

Banshidhar and ors. Vs. State

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Court : Rajasthan

Decided On : Oct-21-1976

Reported in : AIR1977Raj46

Judge : V.P. Tyagi, Actg. C.J.,; A.P. Sen,; K.D. Sharma,; D.P. Gupta and; M.

Acts : Rajasthan Imposition of Ceiling on Agricultural Holding Act, 1973 - Sections 15, 15(2) and 40; Rajasthan Tenancy Act, 1955 - Sections 30E, 30E(1) and 30E(2); Rajasthan General Clauses Act, 1955 - Sections 6

Appeal No. : Special Appeal Nos. 8, 14, 18, 20 to 29, 31 to 37, 40, 46, 47, 52, 351 and 364 of 1976

Appellant : Banshidhar and ors.

Respondent : State

Advocate for Def. : L.M. Singhvi and; S.K. Tewari, Advs.; M.B.L. Bhargava

Advocate for Pet/Ap. : H.M. Parekh,; C.K. Garg,; S.M. Mehta,;

Disposition : Appeal dismissed

Judgement :

V.P. Tyagi, Actg. C.J.

1. These 27 special appeals arise out of the judgment of the learned single Judge D/-22-12-1975 whereby the learned Judge has held that the proceedings commenced under Chapter III-B of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as the 'old Law') for the determination of the ceiling and the surplus area of the land-holder shall even after the Rajasthan' Imposition of Ceiling on Agricultural Holdings Act, 1973 (Act No. 11 of 1973) (hereinafter called the 'new Law') came into force, be governed by the old Law and the new Law shall have no effect on such proceedings. Having felt aggrieved by this finding the landholders have preferred these appeals.

2. In order to resolve the controversies raised in these appeals it will be relevant to give a short history of various laws enacted by the legislature from time to time for the fixation of ceiling on agricultural holdings. For the first time, the law was made in the State of Rajasthan by enacting the Rajasthan Tenancy (Amendment) Act, 1960. (Act No. 4 of 1960) which introduced in the Rajasthan Tenancy Act, 1955. Chapter III-B. This amending Act got the assent of the President on March 12, 1960. This chapter came into force on December 15, 1963, vide Notification No. F.6(12) Rev. B/60, dated 26th November, 1963, published by the Government in the Rajasthan Gazette, Extraordinary, part IV (A) of December 1, 1963. Thus the law relating to ceiling on holdings was incorporated in the Rajasthan Tenancy Act, 1955. The Government while exercising its power under Section 257 of the Rajasthan Tenancy Act framed rules known as the Rajasthan Tenancy (Fixation of Ceiling of Land) Government Rules, 1963. The Government by issuing a Notification No. F. 6 (120) Rev, B/60 (ii) fixed 1-4-1965 as a notified date. This Amending Act of 1960 was however challenged in this Court and the petitioners obtained interim orders directing the Government to stay the implementation of the ceiling law. Looking to the number of the petitions filed before this Court, the Government thought it proper not to implement the ceiling law till the clouds cast by the petitioners by preferring writ petitions and obtaining the stay orders had melted away. The writ petitions were dismissed by this Court and thereafter a new notified date was fixed as 1-4-1966 vide Notification No. F. 6 (9) Rev. B/64 dated the February 11, 1966. The law fixed 30 standard acres of land as the ceiling area. Directions were issued vide the said notification that declaration in accordance with Rule 9 of the then Ceiling Rules should be filed within six months from the

notified date. These directions of the Government were, however, not carried out by the large number of the land-holders and therefore, a fresh notification was issued on 7-6-1968 by the State Government directing all the Collectors for acquiring land from the land-holders who had land in their possession in excess of 90 standard acres. Meanwhile certain amendments were brought in Chapter III-B of the Rajasthan Tenancy Act. The effect of the amendments so brought by the legislature was that it maintained the ceiling area to the extent of 30 standard acres but recognised certain transfers effected after 1958 which could not be recognised under the unamended law. The law was again amended in 1970 and Section 30 (j) was deleted with effect from 18-8-1970. The Parliament in order to avoid litigation between the State and the land-holders placed the Rajasthan Tenancy Act, 1955 in the 9th Schedule of the Constitution but that Act of the Parliament was challenged before the Supreme Court. That Act was, however, held to be valid by the Supreme Court. It is averred by the State that under Chapter III-B of the Rajasthan Tenancy Act, 1955, 33,471 cases were decided in accordance with the provisions of that chapter upto 31-12-1972 prior to the commencement of the new Law i.e., the Rajasthan Imposition of Ceilings on Agricultural Holdings Act, 1973. After the new Law came into force as many as 8494 cases were initiated under Chapter III-B of the Rajasthan Tenancy Act, and they were also decided during the period commencing from 1-1-1973 to 30-6-1976. An area measuring 2,95,812 acres was declared as a surplus area upto 31-12-1972. The possession of the surplus land except the land covered by 166 cases, according to the affidavit of the officer-in-charge, was taken possession of by the State Government and distributed among the landless tenants.

3. On 1-1-1973 the Governor issued an Ordinance called the Rajasthan Imposition of Ceiling on Agricultural Holdings Ordinance, 1973 (Rajasthan Ordinance No. 1 of 1973), By this Ordinance the old Law relating to ceiling contained in Chapter III-B of the Rajasthan Tenancy Act, 1955 was repealed except so far as it related to the second proviso to Sub-section (1) of Section 4 and in Sub-section (2) of Section 15 of the Ordinance. This Ordinance prescribed entirely a new scale of ceiling area. It was published on January 1, 1973, in the Rajasthan Gazette, Extraordinary, Part IV (Kha) dated January 1, 1973.

4. On February 23, 1973, a bill was introduced in the Rajasthan Legislative Assembly to replace the said Ordinance. This bill was published in the Rajasthan Gazette Extraordinary on February 23, 1973. In this Ordinance certain transfers made by the land-holders even after the date mentioned under the old law, were recognised as valid transfers and given effect to for computing the ceiling area. It altogether changed the scheme for computing the ceiling area and instead of 30 standard acres prescribed as a ceiling area under the old Law it adopted a new scheme for determining the limits of the ceiling area. The State legislature replaced the Ordinance by enacting the Rajasthan Imposition of Ceiling on Agricultural Holdings Act (Act No. 11 of 1973) and it was published in the Rajasthan Gazette Extraordinary on March 29, 1973. This Act was given effect from 1-1-1973. The repealing Section 40 of this Act repealed the old Law as well as the Ordinance. In Sub-section (3) of Section 40 the Legislature made it clear that notwithstanding the repeal of the said Ordinance under Sub-section (2) anything done or any action taken or any rules made under the said Ordinance shall be deemed to have been done, taken or made under this Act and Section 27 of the Rajasthan General Clauses Act, 1955 (Rajasthan Act 8 of 1955) shall apply to such repeal and reenactment. By way of abundant precaution under the heading 'declaration' Section 41 was introduced in the Act whereby it was declared by the legislature that the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973, is for giving effect to the policy of the State towards securing the principles specified in Clauses (b) and (c) of Article 39 of the Constitution of India.

5. The cases of the appellants for the fixation of ceiling and declaring the surplus land were however pending before the S. D. O. concerned when the new Law came into force. In some of the cases after the new Law was promulgated various officers issued notices to the appellants under the provisions of the new Law and the Rules made thereunder, but later on these notices were withdrawn and the authorities proceeded to determine the ceiling area of the appellants under the old Law presumably under the directions issued by the Board of Revenue that old ceiling cases initiated under the old Law shall be determined in accordance with the provisions of Chapter III-B of the Rajasthan Tenancy Act, 1955 even though that chapter stood repealed by virtue of Section 40 of the new Act. The appellants having felt aggrieved by the action by the S. D. Os. who for the purpose of the new

Law were appointed as authorised officers, preferred writ petitions in this Court challenging the actions of the S. D. Os. inter alia on the ground that the S. D. Os. had no jurisdiction to proceed with the cases of the petitioners under the provisions of the old Law and prayed that notices issued by the S. D. Os. being without jurisdiction be quashed and the respondents be ordered not to proceed against the petitioners for the determination of their ceiling area under the provisions of Chapter III-B of the Rajasthan Tenancy Act, 1955. The prayer relating to the declaration of Chapter III-B as ultra vires the provisions of Articles 14, 19 and 31 of the Constitution had, however, not been pressed before Us because of the emergency as Articles 14 and 19 stand suspended. It is in this background that these appeals have come up before Us for disposal. These appeals were heard by a Division Bench but looking to the importance of the questions raised herein they were referred for disposal to this special Bench of five Judges.

6. Mr. Hastimal with his usual ability and clarity argued the appeal on behalf of the appellant in Civil Special Appeal No. 8 of 1976 with great force and the counsel appearing on behalf of the appellants adopted the argument of Mr. Hasti Mal except in the case of Mr. C. K. Garg who addressed the Court on a very limited question which shall be dealt with when we take up that question for consideration. Mr. M. B. L. Bhargava wanted to intervene and he was permitted to address the Court. He supported the claims of the appellants. Learned Advocate-General assisted by Dr. S. K. Tewari, has very ably supported the stand taken by the State. It will be convenient to mention the questions broadly raised by learned counsel for the parties for our decision and they are as follows:--

(1) Mr. Hastimal has at the very outset urged that in view of Section 40 of the new Law Chapter III-B stands totally repealed with effect from 1-1-1973 and therefore with the coming into force of 1973 Act the provisions of Chapter III-B stand completely obliterated from the statute book and therefore, the provisions of the old Law cannot be made available for determining the ceiling of the surplus area of the appellants. In reply, it is contended by learned Advocate-General that the rights and the liabilities accrued and incurred under Section 30-E of the old Law are saved by the operation of Section 6 of the Rajasthan General Clauses Act

and, therefore, to that extent rights and liabilities accrued or arisen under the old Law are to be preserved and, the provisions of Chapter III-B of the Rajasthan Tenancy Act will govern, the cases of the appellants.

(2) Mr. Hastinnal next argued that the intention of the legislature is clearly manifested by Sections 3, 9, 15 (2) and 19 of the new Law to show that no other law except the one contained in the new Act shall govern the proceedings relating to the computation of ceiling area of the land-holders in Rajasthan and, therefore, in view of the provisions contained in the aforesaid sections the application of the old Act to the cases initiated before the new Act came into force, is totally ruled out. The learned Advocate-General on the other hand urged that the correct reading of Sections 3, 6, 9, 15 (2) and 19 of the new Act will reveal that the legislature never intended to apply the new Law to the old cases where the rights and liabilities have accrued or incurred under Sections 30-E (1) and (2) of the old Act.

7. We propose to deal with these arguments one by one.

8. It will be relevant to reproduce Section 40 of the new Act around which the entire argument of the appellants revolves viz. that Chapter III-B of the Rajasthan Tenancy Act having been repealed by the new Act, shall stand completely obliterated from the statute book and it shall be taken as if it had never existed in the Rajasthan Tenancy Act. Section 40 reads as under :--

'40. Repeal and savings -- (1) Except as provided in second proviso to Sub-section (1) of Section 4 and in Sub-section (2) of Section 15 of this Act, the provisions of Clause (6-A) of Section 5 and Chapter III-B of the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955) are hereby repealed except in the Rajasthan Canal Project area wherein such provisions shall stand repealed on the date on which this Act comes into force in that area.

(2) The Rajasthan Imposition of Ceiling on Agricultural Holdings Ordinance, 1973 (Rajasthan Ordinance 1 of 1973) is hereby repealed.

(3) Notwithstanding the repeal of the said Ordinance under Sub-section (2), anything done or any action taken or any rules made under the said Ordinance shall be deemed to have been done, taken or made under this Act and Section 27 of the Rajasthan General Clauses Act, 1955 (Rajasthan Act 8 of 1955) shall apply to such repeal and reenactment.'

9. A cursory look on the provisions of this repealing section shows that except as provided in second proviso to Sub-section (1) of Section 4 and Sub-section (2) of Section 15 all the provisions of Chapter III-B of the Tenancy Act, 1955, which governed the determination of the ceiling area under the old Law, stand repealed.

10. Upto the year 1936 the general trend of the courts in India was that Section 6 of the General Clauses Act would apply only to those cases where a previous law has been simply repealed but there was no fresh legislation to take its place. In the words of Sulaiman, C. J., in (Firm Danmal Parshotaro Dass v. (Firm) Babu Ram Chhote Lal, AIR 1936 All 3),--

'Where an old law has been merely repealed then the repeal would not affect any previous right acquired nor would it even affect a suit instituted subsequently in respect of a right previously so acquired. But where there is a new Law which not only repeals the old Law. but is substituted in place of the old Act, Section 6 (e) of the Act is not applicable.'

11. Placing reliance on these observations in the Allahabad case (AIR 1936 All 3) Mr. Hastimal strenuously urged before us that in the present case the old Law was not only repealed by the new Act but it has been replaced by a fresh enactment and, therefore, when the Act itself does not save the rights accrued or liabilities incurred under the old Law, no resort can be taken to the provisions of the old Law to determine the case instituted under the old Law.

12. Mr. Hastimal in this connection placed reliance on the Supreme Court authorities in State of Punjab v. Mohar Singh, AIR 1955 SC 84, Indira Sohanlal v. Custodian of Evacuee Property, Delhi, AIR 1956 SC 77, The Brihan Maharashtra Sugar Syndicate Ltd. v. Janardan Ramchandra, AIR 1960 SC 794, State of Orissa v. M. A. Tulloch and Co., AIR 1964 SC 1284, Kalawati Devi Harlalka v. Commr. of

Income-tax, West Bengal, AIR 1962 SC 162, Qudrathulla v. Municipal Board Bareilly, (1974) 1 SCC 202 = (AIR 1974 SC 396). He also cited a Bombay decision in Union of India v. Dr. Maqood Ahmed, AIR 1963 Bom 110.

13. Mr. Advocate-General on the other hand submitted that there is lot of difference between the right created under a statute and the right acquired, and similarly a liability created and the liability incurred. Under the provisions of the old Act if the liability has been incurred by the appellants and a corresponding right has accrued to the State by virtue of the statutory provisions, namely, the provisions of Section 30-E (1) and (2) of the old Law then Section 6 of the General Clauses Act is attracted and it saves that right even though there has been a repeal of the old Act and followed by a re-enactment. In this connection reliance was placed by the learned Advocate-General on various English authorities reported in *Free Lanka Insurance Co., Ltd. v. Ranasinghe*, (1964) 1 All ER 457, *R. v. Fisher*, (1969) 1 All ER 100, *James Gardner v. Edward A. Lucas*, (1878) 3 AC 582, *In re Athlumney; Ex. parte Wilson*, (1898) 2 QB 547, *Abbott v. Minister for Lands*, 1895 AC 425 and *Director of Public Works v. Ho Po Sang*, (1961) 2 All ER 721. Besides these English authorities learned Advocate-General quoted various observations from the Supreme Court cases reported in *Moti Rani v. Suraj Bhan*, AIR 1960 SC 655, *Keshavan v. State of Bombay*, AIR 1951 SC 128, *K. M. S. Lakshmanier and Sons v. Commr. of Income-tax and Excess Profits Tax, Madras*, AIR 1953 SC 145 and *Income-tax Officer. Alleppey v. M. C. Poonoose*, AIR 1970 SC 385 and also tried to explain the authorities of the Supreme Court cited in his favour by Mr. Hasti Mal. According to the learned Advocate-General the authorities of the Supreme Court relied upon by Mr. Hastimal do not support his case but strengthen the plea advanced by the State.

14. Before dealing with these authorities as cited by learned counsel for the parties, it will be relevant to look into the provisions of the old Act under which the State Government claims that certain rights accrued to the State Government and a corresponding liability was incurred by the appellants. In view of Section 30-E (2) of the old Act it is argued that the provisions of clauses(c) and (e) of Sub-section (1) of Section 6 of the Rajasthan General Clauses Act which provide that if any law is repealed then unless a different intention appears, the repeal shall not affect any

privilege, obligation or liability acquired, accrued or incurred under any enactment on repealed or affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, fine, penalty, forfeiture or punishment as aforesaid are attracted. The provisions of Section 30-E (1) and (2) have been relied upon by the State Government to show that after the old Law was enacted by the legislature and Section 30-E in Chapter III-B of the Rajasthan Tenancy Act, was introduced therein an obligation was cast on the land-holder not to hold or retain in his possession in any capacity and under any tenure whatsoever land in excess of the ceiling area applicable to him. Sub-section (2) of Section 30-E provides that every person, who, on such date (in this case the date is 1-4-1966) is in possession of land in excess of the ceiling area applicable to him or who thereafter comes into possession of any land by acquisition under Clause (b) of Sub-section (1), shall, within six months of such date or within three months of the acquisition, as the case may be, make a report of such possession or acquisition to, and shall surrender such excess land to the State Government and place it at the disposal of the Tehsildar within the local limits of whose jurisdiction such land is situate. This provision according to the learned Advocate-General positively creates a vested right in the State to take away the land held by the land-holder in excess of his ceiling area and casts a positive obligation on the land-holder not to hold or retain in his possession in any capacity and under any tenure whatsoever in excess of the ceiling area applicable to him. According to Dr. Singhvi these two Sub-sections of Section 30-E of the old Act create a complete right in favour of the State and a liability is incurred by the land-holder to part with the excess land in this connection reference has been made to certain entries to be made by the landholder while making declarations under Rule 9 of the 1963 Rules. On the basis of those entries, it is vehemently urged by Dr. Singhvi that the land-holder while making declaration under Rule 9 knew it full well that he was in possession of lands which were in excess of the ceiling area prescribed by the law and, therefore, a liability was incurred by him not to retain land and he was under a statutory obligation to part with it as soon as time prescribed in Sub-section (2) of Section 30-E expires. Dr. Singhvi also urged that the right accrued in Sub-sections (1) and (2) of Section 30-E are not inchoate rights and, therefore, the application of Section 6 (c) and (e) cannot be avoided.

15. The stress has been laid by Mr. Hastimal on the scheme of Section 30-E which, in his opinion, is not capable of any other interpretation except that Sub-section (5) when read with Sub-sections (3) and (4) clearly manifests the intention that the land held in excess shall vest in the State Government only when such land has been either surrendered by the land-holder under Sub-section (2) of Section 30-E or the land-holder after he was declared a trespasser under Sub-section (4) was ejected therefrom. It is only in these circumstances that the surplus land so determined under the old Law shall vest in the State Government, and therefore, State Government cannot claim any vested right in such surplus land unless it came to the State. According to Mr. Hastimal any rights claimed by the State under Section 30-E (2) are only inchoate rights which are not saved by Section 6 (c) and (e) of the Rajasthan General Clauses Act.

16. It will be relevant to reproduce here the Section 30-E of the old Law:--

'30-E -- Maximum land that can be held and restriction on future acquisitions -

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, no person shall, as from a date notified by the State Government in this behalf,--

(a) continue to hold or retain in his possession in any capacity and under any tenure whatsoever land in excess of the ceiling area applicable to him, or

(b) acquire, by purchase, gift, mortgage, assignment, lease, surrender or otherwise or by devolution or bequest, any land so as to effect an increase in the extent of his holding over the ceiling area applicable to him;

Provided that different dates may be so notified for different areas of the State

(2) Every person, who, on such date, is in possession of land in excess of the ceiling area applicable to him or who thereafter comes into possession of any land by acquisition under Clause (b) of Sub-section (1) shall, within six months of such date or within three months of acquisition, as the case may be, make a report of such possession or acquisition to and shall surrender such excess land to the State Government and place it at the disposal of, the Tehsildar within the local

limits of whose jurisdiction such land is situate.

Provided that if any person holding or acquiring land in excess of the ceiling area applicable to him holds land in more than one Tehsil he shall have the option to choose which of the lands held by him in different Tehsils should be surrendered so as to leave with him the land upto the ceiling area applicable to him;

Provided further that the option afforded by the foregoing provisos shall be subject to the limitation that, where the person surrendering excess land under this sub-section holds lands, of which some are encumbered and some are not encumbered, the un-encumbered lands, shall so far as may be, be surrendered in preference to encumbered lands.

(3) Any person failing intentionally to make a report or to surrender land as required by Sub-section (2) shall, on conviction, be punishable with fine which may extend to one thousand rupees.

(4) Without prejudice and in addition to such conviction and fine the person retaining possession of any land in excess of the ceiling area applicable to him shall be deemed to be a trespasser liable to ejectment from such excess land and to pay penalty in accordance with Clause (a) of Sub-section (1) of Section 183:

Provided that the lands, from which a person shall be so ejected shall, as far as may be, be un-encumbered lands.

(5) All lands coming to the State Government by surrender under Sub-section (2) or by ejectment under Sub-section (4) shall vest in it free from all encumbrances.

(6) Nothing contained in this section shall operate as against the transferor to the extent his transfers are recognised under Section 30-DD.'

17. A close scrutiny of the provisions of Section 30-E will show that after the date notified by the State Government a land-holder can neither continue to hold or retain possession in any capacity and under any tenure the land in excess of the ceiling area applicable to him. This provision of law undoubtedly creates a liability on the land-holder to part with a land which in the eye of law is surplus in his

hands. Sub-section (2) also casts an unqualified obligation on the land-holder to part with the excess land within the period of six months and if he has acquired the land after the Act came into force then to surrender that land within three months from the date of the acquisition and to place it at the disposal of the Tahsildar. The penal consequences have been provided under Sub-section (3). Any person failing intentionally to make report or surrender the land as required by Sub-section (2) shall on conviction be punishable with fine which may extend to Rs. 1000/-. Sub-section (4) lays down that without prejudice and in addition to such conviction as mentioned in Sub-section (3) if any person was found to retain possession of any land in excess of ceiling area then he will be deemed to be a trespasser and liable to ejectment from such excess land. It may be mentioned here that though under the definition of a trespasser as given in the Rajasthan Tenancy Act, the land-holder till the land is vested in the government under Sub-section (5) of Section 30-E may not come within the mischief of the term 'trespasser' yet the legislature by a fiction of law as contained in Sub-section (4) provided that he will be deemed to be a trespasser and he will be liable to ejectment treating him as a trespasser in his own land which has not till then vested in the State Government. Sub-section (5) deals with the vesting of the surplus area in the government and it says that all the lands coming to the State Government by surrender under Sub-section (2) or by ejectment under Sub-section (4) shall vest in it free from all encumbrances. The vesting clause no doubt makes it clear that till the land is factually surrendered or the land-holder has been actually ejected from such excess land treating him to be a trespasser under Sub-section (4) the land of the land-holder shall not vest in the government but Sub-section (5) in our opinion is not very relevant to determine the rights of the State accrued under Sub-section (1) of Section 30-E and the obligation cast on the land-holder to part with his surplus land under Sub-section (2) of the said section,

18. In the light of these provisions of law we have now to examine whether the rights under Clause (a) of Sub-section (1) of Section 30-E claimed to have been created in favour of the State really accrued to the State and the obligation cast under Sub-section (2) of Section 30-E has really incurred by the land-holder.

19. A vested right as distinguished from the contingent right has positive connotation and it is to be seen whether its enjoyment is presently conferred, or is postponed to some future date. In other words an interest is vested when there is an immediate right of present enjoyment or a present right of future enjoyment. In *Sashi Kantha v. Promode Chandra*, AIR 1932 Cal 600 the learned Judges of the Calcutta High Court in this connection observed as follows:--

'An estate or interest is contingent if the right of enjoyment is made to depend upon some event or condition which may or may not happen or be performed, or if in the case of a gift to take effect in future, it cannot be ascertained in the meantime whether there will be any one to take the gift; in other words, an estate or interest is contingent when the right of enjoyment is to accrue, on an event which is dubious or uncertain. And as regards certainty, the law does not regard as uncertain the event of a person attaining a given age or of the death of somebody beyond which his enjoyment is postponed, because if he lives long enough the event is sure to happen.'

20. This authority lays down that if the interest does not depend upon some event or condition which may or may not happen or be performed then the interest or right is called the vested right meaning thereby that when there is an immediate right of present enjoyment or a present right of future enjoyment, then, such a right shall be deemed to have accrued to the person who claims that right. If this doctrine of 'present right of future enjoyment' is applied to the case of the appellants then it becomes clear that in the case under the Ceiling Act the State Government acquires right in the surplus land from the date the Chapter III-B was introduced in the Rajasthan Tenancy Act, 1955 but the enjoyment thereof was to be postponed to some future date when all other statutory formalities necessary for the determination of the Ceiling Area by the competent authority are over.

21. This very principle as laid down by the Calcutta High Court, has been accepted by the learned Judges of the Madras High Court in *Sree Chand Sowcar v. Kasi Chetty*, AIR 1933 Mad 885.

22. In *Venugopala Reddiar v. Krishnaswami Reddiar*, AIR 1943 FC 24 a suit was instituted in 1932 in British India with respect to properties situate in British India

and also in Burma. After Burma was separated from India by the Constitution Act of 1937, a question was raised before the learned Judges of the Federal Court whether suit relating to the properties situated in Burma could be continued in British India even though Burma was separated from India. The learned Judges held that a right to continue a duly instituted suit is in the nature of a vested right and it cannot be taken away except by a clear indication of intention to that effect. In the absence of such a clear indication in the Constitution Act, a British Indian Court continues to have jurisdiction to proceed with trial of a suit already pending before it even with respect to properties situated in Burma. In this case the right to continue a suit duly instituted has been recognised by the court as a vested right.

23. In *Rajes Kanta Roy v. Sm. Shanti Debi*, AIR 1957 SC 255 a question came before the Supreme Court whether the interest of the sons who acquired certain rights in the properties left by their father under a registered trust deed were contingent or vested. Learned Judges decided this question by saying that if the discharge of the debts under the trust was an uncertain event in the sense that neither the factum nor the time of such discharge was such that could be predicated with any certainty, and since the interest which A and B took was to be only after such a discharge, their respective interests therein were contingent. While considering other factors which by no means were uncertain, their Lordships said that the certain events which are bound to take place cannot involve an element of contingency,

24. On the basis of these observations of the learned Judges of the Supreme Court, the Advocate-General asserted that there was nothing uncertain in this matter while determining the surplus area in the hands of the land-holder as every relevant factor had already taken place and, therefore, the rights of the State under Clause (a) of Sub-section (1) are accrued rights and the duties to be discharged under Sub-section (2) of Section 30-E are nothing but a liability incurred by the land-holder. In another Supreme Court authority in *Garikapati Veerayya v. Subbiah Chaudhary*, AIR 1957 SC 540 the question raised before the Supreme Court was whether the right of appeal is a vested right or not and their Lordships held that when the suit was instituted if the right of appeal resided in the parties thereto at the date of institution then subsequent change in the law

shall not have the effect of divesting the parties of such a vested right.

25. Dr. Singhvi went to the extent in making his submission that if the right created in favour of the State by the statute under Section 30-E (1) (a) without a right which really vested in the State even then such a right cannot be taken away by a subsequent legislation and on the basis of such inchoate right the State could claim protection under Section 6 (c) and (e) of the General Clauses Act. We regret we cannot accept this wide contention of learned Advocate-General. This question whether Section 6 of the General Clauses Act protects the inchoate right or not under the repealed law, has been elaborately discussed by the Punjab High Court in *Amar Singh Uttam Singh v. R. L. Aggarwal*, AIR 1960 Punj 312. Justice Tek Chand has dealt with this question very elaborately and has observed:

'The next argument which may be examined relates to the effect of an unqualified repeal of a statute. It is a well settled rule of interpretation, that an unqualified repeal of a statute, conferring civil rights or powers, operates to deprive the citizen of all such rights or powers which at the time of the repeal, are inchoate, incomplete or unperfected or which have not accrued or become vested. Of course, rights which have become vested, are not extinguished in the absence of express words to that effect and construction of a statute is always avoided, where the result would be to impair contracts or vested rights, and for this purpose, a repealing statute would not be given a retrospective operation.

If the right acquired under a repealed Act has not developed into a *jus in rem* and has not yet fully matured and is merely continuing as a *jus ad rem* not having progressed beyond an inchoative state, it cannot survive the repealed Act, and must fall with it, unless expressly saved. The distinction between a *jus in rem* a right in a thing which implies an absolute dominion, and a *jus ad rem* a right to a thing which signifies an imperfect right, assumes considerable importance in relation to survival, when the statute under which such a right has been created is unconditionally repealed.'

26. In *E. D. Sasoan and Co. Ltd. v. Commr. of Income-tax, Bombay City*, AIR 1954 SC 470 a question arose in an income-tax matter whether the income which has not been received by the assessee should be assessed and in that connection a

point was raised that at a stage when the income becomes assessable it connotes a character of the income which is more or less inchoate. The learned Judges relying on a Calcutta case reported in *Rogers Pratt Shellac Co, v. Secy. of State*, AIR 1925 Cal 34, observed:--

'It is clear therefore, that income may accrue, to an assessee without the actual receipt of the same. If the assessee acquires a right to receive the income, the income can be said to have accrued to him though it may be received later on its being ascertained. The basic conception is that he must have acquired a right to receive the income. There must be a debt owed to him by somebody. There must be as is otherwise expressed 'debitum in praesenti', 'solvendum in future': see *W. G. Try Ltd. v. Johnson*, (1946) 1 All ER 532 at page 539 and *Webb v. Stenton*, (1883) 11 QBD 518 at pages 522 and 527. Unless and until there is created in favour of the assessee a debt due by somebody it cannot be said that he has acquired a right to receive the income or that income has accrued to him'.

27. In the light of these observations we may now proceed to examine whether provisions of Section 30-E (1) (a) and 30-E(2) created a vested right in the surplus land which may be quantified in accordance with the provisions of the Act at a later date, in favour of the State or whether these provisions created only the rights to the property viz. the jus in rem. It is true that on the date when the declaration was to be filed by the landholder under Rule 9 of the old Rules it could not in all cases be said what exact area of the land shall ultimately be surrendered as a surplus land by the landholder to the State but it hardly makes any difference and has little relevance to determine the question whether the rights created in favour of the State under Section 30-E of the old Law were rights 'accrued' or vested right. The procedure to finally determine the quantum of the surplus area is given in the statute and the rules made thereunder but this procedure hardly affects the rights created in favour of the State. As soon as the exact amount of surplus land is determined by taking resort to the procedure laid down in the old Act or the rules made thereunder that would enable the land-holder to pass on the possession of such surplus land to the State Government but that right of the Government to take such land would relate back to the point of time when the right was actually created by the law in favour of the State. In our opinion the right under Section 30-

E (1) (a) and 30-E (2) vest in the State when the period prescribed under Sub-section (2) of Section 30-E to surrender the surplus land is over because it is a statutory obligation for the land-holder to surrender the surplus land to the State. If the land-holder like an honest citizen acts in the manner prescribed by the law then there is no difficulty for him to find out the surplus land in his hand and to surrender the same to the Tehsildar. However if it is not done by the land-holder then the competent authority has a power under the statute to determine the excess land possessed by the land-holder after the declaration made by him under Rule 9 of the old Rules. The theory of 'relating back' would undoubtedly be attracted when the question of the right of the State in the surplus land is to be determined.

28. Our views are fortified by the provisions of Sub-section (4) of Section 30-E of the old Act wherein it has been laid down that a person retaining possession of any land in excess of ceiling area applicable to him, shall be deemed to be a trespasser liable to ejectment from such excess land. In the scheme of this section, Sub-section (4) makes the landholder by virtue of a legal fiction a trespasser in respect of the excess land even though such a land had not vested in the State under the provisions of Sub-section (5) of the said section. If a person is by virtue of the deeming clause to be declared a trespasser then he will assume that character of being a trespasser not from the date when such a declaration has been made but he will be treated as a trespasser right from the date when that person unauthorisedly retained the possession of the land in excess of ceiling area after a declaration under Rule 9 of the old Law was made by him. It is not necessary that on the day of the filing of the declaration the computation of the excess land is factually completed. It is true that till the land-holder surrenders or is ejected from the surplus land it does not vest in the State (see Sub-section (5) of Section 30-E) and till then according to Mr. Hastimal the land-holder remains the Khatedar of such land even though it may be found in excess of the ceiling area. But this assertion of Mr. Hastimal is hardly of any avail to the land-holder when by virtue of a legal fiction introduced by the legislature in Sub-section (4) of Section 30-E of the old Act he can be declared a trespasser in his own land and that he would be a trespasser in respect of such surplus land since the date when he should have surrendered the same to the State after making a declaration under

Rule 9 of the Rules. In this view of the matter we are of opinion that the obligation not to retain land in excess of the ceiling area arises from the time prescribed under Sub-section (2) of Section 30-E of the old Act and from that date the rights of the State are perfected and cannot therefore be called inchoate right. the landholder also incurs a liability to part with the land and to surrender it to the Tehsildar under the provisions of the law on the expiry of the period mentioned in Sub-section (2) of Section 30-E. Such rights of the State which have accrued to it and the liability of the land-holder incurred under the statute shall be governed by the provisions of Clauses (c) and (e) of Section 6 of the General Clauses Act.

29. The matter may also be viewed from another angle. The pending proceedings partake the nature of an investigation into a claim. The State was not trying to take any advantage under the old Law. That advantage had accrued to the State by the legislation i.e., by Section 30-E (1). That section was nothing but a mandate that no land-holder shall, as from the notified date, continue to hold or retain in his possession in any capa and under any tenure whatsoever land in excess of the ceiling area applicable to him, or acquire, by purchase, gift, mortgage, assignment, lease, surrender or otherwise or by devolution or bequest, any land so as to effect an increase in the extent of his holding over the ceiling area applicable to him. There was a liability imposed under Section 30-E (2) on the land-holders to surrender their surplus lands within six months of the notified date or three months of the acquisition. The State acquired a corresponding right to enforce that liability. The landholders filed in their returns in Form IV claiming that they were entitled to retain lands in excess of the ceiling area on the ground that the lands fell within any of the exempted classes under Section 30-J, or that the transfers effected by them should be taken into account because they were permitted transfers under Section 30-DD. At the time of repeal, the pending cases necessarily involved an investigation into these claims. The repeal of the old Law does not affect such investigation under Section 6 (e) of the Rajasthan General Clauses Act, and the investigation into the claims made by the land-holders had still to be adjudicated upon. For without such investigation and adjudication, there could be no quantification of the ceiling area of the land-holders in these pending cases. Lord Morris in delivering the judgment of their Lordships in *Director of Public Works v. Ho Po Sang*, (1961) 2 All ER 721, observed:--

'It may be, therefore, that, under some repealed enactment, a right has been given but that, in respect of it, some investigation or legal proceeding is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should or should not be given. On a repeal, the former is preserved by the Interpretation Act. The latter is not.'

30. Their Lordships of the Privy Council had a similar problem in *Free Lanka Insurance Co., Ltd. v Ranasinghe*, (1964) 1 All ER 457 where the Ceylon Motor Car Ordinance of 1938 was repealed and replaced by the Ceylon Motor Traffic Act, 1951. The Act of 1951 contained no transitional provision designed to preserve rights or claims originating under the Ordinance of 1938, but by the Ceylon Interpretation Ordinance of 1900, Section 6 (3) (b) which is analogous to Section 6 (c) of the Rajasthan General Clauses Act, the repeal was not to affect any right acquired under the repealed law. Lord Evershed in delivering the judgment of their Lordships observed that the claimant had 'acquired a right' in respect of a third party insurance, which was something more than a mere hope or expectation. He further observed that he had in truth as against the insurer a 'right' within the contemplation of Section 6 (3) (b) of the Interpretation Ordinance, although that right might fairly be called inchoate or contingent. The Privy Council quoted with approval the observations of Lord Morris in *Director of Public Works v. Ho Po Sang*, (1961) 2 All ER 721. Their Lordships stated that if, under some repealed enactment, a right has been given but that, in respect to it, some investigation or legal proceeding is necessary then the right is unaffected and preserved. It will be preserved even if a process of quantification is necessary. That is precisely the case here,

31. Mr. Garg appearing on behalf of some of the appellants urged that the old Law was factually repealed by the Ordinance of 1973 and not by the new Law. According to him when the new Law (Act No. 11 of 1973) got the assent of the President the old Law was not actually holding the field and, therefore, Section 40 which no doubt speaks about the repeal of the old Law does not repeal the old Law but factually the old Law shall be deemed to have been repealed by the

Ordinance and not by the Act of 1973. Therefore, according to Mr. Garg resort to provision of Section 6 of General Clauses Act cannot be taken by the State to keep the rights, if any, under the old Law intact. This argument was further developed by Mr. Bhargava who was allowed to intervene.

32. While giving the history of the legislation on the ceiling law we have mentioned the dates on which the different statutes came into force. It is true that the Ordinance (Ordinance 1 of 1973) came into force on 1-1-1973 and it had the effect of repealing the old Law (Chapter III-B in the Rajasthan Tenancy Act, 1955), but thereafter when the new Law (Act No. 11/1973) was enacted by the legislature, it purposely made it effective retrospectively so as to come into force from 1-1-1973. It is by fiction of law that it shall be deemed that on 1-1-1973 the new Law was on the statute Book and for all intent and purposes it was in force on 1-1-1973. In this view of the matter Section 40 of the new Act has the effect of repealing both the old Law as well as the Ordinance. It is on account of the legal fiction that the legislature enacted the new Law with effect from 1-1-1973 and therefore, it is difficult for us to accept the contention of Mr. Garg and Mr. Bhargava that the old Law was repealed by the Ordinance and not by the new Act. This argument of learned counsel is based on misconception of the position of the new Law. Section 40 (1) makes it abundantly clear that the new Act repealed the old Law except the two provisions which were to hold the field for a limited purposes mentioned in that sub-section. The new Act shall for all purposes be deemed to be in force on 1-1-1973 and the only purpose of the Ordinance left after the new Act was given retrospective effect by the legislature would be that anything done or any action taken or any rule made under such Ordinance, shall be deemed to have been done, taken or made under the new Act. As a matter of abundant precaution the legislature also mentioned that Section 27 of the Rajasthan General Clauses Act, 1955 shall apply to such repeal and re-enactment. In view of this history traced out herein-above of the Ordinance as well as of the new Law it leaves no room for doubt for us to hold that the old Law though repealed by the Ordinance on 1-1-1973 shall be ultimately taken to have been notionally repealed by the new Law, as it was made effective retrospectively with effect from 1-1-1973. In view of the notional repeal of the old Law by the Act of 1973, the application of Section 6 of the General Clauses Act cannot be ruled out.

33. It was next urged by Mr. Hastimal, Mr. Garg and Mr. Bhargava that Sub-section (3) of Section 40 of the Act of 1973, which applies Section 27 of the Rajasthan General Clauses Act to the action taken under the repealed Ordinance, shall be deemed to have been taken under the new Law, makes it clear that the Legislature never intended to apply Section 6 of the General Clauses Act, otherwise it should have provided specifically in the new Law like Section 40 (3) for the application of Section 6 to safeguard the rights and liabilities accrued or incurred under the old Law. In other words it is argued by Mr. Hastimal that the specific mention of the application of Section 27 of the Rajasthan General Clauses Act by implication rules out the proposition that the rights accrued and liability incurred under the old Law were saved by the application of Section 6 of the Rajasthan General Clauses Act. According to him if that had been the intention of the legislature then the legislature would have expressly mentioned the application of Section 6 of the Rajasthan General Clauses Act. The learned Advocate-General while meeting this argument, urged that the application of Section 27 of the Rajasthan General Clauses Act to such repeal and re-enactment itself shows that the legislature was conscious of the fact that it wanted to save only those things which were done or action taken under the Ordinance and not under the old Law. According to Dr. Singhvi it was necessary to save the action taken under the Ordinance because of the peculiar circumstances prevailing in these cases. The Ordinance came into force on 1-1-1973 and repealed the old Law, but the new Law later on was enforced from that very day the Ordinance came into force and replaced the Ordinance from the very day when the Ordinance saw the light of the day and. therefore, it became necessary for the legislature to save certain actions taken under the Ordinance till factually the new Law was enacted. Dr. Singhvi is correct when he argues that if the legislature wanted to save the action taken under the old Law as if it was taken under the new Law then the provision similar to Section 40 (3) would have been incorporated in Ordinance itself when the old Law was repealed by it, but it was not done by the legislature which throws considerable light on the intention of the legislature that it never wanted actions taken under the old Law to be treated as if such actions were taken under the Ordinance. Non-mentioning of the application of Section 6 of the General Clauses Act, therefore, in these circumstances cannot be interpreted to mean that the

legislature wanted to rule out its application to the rights and liabilities created and incurred under the old Law.

34. Mr. Advocate-General vehemently urged that the word 'such' used in Sub-section (3) of Section 40 before the word 'repeal' throws light on the intention of the legislature. According to him the word 'such' applies to the repeal of the Ordinance alone. Sub-section (3) of Section 40 undoubtedly deals with the action taken and things done and rules made under the Ordinance which have been saved by the legislature as things done, action taken and rules made under the new Law. It is by way of abundant precaution that the legislature applied the provisions of Section 27 of the Rajasthan General Clauses Act, 1955 to 'such repeal'. It may be reiterated that while enacting Ordinance No. 1 of 1973, which repealed the old Law, the legislature did not provide that things done and action taken and rules made under the old Law should be deemed to have been done, taken or made under the Ordinance and, therefore, in this light if the words 'such repeal' are properly interpreted, then it leaves no room for doubt to hold that the legislature wanted only to save the things done, action taken and rules made under the Ordinance as if they were taken, done and made under the new Law. It may also be mentioned that the scope of Section 27 of the Rajasthan General Clauses Act is wider than what has been saved by the first portion of Sub-section (3) of Section 40 and, therefore, the legislature in order to clarify the situation beyond doubt, thought it proper to mention in Sub-section (3) of Section 40 of the new Act the application of Section 27 of the Rajasthan General Clauses Act to such repeal or re-enactment so as to save the actions taken, things done and rules made under the Ordinance as if they were taken, done and made under the new Law. In these circumstances it cannot be said that application of Section 27 impliedly ousts the application of Section 6 of the General Clauses Act to the new Law. We regret we cannot accept the proposition of law as canvassed by Mr. Garg, Mr. Hastimal and Mr. Bhargava.

35-38. It is in the light of the aforesaid discussions that we propose to scrutinise the effect of the repeal of the old Law by the new Act.

39. Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act though it has been specifically mentioned in

the repeal Act or not, will follow unless, as the section itself says, a different intention appears. In Mohar Singh's case AIR 1955 SC 84 on which considerable stress has been laid by Mr. Hastimal, the Supreme Court while dealing elaborately with the effect of repeal, has observed:--

'In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject the Court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities, but whether it manifests an intention to destroy them. The Court cannot therefore, subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of this section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new Law and the mere absence of a saving clause is by itself not material. The provisions of Section 6 of the General Clauses Act will apply to a case of repeal even if there is simultaneous enactment unless a contrary intention can be gathered from the new enactment. Of course, the consequences laid down in Section 6 of the Act will apply only when a statute or regulation having the force of a statute is actually repealed. It has no application when a statute, which is of a temporary nature automatically expires by efflux of time.'

40. The principles laid down by the Supreme Court in Mohar Singh's case AIR 1955 SC 84 have been consistently followed in subsequent cases referred to above and relied upon by both the parties. The old doctrine of extinguishing or effacing the repealed law for all purposes and intent except for the acts past and closed has now given way to the principles enunciated by the Supreme Court in Mohar Singh's case. We cannot therefore, subscribe to the broad proposition pressed before us by Mr. Hastimal that Section 6 of the General Clauses Act is ruled out when there is a repeal of the enactment followed by a fresh legislation. In this connection stress has been laid by Mr. Hastimal in support of the above

argument on the law laid down by the Supreme Court in *Bishambhar Nath Kohli v. State of Uttar Pradesh*, AIR 1966 SC 573. In that case Section 58 (3) was introduced in the Administration of Evacuee Property Act, 1950. While dealing with the scope of Section 58 (3) in the background of the provisions of Section 6 of the General Clauses Act, 1897 which is analogous to Section 6 of the Rajasthan Act, their Lordships observed :--

'This provision appears to have been enacted with a view to avoid the possible application of the rule of interpretation that where a statute expires or is repealed, in the absence of a provision to the contrary, it is regarded as having never existed except as to matters and transactions past and closed. This rule was altered by an omnibus provision in the General Clauses Act relating to the effect of repeal of statutes by any Central Act or Regulation. But the rule contained in Section 6 applies only if a different intention does not appear, and by enacting Section 58 (3) the Parliament has expressed a different intention, for whereas the General Clauses Act keeps alive the previous operation of the enactment repealed, and things done and duly suffered, the rights, privileges, obligations or liabilities acquired or incurred, and authorises the investigation, legal proceeding and remedies in respect of rights, privileges, obligations, liabilities, penalties, forfeiture and punishment, as if the repealing Act or Regulation had not been passed. Section 58 (3) directs that things done or actions taken in exercise of the power conferred by the repealed statutes shall be deemed to be done or taken under the repealing Act as if that latter Act were in force on the day on which such thing was done or action was taken. The rule so enunciated makes a clear departure from the rule enunciated in Section 6 of the General Clauses Act.'

41. Further discussing the scope of Section 58 (3) the learned Judges also observed:--

'By the first part of Section 58 (3) which is in terms negative, the previous operation of the repealed statutes survives the repeal. Thereby matters and transactions past and closed remain operative, so does the previous operation of the repealed statutes. The previous law stands repealed, and it has not for the future the partial operation as is prescribed by Section 6 of the General Clauses

Act. All things done and actions taken under the repealed statute are deemed to be done or taken in exercise of the powers conferred by or under the repealing Act, as if that Act were in force on the day on which that thing was done or action was taken. The previous operation of the statute repealed was also affirmed expressly, but things done or actions taken under the repealed statute are to be deemed by fiction to have been done or taken under the repealing Act. The use of the expression 'subject thereto' (underlining is ours) in the commencement of the positive part of Section 58 (3) cannot attribute to the previous operation of the repealed statute an overriding effect so as to deprive the authorities constituted under the repealing Act of their power to entertain appeals or revision applications, which they possess by the express enactment that the acts done or actions taken are deemed to have been done under the statutes.'

42. If we carefully peruse the provisions of Section 58 (3) in the Administration of Evacuee Property Act, 1950, it will be clear that it had the effect of saving the things done or actions taken under the repealed statutes, as if such action is taken and things done under the repealing Act. This was held by the learned Judges on account of the fiction introduced in Section 58 (3) itself. We do not find a parallel provision in the new Act of 1973 which has repealed Chapter III-B of the Rajasthan Tenancy Act, 1955 and, therefore, the observations of their Lordships in Bishambhar Nath's case AIR 1966 SC 573 cannot be availed of to water down the principles of law laid down by their Lordships in Mohar Singh's case AIR 1955 SC 84. In our opinion this ruling hardly helps the contention of the appellants.

43. Having carefully gone through all the authorities cited by the parties as referred to above, we are of opinion that the new Act of 1973 does not have the sweeping effect of destroying all the rights accrued and liabilities incurred under the old Law. The law, as has been clearly laid down by the Supreme Court in Mohar Singh's case AIR 1955 SC 84 and consistently followed in the later judgments, clearly establish that the repeal of an Act followed by re-enactment does not automatically wash away the rights accrued and liabilities incurred under the repealed law unless a contrary intention appears in the repealing law. We have, therefore, to examine whether the new Law expressly or otherwise manifests an intention to wipe out or sweep away those rights and liabilities which had accrued and incurred

under the old Law. It is from this point of view that we will now proceed to look into the second contention of the parties.

44. The next argument of the appellants is that the provisions of the new Act clearly manifest the intention that after the passing of the new Act, it is only the Act of 1973 that will govern the proceedings regarding the fixation of ceiling and the surplus area and no other law will hold the field in that matter. The first point advanced in this direction is that the repealing clause of Section 40 itself indicates that except as provided in second proviso to Sub-section (1) of Section 4 and in Sub-section (2) of Section 15 Of the Act, the provisions of Clause (6-A) of Section 5 and Chapter III-B of the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955) stand repealed. On the strength of this provision of 1973 Act all the learned counsel, who addressed the Court on behalf of the appellants, went on to assert that the provisions of the old Act which have been repealed by the new Act cannot be used for any other matter except for two matters, namely, when the question is to be determined under the second proviso to Section 4 of the new Act or when the old cases were reopened under Section 15 within 3 years from the commencement of the new Act, and if authorities come to the conclusion that the ceiling area, as determined under the old Law, was in contravention of the provisions of the repealed law (old Law) then the case when reopened shall be decided in accordance with the provisions of the old Law.

45. When Section 40 (1) is read with the second proviso to Section 4 (1) and Section 15 (2) of the new Act, no doubt is left in our mind that the legislature was conscious of the fact that such a provision was to safeguard the policy of the new Law that the ceiling area which was prescribed under the old law should firstly be reduced and if the ceiling area determined under the provisions of Section 4 of the new Law exceeds the ceiling area as determined under the provisions of the old Law then the area determined under the old Law shall prevail and to that extent the proceedings taken under the old Law shall not be given a go-bye because such a provision was found necessary to be introduced in the new Law so that the legislature could stick to its policy mentioned in the Statement of Objects and Reasons that the disparity in the holdings of the agricultural land be reduced and the ceiling area be re-fixed in such a manner that most of agricultural lands be

made available for the distribution to landless persons. The legislature by enacting this provision in Section 40 (1) of the new Act never meant to do away with the provisions of the old Law in respect of such rights as were accrued or liabilities incurred under the old Law which were automatically protected after the repeal of the old Law by virtue of Section 6 (c) and (e) of the Rajasthan General Clauses Act. The only purpose for incorporating this provision was to see that if under the scheme of the new Act the land-holder gets a larger ceiling area than what he could have otherwise got if his ceiling area had been determined under the old Law then in that event the legislature wanted to reduce that ceiling area and it is only for this purpose that the first portion of Section 40 (1) was introduced in the enactment. From this provision of the law it is difficult to infer that by introducing this provision in the new Law the legislature intended that old Law cannot be used for any other purpose except the one mentioned in Section 40 (1) of the 1973 Act.

46. As regards the application of the old Law in cases re-opened under Section 15 of the new Act, it is obvious that it is only an enabling section which empowers the authorities under the Act to determine the ceiling area in accordance with the provisions of the old Law. It is but natural that if the ceiling area had once been determined by the authorities under the provisions of the old Law and if for one reason or the other, case is re-opened under Section 15 of the new Act then it is in all fairness that such a determination must be made in accordance with the provisions of the old ceiling Law which were employed while determining the ceiling area. This provision, therefore, does not throw any light on the intention of the legislature and it cannot be said that the legislature by introducing Section 15 (2) in the Act wanted to rule out the application of Section 6 (c) and (e) of the General Clauses Act. We, therefore, do not find any substance in this argument either.

47. On the contrary, there is internal evidence in the Act to show that the pending cases have to be governed by the old Law. Section 15 (2), inserted by Act No. 8 of 1976, supports that construction. It runs thus:

'(2) Without prejudice to any other remedy that may be available to it under the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955), if the State Government,

after calling for the record or otherwise, is satisfied that any final order passed in any matter arising under the provisions repealed by Section 40, is in contravention of such repealed provisions and that such order is prejudicial to the State Government or that on account of the discovery of new and important matter or evidence which has since come to its notice, such order is required to be re-opened, it may, at any time within five years of the commencement of this Act, direct any officer subordinate to it to re-open such decided matter and to decide it afresh in accordance with such repealed provisions.'

48. The opening words of the section 'without prejudice to any other remedy that may be available to it under the Rajasthan Tenancy Act, 1955 (Act No. 3 of 1955)', clearly show that the pending cases have to be governed by the old Law. If transactions past and closed have to be reopened and decided afresh under the provisions of the repealed law, and the ceiling area under Chapter III of the Rajasthan Tenancy Act, 1955, has to be fixed under its repealed provisions, then it must follow as a necessary corollary, that the pending cases must be decided under the old Law.

49. Referring to Sections 3, 6, 9 and 19 it has been vehemently urged that Sections 3, 6 and 9 start with a non obstante clause which clearly throws light on the intention of the legislature that the legislature wanted to give an overriding effect of the provisions of the new Law over all other laws then in force. Section 3 reads as follows: --

'3. Act to override other laws, contracts etc. -- The provisions of this Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force, or any custom, usage or contract or decree or order of a court or other authority.'

50. On the basis Of the language of this section it was vehemently argued that the rights and liabilities created under the old Law, even if saved by the application of the provisions of Section 6 (c) and (e) of the Rajasthan General Clauses Act, cannot be determined in the pending cases in accordance with the provisions of the old law, as the new Law has an overriding effect on all such laws which were 'for the time being in force' and as the old Law was in force 'for the time being' it

cannot be used because of the language of Section 3 of the new Law. It was also urged that Section 3 starts with a non obstante clause viz., 'Notwithstanding anything inconsistent contained in any other law for the time being in force', which makes the intention of the legislature clear beyond doubt that the legislature wanted no other law, except the new Law, to govern the rights and the liabilities of the land-holder vis-a-vis the State. It is further urged that the land-holders had no doubt filed their declarations under Rule 9 of the Rules of 1963, but such declarations cannot escape the overriding effect of Section 3, and, therefore, after the new Law had come into force the ceiling of the landholders shall be determined in accordance only with the provisions of the new Law. In support of this contention reliance has been placed by Mr. Hastimal on *Chief Inspector of Mines v. Karam Chand Thapar*, AIR 1961 SC 838, *South India Corporation (P) Ltd. v. Secy., Board of Revenue*, AIR 1964 SC 207, *A. V. Fernandez v. State of Kerala*, AIR 1957 SC 657, *Kumaon Motor Owners' Union Ltd v. State of Uttar Pradesh*, AIR 1966 SC 785. While referring to the recent Full Bench decision of the Jammu and Kashmir High Court in *Rahim v. Amma Bar*, AIR 1955 J & K 33 (FB) Mr. Hastimal urged that this judgment applies on all fours and it being a judgment of a Full Bench of that Court, it should be looked into with great respect.

51. Dr. Laxmi Mal Singhvi, on the other hand, urged that the expression 'law for the time being in force' does not include within its ambit the law 'deemed to be in force' and, therefore, the non obstante clause of Section 3 will not have an overriding effect on the old Law, which, under the circumstances of this case was not factually in force on the day the new Law came into force, but on account of the fiction of law the old Law shall be deemed to be in force and, therefore, the application of old Law for the determination of the ceiling area cannot be ruled out because of the language of Section 3 of the new Law.

52. In the *Chief Inspector of Mines v. Karam Chand Thapar*, AIR 1961 SC 838, the appellants were held guilty under Sections 73 and 74 of the Mines Act for the contravention of some regulations which were not in force on the date of their contravention. It is true that those regulations were deemed to be in force under the 1952 Act, but their Lordships of the Supreme Court held that this position did not in any way affect the case of the appellant, as the regulations were factually in

force on the alleged date of contravention. While arriving at this conclusion their Lordships clarified the observations made by them in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh*, AIR 1953 SC 394, who was convicted for an offence which was actually not an offence on the date he was convicted. While discussing the doctrine contained in Article 20 of the Constitution, it was observed by the learned Judges,--

'This however would be to import a somewhat technical meaning into the phrase law in force used in Article 20. Law in force referred to therein must be taken to relate not to a law 'deemed to be in force', and thus brought into force, but the law factually in operation at the time of what may be called the then existing law. It cannot therefore, be doubted that the phrase 'law in force' as used in Article 20 must be understood in its natural sense as being the law in fact in existence and in operation at the time of commission of the offence as distinct from the law 'deemed' to have become operative by virtue of power of legislature to pass retrospective laws.'

53. In *A. V. Fernandes v. State of Kerala*, AIR 1957 SC 657 the effect of the non obstante clause was discussed by the learned Judges and it was observed,--

'It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning, and the non obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment.'

53-A. In *South India Corporation (P) Ltd. v. Secy., Board of Revenue*, AIR 1964 SC 207 the scope of the non obstante clause, as used in Article 278 of the Constitution, came up for the consideration of the Supreme Court and their Lordships said :--

'The phrase 'notwithstanding anything in the Constitution' is equivalent to saying that in spite of the other Articles of the Constitution, or that the other articles shall not be an impediment to the operation of Article 278. While Article 372 is subject to Article 278, Article 273 operates in its own sphere in spite of Article 372. The result

is that Article 278 overrides Article 372, that is to say, notwithstanding the fact that a pre-Constitution taxation law continues in force under Article 372, the Union and the State Government can enter into an agreement in terms of Article 278 in respect of Part B States depriving the State law of its efficacy. In one view Article 277 excludes the operation of Article 372, and in the other view, an agreement in terms of Article 278 overrides Article 372. In either view, the result is the same, namely, that at any rate during the period covered by the agreement entered into between the President of India and the Rajpramukh of the State of Travancore-Cochin dated 25-2-1950 the State ceased to have any power to impose the tax in respect of 'works contracts' under the T. C. General Sales Tax Act (1125 M. E.).'

54. In *Kumaon Motor Owners' Union Ltd. v. State of Uttar Pradesh*, AIR 1966 SC 785 the point for consideration was whether in view of the provisions of Section 6 (4) of the Defence of India Act and the rules made thereunder which lays down that during the continuance in force of the Act, the Motor Vehicles Act, 1939, shall have effect subject to certain provisions specified in Clauses (a) to (f) and, therefore, it was urged that the State Government could not take over the route in question and exclude private operators altogether without paying compensation as provided in Chapter IV-A of the Motor Vehicles Act when a scheme for nationalisation was prepared thereunder. Section 68-B of the Motor Vehicles Act, which appeared in Chapter IV-A and the Rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of the Act or in any other law for the time being in force or in any instrument having the effect by virtue of any law. The argument was that this non obstante clause used in Section 68-B of the Motor Vehicles Act overrides the application of Section 6 (4) of the Defence of India Act and the Rules made thereunder. The argument advanced by the State was that Section 43 of the Defence of India Act provided that 'the provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act'. There was definitely certain apparent conflict between Section 43 on the one hand and Section 68-B of the Motor Vehicles Act read with Section 6 (4) of the Defence of India Act on the other hand and that conflict had to be resolved. While considering the arguments

of both the parties their Lordships resolved the conflict by making the following observations:--

'The only way to do it is to decide whether in such situation Section 43 of the Act will prevail or Section 68-B of the Motor Vehicles Act will prevail. We are of opinion that Section 43 of the Act must prevail. In the first place, Section 43 appears in an Act which is later than the Motor Vehicles Act and, therefore, in such a situation unless there is anything repugnant, the provisions in the later Act must prevail. Secondly, if we look at the object behind the two statutes, namely, the Act and the Motor Vehicles Act, there can be no doubt that the Act, which was passed to meet an emergency arising out of the Chinese invasion of India in 1962 must prevail over the provisions contained in Chapter IV-A of the Motor Vehicles Act which were meant to meet a situation arising out of the taking over of Motor Transport by the State. Thirdly, if we compare the language of Section 43 of the Act with Section 68-B of the Motor Vehicles Act we find that the language of Section 43 is more emphatic than the language of Section 68-B. Section 43 provides that the provisions of the Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act. This would show that the intention of the legislature was that the Act shall prevail over other statutes. But we do not find the same emphatic language in Section 68-B which lays down that the provisions in Chapter IV-A would prevail notwithstanding anything inconsistent therewith contained in Chapter IV of the Motor Vehicles Act or in any other law for the time being in force.'

55. In the light of these decisions of the Supreme Court if we look at the collocation of the words in Section 3 viz., 'law for the time being in force' then we see that the intention of the legislature, while enacting Section 3 in the new Act was that only those laws which were factually in force, were to be affected by the overriding effect of these sections of the new Law which contained the non obstante clause. It cannot be denied that at the time when 1973 Act came into force the old Law had been factually repealed by the Ordinance No. 1 of 1973 and it was only the Ordinance that was holding the field. It is true that the new Law was given retrospective effect by the legislature and was made effective from 1-1-1973, a date on which the Ordinance came into force. It is also true, by the fiction of law

Chapter III-B of the Rajasthan Tenancy Act, 1955 was repealed by the new Law as 1973 Act was applied from 1-1-1973, but factually the provisions of Chapter III-B of the Rajasthan Tenancy Act were not in force on the date the Act of 1973 was published in the official Gazette. Therefore, in this background we have to see whether the expression used in Section 3 of the new Act 'law for the time being in force', would cover the provisions of Chapter III-B of the Rajasthan Tenancy Act, which was factually not in force. The learned single Judge has repelled the argument of Mr. Hastimal in respect of the overriding effect of Section 3 of the new Law by saying that the old Law was not in force on the date when Section 3 was enacted by the legislature and, therefore, it was held that that section cannot have an overriding effect on the application of the old Law on the pending cases especially when Chapter III-B of the Rajasthan Tenancy Act, 1955, was not in force. We are in respectful agreement with the view taken by the learned single Judge and we feel that with all the emphasis with which Section 3 was enacted by the legislature, it cannot have its overriding effect on the application of the old Law on pending cases.

56. The Full Bench Authority of Jammu and Kashmir High Court in *Rahim v. Amma Bar*, AIR 1955 J & K 33 (FB), no doubt, appears to support Mr. Kastimal's contention, but on a careful perusal of the entire judgment we find a distinguishing feature in the Kashmir law that was under consideration of that Court and it is that in Section 52 of the Jammu and Kashmir Agrarian Reforms Act (26 of 1972) made specific provisions for pending cases. Section 52 of that Act reads as follows :--

'52. All applications, suit and proceedings pending before any Revenue Officer, Civil or Revenue Court, any authority acting under the J. and K. Consolidation of Holdings Act, 1962, or the Government on the appointed date under any of the Acts mentioned in Sub-section (1) of Section 51 shall abate.'

57. Section 47 of the Jammu and Kashmir Agrarian Reforms Act was no doubt analogous with the provision of Section 3 of the 1973 Act. When the scope of Section 47 was dealt by the learned Judge, who wrote the judgment for the Court, he expressed his opinion that the provisions of Section 47 and the Rules made thereunder shall be primary rule of action, but it cannot be overlooked that the

provisions of Section 52 were heavily weighing in his mind when he considered the questions of pending cases and observed thus:

'Broadly speaking, a pending action will survive if, by or under the new Act, the right be not acquired; and even if not so acquired, it be not lost or destroyed either; and, the remedy too be not barred or changed. It will not survive if, in consequence of the new Act, the right be acquired, lost or destroyed, the remedy be barred or changed.'

58. The subsequent discussion in the judgment reflects the mind of the learned Judge that he was all through conscious of the presence of the provisions of Section 52 of that Act. We have no such provision in our law which can be called analogous to Section 52 of the Jammu and Kashmir Act and, therefore, it is difficult for us to accept the contention of Mr. Hastimal that the decision of the Jammu and Kashmir High Court applies on all fours to the present matter. With all respect to the learned Judge we find it difficult, in the circumstances of these cases, to hold that the pending cases shall be governed by the new Law because of the non obstante clause used by the legislature while enacting Section 3 in the new Act.

59. It was next urged that the provisions of Section 6 also indicate that the pending cases were to be governed by the new Law. The argument is that the transfers made on or after 26th September, 1970 and before 1st January, 1973, except bona fide transfers, shall be deemed to have been made to defeat the provisions of the new Act and shall not be recognised or taken into consideration while determining the ceiling area applicable to a person. On the basis of this provision of the new Law it is contended that bona fide transfers made upto January 1, 1973, were to be recognised by the authorities while determining the ceiling area because Section 6 starts with a non obstante clause which gives an overriding effect over all other laws. Mr. Hastimal also urged that the old Law did not recognise transfers beyond 26th September, 1970, and therefore, no effect would be given to the provisions of Section 6 unless this section overrides the provision of the old Law.

60. While discussing the scope of this argument in respect of Section 3, we have considered at length the meaning that should be given to the expression 'law for the time being in force'. While construing the ambit of Section 6 the same meaning which we have given to the expression 'any law for the time being in force', in Section 3 shall have to be given in this section also. In this view of the matter there can be no escape from the conclusion that the non obstante clause in Section 6 does not in any manner turn the table in favour of the appellants.

61. On the parity of the same reasoning we cannot accept the contention of Mr. Hastimal that Section 9, the opening words whereof give an overriding effect to the provision of any other law, also indicates the intention of the legislature that the new Law would apply to the pending matters.

62. Section 19 is also pressed into service by learned counsel for the appellants to support their contention that it makes the intention of the legislature clear that the new Law will govern the pending cases. We regret that we cannot accept this proposition as this section deals with the payment of compensation to the land-holders whose lands are to be transferred to the State as surplus lands. While enacting the new Law the legislature specified certain rates for determining the compensation to be paid to the land-holders which amount would undoubtedly be different from the one provided under the old Law, but from this difference in the amount of compensation provided under the new Law, and the old Law, it cannot be said that the intention of legislature was that old matters will be decided under the new Law. In our opinion the arguments advanced by learned counsel for the appellants do not in any manner further their cause.

63. It may be observed that Sections 3, 6, 9 and 19 of the new Law do not create any inconsistency with the provisions of the old Law nor do they go to destroy any rights and liabilities created under the old Law and, therefore, the appellants cannot take resort to the provision of these sections to submit that they will oust the application of Section 6 of the Rajasthan General Clauses Act to the pending cases. The basic approach for determining the controversy raised in these appeals requires us to find out whether the rights created in favour of the State under Clause (a) of Sub-section (1) of Section 30-E of the old Law and the liabilities cast

on the land-holders to part with their surplus lands under Sub-section (2) of that section were destroyed by the enactment of the new Law, and if we find that the liabilities and the rights incurred and created under the old Law have not been touched by the new Law, then we cannot feel hesitant to hold that the pending cases relating to the rights and liabilities created under the old Law shall be decided in accordance with the provisions of that Law. From the discussions referred to above, we have come to the conclusion that the rights and liabilities created under Section 30-E of the repealed ceiling law have not, in any manner, been affected by the enactment of the new Law. Therefore all the cases initiated under the old Law and pending before the competent authorities shall be disposed of in the manner and under the provision of the old Law. As is clear from the affidavit filed by the Officer-in-charge, only 166 old cases are pending decisions and the rest of the cases, namely, 8494 cases were decided after 1-1-1973 in accordance with the provisions of the old Law and surplus land to the extent of 2,95,812 acres has been taken from the land-holders and distributed among the landless tenants including the Harijans and Scheduled Tribes people. Learned Advocate-General is correct in his submission that if on a technical ground a different view is taken in respect of the pending 166 cases then it will create an upheaval in the State and the rights created in favour of the new allottees in the surplus lands, shall have to be disturbed and thousands of the landless tenants will be affected if the technical argument of Mr. Hastimal is accepted. We see force in this argument. Though we may make it clear that this ground of learned Advocate-General has weighed with us the least but at the same time this practical aspect could not altogether be ignored by us.

64. For the reasons given above we do not find any life in these appeals. They are, therefore, dismissed. Looking to the circumstances of these cases we leave the parties to bear their own costs.