SUPREME COURT OF INDIA

Gunwantlal Godawat

Vs.

Union of India

C.A.No.4711-4712 of 2011

(J.Chelameswar S. Abdul Nazeer)

22.11.2017

JUDGMENT

J.Chelameswar,J.,

1. On 3rd and 4th June, 1965, the residential premises of the appellant's father were searched by the officers of the Government of India in exercise of the authority conferred upon them under Rule 126L(2) of the Defence of India Rules, 1962[1] (hereinafter referred to as "the RULES"). They found 240 kilograms of gold (bars etc.) buried in the house and seized it. Proceedings for confiscation were initiated. Eventually on 24.9.1966, the Collector of Central Excise and Customs *passed an order*[2] confiscating the seized gold in exercise of the power under Rule 126M of the RULES on the ground that the seized gold was held by the appellant in contravention of Rule 126-I. A penalty of Rs.25 lakhs under Rule 126L(16) of the RULES was also imposed.

2. Aggrieved by the same, an appeal was carried by the appellant's father before the Gold Control Administrator which was dismissed on 6.3.1972. The matter was carried further in a revision before the Government of India which was also dismissed on 4.6.1979. The decision of the Government of India was challenged in a writ petition (No.1215/79) before the Rajasthan High Court. By a judgment and order dated 9.8.1994, the Rajasthan High Court allowed the writ petition.

3. It appears from the said judgment that two submissions were made before the High Court, (i) no personal hearing was given by the Collector to the appellant's father before the order of confiscation was passed though a show cause notice dated 2 "Gold was required to be declared under Rule 126-I of Defence of India Rules, 1962. It was not declared. I accordingly order absolute confiscation of 240.040 kgs. of gold, under Rule 126M of said Rules. The iron safe in which gold was secreted is also confiscated under Rule 126M. I hold that Shri Chhagan Lal Godavat is guilty of contravention of the provisions of the Rule 126-I of the Defence of India Rules, 1962. He is liable to a penalty under Rule 126-L (16) of the said Rules. Taking into consideration the gravity of the offence committed by him and in view of

the fact that he hoarded a very huge quantity of undeclared gold I impose upon him a personal penalty of Rs.25,00,000/- (Twenty five lacs)." 3.2.1966 was issued proposing confiscation and penalty under Section 126M and 126L(16) of the RULES respectively, and (ii) An opportunity to redeem the seized gold was not given.

4. The High Court accepted the submissions and remitted the matter to the Collector (Central Excise and Customs). The operative portion of the judgment reads as follows:-

> "16. As a sequence the orders passed by the Collector dated 24.9.1966 (Annex.1), the order dated 6.3.1972 passed by the Gold Control Administrator as well as the order dated 3/4.6.1979 passed by the Special Secretary Finance, Government of India exercising the power of revision of the Central Government are quashed and the matter is remitted back to the Collector, Central Excise and Customs, New Delhi to examine the matter afresh in the light of the observations made above after affording full opportunity to the petitioners. The parties are directed to appear before the Collector, Central Excise and Customs, New Delhi on 1.9.1994 whereafter the Collector shall proceed with the case afresh and shall dispose of the matter within four months from the date of receipt of the copy of the order as indicated above. The matter has already been considerably delayed for over 30 years and any further delay would amount to denial of justice to the petitioners. It is further ordered that in the event of the appeal being filed by the aggrieved party to the Central Excise and Gold Control Tribunal, the Tribunal shall dispose of the same as expeditiously as possible preferably within six months from the date of filing of the appeal."

5. Pursuant to the remand, by an order dated 9.12.1994, the Collector once again ordered confiscation of the entire quantity of (240 kilograms) gold approximately valued at Rs. 11.04 crores with an option to the legal heirs of the appellant's father to redeem the gold by paying a fine of Rs. 2.5 crores.

> "(i) I order confiscation of the 240.040 Kgs. of gold (1) Sovereigns of gold 80.776 Kgs. (2) Passas of gold 242 Nos. 75.298.300 Kgs. (3) Pieces of gold bars 5 Nos. 10.975.845 Kgs. (4) Gold bars of 19127 and 1992 9 nos. 72.990 Kgss.) valued at Rs. 12,50,070.41 at the time of seizure (present approximate value Rs. 11.04 crores at the rate of Rs. 4,600 per 10 gms. as on 07.12.1994) along with Iron Safe used to conceal the gold seized from the house of Late Shri Chhaganlal Godawat, under the Rule 126-M of the erstwhile Defence of India Rules, 1962. The impugned gold along with the Iron Safe will, however, be released and handed over to the legal heirs of Late Shri Chhaganlal Godawat on payment of redemption fine of Rs. 2.50 crores (Rupees Two crores fifty lacs only) in lieu of confiscation under Rule 126-M (8) (a) of the erstwhile Defence of India Rules, 1962. The option to redeem the same should be exercised within three months from the date of receipt of this order. "

The Collector further held that in view of the fact that the person from whom the gold was seized (Chhaganlal Godawat) expired, the levy of penalty contemplated under Rule 126L(16) of the RULES is not called for.

6. Aggrieved by the decision of the Collector, the appellant herein carried the matter in appeal to the Tribunal[3]. The appeal was heard by a Bench of the Tribunal consisting of two members. There was a difference of opinion between both the members regarding the quantum of the redemption fine. In view of the difference of opinion, the matter was referred to the third Member. The outcome of the entire process is that the Tribunal by its order dated 30th October 1995 finally opined that the redemption fine should be reduced to Rs.12.5 lacs which represented the value of the gold as on the date of the seizure. Accordingly, the appeal was allowed.

7. The Collector sought a reference under ***Section 82-B***[4] of the Gold Control Act, 1968 on two questions of law;

> "1. Whether in the matter of imposition of redemption fine, the provisions of Section 73 of ***erstwhile***[5] Gold (Control) Act, 1968 will apply when the gold was neither seized nor confiscated under the Gold (Control) Act, 1968?
>
> 2. Whether the quantum of Redemption fine should be related to market value of Gold on the date of seizure or the market value of gold on the date of adjudication by the Commissioner of Customs & Central Excise, Jaipur?"

8. By an order dated 20.5.1996, the Tribunal referred the matter to the Rajasthan High Court.

9.In the meanwhile, the Department filed an appeal against that part of the Order of the Collector dated 9.12.1994 which gave an option to the appellant to redeem the gold by paying fine of Rs. 2.5 crores in lieu of confiscation. The said appeal was dismissed on 23.5.1996.

10. It appears from the record that the Union of India filed a Writ Petition being D.B. Civil Writ Petition No. 6295 of 1996 with an interesting prayer as follows:-

> "It is, therefore, most respectfully prayed that:-
>
> (i) By an appropriate writ, order or direction the respondents may be directed not to take any action with respect to getting goods from the Petitioner Department in any manner till the disposal of the reference petition.
>
> (ii) Any other order or direction which the Hon' ble Court may consider just and proper in the facts and circumstance of case may also kindly be passed in favour of the petitioner."

In fact it is stated at para 9(D) of the writ petition as follows:-

> "D. That the petitioner department has come before the Hon' ble Court with a limited prayer that the goods may not be released to the respondents till the final disposal of the reference petition which has been referred by the learned CEGAT."

11. It appears that initially there was an ***interim stay***[6] in the said writ petition on 20th December 1996. By an order dated 28.5.1997, the interim stay was vacated. The operative portion of the Order reads as follows:-

> "8. We, therefore, vacate the stay Order passed on December 20, 1996 staying that operation of the Order dated October 30, 1995 passed by the CEGAT and instead direct that the petitioner shall retain only that much quantity of the seized gold which will fetch a sum of Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakhs) @ Rs. 4600/- (Rupees Four thousand six hundred) per 10 (ten) gms of gold and release and hand over possession of the rest of the quantity of gold to the respondent No. 1 within one month from today. In case the petitioner succeeds and there is any shortfall in the recovery because of fall in price of gold, the respondent No. 1 shall make that good and if the petition is dismissed and the order of the CEGAT is maintained the respondent No. 1 shall be entitled to return of the gold permitted to be retained under this Order as per the directions of this Court while finally disposing of the matter or thereafter. "

12. The Reference came to be answered by the Rajasthan High Court by the order dated 29.6.2009, which is the subject matter of the instant appeal. The relevant portion reads as follows:

> "19. Undeniably and undisputedly, it is the date of giving option which is relevant for adjudging the fine and not the date of seizure. The language of sub-rule 8 of Rule 126-M of 'Rules, 1962' categorically envisages that the officer adjudging may give to the owner of the Gold an option to pay in lieu of confiscation such fine as the said officer thinks fit. According to Wiktionary, a wiki based open content dictionary, the meaning of term in lieu of is 'Instead, in place of , as a substitute for'. This meaning suggests that the redemption fine is the substitute for the market value of the Gold. , the market value of the seized Gold has to be taken on that date when the option is given by the officer adjudging it.
>
> 20. It is revealed from the material on record that the Collector aptly applied the market price of Gold at the rate of Rs.4,600 per 10 gms as on December 7, 1994, the date of adjudicating when the option was given by him to the respondent and on this basis, the price of total seized and confiscated Gold 240.040 kgs came to be 11.4 crores and the redemption fine cannot be in any way less than this.

21. Thus, in the ultimate analysis, it is candidly recorded that the quantity of redemption fine should be related to the market value of gold on 7.12.1994 i.e. the date of adjudication when the officer adjudging gave the owner of the Gold an option to pay fine in lieu of confiscation. The amount of fine as adjudged to the tune of Rs.2.5 crores was totally arbitrary and irrational as it was not based on any sound and lawful reasoning.

23 the respondents are entitled to redeem the confiscated Gold only after paying the redemption fine of Rs. 11.040 crores.

24. In view of above, we deem it just and proper to direct the authorized officer to give an option afresh following above clinching observations to the owner of the Gold asking him to pay the redemption fine in lieu of confiscation."

13. For the sake of completion of the narration of facts, it must be stated that as a consequence, the tribunal (CESTAT) passed an order on 30.4.2010 remitting the matter to the adjudicating Commissioner to determine the appropriate redemption fine and the Commissioner passed an order on 16.7.2010. The relevant portion reads:

"4. Under the circumstances, we dispose of the appeal by way of remand to the Adjudicating Commissioner (authorized officer) to determine appropriate redemption fine and allow the order of the gold to redeem the gold on payment of such redemption fine. It goes without saying that while determining the redemption fine, he shall follow the cited order of the Hon' ble High Court dated 29.6.2009."

(i) An option is given to Shri Gunwant Lal Godawat and legal heir of late Shri Chhagan Lal Godawat to pay Rs.11.04 crores (Rupees Eleven crores and four lakhs only) in lieu of confiscation of the gold weighing 240.040.145 kgs under the erstwhile Defence of India Rules, 1962 within three months of receipt of this order.

(ii) In case Shri Gunwant Lal Godawat and the legal heir of late Shri Chhagan Lal Godawat does not exercise the option of depositing the amount of Rs.11.04 crores in the stipulated time limit, as given above, Shri Gunwant Lal Godawat and legal heir of late Shri Chhagan Lal Godawat shall be liable to return to the Department immediately the gold weighing 185.145 kgs which was returned to them on 2.7.94 in compliance of directions of the Hon' ble Rajasthan High Court given in the order dated 28.05.97."

THE HISTORY OF THE GOLD CONTROL REGIME:

14. On 26th October 1962, the President of India made a proclamation of emergency under Article 352 of the Constitution of India. On 28th October 1962, the President of India promulgated the Defence of India Ordinance (4 of 1962). It was amended by another ordinance (6 of 1962). In exercise of the power conferred under Section 3 of the Ordinance

(4 of 1962), RULES came to be made in GSR 1465 dated 5th November 1962. By an amendment to the RULES, Part XIIA came to be introduced by GSR 1525 dated 23rd September, 1963 with the heading 'Gold Control'.

15. Part XIIA of the RULES contained various provisions regarding acquisition, possession, sale etc. of gold ornaments and articles by two defined classes under RULES 126-A(c) and (h), i.e. "dealers" and "refiners" and persons other than dealers and refiners.

16. Both the Ordinances (4 & 6 of 1962) came to be repealed by Section 48(2) of the Defence of India Act (51 of 1962)[7]. Section 48(2) of the Act (51 of 1962) contained a declaration that notwithstanding the repeal, any Rules made under the repealed ordinance shall be deemed to have been made under the Act 51 of 1962. It contained a further declaration creating a further fiction that Act 51 of 1962 had commenced on 26th October, 1962.

> "Section 48. Repeal and saving. -
>
> (1) The Defence of India Ordinance, 1962(4 of 1962) , and the Defence of India (Amendment) Ordinance, 1962 (6 of 1962), are hereby repealed.
>
> (2) Notwithstanding such repeal, any rules made, anything done or any action taken under the Defence of India Ordinance, 1962(4 of 1962) , as amended by the Defence of India (Amendment) Ordinance, 1962 (6 of 1962) shall be deemed to have been made, done or taken under this Act as if this Act had commenced on the 26the October, 1962."

17. We need not examine the purpose for creating the fiction under sub-section (2) because no submission in this regard is made before us by either of the parties. We only take note of the fact that the RULES must be deemed to have been made under Act 51 of 1962 w.e.f. 26th October 1962 though they were in fact made later under Ordinance 4 of 1962.

18. The Defence of India Act itself was a temporary enactment. Section 1(3) of the Act declared as follows:-

> "(3). It shall remain in force during the period of operation of the Proclamation of Emergency issued on the 26th October, 1962, and for a period of six months thereafter. "

The proclamation of emergency ceased to operate on 10 th January 1968. Therefore, it follows that the Defence of India Act (5 of 1962) ceased to be in force by 9th July 1968.

19. In the year 1968, an ordinance titled The Gold (Control) Ordinance, 1968 (6 of 68) (hereinafter referred to as 'the ORDINANCE') was promulgated on ***29th June, 1968***[8]. Section 117 of the ORDINANCE repealed the RULES. The RULES would have lapsed on

9th July 1968 because the authority of law for the sustenance of the RULES ceased on that day with the cessation of the operation of the Defence of India Act (5 of 1962), but for their repeal by Section 117 of the ORDINANCE. Since the repeal of any rules by another statute and the consequences flowing therefrom are not provided for either in the General Clauses Act 1897 or any other law, it was declared in Section 117 of the ORDINANCE.

> "(1) As from the commencement of this Ordinance, the provisions of Part XII-A of the Defence of India Rules, 1962 shall stand repealed and upon such repeal, Section 6 of the General Clauses Act, 1897, shall apply as if the said Part were a Central Act;
>
> (2)Notwithstanding the repeal made by sub-section (1) but without prejudice to the application of Section 6 of the General Clauses Act, 1897, any notification, order, direction, appointment or declaration made or any notice, licence or certificate issued or permission, authorization or exemption granted or any confiscation adjudged or penalty or fine imposed or any forfeiture ordered or any other thing done or any other action taken under or in pursuance of the provisions of Part XII-A of the Defence of India Rules, 1962, so far as it is not inconsistent with the provisions of this Ordinance be deemed to have been made, issued, granted, adjudged, imposed, ordered, done or taken under the corresponding provisions of this Ordinance."

20. Thereafter Parliament made the Gold Control Act (45 of 1968) (hereinafter referred to as the GOLD ACT). The scheme of the ORDINANCE and the GOLD ACT is more or less the same (the details of which are not necessary for our purpose) and is substantially similar to the scheme of the Part XIIA of the RULES. Section 116(1) of GOLD ACT inter alia repealed the ORDINANCE. Section 116(2) of the GOLD ACT:

> "116. Repeal and savings. - (1) The Gold (Control) Act, 1965 (18 of 1965), and the Gold (Control) Ordinance, 1968 (6 of 1968), are hereby repealed.
>
> (2) Notwithstanding such repeal, anything done or any action taken, including any notification, order or appointment made, direction given, notice, licence or certificate issued, permission, authorization or exemption granted, confiscation adjudged, penalty or fine imposed, or forfeiture ordered whether under the Gold (Control) Ordinance, 1968 (6 of 1968), or Part XII-A of the Defence of India Rules, 1962, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done, taken, made, given, issued, granted, adjudged, imposed or ordered, as the case may be, under the corresponding provision of this Act as if this Act had commenced on the 29th day of June, 1968."
>
> It can be seen from the sub-section (2) extracted above that it creates 2 fictions. The 1st fiction provides that various things done or actions taken under the ORDINANCE or the RULES are deemed to be things done or actions taken under the corresponding provisions of the GOLD ACT. The 2nd fiction is that the GOLD ACT "had commenced as on 29th June 1968". But the GOLD ACT does not contain a

provision corresponding to that part of Section 117(1) of the ORDINANCE dealing with the repeal of the RULES and the consequences of such repeal.

EFFECT OF THE REPEAL OF THE RULES BY THE ORDINANCE:

21. One of the questions that is required to be examined to decide the controversy on hand is whether the RULES stood irrevocably repealed in the absence of a provision in the GOLD ACT similar to Section 117(1) of the ORDINANCE?

22. The judgment of this Court in T. Venkata Reddy & Others v. State of Andhra Pradesh , would be relevant and helpful to answer the above question. Certain posts of part-time Village Officers were abolished by Section 3 of an Ordinance of the then State of Andhra Pradesh. The Legislature never replaced the ordinance by an enactment. In the litigation that ensued therefrom, one of the questions before this Court was whether those abolished part-time Village Officer posts would revive on the lapse of the ordinance. A Constitution bench of this Court held that "the effect of Section 3 of the Ordinance was irreversible except by express legislation".

23. The resultant legal position is that the efficacy of the provisions of an ordinance would not in any way be diminuted or abrogated unless there is a subsequent countervailing legislation. The rights and obligations created, the liabilities incurred or acquired or suffered under an ordinance would be as enduring as those resulting from a Statute.

24. But Venkata Reddy is declared not to be good law in view of the law laid down in *Krishna Kumar Singh & Another v. State of Bihar & Others*[9]. It was held:

> "105.12. The question as to whether rights, privileges, obligations and liabilities would survive an Ordinance which has ceased to operate must be determined as a matter of construction. The appropriate test to be applied is the test of public interest and constitutional necessity. This would include the issue as to whether the consequences which have taken place under the Ordinance have assumed an irreversible character. In a suitable case, it would be open to the court to mould the relief."

25. Krishna Kumar Singh dealt with a case where a series of Ordinances were issued by the Governor of Bihar.

> "13. The Ordinances promulgated by the Governor followed a consistent pattern. None of the Ordinances was laid before the legislature. Each one of the Ordinances lapsed by efflux of time, six weeks after the convening of the session of the Legislative Assembly. When the previous Ordinance ceased to operate, a fresh Ordinance was issued when the Legislative Assembly was not in session. The Legislative Assembly had no occasion to consider whether any of the Ordinances should be approved or disapproved.

> No legislation to enact a law along the lines of the Ordinances was moved by the Government in the Legislative Assembly. The last of the Ordinances, like its predecessors, cease to operate as a result of the constitutional limitation contained in Article 213(2)(a). The subject was entirely governed by successive Ordinances; yet another illustration of what was described by this Court as an Ordinance-Raj barely three years prior to the promulgation of the first in this chain of Ordinances."
>
> This Court was examining the issue:
>
> "69. The issue before the Court is of the consequence of an Ordinance terminating on the expiry of a period of six weeks or, within that period, on a disapproval by the legislature. ... Would the legal effects created by the Ordinance stand obliterated as a matter of law upon the lapsing of an Ordinance or passing of a resolution of disapproval?"

This Court took note of the fact that Venkata Reddy's case and two ***earlier cases***[12] which laid down the law based on the theory of "enduring rights" propounded by English decisions in the cases of ***temporary statutes***[13]

26. This Court in Krishna Kumar Singh opined that "the basis and foundation of the two Constitution Bench decisions cannot be accepted as reflecting the true constitutional position" and went on to consider the issue afresh and finally concluded:

> "92. ... The enduring rights theory attributes a degree of permanence to the power to promulgate Ordinances in derogation of parliamentary control and supremacy. Any such assumption in regard to the conferment of power would run contrary to the principles which have been laid down in S.R. Bommai [S.R. Bommai v. Union of India, (1994) 3 SCC 1] . The judgment in T. Venkata Reddy [T. Venkata Reddy v. State of A.P., (1985) 3 SCC 198 : 1985 SCC (L&S) 632] essentially follows the same logic but goes on to hold that if Parliament intends to reverse matters which have been completed under an Ordinance, it would have to enact a specific law with retrospective effect. This, in our view, reverses the constitutional ordering in regard to the exercise of legislative power."

It must be remembered that the abovementioned discussion of law was in the context of an Ordinance which was never tabled before the Legislature and lapsed by virtue of the efflux of time.

27. In our opinion, the declaration in Krishna Kumar Singh that Venkata Reddy is no longer good law in view of the judgment in S.R. Bommai may not make any difference to the present case. In the case on hand, the ORDINANCES came to be repealed and replaced by the GOLD ACT with retrospective effect from 29th June 1968, that is, from the date of promulgation of the ORDINANCE.

THE EFFECT OF THE REPEAL OF THE ORDINANCE BY THE GOLD ACT:

28. The General Clauses Act is silent in this regard. On the other hand, Section 30 of the General Clauses Act deals with a situation of a Central Act being repealed by an Ordinance. It declares (in substance) that the same consequences that would follow the repeal of an earlier enactment by a later enactment would also follow in the case of repeal of an earlier enactment by a subsequent Ordinance. The implications of Section 30 were considered by this Court in *State of Punjab v. Mohar Singh*[14],. But the counter position is not provided under the General Clauses Act. In the circumstances, we are only required to look into the provisions of the Act which repeals an Ordinance. In the case on hand, the provisions of the GOLD ACT. Though the GOLD ACT expressly repealed the ORDINANCE, it did not make a declaration that the RULES are repealed. But on that account, the peremptory nature of the repeal of the RULES by the ORDINANCE need not be doubted for the following two reasons:

> "(i) The GOLD ACT while making the declaration that the ORDINANCE is repealed provided that various actions taken both under PART XIIA of the RULES or the ORDINANCE are deemed to be actions taken under the corresponding provisions of the GOLD ACT; and
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> (ii) Unlike Krishan Kumar Singh, the ORDINANCE was followed up by a legislative action which did not disapprove the content of the ORDINANCE."

SCHEME AND PURPOSE OF THE 1ST FICTION UNDER SECTION 116:

29. The purpose of creating the 1st fiction under Section 116, according to us, is to declare that the rights and obligations flowing from the adjudgment of confiscation would be those specified in the GOLD ACT. The purpose of the fiction is not to alter the law applicable to the adjudgment proceedings. One of the examples of the rights flowing from the adjudgment of confiscation of gold is a right of appeal against the adjudgment of confiscation. Both the RULES [Rule 126M(3) and the GOLD ACT (Sections 80 and 81)] provide for appeal. While under the RULES, appeals lay to the 'Administrator' irrespective of the forum which adjudged the confiscation. Under the GOLD ACT, the appellate forum varies depending on the forum which adjudged the confiscation.

30. The fiction does not deal with the law applicable to pending proceedings. Such a conclusion is irresistible from the language of Section 116(2) of the GOLD ACT which says; "the confiscation adjudged .. under ... Part XIIA of the Defence of India Rules 1962 ... shall be deemed to have been adjudged ... under the corresponding provisions of this Act."

SCHEME OF PART XIIA OF THE RULES:

31. The RULES dealt with various matters. We are only concerned with Part XIIA titled "Gold Control" (which was inserted by an Amendment dated 09.01.1963), because the

seizure and confiscation of gold which is the subject matter of these appeals arose out of the operation of Part XIIA of the RULES.

32. Various Rules in Part XIIA dealt with the regulation of the activity of three classes of persons (i) dealers, (ii) refiners, and (iii) others who own or possess gold. The expressions 'dealer' and 'refiner' are defined expressions under Rule 126-A(c) and (h) respectively. Chapter V of Part XIIA dealt with the regulation of persons other than dealers and refiners who own gold (hereinafter referred to as PERSONS for the sake of convenience).

33. Under Rule 126-I, PERSONS were required to make a declaration within a period stipulated therein. The declaration is required to contain, the quantity, description and other prescribed particulars of gold (other than ornaments) owned by a PERSON. Sub-rule (3) stipulated that PERSONS shall not acquire any gold other than ornaments except either by succession or in accordance with a permit granted under the RULES. Sub-rule (4) mandated that if a PERSON either acquires or parts with any quantity of gold subsequent to a declaration made by him, such PERSON is required to make a further declaration giving the particulars thereof.

34. Rule 126-L(2) provided the authority of law (obviously for the officers entrusted with responsibility of the enforcement of the RULES) to enter and search any premises of PERSONS and seize gold if found therein, if it is suspected that any provision of Part XIIA "has been or is being or is about to be contravened" with respect to the gold found.

35. Rule 126-M provided for 'confiscation' of the gold seized under Rule 126-L. Rule provided that a confiscation is required to be 'adjudged'. The expression 'adjudged' is not defined but, having regard to the scheme of the Rules mentioned above, the only possible meaning that can be ascribed to that word is that adjudgment is a proceeding by which the liability for confiscation arising out of the provisions of Part XIIA of the gold seized is required to be determined. It appears from the scheme, the liability for confiscation of the gold found in searched premises arises from the fact that "there has been or is being or is about to be" a contravention of any provision of Part XIIA. In other words, adjudgment is nothing but a process of establishing the facts relevant for arriving at a conclusion that "there has been or is being or is about to be" a contravention of any one of the Rules contained in Part XIIA. Goes without saying that adjudgment is a quasi judicial proceeding.

36. The expression 'confiscation' is not defined in the RULES. It had roots in the latin word Confiscate - to consign to fiscus i.e. transfer to treasury, as a punishment or in enforcement of law. Though, the expression is generally understood as having implications associated with a crime. However, it is now well settled at ***least by two***[15] earlier judgments of this Court that the liability for confiscation of property could be purely civil in nature as a consequence of the violation of some prescription of law commonly described as 'forfeiture'. The words 'forfeiture' and 'confiscation' have come to be used

interchangeably. The General Clauses Act, 1972 does not employ the word 'confiscation'. On the other hand, it employs the word 'forfeiture' in ***Section 6(d)***[16]**.** Having regard to the long history of the usage of those two expressions, we are of the opinion that 'forfeiture' is an expression which takes within its sweep 'confiscation' also for the ***purpose of law***[17].

37. Rule 126-P provided for penalties. The sub-rules insofar as it is relevant for the facts of the present case are Rule 126P(1)(i) and (2)(ii) , the first of which stipulated that any PERSON either fails or omits to make any return required under Rule 126-I without any reasonable cause or makes a false statement in the return filed either with knowledge or belief that such statement is false is punishable with imprisonment with a term of one year or fine or both. Sub-rule(2)(ii) stipulates that any person who "has in his possession or under his control any quantity of gold in contravention of any provision of this part" shall be punishable with imprisonment for a term of not less than six months and not more than two years and also with fine.

38. We have indicated the content of Rule 126-P(1) only for the limited purpose of understanding the overall scheme of the RULES and the consequences (other than confiscation of the gold under Rule 126M) that can visit PERSONS either owning or possessing gold in contravention of the provisions contained in Part XIIA.

39. It can be seen from the above that possession of undeclared gold entails two consequences - (i) liability for confiscation of such gold, and (ii) liability for prosecution and punishment. Both the consequences are independent though flowing from the same set of facts.

40. Another relevant feature of the RULES (for the purpose of the case on hand) is that under Rule 126-M(8) , the officer adjudging confiscation may give to the "owner of the gold" an option to pay in lieu of confiscation such fine (popularly known as redemption fine) as the officer thinks fit.

APPLICATION OF THE LAW TO THE FACTS OF THE CASE:

41. Confiscation of the gold of the appellant under the order (dated 24.09.1966) of adjudgment of confiscation was nothing but a 'forfeiture' of gold within the meaning of the expression occurring under Section 6(d) of the General Clauses Act. The order of forfeiture necessarily extinguished the title of the appellant in the confiscated gold and obliged the appellant to part with the gold. Correspondingly the Union of India acquired title to that gold. In other words, the appellant incurred a liability to part with or forfeit the gold. If the original confiscation order (dated 24.09.1966) remained unchallenged or otherwise and became final, the vesting of title in the confiscated gold in the Union of India would have been an accomplished fact under the RULES. But the appellant questioned the legality of the order of confiscation before the 'appellate' fora and the proceedings were pending even by the date of the repeal of the RULES.

42. The adjudgment of confiscation was found to be not in accordance with law by the Rajasthan High Court in Writ Petition No.1215/79 dated 9th August 1994. The High Court had set aside the adjudgment order and remitted the matter to the original authority for fresh adjudgment. The High Court did not hold the seizure of appellant's gold was illegal. In other words, the seizure of the gold under the RULES remained undisturbed thereby requiring an examination of the question whether the gold is required to be confiscated. As a result, only the adjudgment of confiscation was required to be conducted afresh. It is a liability incurred by the appellant. Necessarily the question arises as to what is the law in accordance with which such adjudgment is to be made. By the date of the judgment of the High Court, the RULES stood repealed by the ORDINANCE which inter alia provided that Section 6 of the General Clauses Act applies. By virtue of the operation of Section 6 of the General Clauses Act , the adjudgment of confiscation (legal proceeding) in respect of the seized gold made under the RULES is required to be made afresh and appropriate further orders are to be passed in accordance with the RULES as if the repealing ORDINANCE had not been passed .

43. The legal consequences which follow the repeal of the RULES are specified in Section 117 of the ORDINANCE.

> ".upon such repeal, Section 6 of the General Clauses Act, 1897, shall apply as if the said Part were a Central Act ..." Consequently, the RULES would remain unaffected in respect of the various legal proceedings, referred to in Section 6 (e) of the General Clauses Act, either pending or concluded and other appropriate consequences specified in the RULES would follow.

44. But that does not solve the problem on hand. The ORDINANCE itself came to be repealed by the GOLD ACT by the date of the judgment of the Rajasthan High Court. Such repeal gives rise to two questions - What is the effect of (i) the repeal of the Ordinance 6 of 1968, and (ii) the declaration under Section 116(2) of the GOLD ACT?

45. At the time of the making of the GOLD ACT, Parliament was conscious of the existence of the RULES and their repeal by the ORDINANCE and also the fact that various actions authorised under the provisions of the Part XIIA of the RULES were taken or pending. The Parliament is also conscious of the fact that the ORDINANCE while repealing the RULES provided for the application of Section 6 of the General Clauses Act. Pursuant to the repeal of the ORDINANCE, the Parliament did not choose by the GOLD ACT to disapprove such a declaration made under the ORDINANCE. Therefore, in our opinion, it is more than public interest and constitutional necessity as opined in Krishan Kumar Singh's case to hold that the RULES stood peremptorily repealed by the ORDINANCE and on such repeal, Section 6 of the General Clauses Act applied. Therefore, the RULES stood peremptorily repealed by the ORDINANCE notwithstanding the fact that the ORDINANCE itself came to be repealed subsequently by the GOLD ACT. The repeal of the Ordinance does not revive the RULES.

46. Now we shall deal with Question No.(ii) mentioned above i.e., the effect of Section 116(2), insofar as it is relevant for our purpose, that the confiscation adjudged under Part XII-A of the RULES shall be deemed to have been adjudged under the corresponding provision of the GOLD ACT.

47. The question is no more res integra. This Court in *Jayantilal Amrathlal v. Union of India* specifically dealt with the issue. About 24.5 kgs. of gold was seized from the Jayantilal on 17th December 1964. On 5th June 1965, a show-cause notice was issued, calling upon Jayantilal to explain why the seized gold should not be confiscated under Rule 126-M of the RULES. The said notice was challenged under Article 226 in a writ petition. During the pendency of the said writ petition, the ORDINANCE came to be issued followed by the GOLD ACT. It was argued on behalf of Jayantilal that notice dated 5th June 1965 could not be enforced because it was a notice issued under the RULES which had been repealed. The said argument was rejected.

> "Para 7. In view of Section 115(2) of the Gold (Control) Act, 1968, it was urged on behalf of the appellant that the notice issued on June 5, 1965 can no more be operative because under the Gold (Control) Act, 1968, there are no provisions for making a declaration relating to the possession of primary gold. At this stage it may be noticed that under the "Rules" every person who was in possession of primary gold, exceeding the prescribed weight was required to convert the same either into ornaments or sell the same to the licensed dealers within the time prescribed by the "Rules". Possession of primary gold thereafter exceeding the prescribed limit was an offence. That period had expired long before the Gold (Control) Act, 1968 came into force. Hence the Gold (Control) Act naturally did not make any provision for a declaration of the possession of primary gold. In view of that circumstance it was urged on behalf of the appellant that the provisions in the "Rules" requiring a declaration to be made in respect of the possession of primary gold are inconsistent with the provisions of the Gold (Control) Act and therefore the notice issued under the "Rules" cannot be considered as being continued under the provisions of the Gold (Control) Act, 1968. Para 8. The above contention is untenable. There are no provisions in the Gold (Control) Act, 1968 which are inconsistent with Rule 126(I)(10) of the "Rules". That being so, action taken under that rule must be deemed to be continuing in view of Section 6 of the General Clauses Act, 1897. It is true that Gold (Control) Act, 1968 does not purport to incorporate into that Act the provisions of Section 6 of the General Clauses Act. But the provisions therein are not inconsistent with the provisions in Section 6 of the General Clauses Act. Hence the provisions of Section 6 of the General Clauses Act are attracted in view of the repeal of the Gold (Control) Ordinance, 1968. As the Gold (Control) Act does not exhibit a different or contrary intention, proceedings initiated under the repealed law must be held to continue. We must also remember that by Gold (Control) Ordinance, the "Rules" were deemed as an act of Parliament. Hence on the repeal of the "Rules" and the Gold (Control) Ordinance, 1968 the consequences mentioned in Section 6 of the General Clauses Act, follow. For ascertaining whether there is a

contrary intention, one has to look to the provisions of the Gold (Control) Act, 1968. In order to see whether the rights and liabilities under the repealed law have been put an end to by the new enactment, the proper approach is not to enquire if the new enactment has by its new provisions kept alive the rights and liabilities under the repealed law but whether it has taken away those rights and liabilities. The absence of a saving clause in a new enactment preserving the rights and liabilities under the repealed law is neither material nor decisive of the question − see State of Punjab v. Mohar Singh [AIR 1955 SC 84 : (1955) 1 SCR 893 : 1955 SCJ 25] and T.S. Baliahv. Income Tax Officer, Central Circle VI, Madras [AIR 1969 SC 701 : (1969) 3 SCR 65 : (1969) 1 SCJ 890 : 72 ITR 787] ."

Therefore, it was held that the confiscation proceedings initiated under the RULES must be concluded in accordance with the RULES without any reference to the provisions of the GOLD ACT.

48. All the above analysis leads us to the following conclusions:

"(1) the adjudgment of confiscation of the appellant's gold is required to be made only in accordance with the RULES but not the GOLD ACT;

(2) the role of the 1st fiction created under Section 116 of GOLD ACT is limited as explained in para 29 (supra).

49. The submissions before us revolved around two questions:

"(i) What is the law governing determination of the amount of fine that could be levied and collected from the appellant in lieu of the confiscation of gold seized from him?;

(ii) Whether the High Court applied the correct law in recording the conclusion that the appellant is liable to pay an amount of Rs.11.04 crores in lieu of the confiscation of the Gold if he so chooses? and issues ancillary thereto.

50. It must be remembered that by order dated 9.12.94, the officer adjudging the confiscation of gold of the appellant gave an option to the appellant to pay a fine of Rs.2.5 crores. While deciding that figure, the officer took note of the fact that the gold was valued at Rs.12.5 lakhs at the time of its seizure and also took note of the fact that as on 9.12.1994 (the date of adjudgment order), the gold was valued at Rs.11.04 crores.It must be remembered that Rule 126- M(8)(a) did not oblige the officer to determine the amount of fine on the basis of the value of the confiscated gold either with reference to the date of its seizure or on the date of adjudgment of confiscation. The rule (text of it at least) conferred an unfettered discretion on the officer to determine the amount of fine. But an unfettered discretion and the Rule of Law are contradictions in terms. The High Court opined at para 18;

". Now, what shall be the quantum of fine, decision thereof has been left to the adjudging authority and he may adjudge the fine as he thinks fit. Of course, this decision is required to be exercised judiciously in accordance with law or rule as the case may be but not arbitrarily. The words "an option to pay in lieu of confiscation such fine" are very significant and the use of the words "in lieu of' connotes that the fine should be equivalent to the thing or Gold confiscated by the authority."

We are in complete agreement with the view of the High Court.

51. While it is true that the discretion conferred upon the Authority under Rule 128M - (8)(a) is textually unfettered, it does not lead to the inference that the discretion is absolute and uniform with reference to the various contraventions of the RULES. The limitations on the discretion are to be found from the scheme of the RULES. The various RULES in the Part XIIA of the RULES make various stipulations and the contravention of any one of the stipulations can lead to the confiscation of gold. The factors which influence the Authority's exercise of discretion will necessarily vary from the nature of the offence which is committed. For instance, Rule 126-I mandates that certain PERSONS make a declaration to the Administrator in the prescribed from. The violation of this would entail a confiscation.

52. But Rule 126-I(2) stipulates that the declaration is required to be made by PERSONS other than owners of the gold in certain cases because the owners are either legally incapacitated or judicial persons who are necessarily required to act through a human agency. Rule 126-I(2)(a) stipulates that the declaration is to be made by the guardian. Similarly with gold belonging to an idol , the declaration is to be made by the manager. In all these cases, the declaration is to be made by a third person who is not necessarily in possession or the owner of gold. In such circumstances, if the declaration is not filed, the owner could not be held responsible for the non-declaration. Therefore, the relevant factor for the exercise of the discretion is the culpability of the owner of the gold and factors connected therewith.

53. In the same vein Rule 126-I(3) enjoins a person from acquiring gold, subsequent to making a declaration, except in certain situations contemplated therein. Sub Rule 4 and 5 lay down the manner in which a declaration is supposed to be made by those who acquire gold through succession, intestate or testamentary. PERSONS not filing a declaration at all and PERSONS not filing a further declaration under sub-Rule (3) cannot be treated on the same footing.

54. All this just goes to show that the violations committed by PERSONS falling under different category cannot be treated alike. If the rule were to be applied to all these categories of PERSONS uniformly it would result in the violation of Article 14.

55. The appellant's case does not in our view calls for any discretion to be exercised in his favor in the light of the totality of the circumstances. The non-filing of the declaration is established to be an absolutely calculated violation of law.

56. Aggrieved by the determination of the fine amount of Rs.2.5 crores, the appellant carried the matter in appeal under Section 81 of the GOLD ACT. Two members of the appellate tribunal were not able to agree upon the quantum of the fine. While the Member (Technical - Brahma Deva) opined that the law applicable is only Rule 126-M(8)(a) of the RULES and the RULES did not make any reference to the value of the gold for the purpose of determining the quantum of fine. He, therefore, opined that the quantum is entirely the discretion of the adjudicating officer. He, however, chose to substitute his discretion for that of the adjudicating officer by reducing the fine to Rs.25 lakhs from Rs.2.5 crores. Whereas the Member (Judicial - Sankararaman) opined that the quantum of fine must be "in line with Section 73 of the Gold Control Act" and, therefore, opined that the fine amount should not exceed Rs.12.5 lakhs (the value of the gold at the time of seizure). In view of the disagreement, the matter was referred to the third member of the tribunal who agreed with the Member (Technical)' s view.

57. Aggrieved by the same, the respondent sought a reference under Section 82B of the GOLD ACT to the High Court on two precise questions, which are already noted at para 7 (supra) and, in our opinion, the questions were rightly framed.

58. The High Court rightly came to the conclusion that the case of the appellant is governed only by the RULES and not by Section 73 of the GOLD ACT and recorded at paras 20 and 21 of the impugned judgment as follows:

> "20. It is revealed from the material on record that the Collector aptly applied the market price of Gold at the rate of Rs.4,600 per 10 gms as on December 7, 1994, the date of adjudicating when the option was given by him to the respondent and on this basis, the price of total seized and confiscated Gold 240.040 kgs came to be 11.4 crores and the redemption fine cannot be in any way less than this.
>
> 21. Thus, in the ultimate analysis, it is candidly recorded that the quantity of redemption fine should be related to the market value of gold on 7.12.1994 i.e. the date of adjudication when the officer adjudging gave the owner of the Gold an option to pay fine in lieu of confiscation. The amount of fine as adjudged to the tune of Rs.2.5 crores was totally arbitrary and irrational as it was not based on any sound and lawful reasoning."
>
> The High Court finally directed –
>
> "24. In view of the above, we deem it just and proper to direct the authorized officer to give an option afresh following above clinching observations to the owner of the Gold asking him to pay the redemption fine in lieu of confiscation."

59. Pursuant to the order of the High Court dated 29.06.2009, answering the reference, the tribunal made an order dated 30.04.2010 remitting the matter to the Commissioner:

"4. Under the circumstances, we dispose of the appeal by way of remand to the Adjudicating Commissioner (authorized officer) to determine appropriate redemption fine and allow the order of the gold to redeem the gold on payment of such redemption fine. It goes without saying that while determining the redemption fine, he shall follow the cited order of the Hon' ble High Court dated 29.6.2009."

Thereby, the Commissioner passed an order as follows:

"(i) An option is given to Shri Gunwant Lal Godawat and legal heir of late Shri Chhagan Lal Godawat to pay Rs.11.04 crores (Rupees Eleven crores and four lakhs only) in lieu of confiscation of the gold weighing 240.040.145 kgs under the erstwhile Defence of India Rules, 1962 within three months of receipt of this order.

(ii) In case Shri Gunwant Lal Godawat and the legal heir of late Shri Chhagan Lal Godawat does not exercise the option of depositing the amount of Rs.11.04 crores in the stipulated time limit, as given above, Shri Gunwant Lal Godawat and legal heir of late Shri Chhagan Lal Godawat shall be liable to return to the Department immediately the gold weighing 185.145 kgs which was returned to them on 2.7.94 in compliance of directions of the Hon' ble Rajasthan High Court given in the order dated 28.05.97."

It must be remembered that the amount of Rs. 11.04 crores was the value of the gold as on the date (7.12.94) when the appellant was given the option to pay the fine in lieu of confiscation.

60. However, it is argued before us by the appellant that:

"Once the order of confiscation had been set aside and the matter remanded back, the issue whether the gold is to be confiscated was required to be adjudicated afresh. The determination of the law under the proceedings would continue has to be considered "on the date of remand by the High Court" ... Thus the pending proceedings under Part XII-A of the DoI Rules, will have to be deemed to be continue under the Gold (Control) Act."

In other words, the argument advanced is that the law applicable to the adjudgment proceedings is GOLD ACT - a submission plainly untenable in light of the reasons given by us in the preceding paragraphs and the decision of this Court in Jayantilal.

61. A proceeding initiated under the RULES and pending as on the date of the GOLD ACT will still have to be concluded in accordance with the RULES in view of Section 116 of the ORDINANCE for the reasons already noted at para 29.

62. On the basis of the above-mentioned submission, a further submission was made:

"The said rule (Ed: Rule 126 M (8)) grants the further discretion to impose a fine that is less than or more than the market value as on the date of seizure or of order of confiscation, as the case may be (however, redemption at a higher value would not make commercial sense since the buyer will prefer buying from the market). Section 73 read with Section 2(v) of the Act mandates that the redemption fine will not exceed the market value of the gold seized as on the date of seizure. The Act takes away the discretion available to the officer to determine the relevant date for valuation by mandating the relevant date to be the date of seizure, which in any case is one of the methods available to the officer for calculating the redemption fine under rule 126M(8). Therefore, the Act only reduces the discretion available under Rule 126M(8) with respect to the relevant date for calculation of the redemption fine. The officer continues to have the discretion to impose a fine lesser than the market value as on the date of seizure. There is therefore no inconsistency between the DoI Rules and the Act."

63. The substance of the submission is that both the RULES and the GOLD ACT provide for giving an option to the "owner" of the gold adjudged to be confiscated. While the RULES provide an unrestricted discretion to the "officer adjudging" to determine the amount of fine, GOLD ACT restricts the discretion by imposing an upper limit on the quantum of fine that could be imposed by declaring that "give to the owner thereof an option to pay in lieu of confiscation such fine, not exceeding the value". According to the petitioner, such value is to be determined with reference to the date of the seizure of the gold because of Section 73 of the GOLD ACT read with Section 2(v) thereof.

64. At the outset, we must make it clear that there is nothing in the text of Section 73 of the GOLD ACT which requires the value of the gold (for the purpose of determining the fine) should be the value of the gold as on the date of the seizure. But the expression 'value' is a defined expression under Section 2(v) of the Act.

> "Section 73 - Power to give option to pay fine in lieu of confiscation- Whenever any confiscation is authorized by this Act, the officer adjudging it may, subject to such conditions as may be specified in the order adjudging the confiscation, give to the owner thereof an option to pay in lieu of confiscation such fine, not exceeding the value of the thing in respect of which confiscation is authorized, as the said officer thinks fit." Section 2(v). 'value', in relation to primary gold, article or ornaments, means,-
>
> (i) when the gold is seized under this Act, the market price of such gold as on the date of the seizure thereof,
>
> (ii) when the gold is not available for seizure, the market price of such gold as on the date on which the notice referred to in section 79 is issued."

65. The language of Section 73 is clear that it applies only to those cases wherein confiscation is one which is authorised "by this Act". In our opinion, Section 73 would

have no application to those cases of confiscation which are adjudged under the RULES. It would be applicable only for those cases where the confiscation is authorised by the GOLD ACT. Section 71 authorises the confiscation of gold in respect of which "any provision of this Act or any rule or order made thereunder has been, or is being, or is attempted to be, contravened". In other words, Section 71 authorises the confiscation of gold if there has been or is or is attempt to contravene the provisions of the GOLD ACT i.e. only such contravention occur after the commencement of the GOLD ACT but not contravention of law which existed anterior thereto (the RULES).

66. There is a distinction between acts done pursuant to the authorization of a statute and acts done pursuant to the authorization under a different statute or a statutory instrument but deemed to have been done under the earlier of the abovementioned two statutes. When a statute creates a fiction requiring certain events which took place prior to the commencement of such a statute to be deemed to have been done under the statute, such a fiction does not retrospectively authorise doing of such acts. It only takes note of the existence of certain state of affairs and creates putative state of affairs by declaring that such anterior events should be deemed to have taken place under the statute which came into existence later. Such fictions could only have limited consequences.

67. Prior to the GOLD ACT, seizure and confiscation of gold were authorised by the RULES. Though, by virtue of the fiction created under Section 116, the confiscations adjudged under the RULES are deemed to be confiscations adjudged under the GOLD ACT, the Scheme and the limitations of such fiction are already explained earlier in para 29. Therefore, neither Section 73 nor the definition under Section 2(v), in our opinion, would be applicable for the confiscations adjudged under the RULES - pursuant to a seizure that took place before the commencement of the GOLD ACT.

68. No doubt that the option to pay fine in lieu of confiscation is one of the consequences flowing from the adjudgment of confiscation. Therefore, in view of the fiction under Section 116, Section 73 of the GOLD ACT would have been applicable if consequence of applying such fiction to the confiscations adjudged under the RULES is not inconsistent with the GOLD ACT. In view of the language of Section 73 - "confiscation authorised by this Act" limits the operation of Section 73 only to the confiscations adjudged under the GOLD ACT. Hence, there is an inconsistency. We are of the opinion that the High Court rightly held that Section 73 would not come into play at all in the case on hand. Therefore, the fine amount cannot be determined on the basis of the value of the gold.

69. On the other hand, as rightly opined by the High Court, the market value of the gold as on the date of the exercise of the option by the owner of the gold to pay fine in lieu of the confiscation would be the legally appropriate amount of fine. Because it is a fine in lieu of confiscation. Confiscation would result in the loss of the entire property in the confiscated gold resulting in a financial loss of the value of gold to the owner. Hence, the value of the gold is to be determined with reference to the date on which the owner exercises the option to pay the fine in lieu of the confiscation.

70. One of the ancillary submissions made on behalf of the appellant is that in view of the fact that the order of the Collector dated 9.12.94 gave an option to the appellant to redeem the gold by paying a fine of Rs.2.5 crores in lieu of confiscation which had become final in view of the dismissal of the appeal of the department on 23.5.1996. Therefore, it was not open to the High Court to hold that the appellant is liable to pay a redemption fine of Rs.11.04 crores in a reference under Section 82-B of the GOLD ACT. The High Court could not sit in appeal on the judgment of the Tribunal and substitute its opinion regarding the amount of fine to be collected from the appellant in view of the confiscation of his gold.

71. The submission of the appellant is required to be rejected for the simple reason that the determination of the amount of fine made by the tribunal was without any basis. The conclusion of the Tribunal that the fine in lieu of confiscation must be equal to the value of the gold as on the date of its seizure is not based on any principle of law. The correctness of the said conclusion was the subject matter of the reference before the High Court. The High Court was completely justified in examining the correctness of the legal basis on which the figure of Rs. 12.5 lakhs was arrived at. For the reasons already recorded by us earlier, the High Court rightly came to the conclusion that the fine in lieu of confiscation must represent the value of the gold so confiscated as on the date (9.12.94) the appellant was given an option to pay the fine in lieu of confiscation. Even according to the said order of the Collector, the value of the gold as on that date was Rs.11.04 crores. Therefore, the High Court was right in its direction.

72. We are only left with one submission made on behalf of the Union of India, i.e., in view of the enormous delay which took place in the confiscation proceedings (50+ years), the appellant must be made to pay the interest on the amount of fine of Rs.11.04 crores. Otherwise, it would have the effect of permitting the appellant to profit by litigation as according to the Attorney General if the appellant is permitted to take back the entire quantity of 240.040 kgs. of gold the current market value would be Rs. 72 crores (approx.). We find the submission wholly justified. We, therefore, deem it proper to direct that the appellant would be entitled to redeem the gold by paying not only the fine of Rs.11.04 crores but also the interest thereon calculated @ 10% p.a.

73. The appeals are disposed of as indicated above.

Judgment Referred.

[1] *Rule 126L. Power of entry, search, seizure, to obtain information and to take samples.— (2) Any person authorised by the Central Government by writing in this behalf may—* *(a) enter and search any premises, not being a refinery or establishment referred to in sub-rule (1), vaults, lockers or any other place whether above or below ground;*	[2] *""Gold was required to be declared under Rule 126-I of Defence of India Rules, 1962. It was not declared. I accordingly order absolute confiscation of 240.040 kgs. of gold, under Rule 126M of said Rules. The iron safe in which gold was secreted is also confiscated under Rule 126M. I hold that Shri Chhagan Lal Godavat is guilty of contravention of the provisions of the Rule 126-I of the Defence of India Rules, 1962. He is liable to a penalty*

(b) seize any gold in respect of which he suspects that any provision of this Part has been, or is being, or is about to be contravened, along with the package, covering or receptacle, if any, in which such gold is found and thereafter take all measures necessary for their safe custody.	*under Rule 126-L (16) of the said Rules. Taking into consideration the gravity of the offence committed by him and in view of the fact that he hoarded a very huge quantity of undeclared gold I impose upon him a personal penalty of Rs.25,00,000/- (Twenty five lacs)."*
[3] *Appeal No.C/144/95-NRB on the file of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi against the Order-in-Original No.7/94 dated 9.12.1994 passed by the Collector of Central Excise & Customs, Jaipur.*	[4] *Section 82-B of the Gold (Control) Act, 1968 "Section 82-B. Statement of a case to High Court. (1) The Collector of Central Excise or of Customs or the other party may, within sixty days of the date upon which he is served with notice of an order under sec.81A, by application in the prescribed form, accompanied, court the application is made by the other party, by a fee of two hundred rupees require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court: Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.*
[5] *By the date of the Reference Application, the Gold (Control) Act, 1968 stood repealed by Act No.10 of 1990 of the Parliament w.e.f. 6th June 1990.*	[6] *The order copy is not available on record.*
[7] *Came into force on 15th December 1962*	[8] *Parliament enacted the Gold (Control) Act, 1965 (18 of 65), which was never brought into force (for reasons not known nor necessary to be known for the purpose of this case).*
[9] *Act 45 of 68 came into force on the 1st September 1968.*	[10] *(1985) 3 SCC 198*
[11] *105.10. The theory of enduring rights which has been laid down in the judgment in Bhupendra Kumar Bose [State of Orissa v. Bhupendra Kumar Bose, 1962 Supp (2) SCR 380 : AIR 1962 SC 945] and followed in T. Venkata Reddy [T. Venkata Reddy v. State of A.P., (1985) 3 SCC 198 : 1985 SCC (L&S) 632] by the Constitution Bench is based on the analogy of a temporary enactment. There is a basic difference between an Ordinance and a temporary enactment. These decisions of the Constitution Bench which have accepted the notion of enduring rights which will survive an Ordinance which has ceased to operate do not lay down the correct position. The judgments are also no longer good law in view of the decision in S.R. Bommai [S.R. Bommai v. Union of India, (1994) 3 SCC 1] .*	[12] *Para 76. The "enduring rights" theory which had been applied in English decisions to temporary statutes, was thus brought in while construing the effect of an Ordinance which has ceased to operate. In the view of the Constitution Bench: (Bhupendra Kumar case [State of Orissa v. Bhupendra Kumar Bose, 1962 Supp (2) SCR 380 : AIR 1962 SC 945] , AIR p. 954, para 21)* *"21. ... Therefore, in considering the effect of the expiration of a temporary statute, it would be unsafe to lay down any inflexible rule. If the right created by the statute is of an enduring character and has vested in the person, that right cannot be taken away because the statute by which it was created has expired. If a penalty had been incurred under the statute and had been imposed upon a person, the imposition of the penalty would survive the expiration of the statute. That appears to be the true legal position in the matter."`*
[13] *Wicks v. Director of Public Prosecutions, 1947 AC*	[14]*AIR 1955 SC 84*

362 (HL); Warren v. Windle, 102 ER 576 (KB); and Steavenson v. Oliver, 151 ER 1024 pp. 1026-27 14 Section 30. Application of Act to Ordinances.—In this Act the expression Central Act, wherever it occurs, except in section 5 and the word "Act" in clauses (9), (13), (25), (40), (43), (52) and (54)] of section 3 and in section 25 shall be deemed to include an Ordinance made and promulgated by the Governor General under section 23 of the Indian Councils Act, 1861 (24 and 25 Vict., c.67) or section 72 of the Government of India Act, 1915, (5 and 6 Geo. V. c, 61) or section 42 of the Government of India Act, 1935 (26 Geo. V. c. 2) and an Ordinance promulgated by the President under article 123 of the Constitution.	
[15] *The State of West Bengal Vs. S.K. Ghosh AIR 1963 SC 255 Biswanath Bhattacharya Vs. Union of India (2014) 4 SCC 392*	
[16] *Section 6(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or*	[17] *Raja Saliqram Vs. Secretary of State of India in Council, 1874 12 Bengal LR 167, at page 182 18 Rule 126P. Penalties—(1) Whoever,—(i) fails or omits to make any return including a further return as required by rule 126F or any declaration including a further declaration as required by rule 126I without any reasonable cause, or makes any statement in such return or declaration which is false and which he either knows or believes to be false or does not believe to be true, shall be punishable with imprisonment for a term which may extend to one year or with fine or with both;". Rule 126(2) Whoever,— (ii) has in his possession or under his control any quantity of gold in contravention of any provision of this Part.*