

PETITIONER:

ACHARAYA MAHARAJSHRI NARANDRAPRASADJI ANANDPRASADJI MAHARAJ

Vs.

RESPONDENT:

THE STATE OF GUJARAT & ORS.

DATE OF JUDGMENT 03/10/1974

BENCH:

GOSWAMI, P.K.

BENCH:

GOSWAMI, P.K.

RAY, A.N. (CJ)

BEG, M. HAMEEDULLAH

ALAGIRISWAMI, A.

SARKARIA, RANJIT SINGH

CITATION:

1974 AIR 2098 1975 SCR (2) 317

1975 SCC (1) 11

CITATOR INFO :

R 1981 SC1576 (3)

ACT:

Constitution of India, 1950-Article 26, 31 (2)-Right to compulsorily acquire, property of religious denomination--Scope of right under Article 26(c).

Constitution of India, 1950-Article 31 A-Gujarat Devasthan Inams Abolition Act, 1969-If entitled to the protection of Article 31A.

HEADNOTE:

The Gujarat Legislature enacted Gujarat Devasthan Inams Abolition Act, 1969. Section 5 of the Act provides for abolition of certain Devasthan Inams together with their incidents and makes Devasthan lands liable to payment of land revenue. Section 8 vests all public roads, lanes, tracks, bridges, ditches, dikes and fences etc., situated in Devasthan lands in Government and further provides that all rights held by an Inamdar in such property would be deemed to have been extinguished. Section 9 of the Act provides for compensation in the form of cash annuity. By Section 31 certain exemptions granted to the Devasthan lands by the Bombay Tenancy & Agricultural Lands Act, 1948 and Gujarat Agricultural Lands Ceiling Act 1960 have been deleted.

It was contended by the appellants that the Act violated Article 26(c) of the Constitution since it deprived religious denominations of their ownership of property; that in addition to fulfilling the requirements of Article 31(2) the Act had to fulfil the requirements of Article 26(c) also; that the Act was not saved by the provisions of Article 31 A since the operation of Article 26(c) is not included in the former Article and that Section 31 of the Act is violative of Article 26(c) since the compensation available to religious denominations is grossly inadequate.

Held: Article 26 guarantees the right to own and acquire movable and immovable property for managing religious affairs. This right cannot take away the right of the State to compulsorily acquire property in accordance with the provisions of Article 31(2). If the acquisition of property

of a religious denomination by the State can be proved to be such as to destroy or completely negative its right to own or acquire movable and immovable property for even the survival of a religious institution the question may have to be examined in a different light.- However, such an allegation is not made in the present appeals. When the property is acquired by the State in accordance with the provisions of Article 31(2) and the acquisition cannot be assailed on any valid ground, the right to own that property vanishes as that right is transferred to the State. There is no conflict between Article 26 and Article 31. The court also negatived the contention of the appellants that the decision in Khaja Mian Wakf Estate [1971] 2 S.C.R. 790 has been over-ruled by the Bank Nationalisation case [1970] 3 S.C.R. 530. [327 C-E]

The Act is passed in furtherance of agrarian reform and is fairly protected under the saving provision of Article 31A. The right conferred under Article 26(c) is not absolute and unqualified right. No rights in an organised society can be absolute. Where in a free play of social forces it is not possible to bring about a voluntary harmony, the State has to step in to set right the imbalance between competing interests and there the Directive Principles of State Policy, although not enforceable in courts, have a definite and positive role introducing an obligation upon the State under Article 37 in making laws to regulate the conduct of men and their affairs. In doing so a distinction will have to be made between those laws which directly infringe the freedom of religion and others, although indirectly, affecting some secular activities or religious institutions or bodies. The core of religion is not interfered with in providing for amenities for sufferers of any kind. The

318

Act does not violate the rights guaranteed under Article 26(c). The Act does not make any inroad in such a way as to affect directly the substance of the right conferred by Article 26(c). One fundamental right of a person may have to co-exist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interest of social welfare as a whole. The Courts duty is to strike a balance between conflicting claims of different interests. [328 F-H; 329B] Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, [1954] S.C.R. 1005/1028-1029, referred to.

Objection on the score of inadequacy of compensation cannot be agitated against a legislation which relates to agrarian reform and, therefore, protected by Article 31A. The objection on the score of violation of Article 14, 19 and 31 is not entertainable. [329.F-E]

ARGUMENTS

For the appellants:

1. The impugned Act (The Gujarat Devasthan Inams Abolition Act, 1939) violates Article 26(c) of the Constitution which confers on every religious denomination the fundamental right "to own and acquire movable and immovable property", subject only to "public order, morality and health". The impugned Act aims at agrarian reform but is not concerned with public order, morality and health. Since it deprives religious denominations of their ownership of property, it transgresses Article 26(c) and is invalid.

2. Article 31-A provides that legislation covered by that Article cannot be deemed to be void on the ground of inconsistency with Articles 14, 19 and 21. Since the

impugned act is inconsistent with Articles 26(c) whose operation is not excluded by Article 31A, it is not saved by the provisions of the latter.

3. The Court below was wrong in holding that the question whether the impugned Act contravenes Article 26(c) depends on whether the Act is in conformity with the Directive Principles embodied in Part-IV of the Constitution. It is well established by decisions of this Hon'ble Court that the Directive Principles cannot over-ride fundamental rights. Where a fundamental right has been expressly made subject to certain reasonable restrictions, then the relevant Directive Principle would be taken into consideration by the court in deciding whether in a particular case the restriction imposed is reasonable or not.

But where a fundamental right is in absolute terms, it cannot be Subject to restrictions in the general public interest.

Since fundamental right in Article 26(c) is subject only to public order, morality and health, only those Directive Principles which relate to public order, morality and health would be relevant in construing whether a particular legislation is violative of Article 26(c).

4. While the fundamental rights in the American Constitution have been stated in general terms, those in our Constitution have been concretely defined. The Court below was in error in relying on American decisions for its conclusion that the fundamental rights in our Constitution are subject to the Directive Principles in Part-IV thereof. American decisions are not useful in deciding the scope of our fundamental rights.

5. The impugned Act in so far as it is concerned with compulsory acquisition of Property, fulfils the requirements of Article 31(2). It has, however, to fulfil it, addition the requirements of Article 26(c) also. It was held in the Bank Nationalisation Case [1970] (3) SCR 530 that the word "law" in Article 31(2) means a valid law, i. e. law which does not violate any other fundamental right. The impugned Act must accordingly be consistent not only with Article 31(2) but also Article 26(c). Observations to the contrary effect in Khajimian Wakf Estate etc. v. State of Madras and Anr. [1971] (2) SCR page 790 (at page 797) are inconsistent with the ratio of the Bank Nationalisation case, which was decided by a larger Bench, and are, it is respectfully submitted, not good law.

319

6. The court below was not right in holding that the substance of the right under Article 26(c) is not affected if the property of religious denominations is compulsorily acquired by providing for a reasonable pension. This view, it is submitted, is not correct, because compulsory acquisition of property 'limits the right of ownership guaranteed by Article 26(c). The observations in The State of Bihar Versus Maharajadhiraja Sir Kameshwar Singh of Darbhanga and others [1952] SCR 839 relied upon the Court below are not relevant, as the Bihar Act in question was included in the IXth Schedule of the Constitution and was beyond the challenge based on any fundamental right. Section 31 of the Bombay Tenancy and Agricultural Lands Act 1948 and the Gujarat Agricultural Land Ceiling Act 1960 applicable to the agricultural lands of religious denominations. It cannot be disputed that the compensation available to religious denominations for the lands covered by these Acts is grossly inadequate. Section 31 of the impugned Act is, therefore, violative of Article 26 (c) of the Constitution of India even supposing that the rest of the Act is valid.

For the Respondents:

1.The rights conferred on the religious denominations under Article 26(c) and (d) of the Constitution of India enables them to own and acquire properties and to administer them according to law. In the submission of the respondents, these rights under Article 26(c) and (d) do not however derogate the power of the State to acquire the properties under Article 31 of the Constitution. It was further submitted that Article 26(c) and (d) must be read together with the result the right of the State to acquire property would not be affected, merely because the property is owned by a religious denomination.

2.It was submitted that the right under Article 26(c) is not unbounded or absolute. The same is subject to reasonable regulation.

3.What is reasonable regulation must depend on the nature of the fundamental right sought to be regulated the purpose for which it is conferred and the general pattern of Constitutional rights and obligation. It must also depend on the Directive Principles enumerated in Part IV and the socioeconomic structure envisaged by the Constitution.

4.That in the event of conflict between the individual right and the legislation implementing socioeconomic policies laid down in Part IV, greater weight should be given to the policy enumerated in the Directive Principles.

5.That the socioeconomic policy sought to be implemented through the legislation made in pursuance of Directive Principles would be rejoined as "public purpose" or as intended to promote "public interest" and as a reasonable restriction on the fundamental rights. The two being parts of one scheme and "complementary and supplementary to each other."

6.Any law under which property was compulsorily acquired for a public purpose, the law satisfied the requirements of Art. 31(2) and 31(2A), it should be presumed that such an acquisition would amount to reasonable regulation on the exercise of the fundamental right to hold the Property, empowered in the interest of general public.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos 746-748, 756, 760, 778, 800, 802, 826, 789, 790, 798, 799, 1035 & 1303 of 1971.

Appeals from the Judgment & Order dated the 31st August/1st/2nd/ and 3rd September, 1970 of the Gujarat High Court in Special Civil Applns. Nos. 60, 168, 169, 173, 63, 87, 154, 869, 167, 123, 337, 606, 119 and 604 of 1970 respectively.

V. M. Tarkunde (In CA. No. 746/71) P. C. Bhahtari, C.S. Rao, B.Dadachanji, O. C. Mathur and Ravinder Narain for the appellants, (In Case. Nos. 746-748, 754, 760 & 826/71). 320

Vimal Dave and Kalidas Mehta, for the appellants. (In CAS Nos. 778, 798-799/71).

P. C. Kapur for the appellants (In C. No. 802/71).

R. M. Mehta and S. K. Dholkia for the appellants '(In CAS Nos.800 & 1303/71).

I. N. Shroff and H. S. Parihar, for the appellants (In CAS Nos. 789-790/71).

C.C. Patel, Ambrish Kumar and M. V. Goswami for the appellants (In CAS Nos. 1035/71).

S.T. Desai, R. H. Dhebar and M. N. Shroff, for the respondents.(In all the appeals).

The Judgment of the Court was delivered by

Goswami, J. These appeals are by certificate granted by the High Court of Gujarat. Since a common question of law arises for consideration in all these appeals and the learned counsel in all the appeals adopted the arguments of Mr. Tarkunde, the learned counsel for the appellant (in Civil Appeal No. 746 of 1971) the facts of that appeal alone need be stated and this judgment will govern all the appeals.

The appellant is the Managing Trustee of the Trust of the Temples of Laxminarayan Deo of Vadtal and is the Acharya of the Gadi of the Swaminarayan Sampraday at Vadtal which is a public trust registered under the Bombay Public Trust Act. Under the scheme of the Trust the appellant is authorised to look after the management of the properties of the Trust. It is not disputed that the Swaminarayan Sampraday is a religious denomination which believes in Lord Krishna and Radha. The Institution holds Devasthan Inam lands and the appellant challenges the constitutional validity of the Gujarat Devasthan Inams Abolition Act, 1969 (hereinafter referred to as the Act).

The Act came into force on November 15, 1969 and it extends to the Bombay area of the State of Gujarat. The preamble shows that it is an Act "to abolish inams held by religious or charitable institution in the Bombay area of the State of Gujarat and to provide for matters consequential and incidental thereto".

Section 2 contains the definitions. By section 2(6) "Devasthan inam" means an inam consisting of a grant or recognition as a grant-

(a) of a village, portion of a village or land, whether such grant be-

(i) of soil with or without exemption from payment of land revenue or

(ii) of assignment of the whole of the land revenue of the village, portion of the village, or as the case may be, land, or of a share of such land revenue, or

321

(iii) of total or partial exemption from payment of land revenue in respect of any land, or

(b) of cash allowance or allowance in kind by whatever name called, by the ruling authority for the time being for a religious or charitable institution and entered as such in the alienation register kept under section 53 of the Code or in any other revenue record or public record maintained in respect of alienations or determined as such by a decision under section 5 of the Gujarat Surviving Alienations Abolition Act, 1963 (Gujarat XXXIII of 1963) but does not include-

"

* * * *

By section 2(7) " 'Devasthan land, means a village, portion of a village or land held under a Devasthan inam".

By section 2(9) " 'inferior holder' means a person who is in possession of a Devasthan land whether by inheritance, or succession or valid transfer under the tenancy law or otherwise and who, being liable to pay assessment in cash or kind hold such land, whether on payment of assessment or not".

By section 2 (10) " Inamdar' means in the religious or charitable institution for which a Devasthan inam is held,

whether such inam is actually entered in the relevant revenue record in the name of such institution or of any person in charge of such institution or having the management thereof".

By section 2(12) " 'religious institution' means any institution belonging to any religion".

By section 2(14) " unauthorised holder' means a person in possession of a Devasthan land under any kind of alienation thereof which is null and void under the law applicable to such land immediately before the appointed day".

Section 5 provides for "abolition of certain Devasthan inams together with their incidents and 'Devasthan lands to be liable to payment of land revenue-Notwithstanding any usage or custom, settlement, grant, agreement, sanad or order or anything contained in any decree or order of a court or any law, for the time being applicable to any Devasthan inam, with effect on and from the appointed day-

(a)all Devasthan inams except in so far as they consist of a grant or recognition as a grant of cash allowance or allowance in kind shall be and are hereby abolished;

(b)save as expressly provided by or under this Act all rights legally subsisting immediately before the said day, in the Devasthan inams so abolished and all other incidents of such inams shall be and are hereby extinguished; and

(c)subject to the other provisions of this Act, all Devasthan lands shall be and are hereby made liable to the payment of land
322

revenue in accordance with the provisions of the Code and the rules made thereunder, and accordingly the provisions therein relating to unalienated land shall apply to all Devasthan lands".

Sections 6 and 7 say also be quoted

6."Occupancy rights in respect of Devasthan land.-In the case of a Devasthan land, the person deemed to be the occupant primarily liable to the State Government for payment of land revenue in respect of such land in accordance with the provisions of the Code and the rules made thereunder shall be-

(a)where such land is in possession of the inamdar and had been cultivated on behalf of the inamdar immediately before the appointed day, the inamdar,

(b)where such land is in the possession of an authorised holder or an inferior holder, such authorised holder or inferior holder, as the case may be, and

(c)where such land is in possession of a person other than the inamdar, authorised holder, unauthorised holder or inferior holder, the inamdar".

7."Eviction of unauthorised holder and regrant of Devasthan land to him in certain circumstances and disposal of land not regranted.-

(1) Where any Devasthan land is in the possession of an unauthorised holder, it shall be resumed and such unauthorised holder shall be summarily evicted there from by the Collector in accordance with the provisions of

the Code :

Provided that where in the case of any unauthorised holder the State Government is of opinion that in view of the investment by such holder in the development of the land or in the non-agricultural use of the land or otherwise, the eviction of such holder from the land will involve undue hardship to him, the State Government may direct the Collector to regrant the land to such holder on payment of such amount and subject to such terms and conditions as the State Government may determine and the Collector shall regrant the land to such holder accordingly.

(2) Devasthan land which is not regranted under subsection (1) shall be disposed of in accordance with the provisions of the Code and the rules made thereunder applicable to the disposal of unoccupied unalienated land".

Section 8 vests all public roads, lanes and tracks, bridges, ditches, dikes and fences, etc. and various things mentioned therein situated in Devasthan lands in Government and all rights held by an inamdar

323

in such property shall be deemed to have been extinguished and it shall be lawful for the Collector, subject to the general or special orders of the State Government, to dispose of them as he deems fit, subject always to the rights of way and other rights of the public or of individuals legally subsisting.

Section 9 reads as follows

"Compensation in form of cash annuity, -In the case of a Devasthan inam not consisting of a grant or recognition as a grant of cash allowance or allowance in kind, there shall be paid to the inamdar as compensation for the abolition of all his rights in Devasthan inam, in the form of an annuity in perpetuity--

(a) a sum of money equal to an average of the full assessment lawfully leviable on all the lands comprised in such inam during a period of three years immediately preceding the appointed day, if the grant consisted of grant of soil with or without exemption from payment of land revenue.

(b) a sum of money equal to an average of the amount of land revenue or, as the case may be, the share in such land revenue received or due to the inamdar during a period of three years immediately preceding the appointed day, if the grant consisted of assignment of land revenue or a share in such land revenue.

Section 10 provides for the method of awarding compensation to inamdar.

Section 11 may be set out

" Method of awarding compensation for abortion etc. of rights of other person in property.-

(1) If any person is aggrieved by the provisions of this Act as abolishing, extinguishing or modifying any of his rights to or interest in, property and if compensation for such abolition, extinguishment or modification has not been provided for in the other provisions of this

Act, such person may apply to the Collector for compensation.

(2) The application under sub-section (1) shall be made to the Collector in the prescribed form within the prescribed period. The Collector shall, after holding a formal inquiry in the manner provided by the Code, make an award determining the compensation in the manner and according to the method provided for in subsection (1) of section 23 and section 24 of the Land Acquisition Act, 1894 (1 of 1894).

(3) Nothing in this section shall entitle any person to compensation on the ground that any Devasthan land which was wholly or partially exempt from payment of land revenue has

-M255SupCI/75

324

been under the provisions of this Act made subject to the payment of full assessment in accordance with the provisions of the Code".

By section 12, "Provisions of Land Acquisition Act, applicable to awards-

(1) Every award made under section II shall be in the form prescribed in section 26 of the Land Acquisition Act, 1894 (1 of 1894) and the provisions of the said Act, shall, so far as may be, apply to the making of such award".

x x x
x

Section 13 provides for appeal against Collector's award to the Gujarat Revenue Tribunal.

Section 19 makes actions taken or things done after 18th March, 1968, but before the appointed day, in relation to 'Devasthan lands so as to affect the rights of the tenant from such land or to evict the tenant therefrom, void.

By section 31, the following Acts have been amended

1. Inter-alia, a new section 88E is inserted in the Bombay Tenancy and Agricultural Lands Act, 1948 and the same may be quoted :

88E. "Cessor of exemption in respect of certain public trust lands-

(1) Notwithstanding anything contained in section 88B, with effect on and from the specified date lands which are the property of an institution for public religious worship shall cease to be exempted from those provisions of the Act except sections 31 to 3 ID (both inclusive) from which they were exempted under section 88B and all certificates granted under that section in respect of such lands shall stand revoked.

(2) Where any such land ceases to be so exempted, then in the case of tenancy subsisting immediately before the specified date the tenant shall be deemed to have purchased the land on the specified date and the provisions of section 32 to 32R (both inclusive) shall so far as may be applicable, apply".

x x x

X
2. Similarly under section 3 of the Gujarat Agricultural Lands Act, 1960, after sub-section (2) a new-sub-section (3) has been inserted which reads as under :
"(3) The Devasthan lands which immediately before the date of the commencement of the Gujarat Devasthan Inams Abolition Act, 1969 (Gujarat 16 of 1969) were exempted under clause (d) of sub-section (1) shall with effect on and from the said date cease to be exempted lands"

325

From the foregoing provisions of the Act set out above it is clear that the Act is passed in furtherance of agrarian reforms and that is not disputed before us.

According to the appellant as a consequence of the enforcement of the Act his rights in respect of 729 bighas of Devasthan inam lands will be extinguished. Action was also taken under the Bombay Land Revenue Code in order to effect changes in the record of rights imposing liability to land revenue in view of the abolition of Devasthan Inams under the Act. Some other notices under the Act have also been served on the appellant to hand over his record as inamdar. That led to the application under article 226 of the Constitution in the High Court challenging the validity of the Act without success. Hence this appeal by certificate.

Mr. Tarkunde, learned counsel, whose arguments have been adopted by the appellants in all other appeals before us makes the following submissions :

(1) The Act violates Articles 26(c) of the Constitution since it deprives religious denomination of their ownership of property.

(2) The Act in so far as it is concerned with compulsory acquisition of property fulfils- the requirements of Article 31(2). It has, however, to fulfil in addition the requirements of Article 26(c) also. It is submitted that the observations to the contrary in Khajamian Wakf Estates etc. v. State of Madras & Anr. (1) are inconsistent with the ratio of the Bank Nationalisation case [Rustom Cavasjee Cooper v. Union of India (2)] which was decided by a larger Bench. He further submits that the compulsory acquisition of property limits the substance of the right of ownership guaranteed by Article 26(c).

(3) The Act is not saved by the provisions of Article 31A since the operation of Article 26(c) is not excluded under the former Article.

(4) At any rate section 31 of the Act is violative of Article 26(c) since the compensation available to religious denominations for the lands covered by the Bombay Tenancy and Agricultural Lands Act, 1948 and the Gujarat Agricultural Lands Ceiling Act, 1960 is grossly inadequate.

Mr. S. T. Desai, learned counsel for the respondent on the other hand submits that there is nothing in Article 26(c) and (d) to debar the State from acquiring the properties owned by the religious denominations under Article 31(2) of the Constitution. Secondly, he submits that the right of

property embodies in Article 26(c) is not an absolute right but is subject to reasonable regulation by the State. He further submits that the reasonable regulation must depend, in a large measure, on the Directive Principles enumerated in Part IV of the Constitution

(1) [1971] 2 S.C.R. 790.

(2) [1970] 3 S.C.R. 530.

326

and the socioeconomic structure envisaged by the Constitution. Thirdly, he submits that if under any law a property is compulsorily acquired for public purpose and the law satisfies the requirements of Article 31 A the Court should readily permit the imposition of a reasonable restriction on the exercise of the right to hold property in the interest of the general public.

With regard to the first objection the learned counsel submits that the Act violates Article 26(c) of the Constitution which offers to every religious denomination the fundamental right "to own and acquire movable and immovable property" subject only to "public order, morality and health". He submits that the Act aims at agrarian reform but is not concerned with "public order, morality and health". Since it deprives religious denominations of their ownership of property, it transgresses Article 26(c) and is invalid. He also draws our attention to Article 25(1) which has subjected the rights therein not only to public order, morality and health, but also to "the other provisions of Part III". He, therefore, submits that the right guaranteed under Article 26(c) is not subject to "the other provisions of Part III" and therefore, there can be no acquisition of property under Article 31 of the Constitution.

Articles 25 to 28 in Part III of the Constitution are placed under a sub-title "Right to Freedom of Religion" and deal with matters in the background of that freedom. It is true that Article 25 is made subject to "public order, morality and health" and also "to the other provisions of this Part" while Article 26 is only subject to "public order, morality and health". Insertion of the expression "the other provisions of this Part" in Article 25 is understandable when we find the particular rights which are taken care of in this Article, namely, the right to freedom of conscience and the right freely to profess, practice and propagate religion. Bearing in mind the overlapping nature of the sensitive rights, in Article 19(1) (a) with reference to citizens and in Article 25(1) with reference to- all persons the founders of the Constitution left no room for doubt in expressly subjecting Article 25(1) to the other provisions of Part III. Not only so sub-Article 2 of Article 25 provides that "nothing in this Article shall affect the operation of any existing law or prevent the State from making any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice". The same considerations are, however, not exactly necessary while dealing with "freedom to manage religious affairs" which is the rubric of Article 26. We may now read Article 26 :

Freedom to 26. "Subject to public order, morality and health
manage every religious denomination or any section
religious thereof shall have the right-affairs.
(a) to establish and maintain institutions for religious and charitable purposes;
(b) to manage its own affairs in matters of

religion;

327

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law".

While Article 25, as stated earlier, confers the particular rights on all persons, Article 26 is confined to religious denominations or any section thereof. Article 19(1) confers the various rights specified therein from (a) to (g) on citizens. A religious denomination or a section thereof as such is not a citizen. In that sense the fields of the two Articles may be to some extent different. Again while Article 26(c) refers to the right "to own and acquire movable and immovable property", Article 19(1)(f) confers the right on citizens "to acquire, hold and dispose of property". We are not required to consider in this case why the same expression is not used in the said two clauses of the two Articles. One thing is, however, clear that Article 26 guarantees intervals the right to own and acquire movable and immovable property for managing religious affairs. This right, however, cannot take away the right of the State to compulsorily acquire property in accordance with the provisions of Article 31(2). If, on the other hand, acquisition of property of a religious denomination by the State can be proved to be such as to destroy or completely negative its right to own and acquire movable and immovable property for even the survival of a religious institution the question may have to be examined in a different light. That kind of a factual position, however, is not taken in these appeals before us. When, however, property is acquired by the State in accordance with law and with the provisions of Article 31(2) and the acquisition cannot be assailed on any valid ground open to the person concerned, be it a religious institution, the right to own that property vanishes as that right is transferred to the State. Thereafter there is no question of any right to own the particular property subject to public order, morality and health and Article 26 will in the circumstances be of no relevance. This being the legal position, there is no conflict between Article 26 and Article 31.

In *Khajamian Wakf Estates'* case (at page 797) a Constitutional Bench of this Court dealing with Article 26(c) and (d) observed as follows :

"It was next urged that by acquiring the properties belonging to religious denominations the legislature violated Art. 26(c) and (d) which provide that religious denominations shall have the right to own and acquire movable and immovable property and administer such property in accordance with law. These provisions do not take away the right of the State to acquire property belonging to religious denominations. Those denominations can own acquire properties and administer them in accordance with law. That does not mean that the property owned by them cannot be acquired. As a result of acquisition they cease to own that property. Thereafter their right to administer that property ceases because it is no longer their property. Art. 26 does not interfere with the right of the State to acquire property."

328

It is submitted by Mr. Tarkunde that the above observations

of this Court are inconsistent with the ratio of the decision in Rustom Cavasjee Cooper's case, popularly known as the Bank Nationalisation case, which was decided by a larger Bench. It is difficult to accept the submission that the views expressed in Khajamian Wakf Estates' case are contrary to Rustom Cavasjee Cooper's case. Apart from that this Bench cannot pass upon the correctness or otherwise of the views expressed in Khajaraian Wakf Estate's case. Besides, we do not even think that the submission is well-founded even to merit reconsideration of the Khajamian Wakf Estates' case.

The learned counsel also strenuously relied upon the following passage in the Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindra Thiratha Swamiar of Sri Shirur Mutt.(1)

"Under article 26(b), therefore, a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters A law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under clause (d) of article 26."

We do not think that the above opinion of the Court in that case is of any assistance to the appellants. The first and the second submissions of the learned counsel are, therefore, of no avail.

When we look at the object of the Act and of the various provisions enacted in furtherance of agrarian reform, the Act is squarely protected under the saving provision of Article 31A. But it is then submitted that Article 31A does not provide against the vice of contravention of Article 26 while Articles 14, 19 and 31 are expressly mentioned in Article 31A. The question, therefore, arises whether the right under Article 26(c) is an absolute and unqualified right to the extent that no agrarian reform can touch upon the lands owned by the religious de. nominations. No rights in an organised society can be absolute. Enjoyment of one's rights must be consistent with the enjoyment of rights also by others. Where in a free play of social forces it is not possible to bring about a voluntary harmony, the State has to step in to set right the imbalance between competing interests and there the Directive Principles of State Policy, although not enforceable in courts, have a definite and positive role introducing an obligation upon the State under Article 37 in making laws to regulate the conduct of men and their affairs. In doing so, a distinction will have to be made between those laws which directly infringe the freedom of religion and others, although indirectly, affecting some secular activities or religious institutions or bodies. For example if a religious institution owns large areas of land far exceeding the ceiling under relevant laws and indulges in activities detrimental to the interest of the agricultural

(1) [1954] S.C.R. 1005,1028-1029.

329

tenants, who are at their mercy, freedom of religion or freedom to manage religious affairs cannot be pleaded as a shield against regulatory remedial measures adopted by the State to put a stop to exploitation and unrest in other

quarters in the interest of general social welfare. The core of religion is not interfered with in providing for amenities for sufferers of any kind. We take the view that the Act and its provisions do no violence to the rights guaranteed under Article 26(c). In the view we have taken it is also not necessary to mention Article 26 in Article 31 A and its omission therein is not at all of any consequence.

Right guaranteed under Article 26(c) not being absolute and unqualified is consistent with reasonable replacements made by the State provided the substance of the freedom is not affected. The Act does not make any inroad in such a way as to affect directly the substance of that freedom. A particular fundamental right cannot exist in isolation in a watertight compartment. One fundamental right of a person may have to co-exist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interests of social welfare as a whole. The Court's duty is to strike a balance between competing claims of different interests.

So far as the fourth submission is concerned, the objection is on the score of adequacy of compensation which cannot be agitated against a legislation which admittedly relates to agrarian reform and is, therefore, under the canopy of protection of Article 31A of the Constitution and objection on the score of violation of Articles 14, 19 and 31 is not entertainable. Hence this submission also fails.

in the result all the appeals are dismissed with costs.

P.H.P.

Appeals dismissed

330