

M.D. Narayan Vs. State of Karnataka and Others

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Overruled by : [Bakhtawar Trust and Others v. M.D.Narayan and Others](#)

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Court : Karnataka

Decided On : Sep-08-1997

Reported in : 1999(4)KarLJ572

Judge : R.P. Sethi, C.J. and;S.R. Bannurmath, J.

Acts : [Constitution of India](#) - Articles 13, 14, 141, 245, 246 and 371-D; Bangalore City Planning Area Zonal Regulations (Amendment and Validation) Act, 1996 - Sections 1(3), 2, 3 and 4; Principal Act, 1963 - Sections 9, 10, 11, 12, 13(1) and 14; Life Insurance Corporation (Modified) of Settlement) Act, 1976; Karnataka State Civil Services (Regulation of Promotion Pay and Pension) Act, 1973; Karnataka Act, 1974; State Reorganisation Act, 1956 - Sections 115; [Karnataka Town and Country Planning Act, 1961](#); Inter-State Water Disputes Act, 1956 - Sections 3 and 4

Appeal No. : Writ Petition No. 10500 of 1996

Appellant : M.D. Narayan

Respondent : State of Karnataka and Others

Advocate for Pet/Ap. : Sri Ashok B. Patil, Adv.

Judgement :

ORDER

1. Constitutional validity of the Bangalore City Planning Area Zonal Regulations (Amendment and Validation) Act, 1996, Karnataka Act No. 2 of 1996, hereinafter called the 'Act', has been challenged in this public interest litigation on the grounds that the impugned legislation is unconstitutional, arbitrary and violative of Article 14 of the Constitution. The Act is alleged to have been passed with an object to render ineffective all binding judicial pronouncements between the parties which is not only unwarranted, but also unconstitutional. The impugned legislation is intended to authorise the judicially determined illegal constructions and thus affect the supremacy of Rule of Law. The Act is stated to have the effect of undoing the undertakings given by the parties to this Court and the Hon'ble Supreme Court and thus is arbitrary and unconstitutional. The impugned legislation is contended to have the effect of setting aside the adjudication of the disputes between the parties made by the highest Court in the country. The Act has been termed to be an abortive attempt of the legislature to exercise judicial power which is impermissible under the doctrine of separation of powers. It is further submitted that the impugned Act is intended to defeat public interest by conferring favours to few individuals. The Act is termed to be a colourable piece of legislation.

2. The almost admitted facts necessitating the filing of the present writ petition are that the petitioner, along with other property owners in the locality of 9th Main Road, Rajmahal Vilas Extension, Bangalore, had filed Writ Petition Nos. 3386 and 3387 of 1981 against the respondents challenging the building licence granted in their favour for construction of eight storeyed residential premises building on the properties belonging to the 5th, 7th and 8th respondents. It was alleged that the impugned licences were granted in contravention of the Outline Development Plan and Zonal Regulations framed for the city of Bangalore under the provisions of the [Karnataka Town and Country Planning Act, 1961](#), hereinafter referred to as the 'principal Act'. The petitions were filed at the time of the commencement of the constructions of the building by respondents 6, 7 and 8. As the learned Single Judge did not grant any interim prayer in Writ Petition No. 3386 of 1981, the writ petitioners filed Writ Appeal No. 725 of 1981 wherein interim order was granted by the Division Bench restraining the builders from constructing the building.

Aggrieved by the order of the Division Bench of this Court, the builders filed S.L.P. No. 4940 of 1981 with prayer for setting aside the interim order. The Hon'ble Supreme Court vacated the interim order subject to the builders giving an undertaking to the effect that in the event of the writ petition being decided against them, they would have no objection for the demolition of the portions of the building raised by them. The builders filed undertakings, one of which is attached with the petitions as Annexure-B. Similarly, in Writ Petition No. 3387 of 1981 the interim stay was refused on 21-4-1981 against which Writ Appeal No. 898 of 1981 was filed before the Division Bench. In the writ appeal, the builders gave an undertaking in the same terms in which the undertaking was given before the Supreme Court. Each purchaser and occupier of the flats in the aforesaid building also gave individual undertakings stating therein that they were aware of the pending proceedings in the Courts and agreed to vacate the premises without objection if so required on the orders of the Court without claiming any compensation for vacating the said premises. Writ Petition Nos. 3386 of 1981 and 3387 of 1981 were allowed by the Division Bench of this Court vide order dated 11-6-1982. The impugned licences were declared illegal and a command was issued to the second respondent to modify the licence so as to bring it in conformity with the Outline Development Plan and the Zonal Regulations appended thereto promulgated under Section 13(4) of the main Act and thereafter to pass further necessary orders and to take consequential action in accordance with law.

3. Respondents 3 and 4 filed Civil Appeal Nos. 2780 and 2781 of 1982 in the Hon'ble Supreme Court which, vide its order dated 5-10-1982, made it clear that the construction of the building was subject to the result of the appeals and that the appellants were required to give undertakings themselves and also to obtain the undertakings by the occupants. Copies of the undertakings filed in obedience to the directions of the Court are attached with the petition as Annexures-E, F, G and H. The said civil appeals were dismissed by the Supreme Court on 19-1-1987 vide judgment reported in B.K. Srinivasan and Another v State of Karnataka and Others. After the disposal of the civil appeals by the Supreme Court, some of the occupants of the premises filed Writ Petition Nos. 10261 and 10262 of 1987 challenging the action of the Commissioner in implementing the writ issued by this

Court vide its order dated 11-6-1982 which was confirmed by the Hon'ble Supreme Court. The aforesaid writ petitions were disposed of by this Court vide the order dated 29-10-1987, Annexure-J. In obedience to the directions of the Court and after giving an opportunity of hearing to all the occupiers of the building, the respondent-Commissioner passed an order on 8-4-1988 to the effect that the 6th, 7th and 8th floors of the two buildings be demolished. Vide his order dated 13-4-1988 the Deputy Director of Town Planning issued public notice to the occupants of the multistoreyed building situated at Nos. 51 to 54, 9th Main, 6th Cross, Rajmahal Vilas Extension, Bangalore, and Nos. 26 and 27, 9th Main Road, Rajmahal Vilas Extension, Bangalore. After hearing the concerned, the Commissioner ordered that the three upper floors viz., 6th, 7th and 8th floors of the two buildings be demolished. 45 days time was allowed to the occupants of the upper three floors to vacate the premises under their occupation. The action of the Commissioner, Bangalore City, was again challenged in another set of writ petitions bearing Nos. 7475 to 7477 of 1988 which were disposed of by this Court on 13-11-1990 vide the order Annexure-K. The plea of the occupants that they could not be evicted in implementation of the writ directions, was rejected. Writ Appeal Nos. 59 to 75 of 1991 filed against the order of the learned Single Judge were dismissed by the Division Bench on 17-1-1991 vide Annexure-L with the observations that:

'These cases had chequered history. It is classic example of how by the ingenuity of the parties they could try to outwit the law and even remain defiant to the orders of the highest Court of Law behaving as though Article 141 of the [Constitution of India](#) does not exist'.

After the disposal of the Writ Petition Nos. 7475 to 7477 of 1988 the petitioners issued legal notice to the Commissioner, Corporation of the City of Bangalore, calling upon him to demolish the three unauthorised and illegal floors of the building in dispute. Again, after the dismissal of Writ Appeal Nos. 59 to 75 of 1991 another notice was issued to the Commissioner on 5-3-1991 with the same request. As the Commissioner, Bangalore City Corporation, did not comply with the Court directions, C.C.C. Nos. 904 and 905 of 1991 were filed in this Court. In the aforesaid cases, a Division Bench of this Court, vide its order dated 23-1-1992

directed the Commissioner to evict the occupants of the apartments in the unauthorised floors. The Commissioner reported compliance of the directions along with the report of Executive Engineer, vide Annexure-P. In contempt of Court cases, the respondent-Commissioner, Bangalore City Corporation, sought various extensions of time to comply with the Court directions. After the adjudication of all the disputes between the parties and during the pendency of the contempt petitions, the impugned legislation was passed with the alleged object of frustrating the Court orders and pronouncements made in the litigation spread over for about a period of 15 years.

4. To justify the enactment of the Act, the respondents have submitted that after the State Cabinet passed a resolution deciding to pass the Validating Act, the State Assembly passed the Bill on 28th February, 1996 which was ratified by the Legislative Council on 29th February, 1996. The assent of the Governor was received on 14th March, 1996. A notification was issued on 15th March, 1996 calling upon the builders to apply for regularisation. It is submitted that the Act not only validates the building constructed in accordance with the sanctioned plan and deviating from the Zonal Regulations but also regularizes buildings which are constructed deviating from the permission granted by the Bangalore City Corporation. It is contended that the effect of the Act is that even in a case where there is deviation from the sanctioned plan, such deviations can be regularised under the Act. The Act not only validates the building licences of the Palace Orchards and Rajmahal Apartments, but also encompasses within its fold several buildings which are stated to have been constructed as per the sanctioned plan deviating from the Zonal Regulations and buildings constructed deviating from the sanctioned plan itself. It is vehemently denied that the Act has been passed only to nullify the judgments pertaining to the apartments in question. The contention of the petitioners that the Act was unconstitutional for the reason that it tries to nullify the judgments of the Courts has been vehemently denied. The statement of objects and reasons cannot be made the basis for arriving at a conclusion that the Act was intended to nullify the judgments of this Court and that of the Supreme Court. The Act is stated to have amended the Zonal Regulations which existed during the period from 22-5-1972 to 12-10-1984. The then existing Bye-law No. 38 provided that no person erecting or re-erecting a building on a site shall so

construct that any point of it is at a height greater than 1 1/2 times the width of the street including drain and pavement immediately in front of such building and in no case more than 80 feet. The Zonal Regulations, 1972, provided that the height of the building should not exceed 55 feet. It is submitted that the aforesaid discrepancy has been sought to be set right by the Act. The Act has modified the Zonal Regulations, 1972 thereby permitting the maximum height of the building from 17 metres to 50 metres. It is stated that the Act does not in any way affect the correctness of the judgment. The direction of the Court is claimed to be only to modify the licence to bring it in conformity with the Zonal Regulations. It is contended that the Act does not in any way invalidates the relief granted in the writ petition. The legislature is claimed to have not exercised any judicial power. It is submitted that the validity of the legislation cannot be judged by the undertaking given by a party in a litigation. The legislature has not declared a specified judgment to be not binding. The Act only alters the Zonal Regulation with retrospective effect. The said legislation has not favoured any individual. The contention of the petitioner that the Act was a colourable piece of legislation has been vehemently denied. The writ petition is stated to be misconceived and liable to be dismissed.

5. Before advertng to the rival contentions of the parties it would be necessary to have a glimpse of the Principal Act which was enacted in the year 1963. The Act provided for the regulation of planned growth of land use and development and for the making and execution of Town Planning Scheme in the State of Karnataka. It was enacted to create conditions favourable for planning and replanting of the urban, rural areas in the State of Karnataka with a view to providing full civic and social amenities for the people and to stop uncontrolled development of land due to land speculation and profiteering in land. The Act intended to preserve and improve existing recreational facilities and other amenities contributing towards balance use of land and to direct the future growth of populated areas in the State with a view to ensuring desirable standards of environmental health and hygiene, and creating facilities for the orderly growth of industry and commerce, thereby promoting generally standards of living in the State. Section 4-A authorises the State Government to declare any area in the State to be a Local Planning Area for the purposes of the Act. Section 4-C provides for constitution of planning authority

for the purpose of performance of the functions assigned to it. Chapter III relates to Outline Development Plan authorising every planning authority to carry out a survey of the area and prepare and publish an Outline Development Plan and submit the same to the Government for provisional approval. An Outline Development Plan is required to indicate the manner in which the development and improvement of the entire planning area within the jurisdiction of the planning authority is required to be carried out and regulated. Under Section 13, the State Government has the authority to approve the Outline Development Plan in the manner and the procedure prescribed therein. Section 14 provides that on and from the date of the declaration no change in the land use or development can be made except with the written permission of the planning authority. Chapter IV deals with Comprehensive Development Plan providing for preparation of such plan, its contents, approval by the State Government and the manner of its enforcement. The Comprehensive Development Plan is to supersede the Outline Development Plan. Chapter V deals with the Town Planning Schemes. Chapter VII makes provision for disputed ownership, preliminary scheme, final scheme, its sanction and enforcement. Chapter IX deals with classification of land and Chapter X provides the penalties for offences besides authorising the making of rules and bye-laws.

6. In this context it would be relevant to note down the impugned Act. The Act which received the assent of the Governor on 14-3-1996 was published in the Karnataka Gazette, Extraordinary, on the same day, provides:

'1. Short title and commencement.--(1) This Act may be called the Bangalore City Planning Area Zonal Regulations (Amendment and Validation) Act, 1996.

(2) It shall come into force at once.

2. Amendment of Zonal Regulations appended to the Outline Development Plan.-- Notwithstanding anything contained in any judgment, decree or order of any Court, Tribunal or any other authority, Zonal Regulations appended to the Outline Development Plan of the Bangalore City Planning Area made under the [Karnataka Town and Country Planning Act, 1961](#) (Karnataka Act 11 of 1963} as they existed during the period from 22nd May, 1972 to 12th October, 1984 (hereinafter referred

to as the 'said Zonal Regulations') shall be deemed to have been modified as specified in the Schedule with effect from the 22nd day of May, 1972.

3. Regularisation of certain constructions.--(1) Notwithstanding anything contained in the [Karnataka Town and Country Planning Act, 1961](#) (Karnataka Act 11 of 1963) or in the said Zonal Regulations as modified by this Act if any person after obtaining permission from the Corporation of the City of Bangalore during the period from 22nd May, 1972 to 12th October, 1984 has constructed any building deviating from the said Zonal Regulations as modified by this Act or the permission granted by the Corporation of the City of Bangalore such person may within thirty days from the date of commencement of this Act, apply to the State Government for regularisation of such construction in accordance with the provisions of this section.

(2) There shall be a committee for the purpose of regularisation of constructions referred to in sub-section (1) consisting of the following members, namely--

(i)

The Secretary to Government, Urban Development Department

Chairman

(ii)

The Commissioner, Corporation of the City of Bangalore

Member

(iii)

The Commissioner, Bangalore Development Authority

Member

(iv)

The Director of Town Planning

Member-Secretary

(3) The committee shall scrutinise the applications received under sub-section (1) and after holding such enquiry as it deems fit if it is satisfied that the deviation referred to in sub-section (1) does not constitute material deviation from the said Zonal Regulations as modified by this Act or the permission granted by the Corporation of the City of Bangalore it may make recommendations to the Government for regularisation subject to payment of such amount as may be determined by it having regard to,--

- (i) the situation of the building;
- (ii) the nature and extent of deviation;
- (iii) any other relevant factors:

Provided that the amount so determined shall not be less than an amount equivalent to one and half times the then market value of such construction.

(4) The State Government may, on receipt of the recommendation of the committee and after payment of the amount by the appellant towards regularisation of such construction order for regularisation of the construction.

4. Validation.--Notwithstanding anything contained in any judgment, decree or order of any Court, Tribunal or other authority, any permission to construct building granted by the Corporation of the City of Bangalore during the period from 22nd May, 1972 to 12th October, 1984 and building constructed in pursuance to such permission and regularised under Section 3 shall be deemed to have been validly granted or constructed and shall have effect for all purposes as if the permission had been granted and buildings had been constructed in conformity with the said Zonal Regulations as modified by this Act, and accordingly:

- (a) all such permissions granted, buildings constructed or proceedings or things done or action taken shall for all purposes deemed to be and to have always been done or taken in accordance with law;

(b) no suit or other proceeding shall be instituted, maintained or continued in any Court or before any Tribunal or other authority for cancellation of such permission or demolition of buildings which were constructed after obtaining the permission from the Corporation of the City of Bangalore and were regularised under Section 3, or for questioning the validity of any action or things taken or done in pursuance to the said Zonal Regulations as modified by this Act, and no Court shall enforce or recognise any decree, judgment or order declaring any such permission granted or buildings constructed, action taken or things done in pursuance to the said Zonal Regulations as modified by this Act as invalid or unlawful'.

7. The circumstances necessitating the passing of the impugned Act were detailed in the statement of objects and reasons which read as:

'The Bangalore City Planning Area Zonal Regulations, 1972 which was in vogue till 1984, provided for construction of five floors including ground floor. The Corporation of the City of Bangalore granted permission for construction of buildings beyond five floors in certain cases. In respect of some of the buildings the permission granted by the Corporation contrary to the Zonal Regulations then in force was questioned in the High Court and the Division Bench of the High Court held that the permission granted in violation of the Zonal Regulations was illegal. The matter was taken to the Supreme Court by way of Special Leave Petition and the Supreme Court dismissed it on 19-1-1987 with a direction that the judgment of the High Court should be given effect.

The allottees of the extra floors took up the matter to the High Court resulting into innumerable writ petitions. Some of the writ petitions have been dismissed and the High Court has confirmed the order of demolition.

In respect of one such building contempt petition has been filed against the Commissioner, Bangalore City Corporation for having not carried out demolition of the extra floors. Demolition of extra floors without affecting the security and safety of the first five floors is a difficult task and therefore the Corporation is trying its best to get a suitable party who can carry out the demolition in the intended manner. But, so far no one has come forward to do the job. Furthermore, the cost of demolition is prohibitive which may go even beyond rupees one crore in respect

of a single building.

Thus, the task of demolition is extremely difficult but failure to carry out the direction would attract contempt of Court. The interest of large number of allottees of the flat which is now in danger has also to be borne in mind.

In the circumstances, it is considered necessary to amend retrospectively the Zonal Regulations appended to the Outline Development Plan of the Bangalore City Planning Area as it existed during the period 1972-1984 and to validate the permission granted by the Bangalore City Corporation which has been declared as illegal by the High Court and Supreme Court for the above purpose.

Hence the Bill'.

8. The settled position of law is that the State Legislature have the plenary powers to legislate within the field of legislation entrusted to it subject to constitutional restraints as specified in Part-XI of the Constitution and the restrictions imposed by various pronouncements of the Apex Court and other constitutional Courts in the country. In exercise of such a power the legislature has the competence to enact law both prospectively as well as retrospectively. While interpreting an enactment of the legislature the Courts are deemed to be conscious of the fact that there is a general presumption that the legislature did not intend to exceed its jurisdiction. It is also a sound principle of construction that the Act of a sovereign legislation should, if possible, receive such an interpretation as will make it operative and not inoperative. In a federal polity as we have in our country, the transgression of the power by the various wings of the State is unwarranted. The legislative powers may be open, direct and overt or disguised, indirect and covert. If the exercise is found to be disguised, indirect and covert it shall be described as a colourable legislation. Legalism has to yield when spacious issues arise. Where the administration or the legislature is found to be sliding back from the progressive constitutional values to protect the private interest, then the Court is required to activate the 'welfare jurisprudence' of the Constitution by appropriate commands.

9. Under the constitutional scheme the legislatures have the powers to remove the basis of a decision rendered by a competent Court thereby rendering that decision

ineffective. But no legislature has the power to ask the instrumentalities of the State to disobey or disregard the decision given by the Courts. The limits of the power of legislature to interfere with the directions issued by the Courts were considered by the Supreme Court in *Shri Prithvi Cotton Mills Limited v Broach Borough Municipality and Others*, *Mahal Chand Sethia v State of West Bengal*, *State of Madhya Pradesh v Ranojirao Shinde*, *Municipal Corporation of the City of Ahmedabad v The New Shrock Spinning and Weaving Company Limited* and in the matter of *Cauvery Water Disputes Tribunal*, wherein it was held that, by exercise of the powers vesting in it, the legislature can remove the basis of the decision rendered by a competent Court. No legislature had the right to simply exclude the specified settlements which had been held to be valid and enforceable by a Court. In *Cauvery Water Disputes Tribunal's* case, *supra*, the Apex Court was called upon to examine and report as to whether the Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991 and the provisions thereof were in accordance with the provisions of the Constitution. The facts leading to the reference being made to the Supreme Court under Article 143 of the Constitution were that there arose disputes regarding the sharing of water of Cauvery river between the States of Karnataka and Tamil Nadu. The said river is an inter-State river which was admitted to be one of the major rivers of the Southern peninsula. The basin area of the river and its tributaries had substantially spread over within the territories of the aforesaid two States. The other areas which are the beneficiaries of the river water are the territories comprised in the State of Kerala and the Union territory of Pondicherry. Agreements of 1892 and 1924 regulated the sharing of the river water between the areas which formed part of the State of Karnataka and Tamil Nadu. The last agreement expired in 1974. In 1956 the Parliament enacted the River Boards Act for the purpose of regulation and development of inter-State rivers and river valleys. Inter-State Water Disputes Act, 1956 was also enacted for adjudication of the disputes with regard to the use, distribution or control etc., of the said waters. In 1970 Tamil Nadu invoked the provisions of Section 3 of the Inter-State Water Disputes Act and requested the Central Government for reference of the disputes between the States of Tamil Nadu and Karnataka to a Tribunal under the Act. Negotiations between the two States resulted in the constitution of a Pact Finding Committee in June 1972 which

was set up to ascertain facts, amongst others, as to the availability of water resources, the extent of utilisation and the nature of the areas in the respective States within the river basin, and their requirements. The Fact Finding Committee submitted its report in December 1972 and August 1973. A Central Study Team was also set up to examine the question of assessing the savings of water in the existing and planned projects of the three States in the Cauvery basin. Vide understandings arrived at in 1976 surplus water was decided to be apportioned in the ratio of 30:50:17 amongst the States of Tamil Nadu, Karnataka and Kerala respectively. Despite information gathered through the Fact Finding Committee and Study Teams set up by the Union Government, the negotiations failed. In 1983 Writ Petition No. 13347 of 1993 was filed in the Supreme Court which was decided on 4-5-1990 vide judgment reported in *Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhu Gappu Sangam v Union of India*, holding that negotiations between the two States had failed and directed the Union Government to constitute the Tribunal under Section 4 of the Inter-State Water Disputes Act. In pursuance of the directions given by the Supreme Court, the Union Government, vide notification dated 2-6-1990 constituted the Cauvery Water Disputes Tribunal and referred the aforesaid water dispute. During the pendency of the dispute various applications bearing Nos. CMP 4, 5 and 9 of 1990 were filed, which were considered at different stages and ultimately the Tribunal directed the State of Karnataka to release water from its reservoirs in Karnataka so as to ensure that 205 TMC water is available in Tamil Nadu's Mettur reservoir in a year from June to May. The Tribunal further directed Karnataka to regulate the release of water every year in the manner stated in the order. The monthly quota of the water was to be released in four equal instalments every week, and if there was not sufficient water available in any week, the deficit was directed to be made good in the subsequent week. The Tribunal also directed Tamil Nadu to deliver to Pondicherry 6 TMC water for its Karaikal region in a regulated manner. In addition, the Tribunal directed Karnataka not to increase its area under irrigation by the waters of Cauvery, beyond the existing 11.2 lakh acres. The Tribunal then observed that its said order would remain operative till the final adjudication of the dispute referred to it.

10. Thereafter, the Government of Karnataka issued an Ordinance named 'The Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991'. The Ordinance was issued to provide in the interest of the general public for the protection and preservation of irrigation in irrigable areas of the Cauvery Basin in Karnataka dependent on the waters of the Cauvery river and its tributaries. Section 3 of the Ordinance provide--

'3. Protection of irrigation in irrigable area.--

(1) It shall be the duty of the State Government to protect, preserve and maintain irrigation from the waters of the Cauvery river and its tributaries in the irrigable area under the various projects specified in the Schedule.

(2) For the purpose of giving effect to sub-section (1) the State Government may abstract or cause to be abstracted, during every water year, such quantity of water as it may deem requisite, from the flows of the Cauvery river and its tributaries, in such manner and during such intervals as the State Government or any Officer, not below the rank of an Engineer-in-Chief designated by it, may deem fit and proper'.

Vide Section 4 it was declared that the provisions of the Ordinance shall have the effect notwithstanding anything contained in any order, report or decision of any Court or Tribunal whether made before or after the commencement of the Ordinance. Besides issuing the Ordinance the State of Karnataka instituted a suit against the State of Tamil Nadu and others under Article 13 for declaration that the Tribunal's order granting interim prayer was without jurisdiction and, therefore, null and void, etc. The Ordinance was replaced by Act No. 27 of 1991. In this background, the President, in exercise of powers under Article 143 of the Constitution made the reference to the Supreme Court.

11. Dealing with the validity of the Ordinance/the Act, the Supreme Court held:

'...The legislatures under the Constitution have, within the prescribed limits, power to make laws prospectively as well as retrospectively. By exercise of those powers a legislature can remove the basis of a decision rendered by a competent Court

thereby rendering the decision ineffective. But no legislature in the country has power to ask the instrumentalities of the State to disobey or disregard the decisions given by the Courts. Consequently, the provisions of sub-section (3) of the Section 152-A were held repugnant to the Constitution and were struck down. To the same effect is another decision of this Court in *Madan Mohan Pathak v Union of India*. In this case a settlement arrived at between the Life Insurance Corporation and its employees had become the basis of a decision of the High Court of Calcutta. This settlement was sought to be scuttled by the Corporation on the ground that they had received instructions from the Central Government that no payment of bonus should be made by the Corporation to its employees without getting the same cleared by the Government. The employees, therefore, moved the High Court, and the High Court allowed the petition. Against that, a Letters Patent Appeal was filed and while it was pending, the Parliament passed the Life Insurance Corporation (Modification of Settlement) Act, 1976, the effect of which was to deprive the employees of bonus payable to them in accordance with the terms of the settlement and the decision of the Single Judge of the High Court. On this amendment of the Act the Corporation withdrew its appeal and refused to pay the bonus. The employees having approached this Court challenging the constitutional validity of the said legislation, the Court held that it would be unfair to adopt legislative procedure to undo a settlement which had become the basis of a decision of the High Court. Even if legislation can remove the basis of a decision, it has to do it by alteration of general rights of a class but not by simply excluding the specific settlement which had been held to be valid and enforceable by a High Court. The object of the Act was in effect to take away the force of the judgment of the High Court. The rights under the judgment would be said to arise independently of Article 19 of the Constitution.

Yet another decision of this Court on the point is *P. Sambamurthy v State of Andhra Pradesh*. In this case what was called in question was the insertion of Article 371-D of the Constitution. Clause (5) of the Article provided that the order of the Administrative Tribunal finally disposing of the case would become effective upon its confirmation by the State Government or on the expiry of three months from the date on which the order was made, whichever was earlier. The proviso to the clause provided that the State Government may by special order make in

writing for reasons to be specified therein, modify or annul any order of the Administrative Tribunal before it became effective and in such a case the order of the Tribunal shall have effect only in such modified form or be of no effect. This Court held that it is a basic principle of the rule of law that the exercise of power by the executive or any other authority must not only be conditioned by the Constitution but must also be in accordance with law, and the power of judicial review is conferred by the Constitution with a view to ensuring that the law is observed and there is compliance with the requirement of the law on the part of the executive and other authorities. It is through the power of judicial review conferred on an independent institutional authority such as the High Court that the rule of law is maintained and every organ of the State is kept within the limits of the law. If the exercise of the power of judicial review can be set at naught by the State Government by overriding the decision given against it, it would sound the death-knell of the rule of law. The rule of law would be meaningless as it would be open to the State Government to defy the law and yet get away with it. The proviso to clause (5) of Article 371-D was, therefore, violative of the basic structure doctrine.

The principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter parts and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an Appellate Court or Tribunal.

The effect of the provisions of Section 11 of the present Act, viz., the Inter-State Water Disputes Act read with Article 262 of the Constitution is that the entire judicial power of the State and, therefore, of the Courts including that of the Supreme Court to adjudicate upon original dispute or complaint with respect to the use, distribution or control of the water of, or in any inter-State river or river valleys has been vested in the Tribunal appointed under Section 4 of the said Act. It is, therefore, not possible to accept the submission that the question of grant of interim relief falls outside the purview of the said provisions and can be agitated under Article 131 of the Constitution. Hence any executive order or a legislative

enactment of a State which interferes with the adjudicatory process and adjudication by such Tribunal is an interference with the judicial power of the State. In view of the fact that the Ordinance in question seeks directly to nullify the order of the Tribunal passed on 25th June, 1991, it impinges upon the judicial power of the State and is, therefore, ultra vires the Constitution.

Further, admittedly, the effect of the Ordinance is to affect the flow of the waters of the river Cauvery into the territory of Tamil Nadu and Pondicherry which are the lower riparian States. The Ordinance has, therefore, an extra-territorial operation. Hence the Ordinance is on that account beyond the legislative competence of the State and is ultra vires the provisions of Article 245(1) of the Constitution.

The Ordinance is also against the basic tenets of the rules of law inasmuch as the State of Karnataka by issuing the Ordinance has sought to take law in its own hand and to be above the law, such an act is an invitation to lawlessness and anarchy, inasmuch as the Ordinance is a manifestation of a desire on the part of the State to be a judge in its own cause and to defy the decisions of the judicial authorities. The action forebodes evil consequences to the federal structure under the Constitution and opens doors for each State to act in the way it desires disregarding not only the rights of the other States, the orders passed by instrumentalities constituted under an Act of Parliament but also the provisions of the Constitution. If the power of a State to issue such an Ordinance is upheld, it will lead to the breakdown of the constitutional mechanism and affect the unity and integrity of the nation'.

In *S.R. Bhagwat and Others v State of Mysore*, it was held that where by way of amendment of a statute the State tried to do away with the judgments, decrees and orders of any Court which had become final against the State, the Court has to interfere as exercise of such power was impermissible. In that case the provisions of Mysore Ordinance 1 of 1973 and the Karnataka State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973 were challenged mainly on the ground that the impugned provisions amounted to take away the rights of the parties which had been determined by the High Court in the writ petitions filed before it. After referring to the facts the Court held:

'10. Having given our anxious consideration to rival contentions we have reached the conclusion that the impugned provisions of the Act, namely, Section 11 sub-section (2) is clearly ultra vires the powers of the State Legislature as it encroaches upon the judicial field and tries to overrule the judicial decision binding between the parties and consequently the relevant sub-sections of Section 4 which are also in challenge will have to be read down as indicated hereinafter in this judgment. Before we advert to the relevant provisions of the impugned Karnataka Act it will be appropriate to keep in view the settled legal position governing the present controversy.

11. It is now well-settled by a catena of decisions of this Court that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance overrules such judgment and is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect. We may only refer to two of these judgments.

12. A Constitution Bench of this Court in the case of Cauvery Water Disputes Tribunal, *supra*, had to pronounce on the validity of Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991, by which an interim order passed by a statutory Tribunal supported by the decision of this Court dated 26th April, 1991, (reported in 1951 AIR SCW 1286), which had ruled that the Tribunal had power to consider the question of granting interim relief since it was specifically referred to it, was sought to be displaced Sawant, J., speaking for the Constitution Bench held that the said provisions were unconstitutional and ultra vires. In paragraph 76 of the report the following observations were made: (para 17 at p. 160 of AIR SCW)

'The principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter parts and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an Appellate Court or

Tribunal'.

In the case of *G.C. Kanungo v State of Orissa*, a Division Bench of this Court speaking through Venkatachala, J., had to consider the validity of Arbitration (Orissa Second Amendment) Act, 1991 which sought to nullify the awards made by the Special Arbitration Tribunals constituted under the 1984 Amendment Act, in exercise of the power conferred upon them by the Act itself. Striking down the provisions as ultra vires and illegal, Venkatachala, J., made the following observations in paragraph 28 of the Report: (para 29, at p. 2608 of AIR SCW)

'Thus the impugned 1991 Amendment Act seeks to nullify the awards made by the Special Arbitration Tribunals constituted under the 1984 Amendment Act, in exercise of the powers conferred upon them by that Act itself. When, the awards made under the 1984 Amendment Act by the Special Arbitration Tribunals in exercise of the State Judicial Power conferred upon them which cannot be regarded as those merged in Rules of Court or judgments and decrees of Courts, are sought to be nullified by 1991 Amendment Act, it admits of no doubt that legislative power of the State legislature is used by enacting impugned 1971 Amendment Act to nullify or abrogate the awards of the Special Arbitration Tribunals by arrogating to itself, a judicial power. (See in re: Cauvery Water Disputes Tribunal, supra). From this, it follows that the State Legislature by enacting the 1991 Amendment Act has encroached upon the judicial power entrusted to judicial authority resulting in infringement of basic feature of the Constitution - the Rule of Law. Thus, when the 1991 Amendment Act nullifies the awards of the Special Arbitration Tribunals, made in exercise of the judicial power conferred upon them under the 1984 Amendment Act, by encroaching upon the judicial power of the State, we have no option but to declare it as unconstitutional having regard to the well-settled and undisputed legal position that a legislature has no legislative power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions as invalid and not binding, for such powers, if exercised, would not be legislative power exercised by it, but judicial power exercised by it encroaching upon the judicial power of the State vested in a judicial Tribunal as the Special Arbitration Tribunals under 1984 Amendment Act. Moreover, where the arbitral awards sought to be nullified under

the 1991 Amendment Act are those made by Special Arbitration Tribunals constituted by the State itself under 1984 Amendment Act to decide arbitral disputes to which State was a party. It cannot be permitted to undo such arbitral awards which have gone against it, by having recourse to its legislative power for grant of such permission as could result in allowing the State, if nothing else, abuse of its power of legislation'.

The impugned Karnataka Act 11 of 1974 was enacted to provide for the prospective promotions of civil servants and to regulate the pay, seniority, pension and other conditions of service of civil servants in the State of Karnataka including those that are allotted or deemed to be allotted to serve in connection with the affairs of the State of Karnataka under or in pursuance of Section 115 of the States Reorganisation Act. The preamble referred to the judgment of the Supreme Court in *Ajit Singh v State of Punjab and Another*, and in *Income-tax Officer, Alleppy v N.C. Ponnose*, wherein it had been held that the appointments of civil servants to offices in which statutory functions are exercisable could not be made with retrospective effect. Feeling that retrospective promotions would involve payment of sums of money to persons who had not worked in the promotional posts of officers concerned, the State legislature decided to enact the aforesaid Act 11 of 1974. Section 4 of which, amongst other things, provide:

'4. Promotions, etc., of allottees.--(1) Where the seniority of an allottee as specified in the provisional inter-State seniority list in any class of post or office has been altered in the final seniority list relating to that class, every promotion made on any date after the first day of November 1956, on the basis of seniority-cum-merit, shall be reviewed with reference to the qualifications and other conditions laid down in the rules of recruitment applicable at the relevant time for such promotion and the ranking in the final seniority list assigned to the allottees in that class of post or office. If any person senior in rank than the person promoted is held to be suitable for promotion on such date (hereinafter in this section referred to as the 'date of eligibility') an order shall, subject to Section 9, be made promoting the said person to officiate in the said post or office with effect from a prospective date to be specified in the order'.

Sub-section (2) of Section 11-A of the Act provide:

'(2) Notwithstanding anything contained in any judgment, decree or order of any Court or other competent authority the rights to which a civil servant is entitled to in respect of matters to which the provisions of this Act are applicable, shall be determined in accordance with the provisions of this Act, and accordingly, any judgment, decree or order directing promotion or consideration for promotion of civil servants and payment of salaries and allowances consequent upon such promotion shall be reviewed and orders made in accordance with the provisions of this Act'.

Dealing with the Act in the light of the judgments of the Court, it was held:

'A mere look at sub-section (2) of Section 11 shows that the respondent-State of Karnataka, which was a party to the decision of the Division Bench of the High Court against it had tried to get out of the binding effect of the decision by resorting to its legislative power. The judgments, decrees and orders of any Court or the competent authority which had become final against the State were sought to be done away with by enacting the impugned provisions of sub-section (2) of Section 11. Such an attempt cannot be said to be a permissible legislative exercise. Section 11(2), therefore, must be held to be an attempt on the part of the State legislature to legislatively overrule binding decisions of competent Courts against the State. It is no doubt true that if any decision was rendered against the State of Karnataka which was pending in appeal and had become final it could rely upon the relevant provisions of the Act which were given retrospective effect by sub-section (2) of Section 1 of the Act for whatever such reliance was worth. But when such a decision had become final as in the present case when the High Court clearly directed respondent-State to give to the concerned petitioners deemed dates of promotions if they were otherwise found fit and in that eventuality to give all benefits consequential thereon including financial benefits, the State could not invoke its legislative power to displace such a judgment. Once this decision had become final and the State of Karnataka had not thought fit to challenge it before this Court presumably because in identical other matters this Court has upheld other decisions of the Karnataka High Court taking the same view. It passes one's

comprehension how the legislative power can be pressed in service to undo the binding effects of such mandamus. It is also pertinent to note that not only sub-section (2) of Section 11 seeks to by-pass and override the binding effect of the judgments but also seeks to empower the State to review such judgments and orders and pass fresh orders in accordance with provisions of the impugned Act. The respondent-State in the present case by enacting sub-section (2) of Section 11 of the impugned Act has clearly sought to nullify or abrogate the binding decision of the High Court and has encroached upon the judicial power entrusted to the various authorities functioning under the relevant statutes and the Constitution. Such an exercise of legislative power cannot be countenanced'.

Ultimately the Court concluded by holding:

'18. We, therefore, strike down Section 11, sub-section (2) as unconstitutional, illegal and void. So far as the underlined impugned portions of Section 4, sub-sections (2), (3) and (8) are concerned, they clearly conflict with the binding direction issued by the Division Bench of the High Court against the respondent-State and in favour of the petitioners. Once respondent-State had suffered the mandamus to give consequential financial benefits to the allottees like the petitioners on the basis of the deemed promotions such binding direction about payment of consequential monetary benefits cannot be nullified by the impugned provisions of Section 4. Therefore, the underlined portions of sub-sections (2), (3) and (8) of Section 4 will have to be read down in the light of the orders of the Court which have become final against the respondent-State and insofar as these provisions are inconsistent with these final orders containing such directions of judicial authorities and competent Courts, these impugned provisions of Section 4 have to give way and to the extent of such inconsistency must be treated to be inoperative and ineffective. Accordingly, the aforesaid provisions are read down by observing that the statutory provisions contained in sub-sections (2), (3) and (8) of Section 4 providing that such persons who have been given deemed promotions shall not be entitled to any arrears for the period prior to the date of their actual promotion, shall not apply in cases where directions to the contrary of competent Courts against the respondent-State have become final.

19. In the result, this writ petition succeeds, Section 11, sub-section (2) is struck down as ultra vires the legislative powers of the State. Sub-sections (2), (3) and (8) of Section 4 are read down as aforesaid. The respondent-State shall comply with the directions contained in the binding decision of the High Court of Karnataka dated 21-9-1971 in Writ Petition Nos. 2598, 3302 to 3304 and 4586 of 1970 and shall make available all consequential financial benefits to the concerned petitioners as directed by the High Court within a period of eight weeks from the receipt of the orders of this Court at its end. Rule issued in the writ petition is accordingly made absolute with costs'.

12. Relying upon *Aswini Kumar Ghose and Another v Arabinda Bose and Another*, learned Counsel appearing for the respondents have submitted that to determine the constitutionality of the impugned Act, resort cannot be had to the meanings of the words in the light of the preamble. It is further submitted that the statement of objects and reasons cannot be made basis for determining such constitutionality.

13. In this behalf reliance was also placed on *State of West Bengal v Union of India*, wherein it has been held that the statement of objects and reasons accompanying a bill, when introduced in Parliament, cannot be used to determine the true meaning and effect of the substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation. The Courts should not use the statement as an aid to the construction of the enactment. Reliance was also placed upon *Smt. Indira Nehru Gandhi v Raj Narain*, to urge that the rendering of a judgment ineffective by changing the basis of the enactment cannot be termed to be encroachment on judicial power if the legislation was within the competence of the legislature. Further, relying upon *M/s. Utkal Contractors and Joinery (Private) Limited v State of Orissa*, it has been urged that it could not be said that the State while legislating the Act had encroached upon the judicial power and set aside the binding judgment of the Supreme Court. In that case the Court held:

'14. The next question to be considered is whether the State while purporting to amend the Act has encroached upon the judicial power and set aside the binding

judgment of this Court. We do not think that Mr. Nariman was justified in contending so. The principles have been well-established in a string of decisions of this Court, and we may briefly summarise as follows:

The legislature may, at any time, in exercise of the plenary power conferred on it by Articles 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law. There is no prohibition against retrospective legislation. The power of the legislature to pass a law postulates the power to pass it prospectively as well as retrospectively. That of course, is subject to the legislative competence and subject to other constitutional limitation. The rendering ineffective of judgments or orders of competent Courts by changing their basis by legislative enactment is a well-known pattern of all Validating Acts. Such validating legislation which removes the causes of ineffectiveness or invalidity of action or proceedings cannot be considered as encroachment on judicial power. The legislature, however, cannot by a bare declaration, without more, directly overrule, reverse or set aside any judicial decision. *Hari Singh v Military Estate Officer, Government of Andhra Pradesh v Hindustan Machine Tools Limited, I.N. Saksena v State of Madhya Pradesh, and Misri Lal Jain v State of Orissa* .

15. In the instant case having regard to the then existing provisions of the Act, this Court declared that the Act and notification issued thereunder in relation to sal seeds did not apply to sal seeds grown in Government forests. The Act has been suitably amended by the impugned Ordinance by removing the cause of ineffectiveness pointed out by this Court. The new provisions would now cover specified forest produce whether grown or found on land owned by private persons or on land owned by the State Government or in Government forests and the contracts relating thereto. Such contracts shall stand rescinded when a notification under Section 1(3) of the Act is issued'.

In *I.N. Saksena's case, supra*, it was held that the validity of the validating law has to be judged by three tests, viz., firstly, whether the legislature possesses competence over the subject-matter, secondly, whether by validation the legislature has removed the defect which the Courts had found in the previous law and, thirdly, whether it is consistent with the provisions of Part III of the

Constitution. Reliance of the learned Counsel upon His Holiness Srimad Perarulala Ethiraja Ramanuja Jeeyar Swami v State of Tamil Nadu, is misplaced inasmuch as the Apex Court in that case did not consider the issue of law required to be settled by us in this petition.

14. On the basis of various pronouncements of the Apex Court it can be held that the legislature has the power to make laws under the constitutional scheme as provided under Part XI, Chapter I read with the Seventh Schedule of the Constitution. The legislature can enact laws both prospectively as well as retrospectively. The legislature can change the basis of a decision as given by the Court and thus change the law in general. However, legislature cannot set aside an individual decision inter parts and affect their rights and liabilities. The legislature cannot exercise the judicial power of the State and to function as an Appellate Court or Tribunal. The legislature has no power to ask the instrumentalities of the State to disobey or disregard the decision given by the Courts. The binding judicial pronouncements between the parties cannot be rendered ineffective with the aid of any legislative power- It has to be noticed that the preamble of the Act and the Statement of Objects and Reasons can be used only for the limited purpose of ascertaining the circumstances which led to the passing of the Act and to determine the validity of an offending Act the doctrine of pith and substance has to be applied.

15. The constitutionality of the Act has to be determined in the light of various pronouncements as noted hereinabove. The Act is styled as 'Amendment and Validation Act'. Amendment means 'change'. In the context of a statute the word 'amendment' would mean 'to make any change in any law'. Change in the law to be made with the object of making some improvement or removing the defect. It may be by way of variation, and addition. It would not include the repeal of the statute itself. The dictionary meaning of the word 'Validation' is 'the act of validating' and 'validating' means 'to ratify, to confirm and to substantiate'. It also means 'to make valid, legally binding, legalize, make lawful'.

16. A perusal of the Act would show that though described as Amendment Act, it has not amended any provisions of the principal Act. Section 2 of the Act only

amends the Zonal Regulations appended to the Outline Development Plan made and regulated by the acts of the Executive in exercise of the delegated power of legislation vested in it. Without amending Section 12 the legislature has validated the action taken by the competent authority in pursuance of the power of delegation vested in it. The Outline Development Plan was prepared and declared under Sections 9, 10 and 11 of the principal Act. No amendment has been made in the aforesaid sections. Strictly speaking the Act cannot be termed to be an Amendment Act. Sections 3 and 4 of the Act, when examined minutely, leave no doubt to hold that in effect and in the essence the Act is a 'Validating Act' and not an 'Amendment Act'. The passing of the Validating Act is not impermissible but the manner in which the Act has been enacted and enforced shows the casual approach adopted by the legislature in the process of enacting law with respect to the matters validly determined and adjudicated by the Courts of law so far as the parties to the litigation were concerned. The Act impugned can be set aside on this ground alone. However, in the light of what has been noted hereinabove, the constitutionality of the Act is also determined on assuming that the same was also an Amendment Act.

17. In order to examine as to whether the Act has taken away the basis of the judgments or declared the judgments ineffective, a reference to various orders passed by the Courts in that behalf is necessary. It appears that the object of the legislation has been to invalidate the pronouncements and not to remove the acts of invalidating all the action taken by the respondents. The illegal construction admittedly in violation of the licence granted and the regulations applicable were carried on by the private respondents in the face of the orders passed by this Court and in terms of the directions of the Supreme Court in S.L.P. 4940 of 1981. The Supreme Court had vacated the interim stay of this Court with the directions that:

'After hearing learned Counsel for the parties the Court disposed of the Special Leave Petition in the following terms:

In view of the undertaking which the petitioners are giving to the Court, the impugned order passed by the Trial Court, namely dismissal of the interim relief is

restored. The petitioners give an undertaking to this Court that in the event the original writ petition filed by respondents 6 to 9 ultimately succeeds and in case the construction put up by the petitioners is required to be pulled down, the petitioners will not raise any objection and will not plead the construction that is being done during the pendency of the writ petition as a defence to the pulling down of the construction. The written undertaking to be filed by the petitioners within one week'.

In consequence of the order of the Supreme Court in the aforesaid SLP, the private respondents submitted an undertaking to the effect:

'We hereby undertake that we will not raise any objection regarding the construction that is being done, hereafter, during the pendency of the writ petition as a defence to pulling down the said construction'.

The undertaking and the relevant portion of the order of this Court in Writ Appeal No. 898 of 1981 is as under:

'Respondents 6 and 7 hereby give an undertaking to this Hon'ble Court that in the event the original Writ Petition No. 3387 of 1981 filed by appellants ultimately succeeds and in case the construction put by the respondents 6 and 7 is required to be pulled down, the respondents 6 and 7 will not raise any objections and will not plead the construction that is being done during the pendency of the Writ Petition No. 3387 of 1981 as a defence to the pulling down of the construction. The above writ appeal may be disposed of accordingly.

On the basis of the above memo, the following order was made in the writ appeal:

In Civil Appeal No. 4940 of 1981 arising out of a similar writ petition, the Supreme Court accepted a similar undertaking and did not consider it necessary to issue any temporary injunction restraining the parties therein who were constructing similar high rise building in the same locality, from proceeding with such construction.

Following the above decision of the Supreme Court, we hold that in view of the undertaking now given by respondents 6 and 7 and embodied in the memo filed by

them today in Court, the order of the learned Single Judge declining to grant a temporary injunction does not call for interference. We direct that the undertaking given by respondents 6 and 7 be placed on record.

In view of such undertaking we dismiss the appeal'.

18. After the orders were passed in the aforesaid writ appeal, the purchasers and the occupiers of the flats filed their individual undertakings to the effect:

'I intend to occupy Apartment No. (sic) in Palace Orchard Apartments, Bangalore. I am aware of the pending proceedings in the Supreme Court and I hereby agree and undertake to vacate the said Apartment which I am going to occupy without objection whatsoever if I am required to do so on the orders of the Hon'ble Supreme Court and I shall not claim any compensation for vacating the said apartment in my occupation'.

Writ Petitions 3386 and 3387 of 1981 were allowed by a Division Bench of this Court on 11-6-1982 holding that the impugned licences were illegal. A mandamus was issued to the Commissioner, Corporation of the City of Bangalore, to modify the licence so as to bring it in conformity with the Outline Development Plan and the Zonal Regulations appended thereto which had been promulgated under Section 13(4) of the principal Act and thereafter to pass further necessary orders and to take consequential action in accordance with law. In the civil appeal filed in the Hon'ble Supreme Court, the following interim order was passed on 5-10-1982:

'The High Court judgment and its operative parts are stayed on the following terms:

(i) In both these matters no further or additional construction either heightwise, breadthwise or lengthwise would be undertaken by the appellants (builders). The appellants are, however, permitted to complete the existing eight floors (Ground plus 7 floors) by doing polishing, tiling, approaches, internal fittings such as fixing window panes, etc., and all other things necessary to complete the flats on the said floors subject to their giving an undertaking in writing to this Court that all the aforesaid completion work on 4th, 5th, 6th, 7th and 8th floors will be done by them

at their risk and cost and that they will raise no objection whatever to this Court passing an order for demolishing the said floors if the Court is ultimately inclined to pass such an order nor will they claim any compensation for such demolition if ordered. The appellants are further permitted to allow occupants to occupy the various flats on 4th, 5th, 6th, 7th and 8th floors on such terms as they think fit either on lease or leave and licence or ownership basis or in any other capacity whatsoever but subject to their obtaining and filing an undertaking from each one of the occupants stating that he has been apprised of the pending litigation and that he will vacate the premises in his occupation without any objection whatsoever in case he is required to do so under the orders of this Court and that he shall not claim any compensation for such vacating the premises in his occupation.

(ii) The Municipal and other authorities dealing with sewerage, electricity, water and issuance of completion certificates shall not withhold the issuance of completion certificate merely on the ground that this litigation is pending in this Court or that there is a High Court judgment in the matter. However, the authorities would be at liberty to consider and dispose of all applications made in that behalf on their own merits in accordance with law irrespective of the pendency of the litigation.

(iii) It is made clear that in case demolition of the 4th, 5th, 6th, 7th and 8th floors is ultimately decided upon by this Court appropriate orders may be passed by the Court to see that the same would be done in such a manner that the first three floors (being the ground and two upper floors) are least affected. The undertakings mentioned above will not apply to flats on first three floors (being the ground and two upper floors). The first undertaking should be filed by the partners of the appellant-firm and the trustees of the appellant-trust within 10 days from today. The occupants' undertaking will be filed one week before they are let in and such undertakings will be filed in this Court'.

The civil appeals were dismissed vide judgment reported in B.K. Sreenivasan's case, *supra*, with a direction that the judgment of the High Court shall be given effect to by the authorities taking note of the several undertakings given by the

private respondents and also the purchasers and occupiers of the flats. Writ Petition Nos. 10261 and 10262 of 1987 filed by the occupants of apartments after the judgment of the Supreme Court were dismissed by this Court on 29-10-1987 with the directions:

'For these reasons, the petitions insofar as they relate to the occupants of the apartments in question are allowed and the impugned orders are quashed reserving liberty for the Commissioner to take action in accordance with law after giving an opportunity to these occupants of being heard. It is hoped that the Commissioner would give these petitioners reasonable time to show cause against the proposed action. However, since more than 9 months have elapsed after the Supreme Court gave its final verdict, it is necessary that the Commissioner should take steps expeditiously to implement the judgment of the Supreme Court in accordance with law and in the light of the observations made in this order. Since the Commissioner obviously would not be in a position to ascertain who the occupants of the various apartments in question are, he shall issue a public notice in any one of the local newspapers in English calling upon all the occupants of the apartments in the buildings in question to show cause against the proposed action in terms of the directions of the Supreme Court and this Court. The Commissioner shall issue the public notice within one month from the date of receipt of this order and give effect to the directions of the Supreme Court and this Court within six months from the date of the issue of such notice'.

Thereafter, opportunity was given to the occupiers of the building and the respondent-Commissioner on 8-4-1988 directed the demolition of 6th, 7th and 8th floors of the two buildings. The order of the Commissioner was again challenged in the writ petitions as also in the writ appeals which were dismissed by this Court. In this background, the impugned Act was passed which obviously and ambiguously amounted to declaring the judgments of the Apex Court and this Court to be ineffective without effectively changing the basis which led to the passing of the judgments. In the statement of objects and reasons it was noticed that during the relevant period construction was permissible only up to five floors including the ground floor. It was also noticed that the permission granted by the Corporation contrary to the Zonal Regulations then in force was questioned in the High Court

and the Division Bench of the High Court held that the permission granted was in violation of the Zonal Regulations. The matter was taken up by way of Special Leave Petition which was dismissed by the Supreme Court on 19-1-1987. Litigation referred to in the statement of objects and reasons culminating in the dismissing of the Special Leave Petition vide the judgment of the Supreme Court on 19-1-1987 was admittedly between the contesting parties herein. Again a reference is made to the litigations initiated by the allottees of the extra floors and the dismissal of the writ petition filed by them. Reference is also made to the contempt petition filed against the Commissioner, Bangalore City Corporation. Such a reference is again made to Writ Petitions 10261 and 10262 of 1981 and C.C.C. Nos. 904 and 905 of 1991, admittedly pertaining to the buildings in dispute in the present litigations. It is further stated in theaforesaid statement of objects and reasons that as despite judgments of this Court and the Apex Court it was not possible to carry out the demolition as that the cost of demolition was prohibitive which was apprehended to even go beyond rupees one crore in respect of a single building. Such reference was obviously to the litigation between the parties herein. The legislature is stated to have found that:

'..the task of demolition is extremely difficult but failure to carry out the direction would attract contempt of Court. The interest of large number of allottees of the flat which is now in danger has also to be borne in mind.

In the circumstances, it is considered necessary to amend retrospectively the Zonal Regulations.....'.

As noted hereinabove the only object sought to be achieved by the passing of the Act appears to nullify the effect of the judicial pronouncements without removing the basis with the object to benefit the violators of law for reasons best known to the legislature itself. This Court cannot enter into the controversies regarding the alleged bona fides of the legislature but is of the firm opinion that the Act has been passed with the sole object of nullifying the effect of the judgments of this Court and the Apex Court. The Act intends to protect the interests of the private respondents who have been proved to be consistently and persistently defying the Court directions. After furnishing of the undertakings and being bound by the self-

imposed injunction/restraint the private respondents could not, under any circumstances, refuse to give effect to the Court directions and their undertakings. The legislature cannot come to their rescue in the accomplishments of their misadventure. The action of the legislature appeared to be in complete negation of the Rule of Law and respect for the institution of judiciary. The legislature apparently appears to have acted in a most casual manner obviously at the instance of the violators of law who are alleged to have attempted to deface the beautiful City of Bangalore which was acknowledged to be a city with magic and charm, with elegant avenues, gorgeous flowers, lovely gardens and plentiful spaces. The private respondents have attempted to not only mar the beauty of the city but have also endangered the life and property of the citizens by raising buildings in violation of the prevalent regulations. No care has been taken to prevent congestion and population density. No action appears to have been taken to provide for lung space where people could breathe as was noticed by Justice Chinnappa Reddy in the case between the parties. Had the legislature taken into consideration the observations made and directions issued by the Hon'ble Supreme Court in the case between the parties, we are sure, the impugned Act would not have seen the light of the day.

19. The learned Counsel appearing for the respondents has, however, submitted that quashing or setting aside the impugned Act would result in discrimination inasmuch as some other builders who were also alleged to have raised constructions in violation of the Zonal Regulations have been protected on the basis of the pronouncements made by the Court. Such a submission cannot be accepted for the purpose of validating the illegal acts committed by the private respondents. It would be appreciated if the legislature makes a law to bring the said violators also within the ambit of the judgment of the Apex Court and make provision for the demolition of the illegal constructions raised by them, which, according to the respondents, stands protected by way of judgments of the Courts. Anyhow, we are not persuaded to hold the Act to be valid only on the ground that some other violators have succeeded in getting some orders in their favour may be on account of the inaction of the respondents at the relevant time. It is appreciable that in the instant case, the petitioner has consistently been fighting against the injustice done to the citizens of Bangalore by influential and wealthy

concerned with only inflating their money bags without caring for the safety, security and health of the citizen and having scant regard for the congenial atmosphere and environment.

20. We are, therefore, satisfied that the impugned Act is unconstitutional having been passed to render the judgments of the Courts to be ineffective. The writ petition is accordingly allowed. Rule issued is made absolute. The Bangalore City Planning Area Zonal Regulations (Amendment and Validation) Act, 1996, is declared unconstitutional and not effective. The respondents are directed to give effect to the judgments of the Apex Court and this Court notwithstanding the impugned Act. The costs for demolition of the building and the loss caused to the other occupants, if any, be recovered from the private respondents who had undertaken to demolish the illegal construction in case the petitions were decided against them. The demolition of the illegal constructions would glorify the rule of law and create confidence and respect in the people for the institution of judiciary and its pronouncements. The petitioner is also held entitled to costs of Rs. 20,000/- to be paid by respondents 5 to 8.

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