(9) Clause (1) of S. 15 of the Act is however specially attacked as interfering with the religious affairs of the Temple. The rest of the provisions of that section deal so obviously with secular matters that they have not been challenged. This clause provides that it shall be the duty of the committee to arrange for the proper performance of sevapuja and of the daily and periodical nitis of the Temple in accordance with the record of rights. As we read this clause we see no invasion of the religious affairs of the Temple therein. All that it provides is that it shall be the duty of the committee to arrange for the proper performance of sevapuja etc. of the Temple in accordance with the record of rights. Sevapuja etc. have always two aspects. One aspect is the provision of materials and so on for the purpose of the sevapuja. This is a secular function. The other aspect is that after materials etc. have been provided, the sevaks or other persons who may be entitled to do so, perform the sevapuja and other rites as required by the dictates of religion. Clause (1) of S. 15 has nothing to do with the second aspect, which is the religious aspect of sevapuja; it deals with the secular aspect of the sevapuja and enjoins upon the committee the duty to provide for the proper performance of sevapuja and that is also in accordance with the record of rights. So that the committee cannot deny materials for sevapuja if the record of rights says that certain materials are necessary. We are clearly of the opinion that cl. (1) imposes a duty on the committee to look after the secular part of the sevapuja and leaves the religious part thereof entirely untouched. Further under this clause it will be the duty of the committee to see that those who are to carry out the religious part of the duty do their duties properly. But this again is a secular function to see that sevaks and other servants carry out their duties properly; it does not interfere with the performance of religious duties themselves. The attack on this provision that it interferes with the religious affairs of the Temple must therefore fail.

(10) We may now briefly refer to some other sections of the Act which were attacked. Apart from the main sections 5 and 6 by which the appellant was divested of the sole management, the first section so attacked is S. 11, which deals with the dissolution and supersession of the committee. We have not been able to understand how this section can be attacked once it is held that Ss. 5 and 6, constituting the committee in place of the Raja, are valid, as we have held that they are, for they are the main provisions by which the management has been transferred from the sole control of the Raja to the control of the committee. The next section in this group is S. 19. That section provides for the appointment of an administrator to carry on the day to day administration of the secular part of the affairs of the Temple. We cannot see how this provision is liable to attack once Ss. 5 and 6 are held good, for the committee must have some officer under it to carry on the day to day administration. The next provision that is attacked in this group is S. 21, which deals with powers and duties of the administrator. Again we cannot see how this provision can be attacked once it is held that the appointment of the administrator under S. 19 is good, for S. 21 only delimits the powers and duties of the administrator, and all powers and duties therein specified are with respect to the secular affairs of the Temple, and have no direct impact on the religious affairs thereof. The next section in this group is S. 21-A. That section is clearly concerned with the secular management of the Temple, for the disciplinary powers conferred thereby on the administrator are necessary in order to carry on the administration of the secular affairs of the Temple. The next section which is attacked is S. 30, which gives over-all supervisory power to the State Government. We cannot see how the control which the State Government is authorised to exercise by S. 30 over the committee can be attacked once the appointment of the committee is held to be good. The last section under this group is S. 30A, which creates a criminal offence and makes sevaks etc. liable to a fine on conviction. We think it unnecessary for present purposes to consider the validity of this section. The matter can be decided if and when a case of prosecution under that section ever arises.

(11) This brings us to the contention relating to Arts. 26, 27 and 28 of the Constitution, which were referred to in the petition. Articles 27 and 28 in our opinion have nothing to do with the matters dealt with under the Act. The main reliance has however been placed on Art. 26 (d) which lays down that subject to public order, morality and health, every religious denomination or any section thereof shall have the right to administer its property in accordance with law. In the first place besides saying in the petition that the Act was hit by Article 26 there was no indication anywhere therein as to which was the denomination which was concerned with the Temple and whose rights to administer the Temple have been taken away. As a matter of fact the petition was filed on the basis that the appellant was the owner of the Temple which was his private property. There was no claim put forward on behalf of any denomination in the petition. Under these circumstances we are of opinion that it is not open to the appellant to argue that the Act is bad as it is hit by Art. 26(d). The argument addressed before the High Court in this connection was that the worshippers of Lord Jagannath constitute a distinct religious denomination within the meaning of Art. 26 and that they had a right to administer the Temple and its endowments in accordance with law and that such administration should be only through the Raja of Puri as superintendent of the Temple assisted by the innumerable sevaks attached thereto. But inasmuch as the Act has taken away this right of management from the religious denomination, i.e. the worshippers of Lord Jagannath, and entrusted it to the nominees of the State Government, there had been a contravention of the fundamental rights guaranteed under cl. (d) of Art. 26. This argument was met on behalf of the State with the contention that the Temple did not pertain to any particular sect, cult or creed of Hindus but was a public temple above all sects, cults and, creeds; therefore as the temple was not the temple of any particular denomination no question arose of the breach of cl. (d) of Art. 26. The foundation for all this argument which was urged before the High Court was not laid in the writ petition. In these circumstances we think it was unnecessary for the High Court to enter into this question on a writ petition of this kind. The High Court however went into the matter and repelled the argument on the ground that the Temple in the present case was meant for all Hindus, even if all Hindus were treated as a denomination for purposes of Art. 26, the management still remains with Hindus, for the committee of management consists entirely of Hindus, even though a nominated committee. In view of the defective state of pleadings however we are not prepared to allow the argument under Art. 26(d) to be raised before us and must reject it on the sole gound that no such contention was properly raised in the High Court.

(12) For these reasons we find there is no force in this appeal and it is hereby dismissed with costs.

FH/R.G.D. Appeal dismissed.

AIR 1964 Supreme Court 1511 (V 51 C 199)

(From Assam:)*

24th February, 1964.

P. B. GAJENDRAGADKAR, C. J., K. N. WANCHOO, J. C. SHAH, N. RAJAGOPALA AYYANGAR AND S. M. SIKRI, JJ.

1. Mst. Rafiquennessa (in C. A. No. 549 of 62 and 2. Mohammad Wahedulla (In C. A. No. 569 of 63) Appellants v. 1. Lal Bahadur Chetri (since deceased) and after him his legal representatives and others (In C. A. No. 549 of 62) and 2. Mohammad Abdul Hamid (In C. A. No. 569 of 63), Respondents.

Civil Appeals Nos. 549 of 1962 and 569 of 1963.

Tenancy Laws — Assam Non-Agricultural Urban Areas Tenancy Act (12 of 1955), S. 5(1)(a) — Scope — Applies to pending proceedings.

Where vested rights are affected by any statutory provision, the said provision should normally be construed to be prospective in operation and not retrospective, unless the provision in question relates merely to a procedural matter. The legislature is competent to take away vested rights by means of retrospective legislation. Similarly, the legislature is undoubtedly competent to make laws which override and materially affect the terms of contracts between the parties; but unless a clear and unambiguous intention is indicated by the legislature by adopting suitable express words in that behalf, no provision of a statute should be given retrospective operation if by such operation vested rights are likely to be affected. Retrospective operation of a statutory provision can be inferred even in cases where such retrospective operation appears to be clearly implicit in the provision construed in the context where it occurs. (Para 9)

Section 2 clearly indicates that the legislature wanted the beneficent provisions enacted by it to take within their protection not only leases executed after the Act came into force, but also leases executed prior to the operation of the Act; and in that sense, the Act clearly affects vested rights of the landlords who had let out their urban properties to the tenants prior to the date of the Act. That is one important fact which is material in determining the scope and effect of S. 5. Now, S. 5 itself gives an unmistakable indication of the legislative intention to make its provisions retrospective. The plain object of S. 5 is to protect the tenants who have built a permanent structure either for business or for residence, provided it has been built

*(See S. A. Nos. 86 of 1958 and 14 of 1959 D/- 1-8-1958 and 13-3-1959 respectively, Assam).

within 5 years from the date of contract of tenancy. Therefore, cases where permanent structures had been built within 5 years of the terms of contract would fall within S. 5(1)(a), even though those constructions had been made before the date of the Act. Thus, the very scheme of S. 5(1)(a) clearly postulates the extension of its protection to constructions already made. Further, what is prohibited by S. 5(1)(a) is the eviction of the tenant, and so, inevitably, the section must come into play for the protection of the tenant even at the appellate stage when it is clear that by the proceedings pending before the appellate court, the landlord is seeking to evict the tenant, and that obviously indicates that the pending proceedings are governed by S. 5(1)(a) though they may have been initially, instituted before the Act came into force. Incidentally, an appeal pending before the lower appellate court is a continuation of the suit, and so, there is no difficulty in holding that a suit which was pending when the Act came into force would be governed by S. 5(1)(a) and an appeal arising from a suit which had been decided before the Act came into force, would likewise be governed by S. 5(1)(a), provided it is pending after the date when the Act came into force. (Paras 10, 11, 12, 13)

Cases Referred: Courwise Chronological Paras

(1898) 1898-2 QB 547: 67 LJQB 935,
In re, Athlumney; Ex parte, Wilson 9

Mr. N. C. Chatterjee, Senior Advocate, (M/s. K. P. Sen and P. K. Chatterjee, Advocates, with him), for Appellant (In C. A. No. 549 of 62); Mr. B. P. Maheshwari, Advocate, for Respondents Nos. 1(a) to 1(e) (In C. A. No. 549 of 62); M/s. Behrul Islam and R. Gopalakrishnan, Advocates, for Appellant (In C. A. No. 569 of 63); Mr. D. N. Mukherjee, Advocate, for Respondent (In C. A. No. 569 of 63).

The following Judgment of the Court was delivered by

GAJENDRAGADKAR, C. J.:

These two appeals which have been brought to this Court with a certificate issued by the Assam High Court, raised a short question about the construction and effect of S. 5 of the Assam Non Agricultural Urban Areas Tenancy Act, 1955 (No. 12 of 1955) (hereinafter called "the Act"). The relevant and material facts which have led to the suits from which these two appeals respectively arise, are similar, and so, it would not be necessary to state them in detail in regard to both the matters. We would, therefore, mention the facts broadly in C. A. No. 549/1962, in dealing with the common point raised for our decision. The appellant in this case is Mst. Rafiquennessa who sued the predecessor of the respondents for ejectment. It appears that Lal Bahadur Chetri had executed a registered lease-deed in favour of the appellant on the 14th February, 1946. The lease covered an open plot of land and under the covenant the lessee was entitled to build a house for residential purposes. In ordinary course, the lease was due to expire on the 12th February, 1952, and the lessee had agreed to deliver vacant possession of the land at the expiration of the stipulated period. Accordingly, a notice to quit was served on him to vacate on the 12th February, 1952. He, however, did not comply with the notice and that led to the present suit by the appellant for eviction (No. 149 of 1952). In support of her claim, the appellant alleged that the lessee had contravened the terms of the lease inasmuch as he had sublet the premises built by him, and so, that was an additional ground for evicting the lessee. The sub-lessees were accordingly joined as defendants to the suit.

(2) The lesseee Chetri alone resisted the suit. The sub-tenants let into possession by him did not join issue with the appellant. The trial Judge decreed the appellant's claim whereupon the lessee Chetri filed an appeal in the Court of the Sub-Judge, Lower Assam District, Gauhati, challenging the validity and the correctness of the decree passed against him (Civil Appeal No. 24/1953).

(3) While the appeal was pending, the Act was passed and was published in the Assam Gazette on the 6th July, 1955. Thereafter, when the appeal came on for hearing before the lower appellate Court, the tenant filed an application praying that he should be permitted to take an additional ground under S. 5 of the Act. Before that date, the Assam High Court had taken the view that the said provision of the Act was applicable to the pending proceedings between landlords and tenants for eviction and that was the basis on which the tenant Chetri wanted to support his appeal. The lower appellate Court allowed the tenant's plea, framed an additional issue in pursuance of it and sent the matter back to the trial Court for a finding.

(4) On remand, the trial Court took evidence and after local inspection, made a finding that the two houses proved to have been built by the tenant must be regarded as permanent in relation to the locality of the plot. He, however, found that there was no evidence to show when the said houses were constructed. Part of the finding was challenged by the tenant before the lower appellate Court. The lower appellate Court ultimately allowed the appeal and set aside the decree passed by the

trial Judge in favour of the appellant. The conclusion of the lower appellate Court was that the two houses had been constructed by the tenant within five years after the taking of the lease and that entitled the lessee to claim the benefit of S. 5 of the Act.

(5) The appellant then preferred a second appeal in the High Court of Assam (No. 86/1958). Following its earlier decision about the applicability of the provisions of S. 5 to pending proceedings, the High Court summarily dismissed the said appeal. Thereafter, the appellant applied for and obtained a certificate from the High Court and with the said certificate the present appeal has been brought before us. Pending these proceedings, the tenant Chetri died and his heirs and legal representatives Mst. Tulsa Devi and others have been brought on the record and will be described as respondents hereafter. Thus, the only point which arises for our decision is whether the Assam High Court was right in taking the view that the provisions of S. 5 applied to the proceedings between the parties which were pending at the relevant time before the lower appellate Court.

(6) Appeal No. 569 of 1963 arises from a suit filed by the appellant Wahedulla against his tenant, the respondent Abdul Hamid. The relevant facts are similar to those in C. A. No. 549 of 1962. In the case also, the Act came into force while the appeal was pending before the lower appellate Court and by the application of S. 5 the respondent's claim to continue in possession has been upheld and the appellant's claim for ejecting the respondent has been rejected. The High Court granted certificate to the appellant when it was told that the appellant proposed to challenge the correctness of its earlier decision holding that S. 5 of the Act applied to the pending proceedings.

(7) The Act was passed by the Assam Legislature in order to regulate in certain respects the relationship between landlord and tenant in respect of non-agricultural lands in the urban areas of the State of Assam. It contains fourteen sections and the scheme which is evident in the operative provisions of the Act is to afford protection to the tenants by regulating in certain respects the relationship between them and their landlords in respect of the lands covered by the Act. Section 3(c) defines a 'landlord' as meaning a person immediately under whom a tenant holds but does not include the Government. While S. 3(d) defines a 'permanent structure' in relation to any locality as meaning a structure which is regarded as permanent in that locality, the 'tenant' and 'urban area' are defined by cls. (g) and (h) respectively. Section 4 imposes an obligation on the tenant to pay rent for his holding at fair and equitable rates, and the proviso prescribes that in case of any dispute as to fair rent between the parties, the rent which was paid by the tenant immediately before the dispute shall be deemed to be fair and equitable unless a competent Court decides to the contrary. Section 6 provides for compensation for improvements; S. 7 provides for enhancement of rent by contract; S. 8 deals with enhancement of rent without contract; S. 9 authorises the Court to make an order as to enhancement of rent; S. 10 prohibits illegal realisation beyond the prescribed amount; Section 11 provides for notice for ejectment; S. 12 prescribes the procedure in which the notice has to be served; and S. 13 confers rule-making power on the State Government. Section 14 repeals the earlier Tenancy Act.

(8) Having thus broadly considered the scheme of the Act, it is necessary to read S. 5, the effect of which is the main point of controversy between the parties before us. Section 5(1) reads thus:

"Notwithstanding anything in any contract or in any law for the time being in force— (a) where under the terms of a contract entered into between a landlord and his tenant whether before or after the commencement of this Act, a tenant is entitled to build, and has in pursuance of such terms actually built within the period of five years from the date of such contract, a permanent structure on the land of the tenancy for residential or business purposes, or where a tenant not being so entitled to build, has actually built any such structure on the land of the tenancy for any of the purposes aforesaid with the knowledge and acquiescence of the landlord, the tenant shall not be ejected by the landlord from the tenancy except on the ground of non payment of rent; (b) where a tenant has effected improvements on the land of the tenancy under the terms whereof he is not entitled to effect such improvements, the tenant shall not be ejected by the landlord from the land of the tenancy unless compensation for reasonable improvements has been paid to the tenant".

Sub-section (2) prohibits the ejectment of any tenant from the land of the tenancy except in execution of a decree for ejectment passed by a competent Civil Court; and sub-sec. (3) prohibits the execution of a decree for ejectment on the ground of non-payment of rent within a period of 30 days from the date of the decree, and allows the tenant to pay into the executing Court the entire amount due from him under the decree within the said period.

whereupon the decree has to be entered as satisfied.

(9) Mr. Chatterjee contends that the Assam High Court was in error in coming to the conclusion that the proceedings which were pending between the parties at the appellate stage on 6th July, 1955 when the Act came into force, fell to be governed by the provisions of S. 5. He argues that at the relevant date when the suit was filed by the appellant, he had acquired a right to eject the tenant under the terms of the tenancy, and he contends that where vested rights are affected by any statutory provision, the said provision should normally be construed to be prospective in operation and not retrospective, unless the provision in question relates merely to a procedural matter. It is not disputed by him that the legislature is competent to take away vested rights by means of retrospective legislation. Similarly, the legislature is undoubtedly competent to make laws which over-ride and materially affect the terms of contracts between the parties; but the argument is that unless a clear and unambiguous intention is indicated by the legislature by adopting suitable express words in that behalf, no provision of a statute should be given retrospective operation if by such operation vested rights are likely to be affected. These principles are unexceptionable and as a matter of law, no objection can be taken to them. Mr. Chatterjee has relied upon the well known observations made by Wright J. in re Athlumney; Ex parte Wilson, 1898-2 QB 547 when the learned Judge said that it is a general rule that when the Legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them. He added that there was one exception to that rule, namely, that, where enactments merely affect procedure and do not extend to rights of action, they have been held to apply to existing rights. In order to make the statement of the law relating to the relevant rule of construction which has to be adopted in dealing with the effect of statutory provisions in this connection, we ought to add that retrospective operation of a statutory provision can be inferred even in cases where such retroactive operation appears to be clearly implicit in the provision construed in the context where it occurs. In other words, a statutory provision is held to be retroactive either when it is so declared by express terms, or the intention to make it retroactive clearly follows from the relevant words and the context in which they occur.

(10) Bearing in mind these principles, let us look at S. 5. Before doing so, it is necessary to consider S. 2 which provides that notwithstanding anything contained in any contract or in any law for the time being in force, the provisions of this Act shall apply to all non-agricultural tenancies whether created before or after the date on which this Act comes into force. This provision clearly indicates that the legislature wanted the beneficent provisions enacted by it to take within their protection not only leases executed after the Act came into force, but also leases executed prior to the operation of the Act. In other words, leases which had been created before the Act applied are intended to receive the benefit of the provisions of the Act, and in that sense, the Act clearly affects vested rights of the landlords who had let out their urban properties to the tenants prior to the date of the Act. That is one important fact which is material in determining the scope and effect of S. 5.

(11) Now, S. 5 itself gives an unmistakable indication of the legislative intention to make its provisions retrospective. What does S. 5 provide? It provides protection to the tenants who have actually built within five years from the date of leases executed in their favour, permanent structures on the land let out to them for residential or business purposes, and this protection is available either when the construction of the permanent structure has been made by the tenant in pursuance of the terms of the lease, or even without any term of that kind and the landlord had knowledge of it and had acquiesced in it. Thus, the plain object of S. 5 is to protect the tenants who have built a permanent structure either for business or for residence, provided it has been built within 5 years from the date of contract of tenancy. Therefore, cases where permanent structures had been built within 5 years of the terms of contract, would fall within S. 5 (1) (a), even though those constructions had been made before the date of the Act. Thus, the very scheme of S. 5(1) (a) clearly postulates the extension of its protection to constructions already made. That is another point which is significant in dealing with the controversy between the parties before us.

(12) There is yet another point which is relevant in this connection. Section 5(1) (a) provides that the tenant shall not be evicted by the landlord from the tenancy except on the ground of non-payment of rent, provided, of course, the conditions prescribed by it are satisfied. If the legislature had intended that this protection should operate prospectively, it would have been easy to say that the tenant shall not be sued in ejectment; such an expression would have indicated that the protection is afforded to the suits brought after the Act came into force and that might have introduced the element of prospective operation; instead, what is prohibited by S. 5 (1) (a) is the eviction of the tenant, and so, inevitably, the section must come into play for the protection of the tenant even at the appellate stage when it is clear that by the proceedings pending before the appellate court, the landlord is seeking to evict the tenant, and that obviously indicates that the pending proceedings are governed by S. 5(1) (a), though they may have been initially instituted before the Act came into force.

(13) Incidentally, an appeal pending before the lower appellate court is a continuation of the suit, and so, there is no difficulty in holding that a suit which was pending when the Act came into force would be governed by S. 5(1) (a) and an appeal arising from a suit which had been decided before the Act came into force, would likewise be governed by S. 5(1)(a), provided it is pending after the date when the Act came into force. Therefore, we are satisfied that the Assam High Court was right in coming to the conclusion that the dispute between the parties in the present case must be governed by the provisions of S. 5 (1) (a). It is common ground that if S. 5(1) (a) is held to apply, the decrees passed against the appellants in both the appeals cannot be successfully challenged.

(14) The result is, the appeals fail and are dismissed with costs.

EH/D.H.Z. Appeals dismissed.

AIR 1964 Supreme Court 1515 (V 51 C 200)
9th March, 1964

P. B. GAJENDRAGADKAR, C. J., K. N. WANCHOO, J. C. SHAH, N. RAJAGOPALA AYYANGAR AND S. M. SIKRI, JJ.

1. A. P. Krishnaswami Naidu (In W. P. No. 1 of 1963) 2. R. Muthuswami Gounder (In W. P. No. 7 of 1963) 3. K. Kandi Gounder (In W. P. No. 8 of 1963) 4. S. T. A. K. Paravathammal (In W. P. No. 10 of 1963) 5. V. Guruviah Naidu (In W. P. No. 53 of 1963) 6. K. Rajagopal (In W. P. No. 76 of 1963). Petitioners v. The State of Madras (In all the Petitions), Respondent. 1. Advocate General for the State of Madhya Pradesh 2. The States of Maharashtra, U. P., Rajasthan, Madhya Pradesh and Punjab, Interveners.

Writ Petn. Nos. 1, 7, 8, 10, 53 and 76 of 1963.

Constitution of India, Art. 14 — Madras Land-Reforms (Fixation of Ceiling on Land) Act (58 of 1961), Ss. 5(1), 50 and Chapters II, III — Validity — Provisions violate Art. 14 — Whole Act is unconstitutional.

'Family' has been given an artificial definition in S. 3 (14). Further S. 5(1) fixes a double standard for the purpose of ceiling. The provision of S. 5(1) results in discrimination between persons equally circumstanced. Section 5(1) is violative of the fundamental right enshrined in Art. 14 of the Constitution. As the section is the basis of Chapter II of the Act, the whole Chapter must fall along with it. AIR 1962 SC 723, Rel. on. (Para 6)

The provisions contained in S. 50 read with Sch. III of the Act with respect to compensation are discriminatory and violate Art. 14 of the Constitution. AIR 1962 SC 723, Rel. on. (Para 8)

Sections 5 and 50 are the pivotal provisions of the Act, and if they fall, then the whole Act must be struck down as unconstitutional. The working of the entire Act depends on S. 5 which provides for ceiling and S. 50 which provides for compensation. If these sections are unconstitutional, the whole Act must fall. (Para 9)

Cases Referred: Courtwise Chronological Paras
(62) AIR 1962 SC 723 (V 49): (1962) Supp (1) SCR 829, K. Kunhikoman v. State of Kerala 1, 5, 7, 8

M/s. R. V. S. Mani and K. R. Sarma, Advocates, for Petitioner (In W. P. Nos. 1 and 76 of 1963); M/s. R. V. S. Mani and T. R. V. Sastri, Advocates, for Petitioner (In W. P. Nos. 7, 8, 10 and 53); Mr. A. V. Ranganadham Chetty, Senior Advocate (Mr. A. V. Rangam, Advocate, with him), for Respondent (In all the Petitions); Mr. I. N. Shroff, Advocate, for Interveners Nos. 1 and 5 (In all the Petitions); M/s. M. C. Setalvad and N. S. Bindra, Senior Advocates, (Mr. R. H. Dhebar, Advocate, with them), for Intervener No. 2. (In W. P. No. 1 of 1963); Mr. C. P. Lal, Advocate, for Intervener No. 3 (In W. P. No. 1 of 1963); Mr. R. H. Dhebar, Advocate, for Intervener No. 4 (In W. P. No. 1 of 1963); Mr. S. V. Gupte, Additional Solicitor-General of India and Mr. N. S. Bindra, Senior Advocate (Mr. R. H. Dhebar, Advocate, with them), for Intervener No. 6 (In W. P. No. 1 of 1963).

The following Judgment of the Court was delivered by

WANCHOO, J.:

These six petitions under Art. 32 of Constitution raise a common question about the