

A JASODABAI & SMT. RAMCHANDRABAI

v.

THE STATE OF MAHARASHTRA & ANR.

November 26, 1969

B [M. HIDAYATULLAH, C.J., A. N. GROVER, A. N. RAY,
P. JAGANMOHAN REDDY AND I. D. DUA. JJ.]

Constitution of India, Art. 133—Certificate—Circumstances in which High Court could not refuse certificate—Practice and Procedure—Refusal of certificate—Necessity for giving reasons.

C The appellants applied to the High Court for a certificate seeking to appeal against the judgment and order of the High Court dismissing their petitions challenging the constitutionality of the Maharashtra Agricultural Lands (Ceilings on Holdings) Act, 1961. The High Court had held that an earlier case had already laid down that the Act was saved by Art. 31A and that because of its inclusion in the Ninth Schedule to Act enjoyed the protection of Art. 31B. The High Court refused the certificate and gave no reasons for the refusal. In appeal to this Court against the order refusing certificate it was urged that in view of the decision of this Court in *Ramesh v. Seth Gendalal Motilal Patni* the certificate ought to have been granted because the order was made in the exercise of extra-ordinary original jurisdiction in a civil proceeding and the valuation of the claim was well over Rs. 20,000.

E HELD : (i) Article 133 is wide enough to take in civil proceedings decided in the High Court in the exercise of the extra-ordinary jurisdiction provided some civil right of the party is decided. The appellants were attempting to save their property by challenging the validity of the Act and the decision of the Court that the Act was valid directly affected the civil rights of the parties in properties well over the mark in value. In these circumstances the High Court could not refuse the certificate.

Ramesh v. Seth Gendalal Motilal Patni, [1966] 3 S.C.R. 198.

F The case was not remanded for certification because it would be an exercise in futility to ask the High Court to certify the cases when the appeals that would follow must inevitably fail, as this Court had held the Act to be *intra vires* and it was protected by Art. 31B of the Constitution.

State of Maharashtra v. Madhavrao Damodar Patilchand. [1968] 3 S.C.R. 712.

G (iii) It is desirable to state in brief why the certificate is refused, since, much depends on whether the civil rights of the parties are passed on or not by the judgment proposed to be appealed against. Again, if the court refused to exercise jurisdiction under Art. 226 without deciding the civil rights claimed, it is better to say so while refusing the certificate.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1554 and 1555 of 1966.

H Appeals by special leave from the orders dated December 6, 1965 of the Bombay High Court, Nagpur Bench in Misc. Civil Applications Nos. 170 and 172 of 1965.

G. L. Sanghi, D. N. Mishra, J. B. Dadachanji, O. C. Mathur, and Ravinder Narain, for the appellants (in both the appeals).

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M. S. K. Sastri and S. P. Nayar, for the respondents (in both the appeals).

The Judgment of the Court was delivered by

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Hidayatullah, C.J. This order will govern the disposal of Civil Appeals Nos. 1554 and 1555 of 1966.

The two appellants, seeking to appeal against the common judgment and order of the Bombay High Court (Nagpur Bench), September 10, 1965, in proceedings under Art. 226 of the Constitution, applied to the Division Bench of the High Court for a certificate under Arts. 132 and 133(1)(a) or (b) and/or (c) of the Constitution. Their applications were summarily dismissed on December 6, 1965. The present two appeals (consolidated for hearing) are by special leave and are against the order refusing certificate. The appellants contend that they were entitled to a certificate as of right as laid down in *Ramesh and Anr. v. Seth Gendal Motilal Patni and Ors.*⁽¹⁾ The other side opposes.

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The appellants and 3 others had, by their several petitions under Art. 226 of the Constitution asked that certain notices issued under s. 17(2) of the Act for declaration of lands in excess of the ceilings as surplus and requiring that they be surrendered, be quashed on the ground that the Maharashtra Agricultural Lands (Ceilings on Holdings) Act 1961 (27 of 1961) offended Arts. 14, 19 and 31 and was therefore void under Art. 13. The Divisional Bench disposed of the five petitions by a common judgment and order on September 10, 1965 dismissing them. It was held that barring s. 28, the Act was already held to be validly enacted in a decision of the High Court in another petition decided on October 25, 1968. The earlier case had laid down that the Act was saved by Art. 31-A. The Divisional Bench also pointed out that the Act was included in the 9th Schedule to the Constitution and enjoyed protection of Art. 31-B. That too was held in yet another petition. The learned counsel attempted to urge some new grounds but was not allowed to do so. The petitions were dismissed but without costs.

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In pressing the applications for certificate the petitioners pointed out that 1976 acres of dry crop lands were involved and were likely to be declared surplus and asked to be surrendered and that at a valuation of Rs. 1,000 per acre, the value of the subject matter in the High Court and on appeal to this Court was well over the mark. They claimed a certificate as of right. The

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(1) [1966] 3 S.C.R. 198.

- A High Court refused the certificate but gave no reasons for the refusal.

B In these appeals it is submitted that in view of the decision of this Court *Ramesh and Anr. v. Seth Gendalal Motilal Patni and Ors.*⁽¹⁾, the certificate ought to have been granted because the order was made in the exercise of extraordinary original jurisdiction in a civil proceeding and the valuation of the claim was well over Rs. 20,000. It is submitted that the appeals satisfied all the tests laid down by this Court in the earlier case.

C There is considerable force in the submissions. As pointed out in the earlier case Art. 133 is wide enough to take in civil proceedings decided in the High Court in the exercise of the extraordinary jurisdiction provided some civil right of the party is decided. The appellants before the High Court were attempting to save their property by challenging the validity of the Act and the decision of the Court that the Act was valid directly affected the civil rights of the parties in properties well over the mark in value.

D In these circumstances, the High Court could not refuse the certificate. We would have, therefore, seriously considered remending the case to the High Court for the grant of a certificate but for two things. Special leave was granted on May 5, 1966. Since then on April 10, 1968, in *State of Maharashtra etc. v. Madhavrao Damodar Patilchand and Ors. etc.*⁽²⁾ this Court has held the Act to be *intra vires* and the Act is also included in the 9th Schedule and is protected by Art. 31-B of the Constitution.

E It will be an exercise in futility to ask the High Court to certify the cases when the appeals that will follow must necessarily and inevitably fail. It is better to save circuity of action and to dismiss the appeals before us. We order accordingly but make no order about costs.

F We may say here that it is desirable to state in brief why the certificate is refused since much depends on whether the civil rights of the parties are passed on or not by the judgment proposed to be appealed against. Again, if the Court refuses to exercise jurisdiction under Art. 226 without deciding the civil rights claimed, it is better to say so while refusing the certificate.

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R.K.P.S.

Appeals dismissed.

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(1) [1966] 3 S.C.R. 198.

(2) [1968] 3 S.C.R. 712.