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KUNJ BEHARI LAL BUTAIL AND ORS.

v.

STATE OF HIMACHAL PRADESH AND ORS.

FEBRUARY 18, 2000

B

[S. SAGHIR AHMAD, R.C. LAHOTI AND Y.K. SABHARWAL, JJ.]

Administrative Law :

C *Delegated legislation—Essential legislative function—Held, cannot be delegated by the legislature—Only ancillary or subordinate legislative functions may be delegated—Act delegating rule making power to the State Government "for carrying out the purposes of this Act"—Held, is a general delegation without guidelines—Such delegated powers cannot be used to bring within its net a subject excluded by the Act itself or to bring into existence substantive*
D *rights or obligations or disabilities not contemplated by the provisions of the Act—Delegated legislation must advance the purposes of the statute if is framed under and unless it does so, it cannot be sustained.*

Himachal Pradesh Ceiling on Land Holding Act, 1972 :

E

Section 26—Delegating rule making power to the State Government circumscribed by the Act itself, "for carrying out the purposes of this Act"—State Government framing Rules making complete prohibition of transfer of land subservient to tea plantation—Held, such Rules cannot be sustained because no purpose sought to be achieved by the Act is advanced by
F *such a prohibition—Himachal Pradesh Ceiling on Land Holdings Rules, 1973—Administrative Law—Doctrine of ultra vires.*

Sections 26 and 5(g) - Power delegated to State to make rules to carry out purposes of the Act - Tea plantations and areas necessary for purposes
G *subservient to a tea plantation were expressly exempted from the provisions of the Act—State framing rule 3(1), proviso by a Gazette Notification wherein complete prohibition was put on transfer of land subservient to a tea plantation—Held, Proviso to Rule 3(1) was ultra vires the Act - Himachal Pradesh Ceiling on Land Holdings Rules, 1973 Rule 3(1) proviso - Administrative*
H *Law - Doctrine of ultra vires.*

To consolidate and amend the laws relating to ceiling on land holding in the State, the Legislative Assembly of the Respondent State enacted Himachal Pradesh Ceiling on Land Holdings Act, 1972. In exercise of power conferred under Section 26 of the Act, the State Government framed the Himachal Pradesh Ceiling on Land Holdings Rules, 1973. Rule 3 of the said Rules provided for areas to be treated as subservient to tea plantation. Proviso appended to sub-rule (1) just below clause (d) was inserted by amendment through Notification published in Gazette Extraordinary dated 26.4.1986. On 21.8.1990, the Registrar issued a general Circular to all Tehsildars-cum-Sub-Registrar directing them not to register the sale deed in respect of lands being sold by land owners exempted from the provisions of the Act. The constitutional validity of amendment made in the Rules and the Circular was challenged by the appellants in a writ petition before the High Court, as the effort at alienating a piece of land subservient to tea plantation was sought to be put into jeopardy. High Court dismissed the writ petition. Hence this appeal.

It was contended by the appellants that the Act was not applicable to land subservient to tea estates and therefore, a provision made in the Rules framed in exercise of power delegated by the Act but proposing to make provision as regards a subject excluded within the purview of the Act itself was *ultra vires* the provisions of the Act; that the prohibition imposed by the amended rule suffered from the vice of arbitrariness and unreasonableness inasmuch as though an alienation of land forming part of tea plantation itself was not prohibited either by the Act or the Rules but alienation of land subservient to tea plantation was sought to be restrained; that lands covered by seven categories as defined in clauses (a) to (g) of Section 5 have been excluded from the applicability of the provisions of the Act; and that Section 26 delegates to the State Government the legislative power of making rules which delegation was circumscribed by the expression "for carrying out the purposes of this Act".

Allowing the appeal, this Court

HELD : 1. Section 26 of the H.P. Ceiling on Land Holdings Act, 1972 delegates to the State Government the legislative power of making rules which delegation is circumscribed by the expression - "for carrying out the purposes of this Act". In exercise of such delegated power to legislate, the State Government cannot bring within the net of the Rules what has been excluded by the Act itself. Tea estates are excluded from the provisions of

- A the Act by Section 5. "Tea estate" is defined in the interpretation clause of the Act to mean an area under tea plantation and includes within the definition "such other area necessary for purposes subservient to a tea plantation". The amendment made vide notification dated 4.4.1986 places an embargo on the right to transfer such subservient land though exempted from the operation of the Act. Clearly the impugned proviso is beyond the
- B rule-making power of the State Government as conferred by the Act. The legislature cannot delegate its essential legislative functions which consist in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. What is permitted is the delegation ancillary or subordinate legislative functions, or, what is fictionally
- C ally called, a power to fill up the details. [1061-D-G]

Supreme Court Employees' Welfare Association v. Union of India, AIR (1990) SC 334 and *General Officer Commanding-in-Chief v. Dr. Subhash Chandra Yadav*, AIR (1988) SC 876, relied on.

- D *Principles of Statutory Interpretation—By Justice G.P. Singh, 7th Edn., 1999* (pages 689-90), referred to.

- 2.1. It is common for the legislature to provide for a general rule making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power confirmed. If the rule-making power is not expressed in such usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act. [1061-G-H]

- F *Sant Saran Lal v. Parsuram Sahu*, AIR (1966) SC 1852, relied on.

- 2.2. From the provisions of the Act, no legislative intent delegating expressly or by necessary implication, the power to enact any prohibition on transfer of land can be spelt out. [1062-A]

- 2.3. By placing complete prohibition on transfer of land subservient to tea estate no purpose sought to be achieved by the Act is advanced and so also such prohibition cannot be sustained. Land forming part of a tea estate including land subservient to a tea plantation have been placed
- H beyond the ken of the Act. Such land is not to be taken in account either

for calculating the area of surplus land or for calculating the area of land which a person may retain as falling within the ceiling limit. [1062-B-C] A

Bhim Singhji v. Union of India, [1981 1 SCC 166, relied on .

2.4. A delegated power to legislate by making rules "for carrying out the purposes of the Act" is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself. [1063-B] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1424 of 2000. C

From the Judgment and Order dated 13.9.98 of the Himachal Pradesh High Court in C.W.P. No. 1009 of 1992.

Anil B. Diwan, V.C. Mahajan, Mrs. Indra Sawhney, Virender Sood, S. Mohanty and B.B. Sawhney for the Appellants. D

Naresh K. Sharma for the Respondents.

The Judgment of the Court was delivered by

R.C. LAHOTI, J. Leave granted. E

To consolidate and amend the laws relating to ceiling on land holdings in the State of Himachal Pradesh, the Legislative Assembly of Himachal Pradesh enacted Himachal Pradesh Ceiling on Land Holdings Act, 1972 (hereinafter 'the Act', for short). Sub-section (1) of Section 26 of the Act provides that the State Government may, by notification, make rules for carrying out the purposes of this Act, Sub-sections (2) and (3) thereof provide for previous publication of the rules and the rule being laid on the floor of the State Legislature as soon as may be after it is made. In exercise of the power so conferred the State Government has framed the Himachal Pradesh Ceiling on Land Holdings Rules, 1973 (hereinafter 'the Rules', for short), Rule 3 thereof reads as under : F G

"3. Areas to be treated as subservient to tea plantation. - (1) The following areas shall be treated as subservient to tea plantation :

(a) areas on which there is programme for expansion of tea H

- A plantation during next ten years which will be determined by the State Government;
- (b) areas covered by forests and forest growth of which the fuel wood, timber is required for the manufacture of the tea and maintenance of tea estate;
- B
- (c) low-lying lands which generally serve as water reservoirs for the use of tea plantation; and
- (d) land on which tea factories, labour quarters, playgrounds and other ancillary buildings are situated.
- C

Provided that no land, treated as subservient to tea plantation under this sub-rule and exempted from the operation of the Act under Section 51(g) thereof, shall be transferred by the landowner in any manner, without the permission of the State Government.

- D
- (2) The owner of the tea estate will submit return in Form C-1 to the Collector showing the areas he intends to include for the purpose of clause (a) of sub-rule (1) within one month from the date on which these rules will come into force. The Collector on receipt of this return shall make such inquiry as he deems fit and thereafter send his recommendations to the State Government for orders which will be final."
- E

- The proviso appended to sub-rule (1) and placed just below clause (d) of sub-rule (1) was not there in the text of the Rules as originally framed. It has been inserted by amendment through Notification No. 10-5/73-II Rev.B dated 4.4.86. This amendment was published in Gazette Extraordinary dated 26.4.86.
- F

- On 21.8.90 the Registrar Kangra District at Dharmshala issued a general circular to all Tehsildars-cum-Sub-Registrar (of deeds) in Kangra District containing the following direction :
- G

- "It has been brought to the notice of the Government that the land owners are selling land exempted from the provisions of the H.P. Ceiling on Land Holdings Act, 1972. Therefore you are directed not to register the sale deeds in respect of such lands,
- H

and take action in such cases under the provisions of the Land Ceiling Act, 1972 and intimate of the same to the Deputy Commissioner also so that proper guidance is given by him." A

It is the constitutional validity of amendment made in the Rules by notification dated 4.4.86 (published on 26.4.86) and the circular order dated 21.8.90 which has been put in issue by a writ petition filed by the appellants. The cause of action arose to the appellants because their effort at alienating a piece of land subservient to tea plantation was sought to be put into jeopardy. B

Shri Anil Divan, the learned senior counsel for the appellants has raised two pleas; (i) that the Act is not applicable to land subservient to tea estates and therefore a provision made in the Rules framed in exercise of powers delegated by the Act but proposing to make provision as regards a subject excluded from within the purview of the Act is *ultra vires* the provisions of the Act; (ii) that the prohibition imposed by the amended rule suffers from the vice of arbitrariness and unreasonableness inasmuch as though an alienation of land forming part of tea plantation itself is not prohibited either by the Act or the rules but alienation of land subservient to tea plantation is sought to be restrained. C D

Section 4 of the Act defines the permissible area which a landowner, a tenant or a mortgagee with possession or a person holding partly one or other of the abovesaid status may hold Section 6 places a ceiling on the entitlement to hold any land beyond what is permitted by the Act. Section 7 empowers the State Government to determine the surplus area of the land held by any one ignoring the transfer after the appointed day of a land held in excess of the permissible except *bona fide* transfers. Section 5 of the Act provides for Exemptions and enacts that the provisions of this Act shall not apply amongst others to "tea estates". Section 5 reads as under : E F

"5. Exemptions. - The provisions of this Act shall not apply to -

- (a) lands owned by the State Government or the Central Government; G
- (b) lands belonging to registered Co-operative Farming Societies;

Provided that the share of a member of such society, together with his other land, if any does not exceed the permissible area; H

- A (c) lands belonging to Land Mortgage Banks, the State and Central Co-operative Banks and any other Banks as defined in the Explanation - not reproduced.
- (d) lands belonging to or vested in local authorities;
- B (e) lands belonging to Himachal Pradesh Agriculture University;
- (f) lands owned by the Bhudan Yagna Board established under the law in force in the State of Himachal Pradesh and
- C (g) tea estates."

Shri Anil Divan, the learned senior counsel for the appellants submitted that lands covered by seven categories as defined in clauses (a) to (g) of Section 5 have been excluded from applicability of the provisions of the Act. Section 26 delegates to the State Government the legislative power of making rules which delegation is circumscribed by the expression - 'for carrying out the purposes of this Act'. In exercise of such delegated power to legislate, the State Government cannot bring within the net of the rules what has been excluded by the Act itself. We find merit in the submission so made. Tea estates are excluded from the provisions of the Act by Section 5. 'Tea estate' is defined in the interpretation clause of the Act to mean an area under tea plantation and includes within the definition 'such other area necessary for purposes subservient to a tea plantation as may be prescribed'. Rule 3 defines what areas shall be treated as subservient to tea plantation. The amendment made vide notification dated 4.4.86 places an embargo on right to transfer such subservient land though exempted from the operation of the Act. Clearly the impugned proviso is beyond the rule making power of the State Government as conferred by the Act. It is well settled that the Legislature cannot delegate its essential legislative functions which consist in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up the details, (See : Principles of Statutory Interpretation, Justice G.P. Singh, Seventh Edition 1999, at pp.689-690).

In *Supreme Court Employees Welfare Association v. Union of India*,
H AIR (1990) SC 334, this Court has held :

"A delegated legislation or a subordinate legislation must confirm exactly to the power granted." (para 62) A

"Rules whether made under Constitution or a statute, must be *intra vires* the parent law under which power has been delegated." (para 98) B

In *General Officer Commanding-in-Chief & Anr. v. Dr. Subhashandra Yadav & Anr.*, AIR (1988) SC 876, it has been held :

"Before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely, (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void." C

In the abovesaid case, the rule making provision of the Cantonment Act conferred power of the Central Government to make rules in the matter of "the tenure of office, salaries and allowances, provident funds, pensions, gratuities, leave of absence and other conditions of service of servant of boards." In exercise of this power, the Central Government framed rules to make provision for transfer of the employees of the Boards. It was held that the rule was in excess of the rule making power given to the Central Government. D E

The Government while framing rules under the Bihar Money Lenders Act, 1938 fixed the upper limit for the loans which the money lenders could lend though the Act nowhere provided for the fixing of such upper limit. In *Sant Saran Lal v. Parsuram Saha*, AIR (1966) SC 1852 it was held that the rule making power of the Government does not extend to the fixing of such a limit as it was not empowered by the Act. F

It is very common for the legislature to provide for a general rule making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power conferred. If the rule making power is not expressed in such a usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the G H

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A parent Act, (See : *Sant Saran Lal & Anr. v. Parsuram Sahu & Ors.*, AIR (1966) SC 1852, para 19. From the provisions of the Act we cannot spell out any legislative intent delegating expressly, or by necessary implication, the power to enact any prohibition on transfer of land. We are also in agreement with the submission of Shri Anil Divan that by placing complete

B prohibition on transfer of land subservient to tea estates no purpose sought to be achieved by the Act is advanced so also such prohibition cannot be sustained. Land forming part of tea estate including land sub-

C or for calculating area of land which a person may retain as falling within ceiling limit. We fail to understand how a restriction on transfer of such land is going to carry out any purpose of the Act. We are fortified in taking such view by the Constitution Bench decision of this Court in *Maharao Sahib Shri Bhim Singhji v. Union of India Ors.*, [1981] 1 SCC 166 whereby

D sub-section (1) of Section 27 of the Urban Land (Ceiling and Regulation) Act, 1976 was struck down as invalid insofar as it imposed a restriction on transfer of any urban or urbanisable land with a building or a portion only of such building which was within the ceiling area. The provision impugned therein imposed a restriction on transactions by way of sale, mortgage, gift

E or lease of vacant land or buildings for a period exceeding ten years, or otherwise for a period of ten years from the date of the commencement of the Act even though such vacant land, with or without building thereon, fell within the ceiling limits. The Constitution Bench held (by majority) that such property will be transferable without the constraints mentioned in

F sub-section (1) of Section 27 of the said Act. Their Lordships opined that the right to carry on a business guaranteed under Article 19(1)(g) of the Constitution carried with it the right not to carry on business. It logically followed, as a necessary corollary, that the right to acquire, hold and dispose of property guaranteed to citizens under Article 19(1)(f) carried

G within it the right not to hold any property. It is difficult to appreciate how could a citizen be compelled to own property against his will though he wanted to alienate it and the land being within the ceiling limits was outside the purview of Section 3 of the Act and that being so the person owning the land was not governed by any of the provisions of the Act. Reverting

H back to the case at hand, the learned counsel for the State of Himachal

Pradesh has not been able to satisfy us as to how such a prohibition as is imposed by the impugned amendment in the Rules helps in achieving the object of the Act. A

We are also of the opinion that a delegated power to legislate by making rules 'for carrying out the purposes of the Act' is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself. B

For the foregoing reason, the appeal is allowed. The judgment of the High Court is set aside. The proviso inserted into sub-rule (1) of Rule 3 of the Himachal Pradesh Ceiling on Land Holdings Rules, 1973 by the notification dated 4.4.1986 (published in the Himachal Pradesh Government Gazette dated 26.4.86) and the circular order dated 21.8.90 issued by the Registrar, District Kangra at Dharmshala are declared invalid and struck down as *ultra vires* the powers of the H.P. Ceiling on Land Holdings Act, 1972. No order as to the costs. C D

R.K.S.

Appeal allowed.