

Waqf Estate of Nawab Mohd. Azmat Ali Khan Vs. U.P. State and anr.

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Court : Allahabad

Decided On : Nov-07-1955

Reported in : AIR1956All416

Judge : Brij Mohan Lal and ;Oak, JJ.

Acts : Uttar Pradesh Land Acquisition (Rehabilitation of Refugees) Act, 1948 - Sections 11; Constitution of India (4th Amendment) Act - Article 31B

Appeal No. : Civil Misc. Ref. No. 8 of 1954

Appellant : Waqf Estate of Nawab Mohd. Azmat Ali Khan

Respondent : U.P. State and anr.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : Vidya Bhushan Gupta, Adv.

Judgement :

Brij Mohan Lall, J.

1. This is a reference by the learned Additional Civil Judge of Muzaffarnagar under Section 113, Civil P C. A question arose before him about the validity of Section 11, U.P. Land Acquisition (Rehabilitation of Refugees) Act No. 26 of 1948. Till the date of the reference, i.e., 21-12-1953 there was no reported decision of this Court on that point. The learned Judge was, therefore, competent under the proviso of Section 113 to make a reference to this Court.

2. During the pendency of this reference, an exactly similar question came up for decision before a Division Bench of this Court. The decision is reported in -- 'H. P. Khandelwal v. State of Utar Pradesh', (S) AIR 1955 All 12 (A). The said Bench held the aforesaid provisions to be ultra vires the legislature. In 1955, however the Constitution was amended, and as a result thereof, the decision of the Division Bench has ceased to be good law.

Article 31B of the Constitution declares that none of the Acts specified in the 9th Schedule thereof, nor any of the provisions thereof, shall be deemed to be void or ever to have become void, on the ground that such an Act or provision is inconsistent with, or takes away or abridges any of the rights conferred by any provision of Part 3, and notwithstanding any judgment, decree or order of any Court or tribunal to the contrary, each of the said Acts shall, subject to the power of any competent legislature to repeal or amend it, continue to be in force. By the fourth amendment the impugned Act, i.e., the U.P. Land Acquisition (Rehabilitation of Refugees) Act, has been included in the 9th Schedule of the Constitution.

3. The result, therefore, is that by virtue of provisions of Article 31B this Act should be deemed to be valid and also to have always been valid. We answer the reference accordingly.

4. Let the papers be returned to the learned Additional Civil Judge of Muzaffarnagar.

We assess the fee of the learned Standing Counsel at Rs. 80/-.

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