

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2656 of 2019

1. Lalan Singh and Anr Son of Sri Mundrika Singh, Resident of Amthua, Kajisarai, P.S. Kako, District- Jehanabad, Bihar.
2. Amrendra Kumar Son of Sri Brajbhushan Sharma, Resident of Paleya, Ward No. 5, P.S. Makhdumpur, District- Jehanabad, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Old Secretariat, Patna.
2. The Secretary, Department of Law, Government of Bihar, Patna.
3. The Sub Divisional Officer, Jehanabad.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Shashi Bhushan Kumar, Advocate
For the Respondent/s	:	Mr.Lalit Kishore, Advocate General
		Mr. Anshuman Singh, AC to AG

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 17. 08. 2019

Heard Mr. Shashi Bhushan Kumar, learned counsel for the petitioners and learned Advocate General assisted by Mr. Anshuman Singh, learned A.C. to Advocate General for the State.

The petitioners in the instant application have challenged the legality, validity and vires of sections 3, 4 and 5 of the Bihar Agriculture Land (Conversion for Non-Agriculture Purposes) Act, 2010. The reliefs prayed for by the petitioners in the



instant application is being quoted herein below :

“(I) Section 4(1) of the Act be declared ultra vires for prescribing a conversion fee which is arbitrary, irrational as well as excessive being grossly disproportionate to be justified as compensatory nor as regulatory for the virtual absence of any expenses incurred by the State in maintaining and administering the regulatory mechanism, if any, in pursuance of the legislative object of the Act aimed to regulate the conversion of the agriculture land to non-agriculture purpose and thus the provision fails to withstand the test of reasonableness when tested on the touchstone of Article 14 of the Constitution of India ;

(ii) unrestricted application of Section 4(2) of the Act attaching the liability of manifold rise in rent/cessonce the permission is granted irrespective of the use of the land, the provision contained Section 4(2) of the Act is unfair, illegal and patently discriminatory, therefore, ultra vires the Article 14 of the Constitution of India ;

(iii) to declare and hold that Section 3 and 4 of the Act read together, prohibits use of agriculture land without prior permission of the competent authority which amounts to infraction of the constitutional and, now recognized, human right of the owner of the agriculture land to use it in any manner and, thus, is ultra vires the right guaranteed under Articles 14, 21 and 300 A of the Constitution of India;

(iv) Section 5 of the Act is ultra vires the Article 14 of the Constitution of India for being vague, indefinite and unreasonable by restricting the use of the agriculture land only to the purpose for which permission was granted ;

(v) the proviso to Sub-section (6) of Section 3 providing for differential treatment to conversions made pre and post commencement of Bihar Act 21 of 1993 without any rational basis for such classification is discriminatory and, therefore, is unconstitutional, unenforceable and violative of article 14 of the Constitution of India; and

(vi) any other relief/s for which the Petitioner may be



entitled in law.”

The case of the petitioners is that the Bihar Agriculture Land (Conversion for Non-Agriculture Purposes) Act, 2010 (hereinafter referred to as ‘the Act’) was passed by the State of Bihar and was published in the Bihar Gazette (Extra Ordinary) on 16.04.2010. The petitioners were served with notices issued under the signature of Sub-Divisional Officer, Jehanabad whereby they were required to deposit exorbitant amount for putting their land to non-agriculture use. The notices issued under ‘the Act’ were challenged by filing C.W.J.C. No. 328 of 2014. By a judgment dated 27.01.2015 (reported in 2015 (3) PLJR 387) passed in C.W.J.C. No. 328 of 2014 and analogous cases, the learned Single Judge was pleased to hold that the provisions of the Act were not workable in absence of relevant rules.

It is contended on behalf of the petitioners that by another Gazette notification no. 602 dated 18.07.2016, the Act was notified again and enforced with effect from 16.03.2011. It is the contention of the petitioners that the preamble of the Act states that it was enacted to regulate the conversion of agriculture land to non-agriculture purposes and for matters connected therewith and incidental thereto. According to the



petitioner the entire scheme spelt out in various provisions of the Act, is to bar conversion of agriculture land to non-agriculture purposes unless permission is accorded by the competent authority which comes at a cost, innocuously given the nomenclature of conversion fee. Section 2 of the Act provides the definition of the various terms. Section 3 prohibits the use of agriculture land for non-agriculture purposes without prior permission of the competent authority. Section 4 gives power to levy and collect the conversion fee which is to be at the rate of 10% of the market value of the land in areas to be notified by the government from time to time. Section 5 of the Act deals with the authority competent to give permission for conversion of the land for non-agriculture purpose. Section 6 provides for penalty for unauthorized conversion, Section 7 provides for exemption from conversion fee and Section 8 provides for categories of land for which permission for conversion was not required.

It is the submission made on behalf of the petitioners that the imposition of regulatory fee by 'the Act' which has innocuously been given the nomenclature of conversion fee has no nexus or proximity to the regulatory mechanism or body envisaged under 'the Act' which is non-existent from the



scheme of 'the Act'. According to the petitioners the State did not have to create any additional infrastructure nor does have to engage any additional manpower for the purposes of implementing the purpose of 'the Act'.

In process of explaining the run up to the legislation, it was submitted that Section 23 of the Bihar Tenancy Act, 1985 deals with the right of the raiyat in respect of use of land and Section 23 (4) thereof provides that a raiyat may, with the previous permission of the Collector, use his land for the purposes not enumerated in sub-section 2 of Section 23 but before giving such permission, the Collector shall redetermine the rent of such land in the prescribed manner to the extent of 5% of the market value of the land.

It is submitted that the legality, validity and vires of Section 23(4) of the Bihar Tenancy Act was challenged in the case of Amar Singh & Ors. vs. State of Bihar & Ors. and by judgment dated 30.05.2007 reported in 2007(3) PLJR 225 the Division Bench of this Court held the proviso to Rule 5 of the rules framed, ultra vires the first proviso to Section 23(4) of the Act. The provisions imposing the redetermined rent were found to be in violation of Articles 14 and 19(1) (g) of the Constitution



and were declared to be void and inoperative.

It is the submission on behalf of the petitioners that the instant enactment is the reappearance of the Bihar Act 21 of 1993 which was impugned in the above judgment reported in 2007(3) PLJR 225, with some cosmetic changes. The other submissions on behalf of the petitioner is that although the State had the legislative competence and power under Entry 49 of List II of the 7th Schedule to enact law in the field of taxes on lands and buildings, however, the imposition of the regulatory fee of 10% as provided under Section 4 of 'the Act' was without guidelines and highly excessive. It is argued that 'the Act' does not state that if an application is made before the prescribed authority, what percentage of land will be converted. Section 5 of the Act gave unfettered and unguided power to the State.

It was lastly contended on behalf of the petitioners that the Act was not workable in view of the fact that although from reading of the title of the Act together with its preamble it was evident that the Act was for the purpose to regulate the conversion of agriculture land to non-agriculture purposes, however the term 'non agriculture purposes' has not been defined in the Act. Besides the above, the challenge to the



vires of sections 3, 4 and 5 of the Act has also been made on the following grounds :

(I) Whether a regulatory legislation like the present Act in question can provide for a regulatory fee disproportionate to the expenses incurred in administering the regulatory establishment ?

(ii) Whether the conversion fee at the rate of 10 percent of the market value of the land is arbitrary, irrational, excessive ?

(iii) Whether the conversion fee not being dependent and irrespective of the duration of the use of the land for non-agriculture purpose after conversion is discriminatory?

(iv) Whether the Act curtails the right of the owner of agriculture land as provided under the provisions of the Bihar Tenancy Act?

Counsel for the petitioners in support of the contentions made above has referred to and relied upon the following judgments :

(1) Vam Organic Chemicals Ltd. v. State of U.P [(1997)



2 SCC 715],

(2) Calcutta Municipal Corp. v. Shrey Mercantile (P) Ltd. [(2005) 4 SCC 245],

(3) Sona Chandi Oal Committee & Ors. v. State of Maharashtra[(2005)2SCC345],

(4) A.P. Paper Mills Ltd. v. Got of A.P & Anr. [(2000) 8 SCC 167],

(5) A.P. Dairy Development Corpn. Federation v. B. Narasimha Reddy [(2011) 9 SCC 286],

(6) Grand Kakatiya Sheraton Hotel & Towers Employees & Workers Union v. Srinivasa Resorts Ltd. [(2009)5 SCC 342],

(7) V. Subramaniam v. Rajesh Raghuvandra Rao [(2009) 5 SCC 608],

The learned Advocate General appearing on behalf of the State of Bihar submitted that consequent to issuance of notification under Section 3 of the Bihar Land Reforms Act, 1950 (hereinafter referred to as 'the BLR Act') the estate or tenures of a proprietor or a tenure holder vested in the State. The consequence of the vesting has been provided in Section 4 of the BLR Act, 1950. Except for the land comprised in the homestead as provided in Section 5 of the BLR Act, all land



vested in the State and the intermediaries had no right. As per Section 6 of the BLR Act, 1950 on and from the date of vesting all lands used for agricultural or horticultural purposes and which were in khas possession of an intermediary on the date of such vesting were deemed to be settled by the State with such intermediary who was to retain possession thereof and hold them as raiyat or settlee of the State. It was further submitted that the rights of a raiyat in respect of use of land has been provided under Section 23 of the Bihar Tenancy Act, 1885.

It was the contention on behalf of the Advocate General that the vires of an Act can be challenged only on two broad grounds i.e. firstly, on the legislative competence of the government enacting the legislation and secondly if the Act or any part of it is in violation of the constitutional provision. It was submitted that neither of the above two grounds was satisfied in the instant challenge to Sections 3, 4 and 5 the Bihar Agriculture Land (Conversion for Non-Agriculture Purposes) Act, 2010. The learned Advocate General further submitted that the Wednesbury's Principle of reasonableness would also not be applicable in the instant case as imposition of one time conversion fee at the rate of 10% of the market value of the land



cannot be said to be so unreasonable that no reasonable person would impose such a fee.

Heard learned counsel for the petitioners and learned Advocate General of the State.

Before proceeding to deal with the contentions of the parties it would be relevant to see the provisions of the Act. The Act was promulgated by the State of Bihar with the purpose to regulate the conversion of the agriculture land to non-agriculture purposes and for matters connected therewith and incidental thereto. Article 246 of the Constitution of India deals with the subject matter of laws made by the Parliament and Legislature of State. Article 246(3) provides that subject to clauses 1 and 2 of Article 246, the legislature of any State has exclusive power to make laws for such State with respect to any of the matters enumerated in List II i.e. the State list in the seventh schedule. Entry 49 of List II is quoted herein below:

“49. Taxes on land and buildings”.

Thus, there is no doubt that by virtue of Entry 49 of List II of the Seventh Schedule of the Constitution, the State Legislature of the State of Bihar was competent to make laws on this subject and thus there can be no dispute with respect to the State of Bihar's Legislative Competency in enacting the Act.



As the petitioners in the instant case have challenged the legality, validity and vires of sections 3,4 and 5 of the Act, the three sections are being quoted herein below :

“3. Land use Conversion.-- (1) Agriculture land in the State shall not be used for non-agriculture purpose, without the prior permission of the competent authority.

(2) An application for such conversion of the agriculture land for non-agriculture purpose shall be made before the competent authority in the form prescribed along with conversion fee as specified under section 4.

(3) If the conversion fee so paid as per sub-section (2) is found to be less than the fee prescribed, a notice shall be issued by the competent authority to the applicant within 30 days of the receipt of the application intimating him the deficit amount.

(4) The applicant shall deposit the deficit fees indicated in the notice issued under sub-section (3) within 30 days of the receipt of such notice.

(5) In case the applicant does not deposit the deficit fees indicated in the subsection (3) within 30 days of the receipt of such notice, the competent authority shall issue a second notice to the applicant directing him therein to deposit the deficit fees within 15 days of the receipt of notice. If the applicant fails to comply with the direction, his application is liable to be rejected.

(6) The conversion permission applied for shall either be issued, rejected in full or part by the competent authority within ninety days from the date of the receipt of the application or receipt of the deficit amount whichever is later, provided that in case such applications are rejected, the reasons for such rejection shall be recorded in writing and communicated to the applicant.



In case the aforesaid conversion has been made after the coming into force of the Bihar Act 21 of 1993 and prior to the commencement of this Act, it will be incumbent on the person responsible for the conversion to apply to the competent authority stating therein the fact of the said conversion within a period of 6 months from the date of the commencement of this Act along with conversion fee provided in Section 4 of the Act, and along with an additional conversion fee of 1% of the current market value of the land concerned, failing which the competent authority shall proceed in accordance with section 6 of the Act :

Provided, if a conversion has been made prior to the commencement of the Bihar Act 21 of 1993 and the person concerned requires and applies for a conversion order, he may be allowed to convert, subject to the provisions of this Act and on payment of the conversion fees as specified in Section 4 (1) of this Act.

(7) On receipt of the application, the competent authority shall proceed according to the provisions of the Act.

Provided that if no order is passed on such application, within the time prescribed in sub-section (6), the applicant concerned shall intimate the competent authority by registered post regarding the non-receipt of the desired permission by him. On the receipt of such intimation, the competent authority shall grant the required permission within a fortnight of such receipt, otherwise the required permission shall be deemed to have been given.

Provided further that in case the application is rejected in part or full, the conversion fee as deposited by the applicant shall be refunded to him in proportion of the land against which the permission could not be granted.

Explanation.- Permission for conversion may be granted against a plot, in



part or whole, which is or is to be used for non-agriculture purpose. Payment of conversion fees shall be due in proportion to such land use.

4. Power to levy and collect conversion fee.-- (1) With effect from the date of the commencement of this Act, every occupier or owner of agriculture land shall have to pay a conversion fee for non-agriculture purposes, at the rate of 10% of the market value of the land in areas as may be notified by the Government from time to time.

(2) After the permission for conversion of his agriculture land for non-agriculture purposes is accorded the land owner shall pay rent/cess in respect of the portion of land for which the permission has been accorded at the rate of ten times of the rent/cess of that portion of land being paid by him prior to such conversion under the relevant provisions of the Bihar Tenancy Act, 1885 or Rules/ Instructions if any, issued thereunder.

5. Authority Competent to order conversion of agriculture land for nonagriculture purpose.-- (1) The Sub Divisional Officer shall be competent to order, in respect of the land situated within his territorial jurisdiction, conversion of land use from agriculture purpose to non-agriculture purpose.

(2) Permission to convert may be refused by the competent authority only on the ground that adequate conversion fee has not been paid, or that the conversion is likely to cause a public nuisance, or that the landholder is unable or unwilling to comply with the conditions that may be imposed under sub-section (3) of this Section.

(3) Conditions may be imposed on conversion for the following objects, namely, in order to secure the public health, safety and convenience, and in the case of land



which is to be used as building sites, in order to ensure further that the dimensions, arrangement and accessibility of the sites are adequate for the health and convenience of occupiers or are suitable locally.

(4) If the purpose of any land has been converted in contravention of an order passed or of a condition imposed under any of the foregoing sub-sections, the competent authority may serve a notice on the person responsible for such contravention, directing him, to use the land for its original purpose within 6 months of the service of the notice, or to take such other steps as may be required in order that the land may be used for its original purpose, or that the condition may be satisfied.

(5) If any person served with the notice under sub-section (4) fails within the period stated in the notice to take action as ordered by the competent authority under that Sub-section, the competent authority may take necessary steps so as to ensure a compliance of his order; and any cost incurred in doing so shall be recoverable from such person as if it were an arrear of land revenue.”

Now proceeding with the relevant provisions of the Act, Section 1 provides that it will extend to the whole of the State of Bihar except the Municipal area and cantonment. Section 2 provides with the definition of various terms. Section 2(a) defines ‘agriculture land’ to mean land used for agriculture and allied activities. Section 3 deals with the land use conversion. It provides that agriculture land in the State shall not be used for non-agriculture purpose without prior permission of the competent authority. This section further



provides as to how the application for conversion would be made; with respect to payment of conversion fee; how the applications shall be dealt with etc.. Section-4 deals with power to levy and collect conversion fee. It provides that every occupier or owner of agriculture land shall have to pay a conversion fee for non-agriculture purposes at the rate of 10% of the market value of the land. Section 5 of the Act mentions about the authority competent to order conversion. Section-6 provides for penalty for unauthorized conversion and section 7 deals with exemption from conversion fees in case the conversion is allowed under the policy appertaining to industry notified in this regard by the Industry Department of the Government of Bihar. Section 8 provides for list/categories of land, for conversion of which permission would not be required. Section 15 deals with the power of the government to make rules to carry out the purposes of the Act. In exercise of powers conferred by section 15 of the Act, the Bihar Agricultural Land (Conversion for Non-Agriculture Purposes) Rules, 2011 were framed vide notification number 244(8) Ra dated 15.03.2011. Forming part of the Rules were the 'forms' for applying for the purpose of conversion etc.

It is contended on behalf of the petitioners that



imposition of conversion fee of 10% of the market value of the land as provided in section 4 of the Act is excessive for the reason that the State is not providing any service(s) against the said conversion fees. On the other hand it was submitted by the learned Advocate General that one time conversion fee of 10% is reasonable. The one time conversion fee from leasehold to freehold land in Delhi is 10% and 15% in Maharashtra. These provisions of imposition of 10% fee as provided under section 4 is regulatory in nature and although even when a totally separate set up in the department for carrying out the purposes of the Act may not be required, nevertheless for regulating the working of the Act, the applications which are filed requesting for conversion of agriculture land for non agriculture purpose would have to be processed, inspections will have to be carried out, permission will have to be granted or refused in case the conditions provided in the Act are not satisfied. In either case, monitoring will have to be carried out to keep a check/vigil to see that the conditions are being abided by and in all cases the follow-up consequential steps will have to be taken.

Having gone through the provisions of the Act as narrated herein above it would be evident that section 3 of the Act provides for processing of the application for conversion of



agriculture land for non-agriculture purpose and for deposit of the fee prescribed. It further provides for issuance of a notice for deposit of the deficit amount of fee and in case the same is not done, for issuance of a second notice to the applicant. Besides other provisions, section 6 provides for penalty for unauthorized conversion. By reading of the provision contained in section 6, it would transpire that the same mentions about the competent authority initiating a proceeding either suo-motu or on a report submitted by the Anchal Adhikari. In either case, when a proceeding is started, notice is issued to the person concerned to appear and to submit a show cause and thereafter appropriate orders may be passed requiring him to pay the conversion fee along with penalty. It would also be relevant to note here that Explanation to section 3 of the Act provides that permission for conversion may be granted against a plot, in part or whole and payment of conversion fee shall be in due proportion to such land use.

Thus, it would be evident that from reading of various provisions of the Act, there remains no doubt that for the purposes of the Act to be worked, when either permission for conversion has been granted or even when such permission has been refused, continuous monitoring on part of the State



authorities would be a must in any circumstance. Thus, in my opinion, imposition of a one time conversion fee at the rate of 10% of the market value of the land cannot be said to be excessive, unreasonable or in violation of any provision of the Constitution of India.

It was next contended on behalf of the petitioners that when once permission is granted to the applicant for conversion of the agriculture land for non-agriculture purpose then the State of Bihar should not have limit the use of the said land as provided under section 5(4) of the Act.

From the provisions of section 5 of the Act, quoted above, it would transpire that permission to convert is to be refused only on the ground of non-payment of the conversion fee, when the conversion is likely to cause public nuisance or the land-holder is unable or unwilling to comply with the conditions which may be imposed in order to secure public health, safety and convenience. On a conjoint reading of the above sub-sections (2), (3) and (4) of section 5, none of the provisions contained therein can be said to be arbitrary or unreasonable.

It was further contended on behalf of the petitioners that the Act does not state as to what percentage of the land will be



converted if some person applies with the conversion fee.

Section 2(l) of the Act defines market value to mean value of the agriculture land as determined by the Collector under the provisions of the Indian Stamp Act, 1899. Section 3 of the Act provides that the application for conversion shall be made before the competent authority in the form prescribed along with the conversion fee as specified under section 4. Explanation to section 3 categorically provides that permission for conversion may be granted against a plot, in part or whole and the payment shall be due in proportion to such land use. Section 4 provides that the conversion fee would be at the rate of 10 % of the market value of the land in areas as may be notified by the Government from time to time. Thus, from the above referred sections, especially the Explanation to section 3 there remains no doubt that while the conversion fee is at the rate of 10 % of the market value of the land, permission may be granted in part or for whole of the plot for which an application is made and payment of the conversion fee would be in proportion to such land use. Thus, we find no merit in this submission on behalf of the petitioners.

It is further submitted on behalf of the petitioners that the Act is bad also for the reason that while the title of the Act



clearly states its purpose which is to regulate the conversion of agriculture land to non-agriculture purposes, however, the Act does not define 'non-agriculture purposes'. In reply to the above contention, it was submitted by the learned Advocate General that section 2(a) defines agriculture land to mean land used for agriculture and allied activities. Section 2(b) defines conversion to mean change of land use from agriculture to non-agriculture purposes and section 3(1) and (2) provides that no land shall be used for non-agriculture purpose without prior permission of the competent authority to be made on an application in the form prescribed along with the conversion fee as specified under section 4 of the Act. With respect to this contention made on behalf of the petitioners, from the definition of agriculture land as provided in section 2(a) of the Act, it means land used for agriculture and allied activities. Further from perusal of the prescribed Form 1 which is the form for the purpose of conversion under section 3(2) of the Act and forms part of the 2011 Rules, from the contents of the form itself it would be evident that the same deals with the details of the non-agriculture purposes. The said form addressed to the concerned Sub-Divisional Officer states that the applicant wants to use his agriculture land, the details of which are given in the said form



for the purpose other than agriculture and its allied activities. Further column 8 of the said form is with respect to the proposed area, to be utilized by the applicant, for non-agriculture purpose and column 12 requires the applicant to give the proposed purpose including the details of the purpose for which it is to be used. Thus, even though 'non agriculture purpose' may not be defined in the Act, but a conjoint reading of section 2(a), 2(b) and 3(1) of the Act together with Form 1 of the 2011 Rules, any use of the land which is not for the purpose of agriculture and its allied activities would mean that it is being used for non-agriculture purpose. Thus, in my opinion, the non-defining of the term non-agriculture purpose cannot be said to such a lacunae which would make the Act non-workable.

Now dealing with the judgments relied upon on behalf of the petitioners, in the case of Vam Organic Chemicals Ltd. v. State of U.P (supra), the Supreme Court held that there is a distinction between fees charged for licences i.e. regulatory fees and the fees for the services rendered as compensatory fees. In the case of regulatory fees, like the licence fees, existence of quid pro quo is not necessary although the fee imposed must not be, in the circumstances of the case, excessive. In our opinion the one time imposition of conversion fee at the rate of 10 % of



the market value of the land cannot be said to be unreasonable or excessive.

In the case of Calcutta Municipal Corp. v. Shrey Mercantile (P) Ltd. (supra) the challenge was to charging of different rates on an application for mutation depending on the value of the property. The Hon'ble Supreme Court held that once an application for mutation is made, the same is examined by the department and after hearing the objections, if any, the record is ordered to be changed. Irrespective of the fact whether the valuation of the property is below Rs. 50,000/- or above Rs. 200,000/-, the function of the Corporation in making the mutation entry remains the same. The Court thus found the levy to be irrational, arbitrary and discriminatory. So far as the instant case is concerned, the facts here are distinguishable and as such the ratio of the decision in the case of Calcutta Municipal Corp. v. Shrey Mercantile (P) Ltd. (supra) would not apply. As already stated above, explanation to section 3 provides that permission for conversion may be granted against a plot in part or whole and that payment of conversion fee shall be in proportion to such land used. Thus, when conversion fee to be charged is at the rate of 10 % of the market value of the land in areas to be notified by the government and the same is in



proportion to the land used, for which permission may be granted, the facts are clearly distinguishable and levy of the fees also cannot be termed as arbitrary or unreasonable.

In the case of Sona Chandi Oal Committee & Ors. v. State of Maharashtra (supra) the Hon'ble Supreme Court in para 22 held as follows :

“.....Placing reliance on the following judgments of this Court in the last 20 years, namely, Sreenivasa General Traders Vs. State of Andhra Pradesh, (supra); City Corporation of Calicut Vs. Thachambalath Sadasivan, (1985) 2 SCC 112; Sirsilk Ltd. Vs. Textiles Committee, (1989) Supp. 1 SCC 168; Commissioner & Secretary to Government Commercial Taxes & Religious Endowments Department Vs. Sree Murugan Financing Corporation Coimbatore, (1992) 3 SCC 488; Secretary to Government of Madras Vs. P.R.Sriramulu, (1996) 1 SCC 345; Vam Organic Chemicals Ltd. Vs. State of U.P., (1997) 2 SCC 715; Research Foundation for Science, Technology & Ecology Vs. Ministry of Agriculture, (1999) 1 SCC 655 and Secunderabad Hyderabad Hotel Owners' Association Vs. Hyderabad Municipal Corporation, Hyderabad, (1999) 2 SCC 274, it was held that the traditional concept of quid pro quo in a fee has undergone considerable transformation. So far as the regulatory fee is concerned, the service to be rendered is not a condition precedent and the same does not lose the character of a fee provided the fee so charged is not excessive. It was not necessary that service to be rendered by the collecting authority should be confined to the contributories alone. The levy does not cease to be a fee merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have a direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. The quid pro quo in the



strict sense was not always a sine qua non for a fee. All that is necessary is that there should be a reasonable relationship between the levy of fee and the services rendered. It was observed that it was not necessary to establish that those who pay the fee must receive direct or special benefit or advantage of the services rendered for which the fee was being paid. It was held that if one who is liable to pay, receives general benefit from the authority levying the fee, the element of service required for collecting fee is satisfied.”

The next judgment cited by the learned counsel for the petitioners was the case of A.P. Paper Mills Ltd. v. Govt. of A.P (supra). In our opinion the facts of the said case were completely different in so far as they related to enhancement of licence fee under A.P. Factories Rules, 1950 from Rs. 10,000/- to Rs. 18,00,000/-, which were held to be high. In our opinion the said judgment does not help the petitioners in any manner.

The Supreme Court in the case of A.P. Dairy Development Corpn. Federation v. B. Narasimha Reddy (supra) held that for declaring an Act to be *ultra vires* Article 14 of the Constitution, there must be a case of substantive unreasonableness in the Statute itself. The relevant part of paragraph 29 of the judgment is being quoted herein below :

“29. It is a settled legal proposition that Article 14 of the Constitution strikes at arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. This doctrine of arbitrariness is not restricted only to executive actions, but also applies to legislature. Thus, a party has



to satisfy that the action was reasonable, not done in unreasonable manner or capriciously or at pleasure without adequate determining principle, rational, and has been done according to reason or judgment, and certainly does not depend on the will alone. However, the action of legislature, violative of Article 14 of the Constitution, should ordinarily be manifestly arbitrary. There must be a case of substantive unreasonableness in the statute itself for declaring the act *ultra vires* of Article 14 of the Constitution.”

Referring to the judgment in the case of Grand Kakatiya Sheraton Hotel & Towers Employees & Workers Union v. Srinivasa Resorts Ltd. (supra) it was contended that even if the law cannot be declared *ultra vires* on the ground of hardship, but can be so declared on the ground of total unreasonableness applying Wednesbury’s Principle. In the said case the Court had found unreasonableness from the fact that employees falling in different classes had been treated equally giving them the same benefit. The same not being the case herein, this judgment also is of no assistance to the petitioners.

In the case of V. Subramaniam v. Rajesh Raghuvandra Rao (supra) the matter in issue was that by an amendment in the State of Maharashtra, sub-section 2-A was inserted in section 69 of the Partnership Act, 1932. In the opinion of the Court the said newly introduced sub section 2-A virtually deprived the partner of a firm from his share in the property of the firm



without any compensation and it also prohibited him from seeking a dissolution of the firm although he may have wanted it dissolved. In my opinion, the said judgment has no application in the facts of the present case.

On the other hand, the learned Advocate General relied upon the judgment of the Supreme Court in the case of Government of Andhra Pradesh v. P. Laxmi Devi (Smt.) [(2008) 4 SCC 720]. The challenge in the said case was to section 47-A of the Indian Stamp Act as amended in the State of Andhra Pradesh which requires a party to deposit 50 % deficit stamp duty as a condition precedent for a reference to the Collector under section 47-A as being unconstitutional. The High Court declared the same to be unconstitutional. In the appeal preferred, the Supreme Court allowed the appeal, set aside the impugned judgment and upheld the constitutional validity of the amended section 47-A of the Stamp Act. For ready reference paragraph nos. 40, 41 and 46 of the judgment are being quoted herein below :

“40. The Court must always remember that invalidating a statute is a grave step, and must therefore be taken in very rare and exceptional circumstances.

41. We have observed above that while the Court has power to declare a statute to be unconstitutional, it should exercise great judicial restraint in this connection. This requires clarification, since, sometimes



Courts are perplexed as to whether they should declare a statute to be constitutional or unconstitutional.

46. In our opinion, there is one and only one ground for declaring an Act of the legislature (or a provision in the Act) to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. This violation can, of course, be in different ways, e.g. if a State legislature makes a law which only the Parliament can make under List I to the Seventh Schedule, in which case it will violate Article 246(1) of the Constitution, or the law violates some specific provision of the Constitution (other than the directive principles). But before declaring the statute to be unconstitutional, the Court must be absolutely sure that there can be no manner of doubt that it violates a provision of the Constitution. If two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. Also, the Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope vide *Mark Netto vs. Government of Kerala and others* AIR 1979 SC 83 (para 6). Also, it is none of the concern of the Court whether the legislation in its opinion is wise or unwise.”

As quoted above, the Supreme Court in the case of *Government of Andhra Pradesh v. P. Laxmi Devi (Smt.) (supra)* held that an Act of the legislature or a provision in the Act can be declared to be invalid only if it clearly violates some provision of the Constitution. It further proceeded to hold that if two views are possible, one making the Statute constitutional and the other making it unconstitutional, the views making the



Act constitutional must always be preferred and the Court must make every effort to uphold the constitutional validity of the Statute.

Having discussed the contentions raised on behalf of the petitioners with respect to the validity and constitutionality of sections 3, 4 and 5 of the Act and the reply on behalf of the State, we are of the opinion that the petitioners have not been able to establish that either the one time conversion fee of 10 % was arbitrary, irrational, excessive, that it was disproportionate to the expenses incurred or it violated any of the provisions of the Constitution.

Thus, not finding any merit in this application challenging the vires of sections 3, 4 and 5 of the Bihar Agriculture Land (Conversion for Non-Agriculture Purposes) Act, 2010, the application stands dismissed.

(Partha Sarthy, J)

Jyoti Saran,J:- I agree

(Jyoti Saran, J)

Prakash/-

AFR/NAFR	AFR
CAV DATE	27.06.2019
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