

ANDHRA PRADESH HIGH COURT

Inamdars of Sulhnagar Colony

Vs.

Government of A.P

Writ petns. Nos. 517 of 1959 and C. R. P. Nos. 297/4, 461/4, 462/4, 463/4, 480/4, 363/4, 364/4, 365/4, 366/4, 378/4, 379/4, 388/4, 389/4, 390/4, 540/4, 504/4, 629/4 of 1950 and 102, 444, 775, 808, 867 to 874, 1003, 1017 and 1283 of 1957

(P. Chandra Reddy, C.J. and Chandrasekhara Sastry, J.)

16.03.1961

JUDGMENT

Chandra Reddy, C.J

1. The main controversy in these petitions centres round the question whether the Hyderabad Tenancy and Agricultural Lands Act, 1950 (XXI of 1950) (hereinafter referred to as the Act), which was enacted after the inauguration of the Constitution, is inoperative for the reason that it was not reserved for the consideration of the President as required by Article 31(3) of the Constitution but the assent of H. E. H. the Nizam of erstwhile Hyderabad State was obtained.

2. This Act was passed for the purpose of regulating the relations between the landlords and tenants of agricultural lands and imposing restrictions on alienations of such lands, to assume management of lands which are left uncultivated by the landlords for distribution of the surplus lands amongst the needy persons and to provide for registration of co-operative farms. The objects of the statute are contained in the preamble to it and they are in these words :

"..... And whereas it is also expedient to enable land-holders to prevent the excessive sub-division of agricultural holdings, to empower Government to assume in certain circumstances the management of agricultural lands, to provide for the registration of Co-operative Farms and to make further provision for matters incidental to the aforesaid purposes;
X X X X".

3. Thus, the preamble reflects the legislative policy of the Government in regard to land reforms. This statute had not obtained the assent of the President. It underwent several amendments some of which also were not assented to by the President. The third Amendment which introduced Section 38-E and which also re-enacted the whole of Section 38, was reserved for the consideration of the President. Section 38-E has delegated the power to State Government to

select an area for the purpose of transferring ownership of lands to protected tenants.

4. Pursuant to the power conferred by Section 38-E a notification was issued by the Government on 26-7-1955 choosing the Khammani District for the operation of Section 38-E of the Act. Subsequently, a Tribunal was constituted to enquire into the matters contemplated by the section and, ultimately, the Tribunal declared the respondents in the several revisions as owners of lands.

5. The appeals carried by the aggrieved landlords were disallowed by the District Collector.

6. It is the orders of the Collector confirming those of the Tribunal that form the subject matter of the several revision petitions. It may be mentioned here that the relief asked for in W. P. No. 517 of 1959 is to quash the proceedings initiated by the Collector, Khammam under Section 38-E of the Act.

7. In support of the revision petitions and the Writ Petition, the contention pressed upon us by Sri Ekbote, learned Counsel for the petitioners, is that this Act is ineffective in that it was not passed in the manner indicated by Article 31(3) of the Constitution. It is only when the President declares his assent to the bill that it would become an Act under Article 31(3) and since that prerequisite is absent in this case, there is no valid law that could be enforced, continues the learned counsel.

8. On the other hand, the attitude adopted by the Government is that the non-compliance with the provisions of Article 31(3) would not lead to the whole Act being rendered ineffectual but only such provisions as bear on the acquisition or requisition of the property of persons affected by this Act that would be ineffective.

9. The main question, therefore, that falls for decision is as to the effect of the failure to observe the requirements of Article 31(3). At the outset, it must be mentioned that it is not disputed that the provisions of Chapter VI of the Act which deal with the management or acquisition of uncultivated, improperly cultivated or surplus lands beginning with Section 51, bring the Act within, the range of Article 31 because that chapter makes a provision both for acquisition and requisition of lands. It is also conceded that there are other provisions which bear on the acquisition and requisition of land. It is, therefore, unnecessary for us to examine the other provisions of the enactment to see whether Article 31(2) comes into play.

10. Article 31(2) imposes certain restrictions on the exercise of the power of eminent domain. That Article does not confer this power on the Government but it contains some safeguards in regard to the exercise of that power. It recites :

"No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any Court on the ground that compensation provided by that law is not adequate."

We are here unconcerned with Article 31(2A). We shall next read Article 31(3). It reads :

"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."

11. It is immediately plain, that this clause describes the mode in which the law that is to govern the acquisition or requisition of property is to be made. The submission of Sri Ekbote is that the law referred to in the latter part of Article 31(3) should be equated to the bill that emerges from the legislature and so long as that bill has not been reserved for the assent of the President, it does not become law at all but remains in the stage of a bill which is thus void.

12. This is countered by the learned Advocate General by the argument that the non-observance of the requirements of this clause will only lead to the consequence that such of the provisions as have a bearing on the acquisition or requisition of any property alone will be void and not the Act in its entirety. It is urged by the learned Advocate General that the Act has several objectives, many of which are unconnected with the acquisition or requisition of land and as such do not fall within the sweep of Article 31(2) and such provisions are not affected by the non-compliance of the requirements of Article 31(3). Article 31(2) imposes certain limitations on the exercise of the power of eminent domain on the State and a further restriction of the same nature is contained in clause (3) argues the Advocate General. He invites our attention to Article 13 and Article 254 of the Constitution which, according to him, point to the consequences that flow from the violations of the constitutional prohibitions or restrictions.

13. We will presently show that the situation created by Article 13 is dissimilar to that contemplated by Article 31(3). Article 13, omitting the unnecessary portions, is in these words :

"(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."

* * * * *

14. It is plain that clause (1) deals with laws that prevailed prior to the inauguration of the Constitution, whereas clause (2) bears on laws made subsequent to the Constitution coming into force.

15. We do not think that Article 254 has much of a bearing on the present enquiry. Therefore, we need not pause here to consider the applicability and effect of Article 254(2).

16. To go back to Article 13, clause (2) declares that the law which infringes any provisions of Chapter III of the Constitution will, to that extent be void. The argument of the learned Advocate General based upon this Article is that the effect of any law, which is obnoxious to the language of the constitutional provisions, is to render only that law invalid and not the whole of the Act

and since there is no other provision in the Constitution which nullifies an Act as such for the infringement of the Constitutional provisions, we should take it that the intention of the Constitution makers was that only such provisions as are inconsistent with the provisions of part III (Fundamental Rights) should be struck down. The learned Advocate General drew a distinction between an enactment bearing on a matter not within the competence of a legislature and a law which infringes the restrictions enacted by the Constitution and argues that it is only in the former category the law becomes a nullity but the laws of the latter type are not absolutely null and void, but to the extent that they are repugnant to the institutional provisions they will become ineffective.

17. To substantiate this theory, he cited to us the pronouncement of the Supreme Court in *Sundaramier and Co. v. State of Andhra Pradesh*¹, where their Lordships laid down the law regarding the unconstitutional nature of a statute. The statement of law pressed into service by him occurs at Page 1468 (of SCR) of the report. Says Venkatarama Ayyar, J. who spoke for the Court :

"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 matter not within the competence of the legislature, or because the matter itself being within its competence its provisions offend 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, Schedule 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 its competence of the legislature and a legislation within its competence but violative of constitutional limitations 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 materiel 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

¹(1958) SCR 1422 at p. 1468 : (AIR 1958 SC 468 at p. 489)

cession of that field to the legislature will not have the effect of 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."

18. We feel that the doctrine embodied in this passage cannot come to the rescue of the learned Advocate General. That will apply only where a valid law is made but there is inconsistency between that law and some of the provisions of the Constitution or where it is violative of some of the constitutional restrictions. We do not think that this rule can be attracted to the case where the bill has not been reserved for the consideration of the President. In our opinion, the language of Article 31, clause (3) makes it abundantly clear that where a bill is required to be reserved for the consideration of the President, the bill will not become an Act, unless the President declares his assent to it. This clause does not enact a restriction similar to the one under Article 31(2). Article 31(2) lays down the two conditions which have to be satisfied before the power of eminent domain could be exercised. The purpose of clause (3) is not to impose another limitation upon that power but is only to prescribe the procedure for promulgating the laws. It may be put in the form of a syllogism. The bill becomes an Act if it is reserved for the assent of the President and it receives his assent. It does not become an Act if this formality is not complied with. In other words, it remains in the stage of a bill and does not acquire the sanctity of an Act. It is as if there is no enactment at all. So no question of severability arises.

19. It is then argued by the learned Advocate General that it is only bills within the contemplation of the second proviso to Article 200 that may have such effect but not a bill contemplated by Article 31(3). He urges that a comparison of the two provisions brings out the difference between them, in that Article 31 does not indicate a prohibition against the Governor or the Rajapramukh giving his assent as in the second proviso to Article 200.

20. To appreciate this contention, it is necessary to read Article 200, which is in these words :-

"When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President :

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House, or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is to be returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent there from :

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position

which that Court is by this Constitution designed to fill."

21. It is argued that in Article 31(3) there is no prohibition as in the proviso to Article 200 and so the considerations that are pertinent to that proviso are not apposite in the consideration of Article 31(3). We do not think that this argument is substantial. In our opinion, Article 31(3) is on a par with the proviso to Article 200. Article 200 leaves three courses open to the Governor, viz. either (i) to declare his assent to the bill, or (ii) to withhold his assent therefrom, or (iii) to reserve the bill for the consideration of the President. What follows from this Article is that the Governor can either assent to or withhold his assent in cases which need not be reserved for the consideration of the President but where the Constitution requires that the Bill should be reserved for the consideration of the President, it is obligatory on his part to do so and he has no choice in the matter. Article 200 equally governs the procedure laid down by Article 31(3). Therefore, the failure to conform to the procedure envisaged by Article 31(3) has the same results as those that follow from the violation of proviso to Article 200. There can be little doubt that clause 3 of Article 31 has reference to the legislative course and it is not a limitation on the power of the State to acquire or requisition the property within the purview of Article 31(2). If the procedure indicated in Article 31(3) is not adopted, no part of the bill becomes law because it becomes effective only after it receives the assent of the President. Evidently, the Constitution has introduced this provision to avoid hasty legislations being passed by State Legislatures in regard to matters covered by that article. The President has to satisfy himself as to the effect it will have on the property of the people. It is not disputed that part of the bill cannot be reserved for consideration of the President. The bill as such has to be reserved. If this is not done, it becomes inoperative.

22. There is support for this view in some of the decided cases. The observations of the Supreme Court in *State of Bihar v. Kameswar Singh*², lend countenance to this principle. In rejecting the submission made by the counsel for the respondent in that case, that Article 31(3) read with Article 200 required that the bill before being reserved for the assent of the President should receive the assent from the Governor or the Rajapramukh and unless and 'until both the President and the Governor declared their assent to the bill, it would be ineffective, their Lordships observed that what was to be reserved was only a bill and not a law and that when the bill was reserved for the consideration of the President and was assented to by him, there was no further requirement that the Governor should also give his assent to the bill. Patanjali Sastri, J. who spoke for the Court, observed that the word 'law' is sometimes loosely used in referring to a bill, and that Article 31(4), for instance, spoke of a 'bill' being reserved for the President's assent "after it has been passed" by the "legislature of a State" and of "the law so assented to". His Lordship added :

"If the expression "passed by the Legislature" were taken to mean "passed by

² AIR 1952 SC 252 at p. 265

the houses of the legislature and assented to by the Governor" as Mr. Somayya would have it understood, then, it would cease to be a "bill" and could no longer be reserved as such. Nor is the phrase "law so assented to" strictly accurate, as the previous portion of the clause makes it clear that what is reserved for the President's assent and what he assents to is a "bill" and not a law. The phrase obviously refers to what has become a law

after receiving the assent of the President. Similarly, Article 31(3) must, in my judgment, be understood as having reference to what, in historical sequence having been passed by the House or Houses of the State Legislature and reserved by the Governor for the consideration of the President and assented to by the latter, has thus become a law."

23. It is abundantly plain from these remarks that the bill would become law only after the President has given his assent to it and not before. To a similar effect are the observations of Mahajan, J. in the same case. In our judgment, the effect of these observations is that no part of the bill would become law unless the conditions of Article 31(3) are fulfilled.

24. There is a similar observation in the judgment of the Madras High Court in *Namasivayya v. State of Madras*³, to the effect that unless the President gives his assent no part of the law could take effect at all.

25. In *Bhagat Singh v. State of Patiala*⁴, a Single Judge of Pepsu High Court (Meher Singh, J.) observed that if a bill was not reserved for the consideration of the President and his assent was not received, it became ineffective and inoperative.

26. The learned Advocate General cited to us the decision of the High Court of Travencore Cochin in *K.N. Pandarathil v. District Collector Trivendrum*⁵, which has taken a similar view. The learned Judge observed :

"Article 31 prescribes the necessity for reservation of a law regarding requisitioning or acquisition of property for the consideration of the President and that part of Act, 5 of 1950 pertaining to the requisitioning of property cannot have effect as the requirements of Clause 3 of Article 31 have not been complied with. That part is severable from other parts of that Act and the defect attaching to the part relating to the requisitioning of property will not affect the other parts of that Act."

27. We express our respectful disagreement with the proposition stated by the learned Judge. We have already stated that the principle of severability will come into play only when there is a statute but it is inapplicable where the bill passed by the legislature has not been given the assent by the President in cases where the Constitution requires it.

28. For these reasons, we have reluctantly come to the conclusion that the Hyderabad

³ AIR 1959 Mad 548

⁵ AIR 1954 Trav-Co. 145 at page 149

⁴ AIR 1954 Pepsu 174

Tenancy and Agricultural Lands Act 1950 (XXI of 1950) not having been reserved for the consideration of President and assented to by him, is inoperative. We are aware of the far-reaching consequences that flow from this interpretation of ours but considerations of inconvenience cannot weigh with Courts in interpreting the provisions of the Constitution. That apart, it is not as if the State is without a remedy even if the Act is declared ineffective.

29. The only point that remains to be dealt with is whether the fact that the third amendment

which re-enacted Section 38 and introduced for the first time Section 38-E which was assented to by the President can survive independently of the Act. We do not think that this section can live apart from the rest of the Act, since its survival depends upon the other provisions of the Act. If the rest of the Act is dead, this section can have no independent life because this is bound up with the other provisions of the Act. The provisions of Chapter IV of the Act are inextricably connected with each other. For instance, the requisites of a protected tenant are stated in Sections 34, 35 and 36. 'Protected tenant' is a statutory term and to gather the purport and meaning of it one has to turn to Section 34 and other connected sections. Section. 38-E will be unmeaning if it is divested from the rest of the Act. All the sections of the enactment must go together. The scheme of the Act is spread over the whole of it and Section 38-E, which is a part of the scheme cannot stand by itself. In fact, no attempt was made to sustain this section as being independent. Therefore, the fact that the third amendment obtained the assent of the President is of no avail.

30. In the result, the Hyderabad Tenancy and Agricultural Lands Act is declared ineffective and inoperative. It follows that the proceedings initiated under this enactment are null and void. Hence all the civil revision petitions and writ petition are allowed. There will be no order as to costs.

Petitions allowed.