Supreme Court judgment on J&K

Why in news?

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The Supreme Court has held that Jammu and Kashmir has “no vestige” of sovereignty outside the Indian Constitution and its own, while the citizens of the state are “first and foremost” citizens of India.

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What was the case about?

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- SARFAESI is an enactment which entitles banks to enforce their security interest outside the court process to take possession of secured assets of the borrower and sell them outside the court process.
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- The apex court judgement came on the appeal by State Bank of India (SBI) against the high court verdict which had held that the SARFAESI Act would collide with the Transfer of Property Act of Jammu & Kashmir, 1920.
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- The apex court observed that the conclusion arrived at by Jammu and Kashmir High Court which had held that the state has “absolute sovereign power” to legislate laws touching the rights of its permanent residents regarding their immovable properties is “wholly incorrect”.
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- The bench set aside the verdict of Jammu and Kashmir High Court that had held that any law made by Parliament, which affects the laws made by state legislature, cannot be extended to Jammu and Kashmir.
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What was SC’s rationale?

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- The bench observed that the State of Jammu & Kashmir has no vestige of

sovereignty outside the Constitution of India and its own Constitution, which is subordinate to the Constitution of India.
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- “It is therefore wholly incorrect to describe it as being sovereign in the sense of its residents constituting a separate and distinct class in themselves. The residents of Jammu & Kashmir, we need to remind the High Court, are first and foremost citizens of India,” it said.
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- The apex court said this while holding that provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) are within the legislative competence of Parliament and can be enforced in Jammu and Kashmir.
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- “Entries 45 and 95 of List I provides Parliament with exclusive power to make laws with respect to banking… the Act as a whole would necessarily operate in the state,” the bench said, adding that the SARFAESI Act had itself made a special provision for sale of properties in J&K.
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- The bench, however, made it clear that any provision of the J&K Transfer of Property Act will have to give way to the central law in case the former is found repugnant.
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- “The High Court judgment begins from the wrong end and therefore reaches the wrong conclusion. It states that in terms of Section 5 of the Constitution of Jammu & Kashmir, the State has absolute sovereign power to legislate in respect of laws touching the rights of its permanent residents qua their immovable properties,” the apex court said.
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- It further said, “We may also add that permanent residents of Jammu & Kashmir are citizens of India, and there is no dual citizenship as is contemplated by some other federal Constitutions in other parts of the world”.
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- It also added that its judgement had no effect on **Article 35A**, which confers on permanent residents of J&K special rights and privileges regarding acquisition of immovable property in the state.
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What is Article 35A?

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The Constitution (Application to Jammu and Kashmir) Order, 1954 was issued

saying, that in exercise of the powers conferred by clause (1) of Article 370 of the Constitution, the President, with the concurrence of the Government of the State of Jammu and Kashmir, is pleased to order … (j) After article 35, the following new article shall be added, namely 35A.

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35 A - Saving of laws with respect to permanent residents and their rights.— Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law hereafter enacted by the Legislature of the State: (a) defining the classes of persons who are, or shall be, permanent residents of the State of Jammu and Kashmir; or (b) conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions as respects—

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(i) employment under the State Government;

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(ii) acquisition of immovable property in the State;

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(iii) settlement in the State; or

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(iv) right to scholarships and such other forms of aid as the State Government may provide, shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this Part.

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