
Babu Oomen Thomas (Dr.) Vs State of Kerala and Another

Writ Petition (C) No. 27272 of 2006

Court: High Court Of Kerala

Date of Decision: Oct. 17, 2008

Acts Referred:

Constitution of India, 1950 " Article 14, 16, 16(1), 16(4), 226#Kerala Land Reforms (Ceiling) Rules, 1970 " Rule 30#Kerala Land Reforms Act, 1963 " Section 2, 3, 86, 87, 96#Kerala State and Subordinate Services Rules, 1958 " Rule 14, 15 , 16 , 17#Kerala State Backward Classes (Reservation of Appointments or Posts in the Services Under the State) Act, 1995 " Section 3, 4, 6

Citation: (2008) 4 ILR (Ker) 334 : (2009) 1 KLJ 54

Hon'ble Judges: H.L. Dattu, C.J; K.M. Joseph, J

Bench: Division Bench

Advocate: Babu Oomen Thomas, Party in Person and M.S. Narayanan, Amicus Curiae, for the Appellant; C.P. Sudhakara Prasad, AG and D. Anil Kumar, GP, for the Respondent

Judgement

K.M. Joseph, J.

Petitioner in this Writ Petition (hereinafter referred to as Dr. Babu), seeks a declaration that the Ordinance issued as ""The

Kerala Temporary Stay of Eviction Proceedings Ordinance, 2006"" (Ordinance No. 41 of 2006) and the Kerala Temporary Stay of Eviction

Proceedings Ordinance, 2006 (Ordinance No. 52 of 2006) and the Kerala Temporary Stay of Eviction Proceedings Ordinance, 2007 (Ordinance

No. 14 of 2007) and the Kerala Temporary Stay of Eviction Proceedings Ordinance, 2007 (Ordinance No. 40 of 2007) and the Kerala

Temporary Stay of Eviction Proceedings Act, 2007 (Act No. 14 of 2007) are invalid, void and non-est and ultra vires of the powers of the 1st

respondent by issuing a writ of certiorari of other appropriate writ, direction or order directing the respondents to stay all directions and directives

that are being issued by the first respondent and the second respondent to conduct survey and identification of the lands in the possession of

various persons as a prelude to distribution of the lands to the unauthorised occupants and to stay the distribution of the lands detailed in the

schedule to Ext. P14, Ext. P14A, Ext. P 14B, Ext. P14C Ordinances and Ext. P14Q Act to any person who is found to be in possession

subsequent to 5.6.1995.

2. By Ext. P1 order the Taluk Land Board, Kozhikode directed M/s. Malabar Produce and Rubber Company Limited, (hereinafter referred to as

the Company), to surrender an extent of 126.01 and half acres of land. The Collector took possession of the same. Dr. Sabu is a shareholder of

the said Company, which was disposed of the land. According to the petitioner, the land came to be occupied by trespassers after dispossession

of the Company. It is stated that the ruling party workers brought down hundreds of their supporters from other Districts with an intention to

forcibly occupy the land. Exts.P2 and P3 are newspaper reports. Nearly hundred persons among the encroachers filed writ petition seeking that

they may not be evicted and that the land could not be assigned to any other body or organization. The writ petition was dismissed. Writ Appeal

filed also came to be dismissed. O.P. No. 19328 of 1995 was filed as Public Interest Litigation by some other persons seeking a direction to evict

the encroachers. An interim order was passed directing eviction of the encroachers. It is the case of the petitioner that the petitioners in the Original

Petition were compelled to withdraw the Original Petition. Ext.P7 is a copy of O.P.4023 of 1996 filed by the petitioner, that came to be dismissed

on account of non-representation. It is stated that the petitioner filed O.P. 13326 of 1996 culminating in Ext.P8 judgment. By Ext. P8 judgment, a

learned Single Judge of this Court directed the Government to take effective steps to remove the encroachment. This was done keeping in view the

order passed by this Court in O.P. 19877 of 1996 and the decision in W.A. 13 of 1996 and also paragraphs 5 and 6 of the statement of the

Government in O.P. 19877 of 1996. Government was also directed to take urgent steps for allotting the land for public purposes as intended as

expeditiously as possible so as to prevent further encroachment. W.A. 2634 of 1998 filed by respondents 1 to 4 came to be dismissed by Ext.P9

judgment. Ext.P10 is the judgment in O.P. 19877 of 1996, which was allowed and the court directed that the Government should see that the

encroachers are ousted from Government land. Another writ petition was filed by three MLAs and leaders of the encroachers as O.P.3366 of

2002 seeking assignment of the land and to refrain from evicting the occupants. The said original petition came to be dismissed by Ext. P11

judgment dated 8.2.2006. Thereafter this Court initiated suo motu contempt of court proceedings for non-compliance of the judgment. Ext. P13

would show that the court granted further time and directed the listing of the case on 31.7.2006. While so, Ext. P14 Ordinance came to be

promulgated on 26.7.2006 providing in Section 2 thereof for stay of eviction of persons in occupation of the land described in the schedule for a

period of one year. Still later Ext.P14(a) Ordinance dated 30.10.2006 came to be promulgated. Still later the first respondent enacted Kerala

Temporary Stay of Eviction Proceedings Act, 2007, Act 14 of 2007 on 27.7.2007. By the said Act, stay of eviction is provided for persons in

occupation for a period of two years. The Act was deemed to have come into force on 26.7.2006. Thus the petitioner challenges the constitutional

validity of the legislation providing for stay of eviction of persons in the teeth of the statements filed and the judgment delivered by this Court as

already mentioned.

3. In the counter affidavit it is stated that as far as the Ordinance is concerned, the challenge thereto will not lie as the Ordinance has ceased to

operate. It is further stated that initially all the persons were removed 5.6.1995. Despite the police picket certain persons entered and occupied the

land again. By judgment in O.P.1703 of 1996 the encroachers were directed to be evicted. There was such a direction in O.P. 19877 of 1996

also. However, in O.P.3366 of 2002 it was ordered that ""till the court heard the O.P. and the contempt petition the State authorities shall stay their

hands "" . The writ petition itself came to be disposed of with the observation that if the petitioners have got a case that they are entitled to the

assignment of the land encroached upon, it is for them to approach the appropriate authorities in accordance with law and seek their remedies, if

their applications are rejected. It is stated that on 23.6.2006 persons in possession submitted 505 applications for assignment of the land and they

have stated that formal applications were submitted for assignment of the land during 1997 when the applications were called for in accordance

with the provisions of the Kerala Land Reforms Act and the Rules, and that in terms of O.P. 3366 of 2002 they have again requested to consider

their applications, it is stated that earnest efforts are being made by the respondents to evict the encroachers, but the authorities were unable to

deal with them due to the tense situation brought about by the mass resistance offered by them, and use of force may be likely to result in huge

loss, damage and injury. It was in the circumstances, considering all aspects the Government had to consider the genuineness of the claims of such

unauthorised occupants, the Ordinance was enacted, it is stated. The Ordinance was promulgated only to provide for a situation attendant with

grave law and other situation that may arise if mass eviction is carried out. If their claims were found to be genuine, it would result in great hardship,

if in the meantime Government is to evict them using force, it is stated. It is further stated that as per order dated 9.8.1995, 98.50 acres of the

surplus land which was surrendered to the Government was proposed to be transferred to the Central Reserve Force for setting up a training

complex. However, the above proposal was subsequently cancelled considering the fact that a good number of persons in occupation of the land

are landless poor labourers eligible for assignment of excess land u/s 96 of the Kerala Land Reforms Act. The Ordinance is stated to be legal and

within the powers. Petitioner has no locus standi. Petitioner is only a shareholder, it is stated. The decisions of this Court are not circumvented by

the Ordinance, it is contended.

4. We heard Sri. M.S. Narayanan, whom we had appointed as Amicus Curie, and also the learned Advocate General.

5. It is submitted on behalf of the petitioner that both the Ordinance and the Act are in brazen violation of the statements filed on behalf of the State

and the declaration contained in the judgments passed by this Court and constitutes an onslaught on the rule of law. It is contended that by Ext.P4

judgment in W.P.(C) 14320 of 1995 the learned Single Judge had rejected the claim of nearly hundred encroachers. The court took note of the

situation and after considering the provisions contained in the Kerala Land Reforms Act took the view that the encroachers cannot claim any right

as against the persons waiting in the queue. In other words, the persons who broke the law should not be given any undue advantage was the

reasoning. Thereafter this Court by the judgments, which we have already adverted to had categorically directed eviction of the encroachers. It is

pointed out that a duty was cast to protect the land which came to be vested with the State. It is further pointed out that u/s 96 of the Kerala Land

Reforms Act the land has been reserved for a public purpose. Section 96 of the Act in its material part reads as follows:

96. Assignment of lands by Land Board - (1) The Land Board shall assign on registry subject to such conditions and restrictions as may be

prescribed, the lands vested in the Government u/s 86 or Section 87, as specified below:

(i) the lands in which there are kudikidappukars shall be assigned to such kudikidappukars;

(ii) the remaining lands shall be assigned to:

(a) landless agricultural labourers; and

(b) smallholders and other landlords who are not entitled to resume any land:

Provided that eighty-seven and a half per cent of the area of the lands referred to in Clause (ii) available for assignment in a taluk shall be assigned

to landless agricultural labourers of which one-half shall be assigned to landless agricultural labourers belonging to the (Scheduled Castes, the

Scheduled Tribes, and such other socially and economically backward classes of citizens as may be specified in this behalf by the Government by

notification in the Gazette)

(1A) Notwithstanding anything contained in Sub-section (1), the Land Board may, if it considers that any land vested in the Government u/s 86 or

Section 87 is required for any public purpose, reserve such land for such purpose.

In the decision reported in Indira Sawhney Vs. Union of India and Others, the court was dealing with the issue relating to identification of creamy

layer among the backward classes in the State of Kerala and the implementation of law declared and directions issued in Indra Sawhney etc. etc

Vs. Union of India and others, etc. etc., . The Kerala legislature enacted Kerala State Backward Classes (Reservation of appointments or Posts in

Services) Act, 1995. Section 3 of the Act provided that there are no socially advanced sections in the backward classes, who have acquired

capacity to compete with the forward classes. The Nair Service Society filed a writ petition seeking declaration that the provisions of the Act were

unconstitutional. In the course of the judgment the court referred to Section 6 of the Act. One of the issues which was raised was can the

declaration of law regarding creamy layer in the context of Articles 14 and 16 in Indra Sawhney's case and in other rulings be undone by the

Kerala Legislature by a retrospective validating law containing a statutory declaration whose effect is to say that no creamy layer exists in the State

of Kerala? The court proceeded to hold that the creamy layer principle laid down in Indra Sawhney case cannot be ignored as was done by

Section 6 of the Act. The court also held as follows:

If under the guise of elimination of the "creamy layer", the legislature makes a law which is not indeed a true elimination but is seen by the court to

be a mere cloak, then the court will necessarily strike down such a law as violative of principle of separation of powers and of Article 14, 16(1)

and 16(4).

Section 6 contained a non obstante clause and sought to provide that notwithstanding the judgment of any court inter alia, the reservation of

appointments pursuant to Rules 14 to 17 Part II of the Kerala State and Subordinate Services Rules, 1958 was to be deemed to be validly made

as if the Act in 1995, which was challenged was in force at all material times when such reservations have been made. In the course of its judgment

the court held as follows:

We may again point out that as a matter of law, it is clear that six out of nine Judges in Indra Sawhney made a judicial declaration as stated under

Point 1, as to the class of persons who would belong to the creamy layer. This declaration of law made by this Court is clearly applicable to the

State of Kerala also. The Kerala Legislature cannot, in our opinion refuse to accept this declaration of law nor can it declare anything to the

contrary.

The court further held as follows:

In the judgment of six learned Judges in Indra Sawhney as stated earlier, there is a specific declaration of law that the children of IAS, IPS and

other All India Services in the Backward Classes are creamy layer and this is true "without further inquiry". These persons are to be deemed, in

law and, in fact, to have reached such a level of social advancement that they cease to belong to the Backward Class. The judgment also refers to

a classification of "affluent" sections identified by way of income or property holding.

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The non obstante clause in Section 4 too cannot come to the rescue of the State. As already stated, the said clause cannot override the judgments

of this Court based on Articles 14, 16(1) and 16(4) if the defect is not removed by the legislation. Neither Parliament nor the State Legislature can

make any law to continue reservation to the creamy layer inasmuch as the above judgments of this Court are based on Article 14 and 16(1) of the

Constitution of India, an no law can obviously be made to override the provisions of Articles 14 and 16(1).

Thus, for the aforesaid reasons, Section 4 of the Act along with the non obstante clause is declared unconstitutional and violative of the judgments

of this Court and also violative of Articles 14, 16(1) and 16(4) of the Constitution of India.

We then come to Section 6 of the Act which deals with retrospective validation. This section again stalls with a non obstante clause. Obviously, the

Kerala Legislature is having Indra Sawhney Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., and Ashoka Kumar Thakur Vs. State

of Bihar and others, in its mind, when it inserted, the non obstante clause. Once Section 3 of the Act is held unconstitutional, the position is that the

legislative declaration as to non-existence of creamy layer goes and the existence of creamy layer becomes a starting reality. That will mean that

under the Act of 1995, the Legislature has not eliminated the defect. Nor can Section 4 in this connection be of any help because that provision has

also been declared as unconstitutional. Section 6 cannot stand alone once Sections 3 and 4 are declared unconstitutional. As long as the creamy

layer is not excluded and the defect continues, any validation-without elimination of the defect which is the basic clause of unconstitutionality - is, as

already stated, ineffective and will be invalid. Thus Section 6 is also unconstitutional.

In In the matter of : CAUVERY WATER DISPUTES TRIBUNAL, the Apex Court pronounced the Karnataka Cauvery Basin irrigation

Protection Ordinance as unconstitutional as it affected the jurisdiction of the Tribunal appointed under the Central Act, namely, the Inter-State

Water Disputes Act, 1956, which legislation was traced to Article 262 of the Constitution. The court found that the purport of the Ordinance was

to nullify the interim order passed by the Tribunal. Therein the court proceeded to hold as follows:

The Karnataka Ordinance 1991 is also against the basic tenets of the rule of law inasmuch as the State of Karnataka by issuing the Ordinance has

sought to take law in its own hand and to be above the law. Such an act is an invitation to lawlessness and anarchy, inasmuch as the Ordinance is a

manifestation of a desire on the part of the State to be a judge in its own cause and to defy the decisions of the judicial authorities. The action

forebodes evil consequences to the federal structure under the Constitution and opens doors for each State to act in the way it desires disregarding

not only the rights of the other sates, the orders passed by instrumentalities constituted under an Act of Parliament but also the provisions of the

Constitution. The Ordinance if allowed to stand would lead to the break down of the Constitutional mechanism and affect the unity and integrity of

the nation.

The legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons

and events at large. It cannot, however, set aside an individual decision inter-parties and affect their rights and liabilities alone. Such an act on the

part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate court or Tribunal.

The decision in *M.C. Mehta Vs. Union of India (UOI) and Others*, is rendered only as an aftermath of the decision of the Apex Court in *M.C.*

Mehta's Case (2006) 3 SCC 399, which upheld the power of the Municipal Corporation to seal premises in case of misuser and directed the

sealing process to commence. Later the Court had extended the time limit to stop misuser provided the persons filing an affidavit undertaking

stopping of the misuse before 30.6.2006. The Delhi Laws (Special Provisions) Act was enacted on 19.5.2006. The ultimate question which arose

was the competence of the legislature to extend the time granted by the Supreme Court in the exercise of its law making power. In the said

context, the court proceeded to hold as follows:

Definitely, the legislature would lack competence to extend the time granted by the Supreme Court, in the purported exercise of law-making

power. That would be virtually exercising judicial functions. Such functions do not vest in the legislature. In fact, those who gave undertakings are

already in breach of the undertakings by not stopping misuser by 30.6.2006. The dignity and authority of the Court has to be protected not for any

individual but for maintenance of the rule of law. The fact that those who gave undertakings may have been misled in view of the subsequent

development can only be a mitigating factor while considering the action to be taken for breach of the undertakings. Further, there are no equalities

in favour of those who gave undertakings to the Supreme Court and obtained benefit of time. There is serious challenge to the validity of the Act

and the notification. Pending determination thereof, such persons cannot be allowed to claim any benefit of the notification.

It is pointed out that in the face of an unambiguous direction to evict the encroachers, it is not open to the legislature to make a law, be it as an

Ordinance or a plenary legislation defying the court and setting at naught the judgments of a court made in exercise of the judicial function of the

State vested with the courts. Learned Amicus Curie contended that having regard to the fact that the land was reserved u/s 96(1A) of the Kerala

Land Reforms Act, the same cannot be distributed under Sub-section (1) of Section 96.

6. Per contra, the learned Advocate General would contend that the Ordinance and the law made were perfectly within the legislative powers. He

would contend that it would not be open to the petitioner in W.P.27272 of 2006 to impugn the legislation. It is contended that all that the State has

done by way of the impugned legislation, is keeping in view the fact that many of the persons who have encroached upon the land are actually

landless agricultural labourers entitled to assignment, protected their possession pending the inquiry into their claims. Such a legislation, it is

contended, cannot be treated as contrary to the judgments of this Court. He refers to Rule 30 of the Ceiling Rules. Rule 30 of the Kerala Land

Reforms (Ceiling) Rules, 1970 provides that the Land Board shall verify the applications and prepare a list of persons eligible u/s 96. Sub-section

(2) provides that in preparing the list, the first, preference will be given to the kudikidappukaran, if any, on the land. Thereafter, it is provided that

the preference indicated shall be as provided thereafter subject to the provisions of Sub-section (1) of Section 96 as far as practicable. It is

provided that "second preference" shall be given to the following among other persons:

(a) unauthorised occupants of the land, if any, provided they have effected valuable improvements.

(b) persons evicted from Government land.

It is therefore contended that unauthorised occupants are under the rule entitled to the grant of assignment. He would contend that it is in the

context of the mammoth problem which was posed before it and the difficulties in dealing with such an emergent situation, the State has chosen to

pass the law in question. He relied on the decision of the Apex Court in Virender Singh Hooda and Others Vs. State of Haryana and Another, to

draw support for the proposition that the legislation in question is only to be upheld. He further contended for the position that the litigation itself is

not maintainable as a public interest and in this connection he seeks to draw support from the decision of the Apex Court reported in Guruvayur

Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, . Therein the Apex Court proceeded to delineate the principles evolved

by the court for the exercise of powers under Article 226 of the Constitution in matters relating to public interest. The learned Advocate General

would contend that the case at hand would not fall within any of those criteria laid down.

7. By order in C.M.P. 23444 of 1997 in O.P. 13111 of 1997 a learned Single Judge of this Court on 13.7.1988 directed the District Collector,

Kozhikode, the Taluk Land Board and the State of Kerala to take back into the possession of the State the land obtained surrender of pursuant to

the order of the Taluk Land Board: This was a writ petition filed by the Malabar Products and Rubber Company Limited, in which the petitioner

was the shareholder. An appeal was carried by respondents 1 to 4, who were directed to take back possession as W.A. 1619 of 1998. The writ

appeal and O.P. 13111 of 1997 came to be heard together by the Division Bench and by judgment dated 19.8.1998 the Division Bench allowed

the appeal and set aside the order passed in C.M.P. No. 2344 of 1997. The Original Petition was allowed and in place of the direction to take

back possession of the land, the Land Board and the Taluk Land Board were directed to demarcate the area surrendered by the petitioner

Company. The Division Bench noted the lack of objection for demarcating the area surrendered by them so that he may prevent persons from

encroaching upon the rest of the land. By Ex.P4 dated 6th November, 1995 the learned Single Judge had rejected the claim of the petitioners, who

were found to have asserted that they have illegally taken possession of the land and such persons were held not entitled to discretionary

jurisdiction under Article 226 of the Constitution of India and therefore the Original Petition praying for the following reliefs was dismissed.

to call for the entire records leading to Exts. P1 to P5 and to issue a writ of certiorari quashing Exs. P1 and P2 and any proceedings to assign the

land for any other purpose than assigning the same to landless persons;

to declare that the land vested with the Government in the Taluk Land Board proceedings No. TLB(K) 19/73 dated 31.1.1976 cannot be

assigned to nay other body or organisation without the reservation of the same by the Taluk Land Board;

to declare that the petitioners are entitled to for assignment of the land in Sy. Nos. 93,86/2,86/1 and 6/1 in Raroth Village in Kozhikode Taluk in

accordance with the Kerala Land Reforms Act and Ceiling Rules;

to issue a writ of prohibition prohibiting and restraining the respondents from taking any coersive steps to evict the petitioners and similar persons

from the land from their possession and enjoyment without the procedure prescribed by law.

By Ext.P5 order the Division Bench dismissed the appeal filed against Ex.P4 as withdrawn. However, by Ex.P8, which is dated 18th March, 1997

in O.P. 13326 of 1996, which is a writ petition filed by the petitioner himself, a learned Single Judge, taking note of the order passed in O.P.

19877 of 1996 and the decision of the Division Bench in W.A. 13 of 1996 besides paragraphs 5 and 6 of the Statement of the Government in

O.P. 19877 of 1996 directed the Government to take effective steps for removing the encroachers and directed to take urgent steps for allotting

the land for public purposes as intended so as to prevent further encroachment. This judgment came to be confirmed by Ext.P9 in W.A.. 2634 of

1998 dated 22.11.2000. That was an appeal carried by the State of Kerala, the District Collector, Kozhikode, the Tahsildar, Taluk Office,

Kozhikode and the Land Board. There the court reiterated the obligation on the part of the State and others to remove the encroachers from the

land. In Ext.P9 judgment the court held as follows:

Here, u/s 98 of the Act, the land had to be protected until its assignment or until its being handed over to the concerned public authority in terms of

order Ext.P2. There is therefore a clear obligation on the applicants to remove the encroachers from the land.

Ext.P10 is the judgment in O.P. 19877 of 1996 which also was disposed of taking note of paragraphs 5 and 6 as already noted that the

Government has taken effective steps and criminal proceedings against the encroachers and they are implementing the directions in W.A. 13 of

1996. Noting that a more statement is not enough, the learned Single Judge has directed that the Government should see that the encroachers are

ousted from the land. Ext.P10 is dated 5.3.1997. It is thereafter that Ext.P11 judgment was pronounced in O.P.3366 of 2002 at the instance who

sought for a direction to assign the land in question to the occupants u/s 96 of the Land Reforms Act and to refrain from evicting them. Taking

notice of the judgment in O.P. 19877 of 1996 and the contempt of court case, which is pending therein and the binding nature of the judgment. It

was observed that the prayers sought were to be declined and it was observed that the petitioners therein or anybody else, if aggrieved to take up

the matter in a properly constituted appeal. It is thereafter that the observations have been made, namely, that if the petitioners have got a case that

they are entitled to assignment, it is for them to approach the appropriate authorities in accordance with law and seek their remedies, if their

applications to that effect are rejected by the appropriate authorities. Ext P12 is an affidavit in the suo motu contempt filed by the Chief Secretary.

In Ext. P12 affidavit, which is dated 24th June, 2006, it is inter alia stated as follows:

Several O.Ps and Writ Appeals were filed before this Hon"ble Court in this case and the last one in the series was O.P. No. 3366 of 2002 filed by

Shri. C.K. Nanu, MLA and 10 others. This Hon"ble Court on 30.01.2002 ordered stay of the eviction of the encroachers. On 8.2.2002 this

Hon"ble Court dismissed O.P. No. 3366 of 2002 with the observation that if the petitioners have got a case that they are entitled to assignment of

the land encroached upon, it is for them to approach the appropriate authorities in accordance with the law and seek their remedies if their

applications to that effect are rejected by the appropriate authorities. On enquiry some of the encroachers are found eligible for land assignment.

The present Government have only taken charge about one month back and have not received time to study the whole case in depth. In view of

the direction of this Hon"ble Court in judgment dated 08.02.2006 in O.P. No. 3366/02 and the fact that Government have to consider the genuine

claims of the encroachers, whether they are really eligible people for assignment, it will create great hardship to them if they are evicted now.

Therefore, Government proposes to examine the claims and grievances of the settlers and some more time is necessary for the present

Government, to study the issues involved. Therefore six months time may kindly be granted to complete the process accordingly.

Still later, by Ext.P 13 order dated 27.6.2006 the Division Bench clarified that even if it is assumed that there is some obscurity in the matter, none

of the trespassers have right, title or interest. It is also stated that so far as the stand of the Government reflected in Ext. P12 affidavit that the

trespassers have some right u/s 96 of the Kerala Land Reforms Act is concerned, the same is patently incorrect in view of the earlier decisions of

the Division Bench and in particular the decision rendered by the Division Bench of this Court in O.P. 3366 of 2002, where the claim made by

them based on Section 96 of the Land Reforms Act was specifically rejected. The matter came to be listed on 31.7.2006 apparently in the hope

that the State may even now take steps to comply with the orders which have become final. It is thereafter that the impugned legislation initially in

the form of Ordinance and still later as plenary legislation followed.

7A. We would think that there is merit in the contentions of the petitioner. The judicial power of the State is vested in the judicial organ. The chief

function of the court is to decide the lis between the parties. Its decision is clothed with finality as far as the parties are concerned unless the same is

reversed by itself or a superior forum in appropriate proceedings. One of the parties be it the State itself, the State is bound to act in terms of the

decision. Neither by an executive fiat nor by a legislative device can a State wedded to the rule of law claim the right to set at naught a judicial

pronouncement by merely saying that notwithstanding the judgment, what is to be done is as stated in the executive fiat or the legislative instrument.

It ill-behoves an organ of the State to intrude into the judicial power vested with the courts. Undoubtedly it is open to the State to make law, by

which it removes the very foundation of the judgment and provide for the resultant position such as it is advised to do.

8. In the facts of this case, we are at a loss as to how it is open to the State to contend that the basis of the judgments directing the encroachers to

be removed was in any manner changed. Therefore it is not open to the State to contend that the Ordinance or the Act which are called in question

must pass muster. Having gone through Exts. P11 and P13, we are persuaded to think that it is not open to the respondents to justify the impugned

acts of legislation by referring to the observations contained therein. The State had in the statement made its stand clear namely that there was

encroachment and they were attempting to remove the encroachment.

9. There were judgments of this Court directing the removal of the encroachment. It is in the teeth of these circumstances that we must appreciate

the validity of the legislative acts. The effect of both the Ordinance and the Act is to defeat and to set at naught the directions. These legislative

exercises are without the support of any material taking away the basis of the judgments referred to. We are of the view that the learned Advocate

General cannot derive any support from the decision reported in Virender Singh Hooda's Case (supra). That was a case where the court took the

view that the basis of any judgment can be removed as far as the constitution is not contravened and judicial power is not usurped, the Circulars

which were apparently the basis of the decisions of the Apex Court in Virender S. Hooda and Others Vs. State of Haryana and Another, and

Sandeep Singh's Case (2002) 10 SC 549 were apparently removed by the legislature by repealing the Circulars. It was in this factual context that

the court had to consider and lay down principles about efficacy of enactment having retrospective operation as it was not a case of usurpation of

judicial power. The court held as follows:

It is equally well settled that the legislature cannot by a bare declaration, without anything more, directly overrule, reverse or override a judicial

decision, it may, at any time in exercise of the plenary power conferred on it by the Constitution render a judicial decision ineffective by enacting a

valid law on a topic within its legislative field, fundamentally altering or changing with retrospective, curative or neutralising effect the conditions on

which such decision is based.

It is to be noticed that in this case we are unable to see how the basis of the directions of this Court could be said to have been removed by the

State. In such circumstances, we are of the view that the legislative effort has to be held to fall foul of the fundamental postulate that the State

cannot be permitted to override or negate a judicial pronouncement in the purported exercise of its legislative powers.

10. No doubt the learned Advocate General contended that it was not open to the Division Bench to have clarified or to make the observations in

Ext. P13. He has relied on the following decisions and contended that when a case is decided in contempt jurisdiction, the court does not sit in

judgment over the correctness of the judgment, the violation of which is complained of and it is quite outside the jurisdiction of the court to give any

direction or to otherwise pronounce upon the correctness of the judgment in question. (See the decisions reported in Director of Education,

Uttaranchal and Others Vs. Ved Prakash Joshi and Others, and in State of Bihar and Others Vs. Rajendra Singh and Another, . Learned

Advocate General would contend that the legislation was fully justified having regard to the observations made in O.P.3366 of 2002, which we

have already referred to.

11. We are afraid that the stand of the State to encroachers betrays a disregard of the roles assigned to the three organs of the State under our

Constitutional scheme of things. While it may be open to the State by a validating act to remove the foundation for the judgment and to give

retrospectivity to take away the effect of a judgment, it is not open to the State to simply disregard a declaration or direction given by a competent

court. We notice that the judgment of the learned Single Judge in Ext.P8 was confirmed by a Division Bench in Ext.P9. The said judgment is in the

year 2000. There is a positive direction by this Court, which has become final, to evict the encroachers. This is in a Writ Petition filed by the

petitioner. It is in the teeth of this judicial pronouncement, which had become final and the State, which is a party to the proceedings has yet

proceeded to invoke its legislative power and say that they will not evict them and instead the eviction will be stayed. We are of the opinion that

this stand, which is reflected in Section 3 is absolutely violative of the fundamental tenet of the rule of law and can be premised only on the

overreaching of the powers vested in the State in its legislative capacity. The State did not chose to impugn Ext.P 13 before an appropriate forum.

In fact in the contempt of court case, rejecting the stand reflected in Ext.P10 affidavit of the Chief Secretary, this Court had expressed its view

against the same and provided an opportunity to the State to act in conformity with the judgments.

12. In such circumstances, we are inclined to partly allow W.P.(C) 27272 of 2006 and we declare that Ext. P14(d) Act providing for stay of

eviction in Section 2 thereof is invalid.

We record our appreciation for the efforts taken by Amicus Curiae Sri. M.S. Narayanan.