SUPREME COURT OF INDIA

State of Himachal Pradesh

Vs

Narain Singh

C.A.No.1678 of 2002

(Markandey Katju and Asok Kumar Ganguly JJ.)

08.07.2009

JUDGMENT

GANGULY, J.

1. These appeals are directed against the judgment dated 17.4.2000 of the High Court of Himachal Pradesh at Shimla whereby the Division Bench of the High Court disposed of C.W.P. No.851/96 alongwith C.W.P. No.1192/96, as common questions of law and facts arose in those cases. C.W.P. No. 851/96 was filed by Narain Singh while C.W.P. No.1192/96 was filed by three persons namely Shri Surat Singh, Shiv Singh Tegta and Murki Lal and in both the writ petitions, the respondents were the same

2. In both these cases, the constitutional validity of the Himachal Pradesh Land Revenue (Amendment and Validation) Act, 1996 (hereinafter called `the amendment Act') was challenged as being in conflict with the original provisions of the various sections of the Himachal Pradesh Land Revenue Act, 1953 (Act No.6 of 1954) (hereinafter called `the Principal Act').

3. It was also contended in the writ petition that the amendment is violative of the basic structure of the Constitution.

4. The petitioners of C.W.P. No. 1192/96 and six other land owners of Tehsil Rohru and Chirgaon, District Shimla had earlier filed a C.W.P. No.206 of 1998 titled as Thakur Gyan Singh and others Vs. State of Himachal Pradesh and others wherein the petitioners sought the following relief:- "(i) complete the on going land revenue settlement operations as second Revised Settlement strictly in accordance with the intent of the two notifications one pertaining to the special revision of the existing records of right under Section 33 of the H.P. Land Revenue Act, 1953 and the other for general assessment of land revenue under Section 53 of the said Act;

ii) withdraw Instruction Nos. 2, 4 and supplementary instruction Nos. 2, 23 and 32 of Compendium of Instructions, issued by the 4th respondent (Settlement Officer);

iii) bring up-to-date at re-settlement the field map of the previous settlement without recourse to re-measurement and preparation of the record of rights including wazib- ul-urs etc. strictly in, accordance with Instructions contained in Para 222 of the Settlement Manual read with Appendix XXI thereunder and consequently directing the deletion of Naksha Bartan illegally prepared and not to convert the Classification of the government waste land recorded in the revenue records as also in occupation of the estate-right holders into various lands and directing the modification of the government policy with respect to regularisation of encroachment detected during the settlement proceedings; and

iv) direct the respondents not to hand over/deliver the revenue records to the revenue mohal staff till the completion of the settlement including assessment of land revenue, incorporated in the jamabandies."

5. The said writ petition was disposed of by a reasoned and detailed judgment of the Division Bench of the High Court on 13/01/1994. While accepting the writ petition, the Division Bench issued the following directions:-

"1. The respondents are directed to complete the on going land revenue settlement operations in the area in question as "second revised settlement" in accordance with the instructions contained in Paragraph 222 and Appendix XXI of the Punjab Settlement Manual.

2. The compendium of instructions (P- 21) be amended in consonance with and pertaining to the procedure applicable to special revision of record-of-rights. Resultantly, instructions continuing to be contained in P-21, contrary to letter June, 1986 (P-22) are ordered to be deleted.

3. The new record-of-rights pertaining to the areas in question, prepared in the current settlement in relation to 'Mohal-Bandi', 'Naksha Bartan', `Wazib-ul-urs', classification of land, proposed DPFs and UPFs etc., be ignored and re-settlement be started subsequent to the stage of Forecast Report."

6. Aggrieved by the bovementioned judgment dated 13/01/1994 of the Division Bench in C.W.P. No.206/1988, the State filed a Special Leave Petition before this Court. Leave was granted and the Civil Appeal No. 6025 of 1994 was admitted for hearing by this Court. This Court while granting the leave ordered a stay on the judgment of the High Court dated 13/01/1994.

7. It was contended by the respondents herein while the said special leave petition was pending before this Court, the State, in order to nullify the judgment of the High Court, dated 13/01/1994, enacted the amendment Act of 1996, whereby Sections 4, 16, 32, 33, 34, 36, 38, 47, 117 and 171 of the Principal Act were amended. The specific challenge to the amendment Act of 1996 is that by amending the Sections 32, 33, 34, 36, 38 and 47 contained in Chapter IV of the Principal Act, the whole scheme of Chapter IV of the Principal Act has been disturbed and arbitrary powers have been conferred on the Collector (Revenue). Such conferment of arbitrary power, it is alleged, is unconstitutional.

8. Thus, those provisions of the Act of 1996, introduced by way of amendment in the Principal Act, were challenged as being ultra vires the Constitution of India and mala fide and also as a piece of colourable legislation on the following grounds:-

"(a) That the impugned legislation has been intended to nullify the judgment of this Court in C.W.P. No. 206 of 1988 dated 13.1.1994. In support of this ground, it has been stated that the apex Court has held that a legislature has no power to render ineffective earlier judicial decision by making a law. Such powers if exercised would not be legislative power but a judicial power exercised by it, which encroaches upon the judicial powers of the State exclusively vested in Courts. (See: case reported in 1995 (5) S.C.C. 96).

(b) That the impugned legislation apparently seeks to validate the record of rights prepared after 1976, which is opposed to rule of law and natural Justice. This ground is purported to be supported by stating that in the earlier writ petition, there was a challenge to the errors in the field maps and jamabandies prepared during the settlement, which cannot be

validated as has been done by the impugned legislation, this amounts to denial of opportunity and equal protection of law under Article 14 of the Constitution of India. According to the petitioners, if the impugned legislation stands, the land owners will be rendered without any remedy to redress their grievances, hence the same is against the rule of law.

(c) That by making the impugned legislation i.e. Act of 1996 effective retrospectively from 1976, the same is liable to be struck down as unreasonable and arbitrary. Moreover, it has been stated that the said validation is bad in law inasmuch as the executive instructions earlier issued by the Settlement Officer, Shimla and Kinnaur Districts, respondent No.4, were held to be without any authority of law by this Court in its earlier decision because

the same were inconsistent with the provisions of the Principal Act.

(d) That the Act of 1996 being retrospective in its application adversely affects the rights of estate right holders of Rohru and Chirgaon, which is unconstitutional. It has also been highlighted in this ground that the retrospective effect given to the Act of 1996 is from the year 1976, being for a period of about 20 years, which itself is illegal.

(e) That there are inherent conflicts between the original Sections of the Principal Act and the amended Sections of the Act of 1996. Moreover, the same suffer from the vice of excessive delegation and is against the Scheme of the Principal Act. This is sought to be shown by giving the example that prior to the amendment, only the State Government and Financial Commissioner had the rule making powers under the Principal Act, whereas now by virtue of Sections 4(5), 34-A and 47-A the respondent-State has descended down by one step whereby the Collector has been empowered to issue executive instructions, which are in the nature of the delegated legislation. This delegation of powers to the Collector has been challenged as being against the basic Scheme of the Principal Act. It has also been stated that the powers so delegated to the Collector are unfettered and unguided and are capable of being abused.

(f) That by virtue of the amendments made by the Act of 1996, the sub-division of estates styled as 'Upmahal' are sought to be regularised and validated, which has been questioned as being an act of illegal splitting ab initio, making the same illegal.

(g) Despite the directions of this Court in the earlier case that fresh measurement should be carried out, the earlier incorrect measurement and assessment of land revenue, which was held to be so by this Court, have been declared as having been validly prepared by the Act of 1996. It has been stated that the petitioners have apprehensions that respondent No.4. Settlement Officer, will go ahead with the assessment of the land revenue of this area on the basis of invalid records and complete the settlement operations. This will result in irreparable injury to the rights of the petitioners.

(h) That the Act of 1996 takes away the remedy of review under Section 16 of the Principal Act, thus debarring the Financial Commissioner to review the order passed by him in revision. In this manner, the impugned amendment in Section 16 of the Principal Act has deprived the public at large from one channel from remedy of review, and on the other hand, the highest authority under the Principal Act has been debarred from reviewing the order passed in revision. The amendment in question is against the principle of natural justice besides being against the basic structure of the Constitution of India and the Principal Act, as per the petitioners.

(i) Lastly, that the impugned amendments by way of the Act of 1996 are in direct conflict with the relevant provisions of the Principal Act, if they are allowed to stand, it will result in changing the basic structure of the Principal Act."

9. Thus, the writ petition prayed before the High Court for:-

"(i) Issuance of an order, writ or direction declaring the Act of 1996 as ultra vires the law and as also being violative of the basic structure of the Constitution of India.

(ii) For issuing a writ of mandamus directing the respondents/State not to give effect to Sections 2-B, 2-C, 3 to 6, 9, 10, 12 and 13 of the Act of 1996.

(iii) To declare the aforesaid Sections as bad, in law, they being in direct conflict with the original Sections/provisions of Sections 4, 16, 32 to 35, 38 and 47 of the Principal Act and as also being against the basic Scheme of the said Act."

10. Same relief was also prayed for in the other connected writ petition, namely, C.W.P. No.851/1996.

11. In the impugned judgment, the Division Bench of the High Court did not uphold all the contentions mentioned above but came to a finding that the Amendment Act of 1996 is ultra vires to the extent that it has sought to nullify the earlier decision of this court rendered in CWP No.206/1988 dated 13.01.1994 between Thakur Gian Singh & Ors. Vs. State of Himachal Pradesh & Ors.

12. It may be noted that in the impugned judgment there is no finding that the amendment Act enacted suffers from lack of legislative competence of the State.

13. It is nobody's case that the State legislature is incompetent to enact the said amended Act. There is also no finding in the impugned judgment that the amendment Act in any way infringes or abridges any fundamental right of the petitioner.

14. Normally the restrain on the sovereign power of legislation of a State legislature is limited. The legislature has to exercise its legislative power, which is otherwise plenary, in accordance with the distribution of legislative power under Chapter Part XI Chapter I of the Constitution and it has also to exercise such power consistent with the mandate of Part III of the Constitution and other Constitutional limitations.

15. Learned High Court did not find that the impugned amendment Act transgresses either of these limitations in any way. But the High Count found that the impugned amendment Act is ultra vires the Constitution as it seeks to nullify the previous judgment.

16. This Court is not called upon to pronounce on the correctness or otherwise of the previous judgment rendered by the Division Bench of the High Court dated 13.01.1994. The appeal from the said judgment, being Civil Appeal 6025 of 1994, came to be heard by this Court and was disposed of by a judgment and order dated 16.07.1996 to the following effect:-

"Learned counsel for the appellant submits that the Himachal Pradesh Land Revenue (Amendment and Validation) Act, 1996 (Act No.3 of 1996) has further amended the Himachal Pradesh Land Revenue Act, 1954 and validated certain actions taken in relation to the making or special revision of record-of-rights in the State. Learned counsel adds that the revision of record-of-rights in the State is, therefore, to be made in accordance with the law so amended with retrospective effect; and the directions to the contrary in the impugned judgment of the High Court rendered prior to enactment of Act No. 3 of 1996 have become infructuous. Learned counsel also submits that no specific relief has been granted to any individual by the impugned judgment which merely gives some directions regarding the general revision of record-of-rights. For this reason, learned counsel submits that it is not necessary for the State Government to pursue this appeal.

Learned counsel for the respondents, while conceding that the effect of the aforesaid Act No. 3 of 1996 is to 'amend the law relating to revision of record-of- rights, further submits that the effect thereof is not to render infructuous all the directions given in the impugned judgment. According to learned counsel for the respondents, some part of these directions remains effective even after the enactment of Act No. 3 of 1996. He also states that the validity of Act No. 3 of 1996 has also

been challenged by a separate writ petition in the High Court of Himachal Pradesh.

In view of the common ground emerging from the above submissions, it appears to us that it is needless to consider the merits of the points raised in the appeal since even according to the appellant -State of Himachal Pradesh the directions given in the impugned judgment are no longer effective having been rendered infructuous by the subsequently enacted Act No. 3 of 1996. Moreover, there is no relief granted to any specific individual and the directions relate to the general revision of record-of-rights in the state which obviously has to be governed by the existing law applicable at the time of performance of the exercise. If any grievance is made of non-compliance of any of the al1eged surviving directions by the State Government before the High Court, it would be open to the State Government to show that the same have become infructuous for the reason given by them and in that situation it would be for the High Court to decide the contention on merits. In view of the statement made on behalf of the appellants that the directions given in the impugned judgment have become infructuous, the appeal is disposed of accordingly, without deciding any point on merits."

17. The said order was passed after hearing learned counsel for both the parties. From a perusal of the aforesaid order, it is clear that the appeal was disposed of as it was contended before this Court by the learned counsel for the State that in view of the subsequent amendment of he law, the contentions of the appellant have become infructuous. This court recorded the said submissions and disposed of the said appeal as such.

18. Therefore, the only question which survives in this case is whether the State can in exercise of its sovereign legislative power enact an amendment Act seeking to remove and cure the defects in the previous law despite there being a judgment on the previous law.

19. In the instant case before we examine these questions it would be appropriate to consider the statement of objects and reasons for enacting the amendment act. The statement is as under:- "The volume of land records in each revenue estate has considerably increased due to the increase in number of holdings partially on account of increase in population and partially on account of decrease of extent of land holdings under the agrarian reforms, to bring the volume of the land records maintained in each revenue estate within manageable size, it has become essential to create more estates or sub-estates. Apart from this, with the enactment the Standards of Weights and Measures Act, 1976, it is now mandatory to convert the non-metric measurements into metric measurements. Due to different scales of measurements prevalent in various parts of the State, the conversion to metric system involves the complete remeasurements of all the revenue estates in the State. There is no provision either in the Himachal Pradesh Land Revenue Act, 1954 or in the Punjab Settlement Manual, as applicable to Himachal Pradesh, for the creation of estates/sub-estates by the Collectors or for the complete remeasurements of the estates. In the absence of these statutory provisions of the creation of more estates or sub divisions of estates and the complete remeasurement of the estates for conversion into

metric measurements and the instructions/ directions given by the Collectors, during the settlement operations are not sustainable in the eyes of law. Consequently the settlement operations already carried out in various parts of the State are likely to become infructuous and resettlement operations are likely to cause great public inconvenience and loss to the State Exchequer. Besides this certain other minor amendments in the Act are essential in the changed circumstances. It is also essential to validate the action of the Collector already taken by him during the special revision of record-of-rights in relation to the creation of estates/sub-division of estates, complete remeasurement of all estates based upon metric system, giving directions/issuing instructions to carry out the settlement operations and for the effective implementation of the provisions of the Himachal Pradesh Land Revenue Act, 1954. This Bill seeks to achieve the aforesaid objectives."

20. From a perusal of the aforesaid statement of objects and reasons it is clear that the amendment has been necessitated in view of certain factors which are predominantly in public interest and the said amendment has been made in view of the interest of land revenue, land settlement and for the purpose of updating the same.

21. In fact the amendments have been made for an effective implementation of the provisions of the Himachal Pradesh Land Revenue Act, 1954.

22. It is provided in sub-section (2) of section 1 of the amendment Act that the said amendment shall come into force at once except section 2 (b), 5, 6 and 10 which shall be deemed to have come into force on the 23rd of September 1976. Section 13 of the said act provides for validation. The said section runs as follows:-

"13. Notwithstanding anything contained in the Himachal Pradesh Land Revenue Act, 1954 and rules, instructions, notifications made or issued thereunder, or in any law for the time being in force or in any judgment, decree or order of any court or other authority, where at any time after the 23rd day of September, 1976 and before the commencement of the Himachal Pradesh Land Revenue (Amendment and Validation) Act, 1996, if any record- of-rights or special revision of record- of-rights has been made in respect of the lands, situated in the State of Himachal Pradesh, such making or special revision of record-of-rights shall, and shall be deemed always to have been valid and shall not be questioned on the ground that the amendments made vide sections 2 (b), 5, 6 and 10 of this Act were not in force at that time when such record-of-rights were made or specially revised."

23. An argument was, however, made before the High Court that the aforesaid amendment is actuated by a mala fide motive and is a piece of colourable legislation. The aforesaid contention was, however, not accepted by the High Court in the impugned judgment. In fact such contention is not tenable on principle.

24. Reference in this connection be made to a decision of this Court in the case of K. Nagaraj & others Vs. State of Andhra Pradesh and another - 1985 1 SCC 523, wherein Chief Justice Chandrachud, speaking for a three-Judge Bench said that the legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. Learned Chief Justice held that the concept of "transferred malice" is unknown in the field of legislation provided the legislature enacts the law within its powers.

25. The aforesaid principle in K. Nagaraj (supra) has been accepted by this Court in many cases and a reference in this connection may be made to a decision of this Court in G.C. Kanungo Vs. State of Orissa - (1995) 5 SCC 96.

26. The power of the Sovereign legislature to legislate within its field, both prospectively and retrospectively cannot be questioned. This position has been settled in many judgments of this Court. Some of them may be considered below.

27. In Bhubaneshwar Singh & another Vs. Union of India & others - (1994) 6 SCC 77, the Court/ expressly approved the aforesaid position in Para 9 at page 82-83. In so far as validating Acts are concerned, this Court in Bhubaneshwar Singh (supra) also considered the question in para 11 and held that the Court has the powers by virtue of such validating legislation, to "wipe out" judicial pronouncements of the High Court and the Supreme Court by removing the defects in the statute retrospectively when such statutes had been declared ultra vires by Courts in view of its defects. This Court has held that such legislative exercise will not amount to encroachment on the judicial power. This Court has accepted that such legislative device which removes the vice in previous legislation is not considered an encroachment on judicial power. In support of the aforesaid proposition, this Court in Bhubaneshwar Singh (supra) relied on the proposition laid down by the Chief Justice Hidayatullah, speaking for the Constitution Bench in Shri Prithvi Cotton Mills Ltd. and another Vs. Broach Borough Municipality and others -(1969) 2 SCC 283.

28. Again in the case of Indian Aluminium Company etc. etc. Vs. State of Kerala and others -AIR 1996 SC 1431, this Court while summarizing the principle held that a legislature cannot directly overrule a judicial decision but it has the power to make the decision ineffective by removing the basis on which the decision is rendered, while at the same time adhering to the constitutional imperatives and the legislature is competent to do so [See para 59 sub-para (9) at page 1446.]

29. In the case of Comorin Match Industries (Pvt.) Limited Vs. State of Tamil Nadu - AIR 1996 SC 1916, the facts were that the assessment orders passed under Central Sales Tax Act were set aside by

the High Court and the State was directed to refund the amount to the assessee. As the State failed to carry it out, contempt petitions were filed but the assessment orders were validated by passing the amendment Act of 1969 with retrospective effect and the Court held that the

tax demanded became valid and enforceable. The Court held that in such a situation the State will not be precluded from realizing the tax due as subsequently the assessment order was validated by the amending Act of 1969 and the order passed in the contempt proceeding will not have the effect of the writing off the debt which is statutorily owed by the assessee to the State. The learned Judges held that the effect of the amending Act is retrospective validation of the assessment orders which were struck down by the High Court. Therefore, the assessment order is legislatively valid and the tax demands are also enforceable. [See paras 33 and 35 at page 1925]

30. It is therefore clear where there is a competent legislative provision which retrospectively removes the substratum of foundation of a judgment, the said exercise is a valid legislative exercise provided it does not transgress any other constitutional limitation. Therefore, this Court cannot uphold the reasoning in the High Court judgment that the impugned amendment is invalid just because it nullifies some provisions of the earlier Act.

31. The aforesaid principles have been reiterated by a three-Judge Bench in Meerut Development Authority etc. Vs. Satbir Singh and others- AIR 1997 SC 1467, Justice Ramaswamy speaking for the Court summed up the position in para 10 as follows:-

"10. It is well settled by catena of decisions of this Court that when this Court in exercise of power of judicial review, has declared a particular statute to be invalid, the Legislature has no power to overrule the judgment; however, it has the power to suitably amend the law by use of appropriate phraseology removing the defects pointed out by the Court and by amending the law inconsistent with the law declared by the Court so that the defects which were pointed out were never on statute for effective enforcement of he law. This Court has considered in extenso the case law in a recent judgment in Indian Aluminium Co. V. State of Kerala (1996) 2 JT (SC) 85: (1996 AIR SCW 1051) had held that such an exercise of power to amend a statute is not an incursion on the judicial power of the Court but is astatutory exercise of the constituent power to suitably amend the law and to validate the actions which have been declared to be invalid..."

32. A Constitution Bench of this Court in the case of State of Tamil Nadu Vs. M/s. Arooran Sugars Limited - AIR 1997 SC 1815, reiterated the same principle after analyzing several cases on the point. The Court has summed up the position as follows:-

"16. ...It is open to the legislature to remove the defect pointed out by the court or to amend the

definition or any other provision of the Act in question retrospectively. In this process it cannot be said that there has been an encroachment by the legislature over the power of the judiciary. A court's directive must always bind unless the conditions on which it is based are so fundamentally altered that under altered circumstances such decisions could not have been given. This will include removal of the defect in a statute pointed out in the judgment in question, as well as alteration or substitution of provisions of the enactment on which such judgment is based, with retrospective effect..."

33. In Indra Sawhney Vs. Union of India ◆ AIR 2000 SC 498, Justice Jagannadha Rao speaking for a three-Judge Bench explained the position by saying that it would be permissible for the legislature to remove the defect which is the cause for discrimination and which defect was pointed out by the Court. The learned Judge made it very clear that this defect can be removed both retrospectively and prospectively by legislative action and the previous actions can be validated. But where there is a mere validation without the defect being legislatively removed the legislative action will amount to overruling the judgment by a legislative fiat and that will be invalid. In the instant case the amendment Act has removed the defect of the previous law and therefore, the validation exercise is perfectly sound and cannot be faulted with.

34. In Rai Ramkrishna and others etc. Vs. State of Bihar - AIR 1963 SC 1667, a Constitution Bench of this Court speaking through Justice Gajendragadkar, as His Lordship then was, explained the principle with characteristic clarity, which is reproduced hereinbelow:-

"10. The other point on which there is no dispute before us is that the legislative power conferred on the appropriate Legislatures to enact law in respect of topics covered by the several entries in the three Lists can be exercised both prospectively and retrospectively. Where the Legislature can make a valid law, it may provide not only for the prospective operation of the material provisions of the said law but it can also provide for the retrospective operation of the said provisions. Similarly, there is no doubt that the legislative power in question includes the subsidiary or the auxiliary power to validate laws which have been found to be invalid. If a law passed by a legislature is struck down by the Courts as being invalid for one infirmity or another, it would be competent to the appropriate Legislature to cure the said infirmity and pass a validating law so as to make the provisions of the said earlier law effective from the date when it was passed.

This position is treated as firmly established since the decision of the Federal Court in the case of United Provinces v. Mst. Atiqa Begum, 1940 FCR 110: (AIR 1941 FC 16)."

35. See the decision of this Court in Satnam Overseas (Export) and others Vs. State of Haryana and another- (2003) 1 SCC 561, para 52 where reference was made to the ratio in Rai Ramkrishna (supra).

36. Recently in the case of State of Bihar and others Vs. State Pensioners Samaj - (2006) 5 SCC 65, this Court reiterated the same position in paragraph 16 at page 71, which is reproduced below:-

"16. .....It is always open to the legislature to alter the law retrospectively as long as the very premise on which the earlier judgment declared a certain action as invalid is removed. The situation would be one of a fundamental change in the circumstances and such a validating Act was not open to challenge on the ground that it amounted to usurpation of judicial powers.

37. For the reasons aforesaid, this Court finds that in the instant case the amending Act read with its validation clause correctly passed the tests laid down by this Court. The appeals are allowed. The judgment of the High Court is thus set aside with no orders as to costs.