of India outside the State, the ceiling area in relation to the family is reduced as provided in sub-section (3A), the one-fifth of the ceiling area as aforesaid shall be calculated with reference to the ceiling area as would have been applicable had no such land been held by such member in any other part of India.

**C** (3C) Where a family or a joint family irrespective of the number of members includes a major son, then each major son shall be deemed to be a separate person for the purposes of sub-section (1)".

**D** In accordance with the provisions of Sections 4 and 5 of the Act, classes of land, nature of irrigation facilities provided there, and the ceiling area for each particular class of land in each locality were specified in Schedule I. This is found classified in nine local areas. The range of ceiling limit varies from 10 acres to 54 acres, according to the irrigation facilities and quality of land, the ceiling for less productive and less advantageously situated land being higher.

**E** The question which has been raised before us is whether, apart from variations in the ceiling area imposed by statute, there can be a deprivation of rights of individuals holding property separately, in exercise of their separate individual rights, by grouping them as members of one family so as to compel them to take only one unit of land in such a way that their total holding does not exceed the ceiling limit which is the same for both individuals as well as families as defined by the Act with some allowances for large families. This raises a further question : What is the unit for which this ceiling is prescribed?

**F** It is evident that Section 6 conceives of each "person" holding land as a single unit whose holding must not exceed the ceiling limit. Section 2, sub-s. (21) says : " 'person' includes a joint family;". Thus, the term "person" is not, strictly speaking, defined in the Act. Section 2, sub-s. (21) only clarifies that the term "person" will "include" a joint family also. It certainly does not exclude an individual from being a person in the eyes of law.

**G** This has been done apparently to make it clear that, in addition to individuals, as natural persons, families, as conceived of by other provisions, can also be and are persons. This elucidation of the term "person" is in keeping with Section 3(42) of the General Clauses Act, 1897, which lays down :

**H** " 'person' shall include any company or association or body of individuals, whether incorporated or not".

We have referred to the Central General Clauses Act 10 of 1897 and not to the State General Clauses Act, which also contains a similar clarification, because Article 367 of our Constitution provides that the definitions contained in the Central Act "apply for the interpretation of the Constitution". The argument which has been advanced before us is that the concept of the term "person", having been fixed by the Central General Clauses Act, this concept and no other must be used for interpreting the second proviso to Article 31A of the Constitution which lays down :

"Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a *person* under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit *applicable to him under any law* for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof".

As no argument based on Articles 14 and 19 is open to the appellant, the Act under consideration having been included in the 9th Schedule to the Constitution, the ground now taken is that Section 6, sub-section (2) of the Act, set out above, contains a colourable device for getting round the limitations on legislative power imposed by the second proviso to Article 31A(1) of the Constitution. It is urged that this is done by adopting an unnatural and legally untenable concept of a "person" which transpires from an analysis of Section 6 of the Act.

It is true that, but for the provisions of Section 6, sub.s.(2) of the Act, the term "person", which includes individuals, as natural persons, as well as groups or bodies of individuals, as artificial persons, such as a family is, the entitlement to the ceiling area would be possessed by every person, whether artificial or natural. In other words, if Section 6(2) of the Act was not there, each individual member of a family would have been entitled to hold land upto the ceiling limit if it was his or her legally separate property. This follows from the obvious meaning of the term "person" as well as the inclusive definitions given both in the Act under consideration and in the General Clauses Act.

Spouses and minor children, as natural persons, have not been debarred from holding their separate rights to land by the provisions of the Act. It is not the object of the Act to do that. The object of the Act, as set out above, is two fold : firstly, to limit the ceiling area of each holder; and, secondly, to acquire what falls beyond the ceiling limit so that the State may distribute it to more needy persons. It is not disputed that compensation is provided for acquisition of what exceeds the ceiling area in every case. As was held by this Court in *H.H. Kesavananda Bharati Sripadagalavaru v. State of Kerala*,<sup>(1)</sup> the amount of compensation fixed cannot be questioned. Therefore, no

(1) [1973] Supp. S.C.R. 1.

**A** provision of the Act could be or is challenged on the ground that the required compensation is not prescribed for an acquisition under it as required by Article 31(2) of the Constitution or is inadequate. Article 31B of the Constitution seems to us to provide a complete answer to any attack directed against the provisions of an Act based upon an alleged violation of any of the rights conferred by the provisions of Part III of the Constitution. It reads :

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“31B. Without prejudice to the generality of the provisions contained in Article 31B, 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, and 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”.

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Learned Counsel for the petitioners concede that, in view of the decision of this Court in *H.H. Kesavananda Bharti's* case (supra) and other cases referred to there, it is not possible to assail the provisions of Section 6 of the Act on the ground that they take away or abridge any right conferred by Part III of the Constitution on individuals. But, what they urge is that the second proviso to Article 31A(1) does not confer any right upon any person but only imposes a limit upon the Legislative competence to that the inclusion of the Act in the 9th Schedule will not validate a provision which a legislature was not competent to enact. Such a provision, if it was submitted, will not be protected by Article 31B of the Constitution. The contention is that Article 31B does not protect a provision from invalidity on the ground of legislative incompetence of the legislature enacting it.

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We do not think that the case before us raises any question of legislative competence of the nature which could arise if a State Legislature had tried to trespass upon the exclusive domain of Union Legislation. What has been urged is simply that the second proviso to Article 31(1) disables the State Legislature from acquiring any land below the ceiling limit without providing for compensation for such acquisition at the full market value. The proviso certainly protects, and, indeed, confers certain rights upon individuals to an amount of compensation. That is its direct effect.

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The argument on behalf of the appellant, as we understand it is that, although, an alteration of the ceiling limit for each “person” directly by prescribing its statutory limit is permissible, yet, if it is not done directly by changing the ceiling limit for each person but by introducing a concept of “person”, contrary to the concept in the provisions of the second proviso to Article 31A(1), it becomes a prohibited colourable device for getting round the second proviso to Article 31A(1). It is urged that the effect of the amended Section 6 of the

Act is to change the ceiling limit for some persons only by altering the legal and constitutional concept of a person, A

We do not find any fixed concept of "person" anywhere. No doubt the concept is wide so that it could be contended that it should not be narrowed down or confined. But does Section 6 (2) do that? Section 6 (2) does not either disable a husband or wife from owning or holding their separate properties separately. It does not merge or destroy their separate legal personalities. It requires their separate holdings to be grouped together as though they were held by one person only for the purpose of determining the ceiling limit for each member of a family. It may indirectly have the effect of disabling a member of a family from holding land upto the prescribed ceiling limit for a person holding as an individual. In other words, the result is that such a member of a family will have to be content with a holding less than that of an unmarried individual. It has the effect of making it clear that what have to be grouped together are the separate properties of individuals belonging to families other than what are "joint families", in law. It takes in and applies to members of families other than undivided Hindu families. It means that married persons and their minor children will have to be viewed as though they hold one lot together even though they retain their separate legal personalities and remain competent owners of their separate holdings. It does not affect either their legal status or competence. It does reduce their individual holdings. But, we do not find any prohibition enacted by the second proviso to Article 31A(1) against different ceiling limits prescribed for various individuals or classes of individuals differently situated. Nor does the second proviso to Article 31A(1) prescribe any particular or direct mode of imposing different ceilings on individuals differently circumstanced. B  
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A glance at the provisions of Section 20 of the Act shows that separate rights to properties grouped together for purposes of computation only do not vanish. On the other hand, each holder of such separate rights above the ceiling limit is permitted to select the property he or she wishes to continue to hold in such a way "that the lands selected for such continuance shall be in the same proportion in which lands were held by each spouse before furnishing the relevant statement under sub-section (1) of Section 10". The reduction in their holdings would, therefore, be proportionate to the areas of lands held separately but brought together only for the purposes of determining the ceiling limit for the family. The whole object of the process prescribed seems to be that families, as contemplated by the Act, should be units for merely determination of ceilings for each member of a family. F  
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Appellants relied on *Kunjukutty Sahib etc. etc. v. State of Kerala & Anr.*<sup>(1)</sup> where it was held by this Court (at p. 314) :

"It was not disputed that the ceiling limit fixed by the amended Act was within the competence of the legislature to fix; nor was it contended that the ceiling fixed by the original unamended Act by itself debarred the legislature from further H

(1) [1973] 1 S.C.R. 326 @ 341.

A. reducing the ceiling limit so fixed. Prior to the amendment undoubtedly no land within the personal cultivation of the holder under the unamended Act within the ceiling limit fixed thereby could be acquired without payment of compensation according to the market value, but once ceiling limit was changed by the amended Act the second Proviso to Art. 31A (1) must be held to refer only to the new ceiling limit fixed by the amended Act. The ceiling limit originally fixed ceased to exist for future the moment it was replaced by the amended Act. The prohibition contained in the second proviso operates only within the ceiling limit fixed under the existing law, at the given time. It is true that the new ceiling limit was fixed contemporaneously with the acquisition of the land in excess of that ceiling limit. But it was not contended that a law so fixing the ceiling limit and acquiring the land in excess would offend any provision of the Constitution".

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*Pritam Singh v. State of Punjab & Ors.*<sup>(1)</sup> was also cited on behalf of the appellants. Here the contention, amongst others, was repelled that, by adding land transferred to certain relations to that held by a person under his personal cultivation, for the purpose of determining his ceiling area and the surplus left, under the provisions of the Pepsu Tenancy and Agricultural Lands Act, 1955, as amended by a subsequent Act, rights guaranteed by the second proviso to Article 31A(1) were contravened. This case certainly does not lay down that the ceiling limit applicable to each individual must be uniform or that it must be contained in a single statutory provision directly dealing with ceiling limits.

D. It follows that the ceiling limit may vary from individual to individual. These varying limits may result from the combined effect of several provisions. The prescription of different ceiling limits for different individuals, differently circumstanced, could be enacted directly by a single provision dealing with individual ceiling limits, or, alternatively, it could be the consequence of several provisions dealing with differing sets of circumstances. No law known to us has ever laid down that the intention of the law makers on a particular subject must necessarily transpire from a single statutory provision or statutory provisions dealing directly with a particular aspect. To read any such limit into the 2nd proviso to Article 31A(1) of the Constitution would be to accept a novel restriction on legislative competence. We have no doubt that no such restriction could be found in the 2nd proviso to Article 31A(1) of the Constitution.

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It was urged that Article 31A(1) and 31B of the Constitution operate in different fields of legislation. Whereas Article 31A(1) cures certain possible invalidities in ordinary legislation, arising from its inconsistencies with Articles 14 or 19 or 31 of the Constitution, Article 31B cures a wider range of infirmities arising from conflict with any of the provisions of Part III of the Constitution and necessitates a constitutional amendment so as to protect an impugned legislation by its inclusion in the 9th Schedule to the Constitution. Legislation protected

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(1) [1967] 2 S.C.R. p. 536.

by Article 31A of the Constitution would fall under appropriate legislative entries in the 7th Schedule. But, to secure the protection of Article 31B of the Constitution, resort to the provisions of Article 368 of the Constitution is imperative. These differences do not mean that legislation falling under any part of Article 31A(1) of the Constitution, including the provisos, cannot receive also the protection contemplated by Article 31B of the Constitution. There is nothing in our Constitution to bar any statute from receiving a dual protection, so to speak, of both Article 31A(1) and 31B of the Constitution if the conditions of each are satisfied.

It is clear to us that the proviso to Article 31A(1) of the Constitution confers certain rights upon individuals and protects them from constitutionally illegal invasion. We are, therefore, unable to accept the argument advanced on behalf of the appellants that the "protective umbrella" of Article 31B does not shield the impugned provisions against an attack based upon the limits imposed by the second proviso to Article 31A(1) on legislative power. The argument overlooks certain obvious answers : firstly, that limits on legislative powers, imposed by Part III of the Constitution, do have the direct result of protecting individual rights; and, secondly, that no part of the second proviso to Article 31(1) of the Constitution was, as already pointed out above, infringed by the impugned provisions; and, thirdly, even if one were to assume, for the sake of argument, that rights conferred on individuals by the 2nd proviso to Article 31(1), were infringed in any way, provisions of Article 31B of the Constitution are enough to repel an attack based upon such an alleged infringement. Both Articles 31A(1) and 31B are intended to operate as protections against consequences of what could otherwise be breaches of the Constitution.

Consequently, we have to and do dismiss these appeals. But, in the circumstances of the case, the parties will bear their own costs.

P.H.P.

*Appeals dismissed.*