A BANSIDHAR AND OTHERS

v.

STATE OF RAJASTHAN AND OTHERS

MARCH 29, 1989

B [R.S. PATHAK, CJ, E.S. VENKATARAMIAH, RANGANATH MISRA, M.H. KANIA AND M.N. VENKATACHALIAH, JJ.]

Rajasthan Tenancy Act, 1955: Chapter III-B and ss. 5(6A) and 30E—Ceiling area—Determination of—Effect of repeal of—Proceedings with reference to appointed date under the Act—Whether can be C *initiated and continued under the repealed provisions, even after coming into effect of Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973—State's right to excess land and land-owner's liability to surrender surplus land, on the appointed day—Whether a right accrued and liability incurred within the meaning of clause (c) and (e) of s. 6 of* D *Rajasthan General Clauses Act—Whether affected by repeal—Sec. 6 of Rajasthan General Clauses Act—Whether attracted—Whether s. 3 of 1973 Act has overriding effect as to exclude operation of the 1955 Act.*

Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973: Sections 3, 4(1), 15(2) and 40(1)—Ceiling area—Determination E *of—Repeal of Chapter III-B and s. 5(6A) of the Rajasthan Tenancy Act, 1955—Effect of—Whether cases as on notified date should be decided under old law—Whether rights accrued and liabilities incurred under the old law affected—Whether new law has overriding effect over the old one.*

F *General Clauses Act, 1897/Rajasthan General Clauses Act, 1955: Section 6—Applicability of—In absence of express reference to the section or of express provisions to similar effect in the repealing Act—Repeal and re-enactment on the same subject—Rights accrued and liabilities incurred under repealed law—Whether effaced.*

G *Statutory Construction: Repeal and Saving—Rights and obligations saved in repealing statute—Whether exhaustive.*

Chapter III-B of the Rajasthan Tenancy Act, 1955 prescribing a ceiling on holdings of agricultural lands, and cl.(6A) of s. 5, defining 'ceiling area' were introduced into the Act by the Rajasthan Tenancy H **(Amendment) Act, 1960. The notified date under the 1955 Act was**

1.4.1966. Subsequently, on 1.1.1973, by the Rajasthan Imposition of Ceiling on Agricultural Holdings Ordinance, 1973, these provisions were repealed, except to the extent indicated in the second proviso to s. 4(1) and s. 15(2) of the Ordinance. Certain transfers made by the land-holders, even during the operation of the old law, were recognised as valid transfers for the purpose of computation of ceiling area under the new dispensation brought about by the Ordinance. The Ordinance was replaced by the 1973 Act with retrospective effect from 1.1.1973. Section 40 of the Act repealed both the old law in Chapter III-B of the 1955 Act and the earlier Ordinance.

After the 1973 Act came into force on 1.1.1973 cases for determination of 'ceiling-areas' under Chapter III-B of the 1955 Act came to be initiated and were sought to be continued under the repealed Chapter III-B against the appellants including the appellants in C.A. No. 1003(N) of 1977 who claimed to have entered into possession and cultivation of certain parcels of land, pursuant to agreements to sell dated 28.4.1957, said to have been executed, in their favour by the then land holder. The sale deeds in this case were passed on 22.8.1966, after the notified date. Proceedings for the fixation of ceiling area in the hands of the then land-holder were commenced under the repealed Chapter III-B of the 1955 Act, and the purchases in question were held to be hit by s. 30DD of the repealed Chapter III-B, as appellants did not possess the residential qualifications, prescribed by the section for the eligibility for recognition of such transfers.

The appellants approached the High Court, contending that after the coming into force of the 1973 Act which by s. 40, repealed Chapter III-B of the 1955 Act, recourse could not be had to the repealed law for purposes of commencement, conduct and conclusion of any proceedings for fixation of ceiling as prescribed under the old law.

Rejecting the contention of the appellants, the High Court held that the new Act of 1973 did not have the sweeping effect of destroying all the rights accrued and liabilities incurred under the old Act.

The correctness of the view of the High Court, was challenged in the appeals before this Court. Some other writ petitions were also filed directly in this Court.

On the questions whether (a) the scheme contemplated by the 1973 Act and the different criteria and standards for the determination of ceiling area envisaged in it and, in particular, having regard to the

A limited scope of the saving-provision of s. 40 which, quite significantly, omitted to invoke and attract s. 6 of the Rajasthan General Clauses Act 1955 to the repeal of s. 5(6A) and Chapter III-B of the '1955 Act', must be construed and held to manifest an intention contrary to and inconsistent with the keeping alive or saving of the repealed law so as to be invoked in relation to and applied for the pending cases which had not B been concluded under the old law before the repeal; and (b) even if s. 6 of the Rajasthan General Clauses Act 1955 was attracted and the old law was saved for the purpose, provisions of the old law could not be invoked as no right had been "accrued" in favour of the State in relation to the surplus area determinable under the old law nor any liability incurred by the land-holders under the old law so as to support the C initiation of the proceedings for fixation of ceiling-area under the old law after its repeal.

Dismissing the appeals, Special Leave Petitions and Writ Petitions, this Court,

D HELD: 1.1 When there is a repeal of a statute accompanied by re-enactment of a law on the same subject, the provisions of the new enactment would have to be looked into not for the purpose of ascertaining whether the consequences envisaged by s. 6 of the General Clauses Act ensued or not but only for the purpose of determining whether the provisions in the new statute indicate a different intention. [164F-G]

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State of Punjab v. *Mohan Singh,* [1955] 1 SCR 873 referred to.

1.2 Mere absence of an express reference to s. 6 of the General Clauses Act is not conclusive, unless such omission is attended with the circumstance that the provisions of the new-law evince and make F manifest and intention contrary to what would, otherwise, follow by the operation of the Section, the incidents and consequences of s. 6 would follow. [163A-B]

B. Bansgopal v. *Emperor,* AIR 1933 All 669 referred to.

G 1.3 The scheme of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 does not manifest an intention contrary to, and inconsistent with, the saving of the repealed provisions of s. 5(6A) and Chapter III-B of the Rajasthan Tenancy Act, 1955 so far as pending cases are concerned, and the rights accrued and liabilities incurred under the old law are not effaced. The indicia that the old law H was not effaced are in s. 15(2) and s. 40(1) read with second proviso to s. 4(1) of the new Act. [167G; 165E]

1.4 The High Court was right in holding that the opening words of s. 15(2) "without prejudice to any other remedy that may be available to it under the Rajasthan Tenancy Act, 1955" clearly showed that the pending cases had to be governed by the old law, and if transactions past and closed had to be reopened and decided afresh under the provisions of the repealed law, and the ceiling area under Chapter III of the 1955 Act had 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, and that the expression "law for the time being in force" did not take within its sweep a law "deemed to be in force" and, therefore, the opening words of s. 3 of 1973 Act would not have an overriding effect so as to exclude the old law. [167A-D]

Rao Shiv Bahadur Singh and Anr. **v.** *The State of Vindhya Pradesh,* **[1953] SCR 1188 and** *Chief Inspector of Mines* **v.** *K.C. Thapar,* **AIR 1961 SC 838 referred to.**

2. A saving provision in a repealing statute is not exhaustive of the rights and obligations so saved or the rights that survive the repeal. [167D-E]

I.T. Commissioner U.P. **v.** *Shah Sadiq and Sons,* **AIR 1987 SC 1217 @ 1221 referred to.**

3.1 For purpose of clauses (c) and (e) of the Rajasthan General Clauses Act, 1955, the "right" must be "accrued" and not merely an inchoate one. the distinction between what is and what is not a right preserved by s. 6 of the General Clauses Act is often one of great fineness. What is unaffected by the repeal is a right 'acquired' or 'accrued' under the repealed statute and not "a mere hope or expectation" of acquiring a right or liberty to apply for a right. [168E]

3.2 The right of the State to the excess land was not merely an inchoate right under the Rajasthan Tenancy Act, 1955, but a right "accrued" within the meaning of s. 6(c) of the Rajasthan General Clauses Act, 1955. [172D]

The rights and obligations under s. 30E of the 1955 Act had had to be determined with reference to the notified date i.e. 1.4.1966. The right of the State, to take over excess land, vested in it as on the appointed date, and only the quantification remained to be worked out. The liability of the land-owner to surrender the excess land as on

1.4.1966 was a liability "incurred" also within the meaning of the said provision. [170E; 171H; 172D]

Lalji Raja **v.** *Firm Hansraj,* [1971] **3 SCR 815;** *Raghunath* **v.** *Maharashtra,* [1972] **1 SCR 48 at 57;** *Bhikoba Shankar Dhumal (dead) by LRs & Ors.* **v.** *Mohan Lal Punchand Tathed & Ors.,* [1982] **3 SCR 218 at 228;** *State of Maharashtra* **v.** *Annapurnabai and Ors.,* [1985] **Supp. SCC 273 at 275;** *Director of Public Works* **v.** *Ho Po Sany,* [1961] **2 All E.R. 721 and** *M.S. Shivananda* **v.** *K.S.R. Corpn.,* **AIR 1980 SC 77 at 81 referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2037-2042 of 1977 etc. etc.

From the Judgment and Order dated 21.10.1976 of the Rajasthan High Court in D.B. Special appeal Nos. 8, 20, 22, 26, 27 and 28 of 1976.

A.K. Sen, V.M. Tarkunde, Shanti Bhushan, Sushil Kumar Jain, N.D.B. Raju, Ram Kalyan Sharma, Jagdish Nandware, K.B. Rohtagi, S.K. Dhingra, R.S. Sodhi and Vineet Kumar for the Appellants.

C.M. Lodha, Badri Dass Sharma, S.D. Khanduja and Indra Makwana for the Respondents.

The Judgment of the Court was delivered by

VENKATACHALIAH, J. These appeals, by Special Leave and Petitions for grant of Special Leave pertaining to agrarian reform legislation in the State of Rajasthan, arise out of and are directed against the judgment dated 21st October, 1976, of a full bench of the High Court of Rajasthan, dismissing a batch of special appeals and affirming the judgment dated 2.12.1975 of the learned Single Judge of the High Court rejecting appellants' contentions against the legality of certain proceedings for the fixation of ceiling on agricultural holdings initiated and continued under the Provisions of Chapter III-B of the Rajasthan Tenancy Act, 1955. In the Writ-petition filed directly in this Court reliefs similar to those sought before the High Court are claimed.

The principal controversy before High Court in the proceedings, shorn of its niceties and embellishments, was whether the proceedings for fixation of ceiling area with reference to the appointed dated i.e. 1.4.1966 under Chapter III-B of the Rajasthan Tenancy Act, 1955,

('1955 Act' for short) could be initiated and continued after the coming into force of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act (Act No. 11 of 1973) ('1973 Act' for short) which w.e.f. 1.1.1973 repealed Section 5(6A) and Chapter III-B of the old Act, i.e. '1955 Act'. A

2. Chapter III-B, pertaining to imposition of ceiling on agricultural holdings, in the State of Rajasthan, was introduced into the '1955 Act' by the Rajasthan Tenancy (Amendment) Act, 1960. As a sequential necessity Section 5 was amended by the introduction in it of Clause (6A) which defined "ceiling-area". The notified-date, as originally fixed, was 1.4.1965; but owing to the uncertainties imparted to the implementation of the law by the challenge made to the provisions of Chapter III-B before the High Court and the interim-orders of the High Court staying the operation of the law, Government had had to re-notify 1.4.1966 as the fresh notified-date, after the challenge to the validity of Chapter III-B had been repelled by the High Court. B C

By the time, the '1973 Act' was brought into force disputes touching the determination of the ceiling areas in 33,471 cases had come to be decided in accordance with the provisions of Chapter III-B of the earlier '1955 Act'. After the '1973 Act' came into force on 1.1.1973, some 8,494 cases for the determination of 'ceiling-areas' under III-B of the '1955 Act' came to be initiated and were sought to be continued under said Chapter III-B of the repealed '1955 Act' on the view that the repeal of Chapter III-B of the 1955 Act by the '1973 Act' did not affect the rights accrued and liabilites incurred under the old law. Appellants' principal contention is that after the coming into force of the 1973 Act which, by its 40th Section, repealed Chapter III-B of the '1955 Act', recourse could not be had to the repealed-law for purposes of commencement, conduct and conclusion of any proceedings for fixation of ceiling as prescribed under the old law. This contention has been repelled by the full bench of the High Court in the judgment under appeal. The correctness of view of the full bench arises for consideration in these appeals. D E F

3. The factual antecedents in which the controversy arose before the High Court may be illustrated by the facts of one of the appeals. In CA 1003(N) of 1977, the appellants' claim to have entered into possession and cultivation of certain parcels of land pursuant to alleged agreements to sell dated 28.4.1957 said to have been executed in their favour by the then land-holder, a certain Sri Hari Singh. The sale deeds were passed only on 22.8.1966, after the notified-date. Proceed- G H

A ings for the fixation of ceiling area in the hands of Sri Hari Singh were commenced under the Repealed Chapter III-B of the '1955 Act'. Appellants' pruchases were held to be hit by Section 30 DD of the said Chapter III-B, which prescribed certain residential qualifications, which appellants did not possess, for the eligibility for recognition of such transfers. Appellants' contention is that if the new law had been B applied to the case of the vendor, the transfers in their favour would have been held valid and that invoking of Chapter III-B of the repealed law was impermissible. Apart from the facts of individual cases and their particularities the basic question is one of construction—whether the provisions of the old law are saved and survive to govern pending cases.

C

4. We have heard Sri A.K. Sen, Sri Tarkunde and Sri Shanti Bhushan, learned Senior Advocates for the appellants and Sri Lodha, learned Senior Advocate for the State of Rajasthan and its authorities. The appellant's principal contention—which we perceive as one of construction of statutes—is that the later law made manifest, expressly D and by necessary implication, an intention inconsistent with the continuance of the rights and obligations under the repealed law and that, accordingly, after 1.1.1973, the date of coming into force of the '1973 Act', no proceedings under the old law could be initiated or continued.

5. The points that fall for consideration in these appeals are E whether:

(a) the scheme contemplated by and the different criteria and standards for the determination of "ceiling-area" envisaged in the '1973 Act' and, in particular, having regard to the limited scope of the saving-provision of Sec- F tion 40 thereof which, quite significantly, omits to invoke and attract Section 6 of the Rajasthan General Clauses Act 1955 to the Repeal of Section 5(6A) and Chapter III-B of the '1955 Act' must be construed and held to manifest an intention contrary to and inconsistent with the keeping alive or saving of the repealed law so as to be invoked in G relation to and applied for the pending cases which had not been concluded under the old law before the repeal; and

(b) that, at all events, even if Section 6 of the Rajasthan General Clauses Act 1955 was attracted and the old law was saved for the purpose, provisions of the old-law could H not be invoked as no right had been "accrued" in favour of

the State in relation to the surplus-area determinable under the old law nor any liability "incurred" by the land-holders under the old law so as to support the initiation of the proceedings for fixation of 'Ceiling-area' under the old-law after its repeal.

6. *Re: Contentions (a)*

In order that this contention, which is presented with some perspicuity, is apprehended in its proper prospective a conspectus of the essential provisions of the earlier law and later law pertaining to prescription of ceiling on agricultural holdigs is necessary.

In 1955, The Rajasthan Tenancy Act 1955 was enacted. By the Rajasthan Tenancy (Amendment) Act, for the first time, provisions in Chapter III-B prescribing a ceiling on holdings of agricultural lands got introduced into the '1955 Act'. This amending Act of 1960 received Presidential assent on 12th March 1960. The Chapter III-B was, by an appropriate notification, brought into force with effect from 15th December, 1963. The notified-date, under the '1955 Act', as stated earlier, was 1.4.1965.

Section 5(6A) of the '1955 Act' defined 'Ceiling-area'.

> " "Ceiling area" in relation to land held anywhere throughout the State by a person in any capacity whatsoever, shall mean the maximum area of land that may be fixed as ceiling area under section 30C in relation to such person;"

Section 30B in Chapter III-B provided:

> "30. B. Definitions—For the purposes of this Chapter—
>
> (a) "family" shall mean a family consisting of a husband and wife, their children and grand-children being dependent on them and the widowed mother of the husband so dependent, and
>
> (b) "person" in the case of an individual, shall include the family of such individual."

Section 30C providing for the extent of ceiling area said:

"30C. Extent of ceiling area—

The ceiling area for a family consisting of five or less than five members shall be thirty standard acres of land;

Provided that, where the members of a family exceed five, the ceiling area in relation thereto shall be increased for each additional member by five standard acres, so however that it does not exceed sixty standard acres of land.

Explanation—A 'standard acre' shall mean the area of land which, with reference to its productive capacity, situation, soil classification and other prescribed particulars, is found in the prescribed manner to be likely to yield ten maunds of wheat yearly; and in case of land not capable of producing wheat, the other likely produce thereof shall, for the purpose of calculating a standard acre, be determined according to the prescribed scale so as to be equivalent in terms of money value to ten maunds of wheat:

Provided that, in determining a ceiling area in terms of standard acres, the money value of the produce of well-irrigated (chahi) land shall be taken is being equivalent to the money value of the produce of an equal area of un-irrigated (barani) land."

In exercise of the Rule making powers under the '1955 Act', the State Government framed and promulgated The Rajasthan Tenancy (Fixation of Ceiling of Land) Government Rules, 1963, which came into force on and with effect from 15.12.1963. Rule 9 required that in order to enable the Sub-Divisional Officer to determine the ceiling area applicable to every person under Section 30C of the Act and to enforce the provisions of Section 30E, every land-holder and tenant in possession of lands, in excess of the ceiling area applicable to him, shall file a declaration within six-months from the notified-date. The law fixed 30 standard acres as the ceiling area. Thereafter, successive amendments were made to Chapter III-B of the '1955 Act' which, while maintaining the ceiling at 30 standard acres, however, recognised certain transfers effected after 1958, which were not originally so recognised in fixing the ceiling. Again (by an amendment) of the year 1970, Section 30 (j) was deleted. The 1955 Act itself came to be included in the IX Schedule to the Constitution by a Parliamentary law. The challenge to

said inclusion was repelled by this Court. A

7. On 1.1.1973, the Governor of the State of Rajasthan promulgated The Rajasthan Imposition of Ceiling on Agrilcultural Holdings Ordinance, 1973 under Article 213 of the Constitution of India. The Ordinance repealed the corresponding provisions relating to ceiling on agricultural holdings contained in Section 5(6A) and Chapter III-B of the '1955 Act' except to the extent indicated in the Second proviso to Section 4(1) and Section 15(2) of the said Ordinance. The Ordinance brought into existence a new concept of and standards for the "ceiling-area". Certain transfers made by the land-holders even during the operation of the old law were recognised as valid transfers for purposes of computation of ceiling area under the new dispensation brought about by the Ordinance. This Ordinance was replaced by the 1973 Act which was made operative retrospectively from 1.1.1973 being the date of promulgation of the Ordinance. Section 40 of the '1973 Act' repealed, as did the predecessor-Ordinance, both the old law in Chapter III-B of the '1955 Act' and the earlier Ordinance for which it substituted. B C D

Section 3, Section 4(1), Second Proviso and Section 40 of the 1973 Act require particular notice.

Section 3 provides: E

> "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, on any custom, usage or contract or decree or order of a court or other authority." F

The Second Proviso to the Explanation appended to Section 4(1) of the Act says:

> "Provided further that if the ceiling area applicable to any person or family in accordance with this section exceeds the ceiling area applicable to such person or family according to the provisions of law repealed by section 40, in that case the ceiling area applicable to such person or family will be the same as was under the provisions of the said repealed law." G H

A Section 40 provides:

> "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 (6A) of section 5 and Chapter III-B of the Rajasthan
B 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 Abgri-
C cultural Holdings Ordinance, 1973 (Rajasthan Ordinance-I of 1973) is hereby repealed.
>
> (3) Notwithstanding the repeal of the said Ordinace under sub-section (2), anything done or any action taken or any rules made uner the said Ordinance shall be deemed to
D 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 re-enactment."

Section 41 contains a statutory declaration that the 'Act' is for
E giving effect to the directive principles of State policy towards securing the principles specified in Article 39(b) and (c) of the Constitution of India.

8. Appellants' learned counsel contend that when there is a repeal of a statute followed by a re-enactment of a new law on the
F same subject, with or without modifications, Section 6 of the General Clauses Act is not attracted and the question as to the extent to which the repealed law is saved would be dependent upon the express provisions of the later statute or what must be held to be its necessary and compelling implications. It was urged that where the repeal is accompanied by a afresh Legislation on the same subject, the new law
G alone will determine if, and how far, the old law is saved and that in the absence of an express appeal to Section 6 of the General Clauses Act or of express provisions to similar effect in the new law itself, the provisions of the old law must be held to have been effaced except whatever had been done, or having effect as if done. This argument has the familiar ring of what Sulaiman, CJ. had said on the matter in
H *Rashid Ahmad* v. *Mt. Anis Fatima & Ors.*, AIR 1933 All. 3. But it

must now be taken to be settled that the mere absence of an express reference to Section 6 of the General Clauses Act is not conclusive, unless such omission to invoke Section 6 of the General Clauses Act is attended with the circumstance that the provisions of the new-law evince and make manifest an intention contrary to what would, otherwise, follow by the operation of Section 6 of the General Clauses Act, the incidents and consequences of Section 6 would follow.

9. Appellants' learned counsel submitted that the legislation in question pertaining, as it did, to the topic of agrarian reform was attendant with the difficulties naturally besetting a task so inextricably intermixed with complex and diverse and, indeed, often conflicting socio-economic interests had had to go through stages of empirical evolution and that having regard to the wide-diversity of policy-options manifest between the earlier and the later legislations, the conclusion becomes inescapable that the later legislation, made manifest an intention inconsistent with and contrary to the continuance of the rights and obligations under the repealed law. It was agreed that with the experience gained in the implementation of the policy of agrarian reforms embodied in the repealed law, the new policy-considerations—reflected in the new and basically different thinking on some of the vital components of the new-policy—were evolved and incorporated in the new law, so much so that the repealed and repealing laws represented two entirely different systems and approaches to the policy of agrarian reforms and the two systems, with their marked differences on basic and essential criteria underlying their policies, could not co-exist. It was urged that the statement of objects and reasons appended to the 1973 Bill recognised that the legislative policy and technique underlying the old law were ineffective in removing the great disparity that persisted in the holdings of agricultural lands or in diluting the concentration of agricultural wealth in the hands of a few and recognised the necessity "to reduce such disparity and to re-fix the ceiling area on the agricultural holdings so that agricultural land may be available for distribution to land-less persons". It was pointed out that material criteria relevant to the effectuation of the new-policy made manifest an intention contrary to the survival of the policy under the old law. The wide changes in the policy of the later law which reflected a new and basically different approach to the matter, included (i) a fundamental rethinking on the concept of the "ceilling-area" by reducing the 30 standard acres prescribed in the old law to 18 standard acres; (ii) the re-definition of the very concept of 'family' and 'separate unit'; (iii) the point of time with reference to which the composition and strength of the family would require to be ascertained; (iv) a re-

A thinking, and a fresh policy as to the recognition of transfers made by land-holders including even those transfers made during the period of operation of the old law; (v) the point of time of the vesting of the surplus land in Government; (vi) the re-defining of the principles and priorities guiding the distribution of the surplus land to landless persons, and (vii) the amount to be paid to the land holders for the B excess land vesting in the State under the new law.

It was submitted that the two laws—the old and the new—envisaged two totally different sets of values and policies and were so disparate in their context and effect as to yield the inevitable inference that the policy and scheme of the later law, by reason alone of the C peculiarities and distinction of its prescriptions, should be held to manifest an intention contrary to the saving of the old law even respective pending cases. The ceiling laws, it was submitted, envisage and provide an integrated and inter-connected set of provisions and the marked distinctions in the vital provisions in the two sets of laws rendered the continued applicability of the old law to any case, not D already finally concluded thereunder, as impermissible in law as unreasonable in its consequences if permitted. It was urged that Section 3 of the 1973 Act was a clinching indicator in this behalf when it provided that the provisions of the later law "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 E Court or other authority" (underlining supplied) and that the old Act, even if it was, otherwise, held to be in force in relation to pending cases, was clearly over-borne by Section 3 of the new law.

When there is a repeal of a statute accompanied by re-enactment of a law on the same subject, the provisions of the new enactment F would have to be looked into not for the purpose of ascertaining whether the consequences envisaged by Sec. 6 of the General Clauses Act ensued or not—Sec. 6 would indeed be attracted unless the new legislation manifests a contrary intention—but only for the purpose of determining whether the provisions in the new statute indicate a different intention. Referring to the way in which such incompatibility with G the preservation of old rights and liabilities is to be ascertained this Court in *State of Punjab* v. *Mohar Singh*, [1955] 1 SCR 893 said:

> "..... 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 H clause is by itself not material. The provisions of Sec. 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 ...."

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Addressing itself to the question whether, having regard to the particular provisions of the 1973 Act, the inference that the new law manifests such contrary intention could justifiably be drawn, the High Court observed:

> "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 ....."

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> "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 ....."

D

10. One of the indicia that the old law was not effaced is in sec. 15(2) of the new Act. It provides that if the State Government was satisfied that the 'ceiling-area' in relation to a person as fixed under the old-law had been determined in contravention of that law, a decided case could be re-opened and inquired into it and the 'ceiling-area' and the 'surplus area' determined afresh in accordance with the provisions of the old law. Another indicium is in Sec. 40(1) read with the Second Proviso to Sec. 4(1) of '1973 Act' which provides that if the ceiling area applicable to a person or a family in accordance with the said Sec. 4(1) exceeds the 'ceiling-area' applicable to such persons or family, under the old law, then, the 'ceiling-area' applicable to such person or family would be the same as was provided under the provisions of the old law.

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The High Court relied upon and drew sustenance for its conclusion from, what it called, the internal evidence in the Act which, according to the High Court, indicated that pending-cases were governed only by the old law. The High Court referred to sec. 15(2) inserted by Act No. 8 of 1976 and what, according to it, necessarily flowed from it in support of its conclusion. Sec. 15(2) inserted by Act No. 8 of 1976 thus:

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A "(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 B 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 C such repealed provisions."

(Emphasis Supplied)

The High Court referring to the opening words of the above D provisions observed:

"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 E 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."

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11. Sri Lodha, learned counsel for the State of Rajasthan submitted that the 'ceiling-area' had to be fixed with reference to the notified date i.e. 1.4.1966 by the statutory standards prescribed under the Chapter III-B of the '1955 Act'. The two legislations are complementary to each other and constitute two tier provisions. So far as G the cases that attracted and fell within Chapter III-B of 1955 Act, as on 1.4.1966, would continue to be governed by that law as the rights and obligations created by the said Chapter III-B amounted to create rights and incur liabilities. Shir Lodha submitted that the view taken by the High Court was unexceptionable.

H 12. On a careful consideration of the matter, we are inclined to

agree with the view taken by the High Court on the point. The reliance placed by appellants' learned counsel on the provisions of Sec. 3 of 1973 Act as detracting from the tenability of the conclusion reached by the High Court on the point is, in our opinion, somewhat tenuous. The contention of the learned counsel is that the expression "notwithstanding anything inconsistent contained in any other law for the time being in force" in Section 3 of the 1973 Act would exclude the operation of Chapter III-B of the '1955 Act' which, according to the contention, even if kept alive would yet be a 'law for the time being in force' and, therefore, be excluded by virtue of Section 3. This contention has been negatived by the High Court—and in our opinion rightly—by placing reliance on the pronouncements of this Court in *Rao Shiv Bahadur Singh and Anr.* v. *The State of Vindhya Pradesh,* [1953] SCR 1188 and *Chief Inspector of Mines* v. *K.C. Thapar,* AIR 1961 SC 838. The High Court held that the expression "law for the time being in force" does not take within its sweep a law 'deemed to be in force' and that, accordingly, the opening words of Sec. 3 relied upon by the Appellants' learned counsel will not have an overriding effect so as to exclude the old law.

13. A saving provision in a repealing statute is not exhaustive of the rights and obligations so saved or the rights that survive the repeal. It is observed by this Court in *I.T. Commissioner, U.P.* v. *Shah Sadiq & Sons*, AIR 1987 SC 1217 at 1221:

> "..... In other words whatever rights are expressly saved by the 'savings' provision stand saved. But, that does not mean that rights which are not saved by the 'savings' provision are extinguished or stand ipso facto terminated by the mere fact that a new statute repealing the old statute is enacted. Rights which have accrued are saved unless they are taken away expressly. This is the principle behind Sec. 6(c), General Clauses Act, 1897 ....."

We agree with the High Court that the scheme of the 1973 Act does not manifest an intention contrary to, and inconsistent with, the saving of the repealed provisions of sec. 5(6A) and Chapter III-B of '1955 Act' so far as pending cases are concerned and that the rights accrued and liabilities incurred under the old law are not effaced. Appellant's contention (a) is, in our opinion, insubstantial.

14. *Re: Contention(b):*

This takes us to the next question whether in the present cases

A even if the provisions of Sec. 6 of the Rajasthan General Clauses Act, 1955, are attracted, the present cases did not involve any rights "accrued" or obligations "incurred" so as to attract the old law to them to support initiation or continuation of the proceedings against the land-holders after the repeal. It was contended that even if the provisions of the old Act were held to have been saved it could not be B said that there was any right accrued in favour of the State or any liability incurred by the land holders in the matter of determination of the 'ceiling-area' so as to attract to their cases the provisions of the old law. The point emphasised by the learned counsel is that the excess-land would vest in the State only after the completion of the proceedings and upon the land-holder signifying his choice as to the identify of C the land to be surrendered. Clauses (c) and (e) of Sec. 6 of the Rajasthan General Clauses Act, 1955, provide, respectively, that the repeal of an enactment shall not, unless a different intention appears, "affect any right privilege, obligation, or liability, acquired, accrued, or incurred under any enactment so repealed" or "affect any investigation, legal proceeding or remedy in respect of any such right, privilege, D obligation, liability, fine, penalty, forfeiture, or punishment as aforesaid."

For purposes of these clauses the "right" must be "accrued" and not merely an inchoate one. The distinction between what is and what is not a right preserved by Section 6 of the General Clauses Act, it is E said, is often one of great fineness. What is unaffected by the repeal is a right 'acquired' or 'accrued' under the repealed statute and not "a mere hope or expectation" of acquiring a right or liberty to apply for a right.

In *Lalji Raja* v. *Firm Hansraj,* [1971] 3 SCR 815 this Court dealing with the distinction between the "abstract rights" and "specific-F rights" for the purpose of the operation of Sec. 6 of General Clauses Act said:

> "That a provision to preserve the right accrued under a repealed Act 'was not intended to preserve the abstract G rights conferred by the repealed Act ..... It only applied to specific rights given to an individual upon happening of one or the other of the events specified in statute'—See Lord Atkin's observations in *Hamilton Gell* v. *White,* [1922] 2 K.B. 422. The mere right, existed at the date of repealing statute, to take advantage of provisions of the H statute repealed is not a 'right accrued' within the meaning

of the usual saving clause—see *Abbot* v. *Minister for Lands,* [1895] A.C. 425 and *G. Ogden Industries pty. Ltd.* v. *Lucas,* [1969] 1 All E.R. 121" A

15. To ascertain whether these were 'accrued' rights and 'incurred' liabilities a reference Section 30E of the repealed law is necessary. B

Sec. 30-E of 1955 Act provides:

"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:— C

(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 D

(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; E

Provided that different dated 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. F G

..... (Omitted as unnecessary)

..... -do- H

A (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 a fine which may extend to one thousand rupees.

B (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 (i) of section 183;

C Provided that the lands, from which a person shall be so ejected shall, as for as may 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 encumberances.

D

..... (Omitted as unnecessary)"

The rights and obligations under this provision had had to be determined with reference to the notified date i.e. 1.4.1966. Referring to analogous provision of the Maharashtra Agricultural Lands (Ceiling E on Holdings) Act, 1961, this Court in *Raghunath* v. *Maharashtra,* [1972] 1 SCR 48 at 57 observed:

"The scheme of the Act seems to be to determine the ceiling area of each person (including a family) with reference to the appointed day. The policy of the Act appears to F be that on and after the appointed day no person in the State should be permitted to hold any land in excess of the ceiling area as determined under the Act and that ceiling area would be that which is determined as on the appointed day ....."

G 16. Again in *Bhikoba Shankar Dhumal (dead) by LRs. & Ors.* v. *Mohan Lal Punchand Tathed & Ors.,* [1982] 3 SCR 218 at 228, it was observed:

"A close reading of the aforesaid provisions of the Act shows that the determination of the extent of surplus H land of a holder has to be made as on the appointed day. If

> any person has at any time after the fourth day of August, 1959, but before the appointed day held any land (including any exempted land) in excess of the ceiling area, such person should file a return within the prescribed period from the appointed day furnishing to each of the Collectors within whose jurisdiction any land in his holding is situated, in the form prescribed containing the particulars of all land held by him. If any person acquires, holds or comes into possession of any land including any exempted land in excess of the ceiling area on or after the appointed day, such person has to furnish a return as stated above within the prescribed period from the date of taking possession of any land in excess of the ceiling area .....".

A contention similar to the one urged for the appellants here that the title respecting the surplus land would vest in the Government upon such land being taken possession of by Government after the declaration regarding the surplus was noticed in that case. But, it was held that the liability to surrender the surplus land would date back to the appointed day. This Court said:

> "..... Any other construction would make the Act unworkable and the determination of the extent of surplus land of a holder ambulatory and indefinite ....."

This was again reiterated in *State of Maharashtra* v. *Annapurnabai and Ors.*, [1985] Supp. SCC 273 at 275. This Court said:

> "... Section 21 of the Act no doubt states that the title of the holder of the surplus land would become vested in the State Government only on such land being taken possession of after a declaration regarding the surplus land is published in Official Gazette. But the liability to surrender the surplus land relates back to the appointed day in case of those who held land in excess of the ceiling on the appointed day. Therefore, even if the holder dies before declaration of any part of his land as surplus land, the surplus land is liable to be determined with reference to his holding on the appointed day ...."

17. It is, therefore, seen that the right of the State to take over excess land vested in it as on the appointed day and only the quantification remained to be worked out. As observed by Lord Morris, in

A *Director of Public Works* v. *Ho Po Sang,* [1961] 2 All. E.R. 721.

> "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 be or should not be given. On a repeal the former is preserved by the Interpretation Act. The latter is not."

B

C

The above passage was referred to with approval in *M.S. Shivananda* v. *K.S.R.T. Corpn.,* AIR 1980 SC 77 at 81.

18. We agree with the High Court that the right of the State to the excess land was not merely an inchoate right under the Act, but a right "accrued" within the meaning of sec. 6 (c) of the Rajasthan General Clauses Act, 1955, and the liability of the land-owner to surrender the excess land as on 1.4.1986 was a liability "incurred" also within the meaning of the said provision. There is no substance in contention (b) either.

D

E

19. These Appeals, Special Leave Petitions and the Writ-Petition, accordingly, fail and are dismissed. In the circumstances of the case, there will be no order as to costs.

N.P.V. Appeals & Petitions dismissed.