CIVIL MISCELLANEOUS

Before D. Falshaw, C.J. and Harbans Singh, J.

SOHAN LAL AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1153 of 1963.

1963

December, 2nd

Punjab Development of Damaged Areas (Validation) Act (VIII of 1963)—Whether valid—S. 2—Effect of—Constitution of India (1950)—Art. 144—Schemes or provisions of a statute declared by the Supreme Court to be invalid —Whether can be validated by subsequent legislation.

Held, that the provisions of the Punjab Development of Damaged Areas (Validation) Act, 1963 are valid. This Act only validates the previous schemes which fully conformed with the provisions with regard to publications and sanction by the Government under the Punjab Development of Damaged Areas Act, 1951, but were held to be invalid simply on the ground that there was no proper notification declaring the area in dispute as a "damaged area' under the relevant legislation. This validating legislation cannot be held to be void simply because it retrospectively makes the schemes valid which had been held to be invalid by the Supreme Court. The Act merely removes a technical defect which had been found to invalidate all the previous schemes.

Held, that the effect of section 2 of the Validating Act is that the schemes prepared and sanctioned in conformity with the Punjab Development of Damaged Areas Act, between the dates specified in the Validating Act, must be

held to be valid as if the defect of notification declaring the area in dispute as "damaged area" did not exist.

Held, that the argument that once the Supreme Court had struck down the schemes as invalid, that was the law of the land and the State Legislature could not legislate holding that the schemes, which had been so struck down by the Supreme Court, were, in fact, valid has no force. The legislature has the power to enact validating Acts and in order to determine the validity of such legislation it has to be seen whether the defect, in a particular provision in the statute or in any scheme, etc. found by the Supreme Court, is fundamental in the sense that it is *ultra vires* the Constitution and cannot be remedied. If the defect is of such a kind, obviously no subsequent legislation can declare the provision, so struck down, to be valid for the simple reason that the State Legislature or the Central Legislature had no jurisdiction to pass or validate any legislation which is *ultra vires the* Constitution. However, where the defect discovered is of a nature unconnected with the constitutional provisions, the same can be remedied by the State Legislature concerned.

Petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ, order or direction be issued prohibiting the respondents from executing the Scheme without complying with the directions of the State Government and to dispossess the petitioners from their respective properties. The Scheme and the proceedings taken be declared to be illegal and without jurisdiction.

H. S. GUJRAL, ADVOCATE, for the Petitioner.

S. M. SIKRI, ADVOCATE-GENERAL and T. S. MUNJRAL, ADVOCATE, for the Respondents.

ORDER

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HARBANS SINGH, J.—This petition and a number of other such petitions have been referred to a Division Bench because a common point of law is involved in all of them, namely, as to the validity

or the effect of the Punjab Development of Damaged Areas (Validation) Act, 1963.

Facts in these petitions are not quite identical and besides this law point various other points also arise. It is not necessary to go into facts of the individual petitions for the limited purpose of deciding the validity and effect of the validating Act referred to above.

The facts necessary for the decision of the point referred may briefly be stated as follows : Under the Punjab Development of Damaged Areas Act, 1951, which replaced the Punjab Development of Damaged Areas Ordinance (16 of 1950), "damaged area", as defined in sub-clause (d) of section 2, means "any area which the State Government may, by notification, declare to be a damaged area shall include the areas already notified under the East Punjab Damaged Areas Act, 1949", and under clause (e) "Improvement Trust" or "Trust" means "an Improvement Trust constituted under the Punjab Town Improvement Act, 1922". One such Trust was constituted for Amritsar town where during the communal disturbances immediately before the partition of the country a considerable portion of the city was damaged. Under section 3 the Trust is empowered to frame a scheme or schemes for the development of a damaged area, providing for the various matters mentioned in section 28 of the Punjab Town Improvement Act, 1922. Under section 4, such schemes have to be published and objections invited. Such publication must indicate, *inter alia*, the boundaries of the locality comprised in the scheme and the place where, and the time when, details of the scheme can be examined as well as prescribed the period during which objections to the scheme will be received. Under section 5, after considering the objections received by the Trust the Trust may approve

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the scheme with or without modifications and thereafter the scheme, as finally sanctioned together with a statement of objections that had been received by the Trust, has to be forwarded to the State Government and the State Government may modify the scheme; if necessary and thereafter notify the scheme in its original form or as modified by it and the scheme so notified and published is to be deemed to be the sanctioned scheme, and under sub-section (4) of section 5, the publication of the scheme under sub-section (3) is to be taken as conclusive evidence that a scheme has been duly framed and sanctioned.

Certain schemes were prepared published and ultimately sanctioned by the State Government and notified by it. The legality of these schemes was challenged, *inter alia;* on the ground that there was no subsisting notification after 11th of May; 1951; declaring the areas concerned as damaged areas under the aforesaid Act and; consequently; the areas in question could not be treated as damaged areas within the definition of that term under the Act. This contention was unheld by the Supreme Court in *T.M.L. S. Bradari* v. *Improvement Trust* (1); The result of this decision was that all schemes prepared and sanctioned became invalid. A fresh notification for declaring the Amritsar Town as damaged area was issued on 26th of June, 1962. However, this could not validate the shemes that had been prepared and got sanctioned between 11th of May, 1951, and 26th June, 1962. and in order to validate these shemes, Punjab Development of Damaged Areas (Validation), Ordinance, 1963, was issued which was later on replaced by the Punjab Development of Damaged Areas (validation) Act, 1963, which received the assent of the

(1) A.I.R. 1963 S.C. 976.

President of India on 29th of March, 1963, and was published in the Punjab Gazette extraordinary on 31st of March; 1963. The main operating section is section 2 which is to the folowing effect:—

> "Notwithstanding any judgment, decree or order of any Court or of any other tribunal or authority, for the period commencing on the 11th of May, 1951, and ending on the 26th day of June, 1962, the entire area within the walled city of Amritsar shall be deemed to be a "damaged area" for the purposes of the Punjab "Development of Damaged Areas Act, 1951, and any scheme framed and sanctioned or deemed to have been framed or sanctioned, or acquisition of land made or award of compensation given, under the Act and any proceeding held, order made or action taken in respect of or in pursuance of such scheme shall be, and shall be deemed always to have been, as valid as if the entire area within the walled city of Amritsar was a damaged area at all material times when such scheme was framed and sanctioned or deemed to have been framed or sanctioned or such acquisition of land was made or such award of compensation was given or such proceeding was held or such order was made or such action was taken. and no such scheme, acquisition, award; proceeding, order or action shall be questioned on the ground that the entire area within the walled city of Amritsar was not declared to be a damaged area under that Act."

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As a result of this, all the schemes which had been notified by the State Government under section 5 of the Act are treated as valid.

In the petitions before us, it is urged that inasmuch as the schemes were without legal foundation, illegal and *ultra vires* on the date when they were framed, the petitioners were justified in ignoring their publication altogether and in not raising any objections to the same, and in cases, where no such objections were raised on the ground that objections need not be raised because of the invalidity of the schemes, the validating Act can, at best validate the preparation of the schemes under sub-section (3) and the publication under sub-section (4) must either be made a fresh or at least a fresh period should be prescribed within which objections can be filed. The main argument of the learned counsel appearing for the petitioners was that if schemes are treated as having been properly and validly sanctioned, the petitioners would lose their valuable right to file objections and to have them considered not only by the Improvement Trust but also by the State Government. It was further contended that in respect of schemes prepared after 26th of June, 1962, any person affected thereby would have a right to raise objections whereas the petitioners who are affected by the schemes which are sought to be validated by the validating Act, would have no such right and that this amounts to violation of their fundamental right guaranteed by Article 14 of the Constitution. Reference in this connection was made to *Ram Prasad* v. *State of Bihar* (2). That case, however, has no application to the facts

(2) A.I.R.1953 S. C. 215.

of the present case. There, a Bihar Act had singled out two individuals and one solitary transaction entered into between them and another private party and had declared the transaction to be a nullity on the ground that it was contrary to the provisions of law, although there had been no adjudication on this point by any judicial tribunal. This Act was struck down on the ground that it involved discrimination between two citizens and had visited them "with a disability which is not imposed upon anybody else and against which even the right of complaint is taken away". Here, there is no question of discriminating against the petitioners. The Act merely removes a technical defect which had been found to invalidate all the schemes that had been prepared. Anyway, full opportunity was available to the petitioners to raise objections because the entire procedure prescribed under the Act was duly followed. No inherent defect was found in the schemes themselves, and the defect noticed by the Supreme Court on which the schemes were held to be invalid was the fact that an earlier notification declaring the area in question as the damaged area under the Act did not subsist after 11th of May, 1951.

The second point urged was based on the provisions of Article 144 of the Constitution, the argument being that once the Supreme Court had struck down the schemes as invalid, that was the law of the land and the State Legislature could not legislate holding that the schemes, which had been so struck down by the Supreme Court, were, in fact, valid. The occasions for validating by a subsequent legislation Acts found to be invalid by the Supreme Court, have been many and the Supreme Court, has held such legislation to

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be valid in a number of cases. It all depends whether the defect in a particular provision in the statute or in any scheme etc. found by the Supreme Court, is fundamental in the sence that it is *ultra vires* the Constitution and cannot be remedied. If the defect is of a such kind, obviously no subsequent legislation can declare the provision, so struck down, to be valid for the simple reason that the State Legislature or the Central Legislature has no jurisdiction to pass or validate any legislation which is *ultra vires* the Constitution. However;where the defect discovered is of a nature unconnected with the constitutional provisions, the same can be remedied by the State Legislature concerned.

Reference in this connection may be made to *Jadab Singh* v. *Himachal Pradesh Administration* (3). In this case, by virtue of the provision in the Government of Part C States Act (49 of 1951), elections were held in 1952 to the Himachal Pradesh Assembly and 36 members were duly elected. A Bill (Himachal Pradesh Abolition of Big Landed Estates and Land Reform Bill) was introduced in this Assembly. Before the Bill could be passed into an enactment, Himachal Pradesh and Bilaspur (New State) Act of 1954 was passed constituting a new State by uniting the States of Himachal Pradesh and Bilaspur. According to this, the Legislative Assembly for the new State of Himachal Pradesh was to be constituted with 41 seats to be filled by direct elections. It was further provided that 36 members already elected shall be deemed to have been elected to the new Assembly, no fresh elections took place for the remaining seats. The Lieutenant-Governor of the new Himachal Pradesh State convened a second session of the Himachal

(3) A.I.R. 1960 S. C. 1008.

Pradesh Legislative Assembly in which the Bill aforesaid was passed into an Act (hereinafter referred to as the Abolition Act). On the Constitutional validity of this Act being challenged, it was held by the Supreme Court that although the new State Act provided that each of the 36 members representing a constituency of the old Legislative Assembly was deemed to have been elected and by the deeming provision these members were placed in the same position as if they had gone through the entire process of elections, yet there being no notification under section 74 of the Representation of People Act of 1951, the 36 members could not constitute the Legislative Assembly of the new State. Moreover, the second session was summoned of the old Legislative Assembly, and a session of the new Legislative Assembly was not summoned. The Abolition Act, therefore, was held to be *ultra vires* as having been enacted by a Legislative body not duly constituted. In order to get rid of the effect of this judgment, Ordinance (No. 7 of 1958) was issued by the president, which was, later on, replaced by Act 56 of 1958. The relevant portion of sub-clause (a) of section 3 of the Act, which reproduced the corresponding provisions of the Ordinance, was to the following effect:—

> "Notwithstanding anything contained in any law or in any judgment, decree or order of any Court;—
>
> (a) the body of persons summoned to meet from time to time as the Himachal Pradesh Legislative Assembly * * * during the period commencing on the 1st day of July, 1954, and ending with the 31st day of October, 1956; by the Lieutenant-Governor of Himachal Pradesh * * * * *

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shall be deemed for all purposes to have been the duly constituted Legislative Assembly of the new State of Himachal Pradesh formed under section 3 of the Himachal Pradesh and Bilaspur (New State) Act, 1954;

(b) * * * * * *

(c) * * * * *

and accordingly—

(1) any Bill passed by the new Legislative Assembly (whether the Bill was introduced in the new Legislative Assembly or was introduced in the Legislative Assembly of Himachal Pradesh functioning immediately before the 1st day of July, 1954) and assented to by the President shall be deemed to have been validly enacted and to have the force of law."

Validity of this validating Ordinance and Act being challenged, the Supreme Court in the above-mentioned case held that the effect of the validaing Act would be to make the Abolition Act as effective as it was preperly passed by a competent Legislature on the date when it received the assent of the President at page 1011 of the report, it was observed as follows:—

"There is no absolute bar against the authority of the Parliament to enact legislation which takes away vested rights provided the legislation falls within any of the legislative lists within the competence of the Parliament and it does

not infrings any of the fundamental rights of the citizens. * * * When the validating Act was enacted, the Himachal Pradesh State had ceased to exist by the operation of the States Reorganisation Act, 1956, * * *; but on that account, the authority of the Parliament to validate the proceedings of the body of persons which purported to function as the Legislative Assembly under Act 32 of 1954 was not extinguished."

Again in *M/s. West Ramnad Electric Distribution Co., Ltd.* v. *The State of Madras* (4), under the Madras Electricity Supply Undertakings (Acquisition) Act 43 of 1949 (hereinafter referred to as the 1949 Act) a notification was issued acquiring, as a running concern, the undertaking run by M/s. West Ramnad Electric Distribution Co. Ltd. The Act, however, was held to be *ultra vires* by the Supreme Court in its decision reported as *Rajahmundry Electric Supply Corporation Ltd.* v. *State of Andhra* (5), on the ground that such legislation was beyond the legislative competence of the State Legislature "inasmuch as there was no entry in any of the three Lists of the Seventh Schedule of the Government of India Act, 1935, relating to compulsory acquisition of any commercial or industrial undertaking". This decision was given on 10th of February, 1954. Meanwhile, the Constitution had come into force and in view of entry 36 of List II of the Seventh Schedule, the State Legislature was clothed with powers to pass such legislation. After the decision of the Supreme Court, therefore, the Madras Legislature enacted

(4) A.I.R. 1962 S. C. 1753.
(5) A.I.R. 1954 S. C. 251.

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the Madras Electricity Supply Undertakings (Acquisition) Act 29 of 1954 (hereinafter referred to as the 1954 Act). A number of its provisions were retropective in operation. Section 24 was in the following terms:—

> "Orders made, decisions or directions given, notifications issued, proceedings taken and acts or things done, in relation to any undertaking taken over, if they would have been validly made, given issued, taken or done, had the Madras Electricity Supply Undertakings (Acquisition) Act, 1949, (Madras Act 43 of 1949) and the rules made thereunder been in force on the date on which the said orders, decisions or directions, notifications, proceedings, acts or things; were made, given, issued, taken or done, are hereby declared to have been validly made, given, issued; taken or done; as the case may be, except to the extent to which the said orders, decisions, "directions; notifications, proceedings, acts or things are repugnant to the provisions of this Act."

In this case the appellant undertaking had been taken over by the State Government by virtue of a notification to that effect issued under the 1949 Act. Possession was taken on behalf of the State by the Chief Electrical Engineer. This possession was continued by issuing a further notification under the 1954 Act. The contention on behalf of the appellant was that the notification issued under the 1949 Act was invalid for two reasons—

(1) It had been issued under the provisions of an Act which was void as being beyond the legislative competence of the Madras Legislature.

(2) It was void for the additional reason that before it was issued the Constitution of India had come into force and it offended against the provisions of Article 31 of the Constitution, and Article 13(2) applied.

Both these contentions were negatived. While remaking that section 24 is not happily worded, their Lordships of the Supreme Court observed as follows:—

> "* * on its fair and reasonable construction, there can be no doubt about its meaning or effect. It is a saving and validating provision and it clearly intends to validate actions taken under the relevant provisions of the earlier Act which was invalid from the start. The fact that S. 24 does not use the usual phraseology that the notifications issued under the earlier Act shall be deemed to have been issued under the Act, does not alter the position that the second part of the section has and is intended to have the same effect."

The Supreme Court while dealing with the second point observed as follows:—

> "If the Act is retrospective in operation and section 24 has been enacted for the purpose of retrospectively validating actions taken under the provisions of the earlier Act, it must follow by the very retrospective operation of the relevant provisions that at the time when the impugned notification was issued, these provisions were in existence. That is

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> the plain and obvious effect of the retrospective operation of the statute. Therefore in considering whether Article 31(1) has been complied with or not, we must assume that before the notification was issued, the relevant provisions of the Act were in existence and so Article 31(1) must be held to have been complied with in that sense."

According to this, therefore, although; in fact; there was no valid legislation in existence in the year 1949 when the notification in dispute was issued; yet by the operation of section 24 of the 1954 Act that legislation was deemed to have been validly passed and; consequently; the deprivation of the property was deemed to be by authority of law. A further point raised on behalf of the appellant was that if a law is void for the reason that it contravened fundamental rights (and it was urged that the Act of 1949 did contravene the right of the enjoyment of property and protection from deprivation of property except by authority of law) such an infirmity cannot be cured and an action taken under such invalid law, cannot be validated retrospectively. This was also negatived and it was observed that—

> "* *the infirmity proceeding from lack of legislative competence as well as the infirmity proceeding from the contravention of fundamental rights lead to the same result and that is that the offending legislation is void and *non est*. That being so, if the legislature can validate actions taken under one class of void legislation, there is no reason why it cannot exercise its legislative power to validate actions taken under the other class of void legislation."

In support of the Legislature's power to pass retrospective laws, reference was made to a number of decided cases, including *United Provinces* v. *Mst. Atiqa Begum* (6), and *Union of India* v. *Madan Gopal Kabra* (7), and the observations of Gwyer, C.J., in the first case at page 26 and of their Lordships of the Supreme Court at page 162 in the second case were quoted with approval. *B.P.V. Sundararamier & Co.* v. *State of Andhra Pradesh* (8), and *J. K. Jute Mills Co. Ltd.* v. *State of Uttar Pradesh* (9), were cases where legislations passed to validate retrospectively taxing statutes were held to be valid. Reference was also made to *Jadab Singh's case* and *Raghubar Dayal Jai Prakash* v. *Union of India* (10).

One of the recent judgments dealing with the same point is *Rai Ramkrishna* v. *State of Bihar* (11). In this case the Bihar Finance Act, 1950, had levied a tax on passengers and goods carried by public service motor vehicles in Bihar, The Supreme Court held Part III of the aforesaid Act, which also contained charging section, as invalid. After the decision of the case, an Ordinance was issued whereby all the material provisions of the earlier Act of 1950, which had been struck down by the Supreme Court, were validated and brought into force retrospectively from the date when the earlier Act had purported to come into force. The retrospective effect of the Act, which had replaced the Ordinance aforesaid, was challenged but the Supreme Court upheld the provisions and, *inter alia*, observed as follows:—

> "If a law passed by a Legislature is struck down by the Courts as being invalid

(6) A.I.R. 1941 F. C. 16.
(7) A.I.R. 1954 S. C. 158.
(8) A.I.R. 1958 S. C. 468.
(9) A.I.R. 1961 S. C. 1934.
(10) A.I.R. 1962 S. C. 263.
(11) A.I.R. 1963 S. C. 1667.

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for one infirmity or another, it would be competent to the appropriate Legislature to cure the said infirmity and pass a validating law so as to make the provisions of the said earlier law effective from the date when it was passed."

It was urged that the nature of the tax, so far as its retrospective operation was concerned, had changed because it was almost impossible for the operators to recover tax from the passengers whom they had carried in the past. Notwithstanding this difficulty, this argument was negatived and it was observed as follows:—

"* * * it is not easy to see how it can be said that the character of the tax is radically changed in the present circumstances; because it would be very difficult; if not impossible; for the owner to recover the tax from the passengers whom he has carried in the past. The tax recovered retrospectively like the one which will be recovered prospectively still continues to be a tax on passengers and it adopts the same machinery for the recovery of tax both as to past as well as to the future. In this connection, we ought to bear in mind that the incidence of the tax should not be confused with the machinery adopted by the statute to recover the said tax."

In the present case, the previous schemes were held to be invalid simply on the ground that there was no proper notification declaring the area in the dispute as a "damaged area" under the relevant legislation. This defect was sought to be removed by the Validating Act; as stated above; and

the result of that is that the schemes, which otherwise fully conformed with the provisions with regard to publication and sanction by the Government under the Punjab Development of Damaged Areas Act, became valid, and this validating legislation cannot be held to be void simply because it retrospectively makes the schemes valid. All the arguments addressed in the present case would be equally applicable to the cases referred to above decided by the Supreme Court in which the validity of such legislations was upheld.

The other argument raised on behalf of the petitioners, that in view of the fact that the Supreme Court has held the previous schemes to be invalid and *ultra vires*, in view of Article 144 of the Constitution the judgment of the Supreme Court is the law of the land and the Legislature cannot enact contrary to such a decision has also no force. All the cases, referred to above, were those in which the Legislature tried to get rid of the effect of the adverse judgments given by the Supreme Court and this matter has been recently dealt with by this very Bench in *Thakar Singh* v. *State of Punjab*, Civil Writ No. 164 of 1962, decided on 18th of October, 1963, in which my Lord the Chief Justice; who wrote the judgment, *inter alia;* referred to the *cases of Jadab Singh* v. *Himachal Pradesh Administration* (3), and *M/s. West Ramnad Electrical Distribution Co. Ltd.*, v. *The State of Madras* (4).

In view of the above, therefore, I am of the opinion that by virtue of the validating Act, the schemes prepared and sanctioned in conformity with the Punjab Development of Damaged Areas Act, between the dates specified in the validating Act; must be held to be valid as if the defect of notification declaring the area in dispute as "damaged area" did not exist.

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As points; other than the one decided by us; also arise in the various petitions; these will now be placed before a learned Single Judge for decision.

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D. FALSHAW; C.J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

RAGHBIR SINGH AND OTHERS,—*Petitioners.*

versus

FINANCIAL COMMISSIONER, REVENUE, PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 153 of 1963.

1964

Feb., 12th.

Punjab Security of Land Tenures Act (X of 1953)—Ss. 5 and 18—Landowner omitting to include area in his self-cultivation at the commencement of the Act in the Permissible Area reserved by him—Whether makes the whole reservation bad.

Held, that according to section 5 of the Punjab Security of Land Tenures Act, 1953, a landowner has to include the area under his self-cultivation at the commencement of the Act while making reservation of his permissilbe area. If he omits to include any such area in his permissible area, the reservation made by him of the permissible area does not become void. An irregularity or defect in making this reservation cannot result in depriving a landowner of the permissible area, which the Act authorises him to keep. It was not the intention of this enactment that in such a contingency a landowner should lose even his permissible area. The correct procedure, in such a case, is that the land, which he had to include in his reserved area and which he had failed to do, should be so included and an equivalent area should be excluded out of