REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3962 OF 2007

S.T. SADIQ … APPELLANT

VERSUS

STATE OF KERALA & ORS. … RESPONDENTS

WITH

CIVIL APPEAL NO.3963 OF 2007

J U D G M E N T

R.F. NARIMAN, J.

1. These petitions raise questions as to the constitutional validity of the Kerala Cashew Factories (Acquisition) Act, 1974 (hereinafter referred to as "the said Act"), which has been placed in the 9th Schedule to the Constitution of India, being entry 148 thereof. This Act came into force on 19th November, 1974 and Section 3 thereof enabled the State Government to acquire in public interest cashew factories under certain circumstances. Section 3 is set out hereunder:

> "3. **Order of Acquisition**:-
> (1) The Government may, if they are satisfied –
>
> (a) that the occupier of a cashew factory does not conform to the provisions of law relating to safety,

conditions of service or fixation and payment of wages to the workers of the factory; or

(b) that raw cashewnuts allotted to a cashew factory by the Cashew Corporation of India are not being processed in the factory to which allotment has been made or that such nuts are being transferred to any other cashew factory; or

(c) that there has been large scale unemployment, other than by way of lay off or retrenchment, of the workers of a cashew factory by order published in the Gazette declare that the cashew factory shall stand transferred to, and vest in the Government.

Provided that before making a declaration under this sub-section in respect of a cashew factory, the Government shall give the occupier of the factory and the owner of the factory where he is not the occupier, a notice of their intention to take action under this sub-section and the grounds therefore and consider the objections that may be preferred in pursuance of such notice.

Explanation.- For the purposes of this sub-section, the expressions "lay off" and "retrenchment" shall have the meanings respectively assigned to them in the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

(2) The notice referred to in the proviso to sub-section (1) shall also be published in two newspapers published in the State of Kerala, and such publication shall be deemed to be sufficient notice to the occupier, to the owner where he is not the occupier and to all other persons interested in the cashew factory.

(3) On the making of a declaration under sub-section (1), the cashew factory to which the declaration relates, together with all machinery, other accessories and other movable properties as were immediately before the appointed day in the ownership, possession power or control of the

occupier in relation to the factory and all books of accounts, registers and other documents relating thereto shall stand transferred to, and vest in, the Government."

2. Identical notices were sent between 1984 and 1986 to 10 cashew factories under Section 3 of the Acquisition Act, and the said factories were acquired under the Act pursuant to those notices. Similar notices stating identical grounds were sent to 36 other cashew factories in 1988 by which the said factories were also acquired under the said Act. A specimen notice is set out hereinbelow.

"No.31033/K3/84/Id 19.9.1985

NOTICE

Notice under rule 3 of the Kerala Cashew Factories (Acquisition) Rules, 1974.

WHEREAS it has been brought to the notice of the Government that in respect of Cashew Factory No.AP.11 located in Eruva, Kayamkulam, in Karthikappally Taluk, Alapuzha District of which Smt. T. Suhara Beevi C/o Masaliar Industries, Kilikolloor, Kollam is the owner and M/s. Janso Exports (Private) Ltd., N.N.C., Estates Vadakkevila P.O., Kollam is the occupier (proposed) there exist grounds as detailed below warranting action under section 3(1) of the Kerala Cashew Factories (Acquisition) Act, 1974 notice is hereby given to all concerned of the intention of the Government to take action under the above said section of the Act. Interested persons are hereby directed to file their objections, if any, before the Government of Kerala against the proposed action within seven days of the receipt of this notice or the publication of this notice in the newspapers, whichever is earlier or if they no desire, appear before Shri N. Gopalan Nair, Additional Director of Industries and

Commerce and special office for cashew societies at the District Industries Centre, Kollam at 11 a.m. on 23.9.1985 and state their objections. If no objections are received within the said period or no persons appears on the said date it will be presumed that there are no objections against the proposed action and further steps will be taken.

All concerned are further informed that Shri N. Gopalan Nair, Additional Director of Industries and Commerce and Special Officer for Cashew Societies, Vikas Bhavan, Thiruvananthapuram has been authorized to prepare an inventory of all properties of the cashew factories mentioned above under section 5(1) of the Act. They are also informed that commissions of any act by any person which will diminish the value of the properties and assets of the cashew factory or the removal of any property or assets from the premises of the factory is punishable under section 13 of the Act.

GROUNDS

It has been reported by the Authorized officer that your factory is lying closed and that there is no possibility of its starting functioning within a period of ten days or in the immediate future. The Government are therefore, of opinion that the said situation will lead to large scale unemployment of the workers of the Cashew Factory.

By Order of the Governor

Place: Thiruvananthapuram M. Vijayanunni
Dated: 16.9.1985 Special Secretary to Governor

Industries Department

To,
Smt. T. Suhara Beevi, C/o Musaliar Industries
Kilikolloor, Kollam 4.

Copy to:

1. Shri N. Gopalan Nair, Addl. Director of Industries and Commerce and Spl. Officer for

Cashew Societies, Vikas Bhavan, Thiruvananthapuram.

2. Special Officer for cashew industry, Kollam for necessary action.
3. The Director of Public Relations for immediate publication in any two leading dailies having wide circulation.

Forwarded/ By order
Sd/- Section Officer."

3. The 10 cashew factories that were acquired filed writ petitions in the High Court in the year 1985-1986, which were dismissed by a common judgment dated 20.1.1994. Meanwhile, the 36 factories approached the Supreme Court directly in writ petitions filed under Article 32 of the Constitution. These writ petitions were disposed of by a judgment dated 12.5.1994 reported in **Indian Nut Products v. Union of India** (1994) 4 SCC 269 in the following terms:-

> "8. It appears that in the notice, there is only reference to Section 3(1) of the Act, without disclosing whether the Government was satisfied in respect of the existence of any of the situations under clause (a), (b) or (c) thereof. No details have been mentioned in the said notice. Towards the end of the said notice, under the heading "Grounds" it has been stated that the factory was lying closed and that there was no possibility of it to start functioning within a period of ten days or in the immediate future and, therefore the Government was of the opinion that the said situation "will lead to a large scale unemployment …". It need not be impressed that an order under Section 3(1) on the ground specified in clause (c) of sub-section (1) can be issued by the State Government only when the

State Government is satisfied that "there has been large scale unemployment, other than by way of lay off or retrenchment, of the workers of a cashew nut factory". The grounds do not even state that there has been any unemployment much less large scale unemployment. The grounds simply state that the factory was lying closed and there was no possibility of its starting functioning within a period of ten days or in the immediate future, which will lead to large scale unemployment. No details have been mentioned in the said notice as to from what date each of the factories was lying closed. We are not able to appreciate as to how by a common notice all the 36 cashew factories could be summoned to show cause without giving particulars of conditions existing in different factories. The learned counsel, who appeared on behalf of the State, could not point out, as to how different occupiers or the owners of the factories could have filed objections to such common notice which did not refer to any conditions pertaining to their factories.

9. There is no dispute that the cashew nut factories do not work throughout the year but work for varying periods depending upon the supply of raw nuts etc. As such the particulars of the alleged closure of each of the factories were required to be furnished to the individual owner to meet the case against him. The object of the Act is to safeguard the interests of the workers in the cashew factories and it is to safeguard their interests that the power has been vested in the State Government to issue orders for the transfer of the factories. The transfer or vesting of the factories has to be in accordance with the procedure prescribed in the Act. As already pointed out above, the proviso to sub-section (1) not only requires a notice to be given to the occupier or the owner of the factory in respect of the intention of the Government to take action under the said sub-section, but also requires to furnish the grounds on which such action is considered necessary. In the present case, according to us, the notice does not comply with and conform to the requirement of the proviso to sub-section (1) of

Section 3.

10. It is well-settled that if a statute requires an authority to exercise power, when such authority is satisfied that conditions exist for exercise of that power, the satisfaction has to be based on the existence of grounds mentioned in the statute. The grounds must be made out on the basis of the relevant material. If the existence of the conditions required for the exercise of the power is challenged, the courts are entitled to examine whether those conditions existed when the order was made. A person aggrieved by such action can question the satisfaction by showing that it was wholly based on irrelevant grounds and hence amounted to no satisfaction at all. In other words, the existence of the circumstances in question is open to judicial review.

11. It cannot be disputed that serious consequences follow on the basis of the order passed by the Government on grounds mentioned in clauses (a), (b) and (c). Hence it is all the more necessary that the Government furnishes the full particulars on the basis of which the Government claims to be satisfied that there is a case for taking over the factory. As already pointed out above, there is not even an assertion in the notice that there has been any unemployment much less large scale unemployment. The ground simply says that the Government was of the opinion that the closure of the factory "will lead to a large scale unemployment". We are of the view, that in the facts and circumstances of the present case, the notice issued to the petitioners with the so-called grounds was not in accordance with the requirement of the provisions of sub-section (1) of Section 3 of the Act. The notices issued to different petitioners are, therefore, declared to be null and void. Consequent thereto, the order dated 6-7-1988 is also quashed.

12. However, it is made clear that it shall be open to the Government to exercise the power conferred on it by sub-section (1) of Section 3, whenever it is satisfied on the basis of the relevant material, that any of the

three conditions mentioned therein exists in individual factories, by following the procedure prescribed therein.

13. In order to work out the equities and the rights and liabilities which have arisen between the date of the transfer of the factories and passing of this order, we direct:

(i) The possession of the factories shall be handed over to the respective owners within two weeks from the date of this order. As and when possession is given, an inventory of all the materials shall be made.

(ii) The daily workers other than the members of the staff engaged by the Kerala State Cashew Development Corporation Ltd., or the State Government, as the case may be, shall be retained by the factory owners and shall not be retrenched except in accordance with law. So far as the members of the staff are concerned, it shall not be the obligation of the factory owners to retain them, in view of the interim order passed by this Court on 19-7-1988.

(iii) The petitioners shall pay the same salary and emoluments which were being paid by the State Government while the factories were with the State Government.

(iv) Any claim for compensation in respect of any damage or loss caused to the machinery, equipments, building etc. during the period of occupation by the Kerala State Cashew Development Corporation Ltd., shall be assessed by the District Judge, Quilon. Similarly, any claim in respect of any amount for an additional construction made or additional machinery installed by the Kerala State Cashew Development Corporation Ltd., shall be determined by the District Judge, Quilon, on proper application being filed before it.

(v) The Kerala State Cashew Development Corporation Ltd., shall be entitled to remove any

machinery or materials installed by it within one week of preparation of the inventory; and

(vi) Any disciplinary enquiry pending against any of the workmen may be continued by the owner of the factory concerned, if he chooses to do so."

4. Based on the fact that the notice was identical also in the case of the 10 factories, by a judgment dated 10.3.1995, this Court followed the judgment in the Indian Nut Products case in the following terms:

"IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO._____ OF 1995
(Arising out of the S.L.P.(C) No.8219/94)

S.T. Sadiq … Appellant

Vs.

State of Kerala & Ors. …Respondents

ORDER

It is clear to us that this case is fully covered by a decision of this court in Indian Nut Products & Ors. Etc. Vs. Union of India & Ors. 1994 (4) SCC 269 and the rights of the Government to exercise power conferred on it by sub-section (1) of Section 3 of the Kerala Cashew Factories (Acquisition) Act 1974 stand preserved. In terms of the Judgment in that case, this petition too is disposed of on identical terms and the direction given by the Court in paragraph 13 of the said report shall be operative in so far as this petition is concerned. To formalize it, leave is granted and the appeal allowed accordingly. No costs.

Sd/-
(M.M. Punchhi…J)
Sd/-
(K. Jayachandra Reddy..J)

New Delhi,
March 10, 1995."

5. It appears that so far as the 36 cashew factories are concerned, the mandamus of this Court was followed by handing them back to their respective owners by 20.5.1994. However, the same was not done so far as the 10 cashew factories are concerned, which then filed contempt petitions which were disposed of on 12.7.1996 stating:

> "The orders of this court passed in C.A. No.343/95 were required to be obeyed by 24.3.1995 by the respondents. Specific attention was drawn by the petitioner on 1.4.1995 for compliance with the order but, apparently, compliance was kept delayed because change of law was contemplated which ultimately fructified by an Ordinance on 16.8.1995. Though it would have been desirable for the respondents to carry out the order of this court, their taking shelter in the contemplated Ordinance is not totally out of place. They are guilty, though, of contempt for non-compliance for a small period. Holding so, we accept their apology as tendered in the affidavits filed in response.
>
> The contempt proceedings are, thus, terminated."

6. The promised Ordinance was then brought in which became the Kerala Cashew Factories Acquisition (Amendment) Act of 16.8.1995. This Act was brought into force with effect from 1.5.1984 so as to cover all 46 acquisitions that had been made under the Principal Act. This Act is a short Act of six Sections and a Schedule. We are concerned with Section 3A and Section 6

which are set out hereinbelow:

> "3A. Power to acquire any cashew factory in public interest.
>
> (1) Notwithstanding anything contained in section 3, if the Government are satisfied, in relation to a cashew factory, that it has been closed for a period of not less than three months and such closure has prejudicially affected the interest of the majority of the workers engaged in that factory and that immediate action is necessary to restart the cashew factory and such restarting is necessary in the public interest, they may, by order published in the Gazette, declare, that the cashew factory shall stand transferred to, and vent in, the Government.
>
> Provided that no order under this sub-section shall be published unless the proposal for such acquisition is supported by a resolution of the Legislative Assembly."
>
> "6. Declaration as to acquisition of certain cashew factories.
>
> (1) It is hereby declared that it is expedient in the public interest that the cashew factories specified in the Schedule to this Act shall, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority and notwithstanding anything contained in any other law, agreement or other instrument for the time being in force, stand transferred to, and vest in, the Government with effect from the date noted against each.
>
> (2) The provisions of Section 4, Section 7 to 16 (both inclusive) of the principal Act shall, as far as may be, apply to, or in relation to, the cashew factory in respect of which sub-section (1) apply, as they apply to a cashew factory in relation to which a declaration has been made under sub-section (1) of section 3A.

(3) For removal of doubt it is hereby declared that the dates mentioned in the Schedule against each factory shall be the 'appointed day' in respect of that factory for the purposes of the principal Act.

(4) All acts, proceedings or things done or taken by the Government or any officer or authority in respect of cashew factories mentioned in the Schedule including all the orders issued under sub-section (1) of Section 8, during the periods commencing on and from the dates noted against each and ending with the date of publication of this Act in the Gazette, shall, for all purposes, be, and shall be deemed always to have been, as valid and effective as if the amendments made to the principal Act by this Act had been in force at all material times."

7. The schedule to the Act contains only the 10 cashew factories that had been acquired between 1984 and 1986.

8. Mr. Krishnan Venugopal, learned counsel appearing on behalf of the some of the petitioners raised three points before us. He argued that first and foremost Section 6 of the Amendment Act is bad as it seeks to directly nullify the judgments of this Hon'ble Court dated 12.5.1994 and 10.3.1995 without changing the basis of the law. For this proposition he cited several judgments including **State of T.N.** v. **M. Rayappa Gounder** (1971) 3 SCC 1, **Madan Mohan Pathak & Anr.** v. **Union of India & Ors.** 1978 (2) SCC 50, **Virender Singh Hooda & Ors.** v. **State of Haryana & Anr.** 2004 (12) SCC 588 and **State of Tamil Nadu** v. **State of Kerala & Anr.** 2014 (6) SCALE 380. His second point was that

considering that all the notices served were in identical terms, and considering that the objects and reasons of the 1995 Amendment Act placed all 46 factories at par, Section 6 of the Act violated Article 14 inasmuch as it discriminated between the 10 factories which were sought to be taken over and the 36 factories which were not sought to be taken over by the Amendment Act. The third point he argued before us was that in any case Section 6 of the Amendment Act read with Section 9 of the original Act was an independent stand alone provision. Section 6 of the Amendment Act was not in the 9th Schedule and since it referred *inter alia* to Section 9 of the original Act, it was legislation by incorporation and, therefore, Section 9 being part of the Amendment Act would be open to attack on the ground that it violated Article 300 A of the Constitution of India, in that the basis for awarding compensation for land that is acquired along with the cashew factories is on a completely irrelevant and arbitrary date, namely, the market value of the land on the date of setting up of the cashew factory. He pointed out to us on facts that some factories were granted as little as Rs.58 as compensation for acres of land taken over merely because the cashew factory that was set up on the land may have been set up many many years ago.

9. In fact, he pointed out on his facts that his factory building

was only on 97 cents and 1.86 acres was sought to be taken over despite the fact that this land was neither used nor was necessary for the working of the factory.

10. Mr. Giri appearing for the State of Kerala replied to each one of these three contentions. In his view, so far as the first contention is concerned, he pointed out the judgment of this Court in the Indian Nut Products case and said that only a notice had been struck down and the Court had left it open to the State to take over in future on the basis of relevant material any cashew factory if the conditions stated in Section 3(1) of the principal Act were satisfied. According to him, there was no question of retrospectively amending the Act so as to remove the basis of any earlier decision as the Act had not been touched by the Supreme Court. He, therefore, argued that Section 6 could be viewed as a provision under which cashew factories could be acquired in public interest apart from being acquired under Section 3 or Section 3A of the Act by merely putting such cashew factories into the Schedule contained in the Amendment Act. So far as point 2 is concerned, he argued that the High Court was correct in saying that there is an intelligible differentia between cashew factories taken over by the Cashew Development Corporation on the one hand (the 36 factories) and the 10 factories taken over by

CAPEX, which is an apex body consisting of cooperative societies of workmen. So far as point 3 is concerned, he replied by saying that Article 31B would bar any challenge to the compensation provision that is Section 9 of the main Act. Section 6 merely refers to Section 9 and, therefore, legislation is not by incorporation but by reference.

11. Having heard learned counsel for both parties, we think Mr. Venugopal is on firm ground on both points 1 and 2 argued by him. We do not feel it necessary to enter upon a discussion on point 3 inasmuch as the Civil Appeals before us have to be allowed on points 1 and 2.

12. **Point 1**.

It is settled law by a catena of decisions of this Court that the legislature cannot directly annul a judgment of a court. The legislative function consists in "making" law [see: Article 245 of the Constitution] and not in "declaring" what the law shall be [see: Article 141 of the Constitution]. If the legislature were at liberty to annul judgments of courts, the ghost of bills of attainder will revisit us to enable legislatures to pass legislative judgments on matters which are inter-parties. Interestingly, in England, the last such bill of attainder passing a legislative judgment against a man called Fenwick was passed as far back as in 1696. A century later, the

US Constitution expressly outlawed bills of attainder [see: Article 1 Section 9].

It is for this reason that our Constitution permits a legislature to make laws retrospectively which may alter the law as it stood when a decision was arrived at. It is in this limited circumstance that a legislature may alter the very basis of a decision given by a court, and if an appeal or other proceeding be pending, enable the Court to apply the law retrospectively so made which would then change the very basis of the earlier decision so that it would no longer hold good. However, if such is not the case then legislation which trenches upon the judicial power must necessarily be declared to be unconstitutional.

This Court has struck down such legislation in a number of judgments. Thus, in **State of T.N. v. M. Rayappa Gounder** 1971 (3) SCC page 1, Section 7 of the Madras Entertainment Tax Act, 1939 was struck down. The Court held:

> "**3.** The question as to the power of the assessing authority to reassess the receipts that had escaped assessment under the Madras Entertainments Tax Act, 1939, had come up for consideration before the High Court of Madras in *R. Sundararaja Naidu* v. *Entertainment Tax Officer* [WP No. 513 of 1963 (Madras)] . Therein the High Court of Madras held that there was no power to reassess under that Act. Thereafter the State Legislature enacted the Act. The Act among other provisions contains Section 7, a provision relating to validation of assessment and

collection of certain taxes. That section reads:

"Notwithstanding anything contained in this Act or in the principal Act or in any judgment, decree or order of any Court no assessment or reassessment or collection of any tax due on any payment for admission to any entertainment or any cinematograph exhibition which has escaped assessment to tax, or which has been assessed at a rate lower than the rate at which it is assessable, under Section 4 or 4-A of the principal Act, made at any time after the date of the commencement of the principal Act and before the date of the publication of this Act in the Fort St. George Gazette shall be deemed to be invalid or ever to have been invalid on the ground only that such assessment or reassessment or collection was not in accordance with law and such tax assessed or reassessed or collected or purporting to have been assessed or reassessed or collected, shall, for all purposes, be deemed to be and to have been always validly assessed or reassessed or collected and accordingly—

(*a*) all acts, proceedings or things done or taken by the State Government or by any officer of the State Government or by any other authority in connection with the assessment or reassessment or collection of such tax, shall, for all purposes, be deemed to be and to have always been done or taken in accordance with law;

(*b*) no suit or other proceeding shall be maintained or continued in any court against the State Government or any person or authority whatsoever for the refund of any tax so paid; and

(*c*) no Court shall enforce any decree or order directing the refund of any tax so paid."

4. The reassessments with which we are concerned in these cases were made prior to the coming into force of the Act. Therefore all that we have to see is whether those reassessments are validly protected by Section 7. The High Court of Madras allowed the writ petitions and quashed the reassessments on the ground that the power to reassess under Section 7(B) introduced by the Act is

incomplete and not exercisable in the absence of prescription as to limitation contemplated by the section and hence Section 7 of the Act fails to validate the assessments in question. We do not propose to go into that question as in our opinion Section 7 of the Act is invalid insofar as it attempts to validate invalid assessments without removing the basis of its invalidity."

Similarly, in **D. Cawasji and Co. Mysore** v. **The State of Mysore & Anr.,** 1985 (1) SCR 825, Section 2 and 3 of Mysore Sales Tax (Amendment) Act, 1969 were struck down in the following terms:

"In the instant case, the State instead of remedying the defect or removing the lacuna has by the impugned amendment sought to raise the rate of tax from 6.1/2% to 45% with retrospective effect from the 1st April 1966 to avoid the liability of refunding the excess amount collected and has further purported to nullify the judgment and order passed by the High Court directing the refund of the excess amount illegally collected by providing that the levy at the higher rate of 45% will have retrospective effect from 1st of April, 1966, The judgment of the High Court declaring the levy of sales tax on excise duty, education cess and health cess to be bad become conclusive and is binding on the parties. It may or may not have been competent for the State Legislature to validly remove the lacuna and remedy the defect in the earlier levy by seeking to impose sales tax through any amendment on excise duty, education cess and health cess; but, in any event, the State Government has not purported to do so through the Amending Act. As a result of the judgment of the High Court declaring such levy illegal, the State became obliged to refund the excess amount wrongfully and illegally collected by virtue of the specific direction to that effect in the earlier judgment. It appears that the only object of

enacting the amended provision is to nullify the effect of the judgment which became conclusive and binding on the parties to enable the State Government to retain the amount wrongfully and illegally collected as sales tax and this object has been sought to be achieved by the impugned amendment which does not even purport or seek to remedy or remove the defect and lacuna but merely raises the rate of duty from 6.1/2% to 45% and further proceeds to nullify the judgment and order of the High Court. In our opinion, the enhancement of the rate of duty from 6.1/2% to 45% with retrospective effect is in the facts and circumstances of the case clearly arbitrary and unreasonable. The defect or lacuna is not even sought to be remedied and the only justification for the steep rise in the rate of duty by the amended provision is to nullify the effect of the binding judgment. The vice of illegal collection in the absence of the removal of the illegality which led to the invalidation of the earlier assessments on the basis of illegal levy, continues to taint the earlier levy. In our opinion, this is not a proper ground for imposing the levy at the higher rate with retrospective effect. It may be open to the Legislature to impose the levy at the higher rate with prospective operation but levy of taxation at higher rate which really amounts to imposition of tax with retrospective operation has to be justified on proper and cogent grounds. This aspect of the matter does not appear to have been properly considered by the High Court and the High Court in our view was not right in holding that "by the enactment of Section 2 of the impugned Act the very basis of the complaint made by the petitioner before this Court in the earlier writ petition as also the basis of the decision of this Court in Cawasji's case that the State is collecting amounts by way of tax in excess of what was authorised under the Act has been removed." We, accordingly, set aside the judgment and order of the High Court to the extent it upholds the validity of the impugned amendment with retrospective effect from 1st of April, 1966 and to the extent it seeks to nullify the earlier judgment of the High Court. We declare that Section 2 of the impugned amendment to the extent that it imposes the

higher levy of 45% with retrospective effect from the 1st day of April, 1966 and Section 3 of the impugned Act seeking to nullify the judgment and order of the High Court are invalid and unconstitutional." (at page 841-842)

Similarly, in **State of Haryana v. Karnal Coop. Farmers' Society Ltd.,** (1993) 2 SCC 363, Section 7 of a Haryana statute was struck down. The court referred to several earlier judgments and then held:

> **"37.** Thus, it becomes clear that a legislature while has the legislative power to render ineffective the earlier judicial decisions, by removing or altering or neutralising the legal basis in the unamended law on which such decisions were founded, even retrospectively, it does not have the power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions as invalid or not binding for such power if exercised would not be a legislative power but a judicial power which cannot be encroached upon by a legislature under our Constitution.
>
> **38.** In the instant case, the Haryana State Legislature, by the Amendment Act of 1981, has not made any provision to include the lands and immovable properties — the subject of the civil court's decrees, in 'shamilatdeh' so as to bring them within the purview of the principal Act. But, the provision made therein merely directs the Assistant Collector of first grade, in effect, to disregard or disobey the earlier civil courts' decrees and judicial orders by which it had been held that certain lands and immovable properties fell outside 'shamilatdeh' regulated by the principal Act. Such provisions inserted by the Amendment Act of 1981 in the principal Act by a legislature are clearly unconstitutional for they are to be regarded as provisions made by encroaching upon the judicial power. Hence, the view of the High Court that the

provisions of the Amendment Act of 1981 which merely authorise the Assistant Collector of first grade to decide the claims to be made before him claiming certain lands or immovable properties as 'shamilatdeh' vesting in Panchayats ignoring the judicial orders or decrees, by which any right, title or interest of private parties in such lands or immovable properties are recognised, are unconstitutional, requires to be upheld. Consequently, the provisions of the Amendment Act of 1981, insofar as they are intended to operate retrospectively for nullifying the adjudications made by civil courts prior to that Amendment Act, are invalid, inoperative and unconstitutional. However, the provisions in the Amendment Act of 1981, can undoubtedly operate prospectively for adjudicating upon claims to 'shamilatdeh' in proceedings initiated subsequent to the commencement of that Act, if they do not, in any way, disturb the finality of adjudications made earlier."

Equally, in **Re Cauvery Water Disputes Tribunal,** 1993 Supp (1) SCC 96, this Court after referring to two earlier judgments stated:

> **"76.** The principle which emerges from these authorities is that 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 partes 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."

Similarly, in **S.R. Bhagwat** v. **State of Mysore,** (1995) 6 SCC 16, this Court held:

"17. We may recapitulate at this stage that the petitioners have mounted a limited attack on the impugned provisions of the Act insofar as they deprive them of the monetary benefits flowing from the deemed promotion to be given to them pursuant to the orders of the Division Bench of the High Court which have become final between the parties. We have extracted the aforesaid section with its relevant sub-sections wherein the impugned provisions of the clauses concerned have been indicated by underlining them. Petitioners contend that underlined portions of sub-sections (2), (3) and (8) of Section 4 clearly fall within the teeth of binding decision of the Division Bench of the High Court and they are in clear conflict with the said binding decision. As we are not concerned with other provisions of the Act except Section 11(2) we may straightaway turn to Section 11. The said provision deals with overriding effect of the Act. It reads as under:

"*Overriding effect.*— (1) The provisions of this Act or of any order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any law or order having the force of law or rules made under the proviso to Article 309 of the Constitution of India for the time being in force or any provision regulating the conditions of service of any allottee or in any order made by virtue of any such law, rules or provisions.

(2) Notwithstanding anything contained in any judgment, decree or order of any court or other competent authority the rights to which a civil servant is entitled to in respect of matters to which the provisions of this Act are applicable, shall be determined in accordance with the provisions of this Act, and accordingly, any judgment, decree or order directing promotion or consideration for promotion of civil servants and payment of salaries and allowances consequent upon such promotion shall be reviewed and orders made in accordance with the provisions of this Act."

18. A mere look at sub-section (2) of Section 11 shows

that the respondent State of Karnataka, which was a party to the decision of the Division Bench of the High Court against it had tried to get out of the binding effect of the decision by resorting to its legislative power. The judgments, decrees and orders of any court or the competent authority which had become final against the State were sought to be done away with by enacting the impugned provisions of sub-section (2) of Section 11. Such an attempt cannot be said to be a permissible legislative exercise. Section 11(2), therefore, must be held to be an attempt on the part of the State Legislature to legislatively overrule binding decisions of competent courts against the State. It is no doubt true that if any decision was rendered against the State of Karnataka which was pending in appeal and had not become final it could rely upon the relevant provisions of the Act which were given retrospective effect by sub-section (2) of Section 1 of the Act for whatever such reliance was worth. But when such a decision had become final as in the present case when the High Court clearly directed respondent-State to give to the petitioners concerned deemed dates of promotions if they were otherwise found fit and in that eventuality to give all benefits consequential thereon including financial benefits, the State could not invoke its legislative power to displace such a judgment. Once this decision had become final and the State of Karnataka had not thought it fit to challenge it before this Court presumably because in other identical matters this Court had upheld other decisions of the Karnataka High Court taking the same view, it passes one's comprehension how the legislative power can be pressed in service to undo the binding effects of such mandamus. It is also pertinent to note that not only sub-section (2) of Section 11 seeks to bypass and override the binding effect of the judgments but also seeks to empower the State to review such judgments and orders and pass fresh orders in accordance with provisions of the impugned Act. The respondent-State in the present case by enacting sub-section (2) of Section 11 of the impugned Act has clearly sought to nullify or abrogate the binding decision of the High Court and has

encroached upon the judicial power entrusted to the various authorities functioning under the relevant statutes and the Constitution. Such an exercise of legislative power cannot be countenanced."

In **Delhi Cloth & General Mills Co. Ltd. v. State of Rajasthan,** (1996) 2 SCC 449, this Court struck down The Kota Municipal Limits (Continued Existence) Validating Act, in the following terms:

"15. In the case of the village of Raipura there was a preliminary notification calling for objections to the extension of the limits of the Kota Municipality to include it, but it was not followed by a final notification. In the case of the village of Ummedganj there was a notification extending the limits of the Kota Municipality to include it, but it had not been preceded by a notification inviting the objections of the public thereto. Later, another notification was published whereby the village of Ummedganj was excluded from the limits of the Kota Municipality. The provisions of Sections 4 to 7 of the 1959 Act and the earlier provisions of the 1951 Act in the same behalf were, therefore, not met in the case of either the village of Raipura or the village of Ummedganj. The Full Bench of the Rajasthan High Court has held that these provisions were mandatory and that judgment has become final.

16. The Validating Act provides that, notwithstanding anything contained in Sections 4 to 7 of the 1959 Act or in any judgment, decree, order or direction of any court, the villages of Raipura and Ummedganj should be deemed always to have continued to exist and they continue to exist within the limits of the Kota Municipality, to all intents and for all purposes. This provision requires the deeming of the legal position that the villages of Raipura and Ummedganj fall within the limits of the Kota Municipality, not the deeming of

> facts from which this legal consequence would flow. A legal consequence cannot be deemed nor, therefrom, can the events that should have preceded it. Facts may be deemed and, therefrom, the legal consequences that follow.
>
> **17.** Sections 4 to 7 remained on the statute book unamended when the Validating Act was passed. Their provisions were mandatory. They had admittedly not been followed. The defect of not following these mandatory provisions in the case of the villages of Raipura and Ummedganj was not cured by the Validating Act. The curing of the defect was an essential requirement for the passing of a valid validating statute, as held by the Constitution Bench in the case of *Prithvi Cotton Mills Ltd.* [(1969) 2 SCC 283 : (1970) 1 SCR 388] It must, therefore, be held that the Validating Act is bad in law and it must be struck down."

Mr. Giri, learned counsel appearing for the State is correct in saying that no Section of the principal Act had been struck down and hence Section 6 of the Amendment Act did not need to remove the basis of any earlier decision striking down an Act. We repeatedly asked him if action had been taken under Section 3(1) or 3A of the Amendment Act to acquire any of the cashew factories before us. His candid answer was "no". The argument that Section 6 contains a third source of power to acquire cashew factories merely by putting them in a schedule has to be rejected on two fundamental grounds. First, no notice or hearing is provided as in Section 3 or Section 5A of the Land Acquisition Act or any other safeguard such as a resolution of the legislative

assembly supporting such acquisition as in Section 3A. If acquisition is to take place in conformity with law rules of natural justice cannot be bypassed. Further, Section 6 is aimed only at directly upsetting a final judgment of a final court namely the Supreme Court of India. This is clear from two things – (1) the *non obstante* clause wiping out "any judgment" and (2) the reference to the schedule of the Amendment Act which contains only the 10 cashew factories that were ordered to be handed back by a final judgment of this Court dated 10.3.1995. It is clear, therefore, that Section 6 directly seeks to upset a final judgment inter-parties and is bad on this count and is thus declared unconstitutional.

13. **Point 2**.

The Statement of Objects and Reasons for the 1995 Amendment Act reads as follows:-

"STATEMENT OF OBJECTS AND REASONS

> The Kerala Cashew Factories (Acquisition) Act, 1974 empowers the Government in the public interest to acquire certain cashew factories and to provide employment to the workers who have been rendered unemployed and to secure to them just conditions of service.

2. The Government have acquired certain cashew factories by invoking section 3 of the Kerala Cashew Factories (Acquisition) Act, 1974. The above action of the Government was challenged by the original owners. In Indian Nut Product-Vs-Union of India reported in 1994 (2) KLT 598 the Supreme Court had upheld the validity of the Kerala Cashew Factories (Acquisition) Act, 1974 however the Court declared certain notifications issued by the Government under Section 5(1) of the aforesaid Act as null and void. Based on the above decision of the Supreme Court, the Kerala High Court disposed of certain petitions pending in the High Court against acquisition under the said Act and directed the Government to hand over the factories to the original owners.

3. The main ground for quashing the notifications was that the Government had not given proper notice as required under section 3 of the Act and that the parties were not given sufficient opportunity of being heard before final orders were passed by the Government.

4. These factories are now under the management of the Cashew Development Corporation and also CAPEX. In case the factories are to be handed over to the petitioners in the OP's as stipulated by the Court, the above mentioned institutions and Government will suffer financially, amounting to crores of rupees.

5. If the cashew factories are handed over to its previous owners based on the directions of the Court, owners may not be in a position to start work in the near future for the reason that they are not in Cashew trade for a long period and due to paucity of raw cashew in the world market. There will be large scale unemployment among the workers in Cashew Industry. There will also be scored economic disorders in the Southern Districts of the State. Where there is concentration of Cashew Factories.

6. Therefore to tide over the situation Government

intends to arm with a new legislation to acquire certain factories from the date of original notification for acquisition.

7. The Bill seeks to amend the Kerala Cashew Factories (Acquisition) Act, 1974, to achieve the above objects."

A bare reading of the Statement of Objects of the Amendment Act shows that the Kerala Legislature wished to interfere with two judgments of the Supreme Court making no distinction between factories that were managed by the Cashew Development Corporation (the 36 factories) and CAPEX (the 10 factories). It is interesting to note that apart from the Government suffering financially (if the factories are to be handed back), there will be large scale unemployment among workers in the cashew industry.

It is clear that the objects and reasons for the Amendment Act makes no differentiation between the 36 factories handed back and the 10 factories taken over by the Amendment Act. The High Court was in error in saying that there was an intelligible differentia between the two. Further, even otherwise, there is no difference between factories which post acquisition are run by the Cashew Development Corporation or CAPEX regard being had to

the object sought to be achieved – namely to avoid unemployment of cashew workers. Whether 36 factories run by the Cashew Development Corporation are to be acquired or 10 factories run by CAPEX are to be acquired makes not the least difference to the object sought to be achieved. Large scale unemployment is there in both cases. And both the Cashew Development Corporation and CAPEX, along with the Government, will suffer financially. In fact, the handing back of only 36 factories would be patently discriminatory as all 46 factories are similarly situate and have been treated as such by the State by issuing common notices to all of them under Section 3 of the Act. We have been reliably informed that these 36 factories are functioning under their respective owners for the last twenty years. In the circumstances we hold that there is no intelligible differentia between the 36 factories and the 10 factories taken over having any rational relation with the object sought to be achieved and on this ground also Section 6 of the Amendment Act deserves to be struck down as violating Article 14 of the Constitution.

14. The appeals are allowed. The judgment of the High Court is set aside and it is ordered that the cashew factories and the land

appurtenant thereto that have been taken over by the State under the Amending Act must be handed back within a period of eight weeks from the date on which this judgment is pronounced.

……..J.
(Ranjan Gogoi)

……..J.
(R.F. Nariman)

New Delhi;
February 04, 2015.

ITEM NO.1A COURT NO.7 SECTION XIA
(for Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 3962/2007

S.T. SADIQ Appellant(s)

VERSUS

STATE OF KERALA & ORS. Respondent(s)

WITH
C.A. No. 3963/2007

Date : 04/02/2015 These appeals were called on for pronouncement of judgment today.

For Appellant(s) Mr. Krishnan Venugopal, Sr. Adv.
Mr. Deepak Prakash, Adv.
Mr. Biju P. Raman, Adv.
Mr. Subhash Chandran K.R. Adv.,
Ms. Shruti Srivastava, Adv.
Ms. Yogamaya M.G., Adv.
For M/s. T. T. K. Deepak & Co., Advs.

For Respondent(s) Mr. V. Giri, Sr. Adv.
Ms. Bina Madhavan, Adv.
Mr. Somiram Sharma,Adv.

Mr. Vishnu Sharma,Adv.

Mr. G. Prakash, Adv.
Mr. K. R. Sasiprabhu, Adv.
Mr. M. Vijaya Bhaskar, Adv.

Hon'ble Mr. Justice Rohinton Fali Nariman pronounced the reportable judgment of the Bench comprising Hon'ble Mr. Justice Ranjan Gogoi and His Lordship.

The appeals are allowed. The judgment of the High Court is set aside and it is ordered that the cashew factories and the land appurtenant thereto that have been taken over by the State under

the Amending Act must be handed back within a period of eight weeks from the date on which this judgment is pronounced in terms of the signed reportable judgment.

(R.NATARAJAN)
Court Master

(INDU BALA KAPUR)
Court Master

(Signed reportable judgment is placed on the file)