The Consumer Action Group & Anr vs State Of Tamil Nadu & Ors.!The Consumer ... on 18 August, 2000

Equivalent citations: AIR 2000 SUPREME COURT 3060, 2000 (7) SCC 425, 2000 AIR SCW 3357, (2001) 1 MAD LW 1, 2000 (8) SRJ 96, 2000 (6) SCALE 1, 2001 (1) MADLW 3, (2000) 9 JT 272 (SC), (2000) 3 SCJ 389, (2000) 5 SUPREME 602, (2000) 6 SCALE 1

Bench: B.N. Kirpal, A. P. Misra

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           PETITIONER:
THE CONSUMER ACTION GROUP & ANR.

        Vs.

RESPONDENT:
STATE OF TAMIL NADU & ORS.!The Consumer Action GroupVs.State of Tamil Nadu & Anr.

DATE OF JUDGMENT:       18/08/2000

BENCH:
B.N. Kirpal J. & A. P. Misra J.




JUDGMENT:
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MISRA, J.

L...I...T.......T.......T.......T.......T.......T.......T..J The petitioner challenges the constitutional validity of Section 113 of the Tamil Nadu Town and Country Planning Act,@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ 1971 (hereinafter referred to as the Act) as it being@@ JJJJ ultra vires of Articles 14 and 21 of the Constitution of India and also the validity of the orders passed under it, granting exemptions by respondent no.1, viz., the Government. We are drawn to consider an issue, more appropriately expressed in the words of Chinnappa Reddy, J. the perennial, nagging problem of delegated legislation and the so-called Henry VIII clause have again come up for decision... The petitioner - the consumer action group which is a trust registered under the Indian Trust Act, has raised similar issue before us.

The petitioner through this petition under Article 32 of the Constitution of India has brought to the notice of this Court, impunity with which the executive power of State of Tamil Nadu is being exercised indiscriminately in granting exemptions to the violators violating every conceivable control, check including approved plan, in violation of the public policy as laid down under the Act and the Development Control Rules (hereinafter referred to as the Rules). The submission is,

granting of such exemptions is against the public interest, safety, health and the environment. To bring home this indiscriminate exercise of power, reference is made to about sixty two such orders passed by the Government between the period 1.7.1987 to 29.1.1988 which have been annexed compositely as Annexure II to the petition. Submission is, it is this indiscriminate exercise of power which results in the shortage of water, electricity, choked roads and ecological and environmental imbalances. Mr. Dayan Krishnan, learned counsel for the petitioner submits, such exercise of power is because there are no guidelines or control under the Act. This is the main plank of attack, for declaring Section 113 as ultra vires as it can do or undo anything under the Act to wipe out any development without any check which amounts to the delegation by the Legislature of its essential legislative power.

Mr. R. Mohan, learned senior counsel for the State has denounced with vehemence these submissions. The power is neither uncanalised nor without any guideline. This power is controlled through the guidelines, which could be gathered from the preamble, Objects and Reasons, including various provisions of the Act and the Rules. So far challenge to the orders passed under it by the State Government, it is open for the Court to examine the same and in case they are found to have been passed arbitrarily or illegally the court may quash the same, but such exercise of power would not lend support to a declaration of Section 113 as ultra vires.

In order to appreciate the submissions and to adjudicate the issues involved, it is proper to scan through the periphery, scope and object of the aforesaid Act and the Rules. The preamble of the Act picturises that the Act is for the planning the development of use of rural and urban land in the State of Tamil Nadu and for the purposes connected therewith. Section 2(13) defines development to mean carrying out of all or any of the works contemplated in a regional plan, master plan, detailed development plan or a new town development plan prepared under this Act, which includes the carrying out of building, engineering, mining or other operations in, or over or under the land and also includes making of any material change in the use of any building or land. Sub-section 15 of Section 2 defines development plan to mean for the development or re- development or improvement of the area within the jurisdiction of a planning authority and includes a regional plan, master plan, detailed development plan and a new town development plan prepared under this Act. This Act consists of XIV Chapters containing 125 Sections. It provides for the creation of the Metropolitan Development Authority for the Metropolitan area. Under Chapter II-A, the Madras Metropolitan Development Authority (MMDA) was formed. The control and development plan of the Madras Metropolitan area is listed with MMDA. Chapter III deals with the planning authorities and its plan, Chapter IV deals with acquisition and disposal of land, Chapter V contains special provisions regarding new town development authority and Chapter VI refers to the control of development and use of land. This Chapter gives clear guidelines to the appropriate authorities under which it has to perform its statutory functions. Sub-section (2) of Section 49 gives guidelines to enable the appropriate planning authority to grant or refuse permission in respect of an application made under Section 49(1) by any person intending to carry out any development on any land or building. Thus, this Section empowers MMDA to revoke or modify any permission already granted. This also provides as to when such an application for modification could be made. This Act also provides for the constitution of a tribunal under Chapter IX and provisions under Chapter X for an appeal, revision or review. It is under Chapter XII, the impugned Section 113 is placed. This

confers delegation of power on the State Government and delegation of power to the Director under Section 91 and to the appropriate planning authority under Section 91-A. It is true both these later Sections are hedged with restrictions contained therein. It is under this setting, when there is no check, or restrictions in Section 113 its vires is challenged. This contrast between Section 91 and 91-A with Section 113 is submitted, is indicative that the power with the Government is unguided and uncontrolled. In Chapter XIII, Section 122 empowers the Government to make rules to carry out the purposes of this Act. Section 123 obligates the Government to place its rules before the Legislature. Section 124 empowers the planning authority with the previous approval of the Government to make regulations prospectively or retrospectively not inconsistent with this Act and the Rules. Significantly sub-section (3) of Section 124 gives power to the Government to rescind any regulation made under this section through notification. Similarly, rule 3 guides and controls the authorities to exercise its powers within the limitations of each such zone. The said rules further guide the authorities to exercise its power within the limitation as tabulated specifying the requirements relating to floor space index, maximum height, minimum set-back, front set back, side set back, rear set back etc. For commercial zones further restrictions are in relation to the horsepower rating of electric motors and steps to be taken to regulate storage of explosives, to regulate effluents, smoke, gas or other items likely to cause danger or nuisance to public health. These rules sets out norms on which basis specific standards are to be worked out, keeping in mind the public interest, public health and their safety as well development of that area, to cater to the need of its citizens.

It is in this background we now proceed to consider the challenge to Section 113. For ready reference, the same is quoted hereunder:-

> 113. Exemptions:- Notwithstanding anything contained in this Act, the Government may, subject to such conditions as they deem fit, by notification, exempt any land or building or class of land or buildings from all or any of the provisions of this Act or rules or regulations made thereunder."

It cannot be doubted, mere reading literally its language, the first impression is that power conferred upon the Government displays one to be of the widest amplitude with no in built check revealed from this Section. The petitioners case is, such wide powers have led to its exercise unscrupulously without consideration of its effect on the public at large. On the other hand learned counsel for the State denying this submits, the power is bridled and controlled through the Preamble, Objects and Reasons and various provisions of the Act and the Rules.

Challenging the vires of this section, counsel for the petitioner referred to Premium Granites and Anr. V. State@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ of T.N. and Ors. 1994 (2) SCC 691. In this case, Rule of@@ JJJJJJJJJJJJJJJJJJJJJJJJ granting exemption from other provisions of the statute of the Tamil Nadu Minerals Concession Rules, 1959 was challenged as being arbitrary and without any guidelines. Same submission was made, as in the present case that this gives wide discretionary power to the authority uncanalised. This decision held:-

..In our view, in interpreting the validity of a provision containing relaxation or exemption of another provision of a statute, the purpose of such relaxation and the scope and the effect of the same in the context of the purpose of the statute should be taken into consideration and if it appears that such exemption or relaxation basically and intrinsically does not violate the purpose of the statute, there will be no occasion to hold that such provision of relaxation or exemption is illegal or the same ultra vires other provisions of the statute. The question of exemption or relaxation ex hypothesi indicates the existence of some provisions in the statute in respect of which exemption or relaxation is intended for some obvious purpose.

This holds such a provision of regularisation or exemption cannot be held to be illegal, if it is consistent with the purpose of the statute. It further held:-

But we do not think that in the facts and circumstances of the case, and the purpose sought to be achieved by Rule 39, such reading down is necessary so as to limit the application of Rule 39 only for varying some terms and conditions of a lease. If the State Government has an authority to follow a particular policy in the matter of quarrying of granite and it can change the provisions in the Mineral Concession Rules from time to time either by incorporating a particular rule or amending the same according to its perception of the exigencies, it will not be correct to hold that on each and every occasion when such perception requires a change in the matter of policy of quarrying a minor mineral in the State, particular provision of the Mineral Concession Rules has got to be amended.

So, this Court upheld the validity of Rule 39 of the Tamil Nadu Mineral Concession Rules, 1959. Strong reliance is placed for the petitioner in the case of A.N. Parasuraman and Ors. V. State of Tamil Nadu, 1989 (4) SCC 683, Section 22 of the Tamil Nadu Private Educational Institutions (Regulation) Act, 1966 was challenged. This conferred wide exemption power on the State Government to exempt any private educational institution from all or any provisions of the Act. This Court held:-

The provisions of the Act indicate that the State Government has been vested with unrestricted discretion in the matter of the choice of the competent authority under Section 2(c) as also in picking and choosing the institutions for exemption from the Act under Section 22. Such an unguided power bestowed on the State Government was struck down as offending. Article 14 in the case of the State of West Bengal v. Anwar Ali Sarkar. A similar situation arose in K.T. Moopil Nair v. State of Kerala where, under Section 4 of the Travancore-Cochin Land Tax Act, 1955, all lands were subjected to the burden of a tax and Section 7 gave power to the government to grant exemption from the operation of the Act. The section was declared ultra vires on the ground that it gave uncanalised, unlimited and arbitrary power, as the Act did not lay down any principle or policy for the guidance of exercise of the discretion in respect of the selection contemplated by Section 7.

Section 22 was held to be ultra vires as the Act did not lay down any principle or policy for the guidance to the delegatee for exercising its discretion.

In Mahe Beach Trading Co. and Ors. V. Union Territory of Pondicherry and Ors., 1996 (3) SCC 741, the Municipal Council decided to levy a municipal tax of 5 paise on each litre of petrol and diesel oil sold at the petrol pump. This levy was challenged which was struck down by the learned Single Judge. During the pendency of this appeal, the Administrator of Pondicherry, promulgated Pondicherry Municipal Decree (Levy and Validation of Taxes, Duties, Cesses and Fees) Ordinance, 1973 and this was later replaced by an Act. Sections 3 and 4 of the Validation Act were challenged on the ground of excessive delegation of the essential legislative power. This Court held:

The principle which emanates from the aforesaid decisions relied upon by the appellants is very clear namely: that if there is abdication of legislative power or there is excessive delegation or if there is a total surrender or transfer by the legislature of its legislative functions to another body then that is not permissible. There is, however, no abdication, surrender of legislative functions or excessive delegation so long as the legislature has expressed its will on a particular subject-matter, indicated its policy and left the effectuation of the policy to subordinate or subsidiary or ancillary legislation.

However, the Court holds, the question of these Sections being ultra vires would have been relevant if any delegatee was to take any decision, which was not in that case.

In State of Kerala and Ors. V. Travancore Chemicals and Manufacturing Co. and Anr. 1998 (8) SCC 188, the validity of Section 59-A of the Kerala General Sales Tax Act was challenged which was held to be violative of Article 14 and was thus struck down. Section 59-A of this Act is quoted hereunder:

59-A. Power of Government to determine rate of tax.-If any question arises to the rate of tax leviable under this Act on the sale or purchase of any goods, such question shall be referred to the Government for decision and the decision of the Government thereon shall, notwithstanding any other provision in this Act, be final.

Court held:

Section 59-A enables the Government to pass an administrative order which has the effect of negating the statutory provisions of appeal, revision etc. contained in Chapter VII of the Act which would have enabled the appellate or revisional authority to decide upon questions in relation to which an order under Section 59-A is passed. Quasi-judicial or judicial determination stands replaced by the power to take an administrative decision. There is nothing in Section 59-A which debars the Government from exercising the power even after a dealer has succeeded on a

question relating to the rate of tax before an appellate authority. The power under Section 59-A is so wide and unbridled that it can be exercised at any time and the decision so rendered shall be final.

In Kunnathat Thathunni Moopil Nair V. The State of Kerala and Anr. 1961 (3) SCR 77, the constitutional validity of the Travancore-Cochin Land Tax Act (Amendment Act 10 of 1957) was challenged as it contravenes Article 14, 19(1)(f) and 31(1) of the Constitution of India. The grounds of challenge were (a) the Act did not have any regard to the quality of the land or its productive capacity and the levy of tax at a flat rate is unreasonable restriction on the right to hold property; (b) the Act did not lay down any provision calling for a return from the assessee for an enquiry or investigation of facts before the assessment; (c) Section 7 gave arbitrary power to the Government to pick and choose in the matter of grant of total or partial exemption from the provisions of the Act; and (d) the tax proposed to be levied had absolutely no relation to the production capacity of the land sought to be taxed or to the income they could arrive. This Court with respect to Section 7 of the said Act held:-

Furthermore, Section 7 of the Act, quoted above, particularly the latter part, which vests the Government with the power wholly or partially to exempt any land from the provisions of the Act, is clearly discriminatory in its effect and, therefore, infringes Art. 14 of the Constitution. The Act does not lay down any principle or policy for the guidance of the exercise of discretion by the Government in respect of the selection contemplated by s.7. Section 7 was held to be ultra vires as the Act did not lay down any principle or policy for the guidance.

For the State reliance is placed in the State of Bombay and Anr. V. F.N. Balsara, 1951 SCR 682 (Constitution Bench). With reference to the validity of Section 139(c) of the Bombay Prohibition Act (XXV of 1949) the submission was that power given to the Government to exempt any person or institution or any class of persons or institutions from observing whole or any of the provisions of the Act, rule or regulation or order is too wide and unbridled. This section is similar in the width of discretion to the section we are considering. This Court while setting aside the High Court decision upheld the provisions and held:-

This Court had to consider quite recently the question as to how far delegated legislation is permissible, and a reference to its final conclusion will show that delegation of the character which these sections involve cannot on any view be held to be invalid. (See Special Reference No.1 of 1951: In re The Delhi Laws Act, 1912, etc.). A legislature while legislating cannot foresee and provide for all future contingencies, and section 52 does no more than enable the duly authorized officer to meet contingencies and deal with various situations as they arise. The same considerations will apply to section 53 and 139(c). The matter however need not be pursued further, as it has already been dealt with elaborately in the case referred to.

In Harishankar Bagla and Anr. V. The State of Madhya Pradesh 1995 SCR 380 (Constitution Bench) this Court held:-

The next contention of Mr. Umrigar that section 3 of the Essential Supplies (Temporary Powers0 Act, 1946, amounts to delegation of Legislative power outside the permissible limits is again without any merit. It was settled by the majority judgment in the Delhi Laws Act case that essential powers of legislature cannot be delegated. In other words, the legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The Legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in the determination or choice of the legislative policy and of formally enacting that policy into a binding rule of conduct. In the present case the legislature has laid down such a principle and that principle is the maintenance or increase in supply of essential commodities and of securing equitable distribution and availability at fair prices.As already pointed out, the preamble and the body of the sections sufficiently formulate the legislative policy and the ambit and character of the Act is such that the details of that policy can only be worked out by delegating them to a subordinate authority within the framework of that policy.

In Sardar Inder Singh V. The State of Rajasthan 1957 SCR (Constitution Bench), this Court was considering Section 15 of the Rajasthan (Protection and Tenants) Ordinance, 1949 which, with similar provision authorised the Government to exempt any person from the operation of the Act. This Court held:

A more substantial contention is the one based on s. 15, which authorises the Government to exempt any person or class of persons from the operation of the Act. It is argued that that section does not lay down the principles on which exemption could be granted, and that the decision of the matter is left to the unfettered and uncanalised discretion of the Government, and is therefore repugnant to Art. 14. It is true that that section does not itself indicate the grounds on which exemption could be granted, but the preamble to the Ordinance sets out with sufficient clearness the policy of the Legislature; and as that governs s. 15 of the Ordinance, the decision of the Government thereunder cannot be said to be unguided. Vide Harishanker Bagla v. The State of Madhya Pradesh.

P.J. Irani V. The State of Madras 1962 (2) SCR 169 (Constitution Bench). In this case Section 13 of Madras Buildings (Lease and Rent Control) Act, 1949 is similar to the provisions we are considering conferred power of exemption. This Court held:

It was not possible for the statute itself to contemplate every such contingency and make specific provision therefor in the enactment. It was for this reason that a power of exemption in general terms was conferred on the State Government which,

however, could be used not for the purpose of discriminating between tenant and tenant, but in order to further the policy and purpose of the Act which was, in the context of the present case, to prevent unreasonable eviction of tenants.

In Registrar of Co-operative Societies, Trivandrum and Anr. V. K. Kunhambu and Ors. 1980 (2) SCR 260, this Court was considering Section 60 of the Madras Cooperative Societies Act 1932, which empowered the State Government to exempt existing society from any of the provisions of the Act or to direct that such provisions shall apply to such society with specified modifications. This Court held:

The Legislature may guide the delegate by speaking through the express provision empowering delegation or the other provisions of the statute, the preamble, the scheme or even the very subject matter of the statute. If guidance there is, wherever it may be found, the delegation is validSection 60 empowers the State Government to exempt a registered society from any of the provisions of the Act or to direct that such provision shall apply to such society with specified modifications. The power given to the Government under s. 60 of the Act is to be exercised so as to advance the policy and objects of the Act, according to the guidelines as may be gleaned from the preamble and other provisions which we have already pointed out, are clear.

The catena of decisions referred to above concludes unwaveringly in spite of very wide power being conferred on delegatee that such a section would still not be ultra vires, if guideline could be gathered from the Preamble, Object and Reasons and other provisions of the Acts and Rules. In testing validity of such provision, the courts have to discover, whether there is any legislative policy purpose of the statute or indication of any clear will through its various provisions, if there be any, then this by itself would be a guiding factor to be exercised by the delegatee. In other words, then it cannot be held that such a power is unbridled or uncanalised. The exercise of power of such delegatee is controlled through such policy. In the fast changing scenario of economic, social order with scientific development spawns innumerable situations which Legislature possibly could not foresee, so delegatee is entrusted with power to meet such exigencies within the in built check or guidance and in the present case to be within the declared policy. So delegatee has to exercise its powers within this controlled path to subserve the policy and to achieve the objectives of the Act. A situation may arise, in some cases where strict adherence to any provision of the statute or rules may result in great hardship, in a given situation, where exercise of such power of exemption is to remove this hardship without materially effecting the policy of the Act, viz., development in the present case then such exercise of power would be covered under it. All situation cannot be culled out which has to be judiciously judged and exercised, to meet any such great hardship of any individual or institution or conversely in the interest of society at large. Such power is meant rarely to be used. So far decisions relied by the petitioner, where the provisions were held to be ultra vires, they are not cases in which court found that there was any policy laid down under the Act. In A.N. Parasuraman & Ors. (supra) Court held

Section 22 to be ultra vires as the Act did not lay down any principle or policy. Similarly, in Kunnathat Thathunni Moopil Nair (supra) Section 7 was held to be ultra vires as there was no principle or policy laid down.

In this background we find the preamble of the Act laid down:-

An Act to provide for planning the development and use of rural and urban land in the State of Tamil Nadu and for purposes connected therewith.

The preamble clearly spells out policy which is for planning and development of the use of the rural and urban land in the State. The Statement of Objects and Reasons also indicates towards the same. The relevant portion of which is quoted hereunder:

The Tamil Nadu Town Planning Act, 1920 (Tamil Nadu Act VII of 1920) which is based on the British Town and Country Planning and Housing Act, 1909, has been in force in the State for nearly five decades. The said Act provides for matters relating to the development of towns to secure to their present and future inhabitants, sanitary conditions, amenity and convenience. It was felt necessary to make comprehensive amendments to the Act as the Act had several shortcomings and defects.

Not only preamble and Objects and reasons of the Act clearly indicate its policy but it is also revealed through various provisions of the enactment. Sub-section (13) of Section 2 defines development for carrying out any of the works contemplated in the regional and master plan etc., Section 9-C defines functions and powers of the Metropolitan Development Authority, Section 12 refers to functions and powers of the Appropriate Planning Authorities, Section 15 refers to regional planning. Section 16 is for preparation of land and building map, Section 17 refers to the Master plans, Section 18 refers to new town development plan, Section 19 refers to the declaration of intention to make or adopt a detailed development plan, Section 20 refers to the contents of detailed development plan, Section 47 refers to use and development of land to be in conformity with development plan, Section 48 refers to the restrictions on building and lands in the area of the planning authority. Each of them contributes for subserving the policy of the Act, and clearly declares the purpose of the Act. Hence Section 113 cannot be held to be unbridled, as Government has to exercise its power within this guideline. Hence we hold Section 113 to be valid.

There is a clear distinction between a provision to be ultra vires as delegation of power being excessive and the exercise of power by such delegatee to be arbitrary or illegal. Once the delegation of power is held to be valid the only other question left for our consideration is, whether the power exercised by the Government in passing the impugned sixty two G.Os under Section 113 could be said to be arbitrary or illegal.

Submission is that the Government has exercised this power of exemption indiscriminately, contrary to the provisions of the Act and Rules. The fact that

Government issued 62 GOs during the period 1.7.1987 till 29.1.1988 exempting large number of buildings in total disregard and in contravention of the provisions of the Act, speaks for itself. In fact, 36 such GOs were issued on one day, namely, on 31.12.1987. The submission is that these GOs further override even the orders passed by the development authority rejecting their plan as not being in conformity to the Development Control Rules. In fact, every essential restriction condition as laid down under the Act is in the interest of public at large, was set at naught without assigning any reasons. Even the basic requirements of set-back, alignments, abutting road width, FSI, height of building, corridor width, fire safety, staircase, transformer room, provision of lift, parking requirement etc. were all given a go by.

We may record here the State Government has not filed any counter affidavit against all these allegations made in the writ petition which was filed in the year 1988.

The petitioner has annexed each of the aforesaid 62 GOs compositely as Annexure II and a chart showing the details of these 62 GOs as Annexure I to the writ petition. A perusal of the exercise of power in each one of them by the first respondent-Government shows a consistent and mechanical pattern in granting the exemption, about which we shall be referring later.

The allegation in the writ petition is that after the death of Thiru M.G. Ramachandra on 14th December, 1987, the Government, during the interim period passed large number of GOs under Section 113 recklessly and indiscriminately and as per information of the petitioner about 73 GOs were passed on one day, viz., on 31st December, 1987. However, the petitioner could only obtain 36 GOs being passed on that day hence annexed only such G.Os. The allegation is, further batch of large number of GOs were passed on the 29th January, 1988 by the successor Ministry.

We have before us the chart of 62 such GOs issued by the Government under Section 113, which is between the period 1.7.1987 to 29.1.1988. We have examined each of these 62 GOs which is annexed compositely as Annexure II to this writ petition. Through each of such G.O. exemptions were granted to all such buildings, which admittedly violated compliance under the various rules. The aforesaid Act and the Rules have elaborately laid down the restrictions in the use of both the land and the building to regulate the development of urban and rural land. The various norms have been laid down exhaustively keeping in mind the public interest, the public health and public safety as well as interest of the builders and the landowners. Under Section 122 development control rules have been framed for the Madras Metropolitan Area. For developing of various zones, Rule 7 lays down for primary residential zone, Rule 8 for mixed residential use zone and Rule 9 for commercial use zone in the Madras Metropolitan Area which is divided into 9 zones. The rules provide with elaborate details which buildings are normally to be permitted for what purpose and what not otherwise covered in that zone to what extent they are permitted, e.g., schools and petty shops in the residential area, subject to the

limitations in each such zone. Each zone sets out in a tabular form the requirements relating to the floor space index, (FS1) maximum height, minimum set back, front set back, side set back, rear set back etc. Similarly, for commercial zones restrictions are imposed in relation to the horsepower rating of electric meters and to regulate storage of explosives as well as the affluence smoke, gas or other items likely to cause danger or nuisance to public safety.

In this background we scrutinized each of these 62 GOs. We find the grant of exemptions to the persons concerned has been in a set manner, almost identically except one or two. When we are saying mechanically it is because except for typing different plot numbers and the rules which have been exempted all other words are identical. Except for this little difference rest of the words in these orders are the same, which is reproduced below:

> In exercise of powers conferred by Section 113 of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972) the Government of Tamil Nadu hereby exempts the construction made atfrom the provisions of Ruleof the Development Control Rules relating to.(Front set back, FSI etc..) requirements respectively to the extend of violations as per plan refused by the Member Secretary, Madras Metropolitan Development."

> Each of these orders reveals non-application of mind by giving total go-by to the rules relating to the restrictions and control in construction of a building, to the floor space index, the front set back, side set back, parking requirements including provision of stand by generate, transformer room and meter room and floor space requirements construction abutting road width, corridor width, permissible floor area, limits of nursing homes, height of the rear construction even from the provisions of prohibition on the construction of multi storied buildings etc. Not only this, while granting the exemptions Government has not recorded any reasons as to why such power is being exercised and further such power was exercised not only to regularise some irregularities but were passed to over reach even the order of refusal passed by the Member-Secretary, Madras Metropolitan Development Authority. In other words, power of exemptions was granted which set aside the orders earlier passed by the statutory authorities in terms of the Act and the Rules. The submission on behalf of the State for salvaging the validity of Section 113 being ultra vires was, Government does not possess uncanalise or unbridled power as it is controlled by the policy of the Act. The question is, whether the impugned orders could be said to have been passed for the furtherance of such policy or for achieving the purpose for which it was enacted. So even as per submission it can only be exercised in the aid of such policy and not contrary to it. We find, in the present case, the Government while exercising its powers of exemption has given a go-by to all the norms as laid down under the Act and the Rules and has truly exercised its powers arbitrarily without following any principle which could be said to be in furtherance of the objective of that, nor learned counsel for the State could point out any.

Whenever any statute confers any power on any statutory authority including a delegatee under a valid statute, howsoever wide the discretion may be, the same has to be exercised reasonably within the sphere that statute confers and such exercise of power must stand the test to judicial scrutiny. This judicial scrutiny is one of the basic features of our Constitution. The reason recorded truly discloses the justifiability of the exercise of such power. The question whether the power has been exercised validly by the delegatee, in the present case, if yes, then it can only be for the furtherance of that policy. What is that policy? The policy is the development and use of rural and urban land including construction of, colonies, buildings etc. in accordance with the policy of the planning as laid down under the Act and the Rules. When such a wide power is given to any statutory authority including a delegatee then it is obligatory on the part of the such authority to clearly record its reasons in the order itself for exercising such a power. Application of mind of such authority at that point of time could only be revealed when order records its reason. Even if Section is silent about recording of reason, it is obligatory on the Government while passing orders under Section 113 to record the reason. The scheme of the Act reveals, the Government is conferred with wide ranging power, including power to appoint all important statutory authorities; appoints Director and its members of Town and Country Planning under Section 4; constitutes Tamil Nadu Town and Country Planning Board under Section 5; Board to perform such functions as Government assigns under Section 6; appoints Madras Metropolitan Development Authority under Section 9-A; Government entrusted for making master plan or any other new plan; any plant or modification is subject to the approval of Government. In fact, every statutory Committee is created by the Government and its planning is subject to the approval by the Government. It is because of this that very wide power is given to it under Section 113. In a given case, where a new development in rural or urban area may be required urgently and provisions under the Act and Rules would take long procedure, it may in exercise of its exemption power exempt some of the provisions of the Act and Rules to achieve the development activity faster or in a given case, if any hardship arises by following or having not followed the procedure as prescribed, the power of exemption could be exercised but each of these cases would be for furtherance of the development of that area.

When such a wide power is vested in the Government it has to be exercised with greater circumspection. Greater is the power, greater should be the caution. No power is absolute, it is hedged by the checks in the statute itself. Existence of power does not mean to give one on his mere asking. The entrustment of such power is neither to act in benevolence nor in the extra statutory field. Entrustment of such a power is only for the public good and for the public cause. While exercising such a power the authority has to keep in mind the purpose and the policy of the Act and while granting relief has to equate the resultant effect of such a grant on both viz., the public and the individual. So long it does not materially effect the public cause, the grant would be to eliminate individual hardship which would be within the permissible limit of the exercise of power. But where it erodes the public safety,

public convenience, public health etc., the exercise of power could not be for the furtherance of the purpose of the Act. Minor abrasion here and there to eliminate greater hardship, may be in a given case, be justified but in no case effecting the public at large. So every time Government exercises its power it has to examine and balance this before exercising such a power. Even otherwise every individual right including fundamental right is within reasonable limit but if it inroads public rights leading to public inconveniences it has to be curtailed to that extent. So no exemption should be granted effecting public at large. Various development rules and restrictions under it are made to ward off possible public inconvenience and safety. Thus, whenever any power is to be exercised, Government must keep in mind, whether such a grant would recoil on public or not and to what extent. If it does then exemption is to be refused. If the effect is marginal compared to the hardship of an individual that may be considered for granting. Such an application of mind has not been made in any of these impugned orders. Another significant fact which makes these impugned orders illegal is that Section 113 empowers it to exempt but it obligates it to grant subject to such condition as it deems fit. In other words, if any power is exercised then Government must put such condition so as to keep in check such person. We find in none of these sixty-two orders any condition is put by the Government. If not this then what else would be the exercise of arbitrary power.

We find in the present case, under the garb of its wide power, it has exercised it illegally and arbitrarily beyond its power vested under the said section without application of mind. We heard both learned counsels for the State and other affected respondents. They could not submit anything for us to draw inference contrary to the above. Thus after examining each of said GOs, in view of the finding recorded above, all these 62 GOs are not sustainable in law and are hereby quashed.

This brings us to the next and the last consideration which is the matter of the connected writ petition. During the pendency of this appeal in this Court, the State passed, Tamil Nadu Town and Planning (Amendment) Act, 1998 (hereinafter referred to as the amending Act) through which Section 113-A was introduced in the aforesaid 1971 Act, which is reproduced below:

113-A. Exemption in respect of development of certain lands or buildings (1) Notwithstanding anything contained in this Act or any other law for the time being in force, the Government or any officer or authority authorised by the Government, by notification, in this behalf may, on application, by order, exempt any land or building or class of lands or buildings developed immediately before the date of commencement of the Tamil Nadu Town and Country Planning (Amendment) Act, 1998 (hereafter in this section referred to as the said date) in the Chennai Metropolitan Planning Area, from all or any of the provisions of this Act or any rule or regulation made thereunder, by collecting regularisation fee at such rate not exceeding twenty thousand rupees per square metre, as may be prescribed. Different rates may be prescribed for different planning para- metres and for different parts of

the Chennai Metropolitan Planning Area.

(2) The application under sub-section (1) shall be made within ninety days from the said date in such form containing such particulars and with such documents and such application fee, as may be prescribed.

(3) Upon the issue of the order under sub-section (1), permission shall be deemed to have been granted under this Act for such development of land or building.

(4) Nothing contained in sub-section (1) shall apply to any application made by any person who does not have any right over the land or building referred to in sub-section (1).

(5) Save as otherwise provided in this section, the provisions of this Act, or other laws for the time being in force, and rules or regulations made thereunder, shall apply to the development of land or building referred to in sub-section (1).

(6) Any person aggrieved by any order passed under sub-section (1) by any Officer or authority may prefer an appeal to the Government within thirty days from the date of receipt of the order.

It seems, situation developed to such an extent, that irregularity, violation became order of the day and regularisation through power of exemption may not be appropriate, this amendment was brought in to overcome this situation. By this, Government is empowered, on application being made by person affected, to exempt any land or building developed immediately before the date of the commencement of this amending Act from all or any of the provisions of the Act, rules and regulations by collecting regularisation fees at such rate not exceeding Rs.20,000/- per square meter. The aforesaid 1982 amendment also added clause (cc) to sub-section (2) of Section 122 of the 1971 Act. The Governor in exercise of its power under this clause (cc) made Application, Assessment and Collection of Regularisation Fees (Chennai Metropolitan Rural Area) Rules, 1999 which prescribe the rates of regularisation fees with respect to the various violation if one seeks to regularise it under Section 113-A. The petitioner has also challenged this amending Act, through writ petition Civil No. 237 of 1999, which we have heard along with the main writ petition.

The petitioners challenge is that Section 113-A suffers from the same vice of it being unconstitutional as Section

113. It is also not only against the policy of the statute but it does not subserve to the public interest. The submission is, Section 113-A is merely an extension of the unbridled exemption power conferred by the statute under Section 113 except that under this newly introduced section Government could collect regularisation fees.

This amending Act seeks to legitimatize all violations under the Act, Rules and Regulations and condones all executive acts which is the cause of reaching this situation by not taking appropriate

action as against such illegal construction which they were obliged to do under the Act. When the Government and other statutory functionaries failed to work, to promote planned development to this extent, the Legislature has to intervene to bring this amendment.

The submission is this amending Act will greatly prejudice the public safety, security, fresh air and light and convenience to the public at large. Under Section 113-A the Government is empowered to grant exemption to such person who makes any application for exempting any land or building developed prior to the date of the commencement of the amending Act from applicability of any of the provisions of this Act and Rules by collecting the regularisation fees, as prescribed. So, this section not only infuses the Government with power to exempt but also lays down the procedure and condition to grant exemption. This covers all buildings or land developed immediately before the date of the commencement of the aforesaid 1998 Act. Here Legislature lays down everything and does not leave to the absolute direction of the delegatee. So, Section 113-A cannot be challenged that discretion of the delegatee is unbridled or uncanalised as section itself confers full guidelines in this regard. It is significant also to reproduce the Objects and Reasons for the introduction of this section which is quoted below:

> The Statement of Objects and Reasons for the Amendment Act state that:
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> As to today in Chennai as well as in other metropolitan cities of India many aberrations in the urban development are noticed. Huge disparities between peoples income and property value, together tempt the builders to violate the rules and the buyers to opt for such properties in the city of Chennai. A rough estimate of about three lakh buildings (approximately 50% on total number of buildings) will be violative of Development Control Rules or unauthorised structures. However, according to the Tamil Nadu Town and Country Planning Act, 1971 (Act 35 of 1972) the demolition action cannot be pursued on any of them unless a notice issued within 3 years of completion. The Chennai Metropolitan Development Authority has booked five thousand structures on which demolition action could be taken. Number of such cases booked by the Chennai City Municipal Corporation within its jurisdiction is nearly one thousand. Administratively also demolition of such a large number of cases is neither feasible nor desirable as it will result in undue hardship to the owners and occupants. Considering this and the practice followed in other metropolitan cities of the country to deal with violated constructions, the State Government have taken a policy to exempt the lands and buildings developed immediately before the date of commencement of the proposed legislation by collecting regularisation fee provided that the development has been made by a person who has right over such land or buildings.
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> (Emphasis supplied) The Statement of Objects and Reasons exhibits the change of Legislative policy to regularise all those building or land developed in contravention of the various provisions of the Act and the Rules. Section 113-A read with the Statement of Objects and Reasons clearly indicates Legislatures intent and policy, instead of demolishing illegal constructions to regularise them by charging

> regularisation fees. Thus no similar attributable vice could be attached to Section 113-A which was submitted for Section 113. Section 113-A Legislature, itself lays down what is to do be done by the Government, while in Section 113 Government is conferred with wide discretion though to act within the channel of the policy. In Section 113-A hardly any discretion is left on the Government while in Section 113 very large discretion is left. Challenge to Section 113 is unguided wide power to a delegatee, but no such challenge could be made against Legislature. Section 113-A is mandate of the Legislature itself to grant exemption and realise regularisation fees no discretion on the delegatee. Hence we hold Section 113-A as a one time measure is valid piece of legislation and challenge to its validity has no merit. It is interesting, though a matter of concern, what is recorded in the Statement of Objects and Reasons. It records; (A) A Rough estimate of about three lakh buildings (Approximately 50% of the total number of buildings) will be violative of Development Control Rules or unauthorised structure. (B) Under the Act demolition action against such structure cannot be pursued against any of them unless a notice was issued within 3 years of its completion.

(C) Chennai Metropolitan Development Authority could book only five thousand such structures and Chennai City Municipal Corporation could book only one thousand such buildings against which demolition action could be taken. (D) Administratively also demolition of such a large number of cases are neither feasible nor desirable, as it will result in undue hardship to the owners and the occupants. (E) Considering practice followed in other metropolitan cities of the country, the State Government took a policy decision to exempt buildings and lands by collecting regularisation fees.

Mere reading of this reveals, administrative failure, regulatory inefficiency and laxity on the part of the concerned authorities being conceded which has led to the result, that half of the city buildings are unauthorised, violating the town planning legislation and with staring eyes Government feels helpless to let it pass, as the period of limitation has gone, so no action could be taken. This mess is the creation out of the inefficiency, callousness and the failure of the statutory functionaries to perform their obligation under the Act. Because of the largeness of the illegalities it has placed the Government in a situation of helplessness as knowing illegalities, which is writ large no administratively action of demolition of such a large number of cases is feasible. The seriousness of the situation does not stay here when it further records, this is the pattern in other metropolitan cities of India. What is the reason? Does the Act and Rules not clearly lay down, what constructions are legal what not? Are consequences of such illegal constructions not laid down? Does the statute not provide for controlled development of cities and rural lands in the interest of the welfare of the people to cater to public conveniences, safety, health etc.? Why this inaction? The Government may have a gainful eye in this process of regularisation to gain affluence by enriching coffers of the State resources but this gain is insignificant to the loss to the public, which is State concern also as it waters down all preceding developments. Before such pattern becoming cancerous to spread to all part of this country, it is high time that remedial measure is taken by the State to check this pattern. Unless the administration is toned up, the persons entrusted to implement the scheme of the Act are made answerable to the latches on their failure to perform their statutory obligations, it would

continue to result with wrongful gains to the violators of the law at the cost of public, and instead of development bring back cities into the hazards of pollution, disorderly traffic, security risks etc. Such a pattern retards the development, jeopardises all purposeful plans of any city, and liquidates the expenditure incurred in such development process.

We may shortly refer to the possible consequences of the grant of such exemption under Section 113-A by collecting regularisation fees. Regularisation in many cases, for the violation of, front set-back, will not make it easily feasible for the corporation to widen the abutting road in future and bring the incumbent closer to the danger of the road. The waiver of requirements of side set-back will deprive adjacent buildings and their occupants of light and air and also make it impossible for a fire engine to be used to fight a fire in a high rise building. The violation of floor space index will result in undue strain on the civil amenities such as water, electricity, sewage collection and disposal. The waiver of requirements regarding fire staircase and other fire prevention and fire fighting measures would seriously endanger the occupants resulting in the building becoming a veritable death trap. The waiver of car parking and abutting road width requirements would inevitably lead to congestion on public roads causing severe inconvenience to the public at large. Such grant of exemption and the regularisation is likely to spell ruin of any city as it affects the lives, health, safety and convenience of all its citizens. This provision, as we have said, cannot be held to be invalid as it is within the competence of State Legislature to legislate based on its policy decision, but it is a matter of concern. Unless check at the nascent stage is made, for which it is for the State to consider what administrative scheme is to be evolved, it may be difficult to control this progressive illegality. If such illegalities stays for a long, wave of political, humanitarian regional and other sympathies develop. Then to break it may become difficult. Thus this inflow has to be checked at the very root. State must act effectively not to permit such situation to develop in the wider interest of public at large. When there is any provision to make illegal construction valid on ground of limitation, then it must mean Statutory Authority in spite of knowledge has not taken any action. The functionary of this infrastructure has to report such illegalities within shortest period, if not, there should be stricter rules for their non-compliance. We leave the matter here by bringing this to the notice of the State Government to do the needful for salvaging the cities and country from this wrath of these illegal colonies and construction.

Another attack on behalf of the petitioner is, when procedure for planned development takes place, the proposals are notified for public to file any objection under the Act and Rules which are considered before finalising the plan. But when regularisation takes place, which may affect the public, there is no provision for any notice to such public. We feel on the facts of the present case, when regularisation covers all buildings made in contravention of the Act and the Rules prior to the coming into force of the aforesaid Amending Act, the number being very large and this being one time settlement, then giving of public notice, in each of such cases, before deciding, may not be practicable. However, we find under sub- section (6) of Section 113-A there is provision for an appeal against such an order of regularisation by any person aggrieved. The appeal is to be filed within 30 days from the date of the receipt of the order which would normally be to the person who has applied for regularisation. It would be appropriate for the State to consider, in future, not this one time settlement, to either provide for an opportunity to the public at the first stage of consideration of the grant of exemption or at the stage of appeal, if any, provided. Where public

right is affected, the person from public will have a right to get redress of his grievance by placing such objection as he deem fit, which may be considered only to the extent the public right is affected.

As we have held the 62 GOs by the State Government granting exemptions to various persons under Section 113 of the Act cannot be sustained, we quash each one of the 62 GOs annexed compositely as Annexure II to the writ petition. In view of this such land or building under each such GO would become unauthorised. In the absence of Section 113-A the consequence of demolition would have been the only option. However, in view of Section 113-A, the person covered by the said 62 GOs, as a consequence of quashing, would be the person affected, and would also be persons entitled for regularisation under Section 113-A in terms of the aforesaid Rules 1999. Though all the affected 62 persons are parties, some of them have chosen not to appear in spite of service, hence we feel it appropriate that the Government will issue public notice including a notification that any person desiring regularisation of the unauthorised construction as a consequence of the orders passed by this Court may apply to the concerned authorities within 30 days of such publication and on such application being made the authority concerned will dispose it of in accordance with law treating them to be filed within time.

In view of the aforesaid findings recorded, by us we conclude:- (A) Section 113 of the Tamil Nadu Town and Country Planning Act, 1971 is valid. It does not suffer from the vice of excessive delegation of any essential legislative function. The preamble, Objects and Reasons and various provisions of the Act give clear-cut policy and the guidelines to the Government for exercising its power. Hence it is neither unbridled nor without any guidelines.

(B) So far the impugned 62 GOs, each one of them, which has been annexed compositively under Annexure II to the writ petition, cannot be sustained and are hereby quashed.

(C) Section 113-A as a one time measure brought in through the Tamil Nadu Town and Planning (Amendment) Act, 1998 is valid piece of legislation and not ultra vires.

(D) The facts recorded in the Statement of Objects and Reasons of the Amending Act indicates matter of serious concern which requires earnest consideration to salvage in future such recurring situation affecting public right with resultant hazard of traffic, public health, security etc. (E) To take effective measures, to check at the root level, at the very nascent stage and see that such situations does not recur.

In view of the aforesaid findings and our conclusions both the writ petitions are partly allowed. Costs on the parties.