Krishna Bhimrao Deshpande vs Land Tribunal, Dharwad And Ors on 3 November, 1992

Equivalent citations: AIR 1993 SUPREME COURT 883, 1993 (1) SCC 287, 1992 AIR SCW 3407, (1992) 6 JT 149 (SC), 1992 (6) JT 149, 1993 ( ) BOM CJ 576, (1992) 3 SCJ 693

Author: Lalit Mohan Sharma

Bench: Lalit Mohan Sharma

PETITIONER:
KRISHNA BHIMRAO DESHPANDE

Vs.

RESPONDENT:
LAND TRIBUNAL, DHARWAD AND ORS.

DATE OF JUDGMENT03/11/1992

BENCH:
[LALIT MOHAN SHARMA AND K. JAYACHANDRA REDDY, JJ.]

ACT:
Constitution of India, 1950:
Article 252 read with Schedule VII, List n Entry 18-Legislation by Parliament Requirement-Central Law on ceiling on urban immovable property in pursuance of Resolution of State Legislature State Laws on other matters relating to the subject-matter of resolution-Legality of.
Constitution of India, 1950:
Article 252, Schedule VII, list II, Entry 18-Urban Land (Ceiling and Regulation) Act, 1976 andKarnataka Land Reforms Act as amended in 1974 Object and application of-Whether any conflict between the Acts.

HEADNOTE:
In the year 1972 the Karnataka Legislature passed a resolution under Article 252 of the Constitution imposing a ceiling on urban immovable property and the acquisition of such property in excess of the ceiling is limit for public purposes and all the matters connected therewith shall be regulated in the State by Parliament by law.

On 1.4.74 the Karnataka Land Reforms (Amendment) Act was enacted and under the Act the tenant of the land covered by the Act was entitled to the grant of occupancy rights after making an application under the Act. The Act came Into force with effect from 2.1.85. But for the purpose of grant of occupancy rights, 1.4.74 was the relevant date.

In the year 1975 the Karnataka Urban Agglomeration Ordinance was passed, whereunder all lands between the periphery of 8 K.Ms. of the municipal limits of Hubli Dharwad were declared as urban agglomeration land.

The Parliament passed the Urban Land (Ceiling and Regulation) Act, 1976 for imposition of ceiling on urban properties and the Ceiling Act was made applicable to Karnataka also in view of the resolution passed by the State Government.

The lands involved in the present cases were covered by the development plan by the Belgaum City Town Planning authority as per the Master Plan and they were included and declared as urban agglomeration in the City of Hubli under the provisions of the Ceiling Act.

The owners of the agglomeration lands challenged the order of the Land Tribunal under the Land Reforms Act conferring occupancy rights on the tenants before the High Court. They contended that the lands involved in the cases were within the purview of the Ceiling Act and therefore the provisions of the Land Reforms Act had no application to such lands on the ground that the provisions of the Ceiling Act.

The writ petitions were dismissed by the High Court.

The owner's writ appeals were also dismissed by a common judgment by the Division Bench of the High Court. The Division Bench held that there was no conflict between the two enactments.

The judgment of the Division Bench was challenged in S.L.P. (Civil) No. 16041-42/88.

Many of the similar writ petitions that were pending before the High Court were transferred to the Land Reforms Appellate Tribunal.

The Appellate Tribunal dismissed the petitions by a common order following the judgment of the Division Bench of the High Court. Several Civil revision petitions filed by the land owners against the order of the Appellate Tribunal were dismissed by the High Court. Some of the special leave petitions were filed against the order of the High Court in the said civil revision petitions.

The petitioners-land owners contended that when in pursuance of the resolution of the State Legislature passed under Article 252 of the Constitution the Parliament legislated in respect of the topic covered by the resolution. The Parliamentary law repealed or superseded the existing State legislation on the topic and therefore such law could not be enforced thereafter; and that vesting of tenanted land in the State and conferment of occupancy

rights under the provisions of the State Act directly fall under the subject of imposing ceiling on land holding and other matters incidental or ancillary to the main topic of imposing ceiling and therefore they were fully covered by the Ceiling Act passed by the Parliament and the same superseded the State enactment in respect of such lands.

The respondents submitted that "imposition of ceiling" was a distinct and separately identifiable subject and the Parliament was empowered to legislate; that the power of the State to legislate in respect of the remaining part of the subject-matter was unaffected; that when two distinct powers came into existence, vesting law making competence in the State and Parliament, the pith and substance of the laws made by each of them had to be examined to see whether any one of them encroached the field set apart as falling within the competence of the other body; that in any event the provisions of Chapter III of the Karnataka Land Reforms Act had nothing to do with the imposition of ceiling on the urban land and that conferring of occupancy rights etc. to the tenants under Chapter III of the Karnataka Land Reforms Act did not come under the category of "the matters connected therewith or ancillary or incidental to the imposition of ceiling" on urban immovable property.

Dismissing the special leave petitions, this Court,

HELD: 1.01. Article 252 empowers the Parliament to legislate for two or more States on any of the matters with respect of which the Parliament has no power to make law except as provided under Articles 249 and 250. This power to legislate is vested in the Parliament only if two or more State Legislatures think it desirable to have a law enacted by Parliament on such matters in List II, i.e. with respect to which the Parliament has no power to make law for the State. The passing of the resolutions by the State Legislatures is a condition precedent for vesting the Parliament with such power. [339-C-D]

1.02. The scope of Entry 18 is very wide and the land mentioned therein may be agricultural or non-agricultural and may be rural or urban. The subject-matter carved out of Entry 18 under the resolutions passed by The various State Legislatures related to only "urban immovable property" and by virtue of the resolution the law that can be enacted by the Parliament should be a law "imposing a ceiling on such urban immovable property." [340-B, C]

1.03. From the resolution it is clear that the subject-matter that was resolved to be entrusted to the Parliament was the one imposing a ceiling on urban immovable property and acquisition of such property in excess of the ceiling. This subject-matter is the topic that falls within Entry 18 of List II of Schedule VII to the Constitution and the subject-matter of Entry 18 has been originally kept apart for the State Legislature to make law and Parliament had no competence in respect of those matters falling under the wide scope of Entry 18. By virtue of this resolution a part

of the area falling under Entry 18 is transferred to the domain of Parliament to make law relating to the matters within the transferred area. [339-G, H; 341-A]

2.01. The primary object and the purpose of the Urban Land (Ceiling and Regulation) Act, 1976 is to provide for the imposition of ceiling on vacant land in urban agglomeration and for acquisition of such lands in excess of the ceiling limit and to regulate the construction of buildings on such lands and for matters connected therewith. [340-H; 341-A]

2.02. The Karnataka Land Reforms Act as amended in 1974 is a welfare legislation. The object of the Act was to have a uniform law in the State of Karnataka relating to agrarian reforms, conferment of ownership on tenants, ceiling on land holdings and for certain other matters contained therein. [342-D]

2.03. In respect of imposing ceiling on the land under urban agglomeration the provisions of the Ceiling Act alone are applicable and to that extent the provisions of Chapter IV of the Karnataka Land Reforms Act which also deal with the imposition of ceiling would not be applicable. [344-C]

2.04. The land in the instant case comes under the urban agglomeration the imposition of the ceiling should naturally be under the provisions of the Urban Ceiling Act and not under the Karnataka Land Reforms Act. [344-B, C]

2.05. Imposition of ceiling on urban land is a distinct and independent subject as compared to imposition of ceiling on owning or to hold agricultural land or any other kind of property which do not attract the Urban Ceiling Act. These are two distinct powers and therefore the law making competence can be in two different legislative bodies. Consequently it is difficult to hold that the provisions of Chapter III of the Karnataka Land Reforms Act are outside the legislative competence of the State Legislature. [350-C, D]

2.06. The one topic that is transferred in the resolution passed under Article 252 as distinct and separately identifiable and does not include the remaining topics under Entry 18 in respect of which the State alone has the power to legislate. [351-D]

2.07. The legislative power of the State has to be reconciled with that of the Parliament and that in their respective fields each is supreme. Even assuming that the State enactment has same effect on the subject-matter falling within the Parliament's legislative competence that by itself will not render such law invalid or inoperative. [350-G-H]

2.08. There is no conflict between the Ceiling Act and the State Act. The imposition of ceiling on urban immovable property is an independent topic and cannot be construed as to nullify the other subject left in the domain of the State Legislature under Entry 18 inasmuch as imposition of ceiling

is a distinct and separately identifiable subject and does not cover the other measures such as regulation of relationship of landlord and tenant in respect of which the State Legislature has competence to legislate. [351-C-D]

2.09. There is a ceiling provision under Section 45(2) of the Karnataka Land Reforms Act providing for computation of the area in respect of which the tenant may be granted occupancy rights. But it is clear that ceiling on the area in this context is only for the purpose of Section 45. [351-F]

2.10. Provisions in the Chapters II, III, V, VI to XI of the Karnataka Land Reforms Act deal with the conferment of occupancy rights on the respective tenants and they do not in any way conflict with the subject matter transferred to the Parliament by the resolution passed under Section 252. [351-E,F]

Thumati Venkaiah and others v. State of Andhra Pradesh and of others, [1980] 4 SCC 295; Union of India and others v. Valluri Basavaiah Chowdhary and others, [1979] 3 SCC 324; Calcutta Gas Company (Proprietory) Ltd. v. State of West Bengal and others, AIR 1962 SC 1044 and Kannan Devan Hills Produce Company Ltd. v. The State of Kerala etc., AIR 1972 SC 2301 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) Nos. 16041-42/88.

From the Judgment and Order dated 27.7.1988 of the Karnataka High Court in W.P. No 9173/86 and W.A. No 2707/85.

WITH SLP (C) Nos. 12258, 12254, 12260/90 & 8608/91 R.N. Narasimhamurthy, S.S. Javali, S.N. Bhat and Ravi P. Wadhwani for the Petitioners.

M.S. Nesargi, R. Jagannath Goulay, M.K. Dua, M. Veerappa, K.H. Nobin Singh, S.K. Kulkarni and Surya Kant for the Respondents.

The following Order of the Court was delivered by K. JAYACHANDRA REDDY, J. In all these special leave petitions the common question that arises for consideration is whether the provisions of the Karnataka Land Reforms Act, 1961 as amended in 1974 (`Act' for short) cease to be applicable in all respects to the lands which came within the purview of the Urban Land (Ceiling and Regulation) Act, 1976 ('Ceiling Act' for short). The lands involved in these matters are covered by the development plan by the Belgaum City Town Planning authority as per the Master Plan for the said City and they are included and declared as urban agglomeration in the City of Hubli under the provisions of the Ceiling Act. In the year 1972 the Karnataka Legislature passed a resolution under Article 252 of the Constitution to the effect that imposing a ceiling on urban immovable property and the acquisition of such property in excess of the ceiling limit for public purposes and all the

matters connected therewith shall be regulated in the State by Parliament Qby law. The State Legislature thus divested itself of the legislative competence to enact law in respect of subject-matter of the resolution. On 1.4.74 the amended Karnataka Land Reforms Act was enacted and under the said Act the tenant of the land covered by the Act is entitled to the grant of occupancy rights after making an application under the Act. This Act came into force with effect from 2.1.85. But for the purpose of grant of occupancy rights 1.4.74 was the relevant date. While so in the year 1975 the Governor of Karnataka passed the Urban Aggolmeration Ordinance whereunder all lands between the periphery of 8 K.Ms. of the municipal limits of Hubli Dharwad were declared as urban agglomeration land. In the year 1976 the Parliament passed the Ceiling Act for imposition of ceiling on urban properties and the Act was made applicable to Karnataka also in view of the resolution passed by the State Government referred to above. The order of the Land Tribunal under the Act conferring occupancy rights on the tenants was challenged before the High Court contending that the lands involved in these cases were within the purview of the Ceiling Act and therefore the provisions of the Land Reforms Act had no application to such lands on the ground that the provisions of the State Act were repugnant to the provisions of the Central Act namely the Ceiling Act. The writ petition was dismissed by the High Court. The owners preferred writ appeals and they were also dismissed by a common judgment in Writ Appeal Nos. 2707 and 2361/85 etc. The Division Bench held that there is no conflict between the two enactment in certain respect i.e. atleast so far as the implementation of the provisions of Chapter III of the Act are concerned and that provisions of this Chapter of the Act do not cease to apply to the agricultural lands coming within the meaning of urban agglomeration in the Ceiling Act. The judgment of the Division Bench is challenged in S.L.P.(Civil) No. 16041- 42/88. Many of the similar writ petitions that were pending before the High Court were transferred to the Land Reforms Appellate Tribunal. The Appellate Tribunal dismissed the petitions by a common order following the judgment of the Division Bench of the High Court in Writ Appeal No.2707/85 and connected matters. Several civil revisions petitions filed by the land owners against the order of the Appellate Tribunal were dismissed by the High Court. Some of the special leave petitions are filed against the order of the High Court in the said civil revision petitions. Therefore all these special leave petitions can be disposed of by a common order.

It was urged before us that the resolution of the State Legislature passed under Article 252 of the Constitution shifted the topic covered by the resolution from List II of Schedule VII to the Constitution and vested the competence to make the law in respect of the said topic in the Parliament and that thereafter the State enactment ceased to have efficacy in respect of said topic. Alternatively it was urged that, when in pursuance of the resolution the Parliament legislates in respect of the topic covered by the resolution, the Parliamentary law, repeals or supersedes any existing State legislation on the topic and therefore such law cannot be enforced thereafter.

We shall first extract some of the relevant provisions of the Constitution of India and the respective enactments. Article 246 of the Constitution reads thus:

> "246. Subject-matter of laws made by Parliament and by the Legislatures of States-(l) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh

Schedule (in this Constitution referred to as the "Union List").

(2) xx xx xx (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4)xx xx xx "

Entry 18 in List II namely the State List of the VII Schedule to the Constitution is in the following terms:

"18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents, transfer and alienation of agricultural land; land improvement and agricultural loans;

colonization."

Article 252 of the Constitution reads thus:

"252. Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State-(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in Articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State. (2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applics, be amended or repcaled by an Act of the Legislature of that State."

Article 252 empowers the Parliament to legislate for two or more States on any of the matters with respect of which the Parliament has no power to make law except as provided under Articles 249 and 250. This power to legislate is vested in the Parliament only if two or more State Legislatures think it desirable to have a law enacted by Parliament on such matters in List II i.e. with respect to which the Parliament has no power to make law for the State. The passing of the resolutions by the State Legislatures is a condition precedent for vesting the Parliament with such power. The relevant portion of the resolution passed by the State Legislature under Article 252 reads thus:

"Now, therefore, in pursuance of clause (1) of Article 252 of the Constitution, this Assembly hereby resolves that the imposition of a ceiling on urban immovable

> property and F acquisition of such property in excess of the ceiling and all matters connected therewith or ancillary and incidental thereto should be regulated in the State of Karnataka by Parliament by law."

The resolution states that the imposition of ceiling on urban immovable property and the acquisition of such property in excess of the ceiling limit with a view to utilising such excess property for public purposes and all other matters connected therein or incidental thereto shall be regulated in this State by Parliament by law. The basic question that arises is what is the actual content of the subject-matter that was resolved to be entrusted to Parliament by the State Legislature under Article 252 of the Constitution. From the resolution it is clear that the subject-matter that was resolved to be entrusted to the Parliament was the one imposing a ceiling on urban immovable property and acquisition of such property in excess of the ceiling. It is true that this subject-matter is the topic that falls within Entry 18 of List 11 of Schedule VII to the Constitution and the said subject-matter of Entry 18 has been originally kept apart for the State Legislature to make law and Parliament had no competence in respect of those matters falling under the wide scope of Entry 18. Now by virtue of this resolution a part of the area falling under Entry 18 is transferred to the domain of Parliament to make law relating to the matters within the transferred area. The scope of Entry 18 is very wide and the land mentioned therein may be agricultural or non-agricultural and may be rural or urban. The subject-matter carved out of Entry 18 under the resolutions passed by the various State Legislatures related to only- "urban immovable property" and by virtue of the resolution the law that can be enacted by the Parliament should be a law "imposing a ceiling on such urban immovable property. The learned counsel for the petitioners, however, urged that vesting of tenanted land in the State and conferment of occupancy rights under the provisions of the State Act directly fall under the subject of imposing ceiling on and holding and other matters incidental or ancillary to the main topic of imposing ceiling and therefore they are fully covered by the Ceiling Act passed by the Parliament and the same supersedes the State enactment in respect of this land. The learned counsel appearing for the respondents on the contrary submitted that "imposition of ceiling" is a distinct and separately identifiable subject and is the power carved out of Entry 18 and vested in the Parliament to legislate and that the power of the State to legislate in respect of the remaining part of the subject-matter is unaffected and that when two distinct powers have come into existence, vesting law making competence in the State and Parliament, the pith and substance of the laws made by each of them has to be examined to see whether any one of them encroaches the field set apart as falling within the competence of the other body. The learned counsel for the respondents, however, submitted that in any event the provisions of Chapter III of the Act have nothing to do with the imposition of ceiling on the urban land and that conferring of occupancy rights etc. to the tenants under Chapter 111 of the Act do not come under the category of "the matters connected therewith or ancillary or incidental to the imposition of ceiling" on urban immovable property.

Now we shall refer to the provisions of the Urban Ceiling Act. The Statement of Objects and Reasons under Preamble to the said Act would show that the primary object and the purpose is to provide for the imposition of ceiling on vacant land in urban agglomeration and for acquisition of such lands in excess of the ceiling limit and to regulate the Marwaha and others. [1974] 1 SCR 165; Miss Neelima Shangla v. State of Haryana and others, [1986] 4 SCC 268, or Jitendra Kumar and others v. State of

Punjab and others:

[1985] 1 SCR 899."

If we have regard to the above enunciation that a candidate who finds a place in the select list as a candidate selected for appointment to a civil post, does not acquire an indefeasible right to be appointed in such posting the absence of any specific Rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no bona fide reasons, it follows as a necessary concomitant that such candidate even if has a legitimate expectation of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily: In the instant case, when the Chandigarh Administration which received the complaints about the unfair and injudicious manner in which select list of candidates for appointment as conductors in CTU was prepared by the Selection Board constituted for the purpose, found those complaints to be well founded on an enquiry got made in that regard, we are unable to find that the Chandigarh Administration had acted either arbitrarily or without bona fide and valid reasons in cancelling such odubious select list. Hence, the contentions of the learned counsel for the Respondents as to the sustainability of the Judgment of CAT under appeal on the ground of non-affording of an opportunity of hearing to the Respondents (candidates in the select list) is a misconceived one and is consequently rejected.

In the result, we allow this appeal, set aside the Judgment under appeal, and reject the applications made by Respondents before CAT, Chandigarh. However, in the facts and circumstances of this appeal, we make no order as to costs.

G.N. Appeal allowed.

FOOD CORPORATION OF INDIA V. KAMDHENU CATTLE FEED INDUSTRIES NOVEMBER 3, 1992 [J.S. VERMA, YOGESHWAR DAYAL AND N. VENKATACHALA, JJ.] Constitution of India, 1950: Article 14-Contractual transactions of State or its instrumentality-Essential requisites-Non-arbitrariness, fairness in action and due consideration of legitimate expectation-Ignoring the highest bid- Negotiations for higher offer and acceptance thereof-Validity of. Administrative Law:

Doctrine of legitimate expectation-Forms part of non arbitrariness and Rule of Law-To be determined in the larger public interest Open to judicial review.

The appellant-Corporation invited tenders for sale of stocks of damaged food-grains. The respondent's bid was the highest. Since the appellant was not satisfied about the adequacy of the amount offered even in the highest tender, it invited all the tenders

to participate in the negotiations, instead of accepting the highest tender. During the course of negotiations, the respondent refused to revise the rates in its offer. On the basis of the highest bid made during the negotiations, the appellant disposed of the stocks of damaged foodgrains, rejecting the highest tenders. The respondent, whose tender was the highest, challenged the decision of the appellants by filing a Writ Petition before the High Court. It was contended that the action of the appellant was arbitrary and hence violative of Art. 14 of the Constitution. The High Court accepted the contention and allowed the Writ Petition. Being aggrieved by the High Court's decision the appellant-Corporation preferred the present appeal.

It was contended on behalf of the appellant that there being no right in the person submitting the highest tender to claim acceptance thereof, and since all tenderers were given equal opportunity to participate in the negotiations and to revise the bid before acceptance, the action of the appellant was not arbitrary.

The Respondent contended that since no cogent reasons were indicated for rejecting all the tenders and for deciding to dispose of the stock by negotiating with the tenderers for procuring a higher price, such a decision was arbitrary.

Allowing the appeal, this Court, HELD: 1.1. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non- arbitrariness is a significant facet. There is no unfettered discretion in public law. A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is necessary to consider and give due weight to the reasonable-or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review. [328-A-D]

12. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-

arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. Whether the expectation of the

claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non- arbitrariness and withstand judicial scrutiny. [328-E-G] 2.1. Even though the highest tenderer can claim no right to have his tender accepted, there being a power while inviting tenders to reject all the tenders, yet that power cannot be exercised arbitrarily and must depend for its validity on the existence of cogent reasons for such action. The object of inviting tenders for disposal of a commodity is to procure the highest price while giving equal opportunity to all the intending bidders to compete. Procuring the highest price for the commodity is undoubtedly in public interest since the amount so collected goes to the public fund. Accordingly, inadequacy of the price offered in the highest tender would be a cogent ground for negotiating with the tenderers giving them equal opportunity to revise their bids with a view to obtain the highest available price. Retaining the option to accept the highest tender, in case the negotiations do not yield a significantly higher offer would be fair to the tenderers besides protecting the public interest. A procedure wherein resort is had to negotiations with the tenderers for obtaining a significantly higher bid during the period when the offers in the tenders remain open for acceptance and rejection of the tenders only in the event of a significant higher bid being obtained during negotiations would ordinarily satisfy this requirement. This procedure involves giving due weight to the legitimate expectation of the highest bidder to have his tender accepted unless outbid by a higher offer, in which case acceptance of the highest offer within the time the offers remain open would be a reasonable exercise of power for public good. [329-E-H; 330-A] Shanti Vijay & Co. etc. v. Princess Fatima Fouzia & Ors. etc., [1980] I S.C.R. 459, relied on.

Council of Civil Service Unions and Others v. Minister for the Civil Service, 1985 A.C. 374 (H.L.), and In re Preston, 1985 A.C. 835 (H.L.), referred to.

22. In the instant case, the respondent's highest tender was super seded only by a significantly higher bid made during the negotiations with all tenderers giving them equal opportunity to compete by revising their bids. The fact that it was a significantly higher bid obtained by adopting the right course is sufficient to demonstrate that the action of the appellant satisfied the requirement of non-arbitrariness, and it was taken for the cogent reason of inadequacy of the price offered in the highest tender, which reason was evident to all tenderers invited to participate in the negotiations and to revise their bids. The High Court was in error in taking the contrary view. [330-D-E] CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4731 of 1992.

From the Judgment and Order dated 21.7.92 of the C.W.N. 7419 of 1992.

Y.P. Rao for the Appellant.

Ashok Sen, H.L. Aggarwal, and K.K. Gupta (NP) for the Respondent.

The Judgment of the Court was delivered by VERMA, J. Leave granted.

The appeal by special leave under Article 136 of the Constitution is against the judgment and order dated 21.7.92 by which the Civil Writ Petition No. 7419 of 1992 has been allowed by the Punjab & Haryana High Court directing the appellant Food Corporation of India to allot to the respondent the necessary stocks of damaged rich for which the tenders had been invited by the appellant, since the respondent was the highest bidder.

The appellant invited tenders for sale of stocks of damaged foodgrains in accordance with the terms and conditions contained in the tender notice (Annexure `A'). The tenders were required to be submitted upto 2.45 p.m. on 18.5.92; the tenders were to be opened on 18.5.92 at 3.00 p.m.; and offers were to remain open for acceptance upto and inclusive of 17.7.92. The respondent submitted its tender for a stock of damaged rice within the time specified, but the respondent's tender was conditional and the full amount of earnest money required by the terms was also not deposited. It is, however, not necessary to mention the particulars of these two deficiencies in respondent's tender since they appear to have been waived by the appellant and are not relied on before us to support the appellant's action. The respondent's bid in the tender was admittedly the highest as found on opening, the tenders. lt appears that the appellant was not satisfied about the adequacy of the amount offered in the highest tenders for purchase of the stocks of damaged foodgrains and, therefore. instead of accepting any of the tenders submitted, the appellant invited all the tenderers to participate in the negotiation on 9.6.92. The respondent refused to revise the rates offered in its tender. It was Rs. 245 per quintal for certain lots of this stock;, while the highest offer made during the negotiations was Rs. 275.72 per quintal. Similarly, as against the respondent's offer of Rs. 201 per quintal in respect of some other lots, the highest offer made during the negotiation was Rs. 271.55 per quintal. On this basis, the appellant was to receive an additional amount of Rs. 8 lakhs by accepting the highest offer made during the negotiations over the total amount offered by the respondent for the stock of damaged rice. Overall, the appellant was offered an excess amount of Rs. 20 lakhs for the entire stock of damaged foodgrains in the highest offer made during the negotiations, inasmuch as against the total amount Rs.90 lakhs which the appellant would have received by acceptance of the highest tenders, the appellant was to receive the amount of Rs. 1 crore 10 lakhs by accepting the highest offers made during the negotiations in which all the tenderers, including the respondent, were given equal opportunity to participate.

The respondent filed the above Writ Petition in the High Court challenging the appellant's refusal to accept the highest tender submitted by it for the stock of damaged rice claiming that the appellant having chosen to invite tenders, it could not thereafter dispose of the stocks of damaged foodgrains by subsequent negotiations rejecting the highest tenders on the ground that a higher bid was obtained by negotiations. This action of the appellant, was alleged to be arbitrary and, therefore, in substance, violative of Article 14 of the Constitution. The High Court by its impugned order accepted this contention of the respondent and allowed the Writ Petition. Hence, this appeal.

It is not disputed that according to the terms and conditions on which the appellant had invited tenders, the appellant had reserved the right to reject all the tenders and, therefore, the highest tender was not bound to be accepted. Learned counsel for the appellant submitted that there being no right in the person submitting the highest tender to claim acceptance of the tender, in a case like the present. where all the tenderers including the respondent, were invited for negotiation and given

equal opportunity to participate and to revise the bid before acceptance of the highest bid offered during negotiation which resulted in obtaining an additional amount of Rs. 8 lakhs for the stock relating to respondent's tender and an overall gain of Rs. 20 lakhs in disposal of the entire stock of damaged foodgrains, the action of the appellant could not be termed arbitrary. In reply, Shri A.K. Sen, learned counsel for the respondent contended that even though the appellant had the right to reject any tender, including the highest tender, and thereafter negotiate with all the tenderers to procure the highest price for the commodity, yet this right has to be exercised reasonably and not arbitrarily, otherwise, the credibility of the procedure of sale by inviting tenders would be lost. Shri Sen submitted that the decision not to accept any tender and to negotiate thereafter for obtaining a higher price than that quoted in the highest bid, cannot be taken on the whim and caprice of the concerned authority and can be only for cogent reasons indicated while taking the decision, or else, the decision would be arbitrary. On this basis, Shri Sen further submitted that in the present case, no cogent reasons were indicated for rejecting all the tenders and deciding to dispose of the commodity by negotiation with the tenderers for procuring a higher price. He also added that the mere fact that a higher price was obtained by negotiation would not justify the decision if it was not taken in the manner permissible. This was the only submission of Shri Sen to support the decision of the High Court.

In our view, Shri A.K. Sen is right in the first part of his submission. However, in the present case, the respondent does not get any benefit therefrom. The High Court's decision is based on the only ground that once tenders have been invited and the highest bidder has come forward to comply with the conditions stipulated in the tender notice, it is not permissible to switch over to negotiation with all the tenderers and thereby reject the highest tender. According to the High Court, such a procedure is not countenanced by the rule of law. This is not the same, as the submission of Shri Sen which is limited to permissibility of such a course only on cogent grounds indicated while deciding to switch over to the procedure of negotiation after receiving the tenders to satisfy the requirement of non arbitrariness, a necessary concomitant of the rule of law. The proposition enunciated by the High Court which forms the sole basis of its decision is too wide to be acceptable and has to be limited in the manner indicated hereafter.

In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review.

The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a Legitimate expectation forms part of the principle of non- arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.

In Council of Civil Service Unions and Others v. Minister for the Civil Service, 1985 A.C. 374 (H.L.) the House of Lords indicated the extent to which the legitimate expectation interfaces with exercise of discretionary power. The impugned action was upheld as reasonable, made on due consideration of all relevant factors including the legitimate expectation of the applicant, wherein the considerations of national security were found to outweigh that which otherwise would have been the reasonable expectation of the applicant. Lord Scarman pointed out that `the controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject-matter'. Again in In re preston 1985 A.C. 835 (H.L.) it was stated by Lord Scarman that `the principle of fairness has an important place in the law of judicial review' ant `unfairness in the purported exercise of a power can be such that it is an abuse of excess of power'. These decisions of the House of Lords give a similar indication of the significance of the doctrine of legitimate expectation. Shri A.K. Sen referred to Shanti Vijay & Co. etc. v. Princess Fatima Fouzia & Ors. etc., [1980] 1 S.C.R. 459, which holds that court should interfere where discretionary power is not exercised reasonably and in good faith.

From the above, it is clear that even though the highest tenderer can claim no right to have his tender accepted, there being a power while inviting tenders to reject all the tenders, yet the power to reject all the tenders cannot be exercised arbitrarily and must depend for its validity on the existence of cogent reasons for such action. The object of inviting tenders for disposal of a commodity is to procure the highest price while giving equal opportunity to all the intending bidders to compete. Procuring the highest price for the commodity is undoubtedly in public interest since the amount so collected goes to the public fund. Accordingly, inadequacy of the price offered in the highest tender would be a cogent ground for negotiating with the tenderers giving them equal opportunity to revise their bids with a view to obtain the highest available price. The inadequacy may be for several reasons known in the commercial field. Inadequacy of the prince quoted in the highest tender would be a question of fact in each case. Retaining the option to accept the highest tender, in case the negotiations do not yield a significantly higher offer would be fair to the tenderers besides protecting the public interest. A procedure wherein resort is had to negotiations with the tenderers for obtaining a significantly higher bid during the period when the offers in the tenders remain open for acceptance and rejection of the tenders only in the event of a significant higher bid being obtained during negotiations would ordinarily satisfy this requirement. This procedure involves giving due

weight to the legitimate expectation of the highest bidder to have his tender accepted unless outbid by a higher offer, in which case acceptance of the highest offer within the time the offers remain open would be a reasonable exercise power for public good.

In the present case, the last date upto which the offer made in the tender was to remain open for acceptance was 17.7.92. After opening the tenders on 18.5.92, the appellant decided to negotiate with all the tenderers on 9.6.92 when significantly higher amount, as indicated earlier, was offered above the amount quoted in the highest tender. In such a situation, if the negotiations did not yield the desirable result of obtaining a significantly higher price, the appellant had the option to accept the highest tender before the last date, viz., 17.7.92 upto which the offer made therein was to remain open for acceptance. In this manner, the respondent's higher tender was superseded only by a significantly higher bid made during the negotiations with all tenderers giving them equal opportunity to compete by revising their bids. The fact that it was a significantly higher bid obtained by adopting this course is sufficient in the facts of the present case to demonstrate that the action of the appellant satisfied the requirement of non- arbitrariness, and it was taken for the cogent reason of inadequacy of the price offered in the highest tender, which reason was evident to all tenderers invited to participate in the negotiations and to revise their bids. The High Court was in error in taking the contrary view.

Consequently, this appeal is allowed. The impugned judgment of the High Court is set aside, resulting in dismissal of the respondent's writ petition, No costs, G.N. Appeal allowed.

KRISHNA BHIMRAO DESHPANDE v.

LAND TRIBUNAL, DHARWAD AND ORS.

NOVEMBER 3, 1992 [LALIT MOHAN SHARMA AND K. JAYACHANDRA REDDY, JJ.]
Constitution of India, 1950:

> Article 252 read with Schedule VII, List n Entry 18- Legislation by Parliament Requirement-Central Law on ceiling on urban immovable property in pursuance of Resolution of State Legislature State Laws on other matters relating to the subject-matter of resolution-Legality of.
>
> Constitution of India, 1950:
>
> Article 252, Schedule VII, list II, Entry 18-Urban Land (Ceiling and Regulation) Act, 1976 and Karnataka Land Reforms Act as amended in 1974 Object and application of-Whether any conflict between the Acts.
>
> In the year 1972 the Karnataka Legislature passed a resolution under Article 252 of the Constitution imposing a ceiling on urban immovable property and the acquisition of such property in excess of the ceiling is limit for public purposes and all the matters connected therewith shall be regulated in the State by Parliament by law.

On 1.4.74 the Karnataka Land Reforms (Amendment) Act was enacted and under the Act the tenant of the land covered by the Act was entitled to the grant of occupancy rights after making an application under the Act. The Act came Into force with effect from 2.1.85. But for the purpose of grant of occupancy rights, 1.4.74 was the relevant date.

In the year 1975 the Karnataka Urban Agglomeration Ordinance was passed, whereunder all lands between the periphery of 8 K.Ms. of the municipal limits of Hubli Dharwad were declared as urban agglomeration land.

The Parliament passed the Urban Land (Ceiling and Regulation) Act, 1976 for imposition of ceiling on urban properties and the Ceiling Act was made applicable to Karnataka also in view of the resolution passed by the State Government.

The lands involved in the present cases were covered by the development plan by the Belgaum City Town Planning authority as per the Master Plan and they were included and declared as urban agglomeration in the City of Hubli under the provisions of the Ceiling Act.

The owners of the agglomeration lands challenged the order of the Land Tribunal under the Land Reforms Act conferring occupancy rights on the tenants before the High Court. They contended that the lands involved in the cases were within the purview of the Ceiling Act and therefore the provisions of the Land Reforms Act had no application to such lands on the ground that the provisions of the Ceiling Act.

The writ petitions were dismissed by the High Court. The owner's writ appeals were also dismissed by a common judgment by the Division Bench of the High Court. The Division Bench held that there was no conflict between the two enactments.

The judgment of the Division Bench was challenged in S.L.P. (Civil) No. 16041-42/88.

Many of the similar writ petitions that were pending before the High Court were transferred to the Land Reforms Appellate Tribunal.

The Appellate Tribunal dismissed the petitions by a common order following the judgment of the Division Bench of the High Court. Several Civil revision petitions filed by the land owners against the order of the Appellate Tribunal were dismissed by the High Court. Some of the special leave petitions were filed against the order of the High Court in the said civil revision petitions.

The petitioners-land owners contended that when in pursuance of the resolution of the State Legislature passed under Article 252 of the Constitution the Parliament legislated in respect of the topic covered by the resolution. The Parliamentary law

repealed or superseded the existing State legislation on the topic and therefore such law could not be enforced thereafter; and that vesting of tenanted land in the State and conferment of occupancy rights under the provisions of the State Act directly fall under the subject of imposing ceiling on land holding and other matters incidental or ancillary to the main topic of imposing ceiling and therefore they were fully covered by the Ceiling Act passed by the Parliament and the same superseded the State enactment in respect of such lands.

The respondents submitted that "imposition of ceiling" was a distinct and separately identifiable subject and the Parliament was empowered to legislate; that the power of the State to legislate in respect of the remaining part of the subject-matter was unaffected; that when two distinct powers came into existence, vesting law making competence in the State and Parliament, the pith and substance of the laws made by each of them had to be examined to see whether any one of them encroached the field set apart as falling within the competence of the other body; that in any event the provisions of Chapter III of the Karnataka Land Reforms Act had nothing to do with the imposition of ceiling on the urban land and that conferring of occupancy rights etc. to the tenants under Chapter III of the Karnataka Land Reforms Act did not come under the category of "the matters connected therewith or ancillary or incidental to the imposition of ceiling" on urban immovable property.

Dismissing the special leave petitions, this Court, HELD: 1.01. Article 252 empowers the Parliament to legislate for two or more States on any of the matters with respect of which the Parliament has no power to make law except as provided under Articles 249 and 250. This power to legislate is vested in the Parliament only if two or more State Legislatures think it desirable to have a law enacted by Parliament on such matters in List II, i.e. with respect to which the Parliament has no power to make law for the State. The passing of the resolutions by the State Legislatures is a condition precedent for vesting the Parliament with such power. [339-C-D] 1.02. The scope of Entry 18 is very wide and the land mentioned therein may be agricultural or non-agricultural and may be rural or urban. The subject-matter carved out of Entry 18 under the resolutions passed by The various State Legislatures related to only "urban immovable property" and by virtue of the resolution the law that can be enacted by the Parliament should be a law "imposing a ceiling on such urban immovable property." [340-B, C] 1.03. From the resolution it is clear that the subject-

matter that was resolved to be entrusted to the Parliament was the one imposing a ceiling on urban immovable property and acquisition of such property in excess of the ceiling. This subject-matter is the topic that falls within Entry 18 of List II of Schedule VII to the Constitution and the subject-matter of Entry 18 has been originally kept apart for the State Legislature to make law and Parliament had no competence in respect of those matters falling under the wide scope of Entry 18. By virtue of this resolution a part of the area falling under Entry 18 is transferred to the domain of Parliament to make law relating to the matters within the transferred area. [339-G, H; 341-A] 2.01. The primary object and the purpose of the Urban Land (Ceiling and Regulation) Act, 1976 is to

provide for the imposition of ceiling on vacant land in urban agglomeration and for acquisition of such lands in excess of the ceiling limit and to regulate the construction of buildings on such lands and for matters connected therewith. [340-H; 341-A] 2.02. The Karnataka Land Reforms Act as amended in 1974 is a welfare legislation. The object of the Act was to have a uniform law in the State of Karnataka relating to agrarian reforms, conferment of ownership on tenants, ceiling on land holdings and for certain other matters contained therein. [342-D] 2.03. In respect of imposing ceiling on the land under urban agglomeration the provisions of the Ceiling Act alone are applicable and to that extent the provisions of Chapter IV of the Karnataka Land Reforms Act which also deal with the imposition of ceiling would not be applicable. [344-C] 2.04. The land in the instant case comes under the urban agglomeration the imposition of the ceiling should naturally be under the provisions of the Urban Ceiling Act and not under the Karnataka Land Reforms Act. [344-B, C] 2.05. Imposition of ceiling on urban land is a distinct and independent subject as compared to imposition of ceiling on owning or to hold agricultural land or any other kind of property which do not attract the Urban Ceiling Act. These are two distinct powers and therefore the law making competence can be in two different legislative bodies. Consequently it is difficult to hold that the provisions of Chapter III of the Karnataka Land Reforms Act are outside the legislative competence of the State Legislature. [350-C, D] 2.06. The one topic that is transferred in the resolution passed under Article 252 as distinct and separately identifiable and does not include the remaining topics under Entry 18 in respect of which the State alone has the power to legislate. [351-D] 2.07. The legislative power of the State has to be reconciled with that of the Parliament and that in their respective fields each is supreme. Even assuming that the State enactment has same effect on the subject-matter falling within the Parliament's legislative competence that by itself will not render such law invalid or inoperative. [350-G-H] 2.08. There is no conflict between the Ceiling Act and the State Act. The imposition of ceiling on urban immovable property is an independent topic and cannot be construed as to nullify the other subject left in the domain of the State Legislature under Entry 18 inasmuch as imposition of ceiling is a distinct and separately identifiable subject and does not cover the other measures such as regulation of relationship of landlord and tenant in respect of which the State Legislature has competence to legislate. [351-C-D] 2.09. There is a ceiling provision under Section 45(2) of the Karnataka Land Reforms Act providing for computation of the area in respect of which the tenant may be granted occupancy rights. But it is clear that ceiling on the area in this context is only for the purpose of Section 45. [351-F] 2.10. Provisions in the Chapters II, III, V, VI to XI of the Karnataka Land Reforms Act deal with the conferment of occupancy rights on the respective tenants and they do not in any way conflict with the subject matter transferred to the Parliament by the resolution passed under Section

252. [351-E,F] Thumati Venkaiah and others v. State of Andhra Pradesh and of others, [1980] 4 SCC 295; Union of India and others v. Valluri Basavaiah Chowdhary and others, [1979] 3 SCC 324; Calcutta Gas Company (Proprietory) Ltd. v. State of West Bengal and others, AIR 1962 SC 1044 and Kannan Devan Hills Produce Company Ltd. v. The State of Kerala etc., AIR 1972 SC 2301 referred to.

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) Nos. 16041-42/88.

From the Judgment and Order dated 27.7.1988 of the Karnataka High Court in W.P. No 9173/86 and W.A. No 2707/85.

WITH SLP (C) Nos. 12258, 12254, 12260/90 & 8608/91 R.N. Narasimhamurthy, S.S. Javali, S.N. Bhat and Ravi P. Wadhwani for the Petitioners.

M.S. Nesargi, R. Jagannath Goulay, M.K. Dua, M. Veerappa, K.H. Nobin Singh, S.K. Kulkarni and Surya Kant for the Respondents.

The following Order of the Court was delivered by K. JAYACHANDRA REDDY, J. In all these special leave petitions the common question that arises for consideration is whether the provisions of the Karnataka Land Reforms Act, 1961 as amended in 1974 (`Act' for short) cease to be applicable in all respects to the lands which came within the purview of the Urban Land (Ceiling and Regulation) Act, 1976 ('Ceiling Act' for short). The lands involved in these matters are covered by the development plan by the Belgaum City Town Planning authority as per the Master Plan for the said City and they are included and declared as urban agglomeration in the City of Hubli under the provisions of the Ceiling Act. In the year 1972 the Karnataka Legislature passed a resolution under Article 252 of the Constitution to the effect that imposing a ceiling on urban immovable property and the acquisition of such property in excess of the ceiling limit for public purposes and all the matters connected therewith shall be regulated in the State by Parliament Qby law. The State Legislature thus divested itself of the legislative competence to enact law in respect of subject-matter of the resolution. On 1.4.74 the amended Karnataka Land Reforms Act was enacted and under the said Act the tenant of the land covered by the Act is entitled to the grant of occupancy rights after making an application under the Act. This Act came into force with effect from 2.1.85. But for the purpose of grant of occupancy rights 1.4.74 was the relevant date. While so in the year 1975 the Governor of Karnataka passed the Urban Aggolmeration Ordinance whereunder all lands between the periphery of 8 K.Ms. of the municipal limits of Hubli Dharwad were declared as urban agglomeration land. In the year 1976 the Parliament passed the Ceiling Act for imposition of ceiling on urban properties and the Act was made applicable to Karnataka also in view of the resolution passed by the State Government referred to above. The order of the Land Tribunal under the Act conferring occupancy rights on the tenants was challenged before the High Court contending that the lands involved in these cases were within the purview of the Ceiling Act and therefore the provisions of the Land Reforms Act had no application to such lands on the ground that the provisions of the State Act were repugnant to the provisions of the Central Act namely the Ceiling Act. The writ petition was dismissed by the High Court. The owners preferred writ appeals and they were also dismissed by a common judgment in Writ Appeal Nos. 2707 and 2361/85 etc. The Division Bench held that there is no conflict between the two enactment in certain respect i.e. atleast so far as the implementation of the provisions of Chapter III of the Act are concerned and that provisions of this Chapter of the Act do not cease to apply to the agricultural lands coming within the meaning of urban agglomeration in the Ceiling Act. The judgment of the Division Bench is challenged in S.L.P.(Civil) No. 16041- 42/88. Many of the similar writ petitions that were pending before the High Court were transferred to the Land Reforms Appellate Tribunal. The Appellate Tribunal dismissed the petitions by a common order following the judgment of the Division Bench of the High Court in Writ Appeal No.2707/85 and connected matters. Several civil revisions

petitions filed by the land owners against the order of the Appellate Tribunal were dismissed by the High Court. Some of the special leave petitions are filed against the order of the High Court in the said civil revision petitions. Therefore all these special leave petitions can be disposed of by a common order.

It was urged before us that the resolution of the State Legislature passed under Article 252 of the Constitution shifted the topic covered by the resolution from List II of Schedule VII to the Constitution and vested the competence to make the law in respect of the said topic in the Parliament and that thereafter the State enactment ceased to have efficacy in respect of said topic. Alternatively it was urged that, when in pursuance of the resolution the Parliament legislates in respect of the topic covered by the resolution, the Parliamentary law, repeals or supersedes any existing State legislation on the topic and therefore such law cannot be enforced thereafter.

We shall first extract some of the relevant provisions of the Constitution of India and the respective enactments. Article 246 of the Constitution reads thus:

> "246. Subject-matter of laws made by Parliament and by the Legislatures of States-(l) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").
>
> (2) xx xx xx (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").
>
> (4)xx xx xx "
>
> Entry 18 in List II namely the State List of the VII Schedule to the Constitution is in the following terms:
>
> "18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents, transfer and alienation of agricultural land; land improvement and agricultural loans;
>
> colonization."

Article 252 of the Constitution reads thus:

> "252. Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State-(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in Articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that

> effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State. (2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applics, be amended or repcaled by an Act of the Legislature of that State."

Article 252 empowers the Parliament to legislate for two or more States on any of the matters with respect of which the Parliament has no power to make law except as provided under Articles 249 and 250. This power to legislate is vested in the Parliament only if two or more State Legislatures think it desirable to have a law enacted by Parliament on such matters in List II i.e. with respect to which the Parliament has no power to make law for the State. The passing of the resolutions by the State Legislatures is a condition precedent for vesting the Parliament with such power. The relevant portion of the resolution passed by the State Legislature under Article 252 reads thus:

> "Now, therefore, in pursuance of clause (1) of Article 252 of the Constitution, this Assembly hereby resolves that the imposition of a ceiling on urban immovable property and F acquisition of such property in excess of the ceiling and all matters connected therewith or ancillary and incidental thereto should be regulated in the State of Karnataka by Parliament by law."

The resolution states that the imposition of ceiling on urban immovable property and the acquisition of such property in excess of the ceiling limit with a view to utilising such excess property for public purposes and all other matters connected therein or incidental thereto shall be regulated in this State by Parliament by law. The basic question that arises is what is the actual content of the subject-matter that was resolved to be entrusted to Parliament by the State Legislature under Article 252 of the Constitution. From the resolution it is clear that the subject-matter that was resolved to be entrusted to the Parliament was the one imposing a ceiling on urban immovable property and acquisition of such property in excess of the ceiling. It is true that this subject-matter is the topic that falls within Entry 18 of List 11 of Schedule VII to the Constitution and the said subject-matter of Entry 18 has been originally kept apart for the State Legislature to make law and Parliament had no competence in respect of those matters falling under the wide scope of Entry 18. Now by virtue of this resolution a part of the area falling under Entry 18 is transferred to the domain of Parliament to make law relating to the matters within the transferred area. The scope of Entry 18 is very wide and the land mentioned therein may be agricultural or non-agricultural and may be rural or urban. The subject-matter carved out of Entry 18 under the resolutions passed by the various State Legislatures related to only- "urban immovable property" and by virtue of the resolution the law that can be enacted by the Parliament should be a law "imposing a ceiling on such urban immovable property. The learned counsel for the petitioners, however, urged that vesting of tenanted land in the State and conferment of occupancy rights under the provisions of the State Act directly fall under the subject of imposing ceiling on and holding and other matters incidental or ancillary to the main topic of imposing ceiling and therefore they are

fully covered by the Ceiling Act passed by the Parliament and the same supersedes the State enactment in respect of this land. The learned counsel appearing for the respondents on the contrary submitted that "imposition of ceiling" is a distinct and separately identifiable subject and is the power carved out of Entry 18 and vested in the Parliament to legislate and that the power of the State to legislate in respect of the remaining part of the subject-matter is unaffected and that when two distinct powers have come into existence, vesting law making competence in the State and Parliament, the pith and substance of the laws made by each of them has to be examined to see whether any one of them encroaches the field set apart as falling within the competence of the other body. The learned counsel for the respondents, however, submitted that in any event the provisions of Chapter III of the Act have nothing to do with the imposition of ceiling on the urban land and that conferring of occupancy rights etc. to the tenants under Chapter 111 of the Act do not come under the category of "the matters connected therewith or ancillary or incidental to the imposition of ceiling" on urban immovable property.

Now we shall refer to the provisions of the Urban Ceiling Act. The Statement of Objects and Reasons under Preamble to the said Act would show that the primary object and the purpose is to provide for the imposition of ceiling on vacant land in urban agglomeration and for acquisition of such lands in excess of the ceiling limit and to regulate the construction of buildings on such lands and for matters connected therewith. Section 21(n) of the Urban Ceiling Act defines "urban agglomeration" and the material part of it reads thus:

> "(n) "urban agglomeration"

(A) in relation to any State or Union territory specified in column (1) of Schedule 1, means (i) the urban agglomeration specified in the corresponding entry in column (2) thereof and includes the peripheral area specified in the corresponding entry in column (3) thereof; and xx xx xx"

> Section 2(o) defines "urban land" which reads thus:
>
> "(o) "urban land" means, -
>
> (i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or
>
> (ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat, but does not include any such land which is mainly used for the purpose of agriculture.

Explanation- For the purpose of this clause and clause (q)-

(A) xx xx xx (B) land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the purpose of agriculture;

xx xx xx (C) notwithstanding anything contained in clause (B) of this Explanation, land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture;"

For the purpose of the instant case it is enough to note that Hubli-Dharwad is shown in the Schedule and there is also a master plan prepared for the area and the land in question also is undoubtedly within the urban agglomeration and therefore there is no doubt that in respect of imposition of ceiling on this area comes within the purview of the Urban Ceiling Act. But the question is whether granting occupancy rights under Chapter III of the Act are in any manner affected. The Karnataka Land Reforms Act as amended in 1974 is a welfare legislation. The object of the Act was to have a uniform law in the State of Karnataka relating to agrarian reforms, conferment of ownership on tenants, ceiling on land holding and for certain other matters contained therein. Section 34 of the Act defines "tenant" thus:

"(34) "tenant" means an agriculturist who cultivates personally the land he holds on lease from a landlord and includes,-

(i) a person who is deemed to be a tenant under Section 4;

(ii) a person who was protected from eviction from any land by the Karnataka Tenants (Temporary Protection from Eviction) Act, 1961;

(iia) a person who cultivates personally any land on lease under a lease created contrary to the provisions of section 5 and before the date of commencement of the Amendment Act;

(iii) a person who is a permanent tenant; and

(iv) a person who is a protected tenant.

Explanation- A person who takes up a contract to cut grass, or to gather the fruits or other produce of any land, shall not on that account only be deemed to be a tenant."

The provisions of Chapter III of the Karnataka Land Reforms Act deal with conferment of ownership on tenants. Section 45 occurring in this Chapter in particular deals with conferring of occupancy rights on the tenants subject to certain conditions. The relevant portion of Section 45 reads as under:

> "45. Tenants to be registered as occupants of land on certain conditions-(1) Subject to the provisions of the succeeding sections of this Chapter, every person who was a permanent tenant, protected tenant or other tenant or where a tenant has lawfully

sublet, such sub-tenant shall with effect on and from the date of vesting be entitled to be registered as an occupant in respect of the lands of which he was a permanent tenant, protected tenant or other tenant or sub-tenant before the date of vesting and which he has been cultivating personally.

(2) If a tenant or other person referred to in sub-section (1)-

(i) holds land partly as owner and partly as tenant but the area of the land held by him as owner is equal to or exceeds a ceiling area he shall not be entitled to be registered as an occupant of the land held by him as a tenant before the date of vesting;

(ii) does not hold and cultivate personally any land as an owner, but holds land as tenant, which he cultivates personally in excess of a ceiling area, he shall be entitled to be registered as an occupant to the extent of a ceiling area;

(iii) holds and cultivates personally as an owner of any land the area of which is less than a ceiling area, he shall be entitled to be registered as an occupant to the extent of such area as will be sufficient to make up his holding to the extent of a ceiling area. xx xx xx The provisions under Chapter III which exclusively deal with conferment of occupancy rights on tenants have nothing to do with the imposition of ceiling on holdings of agricultural land under the Act. It is only Chapter IV of the said Act which deals with ceiling on land holdings. Now that the land in the instant case comes under the urban agglomeration the imposition of the ceiling should naturally be under the provisions of the Urban Ceiling Act and not under the Karnataka Land Reforms Act. The High Court, however, did not deal with this aspect. Perhaps it is necessary for us to make it clear that in respect of imposing ceiling on the land under urban agglomeration the provisions of the Ceiling Act alone are applicable and to that extent the provisions of Chapter IV of the Act which also deal with the imposition of ceiling would not be applicable. As a matter of fact in Thumati Venkaiah and Others v. State of Andhra Pradesh and Others, [1980] 4 SCC 295 to which we will refer to at a later stage in detail on the main point, this Court observed thus:

"It is no doubt true that if the Andhra Pradesh Act seeks to impose ceiling on land falling within an urban agglomeration, it would be outside the area of its legislative competence, since it cannot provide for imposition of ceiling on urban immovable property."

However, the crucial question in the instant case with which we are concerned is whether the provisions of Chapter III of the Act also become inoperative by virtue of the resolution passed under Article 252 and particularly on the ground that it is a matter of imposition of ceiling on urban land or other matters connected therewith or ancillary and incidental thereto.

A plain reading of the above provisions in the background of the objects underlying these two enactments clearly shows that the two Acts operate in two different fields to a large extent. This Court had an occasion to consider these aspects in a few cases. In Union of India and others v.Valluri Basavaiah Chowdhary and others, [1979] 3 SCC 324 this Court, in respect of effect of passing a resolution under Article 252 of the Constitution by the Andhra Pradesh Legislature, observed thus:

> "The effect of the passing of a resolution under clause (1) of Article 252 is that Parliament which has no power to legislate with respect to the matter which is the subject of the resolution, becomes entitled to legislate with respect to it. On the other hand, the State Legislature ceases to have a power to make a law relating to that matter."

It was further observed that:

> "....It is not disputed that the subject-matter of Entry 18, List II of the Seventh Schedule i.e. `land' covers `land and buildings' and would, therefore, necessarily include `vacant land'. The expression `urban immovable property' may mean, land and buildings or `buildings' or `lands'. It would take in lands of every description i.e., agricultural land, urban land or any other kind and it necessarily includes vacant land."

With regards the concept of ceiling on urban immovable property and the object underlying in passing the resolution by the several State Governments under Article 252 it was further observed in the above judgment thus:

"....A Working Group was constituted under the Chairmanship of the Secretary, Ministry of Works, Housing and Urban Development. The report of the Working Group shows that the proposal was to impose a ceiling on urban immovable property. In the report the said Working Group defined `urban area' to include the area within the territorial limits of municipalities or other local bodies and also the peripheral area outside the said limits. Such inclusion of the peripheral limits in an urban area was accepted by the Government and a model bill prepared in pursuance thereof also contained such a definition. A copy of each of the report of the Working Group and the Model Bill referred to was placed on the table of the Parliament on December 15, 1970 and March 22, 1972 respectively. The said documents were forwarded to the State Government of Andhra Pradesh, besides other State Governments, for consideration by the State Legislatures before they passed a resolution authorising the Parliament to make a law in respect of urban immovable property. Their intention was to include the lands within the territorial area of an urban area and also its peripheral areas. The concept of ceiling on urban immovable property and the nature and content of urban agglomeration ultimately defined by Section 2(n) of the impugned Act was, therefore, fully, under stood by the State Governments."

Some more observations in the above judgment read thus:

> "It is but axiomatic that once the legislatures of two or more States, by a resolution in terms of Article 252(1), abdicate or surrender the area, i.e. their power of legislation on a State subject, the Parliament is competent to make a law relating to the subject. It would indeed be contrary to the terms of Article 252(1) to read the resolution passed by the State legislature subject to any restriction. The resolution, contemplated under Article 252(1) is not hedged in with conditions. In making such a law, the Parliament was not bound to exhaust the whole field of legislation. It could make a law, like the present Act, with respect to ceiling on vacant land in an urban agglomeration, as a first step towards the eventual imposition of ceiling on immovable property of every other description."

One other decision also arose from State of Andhra Pradesh. In Thumati Venkaiah's case Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act which is analgous to Karnataka Land Reforms Act was challenged on the ground that the subject matter of the said law was covered by the topic of the legislation transferred to Parliament by the resolution under Article 252 passed by the Andhra Pradesh Legislative Assembly and that provisions of the Ceiling Act alone covered that subject and therefore Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act was unenforceable. In this context Supreme Court again reiterated the same in the said decision. This Court proceeded to observe as under:

"The effect of passing of resolutions by the Houses of Legislature of two or more States under this constitutional provision is that Parliament which has otherwise no power to legislate with respect to a matter, except as provided in Articles 249 and 250, becomes entitled to legislate with respect to such matter and the State legislatures passing the resolutions cease to have power to make law relating to that matter.

The resolutions operate as abdication or surrender of the powers of the State legislatures with respect to the matter which is the subject of the resolutions and such matter is placed entirely in the hands of Parliament and Parliament alone can then legislate with respect to it. It is as if such matter is lifted out of list II and placed in List I of the Seventh Schedule to the Constitution."

It was further observed that:

> "The result was that at the date when the Andhra Pradesh Act was enacted, Parliament alone was competent to legislate with respect to ceiling on urban immovable property and acquisition of such property in excess of the ceiling and all connected, ancillary or incidental matters, and the Andhra Pradesh Legislature stood denuded of its power to legislate on that subject."

On the effect of ceiling this Court stated thus:

> "It will thus be seen that the Central Act imposes a ceiling on holding of land in urban agglomeration other than land which is mainly used for the purpose of agriculture and agriculture in this connection includes horticulture, but does not include raising

of grass, dairy farming, poultry farming, breeding of live-stock and such cultivation or the growing of such plants as may be prescribed by the Rules, and moreover, in order to fall within the exclusion, the land must be entered in the revenue or land record before the appointed day for the purpose of agriculture and must also not have been specified in the master plan for a purpose other than agriculture."

Considering the contention that the whole of Andhra Pradesh Land Reforms Act was ultra vires this Court held thus:

"The argument of the landholders was that the Andhra Pradesh Act sought to impose ceiling on land in the whole of Andhra Pradesh including land situate in urban agglomeration defined in Section 2(n) of the Central Act was an expansive concept and any area with an existing or future population of more than one lakh could be notified to be an urban agglomeration, the whole of the Andhra Pradesh Act was ultra vires and void as being outside the legislative competence of the Andhra Pradesh Legislature. This argument, plausible though it may seem, is in our opinion, unsustainable. It is not doubt true that if the Andhra Pradesh Act seeks to impose ceiling on land falling within an urban agglomeration, it would be outside the area of its legislative competence, since it cannot provide for imposition of ceiling on urban immovable property. But the only urban agglomerations in the State of Andhra Pradesh recognised in the Central Act were those referred to in Section 2(n)(A)(i) and there can be no doubt that, so far as these urban agglomerations are concerned, it was not within the legislative competence of the Andhra Pradesh Legislature to provide for imposition of ceiling on land situate within these urban agglomerations. It is, however, difficult to see how the Andhra Pradesh Act could be said to be outside the legislative competence of the Andhra Pradesh Legislature insofar as land situate in the other areas of the State of Andhra Pradesh is concerned. We agree that any other area in the State of Andhra Pradesh with a population of more than one lakh could be notified as an urban agglomeration under Section 2(n) (A) (ii) of the Central Act, but until it is so notified it would not be an urban agglomeration and the Andhra Pradesh Legislature would have legislative competence to provide for imposition of ceiling on land situate within such area. No sooner such area is notified to be an urban agglomeration, the Central Act would apply in relation to land situate within such area, but until that happens, the Andhra Pradesh Act would continue to be applicable to determine the ceiling on holding of land in such area. It may be noted that the Andhra Pradesh Act came into force on January 1, 1975 and it was with reference to this date that the surplus holding of land in excess of the ceiling area was required to be determined and if there was any surplus, it was to be surrendered to the State Government. It is therefore clear that in an area other than that comprised in the urban agglomerations referred to in Section 2(n)(A)(i), land held by a person in excess of the ceiling area would be liable to be determined as on January 1, 1975 under the Andhra Pradesh Act and only land within the ceiling area would be allowed to remain with him. It is only in respect of land remaining with a person, whether an individual or a family unit, after the operation of the Andhra Pradesh Act, the Central

> Act would apply, if and when the area in question is notified to be an urban agglomeration under Section 2(n)(A)(ii) of the Central Act. We fail to see how it can at all be contended that merely because an area may possibly in the future be notified as an urban agglomeration under Section 2(n)(A)(ii) of the Central Act, the Andhra Pradesh Legislature would cease to have competence to legislate with respect to ceiling on land situate in such area, even though it was not an urban agglomeration at the date of enactment of the Andhra Pradesh Act. Undoubtedly, when an area is notified as an urban agglomeration under Section 2(n)(A)(ii), the Central Act would apply to land situate in such area and the Andhra Pradesh Act would cease to have application, but by that time the Andhra Pradesh Act would have already operated to determine the ceiling on holding of land falling within the definition of Section 3(j) and situate within such area. It is therefore not possible to uphold the contention of the landholders that the Andhra Pradesh Act is ultra vires and void as being outside the Legislative competence of the Andhra Pradesh Legislature."

The above observations throw a flood of light on the question involved before us. It can be seen that entire power to legislate in respect of several matters falling under the wide scope of Entry 18 List II is not transferred. The power transferred is only in respect of imposition of ceiling on urban immovable property. There can be several topics in respect of the subject matters of regulatory legislations governing the lands or other immovable properties. The imposition of ceiling on owning property is one such topic and there can be laws regulating ceiling on owing the property, relationship of lessor and lessee, payment of rent, manner of granting the lease, conferment of ownership on the lessee etc. It is the concept of a welfare State which is the underlying object in such welfare legislations. When viewed from that angle it is axiomatic that imposition of ceiling on urban land is a distinct and independent subject as compared to imposition of ceiling on owning or holding agricultural land or any other kind of property which do not attract the Urhan Ceiling Act. Likewise it cannot be said that the pith and substance of the law governing the conferment of ownership of land on the tenant is a law regulating the imposition of ceiling on land holding. Equally it cannot be said that the pith and substance of the law imposing the ceiling on land holding covers the subject of conferring ownership of land on the tenant. These are two distinct powers and therefore the law making competence can be in two different legislative bodies. Consequently it is difficult to hold that the provisions of Chapter III of the Karnataka Land Reforms Act are outside the legislative competence of the State Legislature. In Calcutta Gas Company (Proprietory) Ltd. v. State of West Bengal and others, AIR 1962 SC 1044 this Court observed as under:

> "The entries in the three Lists are only legislative heads or fields of legislation; they demarcate the area over which the appropriate Legislatures can operate. It is also well settled that widest amplitude should be given to the language of the entries. But some of the entries in the different Lists 1 or in the same Lists may overlap and sometimes may also appear to be in direct conflict with each other. It is then the duty of this Court to reconcile the entries and bring about harmony between them."

It is well settled that the legislative power of the State has to be reconciled with that of the Parliament and that in their respective fields each is supreme. Even assuming that the State

enactment has same effect on the subject matter falling within the Parliament's legislative competence, that by itself will not render such law invalid or inoperative. In Kannan Devan Hills Produce Company Ltd. v. The State of Kerala etc., AIR 1972 SC 2301 this Court held as under:

> "It seems to us clear that the State has legislative competence to legislate on Entry 18, List II and Entry 42 List III. This power cannot be denied on the ground that it has some effect on an industry controlled under Entry 52 List 1. Effect is not the same thing as subject matter. If a State Act, otherwise valid, has effect on a matter in List I it does not cease to be a legislation with respect to an entry in List II or List III."

However, in the instant case, we are clearly of the view that there is no conflict. The imposition of ceiling on urban immovable property is an independent topic and cannot be construed as to nullify the other subject left in the domain of the State Legislature under Entry 18 inasmuch as imposition of ceiling is a distinct and separately identifiable subject and does not cover the other measures such as regulation of relationship of landlord and tenant in respect of which the State Legislature has competence to legislate. Thus the one topic that is transferred in the resolution passed under Article 252 is distinct and separately identifiable and does not include the remaining topics under Entry 18 in respect of which the State alone has the power to legislate. An examination of the various provisions of the State Act makes this aspect clear. The object underlying the Act is to make a uniform law in the State of Karnataka relating to agrarian relations, conferment of ownership on tenants, ceiling on land holdings etc. Chapter II of the Act contains general provisions regarding tenancy, deemed tenancy, regulation of relationship between landlord and tenant etc. Sections 44 to 62 of Chapter III provide for vesting of tenanted lands in the State Government with effect from 1.3.74 and conferment of occupancy rights on the tenants. Chapter V controls the eligibility to purchase or possess agricultural lands. Chapters VI to XI have many other provisions regarding agrarian reforms. We, however, find a ceiling provision under Section 45(2) providing for computation of the area in respect of which the tenant may be granted occupancy rights. But it is clear that ceiling on the area in this context is only for the purpose of Section 45. These are all topics regarding the conferment of occupancy rights on the respective tenants and they do not in any way conflict with the subject matter transferred to the Parliament by the resolution passed under Section 252. Consequently these Special Leave Petitions are dismissed.

Petitions dismissed.