G. MOHAN RAO & ORS.

v.

STATE OF TAMIL NADU & ORS.

(Writ Petition (Civil) No. 1411 of 2020)

JUNE 29, 2021

[A.M. KHANWILKAR* AND DINESH MAHESHWARI, JJ.]

Tamil Nadu Land Acquisition Laws (Revival of Operation, Amendment and Validation) Act, 2019:

Constitutional validity of – Held: 2019 Act is a legitimate legislative exercise and is consistent with and within the four corners of Art.254 – Constitution of India.

Enactment of the 2019 Act by the State legislature – Legislative competence of – State legislature enacted three State land acquisition statutes-the 1978 Act, the 1997 Act and the 2001 Act – Union legislature thereafter enacted the 2013 Act for land acquisition across the country – Repugnancy between the Union and State enactments – In view thereof, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Act, 2014 was effected to the 2013 Act whereby s. 105-A inserted in the 2013 Act, making the provisions of the 2013 Act inapplicable to acquisition of land under the three State enactments – Thereafter, the 2014 Act, along with the 1997 Act and 2001 Act, challenged before the High Court on the grounds of repugnancy with the 2013 Act and violation of Article 14 – High Court struck down and declared all three State laws to be void for repugnancy and set aside all land acquisitions thereunder post coming into effect of the 2013 Act – To protect the nullified State enactments, the State legislature brought the 2019 Act – 2019 Act was applied retrospectively from 26.09.2013 with the objective to validate all pending acquisitions on and after that date under the State enactments, otherwise quashed by the High Court – State legislature enacting the 2019 Act, if transgressed the limits of its legislative competence having the effect of nullifying/overruling the judgment of the High Court – Held: Legislative intent behind the 2019 Act and more particularly, the assent accorded thereto by the

* Author

Governor and the President of India for overcoming repugnancy with the Act made by the Parliament, was to revive the operation of the State enactments declared as null and void being unconstitutional and repugnant to the Act made by the Parliament and to amend the same, as well as, validate the actions already taken by the State authorities – Concerned constitutional bodies understood the substance of what is placed before them – Concern is with the substance of the legislature and not its form – 2019 Act is a conscious attempt by the State legislature to bring four material aspects of land acquisition under the three State enactments at par with the 2013 Act-compensation, rehabilitation, resettlement and infrastructure facilities – Effect of the 2019 Act is to change the law retrospectively and not to overrule the judgment of the Court – There is no irreconcilability between the High Court judgment and the 2019 Act – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 – Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 – Tamil Nadu Highways Act, 2001 – Constitution of India – Art. 254.

Retrospective commencement of date of 2019 Act – Effect of – Held: A law is said to be made on the day it obtains Presidential assent u/Art. 111 or u/Art. 254 or of Governor u/Art. 200 – Commencement of law, unlike making of law, is not a part of the legislative process – For checking repugnancy, the relevant point of time would be the date of assent and not date of commencement – It may appear anomalous to operationalise the 2019 Act from 26.09.2013, a day prior to the making of the 2013 Act, but it does not make any impact on the validity thereof or its substance – Date has been chosen by the State legislature only by way of abundant caution and, rightly – It is relevant to overcome the repugnancy corresponding to the commencement of the 2013 Act – Adopting any other interpretation would not only be unwarranted but would also strike at the very purpose of a retrospective reviving and validating enactment – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013– Constitution of India – Art. 254.

Presidential assent u/Art. 254(2) – Requirement of – Plea that that the actual repugnancy was not pointed out to the President while

obtaining assent and thus, requirements of Art.254(2) unfilled – Held: Letter written by the State Government seeking presidential assent clearly demonstrates the communication was in compliance with the mandate of Art. 254 – Constitution of India – Art. 254.

Retrospective operation:

Retrospective operation of a statute – Concept of – Held: Retrospectivity is to cure including validate certain transactions of the past by making a law in the present and not to compete with the laws existing in the past at that point of time.

Enactment of a retrospective validating Act – Legislative competence of the State legislature – Held: When voidness is a result of repugnancy between the State law and law made by the Parliament, the State legislature can revive of such State law by enacting a subsequent amendment substantively changing the basis of the voidness and applying it retrospectively from a prior date.

Constitution of India: Art. 254 – Concept of repugnancy and its functioning under – Explained.

Dismissing the writ petitions, the Court Held:

1. The Tamil Nadu Land Acquisition Laws (Revival of Operation, Amendment and Validation) Act, 2019 is held to be a legitimate legislative exercise and it is found to be consistent with and within the four corners of Article 254 of the Constitution of India and also of the High Court judgment. [Para 56]

2.1 The impugned Act- Tamil Nadu Land Acquisition Laws (Revival of Operation, Amendment and Validation) Act, 2019 is in the nature of a validation Act i.e., an Act which validates something invalid in the eyes of law and to make such validation effective, it has been given a retrospective effect by the State. [Para 27]

2.2 The power of a legislature to legislate retrospectively is within the constitutional bounds. It emanates from the basic principle that a legislature is deemed to be the main protagonist of the public interest at large. For, the legislature is the bulwark of a democratic polity. It is also beyond debate that a legislature can validate an invalidated law by removing the cause for such invalidity through a legislative exercise. However, no doubt, there are some judicially recognised limitations to such power. [Para 28]

2.3 The legislature must be having power over the subject matter as also competence to make a validating law. There must be a clear validating clause coupled with substantive change in the earlier position. The retrospective operation must be specified clearly. There can be no express or declaratory overruling of the judgment of the Court. It is permissible for the legislature to make a decision of the Court ineffective by removing the material basis of the decision in the manner that the Court would not have arrived at the same conclusion had the corrected/modified position prevailed at the time of rendering the said earlier decision. [Para 29]

2.4 When voidness is a result of repugnancy between the State law and law made by the Parliament, that is, voidness under Article 254 of the Constitution, revival of such State law by enacting a subsequent amendment substantively changing the basis of the voidness and applying it retrospectively from a prior date is recognised time and again by this Court. [Para 30]

National Agricultural Cooperative Marketing Federation of India Ltd. & Anr. v. Union of India & Ors. **(2003) 5 SCC 23 : [2003] 3 SCR 1**; *Ujagar Prints & Ors. (II) v. Union of India & Ors.* **(1989) 3 SCC 488 : [1988] 3 Suppl.SCR 770**; *Indian Aluminium Co. & Ors. v. State of Kerala & Ors.***(1996) 7 SCC 637 : [1996] 2 SCR 23**; *State of Tamil Nadu v. State of Kerala & Anr.* **(2014) 12 SCC 696 : [2014] 12 SCR 875**; *P.L. Mehra & Ors. v. D.R. Khanna & Ors.* **AIR 1971 Delhi 1 – referred to.**

3.1 The High Court has correctly explained the concept of repugnancy under Article 254, but did not apply it in the same manner to identify the actual existence of repugnancy between the State Acts and law made by the Parliament. Assuming the presence of repugnancy as assumed by the High Court itself, the only enquiry before the High Court was regarding the method of revival of repugnant State laws. While undertaking such enquiry, it found Section 105-A of the 2014 Act to be an impermissible method of revival and called for re-enactment as per Article 254(2) of the Constitution. This, was the sole material basis of the judgment of the High Court. Strikingly, the High Court did not rule out revival and validation at all

and grounded the enquiry on due compliance with Article 254(2), for that is the only way for a State law to prevail in the face of a subsequent law made by the Parliament on the same subject. [Para 33]

3.2 The concept of repugnancy is meant to prevent the operation of two conflicting laws on the same field so as to result into uncertainty and inconsistency. Naturally, when a situation like that emerges, the subjects of law cannot be expected to approach a Court immediately and seek a resolution as to which of the two laws would operate on them. Thus, the Constitution provides for univocal and unambiguous solution in the form of Article 254 which makes it clear that in such circumstances, the law made by the Parliament ought to prevail and the subjects would be governed by it. However, it does not stop here. It goes beyond this basic declaration and gives an opportunity to the legislature to which the repugnant law belonged (State legislature) to revive it by obtaining the Presidential assent, thereby providing impetus to the competency of the State legislature to meet with the fallouts of repugnancy. Article 254 does not contemplate that the State law and law made by the Parliament must be the same *in toto*. For, to say that would render the whole objective of revival through Presidential assent as pointless exercise as it will serve no purpose for any State to enact a law exactly the same as the law made by the Parliament. In fact, any such dittoed and clichéd law made by the State legislature would be redundant. It (State) would rather follow the law made by the Parliament. Indubitably, Article 254 contemplates co-existence of Union and State laws, even if repugnant, but only after the repugnancy is assented to by the President. Differently put, Article 254 is a manifestation of decentralized law-making and recognition of the competency of the State legislature to modulate dispensation as may be expedient to that State, upon seeking Presidential assent for such deviation. [Para 34,35]

3.3 The basic ingredients for the application of Article 254(2) can be noted thus: (i) A law made by the legislature of the State (the 2019 Act in this case); (ii) Such law is made on a subject falling in the concurrent list (Entry-42 of the Concurrent List in this case); (iii) Such law is repugnant to the provisions of an earlier/existing law made by the Parliament (the 2013 Act

in this case); and (iv) The State law is reserved for the assent of the President and has received the same. Upon fulfilment of the said conditions, such State law would prevail in the State despite there being a law made by the Parliament on the same subject and despite being repugnant thereto. The most peculiar feature of Article 254(2) is the recognition of existence of repugnancy between the law made by the Parliament and State law and rendering that repugnancy inconsequential upon procurement of Presidential assent. In the instant case, the State legislature duly passed the 2019 Act (State law) on a subject of the concurrent list in the presence of a law made by the Parliament (2013 Act) and obtained the assent of the President to the same on 02.12.2019 after duly placing the State law before the President and duly stating the reason for reserving it for his assent. A priori, this is in compliance of Article 254(2). [Para 37]

3.4 The whole exercise of pointing out any repugnancy after a validating Act has obtained the assent of the President is otiose. For, the whole purpose of Article 254(2) is to resuscitate and operationalize a repugnant Act or repugnant provisions in such Act. For, the Constitution provides concurrent powers to the states as well on subjects falling in List-III. After duly complying with the requirements of Article 254(2), the Court is left with nothing to achieve by identifying repugnancy between the laws because the same has already been identified, accepted and validated as per the sanction of the Constitution under Article 254(2). To indulge in such an exercise would be intuitive. Moreover, the Court ought not to nullify a law made in compliance with Article 254(2) on the sole ground of repugnancy. For, repugnancy, in such cases, is said to have been constitutionalized. To put it differently, the very purpose of engaging in the exercise, in terms of clause (2) of Article 254, pre-supposes existence of repugnancy and is intended to overcome such repugnancy. Therefore, the endeavour of the petitioners in the instant matter to highlight repugnancy, is misdirected, flimsy and inconsequential. [Para 39]

3.5 For, the High Court judgment called for re-enactment for the proper fulfilment of Article 254(2). While enacting the 2019 Act, the State legislature neither individually placed the 1997 Act and 2001 Act in the form of fresh bills before the House,

nor introduced amending Acts for the said three enactments in order to incorporate the provisions of compensation, resettlement and rehabilitation. Instead, it framed one bill that sought to achieve four purposes – first, amend the State enactments to provide for different provisions of compensation to bring them in line with the law made by the Parliament; second, add fresh provisions relating to resettlement, rehabilitation and infrastructure amenities at par with the 2013 Act; third, revive the enactments declared to be repugnant and void by the High Court and validate them after passing this bill in the assembly and placing it before the President; and fourth, restore the validity of all past acquisitions under the State legislations, quashed by the High Court by making the Act operative from a retrospective date. [Para 40]

3.6 The enactment or re-enactment involves introducing a bill in the legislature, readings of the bill as mandated in the assembly rules of conduct, passing thereof by the legislature, placing it before the Governor or the President (if necessary). Such a bill could either delineate all the existing and fresh provisions from scratch or could incorporate those provisions by way of reference. The latter would fall in the category of referential legislation, as done in the instant case. The submission that such referential legislation is impermissible and re-enactment would mean introducing fresh bills containing the same provisions of 1997 Act and 2001 Act, is tenuous. No material difference would result in following either of the two methods. The legislature has made no attempt to hide the provisions as the 2019 Act is divided into three parts and each part is specifically dedicated to concerned State enactment. [Para 41]

3.7 To wit, the Statement of Objects and Reasons of the 2019 Act depicts the background in which it was thought appropriate to resort to such legislative tool, for the revival of the concerned State Acts declared to be repugnant by the High Court including to amend the same and for validating the actions already taken thereunder. The legislative intent behind the 2019 Act and more particularly, the assent accorded thereto by the Governor and the President of India for overcoming repugnancy with the Act made by the Parliament, was to revive the operation of the State enactments declared as null and void being unconstitutional and repugnant to the Act

made by the Parliament and to amend the same, as well as, validate the actions already taken by the State authorities. The overall scheme is well laid-out and is not cryptic in any manner so as to play a fraud upon the mandate of the Constitution. More importantly, the concerned constitutional bodies i.e., legislative assembly, Governor and President have understood the substance of what is placed before them. The concern is with the substance of the legislation, and not its form. [Para 42, 43]

3.8 Referential legislation is a recognized form of legislation and the Constitution does not attach unconstitutionality to a legislation for being framed in a certain manner until and unless it violates any provision of the Constitution. [Para 44]

3.9 Plenary power of legislature is not limited to the substance of legislation in context of the Seventh Schedule, but also extends to the determination of the form of legislation. To say that a particular form of legislative activity is not permissible would require a strong basis in the Constitution, which has not been pointed out by the petitioners. The Constitution envisages a judicial review of the existence of legislative competence and use of such competence to enact something that does not violate Part-III or other provisions of the Constitution. It does not envisage a review of the cosmetic characteristics of a legislation as long as the substance of such legislation has its roots in the Constitution. [Para 45]

Girnar Traders (3) v. State of Maharashtra & Ors. **(2011) 3 SCC 1 : [2011] 3 SCR 1**; *Krishna Chandra Gangopadhyaya & Ors. v. Union of India & Ors.* **(1975) 2 SCC 302 : [1975] Suppl. SCR 151**; *Ujagar Prints & Ors. (II) v. Union of India & Ors.***(1989) 3 SCC 488 : [1988] 3 Suppl.SCR 770 – relied on.**

3.10 The 2019 Act is a conscious attempt by the State legislature to bring four material aspects of land acquisition under the three State enactments at par with the 2013 Act i.e., compensation, rehabilitation, resettlement and infrastructure facilities. No doubt, certain features of the stated law made by the Parliament have been left out. To say that failure to import all provisions of the law made by the Parliament in the State enactments

results into non- removal of defects pointed by the High Court, is nothing but a palpable misreading of the judgment of the High Court. [Para 46]

3.11 Whereas, the judgment of the High Court does not even point out the absence of compensation/rehabilitation/ resettlement/ infrastructure related provisions as a defect in the State enactments. It nowhere points out the exact provisions from the State enactments which are repugnant to the law made by the Parliament. The only defect pointed out by the High Court was the impermissibility of Section 105-A (coming into effect from 01.01.2014), as a tool for reviving the State enactments once rendered repugnant (on 27.09.2013) due to law made by the Parliament. The State has since been advised to accept that defect pointed out by the High Court and has moved on from that thought process by devising a new legislative tool for validating the State enactments in line with Article 254(2). Had the legislature re-enacted Section 105-A even after the declaration of invalidity by the High Court, it would have been a case of non-removal of defect pointed out by the High Court. In fact, that would have been declaratory overruling of the judgment of the Court by the legislature, which, is simply impermissible. The effect of the 2019 Act is to change the law retrospectively and not to overrule the judgment of the Court. [Para 47]

3.12 Strikingly, the High Court nowhere issued a prohibition on revival and validation at all. It only disapproved one particular way of revival. Applying the test for determining whether a judgment is nullified is to see whether the law and the judgment are inconsistent and irreconcilable so that both cannot stand together, there is no irreconcilability between the High Court judgment and the 2019 Act. The 2019 Act is an evolution, not reiteration of the earlier position much less regression thereof. Even noting the test that the ultimate query should be whether the Court would have given the same decision had the circumstances been the altered ones, there is no indication in the High Court order that the Court would have arrived at the same decision even today. For, the method prescribed under Article 254(2) has been followed now. [Para 48, 49]

State of Tamil Nadu v. State of Kerala & Anr. **(2014) 12 SCC 696 : [2014] 12 SCR 875; *Shri Prithvi Cotton Mills Ltd. & Anr. vs. Broach Borough Municipality & Ors.* (1969) 2 SCC 283 : [1970] 1 SCR 388 – relied on.**

State of Karnataka & Ors. v. Karnataka Pawn Brokers Association & Ors. **(2018) 6 SCC 363 : [2018] 10 SCR 409 – distinguished.**

Pt. Rishikesh & Anr. v. Salma Begum **(1995) 4 SCC 718 : [1995] 3 SCR 1062 – referred to.**

4. In the instant case, the Letter No. 13566/Rev-Dfg/2019-1 dated 25.07.2019 written by the State Government seeking assent clearly demonstrates that the three State enactments viz. Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978; Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997; and Tamil Nadu Highways Act, 2001 were made for the purpose of speedy acquisitions. It further states that the law made by the Parliament rendered the three enactments repugnant and out of operation owing to the High Court judgment. It also states that the State has considerable interest, having a strong bearing on the public exchequer, in saving and reviving the three State enactments. It also clearly specifies the law made by the Parliament, which could be coming in the way of the State enactments for due consideration by the President. Suffice it to say that the communication was in compliance with the mandate of Article 254 as well as with the decision of this Court in *Kaiser-I-Hind Pvt. Ltd.* case. [Para 52]

Kaiser-I-Hind Pvt. Ltd. & Anr. v. National Textile Corpn. (Maharashtra North) Ltd. & Ors. **(2002) 8 SCC 182 : [2002] 2 Suppl.SCR 555 – relied on.**

5.1 The submission that retrospectivity from 26.09.2013 was fatal to the 2019 Act as on that date, there was no 2013 Act in operation and when the 2013 Act came into operation on 27.09.2013, the State enactments would again become repugnant, is untenable. For, a law is said to be "made" on the day it obtains Presidential assent. Throughout the chapter on federal relations, the word "made" or "make" is used in the Constitution while referring to legislative activity. Making of law implies a clearly demarcated procedure which

culminates with the assent of the President under Article 111 or under Article 254 (if legislated on same subject matter) or of Governor under Article 200. Articles 111, 200 and 254 are part of the constitutionally prescribed legislative procedure itself. The other concept relevant is of "commencement". Commencement of law, unlike making of law, is not a part of the legislative process. Rather, it is an offshoot of the successful culmination of the legislative process. In other words, commencement is a question which follows the legislative process and intent and does not overlap with it. The commencement of law could be from the date of making (assent), or from a back date or even from a future date. But it does not affect the fact that the legislation has stepped into the statute book and the provisions relating to repugnancy as well as other provisions of the chapter of legislative relations between the Union and the State have become active from that point onwards, as they are concerned with the date of making. Thus, for checking repugnancy, the relevant point of time would be the date of making i.e., date of assent and not date of commencement. [Para 53]

State of Kerala & Ors. v. Mar Appraem Kuri Company Limited & Anr. **(2012) 7 SCC 106 : [2012] 4 SCR 448– relied on.**

5.2 The primary objective of retrospective application of a law is to alter an undesirable past circumstance and it is meant to apply to things which have already happened. The underlying purpose of retrospectivity, therefore, is to cure including validate certain transactions of the past by making a law in the present and not to compete with the laws existing in the past at that point of time. In this case, the objective was to save and validate past acquisitions under the three State enactments, which were valid until the commencement of the 2013 Act but stood quashed due to the High Court decision. This was also for altering the basis of the law in existence at that point of time and providing for benefits at par with the 2013 Act, so far as it was fit in the wisdom of the State legislature. No doubt, it may appear anomalous to operationalise the 2019 Act from 26.09.2013, a day prior to the making of the 2013 Act, but it does not make any impact

on the validity thereof or its substance. The date has been chosen by the State legislature only by way of abundant caution and, rightly. It is obviously relevant to overcome the repugnancy corresponding to the commencement of the 2013 Act. Adopting any other interpretation would not only be unwarranted as per the constitutional scheme but would also strike at the very purpose of a retrospective reviving and validating enactment. [Para 54]

Halsbury's Laws of England – referred to.

Saghir Ahmad & Anr. v. State of U.P. & Ors. **AIR 1954 SC 728 : [1955] 1 SCR 707; *Union of India & Anr. v. Tarsem Singh & Ors.* (2019) 9 SCC 304 : [2019] 13 SCR 49** *Nagpur Improvement Trust & Anr. v. Vithal Rao & Ors.* **(1973) 1 SCC 500 : [1973] 3 SCR 39; *P. Vajravelu Mudaliar & Anr. v. The Special Deputy Collector for Land Acquisition, West Madras & Anr.* AIR 1965 SC 1017 : [1965] 1 SCR 614; *B.K. Pavitra & Ors. v. Union of India & Ors.* (2019) 16 SCC 129 : [2019] 7 SCR 1086; *Jaora Sugar Mills (P) Ltd. v. State of Madhya Pradesh & Ors.* [1966] 1 SCR 523; *M.P.V. Sundararamier and Co. v. The State of Andhra Pradesh & Anr.* [1958] 1 SCR 1422; *State of Gujarat & Anr. v. Shri Ambica Mills Ltd., Ahmedabad & Anr.* (1974) 4 SCC 656 : [1974] 3 SCR 760; *Devi Das Gopal Krishnan & Ors. v. State of Punjab* [1967] 3 SCR 557; *Municipal Committee, Amritsar & Anr. v. State of Punjab* [1969] 3 SCR 447; *The State of Madhya Pradesh v. G.C. Mandawar* [1955] 1 SCR 599 – **referred to.**

CIVIL ORIGINAL JURISDICTIONL Writ Petition (Civil) No. 1411 of 2020.

(Under Article 32 of the Constitution of India)

With

W.P. (C) Nos. 173 and 174 of 2021

G. MOHAN RAO & ORS. v.
STATE OF TAMIL NADU & ORS.

K.K.Venugopal, AG., Balaji Srinivasan, AAG., Vijay Narayan, Adv. Gen., P. Wilson, Aman Sinha, Mukul Rohatgi, Sr. Advs., M. Yogesh Kanna, Raja Rajeshwaran S., Aditya Chadha, Ms. Uma Prasuna Bachu, Siddhanth Kohli, Ms. Pallavi Sengupta, D. Kumanan, Richardson Wilson, A. Mohan Raj, Ms. Charulata Chaudhary, Ms. Suhrith Parthasarathy, Ms. Rashmi Nandakumar, Shankar Narayanan, Ms. Amritha Sathyajith, Ms. Ayushma Awasthi, Senthil Jagadeesan, M. Thangathurai, Ms. Mrinal Kanwar, Ms. Sonakshi Malhan, Ms. Suriti Chowdhary, Sandeep Kumar Mahapatra, Sugam Kumar Jha, Ms. Mrinmayee Sahu, Advs. for the petitioners.

P. Wilson, Mukul Rohatgi, Aman Sinha, Sr. Advs., D. Kumanan, Richardson Wilson, Senthil Jagadeesan, M. Thangathurai, Ms. Mrinal Kanwar, Ms. Sonakshi Malhan, Ms. Suriti Chowdhary, Pravesh Thakur, Nikilesh Ramachandran, N. Subramaniyan, Pranav Sachdeva, Jatin Bhardwaj, Ms. Suhrith Parthasarathy, Ms. Rashmi Nandakumar, Shankar Narayanan, Ms. Amritha Sathyajith, Ms. Ayushma Awasthi, Sandeep Kumar Mahapatra, Sugam Kumar Jha, Ms. Mrinmayee Sahu, V. Balaji, C. Kannan, Ms. Neha Singh, Rakesh K. Sharma, Ms. Deepika Nandakumar, Naresh Kumar, Saurabh Mishra, Onkar Singh, Ms. Neha Tripathi. Advs. for the respondents.

The Judgment of the Court was delivered by

A. M. KHANWILKAR, J.

1. The Indian Constitution ordains a structure of governance wherein the three organs of the State are entrusted with independent functions. The Legislature legislates on the law, the Executive puts the law into execution and the Judiciary being the sentinel on the *qui vive* reviews and enforces the law in light of its primary role as the guardian of the Constitution. Thus, we the people of India have embraced a system of separation of powers for securing checks and balances. Consequently, in day-to-day functioning of the government institutions many a times a perception emerges about the "overstepping" between three organs. Similar grievance has been made in the case at hand. The extent and manner in which the basis of a judicial determination of unconstitutionality of a legislation could be altered by the legislature by subsequently enacting a validating or reviving legislation, without overstepping on the jurisdiction of the constitutional Court, is the pivotal issue in this case.

FACTS IN BRIEF

2. The present case is outcome of a long chain of proceedings at different forums. Traversing the entire storyline may not be relevant for the determination of the question at hand. Thus, we are delineating only the relevant facts in brief for a proper perspective.

3. The resource in the form of land is an essential requirement for the development of a nation. At the same time, property rights of individuals have always had an important status in the hierarchy of rights. To resolve this apparent conflict between right to property of individuals and duty of State towards holistic development, the Land Acquisition Act, 1894[1] had been enacted as a uniform law for the whole country with the short title:

"An Act to amend the law for the acquisition of land for public purposes and for Companies."

The 1894 Act was in force throughout the country. After 1950, when the Constitution came into force, we adopted the principle of distribution of powers and the legislative competence of the Union and States. It was differentiated on the basis of the Union List (List-I), State List (List-II) and the Concurrent List (List-III). As regards the subjects listed in the Concurrent List, the Union and States have been given concurrent powers to legislate. In pursuance thereof, the State of Tamil Nadu carved out three public purposes for which a different land acquisition law was envisioned. The three sectors were highways, industries and Harijan welfare schemes. Accordingly, the Tamil Nadu legislative assembly enacted the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978[2], Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997[3] and Tamil Nadu Highways Act, 2001[4]. Be it noted that besides the 1894 Act, the field of land acquisition was also governed by another enactment made by the Parliament being a special legislation, namely, the National Highways Act, 1956[5]. This Act was enacted to provide for the declaration of certain highways to be national highways and for matters connected

1 for short, "1894 Act"
2 for short, "1978 Act"
3 for short, "1997 Act"
4 for short, "2001 Act"
5 for short, "1956 Act"

therewith including power to the competent authority to acquire lands required for national highways. Since there was a law made by the Parliament operating in the same field regarding land acquisition, the State obtained Presidential assent as per Article 254 to avoid repugnancy and thus, the aforementioned State Acts prevailed in the State.

4. The 1894 Act was found to be inadequate on certain aspects, including measures relating to compensation, rehabilitation and resettlement, and thus, the Parliament enacted the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013[6]. The Act received assent of the President of India on 27.09.2013 and came into force w.e.f. 01.01.2014. The 2013 Act carried a special provision – Section 105 – to declare that this Act shall have no applicationto certain enactments made by the Parliament relating to land acquisition specified in the Fourth Schedule. This was however, subject to sub-section (3) whereunder the Central Government had been bestowed power to issue notification within one year from the date of commencement of the Act, to notify that the provisions of 2013 Act shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule relating to determination of compensation, rehabilitation and resettlement being beneficial to affected families with such exceptions or modifications as prescribed. Thereafter, on 28.04.2015 vide S.O. 2368 (E), the Central Government extended the provisions relating to compensation (First Schedule), rehabilitation and resettlement (Second Schedule) and infrastructure amenities (Third Schedule), as provided in the 2013 Act, to the enactments placed in the Fourth Schedule of the Act (which included 1956 Act) as well — so as to extend the benefit of the 2013 Act to all categories of acquisitions irrespective of the purpose.

5. On the lines of Section 105 read with the Fourth Schedule of the 2013 Act, the State of Tamil Nadu also sought to protect and reserve its three State enactments — 1978 Act, 1997 Act and 2001 Act — from the operation of the 2013 Act as it found its own legislations to be expedient. For this purpose, a State amendment, namely, the

6 for short, "2013 Act"

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Act, 2014[7] was effected to the 2013 Act whereby Section 105-A came to be inserted in the 2013 Act. The purport of the State amendment in terms of the 2014 Act made the provisions of the 2013 Act inapplicable to acquisition of land under the three State enactments mentioned in the Fifth Schedule of the 2013 Act which also came to be inserted by the same State amendment Act, 2014. The State legislature, thus, inserted a new Schedule — Fifth Schedule — in the 2013 Act and placed the three State laws in that schedule. The 2014 Act received Presidential assent on 01.01.2015 and was applied retrospectively from 01.01.2014 onwards i.e., the date of coming into force of the 2013 Act. The retrospective date was chosen by the State legislature with the objective to protect the acquisition under the three State enactments from being rendered void due to repugnancy after coming into effect of the 2013 Act. However, this legislative exercise to protect and preserve the three state enactments by way of insertion of Section 105A and Fifth Schedule to 2013 Act turned out to be fatal, as noticed *infra*.

6. The 2014 Act, along with the 1997 Act and 2001 Act, came to be challenged before the High Court of Judicature at Madras, primarily on twin grounds of repugnancy with the 2013 Act and violation of Article 14 due to manifest arbitrariness and discrimination in the operation of the State Acts. Pertinently, on 18.09.2014, the High Court vide an interim order in W.P. (C) 24182/2014, allowed the acquisition proceedings to go on with the caveat that no final order shall be passed and status quo as regards possession on the land be maintained. Thereafter, the High Court vide judgment and order dated 03.07.2019 in a batch of petitions with W.P.(C) No. 22448/2018[8] as main matter, framed four issues in the case thus:

"**Issues:**

74. The issues therefore, which arise for our consideration are:

1) Are the State Enactments void because of inherent Arbitrariness?

7 for short, "2014 Act"
8 (2019) 5 MLJ 641

2) Did the President of India fail to apply his mind while granting assent to Section 105A?

3) Did the Impugned State Enactments become repugnant once the Parliament 'made' the New Land Acquisition Act. If so, did the presidential assent to Section 105A inserted by Tamil Nadu Act No. 1 of 2015, revive the three acts?

4) Are the provisions of Section 105A(2) and (3) mandatory, and if so, whether non-compliance of these provisions fatal to the validity of these enactments."

7. The High Court vide judgment and order dated 03.07.2019 rejected the challenge as regards the violation of Article 14 and non-application of mind by the President while granting assent. On the point of repugnancy, however, it found that the State enactments became repugnant to the 2013 Act and thus void, on 27.09.2013 itself (date of Presidential assent to the 2013 Act). Resultantly, subsequent enactment of 2014 Act w.e.f. 01.01.2014 would not go on to reactivate the three enactments. The High Court held that the State enactments could only be revived through re-enactment by the Legislative Assembly followed by fresh assent of the President in accordance with Article 254 of the Constitution. As a consequential order, it also quashed all pending acquisition proceedings under the three enactments on and after 27.09.2013. The said decision is under challenge before this Court in connected but separate proceedings and we may advert to it at the appropriate stage, as and when need arises for decision of the present case.

8. On 19.07.2019, the State Government made an attempt to revive the three enactments held to be void and unconstitutional by the High Court by using a legislative tool. It tabled a Bill to revive the operation of the Tamil Nadu Acquisition for Harijan Welfare Schemes Act, 1978, the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 and the Tamil Nadu Highways Act, 2001 on the floor of the legislative assembly. The bill was passed by the Assembly titled as "The Tamil Nadu Land Acquisition Laws (Revival of Operation, Amendment and Validation) Act, 2019[9]". This Act was sent for the assent of the

9 for short, "2019 Act"

President in terms of Article 254(2) and the same was granted on 02.12.2019. Notably, the 2019 Act was applied retrospectively from 26.09.2013 with the objective to validate all pending acquisitions on and after that date under the State enactments, otherwise quashed by the High Court. The said Act of 2019 is under challenge before us in the instant batch of petitions on grounds delineated hereinafter.

CONTENTIONS OF PARTIES

9. The petitioners are landowners whose lands are sought to be acquired under the 1997 Act and 2001 Act. The primary contention of the petitioners is that the legislative tool adopted by the State legislature to revive unconstitutional enactments is a direct attempt to overrule and nullify the judgment of the High Court and the same is impermissible in the constitutional scheme as it violates the doctrine of separation of powers. It is submitted that on being declared unconstitutional due to repugnancy, the only option available to the State legislature was to re-enact the repugnant enactments after removing the repugnant areas and pass it afresh in the Assembly, followed by a fresh Presidential assent. It is further urged that the permissible method is to remove the material basis of a judgment by correcting the anomalies pointed out by the Court and re-enact the legislation. It is added that amending an unconstitutional enactment cannot be a permissible method of revival because the moment an enactment is declared as unconstitutional, there remains nothing to amend. To support this position, reliance has been placed upon ***State of Karnataka & Ors. vs. Karnataka Pawn Brokers Association & Ors.***[10], ***Pt. Rishikesh & Anr. vs. Salma Begum***[11], ***Saghir Ahmad & Anr. vs. State of U.P. & Ors.***[12] and ***P.L. Mehra & Ors. vs. D.R. Khanna & Ors.***[13].

10. To buttress the above submission, it is urged that, despite incorporating the provisions relating to compensation, rehabilitation and resettlement from the 2013 Act, the 2019 Act is still repugnant to the 2013 Act as it fails to incorporate material provisions relating to social impact assessment, timelines for various steps involved

10 (2018) 6 SCC 363
11 (1995) 4 SCC 718
12 AIR 1954 SC 728
13 AIR 1971 Delhi 1

in the process of acquisition and other provisions relating to fair procedure. Thus, it cannot be termed as a curative legislation and would again fall foul of Article 254.

11. The petitioners have emphasized on the meaning of the word "made" as used in Article 254 to assert that retrospectivity in the 2019 Act is actually fatal to its own validity. It is stated that the 2019 Act was made on 26.09.2013 (date of retrospective commencement) and not on 02.12.2019 (date of Presidential assent), whereas the 2013 Act was made on 27.09.2013. Thus, there was no Act made by the Parliament in force on 26.09.2013 and the moment the 2013 Act was made on the next day, the 2019 Act again became repugnant.

12. The petitioners further submit that the 2019 Act has been enacted without a determining principle as it fails to comply with the material aspects of the 2013 Act and stands to discriminate with the people of the State by subjecting them to a different and less advantageous procedure of land acquisition. To buttress, it is added that equally placed persons cannot be subjected to two different laws as it would be violative of Article 14 and even if this course is to be adopted, the classification has to be duly justified in light of the settled principle of intelligible differentia and reasonable classification. It is further added that the State must show special circumstances to demonstrate their inability to apply the Act made by the Parliament in the State and without such circumstances, the State legislature has no power to deviate and frame its own law. Reliance has been placed on ***Union of India & Anr. vs. Tarsem Singh & Ors.***[14] and ***Nagpur Improvement Trust & Anr. vs. Vithal Rao & Ors.***[15].

13. In W.P. (C) No. 173/2021 and W.P. (C) No. 174/2021, similar arguments have been raised to assail the validity of 2019 Act and we are not reiterating the same to avoid repetition. In addition, the petitioners in these two petitions have also assailed the 1997 Act and 2001 Act dealing with industries and highways respectively. The petitioners have attempted a comparative analysis of the State enactments and the Act made by the Parliament to illustrate discrimination and unequal

14 (2019) 9 SCC 304
15 (1973) 1 SCC 500

treatment with equally placed persons merely on the basis of purpose of acquisition. It is urged that despite incorporating provisions relating to compensation from the 2013 Act, the State enactments do not provide the same amount of compensation due to absence of fixed timelines for acquisition and a lapse provision in case of undue delay. Placing reliance upon ***P. Vajravelu Mudaliar & Anr. vs. The Special Deputy Collector for Land Acquisition, West Madras & Anr.***[16], it is submitted that the State enactments violate Articles 14, 19, 21 on account of unreasonable classification between those persons whose lands are acquired for industrial purposes and those whose lands are acquired for other purposes thereby impacting their right to trade and occupation coupled with right to livelihood. It is further submitted that deprivation of property without complying with due procedure is also violative of Article 300A of the Constitution.

14. As regards the Presidential assent, it is urged that the same is vitiated as the State enactments were not placed before the President and attention was not drawn towards the provisions which are repugnant to the Act made by the Parliament. To buttress this submission, reliance has been placed upon the dictum of this Court in ***Kaiser-I-Hind Pvt. Ltd. & Anr. vs. National Textile Corpn. (Maharashtra North) Ltd. & Ors.***[17]**.**

15. Responding to the petitioners, learned Attorney General for India advanced arguments for the State of Tamil Nadu. It is submitted that the 2019 Act is an acceptance on the part of the State that the previous measure of enacting Section 105-A to do away with repugnancy did not commend to the High Court and therefore, the State adopted another legislative measure of enacting a validating/curative Act in accordance with its legislative competence under List-III of the Seventh Schedule. Placing reliance upon ***State of Tamil Nadu vs. State of Kerala & Anr.***[18], it is submitted that this Court has laid down twin tests for testing the constitutionality of validating enactments, namely — presence of legislative competence and removal of defect found by the Court.

16 AIR 1965 SC 1017
17 (2002) 8 SCC 182
18 (2014) 12 SCC 696

16. The respondents have further submitted that the power of the State legislature is plenary in its own field and it is well within its competence to amend a law retrospectively as well as to remove the cause for invalidation by enacting a new law altogether. It has been added that the 2019 Act has been enacted by the legislature in its wisdom keeping in mind the State interest, public interest and land owners' interest. To support these submissions, reliance has been placed upon ***Karnataka Pawn Brokers Association***[19] and ***B.K. Pavitra & Ors. vs. Union of India & Ors.***[20] and ***Jaora Sugar Mills (P) Ltd. vs. State of Madhya Pradesh & Ors.***[21].

17. The respondents have also attacked the judgment of the High Court stating that the judgment does not undertake any examination to determine the repugnancy between provisions and fails to severe the repugnant provisions from the rest. It is submitted that Article 254 does not contemplate striking down an entire enactment due to repugnancy between some provisions of the Act made by the Parliament and State enactments, and therefore, there is no need for the State legislature to re-enact the entire legislation to rectify the repugnancy between some provisions. To support these submissions, reliance has been placed upon ***M.P.V. Sundararamier and Co. vs. The State of Andhra Pradesh & Anr.***[22], ***State of Gujarat & Anr. vs. Shri Ambica Mills Ltd., Ahmedabad & Anr.***[23], ***Devi Das Gopal Krishnan & Ors. vs. State of Punjab & Ors.***[24] and ***Municipal Committee, Amritsar & Anr. vs. State of Punjab & Ors.***[25]. Furthermore, it is urged that even after the declaration of repugnancy, an Act does not get wiped off from the statute book and it can be amended to remove the defect in terms of the decision of this Court in ***State of Kerala & Ors. vs. Mar Appraem Kuri Company Limited & Anr.***[26].

18. The respondents have submitted that the 2019 Act is an effective re-enactment of the State Acts, in line with the decision of the High Court. Further, the key features of 2013 Act, including those relating to

19 supra at Footnote No. 10
20 (2019) 16 SCC 129
21 (1966) 1 SCR 523
22 (1958) 1 SCR 1422
23 (1974) 4 SCC 656
24 (1967) 3 SCR 557
25 (1969) 3 SCR 447
26 (2012) 7 SCC 106

compensation, resettlement and rehabilitation, have been introduced in all three State enactments by way of reference vide 2019 Act. It is added that, for the purpose of obtaining assent, there is no difference between placing the entire 2019 Act before the President and placing the three State Acts individually. Reliance has been placed upon ***Krishna Chandra Gangopadhyaya & Ors. vs. Union of India & Ors.***[27] to support the permissibility of referential legislation.

19. As regards the date for deciding repugnancy, it is submitted by the respondents that the date of making of the State law would be relevant. Further, it is added that the date of making would be the date of Presidential assent i.e., 02.12.2019 in this case and merely because the 2019 Act has been applied from a retrospective date, that date would not be referred to as the date of making the Act, for that would defeat the purpose of the entire exercise behind a validating legislation. To explain the meaning of the word "made", as used in Article 254, support has been drawn from the decision of this Court in ***Mar Appraem Kuri Company Limited***[28].

20. The respondents have urged that for the purpose of determining the constitutionality of an independent legislation, as the 2019 Act, there can be no comparative analysis between provisions of the Act made by the Parliament and the impugned State Acts. It is added that the State is well within its competence to deviate from the law made by the Parliament and obtain assent of the President to such deviation. In support, reliance has been placed upon the decision of this Court in ***The State of Madhya Pradesh vs. G.C. Mandawar***[29].

21. We have heard Shri P. Wilson, learned senior counsel and Shri Suhrith Parthasarthy, learned counsel for the petitioners, Shri K.K. Venugopal, learned Attorney General for India and Shri Aman Sinha, learned senior counsel for the respondents.

22. Before traversing the arguments on the issues involved in the case, we deem it fit to describe the scope of enquiry at the very outset. We had clarified during the course of the hearing that the issues relating to the constitutional validity of the 1997 Act and 2001 Act in

27 (1975) 2 SCC 302
28 supra at Footnote No. 26
29 (1955) 1 SCR 599

context of Part-III of the Constitution have since been raised in the Special Leave Petitions emanating from the decision of the High Court of Judicature at Madras, dated 03.07.2019. The same may be considered in the aftermath of this decision, as noted in our order dated 23.02.2021.

23. Therefore, our enquiry in this case is limited to whether the 2019 Act has been validly enacted and thus, succeeds in reviving the State Acts declared as null and void by the High Court, for being repugnant to the 2013 Act and amending the same including validating actions taken thereunder.

24. In light of the aforesaid facts and grounds urged by the parties, the following issues arise for our consideration:

(i) Whether the State legislature had legislative competence to enact the 2019 Act, a retrospective validating Act?

(ii) Whether the State legislature transgressed the limits of its legislative competence having the effect of nullifying/overruling the judgment of the High Court, by enacting the 2019 Act?

(iii) Whether the 1997 Act and 2001 Act again fall foul of Article 254 on account of being repugnant to the 2013 Act, owing to the date of retrospective commencement of the 2019 Act?

CONSIDERATION

LEGISLATIVE COMPETENCY

25. Chapter-I titled "Legislative Relations" of Part-XI of the Constitution provides for the distribution of legislative powers between the Union and the States. Article 245 talks about the territorial competence of the Union and the States, and whereas it empowers the Parliament to legislate for the entire territory of India (even beyond in certain circumstances), the State legislature is empowered to legislate only for the territory of the State. Within its territory, the States are empowered to legislate on any of the subjects of List-II (State List) and List-III (Concurrent List) of the Seventh Schedule. The concurrent list contains subjects which can be legislated upon both by the Union and States. Even within the State list, the legislative power of the State cannot be said to be absolute and can be subjected to intervention of the Parliament under certain circumstances such as national emergency,

national interest, desire expressed by legislatures of two or more States etc., as delineated by Articles 249 to 253. It is crystal clear from this constitutional scheme that the balance of power tilts in favour of the Union in multiple circumstances. An example of this tilt is manifested in Article 254 of the Constitution which is a subject of debate in the present case. The same reads thus:

"**254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States. —**

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

26. Notably, Entry-42 of List-III enables both Parliament and State legislature to legislate on "Acquisition and requisitioning of property" under which the land acquisition laws are enacted. Using this entry, the State legislature had enacted the stated Acts including the 1997 Act and the 2001 Act. Using the same entry, the Union legislature had thereafter enacted the 2013 Act for land acquisition across the country. The Union and State enactments clashed with each other and the High Court found the State enactments to be null and void

in the face of the Act made by the Parliament. To protect the nullified State enactments, the State legislature again resorted to Entry-42 of List-III and brought the 2019 Act with the objective of "revival of operation", "amendment" and "validation" of the State enactments.

27. As the name suggests, the impugned Act is in the nature of a validation Act i.e., an Act which validates something invalid in the eyes of law and to make such validation effective, it has been given a retrospective effect by the State. Whereas the subject-matter legislative competence is manifest from List-III of the VII Schedule read with Article 246. Despite that, an in-principle question has been raised on the competence of the State legislature to pass a revival Act with retrospective effect.

28. The constitutional scheme and decisions of this Court on the subject untangle a settled position that the power of a legislature to legislate retrospectively is within the constitutional bounds. It emanates from the basic principle that a legislature is deemed to be the main protagonist of the public interest at large. For, the legislature is the bulwark of a democratic polity. It is also beyond debate that a legislature can validate an invalidated law by removing the cause for such invalidity through a legislative exercise. However, no doubt, there are some judicially recognised limitations to such power as summed up by this Court in ***National Agricultural Cooperative Marketing Federation of India Ltd. & Anr. vs. Union of India & Ors.***[30] thus:

"**15.** The legislative power either to introduce enactments for the first time or to amend the enacted law with retrospective effect, is not only subject to the question of competence but is also subject to several judicially recognized limitations with some of which we are at present concerned. **The first is the requirement that the words used must expressly provide or clearly imply retrospective operation**.[31] **The second is that the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional**.[32] **The third is apposite where**

30 (2003) 5 SCC 23
31 S.S. Gadgil v. Lal and Co., AIR 1965 SC 171, 177; J.P. Jani v. Induprasad Devshanker Bhatt, AIR 1969 SC 778, 781.
32 Rai Ramkrishna v. State of Bihar, AIR 1963 SC 1667 : (1964) 1 SCR 897, 915; Jawaharmal v. State of Rajasthan, AIR 1966 SC 764 : (1966) 1 SCR 890, 905; Ujagar Prints (II) v. Union of India, (1989) 3 SCC 488, 517 : 1989 SCC (Tax) 469

the legislation is introduced to overcome a judicial decision. Here the power cannot be used to subvert the decision without removing the statutory basis of the decision.[33]"

(emphasis supplied)

It further stated thus:

"17. **Avalidating clause coupled with a substantive statutory change is therefore only one of the methods to leave actions unsustainable under the unamended statute, undisturbed.** Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent."

(emphasis supplied)

In ***Ujagar Prints & Ors. (II) vs. Union of India & Ors.***[34], a 5-judges bench of this Court categorically observed that retrospective validating statutes are permissible as follows:

"**65**. ...**A competent legislature can always validate a law which has been declared by courts to be invalid, provided the infirmities and vitiating infactors noticed in the declaratory judgment are removed or cured. Such a validating law can also be made retrospective.** If in the light of such validating and curative exercise made by the legislature — granting legislative competence — the earlier judgment becomes irrelevant and unenforceable, that cannot be called an impermissible legislative overruling of the judicial decision. **All that the legislature does is to usher in a valid law with retrospective effect in the light of which earlier judgment becomes irrelevant.** (See Sri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality[35])."

(emphasis supplied)

The Court also highlighted the utility of such validating enactments in a practical scenario thus:

33 Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality, (1969) 2 SCC 283; Lalitaben v. Gordhanbhai Bhaichandbhai, 1987 Supp SCC 750; Janapada Sabha Chhindwara v. Central Provinces Syndicate Ltd., (1970) 1 SCC 509; Indian Aluminium Co. v. State of Kerala, (1996) 7 SCC 637.

34 (1989) 3 SCC 488

35 (1969) 2 SCC 283 : (1970) 1 SCR 388

"**66.Such legislative expedience of validation of laws is of particular significance and utility and is quite often applied, in taxing statutes. It is necessary that the legislature should be able to cure defects in statutes. No individual can acquire a vested right from a defect in a statute and seek a windfall from the legislature's mistakes.** Validity of legislations retroactively curing defects in taxing statutes is well recognised and courts, except under extraordinary circumstances, would be reluctant to override the legislative judgment as to the need for and wisdom of the retrospective legislation. ...."

(emphasis supplied)

In ***Indian Aluminium Co. & Ors. vs. State of Kerala & Ors.***[36], the Court again culled out certain principles and we find it useful to reproduce the following two passages relevant to the case at hand:

"**56.** …

(1) to (7) …

(8) **In exercising legislative power, the legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions are such that the previous decision would not have been rendered by the court, if those conditions had existed at the time of declaring the law as invalid. It is also empowered to give effect to retrospective legislation with a deeming date or with effect from a particular date.** The legislature can change the character of the tax or duty from impermissible to permissible tax but the tax or levy should answer such character and the legislature is competent to recover the invalid tax validating such a tax on removing the invalid base for recovery from the subject or render the recovery from the State ineffectual. It is competent for the legislature to enact the law with retrospective effect and authorise its agencies to levy and collect the

36 (1996) 7 SCC 637

tax on that basis, make the imposition of levy collected and recovery of the tax made valid, notwithstanding the declaration by the court or the direction given for recovery thereof.

(9) **The consistent thread that runs through all the decisions of this Court is that the legislature cannot directly overrule the decision or make a direction as not binding on it but has power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law of the Constitution and the legislature must have competence to do the same.**"

(emphasis supplied)

In ***State of Tamil Nadu***[37], the Court laid down twin tests for testing validity of a validating law thus:

"**126.** On deep reflection of the above discussion, in our opinion, the constitutional principles in the context of Indian Constitution relating to separation of powers between the legislature, executive and judiciary may, in brief, be summarized thus:

126.1 to 126.5 .....

126.6.If the legislature has the power over the subject-matter and competence to make a validating law, it can at any time make such a validating law and make it retrospective. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation law it removes the defect which the courts had found in the existing law."

(emphasis supplied)

29. The line of decisions discussed above reveals a settled position as regards the competency of legislature to enact a retrospective validating Act, *inter alia*, delineated as under:

(i) The legislature must be having power over the subject matter as also competence to make a validating law.

37 supra at Footnote No. 18

(ii) There must be a clear validating clause coupled with substantive change in the earlier position.

(iii) The retrospective operation must be specified clearly.

(iv) There can be no express or declaratory overruling of the judgment of the Court.

(v) It is permissible for the legislature to make a decision of the Court ineffective by removing the material basis of the decision in the manner that the Court would not have arrived at the same conclusion had the corrected/modified position prevailed at the time of rendering the said earlier decision.

Notably, the factum of power vested in the State legislature over the subject matter and its competence to make a validating law is not in issue or disputed in the present case.

30. Relying upon the decision of Delhi High Court in ***P.L. Mehra***[38], the petitioners have urged that the moment the Court declared the State enactments as null and void, they were wiped off the statute book and further amendment therein was simply not permissible to revive the same. On a reading of this decision, it is clear that the Court was analysing the effect of voidness in the light of Article 13 i.e., voidness due to violation of any of the provisions of Part-III of the Constitution. This decision, in our view, has no bearing on the issues involved in the present proceedings. Thus, without dilating on this decision, suffice it to observe that when voidness is a result of repugnancy between the State law and law made by the Parliament, that is, voidness under Article 254 of the Constitution, revival of such State law by enacting a subsequent amendment substantively changing the basis of the voidness and applying it retrospectively from a prior date is recognised time and again by this Court, as discussed above. We say no more.

DOES 2019 ACT NULLIFY THE JUDGMENT OF THE HIGH COURT?

31. Having understood the legislative competency of the State legislature in principle and in law, we may now examine whether the legislature

38 supra at Footnote No. 13

acted in violation of the above stated principles and thus, exceeded its competency. For that, we must first examine the material basis of the judgment of the High Court and see whether the substantive changes brought about by enacting the 2019 Act result into successful revival of the State enactments.

32. The Madras High Court framed four issues for consideration, as produced in the initial part of this judgment. We are not concerned with any other issue except issue no. 3 relating to repugnancy between the State Acts and Act made by the Parliament and permissibility of Section 105-A of the 2014 Act (Tamil Nadu State amendment of 2013 Act) for reviving the repugnant State Acts. Issue no. 3 is reproduced for better appraisal thus:

"**Issues:**

74. The issues therefore, which arise for our consideration are:

1) …..

2) …..

3) Did the Impugned State Enactments become repugnant once the Parliament 'made' the New Land Acquisition Act. If so, did the presidential assent to Section 105A inserted by Tamil Nadu Act No. 1 of 2015, revive the three acts?

…."

The High Court first examined the sweep of Article 254 and then declared the State enactments to be repugnant from the moment Presidential assent was obtained for the 2013 Act. It noted thus:

"111. Applying the above principles, it is clear that both Parliament and the State Legislature are competent to enact these laws. The three State enactments received the assent of the President on 21.7.1978, 25.5.1999 and 16.9.2002 respectively and therefore, prevailed in the State of Tamil Nadu even when the Old Act, 1894 covered the entire field. Contention of the petitioner is that when the new Act came into force, the three state enactments have become void. In order to save the acquisitions made under the three State enactments, the State of Tamil Nadu brought out an amendment to the Central Act by inserting Section 105-A in order to save the acquisitions made under

the three State enactments from 1.1.2014 to the insertion of 105-A. The State Government also brought out three Government Orders dated 31.12.2014, clearly mentioning that the acquisitions made under the three State enactments would be saved by amendment to the new Land Acquisition Act and for this purpose the amending Act even though received the assent of the President on 1.1.2015 was deemed to have come into force on 1.1.2014. Article 254 kicks in when there is repugnancy in any provision of the law made by the Legislature of the State to any provision of law made by the Parliament which the Parliament is competent to enact. **Therefore, these state enactments are rendered void, the moment the New Act was "made." i.e. when it received the presidential assent, as on 27.09.2013**."

(emphasis supplied)

Applying clause (2) of Article 254, it then observed that Section 105-A of the 2014 Act could not have revived the State enactments once rendered void due to repugnancy having struck at a prior point of time, and the only course of action for the revival of a repugnant law is re-enactment followed by fresh presidential assent thus:

"112. The only protection in this sense offered to law made by the States in case of repugnancy is under Article 254(2). Importantly, the repugnancy is noted only in respect of an earlier law laid down by the Parliament. The provisions of Article 254(2) would not apply in the case of a law already made by the State, which has become repugnant as a result of a new enactment of Parliament. Article 254(2) does not offer any protection to laws made by States before the Central Legislation, which leads them to be repugnant, comes into force. It requires the entire repugnant law to be reserved for the consideration of the President, afresh, and the President must give his consent to the entire law. This law which otherwise would be repugnant, is then specifically saved. These laws must receive his assent in the present sense. **Thus, in order to bring any act within the purview of Article 254(2) it must necessarily be re-enacted, and reconsidered by the President afresh. Merely inserting Section 105A in the New Act, shall not fulfil the requirements of Article 254(2), and the laws would remain repugnant.**"

(emphasis supplied)

The High Court then recorded certain conclusions and the relevant ones read thus:

"**Conclusions:**

158. In view of the discussion, the net result of Writ Petitions before us is as follows:

158.1 .....

158.2 .....

158.3. However, the Writ Petitioners before us ultimately succeed because, Article 254(1) by its operation rendered the impugned Tamil Nadu Legislations repugnant, and null and void, as on the date on which the New Act was made, i.e. 27.09.2013, the date of making of the New Act, as held in the case of State of Kerala v Maar Appraem Kuri Co. (supra)[39]and therefore the impugned Acts do not survive.

158.4. **By enacting Section 105-A of the New Act, the State of Tamil Nadu could not have revived the three state Acts, that had become repugnant as on 27.09.2013**.

158.5. **In order to revive these acts, the State must re-enact these statutes, in accordance with Article 254(2) of the Constitution of India, and obtain the assent of the President. Merely, by inserting Section 105-A and the 5th Schedule, in the new Act, these impugned enactments do not get revived**. Since this had admittedly not been done, the Acts remain repugnant, and Article 254(1) renders them inoperative.

....."

(emphasis supplied)

33. Analysing the judgment of the High Court for the limited purpose of this case and without impinging upon the other contentions including the outcome of cases pending by way of special leave against the said judgment, we note that the High Court has correctly explained the concept of repugnancy under Article 254, but did not apply it in the same manner to identify the actual existence of repugnancy between the State Acts and law made by the Parliament. Assuming

39 supra at Footnote No. 26

the presence of repugnancy as assumed by the High Court itself, the only enquiry before the High Court was regarding the method of revival of repugnant State laws. While undertaking such enquiry, it found Section 105-A of the 2014 Act to be an impermissible method of revival and called for re-enactment as per Article 254(2) of the Constitution. This, in our view, is the sole material basis of the judgment of the High Court. Strikingly, the High Court did not rule out revival and validation at all and grounded the enquiry on due compliance with Article 254(2), for that is the only way for a State law to prevail in the face of a subsequent law made by the Parliament on the same subject.

34. We may briefly examine the concept of repugnancy and its functioning under Article 254. The concept of repugnancy is meant to prevent the operation of two conflicting laws on the same field so as to result into uncertainty and inconsistency. Naturally, when a situation like that emerges, the subjects of law cannot be expected to approach a Court immediately and seek a resolution as to which of the two laws would operate on them. Thus, the Constitution provides for univocal and unambiguous solution in the form of Article 254 which makes it clear that in such circumstances, the law made by the Parliament ought to prevail and the subjects would be governed by it. However, it does not stop here. It goes beyond this basic declaration and gives an opportunity to the legislature to which the repugnant law belonged (State legislature) to revive it by obtaining the Presidential assent, thereby providing impetus to the competency of the State legislature to meet with the fallouts of repugnancy. It is crucial to note that Article 254 does not contemplate that the State law and law made by the Parliament must be the same *in toto*. For, to say that would render the whole objective of revival through Presidential assent as pointless exercise as it will serve no purpose for any State to enact a law exactly the same as the law made by the Parliament. In fact, any such dittoed and clichéd law made by the State legislature would be redundant. It (State) would rather follow the law made by the Parliament.

35. Indubitably, Article 254 contemplates co-existence of Union and State laws, even if repugnant, but only after the repugnancy is assented to by the President. Differently put, Article 254 is a manifestation

of decentralized law-making and recognition of the competency of the State legislature to modulate dispensation as may be expedient to that State, upon seeking Presidential assent for such deviation.

36. Having understood the material basis of the High Court judgment and basic essence of the concept of repugnancy in light of Article 254, the fundamental question now is whether the 2019 Act qualifies as sufficient compliance of Article 254(2). For, Article 254(2) is the only mode of revival as per the High Court judgment.

37. Article 254(2) is produced again for ready reference thus:

"**254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States. —**

(1) …

(2) Where a **law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament** or an existing law with respect to that matter, then, **the law so made by the Legislature of such State shall**, if it has been reserved for the consideration of the President and **has received his assent**, **prevail in that State**:"

(emphasis supplied)

The basic ingredients for the application of Article 254(2) can be noted thus:

(i) A law made by the legislature of the State (the 2019 Act in this case);

(ii) Such law is made on a subject falling in the concurrent list (Entry-42 of the Concurrent List in this case);

(iii) Such law is repugnant to the provisions of an earlier/existing law made by the Parliament (the 2013 Act in this case); and

(iv) The State law is reserved for the assent of the President and has received the same.

Upon fulfilment of the above conditions, such State law would prevail in the State despite there being a law made by the Parliament on the same subject and despite being repugnant thereto. The most

peculiar feature of Article 254(2) is the recognition of existence of repugnancy between the law made by the Parliament and State law and rendering that repugnancy inconsequential upon procurement of Presidential assent. In this case, the State legislature duly passed the 2019 Act (State law) on a subject of the concurrent list in the presence of a law made by the Parliament (2013 Act) and obtained the assent of the President to the same on 02.12.2019 after duly placing the State law before the President and duly stating the reason for reserving it for his assent. A *priori,* we hold that this is in compliance of Article 254(2).

38. This understanding of Article 254(2) is well settled and reference can be usefully made to the following paragraph of ***Pt. Rishikesh***[40]:

"**15.Clause (2) of Article 254 is an exception to clause (1). If law made by the State Legislature is reserved for consideration and receives assent of the President though the State law is inconsistent with the Central Act, the law made by the Legislature of the State prevails over the Central law and operates in that State as valid law.** If Parliament amends the law, after the amendment made by the State Legislature has received the assent of the President, the earlier amendment made by the State Legislature, if found inconsistent with the Central amended law, both Central law and the State Law cannot coexist without colliding with each other. Repugnancy thereby arises and to the extent of the repugnancy the State law becomes void under Article 254(1) unless the State Legislature again makes law reserved for the consideration of the President and receives the assent of the President. Full Bench of the High Court held that since U.P. Act 57 of 1976 received the assent of the President on 30-12-1976, while the Central Act was assented on 9-9-1976, the U.P. Act made by the State Legislature, later in point of time it is a valid law."

(emphasis supplied)

39. The petitioners have advanced lengthy arguments as to how the 2019 Act is repugnant to the 2013 Act. We are constrained to observe that the whole exercise of pointing out any repugnancy

40 supra at Footnote No. 11

after a validating Act has obtained the assent of the President is otiose. For, the whole purpose of Article 254(2) is to resuscitate and operationalize a repugnant Act or repugnant provisions in such Act. For, the Constitution provides concurrent powers to the states as well on subjects falling in List-III. After duly complying with the requirements of Article 254(2), the Court is left with nothing to achieve by identifying repugnancy between the laws because the same has already been identified, accepted and validated as per the sanction of the Constitution under Article 254(2). To indulge in such an exercise would be intuitive. Moreover, the Court ought not to nullify a law made in compliance with Article 254(2) on the sole ground of repugnancy. For, repugnancy, in such cases, is said to have been constitutionalized. To put it differently, the very purpose of engaging in the exercise, in terms of clause (2) of Article 254, pre-supposes existence of repugnancy and is intended to overcome such repugnancy. Therefore, the endeavour of the petitioners in the present matter to highlight repugnancy, is misdirected, flimsy and inconsequential.

40. Having said thus, the argument that the 2019 Act could not be said to be a "re-enactment" of the 1997 Act and 2001 Act deserves to be addressed. For, the High Court judgment called for re-enactment for the proper fulfilment of Article 254(2). While enacting the 2019 Act, the State legislature neither individually placed the 1997 Act and 2001 Act in the form of fresh bills before the House, nor introduced amending Acts for the said three enactments in order to incorporate the provisions of compensation, resettlement and rehabilitation. Instead, it framed one bill that sought to achieve four purposes –

first, amend the State enactments to provide for different provisions of compensation to bring them in line with the law made by the Parliament;

second, add fresh provisions relating to resettlement, rehabilitation and infrastructure amenities at par with the 2013 Act;

third, revive the enactments declared to be repugnant and void by the High Court and validate them after passing this bill in the assembly and placing it before the President; and

fourth, restore the validity of all past acquisitions under the State legislations, quashed by the High Court by making the Act operative from a retrospective date.

41. Be it noted, enactment or re-enactment involves introducing a bill in the legislature, readings of the bill as mandated in the assembly rules of conduct, passing thereof by the legislature, placing it before the Governor or the President (if necessary). Such a bill could either delineate all the existing and fresh provisions from scratch or could incorporate those provisions by way of reference. The latter would fall in the category of referential legislation, as done in the present case. The petitioners have contended that such referential legislation is impermissible and re-enactment would mean introducing fresh bills containing the same provisions of 1997 Act and 2001 Act. We must note that the argument is tenuous. For, we fail to see what material difference would result in following either of the two methods. The legislature has made no attempt to hide the provisions as the 2019 Act is divided into three parts and each part is specifically dedicated to concerned State enactment.

42. To wit, the Statement of Objects and Reasons of the 2019 Act depicts the background in which it was thought appropriate to resort to such legislative tool, for the revival of the concerned State Acts declared to be repugnant by the High Court including to amend the same and for validating the actions already taken thereunder. It would be useful to reproduce the Statement of Objects and Reasons of the 2019 Act, which reads thus: -

"In the Writ Petitions filed against the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Act, 2014 (Tamil Nadu Act 1 of 2015), the Division Bench of Hon'ble High Court of Madras in its order dated 03-07-2019 has held that Article 254(1) of the Constitution, by its operation rendered the Tamil Nadu Land Acquisition Acts, namely, the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978), the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (Tamil Nadu Act 10 of 1999) and the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002) inoperative on the date on which the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) was made,

namely, 27th September 2013. Consequently, the High Court has held that all the acquisitions made under the said three Tamil Nadu Acts on or after the 27th September 2013 as illegal and quashed them save those lands which have already been put to use and the purpose for which the land was acquired has been accomplished.

2. Under the aforesaid three Tamil Nadu Acts, on and from 26th September 2013, though 23804 hectares of land have been acquired, only 1,373 hectares have been actually put to use. The acquisitions proceedings are in progress in the remaining 22,431 hectares of land. This involves an approximate value of Rs.1,84,778 crores and the projects are capable of generating employment for 1.83 lakh persons. As a result, the State Exchequer would be put to heavy monetary loss besides derailing many developmental projects, causing significant negative impact on the State economy.

3. **To tide over the situation, the Government have decided to revive the aforesaid three Tamil Nadu Acts and to apply the provisions relating to the determination of compensation, rehabilitation and resettlement and infrastructure amenities as in the said Central Act 30 of 2013 to the land acquisitions made under the Tamil Nadu Acts and to validate the action already taken under the said Acts. Accordingly, the Government have decided to undertake legislation for the above said purpose**.

4. The Bill seeks to give effect to the above decision."

(emphasis supplied)

The provisions of the 2019 Act notified in the Tamil Nadu Government Gazette Extraordinary No. 451 (Part IV – Section 2) on 5.12.2019, as commended to the State legislature and also the Governor and the President of India to accord assent to overcome the repugnancy with the Act made by the Parliament, read thus: -

"The following Act of the Tamil Nadu Legislative Assembly received the assent of the President on the 2nd December 2019 and is hereby published for general information: —

ACT No. 38 OF 2019.

An Act to revive the operation of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, the Tamil Nadu

Acquisition of Land for Industrial Purposes Act, 1997 and the Tamil Nadu Highways Act, 2001.

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Seventieth Year of the Republic of India as follows: —

1. (1) **This Act may be called the Tamil Nadu Land Acquisition Laws (Revival of Operation, Amendment and Validation) Act, 2019**.

(2) **It shall be deemed to have come into force on the 26th day of September 2013**.

2. (1) All the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (hereinafter referred to as the 1978 Act), except the provisions relating to the determination of compensation, **shall stand revived with effect on and from the 26th day of September 2013.**

(2) All rules, notifications, notices, orders, directions issued or any other proceedings initiated under the 1978 Act, except those relating to determination of compensation, which were in force immediately before the 26th day of September 2013 shall, for all purposes, **be deemed to have been revived on and from the 26th day of September 2013.**

(3) The provisions relating to the **determination of compensation** as specified in the First Schedule, rehabilitation and resettlement as specified in the Second Schedule and infrastructure amenities as specified in the Third Schedule to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement **Act, 2013 shall apply to the land acquisition proceedings under the 1978 Act.**

3. Save as otherwise provided in this Act, the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement **Act, 2013 shall cease to apply** to any land which is required for the purpose specified in sub-section (1) of section 4 of the 1978 Act and any **such land shall be acquired by the Government only in accordance with the provisions of the 1978 Act**.

4. **Section 20 of the 1978 Act shall be omitted**.

5. Notwithstanding anything contained in any judgment, decree or order of any court, the provisions of the 1978 Act, except the provisions relating to determination of compensation, shall be deemed to have been in force in all material times during the period commencing on the 26th day of September 2013 and ending with the date of publication of this Act in the Tamil Nadu Government Gazette, and anything done or any action taken under the 1978 Act, except those relating to determination of compensation **shall be deemed to have been validly done or taken under the 1978 Act**.

PART – II.

6. (1) All the provisions of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (hereinafter referred to as the 1999 Act), except the provisions relating to the determination of compensation, **shall stand revived with effect on and from the 26th day of September 2013**.

(2) All rules, notifications, notices, orders, directions issued or any other proceedings initiated under the 1999 Act, except those relating to determination of compensation, which were in force immediately before the 26th day of September 2013 shall, for all purposes, **be deemed to have been revived on and from the 26th day of September 2013**.

(3) The provisions relating to the **determination of compensation** as specified in the First Schedule, rehabilitation and resettlement as specified in the Second Schedule and infrastructure amenities as specified in the Third Schedule to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement **Act, 2013 shall apply to the land acquisition proceedings under the 1999 Act.**

7. Save as otherwise provided in this Act, the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement **Act, 2013 shall cease to apply** to any land which is required for the purpose specified in sub-section (1) of section 3 of the 1999 Act and any such land **shall be acquired by the Government only in accordance with the provisions of the 1999 Act**.

8. **Section 21 of the 1999 Act shall be omitted**.

9. Notwithstanding anything contained in any judgment, decree or order of any court, the provisions of the 1999 Act, except the provisions relating to determination of compensation, shall be deemed to have been in force in all material times during the period commencing on the 26th day of September 2013 and ending with the date of publication of this Act in the Tamil Nadu Government Gazette, and anything done or any action taken under the 1999 Act, except those relating to determination of compensation **shall be deemed to have been validly done or taken under the 1999 Act**.

PART – III.

10. (1) All the provisions of the Tamil Nadu Highways Act, 2001 (hereinafter referred to as the 2002 Act), except the provisions relating to the determination of compensation**, shall stand revived with effect on and from the 26th day of September 2013**.

(2) All rules, notifications, notices, orders, directions issued or any other proceedings initiated under the 2002 Act, except those relating to determination of compensation, which were in force immediately before the 26th day of September 2013 shall, for all purposes, **be deemed to have been revived on and from the 26th day of September 2013**.

(3) The provisions relating to the **determination of compensation** as specified in the First Schedule, rehabilitation and resettlement as specified in the Second Schedule and infrastructure amenities as specified in the Third Schedule to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement **Act, 2013 shall apply to the land acquisition proceedings under the 2002 Act**.

11. Save as otherwise provided in this Act, the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement **Act, 2013 shall cease to apply** to any land which is required for the purpose specified in sub-section (1) of section 15 of the 2002 Act and any **such land shall be acquired by the Government only in accordance with the provisions of the 2002 Act**.

12. **Section 68 of the 2002 Act shall be omitted**.

13. Notwithstanding anything contained in any judgment, decree or order of any court, the provisions of the 2002 Act, except the provisions relating to determination of compensation, shall be deemed to have been in force in all material times during the period commencing on the 26th day of September 2013 and ending with the date of publication of this Act in the Tamil Nadu Government Gazette, and anything done or any action taken under the 2002 Act, except those relating to determination of compensation **shall be deemed to have been validly done or taken under the 2002 Act**.

(By order of the Governor)

C. GOPI RAVIKUMAR,

Secretary to Government (FAC)

Law Department."

(emphasis supplied)

As aforesaid, the legislative intent behind the 2019 Act and more particularly, the assent accorded thereto by the Governor and the President of India for overcoming repugnancy with the Act made by the Parliament, was to revive the operation of the State enactments declared as null and void being unconstitutional and repugnant to the Act made by the Parliament and to amend the same, as well as, validate the actions already taken by the State authorities thereunder.

43. For instance, Part-I of the 2019 Act talks about revival of 1978 Act in Section-2(1), revival of all the notifications, orders etc. passed thereunder in Section-2(2), incorporation of First, Second and Third Schedules of the 2013 Act to the 1978 Act in Section-2(3), saving clause in Section-3 and validation of previous acts in Section-5. Similar pattern is followed in Parts-II and III for 1997 Act and 2001 Act respectively. Notably, Section 20 of the 1978 Act, Section 21 of the 1999 Act and Section 68 of the 2002 Act were omitted, respectively by Sections 4, 8 and 12 of the 2019 Act. The overall scheme is well laid-out and is not cryptic in any manner so as to play a fraud upon the mandate of the Constitution. More importantly, the concerned constitutional bodies i.e., legislative assembly, Governor and President

have understood the substance of what is placed before them. We are concerned with the substance of the legislation, and not its form.

44. We must note that referential legislation is a recognized form of legislation and the Constitution does not attach unconstitutionality to a legislation for being framed in a certain manner until and unless it violates any provision of the Constitution. In ***Girnar Traders (3) vs. State of Maharashtra & Ors.***[41], this Court noted how the provisions imported in a legislation by way of reference become a part of the legislation itself for all practical purposes. It observed thus:

"**89.** With the development of law, the legislature has adopted the common practice of referring to the provisions of the existing statute while enacting new laws. **Reference to an earlier law in the later law could be a simple reference of provisions of earlier statute or a specific reference where the earlier law is made an integral part of the new law i.e. by incorporation. In the case of legislation by reference, it is fictionally made a part of the later law.** …"

(emphasis supplied)

In ***Ujagar Prints***[42], the Court while deciding the impact of subsequent changes in a statute referred to in a legislation, promptly noted how the reference of an Act or its provisions into another Act practically amounts to ***re-enactment*** of the existing provisions at the time of such reference. It observed thus:

"**93.** Referential legislation is of two types. One is where an earlier Act or some of its provisions are incorporated by reference into a later Act. **In this event, the provisions of the earlier Act or those so incorporated, as they stand in the earlier Act at the time of incorporation, will be read into the later Act. Subsequent changes in the earlier Act or the incorporated provisions will have to be ignored because, for all practical purposes, the existing provisions of theearlier Act have been re-enacted by such reference into the later one**, rendering irrelevant what happens to the earlier statute thereafter. ..."

(emphasis supplied)

41 (2011) 3 SCC 1
42 supra at Footnote No. 34

In ***Krishna Chandra Gangopadhyaya***[43], the Court acknowledged that there is no constitutional inhibition to legislation by incorporation and found it in accordance with the power accorded by the constitutional law to instrumentalities clothed with plenary authorities (the State legislature in this case). The relevant paragraph reads thus:

"12. …

…

The kernel of Gwalior Rayon[44] is the ambit of delegation by Legislatures, and **the reference to legislation by adoption or incorporation supports the competence and does not contradict the vires of such a process — not an unusual phenomenon in legislative systems nor counter to the plenitude of powers constitutional law has in many jurisdictions conceded to such instrumentalities clothed with plenary authority.** The Indian Legislatures and courts have never accepted any inhibition against or limitation upon enactment by incorporation, as such."

(emphasis supplied)

45. The authorities discussed above indicate a clear line of precept that plenary power of legislature is not limited to the substance of legislation in context of the Seventh Schedule, but also extends to the determination of the form of legislation. To say that a particular form of legislative activity is not permissible would require a strong basis in the Constitution, which has not been pointed out by the petitioners. The Constitution envisages a judicial review of the existence of legislative competence and use of such competence to enact something that does not violate Part-III or other provisions of the Constitution. It does not envisage a review of the cosmetic characteristics of a legislation as long as the substance of such legislation has its roots in the Constitution.

46. We may now consider the argument that the 2019 Act does not remove the defects found by the High Court and thus, lacks determinative principle thereby making it arbitrary. The 2019 Act is a conscious attempt by the State legislature to bring four material aspects of land

43 supra at Footnote No. 27
44 Gwalior Rayon Mills v. Asst. C.S.T., (1974) 4 SCC 98, 125-126 : 1974 SCC (Tax) 226

acquisition under the three State enactments at par with the 2013 Act i.e., compensation, rehabilitation, resettlement and infrastructure facilities. No doubt, certain features of the stated law made by the Parliament have been left out, but that debate does not fall for our consideration as the vires of 1997 Act and 2001 Act are already under consideration in the batch of SLPs, as already pointed above. To say that failure to import all provisions of the law made by the Parliament in the State enactments results into non-removal of defects pointed by the High Court, is nothing but a palpable misreading of the judgment of the High Court.

47. Whereas, the judgment of the High Court does not even point out the absence of compensation/rehabilitation/ resettlement/infrastructure related provisions as a defect in the State enactments. It nowhere points out the exact provisions from the State enactments which are repugnant to the law made by the Parliament. The only defect pointed out by the High Court was the impermissibility of Section 105-A (coming into effect from 01.01.2014), as a tool for reviving the State enactments once rendered repugnant (on 27.09.2013) due to law made by the Parliament. The State has since been advised to accept that defect pointed out by the High Court and has moved on from that thought process by devising a new legislative tool for validating the State enactments in line with Article 254(2). Had the legislature re-enacted Section 105-A even after the declaration of invalidity by the High Court, it would have been a case of non-removal of defect pointed out by the High Court. In fact, that would have been declaratory overruling of the judgment of the Court by the legislature, which, as already discussed at length, is simply impermissible. The effect of the 2019 Act is to change the law retrospectively and not to overrule the judgment of the Court.

48. The dictum of the Court in ***Karnataka Pawn Broker Association***[45] does not apply to this case. It is based on a radically different factual premise. In that case, the Court was considering a situation of clear-cut overruling of mandamus issued by the Court. No such thing has been done in this case because there is no resurfacing of Section 105-A in the same form and also because revival by

45 supra at Footnote No. 10

way of the 2019 Act is in tune with the mandate of Article 254(2). Strikingly, the High Court nowhere issued a prohibition on revival and validation at all. It only disapproved one particular way of revival. Notably, this Court in ***State of Tamil Nadu***[46] expounded that "*One of the tests for determining whether a judgment is nullified is to see whether the law and the judgment are inconsistent and irreconcilable so that both cannot stand together.*" Applying this test, we see no irreconcilability between the High Court judgment and the 2019 Act. The 2019 Act is an evolution, not reiteration of the earlier position much less regression thereof.

49. Even noting the test in ***Shri Prithvi Cotton Mills Ltd. & Anr. vs. Broach Borough Municipality & Ors.***[47], which states that the ultimate query should be whether the Court would have given the same decision had the circumstances been the altered ones, we see no indication in the High Court order that the Court would have arrived at the same decision even today. For, the method prescribed under Article 254(2) has been followed now.

PRESIDENTIAL ASSENT UNDER ARTICLE 254(2)

50. We may now address the contention that the actual repugnancy was not pointed out to the President while obtaining assent and thus, requirements of Article 254(2) remained unfulfilled. To address this, the respondents have placed on record Letter No. 13566/Rev-Dfg/2019-1 dated 25.07.2019 written by the State Government for obtaining the assent of the President. The letter succinctly narrates the entire factual position including about the failed attempt of the State to revive the State enactments by enacting Section 105-A. After duly specifying the existence of distinctive provisions in various enactments, particularly relating to compensation, resettlement, rehabilitation and infrastructural facilities, the letter clearly states that some provisions of the 2019 Act could be said to be repugnant to the 2013 Act and thus, the Act is being placed for consideration of the President as per Article 254. The relevant paragraph reads thus:

46 supra at Footnote No. 18
47 (1969) 2 SCC 283

"7. The provisions of the Bill proposes to revive the three Tamil Nadu Acts, namely, the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978), the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (Tamil Nadu Act 10 of 1999) and the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002) with retrospective effect from the 26th September, 2013 and **the provisions of the said three Tamil Nadu Acts may be said to be repugnant to the provisions contained in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013), which is an earlier law made by Parliament on the Concurrent subject.** Hence, the Bill is reserved for the consideration of the President under Article 254(2) of the Constitution."

(emphasis supplied)

51. The petitioners' argument stemmed from the decision in ***Kaiser-I-Hind Pvt. Ltd.***[48] However, upon closer examination, we find that the reliance is misplaced. In that case, the Court was considering a requisition of assent by the State Government without specifying the exact law made by the Parliament which is purportedly repugnant to the State law. In that light, the Court observed that the mandate of Article 254 requires placing the State law before the President for his/her consideration for permitting the State law to prevail over a ***specific law*** made by the Parliament. In other words, there can be no general assent against all laws made by the Parliament operating on the subject. The Court went on to make it clear that judicial review of assent does not permit examining whether the assent was rightly or wrongly or erroneously given. In paragraph 25, it noted thus:

"**25. In our view, for finding out whether the assent was given qua the repugnancy between the State legislation and the earlier law made by Parliament, there is no question of deciding validity of such assent nor the assent is subjected to any judicial review. That is to say, merely looking at the record, for which assent was sought, would not mean that the Court is deciding whether the assent is rightly, wrongly or erroneously granted. The consideration by the Court is limited to the extent that**

48 supra at Footnote No. 17

whether the State has sought assent qua particular earlier law or laws made by Parliament prevailing in the State or it has sought general assent. In such case, the Court is not required to decide the validity of the "assent" granted by the President. In the present case, the assent was given after considering the extent and nature of repugnancy between the Bombay Rent Act and the Transfer of Property Act as well as the Presidency Small Cause Courts Act. Therefore, it would be totally unjustified to hold that once the assent is granted by the President, the State law would prevail qua earlier other law enacted by Parliament for which no assent was sought for nor which was reserved for the consideration of the President."

(emphasis supplied)

To state the limited scope of examination of assent under Article 254, the Court went on to observe that it is not even considering whether the assent was given without considering the extent or nature of repugnancy and noted that:

"**27.** In this case, we have made it clear that we are not considering the question that the assent of the President was rightly or wrongly given. We are also not considering the question that — whether "assent" given without considering the extent and the nature of the repugnancy should be taken as no assent at all. ….."

In the concurrent opinion by Doraiswamy Raju J. in the same case, His Lordship has resonated the same view and even observed that so far the assent under Article 254 is concerned, mere supply of copy of the bill may obviate the need to pin-point provisions thereunder but the law made by the Parliament which is sought to give way to the State law must be clearly specified. In paragraph 74, it is noted thus:

"**74.The mere forwarding of a copy of the Bill may obviate, if at all, only the need to refer to each one of the provisions therein in detail in the requisition sent or the letter forwarding it, but not obliterate the necessity to point out specifically the particular Central law or provisions with reference to which, the predominance is claimed or purported to be claimed.** The deliberate use of the word "consideration" in clause (2) of Article 254, in my view, not only connotes that there should be an active application of mind, but also postulates a deliberate and careful thought process

before taking a decision to accord or not to accord the assent sought for. If the object of referring the State law for consideration is to have the repugnancy resolved by securing predominance to the State law, the President has to necessarily consider the nature and extent of repugnancy, the feasibility, practicalities and desirabilities involved therein, though may not be obliged to write a judgment in the same manner, the courts of law do, before arriving at a conclusion to grant or refuse to grant or even grant partially, if the repugnancy is with reference to more than one law in force made by Parliament. Protection cannot be claimed for the State law, when questioned before courts, taking cover under the assent, merely asserting that it was in general form, irrespective of the actual fact whether the State claimed for such protection against a specific law or the attention of the President was invited to at least an apprehended repugnancy vis-à-vis the particular Central law. ....."

(emphasis supplied)

52. In the present case, the letter seeking assent clearly demonstrates that the three State enactments were made for the purpose of speedy acquisitions. It further states that the law made by the Parliament rendered the three enactments repugnant and out of operation owing to the Madras High Court judgment. It also states that the State has considerable interest, having a strong bearing on the public exchequer, in saving and reviving the three State enactments. It also clearly specifies the law made by the Parliament, which could be coming in the way of the State enactments for due consideration by the President. Suffice it to say that the communication was in compliance with the mandate of Article 254 as well as with the decision of this Court in ***Kaiser-I-Hind Pvt. Ltd.***[49] We see no reason to intervene on this ground.

EFFECT OF RETROSPECTIVE COMMENCEMENT DATE OF THE 2019 ACT

53. We may now consider the argument that retrospectivity from 26.09.2013 was fatal to the 2019 Act as on that date, there was no 2013 Act in operation and when the 2013 Act came into operation on

49 supra at Footnote No. 17

27.09.2013, the State enactments would again become repugnant. In our view, even this plea is untenable. For, a law is said to be "made" on the day it obtains Presidential assent. Throughout the chapter on federal relations, the word "made" or "make" is used in the Constitution while referring to legislative activity. Making of law implies a clearly demarcated procedure which culminates with the assent of the President under Article 111 or under Article 254 (if legislated on same subject matter) or of Governor under Article 200. Notably, Articles 111, 200 and 254 are part of the constitutionally prescribed legislative procedure itself. The other concept relevant for this discussion is of "commencement". Commencement of law, unlike making of law, is not a part of the legislative process. Rather, it is an offshoot of the successful culmination of the legislative process. In other words, commencement is a question which follows the legislative process and intent and does not overlap with it. The commencement of law could be from the date of making (assent), or from a back date or even from a future date. But it does not affect the fact that the legislation has stepped into the statute book and the provisions relating to repugnancy as well as other provisions of the chapter of legislative relations between the Union and the State have become active from that point onwards, as they are concerned with the date of making. Thus, for checking repugnancy, the relevant point of time would be the date of making i.e., date of assent and not date of commencement. This understanding finds approval from the decision of this Court in ***Mar Appraem Kuri Company Limited***[50] thus:

"**60**. ...We have to read the word "made" in the proviso to Article 254(2) in a consistent manner.

61.The entire above discussion on Articles 245, 246, 250, 251 is only to indicate that the word ''made'' has to be read in the context of the law-making process and, if so read, it is clear that to test repugnancy one has to go by the making of law and not by its commencement."

(emphasis supplied)

50 supra at Footnote No. 26

54. The above understanding emanates from the basic concept of retrospectivity. The primary objective of retrospective application of a law is to alter an undesirable past circumstance and it is meant to apply to things which have already happened. In Halsbury's Laws of England, retrospectivity is defined as:

> "**921. Meaning of "retrospective"**. It has been said that "retrospective" is somewhat ambiguous and that a good deal of confusion has been caused by the fact that it is used in more senses than one. **In general, however, the courts regard as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct.** Thus a statute is not retrospective merely because it affects existing rights; or is it retrospective merely because a part of the requisites for its action is drawn from a time antecedent to its passing."
>
> (emphasis supplied)

The underlying purpose of retrospectivity, therefore, is to cure including validate certain transactions of the past by making a law in the present and not to compete with the laws existing in the past at that point of time. In this case, the objective was to save and validate past acquisitions under the three State enactments, which were valid until the commencement of the 2013 Act but stood quashed due to the High Court decision. This was also for altering the basis of the law in existence at that point of time and providing for benefits at par with the 2013 Act, so far as it was fit in the wisdom of the State legislature. No doubt, it may appear anomalous to operationalise the 2019 Act from 26.09.2013, a day prior to the making of the 2013 Act, but it does not make any impact on the validity thereof or its substance. The date has been chosen by the State legislature only by way of abundant caution and, in our view, rightly. It is obviously relevant to overcome the repugnancy corresponding to the commencement of the 2013 Act. Adopting any other interpretation would not only be unwarranted as per the constitutional scheme but would also strike at the very purpose of a retrospective reviving and validating enactment. More so, it would open a pandora's box of unforeseen conflicts.

55. During the course of hearing as well as in the written submissions, the petitioners drew a comparative analysis between the provisions of the three State enactments and the 2013 Act to establish a case of violation of equality under Article 14. The respondents objected to the same by stating that such an approach is impermissible. Be that as it may, we are leaving this contention open as it is beyond the limited scope of our consideration herein. We deem it fit to desist from dilating thereon in this judgment. The petitioners herein may raise all other issues not dealt with in this judgment in relation to the validity of State enactments in the other pending cases arising from the decision of the High Court, including by getting themselves impleaded therein.

56. In light of the aforesaid discussion, we hold the 2019 Act to be a legitimate legislative exercise and find it to be consistent with and within the four corners of Article 254 of the Constitution of India and also of the High Court judgment.

57. Thus, we dismiss the present batch of writ petitions.

58. Interlocutory applications, if any, shall also stand disposed of in view of the aforesaid discussion. We pass no order as to costs.

Headnotes prepared by: Nidhi Jain

Result of the case:
Writ petitions dismissed.