

ALLAHABAD HIGH COURT

Lekh Raj

Vs.

4th Addl District Judge

Writ petn. No.1690 of 1979

(N.D. Ojha and V.K. Khanna, JJ.)

26.02.1982

JUDGEMENT

N.D. Ojha, J.

1. Respondents 2 to 5 are the landlords of house No.1 Manam, Mohalla Lalkurti, Meerut cantonment which was occupied by the petitioner as tenant. An application was made by respondents 2 to 5 against the petitioner for release of the aforesaid house in their favor under Section 21 (1) (a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972 (hereinafter referred to as U.P. Act XIII of 1972) on the ground that they needed it for their own use. The application was contested by the petitioner and was dismissed by the prescribed Authority. Aggrieved by that order Respondents 2 to 5 preferred an appeal before the District Judge which was allowed in part by the IVth Additional District Judge, Meerat, and a portion of the house aforesaid was released in favor of Respondents 2 to 5. It is this order which is sought to be quashed in the present writ petition.

2. When the writ petition came up for hearing before a learned single Judge of this Court, it was *inter alia* urged by counsel for the petitioner that since the house in question is situate within the cantonment area, the provisions of U.P. Act XIII of 1972 were not applicable. For the landlord-respondents. On the other hand, relying on the decision of a learned single Judge of this Court in *Brij Sundar Kapoor v. Ist Addl. District Judge, Jhansi*¹ it was urged that U.P. Act XIII of 1972 was applicable even to a house situated within the cantonment area of Uttar Pradesh. The learned single Judge took the view that the decision in Sri Brij Sundar Kapur's case (supra) required reconsideration. He accordingly referred the following question for decision by a larger Bench;

"Whether the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972, U.P. Act XIII of 1972 apply to the cantonment areas of Uttar Pradesh or not?"

The said question has accordingly come up before this Bench for an answer.

3. Before dealing with the submissions made by counsel for the parties it may be pointed out that after the commencement of the Constitution the power to legislate in regard to regulation of letting rent and eviction of house accommodation in cantonment areas vests exclusively in Parliament in view of Article 246(1) of the Constitution read with Entry III of List 1 of the VIIth Sch. thereto. It has been so held by the SC in *Indu Bhutan v. Rama Sundari Debi*,² The Parliament in exercise of the aforesaid power enacted Uttar Pradesh Cantonments (Control of Rent and Eviction) Act 1952 (hereinafter referred to as Act 10 of 1952.) In the non-cantonment areas, on the other hand, U.P. (Temporary) Control of Rent and Eviction Act, 1947 (hereinafter referred to as U.P. Act III of 1947) was in force. Subsequently the Parliament enacted Cantonments (Extension of Rent Control Laws) Act 1957 (hereinafter referred to as Act 46 of 1957). Section 3 of Act 46 of 1957 *inter alia* provided;

"The Central Government may by a notification in the official Gazette extend to any cantonment with such restrictions and modifications as it thinks fit, any enactment relating to the control of rent and regulation of house accommodation which is in force on the date of the notification in the State in which the cantonment is situated."

Act 46 of 1957 was amended by the Cantonments (Extension of Rent Control Laws) Amendment Act (22 of 1972). Upon amendment Section 1(2) of the principal Act declared that the principal Act would be deemed to have come in force on 26th Jan. 1950. The words "on the date of the notification" in Section 3 of the Principal Act were omitted so that under Section 3 the Central Government was to be deemed to have been empowered always to extend to a cantonment any enactment relating to the control of rent and regulation of house accommodation in the State even as it stood before the date of the notification. Further subject to the proviso, the Central Government now enjoyed power to

extend an enactment from the date earlier to the date of the notification or from a future date. That this is the effect of the amendment, finds support from two decisions of the SC in *Jai Singh Jai Ram Tyagi v. Maman Chand*,³ and *Gur Charan Singh v. V.K. Kaushal*,⁴ Thus in Dec. 1971 Act 10 of 1952 was the enactment dealing with regulation of letting, rent and eviction of houses situate within the various cantonments in the State of Uttar Pradesh whereas in the areas outside, U.P. Act III of 1947 was applicable for this purpose. It appears that in order to have uniform legislation dealing with regulation of letting, rent and eviction of house accommodation in the whole of Uttar Pradesh subject to such modifications as may be considered necessary the Parliament enacted the Uttar Pradesh Cantonments (control of Rent and Eviction) (Repeal) Act 1971 (hereinafter referred to as Act 68 of 1971). The purpose of this Act, as is apparent from its preamble, was "to provide for the repeal of the Uttar Pradesh Cantonments (Control of Rent and Eviction) Act 1952." Section 2 of Act 68 of 1971 reads as follows :-

"2. Repeal of Act 10 of 1952. On and from the date on which is United Provinces (Temporary) Control of Rent and Eviction Act 1947 (United provinces Act III of 1947) is extended by notification under Section 3 of the Cantonments (Extension of Rent Control Laws) Act 1957 (46 of 1957), to the cantonments in the State of Uttar Pradesh, the Uttar Pradesh Cantonments (Control of Rent and Eviction) Act 1952 (10 of 1952) shall stand repealed."

The enactment of Act 68 of 1971 was apparently necessary inasmuch as unless Act 10 of 1952 was repealed, the provisions of U.P. Act III of 1947 could not be extended to the cantonments in the State of Uttar Pradesh by issuing a notification under Section 3 of Act 46 of 1957. With the repeal of Act 10 of 1952 by Act 68 of 1971 the obstacle in issuing a notification under Section 3 of Act 46 of 1957 was removed and the Central Government in exercise of the power conferred by Section 3 of Act 46 of 1957 issued a notification dated Apr. 3, 1972 extending the provisions of U.P. Act III of 1947 as in force on the date of that notification to the cantonments in the State of Uttar Pradesh with certain modifications. U.P. Act III of 1947 in its turn was repealed by U.P. Act XIII of 1972 which came into force on July 15, 1972. The Central Government thereupon issued another notification dated Sept. 1, 1973 published in the

Gazette of India dated Sept, 29, 1973 whereby the earlier notification dated Apr. 3, 1972 was superseded and the provisions of U.P. Act XIII of 1972 as in force on the date of that notification were extended to all the cantonments in the State of Uttar Pradesh with certain modifications mentioned therein.

4. Now in the aforesaid background may be considered the submissions made by counsel for the parties in respect of the question referred to us. It was urged by counsel for the petitioner that the repeal of Act 10 of 1952 by Act 68 of 1971 was conditional on the issue of the relevant notification by the Central Government under Section 3 of Act 46 of 1957 extending the provisions of U.P. Act III of 1947 to the cantonments in the State of Uttar Pradesh and consequently it was a case of legislation by incorporation, with the result that U.P. Act III of 1947 subject to the modification mentioned in the notification dated Apr. 3, 1972 stood bodily lifted and incorporated in Act 68 of 1971. According to counsel for the petitioner this being the position the repeal of U.P. Act III of 1947 did not have any bearing in so far as the houses situate within the cantonments of the State of Uttar Pradesh were concerned and Act 68 of 1971 incorporating the provisions of U.P. Act III of 1947 continued to be operative to the cantonments in the State of Uttar Pradesh. He further urged that if subsequently the provisions of U.P. Act XIII of 1972 were intended to be applied to cantonments, it could be done only by an Act of parliament repealing Act 68 of 1971 and passing another Act extending the provisions of U.P. Act XIII of 1972 to the cantonments.

5. Having considered the submissions made by counsel for the petitioner in this behalf we find it difficult to accept the same. The legal proposition that where a provision of one Statute is incorporated in another the repeal or amendment of the former does not effect the latter and the effect of incorporation is as if the provision incorporated were written out in the incorporating Statute and were a part of it admits of no doubt. If authority were needed for this proposition, reference may be made to *Mahindra and Mahindra Ltd. v. Union of India*,⁵ The same principle has been laid down in various earlier decisions but we find it unnecessary to refer to all of them. The question which, however, falls for our consideration is whether Section 2 of Act 68 of 1971 has taken recourse to legislation by incorporation. In our considered opinion it has not. As has been pointed out above, and as is apparent even from the preamble of U.P. Act 68 of

1971 the only purpose of the Act was to repeal Act 10 of 1952 in order to clear the ground for the issue of a notification under Section 3 of Act 46 of 1957 by the Central Government extending the provisions of U.P. Act III of 1947 to the cantonments. The power to extend the provisions of U.P. Act III of 1947 to the cantonments by issuing a notification in this behalf already vested in the Central Government by virtue of Section 3 of Act 46 of 1957. It was, therefore, not a case of death of power but was a case where there was a hurdle in the exercise of the power, namely, the existence of Act 10 of 1952. By enacting Act 68 of 1971 the Parliament intended only to remove that hurdle and not to confer a fresh power on the Central Government to issue the relevant notification in supersession of the power contained in Section 3 of Act 46 of 1957. The words "on and from the date on which the United provinces (Temporary) Control of Rent and Eviction Act 1947. (United Provinces Act III of 1947) is extended by notification under Section 3 of the Cantonments (Extension of Rent Control Laws) Act 1957 (46 of 1957), to the cantonments in the State of Uttar Pradesh" were in our opinion used to give the date on and from which Act 10 of 1952 shall stand repealed. Even if Act 10 of 1952 had simply been repealed by Act 68 of 1971 the Central Government could have immediately thereafter issued a notification in exercise of the already existing power in this behalf as contained in Section 3 of Act 46 of 1957 but the possibility of a hiatus between the repeal of Act 10 of 1952 and issue of the relevant notification under, Section 3 of Act 46 of 1957 was not ruled out on account of some situation beyond the control of the Central Government. By enacting Section 2 of Act 68 of 1971 in the present form the Parliament apparently intended to avoid this situation. If the Parliament had intended to create a fresh source of power in favor of the Central Government by Act 68 of 1971 to issue a notification extending the provision of U.P. Act III of 1947 which was the only enactment relating to the control of rent and regulation of house accommodation in force in the State of Uttar Pradesh at that time it would not have used the words "by notification under Section 3 of the Cantonments (Extension of Rent Control Laws) Act 1957 (46 of 1957)" after the words "is extended" in Section 2 of Act 68 of 1971. For the reasons already stated above, we are of opinion, that the provisions of U.P. Act III of 1947 did not stand incorporated in Act 68 of 1971. If really this was the intention the language of Section 2 of Act 68 of 1971 would have been much simpler. It would have been somewhat in the following terms:

"On and from the date of commencement of this Act the provisions of U.P. Act III of 1947 shall be applicable to the cantonments in the State of Uttar Pradesh and Act 10 of 1952 shall stand repealed."

6. It was then urged by counsel for the petitioner that the purpose of Act 68 of 1971 was to empower the Central Government to extend U.P. Act III of 1947 to the cantonments by issuing a notification under Section 3 of Act 46 of 1957 consequent upon the repeal of Act 10 of 1952 and the said power having been exercised by the Central Government by issuing the notification dated April 3, 1972 stood exhausted and could not be exercised again for issuing the notification dated Sept. 1, 1972 whereby U.P. Act XIII of 1972 was extended to the cantonments. Reliance in support of this submission was placed on the decision of the SC in *Lachmi Narain v. Union of India*,⁶ We find it difficult to accept this submission either. In *Lachmi Narain's* case (supra) Section 2 of the Union Territories (Laws) Act, 1950 which empowered the Central Government to extend by notification in the official Gazette to a part-C State an enactment which is in force in a part-A State with such restrictions and modifications as it thinks fit came up for consideration and it was held that once the Central Government had issued a notification under Section 2, the power to issue a notification got exhausted and no subsequent notification could be issued in the exercise of that power. In our opinion, the principle contained in *Lachmi Narain's* case (supra) would have applied only if the power to extend U.P. Act III of 1947 to the Cantonment by issuing a notification had been conferred on the Central Government by Section 2 of Act 68 of 1971. As already pointed out above, the power to do so was in our opinion, not conferred on the Central Government by Section 2 of Act 68 of 1971 but Section 2 only repealed Act 10 of 1952 and thereby removed the obstacle in the exercise of such power already existing under Section 3 of Act 46 of 1957 with effect from the date on which this power was exercised by the Central Government.

7. Insofar as the power conferred by Section 3 of Act 46 of 1957 is concerned, the principle contained in *Lachmi Narain's* case (supra) will in our opinion, not be applicable in view of the language and phraseology of this section Section 3 of Act 46 of 1957, as already seen above, empowers the Central Government by notification in the official Gazette to extend to any cantonment with such

restrictions and modifications at it, thinks fit, any enactment relating to the control of rent and regulation of house accommodation which is in force in the State in which the cantonment is situated. The word "any" and the words "which is in force" used in Section 3 are of significance. They indicate that Section 3 of Act 46 of 1957 confers power on the Central Government to issue not one but even successive notifications in order to extend to any cantonment with such restrictions and modifications as it thinks fit, such enactment relating to the control of rent and regulation of house accommodation which may, from time to time, be in force in the State in which the cantonment is situated. The purpose of giving the power to the Central Government to issue a notification under Section 3 of Act 46 of 1957 is obviously to apply to a cantonment the same enactment relating to the control of rent and regulation of house accommodation which may, from time to time, be in force in the State in which the cantonment is situated with such restrictions and modifications as was thought fit. As a necessary corollary it follows that it was not the purpose of Section 3 of Act 46 of 1957 that an enactment which had been extended to a cantonment by issuing a notification under Section 3 of Act 46 of 1957 may continue to be operative in such cantonment even if the same had been repealed and had been replaced by another enactment and was thus not in force in the State in which the said cantonment was situated. In other words, the extension of an enactment to a cantonment was to remain operative till the said enactment had not been repealed and was in force in the State in which the cantonment is situated. In this view of the matter on the language of Section 3 of Act 46 of 1957 we are of opinion that it is not the principle contained in Lachmi Narain's case (supra) but the principle contained in Section 21 of the General Clauses Act which will apply to the facts of the instant case.

8. In *R.K. Porwal v. State of Maharashtra*,⁷ a similar question arose with regard to a notification issued under Section 5 of the Maharashtra Agricultural procedure Marketing (Regulation) Act 1963 which read as follows .-

"5. (1) For every market area, there shall be established a principal market, and there may be established one or more subsidiary markets.

(2) The Director shall, as soon as possible after the issue of a notification under sub-section (1) of Section 4, by a notification in the official Gazette establish any place (including any structure, enclosure, open place or

locality) in any market area to be the principal market for the marketing of the agricultural produce specified in that notification; and may by the same notification, or by like notification, establish in any other like places in the market area, subsidiary markets for the marketing of such agricultural produce."

9. Repelling the submission that once a principal or subsidiary market was established at one place, there was no provision in the Act which enabled the Principal or subsidiary market to be transferred to another place it was held (Para 6) :--

"We have seen that Section 5 authorizes the establishment of a principal market and one or more subsidiary markets. Quite obviously the power to establish a principal market or a subsidiary market carries with it the power to disestablish (if such expression may be used) such market. Quite obviously again, the power given by Section 5 to establish a principal or subsidiary market may be exercised from time to time. These follow from Secs.14 and 21 of the Maharashtra General Clauses Act. So Section 5 of the Maharashtra Agricultural procedure Marketing (Regulation) Act 1963, read with Secs.14 and 21 of the Maharashtra General Clauses Act vest enough power in the Director to close an existing market and establish it elsewhere.....Any other construction may frustrate the very object of the legislation. Nothing may be expected to remain static in this changing world of ours. A market which is suitably and conveniently located today may be found to be unsuitable and inconvenient tomorrow on account of the development of the area in another direction or the congestion which may have reduced the market into an impossible squalid place or for a variety, of other reasons. To so interpret the provisions of the Agricultural Produce Marketing Regulation Act as prohibiting the abolition of a market once established and bar the transfer of the market to another place would, as we said, be to defeat the very object of the Act. Neither the text' nor the context of the relevant provisions of the Act warrant such a prohibition and bar and there is no reason to imply any such. On the other hand Sections 14 and 21 of the Maharashtra General Clauses Act warrant our reading into Section 5 a power to close a market and establish it elsewhere."

10. In our opinion, the principle of law enunciated above applies to the facts of the instant case also particularly in view the object and language of Section 3 of Act 46 of 1957 already noticed above. Consequently on the U.P. Act III of 1947 being repealed and replaced by another enactment the Central Government in order to fulfill the purpose of Section 3 of Act 46 of 1957 had to issue another notification extending the provisions of the new enactment in supersession of the notification extending the enactment which was subsequently repealed. In this connection it may be pointed out that Section 3 contemplates extension of an enactment which is in force, namely, an existing enactment. Continuation of an extension of the enactment will depend upon the continuation of the extended enactment. The term 'extension' according to words And Phrases by Rolland Burrows "imports the continuation of an existing thing." According to new International Dictionary the term "extend" *inter alia* means "increase the size of, enlarge, to increase the scope, meaning or application of. What is non-existent cannot be extended. It is for these reasons that we find it difficult to accept the submission made by counsel for the petitioner that the power of the Central Government to issue a notification under Section 3 of Act 46 of 1957 stood exhausted by issue of the notification dated Apr. 3, 1972 and the subsequent notification dated Sept. 1, 1973, extending the provisions of U.P. Act XIII of 1972 to the cantonments in the State of Uttar Pradesh was ultra vires.

11. Counsel for the petitioner then urged that Section 3 of Act 46 of 1957 suffered from the vice of excessive delegation and abdication of essential legislative function when it purported to empower the Central Government to extend the provisions of even such a State Act which was not in existence at the time of commencement of Act 46 of 1957 and came into being later on inasmuch as the Parliament not having seen such enactment could not be said to have applied its mind to its provisions while empowering the Central Government to extend it to Cantonments by issuing a notification. Reliance was placed on the decision of the SC in *B. Shama Rao v. Union Territory Pondichery*,⁸

12. In *Gwalior Rayon Mills v. Asstt. Commr.*⁹ while distinguishing the case of *B. Shama Rao* it was pointed out in para 7 of the report that in that case the

Pondicherry legislature while providing in Pondicherry General Sales Tax Act that the Madras General Sales Tax Act, 1959, as in force in the State of Madras immediately before the commencement of the Pondicherry Act, shall be extended to Pondicherry subject to certain modification, had totally surrendered in the matter of sales tax legislation by the Pondicherry legislature in favor of the Madras Legislature without laying down any legislative policy. In para 8 of the report it was pointed out:-

"Another distinction, though not very material, is that in the Pondicherry case the provisions of the Madras Act along with the subsequent amendments were made applicable to an area which was within the Union Territory of Pondicherry and not in Madras State. As against that, in the present case we find that the parliament has adopted the rate of local sales tax for certain purposes of the Central sales tax only for the territory of the State for which the Legislature of that State had prescribed the rate of sales tax. The Central sales tax in respect of the territory of a State is ultimately assigned to that State under Article 269 of the Constitution and is imposed for the benefit of that State. We would, therefore, hold that the appellants cannot derive much assistance from the above mentioned decision of this Court."

13. While reiterating that the essential legislative function could not be delegated it was held that the essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. If legislative policy had been determined and formulated as a rule of conduct the working out of details could be delegated to the executive or any other agency. Again in para 65 of the report it was pointed out :-

"We think that the principle of the ruling in (1967) 2 SCR 650 must be confined to the facts of the case. It is doubtful whether there is any general principle which precludes either Parliament or a State legislature from adopting a law and the future amendments to the law passed respectively by a State legislature or parliament and incorporating them in its legislation. At any rate, there can be no such prohibition when the adoption is not of the entire corpus of law on a subject but only of a provision and its future amendments and that for a special reason or

purpose."

14. Having given our anxious consideration we are of the opinion that the principles enunciated in the case of Gwalior Rayon Mills, AIR 1974 SC 1660 (supra) which save a legislation from the vice of excessive delegation and abdication of essential legislative function have been kept in mind by the Parliament in enacting Section 3 of Act 46 of 1957. We now proceed to give our reasons for taking this view.

15. By and large the background and the circumstances which necessitate the passing of an Act about regulation of letting, rent and eviction in respect of buildings situated within a particular State are the same throughout that State and the State legislature of that State is expected to have special knowledge about the problems to be solved. The framers of the Constitution though it proper to confer the legislative power in this behalf of the State Legislatures. But for the fortuitous circumstances that certain buildings situate within a State lie in a cantonment the State Legislature would have had jurisdiction to legislate for those buildings also. For obvious reasons pertaining to the defense of the country and the like, there are certain special considerations on account of which the power of legislation about regulation of letting, rent and eviction in respect of buildings situate within a Cantonment, has been conferred on the Parliament. In this background if the Parliament as a matter of legislative policy decides as it has apparently done in enacting Act.46 of 1957 that there should be uniform law in the whole of a State about regulation of letting, rent and eviction in respect of all the buildings in that State subject to such restrictions and exceptions which may have a nexus with the object sought to be achieved by conferring the power of legislation not on the legislature of the State concerned but on the Parliament so far as the buildings situate within a Cantonment are concerned and thereby passes an Act laying down the restrictions and exceptions referred to above and chooses to rely on the wisdom of the State Legislature as regards such matters which are common throughout the State, it cannot be said that the conferment of power on the Central Government to extend the enactment in this behalf in force in that State to Cantonments also by issuing a notification, suffers either from the vice of excessive delegation or abdication of the essential legislative function. Section 3 of Act 46 of 1957 in our opinion, precisely does the same thing. The restrictions

and exceptions which were considered relevant have been incorporated therein and for the rest of the matters, as a matter of legislative policy of having uniform legislation, power has been conferred on the Central Government to extend the enactment relating to the control of rent and regulation of house accommodations in force in the State to Cantonments within that State. It is an instance "when the adoption is not of the entire corpus of law on a subject" the restrictions and exceptions considered necessary having been incorporated in Act 46 of 1957 "but only of a provision" or provisions "for a special reason or purpose," the same being the legislative policy of having uniform law on the subject in the whole of a particular State. Further unlike the Pondicherry Legislature in the case of B. Shama Rao, AIR 1967 SC 1480 authorizing extension of the law of a different State, the Parliament in the instant case has authorized extension to Cantonments of the same law which is in force in other parts of that very State where the Cantonments are situated. In case of B. Shama Rao it had been emphasized that the Pondicherry Legislature could not predicate whether future amendments made by the Madras Legislature in its Act would be suitable in Pondicherry. This being so it is, in our opinion, of no consequence that the enactment extended to Cantonments by a notification under Section 3 of Act 46 of 1957, namely U.P. Act XIII of 1972, was not in existence when Act 46 of 1957 was enacted but, came into being later on. In this connection it is further relevant that notwithstanding the issue of a notification under Section 3 of Act 46 of 1957 by the Central Government, the Parliament continues to have the power to nullify or modify the provision of the extended enactment in so far as Cantonments are concerned by passing an Act if exigencies of the situation so demand. That this circumstance would constitute a relevant consideration admits of no doubt in view of the following observations in Gwalior Rayon Mills (supra) in para 72 of the report:

"There can be no doubt that Parliament can repeal the provisions of Section 8 (2) (b) adopting the higher rate of tax fixed by the appropriate State legislature in respect of intra-State sales. If Parliament can repeal the provision, there can be no objection on the score that Parliament has abdicated its legislative function. It retains its control over the fixation of the rate intact. In other words, so long as Parliament can repeal the provisions of Section 8(2)(b) adopting the higher rate of tax fixed by the State legislatures, it has not abdicated its legislative function. As already

stated, this point has been expressly decided by the Privy Council in (1967) 1 AC 141."

16. In view of the foregoing discussion our answer to the question referred to us is that the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act XIII of 1972) apply to the Cantonment areas of Uttar Pradesh subject to the restrictions and exceptions contained in Act 46 of 1957 and the modifications contained in the notification dated September 1, 1973, issued by the Central Government, published in the Gazette of India dated Sept. 29, 1973.

17. The writ petition may now be listed for hearing before the learned single Judge with this opinion of ours.

Order accordingly.

Cases Referred.

1. (1980 All Rent Cas 319)
2. AIR 1970 SC 228
3. AIR 1980 SC 1201
4. AIR 1980 SC 1866
5. AIR 1979 SC 798
6. AIR 1976 SC 714
7. AIR 1981 SC 1127
8. AIR 1967 SC 1480
9. AIR 1974 SC 1660