

CASE NO.:
Appeal (civil) 2517 of 1999

PETITIONER:
DIR. OF SETTLEMENTS, A.P. & ORS.

Vs.

RESPONDENT:
M.R. APPARAO & ANR.

DATE OF JUDGMENT: 20/03/2002

BENCH:
G.B. Pattanaik, S.N. Phukan & S.N. Variava

JUDGMENT:

PATTANAIAK, J.

This appeal by the State of Andhra Pradesh is directed against the impugned Judgment of the Division Bench of the Andhra Pradesh High Court dated 4.11.93 in Writ Appeal No. 511 of 1993. The Division Bench of the Andhra Pradesh High Court has come to the conclusion that the rights accrued in favour of the respondents to receive interim payments under Section 39 of the Andhra Pradesh Estates (Abolition and Conversion into Ryotwari) Act, 1948, which has already become final, the earlier Judgments of the High Court, not being assailed, the decision of the Supreme Court in the Venkatagiri's case, would not take away that right and, therefore, the respondents would be entitled to receive interim payments in accordance with the judgments in their favour.

A brief facts are that the two estates called Vuyyur and Meduru, were notified under the provisions of the Estates Abolition Act, 1948 and the State Government took over the two estates. The compensation due for the estates was notified on 20.6.1961. The State Government realising its mistake in notifying the two estates together, issued two separate notifications under the Estates Abolition Act, on 1.10.1963 and compensation for the two estates were determined separately, one on 21.11.64 for Meduru and another on 5.4.1966 for Vuyyur. The State Government issued an administrative instruction in G.O.Ms. No. 645 dated 28.5.66, indicating the procedure for determining the final compensation. Section 39 of the Act indicates the manner in which the compensation is to be determined. The scheme of the aforesaid provision is that the Director shall determine the compensation under sub-section (1) of Section 39 and a person aggrieved could put-forth his grievances to the Director, in the matter of proposed determination of the basic annual sum and also the total compensation payable. The Director is required to determine the compensation payable under sub-section (1) of Section 39, after giving the applicant an opportunity of making his representation, either in writing or orally. The order passed under sub-section (1) of Section 39 on being communicated to the concerned land-

holder as well as to any other applicant, the person aggrieved within three months could approach the Board of Revenue by filing an appeal, as provided under sub-section (5) of Section 39. Sub-section (6) of Section 39 confers suo motu powers on the Board, who in its discretion at any time call for and examine the record of any order passed by the Director. The Board of Revenue is thus entitled to modify or cancel the order passed by the Director under sub-section (1). Sub-section (2) of Section 50, casts an obligation on the Government to make interim payments every fasli year to the principal landholder and to other persons referred to in Section 44, sub-section (1) for the period, after the notification issued for vesting the estate and before the compensation is determined under Section 39 and deposited under Section 41. On 6.11.1970, Ordinance 6 of 1970 was promulgated to restrict the interim payments payable to the estate-holder till the determination by the Director of Settlement. The aforesaid Ordinance was replaced by Act 3 of 1971 on 16.1.1971, amending Sections 41, 44, 50 and 54 of the Estates Abolition Act, with retrospective effect. It may be stated that Section 41, prior to its amendment by Act 3/1971 read thus:

"41(1). The Government shall deposit in the office of the Tribunal, the compensation in respect of each estate as finally determined under Section 39, in such form and manner, and at such time or times and in one or more instalments, as may be prescribed by rules made under Section 40."

Under the amended provision, the expression "as finally determined under Section 39" was substituted by the expression "determined by the Director under Section 39". A writ petition was filed in the Andhra Pradesh High Court by Raja of Venkatagiri, questioning the validity of the ordinance as well as the amendment Act and by Judgment dated 22.9.1971, the High Court declared that Act 3/1971 to the extent it extinguished the vested right of the estate holders to receive interim compensation till the date of commencement of the Act was ultra vires of Article 31(2) and not protected by Article 31A or 31B. It further held that interim payments were payable upto the date of the ordinance but not thereafter. Thus the amended Act was held to be valid prospectively. The present respondents along with several others filed writ petitions before the Andhra Pradesh High Court, seeking interim payments, which were registered as Writ Petition Nos. 3293 and 3294 of 1975. A learned Single Judge of the High Court disposed of the two writ petitions by Judgment dated 17.6.1977 and following the earlier Judgment in Venkatagiri's case, issued a writ of mandamus to make interim payments to the respondents herein in accordance with law laid down in Venkatagiri's case. Against this direction of the learned Single Judge, the State Government filed an application for leave to appeal under Article 133(a) & (b) of the Constitution, but the same on being dismissed, the State Government did not approach the Supreme Court and allowed the matter to rest therein. Notwithstanding the finality attached to the order of the learned Single Judge in favour of the respondents, the same not being complied with, a fresh writ petition was filed, which was registered as Writ Petition No. 730 of 1978, praying therein that the earlier order be commanded to be implemented by a writ of mandamus. That application was disposed of on

28.3.1978 and the Court issued the direction to implement the earlier order dated 7.6.1977 within one month from the date of the order. The Judgment of the Andhra Pradesh High Court in Venkatagiri's case had been assailed in the Supreme Court in Civil Appeal Nos. 398 and 1385 of 1972. Those two appeals were disposed of by order dated 6.2.1986. In this Court the counsel appearing for the respondents, who were the original writ petitioners before the High Court consented to the Judgments and orders of the High Court under appeal being set aside, leaving it open to the land-holders and others to get the compensation and interim payments in accordance with the amended provisions of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948. The Court also itself expressed its opinion and held that the amendments made to the Act are constitutionally valid and the view expressed in the writ petition No. 496 of 1965 is erroneous. The Court, therefore, set aside the judgments and orders passed by the Andhra Pradesh High Court, leaving the question of computation of interim payments payable to the respondents therein open, to be decided by the authorities concerned in accordance with law and the orders passed by the Director. The Court hastened to add that the interim payments payable under the Act ends with the date of the original determination made by the Director under Section 39(1) thereof before the filing of the appeal, if any, and of the deposit of the amount so determined. On 3.7.1986, the State of Andhra Pradesh in the Department of Revenue (J) issued a memorandum, Memo No. 609/J-2/81-27, stating therein that the land-holders of Vuyyur and Meduru estates cannot contend that the decision of the Supreme Court in Venkatagiri's case, does not bind them merely because appeals were not filed against the judgment in their favour and the law declared by the Supreme Court is binding on the land-holders whether they were parties to the Judgment or not. The authorities concerned were directed to act in accordance with the judgment of the Supreme Court in Venkatagiri's case. The respondents herein filed a writ petition, which was registered as Writ Petition No. 16737 of 1990, claiming interim payments from 1.7.64 to 31.11.1970 and to implement the earlier order in their favour passed by the High Court. The learned Single Judge by Judgment dated 30th of January, 1993, dismissed the writ petition on the ground that the very basis namely the judgment in Venkatagiri's case, having been set aside by the Supreme Court, the earlier decision in favour of the respondents would not constitute an enforceable right and as such a writ of mandamus cannot be issued. The respondents however assailed the aforesaid judgment of the learned Single Judge in writ appeal No. 511 of 1993 and the said writ appeal having been allowed, the present appeal has been preferred by the State Government by grant of special leave.

When this appeal had been listed before a Bench of two learned Judges of this Court on 7.2.2002, the Court felt that the decision of this Court in the case of M/s Shenoy & Co. & Ors vs. Commercial Tax Officer Circle II, Bangalore & Ors., on which the counsel for the State relied upon and the decision of this Court in the case of Authorised Officer (Land Reforms) vs. M.M. Krishnamurthy Chetty, 1998(9) SCC 138, on which Mr. Rao for the respondents relied upon, perhaps run counter to each other and as such to resolve the said conflict, the appeal should be decided by a Bench of three learned Judges, and that is how the appeal has been placed before us.

Mr. Guntur Prabhakar, the learned counsel appearing for the State, contended that the law declared by the Supreme Court in the appeal in the case of State of Andhra Pradesh & Ors. vs. Venkatagiri & Ors. is the law of the land and binding on all persons throughout the country in view of Article 141 of the Constitution. By the said Judgment, this Court having held that the amendment of 1971 Act is valid and it having further held that the period during which the interim payment are payable under the Act ends with the date of original determination made by the Director under Section 39(1) of the Act, the Division Bench of the High Court committed serious error in issuing a mandamus contrary to the aforesaid declaration of law on the basis of finality attached to the Judgment in favour of the respondents. According to Mr. Prabhakar, the very Judgment in favour of the respondents having emanated, because of the Judgment of Andhra Pradesh High Court in Venkatagiri's case and the judgment of Venkatagiri, having been set aside, the respondents cannot make any claim on the basis of the earlier judgment in their favour. High Court, therefore, was in error in issuing the impugned directions in the Judgment under challenge. Relying upon the Judgment of this Court in M/s Shenoy and Co. vs. Commercial Tax Officer, Circle II, Bangalore, 1985(2) S.C.C. 512, Mr. Prabhakar contends that the effect of the Judgment of this Court in C.A. No. 1743 of 1973 is that the said Judgment would be a binding law, not only for the parties in that appeal but also those, who had approached the High Court under Article 226 and in whose favour, a mandamus had been issued, following the Judgment in Venkatagiri's case. The law declared by the High Court in Venkatagiri's case, having been set aside and the amendment Act having been held to be constitutionally valid and effective, the mandamus that had been issued in favour of the respondents, must be held to have been rendered ineffective and unenforceable and, therefore, the High Court could not have issued the impugned directions. According to Mr. Prabhakar, the three Judge Bench Judgment of this Court in Shenoy's case referred to supra, apply with full force to the case in hand and in this view of the matter, the impugned judgment must be held to be unsustainable in law. Mr. Prabhakar also relied upon the Judgment of this Court in U.P. Pollution Control Board and Ors. vs. Kanoria Industrial Ltd. and Anr., 2001(2) S.C.C. 549, and urged that to apply the law laid down by this Court in Venkatagiri's case only to the parties to the said appeal, would tantamount to ignore the binding nature of a judgment of this Court under Article 141 of the Constitution. According to him, such an interpretation would make the mandate of Article 141 illusory and the High Court, therefore, committed serious error in not examining the effect of Article 141 of the Constitution in its true perspective. Mr. Prabhakar also relied upon the Constitution Bench decision of this Court in E.S.P. Rajaram and ors. vs. Union of India and Ors., 2001(2) S.C.C. 186, and contended that the very approach adopted by this Court in the aforesaid case to have a uniformity of law in respect of all concern leads to the only conclusion that the High Court was not justified in issuing a mandamus on the ground of finality to the earlier Judgment in favour of the respondents, as that would go against the provisions of Article 141 of the Constitution.

Mr. P.P. Rao, the learned senior counsel, appearing for the respondents on the other hand contended that the judgment of this Court in C.A. Nos. 398 & 1385 of 1972

(State of Andhra Pradesh & Ors. vs. Venkatagiri) proceeded on the basis of a concession of the counsel appearing for said Venkatagiri. Neither the Court examined the different contentions or adjudicated upon the same and as such, it cannot be held to be a law declared within the ambit of Article 141 of the Constitution. According to Mr. Rao, the so called observation of this Court in Venkatgiri's case in its judgment dated 6th February, 1986, in the appeals preferred by the State of Andhra Pradesh are per incurium inasmuch as the judgment of the High Court in Writ Petition No. 496 of 1965 was not under appeal before this Court and the Court did not advert to the reasons given by the High Court. Further the Bench of this Court did not consider the relevant provisions of the Act wherein the expression 'final determination' had been used by the legislature in contrast to the word 'determination' used in Section 39(1). Even the Bench did not consider the earlier decision of this Court in S.R.Y. Sivaram Prasad Bahadur .vs. Commissioner of Income Tax 1971 (3) SCC 726 wherein it was held that the interim payment is different from the compensation payable. Mr. Rao contends that the expression 'determination' and 'final determination' connotes two distinct meaning and cannot be one and the same. According to Mr. Rao when the two expression of different import are used in a statute they convey different meaning applicable to different situations. With reference to the judgment of this Court in M/s. Shenoy and Co. vs. Commercial Tax Officer, Circle II, Bangalore 1985 (2) SCC 512, on which decision the learned counsel for the State heavily relied upon, Mr. Rao contends that the aforesaid decision requires re-consideration inasmuch as it has not taken into account the binding precedents on the principle of res judicata in the realm of public law. According to Mr. Rao, the decision of this Court in the case of Authorised Officer (Land Reforms) vs. MM Krishnamurthy Chetty 1998 (9) SCC 138 represents the correct position and the order of the Court which may not be strictly legal if has become final, the same not being challenged before a superior Court, it would have the binding effect as between the parties. In this view of the matter the mandamus issued in favour of the respondents in Writ Petition Nos. 3293 and 3294 of 1975 directing the State to make interim payments cannot be disobeyed or nullified merely because the judgment of the High Court in Venkatgiri's case was reversed by the Supreme Court, and more particularly, because the reversal of the judgment in the Supreme Court was on the basis of the concession of the counsel appearing for Venkatgiri. According to Mr. Rao, the rights accrued to the respondents in terms of the earlier judgment are not affected by the order and judgment of the Supreme Court dated 6.2.1986 in Venkatgiri's case and as such, the Division Bench of the High Court was fully justified in issuing the impugned order and direction.

In view of the rival submissions following questions arise for our consideration:

(a) Can the decision of this Court dated 6th February, 1986, upholding the constitutional validity of the Amendment Act of 1971 reversing the judgment of Andhra Pradesh High Court in C.A. Nos. 398 and 1385 of 1972 (State of Andhra Pradesh vs. Venkatagiri and batch), and further indicating that the period during which interim payments are payable under the Act ends with the date of the original determination made by the Director under

Section 39(1) of the Act, be held to be a law declared by the Supreme Court under Article 141 of the Constitution, or it can be said to be per incurium, as contended by Mr. Rao, learned counsel appearing for the respondents?

(b) The judgment of the Andhra Pradesh High Court in favour of the respondents passed in Writ Petition Nos. 3293 and 3294 of 1975 not being challenged by way of appeal to the Supreme Court even though it merely followed the earlier decision of the High Court in Venkatgiri's case, whether has conferred an indefeasible right on the respondents notwithstanding the reversal of the judgment of the High Court in Venkatgiri's case by the Supreme Court?

(c) Whether the High Court would be justified in issuing a mandamus in the changed circumstances, namely, Supreme Court reversing the judgment of the High Court in Venkatgiri's case inasmuch as for issuance of a mandamus one of the condition precedent, which is required to be established is that the right subsisted on the date of the petition?

(d) Whether the judgment of this Court in Shenoy's case 1985 (2) Supreme Court Cases 512 requires any re-consideration?

So far as the first question is concerned, Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has 'declared law' it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An 'obiter dictum' as distinguished from a ratio decidendi is an observation by Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a bind effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme

Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (see AIR 1970 SC 1002 and AIR 1973 SC 794). When Supreme Court decides a principle it would be the duty of the High Court or a subordinate Court to follow the decision of the Supreme Court. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. (See 1984(2) SCC 402 and 1984 (2) SCC 324). We have to answer the first question bearing in mind the aforesaid guiding principles. We may refer to some of the decisions cited by Mr. Rao in elaborating his arguments contending that the judgment of this Court dated 6th February, 1986 cannot be held to be a law declared by the Court within the ambit of Article 141 of the Constitution. Mr. Rao relied upon the judgment of this Court in the case of Pandit M.S.M. Sharma vs. Shri Sri Krishna Sinha and Others 1959 Suppl.(1) Supreme Court Reports 806, wherein the power and privilege of the State Legislature and the fundamental right of freedom of speech and expression including the freedom of the press was the subject matter of consideration. In the aforesaid judgment it has been observed by the Court that the decision in Gunupati Keshavram Reddy vs. Nafisul Hasan - AIR 1954 SC 636, relied upon by the counsel for the petitioner which entirely proceeded on a concession of the counsel cannot be regarded as a considered opinion on the subject. There is no dispute with the aforesaid proposition of law. The next decision relied upon by Mr. Rao is the case of Supdt. & Legal Remembrancer, State of West Bengal vs. Corporation of Calcutta - 1967 (2) Supreme Court Reports 170. The observation of Subba Rao, J. in the aforesaid case, in relation to the decision of the Privy Council in the case of Province of Bombay vs. Municipal Corporation of the City of Bombay (73 Indian Appeals 271) which had been pressed into service by the learned Advocate General of State of West Bengal, has been pressed into service by Mr. Rao. After quoting a passage from the judgment of the Privy Council this Court held "the decision made on concession made by the parties even though the principle consisted was accepted by the Privy Council without discussion cannot be given the same value as one given upon a careful consideration of the pros and cons of the question raised. The aforesaid observation indicates the care and caution taken by the Court in the matter and therefore, merely because the pros and cons of the question raised had not been discussed the judgment of this Court cannot be held to be not a law declared, as contended by Mr. Rao.

The next decision relied upon by Mr. Rao is the case of Krishena Kumar and Anr. Etc. etc. vs. Union of India and ors. 1990 (3) Supreme Court Reports 352. In the aforesaid case the Constitution Bench was considering the ratio decidendi in Nakara's case 1983 (2) SCR 165, when the question before the Court was whether the States' obligation is the same towards the Pension retirees as well as the Provident Fund retirees and ultimately the Court came to the conclusion that the Pension Scheme and Provident Fund Scheme are

structurally different and, as such, the observation of the Court in Nakara may be a moral obligation of the State but cannot be construed a ratio decidendi for being enforceable and applicable in all cases. It is in this context, it was observed in Krishena Kumar that the enunciation of the reason or principle upon which a question before a Court has been decided is alone binding as a precedent, and the ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract the specific peculiarities of the particular case which gives rise to the decision. Having examined Nakara's case it was stated in Krishena Kumar that it was never required to be decided that all the retirees formed a class and no further classification was permissible. At the same time it was never held in Nakaras' case that both the Pension retirees and Provident Fund retirees formed a homogeneous class and that any further classification among them could be violative of Article 14. We fail to understand as to how the aforesaid observations made in Krishena Kumar can have any application to the case in hand where directly the issue was whether the Amendment Act is constitutionally valid or not and the Andhra Pradesh High Court was of the opinion that the said Act is ultra virus and had struck down the amendment and against that decision State had come up in appeal. When this Court ultimately held the Amendment Act to be constitutionally valid which was the subject matter directly in issue, it is difficult for us to hold that it was not law declared.

The next case relied upon is the case of State of U.P. and another vs. Synthetics and Chemicals Ltd. and another (1991) 4 Supreme Court Cases, 139,. Hon'ble Justice Sahai in his concurring judgment held that a decision which is not expressed and is not founded on reasons, nor it proceeded on consideration of issue, cannot be deemed to be a law declared to have binding effect as is contemplated by Article 141. The learned Judge further observed that any declaration or conclusion arrived at without application of mind or proceeded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. We are afraid, that the aforesaid observations cannot be held to be applicable to the case in hand when before the Court the constitutionality of the Act was directly under consideration and, notwithstanding the concession of the counsel appearing for the party, the Court independently on examining the amendments in question held the same to be constitutionally valid, and further it went on to hold the period for which interim payment would be payable.

A recent decision of this Court in ArnitDas vs. State of Bihar 2000 (5) Supreme Court Cases, 488, was also pressed into service by Mr. Rao. In the aforesaid case this Court had observed that a decision not expressed and accompanied by reasons and not proceeded on a conscious consideration of issue cannot be deemed to be a law declared to have a binding effect as contemplated under Article 141 of the Constitution. Applying the test to the case in hand is it possible for us to hold that the question of constitutionality of the Amendment Act of 1970 was not an issue before this

Court in Civil Appeal No. 398 of 1972 or that the conclusion of the Court was not of a conscious consideration and the answer would be in the negative. In our considered opinion, therefore, the aforesaid decision is of no assistance to support Mr. Rao's contention.

Mr. Rao then placed reliance on yet another decision of this Court in the case of A-One Granites vs. State of U.P. and Others (2001) 2 Supreme Court Cases 537, to which one of us (Pattanaik, J.) was a party. In that particular case the applicability of Rule 72 of the U.P. Minor Minerals (Concession) Rules, 1963 was one of the bone of the contention before this Court, and when the earlier decision of the Court in Prem Nath Sharma vs. State of U.P. (1997) 4 Supreme Court Cases 552, was pressed into service, it was found out that in Prem Nath Sharma's case the applicability of Rule 72 had never been canvassed and the only question that had been canvassed was the violation of the said Rules. It is in this context, it was held by this Court in Granite's case "as the question regarding applicability of Rule 72 of the Rules having not been even referred to, much less considered by Supreme Court in the earlier appeals, it cannot be said that the point is concluded by the same and no longer res integra". This dictum will have no application to the case in hand on the question whether the judgment of this Court in Civil Appeal No. 398 of 1972 can be held to be a law declared under Article 141.

Yet another decision of this Court relied upon by Mr. Rao is Kulwant Kaur and others vs. Gurdial Singh Mann (dead) by Lrs. (2001) 4 Supreme Court Cases 262. In that case what was observed by this Court is that when the Court proceeds on the basis of a concession then the decision cannot have a binding precedent in as much as it cannot be held to be a law declared under Article 141. As we have already stated, the question therefore requires an answer is whether the judgment of this Court in Civil Appeal No. 398 of 1972 is based only upon a concession of the counsel for the parties or is a conclusion of the Court on an independent application of mind as the constitutionality of the Amendment Act of 1971 which was the only issue in the appeal.

Mr. Rao relied upon the judgment of this Court in Lakshmi Shanker Srivastava vs. State (Delhi Administration) (1979) 1 Supreme Court Cases 229, which was an appeal against conviction under Section 5(2) of the Prevention of Corruption Act, 1947 read with Section 161. In that particular case the attention of the Court had been drawn to an earlier decision in the case of R.J. Singh Ahluwalia vs. State of Delhi (1970) 3 Supreme Court Cases 451, on the question of validity of sanction, and the Court observed that the judgment proceeds on concession and not on any analysis or examination of the relevant provisions, and as such will be of no help. In our considered opinion, the aforesaid decision is of no assistance to the point in issue. Mr. Rao also relied upon the observations of this Court in Raval & Co. vs. K.C. Ramachandran & Ors. - (1974) 2 Supreme Court Reports 629. In this case, on behalf of the appellant reliance had been upon

two earlier decisions (1963 (3) SCR 312, and 1967(1) SCR 475). Both the cases were dealing with the eviction. The Court, however, observed that the general observations in those two decisions upon which reliance was placed to contend that they apply to cases for fixation of rent also will not apply. It was held that the general observations therein should be confined to the facts of those cases and any general observation cannot apply in interpreting provisions of the Act unless the Court had applied its mind to analyse its decision to that particular Act. While there is no dispute with the aforesaid proposition, but in our view the same will be of no assistance in deciding the question for consideration inasmuch as the decision as to the constitutionality of the Amendment Act of 1971 is neither a general observation nor can it be held to be an observation without application of mind. The only other case which may be noticed in this connection, is the case of Municipal Corporation of Delhi vs. Gurnam Kaur (1989) 1 Supreme Court Cases 101. In the aforesaid case the Court examined the provisions of Article 141, elaborated the meaning of the expression 'obiter dicta, per incuriam and sub silentio decisions and ultimately held that the orders made with the consent of the parties and with the reservation that the same should not be treated as precedent, cannot have a binding effect as law declared. We are unable to persuade ourselves with the contention of Mr. Rao that a judgment of this Court in Civil Appeal No. 398 of 1972 is merely a judgment on concession and not a decision on merits. Consequently, this decision also will be of no application.

Bearing in mind the host of decisions cited by Mr. Rao and on examining the judgment of this Court dated 6.2.1986 in Civil Appeal No. 398 of 1972 we have no doubt in our mind that the conclusion of the Court that the amendments are constitutionally valid and the view expressed by the Andhra Pradesh High Court is erroneous is a conscious decision of the Court itself on application of mind to the provisions of the Act. It is no doubt true that the counsel for the respondent Venkatgiri had indicated that the respondent will have no objection to the judgments and orders of the High Court under appeal, being set aside. But that by itself would not tantamount to hold that the judgment is a judgment on concession. Even after recording the stand of the counsel appearing for Venkatgiri when the Court observed "we are also of the view that the two amendments referred to above, are constitutionally valid", the same is unequivocal determination of the constitutional validity of the Amended Act, it cannot be dubbed as a conclusion on concession, nor can it be held to be a conclusion without application of mind, particularly when the very constitutionality of the Amendment Act was the core question before the Court. It is also apparent from the further direction when the Court holds 'we further make it clear that the period during which interim payments are payable under the above said Act ends with the date of the original determination by the Director under Section 39(1) thereof'. This conclusion is possible only after application of mind to the provisions of Section 39 as well as other provisions and the Amendment that was brought into the statute book. In the aforesaid premises,

our answer to the first question is that the decision of this Court dated 6.2.1986 must be held to be a 'law declared' within the ambit of Article 141 of the Constitution and the constitutional validity of the Amendment Act 1971 is not open to be re-agitated and that the judgment of Andhra Pradesh High Court holding the Amendment Act to be constitutionally invalid had been set aside by this Court.

So far as the second question is concerned, it is no doubt true that the Judgment of the Andhra Pradesh High Court in favour of the respondents, not having been challenged, has reached finality. The High Court in the aforesaid two cases, following the reasoning and conclusion of the earlier decision in Venkatagiri's case in Writ Petition No. 4709/70 dated 22.9.71 issued a writ of mandamus to make payments to the petitioners in accordance with law laid down in Writ Petition No. 4709 of 1970 dated 22.9.71. Notwithstanding the aforesaid direction in favour of the respondents in writ petition Nos. 3293 and 3294 of 1975, interim payments not having been made, the respondents approached the High Court again, by filing a fresh writ petition, which was registered as writ petition No. 730 of 1978. The High Court disposed of the matter on 28.3.78, directing the State to implement the earlier order dated 7.6.77 within a month from the date of the said order. Yet, no interim payments had been made and in the meantime, Supreme Court reversed the Judgment of the Andhra Pradesh High Court in Venkatagiri's case in C.A. Nos. 398 and 1385 of 1972 by Judgment dated 6.2.1986. While reversing the Judgment of the Andhra Pradesh High Court in Venkatagiri's case, independent of the concession made by the counsel for the said Venkatagiri, the Court also held that the amended provision is constitutionally valid and further directed that interim payments would be payable only till the date of the original determination made by the Director under Section 39(1) of the Act and on the deposit of the amount by the State, so determined. The original mandamus in favour of the respondents having been based upon the sole ground of the decision of the Andhra Pradesh High Court in Venkatagiri's case and that decision of Venkatagiri, having been reversed by the Supreme Court, the question of right of the respondents emanating from the Judgment in their favour, requires to be decided. Mr. P.P.Rao, in this connection argued with vehemence that the mandamus in favour of the respondents, could not have been ipso facto nullified on account of reversal of the decision of the High Court in Venkatagiri's case and, therefore, the same would be enforceable even now, and in fact the Division Bench of the High Court has allowed such relief. Mr. Rao relies upon the decision of this Court in the case of Satyadhyan Ghosal and Ors. vs. Smt. Deorajin Debi and another, 1960(3) S.C.R. 590, wherein, the Court was considering the principle of res judicata. The Court in that case came to the conclusion that the principle of res judicata applies as between the past litigation and future litigation and when a matter, whether on a question of fact or on a question of law has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, neither party will be allowed in a future

suit or proceeding between the same parties to canvass the matter again. It was further held that the principle of res judicata applies as between two stages in the same litigation. Mr. Rao also relied upon the decision of this Court in the case of State of West Bengal vs. Hemant Kumar Bhattacharjee and Ors., 1963 Supp (2) S.C.R. 542, where under the question for consideration was whether the earlier decision of the high Court regarding the unconstitutionality of Section 4(1) of the West Bengal Criminal Law Amendment Act, would be binding between the parties and the correctness could not be collaterally or incidentally challenged? The Court held that it would not be permissible for the State Government to challenge the correctness of the earlier Judgment either collaterally or incidentally, no appeal having been taken from the earlier decision. Mr. Rao further relied upon the decision of this Court in the case of B.N. Nagarajan and Ors. vs. State of Mysore and Ors, 1966(3) S.C.R. 682, whereunder while allowing the appeals filed by the State as well as private persons and setting aside the Judgment of the High Court, the Court also observed that those who have not prosecuted their appeals, they would also have the benefit of the Judgment and this the Supreme Court could do in exercise of its power under Article 142 of the Constitution. We really fail to understand as to how the aforesaid decision is of any application. According to Mr. Rao, since in Venkatagiri's case there has been no such observation notwithstanding the reversing the Judgment of the High Court, those of the persons against whom, the State did not come up in appeal, their rights are concluded by the earlier judgment of the High Court and that must be allowed to operate. It is however difficult for us to accept this contention in the facts of the present case, particularly in the context of the issuance of mandamus by the Court. Mr. Rao also strongly relied upon the Judgment of this Court in the case of Authorised Officer (Land Reforms) vs. M.M. Krishnamurthy Chetty, 1998(9) SCC 138. In this case, this Court held that the order of the High Court, directing the Authorised Officer to examine the dispute in the light of the Judgment of the High Court in the case of Naganatha Ayyar vs. Authorised Officer, became final although the very Judgment on which the grievance had to be examined itself was reversed later by the Supreme Court and, therefore, the orders which may not be strictly legal, having become final and binding between the parties, if they are not challenged before the superior courts, the same has to be followed. The aforesaid Judgment of a two Judge Bench of this Court, undoubtedly supports Mr. Rao's contention but it had not taken into consideration a three Judge Bench decision in M/s Shenoy and Co. vs. Commercial Tax Officer, Circle II, Bangalore and Ors., 1985(2) SCC 512, wherein under identical circumstances, this Court had held that when large number of writ petitions were filed challenging the Act and all those writ petitions were grouped together, heard together, and were disposed of by the High Court by a common Judgment and the dispute in the cause between the State and each of the petitioner had no personal or individual element in it, and on the other hand, challenge was to the constitutional validity of 1979 Act, when the Supreme Court held that the Act is constitutionally valid, it

would be difficult to contend that the law laid down in the Judgment would bind only Hansa Corporation, who has approached the Supreme Court and not the other petitioners against whom the State of Karnataka had not filed any appeal. According to the aforesaid Judgment to do so, would be to ignore the binding nature of a Judgment of this Court under Article 141 of the Constitution. The Court further held that if the law which was declared invalid by the High Court is held constitutionally valid, effective and binding by the Supreme Court, then the mandamus forbearing the authorities from enforcing its provisions would become ineffective and the authorities cannot be compelled to perform a negative duty. The declaration of the law is binding on everyone and it would, therefore be futile to contend that the mandamus would still survive in favour of those parties against whom appeals were not filed. In our considered opinion, the ratio in the aforesaid case fully applies to the case in hand, particularly, when the Court is examining the question whether while issuing a mandamus, the earlier Judgment notwithstanding having been held to be invalid, can still be held to be operative. Mr. Rao also relied upon the Judgment of this Court in Ram Bai vs. Commissioner of Income Tax, 1999(3) S.C.C. 30, which was a case arising from an assessment made under the Income-tax Act. Having examined the aforesaid decision at length, we do not find anything stated therein which will be of any assistance to the respondents in the present case. Mr. Rao, no doubt submitted with force that in Shenoy's case, the Court never focussed its attention as to the finality of the earlier Judgment and the principle of res judicata and accordingly, the said decision require a consideration by a larger Bench. But we are not persuaded to accept this submission inasmuch as when the Court is examining the question of any right having emanated from a Judgment of the High Court and the said Judgment squarely having emanated, on following an earlier Judgment of the said Court, without any further reasoning advanced and no question of facts involved but purely a question of constitutionality of an Act, the moment the earlier Judgment of the High Court is reversed by the Supreme Court, that becomes the law of the land, binding on all parties. In other words, the Judgment of the Andhra Pradesh High Court in Venkatagiri's case, holding the amendment Act to be constitutionally invalid, on being reversed by the Supreme Court on a conclusion that the said amendment is constitutionally valid, the said dictum would be valid throughout the country and for all persons, including the respondents, even though the Judgment in their favour had not been assailed. It would in fact lead to an anomalous situation, if in the case of the respondents, the earlier conclusion that the amendment act is constitutionally invalid is allowed to operate notwithstanding the reversal of that conclusion in Venkatagiri's case and only in Venkatagiri's case or where the parties have never approached the Court to hold that the same is constitutionally valid. This being the position, notwithstanding the enunciation of the principle of res judicata and its applicability to the litigation between the parties at different stages, it is difficult for us to sustain the argument of Mr. Rao that an indefeasible right has accrued to the respondents on

the basis of the Judgment in their favour which had not been challenged and that right could be enforced by issuance of a fresh mandamus. On the other hand, to have the uniformity of the law and to have universal application of the law laid down by this Court in Venkatagiri's case, it would be reasonable to hold that the so-called direction in favour of the respondents became futile inasmuch as the direction was on the basis that the amendment Act is constitutionally invalid, the moment the Supreme Court holds the Act to be constitutionally valid. We are, therefore, of the considered opinion that no indefeasible right on the respondents could be said to have accrued on account of the earlier Judgment in their favour notwithstanding the reversal of the Judgment of the High court in Venkatagiri's case.

Coming to the third question, which is more important from the point of consideration of High Court's power for issuance of mandamus, it appears that the constitution empowers the High Court to issue writs, directions or orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the rights conferred by Part III and for any other purpose under Article 226 of the Constitution of India. It is, therefore essentially, a power upon the High Court for issuance of high prerogative writs for enforcement of fundamental rights as well as non-fundamental or ordinary legal rights, which may come within the expression 'for any other purpose'. The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, it must be exercised along recognised lines and subject to certain self-imposed limitations. The expression 'for any other purpose' in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Court must exercise the same with certain restraints and within some parameters. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior Courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition. {Kalyan Singh vs. State of U.P., AIR 1962 SC

1183}. The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law. When the aforesaid principle are applied to the case in hand, the so-called right of the respondents, depending upon the conclusion that the amendment Act is constitutionally invalid and, therefore, the right to get interim payment will continue till the final decision of the Board of Revenue cannot be sustained when the Supreme Court itself has upheld the constitutional validity of the amendment Act in Venkatagiri's case on 4th of February, 1986 in Civil Appeal No. 398 & 1385 of 1972 and further declared in the said appeal that interim payments are payable till determination is made by the Director under Section 39(1). The High Court in exercise of power of issuance of mandamus could not have said anything contrary to that on the ground that the earlier judgment in favour of the respondents became final, not being challenged. The impugned mandamus issued by the Division Bench of the Andhra Pradesh High Court in the teeth of the declaration made by the Supreme Court as to the constitutionality of the amendment Act would be an exercise of power and jurisdiction when the respondents did not have the subsisting legally enforceable right under the very Act itself. In the aforesaid circumstances, we have no hesitation to come to the conclusion that the High Court committed serious error in issuing the mandamus in question for enforcement of the so-called right which never subsisted on the date, the Court issued the mandamus in view of the decision of this Court in Venkatagiri's case. In our view, therefore, the said conclusion of the High Court must be held to be erroneous.

Coming to the last question, Mr. Rao vehemently urged that the Shenoy's case requires reconsideration inasmuch it had not taken into account the various principles including the principle of res judicata. But on examining the Judgment of this Court, more particularly, the conclusion in relation to the provisions of Article 141 of the Constitution, and applying the same to the facts and circumstances to the present case, we do not think that a case has been made out for referring the Shenoy's case to a larger Bench for reconsideration. On the other hand, we respectfully agree with the conclusion arrived at by the three Judge Bench of this Court in Shenoy's case. In Shenoy the Court was considering the applicability of Article 141 of the Constitution and its effect on cases, against which no appeals had been filed. A law of the land would govern everybody, and the non-consideration of the principle of res judicata will not be a ground to reconsider the said judgment.

In the aforesaid premises, the judgment of the Division Bench of Andhra Pradesh High Court is set aside and this appeal is allowed.

.....J.
(G.B. PATTANAİK)

J.
(S.N. PHUKAN)

J.
(S.N. VARIAVA)

March 20, 2002.

JUDIS