Supreme Court of India
Meerut Development Authority Etc vs Satbir Singh And Ors. Etc on 19 September, 1996
Bench: K. Ramaswamy, Faizan Uddin, G.B. Pattanaik

PETITIONER:
MEERUT DEVELOPMENT AUTHORITY ETC.

Vs.

RESPONDENT:
SATBIR SINGH AND ORS. ETC.

DATE OF JUDGMENT: 19/09/1996

BENCH:
K. RAMASWAMY, FAIZAN UDDIN, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

WITH C.A. Nos. 2217/88, 2758/88,1829/88, 2219/88,, 2221/88 2218/88, 2220/88, 2222/88, 1830/88, C.A Nos. 12810-12825/96@ SLP(C) Nos. 5832/88, 5833/88, 5834/88, 5835/88, 5836/88, 5837/88, 5838/88, 5839/88, 5840/88, 6094/88, 6095/88, 13207/88, 13577/88, 13296/88, 13463/88, 7331/88, W.P. [C] Nos.153/96, C.As.12826-28/96@ SLP(C)Nos. 3822/76, 3823/76, 3824/76 O R D E R Substitution allowed.

Leave granted in all the special leave petitions. Notification under Section 4 [1] of the Land Acquisition Act, 1894 [for short, the "Act"] was published on June 11, 1985. The Government also exercised the power under Section 17 [4] of the Act and dispensed with the enquiry under Section 5-A and had the declaration under Section 6 published on June 13, 1985. The publication of substance of the notification in the local newspapers came to be made on July 25, 1985. In August 1985, the respondents filed a batch of writ petitions in the High Court impugning the validity of the notification under Section 4 [1] and of the declaration under Section 6 on six grounds. Five of the grounds raised by the respondents were negatived by the High Court as not sustainable but declaration under Section 6 was quashed on the ground that after the Amendment Act 68 of 1984 had come in to force w.e.f, September 24, 1984, the simultaneous publication of the declaration under Section 6 along with publication of notification under Section 4 [1] was invalid in law. They relied upon the judgment of this Court in State of U.P. and Ors. v. Radhey Shyam Nigam and Ors. etc. [(1989) 1 SCR 92] . The respondents filed cross appeals against the findings that were negatived

by the High Court in respect of all the other five points. Thus these appeals by special leave.

Pending appeals, the Governor exercising the power under Article 213 of the Constitution issued the Ordinance No.32 of 1990 and the State Legislature enacted the Land Acquisition [U.P. Amendment and Validation Act, 1991 [UP Act 5 of 1991] which came in to force from December 28,1990, introducing provision to Section 17 [4] of the Act and also by Section 3 thereof validated all the notifications and declarations issued under the Act prior to the date of the judgment of this Court in Radhey Shyam Nigam case [supra]. The Ordinance came to be challenged by way of writ petition No.153/96. Thus all the matters tagged are disposed of together. With a view to satisfactorily resolve the controversy, it is, at the first instance, necessary to dispose of the writ petition.

It is seen that this Court in Radhey Shyam Nigam's case had considered the provisions of U.P. Urban Planning and Development Act and the Act. In exercise of power under Section 17 [4] of the Act, the appropriate State Government was empowered to issue and get published the notification under Section 4 [1] and the declaration under Section 6 of the Act simultaneously. That was upheld by this Court in Smt. Somawanti and Ors. v. State of Punjab and Ors. [(1963) 2 SCR 775]. After the Amendment Act 68 of 1984 was brought on statute, sub-section (4) of Section 17 envisages that the authority empowered to have the declaration under Section 6 published after the publication of the notification under Section 4 [1]. In other words, the simultaneous exercise of power to get the notification under Section 6 was not valid in law. This Court had held thus;

> "It is true that the expression "after the date of the publication of the notification" introduced in Section 17 [4] can be explained... changes in Sections 4 and 6 of the Act".

It is to be seen that the State Legislature thereafter, has enacted proviso to sub-section [4] as under:

> "Provided that where in the case of any land, notification under Section 4, sub-section [1] has been published in the official Gazette on or after September 24, 1984 but before January 11, 1989, and the appropriate Government has under this sub-section directed that the provisions of Section 5-A shall not apply, a declaration under Section 6 in respect of the land may be made either simultaneously with or at any time after, the publication in the Official Gazette of the notification under Section 4, sub- section [1]".

This proviso was inserted by Section 2 of the State Amendment Act 5 of 1991, sub-section [3] validated the acquisitions pending as on the date of the judgment of this Court which reads as under:

> " 3. Validation of certain acquisitions. - Notwithstanding any judgment, decree or order of any Court, Tribunal or other authority , no acquisition of land made, or purporting Act before the commencement of this Act and no action taken or thing done [including any order or declaration made, agreement entered in to or notification published] in connection with such acquisition, which is in conformity

> with the provisions of the Principal Act as amended by this Act as amended by this Act shall be deemed to be invalid or ever to have been invalid merely on the ground that declaration under Section 6 of the Principal Act was published in the Official Gazette on the same date on which notification under Section 4, sub-section [1] of the Principal Act, was published in the Official Gazette or on any other date prior to the date of publication of such notification as defined in Section 4, sub-section [1] of the Principal Act".

The controversy is no longer res integra. This Court in Ghaziabad Development Authority v. Jai Kalyan Samiti Sheopuri Ghaziabad and Anr. [(1996) 2 SCC 365] has considered the effect of the proviso introduced by the State Legislature by way of amendment to Section 17 [4]. The validity has been upheld by the Two-judge Bench of this Court.

Shri Pradeep Misra, learned counsel for the respondents, contended that if the law is declared by this Court that simultaneous publication under Section 4 [1] and declaration under Section 6 of the Act is invalid, the Legislature has no power to over-rule and nullify the judgment of this Court by way of amendment. It has only to remove the defect, as pointed out by this Court, by suitably amending the statute. In this case, a reading of the proviso would indicate that the State Legislature, without removing the defect, as pointed out by this Court, reiterated the defect and sought to validate all the invalid notification or declarations as declared by this Court in Radhey Shyam Nigam's case [supra] as valid. Therefore, the U.P. Amendment Act 5 of 1991 is invalid in law.

It is well-settled by catena pf decisions of this Court that when this Court in exercise of power of judicial review, has declared a particulate statute to be invalid, the Legislature has no power to over-rule the judgment; however, it has the power to suitably amend the law by use of appropriate phraseology removing the defects poins out by the court and by amending the law inconsistent with the law declared by the court so that the defects were pointed out were never on statute for effective enforcement of the law. This Court has considered in extenso the case law in a recent judgment in Indian Aluminium Co. and Ors. v. State Of Kerala and Ors. [(JT 1996 (2) SC 85] had held that such an exercise of power to amend a statute is not an Incursion on the judicial power the court but is a statutory exercise of the constituent power to suitably amend the law and to validate the actions which have been declared to be invalid. It laid down the following principles:

> "[1] The adjudication of the rights of the parties is the essential judicial function. Legislature has to lay down the norms of conduct or rules which will govern the parties and the transactions and require the court to give effect to them: [2] The Constitution delineated delicate balance in the exercise of the sovereign power by the Legislature, Executive and Judiciary:
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> [3] In a democracy governed by rule of law, the Legislature exercises the power under Articles 245 and 246 and other companion Articles read with the entries in the respective Lists in the Seventh Schedule to make the law which includes power to amend the law: [4] Courts in their concern and endeavour to preserve judicial power equality must be guarded to maintain the delicate balance devised by the constitution

between the three sovereign functionaries. In order that rule of law permeates to fulfil an egalitarian social order, the respective sovereign functionaries need free-play in their joints so that the march of social progress and order remain unimpeded. The smooth balance built with delicacy must always be maintained:

[5] In its anxiety to safeguard judicial power, it is unnecessary to be over jealous and conjure up incusion in to the judicial preserve invalidating the valid law competently made:

[6] The Court, therefore, need to carefully scan the law to find out : (a) whether the vice pointed out by the Court and invalidity suffered by previous law is cured complying with the legal and constitutional requirements: (b) whether the Legislature has competence to validate the law: (c) whether such validation is consistent with the rights guaranteed in Part III of the constitution:

[7] The Court does not have the power to validate an invalid law or to legalise or to remove the norm of invalidation or provide a remedy. These are not judicial functions but the exclusive province of the Legislature. Therefore, they are not the encroachment on judicial power. [8] In exercising legislative power the Legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions are such that the previous decision would not have been rendered by the Court, if those conditions had existed at the time of declaring the law as invalid. It is also empowered to give effect to retrospective legislation with a deeming date or with effect from a particular date. The Legislature can change the character of the tax or duty form impermissible to permissible tax but the tax or levy should answer such character and the Legislature is competent to recover the invalid tax validating such a tax or removing the invalid base for recovery from the subject or render the recovery from the State ineffectual. It is competent for the legislature to enact the law with retrospective effect and authorise its agencies to levy and collect the tax on that basis, make the imposition of levy collected and recovery of the tax made valid, notwithstanding the declaration by the Court or the direction given for recovery thereof.

[9] The consistent thread that runs through all the decisions of this Court is that the legislature cannot directly overrule the decision or make a direction as not binding on it but has power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law of the Constitution and the legislature must have competence to do the same".

The same view as reiterated in State Of Orissa v. Gopal Chandrarath [(1995) 6 SCC 243], Bhubaneswar Singh and Anr. v. Union of India and Ors. [(1994) 6 SCC 77] and Comorin Match Industries P. Ltd, v. State of Tamil Nadu [(1996) 4 SCC 281]. It is equally settled law that validating

Act cannot simply seek to take away the effect of the judgment of the Court. In such an even, it will be legislative repeal of judicial decision as had been held by this Court in Madan Mohan Pathak v. Union of India [(1978) 2 SCC 50], State of U.P. and Anr. v. Keshwav Prasad Singh [(1995) 5 SCC 587] and State of Haryana v. The Karnal Co-operative Farmers' Society Ltd. [JT 1993 (2) SC 235].

The question in this case is; whether the Legislature has merely reiterated the defect pointed out by this Court and thereby caused legislative repeal of the judicial decision or it has cured the defect pointed out by this Court so as to be in conformity with the law? In this behalf, it must be remembered on the facts in this case that acquisition is a concurrent subject vide Entry 42 in the List III of the Seventh Schedule to the constitution on which both the Parliament as well as the State Legislature have competence to enact the law suitable to the situation prevailing in the appropriate State. Article 254 of the Constitution deals with such an area. Clause [2] of Article 254 envisages that "Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by parliament, or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State". The scope thereof was elaborately considered by this Court in Gouri Shankar Gauri and Ors. v. State of U.P. and Ors. [(1994) 1 SCC 92 at 117-118] and it was held thus:

> "...[1] Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view if the repugnancy: [2] where, however, a law passed by the States comes in to collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the Central Act would become void provided the State Act has been passed in accordance with clause (2) Article 254: (3) where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with or repugnant to a previous law made by parliament, then such a law can be protected by obtaining the assent of the President under Article 254 [2] of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254. In that case it was held that part of the provisions were not repugnant in their application to the public men in Tamil Nadu but are void to the extent of public servants. T. Baraj v. Henry Ah Hoe [(1983) 1 SCC 177] is a case where Section 16 [1] (a) of the prevention of Food Adulteration Act, 1954 in the Concurrent List prescribes a punishment of six years and fine. The West Bengal State Legislature amended it by West Bengal Amendment Act, 1973 and prescribed a punishment of imprisonment for life for the selfsame offence under Section 16 [1] of the Act. Prevention of Food Adulteration Act was amended by Parliament in 1976. The proviso to Article 254 [2] the State law is void. Since the Central Amendment Act, 1976 occupies the same filed imposing lesser punishment, the previous State law imposing punishment of imprisonment for life,

though received the assent of the President, was held to be void".

It is not in dispute that the State Amendment Act 5 of 1991 was enacted and reserved for consideration of the President and received the assent of the President on 26.2.1991 and the Act was published in the Gazette on 27.2.1991. it is to be seen that as regards simultaneous publication of the notification and the declaration in respect of acquisition of the land for public purpose exercising the power of eminent domain in certain situation where possession was need urgently, depending upon the local needs and the urgency, Government requires such power. Consequently, the State Legislature thought it appropriate that despite the enactment of the Amendment Act 68 of 1984 amending Section 17(4), the State needed further amendment. Resultantly, the U.P. Amendment Act 5 of 1991 came to be made and it was given retrospective effect from the date of the Amendment Act 68 of 1984 has come in to force, i.e., September 24, 1984.

It is true that the proviso was not happily worded. But a reading of it would clearly give us an indication that the proviso to sub-section (4) introduced by Section 2 of the Amendment Act 5 of 1991 would deal with both the situation, namely, the notification published on or after September 24, 1984 but before January 11, 1989 but also the declaration to be simultaneously published subsequent thereto. The literal interpretation sought to be put up by Shri Pradeep Misra would defeat the legislative object. Therefore, ironing out the creases we are of the view that the proviso applies not only to the notifications and declarations simultaneously published after the date of coming in to force of the Amendment Act 68 of 1984 but also to the future declarations as well. Thus, it could be seen that the proviso would operate prospectively and retrospectively from April 24, 1984 applying to the previous notifications and declarations but also to the notification and declaration to be published subsequently.

It is true that normally the Legislature has to give effect to he judgment of the court only to cure the defects pointed out in the previous judgment so that the operation of the law would be consistent with the law declared by this Court. But in view of the peculiarity, namely, the special needs of the State, Article 254(2) itself gives such a power to the State, Legislature to amend the law to make applicable in relation to that State though Central Law may be inconsistent with the law operating in other States. In other words, when the topic is occupied in the Concurrent List, uniformity of the operation of the law is not the rule but simultaneous existence of the inconsistency would also operate in the same field. But when the State Amendment was reserved and received the assent of the President to the extent of inconsistency is saved in relation to that State. Therefore, the amendment by proviso to Section 17(4) is not invalid. Any other construction would dry out the power of the State Legislature to enact the law on the subject of acquisition.

It is seen that Section 3 of the Amendment Act 5 of 1991 seeks to validate the illegal declarations made simultaneously with the publication of the Section 4 notification and in some cases even prior to the publication of Section 4 notification: it also seeks to validate certain acquisitions envisaged thereunder. This validation is not illegal. Shri Misra contended that since the appeals were pending before this Court, the Legislature would not be competent to amend the law so as to take away the effect of the decisions of this Court. In support thereof he contended that leave was granted by this Court and it was directed to post these cases along with the main matter, i.e. Radhey Shyam Nigam's

case. Since the matters were not disposed of, the amendment was brought about to defuse the effect of the judgment. Therefore, the amendment is not valid in law. We find no force in the contention.

Government of Andhra Pradesh v. H.W.T. [1975 (supp) SCR 384] was a case where pending appeals in this Court the Legislature has amended the Gram Panchayat Act and suitably defined 'house' which was found to be defective as declared by a judgment of A.P. High Court under appeal. Amendment was made to the Gram Panchayat Act. When the Validation Act was challenged, a bench of three judges of this Court had upheld the validity of the Amendment Act and held that the State Legislature has not overruled or set aside the judgment of the High Court. It has amended the definition of 'house' by substitution of a new Section 217 for the old section and it has provided that the new definition shall have retrospective effect notwithstanding anything contained in any judgment, decree or order of any court or other authority. In other words, it has removed the basis of the decisions rendered by the High Court so that the decision would not have been given in the altered circumstances. The same ratio applies to the facts in this case.

It is then contended by Shri Krishnamani, learned Senior counsel appearing for some of the appellants in cross appeals that in the Amendment Act two inconsistent dates for coming in to force of the Act and giving effect to the provisions of the Act have been introduced. That is also impermissible. We find no force in the contention. It is seen that the Amendment Act 5 of 1991 was given effect from the date when the amendment Ordinance was published in the Gazette but the effect of the amendment was to remove the defects pointed out and to validate the notifications and declarations which otherwise would be invalid. Consequently, the retrospective effect was given from the date of the issuance of the Ordinance to the Act and operation retrospectively from the date of judgment. Under those circumstances, we do not find any inconsistency in operation of the Act or invalidity in giving two dates for the respective operation provision of the Act.

Then it is contended by Smt. S. Janani, learned counsel for the appellants in cross appeals that the High Court was not justified in rejecting 5 of the contentions raised by the appellants. The exercise of the power is arbitrary. She has highlighted her point by placing before us a map in which some of the portions were omitted from acquisition while the lands in question came to be acquired. Therefore, it is arbitrary exercise of the power. We find no force in the contention. When we have enquired from the counsel appearing for the M.D.A., it is pointed out that the lands left out were agricultural lands which could be acquired under the Land Reforms Act and that, therefore, they had not been resorted to the acquisition under the Land Acquisition Act. It is also pointed out that some of the lands where abadi is situated, such lands were not acquired. Shri Rajeev Dhawan, learned senior counsel for the MDA further contended that certain lands were left out where greenery is in existence and that was not sought to be disturbed so as to maintain ecology. Mrs. Janani has pointed out that the Kanugo had intimated that the respondents are free to construct house without obtaining permission. The High Court has pointed out that such construction was invalid in law and therefore the notification under Section 17(4) was not to be sustained on that ground. The view of the High Court is not correct in law. We find no force in the contention. It is seen that where large extent of land was acquired, mere existence of some houses even if they were constructed, may be according to rules or may not be according to rules, the exercise of the power under Section 17(4) by the Government dispensing with the enquiry does not become invalid, when

there was urgency to take possession of the acquired land. It is now settled legal position that acquisition for planned development of housing scheme is also urgent purpose as laid down by this Court in Aflatoon v. Lt. Governor of Delhi and Ors. [(1975) 4 SCC 285] and Smt. Pista Devi v. H.D.A. [(1986) 4 SCC 251] and in recent judgment of this Court in State of Tamil Nadu v. L.Krishnan [(1996)7 SCC 450]. In the light of the settled legal position the acquisition for housing development in an urgent purpose and exercise of the power under Section 17(4) dispensing with the enquiry under Section 5A is not invalid.

Mrs. Janani has further contended that since no developments have been undertaken and no plans have been prepared, the acquisition is bad in law. We find no force in the contention. Under the U.P. Urban Development Act is not mandatory that the entire scheme should be prepared prior to the notification under section() was published. Similar situation was considered by this Court in L.Krishnan's case (supra) and it was held that the acquisition on that account is not bad in law. Accordingly we hold that the exercise of the power under section() and declaration under section() and declaration under section are not vitiated by any manifest error of law warranting to quash the declaration under section as was done by the High Court.

The appeals of the Meerut Development Authority are accordingly allowed. The appeals of the claimants- respondents stand dismissed. The writ petition also stands dismissed. But in the circumstances, without costs.

Shri Markandeya, learned counsel has pointed out that in some of the cases despite the status quo order passed by this Court, some of the respondents/appellants in contempt case have carried out the constructions and that, therefore, he has taken out contempt proceedings for violation of the orders of the court. We need not take any further steps in this case. Suffered to state that any constructions will not bind the authority nor are they entitled to compensation for these illegal construction. The same would be taken note by the Land Acquisition Officer at the time of passing the award and would be deal with appropriately. The contempt petitions are accordingly dismissed. The Land Acquisition Officer should pass the award within six months from the date of the receipt of this order.