SUPREME COURT OF INDIA

K.K. Poonacha

Vs.

State of Karnataka

C.A.No.730 of 2004

(G.S. Singhvi and Asok Kumar Ganguly JJ.)

07.09.2010

JUDGEMENT

G.S. SINGHVI, J.

1. Whether the Bangalore Development Authority Act, 1976 (for short, "the 1976 Act") is liable to be declared void on the ground that the same was not reserved for the consideration of the President and did not receive his assent as per the requirement of Article 31(3) of the Constitution is the question that arises for consideration in these appeals filed against the judgments of the Division Bench of Karnataka High Court which upheld the order of the learned Single Judge declining to interfere with the acquisition of the appellants' land.

2. Although, the above noted question was considered and answered in negative by three-Judge Bench in Bondu Ramaswamy v. Bangalore Development Authority and others (2010) 5 SCALE 70, Shri Dushyant Dave, learned senior counsel appearing for the appellants argued that the issue needs reconsideration because the three-Judge Bench solely relied upon the judgment of the Constitution Bench in M.P.V. Sundararamier and Company v. The State of Andhra Pradesh 1958 SCR 1422 but

did not deal with the other Constitution Bench judgments in Deep Chand v. The State of Uttar Pradesh and others (1959) Supp. 2 SCR 8, Mahant Sankarshan Ramanuja Das Goswami etc. v. The State of Orissa and another (1962) 3 SCR 250 and Jawaharmal v. State of Rajasthan and others (1966) 1 SCR 890, which according to the learned senior counsel lay down that any law enacted by the Legislature in violation of the provisions contained in Part III of the Constitution is void. Shri Dave submitted that Article 31(3), which was in existence at the time of enactment of the 1976 Act postulated that any law made by the Legislature of a State for compulsory acquisition/requisition of the property shall not be effective unless such law is reserved for consideration of the President and has received his assent and as the 1976 Act was not even sent to the President for his consideration, the same remained still-born, invalid and inoperative and did not become valid merely because Article 31(3) was repealed with effect from 20.6.1979. Shri Dave emphasized that the provision contained in Article 31(3) was mandatory and non compliance thereof had the effect of rendering the legislation enacted by the State for acquisition/requisition of land void from its inception. In support of his arguments, the learned senior counsel relied upon the Constitution Bench judgments of this Court in Behram Khurshed Pesikaka v. The State of Bombay (1955) 1 SCR 613, Saghir Ahmad v. The State of U.P. and others (1955) 1 SCR 707, Deep Chand v. The State of Uttar Pradesh and others (supra), Mahendra Lal Jaini v. The State of U.P. (1963) Supp. 1 SCR 912, Mahant Sankarshan Ramanuja Das Goswami etc. v. The State of Orissa and another (supra) and Jawaharmal v. State of Rajasthan and others (supra). Learned senior counsel further argued that the judgment of two-Judge Bench in Munithimmaiah v. State of Karnataka (2002) 4 SCC 326 upon which reliance has been placed by the three-Judge Bench for holding that the 1976 Act is a law enacted with reference to Entry 5 of List II does not lay down correct law because it runs contrary to the Constitution Bench judgment in Ishwari Khetan Sugar Mills (P) Ltd. v. State of U.P. (1980) 4 SCC 136.

Learned senior counsel made a pointed reference to paragraphs 12 and 25 of that judgment to show that power to legislate for acquisition of property is an independent and separate power and is exercisable only under Entry 42 of List III.

3. Shri Altaf Ahmed, learned senior counsel appearing for the Bangalore Development Authority fairly conceded that the 1976 Act was not reserved for the consideration of the President but argued that non compliance of Article 31(3) does not have the effect of rendering the legislation void because the same falls within the ambit of Article 31(2A). Shri Altaf Ahmed then referred to Sections 17, 18, 19, 35 and 36 of the 1976 Act and the judgment of this Court in Munithimmaiah v. State of Karnataka (supra) and submitted that the 1976 Act was enacted for the establishment of a Development Authority for the development of the City of Bangalore and areas adjacent thereto and acquisition of land under Sections 35 and 36 thereof is ancillary to the planned development of the City and, as such, the same cannot be treated as a law enacted with reference to Entry 42 of List III of the Constitution. Learned senior counsel pointed out that the provisions of the Land Acquisition Act, 1894 are attracted only when the acquisition of land under the 1976 Act is otherwise than by agreement as provided under Section 35. He further argued that Article 31(3) as it existed up to 20.6.1979, neither impinged upon the legislative competence of the State to enact law for acquisition of land nor it contained a negative mandate like the one enshrined in Article 13(2) of the Constitution. Shri Altaf Ahmad argued that the provision contained in Article 31(3) was procedural in nature and non compliance thereof did not affect validity of the 1976 Act, which was within the

legislative competence of the State but merely postponed its implementation and once Article 31 was repealed, the Legislation automatically became effective. Learned senior counsel emphasized that the validity of the legislation is to be tested on the date of its enactment to find out whether the Legislature is competent to enact such law and whether the same violates the provisions contained in Part III or any other provisions of the Constitution and non compliance of a procedural provision like the one contained in Article 31(3) of the Constitution does not affect validity of the legislation. Learned senior counsel finally submitted that the judgment in Bondu Ramaswamy v. Bangalore Development Authority and others (supra) does not require reconsideration because the three-Judge Bench had followed the ratio of the Constitution Bench judgment in M.P.V.

Sundararamier & Co. v. The State of Andhra Pradesh (supra).

4. We have considered the respective submissions. In Bondu Ramaswamy v. Bangalore Development Authority and others (supra), the three-Judge Bench rejected challenge to the constitutionality of the 1976 Act by making the following observations:

"It is no doubt true that the BDA Act received only the assent of the Governor and was neither reserved for the assent of the President nor received the assent of the President. As Clause (3) of Article 31 provided that a law providing for acquisition of property for public purposes, would not have effect unless such law received the assent of the President, it was open to a land owner to contend that the provisions relating to acquisition in the BDA Act did not come into effect for want of President's assent. But once Article 31 was omitted from the Constitution on 20.6.1979, the need for such assent disappeared and the impediment for enforcement of the provisions in the BDA Act relating to acquisition also disappeared. Article 31 did not render the enactment a nullity, if there was no assent of the President. It only directed that a law relating to compulsory acquisition will not have effect unless the law received the assent of the President. As observed in Munithimmaiah v. State of Karnataka [2002 (4) SCC 326], acquisition of property is only an incidental and not the main object and purpose of the BDA Act. Once the requirement of assent stood deleted from the Constitution, there was absolutely no bar for enforcement of the provisions relating to acquisition in the BDA Act. The Karnataka Legislature had the legislative competence to enact such a statute, under Entry 5 of List II of the Seventh Schedule to the Constitution. If any part of the Act did not come into effect for non-compliance with any provision of the Constitution, that part of the Act may be unenforceable, but not invalid."

The three-Judge Bench then noticed the propositions of law laid down in M.P.V. Sundararamier and Company v. The State of Andhra Pradesh and another (supra) and Mahendra Lal Jaini v. The State of U.P. (supra) and observed:

"On a careful consideration of the aforesaid observations, we are of the view that the said decision does not in any way express any view contrary to the clear enunciation of law in Sundaramier. In Mahendra Lal Jaini, this constitutional laws governed by Article 13(1) and post-constitutional laws which are governed by Article 13(2) and held that any post- constitutional law made in

contravention of provisions of part III, to the extent of contravention is a nullity from its inception.

Let us now examine whether any provision of the BDA Act violated any provisions of Article 31 in part III of the Constitution. Clause (1) of Article 31 provided that no person shall be deprived of his property save by authority of law. As we are examining the validity of a law made by the state legislature having competence to make such law, there is no violation of Article 31(1). Clause (2) of Article 31 provided that no law shall authorise acquisition unless it provided for compensation for such acquisition and either fixed the amount of compensation, or specified the principles on which, and the manner in which, the compensation was to be determined and given. BDA Act, does not fix the amount of compensation, but Section 36 thereof clearly provides that the acquisition will be regulated by the provisions of the Land Acquisition Act, 1894 so far as they are applicable. Thus the principles on which the compensation is to be determined and the manner in which the compensation is to be determined set out in the LA Act, become applicable to acquisitions under BDA Act. Thus there is no violation of Article 31(2). Article 31(3) merely provides that no law providing for acquisition shall have effect unless such law has received the assent of the President. Article 31(3) does not specify any fundamental right, but relates to the procedure for making a law providing for acquisition. As noticed above, it does not nullify any laws, but postpones the enforcement of a law relating to acquisition, until it receives the assent of the President. There is therefore no violation of Part III of the Constitution that can lead to any part of the BDA Act being treated as a nullity. As stated above, the effect of Article 31(3) was that enforcement of the provisions relating to acquisition was not possible/permissible till the assent of the President was received. Therefore, once the requirement of assent disappeared, the provisions relating to acquisition became enforceable."

5. We shall now examine whether the view expressed by the three-Judge Bench on the constitutionality of the 1976 Act needs reconsideration by a larger Bench because the judgments of the Constitution Benches on which reliance has been placed by Shri Dushyant Dave were not considered. For this purpose, it will be useful to notice the provisions of Article 13, Article 31 as it existed till 20.6.1979 and Articles 254 and 255 of the Constitution.

The same read as under:

"13. Laws inconsistent with or in derogation of the fundamental rights. - (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,- (a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.

31. Compulsory acquisition of property.- (1) No person shall be deprived of his property save by authority of law.

(2) No property shall be requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law; and no such law shall be called in question any court on the ground that the amount so fixed the whole or any part of such amount is to be given otherwise than in cash.

Provided that in making any law providing for compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1) of article 30, the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

(2B) Nothing in sub-clause (f) of clause (1) of article 19 shall affect any such law as is referred to in clause (2).

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent.

(4) to (6) xxx xxx xxx 254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.-- (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

255. Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only.-- No Act of Parliament or of the Legislature of a State and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given- (a) where the recommendation required was that of the Governor, either by the Governor or by the President;

(b) where the recommendation required was that of the Rajpramukh, either by the Rajpramukh or by the President;

(c) where the recommendation or previous sanction required was that of the President, by the President."

6. Article 13(1) deals with pre-Constitution laws and declares that all laws in force in the territory of India immediately before commencement of the Constitution shall be void to the extent they are

inconsistent with the provisions of Part III. Article 13(2) injuncts the State from enacting any law which takes away or abridges the rights enumerated in Part III of the Constitution and declares that any law made in contravention of that clause shall be void. To put it differently, Article 13(2) contains a constitutional prohibition against enactment of any law by the State which infringes the rights guaranteed to the citizens and others under Part III of the Constitution.

Article 31(1), as it stood till 20.6.1979, contained a general injunction against depriving any person of his property except by authority of law.

Article 31(2) laid down that no property shall be requisitioned save for a public purpose and save by authority of law which provides for acquisition and requisitioning of property subject to payment of compensation. Clause (2A) of Article 31 was added by the Constitution (Fourth Amendment) Act, 1955. This clause clarified the meaning of the words `acquisition' and `requisitioning' used in clause (2) and laid down that where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, such law shall not be treated as one providing for compulsory acquisition or requisitioning of property despite the fact that it may deprive any person of his property. Article 31(3) laid down that no law enacted by the Legislature of a State with reference to clause (2) shall be effective unless such law, having been reserved for the consideration of the President, has received his assent. This clause of Article 31 did not contain a constitutional inhibition against enactment of law by the Legislature of a State under clause (2), but merely contained a post enactment procedural provision which was required to be complied with for making such law effective. What was implicit in the language of Article 31(3) was that the particular law was within the legislative competence of the State and such law did not violate the provisions contained in Part III or any other provision of the Constitution.

The assent given by the President in terms of Article 31(3) of the Constitution to a law enacted by the Legislature of a State did not mean that the particular enactment acquired immunity from challenge even though the same was not within the legislative competence of the State or was otherwise violative of any constitutional provision. Clause (1) of Article 254 lays down that in the event of conflict between a law enacted by Parliament and a State law enacted on a subject enumerated in the Concurrent List (List III of Seventh Schedule), the former prevails over the latter. In other words, if the law enacted by the Legislature of a State on a subject enumerated in the Concurrent List is repugnant to a law enacted by Parliament on that subject, then to the extent of repugnancy, State law shall be void. Clause (2) of Article 254 engrafts an exception to the rule enshrined in clause (1) and provides that if the President assents to a State law, which has been reserved for his consideration, then the State law will prevail notwithstanding any repugnancy with an earlier law enacted by Parliament. In such a case, Parliamentary legislation will give way to the State law to the extent of inconsistency. Proviso to Article 254(2) empowers Parliament to repeal or amend a repugnant State law, either directly or by itself enacting a law repugnant to the State law with respect to the same subject. Even if a subsequent law enacted by Parliament does not expressly repeal an existing State law, the State legislation will become void to the extent of repugnancy with a subsequent Parliamentary legislation. If Article 31(3) is read in the light of Article 254, it becomes clear that object thereof was to ensure that the law enacted by the Legislature of a State with

reference to clause (2) of Article 31 may not be inconsistent with or repugnant to the provisions of a law made by Parliament and in the event of conflict or repugnancy, such law shall not become effective without the assent of the President. Article 255, by its very nomenclature indicates that the provision contained therein is procedural in nature. This Article declares that no Act of Parliament or of the Legislature of a State and no provision of any such Act, shall be invalid by reason only that the requirement contained in other provisions of the Constitution regarding recommendation or previous sanction has not been complied with if assent to that Act was given by the concerned constitutional functionary mentioned in clauses (a) to (c).

7. In the light of the above, we shall now consider whether the 1976 Act is liable to be treated as unconstitutional and void on the ground that the same was not reserved for consideration of the President and did not receive his assent or in the absence of Presidential assent, the 1976 Act remained dormant and became effective as soon as Article 31 including clause (3) thereof was repealed. The consideration of the aforesaid question needs to be prefaced with an observation that the appellants have not questioned constitutionality of the 1976 Act on the ground that it is beyond legislative competence of the State or violates any of their rights guaranteed under Part III of the Constitution or any other provision of the Constitution. Indeed, it was not even argued by Shri Dushyant Dave, learned senior counsel for the appellants that the 1976 Act violates the mandate of Article 31(2) of the Constitution.

8. In his work on "Constitution of the United States" Volume I, Willoughby says:

"The Court does not annul or repeal the statute if it finds it in conflict with the Constitution. It simply refuses to recognize it, and determines the rights of the parties just as if such statute had no application. .....

The validity of a statute is to be tested by the constitutional power of a legislature at the time of its enactment by that legislature, and, if thus tested, it is beyond the legislative power, it is not rendered valid, without re-enactment, if later, by constitutional amendment, the necessary legislative power is granted. `An after-acquired power cannot, ex proprio vigore, validate a statute void when enacted.' However, it has been held that where an act is within the general legislative power of the enacting body, but is rendered unconstitutional by reason of some adventitious circumstance, as, for example, when a State legislature is prevented from regulating a matter by reason of the fact that the Federal Congress has already legislated upon that matter, or by reason of its silence is to be construed as indicating that there should be no regulation, the act does not need to be re-enacted in order to be enforced, if this cause of its unconstitutionality is removed."

9. In John M. Wilkerson v. Charles A. Rahrer (1891) 140 U.S. 545, the Supreme Court of the United States considered the question whether the prohibitory Liquor Law enacted by the State of Kansas, which could not operate until the passage of the Act by the United States Congress became effective on the passing of such Act by the Congress and answered the same in affirmative. The facts of that case were that in June 1990, the petitioner, a citizen of the United States and an agent of

Maynard, Hopkins & Co., received from his principal intoxicating liquor in packages. The packages were shipped from the State of Missouri to various points in the State of Kansas and other States. On August 9, 1890, the petitioner offered for sale and sold two packages in the State of Kansas. He was prosecuted for violating the prohibitory Liquor Law of the State of Kansas. On August 8, 1890, an Act of Congress was passed making the State law applicable once intoxicating liquors were transported into any State. The Supreme Court of the United States considered the question whether the prohibitory Liquor Law enacted by the State of Kansas, which was within the competence of the Legislature of the State but which law did not operate upon packages of liquors imported into the Kansas State in the course of inter-State commerce because regulation of inter-State commerce was within the powers of the Congress, became effective from August 8, 1890 when the Congress enacted a law making intoxicating liquors transported into a State subject to the laws of that State and held:

"It was not necessary, after the passage of the Act of Congress of August 8, 1890, to re-enact the Law of Kansas of 1899, forbidding the sale of intoxicating liquors in that State, in order to make such State Law operative on the sale of imported liquors."

"This is not the case of a law enacted in the unauthorized exercise of a power exclusively confided to Congress, but of a law which it was competent for the State to pass, but which could not operate upon articles occupying a certain situation until the passage of the Act of Congress. That Act in terms removed the obstacle, and we perceive no adequate ground for adjudging that a re-enactment of the State Law was required before it could have the effect upon imported which it had always had upon domestic property.' A reference to those decisions brings out in bold relief the distinction between the two classes of cases referred to therein.

It will be seen from the two decisions that in the former the Act was void from its inception and in the latter it was valid when made but it could not operate on certain articles imported in the course of inter-State trade. On that distinction is based the principle that an after-acquired power cannot, ex proprio vigore, validate a statute in one case, and in the other, a law validly made would take effect when the obstruction is removed."

(emphasis supplied)

10. A somewhat similar issue was considered by the Australian Court in Carter v. Egg and Egg Pulp Marketing Board (1942) 66 C.L.R. 557 in the context of Section 109 of the Australian Constitution which provided that if a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall be invalid to the extent of inconsistency. Commenting on that section, Latham, C.J., observed:

"This section applies only in cases where, apart from the operation of the section, both the Commonwealth and the State Laws which are in question would be valid. If either is invalid ab initio by reason of lack of power, no question can arise under the section. The word `invalid' in this section cannot be interpreted as meaning that a State law which is affected by the section becomes ultra vires in whole or in part. If the Commonwealth law were repealed the State law would again become operative."

11. In none of the judgments relied upon by the learned counsel for the parties, this Court was called upon to consider the effect of non compliance of a provision like the one contained in Article 31(3) but in some of them the Court did consider the effect of removing a constitutional embargo/limitation on the operation of a statute. In Bhikaji Narain Dhakras v. The State of Madhya Pradesh and another (1955) 2 SCR 589, the Constitution Bench considered the effect of the Constitution (First Amendment) Act, 1951 on the provisions of the Motor Vehicles Act, 1939 as amended by the C.P. & Berar Motor Vehicles (Amendment) Act, 1947.

By virtue of the amendments made in the 1939 Act, the Government got power (i) to fix fares or freights throughout the Province or for any area or for any route, (ii) to cancel any permit after the expiry of three months from the date of notification declaring its intention to do so and on payment of such compensation as might be provided by the Rules, (iii) to declare its intention to engage in the business of road transport generally or in any area specified in the notification, (iv) to limit the period of the license to a period less than the minimum specified in the Act, and (v) to direct the specified Transport Authority to grant a permit, inter alia, to the Government or any undertaking in which Government was financially interested. After commencement of the Constitution on 26.1.1950, the Amending Act became an existing law within the meaning of Article 13(1). Since all private motor transport operators were excluded from the field of transport business, they challenged the vires of the Amending Act. The Constitution Bench expressed the view that the same appear to be violative of Article 19(1)(g) read with clause (6) of that Article and became void to that extent. By the Constitution (First Amendment) Act, 1951, clause (2) of Article 19 was substituted with retrospective effect. Clause (6) was also amended but was not given retrospective effect. It was argued on behalf of the petitioners that the law having become void could not be vitalized by a subsequent amendment of the Constitution which removed the constitutional objection unless the same was re-enacted. In support of this argument, reliance was placed on the judgment of this Court in Saghir Ahmad v. The State of U.P. and others (supra). The Constitution Bench referred to that judgment and also the judgment in Keshavan Madhava Menon v. The State of Bombay 1951 SCR 228 and observed:

"The impugned Act was an existing law at the time when the Constitution came into force. That existing law imposed on the exercise of the right guaranteed to the citizens of India by Article 19(1)(g) restrictions which could not be justified as reasonable under clause (6) as it then stood and consequently under Article 13(1) that existing law became void "to the extent of such inconsistency". As explained in Keshavan Madhava Menon's case (supra) the law became void not in toto or for all purposes or for all times or for all persons but only "to the extent of such inconsistency", that is to say, to the extent it became inconsistent with the provisions of Part III

which conferred the fundamental rights on the citizens. It did not become void independently of the existence of the rights guaranteed by Part III. In other words, on and after the commencement of the Constitution the existing law, as a result of its becoming inconsistent with the provisions of Article 19(1)(g) read with clause (6) as it then stood, could not be permitted to stand in the way of the exercise of that fundamental right. Article 13(1) by reason of its language cannot be read as having obliterated the entire operation of the inconsistent law or having wiped it out altogether from the statute book. Such law existed for all past transactions and for enforcement of rights and liabilities accrued before the date of the Constitution, as was held in Keshavan Madhava Menon's case. The law continued in force, even after the commencement of the Constitution, with respect to persons who were not citizens and could not claim the fundamental right. In short, Article 13(1) had the effect of nullifying or rendering the existing law which had become inconsistent with Article 19(1)(g) read with clause (6) as it then stood ineffectual, nugatory and devoid of any legal force or binding effect only with respect to the exercise of the fundamental right on and after the date of the commencement of the Constitution.

Therefore, between the 26-1-1950 and the 18-6-1951 the impugned Act could not stand in the way of the exercise of the fundamental right of a citizen under Article 19(1)(g). The true position is that the impugned law became, as it were, eclipsed, for the time being, by the fundamental right. The effect of the Constitution (First Amendment) Act, 1951 was to remove the shadow and to make the impugned Act free from all blemish or infirmity. If that were not so, then it is not intelligible what "existing law" could have been sought to be saved from the operation of Article 19(1)(g) by the amended clause (6) insofar as it sanctioned the creation of State monopoly, for, ex hypothesi, all existing laws creating such monopoly had already become void at the date of the commencement of the Constitution in view of clause (6) as it then stood. The American authorities refer only to post-Constitution laws which were inconsistent with the provisions of the Constitution. Such laws never came to life but were still born as it were. The American authorities, therefore, cannot fully apply to pre- Constitution laws which were perfectly valid before the Constitution. But apart from this distinction between pre- Constitution and post-Constitution laws on which, however, we need not rest our decision, it must be held that these American authorities can have no application to our Constitution. All laws, existing or future, which are inconsistent with the provisions of Part III of our Constitution are, by the express provision of Article 13, rendered void "to the extent of such inconsistency". Such laws were not dead for all purposes. They existed for the purposes of pre-Constitution rights and liabilities and they remained operative, even after the Constitution, as against non-citizens. It is only as against the citizens that they remained in a dormant or moribund condition. In our judgment, after the amendment of clause (6) of Article 19 on the 18-6- 1951, the impugned Act ceased to be unconstitutional and became revivified and enforceable against citizens as well as against non-citizens. It is true that as the amended clause (6) was not made retrospective the impugned Act could have no operation as against citizens between the 26-1-1950 and the 18- 6-1951 and no rights and obligations could be founded on the provisions of the impugned Act during the said period whereas the amended clause (2) by reason of its being expressly made retrospective had effect even during that period. But after the amendment of clause (6) the impugned Act immediately became fully operative even as against the citizens. The notification declaring the intention of the State to take over the bus routes to the exclusion of all other motor transport operators was published on the 4-2-1955 when it was perfectly constitutional for the State to do so. In our judgment the contentions put forward by the respondents as to the effect of the Constitution (First Amendment) Act, 1951 are well-founded and the objections urged against them by the petitioners are untenable and must be negatived.

(emphasis supplied) The Constitution Bench then considered the argument of the petitioners that the impugned Act violated their right to property guaranteed under Article 31 of the Constitution. While rejecting the contention, the Court observed:

"There can be no question that the amended provisions, if they apply, save the impugned law, for it does not provide for the transfer of the ownership or right to possession of any property and cannot, therefore, be deemed to provide for the compulsory acquisition or requisitioning of any property. But the petitioners contend, as they did with regard to the Constitution (First Amendment) Act, 1951, that these amendments which came into force on the 27-4-1955 are not retrospective and can have no application to the present case. It is quite true that the impugned Act became inconsistent with Article 31 as soon as the Constitution came into force on the 26-1-1950 as held by this Court in Shagir Ahmad's case (supra) and continued to be so inconsistent right up to the 27-4-1955 and, therefore, under Article 13(1) became void "to the extent of such inconsistency." Nevertheless, that inconsistency was removed on and from the 27-4-1955 by the Constitution (Fourth Amendment) Act, 1955. The present writ petitions were filed on the 27-5-1955, exactly a month after the Constitution (Fourth Amendment) Act, 1955 came into force, and, on a parity of reasoning hereinbefore mentioned, the petitioners cannot be permitted to challenge the constitutionality of the impugned Act on and from the 27-4-1955 and this objection also cannot prevail."

(emphasis supplied)

12. In M.P.V. Sundararamier & Co. v. The State of Andhra Pradesh (supra), the Constitution Bench considered the effect of the Sales Tax Laws Validation Act, 1956 enacted by Parliament on the petitioners' challenge to the constitutionality of the Madras General Sales Tax Act, 1939, which was a pre-Constitution legislation. The facts of that case were that petitioners were dealers carrying on business of sale and purchase of yarn in the City of Madras. The dealers in the State of Andhra Pradesh used to purchase yarn from the petitioners. The goods were delivered ex-godown at Madras and thereafter dispatched to the purchasers. After coming into force of the Constitution of India, the President in exercise of the powers conferred upon him by Article 372(2) made Adaption Orders with reference to the Sales Tax Laws of all the States. As regards the Madras General Sales Tax Act, 1939, he issued an amendment inserting Section 22 in that Act, which was a verbatim reproduction of the Explanation to Article 286(1)(a) of the Constitution. On July 13, 1954, the Board of Revenue (Commercial Taxes), Andhra Pradesh relying upon the decision of this Court in The State of Bombay and another v. The United Motors (India) Ltd. and others 1953 SCR 1069, called upon the dealers in the State of Madras to submit returns of their turnover of sales in which goods were delivered in the State of Andhra Pradesh for consumption. The petitioners filed writ petitions under Article 32 of the Constitution and claimed immunity from taxes under Article 286(2) of the Constitution. During the pendency of the writ petitions, this Court rendered judgment in The Bengal Immunity Company Ltd. v. The State of Bihar and others (1955) 2 SCR 603, in terms of which the petitioners could not have been taxed under the State Sales Tax Act.

However, before the writ petitions could be decided, Parliament enacted Sales Tax Laws Validation Act, 1956. Section 2 of the Validation Act provided that no law of a State imposing or authorizing the imposition of tax on inter-State sales during the period between April 1, 1951 and September 6, 1955 shall be deemed to be invalid or ever to have been invalid merely by reason of the fact that sales took place in the course of the inter-State trade.

On behalf of the petitioners, many contentions were raised for challenging the constitutionality of the Validation Act. One of the arguments was that Section 22 was unconstitutional when it was enacted and, therefore, void and no proceedings could be taken thereunder on the basis of the Validation Act because the effect of unconstitutionality of the law was to efface it out of the statute book. Venkatarama Aiyer, J. who delivered the majority judgment, prefaced his views by making the following observations:

"Now, in considering the question as to the effect of unconstitutionality of a statute, it is necessary to remember that unconstitutionality might arise either because the law is in respect of a matter not within the competence of the legislature, or because the matter itself being with its competence, its provisions of end some constitutional restrictions. In a Federal Constitution where legislative powers are distributed between different bodies, the competence of the legislature to enact a particular law must depend upon whether the topic of that legislation has been assigned by the Constitution Act to that legislature. Thus, a law of the State on an Entry in List I, Sch.

VII of the Constitution would be wholly incompetent and void.

But the law may be on a topic within its competence, as for example, an Entry in List II, but it might infringe restrictions imposed by the Constitution on the character of the law to be passed, as for example, limitations enacted in Part III of the Constitution. Here also, the law to the extent of the repugnancy will be void. Thus, a legislation on a topic not within the competence of the legislature and a legislation within its competence but violative of constitutional limitation have both the same reckoning in a court of law; they are both of them unenforceable. But does it follow from this that both the laws are of the same quality and character, and stand on the same footing for all purposes? This question has been the subject of consideration in numerous decisions in the American Courts, and the preponderance of authority is in favour of the view that while a law on a matter not within the competence of the legislature is a nullity, a law on a topic within its competence but repugnant to the constitutional prohibitions is only unenforceable. This distinction has a material bearing on the present discussion. If a law is on a field not within the domain of the legislature, it is absolutely null and void, and a subsequent cession of that field to the legislature will not have the effect to breathing life into what was a still-born piece of legislation and a fresh legislation on the subject would be requisite. But if the law is in respect of a matter assigned to the legislature but its provisions disregard constitutional prohibitions, though the law would be unenforceable by reason of those prohibitions, when once they are removed, the law will become

effective without re-enactment. "

(emphasis supplied) The learned Judge then referred to Willoughby on the Constitution of the United States, the judgment of the U.S. Supreme Court in John M. Wilkerson v. Charles A. Rahrer (supra) as also of this Court in Bhikaji Narain Dhakras v. The State of M.P. (supra) and summed up legal position in the following words:

"Where an enactment is unconstitutional in part but valid as to the rest, assuming of course that the two portions are severable, it cannot be held to have been wiped out of the statute book as it admittedly must remain there for the purpose of enforcement of the valid portion thereof, and being on the statute book, even that portion which is unenforceable on the ground that it is unconstitutional will operate proprio vigore when the Constitutional bar is removed, and there is no need for a fresh legislation to give effect thereto. On this view, the contention of the petitioners with reference to the Explanation in s. 22 of the Madras Act must fail. The Explanation operates, as already stated, on two classes of transactions. It renders taxation of sales in which the property in the goods passes in Madras but delivery takes place outside Madras illegal on the ground that they are outside sales falling within Art.286(1)(a). It also authorises the imposition of tax on the sales in which the property in the goods passes outside Madras but goods are delivered for consumption within Madras. It is valid in so far as it prohibits tax on outside sales, but invalid in so far as sales in which goods are delivered inside the State are concerned, because such sales are hit by Art.286(2). The fact that it is invalid as to a part has not the effect of obliterating it out of the statute book, because it is valid as to a part and has to remain in the statute book for being enforced as to that part. The result of the enactment of the impugned Act is to lift the ban under Art.

286(2) and the consequence of it is that that portion of the Explanation which relates to sales in which property passes outside Madras but the goods are delivered inside Madras and which was unenforceable before, become valid and enforceable.

In this view, we do to feel called upon to express any opinion as to whether it would make any difference in the result if the impugned provision was unconstitutional in its entirety."

(emphasis supplied)

13. In Keshavan Madhava Menon v. The State of Bombay (supra), this Court was called upon to consider the question whether a prosecution launched under the Indian Press (Emergency Powers) Act, 1931 before commencement of the Constitution could be continued after 26.1.1950. The objection taken was that the 1931 Act was void because it was violative of the fundamental rights guaranteed under Part III of the Constitution. By a majority judgment, this Court held that Article

13(1) of the Constitution did not make existing laws which were inconsistent with the fundamental rights void ab initio, but only rendered such laws ineffective and void with respect to the exercise of the fundamental rights on and after the date of the commencement of the Constitution and that it had no retrospective effect.

Das, J. expressed his views in the following words:

"They are not void for all purposes but they are void only to the extent they come into conflict with the fundamental rights. In other words, on and after the commencement of the Constitution no existing law will be permitted to stand in the way of the exercise of any of the fundamental rights. Therefore, the voidness of the existing law is limited to the future exercise of the fundamental rights.... Such laws exist for all past transactions and for enforcing all rights and liabilities accrued before the date of the Constitution."

In his separate opinion, Mahajan, J. observed:

"The effect of Article 13(1) is only prospective and it operates in respect to the freedoms which are infringed by the State subsequent to the coming into force of the Constitution but the past acts of a person which came within the mischief of the law then in force are not affected by Part III of the Constitution."

The learned Judge then referred to American Law on the subject and observed:

"It is obvious that if a statute has been enacted and is repugnant to the Constitution, the statute is void since its very birth and anything done under it is also void and illegal. The courts in America have followed the logical result of this rule and even convictions made under such an unconstitutional statute have been set aside by issuing appropriate writs. If a statute is void from its very birth then anything done under it, whether closed, completed, or inchoate, will be wholly illegal and relief in one shape or another has to be given to the person affected by such an unconstitutional law. This rule, however, is not applicable in regard to laws which were existing and were constitutional according to the Government of India Act, 1935. Of course, if any law is made after 25-01-1950, which is repugnant to the Constitution, then the same rule will have to be followed by courts in India as is followed in America and even convictions made under such an unconstitutional law will have to be set aside by resort to exercise of powers given to this Court by the Constitution."

14. In Behram Khurshed Pesikaka's case, the Court considered the legal effect of the declaration made in the case of The State of Bombay v. F.N. Balsara 1951 SCR 682 that clause (b) of Section 13 of the Bombay Prohibition Act (Bom. XXV of 1949) is void under Article 13(1) of the Constitution insofar as it affects the consumption or use of liquid medicinal or toilet preparations containing alcohol and held that it was to render part of Section 13(b) of the Bombay Prohibition Act inoperative, ineffective and ineffectual and thus unenforceable. Bhagwati, J., cited all the relevant passages from text books on Constitutional Law and accepted the view that an unconstitutional law is like a legislation which had never been passed.

Jagannadhadas, J., noticed the distinction between the scope of Clauses (1) and (2) of Article 13 of the Constitution, referred to `Willoughby on Constitution of the United States' and observed:

"This and other similar passages from other treatises relate, however, to cases where the entire legislation is unconstitutional from the very commencement of the Act, a situation which falls within the scope of Article 13(2) of our Constitution. They do not directly cover a situation which falls within Article 13(1).... The question is what is the effect of Article 13(1) on a pre-existing valid statute, which in respect of a severable part thereof violates fundamental rights. Under Article 13(1) such part is `void' from the date of the commencement of the Constitution, while the other part continues to be valid. Two views of the result brought about by this voidness are possible viz. (1) the said severable part becomes unenforceable, while it remains part of the Act, or (2) the said part goes out of the Act and the Act stands appropriately amended pro tanto. The first is the view which appears to have been adopted by my learned Brother. Justice Venkatarama Aiyar, on the basis of certain American decisions.

I feel inclined to agree with it. This aspect, however, was not fully presented by either side and was only suggested from the Bench in the course of arguments. We have not had the benefit of all the relevant material being placed before us by the learned advocates on either side. The second view was the basis of the arguments before us. It is, therefore, necessary and desirable to deal with this case on that assumption."

In the same case, Mukherjea, J. observed as under:

"We think that it is not a correct proposition that constitutional provisions in Part III of our Constitution merely operate as a check on the exercise of legislative power. It is axiomatic that when the law-making power of a State is restricted by a written fundamental law, then any law enacted and opposed to the fundamental law is in excess of the legislative authority and is thus a nullity. Both these declarations of unconstitutionality go to the root of the power itself and there is no real distinction between them. They represent but two aspects of want of legislative lower. The legislative power of Parliament and the State Legislatures as conferred by Articles 245 and 246 of the Constitution stands curtailed by the fundamental rights chapter of Constitution. A mere

reference to the provisions of Article 13(2) and Articles 245 and 246 is sufficient to indicate that there is no competency in Parliament or a State Legislature to make a law which comes into clash with Part III of the Constitution after the coming into force of the Constitution."

Venkatarama Aiyer, J. expressed his views in the following words:

"Another point of distinction noticed by American jurists between unconstitutionality arising by reason of lack of legislative competence and that arising by reason of a check imposed on a competent legislature may also be mentioned.

While a statute passed by a legislature which had no competence cannot acquire validity when the legislature subsequently acquires competence, a statute which was within the competence of the legislature at the time of its enactment but which infringes a constitutional prohibition could be enforced proprio vigore when once the prohibition is removed."

15. In Saghir Ahmad v. The State of U.P. and others (supra), the Court examined challenge to the constitutional validity of the U.P. State Transport Act, 1951 under which the State was enabled to run stage carriage service to the exclusion of others. In exercise of its power under the Act, the State Government made a declaration extending the Act to a particular area and framed a scheme for operation of the stage carriage service on certain routes.

At the relevant time, the State did not have the power to deny a citizen of his right to carry on transport service. However, after the Constitution (First Amendment) Act, 1951, the State became entitled to carry on any trade or business either by itself or through corporations owned or controlled by it to the exclusion of private citizens wholly or in part. One of the questions raised was whether the Constitution (First Amendment) Act could be invoked to validate an earlier legislation. The Court held that the Act was unconstitutional at the time of enactment and, therefore, it was still-born and could not be vitalized by the subsequent amendment of the Constitution removing the constitutional objections and must be re-enacted. Speaking for the Court, Mukherjea, J. observed as under:

"As Professor Cooley has stated in his work on Constitutional Limitations (Vol. I, p. 304 note.) `a statute void for unconstitutionality is dead and cannot be vitalised by a subsequent amendment of the Constitution removing the constitutional objection but must be re-enacted.' We think that this is sound law and our conclusion is that the legislation in question which violates the fundamental right of the appellants under Article 19(1)(g) of the Constitution and is not shown to be protected by clause (6) of the article, as it stood at the time of the enactment, must be held to be void under Article 13(2) of the Constitution."

16. In Deep Chand's case (supra), this Court considered challenge to the constitutionality of the U.P. Transport Service (Development) Act, 1955, which was passed by the Legislature of the State after obtaining the assent of the President and legality of the scheme of nationalization framed and the notifications issued under it. The appellants were plying buses on different routes in U.P. on the basis of permits granted under Motor Vehicles Act, 1939. In exercise of the powers under the 1955 Act, the State Government issued notification directing that the routes on which the appellants were operating shall be exclusively served by the State buses. The writ petitions filed by the appellants were dismissed by the High Court. The appeals filed against the judgment of this Court were also dismissed. Speaking for majority of the Court, Subba Rao, J., (as his Lordship then was) observed:

"The combined effect of the said provisions may be stated thus:

Parliament and the Legislatures of States have power to make laws in respect of any of the matters enumerated in the relevant lists in the Seventh Schedule and that power to make laws is subject to the provisions of the Constitution including Art. 13, i.e., the power is made subject to the limitations imposed by Part III of the Constitution. The general power to that extent is limited. A Legislature, therefore, has no power to make any law in derogation of the injunction contained in Art. 13. Article 13(1) deals with laws in force in the territory of India before the commencement of the Constitution and such laws in so far as they are inconsistent with the provisions of Part III shall, to the extent of such inconsistency be void. The clause, therefore, recognizes the validity of the pre-Constitution laws and only declares that the said laws would be void thereafter to the extent of their inconsistency with Part III; whereas cl. (2) of that article imposes a prohibition on the State making laws taking away or abridging the rights conferred by Part III and declares that laws made in contravention of this clause shall, to the extent of the contravention, be void. There is a clear distinction between the two clauses. Under cl. (1), a pre-Constitution law subsists except to the extent of its inconsistency with the provisions of Part III; whereas, no post-Constitution law can be made contravening the provisions of Part III, and therefore the law, to that extent, though made, is a nullity from its inception.

If this clear distinction is borne in mind, much of the cloud raised is dispelled. When cl. (2) of Art. 13 says in clear and unambiguous terms that no State shall make any law which takes away or abridges the rights conferred by Part III, it will not avail the State to contend either that the clause does not embody a curtailment of the power to legislate or that it imposes only a check but not a prohibition. A constitutional prohibition against a State making certain laws cannot be whittled down by analogy or by drawing inspiration from decisions on the provisions of other Constitutions; nor can we appreciate the argument that the words "any law" in the second line of Art. 13(2) posits the survival of the law made in the teeth of such prohibition. It is said that a law can come into existence only when it is made and therefore any law made in contravention of that clause presupposes that the law made is not a nullity. This argument may be subtle but is not sound.

The words "any law" in that clause can only mean an Act passed or made factually, notwithstanding the prohibition. The result of such contravention is stated in that clause. A plain reading of the clause indicates, without any reasonable doubt, that the prohibition goes to the root of the matter and limits the State's power to make law; the law made in spite of the prohibition is a still-born law."

The learned Judge then referred to the opinions of various American jurists including Prof. Cooley, the judgments of the U.S. Supreme Court in John M. Wilkerson v. Charles A. Rahrer (supra) and Newberry v. United State (1921) 265 U.S. 232 and of this Court in Keshavan Madhava Menon v. The State of Bombay (supra), Behram Khurshed Pesikaka v. The State of Bombay (supra), Saghir Ahmad v. The State of U.P. (supra) and Bhikaji Narain Dhakras v. The State of Madhya Pradesh and another (supra) and observed:

"The Constitutional validity of a statute depends upon the existence of legislative power in the State and the right of a person to approach the Supreme Court depends upon his possessing the fundamental right i.e. he cannot apply for the enforcement of his right unless it is infringed by any law. The cases already considered supra clearly establish that a law, whether pre-Constitution or post-Constitution, would be void and nugatory insofar as it infringed the fundamental rights. We do not see any relevancy in the reference to the directive principles; for, the legislative power of a State is only guided by the directive principles of State Policy. The directions, even if disobeyed by the State, cannot affect the legislative power of the State, as they are only directory in scope and operation. The result of the aforesaid discussion may be summarized in the following propositions: (i) whether the Constitution affirmatively confers power on the legislature to make laws subject-wise or negatively prohibits it from infringing any fundamental right, they represent only two aspects of want of legislative power; (ii) the Constitution in express terms makes the power of a legislature to make laws in regard to the entries in the Lists of the Seventh Schedule subject to the other provisions of the Constitution and thereby circumscribes or reduces the said power by the limitations laid down in Part III of the Constitution; (iii) it follows from the premises that a law made in derogation or in excess of that power would be ab initio void wholly or to the extent of the contravention as the case may be; and (iv) the doctrine of eclipse can be invoked only in the case of a law valid when made, but a shadow is cast on it by supervening constitutional inconsistency or supervening existing statutory inconsistency; when the shadow is removed, the impugned Act is freed from all blemish or infirmity."

(emphasis supplied)

17. In Mahendra Lal Jaini v. The State of U.P. (supra), the petitioners questioned the constitutional validity of U.P. Land Tenures (Regulation of Transfers) Act, 1952 and Indian Forest (U.P. Amendment) Act, 1956. The petitioner had obtained a permanent lease from the Maharaja Bahadur of Nahan in respect of certain land known as "asarori" land situated in District Dehradun, Uttar Pradesh. The U.P. Zamindari Abolition and Land Reforms Act, 1951 was made applicable from July

1, 1952. By that Act all transfers made by intermediaries after the date of enforcement of the Act were declared void. The petitioner was directed not to clear the land or take any action in violation of the U.P. Private Forests Act, 1948. On March 23, 1955, a notification was issued under Section 4 of the Indian Forest Act, 1927 declaring certain lands including the land in dispute as reserved forest.

Thereafter, a proclamation was issued under Section 6 and objections were invited from the claimants. In March, 1956, the Indian Forest (U.P.Amendment) Act, 1956 was passed and a fresh notification was issued under Section 38-B of the amended Act prohibiting various acts mentioned therein.

The petitioners challenged the constitutionality of the Transfer Act and the Forest Amendment Act. The Constitution Bench of this Court reviewed various precedents and observed that the doctrine of eclipse will apply to pre-Constitution laws which are governed by Article 13(1) and would not apply to post-Constitution laws which are governed by Article 13(2). The Court rejected the argument that there should be no difference in the matter of the application of doctrine of eclipse to both the clauses of Article 13 and observed:

"Article 13(2) on the other hand begins with an in-junction to the State not to make a law which takes away or abridges the rights conferred by Part III. There is thus a constitutional prohibition to the State against making laws taking away or abridging fundamental rights. The legislative power of Parliament and the legislatures of States under Article 245 is subject to the other provisions of the Constitution and therefore subject to Article 13(2), which specifically prohibits the State from making any law taking away or abridging the fundamental rights. Therefore, it seems to us that the prohibition contained in Article 13(2) makes the State as much incompetent to make a law taking away or abridging the fundamental rights as it would be where law is made against the distribution of powers contained in the Seventh Schedule to the Constitution between Parliament and the legislature of a State. Further, Article 13(2) provides that the law shall be void to the extent of the contravention. Now contravention in the context takes place only once when the law is made, for the contravention is of the prohibition to make any law which takes away or abridges the fundamental rights. There is no question of the contravention of Article 13(2) being a continuing matter. Therefore, where there is a question of a post-Constitution law, there is a prohibition against the State from taking away or abridging fundamental rights and there is a further provision that if the prohibition is contravened the law shall be void to the extent of the contravention. In view of this clear provision, it must be held that unlike a law covered by Article 13(1) which was valid when made, the law made in contravention of the prohibition contained in Article 13(2) is a stillborn law either wholly or partially depending upon the extent of the contravention. Such a law is dead from the beginning and there can be no question of its revival under the doctrine of eclipse. A plain reading therefore of the words in Article 13(1) and Article 13(2) brings out a clear distinction between the two. Article 13(1) declares such pre-Constitution laws as are inconsistent with fundamental rights void. Article 13(2) consists of two parts; the first part imposes an inhibition on the power of the State to make a law contravening fundamental rights, and the second part, which is merely a consequential one, mentions the effect of the breach.

Now what the doctrine of eclipse can revive is the operation of a law which was operative until the Constitution came into force and had since then become inoperative either wholly or partially; it cannot confer power on the State to enact a law in breach of Article 13(2) which would be the effect of the application of the doctrine of eclipse to post-Constitution laws.

Therefore, in the case of Article 13(1) which applies to existing law, the doctrine of eclipse is applicable as laid down in Bhikaji Narain case; but in the case of a law made after the Constitution came into force, it is Article 13(2) which applies and the effect of that is what we have already indicated and which was indicated by this Court as far back as Saghir Ahmad case."

(emphasis supplied)

18. In Mahant Sankarshan Ramanuja Das Goswami etc. v. The State of Orissa and another (supra), this Court considered whether the Orissa Estates Abolition (Amendment) Act, 1954 was unconstitutional. The amendment Act was challenged on the ground that the unamended Act may fall within the ambit of Article 31A, which was inserted by the Constitution (First Amendment) Act, 1951 because it was a law for the compulsory acquisition of property for public purposes but not to the amendment Act because it was not such a law. While rejecting this argument, the Court observed as under:- "The first argument is clearly untenable. It assumes that the benefit of Article 31-A is only available to those laws which by themselves provide for compulsory acquisition of property for public purposes and not to laws amending such laws, the assent of the President notwithstanding. This means that the whole of the law, original and amending, must be passed again, and be reserved for the consideration of the President, and must be freshly assented to by him. This is against the legislative practice in this country. It is to be presumed that the President gave his assent to the amending Act in its relation to the Act it sought to amend, and this is more so, when by the amending law the provisions of the earlier law relating to compulsory acquisition of property for public purposes were sought to be extended to new kinds of properties. In assenting to such law, the President assented to new categories of properties being brought within the operation of the existing law, and he, in effect, assented to a law for the compulsory acquisition for public purposes of these new categories of property. The assent of the President to the amending Act thus brought in the protection of Article 31-A as a necessary consequence. The amending Act must be considered in relation to the old law which it sought to extend and the President assented to such an extension or, in other words, to a law for the compulsory acquisition of property for public purposes."

19. In Jawaharmal v. State of Rajasthan and others (supra), the scope of Article 255 was considered in the backdrop of challenge to the Rajasthan Passengers and Goods Taxation (Amendment and Validation) Act, 1964 by which the State Finance Acts of 1961 and 1962 were sought to be validated.

Section 4 of the amendment Act which contained a non obstante clause declared that certain provisions of Rajasthan Finance Acts of 1961, 1962 and 1963 shall not be deemed to be invalid or ever to have been invalid during the period between 9.3.1961 and the date of commencement of the amendment Act merely by reason of the fact that the Bills were introduced in the Rajasthan Legislature without the previous sanction of the President as per the requirement of proviso to Article 304(b) of the Constitution and were not assented to by the President. While rejecting the argument that failure of the Legislature to comply with the provisions of Article 255 of the Constitution renders the Financial Acts void ab initio and as such, they cannot be validated by subsequent legislation, this Court observed:

"Article 255 provides, inter alia, that no Act of the Legislature of a State and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to the Act was given by the President later. The position with regard to the laws to which Article 255 applies, therefore, is that if the assent in question is given even after the act is passed, it serves to cure the infirmity arising from the initial non-compliance with its provisions. In other words, if an Act is passed without obtaining the previous assent of the President, it does not become void by reason of the said infirmity; it may be said to be unenforceable until the assent is secured. Assuming that such a law is otherwise valid, its validity cannot be challenged only on the ground that the assent of the President was not obtained earlier as required by the other relevant provisions of the Constitution.

The said infirmity is cured by the subsequent assent and the law becomes enforceable. It is unnecessary for the purpose of the present proceedings to consider when such a law becomes enforceable, whether subsequent assent makes it enforceable from the date when the said law purported to come into force, or whether it becomes enforceable from the date of its subsequent assent. Besides, it is plain that the Legislature may, in a suitable case, adopt the course of passing a subsequent law re-introducing the provisions of the earlier law which had not received the assent of the President, and obtaining his assent thereto as prescribed by the Constitution. We see no substance in the argument that an Act which has not complied with the provisions of Article 255, cannot be validated by subsequent legislation even where such subsequent Act complies with Article 255 and obtains the requisite assent of the President as prescribed by the Constitution. Whether the infirmity in the Act which has failed to comply with the provisions of Article 255, should be cured by obtaining the subsequent assent of the President or by passing a subsequent Act re-enacting the provisions of the earlier law and securing the assent of the President to such Act, is a matter which the Legislature can decide in the circumstances of a given case. Legally, there is no bar to the legislature adopting either of the said two courses."

(emphasis supplied) However, the Court disapproved the enactment of Section 4 of the amending Act by making the following observations:

"What Section 4 in truth and in substance says is that the failure to comply with the requirements of Article 255 will not invalidate the Finance Acts in question and will not invalidate any action taken, or to be taken, under their respective relevant provisions. In other words, the Legislature seems to say by Section 4 that even though Article 255 may not have been complied with by the earlier Finance Acts, it is competent to pass Section 4 whereby it will prescribe that the failure to comply with Article 255 does not really matter, and the assent of the President to the Act amounts to this that the President also agrees that the Legislature is empowered to say that the infirmity resulting from the non-compliance with Article 255 does not matter. In our opinion, the Legislature is incompetent to declare that the failure to comply with Article 255 is of no consequence; and, with respect, the assent of the President to such declaration also does not serve the purpose which subsequent assent by the President can serve under Article 255."

(emphasis supplied)

20. The result of the above discussion and analysis of various precedents is that a post-Constitution law is void ab initio if it is not within the domain of the Legislature or is violative of the rights conferred by Part III of the Constitution. If the law is within the legislative competence of the Union or State and does not infringe any of the rights conferred by Part III of the Constitution, then the same cannot be declared void on the ground of non compliance of the procedural requirement of prior recommendation or sanction, if assent is given in the manner provided under Article 255 of the Constitution. If post enactment assent is necessary for making the law effective, then such law cannot be enforced or implemented till such assent is given. In other words, if a law is within the competence of the Legislature, the same does not become void or is blotted out of the statute book merely because post enactment assent of the President has not been obtained. Such law remains on the statute book but cannot be enforced till the assent is given by the President. Once the assent is given, the law becomes effective and enforceable. If the provision requiring pre enactment sanction or post enactment assent of the President is repealed, then the law becomes effective and enforceable from the date of repeal and such law cannot be declared unconstitutional only on the ground that the same was not reserved for consideration of the President and did not receive his assent.

The provision contained in Article 31(3) did not have even a semblance of similarity with Article 13(2) which was considered in most of the judgments relied upon by Shri Dushyant Dave. The procedural provision contained in clause (3) of Article 31 did not create any substantive right in favour of any citizen or non citizen like those conferred by other Articles of Part III including clauses (1) and (2) of Article 31. Therefore, the 1976 Act cannot be declared unconstitutional or void only on the ground that the same was not reserved for consideration of the President and did not receive his assent.

The only consequence of non compliance of clause (3) of Article 31 was that the same did not become effective and the State Government or the B.D.A. could not have taken action for

implementation of the provisions contained therein. Once Article 31 was repealed, the necessity of reserving the 1976 Act for consideration of the President and his assent disappeared and the provisions contained therein automatically became effective and the three- Judge Bench rightly negatived challenge to its constitutionality.

21. An ancillary question which needs to be addressed is whether the 1976 Act is a law enacted by the Legislature of the State with reference to Entry 5 of List II or it is a law enacted under Entry 42 of List III. The 1976 Act was enacted by the Legislature of the State of Karnataka to provide for the establishment of a Development Authority for the development of the city of Bangalore and the area adjacent thereto and for matters connected therewith. It is not a law enacted for acquisition or requisitioning of property. The terms like "amenity", "civic amenity", "Bangalore Metropolitan Area", "betterment tax", "building", "building operations", "development", "engineering operations", "means of access", "street"

defined in Section 2 of the 1976 Act are directly related to the issue of development. Section 14 lays down that the object of the Authority constituted under Section 3 shall be to promote and secure the development of the Bangalore Metropolitan Area and for that purpose it shall have the power to acquire, hold, manage and dispose of movable and immovable property, within or outside the area of its jurisdiction, to carry out building, engineering and other operations and generally to do all things necessary or expedient for the purpose of such development and for purposes incidental thereto. Chapter 3 of the 1976 Act contains provisions relating to development schemes. The provisions relating to acquisition of land contained in Chapter 4 (Sections 35 and 36) are only incidental to the main object of enactment, namely development of the city of Bangalore and area adjacent thereto. In Munithimmaiah v. State of Karnataka (supra), the two-Judge Bench analysed the provisions of the 1976 Act, considered some of the precedents on the subject and held that the law was enacted with reference to Entry 5 of List II of the Seventh Schedule under which the State Legislature is empowered to make law relating to local government and the same does not fall within the ambit of Entry 42 of List III which empowers Parliament and the State Legislature to enact law for acquisition and requisitioning of property. The relevant portion of paragraph 15 of the judgment which contains discussion on this aspect of the matter reads thus:

"15. So far as the BDA Act is concerned, it is not an Act for mere acquisition of land but an Act to provide for the establishment of a development authority to facilitate and ensure planned growth and development of the city of Bangalore and areas adjacent thereto and acquisition of lands, if any, therefor is merely incidental thereto. In pith and substance the Act is one which will squarely fall under, and be traceable to the powers of the State Legislature under Entry 5 of List II of the Seventh Schedule and not a law for acquisition of land like the Land Acquisition Act, 1894 traceable to Entry 42 of List III of the Seventh Schedule to the Constitution of India, the field in respect of which is already occupied by the Central enactment of 1894, as amended from time to time. If at all, the BDA Act, so far as acquisition of land for its developmental activities is concerned, in substance and effect will constitute a special law providing for acquisition for the special purposes of BDA and the same was not also considered to be part of the Land Acquisition Act, 1894. It could not also be legitimately stated, on a reading of Section 36 of the BDA Act that the Karnataka Legislature

intended thereby to bind themselves to any future additions or amendments, which might be made by altogether a different legislature, be it Parliament, to the Land Acquisition Act, 1894. The procedure for acquisition under the BDA Act vis-`-vis the Central Act has been analysed elaborately by the Division Bench, as noticed supra, in our view, very rightly too, considered to constitute a special and self-contained code of its own and the BDA Act and Central Act cannot be said to be either supplemental to each other, or pari materia legislations.

That apart, the BDA Act could not be said to be either wholly unworkable and ineffectual if the subsequent amendments to the Central Act are not also imported into consideration. On an overall consideration of the entire situation also it could not either possibly or reasonably be stated that the subsequent amendments to the Central Act get attracted or applied either due to any express provision or by necessary intendment or implication to acquisitions under the BDA Act. When the BDA Act, expressly provides by specifically enacting the circumstances under which and the period of time on the expiry of which alone the proceedings initiated thereunder shall lapse due to any default, the different circumstances and period of limitation envisaged under the Central Act, 1894, as amended by the amending Act of 1984 for completing the proceedings on pain of letting them lapse forever, cannot be imported into consideration for purposes of the BDA Act without doing violence to the language or destroying and defeating the very intendment of the State Legislature expressed by the enactment of its own special provisions in a special law falling under a topic of legislation exclusively earmarked for the State Legislature."

22. In Ishwari Khetan Sugar Mills (P) Ltd. v. State of U.P. (supra), the Constitution Bench considered the provisions contained in U.P. Sugar Undertakings (Acquisition) Act, 1971 and held that power to legislate for acquisition of property is an independent and separate power and is exercisable under Entry 42 of List III and not as an incident of the power to legislate in respect of a specific head of legislation in any of the three Lists.

This power of the State Legislature to legislate in respect of acquisition of property remains intact and untrammelled except to the extent where on assumption of control of an industry by a declaration as envisaged in Entry 52 of List I, a further power of acquisition is taken over by a specific legislation. In our view, this judgment has no bearing on the interpretation of the 1976 Act which, as mentioned above, was enacted for the development of the city of Bangalore and the area adjacent thereto and it contains incidental provisions in Sections 35 and 36 for acquisition of land.

23. Since, we have not accepted the argument of the learned senior counsel for the appellants that the judgment of three-Judge Bench in Bondu Ramaswamy v. Bangalore Development Authority and others (supra) requires reconsideration, it is not necessary to deal with the argument of Shri Altaf Ahmed, learned senior counsel for the B.D.A. that the 1976 Act is a law enacted with reference to Article 31(2A) of the Constitution.

24. In the result, the appeals are dismissed. The parties are left to bear their own costs.