

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: 15.12..2014

Pronounced on :: 10..03..2015

C O R A M

The Honourable Mr. SANJAY KISHAN KAUL, CHIEF JUSTICE
and

The Honourable Mr. Justice M. SATHYANARAYANAN

Writ Petition No.10896 of 2013

Anti Corruption Movement,
Rep. by its General Secretary,
No.7, Kaveri Street, Gandhi Nagar,
Saligramam, Chennai-600 093. Petitioner

Versus

1. The Chief Secretary to Government of Tamil Nadu,
Co-operation, Food & Consumer Protection Department,
Fort St. George, Chennai-600 009.
2. The District Collector,
Singaravelar Maligai,
Rajaji Salai, Chennai-600 001.
3. The Tahsildar,
Mambalam - Guindy Taluk,
Chennai-600 018.
4. The Director General (Highways),
Highways Department,
Chepauk, Chennai-600 005.
5. M.R. Srinivasan
6. M.R. Suseela
7. M.P. Kanni Ammal
8. M.R. Chitra Rajasekaran
9. P. Vijaya Krishnan

10. The State of Tamil Nadu,
Rep. by Secretary, Revenue Department,
Secretariat, Chennai-600 009.
(R-10 impleaded as per order dated 27.11.2014
By CJ & MSNJ in M.P. No.2 of 2014 in the W.P.)

... Respondents

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Prayer : Petition filed under Article 226 of the Constitution of India praying for a Writ of Declaration declaring Section 48-B of the Land Acquisition Act, 1894 as unconstitutional, ab initio and also to issue a writ of Certiorari calling for the reasons on the file of the first respondent pertaining to the issue of G.O. Ms. No.24, Co-operative and Consumer Protection Department dated 17.3.2009, quash the same and consequently direct the 1st respondent to take action to take back all the lands so far reconveyed to the erstwhile land owners pursuant to the provisions under Section 48-B of the Land Acquisition Act.

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For Petitioner : Mr. N. Subramanian

For Respondents : Mr. S.T.S. Moorthy, Govt. Pleader
(For Respondents 1 to 4 & 10)

Mr. P.S. Raman, Senior Counsel
Assisted by Mr. R. Syed Mustafa
(For Respondents 5 to 9)

O R D E R

The Honourable Chief Justice

The Land Acquisition Act, 1894 (hereinafter referred to as the 'said Act') was enacted with the object of providing for acquisition of the land by the Government for public purpose and the compensation payable in pursuance thereto to the land owners. The Government has a right to withdraw from the acquisition of land of which possession has not been taken, in view of Section 48(1) of the said Act. Thus, the land owner has no right in the land after acquisition is complete, and thus, de-notification is not legally possible.

2. The Government of Tamil Nadu enacted the Land Acquisition (Tamil Nadu Amendment) Act, 1996 seeking to insert Section 48-B as under:-

"48-B. Transfer of land to original owner in certain cases -Where the Government are satisfied that the land vest in the Government under this Act is not required for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount

paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of Section 23, if any paid under this Act”.

3. The aforesaid provision is, thus, in derogation from Section 48 (1) of the said Act and inasmuch as where the acquisition is complete, but the Government is satisfied that the land is not required for purposes for which it was acquired or for any other public purpose, the Government may transfer such land to the original owner, who is willing to repay the amount paid to him under the Act, inclusive of the amount of interest under Section 23 (1)(a) of the said Act and solatium under Section 23(2) of the said Act. It is the constitutional validity of the aforesaid provision, which is in question in the present writ petition.

4. In so far as the factual matrix is concerned, the petitioner has raised the issue of the acquisition of land made by Award No.4/1961 passed under Section 11 of the Land Acquisition Land in Survey No.22, Venkatapuram Village, Madras District for the purpose of construction of a Hostel and Building for Central Cooperative Institute, the direction issued on 02.01.2007 by this Court on a writ petition (W.P.No.49205 of 2006) filed by the then owners to consider the representation of the private respondents 5 to 9 dated 16.11.2006 under Section 48-B of the said Act, the rejection of such representation on 20.03.2007, quashing of the rejection letter vide order dated 10.09.2007 in W.P.No.26990 of 2007 with a direction to pass fresh orders, the first respondent issuing G.O.Ms.No.24 dated 17.03.2008 for construction of hostel for Co-operative Department as per the original purpose of acquisition and calling upon the Highways Department to vacate the existing building, the rejection of the request of respondents 5 to 9 by the first respondent to re-convey the land under Section 48-B of the said Act on 26.06.2008, respondents 5 to 9 seeking re-conveyance of the land vide W.P.No.19228 of 2008, the Government Departments allegedly filing tailor-made counter affidavits resulting in the writ petition being allowed on 27.08.2012, W.A.No.180 of 2013 being dismissed and the Special Leave Petition also thereafter receiving the same fate. Since this writ petition was in the nature of public interest litigation, it amounted to indirectly questioning the judicial orders already passed in the inter-se dispute between the land owners and the Government mainly on the plea that the Government had failed to place all the relevant facts before the Court, and also on the plea of fraud.

5. The stand of the Highways Department sought to be represented by the learned Government Pleader was that it was the Co-operative Department, which was unsuccessful before the Division Bench and in Review Petition, as also before the Hon'ble Supreme Court, while the Highways Department had independently preferred writ appeals against the order of the learned single Judge. His submission thus was any view expressed in this matter would in turn affect the merits of the controversy which was pending consideration in those proceedings.

6. We have heard the learned counsel appearing for the parties.

7. We had made it clear to the learned counsel appearing for the parties and recorded so on 15.12.2014 that we are only examining the constitutional validity of Section 48-B of the said Act and were not concerned with the individual facts of the private respondents, more so, in view of the pendency of the review applications by the Department concerned. Learned counsel for the petitioner also submitted that he is really concerned only with the larger issue of constitutional validity, though the facts of the private respondents may have triggered off the litigation. We, thus, clarify that whether re-conveyance has to be granted in the particular case of the private respondents or not, was not something which we are going to examine. Thus, the pure question of law i.e., constitutional validity of original Section 48-B is required to be examined in the present petition.

8. We may now proceed to crystallize the legal submissions vide the constitutional validity of the provisions made by the learned counsel for the petitioner :-

(a) Section 48-B violates Articles 14 & 39(b) of the Constitution of India

Once the property is lawfully acquired by the State after payment of just compensation and its possession is taken in accordance with law, as stipulated under Article 300-A of the Constitution of India, the property becomes the property of the people and is held by the State only in Trust and the erstwhile owner has no subsisting right on the acquired land thereafter. Disposal or distribution of such public property should thus be done in a fair and non-discriminatory manner only to achieve the maximum common good, and thus the erstwhile owner is at par with the other public and in such a situation, no special privilege is to be given for the property to be re-conveyed to him/her.

(b) Section 48-B is discriminatory

The State taking recourse to the provisions of the said Act acquires the properties from various land owners every year and some of these properties may not have been used for the purpose of acquisition or for that matter any other purpose for some years. The State may dispose of the property in an open and transparent manner, and not re-convey the same to the erstwhile owners of the land, as those similarly placed land owners whose lands were acquired during the same period, but not utilized, would not get such benefits.

(c) The classification made under Section 48-B of the said Act in favour of the land owners whose lands are validly acquired, but not used is impermissible

The classification, in order to make it permissible under the constitutional scheme, should have rational nexus with the object sought to be achieved. All land owners whose lands are acquired are paid due compensation and such acquisition being complete, the property becomes the public property. All public lands fall only

under one category. Thus, re-conveyance of acquired lands on account of non-utilisation of the same, on refund of the original compensation, would result in unjust enrichment of the land owners compared to other land owners.

- (d) Section 48-B is the result of arbitrary and colorable exercise of powers without taking into consideration the relevant factor

The grievance made is that having obtained compensation, the land value having appreciated over a period of time, while, in the meantime, the compensation might have been invested prudently or similar land purchased, there is no rational to re-convey the property at the original amount received giving a favourable treatment to the land owner. Not even interest on the compensation paid is sought to be recovered. Such re-conveyance, if at all, could have been only at current market value or atleast with appropriate interest.

- (e) On striking down provisions of Section 48-B, consequential directions are required to be issued

Once Section 48-B is declared unconstitutional, it is obliterated from the statute book, as it never existed; and thus, all re-conveyances made become void ab initio. There cannot be a power of prospective over-ruling while declaring any provision of law unconstitutional nor is there any public interest in protecting such transactions in the past. Such re-conveyances have taken place only in pursuance to the directions passed by the Court and selectively special leave petitions are filed where judgments were reversed i.e., (T.N. Housing Board vs. Keeravani Ammal, 2007 (9) SCC 255; T.N. Housing Board vs. L.Chandrasekaran, 2010 (2) SCC 786 and Municipal Corporation of Chennai vs. R.R.Sivasankara Mehta, 2011 (13) SCC 285).

- (f) Section 48-B is ultra vires of the scope of Entry-42 in the Concurrent List

Section 48-B of the Act has been enacted in view of the power conferred under Entry-42 of the Concurrent List III under 7th Schedule of the Constitution of India. The power has been conferred under Articles 245 & 246 of the Constitution of India. Entry 42 is 'Acquisition and Reacquisition' and it does not refer to re-conveyance of the property.

9. Learned counsel for the petitioner referred to following pronouncements of the Hon'ble Supreme Court in support of the aforesaid pleas:-

- (a) State of Kerala vs. M. Bhaskaran Pillai, 1997 (5) S.C.C. 432
Land acquired for public purpose, if not used, can be utilized for any other public purpose. Thus, if land acquired for public purpose is to be disposed of, it should only be by public auction.
- (b) Natural Resources Allocation, in re, Special Reference No.1 of 2012, 2012 (10) S.C.C. 1

Matters of distribution of largesse, grant of contracts or allotment of land, the action of the State has to be tested on the touchstone of Article 14 of the Constitution of India. The action

has to be fair, transparent, non-capricious, unbiased without favouritism or nepotism, in pursuit of health competition and equitable treatment. The property has to be distributed for common-good, as mandated under Article 39(b) of the Constitution of India.

(c) State of H.P. vs. Nurgpur (P) Bus Operators' Union, 1999 (9) SCC 559 P.V.George cs. State of Kerala, 2007 (3) SCC 557 Kailash Chand Sharma vs. State of Rajasthan, 2002 (6) S.C.C. 562

Prospective overruling is not automatic and should be specifically declared by the Hon'ble Supreme Court. Otherwise it has to be retrospective. The High Court has no power of issuing prospective overruling and thus, prospective overruling by the High Court denying relief to the writ petitioners was overruled by the Hon'ble Supreme Court.

10. Insofar as the State Government is concerned, the learned Government Pleader found himself in a peculiar position, as he could not have canvassed against the constitutional validity of Section 48-B. Thus, while not supporting the petitioner on the issue of constitutional validity of the said provision, a case was sought to be made out that in view of the judicial pronouncements, referred to above by the petitioner, the lands once acquired become the property of the State, which can be disposed of only as per the market value. In this connection, learned counsel referred to the judgment of Tamil Nadu Housing Board. Vs. Keeravani Ammal (supra) to contend that Section 48-B is an exception to the rule and the validity of Section 48-B has been left open. Similarly, the land can be re-conveyed to original land owners and not to purchaser or legal heirs is also a question left open. The relevant paragraphs read as under:-

"15. We may also notice that once a piece of land has been duly acquired under the Land Acquisition Act, the land becomes the property of the State. The State can dispose of the property thereafter or convey it to anyone, if the land is not needed for the purpose for which it was acquired, only for the market value that may be fetched for the property as on the date of conveyance. The doctrine of public trust would disable the State from giving back the property for anything less than the market value. In State of Kerala & Ors. Vs. M. Bhaskaran Pillai & Anr. [(1997) 5 S.C.C. 432] in a similar situation, this Court observed :

"The question emerges: whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better

utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting higher value."

16. Section 48B introduced into the Act in the State of Tamil Nadu is an exception to this rule. Such a provision has to be strictly construed and strict compliance with its terms insisted upon. Whether such a provision can be challenged for its validity, we are not called upon to decide here.

17. We are thus of the view that the writ petitioners, the contesting respondents, have not made out any case for interference by the Court or for grant of any relief to them. It is therefore not necessary for us to go into the further contention raised on the scope of Section 48B of the Act, whether the writ petitioners have established any claim to the lands, whether the re-conveyance can only be to the original owners and not to others and whether if possession has already been made over to the Housing Board, the State could exercise its power under that provision. We leave open those questions for the High Court to consider as and when the occasion arises on it being approached in the context of Section 48B of the Act. Suffice it to say that the decision of the High Court in the Writ Petition in question is totally unsustainable and deserves to be set aside." (paragraphs 15, 16 & 17 - pp- 261-262).

11. In Tamil Nadu Housing Board vs. L.Chandraskearan (supra), it was held that the Government alone can re-convey the land and such release is permissible only till the land vest with the Government and not if it is transferred to any other agency than the Government. The relevant paragraphs read as under:-

"26. A glance at the impugned order shows that the Division Bench did not at all advert to the factual matrix of the case and the reasons incorporated in the Government's decision not to reconvey the acquired land to the respondents. The Division Bench also did not examine the correctness or otherwise of the order passed by the learned Single Judge and allowed the appeals preferred by the respondents simply by relying upon order dated 18.2.2000 passed in Writ Appeal No.2430/1999 and that too without even making an endeavour to find out

whether the two cases were similar. In our view, the direction given by the Division Bench to the appellant-Board to reconvey the acquired land to the respondents is per se against the plain language of Section 48-B of the Act in terms of which only the Government can transfer the acquired land if it is satisfied that the same is not required for the purpose for which it was acquired or for any other public purpose. The appellant-Board is not an authority competent to transfer the acquired land to the original owner. Therefore, the Division Bench of the High Court could not have issued a mandamus to the appellant-Board to reconvey the acquired land to the respondents. As a matter of fact, the High Court could not have issued such direction even to the Government because the acquired land had already been transferred to the appellant-Board and the latter had utilized substantial portion thereof for execution of the housing scheme and other public purposes."

"28. It need no emphasis that in exercise of power under Section 48-B of the Act, the Government can release the acquired land only till the same continues to vest in it and that too if it is satisfied that the acquired land is not needed for the purpose for which it was acquired or for any other public purpose. To put it differently, if the acquired land has already been transferred to other agency, the Government cannot exercise power under Section 48-B of the Act and reconvey the same to the original owner. In any case, the Government cannot be compelled to reconvey the land to the original owner if the same can be utilized for any public purpose other than the one for which it was acquired." (SCC page - 799).

12. In Commissioner, Corporation of Chennai vs. R.Sivasankaran Mehta (supra), the provision is held to be prospective in nature. It is observed in paragraph-7 as under :-

"7. Admittedly, Section 48-B came on the statute book in 1997 by the Land Acquisition (Tamil Nadu Amendment) Act, 1996 (being Act 16 of 1997). The assent of the President of the said Act was received on 14.3.1997. Section 48-B runs as follows :-

"Where the Government are satisfied that the land vest in the Government under this Act is not required for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section(1-A) and (2) of Section 23, if any paid under this Act".

same is not retrospective in operation. The said provision, which is a departure from Section 48 can apply only prospectively." (SCC p-287).

In the aforesaid case, the judgment in Tamil Nadu Housing Board vs. L.Chandrasekaran (supra) has been relied upon to emphasize that re-conveyance can be only at present market value. In paragraphs 16 & 17, it has been observed as under :-

"16. Apart from the aforesaid question, in L.Chandrasekaran (supra), this Court held that if any re-conveyance is to be made that has to be done on the basis of the present market value. The purported order of re-conveyance initially made by the Government was not made on that basis either.

17. In the facts of this case there can be no question of promissory estoppel which is an equitable doctrine. In the context of the clear provision of Section 48 of the principal Act which was governing its field in 1995, when re-conveyance was purportedly ordered, equity has no application. Nor is there any scope for principle of natural justice to operate when the person complaining of its infraction cannot show any right of his which has been violated. In the given facts of the case and the clear mandate of Section 48 of the principal Act, we do not discern any right of the landowners to apply for re-conveyance in respect of a land which had vested in the Government long ago." (SCC p-289)

13. We may, however, note at this stage that the observations in paragraph-10 have to be also referred to appreciate the conclusion, which reads as under :-

"10. Under the provisions of Section 48 of the principal Act, we are afraid, the respondent(s) has no right of asking for re-conveyance in 1995 inasmuch as it is an admitted case of the parties that possession of the property was taken over by the State as early as in 1949 when the Award was passed and the land vested in the State Government in 1962. Thereafter it was transferred to the Corporation. This aspect of the case, which goes to the root of the question, was totally missed by the High Court. Even if we accept, for the sake of argument, that Section 48-B was available in 1995 when re-conveyance was ordered even then the respondent(s) has no case."

The aforesaid provision has been analysed, as it is in the context of Section 48 of the said Act and it has been observed that there was no right to ask for re-conveyance as the provision never existed at that stage. In that context, it was observed that even if Section 48-B was available, even then the private respondents

14. The judgment in V.Chandrasekaran vs. Administrative Officer, 2012 (12) S.C.C. 133, while observing that the land once vested to the State free from all encumbrances, cannot be divested and proceedings under the said Act would not lapse, only dealt with Section 48 of the said Act.

15. In Special Tahsildar vs. T. Nagendran, 2003 (2) L.W. 414, the provisions of Section 48-B have been held to be prospective in application. In paragraph-16 it is observed as under:-

"16. This Act came into force in the year 1997. Admittedly, vesting of the lands with the State Government took place during 1983/1984 mostly and in the remaining one or two cases in the year 1986. In the act, there is nothing to show that it is retrospective in operation. Of course, learned Government Pleader would contend, that the relevant date is the date when the State Government considers and satisfies and not the date when the land vested with the Government. According to the Government Pleader, the Government decided only after 1997 that being so the provisions of the Section can be applied to the instant case. We are not able to accept this submission. Admittedly, the land vested with the Government way back in the year 1984 in most of the cases and in one or two remaining cases in 1986 (i.e.) about 16 years before. The crucial date for consideration is the date when the lands vested with the Government and not the date when the Government considered and decided. Or in other words, Section 48(B) cannot be (sic) applicable only in respect of the cases where the acquired lands vested with the Government after the said amendment Act XVI of 1997 came into force. We are of the view that Section 48(B) of the Act would not be available for the Government to be invoked. "

16. In Southern Railways vs. S. Palaniappan, 2005 (2) CTC 721, it has been held that Section 48-B will apply only to the original owner, who is willing to repay the amount paid to him under the Act. It would be useful to reproduce the observations in paragraph-16.

"16. Thus, before the enactment of Section 48-B by the Land Acquisition (Tamil Nadu Amendment) Act, 1996 the legal position was that once the land stood vested in the State Government under Section 16 of the Act, it could not be re-conveyed to the original owner even by mutual consent between the Government and the original land owner. It was evidently to get over this difficulty that Section 48-B was enacted. In our opinion, Section 48-B clearly contemplates a mutual agreement between the original owner and the government to re-convey the land which is vested in the State Government under Section 16 to the original owner on his return of the money paid to him in respect of the acquisition. In our opinion, Section 48-B does not contemplate a unilateral withdrawal

from the acquisition by the State Government. The land in question stood vested in the State Government under Section 16 of the Act, and in view of the decision of the Supreme Court in Government of A.P. Vs. Syed Akbar, AIR 2005 SC 492 it could not have even been re-conveyed to the original owner even by mutual consent between the original land owner and the government, but for Section 48-B which was inserted in the State of Tamil Nadu."

The discussion thereafter proceeded on the plea of the learned Advocate General that Section 48-B permits the State Government to transfer back the land to the original owner unilaterally, which plea, however, was repelled. There has to be willingness of both and whether it causes hardship or not was held not to be material as the provision could not be interpreted in a manner so as to defeat its object. Moreover, the Courts are not concerned with the legislative policy or with the result, whether injurious or otherwise.

17. In R. Shanmugam vs. State of Tamil Nadu, 2006 (4) C.T.C. 290, it has been held that the Government is obliged to consider the rights of the original land owner, who is willing to repay the amount, but does not have an automatic or absolute rights to seek re-conveyance. Different pronouncements of this Court have been analyzed. The discussions which proceed from paragraphs 23 to 35 are as under :-

"23. The inserted provision contemplates that in case the Government are satisfied that the land vest in the Government is not required for the purpose for which it was acquired or for any other public, they may transfer such land to the original owner who is willing to repay the amount paid to him for the acquisition of such land inclusive of the amount referred to in sub-section(1-A) and (2) of Section 23, if any, paid under the Act. When once the land vest in Government under Section 16-B, it is obligated to consider the request of the original owner who is willing to repay the amount for transfer of the land to such original owner.

24. The next question that arises for our consideration is as to whether the original owner has any vested right?

25. Right to property is not a fundamental right after the insertion of Article 300-A by the Constitution (Forty Fourth Amendment) Act, 1978, but such right is still a constitutional right. In terms of Article 300-A. No person shall be deprived of his property save by authority of law. The provisions of the Principal Act provide such authority to the State and Central Government, as the case may be, to acquire the land for public purpose. As the acquisition of land deprives the constitutional rights of the land owners, stringent provisions are made for acquisition and payment of

reasonable compensation. The right to acquire land by the Government is sovereign power of eminent domain as held by the Supreme Court in *Jilubhai N. Khachar vs. State of Gujarat* (1995 Supp (1) SCC 596).

26. In *Chandragauda Ramgonda Patil vs. State of Maharashtra* (1996 (6) S.C.C. 405), the Supreme Court has observed as follows :-

"We do not think that this Court would be justified in making direction for restitution of the land to the erstwhile owners when the land was taken away back and vested in the Municipality free from all encumbrances. We are not concerned with the validity of the notification in either of the Writ Petitions. It is axiomatic that the land acquired for a public purpose would be utilized for any other public purpose, though use of it was intended for the original public purpose. It is not intended that any land which remained unutilized, should be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of the notification. Under these circumstances, the High Court was well justified in refusing to grant relief in both the Writ Petitions

27. In *S.P.SUBRAMANIA CHETTY VS K.S.R.T.C* (A.I.R.1997 SC 2076), the Supreme Court observed that the Court cannot compel the Government to withdraw the acquisition proceedings or to restore the possession to the owners of the land.

28. In *C. PADMA VS DEPUTY SECRETARY TO THE GOVERNMENT OF TAMIL NADU* (1997 (2) S.C.C. 627), the Supreme Court observed that when the acquired land having vested in the State and the compensation having been paid to the claimant, the claimant was not entitled to restitution of possession on the ground that either original public purpose had ceased to be in operation or the land could not be used for other purpose.

29. In *NORTHERN INDIAN GLASS INDUSTRIES VS JASWANT SINGH* (2003 (1) S.C.C. 335), the Supreme Court has held as follows :-

"If the land was not used for the purpose for which it was acquired, it was open to the State Government to take action but that did not confer any right on the respondents to ask for restitution of the land.

30. In *GOVERNMENT OF A.P. AND ANOTHER VS. SYED AKBAR* (2005 (1) S.C.C. 558), the Supreme Court has held as follows :-

"When the land is acquired under the Land Acquisition Act which is vested in the State Government free from all encumbrances, the Question of re-conveying the land as claimed by the respondent could not be accepted in view of the clear position of law stated in the decisions of this Court aforementioned."

31. In fact, the Supreme has observed that the Government is also entitled to dispose of the unutilized land, of course, by public auction and necessarily need not be re-conveyed to the erstwhile owner in the judgment reported in STATE OF KERALA VS. M. BHASKARAN PILLAI (1997 (5) S.C.C. 432). The relevant portion reads as follows :-

"In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public action can be better utilized for the public purpose envisaged in the directive principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value."

32. As the very object of the Amendment Act introducing Section 48B indicates that for insertion of the said provision enabling the State Government to re-convey the unutilised lands to the erstwhile owners subject to the conditions enumerated in that Section. This provision was inserted keeping in mind that there is no provision in the Central Act enabling the Government to re-convey the unutilised land. Of course, the Supreme Court in all the above judgments had considered the power of the Government to withdraw the land acquisition

proceedings under Section 48 of the Central Act. That Section contemplates that the Government shall be at liberty to withdraw the acquisition proceedings of any land of which possession has not been taken. While considering the scope of Section 48, the Supreme Court has held that the Government is empowered to withdraw the acquisition but even then, in the absence of any vested right on the erstwhile owners, the Government cannot be compelled to withdraw the acquisition proceedings and re-convey the land. Equally, the Government also cannot unilaterally withdraw the acquisition without the consent of the erstwhile owners.

33. As the provision of Section 48B is unique and is contemplated only by Tamil Nadu Amendment Act, the purport of that Section must be considered with reference to the object and reasons. By the above provision, the erstwhile owners are entitled to make request to the Government for re-conveyance of the land, of course, subject to their willingness to repay the amount paid to them under the Act for acquisition of land inclusive of the amount referred to in Sub-section (1-A) and (2) of Section 23, if any, paid under this Act. By the provision of Section 48-B an element of right to repossess the land by way of re-conveyance is conferred on the owners, of course, subject to the compliance of Section 48-B. Issue of re-conveyance under Section 48-B, came up for consideration before a Division Bench of this Court in the judgment reported in SOUTHERN RAILWAYS ETC. VS S. PALANIAPPAN AND OTHERS (2005 (2) L.W. 325). In the said judgment, the Division Bench while considering the issue as to the willingness of the land owners and the right of the Government to accept the willingness, has held in para 33, 34 and 35 as follows :-

"33. Mr. R. Krishnamoorthy, learned senior counsel for the respondents-land owners placed reliance on the decision of a learned single Judge in M. Manimegalai vs State of Tamil Nadu, 2004 Writ L.R. 789 (vide paragraph-10) wherein it was observed:

"Section 48-B has been introduced with a view to protect the interest of the persons from whom the land has been acquired but not utilised. Such provision is a benevolent provision. Even though it is not specifically indicated in Section 48-B regarding the right of such a person to file application, it is obvious that such a person has to indicate his willingness to get the land back subject to repayment of the compensation."

learned single Judge that Section 48-B has been introduced only to protect the interest of the persons from whom the the land has been acquired. In our opinion, Section 48-B can also protect the interest of the State Government which wants to re-convey the land which it had acquired, but in such a case the State Government must get the consent of the erstwhile land owner before it can re-convey the land to him under Section 48-B. The State Government cannot act unilaterally in this connection as already held above.

35. For the reasons given above, we are of the opinion that the impugned order dated 3.12.2003 does not fall within the ambit of Section 48-B as it is a unilateral act and hence, it has to be declared as invalid, because by a mere executive order, unsupported by statute, land which stands vested in the State Government under Section 16 of the Land Acquisition Act cannot be unilaterally reconveyed by the State Government to the erstwhile land owners."

34. It is well settled principle of law that ordinarily the Court should give a plain and literal meaning while interpreting the statute. In SWEDISH MATCH AB VS SECURITIES AND EXCHANGE BOARD, INDIA (AIR 2004 S.C. 429), the Supreme Court has held that where the words of a statute are absolutely clear and unambiguous, recourse cannot be resorted to the principles of interpretation other than the literal rule. In PRAKASH NATH KHANNA VS CIT (2004 (9) S.C.C. 686, the Supreme Court has held that the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency especially when a literal reading of produces an intelligible result.

35. In order to apply the provisions of Section 48-B of the Tamil Nadu Amendment Act, 1996, firstly, the land must vest with the Government under the Act in Revenue Department, and secondly, in the opinion of the State Government, such land is not required for any other public purpose and thirdly, the said land can be re-conveyed to the original owner who is willing to repay the amount that was paid to him under the Act for the acquisition of such land inclusive of the amount referred to in Sub-section (1-A) and (2) of Section 23, if any, paid under the Act. The power of the Government to

transfer such land to the original owner is only discretionary. Where the lands are forfeited by the Government from the Housing Board, it can be utilised by the Government for any other public purpose. In the event, the Government is of the opinion that the lands are not required for any other public purpose, then it must consider re-conveyance of the land under Section 48-B. Only in the event, the Government is of the view that the lands cannot be re-conveyed, it may resort to dispose the land by public auction. However, the exercise of the power under Section 48-B cannot be mechanical and whenever the discretion to take a decision is conferred on the authority by a statute, concept of fairness inherent in the guarantee of equality under Article 14 of the Constitution of India must be ensured. Exercise of such discretion could be tested on fairness and reasonableness. This is more so when such authority is bound to determine the questions affecting the right to property of individual. The decision must be supported by reasons with materials and necessarily be an informed one. In this context, the exercise of such discretionary power as to whether the land should be re-conveyed to the original owner or should it be sold by public auction, should not be arbitrary and unreasonable and fairness must prevail in such decision. Though the land owners cannot have any vested or absolute right to seek for automatic re-conveyance of the land, they have an element of right for consideration of their claim for reconveyance in terms of Section 48-B."

18. In *S. Ramesh Kumar & 2 others vs. State of Tamil Nadu*, 2006 (2) L.W. 811, the right to seek consideration for re-conveyance under Section 48-B was held as available only to the original owners and not subsequent purchasers.

19. In *Malarkodi and 6 others vs. The Secretary to the Government of Tamil Nadu and others*, 2008 (4) L.W. 29, it was observed that the land must be vested with the Government and it should be satisfied that it is not required for public purpose, for which it was acquired or for any other purpose before re-conveyance can arise.

20. In *Tamil Nadu Housing Board vs. M. Kirubakaran and 10 others*, 2009 (4) L.W. 506, it was observed in paragraphs 5 and 6 as under:-

"5. The writ appeal raises the following two issues:

(i) In an application under Section 48-B, whether the Government is bound to re-convey the unutilized land to the land owner as a matter of right or not?

(ii) Whether the exemption granted in favour of some of the land owners would automatically enure the other owners as well to claim such benefit?

6. Point No.(i): As far as the right of a land owner to seek for re-conveyance of the unutilized land as a matter of right, we may usefully refer to the Division Bench judgment of this Court in R.Shanmugam and others v. The State of Tamil Nadu rep.by its Secretary, Housing & Urban Development Department, Chennai and others, 2006 (4) CTC 290. That was also a case where the acquisition was for the proposed construction of housing units by the Tamil Nadu Housing Board. The land remained unutilized for quite some years and an application under Section 48-B was made. While considering the right of a land owner, this Court, having regard to the introduction of Section 16-B by the Tamil Nadu Amendment Act 16 of 1997 empowering the Government to re-possess the land from the Tamil Nadu Housing Board in the event of the land having remained unutilized, held that such a power could be exercised by the Government to re-possess the land from the Tamil Nadu Housing Board and on such re-possession, the land shall vest in the Government free from all encumbrances. Once the land vested in the Government, it has to be dealt with by the Government to explore the possibility of using the land for any public purpose at the first instance. In the event the Government is of the view that the land is not required for any other public purpose, thereafter, it has to be sold in public auction. Only if the Government could not do so, the claim of the owner for re-conveyance could be considered. However, such consideration cannot be made in an arbitrary manner, but on acceptable grounds. In view of the said law, the claim of the owners for re-conveyance, though not automatic, should be considered and could be rejected on reasonable grounds."

21. In Tamil Nadu Housing Board vs. S.Gajendran and another, 2010 SCC Online Mad. 1587, it was observed that the lands must vest with the Government. It was further observed in paragraphs 10, 11 and 18 as under :-

"10. It is not the case of the first respondent that the second respondent Government forfeited the land from the Tamil Nadu Housing Board due to the alleged non-utilisation of the land. In such circumstances, the first respondent cannot approach the Government for re-conveyance of the land under section 48-B of the Land Acquisition Act, 1894. Re-conveyance of the land under Section 48-B can be considered by the Government only if the land is in possession of the Government and once possession is handed over to the requisitioning body viz., the Tamil Nadu Housing Board, the Government loses its right to consider re-conveyance request made, if any, by the erstwhile land owners. Section 48-B of the Act reads as follows:

"48-B. Transfer of land to original owner in certain cases.- Where the Government are satisfied that the land vest in the Government under this Act is not required for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of section 23, if any, paid under this Act."

11. A Division Bench of this Court in the decision reported in 2006 (4) CTC 290 (R. Shanmugam v. The State of Tamil Nadu), considered the issue as to whether the Government has got power under Section 48-B of the Act to re-convey the land after handing over possession to the Tamil Nadu Housing Board, without divesting the same under section 16-B of the Land Acquisition Act from the Tamil Nadu Housing Board. In paragraphs 21 and 36 of the said Judgment the Division Bench held as follows:

"21. The lands are acquired under the Central Act only on the proposal of Housing Board. On acquisition, the land vest in Government under Section 16 of the Act and thereafter it is transferred to Housing Board only for the limited purpose of implementation of the Scheme. In the event, the State Government is satisfied that the land acquired and transferred to the Housing Board is not utilized for housing or improvement scheme for the purpose for which it was acquired, in exercise of the provisions of Section 16-B, it shall forfeit the land as penalty and thereafter the land shall vest with the Government in Revenue Department free from all encumbrances.

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36. we hold that the Government in exercise of the power under Section 16-B of the Act can forfeit the land from the Tamil Nadu Housing Board as penalty and on such forfeiture, the land shall vest in the Government in Revenue Department free from all encumbrances. Once such vesting takes place, the Government shall consider the request, if any, received from the land owners expressing their willingness for re-conveyance and may accept or reject. Such exercise of power is discretionary and the owners have no right to seek for automatic re-conveyance of land. The Tamil Nadu Housing Board has no power under Section 72 of the Act to dispose of unutilized land and such power shall only vest with the Government under Section 16-B of the Land Acquisition Act."

The same view is again reiterated in the Division Bench decision reported in 2010 (1) C.W.C. 261 (The Managing Director, Tamil Nadu Housing Board v. I. Ravichandran @ Ravi Sam and others). Thus, it is evident that unless and until possession given to the Housing Board is divested in exercise of powers under Section 16-B, the Government cannot re-convey the land to the original owner under Section 48-B of the Act. It is not the case of the first respondent that the land is divested from the Tamil Nadu Housing Board for considering his request for re-conveyance under Section 48-B. Hence the application filed by the first respondent for re-conveyance is not maintainable.

18. It need no emphasis that in exercise of power under Section 48-B of the Act, the Government can release the acquired land only till the same continues to vest in it and that too if it is satisfied that the acquired land is not needed for the purpose for which it was acquired or for any other public purpose. To put it differently, if the acquired land has already been transferred to other agency, the Government cannot exercise power under Section 48-B of the Act and reconvey the same to the original owner. In any case, the Government cannot be compelled to reconvey the land to the original owner if the same can be utilized for any public purpose other than the one for which it was acquired."

22. In Dharmalingam vs. State of Tamil Nadu, 2013 SCC Online Mad 1980, the proposition is that there should be a mutual agreement between the Government and the original land owners.

23. On the conspectus of the aforesaid judgments, it was submitted before us :-

(i) Section 48-B of the said Act thus to some extent vest uncanalysed power with the Government qua the land for which the acquisition process is complete.

(ii) The re-conveyance should be at market value on the original compensation paid, in view of the aforesaid judgments.

(iii) No time limit has been prescribed as to when the land can be re-conveyed unlike Section 48(1), where the re-conveyance could only occur at pre-possession stage. However, in view of the judicial pronouncements referred to aforesaid, Section 48-B of the said Act would only apply prospectively and thus, the relevant date would be the date when the lands were vested with the Government and not the date when the Government considered and decided.

(iv) The vesting can only be with the original owner and no other person including the legal heirs can seek re-conveyance.

24. Mr. P.S. Raman, learned senior counsel representing private respondents 5 to 9 also took on the burden of defending the provisions of Section 48-B of the said Act on account of the stated reason that in view of the legal battle going on between the private respondents and the State of Tamil Nadu, the endeavour of the State Government is only to read down the statutory provision. Since it could not have supported the challenge to the provision, this plea in turn is based on the ground taken in the Special Leave Petition filed earlier, Questions of Law, Review Petitions filed etc. Be that as it may, it was urged that the determination of the question of the Constitutional validity of a provision cannot be coloured by aspects such as plea of strict construction, non-applicability to acquisitions made prior to 1997, payment of market value by the land owners, non-applicability of the provision to the legal heirs of the land owners and delay or laches in approaching the Court, as these are aspects arising in respect of the implementation of the provision in the given cases. It was thus submitted that this Court is not required to lay down any of the propositions as enunciated by the State Government, as the Court is only concerned with the aspect of the Constitutional validity of the provision.

25. The thrust of the argument of the learned senior counsel was that the other party should not take the Court into arenas which are not germane for determining the Constitutional validity of a statutory provision, there being only two grounds available for such challenge. These two grounds are :

- 1)Legislative competence, and
- 2)Violation of Fundamental Rights guaranteed under Part-III of the Constitution of India.

26. In support of this broad plea, in order to curtail the scope of scrutiny before this Court, reference was made to a number of judgments, which are discussed hereinbelow :-

- a) State of A.P. vs. McDowell & Company, (1996) 3 S.C.C. 709

"43. Shri. Rohinton Nariman Submitted that inasmuch as a large number of persons falling within the exempted categories are allowed to consume intoxicating liquors

in the State of Andhra Pradesh, the total prohibition of

manufacture and production of these liquors is "arbitrary" and the amending Act is liable to be struck down on this ground alone. Support for this proposition is sought from a judgment of this Court in State of Tamil Nadu and Ors. v. Ananthi Ammal and Ors., A.I.R. 1995 S.C. 2114. Before, however, we refer to the holding in the said decision, it would be appropriate to remind ourselves of certain basic propositions in this behalf. In the United Kingdom, the Parliament is supreme. There are no limitations upon the power of the Parliament. No Court in the United Kingdom can strike down an Act made by the Parliament on any ground. As against this, the United States of America has a Federal Constitution where the power of the Congress and the State Legislatures to make laws is limited in two ways, viz., the division of legislative powers between the States and the federal government and the fundamental rights (Bill of Rights) incorporated in the Constitution. In India, the position is similar to the United States of America. The power of the Parliament or for that matter, the State Legislatures is restricted in two ways. A law made by the Parliament or the Legislature can be struck down by Courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part-III of the constitution or of any other constitutional provision. There is no third ground. We do not wish to enter into a discussion of the concepts of procedural unreasonableness and substantive unreasonableness concepts inspired by the decisions of United States Supreme Court. Even in U.S.A., these concepts and in particular the concept of substantive due process have proved to be of unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the courts as arbiters of the wisdom of the Legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by Clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the Clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment

cannot be struck down on the ground that Court thinks it unjustified. The Parliament and the Legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds, viz., (i) unreasonableness, which can more appropriately be called irrationality, (ii) illegality and (iii) procedural impropriety [See Council of Civil Services Union v. Minister for the Civil Services (1985) A.C. 374 which decision has been accepted by this Court as well]. The applicability of doctrine of proportionality even in administrative law sphere is yet a debatable issue. [See the opinions of Lords Lowry and Ackner in R. v. Secretary of State for the Home Department Ex-parte Blind and Ors., (1991) A.C. 696. It would be rather odd if an enactment were to be struck down by applying the said principle when its applicability even in administrative law sphere is not fully and finally settled. It is one thing to say that a restriction imposed upon a fundamental right can be struck down if it is disproportionate, excessive or unreasonable and quite another thing to say that the Court can strike down enactment if it thinks it unreasonable, unnecessary or unwarranted. Now, coming to the decision in Ananthi Ammal, we are of the opinion that it does not lay down a different proposition. It was an appeal from the decision of the Madras High Court striking down the Tamil Nadu Acquisition of land for Harijan Welfare Schemes Act, 1978 as violative of Articles 14, 19 and 300A of the Constitution. On a review of the provisions of the Act, this Court found that it provided a procedure which was substantially unfair to the owners of the land as compared to the procedure prescribed by the Land Acquisition Act, insofar as Section 11 of the Act provided for payment of compensation in installments if it exceeded Rupees two thousand. After noticing the several features of the Act including the one mentioned above, this Court observed :

"7. When a statute is impugned under Article 14 what the court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis".

- b)The aforesaid observations have been approved by the Constitution Bench of the Supreme Court in *Union of India vs. R. Gandhi, President, Madras Bar Association*, (2010) 11 S.C.C. 1 on the following lines :-

"99. MBA contended that constitution of a Tribunal to transfer the entire company law jurisdiction of the High Court was violative of the doctrine of separation of power and independence of judiciary which are parts of basic structure of the Constitution. The Union of India countered it by contending that a Legislation cannot be challenged on the ground it violates the basic structure of the Constitution. It is now well settled that only constitutional amendments can be subjected to the test of basic features doctrine. Legislative measures are not subjected to basic features or basic structure or basic framework. The Legislation can be declared unconstitutional or invalid only on two grounds namely (i) lack of legislative competence and (ii) violation of any fundamental rights or any provision of the Constitution [See : *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1; *Kuldip Nayar v. Union of India*, 2006 (7) SCC 1; and *State of Andhra Pradesh v. McDowell & Co.*, 1996 (3) SCC 709]. The reason for this was given by Chandrachud J. in *Indira Gandhi*, thus :

"691. ...'Basic structure', by the majority judgment [in *Keshavanda Bharati v. State of Kerala*, 1973 (4) SCC 225], is not a part of the fundamental rights nor indeed a provision of the Constitution. The theory of basic structure is woven out of the conspectus of the Constitution and the amending power is subjected to it because it is a constituent power. "The power to amend the fundamental instrument cannot carry with it the power to destroy its essential features" - this, in brief, is the arch of the theory of basic structure. It is wholly out of place in matters relating to the validity of ordinary laws made under the Constitution.

692. ...There is no paradox, because certain limitations operate upon the higher power for the reason that it is a higher power. A constitutional amendment has to be passed by a special majority and certain such amendments have to be ratified by the legislatures of not less than one-half of the States as provided by Article 368(2). An ordinary legislation can be passed by a simple majority. The two powers, though species of the same genus, operate in different fields and are therefore subject to different limitations."

- c) *Greater Bombay Co-op. Bank Ltd. vs. United Yarn Tex (P) Ltd.*,

"82. The constitutional validity of an Act can be challenged only on two grounds, viz. (i) lack of legislative competence; and (ii) violation of any of the Fundamental Rights guaranteed in Part III of the Constitution or of any other constitutional provision. In State of A. P. and Ors. vs. Mc Dowell & Co. and Ors. [1996] 3 S.C.R. 721, this Court has opined that except the above two grounds, there is no third ground on the basis of which the law made by the competent legislature can be invalidated and that the ground of invalidation must necessarily fall within the four corners of the afore-mentioned two grounds.

83. Power to enact a law is derived by the State Assembly from List II of the Seventh Schedule of the Constitution. Entry 32 confers upon a State Legislature the power to constitute co-operative societies. The State of Maharashtra and the State of Andhra Pradesh both had enacted the MCS Act, 1960 and the APCS Act, 1964 in exercise of the power vested in them by Entry 32 of List II of the Seventh Schedule of the Constitution. Power to enact would include the power to re-enact or validate any provision of law in the State Legislature, provided the same falls in an Entry of List II of the Seventh Schedule of the Constitution with the restriction that such enactment should not nullify a judgment of the competent court of law. In the Appeals/Slips/petitions filed against the judgment of the Andhra Pradesh High Court, the legislative competence of the State is involved for consideration. Judicial system has an important role to play in our body politic and has a solemn obligation to fulfil. In such circumstances, it is imperative upon the Courts while examining the scope of legislative action to be conscious to start with the presumption regarding the constitutional validity of the legislation. The burden of proof is upon the shoulders of the incumbent who challenges it. It is true that it is the duty of the constitutional courts under our Constitution to declare a law enacted by the Parliament or the State Legislature as unconstitutional when Parliament or the State Legislature had assumed to enact a law which is void, either for want of constitutional power to enact it or because the constitutional forms or conditions have not been observed or where the law infringes the Fundamental Rights enshrined and guaranteed in Part III of the Constitution.

84. As observed by this Court in C.S.T. vs. Radhakrishnan in considering the validity of a Statute the presumption is always in favour of

constitutionality and the burden is upon the person who attacks it to show that there has been transgression of constitutional principles. For sustaining the constitutionality of an Act, a Court may take into consideration matters of common knowledge, reports, preamble, history of the times, objection of the legislation and all other facts which are relevant. It must always be presumed that the legislature understands and correctly appreciates the need of its own people and that discrimination, if any, is based on adequate grounds and considerations. It is also well-settled that the courts will be justified in giving a liberal interpretation in order to avoid constitutional invalidity. A provision conferring very wide and expansive powers on authority can be construed in conformity with legislative intent of exercise of power within constitutional limitations. Where a Statute is silent or is inarticulate, the Court would attempt to transmute the inarticulate and adopt a construction which would lean towards constitutionality albeit without departing from the material of which the law is woven. These principles have given rise to rule of "reading down" the provisions if it becomes necessary to uphold the validity of the law.

85. In *State of Bihar v. Bihar Distillery Ltd.*, (1997) 2 S.C.C. 453, this Court indicated the approach which the court should adopt while examining the validity/constitutionality of a legislation. It would be useful to remind ourselves of the principles laid down, which read: (SCC p. 466, para 17)

"The approach of the court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The court should try to sustain its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it. The court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed. Indeed, any such defects of drafting should be ignored out as part of the attempt to sustain the validity/constitutionality of the enactment. After all, an Act made by the legislature represents the will of the people and that cannot be lightly interfered with. The unconstitutionality must be plainly and clearly established before an enactment is declared as void. The same approach holds good while ascertaining the intent and purpose of an enactment or its scope and application."

follows (SCC p. 466) :

"The court must recognise the fundamental nature and importance of legislative process and accord due regard and deference to it, just as the legislature and the executive are expected to show due regard and deference to the judiciary. It cannot also be forgotten that our Constitution recognises and gives effect to the concept of equality between the three wings of the State and the concept of 'checks and balances' inherent in such scheme."

86. The principles of legislative competence were stated with precision by the Federal Court in *Subramanyan Chettiar vs. Muttuswami Goundan*, A.I.R. 1941 F.C. 47 as follows :

"It must inevitably happen from time to time that legislation though purporting to deal with a subject in one list, touches also upon a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee, whereby the impugned statute is examined to ascertain its pith and substance or its true nature and character for the purpose of determine whether it is legislation with respect to matters in this list or that..."

In *A.S. Krishna v. State of Madras*, 1957 Cri L.J. 409, this Court applied these principles.

87. In *State of Rajasthan v. Chawala*, 1959 Suppl (1) SCR 904, *Hidayatullah, J.* aptly described the principles of pith and substance as under :

"13. The pith and substance of the impugned Act is the control of the use of amplifiers in the interests of health and also tranquility, and thus falls substantially (if not wholly) within the powers conferred to preserve, regulate and promote them and does not so fall within the Entry in the Union List, even though the amplifier, the use of which is regulated and controlled is an apparatus for broadcasting or communication. As *Latham, C. J.*, pointed out in *Bank of New South Wales v. The Commonwealth*, (1948) 76 C.L.R. 1:

<https://hcservices.ecourts.gov.in/hcservices/> "A power to make laws 'with respect to' a subject matter is a power to make

laws which in reality and substance are laws upon the subject-matter. It is not enough that a law should refer to the subject-matter or apply to the subject-matter: for example, income tax laws apply to clergymen and to hotel-keepers as members of the public; but no one would describe an income-tax law as being, for that reason, a law with respect to clergymen or hotel-keepers. Building regulations apply to buildings erected for or by banks; but such regulations could not properly be described as laws with respect to banks or banking.

88. Entry 43 List of I speaks of banking, insurance and financial corporations etc. but expressly excludes co-operative societies from its ambit. The constitutional intendment seems to be that the co-operative movement was to be left to the States to promote and legislate upon and the banking activities of co-operative societies were also not to be touched unless Parliament considered it imperative. The BR Act deals with the regulation of the banking business. There is no provision whatsoever relating to proceedings for recovery by any bank of its dues. Recovery was initially governed by the Code of Civil Procedure by way of civil suits and after the RDB Act came into force, the recovery of the dues of the banks and financial institutions was by filing applications to the Tribunal. The Tribunal has been established with the sole object to provide speedy remedy for recovery of debts of the banks and financial institutions since there has been considerable difficulties experienced therefore from normal remedy of Civil Court.

89. In *R.C. Cooper, etc. v. Union of India*, [1970] 3 S.C.R. 530, this Court observed that power to legislate for setting up corporations to carry on banking and other business and to acquire, hold and dispose of property and to provide for administration of the corporations is conferred upon the Parliament by Entries 43, 44 and 45 of the Constitution. Therefore, the express exclusion of co-operative societies in Entry 43 of List I and the express inclusion of co-operative societies in Entry 32 of List II separately and apart from but along with corporations other than those specified in List I and universities, clearly indicated that the constitutional scheme was designed to treat co-operative societies as institutions distinct from corporations. Co-operative Societies, incorporation, regulation and winding up are State subjects in the ambit of Entry 32 of List II of Seventh Schedule to the Constitution of India. Co-operatives form a specie of genus 'corporation' and as such co-operative societies

with objects not confined to one State read in with the Union as provided in Entry 44 of List I of the Seventh Schedule of the Constitution, MSCS Act, 2002 governs such multi-state co-operatives. Hence, the co-operative banks performing functions for the public with a limited commercial function as opposed to corporate banks cannot be covered by Entry 45 of List I dealing with "banking". The subject of co-operative societies is not included in the Union List rather it covers under Entry 32 of List II of Seventh Schedule appended to the Constitution.

90. We have gone through the decision of this Court in *The Life Insurance Corporation of India v. D. J. Bahadur and Ors.*, (1981) 1 L.L.J. 1 S.C. cited at bar. This Court held that the Industrial Disputes Act, 1947 is a special Statute devoted wholly to investigation and settlement of industrial disputes. Therefore, with reference to industrial disputes between employers and workmen, the Industrial Disputes Act is a special Statute and the Life Insurance Corporation Act (31 of 1956) does not speak at all with specific reference to workmen. The industrial disputes between workmen and the employer as such are beyond the orbit of and have no specific or special place in the scheme of the Life Insurance Corporation Act.

91. In *ITC Ltd. vs. Agricultural Produce Market Committee and Ors.*, [2002] 1 S.C.R. 441, this Court, as per majority opinion, held that the legislative power of Parliament in certain areas is paramount under the Constitution is not in dispute. What is in dispute is the limits of those areas as judicially defined. Broadly speaking Parliamentary paramountcy is provided for under Articles 246 and 254 of the Constitution.

92. The first three clauses of Article 246 of the Constitution relate to the demarcation of legislative powers between the Parliament and the State Legislatures. Under Clause (1), notwithstanding anything contained in Clauses (2) and (3), Parliament has been given the exclusive power to make laws with respect to any of the matters enumerated in List I or the Union List in the Seventh Schedule. Clause (2) empowers the Parliament and State Legislatures subject to the power of Parliament under Sub-clause (1), to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule described in the Constitution as the 'Concurrent List' notwithstanding anything contained in Sub-clause (3). Under Clause (3) the State Legislatures have been given exclusive powers to make laws in respect of matters enumerated in List II in the Seventh Schedule described as the 'State List' but subject to Clauses (1) and (2). The three lists while enumerating in detail the legislative subjects carefully

distribute the areas of legislative authority between Parliament (List I) and the State (List II). The supremacy of Parliament has been provided for by the non-obstante clause in Article 246 (1) and the words 'subject to' in Article 246 (2) and (3). Therefore, under Article 246 (1) if any of the Entries in the three Lists overlap, the Entry in List I will prevail. Additionally, some of the Entries in the State List have been made expressly subject to the power of Parliament to legislate either under List I or under List III. Entries in the Lists of the Seventh Schedule have been liberally interpreted, nevertheless Courts have been wary of upsetting this balance by a process of interpretation so as to deprive any Entry of its content and reduce it to 'useless lumber'. The use of the word 'exclusive' in Clause (3) denotes that within the legislative fields contained in List II, the State Legislatures exercise authority as plenary and ample as Parliament.

93. In *Associated Timber Industries and Ors. vs. Central Bank of India and Anr.*, A.I.R. 2000 S.C. 2689, this Court observed:

"Banking" being included in Union List in Entry 45 List I of Seventh Schedule cannot come within the purview of Assam Money Lenders Act, while "money-lending and money-lenders; relief of agricultural indebtedness" under the Assam Money Lenders Act 1934 comes under Entry 30 of List II State List of the Seventh Schedule.

94. In *State of Maharashtra vs. Laljit Rajshi Shah and Ors.*, 2000 Cri L.J. 1494, the question before this Court was whether a person defined as "officer" under Section 2(20) of the MCS Act, 1960 was a "public servant" within the meaning of Section 2 of the Prevention of Corruption Act, 1947 by virtue of the provisions of Section 161 of the MCS Act, 1960 read with Section 21 IPC and as such, could be proceeded against for offences under Section 5(1) read with Section 5 (2) of the Prevention of Corruption Act, 1947. On analysis of the various provisions of the statutes and Articles 245, 246, 254(2) and Schedule Seven List II Entry 32 and List III Entry I, this Court held in para 6 as under:

"...The Maharashtra Co-operative Societies Act 1960 has been enacted by the State Legislature and their powers to make such legislation is derived from Entry 32 of List II of the Seventh Schedule to the Constitution. The legislature no doubt in Section 161 has referred to the provisions of Section 21 of the Indian Penal Code

concerned 'public servants' within the ambit of Section 21. The State Legislature had the powers to amend Section 21 of the Indian Penal Code, the same being referable to a legislation under Entry 1 of List III of the Seventh Schedule, subject to Article 254(2) of the Constitution as, otherwise, inclusion of the persons who are 'public servants' under Section 161 of the Co-operative Societies Act would be repugnant to the definition of 'public servant' under Section 21 of the Indian Penal Code. That not having been done, it is difficult to accept the contention of the learned Counsel, appearing for the State that by virtue of deeming definition in Section 161 of the Co-operative Societies Act by reference to Section 21 of the Indian Penal Code, the persons concerned could be prosecuted for the offences under the Indian Penal Code. The Indian Penal Code and the Maharashtra Co-operative Societies Act are not Statutes in pari materia. The Co-operative Societies Act is a completely self-contained Statute with its own provisions and has created specific offences quite different from the offences in the Indian Penal Code. Both Statutes have different objects and created offences with separate ingredients. They cannot thus be taken to be Statutes in pari materia, so as to form one system. This being the position, even though the Legislatures had incorporated the provisions of Section 21 of the Indian Penal Code into the Co-operative Societies Act, in order to define a 'public servant' but those 'public servants' cannot be prosecuted for having committed the offence under the Indian Penal Code. It is a well-known principle of construction that in interpreting a provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. But in so construing the fiction, it is not to be extended beyond the purpose for which it is created, or beyond the language of the Section by which it is created. A legal fiction in terms enacted for the purposes of one Act is normally restricted to that Act and cannot be extended to cover another Act. When the State Legislatures make the Registrar, a person exercising the power of the Registrar, a person authorised to audit the accounts of a society under Section 81 or a person to hold an inquiry under Section 83 or to make an inspection under Section 84 and a person appointed as an Administrator under Section 78 or as a

Liquidator under Section 103 shall be deemed to be 'public servants' within the meaning of Section 21 of the Indian Penal Code. Obviously, they would not otherwise come within the ambit of Section 21, the legislative intent is clear that a specific category of officers while exercising powers under specific sections have by legal fiction become 'public servant' and it is only for the purposes of the Co-operative Societies Act. That by itself does not make those persons 'public servants' under the Indian Penal Code, so as to be prosecuted for having committed the offence under the Penal Code. When a person is "deemed to be" something, the only meaning possible is that whereas he is not in reality that something, the Act of legislature requires him to be treated as if obviously for the purposes of the said Act and not otherwise."

95. Union of India v. Delhi High Court Bar Assn., (2002) 4 S.C.C. 275 relied upon on behalf of the respondents in support of the judgments and orders of the High Court of Bombay and the High Court of Andhra Pradesh, does not consider the issue of cooperative banks' adjudication and recovery provisions under Entry 32 of List II. The Court was only considering Entry 45, List I vis-à-vis Entry II-A, List III "administration of justice". As such, the decision of this case is of no assistance or of help to the proposition of law involved in the present cases.

96. None of the contentions of the learned counsel for the respondents supporting the judgments and orders of the High Courts impugned before this Court on the question of interpretation clause as well as the question of constitutional clause formulated hereinabove can be sustained. सत्यमेव जयते

97. For the reasons stated above and adopting pervasive and meaningful interpretation of the provisions of the relevant statutes and Entries 43, 44 and 45 of List I and Entry 32 of List II of the Seventh Schedule of the Constitution, we answer the reference as under:

"Cooperative banks" established under the Maharashtra Cooperative Societies Act, 1960 (the MCS Act, 1960), the Andhra Pradesh Cooperative Societies Act, 1964 (the APCS Act, 1964), and the Multi-State Cooperative Societies Act, 2002 (the MSCS Act, 2002) transacting the business of banking, do not fall within the meaning of "banking company" as defined in Section 5(c) of the Banking Regulation Act, 1949 (the BR Act).

Therefore, the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the RDB Act) by invoking the doctrine of incorporation are not applicable to the recovery of dues by the cooperatives from their members."

d)State of Madhya Pradesh vs. Rakesh Kohli, (2012) 6 S.C.C. 312

"16. The statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. The court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. Sans flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature is not declared bad.

17. This Court has repeatedly stated that legislative enactment can be struck down by court only on two grounds, namely (i) that the appropriate legislature does not have the competence to make the law, and (ii) that it does not (sic) take away or abridge any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. In McDowell and Co. (supra) while dealing with the challenge to an enactment based on Article 14, this Court stated in para 43 of the Report as follows: (SCC pp. 737-38)

"43. ... A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone viz. (1) lack of legislative competence, and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground. ... if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by sub-clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of

the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom".

19. The High Court has not given any reason as to why the provision contained in clause (d) was arbitrary, unreasonable or irrational. The basis of such conclusion is not discernible from the judgment. The High Court has not held that the provision was discriminatory. When the provision enacted by the State Legislature has not been found to be discriminatory, we are afraid that such enactment could not have been struck down on the ground that it was arbitrary or irrational."

27. Learned senior counsel defended the legislative competence of the State Legislature on account of the subject of acquisition and requisition of property being covered under Entry 42 of List III of the VII Schedule, which is in the Concurrent List. It was thus contended that the said Entry should be given a reasonable but expansive meaning which will include within its folds all aspects of land acquisition, which necessarily include vesting as well as divesting of acquired land, and in support of this plea, referred to the following observations of the Supreme Court in V. Chandrashekar vs. Administrative Officer, (2012) 12 S.C.C. 133, where the Supreme Court recognised that by statutory amendment to the said Act, a provision could be made for re-conveyance :

"31. In view of the above, the law can be crystallised to mean, that once the land is acquired and it vests in the State, free from all encumbrances, it is not the concern of the landowner, whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes persona non grata once the land vests in the State. He has a right to only receive compensation for the same, unless the acquisition proceeding is itself challenged. The State neither has the requisite power to re-convey the land to the person interested nor can such person claim any right of restitution on any ground, whatsoever, unless there is some statutory amendment to this effect."

28. Learned senior counsel submitted that while examining the issue of legislative competence, it is the pith and substance doctrine which is required to be applied, as enunciated by the Courts starting from the earliest judgment of the year 1941. The judgments referred to in support thereof are as under :

- i) Subrahmanyam Chettiar vs. Muthuswamy Goundan, A.I.R. 1941 F.C. 47
- ii) A.S. Krishna vs. State of Madras, A.I.R. 1957 S.C. 297
- ii i) Greater Bombay case (supra) referred to in extenso hereinabove

advanced on behalf of the petitioner of arbitrariness or unreasonableness on the touchstone of Articles 14 and 19 of the Constitution as not being attracted to the subject matter. This is in view of the observations in McDowell and Co. (supra) that no enactment could be struck down by just saying it is arbitrary and unreasonable. The legislative wisdom cannot be gone into or sat in judgment over and thus, even erroneous legislation, unless it fails to satisfy the dual test of intelligible classification and rationality, will not be subject to judicial interference. In support of this proposition, reliance was placed on the following observations of the Supreme Court in M/s. Jalan Trading Company vs. Mill Mazdoor Sabha, A.I.R. 1967 S.C. 691 :-

"27. Whether the scheme for payment of minimum bonus is the best in the circumstances, or a more equitable method could have been devised so as to avoid in certain cases undue hardship is irrelevant to the enquiry in hand. If the classification is not patently arbitrary, the Court will not rule it discriminatory merely because it involves hardship or inequality of burden. With a view to secure a particular object a scheme may be selected by the Legislature, wisdom whereof may be open to debate; it may even be demonstrated that the scheme is not the best in the circumstances and the choice of the legislature may be shown to be erroneous, but unless the enactment fails to satisfy the dual test of intelligible classification and rationality of the relation with the object of the law, it will not be subject to judicial interference under Article 14. Invalidity of legislation is not established by merely finding faults with the scheme adopted by the Legislature to achieve the purpose it has in view. Equal treatment of unequal objects, transactions or persons is not liable to be struck down as discriminatory unless there is simultaneously absence of a rational relation to the object intended to be achieved by the law. Plea of invalidity of Section 10 on the ground that it infringes Article 14 of the Constitution must therefore fail."

Reliance was also placed on the following observations of the Supreme Court in Sanjeev Coke Manufacturing Company vs. M/s. Bharat Coking Coal Ltd., A.I.R. 1983 S.C. 239 :-

"The learned counsel submitted that Article 39 (b) would be attracted if the industry as a whole was nationalised and not if only a part of the industry was nationalised. According to him, all the coke oven plants wherever they existed had to be nationalised and no privately owned coke oven plants could be allowed to be set up in the future, if Article 39(b) was to be applied. We are unable to see any force in this submission. The distribution between public, private and joint sectors and the extent and range of any scheme of nationalisation are essentially matters of state policy which are inherently inappropriate subjects for judicial

review. Scales of justice are just not designed to weigh competing social and economic factors. In such matters legislative wisdom must prevail and judicial review must abstain."

30. Learned senior counsel submitted that the adequacy or inadequacy of the compensation refund cannot be the subject matter of challenge, as it is also in the realm of legislative wisdom and it is not open to the State Government to substitute the re-conveyance valuation as market value, a plea sought to be propounded by the learned Advocate General. According to the learned senior counsel, this would amount to the Court legislating, which is impermissible in view of the judgment of the Supreme Court in *Kesavanandha Bharati vs. State of Kerala*, A.I.R. 1973 S.C. 1461, as followed in *State of Karnataka vs. Ranganatha Reddy*, A.I.R. 1978 S.C. 215, wherein the Supreme Court has observed as follows :-

"16. Just to support the principle of law called out above, we may refer to a few lines in some of the judgments in *Kesavananda Bharati* case. Sikri, C.J., has said at p. 197 (SCC p. 390, last line):

"Applying this to the fundamental right of property, Parliament cannot empower Legislatures to fix an arbitrary amount or illusory amount or an amount that virtually amounts to confiscation, taking all the relevant circumstances of the acquisition into consideration."

Shelat and Grover, JJ. in addition to what they have said earlier categorically say at p. 285 (SCC p. 457, para 591):

"... and further that the 'amount' is neither illusory nor it has been fixed arbitrarily, nor at such a figure that it means virtual deprivation of the right under Article 31(2). The question of adequacy or inadequacy, however, cannot be gone into."

Hegde and Mukherjea, JJ. have observed at p. 338 (SCC p. 498, paras 699 and 701):

"Therefore, stated briefly, what the 25th Amendment makes non-justiciable is an enquiry into the question whether the amount fixed or determined is an equivalent value of or 'compensation' for the property acquired or requisitioned. ... It is difficult to believe that Parliament intended to make a mockery of the fundamental right conferred under Article 31 (2). It cannot be that the Constitution while purporting to preserve the fundamental right of the citizens to get an 'amount' in lieu of the property taken for public purpose has in fact robbed him of all his right."

Ray, J., as he then was goes to point out at pages 446 and 447 (SCC p. 582, para 1019):

"... the Article still binds the legislature to provide for the giving to the owner a sum of money either in cash or otherwise. The legislature may either lay down principles for the determination of the amount or may itself fix the amount.... The Constitution does not allow judicial review of a law on the ground of adequacy of the amount and the manner as to how such amount is to be given otherwise than in cash."

At p. 555 (SCC p. 666) is to be found the view of Jagannathan Reddy, J. in these words:

"Once the Court is satisfied that the challenge on the ground that the amount or the manner of its payment is neither arbitrary or illusory".

Lastly we would refer to a passage occurring in the judgment of one of us (Chandrasekharendra Prasad, J.) at p. 992 and 993 (SCC p. 1000, para 2122). It runs thus:

"The specific obligation to pay an 'amount' and in the alternative the use of the word 'principles' for determination of that amount must mean that the amount fixed or determined to be paid cannot be illusory. If the right to property still finds a place in the Constitution, you cannot mock at the man and ridicule his right. You cannot tell him: 'I will take your fortune for a farthing'."

The submission was that the concept of "reading down" and "reading into" would be only permissible in order to sustain a legislation, if in the absence of the same, the provision would become invalid.

31. Learned senior counsel further submitted that the possibility of abuse and misuse of re-conveyance, thereby resulting in the State property being frittered away, cannot be a ground for declaring the provision invalid as it must be presumed that the administration and application of a particular law would be done "not with an evil eye and unequal hand", as observed by the Supreme Court in *A. Thangal Kunju Musaliar vs. M. Venkatachalam Potti*, A.I.R. 1956 S.C. 246, as re-affirmed in a series of decisions, including the one in *Mafatlal Industries vs. Union of India*, (1997) 5 S.C.C. 536 and more recently in *Sushil Kumar Sharma vs. Union of India*, (2005) 6 S.C.C. 281, wherein the Supreme Court has observed as follows :-

"11. It is well settled that mere possibility of abuse of a provision of law does not per se invalidate a

legislation. It must be presumed, unless the contrary is proved, that administration and application of a particular law would be done "not with an evil eye and unequal hand". (See A. Thangal Kunju Musaliar v. M. Venkatchalam Potti supra).

12. In Budhan Choudhry v. State of Bihar, 1955 Cri LJ 374, a contention was raised that a provision of law may not be discriminatory but it may lend itself to abuse bringing about discrimination between the persons similarly situated. This Court repelled the contention holding that on the possibility of abuse of a provision by the authority, the legislation may not be held arbitrary or discriminatory and violative of Article 14 of the Constitution.

13. From the decided cases in India as well as in the United States of America, the principle appears to be well settled that if a statutory provision is otherwise intra vires, constitutional and valid, mere possibility of abuse of power in a given case would not make it objectionable, ultra vires or unconstitutional. In such cases, "action" and not the "section" may be vulnerable. If it is so, the court by upholding the provision of law, may still set aside the action, order or decision and grant appropriate relief to the person aggrieved.

14. In Mafatlal Industries Ltd. v. Union of India supra, a Bench of nine Judges observed that mere possibility of abuse of a provision by those in charge of administering it cannot be a ground for holding a provision procedurally or substantively unreasonable. In Collector of Customs v. Nathella Sampathu Chetty, 1983 E.C.R. 2198 D (SC), this Court observed: (SCR p. 825)

"The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity."

It was said in State of Rajasthan v. Union of India, (1978) 1 SCR 1 : (SCC p. 658, para 147)

"It must be remembered that merely because power may sometime be abused, it is no ground for denying the existence of power. The wisdom of man has not yet been able to conceive of a Government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief."

(Also see Commr., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, (1954) 1 S.C.R. 1005).

15. As observed in Maulavi Hussein Haji Abraham Umarji v. State of Gujarat, 2004 Cri LJ 3860, Unique Butyle Tube Industries (P) Ltd. v. U.P. Financial Corpn., (2002) Supp. 5 SCR 666 and Padma Sundara Rao v. State of T.N., (2002) 255 ITR 147 (SC) while interpreting a provision, the Court only interprets the

law and cannot legislate it. If a provision of law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary.

16. The judgment of the Delhi High Court on which reliance was made was rendered in the case of Savitri Devi v. Ramesh Chand, 104 (2003) DLT 824. In that case while holding that the allegations regarding commission of offence punishable under Section 498-A IPC were not made out, certain observations in general terms were made about the need for legislative changes. The complainant had moved this Court against the judgment on merits in SLP (Crl.) ... of 2003 entitled Savitri Devi v. Ramesh Chand (supra). By order dated 28-11-2003 this Court observed as follows:

"Heard learned counsel for the petitioner.

Delay condoned.

We do not see any merit in the challenge made to the order of the High Court in Criminal Revision No. 462 of 2002, on the facts of the case. The special leave petition is, therefore, dismissed.

At the same time, we express our disapproval of some of the generalised views expressed in paras 23 to 32 of the judgment of the High Court by the learned Single Judge. The learned Judge ought to have seen that such observations, though may be appropriate for seminars or workshops, should have been avoided being incorporated as part of a court judgment. Some of the views also touch upon legislative measures and wisdom of legislative policy in substance, which according to the learned Judge need to be taken into account. There was no scope for considering all such matters in the case which was before the learned Judge. It is, therefore, appropriate that such generalised observations or views should be meticulously avoided by courts in the judgments."

32. Without prejudice to the issue that other aspects not linked with the Constitutional validity cannot be examined, learned senior counsel also turned towards the plea arising from the fact that the persons approaching the Court (private respondents) were not the original owners of the lands and emphasized that a legal representative means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, by relying on the judgment of the Supreme Court in Hafizun Begum vs. Md. Ikram Heque, (2007) 6 M.L.J. 76 (SC).

33. Learned senior counsel canvassed that this was not the first time that such an issue had arisen, as the question of re-conveyance under Section 48-B of the said Act had arisen in a number of cases where various aspects were dealt with. These

- i) G.V. Krishna Setty vs. Government of Tamil Nadu, 2008 Writ L.R. 846 - Section 48-B of the Act does not give the appellants any right to claim re-conveyance, but merely empowers the Government to re-convey, provided the conditions specified under the Section are fulfilled.
- i i) GHCL Ltd. vs. State of Tamil Nadu, (2008) 7 M.L.J. 833 - The public purpose for which the land was acquired, viz. for construction of staff quarters for the workers did not exist. The company was resorting to change of use of the land for which it was originally acquired and thus, it was observed that the Company cannot contend that any public purpose still survives in respect of the unutilised portion of the acquired land. In passing an order under Section 48-B of the said Act, the Government has to consider the facts and circumstances, and the decision of the Government must be supported by reasons and materials, and must be in accordance with law.
- i ii) K.T. Plantation Private Limited vs. State of Karnataka, (2011) 9 S.C.C. 1 - In dealing with the Constitutional validity of the Karnataka Roerich and Devikarani Roerich Estate (Acquisition and Transfer) Act, 1996, it was observed that this was enacted in public interest to preserve and protect the land used for the linaloe cultivation and its tree growth as part of agrarian reforms, which is its dominant purpose and protected from the challenge under Articles 14 and 19 of the Constitution of India, as it falls within the expression "estate" under Clause 2 of Article 31-A of the Constitution, and the Act in question had obtained the assent of the President.

34. Learned senior counsel referred to Clause 23 of the Statement of Objects and Reasons for the Constitution (VII Amendment) Act, 1956, whereby it was found that three entries in the legislative lists (33 of List-I, 36 of List-II and 42 of List-III) relating to the essentially single subject of acquisition and requisitioning of property by the Government gave rise to unnecessary technical difficulties in legislation and in order to avoid these difficulties and simplify the constitutional position, it was proposed to omit the entries in the Union and State List and replace the entry in the Concurrent List by a comprehensive entry covering the whole subject.

35. On appreciation of the submissions and the judicial pronouncements referred to aforesaid, we are of the view that the test to be applied for determining the constitutional validity has been correctly set out by the learned senior counsel on behalf of private respondents 5 to 9. The dual test in this behalf is, (1) legislative competence and (2) violation of Fundamental Rights guaranteed under Part-III of the Constitution of India.

36. As far as legislative competence is concerned, there is really no quibble that the State Legislature actually had the competence to carry out the amendment in view of the matter falling under Entry 42 of List-III of the VII Schedule, being the Concurrent List. It is difficult to accept the submission of the learned counsel for the petitioner that since the subject matter of the Entry deals with acquisition and requisition of property, re-conveyance of property would not fall within the parameters of the Entry. Such acquisition in terms includes vesting as well as divesting of acquired land. This is also apparent from the fact that often, the land which is acquired for public purpose, is placed at the disposal of the authority for whose benefit the acquisition has been made. In fact, in V.Chandrasekaran's case (supra), while dealing with Section 48 of the said Act, it was observed that the land owner cannot seek de-vesting of land, but only has the right to receive compensation. The State was also held not to have requisite power to re-convey the land "unless there is some statutory amendment to this effect". Section 48-B is this statutory amendment.

37. The judgments referred to in support of the pith and substance doctrine to be applied while examining issues of legislative competence have been set out in the various judicial pronouncements in Subrahmanyam Chettiar vs. Muthuswamy Goundan (supra), A.S. Krishna vs. State of Madras (supra) and Greater Bombay case (supra).

38. In the catena of judgments referred to by the learned senior counsel appearing for private respondents 5 to 9, the discussion proceeds on the basis that the compensation in India qua challenge to the constitutional validity of a provision of an enactment is similar to the United States of America, and apart from the two aspects referred to aforesaid, there is no third ground available. It is in this context, it has been observed that no enactment can be struck down by just saying that it is arbitrary or unreasonable, and the endeavour should not be to somehow or the other find a constitutional infirmity to invalidate an Act. In fact, an enactment cannot be struck down on the ground that Court thinks it unjustified. The Parliament and the Legislatures, being the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court is not supposed to sit in judgment over their wisdom" - vide State of U.P. vs. McDowell's case (supra). These views have been approved by the Constitution Bench of the Supreme Court in R. Gandhi, President, Madras Bar Association (supra).

39. The presumption in favour of constitutionality and the burden being on the person who attacks it to show that there has been transgression of the constitutional principles is thus founded on the number of judicial pronouncements discussed above as well as in Greater Bombay Co-op. Bank Ltd. case (supra) as the Courts would be justified in giving a liberal interpretation in order to avoid constitutional invalidity. Even if very wide and expansive powers are given to an authority, they can be in conformity with

legislative intent of exercise of power within the constitutional limitations. It is also the view in State of Bihar vs. Bihar Distillery Ltd. case (supra) and State of Madhya Pradesh vs. Rakesh Kohli (supra), the beginning of the principle of legislative competence being traced out in Subramanyan Chettiar vs. Muttuswami Goundan case (supra).

40. The challenge laid by the petitioner based on the plea of arbitrariness and unreasonableness on the touchstone of Articles 14 and 19 of the Constitution of India, on the first blush, appeared to be attractive over the possibilities of how the provision may be used, but once the touchstone of constitutional validity in terms of the aforesaid principle is applied, it is difficult to accept the contention of the learned counsel for the petitioner.

41. The legislative wisdom cannot be gone into or sat in judgment over and thus, even what is perceived to be an erroneous legislation cannot be quashed unless it fails to satisfy the dual test of intelligible classification and rationality.

42. The submissions of the learned counsel for the petitioner are in substance based on the possibilities of misuse which may occur and are obviously coloured by the factors involved in the case, which form the basis of the petition. We have already said that we are not going into the merits of the said case for the reasons set out by us earlier. Thus, whether in a given case the re-conveyance can take place or not, whether it should have applicability to cases prior to the introduction of Section 48-B of the said Act and delays or laches in approaching the Court are all questions to be examined in the given facts of the case and really do not touch upon the constitutional validity of the provision. We thus make it clear that these issues are left open to be determined in the given facts of the case, whether the one which formed the basis of the petition or otherwise.

43. The mere chanting of Articles 14, 19 or 39(b) of the Constitution would not suffice to declare a legislation constitutionally invalid. We draw strength for coming to this conclusion by referring to the observations of the Supreme Court in Jalan Trading Company case (supra), where it was observed that whether the scheme is best in the circumstances or a more equitable method could have been devised so as to avoid undue hardship would be irrelevant. In fact, in Sanjeev Coke Manufacturing Company case (supra), the plea based on Article 39(b) was rejected on the ground that scales of justice are just not designed to weigh competing social and economic factors and in such matters, legislative wisdom must prevail, and judicial review must abstain. It is this reason which has prevailed in opining when the question of adequacy or inadequacy of compensation in land acquisition would not affect the constitutional validity - State of Karnataka vs. Ranganatha Reddy (supra). Thus, in the present case, whether the land owners are to be paid the market value at times of re-conveyance or at least interest on such amount as a principle of equity would have no bearing on the constitutional validity of

Section 48-B of the Act.

44. We may also note that the wordings of Section 48-B brook of no two views, neither are they per se constitutionally invalid that the principles of reading down or reading into should be applied as was sought to be suggested by the learned Advocate General. The State Legislature, in its wisdom, deemed it proper, by amending the provisions of the said Act, to introduce Section 48-B as a measure of relief to the owners whose lands were acquired, possession taken, but yet remained unutilised for a long period of time. In fact, when it was sought to be argued by the learned counsel for the petitioner that the provision can only apply prospectively, i.e. only acquisitions post the introduction of the provision would be affected, learned senior counsel for the private respondents submitted that there necessarily has to be a time lag between the acquisition being completed and the property not being utilised for any public purpose that the occasion to re-convey would arise and thus, it must necessarily apply even to acquisitions prior to the introduction of the provision so long as the rights under this provision are available. These are competing arguments not germane for the constitutional validity.

45. Another factor which weighs with us is the submission of the learned senior counsel for the private respondents that the administration is expected to act fairly and justly, and there has to be a presumption that the application of a particular law would be done "not with an evil eye and unequal hand" - A.Thangal Kunju Musaliar case (supra) and recently affirmed in Sushil Kumar Sharma vs. Union of India case (supra). Thus, the mere possibility of abuse of a provision of law does not per se invalidate a legislation. If there is a misuse, it is always open to the Court to invalidate the particular decision/action. In Mafatlal Industries vs. Union of India (supra), nine Judges of the Supreme Court held that the mere possibility of abuse of a provision by those in charge of administering it cannot be a ground for holding a provision procedurally or substantively unreasonable. There are other judgments referred to above also on the same principle. The judicial function of the Court requires the interpretation of the law and not to legislate, and if there are possibilities of misuse, it is for the Legislature to amend, modify or repeal it, if deemed necessary.

46. The various judicial pronouncements referred to by the learned Government Pleader give credence to the fact that in a number of cases, re-conveyance under Section 48-B had been set aside by the Supreme Court in the given facts of the case.

47. The plea of the learned Government Pleader that there may be uncanalised power with the Government qua the value at which re-conveyance should be made, no timeline being prescribed as under Section 48(1), thus this provision to have a prospective effect, vesting can only be with the original owner and not the legal heirs, all in substance arise from the issues sought to be raised in the separate review applications filed by the Department

concerned represented by him, which seeks to negate the re-conveyance. Learned Government Pleader was conscious of the fact that the provision being a State Amendment, he could not have assailed the constitutional validity of the same. These individual aspects in each case have often been left open in the judgments referred to above, as only the issue on hand has been tackled. To the extent the observations refer to Section 48(1) and the challenge laid to the acquisition made under it, they cannot ipso facto apply to Section 48-B, though its strict compliance can be inflicted upon-T.N. Housing Board vs. Keeravani Ammal (supra).

48. Similarly, in Municipal Corporation of Chennai vs. R.R. Sivasankara Mehta (supra), it has been observed that if Section 48-B is not retrospective in operation, that would apply in the given facts of the case and would not require to be considered in the realm of determining the constitutional validity of the provision. It was open to the learned Government Pleader to take recourse to these judgments when the matters relating to the private respondents before us are argued for that particular case of re-conveyance. If one may say so, once again, the submissions and reliance go beyond the issue of challenge to the constitutional validity and would have to be determined in the facts of the case, including of the private respondents, which is pending consideration in the review applications.

49. We may note that it is for the State Legislature to consider whether it wants to continue with the provision of Section 48-B on the statute book or not, whether it needs any amendment or not in view of the perceived defects in implementation or possibility of misuse. The Legislature may bestow consideration on this aspect including whether any amendment is required to clarify the issue of the date of its applicability, i.e. whether it applies to acquisitions made prior to the date of its introduction or not, failing which the parties can rely on the judicial pronouncements already made when those cases are taken up, including of the private respondents. We thus once again emphasize that other than analyzing the constitutional validity of the provision, we have not gone into any other aspect taking into consideration the limited scope of the present petition.

50. We thus uphold the constitutional validity of the provisions of Section 48-B of the said Act as the dual test on which it would have been struck down as unconstitutional is not satisfied, and all other aspects are left open to be determined in the given facts of the case, including of the private respondents 5 to 9 herein.

51. The writ petition is accordingly disposed in the aforesaid terms. There shall, however, be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ab/pv

To

1. The Chief Secretary to Government of Tamil Nadu,
Co-operation, Food & Consumer Protection Department,
Fort St. George, Chennai-600 009.
2. The District Collector,
Singaravelar Maligai,
Rajaji Salai, Chennai-600 001.
3. The Tahsildar,
Mambalam - Guindy Taluk,
Chennai-600 018.
4. The Director General (Highways),
Highways Department,
Chepauk, Chennai-600 005.
5. The Secretary, State of Tamil Nadu,
Revenue Department,
Secretariat, Chennai-600 009.

+1cc to Mr.R.Syed Mustafa, Advocate SR.No.13401

jp[col
gp/13.3.15.

Writ Petition No.10896
of 2013

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