Supreme Court of India
Jagannath Etc. Etc vs Authorised Officer, Land Reforms ... on 11 October, 1971
Equivalent citations: 1972 AIR 425, 1972 SCR (1)1055
Author: G Mitter
Bench: Sikri, S.M. (Cj), Shelat, J.M., Ray, A.N., Dua, I.D. & Roy, Subimal Chandra, Palekar, D.G. & Mitter, G.K.

PETITIONER:
JAGANNATH ETC. ETC.

Vs.

RESPONDENT:
AUTHORISED OFFICER, LAND REFORMS & ORS. ETC.

DATE OF JUDGMENT11/10/1971

BENCH:
MITTER, G.K.
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MITTER, G.K.
SIKRI, S.M. (CJ)
SHELAT, J.M.
RAY, A.N.
DUA, I.D.
ROY, SUBIMAL CHANDRA
PALEKAR, D.G.

CITATION:
1972 AIR 425 1972 SCR (1)1055
1971 SCC (2) 893
CITATOR INFO :
RF 1974 SC1300 (43)
RF 1975 SC1389 (27)
RF 1975 SC2299 (606)
R 1978 SC 916 (4)
RF 1979 SC 25 (38)

ACT:
Constitution of India, 1950, Arts. 31-B, 39 and Ninth Schedule and Seventh Schedule, List II, entry 18 and List III, entry 42 Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961-Struck down as violative of Art. 14-Act included in Ninth Schedule-Effect on validity--Whether State Legislature competent to enact the Act.

HEADNOTE:
The Madras Land Reforms (Fixation of Ceiling on Land) Act , 1961, was an Act to provide for fixation of ceiling on agricultural land holdings and for certain other matters

connected therewith in the State of Madras. Its validity had been challenged by earlier writ petitions filed, in this Court on the ground that its provisions violated Arts. 14, 19 and 31(2) of the Constitution and this Court held that its pivotal provisions violated Art. 14 and therefore struct down the entire Act as unconstitutional. Similar attacks had been made on several other acts of other States imposing ceilings on holding of land, and in order to shield these Acts against such attacks Parliament passed the Constitution (Seventeenth Amendment) Act, 1964. By that amendment several Acts were included in the Ninth Schedule to the Constitution including the Madras Act. The Madras Act was again challenged on two grounds; namely (1) the Act having been struck down as invalid by this Court it was non est, and was void ab initio and Art. 31-B could not validate it without the State Legislature reenacting its provisions, and (2) the Act was incompetent for want of legislative power in the State.

HELD : Art. 31-B and the Ninth Schedule as they stood after the 7th amendment must be taken to have cured the defect, if any, in the various Acts mentioned in the said Schedule as regards any unconstitutionality alleged on the ground of infringement of fundamental rights; and, by the express words of Art.. 31-B such curing of the defect took place with retrospective operation from the dates on which the Acts were put on the statute book. These Acts, even if void or inoperative at the time when they were enacted by the reason of infringement of Art. 13(2) of the Constitution, assumed full force and vigour from the respective dates of their enactment after their inclusion in the Ninth Schedule read with Art. 31-B of the Constitution. Besides, the States could not, at any time, cure any defect arising from the violation of the provisions of Part III of the Constitution. Therefore, the objection that the Madras Act should have been re-enacted by the Madras Legislature after the Seventeenth Amendment came into force cannot be accepted., [1070 B-E]

State of Maharashtra v. Patilchand, [1968] 3 S.C.R. 712, Bhikaji Narain Dhakras & Ors. v. State of Madhya Pradesh & Anr., [1955] 2 S.C.R. 589, M, P. V. Sundararamier & Co. v.' State of Andhra Pradesh, [1958] S.C.R. 1422 and State of Uttar Pradesh v. H. H. Maharaja Brijendra Singh, [1961] 1 S.C.R. 363, followed.

Sajjan Singh v. State of Rajasthan, [1965] 1 S.C.R. 933, Behra Khrushed Pesikaka v. State of Bombay, [1955] 1 S.C.R. 613, Saghir

1056

Ahmed v. State of U.P. [1955] 1 S.C.R. 707 and Deep Chand v. State of A Uttar Pradesh & Ors. [1959] Supp. 2 S.C.R. 8, refereed to.

(2) Entry 18 in List II of the Constitution like any other entry in the three lists only gives the outline of the subject matter of legislation field of legislation governed

by the entry is not to be narrowed down in and the words in the entry are to be read in their widest amplitude. The any way unless there is anything in. the entry itself which defines the limits thereof. Entry 18 is meant to confer the widest powers on the State Legislature with regard to rights in or over land and such rights are not to be measured by or limited to the rights as between landlords and tenants or the collection of rents. The words which follow the expression 'rights in or over land', in the entry are merely by way of illustration. The specification itself shows that the genus of the rights mentioned is not the one which landlords have vis-a-vis their tenants or vice versa. All kinds of legislation regarding transfers and alienations of agricultural land which may affect the rights therein of landlords and tenants are envisaged by the entry as also improvement of land and colonisation of such land. If the State Government seeks to enforce a measure by which the condition of barren or unproductive lands can be improved it can do so even if the measure curtails the rights of the landlords and tenants. If the State wants to enforce a measure of acquiring lands of people who hold areas over a certain ceiling limit so as to be able to distribute the same among the landless and other persons, to give effect to the directive principles in Art. 39(b) and (c) of the Constitution, it is not possible to say that the same would be outside the scope of Entry IS in List II read with Entry 42 in List III. Such a measure can aptly be described as a measure of agrarian reform or land improvement in that persons who have only small holdings and work on the lands themselves would be more likely to put in greater efforts to make the land productive than those who hold large blocks of land and are only interested in getting a return without much effort. The measure does not transgress the limits of the legislative field because it serves to remove the disparity in the ownership of land. Persons who lose the ownership of land in excess of the ceiling imposed are compensated for the lands acquired by the State and distributed among others. Acquisition of land would not directly be covered by Entry 18 but read with Entry 42 in List III the State has competence to acquire surplus land so as to give effect to the policy in Art. 39 of the Constitution. [1072 G-H; 1073 A-F]

Sri Ram Ram Narain Medhi v. State of Bombay, [1959] Supp. 1 S.C.R. 489, Atma Ram v. State of Punjab & Ors. [1955] 1 S.C.R. 743, Sonapur Tea Co. Ltd. v. Mst. Mazirunnessa, [1962] 1 S.C.R. 24 and State of Maharashtra v. Patilchand, [1968] 3 S.C.R. 712, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 247 to 257, 1061, 552, 623, 700, 701, 714, 1260, 1261 and 1696 of 1967.

Appeals from the judgment and orders dated the July 18, 19, 29, 1966, of the Madras High Court in Writ Petitions Nos. 1971 of 1965 etc. V. Vedantachari, K. C. Rajappa and K. Jayaram, for the appelants (in C.As. Nos. 247 to 257 and 714 of 1967). K. Jayaram for R. Gopalkrishnan, for the appellants (in C.As. Nos. 562, 700, 701, 1260, 1261 and 1969 of 1967).

V. Vedantachari and K. Rajendra Chowdhary, for the appel- lants (in C.A. No. 623 of 1967).

K. Jayaram for R. Thaigarajan, for the appellants- (in C.A. No. 1061 of 1967).

S. Govind Swaminathan, Advocate-General, Tamil Nadu, S. Mohan and A. V. Rangam, for the respondents (in all the appeals except C.A. No. 562/67).

L. M. Singhvi, S. Mohan and A. V. Rangam, for the respon- dents (in C.A. No. 562 of 1967).

Niren De, Attorney-General, V. A. Seyid Muhammad and S. P. Nayar, for the Attorney-General.

G. S. Chatterjee, for the Advocate-General, West Bengal. O. P. Rana, for the Advocate-General, Uttar Pradesh. M. C. Setalvad, M. C. Bhandare and B. D. Sharma., for the Advocate-General, Maharashtra.

K. M. K. Nair, for the Advocate-General, Kerala. K. Baldev Mehta, for the Advocate-General, Rajasthan. K. Jayaram for R. Gopalkrishnan, for intervener No. 1. J. B. Dadacharji, 0. C. Mathur, Ravinder Narain and Bhuvanesh Kumari, for intervener No. 2.

The Judgment of the Court was delivered by Mitter, J. In all the above matters there is Common attack on the validity of the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961. The Act received the assent of the President on the 13th April, 1962 and was published in the official gazette on the 2nd May, 1962. It is styled "An Act to provide for fixation of ceiling on agricultural land holdings and for certain other matters connected therewith in the State of Madras". The preamble to the Act shows that it was passed in furtherance of the directive principles of State policy as embodied in Art. 39 of the Constitution and in particular, clauses (b) and (c) thereof, namely, that the ownership and control, of the material resources of the community were to be so distributed as best to subserve the common good and that the operation of the economic system did not result in the concentration of wealth and means of production to the common detriment. The Act sought to achieve this by acquiring agricultural land from persons owning large holdings of it and distributing the same to the landless and other persons so as to reduce the disparity in the ownership thereof. This was attempted to be brought about by fixing a ceiling on the holdings of agricultural land holdings so as to render the surplus available for distribution.

The scheme of the Act in a nut-shell is as follows. By- Chapter 11 of the Act containing sections 5 to 18 provision is made for the fixation of ceiling of land holdings, furnishing of return by persons holding land in excess of the limits specified, preparation and publication of draft statements as

regards land in excess of the ceiling area, exclusion of certain land from calculation of ceiling area and acquisition of surplus land after the publication of the final statement as envisaged in the Chapter. In particular, s. 5 fixes the ceiling on holdings of land of every person and every family. S. 7 provides that subject to the provisions of Chapter VIII no person shall be entitled to hold land in excess of the ceiling area. Sections 3 to 16 provide for submission of return, obtaining of particulars and determination of the surplus land, of a person S. 18 provides for publication of notification by the Government to the effect that the surplus land is required for a public purpose.

Chapter III of the Act provides for ceiling on future acquisitions, enquiries into the bona fides and validity of transfers between the date of the commencement of the Act and the notification thereafter, and the effect of certain future transfers. Chapter VI provides for determination of compensation for land acquired by Government under the provisions of the Act. Section 50-the' opening section in Chapter VI-provides for payment of compensation according to the rates specified in Schedule III to every person whose right, title and interest is acquired by Government under Chapter 11. S. 55 provides for payment of compensation either in cash or in bonds or partly in cash and partly in bonds. Chapter IX provides for exemptions in certain cases from. the provisions of the Act. Chapter XIII provides for disposal of the land acquired by the Government under the Act.

Section' 3 is the definition section. Under cl. (7) thereof ceiling' area means the extent of land which a person is entitled to hold under, section 5. By cl. (11) 'the date of commencement of the Act' was fixed as the 6th April, 1960 i.e. the date on. which the Madras Land Reforms (Fixation of Ceiling on Land) Bill, 1960 was published in the official gazette. A "family" for the purpose of the Act is given an artificial definition in cl.(14). It means in relation to any person, the wife or husband as the case may be, of such person and his or her-

(i) minor sons and unmarried daughters, and

(ii) minor grandsons and unmarried grand- daughter,,, in the male line, whose father and mother are dead.

.lm0 Under the Explanation to the clause 'minor sons' and 'minor, grandsons' are not be include sons or grandsons-

(i) between whom and the other members 'of the family, a partition by means.of a registered instrument has taken place; or

(ii) in respect of whose family properties a preliminary decree for partition has been passed; before the commencement of the Act. Under cl. (19) 'to hold land' means with its grammatical variations and cognate expressions, to own land as owner or to possess or enjoy land as possessory mortgagee or a tenant or as intermediate or in one or more of those capacities. Under cl. (34) ' person' includes any trust, company, family, firm, society or association of individuals, whether incorporated or not. Under cl. (45) "surplus land" means the land held by a person in excess of the ceiling area and declared to be surplus land under ss. i2, 13 or 14.

The Act was challenged by writ petitions filed in 'his Court in 1963 (A.-P. Krishnaswamy Naidu v. State of Madras(1) on the ground that its provisions violated Arts. 14, 19 and 31(2) of the Constitution. The first attack was at s. 5 of the Act laying down the ceiling area and the second, at s. 50 of the Act read with Schedule III thereof which provided for compensation. It was urged that than Act was not protected under Art. 31-A of the Constitution relying on the judgment of this Court in Karimbil Khunhikonian v. State of Kerala (2) . This Court held that the definition of 'family' in s.3(14) was artificial and resulted in discrimination between persons equally circumstanced thus violating Art. 14. The Court also held that the provisions contained' in s. 50 of the Act read with Schedule III with respect to com- pensation were also discriminatory and these two sections viz., ss. 5 and 50, being the pivotal provisions of the Act the whole Act had to be struck down as unconstitutional. The judgement was rendered on 9th March, 1964. it appears that similar attacks had been made not only to the. above Madras Act but to several Acts of other States imposing ceilings on the holding of and attempting to effect similar agrarian reforms. To shield these Acts against such attacks Parliament passed the Constitution (Seventeenth Amendment) Act on the 20th June 1964. The statement of objects and reasons for the Act shows that inasmuch as :

",Several State Acts relating to land reform were struck down on the ground that the provisions of those (1) [1964] 7 S.C.R. 82.

(2) [1962] Suppl. (1) S.C.R. 829.

Acts were violative of articles 14, 19 and 31 of the Constitution and that the protection of article 31-A %as not available to them", it was 'proposed to amend the definition of "estate"-in article 31A of the Constitution by including therein lands held under ryotwari settlement as also other lands in respect of which provisions are normally made in land reform enactments' and it was .also "proposed to amend the Ninth Schedule by including therein certain State enactments relating to land reform in order to remove any uncertainty or doubt that may arise in regard to their validity". Accordingly Parliament passed the Seventeenth Amendment Act effecting change not only in Art. 31-A of the Constitution by adding a proviso after the existing proviso in clause (1) but also substituting a new sub-clause (a) clause (2) and in-eluding in the Ninth Schedule no lass than forty four Acts of different States of which item 46 was the Act struck down by ,this Court.

The Seventeenth Amendment Act was itself challenged in the case of Sajjan Singh v. State of Rajasthan(1). A number .of writ petitions were filed in this Court under Art. 32 of the Const itution in the year 1966, Golaknath v. Punjab(2), challenging not only the validity of the Constitution Seventeenth Amendment Act of 1964 but also Constitution Fourth Amendment Act, 1955 and Constitution First Amendment Act, 1951 in so far as they affected the petitioners' fundamental rights. The first petition in that group of cases was filed by a group of persons against an order made by the Financial Commissioner, Punjab holding that an area of 418 standard acres was surplus in the hands of the petitioners under the provisions of the Punjab Security of Land Tenures Act X of 1953 read with s. 10-B thereof. Five learned Judges of this Court held all the amendments to be valid, while four others concurred in the judgment delivered by Subba Rao, C.J. holding that although the above Amendment Acts abridged ,the scope of the fundamental rights thus violating article 13 of the Constitution they could not be struck down because of the earlier decisions of this

Court to the contrary. One learned Judge took the view that the fundamental rights were outside the amendatory process if the amendments sought to abridge or take away any of those rights : but the First, Fourth and Seventh Amendments being part of the Constitution, by acquiescence for a long time could not be challenged and they contained authority for the Seventeenth Amendment. The judgements in Golaknath's case (supra) were rendered on 27th February, 1967. (1) [1965] 1 S.C.R. 933.

(2) [1967] 2 S.C.R. 762.

In the meanwhile a large number of writ petitions were filed. in the Madras High Court in the years 1964 and 1965 cliallenging the validity of the Madras Act of 1961 and the main attack on, the Act was two-fold. It was urged that the Act having been struck down as invalid by this Court in Krishnaswami' Naidu's case(1) it was non est and,was void ab initio and Art. 31-B could not validate it without a separate Validating Act being passed by the Madras Legislature, and, secondly, the Act was incompetent for want of legislative power of the State. The Second attack was levelled on a wide front before the Madras High Court, but before us learned counsel did not go as far in his. challenge to the legislative competence of the State to pass the Act.

On the first point, learned counsel's contention may be sum- marised as follows. He urged that this Court having declared the Ceiling Act of 1961 void under the provisions of Art. 13 subcl. (2) of the Constitution we must proceed on the basis that the legislation was void ab initio inasmuch as it did not lie within the power of the State to make any law which abridged the rights conferred by Part III of the Constitution. In other words, it was said that the measure was non est or still-born and any validating measure could not instil life therein. It was argued that the effect of the Act being struck down by this Court was as if it had been effeced from the statute book and to make any such Act operative. it was necessary not only to give it the protection against violation of fundamental rights as was sought to be done by Art. 31-B but to get the State of Madras to re-enact the provisions thereof. Learned counsel drew our attention to several decisions of this Court in support of his argument and we shall take note of them in the order in which they were placed before US. The first case referred to was Behram Khrushed Pesikaka v. The State of Bombay (2). In this case the main question turned on the interpretation of the Bombay Prohibition Act XXV of 1949 and the effect of striking down some of the provisions therein by this Court in The State of Bombay & Anr. v. F. N. Balsara(3) In Balsara's case this Court had held that the provisions of the Act including clause (b) of section 13 in so far as they affected, the consumption or use of liquid medicinal and toilet preparations containing alcohol, were invalid and save the provisions expresssly mentioned the rest of the Act was valid. It was also held that the decision declaring some of the provisions of the Act invalid did not affect the validity of the rest of the Act. The effect of (1) [1964] 7 S.C.R. 82. (2) [1965] 1 S.C.R. 613. (3) [1951] 1 S.C.R. 682.

partial declaration of the invalidity of s. 13(b) had to be considered by a Constitution Bench of this Court in Pesikaka's case (supra). According to Mahajan C. J. who delivered 'the opinion of the majority Judges (see p. 654) :

> "The constitutional invalidity of a part of section 13 (b) of the Bombay Prohibition Act having been declared by this Court, that part of the section ceased to have any legal effect in judging cases of citizens and had to be regarded as null and void in determining whether a citizen was guilty of an offence."

His Lordship also observed that in India there was no scope for the application of the American doctrine enunciated by Willoughby that the declaration by a court of unconstitutionality of a statute which was in conflict with the Constitution affected the parties only and there was no judgment against the statute. The American doctrine was held not to be applicable to India in view of Art. 141 of the Constitution under which the law declared by the Supreme Court is to be binding on all courts within ,,the territory of India. According to his Lordship :

> "..... once a law has been struck down as unconstitutional law by a Court, no notice can be taken of that law by any Court, and in every case an accused person need not start proving that the law is unconstitutional."

It is however to be noted that Das, J. (as he then was) took :.a different view and pointed out that the section i.e. section 13, in its entirety was still enforceable against all non-citizens. He found himself unable to accept the proposition put forward by Field J. in Norton v. Shelby County(1) that a law declared to be unconstitutional was to be treated as inoperative as though it had never been passed. In particular he relied on the fact 'that the Bombay Act was a pre-Constitution Act and was certainly valid before the 26th November, 1950.

In Saghir Ahmed v. The State of U.P. & Ors.(2) the second ,case referred to, this Court had to consider the effect of the amendment of Art. 19(6) of the Constitution by the Constitution First Amendment Act of 1951 which enabled the State to carry on any trade or business either by itself or through corporations owned and controlled by the State to the exclusion of private citizens wholly or in part. It is to be noted that this provision of Art. 19(6) which was introduced by the amendment of the Constitution in 1951 was not in existence when the LT.P. Road .Transport Act (Act II of 1951) was passed and it was held that the amendment of the Constitution which came later could not (1) 30 L. Ed.178. (2) [1955] 1 S.C.R. 707.

be invoked to validate an earlier legislation which must be regarded as unconstitutional when it was passed. In delivering the judgment of the Court, Mukherjea J. remarked (see at p. 728) "The amendment of the Constitution which came later,cannot be invoked to validate an earlier legislation which must be regarded as unconstitutional when it was passed."

Counsel relied particularly on the following passage. from Cooley's Constitutional Limitations (Vol. I. p. 384 note) quoted by Mukherjea, J.

> " a statute void for unconstitutionality is dead and cannot be vitalised by a subsequent amendment of the Constitution removing the constitutional objection but must be re-

enacted."

Strong reliance was placed on certain observations of this Court in Deep Chand v. The State of Uttar Pradesh and others(1). In Deep Chand's case the constitutionality of the U.P. Transport Service (Development) Act, 1965, the validity of the scheme of nationalisation framed and the notifications issued by the State Government thereunder were challenged. Subba Rao, J. (as he then was) who spoke for the Judges constituting the majority discussed in detail the distribution of legislative powers under the Constitution and the effect of any statute offending Art. 13. He posed the question : if Arts. 245 and 13 (2) define the ambit of the power to legislate, what is the effect of a law made in excess of that power? According to him the American Law gave a direct and definite answer to this question. He quoted from Cooley in his "Constitutional Limitations' (Eighth Edition, Vol.I) at p. 382 where the learned author said:

> "When a statute is adjudged to be unconstitutional, it is as if it had never been.... And what is true of an act void in toto is true also as to any part of an act which is found to be unconstitutional, and which, consequently is to be regarded as having never, at any time been possessed of any legal force."

The learned Judge also quoted from Rottschaefer on Con- stitutional Law at V. 34 :

> "The legal status of a legislative provision in so far as its application involves violation of constitutional provisions, must however be determined in the light of the theory on which Courts ignore it as law in the (1) [1959] Suppl. 2 S. C.R. 8.
>
> decision of cases in which its application produces unconstitutional results. That theory implies that the legislative provision never had legal force as applied to cases within that clause."

The learned Judge analysed the decisions of this Court in a number of cases and summarised the result thereof in the following propositions (see at p. 40) :

> "(i) Whether the Constitution affirmatively confers power on the legislature to make laws subject-wise or negatively prohibits it from infringing any fundamental right they represent only two aspects of want of legisla-
>
> tive power;
>
> (ii) the Constitution in express terms makes the power of a legislature to make laws in regard to the entries in the List of the Seventh Schedule subject to the other provisions of the Constitution and thereby circumscribes or reduces, the said power by the limitations laid down in Part HI of the Constitution;
>
> (iii) it follows from the premises that a law made in derogation or in excess of that power would be ab initio void wholly or to the extent of the contravention as the case

may be; and

(iv) the doctrine of eclipse can be invoked only in the case of a law valid when made but a shadow is cast on it by supervening constitutional inconsistency or supervening existing statutory inconsistency; when the shadow is removed the impugned Act is freed from all blemish or infirmity."

Applying the aforsaid principles to the case, before the Court the learned Judge held that the validity of the Act could not be tested on the basis of the Constitution (Fourth Amendment) Act, 1955 but only on the terms of the relevant articles as they existed prior to tile amendment.

It must be noted that Das, C.J. with whom Sinha, J. con- curred did not think fit to embark upon the discussion of the question, namely, whether the provisions of part III of the Constitution enshrining the fundamental rights were mere checks or limitations on the legislative competency conferred on Parliament and whether the doctrine of eclipse was applicable only to pre-Constitution laws or those which fell under Art. 13(2) of the Constitution. The Seventeenth Amendment Act, 1964 came up for con- sideration in the case of Sajjan Singh v. State of Rajasthan (1) [1965] 1 S.C.R. 933 Among the points there canvassed in support of the petitions under Art. 32 of the Constitution was one based on the plea that the Seventeenth Amendment was a legislative measure in respect of land and since. Parliament had no right to make a law in respect of a land, the Act was invalid; and since the Act purported to set aside decisions of court of competent jurisdiction it was unconstitutional. Although the Court upheld the validity of the amendment, a doubt was expressed by Mudholkar. J. as to whether Parliament could validate a State law dealing with land. According to the learned Judge only that legislature has power to validate a law which has a power to enact the law.

On behalf of some of the respondents and the intervener, the Attorney-General of India, it was argued that no re- enactment of the Act was necessary. Our attention was drawn to the wide scope of Art. 31-B which sought to cure the defect, if any, in the Acts specified in the Ninth Schedule on the ground that any such Act or any provision thereof was inconsistent with or took away or abridged any of the rights conferred by any provisions of Part III of the Constitution. The words of Art. 31-B, it was argued, made it amply clear that this was sought to be done not only prospectively but retrospectively by the use of the words "None of the Acts..... shall be deemed to be void or ever to have become void on the ground of the inconsistency mentioned." The removal of the defect was to have effect "Notwithstanding any Judgment, decree or order of any court or tribunal to the contrary." In other words, this meant that if the defect in any such Act had been the subject matter of any decision of a court of law and any provision of the Act had been held to be void as being inconsistent with Part III of the Constitution such judgment decree or order was not to be operative on the provisions of the Act. In effect, it was contended that the inclusion of an Act in the Ninth Schedule to the Constitution read with Art. 31-B overrode and rectified all defects in the Act because of inconsistency of any provision therein with any of the fundamental rights conferred by Part III of the Constitution, as from the, date of the commencement of the Constitution,, no matter whether the defect had been pointed out in any judgment of a court of law and the Act held to be void on that ground. Counsel for the respondent and the interveners drew our attention to the dicta of learned

Judges of this Court in several decisions which according to them fortified their contention. The first case refereed to by the learned Attorney-General was that of 16-119SupCI/72 State of Maharashtra v. Patilchand(1) where the judgment of a Bench of Seven Judges of this Court was delivered by our present Chief Justice. The Act impugned there was the Maharashtra State Agricultural Lands (Ceiling on Holdings) Act, 1961. as amended by Act 13 of 1962. The preamble to that Act is practically identical with that of the Madras Act which is under consideration in this case. It was contended on behalf of the appellants there that Art. 31-B did not protect from challenge on the ground of violation of fundamental rights the provides of the Acts amending Agricultural Lands (Ceiling on Holdings) Act, 1961 as originally enacted and that the Seventeenth Amendment Act in spite of the decision in Golaknath's case (supra) was in- invalid. Negativing these contentions it was said (see at p. 719) "..... the High Court was right in holding that Art-31-B does protect the impugned Act from challenge on the ground of violation of fundamental rights. There is no doubt that Art-31-B should be interpreted strictly. But even interpreting it strictly, the only requirement which is laid down by Art. 31-B is that the Act should be specified in the Ninth Schedule."

Section 28 of the Act which was the main target, of attack and which the High Court had originally found as violating Art.14 of the Constitution was held to be protected under Art. 31-B from the ground of attack based on infringement of Art. 14.

In Bhikaji Narain Dhakras & others v. The State of MadhyaPradesh & Ant-.(1) the petitioners who carried on their business as stage carriages operators of Madhya Pradesh for a number of years challenged the validity of the C.P. & Berar Motor Vehicles (Amendment) Act, 1947 which amended the Motor Vehicles Act, 1939 and conferred extensive powers on the Provincial Government including the power to create a monopoly of the motor transport business in its favour to the exclusion of all motor transport operators. In exercise of the powers conferred by the new s. 43 (1)

(iv) a Notification was issued on 4th February, 1955 declaring the intention of the State Government to take 'up certain routes. The petitioners contended that with the commencement of the Constitution the Act became void under the provisions of Art. 13(1) and reliance was placed on the decision of Shagir Ahmad v. The State of U.P. (supra). The contention put forward on behalf of the respondents was that the Constitution (First Amendment Act, 1951 and the Constitution (Fourth Amendment) Act,, 1955 had the effect of removing the inconsistency and the Amending Act III of 1948 became operative again. It was argued on behalf of the petitioners that the impugned Act being void (1) [1968] 3 S.C.R. 712.

(2) (1955) 2 S.C.R. 589.

under Art. 13(1) was dead and could not be revivified by any subsequent amendment of the Constitution but had to be re- enacted. This contention was turned down in the unanimous decision of this Court. It was said that the Act :

"did not become void independently of the Existence of the rights guaranteed by Part

111. In other words, on and after the commencement of the Constitution the existing law, as a result of its becoming inconsistent with. the provisions of article 19 (1) (g) read with clause (6) as it then stood, could not be permitted to stand in the, way of the exercise of that fundamental right. Article 13 (1) by reason of its language cannot be read as having obliterated the entire portion of the inconsistent law or having wiped it out altogether from the statute book. Such law existed for all past transactions and for en- forcement of rights and liabilities accrued before the date of the Constitution, as was held in Keshavan Madhava Menon's case(1)." It was also observed that the "American authorities can have no application to our Constitution. All laws, existing or future, which are inconsistent with the provisions of Part III of our Constitution are by the express provision of article 13, rendered void 'to the extent of such inconsistency'. Such laws were not dead for all purposes..... It is true that as the amended clause (6) (of art. '19) was not made retrospective the impugned Act could have no operation as against citizens between the 26th January 1950 and the 18th June 1951 and no rights and obligations could be founded on the provisions of the impugned Act during the said period whereas the amended clause (2) by reason of its being expressly made retrospective had effect even during that period. But after the amendment of clause (c) the impugned Act immediately became fully operative even against citizens."

In M. P. V. Sundararmier & Co. v. The State of Andhra Pradesh(1) Venkatarama Aiyar J. speaking for the majority of of the Court discussed at some length the different aspects of the unconstitutionality. of a statute. Speaking for the Court he said (at p. 1468).

"In a Federal Constitution where legislative powers are distributed between different bodies, the competence of the legislature to enact a particular law must depend (1) [1951] S.C.R. 228.

(2) [1958] S.C.R. 1422.

upon I whether the topic of that legislation has been assigned by the Constitution Act to that legislature. Thus, a law of the State of an Entry in List I, Schedule VII of the Constitution would be wholly incompetent and void. But the law may be on a topic within its competence, as for example, an Entry in List II, but it might infringe restrictions imposed by the Constitution on the character of the law to be passed as for example, limitations enacted in Part 111, of the Constitution. Here also, the law to the extent of the repugnancy will be void Thus, a legislation on a topic not within the competence of the legislature and a legislation within its competence but violative of constitutional limitations have both the same reckoning in a court of law; they are both of them unenforceable. But does it follow from this that both the laws are of the same quality and character, and stand on the same footing for all purposes',' This question has been the subject of consideration in numerous decisions in the American Courts, and the preponderance of authority is in favour of the view that while a law on a matter not within the competence of the legislature is a nullity, a law

> on a topic within its competence but repugnant to the constitutional prohibitions is only unenforceable. This distinction has a material bearing on the present discussion.

If a law is on a field not within the domain of the legislature it is absolutely null and void, and a subsequent cession of that field to the legislature will not have the effect of breathing life into what was a still-born piece of legislation and a fresh legislation on the subject would be requisite. But if the law is in respect of a matter assigned to the legisl ature but its provisions disregarded constitutional pr ohibitions, though the law would be unenforceable by re- ason of those prohibitions, when once they are removed, the law will become effective without reenactment."

The learned Judge drew support for his, conclusion from Willoughby on the Constitution of the United States, Vol. I p. 11 and Cooley on Constitutional Law at p. 201. In The State of Uttar Pradesh & ors. v. H. H. Maharaja Bri- jendra Singh(1) the respondent challenged the constitutionality of the U.P. Land Acquisition (Rehabilitation of Refugees) Act, 1948 by way of a writ petition to the High Court and ;though the court dismissed the petition it held that two provisos to s. 11 of the Act were invalid as they offended s. 299 (2) of the Government (1) [1961] 1 S.C.R. 363.

India Act. Subsequently the Constitution (Fourth Amendment) Act, 1955 included the U.P. Act in the Ninth Schedule as item, 15. The State of U.P. contented that the inclusion of this Act in the Ninth Schedule protected it under Art. 31 B of the Constitution from any challenge under s. 299(2) of the Government of India Act. The Court--turned down the argument on behalf of the respondent that the amendment of the Constitution which came after the decision of the Allahabad High Court could not validate the earlier legislation which, at the time when it was passed was un- constitutional. Relying on the decision of this Court in Saghir Ahmad v. The State of U.P. (supra) it was said that the provisions of the Act have been "specifically saved from any attack on their constitutionality as a consequence of Art. 31-B read with the Ninth Schedule, the effect of which is that the Act cannot be deemed to be void or ever to have become void on the ground of its being hit by the operation of the Government of India Act."

It has to be noted that although in Golaknath's case (supra) five learned Judges of this Court speaking through Subba Rao, C.J. were of the view that the Constitution Seventeenth Amendment Act infringed Art. 13 (2) of the Constitution, yet on the basis of the earlier decisions of this Court the same was held to be valid. It was said that:--

> "As the Constitution (Seventeenth Amendment), Act holds the field, the validity of the two impugned Acts, namely, the Punjab Security of Land Tenures Act X of 1953, and the Mysore Land Reforms Act X of 1962, as amended by Act XIV of 1965, cannot be questioned on the ground that they offended Arts. 13, 14 or 31 of the Constitution."

The learned Chief Justice also made it clear (see at p. 814) that the "decision will not affect the validity of the Constitution (Seventeenth Amendment) Act, 1964, or other amendments made to the Constitution taking away or abridging the fundamental rights."

Wanchoo, J. (as he then was) speaking for himself and two other Judges observed that a constitutional invalidity could not be cured by State Legislatures in any way but could(only be cured by Parliament by Constitutional amendment. In our view, although decisions of the American Supreme Court and the comments of well known commentators like Willoughby and Cooley have great persuasive force, we need not interpret our Constitution by .too much reliance on them. Nor is it necessary to scrutinise too closely the decisions wherein views appear to have been expressed that a law which is void under Art. 13 (2) is to be treated as still-born. Equally unfruitful would it be to consider the doctrine of eclipse. Apart from the question as to whether fundamental rights originally enshrined in the Constitution were subject to the amendatory process of Art. 368 it must now be held that Art. 31-B and the Ninth Schedule have cured the defect, if any, in the various Acts mentioned in the said Schedule as regards any unconstitutionality alleged on the ground of infringement of fundamental rights, and by the express words of Art. 31-B such curing of the defect took place with retrospective operation from the dates on which the Acts were put on the statute book. These Acts even if void or inoperative at the time when they were enacted by reason of infringement of Art. 13(2) of the Constitution, assumed full force and vigour from the respective dates of their enact- ment after their inclusion in the Ninth Schedule read with Art. 31 B of the Constitution. The States could not, at any time, cure any defect arising from the violation of the provisions of Part III of ,the Constitution and therefore the objection that the Madras Ceilings Act should have been re-enacted by the Madras Legislature after the Seventeenth Constitutional Amendment came into force cannot be accepted. On the other point as to the competency of the State legislature, Mr. Vedantachari drew our attention in particular to the following provisions in the Act :-

> "5. (1) (a) "Subject to the provisions of Chapter VIII, the ceiling area in the case of every person and, subject to the provisions of sub-sections (4) and (5) of Chapter VIII, the ceiling area in the case of every family consisting of not more than five members, shall be 30 standard acres.
>
> (b) The ceiling area in the case of every family consisting of more than five members shall, subject to the provisions of sub- sections (4) and (5) of Chapter VIII, be 30 standard acres together with an additional 5 standard acres for every member of the family in excess of five.
>
> (2) For the purposes of this section, all the lands held individually by the members of a family or jointly by some or all of the members of such family shall be deemed to be held by the family.
>
> 3 (a) in calculating the extent of land held by a member of a family or by an individual person, the share of the member of the family or of the individual person in the land held by an undivided Hindu family, a Marumakkattayam tarward, an Aliyasanthana family or a Nambudiri Illom shall be taken into account.
>
> (b) In calculating the extent of land held by a family or by an individual person, the share of the family or of the individual person in the land held by a firm, a society or

> association of individuals (whether incorporated or not) or by a company (other than a non-agricultural company) shall be taken into account.
>
> 7. On and from the date of the commencement of this Act, no person shall except as otherwise provided in this Act, but subject to the provisions of Chapter VIII, be entitled to, hold land in excess of the ceiling area Provided that in calculating the total extent of land held by any person, any extent in excess of the ceiling area and not exceeding half an acre in the case of wet land and one acre in the case of dry land shall, irrespec- tive of the assessment of such land, be excluded."

He also drew our attention to section 8 which required every person who held land in excess of 30 standard acres to furnish to the authorised officer a return containing the particulars specified in s. 10 which directed the authorised officer to prepare a draft statement in respect of each person owning or deemed to have held land in excess of the ceiling area. He argued that legislative measure of this type were not covered by Entry 18 in List II which runs as follows :

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

Counsel urged that the State could not frame a law under which the holding of two persons could be lumped up for working out the area which the said persons could be permitted to hold. He contended that the property of two individuals could not be treated together for the purpose of acquisition by the State by resort to the fiction of "holding land" in s. 3 (19) of the Act and in any event Entry 18 of List II did not comprehend such a power. He referred us to the American decision in Hoeper v. Tax Commission(1) where it was held that the husband could not, consistently with the due process and equal protection clauses of (1) 284 U.S. 206-221.

the 14th Amendment, be taxed by a State on the combined total of his and his wife's income as shown by separate returns whether her income is her separate property and, by reason of the ,tax being graduated, its amount exceeded the sum of the taxes which would have been due had their separate incomes been separately assessed. Counsel also referred us to the decision in Balaji v. Income Tax Officer(1) and the contention there put forward that Entry 54 in the Federal Legislative List of the Government of India Act, 1935 did not confer on the legislature any power to tax (a) on the income of B and therefore sub-s. (3) of s. 16 of the Incometax Act, 1922 was ultra vires the legislature.

It is necessary to note that this Court left the question open as it felt that the petition in his Court under article 32 of the Constitution could be satisfactorily disposed of on a narrower basis although the Court approved of the view expressed in Sardar Baldev Singh v. Commissioner of Income- tax (2) that Entry 54 should be read not only as authorising the imposition of a tax but also as authorising an enactment which prevented the tax imposed being evaded. Counsel also referred to the case of Diamond Sugar Mills Ltd. & A nr. v. The State of Uttar Pradesh & Anr. (1) where it was held that the premises of a factory was not a local area within the meaning of Entry 52 in List II of

the Seventh Schedule and a law relating to "taxes on the entry of goods into a local area for consumption, use or sale therein" did not authorise the State to impose a cess on the entry of cane into the premises of a factory for such use, consumption etc. The American decision is hardly in point and so far as the three Indian cases are concerned, they turned on the scope of Entries with which we are not concerned in this case. We were also referred to the observations of this Court in Kavalappara Kottarathil Kochuni v. State of Madras(1) that individual proprietary rights were ordinarily to be respected unless a clear case is made out for their restriction.

In our view, Entry 18 in List II like any other Entry in the three Lists only gives the outline of the subject matter of legislation and therefore the words in the entry are to be construed in their widest amplitude. The field of legislation covered by the entry is not to be narrowed down in any way unles there is anything in the entry itself which defines the limits thereof. Entry 18 (1) 43 I.T.R. 393.

(2)40. I.T.R.560,615 (S.C) (3) [1961] 3 S.C.R, 242.

(4) [1960] 3 S.C.R. 887, 927, 928.

in our opinion is meant to confer the widest powers on the State Legislature with regard to rights in or over land and such rights are not to be measured by or limited to the rights as between landlords and tenants or the collection of rents. The words which follow the. Expression "rights in or over land" are merely by way of illustration. The specification itself shows that the genus of the rights mentioned is not the one which landlords have vis-a-vis their tenants or vice versa. All kinds of legislation regarding transfers and alienations of agricultural land which may affect the rights therein of landlords and tenants are envisaged by the entry as also improvement of land and colonisation of such land. If the State Government seeks to enforce a measure by which the condition of barren or unproductive lands can be improved, it can do so even if the measure curtails the rights of landlords and tenants over them. If the State wants to enforce a measure of acquiring lands of people who hold areas over a certain ceiling limit so as to be able to distribute the same among the landless and other persons, to give effect to the directive principles in. Art. 39 (b) and (c) of the Constitution, it is not possible to say that the same would be outside the scope of Entry 18 in List II read with Entry 42 in List III. Such a measure can aptly be described as a measure of agrarian reform or land improvement in that persons who have only small holdings and work on the lands themselves would be more likely to put in greater efforts to make the land productive than those who held large blocks of land and are only interested in getting a return without much effort. The measure ,does not transgress the limits of the legislative field because it serves to remove the disparity in the ownership of land. Persons who lose the ownership of lands in excess of the ceiling imposed are compensated for the lands acquired by the State and distributed among others. Acquisition of land would not directly be covered by Entry 18 but read with Entry 42 in List III the State has the competence to acquire surplus land so as to give effect to the policy in Art. 39 of the Constitution. This is not the first occasion when a measure of such kind has been challenged before this Court. In Sri Rain Ram Narain Medhi v. The State of Bombay(1) challenge was made to the vires of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1956 which was an Act further to amend the Bombay Tenancy and Agricultural Lands Act, 1948. The preamble to the Act showed that it was a measure for ensuring full and efficient use of land for agricultural purposes rendered

necessary on account of the neglect of a landholder or disputes between a land- holder and his-tenants to the prejudice of the cultivation of the landlord's estate. The attack on the Act was made on the (1) (1959) Supp. S.C.R. 489.

ground that it was beyond the ambit of Art.-31-A of the Constitution and was therefore vulnerable as infringing the fundamental rights enshrined in Arts. 14, 19 and 31. It was contended on behalf of the State that it was a piece of legislation for extinguishment or modification of rights in relation to an estate within the definition of Art.-31-A of the- Constitution. Referring to the principles laid down by the Federal Court in United Provinces v. Atiqa Begum(1) and by this Court in Navinchandra Mafatlal v. The Commissioner.- of Income-tax, Bombay City(2) it was observed by this Court that in construing the words in a constitutional enactment conferring legislative power, the most liberal construction should be put upon words so that the same may have effect, in their widest amplitude. It was held that having regard to the above principle of construction the impugned Act was covered by Entry 18 in List II of the Seventh Schedule and was a legislation with reference to land within the competence of the State Legislature.

In Atma Ram v. The State of Punjab & Ors. (3) the petitioners challenged the constitutional validity of the Punjab Security of Land Tenure Act X of 1953 as amended by Act XI of 1955, providing for security of land tenure and other incidental matters. The impugned Act limited the area which might be held by a land owner for the purpose of self- cultivation and thereby rendering some area surplus to be utilised for resettling ejected tenants. S. 18 of the Act conferred upon the tenants the right to purchase from the land-owners the lands held by them and thus themselves become the land-owners on prices which would be below the market value. It was held by this Court that "rights in or over land" and "land tenures" occurring in Entry 18 in List II were sufficiently comprehensive to include measures of land-tenure reforms, such as the impugned Act sought to achieve.

The validity of the Assam Fixation of Ceiling on Land Hold- ings Act 1 of 1957 came up for consideration in Sonapur Tea Co. Ltd. v. Must. Mazirunnessa(4). S. 4 of the Act prescribed a ceiling on existing holdings and s. 5 empowered the appropriate authorities to call for submission of returns by persons holding lands in excess of the ceiling. S. 8 empowered the State Government to acquire such excess lands by publishing in the official gazette a notification to the effect that such lands were required for public purpose, and such publication was to be conclusive evidence of the notice of acquisition to the person or persons holding such lands. It was contended on behalf of the appellants there that the pith and substance of the Act and its main object was to acquire the (1) [1940] F.C.R. 110, 134 (2) [1955] 1 S.C.R. 829, (3) [1955] 1 S.C.R. 748. (4) (1962) 1 S.C.R. 24.

property and dispose of it at a profit. Rejecting this contention it was observed by this Court (see p. 731) that :

> "The whole object of the Act which is writ large in all its provisions is to abolish the intermediaries and leave the lands either with the tiller or the cultivator It was also observed :

> "The State is paying compensation to the persons dispossessed under the principles prescribed by S. 12; amongst the persons entitled to such compensation tenants are included, and when the State proceeds to Settle lands on tenants it expects them to pay a fair amount of price for the land and put a ceiling on this price and it shall never exceed the amount of compensation payable in respect of the said land. In our opinion this provision is very fair and reasonable and it would be idle to attack it as a piece of colourable legislation.

Lastly, reference may be made to the case of State of Maha- rashtra v. Patilchand (supra) which has been already noted. There the Maharashtra State Agricultural Lands (Ceiling on Holdings) Act 1961 as amended by Act 13 of 1962 was upheld, on the ground that it was enacted for securing the distribution of agricultural land to subserve the common good by imposing a ceiling and also ensuring that the persons to whom surplus lands had been granted after the same had vested in the State Government should supply sugarcane at fair prices. The impugned Act, apart from s. 28 already referred to, was held to be covered by Entry 18 in List II and s. 28 was held as within the ambit of Entry 35 of List II dealing with "Works, lands and buildings vested in or in the possession of the State". In the result, we hold that as the attacks on the rivers of the Madras Ceilings Act fail, the appeals must be dismissed but without any costs. In all cases Where, the Madras High Court did not think fit to deal with the merits of the case as regards the application of the Madras Ceilings Act to the particular facts of a case, it will be open to the appellants to canvass the same before the appropriate forum.

V.P.S. Appeals dismissed-.