

A STATE OF HIMACHAL PRADESH AND OTHERS

v.

SATPAL SAINI

(Civil Appeal No.1654 of 2017)

B FEBRUARY 08, 2017

[**ABHAY MANOHAR SAPRE AND  
DR. D. Y. CHANDRACHUD, JJ.**]

C *Constitution of India – Art. 226 – Power of judicial review –*  
*Issuance of mandamus by High Court for amending the legislation*  
*– State Government to make suitable amendments to s.118 of the*  
*HP Tenancy and Land Reforms Act, 1972 read with HP Tenancy*  
*and Land Reforms Rules, 1975 to facilitate purchase of any land*  
*(agricultural and non-agricultural) in the State of Himachal Pradesh*  
*by the non-agriculturist Himachalis residing in the State for decades*  
*together prior to the date of commencement of the 1972 Act, within*  
*a period of ninety days – Sustainability of – Held: Law enacting*  
*body is entrusted with the power to enact such legislation as it*  
*considers necessary to deal with the problems faced by society and*  
*to resolve issues of concern – Courts do not sit in judgment over*  
*legislative expediency or upon legislative policy – Judiciary is*  
*assigned with the function of ensuring that executive actions accord*  
*with the law and that laws and executive decisions accord with the*  
*Constitution – Court does not have the power or function to direct*  
*the executive to adopt a particular policy or the legislature to convert*  
*it into enacted law – High Court transgressed the limitations imposed*  
*upon the power of judicial review u/Art. 226 by issuing the directions*  
*to State legislature to amend the law – Directions issued by High*  
*Court for amending the provisions of the 1972 Act and the Rules*  
*were unsustainable and set aside – HP Tenancy and Land Reforms*  
*Act, 1972 – HP Tenancy and Land Reforms Rules, 1975 –*  
*Legislation.*

G *Mallikarjuna Rao v. State of Andhra Pradesh*  
**1990 AIR 1251:1990 (2) SCR 418; K. Sood v.**  
*Secretary, Civil Aviation 1993 AIR 2285 : 1993 (3) SCR*  
**772; State of Himachal Pradesh v. A Parent of a Student**  
*of Medical College, Shimla 1985 AIR 910 : 1985 (3)*

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SCR 676; *Asif Hameed & Ors v. State of Jammu & Kashmir* 1989 AIR 1899 : 1989 (3) SCR 19; *Union of India v. Association for Democratic Reforms* 2002 AIR 2112 : 2002 (3) SCR 696; *Supreme Court Employees' Welfare Association v. Union of India* 1989 (3) SCR 488 : (1989) 4 SCC 187; *State of Jammu & Kashmir v. A.R. Zakki & Ors.* 1992 AIR 1546 : 1991 (3) Suppl. SCR 216; *V.K. Naswa v. Union of India* 2012 (2) SCR 912 : 2012 (2) SCC 542; *Gainda Ram v. MCD* 2010 (12) SCR 996 : 2010 (10) SCC 715; *Manoj Narula v. Union of India* 2014 (9) SCR 965 : 2014 (9) SCC 1 – referred to.

Case Law Reference

1990 (2) SCR 418	referred to	Para 7	
1993 (3) SCR 772	referred to	Para 7	
1985 (3) SCR 676	referred to	Para 8	D
1989 (3) SCR 19	referred to	Para 8	
2002 (3) SCR 696	referred to	Para 8	
1989 (3) SCR 488	referred to	Para 8	
1991 (3) Suppl. SCR 216	referred to	Para 8	E
2012 (2) SCR 912	referred to	Para 8	
2010 (12) SCR 996	referred to	Para 8	
2014 (9) SCR 965	referred to	Para 8	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1654 of 2017. F

From the Judgment and Order dated 23.09.2016 of the High Court of Himachal Pradesh at Shimla in Civil Writ Petition No. 3572 of 2014.

J. S. Attri, Sr. Adv. Varinder Kumar Sharma, Chandra Nand Jha, Shahid Hussain, Advs. for the Appellant. G

The Order of the Court was delivered by

**DR. D. Y. CHANDRACHUD, J.** 1. Delay condoned.

2. Leave granted. H

A 3. The State of Himachal Pradesh has called into question certain directions that were issued by a Division Bench of the High Court on 23 September 2016. The High Court called upon the State Government to amend the provisions of Section 118 of the H.P. Tenancy and Land Reforms Act, 1972 within a period of ninety days. These directions were issued by the Division Bench while allowing a writ petition which challenged an order dated 23 April 2014 of the revenue authorities. The judgment of the High Court by which it set aside the order dated 23 April 2014, and directed the state to attest the mutation by treating the respondent as an agriculturist is not called into question to that extent. The /is between the respondent and the state has come to a conclusion with the following direction of the High Court :-

C “Accordingly, impugned annexure P-9 dated 23.4.2014 is quashed and set aside. Respondents are directed to attest the mutation within a period of eight weeks from today by treating the petitioner to be an agriculturist”.

D The state is, however, aggrieved by the mandamus which was issued by the Division Bench for amending the legislation, in the following terms :-

E “However, before parting with the judgment, this Court deems it fit and proper to direct the State Government to make suitable amendments to Section 118 of the HP Tenancy and Land Reforms Act, 1972 read with HP Tenancy and Land Reforms Rules, 1975 in order to facilitate to purchase any land (agricultural and non-agricultural) in the State of Himachal Pradesh by the non-agriculturist Himachalis residing in the State for decades together prior to the date of commencement of the HP Tenancy and Land Reforms Act, 1972, within a period of ninety days from today”.

F The appeal is confined to a challenge to the above direction to amend the legislation. In the present proceedings, the appellants have not questioned the correctness of the order passed in favour of the respondent setting aside the order passed by the revenue authorities on 23 April 2014 or the direction to attest the mutation within eight weeks. Since the purpose of the respondent in filing the writ petition was served (and the relief granted to him has not been questioned) it has not been necessary to issue notice to the respondent having regard to the nature of the challenge preferred in these proceedings.

G 4. While issuing the above directions, the High Court appears to

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have been moved by what it described as the plight of “a large population of non- agriculturistHimachalis”. The High Court indicated the rationale underlying its direction in the following extract which is taken from the judgment impugned :-

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“There is perpetual litigation under Section 118 of the HPTenancy and Land Reforms Act, 1972. A large population of non-agriculturist Himachalis has been deprived of their right to purchase property in the State without the permission of the State Government though they are residing in the State of Himachal Pradesh for decades together. There is a sense of alienation amongst the non-agriculturist Himachalis. They are integral part of the State of Himachal Pradesh and have a sense of belonging to the State”.

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5. The State Government is aggrieved by the mandamus which has been issued by the High Court to amend the provisions of law. The submission of the State is that the above directions trench upon the sovereign legislative power of the state legislature.

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6. The grievance, in our view, has a sound constitutional foundation. The High Court has while issuing the above directions acted in a manner contrary to settled limitations on the power of judicial review under Article 226 of the Constitution. A direction, it is well settled, cannot be issued to the legislature to enact a law. The power to enact legislation is a plenary constitutional power which is vested in Parliament and the state legislatures under Articles 245 and 246 of the Constitution. The legislature as the repository of the sovereign legislative power is vested with the authority to determine whether a law should be enacted. The doctrine of separation of powers entrusts to the court the constitutional function of deciding upon the validity of a law enacted by the legislature, where a challenge is brought before the High Court under Article 226 (or this Court under Article 32) on the ground that the law lacks in legislative competence or has been enacted in violation of a constitutional provision. But judicial review cannot encroach upon the basic constitutional function which is entrusted to the legislature to determine whether a law should be enacted. Whether a provision of law as enacted subserves the object of the law or should be amended is a matter of legislative policy. The court cannot direct the legislature either to enact a law or to amend a law which it has enacted for the simple reason that this constitutional function lies in the exclusive domain of the legislature. For the Court to mandate an amendment of a law – as did the Himachal Pradesh High Court – is

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- A a plain usurpation of a power entrusted to another arm of the state. There can be no manner of doubt that the High Court has transgressed the limitations imposed upon the power of judicial review under Article 226 by issuing the above directions to the state legislature to amend the law. The government owes a collective responsibility to the state legislature. The state legislature is comprised of elected representatives.
- B The law enacting body is entrusted with the power to enact such legislation as it considers necessary to deal with the problems faced by society and to resolve issues of concern. The courts do not sit in judgment over legislative expediency or upon legislative policy. This position is well settled. Since the High Court has failed to notice it, we will briefly recapitulate the principles which emerge from the precedent on the subject.
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D 7. In **Mallikarjuna Rao v. State of Andhra Pradesh**<sup>1</sup> and in **V.K. Sood v. Secretary, Civil Aviation**<sup>2</sup>, this Court held that the court under Article 226, has no power to direct the executive to exercise its law-making power.

8. In **State of Himachal Pradesh v. A Parent of a Student of Medical College, Shimla**<sup>3</sup>, this Court deprecated the practice of issuing directions to the legislature to enact a law:

- E “... The direction given by the Division Bench was really nothing short of an indirect attempt to compel the State Government to initiate legislation with a view to curbing the evil of ragging...”

The same principle was followed in **Asif Hameed & Ors v. State of Jammu & Kashmir**<sup>4</sup>, where this Court observed that:

- F “... The Constitution does not permit the Court to direct or advice the Executive in matter of policy or to sermonize qua any matter which under the Constitution lies within the sphere of Legislature or Executive.”

G In **Union of India v. Association for Democratic Reforms**<sup>5</sup>, this Court observed that :-

...it is not possible for this Court to give any direction for amending

<sup>1</sup> AIR 1990 SC 1251

<sup>2</sup> AIR 1993 SC 2285

<sup>3</sup> AIR 1985 SC 910

<sup>4</sup> AIR 1989 SC 1899

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the Act or the statutory rules. It is for the parliament to amend the Act and the Rules.” A

Similarly, in **Supreme Court Employees’ Welfare Association v. Union of India**<sup>6</sup>, this Court held that a court cannot direct the legislature to enact a particular law. This is because under the constitutional scheme, Parliament exercises a sovereign power to enact law and no other authority can issue directions to frame a particular piece of legislation. This principle was reiterated in **State of Jammu & Kashmir v. A.R. Zakki & Ors.**<sup>7</sup>, where this Court observed that: B

“...A writ of mandamus cannot be issued to the legislature to enact a particular legislation. Same is true as regards the executive when it exercises the power to make rules, which are in the nature of subordinate legislation. Section 110 of the J & K Constitution, which is on the same lines as Article 234 of the Constitution of India, vests in the Governor, the power to make rules for appointment of persons other than the District Judges to the Judicial Service of the State of J & K and for framing of such rules, the Governor is required to consult the Commission and the High Court. This power to frame rules is legislative in nature. A writ of mandamus cannot, therefore, be issued directing the State Government to make the rules in accordance with the proposal made by the High Court.” C D E

In **V. K. Naswa v. Union of India**<sup>8</sup>, this Court referred to a large number of decisions and held that:

“18. Thus, it is crystal clear that the court has a very limited role and in exercise of that, it is not open to have judicial legislation. Neither the court can legislate, nor has it any competence to issue directions to the legislature to enact the law in a particular manner.” F

A discordant note had been struck by a Bench of two judges in **Gainda Ram v. MCD**<sup>9</sup>. A direction was issued to the legislature to amend legislation before a particular date. The Constitution Bench in **Manoj Narulav. Union of India**<sup>10</sup>, held that this direction by a Bench of two judges was contrary to the law laid down earlier by three judges. In that G

<sup>6</sup> (1989) 4 SCC 187

<sup>7</sup> AIR 1992 SC 1546

<sup>8</sup> (2012) 2 SCC 542

<sup>9</sup> (2010) 10 SCC 715

<sup>10</sup> (2014) 9 SCC 1 H

A context, the Constitution Bench has conclusively enunciated the legal position thus:

“127. The law having been laid down by a larger Bench than in **Gainda Ram** it is quite clear that the decision, whether or not Section 8 of the Representation of the People Act, 1951 is to be amended, rests solely with Parliament.”

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Having regard to the settled position, the impugned directions are unsustainable.

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9. The judiciary is one amongst three branches of the State; the other two being the executive and the legislature. Each of the three branches is co-equal. Each has specified and enumerated constitutional powers. The judiciary is assigned with the function of ensuring that executive actions accord with the law and that laws and executive decisions accord with the Constitution. The courts do not frame policy or mandate that a particular policy should be followed. The duty to formulate policies is entrusted to the executive whose accountability is to the legislature and, through it, to the people. The peril of adopting an incorrect policy lies in democratic accountability to the people. This is the basis and rationale for holding that the court does not have the power or function to direct the executive to adopt a particular policy or the legislature to convert it into enacted law. It is wise to remind us of these limits and wiser still to enforce them without exception.

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10. For these reasons, we hold that the directions issued by the High Court for amending the provisions of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 and the Rules were manifestly unsustainable. The directions are accordingly set aside. The appeal filed by the State shall stand allowed in these terms.

11. There shall be no order as to costs. •