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SUPREME COURT ON SUBORDINATE LEGISLATION AS LAW

A. Introduction

On 18th January 2022, the Supreme Court, in *G.T.Girish*¹ case ruled that subordinate legislations in the form of statutory rules will be considered law under Section 23 of the Indian Contract Act, 1872 (the “Act”).

B. Facts

1. In 1979, Bangalore Development Authority (“BDA”) allotted a site under a lease-cum-sale agreement to G.T. Girish, the first Defendant (“Girish”). In 1982, Girish entered into an agreement to sell this property to the plaintiff Y. Subba Raju, (“Raju”) shortly after receiving documents from BDA.
2. Girish did not give effect to this transaction relying on the lease-cum-sale agreement and the City of Bangalore Improvement (Allotment of Sites) Rules, 1972² (“1972 Rules”) which barred a allottee from alienating an allotted property for ten years.
3. Consequently, Raju sued for specific performance. The trial court did not decree the suit for specific performance but ordered Girish to repay Raju the sum received.
4. Subsequently, Raju appealed to the Karnataka High Court (“HC”). It ruled that the suit is maintainable and ordered the Girish to transfer the property to the Raju.
5. Aggrieved by this order, the Girish approached the Supreme Court (“SC”) on the ground that the contract is unenforceable when it is expressly or impliedly prohibited by a statute.
6. The issue in consideration is whether rules issued by authorities who derive their power from the legislature constitutes law.

C. Observations and Judgment

1. SC relied on the *Jambu Rao*³ (1968) case where it had observed that a contract which is prohibited by a statute, either expressly or impliedly, will be unenforceable, irrespective of the parties’ intentions.
2. It also relied on the *L.S.N Murthy*⁴ (2011) case in order to understand the position on rules made by authorities to whom the legislature delegated power. It expressed dissenting opinion in relation to the judgment passed on this case and held that rules made by authorities which derive its power

¹ *G.T. Girish vs. Y. Subba Raju (D) by L.Rs and Ors.* (18.01.2022 - SC): MANU/SC/0058/2022.

² Issued under the Bangalore Improvement Act, 1945.

³ *Jambu Rao Satappa Kocheeri vs. Neminath Appayya Hanammannaver* (10.04.1968 - SC): MANU/SC/0178/1968.

⁴ *Union of India (UOI) vs. L.S.N. Murthy and Ors.* (23.11.2011 - SC): MANU/SC/1377/2011.

from the legislature constitute 'law', though certain exceptions such as letters from the Government of India which do not constitute a law may exist.

3. Further relying on *Gherulal Parakh*⁵ (1959) judgment, the SC emphasized that all objects or considerations which are illegal in nature are covered not only by laws made by the legislature but also laws passed by authorities which derive their power from the legislature.
4. Therefore, it held that the HC had erred in allowing the appeal and that the contract between the parties is barred by the 1972 Rules. Hence, contract becomes void under Section 23 of the Act.

D. Conclusion

This judgment and its precedents will make the position clear that before a party enters into commercial contracts, it must make a careful legal assessment as to whether there exists any legal bar – by way of an Act or subordinate legislation made under it. This will avoid risk of the contract becoming void and resulting in financial losses.

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⁵*Gherulal Parakh vs. Mahadeodas Maiya and Ors.* (26.03.1959 - SC): MANU/SC/0024/1959.