
(2013) 09 AP CK 0054

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8933 of 2013

K. Anantha Rao

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Citation : (2013) 6 ALD 556 : (2013) 6 ALT 708 : (2014) ALT(Rev) 10

Hon'ble Judges : Kalyan Jyoti Sengupta, J;K.C. Bhanu, J

Bench : Division Bench

Advocate : Vedula Srinivas, for the Appellant;

Final Decision : Partly Allowed

Judgement

Kalyan Jyoti Sengupta, J.—By this writ petition, the petitioner has challenged the constitutional validity of Section 6D of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (hereinafter referred to as "the Act"). The petitioner is the owner and possessor of the agricultural land admeasuring Acs. 10-29 guntas in Sy. No. 612 of Muthyampet village, Mallial Mandal, Karimnagar district. He is a practicing Advocate in this High Court. Because of the health problem, he is bedridden. In order to maintain the family and also to arrange marriage of his daughter, he has decided to sell the abovementioned land. He was holding the pattadar pass book for the said land. He is also having a share in the property inherited from his ancestors apart from the said land. His brother has filed a partition suit in the Court of Additional District and Sessions Judge, Jagityal, Karimnagar, wherein his father is the first defendant, he is the second defendant and his sister and children are the other defendants. Though the above partition suit relates to the ancestral property and does not relate to the land owned by him, his learned lawyer in the above partition suit filed the pattadar pass book pertaining to the said land is in Sy. No. 612 in the said Court. He has already obtained a certified copy of the pattadar pass book and filed an application for return of the original pattadar pass book. The said application is pending as the other parties to the suit contest the application taking time

indefinitely to file counter affidavit. As such, he states that he was not issued the title deed in respect of the said land in Sy. No. 612. Because of the non-obstante clause in Section 6D of the Act, the petitioner cannot execute sale deed in order to sell the said land to third party. The said non-obstante clause under sub-section (1) of Section 6D provides an obligation on the part of any person having interest or right in land to produce the title deed and pass book before the registering authority appointed under the Registration Act, 1908 along with the documents he proposes to get registered. It is further obligation under the said provision on the part of the said registering authority to make entry of every transaction of sale, gift, purchase, mortgage, lease or exchange in such title deed and pass book at the appropriate place or places under his signature and official seal. Sub-section (2) of the said non-obstante clause provides that the registering authority shall not register any document relating to a transaction of the nature referred to in sub-section (1) without the production of the title deed and pass book by both the parties to the transaction. Though Section 6D of the Act was introduced in the year 1989 by A.P. Act 1 of 1989, the State Government went on issuing orders from time to time exempting the provisions of that Section for the registrations of the documents. Accordingly, the registering authorities had hitherto not been insisting on production of pattadar pass book and title deed all these years at the time of registration of the sale deeds in respect of the agricultural lands. However, the second respondent has now issued draft memo No. G1/17480/96, dated 08-05-2012, basing on the Government Memo No. 18549/Regn.1/A1/2012-1, dated 08-05-2012 instructing all the Sub-Registrars not to accept the documents if the pattadar pass books are not produced by both the parties to the transaction as required u/s 6D of the Act. Because of the aforesaid memo, the third respondent is now insisting on the production of the pattadar pass book and title deed for entertaining the document for registration of sale of his land. Thus he is aggrieved by Section 6D of the Act.

2. In the petition, to challenge the aforesaid Section, it is alleged that the registration of deeds and documents falls under Entry-6 of List III of Schedule VII of the Constitution of India and in exercise of the same, the Government of India has enacted the Registration Act, 1908. Section 32 of the Registration Act, 1908 deals with the presentation of the documents for registration, Section 32A deals with affixing of photographs, Section 33 deals with the recognition of power of attorney, Section 34 provides for enquiry before the registration by the registering officer and Section 35 contains procedure on admission and denial of execution respectively. Part-XI of the Registration Act, 1908 deals with the powers of the Registering authority. The Rules under the Act are framed by the State Government and Rule 26 deals with the manner of examination of the document by the registering officer. It is stated that none of the provisions of the Registration Act, 1908 and the Rules made thereunder casts any obligation on the parties to the document to produce any other documents like pattadar pass book/title deed along with the document sought to be registered for the purpose

of registration. In the said Act or Rules, even there is no whisper of necessary obligation for production of any other documents along with the document sought to be registered. Thus there is no obligation on the part of the parties to produce the title deed and pattadar pass book at the time of registration of the agricultural land nor the registering authority can insist on such production at the time of registration.

3. It is stated in the body of the petition that the Registration Act, 1908 received the assent of the President of India and it has been made by the Parliament in exercise of its power under Article 254 of the Constitution of India, we are of the view that this is patently incorrect statement, as the Registration Act, 1908 was not made by the Parliament, the question of any assent to the same by the President of India does not and cannot arise. It is an existing Act within the meaning of Article 366 of the Constitution of India.

4. It is alleged that Section 6D of the Act runs counter to the law made by the Parliament and hence, it is hit by Article 254(2) of the Constitution of India. There is repugnancy since the State Law clearly override the Central Law because of imposition of restriction on the implementation of the Central Law by requiring production of pattadar pass book and title deed at the time of registration of a sale deed, as such a thing is not required under the Registration Act, 1908. It is further stated that the said Section 6D is presumed to have been enacted under Article 254 of the Constitution of India exercising concurrent power. But clause (2) and the proviso thereunder will not be helpful in any manner, as this State Law had not received the assent of the President of India. It is further stated that the impossibility of compliance with Section 6D(2) of the Act is manifest on its face as it requires both parties to the transaction to produce title deed and pattadar pass book at the time of registration. Under no circumstances, can both parties produce the said document since the vendor only will be in possession of those documents, not the vendee.

5. This application is contested by the State. However, despite time given to file counter affidavit on 02-07-2013 and making clear that if no counter affidavit is filed, the writ petition will be heard without any counter affidavit, counter affidavit was not filed within time.

6. Learned counsel for the petitioner submits that the aforesaid provision of Section 6D of the Act has been enacted presumably in exercise of the power under Article 254 of the Constitution of India as the same relates to the subject under Entry-6 of List III-Concurrent List of Schedule VII of the Constitution of India. The Registration Act, 1908 is an existing law within the meaning of Article 366 of the Constitution of India. He submits that in the Registration Act, 1908, there is no provision for production of the title deed as it has been mandated by the impugned Section. He has taken us through various relevant provisions of the Registration Act, 1908 and submits that it is the power of the registering authority to register the documents the moment it is presented, without requiring the vendor or the vendee to produce any document relating to the title

of the land in question. But by the non-obstante clause of Section 6D, the power of the registering authority is taken away. He contends that the Central Act provides the power to the registering authority to register the document without production of any title deed or pass book, whereas the State Act has taken away such power. In the petition, it is specifically stated that no assent of the President of India, as required under clause (2) of Article 254 of the Constitution of India, is obtained. Hence, the said measure provided under the proviso of clause (2) of Article 254 of the Constitution of India is not applicable. No counter affidavit has been filed by the State inspite of giving time to state the fact that the said piece of enactment was sent for consideration and assent of the President of India and the President of India, upon application of mind, has given any assent. He further states that if the assent has been given as required under clause (2) of Article 254 of the Constitution of India, then he has no case at all. He submits on question of repugnancy that reservation and assent of the President of India are sine qua non. Therefore, it is clear that Section 6D of the Act is hit by the provision of Article 254 of the Constitution of India.

7. He next contends that the production of title deed by the vendee as required by Section 6D, with a non-obstante clause, is absolutely absurd and irrational provision and the same cannot stand to the scrutiny of Article 254 of the Constitution of India. He relies on the judgments of the Supreme Court reported in *State of Orissa Vs. M.A. Tulloch and Co.*, *State of Jammu and Kashmir Vs. M.S. Farooqi and Others*, *Rajiv Sarin and Another Vs. State of Uttarakhand and Others*, *Kaiser-I-Hind Pvt. Ltd. and Others Vs. National Textile Corporation (Maharashtra North) Ltd. and Others*,

8. Learned counsel appearing for the State, while opposing the petition, submits that this enactment has been made not under the provision of Entry-6 of List III-Concurrent List of Schedule VII of the Constitution of India. The aforesaid legislation has been made under Entry-45 of the State List in List-II of Schedule VII of the Constitution of India as it has been admitted in the petition. He argues that the aforesaid enactment has been enacted under the State List and the same is not inconsistent with any other law made by the Parliament. If the assertion of the petitioner is assumed to be correct, then the repugnancy or inconsistency, as alleged with regard to the Act made prior to the Constitution, came into force does not and cannot arise. Unlike Article 254, Article 251 does not provide for inconsistency with regard to the existing Act. This has been provided only in relation to an enactment made under the Concurrent List. Learned counsel for the State further contends that there is no question of repugnancy as the Registration Act, 1908 deals with different subject, whereas the impugned Section is a part of the said Act which is specifically enacted for the purpose of preparation and maintenance of records of rights in the State. So these enactments operate in different fields. Moreover he contends that if any Central Law is silent on any particular subject, the provision of the State Law in relation to the same subject cannot be said to be repugnant or inconsistent. Therefore, the said enactment is constitutionally valid and intervention of the

Court is not called for.

9. After hearing the learned counsel for the parties and considering the statements and averments made in the writ petition, the following points have fallen for consideration by this Court:

1) Whether the provision of Section 6D of the Act is repugnant to and inconsistent with the provisions of Registration Act, 1908?

2) Whether the question of repugnancy and inconsistency would arise in amending Section 6D of the Act if it is done under the provision of Entry-45 of List-II of Schedule VIII of the Constitution of India vis-a-vis the Registration Act, 1908?

10. Therefore, it is necessary to examine the question of repugnancy as formulated in point No. 1. In order to find out the repugnancy and inconsistency, it has to be found from the provisions of both the enactments. It appears to us, as it is also admitted in the petition, that in exercise of the powers enjoined under Entry-45 of List II of Schedule VII of the Constitution of India, the said Act was enacted and the amendment obviously has been made under the said entry. Entry-45 of the said list (List II) relates to, amongst others, the maintenance of land records survey for revenue purposes and records of rights. It appears from the statement and object of the Act that the same was enacted for the purpose of preparation and maintenance of records of rights for the villages and also for the purpose of formulation of scheme for issuance of passbooks to the ryots to enable them to secure loan on the basis of entries in the pass books without requiring to approach the village officers and other officers every time. Therefore, basically it is for the purpose of preparing and maintaining the records of rights and it has nothing to do with the registration of a document. The Constitution has provided about the inconsistency and repugnancy of the said Act under Article 251. We set out the said Article as follows:

251. Inconsistency between laws made by Parliament under articles 249 and 250 and laws made by the Legislatures of States.--Nothing in articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power to make, the law made by Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.

11. It will appear that the concept of inconsistency and repugnancy would arise when the State legislation enacted under List II is inconsistent with and repugnant to the law made by the Parliament within its power. In this case, the State Legislature has not made any provision admittedly inconsistent with and repugnant to any law made by Parliament, rather the existing law which was

made before Parliament came into being. In our considered opinion, this embargo of inconsistency and repugnancy is applicable in the case where the law is made by Parliament and not the law made by the Legislature other than Parliament. In Article 254, it has been specifically provided that the concept of repugnancy and inconsistency would arise not only in relation to the law made by Parliament but also the existing law, namely, made by Legislature before the Parliament came into being. The maker of the Constitution has made a clear distinction between the two provisions keeping in view the concept of federalism. After Constitution came into force, under List II the State Legislature is supreme authority to legislate and such legislation cannot be made by Parliament unless the State Legislature consents as required under Article 252 of the Constitution of India. So this power of the State under List II has been guaranteed and the same is not impaired by the existing law.

12. But in case of any legislation made under Concurrent List, obviously the legislation made by the State Legislature under this List has to be made with a caution that the same does not become inconsistent with or repugnant not only to the laws made by the Parliament but also to the existing laws and in such situation, the State legislation would be invalid unless of course it does not fall within clause (2) of Article 254 of the Constitution of India. The Supreme Court consistently held that in order to decide the question of repugnancy, it has to be examined - 1) whether both the enactments are on the same subject or not; 2) whether the provisions of the State legislation are in direct conflict with the provisions of the laws made by Parliament or existing law; and 3) whether obedience of the provisions of two enactments without having any contradiction is possible or not.

13. In this case, the provisions of the said Act are not encroaching and occupying the field of a registration under the Registration Act, 1908. The impugned Section clearly intends for proper and appropriate maintenance and preservation of records of rights and for that matter, transfer of such right is sought to be regulated by making a special provision with regard to registration. The Registration Act, 1908, being part of the Concurrent List and further an existing law, intends to make provisions for registration of all kinds of documents, both testamentary and non-testamentary. The provisions of this Act nowhere deal with or provide for maintenance and preservation of records of rights. It intends to enable the persons to get the factum of transfer and creation of interest or extinguishment of any right, title and interest in immoveable property, registered. Under these circumstances, we hold that both the pieces of legislations operate in different fields.

14. Upon reading of the entire provisions of the Registration Act, 1908, we do not find that the Registration Act mandates for production of documents relating to title by the vendor or transferor before the Registrar for the purpose of registration of any document for transfer of interest and this aspect of the matter is absolutely silent. By the impugned Section, it has been made mandatory for

production of the document relating to title by the transferor and the transferee at the time of registration and unless it is done, no registration is permissible. If one of the competing Acts (assuming in this case both are competing Acts) is silent and another is expressive as to its operation in a field, then what would be the situation has been decided by an old decision of the Supreme Court in the case of *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, . At page 704 of the report, it was observed by the Apex Court as follows:

Suffice it to say that none of these provisions do overlap the centre being silent with regard to some of the provisions which have been enacted by the State and the State being silent with regard to some of the provisions which have been enacted by the Centre. There is no repugnancy whatever between these provisions and the impugned Act and the rules framed thereunder.

In this case, already we have observed that the Registration Act, 1908 is completely silent about the compulsory production of document relating to title by the vendor and the vendee, whereas the impugned Section obliges the vendor and the vendee to produce the same. Silence does not necessarily mean implied dispensation. Exactly on the same situation, the Calcutta High Court following the Supreme Court decision (*supra*) has dealt with the said question in the case of *Md. Taha v. State of West Bengal* AIR 1966 Calcutta 359. In that case, the point was taken that Section 2(d) of the West Bengal Land Development and Planning Act, 1948 was repugnant to Land Acquisition Act, 1894. While dealing with that case, the Division Bench of the Calcutta High Court in paragraph-7 of the report observed as follows:

As was pointed out by the Supreme Court in the above case, in order to give rise to a question of repugnancy there must be overlapping by the provisions of one Act over the provisions of the other and it was held that the "Centre being silent with regard to some of the provisions which have been enacted by the State and the State being silent with regard to some provisions which have been enacted by the Centre, there could be no repugnancy." The State Act has made provisions with regard to matters on which the Central Act is completely silent and that being so, the two Acts can be easily reconciled and can be treated as complementary to each other.

15. In the case on hand, by the impugned Section, the power of the registering authority, as inappropriately contended by the learned counsel for the petitioner, is not taken away expressly or by necessary implication. It merely lays down necessary requirement for registration. It, therefore, can be said to be a complementary provision and can easily be reconciled. Learned counsel for the petitioner is inspired by the observation made by the Supreme Court in the case of *M.A. Tulloch and Co. (supra)*, that "If a competent Legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other Legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of

provisions of the two statutes but by the mere existence of the two pieces of legislation." But, this observation is not applicable at all in this case as the Legislature, while enacting the Registration Act, does not intend to cover the whole field as the provisions made under the impugned Section would not or could not have been left out portion of the field.

16. The decision cited by the learned counsel for the petitioner in the case of National Textile Corpn. (supra), is not at all helpful to decide the issues involved here, firstly, because in this case there is no factual repugnancy. We have already observed that the Registration Act is completely silent as to necessity of production of the document relating to title for registration of a transfer, whereas the impugned Section has provided for such requirement. Inconsistency and repugnancy would arise only when there is existence of two things, and inconsistency cannot be said to be prevailing on vacuum. Therefore, this decision of the Supreme Court expresses constitutional provision in case of repugnancy regarding requirement of the State Legislature to point out the repugnancy for consideration and assent of the President of India under Article 254(2) of the Constitution of India. Paragraphs 11, 12 and 13 of the said report make the position clear:

11. It is apparent that the language of clause (1) of Article 254 gives supremacy to the law made by Parliament, which Parliament is competent to enact. It inter alia provides [subject to the provisions of clause (2)] that ?

(a) if any provision of law made by the legislature of a State is repugnant to any provision of a law made by Parliament, which Parliament is competent to enact, then the law made by Parliament whether passed before or after the law made by the legislature of such State shall prevail and the law made by the legislature of the State shall, to the extent of repugnancy, be void; or

(b) if any provision of a law made by the legislature of a State is repugnant to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then the existing law shall prevail and the law made by the legislature of the State shall, to the extent of repugnancy, be void.

12. For the purpose of the present case, clause (2) requires interpretation, which on the analysis provides that where a law:

(a) made by the legislature of a State;

(b) with respect to one of the matters enumerated in the Concurrent list;

(c) contains any provision repugnant to the provisions of an earlier law made by Parliament or existing law with respect to that matter;

Then, the law so made by the legislature of the State shall--

(1) if it has been "reserved for consideration of the President"; and

(2) has received "his assent";

would prevail in that State.

13. Hence, it can be stated that for the State law to prevail, the following requirements must be satisfied:

(1) law made by the legislature of a State should be with respect to one of the matters enumerated in the Concurrent List;

(2) it contains any provision repugnant to the provision of an earlier law made by Parliament or an existing law with respect to that matter;

(3) the law so made by the legislature of the State has been reserved for the consideration of the President; and

(4) it has received "his assent".

This decision is not apposite to this case.

17. The decision of the Supreme Court in the case of M.S. Farooqi (supra), as cited by the learned counsel for the petitioner, is not helpful to this case. In that case, the Supreme Court, while comparing the provisions of Jammu and Kashmir Government Servants' Prevention of Corruption (Commission) Act, 1962 with the provisions of All India Service Act, 1951 and All India Services (Discipline and Appeal) Rules, 1955, held as follows:

From the perusal of the provisions of the two statutory laws, namely, the All India Services (Discipline and Appeal) Rules, 1955 and the Jammu and Kashmir government Servants' (Prevention of Corruption) (Commission) Act, 1962, it is impossible to escape from the conclusion that the two cannot go together. The impugned Act provides for additional punishments not provided in the Discipline and Appeal Rules. It also provides for suspension and infliction of disciplinary punishments it is repugnant to the Discipline and Appeal Rules. Parliament has occupied the field and given clear indication that this was the only manner in which any disciplinary action should be taken against the members of the All India Service. Insofar as the Commission Act deals with a preliminary enquiry for the purposes of enabling any prosecution to be launched it may be within the legislative competence of Jammu and Kashmir State and not repugnant to the provisions of the Discipline and Appeal Rules. But as the provisions dealing with infliction of disciplinary punishment the whole Act must be read down so as to leave the members of the All India Services outside its purview.

18. The decision of the Supreme Court in the case of Rajiv Sarin (supra) deals with a different subject altogether and it is of no assistance at all in this case, rather this decision is helpful to the contention of the learned counsel for the State. The observation relevant to this case is in paragraph-33 of the report and the extent of relevancy is quoted hereunder:

In other words, the question of repugnancy under Article 254 of the Constitution arises when the provisions of both laws are completely inconsistent with each other or when the provisions of both laws are absolutely irreconcilable with each

other and it is impossible without disturbing the other provision, or conflicting interpretations resulted into, when both the statutes covering the same field are applied to a given set of facts. That is to say, in simple words, repugnancy between the two statutes would arise if there is a direct conflict between the two provisions and the law made by the Parliament and the law made by the State Legislature occupies the same field. Hence, whenever the issue of repugnancy between the law passed by the Parliament and of State legislature are raised, it becomes quite necessary to examine as to whether the two legislations cover or relate to the same subject matter or different.

19. For the sake of repetition, we reiterate that the field occupied by the Registration Act is completely different from the field occupied by the State legislation.

20. In view of the aforesaid discussion, we hold that the requirement of production of document as mentioned in the impugned Section by the transferor or vendor is not unconstitutional as it is not repugnant to and inconsistent with any provision of Registration Act, 1908 in any manner whatsoever and the same is hereby upheld.

21. However, the requirement of production of document relating to title by the vendee, as mentioned in the sub-section of the impugned Section, is absolutely absurd and irrational as the vendee or transferee cannot produce any document relating to title of the land in question because after the acquisition of interest only, he will get the document relating to title, but not before that. Article 14 of the Constitution of India cannot at all stand irrationality and absurdity of any piece of legislation, and on that ground, this portion is struck down accordingly. We declare that the impugned Section, except this portion, is constitutionally valid. The writ petition is allowed partly and to the extent as above and the remaining portion is dismissed. There will be no order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed.