REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11247 OF 2016
(arising out of S.L.P. (C) No.36973 of 2012)

UCO BANK AND ANR. APPELLANT(s)

VERSUS

DIPAK DEBBARMA & ORS. RESPONDENT(s)

WITH

CIVIL APPEAL NO.11250 OF 2016
(arising out of S.L.P. (C) No.33671 of 2016)

J U D G M E N T

RANJAN GOGOI, J.

Leave granted.

2. The writ petition out of which these appeals have arisen was instituted before the Agartala Bench of the Gauhati High Court. The writ petitioners, who are the respondents herein, are members of Scheduled Tribe(s) of the State of Tripura. They had contended that the Sale Notification dated

26.06.2012 issued by the appellant Bank under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "Act of 2002") was in infraction of Section 187 of the Tripura Land Revenue and Land Reforms Act, 1960 (hereinafter referred to as the "Tripura Act of 1960") as under the Tripura Act there is a legislative embargo on the sale of mortgaged properties by the bank to any person who is not a member of a scheduled tribe. The auction purchasers in the present case happened to be the persons who are not members of any scheduled tribe.

3. The High Court by the impugned order answered the writ petition in favour of the respondents/writ petitioners on the ground that the Tripura Act of 1960 being included in the Ninth Schedule to the Constitution and, therefore, enjoying the protection of Section 31-B of the Constitution, would prevail over the Act of 2002 so as to invalidate the sale Notification dated 26.06.2012, the same being contrary to the provisions of Section 187 of the Tripura Act of 1960.

4. It will not require much appreciation or scrutiny to come to the conclusion that the High Court was wholly incorrect in answering the writ petition and striking down the sale Notification dated 26.06.2012 on the above basis. Article 31-B of the Constitution, on the very face of the language contained therein, is self explanatory and provides protection/immunity to a legislation from challenge on the ground that it violates any of the provisions of Part III of the Constitution. Inclusion of the Tripura Act of 1960 in the Ninth Schedule by itself, would, therefore, not confer immunity to the said legislation from being overridden by the provisions of a Parliamentary statute. This is a question, therefore, that this Court will have to deal with notwithstanding the fact that the proceedings before the High Court did not proceed on the aforesaid basis. We had, therefore, permitted the learned counsels of both sides to address us on the core question arising in the present appeals, namely, whether the Act of 2002 insofar as it provides for sale of immovable properties offered as security for a loan advanced, without any restriction as to the class or category of buyers, would prevail

notwithstanding the restrictive provision in this regard under Section 187 of the Tripura Act of 1960.

5. Shri Mukul Rohatgi, the learned Attorney General for India appearing on behalf of the appellant-Bank and Shri V. Giri, learned senior counsel representing the auction-purchasers in the connected appeal have contended that the purpose and object of the Act of 2002 is to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith. On the other hand, the purpose of the Tripura Act of 1960 is to consolidate the law relating to land revenue and to provide for the acquisition of estates and for certain other measures of land reform. While the Act of 2002 enacted by the Union Parliament is referable to Entry 45 of List I, the Tripura Act can be traced to Entries 18 and 45 of the State List. Section 187 of the Tripura Act puts an embargo on the sale of hypothecated/ mortgaged properties by a bank to any person who is not a tribal. Therefore, the provisions of the Tripura Act of 1960 deal with a crucial aspect of the subject of banking.

Reference in this regard is made to the provision of Section 13 of the Act of 2002 which permits the secured creditor to enforce the security interest without the intervention of the Court. The sale of the property of any person, offered to a bank as security for any financial facility, so as to recover the dues of the Bank is a part of the core banking activity of any bank. The dominant legislation so far as banking is concerned, in the present case, is the Act of 2002 enacted by the Union Parliament and not the State Act. On the said basis, it is contended that by virtue of Article 246(1) of the Constitution, the Act of 2002, so far as sale of mortgaged properties by the bank is concerned, would prevail over Section 187 of the Tripura Act of 1960. The said provisions of the State Act must give way to the provisions of the Central Act, it is urged.

6. Learned counsels for the respondents/writ petitioners, in reply, have contended that the provisions of both the statutes can co-exist and run parallelly without any conflict. It is urged that, in fact, there is no conflict between the two. Section 187 of the Tripura Act of 1960 does not prohibit or impose a

complete embargo on the sale of mortgaged properties. Only when the borrower is a tribal the sale by the Bank has also to be to a tribal.

7. Repugnancy or inconsistency between the provisions of Central and State enactments can occur in two situations. The first, in case of a Central and a State Act on any field of entry mentioned in List III of the Seventh Schedule (Concurrent List). To such a situation of repugnancy or inconsistency, the provisions of Article 254 of the Constitution would apply. If there is such an inconsistency, Article 254(1) makes it very clear that the central law will prevail subject, however, to the provisions of Article 254(2) and further subject to proviso to Article 254(2). The above position would be clear from the opinion rendered by a three Judges Bench of this Court in **M/s Hoechst Pharmaceuticals Ltd. and Ors. vs. State of Bihar and Ors.**[1] Para 67 of the aforesaid opinion which may be usefully noticed is in the following terms:

> "**67.** Article 254 of the Constitution makes provision first, as to what would happen in the case of conflict between a Central and State law with regard to the

[1] **(1983) 4 SCC 45**

subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is 'repugnant' to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To the general rule laid down in clause (1), clause (2) engrafts an exception viz., that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act, will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the proviso to clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the 'same matter'. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together: See *Zaverbhai Amaidas* v. *State of Bombay, (1955) 1 SCR 799*; *M. Karunanidhi* v. *Union of India, (1979) 3 SCR 254* and *T. Barai* v. *Henry Ah Hoe, (1983) 1 SCC 177."*

8. The above view has been reiterated in **State of W.B. vs. Kesoram Industries Ltd. and Ors.**[2] There are several other pronouncements of this Court on the aforesaid issue. The same, however, would not require any mention as any such reference would be only a multiplication of discussions on what appears to be a settled issue. In the present case, however, the question before this Court is not one of repugnancy between a Central and a State law relatable to an Entry in List III (Concurrent List). No further attention to the above aspect of the matter would, therefore, be required.

9. The second situation of repugnancy or inconsistency as in the present case is between to a subsequent Central law (Act of 2002) covered by Entry 45 of List I and an earlier State law (Tripura Act of 1960) relatable to Entries 18 and 45 of List II. How such a situation is to be resolved and answered and which legislation would have primacy is the moot question that arises for consideration in the present appeals.

10. Article 246 of the Constitution of India is in the following terms.

[2] **(2004) 10 SCC 201**

"**246. Subject-matter of laws made by Parliament and by the Legislatures of States**:-

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the 'Union List')

(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the 'Concurrent List')

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List')

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List"

11. In interpreting Article 246 regard must be had to the constitutional scheme which visualises a federal structure giving full autonomy to the Union Parliament as well as to the State legislatures in their respective/demarcated fields of legislation. The problem may, however, become a little more complex than what may seemingly appear as the two

legislations may very well be within the respective domains of the concerned legislatures and, yet, there may be intrusion into areas that fall beyond the assigned fields of legislation. In such a situation it will be plain duty of the Constitutional Court to see if the conflict can be resolved by acknowledging the mutual existence of the two legislations. If that is not possible, then by virtue of the provisions of Article 246(1), the Parliamentary legislation would prevail and the State legislation will have to give way notwithstanding the fact that the State legislation is within the demarcated field (List II). This is the principle of federal supremacy which Article 246 of the Constitution embodies. The said principle will, however, prevail provided the pre-condition exists, namely, the Parliamentary legislation is the dominant legislation and the State legislation, though within its own field, has the effect of encroaching on a vital sphere of the subject or entry to which the dominant legislation is referable. This is the principle that is discernible from the Constitution Bench judgment of this Court in **State of West Bengal and Ors. vs. Committee for**

Protection of Democratic Rights, West Bengal and Ors.[3]

Paragraphs 25, 26 and 27 which illuminates the issue may be conveniently extracted below.

> "**25.** The non obstante clause in Article 246(1) contemplates the predominance or supremacy of the Union Legislature. This power is not encumbered by anything contained in clauses (2) and (3) for these clauses themselves are expressly limited and made subject to the non obstante clause in Article 246(1). The State Legislature has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule and it also has the power to make laws with respect to any matters enumerated in List III (Concurrent List). The exclusive power of the State Legislature to legislate with respect to any of the matters enumerated in List II has to be exercised subject to clause (1) i.e. the exclusive power of Parliament to legislate with respect to matters enumerated in List I. As a consequence, if there is a conflict between an entry in List I and an entry in List II, which is not capable of reconciliation, the power of Parliament to legislate with respect to a matter enumerated in List II must supersede pro tanto the exercise of power of the State Legislature.
>
> **26.** Both Parliament and the State Legislature have concurrent powers of legislation with respect to any of the matters enumerated in List III. The words "notwithstanding anything contained in clauses (2) and (3)" in Article 246(1) and the words "subject to clauses (1) and (2)" in Article 246(3) lay down the principle of federal supremacy viz. that in case of inevitable conflict between the Union and State powers, the Union power as enumerated in List I shall prevail over the State power as enumerated in Lists II and III and in case of an overlapping between Lists II and III, the latter shall prevail.

[3] **(2010) 3 SCC 571**

> **27.** Though, undoubtedly, the Constitution exhibits supremacy of Parliament over the State Legislatures, yet the principle of federal supremacy laid down in Article 246 of the Constitution cannot be resorted to unless there is an irreconcilable direct conflict between the entries in the Union and the State Lists. Thus, there is no quarrel with the broad proposition that under the Constitution there is a clear demarcation of legislative powers between the Union and the States and they have to confine themselves within the field entrusted to them. It may also be borne in mind that the function of the lists is not to confer powers; they merely demarcate the legislative field……"

12. Equally illuminating is the view available in the opinion of this Court rendered in re. **Special Reference No. 1 of 2001**[4], which is reproduced below.

> "**13.** The Constitution of India delineates the contours of the powers enjoyed by the State Legislature and Parliament in respect of various subjects enumerated in the Seventh Schedule. The rules relating to distribution of powers are to be gathered from the various provisions contained in Part XI and the legislative heads mentioned in the three lists of the Schedule. The legislative powers of both the Union and State Legislatures are given in precise terms. Entries in the lists are themselves not powers of legislation, but fields of legislation. However, an entry in one list cannot be so interpreted as to make it cancel or obliterate another entry or make another entry meaningless. In case of apparent conflict, it is the duty of the court to iron out the crease and avoid conflict by reconciling the conflict. If any entry overlaps or is in apparent conflict with another entry, every attempt shall be made to harmonise the same.

[4] **(2004) 4 SCC 489**

14. When the question arose about reconciling Entry 45 of List I, duties of excise, and Entry 18 of List II, taxes on the sale of goods, of the Government of India Act, 1935, Sir Maurice Gwyer, C.J. in *Central Provinces and Berar Act No. XIV of 1938, In re*, (1939) FCR 18, at pp. 42-44 observed:

> "A grant of the power in general terms, standing by itself, would no doubt be construed in the wider sense, but it may be qualified by other express provisions in the same enactment, by the implications of the context, and even by considerations arising out of what appears to be the general scheme of the Act."

It was further observed:

> "An endeavour must be made to solve it, as the Judicial Committee have said, by having recourse to the context and scheme of the Act, and a reconciliation attempted between two apparently conflicting jurisdictions by reading the two entries together and by interpreting, and, where necessary modifying the language of the one by that of the other. If indeed such a reconciliation should prove impossible, then, and only then, will the non obstante clause operate and the federal power prevail;"

15. Although Parliament cannot legislate on any of the entries in the State List, it may do so incidentally while essentially dealing with the subject coming within the purview of the entry in the Union List. Conversely, the State Legislature also while making legislation may incidentally trench upon the subject covered in the Union List. Such incidental encroachment in either event need not make the legislation *ultra vires* the Constitution. The doctrine of pith and substance is sometimes invoked to find out the nature and content of

> the legislation. However, when there is an irreconcilable conflict between the two legislations, the Central legislation shall prevail. However, every attempt would be made to reconcile the conflict."

13. The federal structure under the constitutional scheme can also work to nullify an incidental encroachment made by the Parliamentary legislation on a subject of a State legislation where the dominant legislation is the State legislation. An attempt to keep the aforesaid constitutional balance intact and give a limited operation to the doctrine of federal supremacy can be discerned in the concurring judgment of Ruma Pal, J. in **ITC Ltd. vs. Agricultural Produce Market Committee and Ors**.[5], wherein after quoting the observations of this Court in the case of **S.R. Bomai vs. Union of India** [6] (para 276), the learned Judge has gone to observe as follows (para 94 of the report):

> "***276.*** The fact that under the scheme of our Constitution, greater power is conferred upon the Centre vis-à-vis the States does not mean that States are mere appendages of the Centre. Within the sphere allotted to them, States are supreme. The Centre cannot tamper with their powers. More

[5] **(2002) 9 SCC 232**
[6] **(1994) 3 SCC 1**

> particularly, the courts should not adopt an approach, an interpretation, which has the effect of or tends to have the effect of whittling down the powers reserved to the States.

> **94.** Although Parliament cannot legislate on any of the entries in the State List, it may do so incidentally while essentially legislating within the entries under the Union List. Conversely, the State Legislatures may encroach on the Union List, when such an encroachment is merely ancillary to an exercise of power intrinsically under the State List. The fact of encroachment does not affect the vires of the law even as regards the area of encroachment. [A.S. Krishna vs. State of Madras, AIR 1957 SC 297; Chaturbhai M. Patel vs. Union of India, (1960) 2 SCR 362; State of Rajasthan vs. G. Chawla, AIR 1959 SC 544; Ishwari Khetan Sugar Mills (P) Ltd. vs. State of U.P., (1980) 4 SCC 136]. This principle commonly known as the doctrine of pith and substance, does not amount to an extension of the legislative fields. Therefore, such incidental encroachment in either event does not deprive the State Legislature in the first case or Parliament in the second, of their exclusive powers under the entry so encroached upon. In the event the incidental encroachment conflicts with legislation actually enacted by the dominant power, the dominant legislation will prevail."

14. The aforesaid view in the concurring judgment of Ruma Pal, J. in **ITC Ltd. vs. Agricultural Produce Market Committee and Ors**. **(supra)**, seems to have been echoed in a recent pronouncement of this Court in **Vishal N. Kalsaria vs.**

Bank of India & Ors.[7] , wherein this Court had held that the provisions of the Act of 2002 will not have an overriding effect on the provisions of the State Rent Control Acts.

15. In the present case the conflict between the Central and the State Act is on account of an apparent overstepping by the provisions of the State Act dealing with land reform into an area of banking covered by the Central Act. The test, therefore, would be to find out as to which is the dominant legislation having regard the area of encroachment.

16. The provisions of the Act of 2002 enable the bank to take possession of any property where a security interest has been created in its favour. Specifically, Section 13 of the 2002 Act enables the bank to take possession of and sell such property to any person to realise its dues. The purchaser of such property acquires a clear title to the property sold, subject to compliance with the requirements prescribed.

17. Section 187 of the Tripura Act of 1960, on the other hand, prohibits the bank from transferring the property which

[7] **(2016) 3 SCC 762**

has been mortgaged by a member of a scheduled tribe to any person other than a member of a scheduled tribe. This is a clear restriction on what is permitted by the Act of 2002 for the realisation of amounts due to the bank.

18. The Act of 2002 is relatable to the Entry of banking which is included in List I of the Seventh Schedule. Sale of mortgaged property by a bank is an inseparable and integral part of the business of banking. The object of the State Act, as already noted, is an attempt to consolidate the land revenue law in the State and also to provide measures of agrarian reforms. The field of encroachment made by the State legislature is in the area of banking. So long there did not exist any parallel Central Act dealing with sale of secured assets and referable to Entry 45 of List I, the State Act, including Section 187, operated validly. However, the moment Parliament stepped in by enacting such a law traceable to Entry 45 and dealing exclusively with activities relating to sale of secured assets, the State law, to the extent that it is inconsistent with the Act of 2002, must give way. The

dominant legislation being the Parliamentary legislation, the provisions of the Tripura Act of 1960, pro tanto, (Section 187) would be invalid. It is the provisions of the Act of 2002, which do not contain any embargo on the category of persons to whom mortgaged property can be sold by the bank for realisation of its dues that will prevail over the provisions contained in Section 187 of the Tripura Act of 1960.

19. The decision of this Court in **Central Bank of India vs. State of Kerala and Ors.**[8], holding that the provisions of the Bombay Sales Tax Act, 1959 and the Kerala General Sales Tax Act, 1963 providing for a first charge on the property of the person liable to pay sales tax, in favour of the State, is not inconsistent with the provisions contained in the Recovery of Debts Due to Banks and Financial Institutions, Act 1993 (for short the "DRT Act") and also the Act of 2002 must be understood by noticing the absence of any specific provision in either of the Central enactments containing a similar/parallel provision of a first charge in favour of the bank. The judgment of this Court holding the State enactments to be valid and the

[8] **(2009) 4 SCC 94**

Central enactments not to have any overriding effect, proceeds on the said basis i.e. absence of any provision creating a first charge in favour of the bank in either of the Central enactments.

20. The High Court in the judgment under challenge has also taken the view that the impugned sale Notification dated 26.06.2012 is invalid for infraction of Rule 5 and Rule 8(5) of the Security Interest (Enforcement) Rules, 2002, in as much as the bank did not obtain any valuation report of the property before resorting to the impugned auction sale. The Rules in question read as follows.

> "**5.** Valuation of movable secured assets.-
>
> After taking possession under sub-rule (1) of rule 4 and in any case before sale, the authorised officer shall obtain the estimated value of the movable secured assets and thereafter, if considered necessary, fix in consultation with the secured creditor, the reserve price of the assets to be sold in realisation of the dues of the secured creditor."
>
> **"8.** Sale of immovable secured assets.-
>
> (5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an

> approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:

21. Our attention had been specifically drawn to the stand of the appellant-Bank before the High Court in the counter filed (paragraph 20). Taking into account the averments made in the said affidavit, we find that the sale proclamation had mentioned a reserve price of Rs. 275 lacs and the property had been actually sold by auction at Rs. 416 lacs. That apart, the valuation report dated 14.06.2012 of the approved valuer valuing the property at Rs. 341.15 lacs has also been placed before us by way of an additional document which we are inclined to take on record. The requirements under Rule 5 and Rule 8(5) have, therefore, been complied with and the sale proclamation and the sale effected pursuant thereto cannot be invalidated on the above ground.

22. For the aforesaid reasons, the impugned order passed by the High Court has to be set aside which we hereby do. The

appeals are consequently allowed. There will, however, be no order as to costs.

.....,J.
(**RANJAN GOGOI**)

.....,J.
(**ABHAY MANOHAR SAPRE**)

NEW DELHI
NOVEMBER 25, 2016.