IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND SEVEN

PRESENT

HON'BLE THE ACTING CHIEF JUSTICE BILAL NAZKI

AND

HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.23076 of 2003

Between:
Gangula Narasimha and 31 others

..... PETITIONER

AND
Govt. of Andhra Pradesh rep. By its
Principal Secretary, Revenue Department,
Secretariat, Hyderabad and three others

....RESPONDENTS

&

CRP Nos. 5616 of 2003, 5397 of 2003, 5938 of 2003, 5939 of 2003, 6297 of 2003, 6312 of 2003, 2952 of 2004, 2953 of 2004, 2954 of 2004, 2955 of 2004, 2956 of 2004, 2957 of 2004, 2958 of 2004, 2977 of 2004

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COMMON JUDGMENT: (per the Hon'ble Sri Justice Nooty Ramamohana Rao)

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In this writ petition challenge is mounted to the constitutional validity of Andhra Pradesh Tenancy Laws (Amendment) Act, 2002, Act No. 28 of 2002 (henceforth referred to as `Act No.28 of 2002'). Act No. 28 of 2002 has purported to amend the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 by introducing Clause (g) in Section102 thereof (henceforth referred to as Telangana Area Tenancy Act). Act No. 28 of 2002 has also purported simultaneously to amend Andhra Pradesh (Andhra Area) Tenancy Act, 1956 by introducing clause (f) in sub-section 1 of Section 16 after deleting the proviso incorporated under sub-section (1) of Section 16 (henceforth referred to as `Andhra Tenancy Act'). Since the petitioners have confined their attack to the amendment brought about to the Telangana Tenancy Act in this writ petition, we are not required to deal with the amendment brought about by the impugned Act to the Andhra

Tenancy Act. In fact, a Division Bench of this Court has upheld the amendment carried out to the Andhra Tenancy Act.

The facts which are so essentially relevant for determining the controversy at issue are :

One Sri Bhagawan Das is said to have purchased some time during 1941 in an open auction land of an extent of 767 acres including the lands with which the petitioners herein are concerned. On 10.6.1990, the Telangana Tenancy Act has been ushered in to regulate the relations of the land holders and the tenants of the agricultural land and the alienation of such land. On 2.5.1951, the said Bhagawand Das after obtaining the necessary permission is said to have transferred the lands in favour of Gurukul, Ghatkesar Trust, the 2nd respondent herein, by way of a registered document. The petitioners have asserted that the names of their predecessors in interest/title have been entered in the Khasra – Pahani as tenants. By an Amending Act III of 1956, Section 37-A had been incorporated in the Telangana Tenancy Act providing for conferring on certain tenants notionally the status of a protected tenant and for recording his status as such in the record of rights/village records. The petitioners have asserted that that the names of their predecessors in interest/title have accordingly been recorded as protected tenants with reference to the subject lands with which they are concerned. Section 38A has also been added to the Telangana Tenancy Act providing for the land holder to accord consent to sell his interest in the land in favour of the protected tenant. The petitioners have asserted, though controverted by the respondents, that the 2nd respondent Trust had entered into an agreement for transferring its interest in favour of the petitioners in terms of the aforementioned Section 38A. The 4th respondent, a Housing Society, has made a parallel claim that it was sold certain

extent of land by the 2nd respondent Trust and hence 2nd respondent Trust could not have accorded any consent in favour of any other 3rd party for sale or alienation of it's interests in the land and without their knowledge no third party, like the writ petitioners can seek or stake any claim of title over the lands in question. Similarly some of the respondents have also raised similar pleas that the writ petitioners have no interest or title over the lands in question. In fact, the 7th respondent has also pointed out that there was a 'mosque' constructed during Qutub Sahi dynasty over a small extent of the land in question and hence they also dispute the claims of interest and title of the writ petitioners over the lands in question. Mercifully, We are not required to go into or consider all such questions in this case. Be that as it may, at the instance of the 4th respondent, who had disputed the right, title and interest of the 2nd respondent in entering into an agreement for transfer of its interests in favour of the petitioners had ultimately resulted in the entire matter being directed to be enquired into after providing the necessary opportunity to all parties concerned. The petitioners further assert that in pursuance thereof, Revenue Divisional Officer, Chevalla, Ranga Reddy District had conducted the enquiry and passed orders in their favour on 19.4.2001 in his proceedings No.G/266/98. Since an appeal is provided under Section 90 of the Telangana Tenancy Act, the orders passed by the Revenue Divisional Officer on 19.4.2001 were carried in appeal before the Joint Collector, Ranga Reddy District who passed orders on 7.10.2003 allowing the appeal preferred against the orders of the Revenue Divisional Officer, Chevalla dated 19.4.2001 and consequently he set aside the said orders of the Revenue Divisional Officer. Since a revision is provided under Section 91 of the Telangana Tenancy Act to this Court against

any final orders passed in appeal, the accompanying batch of revisions have been preferred against the orders of the Joint Collector dated 07.10.2003.

It will be relevant at this stage to notice Section 2 of Act 28 of 2002, which is the principal bone of contention and whose constitutional validity is challenged in the writ petition.

> "2. In the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950, in Section 102, after clause (f), the following shall be deemed always to have been added, namely :- "(g) to any agricultural land belonging to or given or endowed for the purpose of any charitable of Hindu religious institution or endowment as defined by the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act."

We have heard Sri K.Pratap Reddy, learned Senior Counsel who led the arguments and Sri S.Niranjan Reddy, on behalf of the petitioners and the learned Advocate General for the State and Sri A.Pulla Reddy and others for the contesting respondents.

The learned senior counsel would principally contend that the impugned Act is violative of the fundamental rights guaranteed to the petitioners under Articles-14 and 21 of the Constitution of India as it is *ex pacie* arbitrary and unjust. He would also contend that crystallized and vested rights of the petitioners are sought to be taken away by the fictional retrospectivity ascribed to the newly added Clause-(g) under Sec.102 of the Telengana Tenancy Act. The learned senior counsel also contended that instead of seeking to promote the interests of the peasants and tenants in compliance with the obligations arising under Part-IV of the Constitution, the amendment is seeking to stamp them out.

Per contra, the learned Advocate General would contend that the statements of objects behind the impugned Act 28/2002 would

underscore the anxiety of the State to give full thrust to the provision contained in Sec.82(1) of the Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Act, 1987 (henceforth referred to as "the Endowments Act"). The learned Advocate General would further contend that the impugned piece of legislation has never attempted to stamp out vested rights of any individual and far therefrom what is attempted is to retrieve the lands belonging to or endowed for purpose of any charitable or Hindu religious institution or endowments from the stranglehold of the rich and influential segments of the society. The learned Advocate General had further tried to justify the fiction sought to be created by the clause which deemed as if Clause-(g) which has always been incorporated to Sec.102 of the Telangana Tenancy Act only with a view to protect such lands, the ownership of which has not fructified in favour of the tenants in terms of Sec.38-E of Telangana Tenancy Act and restore their tenure in favour of religious or charitable endowments or institution is concerned.

Prior to enacting the present Endowments Act, the Government of Andhra Pradesh, through their G.O.Ms.No.729, Revenue (Endowments-III) Department, dated 30th April, 1984, have constituted a Committee, headed by a former Chief Justice of this Court, the principal term of reference of which is given as under:

> "A review of the present system of management of properties of Hindu Religious and Charitable Institutions, the need to protect them from tenancy and other laws; and measures to be taken to ensure that the interests of the institutions are protected."

Accepting the report submitted by this Committee, several measures have been taken and one of them has exclusively dealt with the management of the agricultural lands belonging to Hindu religious charitable endowments and institutions. Thus, the Endowments Act of

1987 has been enacted and one of the principal objects and reasons behind the same is the State's intention to secure termination of leases held by persons other than landless poor persons. Sub-Sec.(1) of Sec.82 of the Endowments Act is, therefore, declares that any lease of agricultural lands belonging to or given or endowed for purpose of an institution or endowment subsisting as on the date of the commencement of the Endowments Act, held by a person, who is not a landless poor person, stands cancelled, notwithstanding anything in any other law for the time being in force. The Endowments Act has been brought into force with effect from 28.05.1987. As a result, all such leases of agricultural lands belonging to or endowed in favour of the Hindu religious charitable institutions and endowments stood cancelled with effect from the said date. Several writ petitions came to be instituted in this Court, challenging the validity of the Sec.82. A learned single Judge as well as a Division Bench of this Court had considered the above provision as unconstitutional. However, when the matter was carried in appeal, the Supreme Court had decided the issue in the case of ***State of A.P. v. Nallamilli Rami Reddi***[1] and upheld the said provision. It is important, therefore, for us to notice how the questions have been answered by the Supreme Court, as under:

> "Insofar as the Telangana Act is concerned, it exempted from its operation imams held by charitable or religious institution or endowment as well as service inam lands. Inams were abolished in the Telangana area of the State in 1955 and that process was completed in 1973. By the amendment Act of 1985, all such inams have also been brought within the purview of the Act and abolished and that resultant position is that none of the charitable or religious institutions or endowments in the Telangana area are exempt from the operation of Hyderabad Act 21 of 1950.
>
> The Division Bench in reaching the conclusion that Section

82 is unconstitutional held that the two tenancy Acts in force in the State of Andhra Pradesh are still applicable to the institutions covered by the Act and, therefore, the object of the enactment of Section 82 will not be fulfilled. The Division Bench also noticed that there is no overriding effect given to the Act. In effecting the agrarian reforms, the major programme of the Government has been to protect the tenants by securing them a permanent tenure of the land and freezing the rent or conferring a right upon them to purchase the land at a certain sum which is far below the market rate and the right of the landlord to evict them would be severely restricted and that too by initiating proceedings before Special Tribunal. Under the Telangana Act, the rent does not exceed five times the land revenue and in case of wetlands irrigated by wells it is only three times the land revenue, while in case of dry lands it is four times the land revenue. Though a maximum rent had been prescribed undr the Andhra Pradesh Act, the same will not be applicable in view of Section 18(2) of the Act to which we have already adverted. The Andhra Pradesh Tenancy Act had granted perpetuity insofar as leases were concerned. The Division Bench was impressed by the fact that Section 82 is the first attempt to undo the right of tenants in respect of agricultural lands held by institutions or endowments governed by the Act. The learned Judges stated that protecting the right of tenants is equally important just as protecting the interest of the institutions or the endowments. Cancellation of the tenancy, by itself, will not achieve the ends. First, the High Court considered whether augmentation of income is possible in view of the rents having been frozen which were obtained on the date of the commencement of theAndhra Pradesh Tenancy Act, 1974. They felt tht it is not possible to augment the income of the institutions at all. Except referring to the enactments arising under the Tenancy Acts, there is no material before the High Court to support the view as to what are the rents payable at present and what would be the rent that becomes payable after the leases are put to an end in terms of Section 82 of the Act and fresh tenancies commence if the lands are leased to others as provided under the provisions of the Act. When the material is not clear before the Court, the Court cannot hazard a guess as to the manner in which the enactment would operate. How the Tenancy Acts will have effect upon the new tenancies would be a matter to be worked out appropriately. Therefore, at the stage of enacting Section 82 or examining its constitutional validity, the

High Court could not have proceeded to hold that unless the operation of the Tenancy Acts are excluded the objectives of the enactment cannot be achieved. It is possible under the new Rules to be framed that the Government may proceed to grant leases or licences only to small or marginal holders of lands as may be found by them suitable to cultivate the land thereby freeing the lands from the grip of rich and powerful persons. Therefore, at this stage, again to state that the purpose of the enactment of freeing the lands from the grip of rich and powerful persons cannot be achieved, is not correct. The learned Judges have felt that it is possible for the old tenants themselves to get back the possession of the lands in question. But, that is as good a guess as against other possibilities, which we have suggested. Therefore, that will not be a permissible ground to strike down the law. Wherever possible, some of these lands which are not within the manageable limits of the religious institutions concerned may be sold in the manner prescribed in Section 80 of the Act or may be leased out by them, as the case may be, like a prudent owner or manager of the property. The High Court proceeded to consider further that cultivation of these lands by these institutions would not be feasible. We fail to understand as to how it can be stated so. It is certainly possible, if the institutions hold large holdings of land, to have a department in the institutions to get the lands cultivated and to expect that the very same incidence and consequences will follow as were applicable earlier prior to coming into force of Section 82 of the Act does not, therefore, appeal to us. Whether a Tenancy Act should be applicable to a religious institution or should be kept out of it is not a matter for the court to decide. How far a Tenancy Act is applicable to a religious institution and to what extent it should be limited is a matter for the legislature to decide. But such a policy should not be irrational. We do not think on that basis, we can interfere with the validity of the Act.

It is plain that religious institutions fall into a separate class and lands held by them have a special character in respect of which tenancies had been created and these tenancies are sought to be put to an end to for resumption of lands for better management thereof. It is clear that the tenants under the religious institutions form a special class by themselves and such classification is made, so far as tenants are concerned, to achieve the object of protecting the interests of the religious institutions. Therefore, we do not think, any of the principles which result in hostile discrimination would be applicable to

the present case."

In unmistakable terms, it has been held by the Supreme Court in the above case that charitable or religious institutions or endowments form a separate class by themselves and that the tenants of agricultural lands also form consequently a separate class, therefore, such tenants can be treated differently from the others.

It is also important for us at this stage to notice some other contentions canvassed before the Supreme Court in the above case. In paragraph-19 of the said judgment, they are noted as under:

> "The learned counsel also contended that cancellation of leases of all tenancies is arbitrary inasmuch as the protection given under the Andhra Act and the Telangana Act being different, the tenants could not have been classed into one category. He next contended that tenancies are inheritable and in such a situation, without paying compensation, could not have deprived them the rights to the same. He also submitted that Section 38-E of the Telangana Act provides for conferment of ownership rights to tenants in question and this aspect has not been considered by the High Court. He further contended that the livelihood of the tenants being deprived, the provision is violative of Article 21 of the Constitution."

These contentions have been dealt with by the Supreme Court in the following manner in paragraphs-20 and 21 of the aforementioned judgment:

> "We need not delve deep into the operation of Section 80 of the Act and whether it is applicable to the lands in question or not and as to the manner in which the lands would be dealt with by the charitable or religious institution or endowment on resumption thereof after cancellation of the leases. It is possible to read that Section 80 of the Act is an independent provision though falling under Chapter X with the heading "Alienation of any immovable property and resumption of inam lands" and contention advanced on behalf of the petitioners is that there is a discernible difference between the applicability of the Act which is for agricultural lands and other properties and Section 80 of the Act which is applicable to only other

properties. Prima facie, Section 80 of the Act does not appear to put such a restriction. The tenants covered either by the Andhra Act or the Telangana Act may fall into two different categories but insofar as their holdings with reference to the institutions are concerned, they fall into the same category. Therefore, the aspect that they had different kinds of rights arising under different enactments and make them a distinct class in the present circumstances will not be of much relevance. Therefore, this contention also does not hold water. The question of tenancy being inheritable or not would arise **if the leses are maintained but if the leases are themselves cancelled, such a question will not arise at all.** Conferment of ownership under Section 38-E of the Telangana Act has no relevance to the present case at all inasmuch as if the proper procedure has been adopted and the proceedings have reached the logical end, the tenant would become the owner of the land. Therefore, Section 82 would not be attracted to such a situation but if the proceedings have not been terminated and a tenancy continues to be in force, Section 82 of the Act would be attracted to such a case. This contention based on Section 38-E of the Telangana Act is untenable.

The arguments relating to livelihood also have no legs to stand. The object of the Act is to resume lands in the hands of existing tenants for better management. After resumption, some tenants may be dependent on the land leased to them by the charitable or religious institution or endowment but it cannot be said that that was the only land held by them and that that was the only avocation carried on by them, the objectives of the cancellation of the land is not to deprive anyone of his livelihood but, on the other hand, it is for the better management of the properties belonging to the charitable or religious institution or endowment. The incident that the same may result in hardship to some of the tenants will not be a ground to say that it deprives them of their livelihood."

In view of the above judgment of the Supreme Court in ***State of A.P. v. Nallamilli Rami Reddi*** (1 supra), it emerges that even without the introduction of Clause-(g) to Sec.102 of Telangana Tenancy Act, the leasehold rights of agricultural lands belonging to and endowed to Hindu religious charitable institutions and endowments stood

cancelled by operation of law from the date the Endowments Act has been brought into force i.e. on 28.05.1987. Therefore, the contention of the learned Advocate General that the introduction of Clause-(g) to Sec.102 of the Telangana Tenancy Act is only to ensure that the full impact of Sec.82 of the Endowments Act is realized is well merited. The learned Advocate General is right in pointing out that prior to the impugned enactment, if any rights of a tenant have undergone a classical metamorphosis in his status from that of a 'tenant' to that of a 'landholder', the present Act or for that matter, even Sec.82 of the Endowments Act will have no applicability to such a situation. The present Act as well as Sec.82 of the Endowments Act only deal with the rights of such tenants which have not been crystallized, vesting them with the ownership right of the land. When once such a transformation takes place, the tenant gets obliterated. The original landholder, namely the religious institution or charitable endowment no longer be liable to be treated as a landholder, and correspondingly, the former tenant of such institution can no longer be treated as a subsisting tenant, as he has become the landholder himself.

The learned senior counsel has pressed into service the oft quoted judgments of the Supreme Court in ***Royappa vs. Union of India***[2], ***Menaka Gandhi v. Union of India***[3], ***Ajay Hasia vs. Khalid Mujib Sehravadi and others***[4], ***M/s.Shanistar Builders vs. Narayana and others***[5] and ***Delhi Transportation.....***[6] for purposes of demonstrating that the classification and inbuilt arbitrariness attempted by the impugned legislation falls foul of Article-14. We are afraid that such a contention is no longer available after the Supreme Court considered the same and repealed it in ***State of A.P. v. Nallamilli Rami Reddi*** (1 supra).

But, however, one of the contentions canvassed deals with the

nature of dichotomy brought about even amongst the same class of tenants of agricultural lands. One set of the Tenants are those whose rights are crystallized and decided and the other set are those whose rights have not been so crystallized. We are afraid that such a contention need not detail us any further in view of what has been stated by a Constitution Bench in the case of ***Anant Mills Co.Ltd. v. State of Gujarat***[7] as under:

> "Apart from the above, we are of the opinion that classification by treating decided cases as belonging to one category and pending cases as belonging to another category is reasonable and not per se offensive to Article 14.
>
> It is well-established that Article 14 forbids class legislation but does not forbid classification. Permissible classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and the differentia must have a rational relation to the object sought to be achieved by the statute in question. In permissible classification mathematical nicety and perfect equality are not required. Similarity, not identity of treatment, is enough. If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstances arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment. Taxation law is not an exception to this doctrine. But, in the application of the principles, the courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the Legislature in the matter of classification so long as it adheres to the fundamental principles underlying the said doctrine. The power of the Legislature to classify is of wide range and flexibility so tht it can adjust its system of taxation in all proper and reasonable ways (see *Ram Krishna Dalmia v. Justice S.R.Tendolkar (1959 SCR 279)* and *Khandige Sham Bhat v.Agricultural Income-tax Officer, Kasaragod((1963) 3 SCR 809).* Keeping the above principles in view, we find no violation of Article 14 in treating pending cases as a class different from decided cases. It cannot be disputed that so far as the pending cases covered by clause (i) are concerned, they have been all

treated alike. In the case of *Rao Shiv Bahadur Singh v. State of V.P. (1953 SCR 1188, 1197)* this Court observed:

"But there is no reason why pending proceedings cannot be treated by the Legislature as a class by themselves having regard to the exigencies of the situation which such pendency itself calls for. There can arise no question as to such a saving provision infringing Article 14 so long as no scope is left for any further discrimination inter se as between persons affected by such pending matters."

In *Hathising Manufacturing Co.Ltd. v. Union of India ((1960) 3 SCR 528)* the constitutional validity of Section 25FFF of the Industrial Disputes Act, 1947 was assailed. That section made a distinction between employers who had closed their undertakings on or before November 28, 1956 and those who closed their undertakings after that date. It was urged that the above provision was violative of Article 14 of the Constitution. The above contention was rejected and it was observed:

"When Parliament enacts a law imposing a liability as flowing from certain transactions prospectively, it evidently makes a distinction between those transactions which are covered by the Act and those which are not covered by the Act, because they were completed before the date on which the Act was enacted. This differentiation, however, does not amount to discrimination which is liable to be struck down under Article 14. The power of the Legislature to impose civil liability in respect of transactions completed even before the date on which the Act is enacted does not appear to be restricted. If, as is conceded—and in our judgment rightly—by a statute imposing civil liability in respect of post-enactment transactions, no discrimination is practiced, by a statute which imposes liability in respect of transactions which have taken place after a date fixed by the statute, but before its enactment, it cannot be said that discrimination is practiced."

In the case of *Jain Bros. V. Union of India ((1970) 3 SCR 253)* it was urged on behalf of the appellants that clause (g) of Section 297(2) of the Income-tax Act, 1961 was violative of Article 14 inasmuch as in the matter of imposition of penalty, it discriminated between two sets of asessees with reference to a particular date, namely, those whose assessment had been completed before first day of April, 1962 and others whose assessment was completed on or after that date. While upholding the validity of the above provision, this Court observed:

> "Now the Act of 1961 came into force on first April, 1962. It repealed the prior Act of 1922. Whenever a prior enactment is repealed and new provisions are enacted the Legislature invariably lays down under which enactment pending proceedings shall be continued and concluded. Section 6 of the General Clauses Act, 1897, deals with the effect of repeal of an enactment and its provisions apply unless a different intention appears in the statute. It is for the Legislature to decide from which date a particular law should come into operation. It is not disputed that no reason has been suggested why pending proceedings cannot be treated by the Legislature as a class for the purpose of Article 14. The date first April, 1962 which has been selected by the Legislature for the purpose of clauses (f) and (g) of Section 297(2) cannot be characterized as arbitrary or fanciful.
>
> We would, therefore, hold that clause (i) of Section 2(1A) is constitutionally valid and not violative of Article 14 in respect of all the years to which it has been made applicable."

Learned Senior Counsel has placed strong reliance upon the judgment of the Constitution Bench rendered in **Acharya Maharajshri Narendra Prasadji Anandprasadji Maha aj v. The State of Gujarat**[8] and contended that the impugned legislation is seeking to stamp out the interests of the tenants and peasants and therefore it is contrary to the agrarian reforms, which required the State to promote them and the impugned enactment is therefore liable to be struck down on that score. The learned counsel has pointed out the following from the above judgment :

> "….The question, therefore, arises whether the right under Article 26© is an absolute and unqualified right to the extent that no agrarian reform can tough upon the lands owned by the religious denominations. No rights is an organized 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 interests of the agricultural 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 suffers of any kind…."

It is well to remember that the Endowment Act and in particular Section 82 thereof attempted to carve out a special place with regard to the agricultural land held by Hindu Religious and Charitable Endowments or Institutions. It is with reference to those institutions, the rights of tenancy of agricultural lands are sought to be cancelled. When once the said scheme has received the seal of approval for its validity at the hands of the Supreme Court, it is no longer available for

one to construe the same as stamping out the rights of the whole class of agricultural tenants or peasants. It is appropriate for us to notice that the Hindu Religious Charitable Endowment Institutions are said to own approximately 3.2 lakhs of acres of agricultural land in our State. The present impugned legislation is therefore confined in its operation in dealing with that extent of the agricultural lands as a whole, in whichever parts of the State they lie. The rights of tenants of the rest of the agricultural lands, which are in vast extents, are not touched or hindered. They are all liable to receive the protection intended by the Andhra Tenancy Act, and the Telangana Tenancy Act holding the field in respective regions.

However, one of the important contentions canvassed is with regard to the retrospectivity of the impugned enactment, which created a fiction by deeming the newly added clause (g) to have been in existence in Section 102 of the Telangana Tenacy Act from its very inception. Section 102 of the Telangana Tenancy Act lists out the lands to which the said Act shall not apply. It is worthy to notice the jurisprudential principles with regard to retrospective operation of enactments.

Francis Bennion in his "Statutory Interpretation, Second Edition at page 214 discussed retrospective operation of an Act as follows :

> "The essential idea of legal system is that current law should govern current activities. Elsewhere in this work a particular Act is likened to a floodlight switched on or off, and the general body of law to the circumambient air. Clumsy though these images are, they show the inappropriateness of the retrospective laws. If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow's backward adjustment of it. Such, we believe is the nature of law. Dislike of *ex post facto* law is inshrined in the United States Constitution and in the Constitution of many American States, which forbid it. The true principle is that *lex prospicit non respicit* (law books forward not back). As Justice

Willes said, retrospective legislation is `contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law."

Maxwell in his Interpretation of Statutes stated the following:

"It is the fundamental rule of English Law that no statute shall be construed to have retrospective operation unless such a construction appears very clearly in terms of the Act, or arises by necessary and distinct implication."

Where, on a weighing of factors, it seems that some retrospective effect was intended the general presumption against retrospectivity indicates that this should be kept to as narrow a compass as will accord with the legislative.

It is now well settled that where a statutory provision which is not expressly retrospective by the legislature seeks to effect vested rights, such provisions cannot be said to have retrospective effect by necessary implication. The Court noted with approval the observation of Maxwell on the Interpretation of Statute "If the enactment is expressed in a language which is fairly capable of either interpretation, it ought to be construed prospective only."

The golden rule of interpretation evolved by the Supreme Court in **Garikapati Veeraya's case**[9] is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed.

The Parliament and the State Legislatures have plenary powers of legislation within the fields assigned to them under the VII Schedule of our Constitution. Subject to certain constitutional restrictions, with particular reference to those contained in Part III of our Constitution and the judicially recognized constraints, the Legislature is as much entitled to legislate prospectively as well as

retrospectively. Hence, it will be inaccurate to deduce that the impugned legislation could not have been made having retrospective applicability. If it had attempted to take away any of the vested rights or crystallized rights of the petitioners, different considerations would arise. Learned Advocate General has specifically drawn our attention to the counter affidavit filed on behalf of the 1st respondent – State by the Principal Secretary to the Government in paragraph 11, it has been stated thus :

> "11. I further submit that it is clear from the narration of various proceedings in the affidavit under reply, the petitioners have not acquired any ownership rights under Section 38-E of Telangana Act and they have only been litigating for the same. Hence, no vested rights of the petitioners are taken away. Whatever rights they assumed, under the Act, that they possess are only inchoate rights. The petitioners continued to be the tenants of the trust as on the date of Act 30 of 1987. They have not become owners of the lands. Hence, their contention that by virtue of deeming provision in Section 2 of Act 28 of 2002, their vested rights are taken away is incorrect and untenable in law. The amendments introduced through Acts 27 and 28 of 2002 will not apply to a person who has become a owner by virtue of operation of Tenancy laws. What is sought to be put an end to is the existing tenancy, which under the Tenancy Laws of Telangana Area would have fructified into ownership, which event has not taken place in the present case. Hence, the provisions are prospective in effect

and apply to all existing leases only including that of the petitioners."

Thus the apprehensions entertained that crystallized and vested rights are being stamped out by the impugned piece of legislation are put to rest. As is noticed from the pleadings, the rights of the petitioners have not fructified by way of alteration of their status from "tenant" to that of "land holders. If such a right had already accrued to them, they no longer get attracted by the sweep of Section 82 of the Endowments Act and consequently the question of cancellation of a non-existent tenancy right insofar as they are concerned does not arise. The rights of the petitioners have not yet been crystallized. They are still litigating in the process. Therefore, the contention by the learned Advocate General that they have only inchoate rights deserves acceptance.

The learned Senior Counsel Sri Pratap Reddy, has also contended that if the impugned piece of legislation is to be held valid, the petitioners will still have their right and title over the land in question by virtue of their prescriptive right due to their open and hostile adverse possession *vis-à-vis* the true owner of the land. It is not necessary for us to deal with what consequences can follow if the present piece of legislation is held to be valid. The petitioners would be entitled to the protection of law, if any, independent of the impugned piece of legislation. We need not speculate in that regard. We are only concerned to examine as to whether the impugned legislation is constitutionally valid or not. The consequences that are likely to follow therefrom, as pointed out by the learned Senior Counsel will have no bearing on the constitutional validity of Act No.28 of 2002.

It is since stated at the Bar that the accompanying revisions will abide by the result in the writ petition, as, if the tenancy rights of Hindu Religious and Charitable Endowments or Institutions once stand

cancelled by operation of law, there would not be any necessity to examine the rights flowing from any such past tenancy. Hence, we have not taken up for examination of merits of the accompanying revisions preferred under Section 91 of the Telangana Tenancy Act against the orders passed by the Joint Collector.

In fact, when the validity of Section-3 of this impugned Act 28 of 2002 has been challenged, which incorporated a similar provision in the Andhra Tenancy Act, the issue was examined in detail by a Division Bench of this Court in **Saithana Nageswara Rao v. State of A.P.**[10] (to which one of us Bilal Nazki,J as he then was, is a member) and the Division Bench has concluded the issue holding as under :

> "24…… Since the petitioners have no legal right to continue as tenants, by virtue of operation of Section 82 of the Endowments Act, 1987, there cannot be any direction either to treat them as tenants or to allow them to continue as such. In the light of the validation of Section 82 of the Endowments Act, 1987, the framers, with a view to rule out any possibility of inconsistency with the provisions of the Tenancy Act, brought Act No. 28 of 2002 i.e., A.P. Tenancy Laws (Amendment) Act, 2002. It is in consonance with the spirit of Section 82. Even if the amendment to Tenancy Act is not given any retrospective effect, it is not going to affect the validity of Section 82. We therefore hold that the provisions of the amended Acts are not arbitrary and unreasonable. Therefore, they are not liable to be struck down….."

For all the aforementioned reasons, we do not find any merit in the writ petition and consequently the writ petition and the accompanying revisions stand dismissed. No costs.

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BILAL NAZKI, ACJ

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NOOTY RAMAMOHANA RAO, J

Dated:31.12.2007
Knk/Dsr

HON'BLE THE ACTING CHIEF JUSTICE BILAL NAZKI

AND

HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

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WRIT PETITION No.23076 of 2003

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CRP Nos. 5616 of 2003, 5397 of 2003, 5938 of 2003, 5939 of 2003, 6297 of 2003, 6312 of 2003, 2952 of 2004, 2953 of 2004, 2954 of 2004, 2955 of 2004, 2956 of 2004, 2957 of 2004, 2958 of 2004, 2977 of 2004

COMMON JUDGMENT

(per the Hon'ble Sri Justice Nooty Ramamohana Rao)

Dated December, 2007

Knk/Dsr

[1] (2001) 7 Supreme Court Cases 708
[2] AIR 1974 SC 555
[3] AIR 1978 SC 597
[4] AIR 1981 SC 487
[5] AIR 1990 SC 630
[6] AIR 1991 SC 101
[7] (1975) 2 Supreme Court Cases 175
[8] AIR 1974 SC 2098
[9] AIR 1957 SC 540
[10] 2003(5) ALT 24 (DB)