A THE PROPERTY OWNERS' ASSOCIATION AND ORS.

v.

THE STATE OF MAHARASHTRA AND ORS.

MAY 1, 1996

B [J.S. VERMA, K.S. PARIPOORNAN AND K. VENKATASWAMI, JJ.]

Maharashtra Housing and Area Development Act, 1976 :

Ss.103A to 103M—Acquisition of properties on payment of hundred times of monthly rent for the premises—Whether provisions of Chapter VIII-A C *are constitutionally valid—Matter referred to Five Judges Bench.*

Constitution of India, 1950 :

Article 31C—Interpretation of—Whether provisions of chapter VIII-A of Maharashtra Housing and Area Development Act, 1976 are constitutionally D *valid—Matter referred to Five Judges Bench.*

His Holiness Kesavananda Bharati Sripadagalavaru **v.** *State of Kerala and Another,* **[1973] Supp. S.C.R. 1;** *Minerva Mills Ltd. & Others* **v.** *Union of India and Others*, **[1980] 3 SCC 625;** *Waman Rao & Others Etc.* **v.** *Union* E *of India and Others Etc.*, **[1980] 3 SCC 587 = [1981] 2 SCC 362 and** *Sanjeev Coke Manufacturing Company* **v.** *M/s. Bharat Coking Coal Limited and Another*, **[1983] 1 SCC 147, referred to.**

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 5302 of 1992 Etc.

F

From the Judgment and Order dated 13.12.91 of the Bombay High Court in W.P. No. 2673 of 1986.

Soli J. Sorabjee, Anil B. Diwan, V.A. Bobde, V.A. Mohta, Ashok Desai, P.H. Parekh, A.S. Bhasme, U.A. Rana, M.N. Shroff, P. Narsimhan, G V.K. Jain, M. Karanjawala, P.N. Gupta, J.S. Wad, A.M. Kanwilkar, S.R. Setia, K.V. Sreekumar for the appearing parties.

The following Order of the Court was delivered :

One of the main questions for decision in these matters pertains to H the constitutional validity of Chapter VIII-A inserted in 1986 in the

Maharashtra Housing and Area Development Act, 1976 (hereinafter referred to as "the MHADA Act") providing for the acquisition of certain properties on payment of hundred times the monthly rent for the premises. These properties are mainly the buildings which were first let out prior to the year 1940 on monthly rent which, the owners claim, is a measly amount for the current value of the property in Bombay and the present value of the rupee. Section IA was also inserted in the MHADA Act in 1986 and it contains a declaration that this Act is for giving effect to the policy of the State towards securing the principle specified in clause (b) of Article 39 of the Constitution of India. Article 31C of the Constitution is, therefore, attracted for excluding the attack to the validity of the enactment on the grounds of Article 14 or Article 19 of the Constitution.

In order to circumvent the effect of Article 31C of the Constitution, Shri F.S. Nariman, learned counsel for the petitioners contended *'inter alia'* that Article 31C does not survive because of the events subsequent to the decision in *Kesavananda Bharati*. Shri Ashok Desai, learned counsel for the respondents replied to those arguments by contending that Article 31C as originally enacted minus the later part which was declared to be unconstitutional in *His Holiness Kesavananda Bharati Sripadagalavaru* v. *State of Kerala and Another*, [1973] Supp. S.C.R. 1, as it was upheld in *Minerva Mills Ltd. and Others* v. *Union of India and Others*, (1980) 3 SCC 625, excludes any attack to the constitutional validity of the enactment. Both the learned counsel have submitted a synopsis of the rival contentions in the form of their written submissions which are taken on record and, therefore, need not be reiterated in this order.

A brief history of Article 31C would help to appreciate the rival contentions. Article 31C, as originally enacted, was inserted in the Constitution of India with effect from April 20, 1972 by Section 3 of the Constitution (Twenty-fifth Amendment) Act, 1971. The constitutional validity of Article 31C was examined in *Kesavananda Bharati* (supra) which was decided on 24.4.1973. At page 1001 of S.C.R., the conclusions the majority opinion are summarised wherein conclusion No. (5) is that the second part of Article 31C, namely, "and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy" was declared to be invalid, while the rest of Article 31C was upheld as valid. Thereafter, with effect from 3.1.1977 by the Constitution (Forty-second Amendment)

A Act, 1976, Section 4, for the words "the principles specified in clause (b) or clause (c) of Article 39", the words "all or any of the principles laid down in Part IV" were substituted. Then on 15.5.1978, Bill No. 88 of 1978 was introduced in the Parliament wherein Clause 8 was to amend Article 31C to restore it to the position prior to its amendment by the Constitution
B (Forty-second Amendment) Act, 1976, in the form as it stood as a result of the decision in *Kesavananda Bharati* (supra). However, Clause 8 of the Bill was dropped after the debate i n the Parliament and this attempt of the Parliament was abortive. The came the decision in *Minerava Mills* (supra). Then operative part of the order in *Minerva Mills* was pronounced on 9.5.1980 and the reasons for the same were pronounced on 31.7.1980.
C The basis on which the decision in respect of Article 31C was rendered in *Minerava Mills* is indicated in para 24 as under :

> "The next question which we have to consider is whether the amendment made by Section 4 of the 42nd Amendment to Article
D 31-C of the Constitution is valid. Mr. Palkhivala did not challenge the validity of the unamended Article 31C, and indeed that could not be done. The unamended Article 31-C forms the subject matter of a separate proceedings and we have indicated therein that it is constitutionally valid to the extent to which it was upheld in *Kesavananda Bharati*."

E

In *Minerva Mills*, Section 4 of the Constitution (Forty-second Amendment) Act, 1976 was held to be invalid and the decision was rendered on the basis that Article 31C continued in the form in which it existed as a result of the decision in *Kesavananda Bharati*. The next
F decision is *Waman Rao and Others Etc.* v. *Union of India and Others Etc.*, wherein the operative order was pronounced on 9.5.1980 and the reasons were pronounced on 13.11.1980. These are reported in [1980] 3 SCC 587 and [1981] 2 SCC 362. In *Waman Rao* (supra) also, like Minerva Mills, it was assumed that Article 31C as it stood prior to its amendment by the Constitution (Forty-second Amendment) Act, 1976 as a result of the
G decision in *Kesavananda Bharati*, stood revived. The next decision is *Sanjeev Coke Manufacturing Company* v. *M/s. Bharat Coking Coal Limited and Another*, [1983] 1 SCC 147 decided on 10.12.1982. Even though in *Sanjeev Coke* (supra) there is criticism of the majority opinion in *Minerva Mills* and expression of broad agreement with the view of Bhagwati, J. (as he then
H was) in that decision, the judgment proceeds on the basis that Article 31C

stood revived as it stood as a result of the decision in *Kesavananda Bharati*, after the amendment to it made by the Constitution (Forty-second Amendment) Act, 1976 had been struck down in *Minerva Mills*.

One of the submission of Shri F.S. Nariman is that the doctrine of revival as it applies to ordinary statutes, has not been applied in India to the constitutional amendments. On this basis, he contended that Clause 8 of Bill No. 88 of 1978 which was to revive Article 31C as it stood as a result of *Kesavananda Bharati* having been dropped by the Parliament, Article 31C as it stood as a result of *Kesavanada Bharati* did not stand revived when the amendment made by the Constitution (Forty-second Amendment) Act, 1976 with effect from 3.1.1977 was later struck down. He contended that the decision in *Minerva Mills* proceeded on the basis of a concession made by Mr. Palkhivala and on an assumption that Article 31C as it survived as a result of *Kesavananda Bharati*, stood revived after the subsequent events. He submitted that that is not the decision in *Minerva Mills* since this question neither arose nor was it decided therein and the decisions in *Waman Rao* and *Sanjeev Coke* also proceed on the same basis. He contended that Article 31C does not, therefore, survive in the Constitution and the benefit thereof is not available to exclude the attack to the validity of the MHADA Act on the ground of Articles 14 and 19 of the Constitution. Several other arguments were advanced by Shri F.S. Nariman related to this contention. Shri Nariman also referred to the words "the Constitution shall stand amended in accordance with the terms of the Bill" in Article 368(2) to support this contention. Shri Nariman also contended with reference to certain decisions that such a question relating to a provision in the Constitution cannot also be bypassed on the principle of stare decisis.

Shri Ashok Desai on the other hand contended that the matter stands concluded by the decision in *Minerva Mills, Waman Rao and Sanjeev Coke* wherein the revival of Article 31C as it stood as a result of *Kesavananda Bharati* was not even disputed because that is the obvious position in law. He also contended that there is nothing in Article 368(2) to support the contention of Shri Nariman. Shri Desai also submitted that it is too late to consider this question when this is how Article 31C has been understood for years. The details of the arguments of both the learned counsel, in the form of synopsis of written arguments are on record.

A The question is whether these points which have been raised by Shri F.S. Nariman should be considered and decided by a larger Bench of at least five Judges. Shri Desai submitted that since these contentions have no substance, merely because they relate to interpretation of certain provisions in the Constitution is no ground to require hearing of the matter by a Bench of not less than five Judges.

B

Having heard learned counsel for some time, we have formed the opinion that it would be more appropriate for a Bench of not less than five Judges to consider and decide these questions for an authoritative pronouncement to the same. The decisions in *Minerva Mills, Waman Rao and Sanjeev Coke* are all by Bench of five Judges. The question in the form C it is raised by Shri F.S. Nariman did not arise for consideration in any of those decisions whether were rendered on a certain premises as indicated therein, which assumption is now seriously challenged by Shri F.S. Nariman. Even if it is assumed that Article 145(3) of the Constitution is not attracted it does appear to us that in order to settle the controversy on D this point which is of some significance and to avoid the question being reagitated before another Bench of less than five Judges, the more appropriate course is to refer these matters for being heard and decided by a Bench of not less than five Judges.

E For the aforesaid reasons, we direct that the papers be laid before the learned Chief Justice of India for constitution a larger Bench of not less than five Judges for hearing and deciding these matters.

R.P.