SUPREME COURT OF INDIA

Bakhtawar Trust and ors.

Versus

M.D. Narayan and ors.

6.5.2003

(V.N. Khare C.J. and Ashok Bhan, J.)

Civil Appeal No. 8951 of 1997.

JUDGMENT

V.N. Khare, C.J., - The question that arises in these appeals is, whether the Bangalote City Planning Area Zonal Regulations (Amendment & Validation) Act, 1996 (Karnataka Act No. 2 of 1996) [hereinafter referred to as `the Act'], is constitutionally valid ?

2. Civil Appeal No. 831/98 has been filed at the instance of the State of Karnataka whereas Civil Appeal No 8951/97 is by the builders [hereinafter referred to as "the builders"].

3. In the year 1980 the builders were granted permission to construct eight-sotoreyed building eighty feet in height in the locality of 9th Main Road, Rajmahal Vilas Extension, Bangalore by the Karnataka Municipal Corporation, Bangalore (hereinafter referred to as "the Corporation").

4. The respondent has the property adjoining to the site where eight-storeyed buildings were to be constructed. When the builders were about to construct the building, the respondent herein filed a petition challenging the permission granted to the builders to construct eight-storeryed residential building. In the writ petitions, it was alleged that the aforesaid sanction is in contravention of the Outline Development Plan and the Zonal Regulations framed for the City of Bangalore under the provisions of the Karnataka Town & Country Planning Act, 1965 (hereinafter referred to as "the Planning Act"). In the writ petition it was prayed that a writ of mandamus be issued to the Corporation to issue forthwith a fresh licence to the builders in conformity with the Outline Development Plan and Zonal Regulations appended thereto promulgated under Section 13(4) of the Planning Act. Here it is relevant to notice that outline development plan and the Zonal Regulations framed under the Act provided maximum height of new construction as 55 feet, whereas Rule 16 of Bye-laws 38 framed by the Bangalore Municipal Corporation provided maximum height of new building as 80 feet. In the writ petition, the respondent prayed for grant of an interim order. However the prayer for interim order was refused. The respondent thereafter preferred writ appeal against the refusal of the grant of interim order before the Division Bench of the Karnataka High Court. The Division Bench of High Court passed an order restraining the builder from constructing the building. Aggrieved, the appellants challenged the aforesaid order by means of a special leave petition before the apex Court. The Court set aside the impugned order subject to the builders' furnishing the undertakings to the effect that in the event of the writ petition being decided against them, they would have no objection to the demolition of the portion of the building made by them.

It is not disputed that the builders gave undertakings before the High Court in terms of the order of the apex Court. Similarly, every purchaser and occupier of the flats in the aforesaid building also gave individual undertakings before the Court. Subsequently, the writ petition filed by the respondent came up for hearing before a Division Bench of the High Court. The High Court by means of the order and judgment dated 11th of June, 1982 allowed the writ petition. The builders thereafter filed appeals before the apex Court, but their appeals were dismissed on 19.1.1987. After dismissal of the civil appeals by this Court, some of the occupants for the premises filed writ petitions challenging the action of the Commissioner in implementing the writ issued by the High Court. However, the said writ petitions were disposed of by an order and judgment dated 29.10.1987. In terms of the directions given by the High Court and after giving opportunity of hearing to all the occupiers of the building, the Commissioner passed an order that 3 floors (6th, 7th and the 8th floors) of the building constructed by the builders by demolished. Thereafter, different proceedings were taken, which are not relevant for the purpose of the present case. However, the respondent filed a contempt petition in the High Court for non-compliance of the order of the High Court. While the matters were pending, the Amending and Validating Act was passed by the Karnataka Legislature, modifying the maximum height of the new building upto above 165 feet and validating the new construction raised in violation of Outline Development Plan and the Zonal Regulations.

5. After the impugned Act was passed, the respondent herein filed a petition challenging the constitutional validity of the Act. The State of Karnataka and the builders defended the validity of the Act. Subsequently, the writ petition came up for hearing before the Division Bench of the Karnataka High Court which allowed the writ petition and struck down the impugned Act holding it to be constitutionally invalid. The High Court was, *inter alia,* of the view that the impugned Act instead of curing the basis of the decision rendered by the High Court, purported to set at naught the decision given by the High Court which was upheld by the Supreme Court; that the object of the impugned Act was to invalidate the pronouncement of the High Court and not to remove the fact of invalidity on the action taken by the appellant; and that Section 2 of the Act only amends the Zonal Regulations appended of the Outline Development Plan made and framed by the Executive in exercise of the delegated power of legislation vested in it without amending the provisions of the Planning Act.

6. S/Shri Harish N. Salve and Gopal Subramanium, learned senior counsel appearing for the appellants argued that the impugned Act is constitutionally valid and the view taken by the High Court is erroneous and deserves to be set aside. However, Shri Ranjit Kumar, learned senior counsel appearing for the respondents defended the view taken by the High Court.

7. On the arguments of the parties, the question that arises for consideration is whether the Karnataka Legislature by the impugned Act has removed the basis of the judgment of the High Court or it, without amending the basis, has purported to nullify the judicial decree *per se* and, therefore, such an Act is *ultra vires* the competence of the State Legislature.

8. Here it would be relevant to advert to the relevant provisions of the Planning Act and the Zonal Regulations framed under Section 13 and Bye-laws framed by the Corporation and the impugned Act.

9. The Planning Act provides for regulation by way of planned growth of land use development and execution of Town Planning Scheme in the State of Karnataka. Section 4-A of the Planning Act empowers the State Government to declare any area in the State to be a Local Planning Area for

purposes of the Act. Section 4-C of the Planning Act provides for constitution of Planning Authority for the purpose of performing 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 to indicate the manner in which the development and improvement of the entire planning area with the jurisdiction of the Planning Authority is required to be carried out and regulated. Under Section 13 of the Planning Act the State Government has 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 declaration no change in the land use or development can be made except with written permission of the Planning Authority. In exercise of power conferred under Section 13, the Authority has framed Zonal Regulations appended to Outline Development Plan. The said Regulations provide maximum height of the building to be constructed in the area as 55 ft.

10. Chapter IV of the Planning Act deals with comprehensive Development Plan providing for preparation of such plan, its contents and approval by the State Government and the manner of its enforcement. The Comprehensive Development Plan is to supersede the Outline Development Plan. The Corporation has framed its bye-laws providing for maximum height of building constructed with the Corporation's limits. Rule 16 of Bye-law 38, which is relevant for the present case, and was in existence at the material time, runs as under :

"16. **Height of the Building** :- No person erecting or re-erecting a building on a site which abuts on a street shall, so construct it 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 it, and any open space immediately in front of such building *and in no case more than eighty feet."*

(Emphasis added)

11. The impugned Act, which received the assent of the Governor on 14.3.1996 and was published in the Karnataka Gazette Extra-ordinary on the same day, reads thus :

"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 Regulation 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 Chairman Government, Urban Development Department

(ii) The Commissioner, Member Corporation of the City of Bangalore

(iii) The Commissioner, Member Bangalore Development Authority

(iv) The Director of Town Member Secretary Planning

(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."

12. A perusal of the aforesaid provisions shows that with effect from 1972 to 1984 under the Zonal Regulations the maximum height permissible for any new building was upto 55 ft. However, Rule 16 of Bye-law 38 provided height of the erection or re-erection of any new building up to 80 ft. It is also not disputed that the said Zonal Regulations ceased to have effect after Comprehensive Development Plan came into force in the year 1985 and after passing of the impugned Act, the height of the new building could be raised to above 50 metres, i.e., 165 ft.

13. In the light of the aforesaid provisions, the validity of the impugned Act has to be looked into.

14. The validity of any Statute may be assailed on the ground that it is *ultra vires* the legislative competence of the Legislature which enacted it or it is violative of Part III or any other provision of the Constitution. It is well settled that the Parliament and State Legislatures have plenary powers of legislation within the fields assigned to them and subject to some constitutional limitations, can legislate prospectively as well as retrospectively. This power to make retrospective legislation enables the legislature to validate prior executive and legislative acts retrospectively after curing the defects that led to their invalidation and thus makes ineffective judgments of competent courts declaring the invalidity. It is also well settled that a validating Act may even make ineffective judgments and orders of competent Courts provided it, by retrospective legislation, removes the cause of invalidity or the basis that had led to those decisions.

15. The test of judging the validity of the Amending and Validating Act is, whether the legislature enacting the Validating Act has competence over the subject matter; whether by validation, the said legislature has removed the defect which the Court had found in the previous laws; and whether the Validating law is consistent with the provisions of Part III of the Constitution.

16. In ***Shri Prithvi Cotton Mills v. Broach Borough Municipality, (1970)2 SCC 388,*** it was held that -

"When a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, *the cause for ineffectiveness or invalidity must be removed* before validation can be said to take place effectively.

.....

Granted legislative competence, *it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise.* A court's decision must always bind *unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.* .... The legislature may follow any one method or all of them and while it does so it *may neutralise the effect of the earlier decision of the court which becomes ineffective after the change or the law .....*

If the legislature has the power over the subject-matter and competence to make a valid law, it can at

any time make such a valid law and make it retrospectively so as to bind, even past transactions. The validity of a Validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and *whether in making the validation it removes the defect which the courts had found in the existing law* and makes adequate provisions in the Validating law or for a valid imposition of the tax."

17. In ***Government of Andhra Pradesh & anr. v. Hindustan Machine Tools Ltd., 1975 (Supp.) SCR 394,*** this Court observed :

"We see no substance in the respondent's contention that by redefining the term `house' with retrospective effect and by validating the levies imposed *under the unamended* Act as if, notwithstanding anything contained in any judgment decree or order of any court, that Act as amended was in force on the date when the tax was levied, the Legislature has encroached upon a judicial function. The power of the Legislature to pass a law postulates the power to pass if prospectively as well as retrospectively, the one no less than the other. Within the scope of its legislative competence and subject to other constitutional limitations, the power of the Legislature to enact laws is plenary.....

The State Legislature, it is significant, *has not overruled or set aside the judgment of the High Court. It has amended the definition of `house' by the substitution of a new Section 2(15) 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 decision rendered by the High Court *so that the decision could not have been given in the altered circumstances.* If the old Section 2(15) were to define `house' in the manner that the amended Section 2(15) does, there is doubt that the decision of the High Court would have been otherwise. In fact, it was not disputed before us that the buildings constructed by the respondent meet fully the requirements of Section 2(15) as amended by the Act of 1974."

18. In ***State of Mysore v. Fakrusab Babusab Karanandi, 1977(2) SCR 544 at 546,*** it was held -

"It is now settled law that when a legal fiction is enacted by the Legislature, the Court should not allow its imagination to boggle but must carry the legal fiction to its logical extent and give full effect in it. We must, therefore, proceed on the basis that the words "or police" were always there in clause (b) of Section 60, even at the time when the learned Judicial Magistrate made his order dated 3rd October, 1970 refusing to take cognizance of the offence and returning the charge-sheet to the police. If these words were in clause (b) of Section 60 at that time, then obviously the learned Magistrate was in error in refusing to take cognizance of the complaint on the ground that the charge-sheet was not filed by an excise officer but by the police. That is the clear effect of the legal fiction enacted in Section 23 of Mysore Act 1 of 1971."

19. In ***Hindustan Gum and Chemicals Ltd. v. State of Haryana & ors. 1985(4) SCC 124,*** this Court held -

"It is now well settled that it is permissible for a competent Legislature to overcome the effect of a decision of a court setting aside the imposition of a tax by passing *a suitable legislation amending the relevant provision of the statute concerned with retrospective effect, thus taking away the basis on which the decision of the court had been rendered and by enacting an appropriate provision validating the levy and collection of tax* made before the decision in question was rendered."

20. In ***Vijay Mills Company Ltd. & ors. v. State of Gujarat & ors., 1993(1) SCC 345 at 357,*** it was held -

"18. From the above, it is clear that there are different modes of validating the provisions of the Act retrospectively, depending upon the intention of the Legislature in the behalf. Where the Legislature intends that the provisions of the Act themselves should be deemed to have been in existence from a particular date in the past and thus to validate the actions taken in the past as if the provisions concerned were in existence from the earlier date, the Legislature makes the said intention clear by the specific language of the validating Act *It is open for the Legislature to change the very basis of the provisions retrospectively and to validate the actions on the changed basis.* This is exactly what has been done in the present case as is apparent from the provisions of clauses (3) and (5) of the Amending Ordinance corresponding to Sections 2 and 4 of the Amending Act No. 2 of 1981. We have already referred to the effect of Sections 2 and 4 of the Amending Act. The effect of the two provisions, therefore, *is not only to validate with retrospective effect the rules already made but also to amend the provisions of Section 214 itself to read as if the power to make rules with retrospective effect were always available under Section 214 since the said section stood amended to give such power from the time the retroactive rules were made.* The Legislature had thus taken care to amend the provisions of the Act itself both to give the Government the power to make the rules retrospectively as well as to validate the rules which were already made. *The contention that the Validating Act cannot validate rules made or acts done prior to the date it was enacted, if accepted, will strike at the very root of the concept of retrospective validation.*

The device of validating a statute is forged precisely to adopt the law to meet the exigencies of the situations. *The validation, therefore, may be done in the manner required by the needs of the time. All that is required is that the agency which validates the statute must have the power to do it.* The manner and method of doing it is to be left to the authority. If the intentions are clear, the validation has to be interpreted according to the intentions. The Courts have in fact upheld such validation regarding it to be an important weapon in the armoury of legislative devices. It is to emphasise this aspect that we have endeavoured to summarise the law on validation as above, at the cost of lengthening the judgment."

21. In ***Indian Aluminium Co. & ors. v. State of Kerala & ors., 1996(7) SCC 637,*** explaining Madan Mohan Pathak's judgment, this Court observed, thus-

"From the observations made by Bhagwati, J. (per majority,) it is clear that *this Court did not intend to lay down that Parliament, under no circumstance, has power to amend the law removing the vice pointed out by the court. Equally, the observation of Chief Justice Beg is to be understood in the context that as long as the effect of mandamus issued by the court is not legally and constitutionally made ineffective, the State is bound to obey the directions.* Thus understood, it is unexceptionable. But, it does not mean that the learned Chief Justice intended to lay down the law that mandamus issued by court cannot at all be made ineffective by a valid law made by the legislature, removing the defect pointed out by the court."

22. In ***Comorin Match Industries (Pvt.) Ltd. v. State of TN, 1996(4) SCC 281,*** this Court held -

"We are unable to uphold the contention that merely because an order was passed in the contempt proceeding to make payment, the respondent is estopped from claiming the amount of tax raised by an assessment order validated by the Act of 1969. If this argument is accepted, a strange result will follow. The assessment order will remain valid. That notice of demand raised pursuant to the

assessment order will remain intact and in force, but it will not be open to the Department to realise the amount of tax merely because of the order passed in the contempt proceeding. The writ court's order had to be carried out, which is why the refund order was passed in the contempt proceeding. This direction to refund the amount of tax already collected was given only because the assessment orders had been set aside by the writ court. But, when the assessment orders were validated by passing the Amendment Act of 1969 with retrospective effect, the tax demand became valid and enforceable. The tax demand is a debt owed by an assessee which can be realised by the State in accordance with law. Merely because the amount of tax which had been realised earlier was directed to be refunded by court's order on the finding that the assessment order was invalid, will not preclude the State from realising the tax due subsequently when the assessment order was validated by the Amending Act of 1969. The order passed in the contempt proceeding will not have the effect of writing off the debt which is statutorily owed by the assessee to the State. The State has filed a suit for recovery of this debt. Unless it can be shown that the debt does not exist or is not legally due, the court cannot intervene and prevent the State from realising its dues by a suit. All that the Department has done in this case is to bring a suit to recover the amount of tax due and payable to it as a result of what must now be treated as a valid assessment order."

23. In ***T. Venkata Reddy & ors. State of Andhra Pradesh, 1985(3) SCC 198 at 211,*** this Court held -

"It is a settled rule of constitutional law that the question whether a statute is constitutional or not is always a question of power of the Legislature concerned, dependent upon the subject-matter of the statute, the manner in which it is accomplished and the mode of enacting it. While the courts can declare a statute unconstitutional when it transgresses constitutional limits, they are *precluded from inquiring into the propriety of the exercise of the legislative power. It has to be assumed that the legislative discretion is properly exercised. The motives of the legislature in passing a statute is beyond the scrutiny of courts. Nor can the courts examine whether the legislature had applied its mind to the provisions of a statute before passing it...."*

24. This Court in ***Gurudevdatta VKSS Maryadit and ors. v. State of Maharashtra & ors., 2001(4) SCC 534 at 546,*** observed thus -

"The Constitution Bench observed that the motive of the legislature in passing a statute is beyond the scrutiny of the courts. It is not only the propriety to follow the Constitutional Bench judgment but we are definitely of the opinion and view that by no stretch the courts can interfere with a legislative malice in passing a statute. Interference is restrictive in nature and that too on the constitutionality aspect and not beyond the same."

25. The decisions referred to above, manifestly show that it is open to the legislature to alter the law retrospectively, provided the alteration is made in such a manner that it would no more be possible for the Court to arrive at the same verdict. In other words, the very premise of the earlier judgment should be uprooted, thereby resulting in a fundamental change of the circumstances upon which it was founded.

26. Where a legislature validates an executive action repugnant to the statutory provisions declared by a Court of law, what the legislature is required to do is first to remove the very basis of invalidity and then validate the executive action. In order to validate an executive action or any provision of a statute, it is not sufficient for the legislature to declare that a judicial pronouncement given by a Court of law would not be binding, as the legislature does not possess that power. A decision of a

Court of law has a binding effect unless the very basis upon which it is given is so altered that the said decision would not have been given in the changed circumstances.

27. Here, the question before us is, whether the impugned Act has passed the test of constitutionality by serving to remove the very basis upon which the decision of the High Court in the writ petition was based. The question gives rise to further two questions - first, what was the basis of the earlier decision; and second, what, if any, may be said to be the removal of that basis.

28. In the earlier decision of the High Court, it was found that licence to construct the building upto 80 feet was repugnant to the Zonal Regulations framed under Section 13 of the Planning Act which provided a maximum height of new building as 55 feet. Thus, the provision of Zonal Regulations which provided maximum height of 55 feet in case of a new building was, therefore, the basis upon which the High Court proceeded to conclude that the construction of the building violated the prescribed norms. It is manifest that the impugned Act has retrospectively modified the Zonal Regulations of 1972 by raising the height of a building from 55 feet to above 165 feet. The provision of law upon which the High Court has placed reliance has, therefore, undergone a material alteration. The High Court would now find it impossible to take the view that the said building was erected in violation of the law, and that the licence granted therefor, was accordingly legally invalid.

29. It was urged on behalf of the learned counsel for the respondent that the impugned amendment was tantamount to a naked usurpation of judicial power inasmuch as its stated purpose and effect were to nullify the effect of the earlier judgment adjudicating the rights between the parties. The adverse effect of the provision on the rule of law, as well as on the doctrine of separation of powers would, therefore, impart detrimentally upon the constitutional validity of the same. We do not find any merit in the argument. Although it would stand to reason that when viewed in isolation, Section 4 of the impugned Act would suggest an appearance of legislative impropriety, but it is a well-established canon of statutory construction that the impugned provision of any statute must be considered in the context of the statute as a whole. It is manifest that what we are concerned with in the present proceedings are not the *vires* of Section 4 only, but the entire Validation Act constitutionality of which has been brought into question.

30. A perusal of the impugned Act further reveals that the stipulated maximum height upto which a building may be constructed under the Zonal Regulations, 1972, has been retrospectively modified, thereby allowing a maximum height of any building above 165 feet, as opposed to the earlier permissible maximum height of 55 feet. The legislature has, therefore, not merely negated the effect of any prior judgment; but it has removed the actual basis upon which the judgment was based and thereafter validated the actions. It would no more be possible for a Court to conclude that the concerned buildings violated the terms of Zonal Regulations, since the legal basis has now been altered through an enhancement of the maximum permissible height retrospectively. We are, therefore, of the view that the impugned Act is constitutionally valid.

31. It was then urged on behalf of the respondents that a perusal of the Statement of Objects and Reasons for the Validation Act shows that the intention of the legislature was rather to render the decision of the High Court infructuous than to correct any infirmity in the legal position. For this, reliance was sought to be placed on the Statement of Objects and Reasons of the impugned enactment. It is well settled by the decisions of this Court that when a validity of a particular statute is brought into question, a limited reference, but not reliance, may be made to the Statement of Objects and Reasons. The Statement of Objects and Reasons may, therefore, be employed for the purposes of comprehending the factual background, the prior state of legal affairs, the surrounding

circumstances in respect of the statute and the evil which the statute has sought to remedy. It is manifest that the Statement of Objects and Reasons cannot, therefore, be the exclusive footing upon which a statute is made a nullity through the decision of a Court of law.

32. In ***T. Venkata Reddy & ors. v. State of Andhra Pradesh, 1985(3) SCC 198,*** and ***Gurudevdatta VKSS Maryadit v. State of Maharashtra & ors, 2001(4) SCC 534,*** it has been laid down that the intention of the legislature in enacting a particular statute is immaterial in terms of the question relating to its validity. The intention of the legislature in passing of a particular statute is beyond the pale of judicial review. In the present matter, the supposedly nebulous intention of the legislature to defeat the judicial process is, therefore, outside the bounds of our consideration.

33. It would be pertinent for us to observe at this stage that in view of Section 3(1) of the impugned Act, any building that has deviated from the Zonal Regulations, as modified, may nonetheless be regularized by the State Government as an authorised construction. It may be seen, then, that the nature of the provision under the Regulation, stipulating a height of 55 feet has thereby undergone a radical change. The provision that was earlier in the nature of a *sine qua non* would now be subject to post-construction regularization to the extent that under Section 3(3) of the impugned Act the concerned authority is empowered to determine a penalty for deviations not amounting to material deviations.

34. It follows that the basis of the decision of the High Court has undergone a change. Earlier, the High Court could not but take the view that construction of a building in excess of a height of 55 feet was in violation of Zonal Planning Regulations. Now, under the changed law, it would not be permissible for the High Court to take that view.

35. Lastly, Shri Ranjeet Kumar, learned senior counsel *inter alia,* urged that the impugned Act though described as a Amendment Act has not amended any provision of the principle Act, inasmuch as Zonal Regulation has not been amended in the manner it was provided in the Act and, therefore, the Amendment and the Validation Act have not removed the basis of the earlier judgment and, therefore, the impugned Act is unconstitutional. We do not find any merit in the submission.

36. It is true that under Section 13, the method of framing of Zonal Regulations is provided under which a maximum height of building can be provided by the impugned Act. The legislature in its wisdom though to provide a maximum height of a new building in the statute itself and it is no longer left to the discretion of the authority to provide a maximum height of a new construction by framing Zonal Regulations under the Act. Now, the Outline Development Plan as prescribed in the Schedule appended to the new Act, cannot even be amended by the procedure prescribed under Chapter III of the Planning Act. The impugned Act substituted the existing Regulations with a statutory Zonal Regulation to the extent it provided maximum height of new building. Further, this is done with retrospective effect i.e. for the entire period during which the Outline Development Plan remained in force i.e. from 1972 to 1984. It is settled law that where a law is retrospectively amended, the consequences of such retrospective amendment are that all actions have to proceed on the premise that the law, as amended, was always the law in force. In that view of the matter there was neither any need for the legislature to modify the maximum height of a new building in the manner provided in the Planning Act nor to amend the provisions of the Planning Act providing for method of framing Zonal Regulations.

37. For the aforesaid reasons we are of the view that the impugned Act is constitutionally valid and

the view taken by the High Court in striking down the Act was erroneous.

38. For the reasons aforementioned, the judgment under appeal is set aside. The appeals are allowed. There shall be no order as to costs.

Appeal allowed.