

(1969) 01 MAD CK 0018
In the Madras High Court

Dharmambal Achi

APPELLANT

Vs

The Authorised Officer, Land Reforms and Another

RESPONDENT

Date of Decision : 24-01-1969

Acts Referred:

Citation : (1970) ILR (Mad) 119 : (1969) 82 LW 713 : (1970) 1 MLJ 544

Hon'ble Judges : K. Veeraswami, J

Bench : Division Bench

Judgement

K. Veeraswami, J.—The main contention for the petitioner is that in the light of I.C. Golak Nath and Others Vs. State of Punjab and

Another, we should reconsider Krishnaraju Reddiar v. Authorised Officer (1967) 1 M.L.J. 179 : ILR (1967) 3 Mad. 109, which upheld the

validity of the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961. The Act was struck down by A.P. Krishnasami Naidu etc. Vs.

State of Madras, , as violative of the fundamental rights. That was on 9th March, 1964, but the Parliament on 20th June, 1964, enacted the

Constitution (Seventeenth Amendment) Act, 1964 which included the Act in the Ninth Schedule to the Constitution. The validity of the

Seventeenth Amendment was unsuccessfully questioned before the Supreme Court in Sajjan Singh Vs. State of Rajasthan, . It was there held by

the majority opinion that Article 13 (2) did not affect the Amendment of the Constitution made under Article 368 and that the power to amend the

Constitution conferred by Article 368 included even power to take away fundamental rights under Part III. In Krishnaraju. Reddiar v. Authorised

Officer ILR (1967)Mad 109 : (1967) 1 M.L.J. 179, we held that the Madras Act was not incompetent for want of legislative power, and rejected

the ground that Act, having been struck down as invalid by the Supreme Court in A.P. Krishnasami Naidu etc. Vs. State of Madras, , it was non

est and was void ab initio and Article 31-B did not help to Validate it without a separate validating Act passed by the Madras Legislature. While

recognising the principle in Deep Chand Vs. The State of Uttar Pradesh and Others, , that an after acquired power cannot, ex proprio vigore

validate a statute void when enacted, we held that it was, however, open to the constituent power, which is supreme, to expressly validate a law hit

by Article 13 (2) of the Constitution by removing the prohibition specifically with reference to such law. We said:

If a law in the teeth of a constitutional prohibition is invalid from its inception, we can see no valid objection to the constituent power lifting the

prohibition retrospectively and providing that the law should not be deemed to be void by reason of the prohibition thereby reviving and Validating

the law right through.

2. We pointed out that was what Article 31-B did which in terms provides that none of the Acts and Regulations specified in the Ninth Schedule

should be deemed to be void or ever to have become Void on the ground that such Acts and Regulations are inconsistent with or take away or

abridge any of the rights conferred by any provisions of Part III. It may be seen that our view in Krishnaraju Reddiar v. Authorised Officer ILR

(1967) 3 Mad 109 : (1967) 1 M.L.J. 179, proceeded on the assumption that Sajjan Singh Vs. State of Rajasthan, , as to the scope of Article 13

(2) and 368 held the field. But that and the earlier cases in Shankari Prasad Singh v. Union of India (1951) S.C.J. 775 : (1951) 2 M.L.J. 683 :

AIR 1951 S.C. 458, have been held by the majority in I.C. Golak Nath and Others Vs. State of Punjab and Another, , to have been wrongly

decided. According to the majority view in I.C. Golak Nath and Others Vs. State of Punjab and Another, , the power of the Parliament to amend

the Constitution is derived from Articles 245, 246 and 248 of the Constitution and not from Article 368 which only contains the procedure;

amendment to the Constitution is but a legislative process and is a law within the meaning of Article 13 and if it takes away or abridges the rights

conferred by Part III, it is void. Since the Parliament has, therefore, no power to amend Part III of the Constitution, so as to take away or abridge

the fundamental rights, the Constitution (First Amendment) Act, 1951, the Constitution (Fourth Amendment) Act, 1955 and the Constitution

(Seventeenth Amendment) Act, 1964, would be void, but on the basis of the earlier decisions of the Supreme Court and invoking and applying the

doctrine of prospective overruling, it upheld these Acts to be valid.

3. The facts in this petition are of the same pattern as in *Sajjan Singh Vs. State of Rajasthan*, . In that case we have fully set out the provisions of

the Madras Act, their intendment and effect as well as the background of the legislation with the relative decided cases and they do not, therefore,

require reiteration. The petitioner is a ryotwari proprietor owning lands in two villages, Meenammanallur and Isanur in Nagapattinam taluk and

Melakottakam in Mannargudi taluk. As on 6th April, 1960, her holding totalled 104 acres and 7 cents out of which 99 cents were exempt u/s 73

and 42 acres and 63 cents were within the ceiling. The surplus 60 acres and 45 cents equivalent to 36 standard acres and 91 cents was notified u/s

18 (1) and there was a proclamation u/s 18 (2) (a) of the Act issued on 29th December, 1966, which was published as prescribed. The petition is

to quash the notification u/s 18 (1).

4. Sri Vedantachari for the petitioner argues that when there is no constituent power to amend the Constitution and constitutional amendment is

itself but a law within the ambit of Article 13 (2) of the Constitution, the Seventeenth Amendment cannot validly revive and validate the Madras

Act which had been struck down as still born by *A.P. Krishnasami Naidu etc. Vs. State of Madras*, , as the power to revive it exclusively belongs

to the State Legislature as a legislative function. Before we proceed to deal with it, we may reiterate that in *Krishnaraju Reddiar v. Authorised*

Officer ILR (1967) 3 Mad. 109 : (1967) 1 M.L.J. 179, we did not accept the contention that the Madras Act was incompetent for want of

legislative power. *A.P. Krishnasami Naidu etc. Vs. State of Madras*, , struck it down only on the ground that it violated Part III of the Constitution.

The protection afforded by Article 31-B to the Act is limited to such violation and is not against any other ground. If the impugned State legislation

lacks legislative competence otherwise than with reference to the fundamental rights, the Seventeenth Amendment does not and cannot save it.

While dealing with the challenge against the Bihar Land Reform Act, 1950,

Patanjali Sastri, C.J., in *The State of Bihar Vs. Sir Kameshwar Singh*, ,
observed:

It will be noted, however, that Article 31-A and 31-B afford only limited protection against one ground of challenge, namely, that the law in

question is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this part. This is made further clear by the

opening words of Article 31-A " notwithstanding anything in the foregoing provisions of this part." The Amendment Act (First Amendment) thus

provides no immunity from attacks based on the lack of legislative competence under Article 245 read with the entries in List II or List III of the

Seventh Schedule to the Constitution to enact the three impugned statutes as the Amendment Act did not in any way affect the lists.

5. What Sri Vedantacbari says is that the Parliament is not competent to revive and validate an invalid State legislation. We do not think that this

proposition can be disputed and the Supreme Court said in *Jaora Sugar Mills (P) Ltd. Vs. State of Madhya Pradesh and Others*, ,

If it is shown that the impugned Act purports to do nothing more than validate the invalid State statutes, then of course, such a validating Act would

be outside the legislative competence of Parliament itself.

6. The position will be *a fortiori* where the State Legislature lacks competency with reference to the relevant lists and the Parliament in exercise of

its own power makes a law attempting to rectify the defect. The Parliament cannot validate the State Acts which are void for lack of legislative

power.

7. But in our view, the foregoing considerations do not affect the Validity of the Madras Land Reforms (Fixation of Ceiling on land) Act, 1961.

We are inclined to that view for two reasons. The majority decision in *I.C. Golak Nath and Others Vs. State of Punjab and Another*, , has only

prospective operation and has upheld the validity of the Seventeenth Amendment on the limited application of the principle of *stare decisis* and on

the basis of its earlier decisions, namely *Shankari Prasad Singh v. Union of India* (1951) S.C.J. 775 : AIR 1951 S.C. 458, and *Sajjan Singh Vs.*

State of Rajasthan, . This can only be on the footing that the two decisions, should hold the field in respect of legislative enactments including the

Seventeenth Amendment made prior to 27th February, 1967, when *I.C. Golak*

Nath and Others Vs. State of Punjab and Another, , the

contention, inter alia, was that Seventeenth Amendment, in spite of the decision of the Supreme Court in I.C. Golak Nath and Others Vs. State of

Punjab and Another, , was invalid and it was disposed of by the Supreme Court by the following observations:

Coming to the second point, the learned Counsel merely mentions the point. He says that there was no majority for any particular ratio as five

Judges held the Seventeenth Amendment to be void because it contravened Art. 13 (2), but by applying to doctrine of "prospective overruling"

they declared that their decision would not affect the validity of the Seventeenth Amendment. Hidayatullah, J., as he then was, on the other hand,

did not apply the doctrine of "prospective overruling," but held Section 3 (2) of the Seventeenth Amendment to be bad. The other five Judges

held that the Seventeenth Amendment was a valid amendment of the Constitution. We are, however, bound by the result arrived at by this Court in

that decision and the result that the Seventeenth Amendment is valid is binding on us.

8. The point is that the majority in I.C. Golak Nath and Others Vs. State of Punjab and Another, , by applying the doctrine of prospective

overruling "upheld the validity of the Seventeenth Amendment, the validity being rested on the basis of the earlier view of the Supreme Court in the

two decisions as to the scope of Articles 13 (2) and 368 of the Constitution. Our view in Krishnaraju Reddiar v. Authorised Officer ILR (1967) 3

Mad. 109 : (1951) 1 M.L.J. 179, as to the validation of the Madras Act by the Seventeenth Amendment being rested on Sankari Prasad Singh v.

Union of India (1951) S.C.J. 775 : (1951) 2 M.L.J. 683 : AIR 1951 S.C. 458, and Sajjan Singh Vs. State of Rajasthan, , does not call for

reconsideration because of their prospective overruling only by I.C. Golak Nath and Others Vs. State of Punjab and Another, .

9. The second reason is this. Though in a sense the Seventeenth Amendment can be said to have revived and Validated the Madras Act after it

had been struck down by A.P. Krishnasami Naidu etc. Vs. State of Madras, , that result is not brought about by the Parliament assuming powers

not belonging to it but the State Legislature. The revival and validation of the Madrai Act by the Seventeenth Amendment are not in our view, a

species of State Legislation arrogated by the Parliament to itself but have been brought about by the deeming process employed by Article 31-B

without in any way trenching on the State Legislature's power. The invalidity of the Madras Act as found in A.P. Krishnasami Naidu etc. Vs. State

of Madras, , resulted from the operation of Article 13 (2) and in effect what Article 31 -B says is that Article 13 (2) with reference to the State Act

in question never applied to it. If this position is fixed in mind as a fact, and it is not allowed to boggle, there will then be no room for the argument

based on the Act being still-born on account of its violation of the fundamental rights and its revival and revalidation.

10. The petition is dismissed with costs. Counsel's fee Rs. 100.