Finding, however, that Shri Shivram Das Udasi was ill-advised to write the book called *'Gurmat Vichar Suraj'* in 1951 I leave the parties to bear their own costs.

Shri Shiv Ram Das Udasi Chakarvarti *v.* The Punjab State

BHANDARI, C.J. I agree with my learned brother that the book does not contain any matter punishable under section 124-A or section 153-A or section 295-A of the Penal Code and consequently that the order of forfeiture must be set aside. I would have the parties to bear their own costs.

Bhandari, C.J.

FALSHAW, J.—I agree.

Falshaw, J.

CIVIL REFERENCE

Before Bhandari, C.J. and Khosla, J.

THAN SINGH AND OTHERS,—*Petitioners*

versus

UNION OF INDIA,—*Respondent*

Civil Reference No. 1-D of 1954

1954

April 28th

Resettlement of Displaced Persons (Land Acquisition) Act (LX of 1948)—Whether ultra vires *wholly or in part—Notifications issued under section 3—Whether illegal and* ultra vires—*Section 3—Use of the word "expedient"—Whether makes the Act* ultra vires.

Held, that the whole of the Resettlement of Displaced Persons (Land Acquisition) Act, 1948, is valid with the exception of the latter part of the first proviso and the whole of the second proviso to section 7 (1) (e). The first part of the first proviso, namely "Provided that the market value referred to in clause first of subsection (1) of section 23 of the said Act shall be deemed to be the market value of such land on the date of publication of the notice under section 3" is valid and does not offend against the provisions of the Constitution. The remaining part of this proviso and the whole of the second proviso are declared *ultra vires* and their provisions cannot be given effect to in a Court of law.

Held, that the notifications issued under section 3 are valid for the Act as a whole has been held to be valid.

Held, that the word "expedient" in section 3 of the Act has not been used in the sense of unjust. The expression used is "necessary or expedient" and two words appear to have been used out of abundant caution. The Act does no more than give authority for acquiring land when it is necessary for the resettlement of displaced persons and that being so section 3 in no way violates the provisions of the Constitution.

Case referred by Shri Gurdev Singh, District Judge, Delhi, dated the 29th August 1953, under the proviso of section 113 of Civil Procedure Code, as amended by Act XXIV of 1951, for decision of the following questions :—

(1) Whether Act LX of 1948 is ultra vires *wholly or in part? and*

(2) Whether the notifications issued by the Chief Commissioner under section 3 of the Act were illegal and ultra vires?

S. S. TYAGI, for petitioners.

C. K. DAPHTARY and BISHAMBAR DYAL, for Respondents.

ORDER

Khosla, J.

KHOSLA, J. There are four matters before us: (1) Civil Reference No. 1-D of 1954 (2) Civil Original 6-D of 1954, (3) Civil Original 7-D of 1954, and (4) Civil Writ Application 14-D of 1954. In all these matters the same question of law, namely, the validity of the Resettlement of Displaced Persons (Land Acquisition) Act, Act LX of 1948, is involved. They may all be conveniently dealt with in one judgment.

The facts briefly are that the Government of India with a view to acquiring about 375 acres of land in Village Basai Darapur for the resettlement of displaced persons issued two notifications on the 1st of January 1949 and the 26th of February 1949. A third notification was issued on the 30th of December 1950 in respect of another lot of land which was intended to be acquired for the

same purpose. Some of the owners of the land proposed to be acquired filed a representative suit praying for (a) a declaration that Act LX of 1948 and the two notifications issued on the 1st of January 1949 and the 26th of February 1949 were *ultra vires* and illegal, and (b) a permanent injunction restraining the Union of India from acquiring the land covered by the said notifications. This suit was dismissed by the trial Judge but when the matter came up in appeal before the learned District Judge he took the view that although the Act as a whole was valid the provisos to section 7(1)(e) offended against the provisions of Article 31 of the Constitution and were, therefore, *ultra vires*. He accordingly referred two law points for the decision of this Court under section 113 of the Code of Civil Procedure, namely :—

(1) Whether Act LX of 1948 is *ultra vires* wholly or in part? and

(2) Whether the notifications issued by the Chief Commissioner under section 3 of the Act were illegal and *ultra vires*?

He indicated his own opinion to the effect that only the provisos to section 7(1)(e) were *ultra vires*. Two other suits were filed by some other owners and these suits were transferred to this Court by the orders of Kapur, J. The fourth matter is a petition for writ filed on behalf of Balkrishna who is also one of the owners of the land sought to be acquired, and this petition is based on identical grounds, namely the illegality of Act LX of 1948.

Counsel for parties confined their arguments in the main to the provisions of section 7 (1) (e) of the Act. No serious attempt was made to challenge any other portion of the Act although Mr. Tyagi did put forward the argument that section 3 was *ultra vires* inasmuch as it imported considerations of expediency as opposed to considerations of justice.

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I shall first deal with the arguments relating to the validity of the provisos to section 7 (1) (e) This is the section which deals with the manner in which compensation for land acquired is to be awarded to the owners. The section runs as follows :—

"7. *Method of determining compensation.* (1) Where any land has been acquired under this Act, there shall be paid compensation, the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say,—

(a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

(b) where no such agreement can be reached, the Provincial Government shall appoint as arbitrator a person qualified for appointment as a Judge of a High Court;

(c) the Provincial Government may, in any particular case, nominate a person having expert knowledge as to the nature and condition of the land acquired to assist the arbitrator and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose;

(d) at the commencement of the proceedings before the arbitrator, the Provincial Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation;

(e) the arbitrator, in making his award, shall have due regard to the provi-

sions of subsection (1) of section 23 of the Land Acquisition Act, 1894 (I of 1894) :

Provided that the market value referred to in clause *first* of subsection (1) of section 23 of the said Act shall be deemed to be the market value of such land on the date of publication on the notice under section 3, or on the 1st day of September 1939, with an addition of 40 per cent, whichever is less:

Provided further that where such land has been held by the owner thereof under a purchase made before the 1st day of April 1948, but after the 1st day of September 1939 by a registered document, or a decree for pre-emption between the aforesaid dates, the compensation shall be the price actually paid by the purchaser or the amount on payment of which he may have acquired the land in the decree for pre-emption, as the case may be.

* * * * * *."

It will be seen that where there is no agreement between the parties regarding the quantum of compensation the matter has to be determined by an arbitrator and this arbitrator must "have due regard to the provisions of subsection (1) of section 23 of the Land Acquisition Act". In other words, he has to assess the market value of the land on a certain date and this market value is to represent the compensation due to the owner of the land. Under subsection (2) of section 23 of the Land Acquisition Act a sum representing 15 per cent of the market value is paid in addition to the market value. The impugned Act does not allow any such addition to be made. The Act was impugned on two grounds. In the first place, it was contended that the provisos whittle down the amount

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of fair compensation due to the owner and to this extent the provisions of Article 31 of the Constitution have been violated. In the second place, it was contended that the Act offends against the provisions of Article 14 because it makes discrimination between those persons whose lands are acquired under the Land Acquisition Act and those persons whose lands are acquired under the provisions of the impugned Act. Thus of two persons owning land in a certain locality one may receive higher compensation than the other according to the caprice of the authority acquiring the land.

I shall first deal with the first argument and there can be no doubt that the arbitrary fixing of the dates in the provisos will inevitably result in the payment of less than just compensation to the owners. There appears to be no justification why the compensation should not equal the market value of the land on the date on which the notification under section 3 is issued. This matter was recently considered by their Lordships of the Supreme Court in *State of West Bengal* v. *Mrs. Belle Banerjee and others* (1). Their Lordships were considering the provisions of section 8 of the West Bengal Land Development and Planning Act, the terms of which are very similar to the terms of section 7 of the impugned Act. In the Bengal Act the market value of the land acquired was to be determined in accordance with the provisions of section 23 of the Land Acquisition Act, but this was subject to the proviso that the compensation was not to exceed the market value of the land on the 31st day of December 1946. The validity of the Act was challenged in the Calcutta High Court in the case which has been referred to in the referring order. The matter was brought in appeal to the Supreme Court and the Act was held valid except to the extent of proviso to section 8. Their Lordship observed :—

"Considering that the impugned Act is a permanent enactment and lands may

(1) A.I.R. 1954 S.C. 170

be acquired under it many years after it came into force, the fixing of the market value on December 31, 1946, as the ceiling on compensation, without reference to the value of the land at the time of the acquisition is arbitrary and cannot be regarded as due compliance in letter and spirit with the requirement of Art. 31 (2). The fixing of an anterior date for the ascertainment of value may not, in certain circumstances, be a violation of the constitutional requirement as, for instance, when the proposed scheme of acquisition becomes known before it is launched and prices rise sharply in anticipation of the benefits to be derived under it, but the fixing of an anterior date, which might have no relation to the value of the land when it is acquired, may be, many years later cannot but be regarded as arbitrary. The learned Judges below observe that it is common knowledge that since the end of the war, land, particularly around Calcutta, has increased enormously in value and might still further increase very considerably in value when the pace of industrialisation increases. Any principle for determining compensation which denies to the owner this increment in value cannot result in the ascertainment of the true equivalent of the land appropriated."

These observations apply to the provisos to section 7(1)(e) of Act LX of 1948 with equal force, and applying the principle laid down by Their Lordships I must hold that the provisos to section 7 (1) (e) are *ultra vires* the Constitution.

There is no need to consider whether these provisos offend against the provisions of Article 14 and I proceed to deal with the argument whether clause (e) of subsection (1) of section 7

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is in any way repugnant to Article 14. The argument of Mr. Tyagi was that clause (e) does not make provision for the payment of the additional 15 per cent mentioned in subsection (2) of section 23 of the Land Acquisition Act. There is no doubt that the mode of assessing compensation under the two Acts is different, but this by itself does not amount to discrimination between citizens. The impugned Act was intended to acquire land for the resettlement of displaced persons and the classification involved is undoubtedly reasonable, and it cannot be said that because under the Land Acquisition Act one citizen may get a higher compensation another citizen whose land is acquired under the impugned Act does not get equal protection of the laws. The legal right of the citizen is to receive adequate compensation for his land if it is acquired by Government and this is provided for in the impugned Act. The fact that someone else may get a little more does not mean that equal protection of the laws has been denied to the first individual. It is only when a man is deprived of the ordinary rights which he has under law that he can have any grievance on the ground of discrimination. In the present case, there is no discrimination. The argument was not even raised before the Calcutta High Court or before the Supreme Court in relation to the Bengal Act, although in that Act, too, only subsection (1) of section 23 of the Land Acquisition Act was to be looked at in assessing compensation. It was contended that the provisos in question were not severable from the rest of the Act and the legislature would never have agreed to pass this law had the provisos not been there. I cannot, however, take this view. The object of passing this Act was to provide machinery for the speedy acquisition of land for the resettlement of displaced persons. In the previous Ordinance which was succeeded by this Act the provisos did not exist, and, therefore, it is clear that the essential desire of the legislature was to provide a machinery for acquiring land and not provide a machinery for acquiring land as cheaply as possible. The emphasis was not on how low a compensation should

paid to the owner of the land but how speedily d for what purpose the land was acquired. That ng so, it is clear that the provisos may be omitted thout doing any violence to the aims and objects the Act. This principle was laid down by the upreme Court in reference to the Bengal Act also nd I would, therefore, hold that the provisos are eparable from the body of the Act and by declar- ng the provisos invalid the rest of the Act is not affected in any way.

A word only need be said regarding section 3 and the use of the word "expedient". Section 3 begins :—

> "Whenever it appears to the Provincial Government that it is necessary or expedient to acquire speedily any land * * *."

r. Tyagi argued that "expedient" meant politic as opposed to just and that, therefore, this Act en- abled the Government to take unjust but politic easures and to that extent the Act was *ultra res.* I cannot, however, take the view that the rd "expedient" is used in the sense of unjust. The ession used is "necessary or expedient" and words appear to have been used out of abun- dant caution. It seems to me that the Act does no more than give authority for acquiring land when it is necessary for the resettlement of dis- placed persons, and that being so, I cannot hold that section 3 in any way violates the provisions of the Constitution.

The notifications issued under section 3 must be held to be valid for the Act as a whole has been held to be valid.

In the result, therefore, I would hold that the entire Act is valid with the exception of the latter part of the first proviso and the whole of the second proviso to section 7 (1) (e). The first part of the first proviso, namely "Provided that

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the market value referred to in clause first of sub-section (1) of section 23 of the said Act shall be deemed to be the market value of such land on the date of publication of the notice under section 3" is valid and does not offend against the provisions of the Constitution. The remaining part of this proviso and the whole of the second proviso are declared *ultra vires* and their provisions cannot be given effect to in a Court of law.

All three cases will accordingly be remitted to the various trial Courts for disposal according to law. The petition for writ is dismissed with costs, as in view of the expression of opinion given by us on the law points involved it is not any longer necessary to issue any directions to the Delhi State or to the competent authority. The costs in the other three cases will be costs in suits.

Bhandari, C.J. BHANDARI, C.J. I agree.

1575 ILR—600—6-8-55—CP and S., Punjab, Chandigarh.