CASE NO.:
Appeal (civil) 1344 of 1976

PETITIONER:
IR COELHO (DEAD) BY LRS.

RESPONDENT:
STATE OF TAMIL NADU

DATE OF JUDGMENT: 14/09/1999

BENCH:
S.P.BHARUCHA & B.N.KIRPAL & V.N.KHARE & S.S.M.QUADRI & D.P.MOHAPATRA

JUDGMENT:
JUDGMENT

DELIVERED BY:
S.P.BHARUCHA,J.

JUDGMENT:

The Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 (the Janmam Act), insofar as it vested forest lands in the Janmam estates in the State of Tamil Nadu, was struck down by this Court in Balmadies v. State of Tamil Nadu (1973 1 SCR 258) because this was not found to be a measure of agrarian reform protected by Article 31A of the Constitution. Section 2(c) of the West Bengal Land Holding Revenue Act, 1979 was struck down by the Calcutta High Court as being arbitrary and, therefore, unconstitutional and the special leave petition filed against the judgment by the State of West Bengal was dismissed. By the Constitution (Thirty fourth Amendment) Act, the Janmam Act, in its entirety, was inserted in the Ninth Schedule. By the Constitution (Sixty sixth Amendment) Act, the West Bengal Land Holding Revenue Act, 1979, in its entirety, was inserted in the Ninth Schedule. These insertions are the subject matter of challenge in these appeals and writ petitions. The contention is that these Acts, inclusive of the portions thereof which had been struck down, could not have been validly inserted in the Ninth Schedule. It rests on two counts: (1) Judicial review is a basic feature of the Constitution; to insert in the Ninth Schedule an Act which, or part of which, has been struck down as unconstitutional in exercise of the power of judicial review is to destroy or damage the basic structure of the Constitution. (2) To insert into the Ninth Schedule after 24th April, 1973, an Act which, or part of which, has been struck down as being violative of the fundamental rights conferred by Part-III of the Constitution is to destroy or damage its basic structure. Article 31B provides : 31B. Validation of certain Acts and Regulations.- Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and

Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.

The judgment of a Constitution Bench of this Court in Waman Rao & Ors. etc. etc. v. Union of India and Ors. (1981 2 SCR 1) dealt with Article 31B. It referred to the judgment of this Court in the case of Kesavananda Bharti (1973 Suppl. SCR 1), decided on 24th April, 1973, where it was held by the majority that Parliament has no power to amend the Constitution so as to damage or destroy its basic or essential features or its basic structure. The order in Waman Raos case was that all amendments to the Constitution which were made before 24th April, 1973 and by which the Ninth Schedule was amended from time to time by the inclusion of various Acts and Regulations therein, were valid and constitutional. Amendments to the Constitution made on or after 24th April, 1973 by which the Ninth Schedule was amended from time to time by the inclusion of various Acts and Regulations therein were open to challenge on the ground that they, or any one or more of them are beyond the constituent power of the Parliament since they damage the basic and essential features of the Constitution or its basic structure. The order in Waman Rao did not pronounce upon the validity of such subsequent constitutional amendments except to say that if any Act or Regulation included in the Ninth Schedule by a constitutional amendment made after April 24, 1973 is saved by Article 31A, or by Article 31C as it stood prior to its amendment by the forty second amendment, the challenge to the validity of the relevant Constitutional Amendment by which that Act or Regulation is put in the Ninth Schedule on the ground that the amendment damages or destroys a basic or essential feature of the Constitution or its basic structure as reflected in Articles 14, 19 or 31, will become otiose. Chandrachud, C.J., in his judgment in Waman Rao, said that laws and regulations included in the Ninth Schedule prior to 24th April, 1973 will not be open to challenge on the ground that they are inconsistent with or take away or abridge any of the rights conferred by any of the provisions of Part III of the Constitution. Acts and Regulations which are or will be included in the Ninth Schedule on or after April 24, 1973 will not receive the protection of Article 31B for the plain reason that in the face of the judgment in Kesavanand Bharti (supra) there was no justification for making additions to the Ninth Schedule with a view to conferring a blanket protection on the laws included therein. The various constitutional amendments by which additions were made to the Ninth Schedule on or after April 24, 1973 will be valid only if they do not damage or destroy the basic structure of the Constitution. Bhagwati, J. delivered a judgment that is common to Waman Rao and Minerva Mills Ltd. & Ors. v. Union of India & Ors. (1981 1 SCR 206). He said that all constitutional amendments made after the decision in Keshavananda Bhartis case would have to be tested by reference to the basic structure doctrine, for Parliament would then have no excuse for saying that it did not know the limitation on its amending powers. He added that in every case where a constitutional amendment includes a statute or statutes in the Ninth Schedule, its constitutional validity would have to be considered by reference to the basic structure doctrine and such constitutional amendment would be liable to be declared invalid to the extent to which it damages or destroys the basic structure of the Constitution by according protection against violation of any particular fundamental right.

The judgment in Waman Rao needs to be considered by a larger Bench so that the apparent inconsistencies therein are reconciled and it is made clear whether an Act or Regulation which, or a part of which, is or has been found by this Court to be violative of one or more of the fundamental rights conferred by Articles 14, 19 and 31 can be included in the Ninth Schedule or whether it is only a constitutional amendment amending the Ninth Schedule that damages or destroys the basic structure of the Constitution that can be struck down.

The Constitution Bench that had decided Waman Rao also decided the case of Maharao Sahib Sri Bhim Singh Ji Etc. Etc. v. Union of India & Ors. Etc. Etc. (1985 Suppl. 1 SCR 862). The Urban Land (Ceiling and Regulation) Act, 1976 was the subject matter of the decision. It had been inserted into the Ninth Schedule by the Constitution ( Fortieth Amendment) Act. Tulzapurkar, J. held the entire Act to be unconstitutional. The other four learned Judges agreed with him to the extent that a part of Section 27(1) of the Act was unconstitutional. Section 27(1) read thus:

27(1) Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of sub-section (3) of section 5 and sub-section (4) of section 10, no person shall transfer by way of sale, mortgage, gift, lease for a period exceeding ten years, or otherwise, any urban or urbanisable land with a building (whether constructed before or after the commencement of this Act) or a portion only of such building for a period of ten years of such commencement or from the date on which the building is constructed, whichever is later, except with the previous permission in writing of the competent authority.

Tulzapurkar, J., Krishna Iyer, J. and A.P. Sen, J. delivered separate judgments. Chandrachud, C.J., on behalf of himself and Bhagwati, J., stated that they would deliver a detailed judgment later; but, later, they passed an order stating that they had gone through the judgment of Krishna Iyer, J. and found that there was nothing that they could usefully add to it. Tulzapurkar, J. struck down Section 27(1) for the reason that it did not adequately control the arbitrary exercise of the power to grant or refuse the permission. The provision was found by him to be violative of Article 14 and was, therefore, struck down as being ultra vires and unconstitutional. A.P. Sen, J. took the view that there was no justification for the freezing of transactions by way of sale, mortgage, gift or lease of vacant land or building for a period exceeding ten years even though such land, with or without building thereon, fell within the ceiling limits. The right to acquire, hold and dispose of property guaranteed to a citizen under Article 19(1)(f) carried with it the right not to hold any property. It was difficult to appreciate how a citizen could be compelled to own property against his will. If vacant land owned by a person fell within the ceiling limits for an urban agglomeration, he was outside the purview of the Act and could not be governed by any of the provisions of the Act. It was, therefore held by the learned Judge that the provisions of Section 27(1) were invalid insofar as they sought to affect a citizens right to dispose of his urban property in an urban agglomeration within the ceiling limits. Krishna Iyer, J. did not discuss the provisions of

Section 27(1), but he agreed with the learned Chief Justice regarding the partial invalidation of Section 27(1). The learned Chief Justice had said in his brief earlier order that Section 27(1) was invalid insofar as it imposed a restriction on the transfer of any urban or urbanisable property within the ceiling area. Such property was transferable without the constraints mentioned in Section 27(1). What is relevant is that whereas Tulzapurkar, J. and A.P.Sen, J. struck down Section 27(1), in part, for violation of the fundamental rights conferred by Articles 14 and 19(1)(f) respectively, without more, Krishna Iyer, J. said: What is a betrayal of the basic feature is not a mere violation of Article 14 but a shocking, unconscienable or unscrupulous travesty of the quintessence of equal justice. If a legislation does go that far it shakes the democratic foundation and must suffer the death penalty.

The decision in Bhim Singh Ji case will also have to be considered by the larger Bench for the purposes of arriving at the conclusion aforementioned.

We deem it fit, accordingly, to refer these writ petitions and appeals for decision to a larger Bench, preferably of nine learned Judges. The papers and proceedings shall be placed before the Honble the Chief Justice of India for appropriate orders.