
(1990) 11 AP CK 0004
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 105 of 1990

Vana Adamma and Others

APPELLANT

Vs

District Collector and Another

RESPONDENT

Date of Decision : 29-11-1990

Acts Referred:

Constitution of India, 1950 — Article 254

Land Acquisition (Amendment) Act, 1984 — Section 17, 17(5), 4(1), 5A, 6

Citation : (1991) 1 ALT 478 : (1991) 1 APLJ 330

Hon'ble Judges : Yogeshwar Dayal, C.J.;Upendralal Waghray, J

Bench : Division Bench

Advocate : Duba Mohan Rao, for the Appellant; Govt. Pleader for Social Welfare, for the Respondent

Final Decision : Dismissed

Judgement

Yogeshwar Dayal, C.J. and Upendralal Waghray, J.—This Writ Appeal is filed against the order of the learned single Judge dated 27th November, 1989, dismissing the writ petition No. 7417/1988 filed by the appellant challenging the proceedings for acquisition of lands initiated by notification u/s 4(1) of the Land Acquisition Act (hereinafter called the Act) published in the District Gazette dated 14-9-1984.

2. The contention raised before the learned single Judge and also reiterated before us is that, though urgency clause u/s 17 of the Act was invoked and declaration u/s 6 of the Act was also published at the same time, as the possession was not taken within three months of invoking the urgency clause, an enquiry u/s 5-A of the Act ought to have been held as contemplated by Sub-section (5) of Section 17 of the Act introduced by the A.P. State Amendment Act 9/1983 (hereinafter referred to as "State Amendment"). The learned single Judge has dismissed the writ petition on the ground of laches as he took into consideration the circumstance that the award was also passed and the writ petition was filed on 2-5-1988.

3. By the date of Section 4(1) notification the Act was amended by Central Amendment Act 68/84 (here in after called the Central Amendment). During the hearing, in view of the Central Amendment and the recent Full Bench judgment of this Court in W.P.No. 9776/1988 dated 21-8-1990, the question of repugnancy of Sub-section (5) of Section 17 as introduced by the State Amendment with the provisions of Section 17 as subsequently amended by the Central Amendment arose. The petitioner's counsel made submissions contending that there was no repugnancy between the provisions of Section 17(5) introduced by the State Amendment and the amendments to Section 17 of the Act made by the subsequent Central Amendment Act. A notice was issued to the learned Advocate General to hear him on the question of repugnancy and the learned Advocate General has appeared and made his submissions and judgment was reserved.

4. The Full Bench has examined the question of repugnancy of the amendments made to Section 4 of the Act by the State Amendment and the subsequent amendment of Section 4 by the Central Amendment. After examining the said amendments and Article 254 of the Constitution of India, it was held that the amendment made to Section 4 by the State Amendment had become repugnant and, therefore, void after the Central Amendment.

5. In this case, we are concerned with the question of repugnancy of Sub-section (5) of Section 17 on a similar ground. Article 254 of the Constitution of India reads as follows:

"254(1): If any provision of a law made by the Legislature of a state is repugnant to any provision of law made by parliament which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the concurrent list, then subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnant, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State"

6. At the commencement of the Constitution, the Land Acquisition Act, 1894 (Act 1 of 1894) was an existing law made by the Central Legislature relating to a subject in item 43 in List III (Concurrent List) of Seventh Schedule referred to in Article 246 of the Constitution of India. The state amendment was made with the

assent of the President and Parliament has subsequently made the Central Amendment. It is contended by the learned counsel for the appellant that there is no repugnancy between Sub-section (5) which was introduced by State Amendment and the subsequent Amendment to Section 17 made by the Parliament, as both could be obeyed and, therefore, the State Amendment has not become void. It is further contended that as Sub-section (5) to Section 17 of the Act was valid and possession was not taken within three months, the authorities were obliged to hold an enquiry contemplated by Section 17 of the Act was valid and possession was not taken within three months, the authorities were obliged to hold an enquiry contemplated by Section 5-A Of the Act and, therefore, the acquisition proceeding from the stage of the declaration u/s 6 of the Act, which was made without such an enquiry are illegal. The learned counsel for the appellant has placed reliance on three decisions of the Supreme Court reported in Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, , T.S. Baliah Vs. T.S. Rengachari, and M. Karunanidhi Vs. Union of India and Another, .

7. The provisions of Section 17 of the Act enable the authorities to invoke its provisions and take possession of the land (which is covered by the notification u/s 4 before passing of the award. This provision has been in the Act since its commencement though it has been amended on several occasions. We are concerned with the two amendments referred to earlier in this case. By the State Amendment, a new Sub-Section (%) was added after the existing four Sub-Sections of Section 17 of the Act which reads as follows:

"17. (5)(a) In any case where the state Government have directed under Sub-Section (4) that the provisions of Section 5-A shall not apply the Collector shall take possession of the land within three months thereof.

(b) If, however, the Collector fails to take possession of the land within the aforesaid period of three months of the provisions of Section 5-A shall apply as if there is no such direction that Section 5-A shall not apply, and in all such cases the period of thirty days referred in Section 5-A shall be reckoned from the date of expiration of three months specified in Clause (a)

8. It is useful to recall that the State Amendment was enacted to overcome the decision of a full Bench of this court reported in Chevuru Suryanarayana Reddy and Others Vs. Government of Andhra Pradesh and Another, , and by it amendments were made to Section 4, 5-A and 17 of the Act. In addition, certain class of acquisitions were validated by Section 5 of the State Amendment Act. For completing the narration, it is to be noticed that the Full Bench judgment, which was the reason for the State Amendment, was overruled by the Supreme Court in Deepak Pahwa v. Lt. Governor of Delhi, AIR 1984 SC 172. Subsequent to the State Amendment several provisions of the Act and has, in a way affected its scheme also. By Section 13 of the Central Amendment, Section 17 of the Principal Act has been amended in four areas by Clauses (q), (b), (c) and (d). We are concerned with the amendments introduced by Clauses (c) and (d) of Section

13 to Section 17 of the Principal Act, the relevant portion of which are as follows :

"13. Amendment of Section 17:-In Section 17 of the principal Act-

(a) x x x x

(b) x x x x

(c) after Sub-section (3), the following Sub-sections shall be inserted, namely-

"(3-A) Before taking possession of any land under Sub-section (1) or Sub-section (2), the Collector shall, without prejudice to the provisions of Sub-section (3)-

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in Section 31, Sub-section (2) and where the Collector is so prevented the provisions of Section 31, Sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

(3-B) The amount paid or deposited under Sub-section (3-A) shall be taken into account for determining the amount of compensation required to be tendered u/s 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector u/s 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue".

(d) in Sub-section (4) for the words "after the publication of the. notification", the words "after the date of the publication of the notification" shall be Substituted."

9. The controversy is whether the State Amendment to Section 17 introducing Sub-section (5) is repugnant to the Subsequent amendments made by the Parliament including Sub-sections (3-A) and (3-B) and amending Sub-section (4)?

10. In *Tika Ramji v. State of A.P.* (1 supra), a Constitution Bench of the Supreme Court examined the question of repugnancy contemplated by Article 254 of the Constitution of India in a batch of writ petitions filed under Article 32 of the Constitution of India. The State Act in that case was U.P- Sugarcane (Regulation of Supply and Purchase) Act of 1953 and the subsequent Central Acts were Industries (Development and Regulation-Act of 1951 as amended in 1953 and the Essential Commodities Act (10 of 1955). Paragraphs 26 to 36 of the judgment deal with this aspect. After examining several Australian and Canadian cases, the Supreme Court has referred with approval to certain passages in the judgment of B.N. Rau, J., in *G.P. Stewart Vs. Brojendra Kishore Roy Chaudhury*, in paragraph 31. It is useful to refer to the portion extracted by the Supreme Court in paragraph 31 which is as follows :

"It is sometimes said that two laws cannot be said to be properly repugnant

unless there is a direct conflict between them as when one says "do" and the other "don't", there is no true repugnancy, according to this view, if it is possible to obey both the laws. For reasons which we shall set forth presently, we think that this is too narrow a test: there may well be cases of repugnancy where both laws say "don't" but in different ways.

For example, one law may say, "No person shall sell liquor by retail, that is, in quantities of less than five gallons at a time" and another law may say, "No person shall sell liquor by retail, that is, in quantities of less than ten gallons at a time." Here, it is obviously possible to obey both laws, by obeying the more stringent of the two, namely, the second one; yet it is equally obvious that the two laws are repugnant, for to the extent to which a citizen is compelled to obey one of them, the other, though not actually disobeyed, is nullified."

The learned Judge then discussed the various authorities which laid down the test of repugnancy in Australia, Canada and England and concluded at page 634.

"The principle deducible from the English cases, as from the Canadian cases, seems therefore to be the same as that enunciated by Isaacs, J., in the Australian 44 hour case (37 CLR 466 (M)), if the dominant law has expressly or impliedly evinced its intention to cover the whole field, then a subordinate law in the same field is repugnant and therefore inoperative. Whether and to what extent in a given case, the dominant law evinces such an intention must necessarily depend on the language of the particular law."

In paragraph 27 of its judgment the Supreme Court has referred to the tests of inconsistency or repugnancy mentioned by Nicholas in his Australian Constitution, 2nd edn., p. 303, which are as follows :

"(1) There may be inconsistency in the actual terms of the competing statutes (R. v. Brisbane Licensing Court, (1920) 28 CLR 23 (L)).

(2) Though there may be no direct conflict a State law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive Code (Clyde Engineering Co. Ltd. v. Cowburn, (1926) 37 CLR 466 (M)).

(3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject-matter (Victoria v. Commonwealth (1937) 58 CLR 618 (N); Wenn v. Attorney-General (Viet.) (1948) 77 CLR 84(0)."

Applying, the tests to the facts of the case before the Supreme Court from UP., it was held that there was no repugnancy. We will presently apply and tests to the facts of the present case.

11. In the next case cited by the learned counsel for the appellant is Balaiah v. RAnachari (2 supra). The controversy was about the effect of the repeal of the Income Tax Act, 1922 by the Income Tax Act, 1961 in respect of certain penal

actions. This is not helpful to the present controversy.

12. The last case cited by the learned counsel for the appellant is in *M. Karunanidhi v. Union of India* (3 Supra). It was an appeal against the judgment of the High Court declining to quash the proceedings in a Criminal Case. A plea for quashing the proceedings was raised on the ground that a State Act amended in 1974 after obtaining the assent of the president, would prevail over the provisions of the Criminal Procedure Code. By the time the appeal reached the Supreme Court, the State Act itself was repealed after obtaining the assent of the President and as observed by the Supreme Court in para 8 of the judgment, the controversy in that form did not survive. However a further contention was raised before the Supreme Court that the subsequent repeal of the State Act will not revive the provisions of the Central Act which had earlier become repugnant to the State Act to which the President had given his assent. As seen from para 9 of the judgment it was neither alleged nor argued that Parliament had, at any time, after the State Act was passed, proceeded to pass any law as contemplated by the proviso to Article 254 of the Constitution. The question posed before the Supreme Court was different from the one in the earlier Constitution Bench decision in *Tika Ramji v. State of U.P.* (1 Supra), which was also considered in paragraph 29 of the judgment. In paragraph 35, the proposition arising in that case are referred to and are as follows.

"1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each, no repugnancy results;

4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field".

13. After discussing the various submissions, the Supreme Court held that the Chief Minister was a public servant within the meaning of the Criminal Procedure Code and the repealed State Act had not made any difference on this aspect and, consequently, the appeal was dismissed. Criminal Procedure Code and the repealed State Act had not made any difference on this aspect and, consequently, the appeal was dismissed.

14. Article 254 of the Constitution of India provides for various situations in which a repugnancy may arise between Central Legislation and State Legislation. Clause (1) provides that, a law made by Parliament shall prevail over any law made by a State Legislature in respect of a subject in the Concurrent List. Clause

(2) provides for an exception that where a State law has received the assent of the President will prevail over any earlier law made by the Parliament, even if it is repugnant to it in respect of the same subject matter in the concurrent list. the proviso to Sub-Clause (2) , however, makes it clear that any assent of the President because its provisions were repugnant to the existing Central law. such amended law, therefore, prevailed in our State. In view of the proviso to Clause (2) of Article 254 the Parliament was free to make any amendment to the Central law, that is, the Land Acquisition Act and it has so done by the subsequent Central Amendment.

15. The short controversy is whether because of the Central Amendment to Section 17 of the State 17 of the State amendment to that Section has become repugnant?

16. The tests laid down by Tika Ramji's case (1 supra) will have to be applied to this case. The tests referred to in Tika Ramji's case (1 supra) by the Constitution Bench of the Supreme Court have been consistently followed in several decisions. Section 17 prior to the State amendment provided for invoking the urgency clause and dispensing with 5-A enquiry to enable possession of the land being taken before passing of award under the Act. There were no other conditions for taking possession. By the State amendment, Sub-section (5) has been introduced by which a condition was put that, unless possession was taken within three months of the invoking of the urgency clause, Section 5-A enquiry was to be held and acquisition proceedings proceeded thereafter. The Central amendment of Section 17 has introduced a different kind of condition on the acquiring authority b, introducing Sub-section (3-A), that is, to tender for payment or deposit of 80 per cent of the compensation before taking of possession pursuant to the invoking of the urgency clause. No time limit for taking possession is prescribed by the Central amendment. Again under Sub-section (5) introduced by the State amendment possession was required to be taken within three months after causing public notice of the notification u/s 4, while by the Central Amendment, possession is to be taken after the date of publication of the notification u/s 4. The Central Act further provides that the notification u/s 4 shall be published in two newspapers, in addition to the gazette and also its public notice given at the place. The last of these types of publications is to be treated as the date of publication of notification. Therefore, while the State law imposes a condition that possession should be taken within three months from the date of publication of notice of the notification u/s 4 without any other requirement, the Central Amendment does not prescribe any outer time limit but prescribes that 80 per cent of the compensation should be paid at the time of taking possession. These indicate that the Parliament has amended the section requiring conditions to be complied with for taking possession which are inconsistent with those prescribed by the State amendment. The tests referred to in Tika Ramji's case (I supra) when applied to the facts of this case clearly indicate that the State law has become inconsistent with or repugnant to the subsequent Central amendment.

17. The contention of the counsel for the appellant that it is possible to obey both the Central amendment and the State amendment by the authorities adopting a particular course cannot be a test for examining the repugnancy of the two legislations as was pointed by B.N. Rao, J., in his judgment extracted by the Supreme Court. As a result it is held that Sub-section (5) of Section 17 introduced by the State Amendment has become repugnant and void after the Central Amendment Act 68/84 and cannot be enforced.

18. As the appellants seek enforcement of the aforesaid provision, which has become repugnant, they are not entitled to any relief. Therefore, even apart from the question of laches on which the learned single Judge has based his conclusions, the appellants are not entitled to any relief. The Writ Appeal is, accordingly, dismissed. No orders as to costs.