

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.3.2009

C O R A M :

THE HONOURABLE MR. JUSTICE K. CHANDRU

W.P.Nos.19088 & 17115 of 1997,
10192, 18446 and 18447 of 1998,
4083 of 1999 and 18339 of 2000
and connected MPs.

R.Sivashanmugam

.. Petitioner in
WP.19088 of 1997

1. Vijayammal
2. Neelavani Thayar

.. Petitioners in
WP.17115 of 1997

Smt.Yasodai Ammal

.. Petitioner in
WP.10192 of 1998

1. S.R.Sampath
2. S.Yadugiri Ammal

.. Petitioners in
WP.18446 of 1998

Meera alias Shenbaga Lakshmi
rep.by her Constituted Attorney
Shri S.R.Sampath

.. Petitioner in
WP.18447 of 1998

N.Chandrasekaran

.. Petitioner in
WP.4083 of 1999

1. K.R.Balasubramania Mudaliar (dead)
2. Tmt.Saraswathi
3. Tmt.Meera Sankaramoorthi
4. Rajasekaran
5. Tmt.Soundari
6. Sivaraman
(petitioners 2 to 6 brought on record
as LRs of deceased first petitioner by
order dated 04.11.2008 in WPMP.No.
1648 of 2008 in WP.18339 of 2000)

..Petitioners in
WP.18339 of 2000

-vs-

1. The State of Tamil Nadu, rep.by
the Secretary to Government,
Law Department, Fort St.George,
Chennai-9.

..R1 in all the WPs.

2. The Assistant Commissioner,
(Land Reforms), Erode. ..R2 in WP.No.19088
of 1997
3. The Assistant Commissioner,
(Land Reforms), Coimbatore. .. R2 in WP.No.17115
of 1997
4. The Assistant Commissioner,
(Land Reforms),Tiruchirappalli. .. R2 in WP.No.10192
of 1998
5. The Authorised Officer (Land
Reforms), Tiruchirappalli. .. R2 in WP.No.18446
of 1998 and WP.No.
18447 of 1998
6. The Authorised Officer & Assistant
Commissioner (Land Reforms),
Erode. .. R2 in WP.No.4083
of 1999
7. The Assistant Commissioner,
(Land Reforms), Villupuram. .. R2 in WP.No.18339
of 2000

PRAYER : Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of declaration declaring that the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1994, Tamil Nadu Act No.11 of 1996 as ultra vires, unconstitutional and strike down the same.

For petitioner in W.P.

Nos.19088 of 1997,

4083 of 1999 &

18339 of 2000

:: Mr.A.Sivaji

For petitioner in W.P.

Nos.17115 of 1997 &

10192 of 1998

:: Mr.C.V.Vijayakumar for

Mr.T.R.Rajaraman

For petitioner in W.P.

Nos.18446 & 18447

of 1998

:: Mr.T.K.Seshadri, SC for

Mr.M.S.Sampath

For respondents

:: Mr.R.P.Kabilan, Addl.A.G.

Asstd.byMr.A.Arumugam,

Spl.GP

ORDER

In these writ petitions, the challenge is to the amendment brought in by the Tamil Nadu Act 11 of 1996 to the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1994 and a prayer is sought to declare them as ultra vires and unconstitutional.

2. Sections 4 to 6 of the Amendment Act reads as follows:-

"S.4. Tamil Nadu Act 58 of 1961, as subsequently modified, to have effect subject to modifications.- The principal Act shall, on and from the 6th day of April 1960, have effect, as if, section 22 had been renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-section had been added, namely:-

"2. For the purpose of sub-section (1) if any transfer or partition has the effect of reducing the extent of surplus land in excess of the ceiling area, such transfer or partition, whether bona fide or not, shall be construed as defeating the provisions of this Act".

S.5. Validation.- Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any court or other authority, all acts done or proceedings taken in respect of cases falling under section 22 of the principal Act by the authorized officer before the date of the publication of this Act in the Tamil Nadu Government Gazette, which are in conformity with the provisions of section 22 of the principal Act, as amended by section 4 of this Act, shall, for all purposes be deemed to be, and to have always been, validly done or taken in accordance with law, as if section 22 of the principal Act as amended by section 4 of this Act had been in force at all material times when such acts or proceedings were done or taken.

S.6. Reopening of certain cases.- Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any court or other authority, but subject to the

provisions of section 21-A of the principal Act, any proceeding taken or order passed under the principal Act which has been disposed of before the date of the publication of this Act in the Tamil Nadu Government Gazette, contrary to the provisions of section 22 of the principal Act, as amended by Section 4 of this Act, shall be reopened and disposed of in accordance with the provisions of section 22 of the principal Act as so amended:

Provided that no such proceeding or order shall be reopened under this section after the expiry of a period of five years from the date of the publication of this Act in the Tamil Nadu Government Gazette:

Provided further that no such proceeding or order shall be reopened unless the person affected has had a reasonable opportunity of being heard."

3. Before the amendment, the original section 22 read as follows:-

"S.22. Transfer or partition made on or after the date of the commencement of this Act, but before the notified date.-

(1) Where, on or after the date of the commencement of this Act, but before the notified date, any person has transferred any land held by him by sale, gift (other than gift made in contemplation of death), exchange, surrender, settlement or in any other manner whatsoever except by bequest or has effected a partition of his holding or part thereof, the authorized officer within whose jurisdiction such land, holding or the major part thereof is situated may, after notice to such person and other persons affected by such transfer or partition and after such enquiry as he thinks fit to make, declare the transfer or partition to be void if he finds that the transfer or the partition, as the case may be, defeats any of the provisions of this Act."

4. The statement of objects and reasons for bringing the amendment as set out in the original Bill may be usefully reproduced below:-

"Section 22 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Tamil Nadu Act 58 of 1961), provides that any transfer or partition, made on or after the date of the commencement of the Act, but before the notified date, may be declared to be void by the authorised officer, if he finds that such

transfer or partition defeats any of the provisions of the Act. In many cases the authorised officers while implementing the Act have passed orders under section 22 holding that the transfers or partitions effected during the said period as void. The orders passed under section 22 have been taken on appeal to the Land Tribunal and the High Court by parties aggrieved. The High Court in a batch of cases in Civil Revision Petitions No.1824, 1825/65 and 44/66 has held that the transfer made during the said period can be declared void only if the authorized officer can come to the conclusion that the transaction is sham, nominal and bogus. The above judgment of the High Court has been taken on appeal to the Supreme Court by the State Government. However, during the pendency of appeal before the Supreme Court, the authorized officers and the Land Tribunals have followed the judgment of the Madras High Court and in many cases the transfer effected during the said period have been held to be valid.

2. Subsequently, the Supreme Court in the appeal preferred by the State Government referred to above and **reported in Authorized Officer, Thanjavur -vs- S.Naganatha Ayyar (AIR 1979 SC 1487)** has reversed the judgment of the Madras High Court and interpreted Section 22 of the Act to the effect that if any transfer defeats the provisions of the Act by reducing the extent of surplus land in excess of the ceiling available from any person such transaction, bona fide or not shall be void in the matter of computation of permissible area and the surplus area.

3. Based on the said judgment of the Supreme Court, many cases in which orders have been passed earlier holding the transaction as valid, have been reopened and surplus land has been declared. All the past cases which have been reopened, are now challenged before the Tamil Nadu Land Reforms Special Appellate Tribunal on the ground that the Act does not confer any right or power on the authorized officer to review such cases which have reached finality.

4. It has, therefore, been decided to amend section 22 of the said Act so as to be in consonance with the principles laid down by the Supreme Court in the case referred to above and to make it clear that if any transfer or partition, has the effect

of reducing the extent of surplus land in excess of the ceiling area, such transfer or partition whether bona fide or not, shall be construed as defeating the provisions of the said Act.

5. It has also been decided to make provisions for validating all acts done or proceedings taken by the authorised officer and to reopen the past cases, based on the said judgment of the Supreme Court.

The Bill seeks to give effect to the above decision."

5. These writ petitions were admitted on various dates and on notice from this Court, counter affidavits have been filed by the State in all the writ petitions. Pending the writ petitions, in most of the cases, stay of dispossession was granted by this Court. But, however, liberty was given to proceed with the other proceedings. In some cases, there was an absolute stay granted by this Court.

6. Initially an objection was raised about the maintainability of the writ petitions as the declaratory relief was not made before the Tamil Nadu Land Reforms Special Appellate Tribunal. Though the decision of the Supreme Court in L.Chandrakumar -vs- Union of India reported in (1997) 3 SCC 261 supports such view, it was contended that the Tamil Nadu Land Reforms Special Appellate Tribunal was not having a Judicial Member and was functioning only with an Administrative Member and, therefore, the Court should not refuse to entertain the writ petition. This Court, by an order dated 11.12.1997 permitted the writ petitions to be entertained by this Court in view of the fractured nature of the Appellate Tribunal. Subsequently it must also be noted that the Tribunal itself had been abolished.

7. In W.P.No.17115 of 1997, a miscellaneous petition was also filed seeking to raise certain additional grounds by the petitioner. But till date, no steps were taken to get the petition ordered by this Court.

8. While one set of writ petitions came up for hearing on 04.11.2008, W.P.No.4083 of 1999 came up on 19.12.2008. Since in all the writ petitions, identical contentions have been raised, they were heard together and a common order is being passed.

9. When orders were passed by the Authorised Officer, the said matter came up for consideration in a revision petition before

this Court. The decision in the Civil Revision was rendered in S.Naganatha Ayyar -vs- Authorised Officer, Thanjavur and another reported in (1970) 84 Mad LW 69. This Court while allowing the revision petition held that the Land Reforms Act being confiscatory in nature, the public authority invested with the power to enquire into and to invalidate a transfer should act reasonably, and that such a power should be construed beneficently in favour of the subject who is affected by the statute. It was also held that the transactions entered into in anticipation of the Ceiling Act will not be hit by the provisions preventing such transfers except where they are mala fide or colourable. It was also held by this Court that Section 22 covers only sham, nominal and bogus transfers.

10. The relevant passage found in the judgment may be usefully extracted below:-

"..... Section 22 seems to cover only those sham, nominal and bogus transfers which are only intended to defeat the provisions of the Act. If the Legislative intention is also to invalidate all bona fide transactions during the relevant period, it would have made certain consequential provisions as to what are the rights of the transferor and the transferee in relation to the property conveyed, and how the resultant equities between the transferee and the transferor have to be worked out. This view that Section 22 will cover only transactions of sham, nominal and bogus characters which are intended only to defeat the provisions of the Act will not be inconsistent with the object provided in Section 7."

11. Thus saying all the transactions other than those which come within the mischief of the section was allowed to go outside the purview of section 22. Therefore, any transfer of land which took place between 06.4.1960 and 02.10.1962 namely the period between the date of commencement of the Act and the notified date respectively can be declared void by the Authorised Officer only if he found that the transfer had defeated any of the provisions of the Act.

12. The matter was taken on appeal by the State and heard by the Supreme Court. The Supreme Court allowed the appeal preferred by the Authorised Officer vide its decision in Authorised Officer, Thanjavur and another -vs- S.Naganatha Ayyar and others

reported in (1979) 3 SCC 466. The Supreme Court in paragraphs 11 and 12 of the said judgment held as follows:-

Para 11."The learned Judge seems to take a liberal view that transactions entered into in anticipation of the Ceiling Act will not be hit by the provisions preventing such transfers except where they are mala fide or colourable. The reason partly turns on semantics and the court argues with lexical support:

The word defeat normally means overcome, thwart, evade, frustrate, circumvent, bypass, disappoint, prevent the accomplishment of ... the word defeat in Section 22 has to be taken as having been used to import sinister motive. Maxwell on the Interpretation of Statutes, twelfth Edn., after stating that the courts will not be astute to narrow the language of a statute so as to allow persons within its purview to escape its net, that the statute has to be applied to the substance rather than the mere form of transactions, thus defeating any shifts and contrivances which parties may have devised in the hope of falling outside the Act.

The conclusion categorically reached by the High Court virtually emasculates Section 22 as we understand its object and import. The learned Judge winds up with these words:

On a due consideration of the matter, I hold that under Section 22 of the Act the authorised officer is entitled to declare as void only those transfers which are sham and nominal entered into with the avowed object of defeating the provisions of the Act, without any bona fide intention to transfer title. So in the light of the view expressed above the facts of each case have to be considered.

Section 22, literally read, leads only to one conclusion, that any transfer, bona fide executed or not, is liable to be declared void by the Authorised Officer if he finds that the transfer defeats any of the provisions of this Act. There is not the slightest doubt that severally and cumulatively the provisions of the Act seek to make available the maximum extent of land, in excess of the ceiling, to be vested in Government for fulfilment of its purposes. Chapter II contains a fasciculus of provisions in this behalf and if any transfer carves out of the surplus area some land, pro tanto, the provisions of the Act are defeated. Indeed, it is not seriously disputed that such will be the conclusion if we do not read into the provisions either the condition that it does not apply to bone fide transfers, as

Shri Ramamurthi would have it, or does not apply to any transfers other than sham, nominal or bogus transfers, as the High Court would have it. A policy-oriented interpretation tallies with the literal construction in the present case. The mischief rule in Heydon case and the grammatical construction which is the Golden Rule converge to the same conclusion in the present case.

Para 12. The policy of the law of land reform with drastic limit on holdings often drives large holders to evade by manouvres. They make gifts, execute sales or settlements, enter into other dealings to save their properties from being taken by the State. May be in a few cases, the owner has real necessity. But why sell only on the eve of land legislation? Why execute deeds, though for good purposes, only where the bill fixing ceilings is round the corner? By and large, the strategies of extrication of holdings from the arm of the law is the reason that prompts sudden affection for making gifts, sudden realisation of debts due and sudden awareness of family necessity. The legislature, astute enough not to be outwitted in its objective, puts a blanket ban on transfers which, in effect, defeat its provisions. This may cause hardship to some but every cause claims martyrs. Individual trauma is inevitable while ushering in a new economic order. This is the rationale of Section 22 of the Ceiling Act. To allow the sense of the text and to mix alien concepts is to debase the statutory metal. Likewise, laws are not value-free and so he reads the symbols of words best who projects in the process the values of the legislation as distinguished from his own. Reading other values into the legislators words may judicially demonetize the statute and break the comity between constitutional instrumentalities".

13. It was concluded in paragraphs 16 and 17 of the Naganatha Ayyar's case and the same may be usefully extracted below:-

Para 16. In the interpretation of Section 22 we too are Portia men. For this reason we reverse the view of the High Court that Section 22 will not apply to nullify any transaction of transfer or partition unless it is further shown that it is sham, nominal or bogus. Nor do we agree with Shree Ramamurthi that even if a transaction defeats the ceiling provisions, it may still be valid if the transfer is, from an individual point of view bona fide. The short reply is that from the

community's angle, especially the landless community's angle hungering for allotment, the alienation, however necessary for the individual, is not bona fide vis-a-vis the community.

Para 17. Therefore, we allow the appeal in the light of the interpretation we have adopted, restore the Tribunal's holding and rule that if any transfer defeats the provisions of the Act by reducing the extent of surplus land in excess of the ceiling available from any person such transaction, bona fide or not, is void in the matter of computation of the permissible area and the surplus area. May be, that the transaction may be good for other purposes or may not be. The Authorised Officer is within his power if he ignores it as void for purposes of Section 22 Section 7 and other ceiling-related provisions."

14. In order to give effect to the said decision, the impugned amendment came to be made by the Legislature and it was also made to come into effect from the date of the principal enactment. In the counter affidavit filed by the State it is stated that the amendments were given retrospective effect as per the principles laid down by the Supreme Court in Naganatha Ayyar's case (cited supra). It is also brought to the notice that the amendments are made to give effect to the principles laid down in Article 39(b) and (c) of the Constitution and found in Part IV containing the Directive Principles of State Policy. As the principal Act was also included in the IX Schedule to the Constitution, it is not liable for any judicial review on the ground of violation of any of the Fundamental Rights in view of Article 31-B of the Constitution.

15. Mr.T.K.Seshadri, learned Senior Counsel appearing for some of the petitioners contended that the amendments are ultra vires the Constitution. In this context, he referred to the judgment of the Supreme Court in P.Sambamurthy and others -vs- State of Andhra Pradesh and another reported in (1987) 1 SCC 362. Reliance was placed upon the following passage found in paragraph 4, which may be usefully reproduced below:-

Para 4. "Now if the exercise of the power of judicial review can be set at naught by the State Government by overriding the decision given against it, it would sound the death knell of the rule of law. The rule of law would cease to have any meaning, because then it would be open to the State Government to defy the law and yet to

get away with it. The proviso to clause (5) of Article 371-D is therefore clearly violative of the basic structure doctrine".

16. For the very same proposition, he also placed reliance upon the judgment of the Supreme Court reported in 1993 Supp (1) SCC 96 (II) in the matter of : Cauvery Water Disputes Tribunal. The following passage found in paragraph 77 is relevant and it may be usefully reproduced below:-

Para 77. ".....Hence any executive order or a legislative enactment of a State which interferes with the adjudicatory process and adjudication by such Tribunal is an interference with the judicial power of the State. In view of the fact that the Ordinance in question seeks directly to nullify the order of the Tribunal passed on June 25, 1991 it impinges upon the judicial power of the State and is, therefore, ultra vires the Constitution."

17. Based upon these two judgments, the learned Senior Counsel submitted that since the Authorised Officer has the trappings of a Court and already orders have been passed by the said Officer, which had become final, the same cannot be reopened. The decision rendered by the Authorised Officer is a judicial order and the amendment, inasmuch as the impugned Act gives power to reopen such of those cases, should be declared as unconstitutional.

18. Mr.Vijayakumar, learned counsel appearing for M/s.T.R.Rajaraman, submitted that invalidating a bona fide transfer that too by a retrospective amendment is wholly illegal. The State Legislature lacks legislative competence for enacting such an amendment. For this purpose, he placed reliance upon the judgment of the Supreme Court in Shri Prithvi Cotton Mills Ltd. and another -vs- Broach Borough Municipality and others reported in (1969) 2 SCC 283.

19. He also referred to the judgment of the Supreme Court in S.R.Bhagwat and others -vs- State of Mysore reported in (1995) 6 SCC 16. After referring to paragraphs 15, 17 and 18, he submitted that once a decision made by the authority has become final and the State has not challenged the said decision before a competent Court, the legislative power cannot be pressed into service to undo the binding effect of such orders passed by the Court.

20. He also placed reliance upon the judgment of the Supreme Court in State of Tamil Nadu -vs- Arooran Sugars Ltd.

reported in (1997) 1 SCC 326 and wanted to emphasize that even if the Legislature has power to make a retrospective legislation, it cannot invalidate the decisions which were rendered already.

21. For the very same purpose, he also placed reliance upon the judgment of the Supreme Court in *Commr. Karanataka Housing Board -vs- C.Muddaiah* reported in (2007) 7 SCC 689. Reliance was placed upon paragraph 20 of the said judgment, which reads as follows:-

Para 20. "In that case also, it was contended by the State that the petitioners were not entitled to consequential benefits in view of legislative provision and overriding effect under Section 11 of the Act. The Court, however, negated the contention. It observed that it is open to a competent legislature to remove a defect in a legislation. Such enactment or validating statute could not be held unconstitutional or ultra vires. But it is equally well settled that a binding judicial pronouncement between the parties cannot be made ineffective or inoperative with the aid of legislative power by making a provision which, in substance and in reality, overrides and overrules a decision rendered by a competent court. Such process virtually renders a judicial decision ineffective by indirectly exercising appellate power over a judicial forum which is impermissible....."

22. Mr.A.Sivaji, learned counsel appearing for some of the petitioners thereafter contended that since the principal Act was included in the IX Schedule, the Supreme Court in *Naganatha Ayyar's case* (cited supra) did not go into the violation of Fundamental Rights. To his knowledge, the Amended Act had not been included in the IX Schedule and, therefore, there is no impediment for this Court to go into the constitutional validity of the amendment and have a fresh look on the same.

23. For this proposition, he relied upon the Division Bench judgment of this Court in *Rajasherriff -vs- Government of Tamil Nadu* and another reported in 2001 (4) CTC 577. The learned counsel stated that though the said judgment was rendered in the context of Section 23A of the Land Acquisition Act, 1894 brought in by a Tamil Nadu Amendment Act, the reasoning given therein is applicable to the impugned amendment also.

24. The learned counsel also submitted that the retrospective nature and effect of the Benami Transactions (Prohibition) Act, 1988 came up for consideration before the Supreme Court in its decision in R.Rajagopal Reddy (dead) by LRs and others -vs- Padmini Chandrasekharan (dead) by LRs reported in (1995) 2 SCC 630. There the Supreme Court held that the Act will not have any retrospective operation and will not apply to pending suits already filed and entertained prior to the coming into force of Section 4 of the Benami Transactions (Prohibition) Act. He also stated that when a declaration is made by the Legislature it is not conclusive and at times it may be amending the law and, therefore, need not be retrospective in character.

25. Therefore, all the learned counsel for the petitioners have submitted that since in the respective cases as there were no finding by the Authorised Officer that the transfers effected were not bona fide and those orders were not under challenge in the manner known to law, the amendment cannot create any right on the part of the State to reopen the concluded orders. Hence to the extent the impugned law should be struck down as invalid.

26. Before venturing into the rival submission by the State, it must be stated that the proviso to Section 6 of the Amended Act impugned in the writ petition as extracted above clearly sets out that by virtue of the amendment no proceeding or order shall be reopened under the section after the expiry of the period of five years from the date of publication of this Act in the Tamil Nadu Government Gazette. The Act was published in the Tamil Nadu Government Gazette (Extraordinary) Issue No.224 on 10.5.1996. Further, the Authorised Officer must also give reasonable opportunity to the affected parties before reopening a case. Therefore, the Legislature itself thought it fit to safeguard the interest and prevent any uncertainty by enabling the Authorising Officer to reopen the orders made already. They are necessary legislative safeguards made by the State.

27. Mr.R.P.Kabilan, learned Additional Advocate General submitted that the amendment was made only to give effect to the Supreme Court judgment in Naganatha Ayyar's case (cited supra). During the relevant period, by virtue of the decision of the Division Bench, the Authorised Officers were forced to accept all transfers

unless there was fraudulent transaction. Once the Supreme Court rendered a judgment upholding a particular provision, it is as if the said provision was always in the statute book. The judgment did not make any prospective overruling. Therefore, section 22 as enacted in the year 1961 and interpreted by the Supreme Court will apply to acts of parties. The amendment is a mere reiteration of the judgment of the Supreme Court. Therefore, no one can claim that any right vested on them was taken away by the impugned amendment.

28. In this context, the learned Additional Advocate General referred to the judgment of the Supreme Court in *State of Haryana and others -vs- Karnal Co-operative Farmers' Society Limited and others* reported in (1993) 2 SCC 363. This is for the purpose of showing that the Legislature has legislative power to render ineffective the earlier judicial decision by removing or altering or neutralising the legal basis in the unamended law on which such decisions were founded even retrospectively. He also submitted that this is not a case where the earlier judicial decisions have been rendered ineffective by using legislative power.

29. The learned Additional Advocate General also referred to the judgment of the Supreme Court in *State of Gujarat -vs- Vora Saiyedbhai Kadarbhai and others* reported in (1995) 3 SCC 196. The argument was that a social welfare legislation even if it affects some citizens, will not make the law unconstitutional. In the light of the same, he sought for dismissal of the writ petitions.

30. It must be stated that the Supreme Court in its judgment in *State of Tamil Nadu -vs- Arooran Sugars Limited* reported in (1997) 1 SCC 326 in paragraph 16 held as follows:-

Para 16. The scope of a non obstante clause and of Validating Act has been examined by this Court from time to time. Reference in this connection be made to the judgment in the case of *Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality* (1969) 2 SCC 283, where Hidayatullah, C.J. speaking for the Constitution Bench said: (SCC pp.286-87, para 4)

When a legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important

condition, of course, is that the legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon courts. The legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law.

The same view was reiterated in the cases of *West Ramnad Electric Distribution Co. Ltd. v. State of Madras* AIR 1962 SC 1753; *Udai Ram Sharma v. Union of India* AIR 1968 SC 1138; *Tirath Ram Rajindra Nath v. State of U.P.* (1973) 3 SCC 585; *Krishna Chandra Gangopadhyaya v. Union of India* (1975) 2 SCC 302; *Hindustan Gum & Chemicals Ltd. v. State of Haryana* (1985) 4 SCC 124; *Utkal Contractors and Joinery (P) Ltd. v. State of Orissa* (1987) Supp SCC 751; *D. Cawasji & Co v. State of Mysore* 1984 Supp SCC 490 and *Bhubaneshwar Singh v. Union of India* (1994) 6 SCC 77. It is open to the legislature to remove the defect pointed out by the court or to amend the definition or any other provision of the Act in question retrospectively. In this process it cannot be said that there has been an encroachment by the legislature over the power of the

judiciary. A courts directive must always bind unless the conditions on which it is based are so fundamentally altered that under altered circumstances such decisions could not have been given. This will include removal of the defect in a statute pointed out in the judgment in question, as well as alteration or substitution of provisions of the enactment on which such judgment is based, with retrospective effect. This is what has happened in the present case. The judgment of the High Court in Writ Petition No. 1464 of 1974, dated 8-10-1976 was solely based on the amendments which had been introduced by Act 7 of 1974. If those amendments so introduced have been effaced by Act 25 of 1978 with retrospective effect saying that it shall be deemed that no such amendments had ever been introduced in the Principal Act, then full effect has to be given to the provisions of the later Act unless they are held to be ultra vires or unconstitutional".

(Emphasis Added)

31. Therefore, from the above **it is clear that the legislature has a power to enact a retrospective legislation for the purpose of clarifying certain ambiguity that has been created by the judgment of the Court. It is only with a view to neutralise the decision rendered in this regard. In the present case, the decision of the Division Bench in Naganatha Ayyar's case (cited supra) was reversed by the Supreme Court which gave the true nature of Section 22. Once such a decision is rendered it must be deemed that it has always been in the statute book as interpreted by the Supreme Court. The present amendment did not make a new amendment to the provision but only gave statutory backing to the interpretation given by the Supreme Court in Naganatha Ayyar's case (cited supra).**

32. Therefore, if an Authorised Officer had given an order in favour of any of the petitioners ignoring the legal provision, such an order can only be a nullity as it had not taken note of the true legislative meaning as well as the intent and purport of section 22. Section 22(2) as amended by the impugned Amendment Act has restored the correct meaning and the spirit of the Act. The petitioners cannot attack the said amendment as if it has taken away their vested right. The truth of the matter is that they have no vested right in making

a transfer to defeat the very purpose of the legislative injunction over such transfers. Further, the amendment itself has put an embargo by prescribing a limitation for reopening the issues beyond five years from the date of the gazette notification. Hence, it cannot be said that the legislation is arbitrary or it had taken away judicial decisions.

33. After the nine Judges' bench judgment of the Supreme Court in J.R.Coelho (dead) by LRs -vs- State of Tamil Nadu reported in 2007 AIR SCW 611, it has been held that notwithstanding Article 31-B of the Constitution, any legislation included in the IX Schedule still can be judicially reviewed if it infringes basic structure of the Constitution. But in the present case, no such argument was advanced to go into the immunity conferred by Article 31-B.

34. The decisions cited by the learned counsel for the petitioners referred to above do not advance the cause of the petitioners. In the light of the above, the challenge to the impugned amendment stands rejected. All the writ petitions will stand dismissed. However, there will be no order as to costs. All the miscellaneous petitions stand closed.

To

1. The Secretary to Government,
Law Department, Fort St.George,
Chennai-9.
2. The Assistant Commissioner,
(Land Reforms), Erode.
3. The Assistant Commissioner,
(Land Reforms), Coimbatore.
4. The Assistant Commissioner,
(Land Reforms), Tiruchirappalli.
5. The Authorised Officer (Land
Reforms), Tiruchirappalli.
6. The Authorised Officer & Assistant
Commissioner (Land Reforms), Erode.
7. The Assistant Commissioner,
(Land Reforms),
Villupuram