Goa Foundation & Anr vs State Of Goa & Anr on 29 March, 2016

Equivalent citations: AIR 2016 SUPREME COURT 1653, 2016 (6) SCC 602, 2016 (3) ABR 486, 2017 (2) AJR 502, AIR 2016 SC (CIVIL) 1666, (2016) 116 ALL LR 493, (2016) 132 REVDEC 149, (2016) 161 ALLINDCAS 91 (SC), (2016) 2 CLR 1027 (SC), (2016) 4 MAD LJ 137, (2016) 3 SCALE 460, (2016) 2 CURCC 7, (2016) 3 BOM CR 747

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Bench: Prafulla C. Pant, Ranjan Gogoi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 131 OF 2009

GOA FOUNDATION & ANR. ...PETITIONER (S)
VERSUS
STATE OF GOA & ANR. ...RESPONDENT (S)

WITH

CONTEMPT PETITION (C) NO. 292 of 2009

IN

CIVIL APPEAL NO.4154 of 2000

J U D G M E N T

RANJAN GOGOI, J.

1. The challenge in this writ petition under Article 32 of the Constitution of India is to Constitutional validity of the Land Acquisition (Goa Amendment) Act, 2009 (Goa Act 7 of 2009) which was promulgated by the Governor of Goa on 11.04.2009 and notified in the Official Gazette on 30.04.2009.

2. The facts leading to the enactment of the aforesaid Amendment Act and its publication in the Gazette dated 30.04.2009 would require a specific enumeration and, therefore, are being recited herein below.

3. The third respondent in the writ petition i.e. M/s Fomento Resorts & Hotels Ltd. is a Company incorporated under the Companies Act, 1956. It is engaged in the hospitality industry. It is the owner of a hotel doing business in the name and style of Cidade de Goa. The said hotel has been constructed on land owned and possessed by the respondent. Sometime in November 1978, the third respondent addressed a letter to the Government to initiate acquisition proceedings under the Land Acquisition Act, 1894 (hereinafter referred to as 'the Central/Principal Act') so as to acquire land covered by Survey Nos. 803 and 804 (new nos.246/2 and 245/2) located within the area of Gram Panchayat Taleigao. The said land is contiguous to the plot(s) owned by it on which the hotel was located. A notification under Section 4 of the Central/Principal Act was issued on 29.10.1980 declaring that the land covered by Survey Nos.803 and 804 was needed for the public purpose of tourism development.

4. As the acquisition of the land was to be made under Part VII of the Principal Act, there was an enquiry held as contemplated under Section 40 of the Act which was followed by an agreement dated 26.10.1983 as required under Section 41 of the Act. The opening paragraphs and Clauses 3, 4 and 6 of the agreement would require specific notice and therefore are being extracted herein below:

> "WHEREAS the principal objects for which the Company is established are, inter alia, construction of a tourism development project, etc. etc. AND WHEREAS for the purpose of the construction of this tourism development project comprising of a hotel at Curla, Vainguinim, Dona-Paola, Goa, the Company has applied to the Government of Goa, Daman and Diu (hereinafter referred to as 'the Government') for acquisition under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as 'the said Act') of the pieces of land containing 19,114 sq m, situated in the district of Tiswadi and more particularly described in the Schedule appended hereto and delineated in the plan hereunder annexed (hereinafter called 'the said land') for the following purpose, namely—Tourism Development Project—construction of hotel at Curla, Vainguinim, Taleigao.
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> AND WHEREAS the Government being satisfied by an enquiry held under Section 40 of the said Act that the proposed acquisition is needed for the aforesaid purpose and the said work is likely to prove useful to the public, has consented to acquire on behalf of the Company the said land, hereinbefore described.
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> 3. The said land, when so transferred to and vested in the Company shall be held by the Company as its property to be used only in furtherance of and for the purpose for which it is required subject nevertheless to the payment of the agricultural, non-agricultural or other assessments and cesses, if any, and so far as the said land is or may from time to time be liable to such assessments and cesses under the provisions of the law for the time being in force.
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> 4. (i) The Company shall not use the said land for any purpose other than that for which it is acquired.

(ii) The Company shall undertake the work of creation of sports and other recreational facilities/amenities within one year from the date on which the possession of the said land is handed over to the Company and complete the same within three years from the aforesaid date.

(iii) Where the Government is satisfied after such enquiry as it may deem necessary that the Company was prevented by reasons beyond its control from creating the sports and other recreational amenities within the time specified in the agreement, the Government may extend the time for that purpose by a period not exceeding one year at a time so however that the total period shall not exceed six years.

(iv) The Company shall keep at all times and maintain the said land and the amenities created thereon, in good order and condition to the satisfaction of the Government or any officer or officers authorised by the Government.

(v) The Company shall maintain all records of the Company properly and supply to the Government punctually any information as may from time to time be required by the Government.

(vi) The Company shall not use the said land or any amenities created thereon for any purpose which in the opinion of the Government is objectionable.

(vii) The Company shall conform to all the laws and the rules and guidelines made by the Government from time to time regarding preservation of ecology and environment.

(viii) The Company shall never construct any building or structures in the acquired land. Prior approval of Eco-Development Council of the Government of Goa, Daman and Diu will be obtained before undertaking activities for its development, besides other statutory requirements under the existing laws.

(ix) The public access/road to the beach shall not be affected or obstructed in any manner.

6. In case the said land is not used for the purposes for which it is acquired as hereinafter recited or is used for any other purpose or in case the Company commits breach of any of the conditions hereof, the said land together with the improvements, if any, affected thereon, shall be liable to resumption by the Government subject however, to the condition that the amount spent by the Company for the acquisition of the said land or its value as undeveloped land at the time of resumption, whichever is less, but excluding the cost or value of any improvements made by the Company to the said land or any structure standing on the said land, shall be paid as compensation to the Company:

> Provided that the said land and the amenities, if any, created thereon shall not be so resumed unless due notice of the breach complained of has been given to the Company and the Company has failed to make good the breach or to comply with any directions issued by the Government in this behalf, within the time specified in the said notice for compliance therewith."

> 5. On execution of the aforesaid agreement a declaration under Section 6 was made declaring that the acquired land was required for the purpose of tourism development. There is no dispute with regard to the fact that with effect from 26.3.1985 the third respondent was put in possession of the land in question and that the said respondent had provided sports and recreational facilities/amenities on the acquired land.
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> 6. It appears that sometime thereafter, on behalf of the third respondent, an application was made to the Panjim Planning and Development Authority under Section 44 (1) read with Section 49(1) of the Goa, Daman & Diu Town and Country Planning Act, 1974 for grant of permission for extension of the existing hotel building on survey nos. 787, 788 and 789.

The aforesaid application was duly considered and recommended for acceptance by the EDC. This was on 15.04.1988. It appears that renewal/extension of the permission granted was sought on 1.2.1991 with a deviation to include Survey/Plot No.803 (New 246/2) i.e. the acquired land. The proposal for extension/renewal with the deviation was not put up before the EEC or the EDC and was granted straight away by the Goa Town and Country Planning Board in the meeting held on 20.6.1991. Permission was granted by the Development Authority on 20.4.1992 to carry out development on land covered, amongst others, by Survey No.803. Thereafter, construction was raised by the third respondent inter alia on about 1,000 square mtrs. of land covered by Survey no.803 (246/2).

7. The aforesaid construction raised and completed on the land covered by Survey No.803 (246/2) came to be challenged before the Goa Bench of the Bombay High Court, inter alia by the present writ petitioner. By judgment and order dated 25.04.2000, the challenge raised was upheld and the construction made by the third respondent was ordered to be demolished and the land resumed.

8. Aggrieved, the third respondent challenged the said order of the High Court by instituting Civil Appeal Nos.4154-4156 of 2000 before this Court which was dismissed on 20.1.2009 with the following operative directions. “(i) The appellants are allowed three months’ time to demolish the extended portion of the hotel building which was constructed on 1000 sq m of Survey No. 803 (new No. 246/2) and, thereafter report the matter to the Development Authority which shall, in turn, submit a report to that effect to the Goa Bench of the Bombay High Court.

(ii) If the appellants fail to demolish the building and report the matter to the Development Authority within the time specified in direction (i) above, the authority concerned shall take action in accordance with paras

(a) and (b) of the operative part of the High Court’s order.

(iii) The access shown in the plan, Ext. A attached to Writ Petition No. 141 of 1992 shall be kept open without any obstruction of any kind from point ‘A’ to ‘B’ in order to come from Machado’s Cove and then go to the beach beyond Point ‘B’. If during pendency of the litigation, Appellant 1 has put up

any obstruction or made construction to block or hinder access to the beach through Survey No. 803 (new No. 246/2), then the same shall be removed within one month from today."

9. Thereafter the Amendment Act of 2009 (Act 7 of 2009) was passed by the Legislative Assembly of Goa amending Section 41 by addition of Sub- sections 6 to 9 which was notified on 30.04.1999. The details of the amendment effect are as follows:

> "Amendment of Section 41.— In Section 41 of the Land Acquisition Act, 1894 (Central Act 1 of 1894), as in force in the State of Goa, after clause (5), the following shall be inserted, namely:— (6) Notwithstanding anything contained in any judgment, decree or an order of any Court, Tribunal or any other authority, any development done or construction undertaken in pursuance of the agreement entered under this section between the Government and the Company on the basis of the statutory approvals like permissions granted by the Planning and Development Authority, Eco-Development Council, Goa Coastal Zone 'Management Authority, Municipal Council, Panchayat, including renewals and deviations thereof approved and regularized, and all permissions obtained by the company and all the buildings constructed by the Company and all the proceedings taken by the competent authorities to issue the license or permission for undertaking construction, shall be deemed to have been validly done and have always been undertaken in accordance with the said agreement.
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> (7) Notwithstanding anything contained in any judgment, decree, or order of any Court, Tribunal or any other Authority the appropriate Government shall be at liberty to modify the agreement executed under this section between the Government and the Company on mutually agreed terms in furtherance of the purpose for which the land was acquired, by publication of the modified agreement in the Official Gazette, and any such modifications made in the agreement, shall come into force from the date on which the original agreement with the Company was executed under this section and any action taken or things done under the modified agreement, shall, for all purposes, be deemed and to have always been done or taken in accordance with the original agreement.
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> (8) Notwithstanding anything contained in any judgment, decree or order of any Court, Tribunal or any other authority, if, in any agreement entered into between the Government and the Company, there be any clause prohibiting the Company to construct any building or structure in the acquired land, such clause shall deemed to have been deleted with retrospective effect from 15-10-1964.
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> (9) No suit or other proceeding shall be instituted, maintained or continued in any Court or before any Tribunal or other authority for cancellation of such permission or for demolition of buildings which were constructed after obtaining the permissions from the Statutory Authorities and have been validated under this section, or for questioning the validity of any action taken or things done or permission granted in

> pursuance of the original agreement as modified and no Court shall enforce or recognize any decree, judgment or order declaring any such action taken or things done under the original agreement as modified, as invalid or unlawful."

10. The Statement of Objects and Reasons for the amendment which would facilitate the understanding of the some of the issues arising may also be noticed at this stage.

Statement of Objects and Reasons "Chapter VII of the Land Acquisition Act, 1894 deals with acquisition of land by the Government for companies under this chapter. The Government has acquired land for various companies and for Acquiring land, the requirement of execution of an agreement between Government and Company in terms of Section 41 of the Land Acquisition Act, 1894 had been executed by Government with various companies for whom land has been acquired under Chapter VII of the Land Acquisition Act. Recently, the Hon'ble Supreme Court in the case of Fomento Resort and Hotels Limited and another Appellant(s) Versus Minguel Martins and others Respondent(s) in Civil Appeal No. 4154,4155 and 4156 of 2000 has held that the clauses of the agreements have the force of law. The Hon'ble Supreme Court has thereafter interpreted the clause of agreement which was not as per the intention of the parties to the agreement. The Apex Court have also specifically held that there is no power to amend, modify, alter or change of agreement entered into as per requirement of Section 41 of the Act, 1894. It is therefore felt necessary to amend the Act by conferring power on the Government to modify or amend the agreement. This power is otherwise also necessary with changing time. Amendment to agreement may be the need of the days.

Therefore it is proposed to amend provision of section 41 of the Land Acquisition Act, 1894 (1 of 1894), after clause (5), by incorporating new clause namely Clauses (6),(7),(8) and (9) in order to meet the requirement thereof so as to enable the Government to exercise power to modify any agreement to meet the exigencies arising at any time, wherein acquisitions made for Companies in which agreements under Section 41 have been executed and with changing times, it may be required to modify such agreements to bring in conformity with the purpose of acquisition or in public interest.

This Bill seeks to achieve the above objects"

11. Thereafter on 6.3.2009 the original agreement was amended by a supplementary agreement which deleted clause 4 (viii) of the original/principal agreement in the following manner:

> "1)That in the Principal Agreement, in Condition 4, clause (viii) shall be deemed to have been deleted with retrospective effect from 26/10/83 and the Principal Agreement shall be so read and construed as if in condition 4, clause (viii) never existed in the Principal Deed w.e.f. 26/10/1983.
>
> In condition 6 of the Principal Agreement, for the expression "as hereinafter recited", the expression "namely tourism development project including construction of hotel" shall be substituted.

> That save as varied as hereinbefore provided in the Principal Agreement, all terms and conditions thereof shall continue to be binding on the parties and shall be in full force and effect."

12. It is the validity of the aforesaid Amendment Act that has been questioned by the petitioner, a non-governmental organization, in the present writ petition. To complete the narration of facts, reference may be made to the Land Acquisition (Goa Amendment) Ordinance that was promulgated with effect from 28.02.2009 and thereafter replaced by the impugned Legislation requiring the challenge in the writ petition to be shifted from the Ordinance to the Amendment Act in question.

13. We have heard Shri Sanjay Parikh, learned counsel appearing for the petitioner, Shri A.N.S. Nadkarni, Advocate General (Goa) for the respondent- State and Shri Rafiq Dada and Shri Dhruv Mehta, learned senior counsels for the private respondents.

14. According to Shri Parikh, learned counsel for the petitioner the impugned legislation seeks to nullify the directions given in the judgment of this Court dated 20.1.2009. Learned counsel submits that while there can be no dispute that the legislature is empowered to alter the basis of the judgment of a Court but in the guise of altering the same, the judgment itself cannot be overruled.

15. It is further submitted that the agreement under Section 41 of the Principal Act executed by respondent no.3, after an enquiry held under Section 40 thereof, not only has a statutory character but in view of Section 42 of the Act the same becomes a part of the Act upon publication in the Official Gazette. The basis of the judgment of this Court therefore could be changed only if a Central enactment amending the Principal Act had been brought about. The State Amendment, in the absence of Presidential assent, would be without any legal effect in view of the provisions of Article 254 (2) of the Constitution. It is also submitted by Shri Parikh that each of the sub-sections 6 to 9 brought in by the Amendment Act of 2009 seeks to nullify the directions given by the Court/Tribunal, as may be and that too retrospectively with effect from 15.10.1964. It is, therefore, submitted that the amendment is a direct affront to the principle of Rule of law.

16. On behalf of the petitioners it is further urged that the State Amendment Act is repugnant to the Principal Act and not being saved by Article 254(2) is void under Article 254(1) of the Constitution. Specifically it is contended that the object of the acquisition made under Part VII of the Act; the satisfaction of the Government under Section 40 of the Act with regard to the purpose of the acquisition and the contours of the acquisition spelt out in the agreement under Section 41 which has the effect of being a part of the Act itself under Section 42 stands obliterated by the State amendment. Not only the scheme under the Principal/Central Act for acquisition of land for companies is violated, even the purpose of the acquisition which may not have been envisaged at the stage of compliance with Sections 39, 40 and 41 of the Act stands altered by the State amendment. Under the Principal Act it was not permissible to modify/alter any terms of the statutory agreement under Section 41. The amended provisions which permit such modification/alteration are therefore clearly repugnant to the Principal Act. In the process not only a scheme which is in direct conflict with the existing scheme under Part VII is introduced, but the coercive machinery of land acquisition is permitted to be brought into force beyond what was contemplated under the

Principal/Central Act. In this regard it is specifically pointed out that Section 41 (6) permits construction contrary to the conditions of the statutory agreement; similarly Section 41 (7) permits modification of the agreement that too retrospectively whereas Section 41 (8) deletes the clause prohibiting the company from constructing structures in the acquired land in the statutory agreement executed under Section 41. Section 41(9), it is submitted, interferes with the exercise of the judicial power which is impermissible having regard to the principle of Rule of Law.

17. The timing of the ordinance i.e. immediately after the legislative session had concluded, has been urged on behalf of the petitioner as indicative of the extraneous reasons for introduction of the same. It is also urged that in the instant case it has been held by this Court in its earlier judgment that the instant acquisition was for purposes under Section 40 (1) (aa) of the Act. In view of the above and having regard to the provisions of Section 44 (b) of the Act, which limits the acquisition for a private company only for the purpose mentioned in Section 40 (1) (a), the acquisition for the benefit of the third respondent under Section 40 (1) (aa) could not have been made at all.

18. Opposing, Shri Nadkarni, learned Advocate General as well as Shri Rafiq Dada and Shri Dhruv Mehta learned senior counsels appearing for the private respondents, including the respondent no.3, have urged that the basis of the judgment dated 20.1.2009 is the embargo imposed by clause 4

(viii) of the agreement which did not permit the respondent no.3 to construct the hotel on the acquired land. The second basis of the judgment was with regard to the public access to the beach. It is urged that insofar as the public access is concerned the same is in no way effected by the amendment. In fact clause 4 (ix) of the agreement is left untouched. So far as the construction is concerned it is urged that the impugned State Legislation has cured the defects by deleting clause 4 (viii). The basis of the earlier judgment has consequently been removed. Support in this regard, is drawn from the decision of this Court in Bhaktwar Trust & Ors. v. MD Narayan & Ors.[1].

19. Insofar as the issue of repugnancy is concerned it is submitted on behalf of respondents that as held by this Court in Karunanidhi V. Union of India[2] repugnancy can arise only if the two sections are completely irreconcilable and in direct conflict. It is urged that in the present case the State amendment seeks to bring the agreement executed under Section 41 in harmony with Section 40 (1) (aa) of the principal Act. The use of the acquired land for construction of the hotel is consistent with what has been recorded by this Court in the earlier judgment, namely, that the acquisition is for the purposes contemplated by Section 40 (1) (aa) of the principal Act. In such a situation the amendment only removes the embargo on construction by deleting Clause 4 (viii); in fact it really facilitates construction for purpose of the hotel.

20. Alternatively, it is urged that for the purpose of Article 254 of the Constitution the repugnancy between State and the Central Law must be in respect of “Law” enacted by the State Legislature and the Parliament. A subordinate legislation or an agreement, which by a legal fiction is given the effect of law (e.g. under Section 42 of the Act), does not come within the scope of Article 254. It is further urged that the language of Section 42 makes it clear that it is only the terms of an agreement under Section 41 which deals with the rights of the public to use the work, which is deemed to be a part of the Act. The object behind Section 42, it is contended, is to make such part of the agreement which

pertains to the user of the work by the public enforceable in law. In this regard the findings recorded in the earlier judgment of this Court (para 57) to the effect that the facility developed by the third respondent on the acquired land was not meant for the general public was specifically relied upon. It is further pointed out that the third respondent being a public limited company Section 44B of the Act which deals with private companies has no application.

21. Insofar as the objections with regard to the requirement of Presidential assent to the State Amendment under Article 254 (2) is concerned it is submitted that though the original agreement was signed between the Union of India and the third respondent, by virtue of Section 45 of the Goa State Reorganization Act, 1987, the State of Goa has been substituted in all such agreements. Consequently, the Goa State Legislature was fully competent to carry out the State Amendment.

22. The submission on behalf of the respondent, therefore, essentially is as follows :

> (a) The basis of the earlier judgment dated 20th January, 2009, namely, that there was a bar to construction was removed by the State Amendment by deleting Clause 4(viii) of the Agreement.
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> (b) There is no repugnancy between the State Amendment and the Principal Act. In fact the State Amendment by permitting construction on the acquired land brings about consistency and harmonises the agreement executed under Section 41 with the satisfaction that the acquisition was for purpose contemplated by Section 40(i) (aa) of the Principal Act.
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> (c) The agreement does not lose its character as an Agreement and physically becomes a part of the Act to be treated as if it is a law made by the Parliament;
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> (d) In any event for the purposes of Article 254, the agreement is not a law made by the Parliament and therefore not covered under Article 254. The Agreement for a limited purpose is given a deeming fiction to have the effect of law “as if forming part of this Act.”

23. The rival arguments give rise to two major issues for determination of the Court. The first is the competence of the State Legislature to enact the State Amendment Act in view of the earlier decision of this Court dated 20th January, 2009. The second is whether the provisions of the State Amendment Act are repugnant to those of the Principal Act thereby invalidating the State law by virtue of Article 254(2) of the Constitution.

24. The principles on which first question would require to be answered are not in doubt. The power to invalidate a legislative or executive act lies with the Court. A judicial pronouncement, either declaratory or conferring rights on the citizens cannot be set at naught by a subsequent legislative act for that would amount to an encroachment on the judicial powers. However, the legislature would be competent to pass an amending or a validating act, if deemed fit, with retrospective effect removing the basis of the decision of the Court. Even in such a situation the courts may not approve

a retrospective deprivation of accrued rights arising from a judgment by means of a subsequent legislation [Madan Mohan Pathak and Another vs. Union of India and Others[3]]. However, where the Court's judgment is purely declaratory, the courts will lean in support of the legislative power to remove the basis of a Court judgment even retrospectively, paving the way for a restoration of the status quo ante. Though the consequence may appear to be an exercise to overcome the judicial pronouncement it is so only at first blush; a closer scrutiny would confer legitimacy on such an exercise as the same is a normal adjunct of the legislative power. The whole exercise is one of viewing the different spheres of jurisdiction exercised by the two bodies i.e. the judiciary and the legislature. The balancing act, delicate as it is, to the constitutional scheme is guided by well defined values which have found succinct manifestation in the views of this Court in Bhaktwar Trust & Ors.(supra). The relevant part of the opinion expounded in Bhaktwar Trust & Ors.(supra) may be noticed below.

14. The validity of any statute may be assailed on the ground that it is ultra vires the legislative competence of the legislature which enacted it or it is violative of Part III or any other provision of the Constitution. It is well settled that Parliament and State Legislatures have plenary powers of legislation within the fields assigned to them and subject to some constitutional limitations, can legislate prospectively as well as retrospectively. This power to make retrospective legislation enables the legislature to validate prior executive and legislative Acts retrospectively after curing the defects that led to their invalidation and thus makes ineffective judgments of competent courts declaring the invalidity. It is also well settled that a validating Act may even make ineffective judgments and orders of competent courts provided it, by retrospective legislation, removes the cause of invalidity or the basis that had led to those decisions.

15. The test of judging the validity of the amending and validating Act is, whether the legislature enacting the validating Act has competence over the subject-matter; whether by validation, the said legislature has removed the defect which the court had found in the previous laws; and whether the validating law is consistent with the provisions of Part III of the Constitution.

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25. The decisions referred to above, manifestly show that it is open to the legislature to alter the law retrospectively, provided the alteration is made in such a manner that it would no more be possible for the Court to arrive at the same verdict. In other words, the very premise of the earlier judgment should be uprooted, thereby resulting in a fundamental change of the circumstances upon which it was founded.

26. Where a legislature validates an executive action repugnant to the statutory provisions declared by a court of law, what the legislature is required to do is first to remove the very basis of invalidity and then validate the executive action. In order to validate an executive action or any provision of a statute, it is not sufficient for the legislature to declare that a judicial pronouncement given by a court of law would not be binding, as the legislature does not possess that power. A decision of a court of law has a binding effect unless the very basis upon which it is given is so altered that the said decision would not have been given in the changed circumstances.

27. Here, the question before us is, whether the impugned Act has passed the test of constitutionality by serving to remove the very basis upon which the decision of the High Court in the writ petition was based. This question gives rise to further two questions — first, what was the basis of the earlier decision; and second, what, if any, may be said to be the removal of that basis?

28. In the earlier decision of the High Court, it was found that licence to construct the building up to 80 feet was repugnant to the Zonal Regulations framed under Section 13 of the Planning Act which provided a maximum height of a new building as 55 feet. Thus, the provision of the Zonal Regulations which provided maximum height of 55 feet in case of a new building was, therefore, the basis upon which the High Court proceeded to conclude that the construction of the building violated the prescribed norms. It is manifest that the impugned Act has retrospectively modified the Zonal Regulations of 1972 by raising the height of a building from 55 feet to 165 feet. The provision of law upon which the High Court has placed reliance has, therefore, undergone a material alteration. The High Court would now find it impossible to take the view that the said building was erected in violation of the law, and that the licence granted therefor, was accordingly legally invalid."

25. If the above principles are to be applied to the present case what follows is that Section 41(6) to (9) introduced in the Principal Act by the Goa State Amendment renders ineffective Clause 4(viii) of the Agreement executed by the parties under Section 41 of the Principal Act. With Clause 4(viii) being deleted the embargo on constructions on the acquired land is removed. It is the aforesaid Clause 4(viii) and its legal effect, in view of Section 42, that was the basis of the Court's decision dated 20th January, 2009 holding the construction raised by the third respondent on the acquired land to be illegal and contrary to the Principal Act. Once Clause 4(viii) is removed the basis of the earlier judgment stands extinguished. In fact, it may be possible to say that if Clause 4(viii) had not existed at all, the judgment of the Court dated 20th January, 2009 would not have been forthcoming. It was therefore well within the domain of the legislature to bring about the Amendment Act with retrospective effect, the Legislative field also being in the Concurrent List, namely, Entry No. 42 of List III (Acquisition and Requisition of Property) of the Seventh Schedule to the Constitution.

26. The argument in support of the plea of repugnancy between the principal legislation (Land Acquisition Act) and the State Amendment though already noticed in detail may be summarized as follows:-

> The agreement under Section 41 is a part of the Principal Act by virtue of Section 42 thereof. There is a legal bar therein with regard to raising of construction by the third respondent. There is no provision either in the Act or in the agreement to vary/amend the terms and conditions thereof. In such a situation the State Amendment bringing into operation Sub-sections (6) to (9) of Section 41, whereby the bar to raising of construction or illegal constructions raised (on account of the bar) has been invalidated in the manner indicated therein, is repugnant to the provisions of Section 41 and the terms of the agreement which are deemed to be a part of the Act under Section 42.

27. In M. Karunanidhi vs. Union of India[4] and Kanaka Gruha Nirmana Sahakara Sangha vs. Narayanamma (Smt) (since deceased) by Lrs. and Others[5] it was held that for repugnancy to arise the following conditions must be satisfied:

(a) There is clear and direct inconsistency between Central and State Act.

(b) Such inconsistency is absolutely irreconcilable.

(c) Inconsistency is of the nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

28. We do not see how repugnancy between the two legislative exercises on the principles laid down in M. Karunanidhi (supra) and Kanaka Gruha Nirmana Sahakara Sangha (supra) can be said to exist in the present case. Section 41 of the Principal Act and the terms of the agreement executed thereunder (even if the latter is understood to be 'Law' enacted by the competent legislature for the purpose of Article 254) are silent with regard to modification/variation or deletion/subtraction of the terms of the agreement. The State Amendment Act by bringing in Sub-sections (6) to (9) of Section 41 invalidates a clause of the agreement [Clause 4(viii)] by effecting a deletion thereof with retrospective effect i.e. 15.10.1964 (the date of coming into operation of the Principal Act to the State of Goa). The State Amendment, by no means, sets the law in a collision course with the Central/Principal enactment. Rather, it may seem to be making certain additional provisions to provide for something that is not barred under the Principal Act. Moreover, if the provisions of the State Amendment are to be tested on the anvil of the finding of this Court that the acquisition in the present case is under Section 40(1)(aa) of the Land Acquisition Act, the deletion of the relevant clause of the agreement as made by the said amendment may appear to be really in furtherance of the purpose of the acquisition under the Central Act. We, therefore, do not find any repugnancy between the Principal Act and the State Amendment, as urged on behalf of the petitioners in this case.

29. The above conclusion of ours would make it wholly unnecessary for us to enter into the other two specific pleas urged on behalf of the respondent to counter the challenge of repugnancy. Whether 'Law' in Article 254 must be laws enacted by the State Legislature and the Union Parliament and not a subordinate legislation or a statutory flavoured act of the parties e.g. the agreement in the present case; whether it is only the specific part of the agreement under Section 41 published in the Gazette dealing with the rights of the public which becomes a part of the Act under Section 42 of the Principal Act, interesting and tempting questions as they may be, need not be gone into on the strength of well developed cannons of judicial disciplines and restraint.

30. Before parting, we deem it appropriate to put on record that on the materials available i.e. Minutes of the Cabinet Meeting dated 24th February, 2009 preceding the promulgation of the Land Acquisition (Goa Amendment) Ordinance, 2009 on 28th February, 2009, we find that the argument made on behalf of the petitioners that the Goa State Amendment was intended to benefit a singular entity i.e. the third respondent is without any basis whatsoever. The aforesaid Cabinet decision

clearly indicates that the exercise undertaken was more broad based than what the petitioners would like us to hold. In fact, there is a detailed reference, by names, in the said Cabinet decision to several other groups and corporations who are similarly situated as the third respondent.

31. Similarly, the plea of violation of the principles of Rule of Law and judicial review, urged on behalf of the petitioners, would not merit any serious consideration as the provisions of Sections 41(6) to (9), introduced by the State Amendment insofar as Court decrees/orders is concerned, are incidental and consequential provisions to an Amendment Act validating actions that had earlier received judicial disapproval.

32. For all the aforesaid reasons we find no merit in the writ petition. We, accordingly, dismiss the same though without any cost and uphold the validity of the Land Acquisition (Goa Amendment) Act, 2009 [Act 7 of 2009].

.....J. [RANJAN GOGOI] .....J. [PRAFULLA C. PANT] NEW DELHI, MARCH 29, 2016.

IN THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION CONTEMPT PETITION (C) NO. 292 of 2009 IN CIVIL APPEAL NO.4154 of 2000 CLAUDE ALVARES ...PETITIONER (S) VERSUS SANJAY KUMAR SRIVASTAVA & ORS. ...RESPONDENT (S) O R D E R In view of the judgment rendered in Writ Petition (C) No.131 of 2009 titled as Goa Foundation & Anr. vs. State of Goa & Anr., decided on 29.03.2016 nothing survives in the contempt petition and the same is accordingly disposed of. Rule of notice is discharged.

.....J. [RANJAN GOGOI] .....J. [PRAFULLA C. PANT] NEW DELHI, MARCH 29, 2016.

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[1] (2003) 5 SCC 298
[2] (1979) 3 SCC 431
[3] (1978) 2 SCC 50
[4] (1979) 3 SCC431
[5] (2003) 1 SCC 228
