
(2013) 11 CAL CK 0065
In the Calcutta High Court
Case No : Writ Petition No. 3724 (W) of 2013

Dr. Debdas Banerjee and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2014) 1 CALLT 174 : (2014) 2 CHN 186

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharya, Mr. Sudip Sanyal, Mr. Sukanta Das and Mr. Dibyendu Chatterjee, Sundarananda Pal and Mr. Naba Kumar Das, for the Appellant; Chama Mukherjee and Ms. Paromita Pal for Respondents 1 to 4 and Mr. Sudipto Maitra, Advocate, Mr. Ranjan Laskar, Advocate and Mr. P.K. Ghosh, Advocate for the Respondents 5 and 6, for the Respondent

Final Decision : Allowed

Judgement

Dipankar Datta, J.—The first, second and third petitioners in this petition under Article 226 of the Constitution are the President, Secretary and Joint Secretary respectively of the Calcutta Greens HIG B Residents' Welfare Association. It is an association registered under the West Bengal Societies Registration Act, 1961. The petitioners complain of alleged illegal and iniquitous actions of the respondent authorities in seeking to form one Apartment Owners' Association for the apartment owners of two separate properties under the West Bengal Apartment Ownership Act, 1972 (hereafter the Act).

2. According to the petitioners, premises No. 1050/2, Survey Park, under Municipal Ward No. 109 in Borough No. 12, Kolkata - 75 comprises of HIG Type A and HIG Type B apartments apart from 7 separate clusters of apartments aggregating 1056 number of flats, designed and developed by the West Bengal Housing Board. The two categories (HIG Type A and HIG Type B) had demarcated property and for their management, the owners of apartments of HIG Type A and HIG Type B have formed their respective Residents' Welfare

Associations.

3. It is averred in the writ petition that trouble began when a few apartment owners of HIG Type B in collusion with some of the office bearers of the Calcutta Greens HIG Type A Residents Welfare Association applied before the competent authority under the Act with false consent of several HIG Type B apartment owners for registration of a body named Calcutta Greens Apartment Owners Association. The common areas shown in the declaration, being Form A, were concocted and manufactured and did not match the property mentioned in the schedule of the deeds of conveyance of the respective parties, i.e. the apartment owners of the two types. On receipt of such application, the competent authority registered the Calcutta Greens Apartment Owners Association (hereafter the Association) on June 15, 2009 and allotted serial No. 7A/2009 on such registration.

4. Objection followed at the instance of the apartment owners of HIG Type B before the competent authority. According to them, they had neither executed any instrument of declaration nor had they submitted their respective apartments to any agency or authority under the Act. It was their specific version that no one was authorised to submit declaration in Form A in terms of the provisions of the Act and the rules framed thereunder, and that they did not receive any notice from the competent authority in regard to filing of an application for formation of a single society or the intention to grant registration to the Association.

5. The competent authority by his letter dated January 1, 2010 conveyed upholding of the order dated June 15, 2009 granting registration of the Association, without extending any opportunity of hearing. An appeal was filed challenging the order dated January 1, 2010, which was heard by the Special Secretary, Department of Housing as the appellate authority. By an order dated February 26, 2010, the appeal was disposed of by the appellate authority holding that he had no jurisdiction to adjudicate the matter.

6. Thereafter, the State Government invoked its power u/s 10B of the Act. The Secretary, Department of Housing by an order dated May 31, 2010 set aside the registration of the Association and directed maintenance of status quo with regard to maintenance and management of the properties.

7. A writ petition followed at the instance of persons who were aggrieved by the order dated May 31, 2010. Since the Secretary, Department of Housing had passed the impugned order without putting the members of the Association on notice, a learned judge of this Court by his order dated March 6, 2012 set aside the same and directed the Secretary to pass a fresh order after hearing all the concerned parties.

8. In compliance with the said order, the Secretary heard the parties. Three prayers were made by the petitioners. First, they prayed that the order of the competent authority dated June 15, 2009 granting registration to the Association

be set aside; secondly, an order was prayed for to declare that the demarcated portion of the premises at Calcutta Greens Phase - I having exclusive common areas and facilities for HIG Type B apartment owners is a separate property within the meaning of the Act; and thirdly, a direction be issued upon the competent authority under the Act to allow formation and registration of a separate apartment owners association for the apartment owners of HIG Type B on the strength of the application filed before him on July 13, 2011. By an order dated December 19, 2012, the Secretary overruled the objection of the petitioners in respect of registration of the Association upon consideration of Rule 3 of the West Bengal Apartment Ownership Rules, 1974 (hereafter the Rules). Insofar as their second prayer is concerned, he recorded that the apartments of HIG Type B do not constitute a separate and distinct property. Regarding the third prayer, a direction issued on the competent authority to dispose of the application filed before him on July 13, 2011 by the petitioners at an early date in accordance with law.

9. Apart from seeking interference of this Court with the order dated December 19, 2012 of the Secretary, the petitioners have also questioned the validity of Rule 3 of the Rules. According to them, Rule 3 is ultra vires Section 2 of the Act.

10. The contention of Mr. Bhattacharya, learned senior advocate for the petitioners, was that if the provisions of the Act were to apply to a building, the sole owner of such building or all the owners thereof have to apply; however, if exemption were granted in favour of any owner, the will of the majority of the owners would prevail and in such case an exempted owner would be subject to the Act in respect of such building. Significantly, the controlling clause was not amended and amendment was effected in the proviso. On a plain and simple construction of Section 2 of the Act, the declaration referred to in Section 10 thereof is required to be executed either by the sole owner or all the owners of a building having residential and/or commercial units, whereas Rule 3 (as amended) permits the majority of the owners to execute such declaration and submit the building comprised of residential and/or commercial units to the provisions of the Act. This, according to him, is an executive overreach since in terms of the statutory provisions the wish of the majority of the owners of a building would have precedence only over an owner who has been exempted by the State Government from submitting such building to the provisions of the Act. Rule 3 has the effect of superseding the controlling provision of Section 2 of the Act, which is impermissible in law and in this connection reliance was placed on the decisions of the Supreme Court reported in *Visitor and Others Vs. K.S. Misra, Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others*, , *Bhaiji Vs. Sub Divisional Officer, Thandla and Others*, , *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, and *Union of India (UOI) and Another Vs. Hansoli Devi and Others*, . The decisions reported in *The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited*, and *Kush Sahgal and Others Vs. M. C. Mitter and Others*, were referred to, wherein the Court had laid down what the proper

function of a proviso is. The decision reported in Smt. Vijayalakshamma and Another Vs. B.T. Shankar, was also relied on to contend that reading the expression "majority of the owners" in the controlling provision of Section 2 would amount to legislation by the Court on the lines as to what in its view the law should be, which is wholly impermissible.

11. Mr. Pal, learned senior advocate representing the learned Advocate General for the State submitted that his role was limited to the extent of advancing argument for sustaining Rule 3 of the Rules and that he was not concerned with the inter-se dispute of the petitioners and the private respondents. He urged that the Court ought to avoid a construction that would defeat the object and purpose of the Act. If the contention raised by Mr. Bhattacharya were accepted, that would lead to a situation where minority members would rule over the majority members and defeat the will of the latter to form an association of apartment owners by submitting the building to the provisions of the Act. The plural expression in Section 2 of the Act does not destroy or militate against the expression "majority of the owners" appearing in Rule 3, and the operative part of Section 10 of the Act should be taken into consideration and not the applicability section of the statute. Such applicability section cannot be called in aid to challenge the vires of a rule made under an Act except for the purpose of a jurisdictional issue. Reference was made to the 2nd edition of Cross on Statutory Interpretation as well as to the decision of the Supreme Court reported in Mohd. Saud and Another Vs. Dr. (Maj.) Shaikh Mahfooz and Others,

12. The writ petition was vehemently opposed by Mr. Maitra, learned advocate for the respondents 5 and 6. He first submitted that although the petitioners have questioned Rule 3 of the Rules, 58 out of 96 apartment owners of HIG Type B had applied before the competent authority under the Act in terms of Section 2 read with Section 10 thereof and a prayer was also made before the Secretary, Housing Department for a direction upon the competent authority to decide the application received by him on July 13, 2011. It was, accordingly, urged that the petitioners cannot blow hot and cold at the same time. Next, it was urged by him by referring to the Statements of Objects and Reasons for introduction of the West Bengal Apartment Ownership (Amendment) Act, 2001 (hereafter the Amendment Act of 2001) that the State Legislature considered the need to effect amendment in the Act so as to make it workable. It pondered on the issue of the provisions of the Act being rendered unworkable because of unwillingness of a small segment of apartment owners in a building, who did not wish such building to be subject to the provisions of the Act. Instead of all the owners agreeing to submission of the building to the provisions of the Act, the words "majority of the owners" were sought to be incorporated. It is by an accidental slip that such words were incorporated in the second proviso instead of in the controlling provision. It does not sound logic that only in case of an exempted owner the majority owners would be at liberty to execute a declaration in terms of Section 10 in Form A, and not when the minority group of apartment owners of a building is not willing to submit it to the provisions of the Act. That was the very

purpose for which the Amendment Act of 2001 was introduced and construction of the statute in the manner urged by Mr. Bhattacharya would frustrate the legislative intent leading to amendment of Section 2.

13. In support of his contentions, Mr. Maitra relied on the following decisions:

(i) P.V. Narsimha Rao Vs. State (CBI/SPE), for the proposition that the speech made by the mover of the Bill explaining the reason for introduction of such Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted.

(ii) Gauri Shankar Gaur and Others, etc. Vs. State of U.P. and Others, for the proposition that in construing a statute equity will not relieve against a public statute of general policy in cases admitted to fall within the statute and it is the duty of the Court to give effect to the legislative intent;

(iii) District Mining Officer and Others Vs. Tata Iron and Steel Co. and Another, , for the proposition that while construing a statute, it is the duty of the Courts to give effect to the legislative intent;

(iv) Tata Power Company Ltd. and Another Vs. Reliance Energy Ltd. and Others, , for the proposition that every legislation is framed with certain aim and if it is intended to remedy a mischief, for deciphering object and purport of the concerned statute the Statement of Objects and Reasons can be taken into consideration;

(v) Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, for the proposition that a statute must be read as a whole to get a holistic perspective of it, and that the Court must have regard to the historical background, objects and reasons, popular understanding, contextual connotation and suggestive subject matter.

(vi) Commissioner of Income Tax Kolkata-III Vs. Alom Extrusions Limited, where it was ruled that the Finance Act 2003 being curative in nature it would apply retrospectively from the date the first proviso to Section 43B of the Income Tax Act 1961 was inserted. The contention advanced before me is that the amendment in Section 2 of the Act with effect from 2001 being curative in nature which was brought about to resolve implementation problems, the Court ought to regard the legislative intent.

(vii) Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, for the proposition that statute should be construed after ascertaining legislative intent and in the context and scheme of the Act.

(viii) (2009) 16 SCC 722 (Surjit Singh v. MTNL), for the proposition that in appropriate cases the Court can depart from literal interpretation and purposive construction could be preferred to literal construction considering the context in which a statute has been made and the object it seeks to achieve, for, a too

literal interpretation may sometimes frustrate the very object of the statute which ought to be eschewed.

(ix) R.L. Arora Vs. State of Uttar Pradesh and Others, for the proposition that a literal interpretation is not always the only interpretation of a provision in a statute and the Court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of the statute.

14. In reply, Mr. Bhattacharya contented that the Statements of Objects and Reasons appended to the Bill preceding the statute in question should be ruled out as an aid to the construction of such statute, and reliance in this connection was placed on the Constitution Bench decision of the Supreme Court reported in Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another,

15. Mr. Maitra was extended the opportunity to rebut. He referred to the decision reported in Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, wherein after considering Aswini Kumar Ghose (supra), it was held that the Statement of Objects and Reasons is not admissible as an aid to the construction of a statute, but could be referred to for the limited purpose of ascertaining the conditions prevailing at the time the bill was introduced, and the purpose for which the amendment was made.

16. I have heard Mr. Bhattacharya, Mr. Pal and Mr. Maitra at substantial length.

17. Before I proceed to examine the point of validity of Rule 3, it would be necessary to note Section 2 of the Act, as originally enacted, and the amendments that have been effected thereto from time to time, as well as decisions of the Supreme Court on how far the Statement of Objects and Reasons could aid the Court to construe a statute appropriately.

18. Section 2, at the time the Act was enforced in 1972, read thus:

2. Application of the Act.--This Act shall apply to every building which is used, or is proposed to be used, mainly for residential purposes:

Provided that the sole owner or all the owners of every such building shall submit the same to the provisions of this Act by duly executing and registering a Declaration setting out the particulars referred to in section 10:

Provided further that the State Government may exempt by any general or special order any such owner from submitting such building to the provisions of this Act.

19. Amended by the Amendment Act of 2001, Section 2 read thus:

2. Application of the Act.--This Act shall apply to every building which is used, or is proposed to be used, mainly for residential purposes, the sole owner or all the owners of every such building shall submit the same to the provisions of this Act

by duly executing and registering a Declaration setting out the particulars referred to in section 10:

Provided further that the State Government may exempt, by a general or special order, any such owner from submitting such building to the provisions of this Act:

Provided further that notwithstanding such exemptions, the other provisions of this Act shall, upon the submission of such building to the provisions of this Act by the majority of the owners of such building, also apply to the owner exempted under the first proviso.

20. Pursuant to further amendment in 2008, Section 2 w.e.f. January 1, 2009 reads thus:

2. Application of the Act.--This Act shall apply to every building having residential units or commercial units or both residential and commercial units, and the sole owner or all the owners of every such building shall submit the same to the provisions of this Act by duly executing and registering a declaration setting out the particulars referred to in section 10:

Provided further that the State Government may exempt, by a general or special order, any such owner from submitting such building to the provisions of this Act:

Provided further that notwithstanding such exemption, the other provisions of this Act shall, upon the submission of such building to the provisions of this Act by the majority of the owners of such building, also apply to the owner exempted under the first proviso.

21. After the amendments were effected in the Rules in exercise of power conferred by Section 17 of the Act vide Notification dated July 31, 2003 published in the Kolkata Gazette dated August 2, 2003, Rule 3 (to the extent relevant for deciding the issue raised herein) reads as follows:

3. The form and manner in which the Declaration referred to in section 2(1), of section 10 and section 10A shall be submitted to the Competent Authority.--(1) the declaration u/s 2 by the sole owner or majority of the owners, as the case may be, of a property shall -

(a) be executed in Form A, and

(b) be signed and verified by the sole owner or majority of the owners, as the case may be, in the presence of Magistrate or any other person competent to administer oath.

(2) ****

(3) When on receipt of such Declaration, the Competent Authority, after following the procedure laid down in clause (a) of sub-section (2) of section 10A, records an order under clause (b) of sub-section (2) of section 10A accepting the Declaration, it shall make an endorsement on the body of the Declaration testifying to the fact of acceptance of the Declaration, put its dated signature and

set its seal. Thereafter when in terms of clause (c) of sub-section (2) of section 10A the Competent Authority returns the Declaration along with its enclosures to the declarant or all the declarants, as the case may be, such declarant or declarants shall, within fifteen days from the date of such return, present the Declaration of Registration under the Registration Act, 1908, at the Office of the Registrar having jurisdiction. In case where the declaration is submitted by majority of the owners and is accepted by the competent authority, the remaining owners shall, if they like, be allowed to submit declaration or declarations subsequently, either individually or collectively, for acceptance by the competent authority. Such declaration or declarations shall be treated as part of the original declaration already accepted by the competent authority.

(4) ****

(5) ****

(6) ****

(7) ****

22. Statement of Objects and Reasons contained in Bill No. 33 of 2001 [The West Bengal Apartment Ownership (Amendment) Bill, 2001] may be ascertained at this stage. For facility of reference, the same is quoted below:

The West Bengal Apartment Ownership Act, 1972 (West Bengal Act XVI of 1972) (hereinafter referred to as the said Act), was passed in the state legislature and assented to by the President in 1972 and the provisions of the said act have been brought into force with effect from 7th June, 1973. In course of execution of the provisions of the said act, it has been noticed that some of the flat owners of a building are not willing to submit their apartments of the building under the provisions of the said act. Naturally, majority of the owners who are willing to submit their apartments under the provisions of the said act, cannot do so due to the unwillingness of some of the flat owners, obviously no Association can be formed under the said Act in such cases.

2. It has also been noticed that provision of penalty made in section 16A of the said Act does not apply to the sole owner of a building or escapes even violating the provisions of relevant sections of the said Act. Further, in section 16A of the said Act there is no provision of penalty for violation of section 2 of the said Act.

3. In view of the above, the State Government has decided to amend section 2 and section 16A of the said Act so that the provisions of the said Act become imperative to the few, who decline to submit their property under the said Act, if the majority owners of the building submit the same. The sole owner may also be penalised for violating the provisions of relevant sections of the said Act.

4. The bill has, accordingly, been framed with the above objects in view.

5. ****

23. The Supreme Court decisions on whether the Statement of Objects and Reasons of a statute could be used as an aid for interpreting it would now exercise my consideration.

24. It has been authoritatively laid down in *Aswini Kumar Ghose (supra)*, why the Statements of Objects and Reasons contained in the Bill cannot be used or relied upon for the purpose of construction of the statute. The reasoning given was that it seeks only to explain what reasons induced the mover to introduce the Bill in the House and what objects he sought to achieve which may not correspond to the objective that the majority of members had in view when they passed it into law. Further, the Bill may have undergone radical changes during its passage through the House or Houses, and there was no guarantee that the reasons which led to its introduction and the objects thereby sought to be achieved have remained the same throughout till the Bill emerges from the House as an Act of the Legislature for they do not form part of the Bill and are not voted upon by the members.

25. The Constitution Bench in *Kochuni (supra)*, relied on by Mr. Maitra, did not take a contrary view and, therefore, the said decision does not come to his assistance.

26. In the decision reported in *Jia Lal Vs. The Delhi Administration*, which is yet another Constitution Bench decision, it was held that the Statement of Objects and Reasons is not admissible in evidence for construing a statute and that it could be admissible only for ascertaining the conditions which prevailed when the legislation was enacted.

27. It is worthwhile to note one other Constitution Bench decision, which is reported in *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, it was ruled that "Statements of Objects and Reasons of a Statute may and do often furnish valuable historical material in ascertaining the reasons which induced the legislature to enact a Statute, but in interpreting the Statute they must be ignored".

28. It is true that unwillingness of a section of apartment owners who were in the minority led to unworkability of the provisions of the Act and the legislature felt the need to introduce amendments to remedy the mischief. The legislative intent appears to be clear that Section 2 of the Act was proposed to be amended so that the provisions of the Act become imperative to the few who decline to submit their property under the Act if the majority owners of the building submit the same. However, the Act in its present form does require all the owners to submit to the provisions of the Act as distinguished from "majority of the owners", which seems to be the driving reason for introducing the amendment. It is noteworthy that the declaration referred to in Section 2 of the Act, in terms of Section 10 thereof, is required to be submitted in a form that may be prescribed and the prescribed form, being Form A which is appended to the Rules, also requires "all owners of the property" to sign it. Amendment in Rule 3

of the Rules introducing the concept of the declaration to be submitted by the "majority of the owners" does appear to be in conflict with the provisions of Section 2 and 10 of the Act read with Form A appended to the Rules. In such perspective, the Court has to consider whether it is permissible to read the main provision of Section 2 by reading the words "majority of" in place of "all" appearing between "owner or" and "the owners". Mr. Mitra urged that keeping in mind the Statement of Objects and Reasons, it would not be impermissible for me to thus read Section 2.

29. I am afraid, the submission does not impress me. I have not been shown any decision of the Supreme Court, which has overruled the principle of law laid down in the aforesaid four Constitution Bench decisions and, thus, I have no other option but to ignore the Statement of Objects and Reasons for introduction of the Amendment Act of 2001 in interpreting Section 2. Whatever is the worth of the Statements of Objects and Reasons leading to introduction of the Amendment Act of 2001, the same does not furnish a ground for me to read the main provision of Section 2 in the manner urged by Mr. Mitra.

30. Having ruled thus, I proceed to consider as to whether a purposive interpretation of Section 2 can be resorted to having regard to the Lord Denning's statement of law in the decision reported in 1949 (2) All ER 155 (CA) (Seaford Court Estates Ltd. v. Esher). Lord Denning, on purposive approach to the interpretation of a word used in the statute, observed as follows:

The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature.... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

(underlining for emphasis by me)

31. I am not oblivious of the fact that the above statement of law has been consistently followed by the Supreme Court in M. Pentiah and Others Vs.

Muddala Veeramallappa and Others, , S. Gopal Reddy Vs. State of Andhra Pradesh, . Ahmedabad Municipal Corpn. Another Vs. Nilaybhai R. Thakore and Another,

32. However, some other relevant decisions of English Courts on the point, which have been accepted by the Supreme Court have to be borne in mind. In the decision reported in 1969 (3) All ER 257 (Pinner v. Everett), the House of Lords ruled that it is wrong and dangerous to proceed by substituting some other words for words of the statute. A passage from the decision of the Privy Council reported in Robert Wigram Crawford vs. Richard Spooner reads as follows:

We cannot aid the legislature's defective phrasing of an Act, we cannot add or mend and, by construction make deficiencies which are left there.

The aforesaid decisions were noted by the Supreme Court in its decision reported in V. Jagannadha Rao and Others Vs. State of A.P. and Others,

33. Bearing in mind the aforesaid decisions, I hold that acceptance of the contention of Mr. Maitra would require me to reframe the legislation. Since the Court has no power to legislate, reframing of the legislation is not permissible. To substitute the words "majority of" for "all" in the main provision of Section 2 would amount to altering the material of which the Act is woven, instead of ironing out the creases.

34. If indeed the legislature perceived submission by majority of the apartment owners to the provisions of the Act to be sufficient for rendering the Act workable, it was for the legislature to replace the word "all" by the words "majority of" in the main provision of Section 2 and thereafter, it was for the executive to carry out necessary amendments in Rule 3 as well as Form A appended to the Rules so as to remedy the mischief which came to notice leading to introduction of the Amendment Act of 2001. It is unfortunate that when Section 2 was amended twice, the legislature forgot to insert the words "majority of" at the appropriate place. No doubt it is the duty of the Court to try and harmonise the various statutory provisions in the manner suggested by Lord Denning in Seaford Court Estates (supra) but certainly it is not the duty to unduly stretch words used by the legislature to fill in gaps or omissions in the provisions of an Act.

35. I have considered the decisions cited by Mr. Mitra. The portion of the decision in P.V. Narasima Rao (supra) referred to by him is the minority view. Insofar as the other decisions are concerned, there cannot be any dispute with regard to the proposition of law laid down therein but the same do not persuade me to accept his contention.

36. The submission of Mr. Pal though attractive at the first blush, does not commend to be acceptable. Although submission to the provisions of the Act commences with presentation of declaration of the nature envisaged in Section 10 of the Act, Section 10 by itself does not throw any light as to whether the

declaration is required to be signed by all the apartment owners or majority thereof. As has been observed above, the unworkability of the provisions of the Act for the stated reason was sought to be remedied. The remedial provision has neither been properly drafted nor has care been taken to ensure that Form A appended to the Rules conforms to amended Rule 3. The fundamental mistakes in the statutory provisions required notice at the time Section 2 was proposed to be amended and it is for the appropriate authority to rectify such mistakes so that the object and purpose of the Act itself is not defeated.

37. I also find no reason to repel the challenge to the validity of Rule 3 on the ground that the petitioners themselves had submitted an application which was signed by the majority of the apartment owners and not all the owners. Validity and/or invalidity of a statute, when questioned before a Court of law, ought not to be solely decided on the basis of the conduct of the parties. An unconstitutional statutory provision does not acquire the character of a valid statute merely because of the conduct of the persons who are to be governed thereby. In a society governed by rule of law and in accordance with constitutional norms and principles, it is of utmost importance that subservience of rules framed by the executive to the legislation conferring power to frame rules is maintained or else it would give rise to anomalous results. In this connection the decision reported in *The Amalgamated Coalfields Ltd. and Others Vs. The Janapada Sabha, Chhindwara*, may be referred to. A tax imposed in 1935 was attacked in 1957. In the meanwhile the petitioners paid such tax. It was held that acquiescence in an illegal tax for a long time is not a ground for denying the petitioners relief.

38. The challenge to Rule 3 as ultra vires Section 2, therefore, succeeds. Rule 3, as amended in July/August, 2003 is struck down. The order impugned dated December 19, 2013, which proceeded to refuse the petitioners' prayer on the basis of Rule 3 consequently cannot survive and, accordingly, stands set aside with the rider that the factual findings contained therein have not been examined. The writ petition stands allowed to the extent mentioned above, without order for costs. Since unworkability of the provisions of the Act would seem to continue as a result of striking down of Rule 3, I hope and trust that adequate measures shall be taken immediately to undo the virtual mischief that Section 2 of the Act has presented.

Urgent photostat certified copy of this judgment and order, if applied, may be furnished to the applicant at an early date.