



2024 INSC 1000

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2024
(@ SPECIAL LEAVE PETITION (C) NO. 16460 OF 2023)

NAEEM BANO ALIAS GAINDO

...APPELLANT(S)

VERSUS

MOHAMMAD RAHEES & ANR.

...RESPONDENT(S)

O R D E R

Leave granted.

2. Being aggrieved by the Order dated 18.11.2022 passed in Matters under Article 227 No.8207 of 2017, the appellant/landlord is before this Court. By the impugned order, the High Court stated that since there is a matter under Article 227 No.5718 of 2019, which has to be answered by a larger Bench of the High Court by way of a reference and which has a bearing on the case, the interim order is continued until further orders. A direction was issued that the matter may be considered after the answer is given by the larger Bench, referred to above. Being aggrieved by the said order, the appellant, who is the landlord, has preferred this appeal.

3. We have heard learned counsel for the respective parties and perused the material on record.

4. Learned counsel for the appellant submitted that it is not known as to when the larger Bench would answer the questions referred to it on a reference. However, having regard to Article 254 of the Constitution of India, particularly the proviso to Sub-clause 2 of Article 254, the amendment made by the Parliament by Section 2 of Act 3 of 2003, whereby Section 106 of the Transfer of Property Act, 1882 (for short, "the T.P. Act") has been substituted with effect from 31.12.2002, would apply and the provision of the Uttar Pradesh Amendment would no longer be applicable to the present case. It was submitted that the notice for ejectment was issued on 24.07.2015 under Section 106 of the T.P. Act. The said notice was issued having regard to the Parliamentary amendment referred to above and hence the earlier amendment made to Section 106 by the Uttar Pradesh State Legislature vide 30.11.1954 would pale into insignificance on the principle of implied repeal. Therefore, on the aforesaid premise, the High Court may be requested to consider the present case without reference to the aspect regarding the validity of the notice. In the alternative, it was submitted that the proviso to Article 254 may be applied and the validity of the notice issued under Section 106 of the T.P.

Act may be sustained.

5. *Per contra*, learned counsel for the respondent(s) submitted that as a reference was pending before the High Court, the impugned order was correctly passed and the case has to be heard subsequent to the answer given by the larger Bench on the reference order. In the circumstance, there is no merit in this appeal

6. We have perused the impugned order, which reads as under:

"It is agreed between the parties that the matter involved in this case qua period of notice under Section 106 of Transfer of Properties Act is pending decision by Larger Bench under the reference order of a concurrent Bench of this Court dated 9.9.2019 passed in Matter under Article 227 No. 5718 of 2019 and so this matter may either be connected with the said matter or be listed after judgment of the larger Bench.

In the circumstances I direct the office to list this matter after the reference made in Matter under Article 227 No.5718 of 2019 stands answered by the larger Bench.

Interim order, if any, shall continue to operate in the meanwhile until further orders."

The aforesaid order has been passed in a revision petition filed under Article 227 of the Constitution by the respondent-tenant against an order of ejectment.

7. Section 106 of the T.P. Act, as it stood prior to 31.12.2002, read as under:

"106. Duration of certain leases in absence of written contract or local usage.— In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property."

7.1 As far as the State of U.P. is concerned, by amendment dated 30.11.1954, Section 106 was amended as under -

"(i) omit the word "expiring with the end of a year of the tenancy" and "expiring with the end of a month of the tenancy";

(ii) for the words "fifteen days' notice" substitute the words "thirty days' notice"

7.2 However, the Parliament, by Act 3 of 2003, substituted Section 106 with effect from 31.12.2002. As a result, the substituted Section 106 reads as under:

"106. Duration of certain leases in absence of written contract or local usage.— (1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either

lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property."

8. Entry 6, List III - Concurrent List of the Seventh Schedule of the Constitution of India reads as under -

"Transfer of property other than agricultural land; registration of deeds and documents."

Entry 6, List III being in the Concurrent List both the Parliament as well as the State Legislature have concurrent legislative competence to enact laws on the said subject. However, there could be an inconsistency in the laws made by the Parliament and the State Legislature. How would such inconsistency be resolved?

8.1 When there is an inconsistency between a law made by the Parliament and a law made by the Legislature of a State, Article 254 of the Constitution would apply, which reads as under:

"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States. - (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

8.2 Article 254 of the Constitution makes provision firstly, as to what would happen in case of a conflict between a Central and a State law with regard to subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Clause (1) to Article 254 lays down the general

rule. As discussed in T.Barai vs. Henry Ah Hoe, [1983] 1 SCR 905, clause (1) lays down that if a State law relating to a Concurrent subject is 'repugnant' to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void.

8.3 Clause (2) is an exception to clause (1). As held in Hoechst Pharmaceuticals Ltd. vs. State of Bihar, [1983] 3 SCR 130, clause (2) provides that if the President assents to a State law which has been reserved for her consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act will give way to the State Act only to the extent of inconsistency between the two.

8.4 The *Proviso* to clause (2) qualifies the exception provided in Clause (2) to Article 254. It empowers the Parliament to repeal or amend a repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the 'same matter'.

9. In Zaverbhai Amaidas vs. State of Bombay, [1955] SCR 799, this Court noted that Article 254(2) is in substance, a reproduction of section 107(2) of the Government of India Act, 1935 and that the proviso in Article 254(2) was incorporated

as a further addition. This Court further noted that, by incorporating the proviso, the Constitution has enlarged the powers of Parliament. That a State law will be void if it conflicts with a later "law with respect to the same matter" that may be enacted by Parliament even if it did not expressly repeal the State law.

9.1 Further, in Gauri Shankar Gaur vs. State of UP, [1993] Supp.1 SCR 667, this Court held as follows:

"An exception has been engrafted to this rule by Cl.2 thereof, namely, if the state law has been reserved for consideration and the President gives assent to a State Law, it will prevail, notwithstanding its repugnance to a earlier law made by the Union, though both laws are dealing with concurrent subject occupying the same field but operate in a collision course. The assent obtained from the President of the State Act which is inconsistent with the Union Law prevails in that State and overrides the provisions of the Union Law in its application to that State only. However, if the Parliament, in exercising its power under proviso to Art. 254(2) makes a law adding, amending or repealing the union law, predominance secured by the State law by the assent of the President is taken away and the repugnant State law though it became valid by virtue of President's assent, would be void either directly or by its repugnance with respect to the same matter."

[emphasis supplied]

9.2 The judgment of this Court in Innoventive Industries Ltd. vs. ICICI Bank, [2017] 8 SCR 33 examined the case law on

Article 254 and summarised the position of law. As regards the case at hand, the following points are relevant:

50. The case law referred to above, therefore, yields the following propositions:

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vi) Repugnancy may be direct in the sense that there is inconsistency in the actual terms of the competing statutes and there is, therefore, a direct conflict between two or more provisions of the competing statutes. In this sense, the inconsistency must be clear and direct and be of such a nature as to bring the two Acts or parts thereof into direct collision with each other, reaching a situation where it is impossible to obey the one without disobeying the other. This happens when two enactments produce different legal results when applied to the same facts.

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viii) A conflict may arise when Parliamentary law and State law seek to exercise their powers over the same subject matter. This need not be in the form of a direct conflict, where one says "do" and the other says "don't". Laws under this head are repugnant even if the rule of conduct prescribed by both laws is identical. The test that has been applied in such cases is based on the principle on which the rule of implied repeal rests, namely, that if the subject matter of the State legislation or part thereof is identical with that of the Parliamentary legislation, so that they cannot both stand together, then the State legislation will be said to be repugnant to the Parliamentary legislation. However, if the State legislation or part thereof deals not with the matters which formed the subject matter of Parliamentary legislation but with other and distinct matters though of a cognate and allied nature, there is no repugnancy.

ix) Repugnant legislation by the State is void only to the extent of the repugnancy. In other words, only that portion of the State's statute which is found to be repugnant is to be declared void.

x) The only exception to the above is when it is found that a State legislation is repugnant to Parliamentary legislation or an existing law if the case falls within Article 254(2), and Presidential assent is received for State legislation, in which case State legislation prevails over Parliamentary legislation or an existing law within that State. Here again, the State law must give way to any subsequent Parliamentary law which adds to, amends, varies or repeals the law made by the legislature of the State, by virtue of the operation of Article 254(2) proviso."

(underlining by us)

9.3 It is noted that the T.P. Act, 1882, which is a pre-Independence statute, has been adopted vide Adaptation of Laws Order, 1950. Consequently, the said Act has to be read within the scope and ambit of Entry 6 List III which is in the Concurrent List. When any subject is within the scope and ambit of the concurrent list, both the Parliament as well as the State Legislature have the legislative competence to make laws on the said subject. In the instant case, by virtue of the said legislative competence to make laws on the said subject, the U.P. Legislature amended Section 106 with effect from 30.11.1954, which had been in operation. However, with effect from 31.12.2002, the Parliamentary amendment would apply. This is because of the proviso to Clause 2 of Article 254 which would apply to the facts of the present case.

9.4 Consequently, the U.P. amendment to Section 106 would pale into insignificance owing to implied repugnancy and

inconsistency between the U.P. State amendment and the Parliamentary amendment to Section 106 of the T.P. Act in the year 2003 even if the earlier U.P. amendment had been reserved for consideration of the President and had received the Presidential assent. Thus, on the Parliament amending a provision subsequent to a State legislature's amendment of a provision of law found in the Concurrent List, the Parliamentary amendment would apply. Article 254 is an instance of Parliamentary supremacy.

9.5 Thus, the subject "transfer of property other than agricultural land" is one which falls within the scope and ambit of Entry 6, List III as noted above and both the Parliament and the State Legislatures have legislative competence to make laws on the said subject including enacting an amendment to any provision of the T.P. Act. If an amendment is made to a provision of T.P. Act such as Section 106 in the instant case, by a State Legislature and the mandate of sub-clause (2) of Article 254 is complied with by the State, then any inconsistency between the State law and the Parliamentary law would result in State law prevailing in the State.

9.6 In the instant case, it is noted that the Legislature of State of U.P. amended Section 106 by amendment dated 30.11.1954 by which the words "fifteen days' notice" in

Section 106 of the T.P. Act were substituted by "thirty days' notice" and the substituted clause prevailed in the State of U.P. However, in view of the amendment made to Section 106 by the Parliament by Act 3 of 2003 with effect from 31.12.2002, the substitution in Section 106 made by the Legislature of the State of U.P. is impliedly repealed and Section 106 as amended with effect from 31.12.2002 by the Parliament, would apply. This is on the strength of the proviso to clause (2) of Article 254 of the Constitution. This position could be better understood by referring to Article 254 of the Constitution and the relevant judicial dicta on the said Article as discussed above. The proviso to clause (2) of Article 254 of the Constitution squarely applies in the instant case.

9.7 In the circumstance, we are of the opinion that the issue with regard to the validity of the notice dated 24.07.2015 in light of the inconsistency between the amendment made by the State Legislature of U.P. and the subsequent Parliamentary amendment to Section 106 of the T.P. Act can no longer be a point of controversy. Therefore, the High Court ought to have considered the case i.e. the tenant's revision petition, on its own merits and disposed of the same rather than awaiting the opinion of the larger Bench on a reference made. It is noted that the respondent(s)/tenant having been unsuccessful before two Courts has filed the petition under Article 227 of

the Constitution of India.

9.8 In the circumstance, the impugned order is set aside. The High Court is requested to dispose of the petition filed by the respondent(s)/tenants bearing the observations made above and on merits as expeditiously as possible.

The appeal is disposed of in the aforesaid terms.

.....J.
[B.V. NAGARATHNA]

.....J.
[NONGMEIKAPAM KOTISWAR SINGH]

NEW DELHI
NOVEMBER 22, 2024.