

P. D. SHAMDASANI

1951

Dec. 21.

v.

CENTRAL BANK OF INDIA LTD.

[PATANJALI SASTRI C. J., MEHR CHAND MAHAJAN,
MUKHERJEA, DAS and CHANDRASEKHARA AIYAR JJ.]

Constitution of India, Arts. 19(1) (f), 31(1), 32—Infringement of property rights by private individuals—Application under Art. 32—Maintainability—Scope of Arts. 19(1) (f) and 31(1).

Article 19(1) (f) of the Constitution is clearly intended to protect the freedom to acquire, hold and dispose of property against State action other than in the legitimate exercise of its power to regulate private rights in the public interest. Similarly, article 31(1) provides a safeguard against deprivation of property by the State except by procedure established by law. Violation of rights of property by private individuals is not within the purview of those articles.

A person whose rights of property are infringed by a private individual must therefore seek his remedy under the ordinary law and not by way of an application under article 32.

ORIGINAL JURISDICTION : Petition No. 328 of 1951. Petition under article 32 of the Constitution for issue of writs in the nature of certiorari, prohibition and mandamus. The facts appear in the judgment.

The petitioner in person.

C. K. Daphtary, Solicitor-General of India, (J. B. Dadachanji, with him) for the respondent.

1951. December 21. The Judgment of the Court was delivered by

PATANJALI SASTRI C. J.—This is a petition under article 32 of the Constitution for the enforcement of the petitioner's fundamental rights under article 19(1) (f) and article 31(1) alleged to have been violated by the Central Bank of India Ltd., a company incorporated under the Indian Companies Act, 1882, and having its registered office at Bombay, (hereinafter referred to as "the Bank").

It appears that the petitioner held five shares in the share capital of the Bank which sold those shares to a

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third party in purported exercise of its right of lien for recovery of a debt due to it from the petitioner, and the transfer was registered in the books of the Bank in the year 1937. The petitioner thereupon instituted a series of proceedings in the High Court at Bombay on its original and appellate jurisdiction challenging the validity of the said sale and transfer. The latest of these proceedings was a suit filed against the Bank in 1951 wherein the plaint was rejected on 2nd March, 1951, under Order 7, Rule 11 (d), of the Code of Civil Procedure as barred by limitation. The petitioner now prays that all the adverse orders made in the previous proceedings be quashed and the said High Court be directed to have "the above suit set down to be heard as undefended and pronounce judgment against the respondent or to make such orders as it thinks fit in relation to the said suit". It may be mentioned here that though the aforesaid order rejecting the petitioner's plaint was appealable, the petitioner did not prefer an appeal on the somewhat extraordinary ground that "the appeal if filed could not be heard by the Judges of the said Court as all of them were disqualified from hearing such appeal" either because of their interest in the Bank or because of their prejudice against him.

We are of opinion that the petitioner has misconceived his remedy and the petition must fail on a preliminary ground. Neither article 19 (1) (f) nor article 31 (1) on its true construction was intended to prevent wrongful individual acts or to provide protection against merely private conduct. Article 19 deals with the "right to freedom" and by clause (1) assures to the citizen certain fundamental freedoms including the freedom "to acquire, hold and dispose of property" subject to the power of the State to impose restrictions on the exercise of such rights to the extent and on the grounds mentioned in clauses (2) to (6). The language and structure of article 19 and its setting in Part III of the Constitution clearly show that the article was intended to protect those freedoms against State action other than in the legitimate exercise of its power to regulate private rights in the public interest.

Violation of rights of property by individuals is not within the purview of the article.

The position is no better under article 31(1). The petitioner has urged that clause (1) should be construed apart from and independently of the rest of the article and, if so construed, its language is wide enough to cover infringements of rights of property by private individuals. He laid emphasis on the omission of the word "State" in clause (1) while it was used in clause (2) of the same article as well as in many other articles in Part III. Referring to entry No. 33 of the Union List, entry No. 36 of the State List and entry No. 42 of the Concurrent List of the Seventh Schedule to the Constitution, he also argued that, while these entries read with article 246 empowered Parliament and the State Legislatures to make laws regarding acquisition or requisitioning of property for the purposes of the Union or the State as the case may be, no power was conferred to make laws regarding "deprivation of property" by the State, so that the "deprivation" contemplated in clause (1) could only be deprivation by individuals. Sub-section (1) of section 299 of the Government of India Act, 1935, corresponding to clause (1) of article 31 was, it was pointed out, omitted in the draft article 19 (later numbered as article 31) which retained in a modified form only the provision contained in sub-section (2) of that section relating to compulsory acquisition of property for public purposes. But, clause (1) was subsequently restored and article 31 was enacted in its present form as recommended in Drafting Committee's Report and this, it was claimed, showed that clause (1) was intended to operate as a distinct provision apart from clause (2). We see no force in any of these arguments.

In support of the argument that clause (1) should be construed in isolation from the rest of the article, the petitioner relied on certain observations of our learned brother Das in *Chiranjit Lal v. The Union of India*⁽¹⁾, where the view was expressed that clause (1) enunciated the general principle that no person should be deprived

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(¹) [1950] S.C.R. 869.

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of his property except by authority of law and laid down no condition for payment of compensation, while clause (2) dealt with deprivation of property brought about by acquisition or taking possession of it and required payment of compensation. In other words, deprivation referred to in clause (1) must be taken to cover deprivation otherwise than by acquisition or requisitioning of property dealt with in clause (2). We consider it unnecessary for the purpose of the present petition to go into that question. Even assuming that clause (1) has to be read and construed apart from clause (2), it is clear that it is a declaration of the fundamental right of private property in the same negative form in which article 21 declares the fundamental right to life and liberty. There is no express reference to the State in article 21. But could it be suggested on that account that that article was intended to afford protection to life and personal liberty against violation by private individuals? The words "except by procedure established by law" plainly exclude such a suggestion. Similarly, the words "save by authority of law" in clause (1) of article 31 show that it is a prohibition of unauthorised governmental action against private property, as there can be no question of one private individual being authorised by law to deprive another of his property.

The argument based on the entries in the Lists is fallacious. It is not correct to suggest that, merely because there is no entry in the Lists of the Seventh Schedule relating to "deprivation of property" as such, it is not within the competence of the legislatures in the country to enact a law authorising deprivation of property. Such a law could be made, for instance, under entry No. 1 of List II, entry No. 1 of List II or entry No. 1 of List III. Article 31(1) itself contemplates a law being passed authorising deprivation of the properties, and it is futile to deny the existence of the requisite legislative power.

Nor does the legislative history of the article lend any support to the petitioner's contention. Section 299

(1) of the Government of India Act, 1935, was never interpreted as prohibiting deprivation of property by private individuals. Its restoration, therefore, in the same form in article 31, after omission in the original draft article 19, could lead to no inference in support of the petitioner's contention, which indeed proceeds on the fundamental misconception that article 19(1)(f) and article 31(1), which are great constitutional safeguards against State aggression on private property, are directed against infringements by private individuals for which remedies should be sought in the ordinary law.

In this view it is unnecessary to deal with certain other objections to the maintainability of the petition raised by the Solicitor-General on behalf of the Bank. The petition is dismissed. We make no order as to costs.

Petition dismissed.

Agent for the respondent : *Rajinder Narain.*

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(and 13 other petitions).

[PATANJALI SASTRI C. J., MEHR CHAND MAHAJAN,
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Preventive Detention—Order of detention challenged as illegal—Fresh order superseding previous order—Validity—Question of bad faith—Habeas corpus proceeding—Legality of detention must be determined as at date of return.

In the absence of bad faith the detaining authority can supersede an earlier order of detention which has been challenged as defective on merely formal grounds and make a fresh order wherever possible which is free from defects and duly complies with the requirements of the law in that behalf. The question of bad faith, if raised, must be decided with reference to the circumstances of each case.

In *habeas corpus* proceedings the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the date of the institution of the proceedings.

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