

Facts and Background:

In this case, a petition under Article 32 of the Indian Constitution was filed to challenge the constitutional validity of the West Bengal Housing Industry Regulation Act, 2017. The West Bengal government was ordered by the Supreme Court in July 2019 to respond to a petition filed by homebuyers questioning the constitutional validity of the West Bengal Housing & Industrial Regulation Act 2017. The Forum for People's Collective Efforts (FPCE), an umbrella homebuyer's organization, filed the petition. To be more specific, West Bengal was the only Indian state that refused to recognize RERA.

West Bengal had also enacted WBHIRA (West Bengal's Housing Industry Regulation Act), which created a similar regime to the RERA enacted by Parliament. The Petitioners challenged this state enactment because both laws dealt with subjects that fell under Entries 6 (property transfer), 7 (contractual matters), and 46 (matters concerning the jurisdiction of courts other than the Supreme Court) of the Concurrent List in the Constitution of India and that while both the Central and State governments may make laws on such subjects, the enactment was challenged on the basis that the State would have to yield to the Central Law if there is any conflict between them.

Judgement:

The Supreme Court held that since both WBHIRA and RERA deal with the same entry in the concurrent list and a substantial number of clauses in WBHIRA overlap with RERA, the State of West Bengal encroached on Parliament's domain in enacting WBHIRA.

Furthermore, since WB-HIRA does not supplement RERA by enacting provisions that can be regarded as in addition to or fortifying the rights, responsibilities, and remedies created by the Central enactment, the State has only enacted a parallel structure and regime entailed by RERA.

Furthermore, it was noted that once parliament has passed a law on a specific issue, the State legislature is not free to pass a similar law and raise it in the same manner. The Court went on to expand on the tests of repugnancy in order to determine if the State statute was repugnant to the law passed by the legislature. The Court determined that the overlap of both enactments was so important that the test of repugnancy based on subject matter identification was defined by testing the repugnancy.

Conclusion:

For the reasons mentioned above, it was determined that WB-HIRA was in violation of the RERA and thus unconstitutional. It was also decided that, as a result of this Court's declaration of the provisions of WB-HIRA to be unconstitutional, the provisions of the WB 1993 Act would be impliedly repealed upon the passage of the RERA, and thus there would be no revival of the WB 1993 Act. As a result, the writ petition was granted in the above words.

Also, the Supreme Court held that that the striking down of WB-HIRA would not have an effect on any registrations, fines, or permits previously issued under the legislation before the date of this judgement. Homebuyers who bought properties under state law before the ruling will not be affected because their identification and other documents will be valid.