

(1967) 05 PAT CK 0010
In the Patna High Court
Case No : Civil Reference No. 1 of 1963

Ramsaran Jha and Others

APPELLANT

Vs

Jokhan Jha and Others

RESPONDENT

Date of Decision : 02-05-1967

Acts Referred:

Bengal Tenancy Act, 1885 — Section 496C, 49J
Constitution of India, 1950 — Article 254

Citation : AIR 1968 Patna 198

Hon'ble Judges : S.N.P. Singh, J;N.L. Untwalia, J

Bench : Division Bench

Advocate : Lalnarayan Sinha, Uday Sinha and Brishketu Saran Singh, for reference, Ray Paras Nath, Against Reference, for the Appellant;

Judgement

1. This is a reference by the learned Subordinate Judge of Samastipur u/s 113 of the CPC read with order 46 of the said Code. The appeal before that court arises out of a suit filed by the plaintiffs u/s 77 of the Registration Act for registration of a sale deed dated the 7th September 1953, said to have been executed by defendant No. 1 in favour of the plaintiffs. The executant of the sale deed is a Mushar by caste and has been found to be a protected tenant to whom restrictions on alienation of land would apply under Chapter VII A of the Bihar Tenancy Act, 1885, hereinafter called the "Act". The question before the Subordinate Judge was whether even if the transfer was in violation of Section 49C of the Act, could the Civil Court refuse to direct its registration in view of the provision of law contained in Section 49J of the Act. The learned Subordinate Judge has expressed the view that an inhibition as to registration of the document of transfer executed in contravention of the provisions contained in Chapter VIIA of the Act encroaches upon and is repugnant to the law engrafted in the Indian Registration Act, 1908. Hence the court of appeal below is of the opinion that the said inhibition engrafted in Section 49J of the Act is ultra vires and should be declared so. It is for that purpose that under the proviso to Section 113 of the Code of Civil Procedure, the learned Subordinate Judge has

made this reference to this Court.

2. This reference came before us for hearing on an earlier occasion on the 12th of October 1966. It was stated at the bar that the vires of Section 49C of the Act was in question in the case of C.W.J.C. No. 134 of 1965 pending hearing before another Bench of this court. Prima facie the sale deed is said to have been executed to contravention of the provision of Section 49C of the Act, we, therefore thought that if Section 49C itself would be declared ultra vires, there will be no contravention of the provisions of Chapter VII A of the Act in so far as the impugned sale deed is concerned and that being so, the question which has been referred for answer to this court in this case will be academic. This court, as usual, will not determine the validity of any section of an statute if the question has become academic. Since then the case in C.W.J.C. No. 134 of 1965 has been decided on the 9th of December 1966, and the constitutional validity of Section 49C of the Act has been upheld. That now necessitates an answer to the question referred for our determination.

3. It is true that neither the District Registrar nor the Sub-Registrar in a proceeding for compulsory registration of a document nor the Civil Court in a suit u/s 77 of the Registration Act, is concerned with the validity or invalidity of the document on a ground of the kind which is involved in the present case. In all probability, therefore, if the inhibition in Section 49J would not have been there directing that no transfer by a protected tenant in contravention of the provisions of Chapter VIIA of the Act shall be registered, the court would not have refused to direct its registration if otherwise the suit was found fit to be decreed u/s 77 of the Registration Act. But, the inhibition is there. The question is whether it is repugnant to the law of registration contained in the Indian Registration Act, 1908 and whether it is ultra vires because of non-fulfilment of the requirements of Article 254 of the Constitution of India.

4. It has been laid down in several decisions of the Privy Council and the Supreme court, leaving aside several others of this court and other High Courts, that if in pith and substance the provision of any Act is within the legislative competence of the State Legislature, it is not rendered invalid because it incidentally trenches upon matters reserved to the Central Legislature or is repugnant to the central Law under the Concurrent List Reference in this regard may be made to two decisions of the Privy Council in *Prafulla Kumar v. Bank of Commerce Ltd. Khulna*, AIR 1947 P.C. 60 and *Megh Raj Allah Rakhia*, AIR 1947 P.C. 72. Applying the same principle, a more direct case in the point is one decided by the Supreme Court in *A.S. Krishna Vs. State of Madras*, . There the question was as to whether the provision of Section 4 of the Madras Prohibition Act was ultra vires because of its repugnancy with certain provisions of the Code of Criminal Procedure and the Evidence Act.

Venkataram Ayyar, J. has said at page 303, column 1:

""When a law is impugned on the ground that it is ultra vires the powers of the

legislature which enacted it, what has to be ascertained is the true character of the legislation. To do that, one must have regard to the enactment as a whole, to its objects and to the scope and effect of its provisions. If on such examination it is found that the legislation is in substance one on a matter assigned to the legislature, then it must be held to be valid in its entirety even though it might incidentally trench on matters which are beyond its competence. It would be quite an erroneous approach to the question to view such a statute not as an organic whole, but as a mere collection of sections, then disintegrate it into parts, examine under what heads of legislation those parts would severally fall, and by that process determine what portions thereof are intra vires, and what are not. Now, the Madras Prohibition Act is, as already stated, both in form and in substance, a law relating to intoxicating liquors. The presumptions in Section 4 (2) are not presumptions which are to be raised in the trial of all criminal cases, as are those enacted in the Evidence Act. They are to be raised only in the trial of offences u/s 4 (1) of the Act. They are therefore purely ancillary to the exercise of the legislative powers in respect of Entry 31 in List II. So, also the provisions relating to search, seizure and arrest in Sections 28 to 32 are only with reference to offences committed or suspected to have been committed under the Act. They have no operation generally or to offences which fall outside the Act. Neither the presumptions in Section 4(2) nor the provisions contained in Sections 28 to 32 have any operation apart from offences created by the Act, and must, in our opinion, be held to be wholly ancillary to the legislation under Entry 31 in List II. The Madras Prohibition Act is thus in its entirety a law within the exclusive competence of the Provincial Legislature, and the question of repugnancy u/s 107(1) does not arise."

5. In the present case also, the law contained in Chapter VILA, of the Act and as a matter of fact in the whole of the Act is a law governing land, the landlord and the tenant, which is covered by item no 18 of List II of the State List. Incidentally it trenches upon the law of registration, in that, u/s 49J of the Act, there is a command of the Legislature that no transfer in contravention of the provisions contained in the said Chapter shall be registered. But this is mere ancillary to the main object of the Act. That being so, we are definitely of the view that no part of Section 49J of the Act can be declared to be constitutionally invalid either on the ground of legislative competence of the State Legislature, being in any way ultra vires, it, or being void on account of the alleged repugnancy with the central law of registration and the alleged non-fulfilment of the requirements of Article 254 of the Constitution of India. We, accordingly answer the question referred to us.

6. Let the case be sent back to the Court of appeal below for deciding the appeal in accordance with law and on the footing of the answer given by us. There will be no order as to costs.