IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PIL WRIT PETITION NO. 59 OF 2007

1. P.B. Samant,)
Meghdoot, Opp. Railway Station,)
Goregaon East, Mumbai – 400 063.)

2. Mrinal Gore,)
3/25, Navjyoti CHS Ltd.,)
Unnat Nagar II, Goregaon 400 063.)

3. Vasant Shirali,)
26/C, Kshipra CHS Ltd.,)
Arya Chanakya Nagar,)
Akurli Cross Road o.1,)
Kadivali (E), Mumbai 400 101.)

4. Kamal Desai,)
Vasant, 1, J.P. Nagar,)
Goregaon East, Mumbai 400 063.).. Petitioners

Vs

1. Union of India,)
C/o. Ministry of Urban Development,)
Nirman Bhavan, Moulana Azad)
Road, New Delhi – 110 011.)

2. The State of Maharashtra,)
Ministry of Urban Development,)
Mantralaya, Mumbai – 400 032.)

3. Jawaharlal Nehru National Urban)
Renewal Mission,)
C/o. Ministry of Urban Development,)
Nirman Bhavan, Maulaa Azad Road,)

New Delhi – 110 011.)

4. The Municipal Corporation of)
Greater Mumbai, a body Corporate)
Constituted uder the provisions of)
The Bombay Municipal Corporation,)
Act, 1888 with its Head Quarters)
at Mahapalika Marg,)
Mumbai – 400 001.).. Respondents

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Shri S.H. Aney alog with Shri D.G. Bagwe for the Petitioners.
Shri N.P. Pandit, AGP for State.

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CORAM : SWATANTER KUMAR, C.J. &
DR. D.Y. CHANDRACHUD, J

JUDGMENT RESERVED ON : 26TH FEBRUARY, 2009.

JUDGMENT PRONOUNCED ON : 17TH MARCH, 2009.

JUDGMENT : (PER SWATANTER KUMAR, CJ)

1. The Petitioners who claim that they are social workers and except Petitioner No.3, all other Petitioners have been Members of Legislative Assembly of Maharashtra in the past. It is averred that Respondent No.3 is a body set up by Respondent No.1 - Union of India which had published a booklet/brochure in the name of

"JAWAHARLAL NEHRU NATIONAL RENEWAL MISSION". Being interested in the welfare of the people of Maharashtra, the Petitioners have filed this Petition. According to the Petitioners, the action of the Respondents in adopting resolution of repealing the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the "said Act") is in violation of the constitutional rights vested in the people of Maharashtra, more particularly as enumerated in Articles 14, 19(1) (g), 21, 3 and 39 of the Constitution of India and Respondent Nos.1 to 4 are failing to perform their public duties. The State Government, in the Assembly agreed to repeal the said Act with respect to Greater Mumbai Pune and Thane within 1 and ½ years and signed a Memorandum dated 7th October, 2006 under the scheme of "Jawaharlal Nehru National Urban Renewal Mission" (JNNURM). The resolution adopting repealment is primarily without legislative intent and without serving public purpose and is adopted only on the consideration that the installments agreed under the memorandum would be released by the Central Government in favour of State. The Resolution besides being unobjective also suffers from infirmities that the State Legislature had to pass the resolution in compliance with

the provisions of the said Act and the Urban Land (Ceiling and Regulation) Repeal Act, 1999 which has not been passed in accordance with law and the rules of business of the Assembly and is stated to be a mere automatic consequences of a tripartite memorandum of agreement dated 7th October, 2006 wherein the State had given a solemn assurance that it would repeal the Act of 1976 before December, 2007. The challenge of the Petitioners to the resolution of the State Government dated 16th April, 2007 is founded on the ground that the Central Government has power to give directions to the State Government as it may have power necessarily for carrying out the purpose of the Act or the rules framed thereunder but it cannot direct the State Government to repeal an enactment merely because the Central Government can offer to and make a condition for giving monies upon compliance of such understanding. It is also averred by the Petitioners that nearly 1221 acres of vacant land was acquired in the year 2006.

2. The Petitioners had also filed a Writ Petition earlier being Writ Petition No.4 of 2006 wherein the Petitioners prayed for the following reliefs:-

> "(a) this Hon'ble Court be pleased to issue a Writ of Mandamus, or any other Writ, Order or Direction in the nature of Mandamus, directing the 1st and 2nd Respondents to place before this Hon'ble Court a list of land holders holding vacant lands of 10 acres and above in Greater Mumbai and disclose the steps taken under the said Urban Land (Ceiling and Regulation) Act, 1976 in respect thereof;
>
> (b) this Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ, Order or Direction in the nature of Mandamus, directing the Respondent Nos.1 ad 2 to forthwith implement and invoke the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 and acquire the excess vacant land which is available in Greater Mumbai, including excess vacant land set out in EXHIBIT "F" hereto, and utilise the same as best to subserve the common good;
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> (c) that pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to direct the 1st and 2nd Respondents to forthwith initiate acquisition proceedings under the said Urban Land (Ceiling and Regulation) Act, 1976 in respect of the excess vacant lands mentioned in EXHIBIT "F" hereto;
>
> (d) that pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to pass an

order and injunction restraining the Respondent No.1 from taking any executive decision to place a resolution before both the House of the State Legislative to adopt the said Urban Land (Ceiling and Regulation) Repeal Act, 1999;

(e) ad-interim relief in terms of prayer © and (d) hereinabove;

(f) for costs and

(g) for such other and further reliefs as the nature and circumstances of the case may require;

3. In the said Writ Petition, an order dated 17th August, 2006 was passed, which reads as under:-

"1. We heard Senior Counsel and counsel for the parties and also perused the affidavit of Mr. Tarunkumar Dhanraj Khatri, Deputy Collector and Competent Authority (ULC), Greater Mumbai.

2. Insofar as prayer (a) of the Writ Petition is concerned, we are of the view that exh.3 discloses the names of land holders holding vacant lands of 10 acres and above i Greater Mumbai. As per the said list, there are 338 declarants holding vacant lads in excess of 10 acres.

3. To our query to th Government pleader as to the present status of proceedings under the Urban Land (Ceiling and Regulation)

Act (for short the “Act of 1976”), in respect of the said land holders, the Government Pleader submitted that before 31.12.2007, the Competent Authority shall be able to pass orders under section 8(4) of the Act of 1976, pursuant to the statements filed under section 6(1). He also submitted that as on date, acquisition of 1009.75 acres (403.90 hectares) of declared surplus vacant land is under process under section 10 of the Act of 1976 and that the said process shall be completed within six months from today.

4. In the light of these submissions of the Government Pleader, for the present, we pass the following order:-

O R D E R

(i) The Competent Authority (ULC), Greater Mumbai, shall proceed with the statements filed under section 6 (1) of the Act of 1976 expeditiously and pass order under section 8(4) as early as possible and in no case later than 31.12.2007.

(ii) The Competent Authority (ULC), Greater Mumbai, is also directed to act quickly for acquisition of 1009.75 acres (403.90 hectares) declared as surplus vacant land and complete the process within six months from today as the land has already vested in the State Government, by virtue of section 10(3) of the Act of 1976.

5. Needless to say that our order shall not impede any legislative process of the Act of 1976.

6. For further directions, as adjourn the matter to 14.2.2007."

4. To the present petition, the Petitioners also sought leave to amend the petition. Earlier it was suggested in the budget speech of the Finance Minister on 28th February, 2005 which reads as under:-

"The demographic trends in the country indicate a rapid increase in urbanization. India needs urban facilities of satisfactory standards to cope with the challenge. If our cities are not renewed, they will die. The National Urban Renewal Mission is designed to meet this challenge. It will cover the seven mega cities, all cities with a population of over a million, and some other towns."

5. The allegation was that the Union of India had proposed to

spend Rs.50,000/- crores through the said Mission during the next seven years beginning with 2006-2007 which resulted in execution of the tripartite agreement. The intention of the Repealing Act which was adopted by Government of Maharashtra was contrary to the business rules and is to encourage builders. The Petitioners claim that they constructed 6000 tenements for the benefit of weaker sections on “no profit no loss” basis. The land which was placed at the disposal is as a result of excessive land. In the affidavit dated 2nd August, 2006 filed by the Competent Authority, it was stated that 62 acres of land was allotted to Nagari Nivara Parishad, 70 acres of land was allotted to MHADA and 66.42 acres were alloted to various institutions, societies and some Government bodies like Municipal Corporation of Greater Mumbai for better purpose and to ensure proper growth. However, thereafter, the Repealing Act of 1999 and the Resolution by the Legislative Assembly was passed on 29th November, 2007 to defeat the very purpose of the social justice. The Repealing Act, besides not having been passed by the Competent Legislative Authority, also destroyed the constitutional objective of justice, social and economic, and a large number of public who could

avail benefit of under Section 23 of the Urban Land (Ceiling and Regulation) Act were deprived as a result of Repealing Act. On this premises and particularly keeping in view even the orders passed by the Division Bench in the earlier writ petition, the Petitioners pray for declaring the Repealing Act of 1999 as ultra vires the Constitution of India.

6. The State of Maharashtra filed a reply denying that the Repealing Act was not passed by the Competent Authority in the prescribed manner and it had violated the provisions of rules. The Act was enacted by the Parliament in exercise of its legislative powers under sub-section (1) of Article 252 of the Constitution pursuant to resolutions passed by the House of Legislature of various States. In terms of Sub-sections (2) and (3) of Section 1 of the Repeal Act provided that the Repeal Act of 1999 should apply to such States which adopt the same by resolution passed in that regard. Both the Houses of the Legislature in the State of Maharashtra, after following due process of law, passed the Repeal Act, 1999 and the State Cabinet approved the said decision on 12th April, 2007 and was

placed before the State Legislative Assembly and the Legislative Council on 16th April, 2007. The resolution was ultimately passed vide Resolution dated 29th November, 2007. There is no legislative or procedural incompetence. It is further stated that the Petitioners had earlier filed a writ petition restraining the State Authorities from placing the Resolution seeking to adopt the ULC and the Repeal Act, 1999 before both the Houses of State Legislature. The Court, while issuing rule directed the State to take steps for acquisition of certain land declared as surplus in the said writ petition but no interim relief was granted. Thus, the Petitioners have filed the present Writ Petition.

7. In the affidavit filed on behalf of the Government, it is stated that the Repeal Act of 1999 has already been adopted by the State Legislative Assembly. In respect of Greater Mumbai Urban Agglomeration, it has been clarified by the Respondents and stated that the statistics given by the Petitioners are incorrect. It is stated that in respect of 338 pending cases involving above 10 acres of holding, statements filed under Section 6(1) of the Act, the Competent

Authority had already decided 213 cases by issuing orders under Section 8(4) upto 29th November, 2007 i.e. Date of adoption of Repeal Act of 1999 wherein 2896.50 acres i.e. 1158.60 hectares had been declared as surplus vacant land and 125 cases were pending. It is further stated that in view of the Repeal Act being adopted, there was no question of passing further orders in that regard. It is further stated in the said affidavit that the Principal Act of 1976 is an Act enacted by Parliament and the Parliament has repealed the said Act by Repeal Act of 1999 on 23rd March, 1999. As per the provisions of Article 252(2) of the Constitution, the powers to repeal an Act in the State are vested in State Legislature. The said resolution was considered and passed by both the Houses of the Legislature. The said proposal was first approved by the State Cabinet on 12th April, 2007 and thereafter the State Government had proposed the said resolution for consideration of the State Legislature on 16th April, 2007 and the same was ultimately passed by both the Houses of the State Legislature on 29th November, 2007. It is further stated in the said affidavit that the Petitioners, while referring to certain provisions of the rules in the Petition, has averred and contended that the resolution

moved by the Chief Minister to adopt the Central Repeal Act, 1999 was a constitutional/statutory resolution which could be moved only by member of Maharashtra Legislative Assembly under Rule 290 of the Maharashtra Legislative Assembly Rules and not by Chief Minister under Rule 110 and that all matters referred to in the Second Schedule under Government Rules of business must be brought before the Council of Ministers, which had not been done. It is also stated in the affidavit that it was the contention of the Petitioners that since according to Section 60(c) of the General Clauses Act, the State Government in respect of anything done shall mean the Governor and the Resolution moved by Governor and the Governor has no power to move a Constitutional/Statutory resolution in Legislative Assembly under Article 368 and 252 of the Constitution. It is stated that all the contentions raised by the Petitioners in the petition are totally misconceived and are not tenable and disentitle them to raise the said issues in the present petition as the said issues relate to proceedings of the State Legislature and there is a Constitutional bar under Article 212 to the proceedings of the State Legislature being called in question and therefore the Petitioners are

precluded from raising the said grounds relating to repeal of the said Act. Reiterating the Legislative Competence and validity of Repeal Act of 1999, it is submitted that the writ petition should be dismissed.

8. It is a settled principle of law that the executive actions are tested under the judicial review on the touch stone of arbitrariness but the criteria for examining the arbitrariness in administrative or executive actions are not *pari materia* the same for examining arbitrariness in legislative act. The scope of judicial review for examining arbitrariness in legislative act is much narrower. The arbitrariness is to be of an absolute nature and it must be shown by the applicant that there was reasonable and manifest arbitrariness to the extent that the law enacted had no necessity, relevance and was with mala fide intent. There are very few cases where the Courts have interfered with enacted law on the ground of arbitrariness. Of couse, it is not entirely beyond the scope of judicial review.

9. In the case of *Khoday Distilleries Ltd and others vs State of Karnataka and others*, **(1996) 10 SCC 304**, the Supreme Court held as under :-

> "13. It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(g) may not be available to the appellants, the rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one just bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. In the case of Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India (1985)1 SCC 641 (SCR at p.243) this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; "unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary". Drawing a comparison between the law in England and in India, the

> court further observed that in England the Judges would say, "Parliament never intended the authority to make such Rules; they are unreasonable and ultra vires". In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution."

10. The above stated principles were reiterated by the Supreme Court in the case of *Sharma Transport vs Government of A.P. And others*, **(2002) 2 SCC 188**, where the Court was concerned with the plea of arbitrariness taken in relation to a subordinate legislation that the Court declined to accept the contention that the agreement and directive of the Government was not a directive under Article 73(b) or Articles 256 or 257 of the Constitution and was thus violative. There the Court held as under :

> "25. It has been pleaded as noted above that withdrawal is without any rational or relevant consideration. In this context, it has to be noted that the operators in the State of Andhra Pradesh are required to pay the same tax as those registered in other states. Therefore, there cannot be any question of irrationality.

> The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression "arbitrarily" means; in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone. In the present cases all persons who are similarly situated are similarly affected by the change. That being so, there is no question of any discrimination. That plea aslo fails."

11. Reference can also usefully be made to the case of *Bombay Dyeing & Mfg. Co. Ltd. Vs Bombay Environmental Action Group and others*, **(2006) 3 SCC 434,** where the Court, while reiterating the decisions in the case of *Khoday Distilleries Ltd. (supra)* and *Sharma Transport (supra)*, held that arbitrariness on the part of the legislature so as to make the legislation violative of Article 14 of the Constitution should ordinarily be manifest arbitrariness. What would be arbitrary exercise of legislative power would depend upon the provisions of the statute vis-a-vis the purpose and object thereof.

12. In light of these principles, now we will examine the merit of the contention raised on behalf of the Petitioners that the Repealing Act suffers from the vice of arbitrariness and is simply in furtherance to an agreement to receive money from the Central Government is, therefore, unsustainable. We are unable to find any merit in this contention inasmuch as the Central Government has not exercised any undue influence over the State legislature and both have operated and acted in sphere of their own legislative competence. There was an agreement entered into between the State and the Centre in exercise of its respective powers but the object was a national object. It is really far fetched to argue that payment of monies as provided in the agreement and realisation of the first instalment, pressurised the State legislature to pass the resolution and adopt the Repealing Act. The State legislature has acted in its own wisdom and not on the dictates of the Centre. There is no material before us which even can even remotely substantiate this argument. The onus to prove arbitrariness lies entirely upon the Petitioners and the Petitioners have not been able to substantiate

their plea by any cogent reason or appropriate admissible judicial material on record. The policies of the Central Government can always be applied to the State Government with its consent. The statement of the Finance Minister in his budget speech on 28th February 2005 had indicated sufficiently in regard to the demographic trends in the country to indicate a rapid increase in urbanization and the National Urban Renewal Mission was designed to meet this challenge. When the Act was introduced in 1976, it was stated and intended to provide for imposition of a ceiling on a vacant land in urban agglomeration and for acquisition of such lands in excess of ceiling limits. The purpose being an equitable distribution of land to subserve the common good. The Object and Reasons of the Repealing Act specifically mentions that though the Act was passed with a laudable social object in mind, but the public opinion was unanimous that the Act had failed to achieve what was expected of it and the land prices had been pushed to unconscionable levels which had brought the housing industry to halt. Thus, the Legislature intended to revoke the most potent clog on housing.

13. No doubt that the agreement had been entered into in furtherance to the policy decision taken and a scheme which had already been sanctioned by the Union of India being Jawaharlal Nehru National Urban Renewal Mission (JNNURM). Execution of such an agreement and receiving of financial aid and assistance thereunder *per se* would not render the Repealing Act of 1999 suffering from vice of arbitrariness. Therefore, we have no hesitation in rejecting the contention of the Petitioners that this Court should interfere on the ground of arbitrariness.

14. Other argument raised on behalf of the Petitioners that a attempt of the Union of India in directing or pressurising the State Government and the State Legislative Assembly to adopt the Resolution in view of financial/aid offered besides being arbitrary is also opposed to the basic structure of the Constitution. This action of the Central Government in issuing the dicta to the State is opposed to the constitutional scheme of State and Centre functioning in their respective fields. Ours is a Federal Constitution and the Supreme Court in the case of *Kuldip Nayar & Ors. v. Union of India & Ors.,*

(2006)7 SCC 1, clearly stated that though the federal principle is dominant in our Constitution that principle is one of its basic features, but, it is also equally true that federalism under the Indian Constitution leans in favour of a strong Centre, a feature that militates against the concept of strong federalism. Some of the provisions that can be referred to in this context include the power of the union to deal with extraordinary situations such as during an emergency and Article 251 when read with Article 249 in effect permits the Rajya Sabha to encroach upon the specified legislative competence of a State Legislature by declaring a matter to be of national importance. In addition to these principles, it is a settled cannon of constitutional law that the law enacted by Union Parliament will have precedence over the State laws wherever they operate in the same field. This being the constitutional scheme and Jawaharlal Nehru National Urban Renewal Mission having been considered as national policy, it can hardly be contended that it was a temptation offered by the union which tantamounts to exercising of undue influence or arbitrariness in relation to the affairs of the State Government and the State Legislative Assembly.

15. In the case of *State of West Bengal v. Kesoram Industries Ltd. & Ors.,* (2004)10 SCC 201, the Supreme Court reiterated this principle and held that federal structure of Constitution as a factor in dealing with purported conflict between taxation powers of the Union and the States with historical bias in favour of strong Centre and it is best interpreted of flexible provisions of Constitution in respect of taxation powers to strike a balance or to remove imbalance resulting in conflict between the States and the Central Laws. It was also stated that Union List – I will have precedence over the State Laws under List-II of Schedule VII.

16. In our considered opinion, the Petitioners have not been able to make out a case either of patent arbitrariness or even legal bias much less exercise of undue pressure, influence in exercise of State Legislative powers. It was open to the State to take recourse to such legislative approach as the members of the Assembly considered it appropriate and in the interest of the State. We have already discussed that entering into tripartite agreement and receiving financial help from the Central for urbanization does not even ex facie

appear to be opposed to public interest or public policy. It is a settled principles of law that the Courts would be very reluctant to invalidate the statute, and particularly, on the ground of arbitrariness. It will be useful to make a reference of a recent judgment of this Court in the case of *Peninsula Land Ltd. v. Brihan Mumbai Mahanagarpalika & Ors.,* 2009(1) MhLJ 710 where the Court held as under:-

> "19. It will be useful to refer to a judgment of the Supreme Court in the case of *Government of Andhra Pradesh & Ors. Vs P. Laxmi Devi (Smt.)* **(2008) 4 SCC 720,** where the Supreme Court held that the Court should be reluctant to invalidate a statute. The step to invalidate a statute should be taken in very rare and exceptional circumstances. The Supreme Court held as under: -
>
> **"37.** Since, according to the above reasoning, the power in the courts to declare a statute unconstitutional has to be accepted, the question which then arises is how and when should such power be exercised.

38. This is a very important question because invalidating an Act of the legislature is a grave step and should never be lightly taken. As observed by the American Jurist Alexander Bickel "judicial review is a counter-majoritarian force in our system, since when the Supreme Court declares unconstitutional a legislative Act or the Act of an elected executive, it thus thwarts the will of the representatives of the people; it exercises control, not on behalf of the prevailing majority, but against it." (See *A. Bickel's The Least Dangerous Branch.*)

39. ....

40. The court must always remember that invalidating a statute is a grave step, and must therefore be taken in very rare and exceptional circumstances.

41. We have observed above that while the court has power to declare a statute to be unconstitutional, it should exercise great judicial restraint in this connection. This requires clarification, since, sometimes courts are perplexed as to whether they should declare a statute to be constitutional or unconstitutional.

42. ....

43. Thus, according to Prof. Thayer, a court can declare a statute to be unconstitutional not merely because it is possible to hold this view, *but only when that is the only possible view not open to rational question.* In other words, the court can declare a statute to be unconstitutional *only when there can be no manner of doubt that it is flagrantly unconstitutional, and there is no way of avoiding such decision.* The

philosophy behind this view is that there is broad separation of powers under the Constitution, and the three organs of the State—the legislature, the executive and the judiciary, must respect each other and must not ordinarily encroach into each other's domain. Also the judiciary must realise that the legislature is a democratically elected body which expresses the will of the people, and in a democracy this will is not to be lightly frustrated or obstructed.

44. ....

45. ....

46. In our opinion, there is one and only one ground for declaring an Act of the legislature (or a provision in the Act) to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. This violation can, of course, be in different ways e.g. if a State Legislature makes a law which only Parliament can make under List I to the Seventh Schedule, in which case it will violate Article 246(1) of the Constitution, or the law violates some specific provision of the Constitution (other than the directive principles). But before declaring the statute to be unconstitutional, the court must be absolutely sure that there can be no manner of doubt that it violates a provision of the Constitution. If two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. Also, the court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope vide *Rt. Rev. Msgr. Mark Netto* v. *State of Kerala*13 SCC

para 6 : AIR para 6. Also, it is none of the concern of the court whether the legislation in its opinion is wise or unwise.

47. ....

48. The court certainly has the power to decide about the constitutional validity of a statute. However, as observed by Frankfurter, J. in *West Virginia* v. *Barnette*[15], since this power prevents the full play of the democratic process it is vital that it should be exercised with rigorous self-restraint.

49. ....

50. ....

51. In our opinion the legislature must be given freedom to do experimentations in exercising its powers, provided of course it does not clearly and flagrantly violate its constitutional limits.

52. ....
53. ....
54. ....
55. ....

56. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimisation of the judges' personal preferences. The court must not invalidate a statute lightly, for, as observed above, invalidation of a statute made by the legislature elected by the people is a grave step. As observed by this Court in *State of Bihar* v. *Kameshwar*

Singh[18]: (AIR p. 274, para 52)

"*52*. … The legislature is the best judge of what is good for the community, by whose suffrage it comes into existence…."

57. In our opinion, the court should, therefore, ordinarily defer to the wisdom of the legislature unless it enacts a law about which there can be no manner of doubt about its unconstitutionality.

58. ....

59. In the light of the above observations, the impugned amendment is clearly constitutional. The amendment was obviously made to plug a loophole in the Stamp Act so as to prevent evasion of stamp duty, and for quick collection of the duty. There are other statutes e.g. the Income Tax Act in which there are provisions for deduction at source, advance tax, etc. which aim at quick collection of tax, and the constitutional validity of these provisions have always been upheld."

17. The learned Assistant Government Pleader appearing for the State while referring to the judgment of the Supreme Court in the case of *M S M Sharma vs Dr. Shree Krishna Sinha and others*, **AIR 1960 SC 1186**, contended that the present Writ Petition is hit by the principles of *res judicata* inasmuch as the prayer in that case was for issuance of a direction or order to the Respondents to prepare and submit a list of holders holding vacant land of 10 acres and above in

terms of the Act of 1976 and invoke provisions of the Act of 1976 and to restrain the Respondents from taking any executive decision to place a Resolution before both the Houses of the State Legislative Assembly to adopt the Repeal Act of 1999. This Writ Petition is pending till today. However, vide the order dated 17th August, 2006, no injunction was granted and the Resolution was actually placed before the Houses of the State Legislative Assembly which adopted on 29th November, 2007. To that extent, that Writ Petition itself became infructuous and remaining reliefs would hardly be subsisting as of now for the reason that the Repealing Act of 1999 has already been repealed the Act of 1976 and even steps in furtherance thereto have already taken by the State as well as the Central Government. In order to attract the principle of *res judicata,* the matter in controversy has to be decided fully and finally in the previous litigation and it is not an interim order which will determine the fate of the subsequent proceedings more so when subsequent proceedings are based upon an independent cause of action and even the facts for institution of such a petition are different. Thus, we see no merit in the objection raised by the Respondents that the present Writ petition

is not maintainable and is hit by the principles of *res judicata*.

18. It was also contended on behalf of the Respondents that the grounds urged have not been specifically raised in the writ petition and in any case the grounds claiming invalidation of the Statute are without any basis. It may be to some extent true that the exact grounds have not been spelt out in the writ petition but after the amendment of the writ petition in the year 2007, in our opinion, the grounds taken up by the Petitioners by and large are relatable to the writ petition and in any case to the rejoinder filed thereafter. The other main contention raised on behalf of the Petitioners is that the Repeal Act of 1999 has not been lawfully adopted by the State Legislature and it was placed only before the Cabinet of the Ministers and not before the Council Ministers as contemplated under the Maharashtra Government Rules of Business General Administration Department. According to them, in terms of Rule 9 of the Maharashtra Government Rules of Business General Administration Department, all cases referred to in the Second Schedule shall be brought before the Council of Ministers. This process having not

been adopted, the Resolution itself suffers from legal infirmities and thus the Resolution would be ineffective and resultantly the Repealing Act of 1999 cannot be said to be in force. This argument is again without any merit inasmuch as it has been made clear on record that the same process which was adopted by the State while enacting the 1976 Act has also been adopted in the present case. In terms of Rule 15 of the Maharashtra Government Rules of Business, instructions can be issued which would supplement the Rules and the said instructions as issued would have the force of law once they are approved by the Government. Vide the Notification dated 7th May, 1964 and as amended from time to time, in terms of Instruction 2, matters to be brought before such Ministers as the Chief Minister directs under Rule (9)(ii) shall be brought before the Cabinet which shall consist of all the Ministers, but shall not include Ministers of State and Deputy Ministers. In face of these statutory instructions, the objections taken up by the Petitioners loses all its significance. Furthermore, these are the matters of State policy and the State has to be provided with sufficient leverage to formulate the law relating to its policy and governance. Unless and until such laws were

unconstitutional or suffer from the vice of patent arbitrariness and/or manifestly intended to subserve the public interest, the Court would not interfere in exercise of such power. Reference can also be made to a judgment of this Court in the case of *Prof. Krishnaraj Goswami v. The Reserve Bank of India & Ors.,* 2007(6) Bom. C.R. 565 where the Court, while referring to the judgments of the Supreme Court in *Balco Employees' Union (Regd.) v. Union of India & Ors.,* (2002)2 SCC 333 and *Federation of Railway Officers Association & Ors. v. Union of India,* (2003)4 SCC 289, observed that policy decisions which fall within the domain of the authorities concerned, the effects and repercussions of such policy decision can hardly be subject matter of judicial review. Policy decisions, unless and until are reversed or are inconsistent with the constitutional mandate or are patently abuse of power, judicial intervention would normally be not necessitated.

19. In view of our above discussion, we do not find any merit in any of the contentions raised by the Petitioners. It is noteworthy that in the order of the Court dated 17th August, 2006, the Court has specifically observed that the order shall not impede any legislative

process for repealing the Act of 1976. In other words, it had been specifically permitted by the Court, obviously if the State and Competent Legislature intended to do so. Thus, we hardly find any merit in this Writ Petition.

20. In the result, the Writ Petition is dismissed, leaving the parties to bear their own costs.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J