

**Dharmambal Achi Vs. the Authorised Officer, Land Reforms and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/814343](http://sooperkanoon.com/814343)

**Court :** Chennai

**Decided On :** Jan-24-1969

**Reported in :** (1970)1MLJ544

**Appellant :** Dharmambal Achi

**Respondent :** The Authorised Officer, Land Reforms and anr.

**Judgement :**

K. Veeraswami, J.

1. The main contention for the petitioner is that in the light of *Golak Nath v. State of Punjab* : [1967]2SCR762 we should reconsider *Krishnaraju Reddiar v. Authorised Officer* (1967) 1 M.L.J. 179 : I.L.R. (1967) 3 Mad. 109, which upheld the validity of the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961. The Act was struck down by *Krishnaswami V. State of Madras* : [1964]7SCR82 , as violative of the fundamental rights. That was on 9th March, 1964, but the Parliament on 20th June, 1964, enacted the Constitution (Seventeenth Amendment) Act, 1964 which included the Act in the Ninth Schedule to the Constitution. The validity of the Seventeenth Amendment was unsuccessfully questioned before the Supreme Court in *Sajjan Singh v. State of Rajasthan* : [1965]1SCR933 . It was there held by the majority opinion that Article 13 (2) did not affect the Amendment of the Constitution made under Article 368 and that the power to amend the Constitution conferred by Article 368 included even power to take away fundamental rights under Part III. In *Krishnaraju Reddiar v. Authorised Officer* I.L.R. (1967)Mad 109 : (1967) 1 M.L.J. 179, we held that the Madras Act was not incompetent for want of legislative power, and rejected the ground that Act, having been struck down as invalid by the Supreme Court in *Krishnaswami v. State of Madras* : [1964]7SCR82 , it was non est and was void ab initio and Article 31-B did not help to validate it without a separate validating Act passed by the Madras Legislature. While recognising the principle in *Deep Chand v. State of Uttar Pradesh* : AIR1959SC648 , that an after acquired power cannot, ex proprio vigore validate a statute void when enacted, we held that it was, however, open to the constituent power, which is supreme, to expressly validate a law hit by Article 13 (2) of the Constitution by removing the prohibition specifically with reference to such law. We said:

If a law in the teeth of a constitutional prohibition is invalid from its inception, we can see no valid objection to the constituent power lifting the prohibition retrospectively and providing that the law should not be deemed to be void by reason of the prohibition thereby reviving and Validating the law right through.

2. We pointed out that was what Article 31-B did which in terms provides that none of the Acts and Regulations specified in the Ninth Schedule should be deemed to be void or ever to have become Void on the ground that such Acts and Regulations are inconsistent with or take away or abridge any of the rights conferred by any provisions of Part III. It may be seen that our view in *Krishnaraju Reddiar v. Authorised Officer* I.L.R. (1967) 3 Mad 109 : (1967) 1 M.L.J. 179, proceeded on the assumption that *Sajjan Singh v. State of Rajasthan* : [1965]1SCR933 , as to the scope of Article 13 (2) and 368 held the field. But that and the earlier cases in *Shankari Prasad Singh v. Union of India* (1951) S.C.J. 775 : (1951) 2 M.L.J. 683 : A.I.R. 1951 S.C. 458, have been held by the majority in *Golak Nath v. State of Punjab* : [1967]2SCR762 , to have been wrongly

decided. According to the majority view in *Golak Nath v. State of Punjab* : [1967]2SCR762 , the power of the Parliament to amend the Constitution is derived from Articles 245, 246 and 248 of the Constitution and not from Article 368 which only contains the procedure; amendment to the Constitution is but a legislative process and is a law within the meaning of Article 13 and if it takes away or abridges the rights conferred by Part III, it is void. Since the Parliament has, therefore, no power to amend Part III of the Constitution, so as to take away or abridge the fundamental rights, the Constitution (First Amendment) Act, 1951, the Constitution (Fourth Amendment) Act, 1955 and the Constitution (Seventeenth Amendment) Act, 1964, would be void, but on the basis of the earlier decisions of the Supreme Court and invoking and applying the doctrine of prospective overruling, it upheld these Acts to be valid.

3. The facts in this petition are of the same pattern as in *Krishnaraju Reddiar v. Authorised Officer* : [1965]1SCR933 . In that case we have fully set out the provisions of the Madras Act, their intendment and effect as well as the background of the legislation with the relative decided cases and they do not, therefore, require reiteration. The petitioner is a ryotwari proprietor owning lands in two villages, Meenammanallur and Isanur in Nagapattinam taluk and Melakottakam in Mannargudi taluk. As on 6th April, 1960, her holding totalled 104 acres and 7 cents out of which 99 cents were exempt under Section 73 and 42 acres and 63 cents were within the ceiling. The surplus 60 acres and 45 cents equivalent to 36 standard acres and 91 cents was notified under Section 18 (1) and there was a proclamation under Section 18 (2) (a) of the Act issued on 29th December, 1966, which was published as prescribed. The petition is to quash the notification under Section 18 (1).

4. Sri Vedantachari for the petitioner argues that when there is no constituent power to amend the Constitution and constitutional amendment is itself but a law within the ambit of Article 13 (2) of the Constitution, the Seventeenth Amendment cannot validly revive and validate the Madras Act which had been struck down as still born by *Krishnaswami v. State of Madras* : [1964]7SCR82 , as the power to revive it exclusively belongs to the State Legislature as a legislative function. Before we proceed to deal with it, we may reiterate that in *Krishnaraju Reddiar v. Authorised Officer* I.L.R. (1967) 3 Mad. 109 : (1967) 1 M.L.J. 179, we did not accept the contention that the Madras Act was incompetent for want of legislative power. *Krishnaswami v. State of Madras* : [1964]7SCR82 , struck it down only on the ground that it violated Part III of the Constitution. The protection afforded by Article 31-B to the Act is limited to such violation and is not against any other ground. If the impugned State legislation lacks legislative competence otherwise than with reference to the fundamental rights, the Seventeenth Amendment does not and cannot save it. While dealing with the challenge against the Bihar Land Reform Act, 1950, Patanjali Sastri, C.J., in *State of Bihar v. Kameswar Singh* : [1952]1SCR1020 , observed:

It will be noted, however, that Article 31-A and 31-B afford only limited protection against one ground of challenge, namely, that the law in question is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this part. This is made further clear by the opening words of Article 31-A ' notwithstanding anything in the foregoing provisions of this part.' The Amendment Act (First Amendment) thus provides no immunity from attacks based on the lack of legislative competence under Article 245 read with the entries in List II or List III of the Seventh Schedule to the Constitution to enact the three impugned statutes as the Amendment Act did not in any way affect the lists.

5. What Sri Vedantachari says is that the Parliament is not competent to revive and validate an invalid State legislation. We do not think that this proposition can be disputed and the Supreme Court said in *Jaora Sugar Mills v. State of Madhya Pradesh* : [1966]1SCR523 ,

If it is shown that the impugned Act purports to do nothing more than validate the invalid State statutes, then of course, such a validating Act would be outside the legislative competence of Parliament itself.

6. The position will be *a fortiori* where the State Legislature lacks competency with reference to the relevant lists and the Parliament in exercise of its own power makes a law attempting to rectify the defect. The

Parliament cannot validate the State Acts which are void for lack of legislative power.

7. But in our view, the foregoing considerations do not affect the Validity of the Madras Land Reforms (Fixation of Ceiling on land) Act, 1961. We are inclined to that view for two reasons. The majority decision in *Golak Nath v. State of Punjab* : [1967]2SCR762 , has only prospective operation and has upheld the validity of the Seventeenth Amendment on the limited application of the principle of stare decisis and on the basis of its earlier decisions, namely *Shankari Prasad Singh v. Union of India* (1951) S.C.J. 775 : A.I.R. 1951 S.C. 458, and *Sajjan Singh V. State of Rajasthan* : [1965]1SCR933 . This can only be on the footing that the two decisions, should hold the field in respect of legislative enactments including the Seventeenth Amendment made prior to 27th February, 1967, when *Golak Nath v. State of Punjab* : [1967]2SCR762 , the contention, inter alia, was that Seventeenth Amendment, in spite of the decision of the Supreme Court in *Golak Nath v. State of Punjab* : [1967]2SCR762 , was invalid and it was disposed of by the Supreme Court by the following observations:

Coming to the second point, the learned Counsel merely mentions the point. He says that there was no majority for any particular ratio as five Judges held the Seventeenth Amendment to be void because it contravened Art. 13 (2), but by applying to doctrine of 'prospective overruling' they declared that their decision would not affect the validity of the Seventeenth Amendment. Hidayatullah, J., as he then was, on the other hand, did not apply the doctrine of 'prospective overruling,' but held Section 3 (2) of the Seventeenth Amendment to be bad. The other five Judges held that the Seventeenth Amendment was a valid amendment of the Constitution. We are, however, bound by the result arrived at by this Court in that decision and the result that the Seventeenth Amendment is valid is binding on us.

8. The point is that the majority in *Golak Nath v. State of Punjab* : [1967]2SCR762 , by applying the doctrine of prospective overruling 'upheld the validity of the Seventeenth Amendment, the validity being rested on the basis of the earlier view of the Supreme Court in the two decisions as to the scope of Articles 13 (2) and 368 of the Constitution. Our view in *Krishnaraju Reddiar v. Authorised Officer* I.L.R. (1967) 3 Mad. 109 : (1951) 1 M.L.J. 179, as to the validation of the Madras Act by the Seventeenth Amendment being rested on *Sankari Prasad Singh v. Union of India* (1951) S.C.J. 775 : (1951) 2 M.L.J. 683 : A.I.R. 1951 S.C. 458, and *Sajjan Singh v. State of Rajasthan* : [1965]1SCR933 , does not call for reconsideration because of their prospective overruling only by *Golak Nath v. State of Punjab* : [1967]2SCR762 .

9. The second reason is this. Though in a sense the Seventeenth Amendment can be said to have revived and Validated the Madras Act after it had been struck down by *Krishnaswami v. State of Madras* : [1964]7SCR82 , that result is not brought about by the Parliament assuming powers not belonging to it but the State Legislature. The revival and validation of the Madrai Act by the Seventeenth Amendment are not in our view, a species of State Legislation arrogated by the Parliament to itself but have been brought about by the deeming process employed by Article 31-B without in any way trenching on the State Legislature's power. The invalidity of the Madras Act as found in *Krishnaswami v. State of Madras* : [1964]7SCR82 , resulted from the operation of Article 13 (2) and in effect what Article 31 -B says is that Article 13 (2) with reference to the State Act in question never applied to it. If this position is fixed in mind as a fact, and it is not allowed to boggle, there will then be no room for the argument based on the Act being still-born on account of its violation of the fundamental rights and its revival and revalidation.

10. The petition is dismissed with costs. Counsel's fee Rs. 100.

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