PATNA HIGH COURT

Mangtulal

Vs

Radha Shyam

A.F.A.D. Nos. 695 and 955 of 1948

(Das, Ramaswami and Narayan, JJ.)

23.09.1952

JUDGMENT

Narayan, J.

1. These appeals arise out of suits in ejectment which had been instituted on the 3rd October, 1945, in the Court of the Munsif of Dhanbad. The plaintiffs sought the ejectment of the defendants from rooms in a certain building belonging to the plaintiffs and occupied by the defendants on payment of rent. The case sought to be made out was that the tenancy had been terminated by a notice to quit but, that still, the defendants had continued in occupation of the rooms. Arrears of rent and damages for use and occupation were also claimed by the plaintiffs. The defendants pleaded that they were not occupying the house, or the rooms as tenants under the plaintiffs, that no valid notice to quit had been served upon them and that the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Ordinance, 1946 were a bar to the suits.

2. The courts below decided all questions of fact against the defendants, and as to the question whether the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Ordinance, 1946, Were a bar to the suits they were of the opinion that as the Ordinance had no retrospective effect, these suits which had been instituted in the year 1945 were not hit by its provisions. The defendants consequently, came up in second appeal, and the two appeals which arose out of two of the suits were placed before a Division Bench consisting of my learned brothers. After having heard the Counsel for the parties my learned brothers were of the opinion that it was of great Constitutional importance to decide if an extension of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, by a competent legislature required the assent of the President in order to resolve any repugnancy between the provisions of the Act of 1947, and any existing law contained in the Code of Civil Procedure, the Indian Contract Act and the Transfer of Property Act. It was, therefore, suggested by my learned brothers that these two appeals be referred to a larger Bench for final decision, and the points formulated are as follows:

> "(1) Whether, in the circumstances stated above, the Bihar Buildings, (Lease, Rent and Eviction) Control (Amendment) Act, 1951, required assent of the President under the provisions of Article 254 of the Constitution of India, and (2) whether in the absence of

such assent, the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, still operate, after the 14th of March 1952, in spite of the provisions being repugnant to existing law contained in the Civil Procedure Code, the Indian Contract Act or the Transfer of Property Act."

3. The Bihar Buildings (Lease, Rent and Eviction) Control Ordinance, 1946, was repealed by the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, and Section 11 of this Act lays down, 'inter alia', that notwithstanding anything contained in any agreement or law to the contrary and subject to the provisions of Section 12, where a tenant is in possession of any building, he shall not be liable to be evicted therefrom whether in execution of a decree or otherwise, except in certain circumstances specified in this section. Sub-section 2 of this section lays down that a landlord who seeks to evict his tenant under sub-section (1) shall apply to the Controller for a direction in that behalf; and sub-section (3) lays down that a landlord may apply to the Controller for an order directing the tenant to put the landlord in possession of a building if he requires it reasonably and in good faith for his own occupation or for the occupation of any person for whose benefit the building is held by him. The other sub-sections of this section are not material for our present purpose.

4. But the definition of the word 'tenant' as given in section 2(h) of the Act is a peculiar one, and according to this definition, 'tenant' means any person by whom, or on whose account, rent is payable for a building and includes a person continuing in possession after the termination of the tenancy in his favour. It is now settled that Section 11 of the Act is a bar to a suit for eviction and a bar even to the execution of a decree even if it had been obtained before the Act had come into force. If, therefore, the Act of 1947 is still in force, no decree for ejectment can be passed in these suits. But the contention urged on behalf of the respondents in this case is that these appeals should be decided as though Section 11 of the Act of 1947 did not subsist or operate after the 14th March, 1952. And the grounds put forward in support of this contention are that the Bihar Buildings (Lease, Rent and Eviction) Control (Amendment) Act, 1951, by which the Act was extended up to the 14th March, 1954, had not received the assent of the President, according to the provisions of Article 254 of the Constitution of India. Sub-section (3) of Section 1 of the Act of 1947 had laid down that the Act 'shall remain in force for such period as the Provincial Government may, by notification, fix', and that the Provincial Government might from time to time, by notification, extend such period. By Bihar Act 7 of 1950, known as the Bihar Buildings (Lease, Rent and Eviction) Control (Amending and Validating) Act, 1949, for sub-section (3) of Section 1 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, the following sub-section was substituted : "It shall remain in force for five years". There is a clause in Section 2 of the Amending Act which says that this "shall be deemed always to have been substituted". The period of five years came to an end on the 14th of March, 1952, but by Bihar Act 38 of 1951, known as the Bihar Buildings (Lease, Rent and Eviction) Control (Amendment) Act, 1951, for the words "for five years" the words and figures "upto and including the 14th March, 1954", were substituted. If this amendment is a valid amendment then the Act should be deemed to have been extended up to the 14th March 1954, and in accordance with the interpretation that has been placed on Section 11 of the Act of 1947 and the definition of "tenant" as given in that Act, these appellants would be protected from eviction, up to the 14th March, 1954. It is an admitted position that though the Act of 1947 and the Amending Act of 1949 had received the assent of the Governor-General, in accordance with the Provisions of the Government of India

Act, 1935, which were in force prior to the commencement of the Constitution, the Amending Act of 1951 had not received the assent of the President. It has, therefore, been urged before us by Mr. Lakshman Saran, appearing for the plaintiffs-respondents that Section 11 of the Act of 1947 which is repugnant to or inconsistent with the existing law as contained in the Code of Civil Procedure, the Indian Contract Act and the Transfer of Property Act, so far as the question of determination of a tenancy is concerned, does not subsist or operate after the 14th March, 1952. Certainly, if this contention prevails, then these appeals will have to be decided as though section 11 does not subsist or operate after the 14th of March, 1952.

5. Article 254(2) of the Constitution of India lays down that where, a law made by the Legislature of a State specified in Part A or Part B of the First Schedule with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. It cannot be doubted that the law in question which has been made by the Legislature of this State is with regard to some of the matters enumerated in the Concurrent List and that some of its provisions are repugnant to the provisions of existing laws with respect to those matters, those existing laws being the Code of Civil Procedure, the Indian Contract Act and the Transfer of Property Act. Such an Act must be reserved for the consideration of the President and must receive his assent before it can prevail in the State. It has not been and could not be contended before us that the Act of 1947 and the Amending Act of 1949 did not require the assent of the Governor-General, and that if these Acts would have been passed after the commencement of the Constitution, they could operate and prevail even without the assent of the President. The contention of the learned Advocate-General appearing on behalf of the defendants-appellants has, however, been that as by the Amending Act of 1951 there was merely an extension of the Act of 1947 which had received the assent of the Governor-General, the said Act of 1947, would be operative up to the 14th March, 1954, even though it has not received the assent of the President. Purely as a legal doctrine it may be correct to say that if the Legislature has passed a temporary Act the duration of which can be extended by the Provincial Government by a notification to that effect, the power so given for extending the duration does not constitute delegated legislation and that the extension can be made not only by a notification but by a separate amending Act which can take the place of the notification. The Legislature by giving the power of extending the duration to the executive authority does not efface itself or abrogate its functions, and there are authorities which have laid down that a conditional Legislation of this character is within the legitimate power of a sovereign Legislature. To quote the language used by their Lordships of the Privy Council in the well-known case of - *'Empress v. Burah[1]',*

> "the proper Legislature has exercised its judgment as to place, person, laws,
> powers and the result of that judgment has been to legislate conditionally as to all these things. The conditions, having been fulfilled, the legislation is absolute."

6. In a bald and simple form it may also be correct to say that the amended statute or the statute which extends the duration of the original statute is not a new and independent statute and that, in effect and substance, it remains the same statute as had been originally passed. But these abstract propositions of law cannot be applied regardless of the facts and regardless of the constitutional

inhibition if any. According to Article 254(2) of the Constitution whenever there is any provision in a law made by the Legislature of a State repugnant to the provisions of an existing law with respect to that matter, then in order that the law made by the Legislature may be effective and operative, the assent of the President has to be obtained with regard to it. This is what the Constitution itself lays down and just as according to the Government of India Act which was the predecessor of the Constitution of India, neither the Act of 1947 nor the Amending Act 1949 could be a valid law without the assent of the Governor-General, the Amending Act of 1951 cannot also be a valid law unless it has received the assent of the President. The language of Article 254(2) appears to be quite plain, and full effect must be given to this provision of the Constitution whatever be the implications. The import of the words used in Article 254(2) is unmistakable, and the obvious result is that every Act of the Legislature of a State specified in Part A or Part B of the First Schedule which offends this provision is necessarily void. The only manner in which the repugnancy between the provisions of the Act of 1947 and the existing laws contained in the Code of Civil Procedure, the Indian Contract Act and the Transfer of Property Act could be resolved was by obtaining the assent of the President. If the assent of the President has not been obtained to the amending Act of 1951 by which the duration of the Act of 1947 was extended "up to and including the 14th March, 1954", this amending Act cannot be deemed to be valid law, and the Act of 1947 would be deemed to have been extended only for the period mentioned in the Amending Act of 1949. Under the Amending Act of 1949 there was an extension for only five years, and the Act thus expired on the 14th of March, 1952. Not taking the President's assent is an omission which is fatal to the Act and it cannot be remedied by the Court by any recognised canons of interpretation. The Act having been passed in absolute contravention of Article 254(2) so much of it as is repugnant to or inconsistent with the existing law as embodied in the Code of Civil Procedure, the Indian Contract Act and the Transfer of Property Act must be declared to be void.

7. The learned Advocate-General has cited before us a recent decision of the Bombay High Court in - *'State of Bombay v. Heman Santlal[2]',* and also an American case -*'United States v. Powers[3]',* which has been referred to in the Bombay case. These authorities can be of no assistance id us in deciding the point which precisely arises in this case. The American ease lays down no other proposition relevant for our present purpose except this that an amendment by which the duration of the Connally Act of February 22, 1935, which was to expire on June 16, 1937, was extended for another
term was no new legislation and that it merely perpetuated the original Act for another term. It was observed by Douglas, J., that due to the amendment, the Act had never ceased to be in effect and that without hiatus of any kind, the original Act had been given extended life. This observation of Douglas J. has been quoted by Chagla C.J. in the Bombay case referred to above, and the point which had arisen before the Bombay High Court was whether Act 2 of 1950 which had extended the duration of Act 33 of 1948 for a further period of two years was a valid Act. Act 33 of 1948 was a temporary Act, the duration of which was fixed up to the 31st March, 1950. That Act contained a provision according to which its duration could be extended for a further period of two years on the condition that the Provincial Government should issue a notification to that effect. But what actually happened was that instead of a notification being issued by the Provincial Government extending the Act, a new Act, II of 1950 was passed by which the duration of the Act was extended for another two years. Their Lordships of the Bombay High Court held that the particular provisions with which they were concerned were no new provisions inserted by the new Act and that the duration of the original Act should be

deemed to have been validly extended even if instead of a notification having been issued the Legislature had passed a new Amending Act by which the period of the original Act had been extended. Act 33 of 1948 as amended by Act 2 of 1950 was held to be an existing law within the meaning of Article 31(5)(a) of the Constitution, and their Lordships were of the opinion that even if such a law offended against Article 31(2) it did not become void under Article 31(1). The Bombay case had nothing to do with the interpretation of Article 254 of the Constitution and we can get no assistance from this Bombay decision in deciding the point which arises in this present case. In order that the repugnancy of the temporary Act to the existing law may be resolved, the assent of the Governor-General was deemed necessary with regard to the Act of 1947 and the Amending Act of 1949. The Amending Act of 1951 came to be passed after the Constitution had come into force, and according to the Constitution the repugnancy of the temporary Act to the provisions of the existing law could be resolved only by obtaining the assent of the President. This having not been done, the Amending Act of 1951 would be an invalid Act and the duration of the original Act cannot be deemed to have been extended by it.

8. It is noteworthy that sub-section (3) of the original Act (Bihar Act 3 of 1947) which had laid down that "it shall remain in force for such period as the Provincial Government may, by notification, fix", stood deleted when the Amending Act of 1949 was passed. And, therefore it cannot be urged in this case on the strength of the Bombay ease or the decisions of the Privy Council in - *'Empress v. Burah*[4]*',* - *'Hodge v. The Queen*[5]*,* and other cases that the proper Legislature having once exercised its judgment as to place, person, laws and powers the result of that judgment would be to legislate conditionally as to all these things and that when the conditions are fulfilled the original legislation would be deemed to be absolute. As already pointed out, by the Amending Act of 1949, a period of five years was fixed and sub-section (3) as it originally stood, underwent a complete change. The question as to what would have been the position at present if the original sub-section (3) had stood and if instead of issuing a notification now an Act would have been passed extending the duration of
the original Act would be a purely academic question. Because of the clause in the original Act that the Act shall remain in force for such period as the Provincial Government may, by notification, fix, the learned Advocate-General has thought fit to rely on the Bombay decision and the American decision referred to above. But that clause has already been deleted and did not stand when the particular Amending Act, which is being impugned before us, was passed.

9. The provisions of the Act of 1947 with which we are concerned in these appeals, namely section 11 including the definition of the word "tenant" as given in the Act are certainly repugnant to and inconsistent with the existing law and therefore these provisions must be declared to be absolutely void. The Act of 1947 being not in force since after March 1952, it does not protect the appellants from ejectment. All other points have been decided against the appellants by the Courts of fact, and they could not be agitated before us in view of the findings of fact arrived at by the Courts below. Therefore, if the Constitutional question raised in the case has to be decided against the appellants, the appeals must fail. I never understood the learned Advocate General to argue with any seriousness that the legislation in question comes within Item 18 of the State List, but as pointed out by my learned brother Das, J., he had probably suggested at some stage of the argument that the legislation might be taken to be a legislation covered by Item No.18 of the State List. The question, however has been dealt with in the judgments of my learned brethren, and for reasons given by them with which I respectfully agree this suggestion is not fit to be accepted.

10. I did not also address myself to the question of repugnancy because both parties argued on the assumption that Section 11 of the Control Act of 1947, was in fact, repugnant to the "existing law". The only contention advanced before us was that the repugnancy stood resolved, because, the assent of the President had once been obtained. It has practically been conceded by the learned Advocate- General that Section 11 of the Act is repugnant to the existing law. The provisions of Section 11 and the definition of "tenant" as given in the Act are absolutely repugnant to and inconsistent with the provisions of the Transfer of Property Act, and this is so manifest that the learned Advocate General did not consider it necessary to advance any argument before us on the question of repugnancy.

11. However, if it is still necessary to examine the question and express ourselves on this point which was considered clear and inarguable by the learned Advocate-General I would respectfully adopt the views of my learned brother Das, J., with regard to it. It is enough if the provisions of the Control Act with which we are concerned in these appeals are found to be repugnant to certain provisions of the Transfer of Property Act, and it would therefore be unnecessary to go into the question whether these provisions of the Act are also repugnant to the provisions of the Code of Civil Procedure and the Contract Act. The result will be one and the same, and these appeals must fail if the provisions of the Act are repugnant to and inconsistent with the provisions of the Transfer of Property Act. In the result, therefore, I would dismiss these appeals with costs.

Ramaswami, J.

12. The question involved in this case is whether Section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act of 1947 is constitutionally valid and operative after 14th March, 1952, on which date that Act expired.

13. In order to protect the tenants from enhancement of rent and unreasonable eviction by the landlords the Governor of Bihar enacted the Bihar Buildings (Lease, Rent and Eviction) Ordinance, 1946. The Ordinance was promulgated by the Governor on 1st October, 1946. Section 11 of the Ordinance provided that notwithstanding anything contained in any agreement or law to the contrary a tenant who is in possession of any building shall not be liable to be evicted therefrom, whether in execution of a decree or otherwise, except- (a) in the case of a month to month tenant, for non-payment of rent or breach of the conditions of the tenancy, (b) in the case of any other tenant, on the expiry of the period of the tenancy, or for non-payment of rent, or for breach of the conditions of the tenancy. The provisions of the Ordinance were re-enacted by the Bihar Legislature in Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, with certain modification. This Act will be hereinafter referred to in this judgment as the Act of 1947. Sub-section (3) of Section 1 of the Act of 1947 states that the Act shall remain in force for such period as the Provincial Government may, by notification, fix. Possibly on account of the decision of the Federal Court in - *'Jatindra Nath v. Province of Bihar*[6]*',* the Bihar Legislature enacted Bihar Buildings (Lease, Rent and Eviction) Control (Amending and Validating) Act, 1949 (which will hereinafter be referred to as the Amending Act of 1949). This Act amended sub-section (3) of Section 1 of the Act of 1947. The amendment was to the effect that the Act of 1947 shall remain in force for a period of five years. This period of five years terminated on the 14th March, 1952. Before this date the Bihar Buildings (Lease, Rent and

Eviction) Control (Amendment) Act of 1951 was passed to which the Governor assented on 23rd November, 1951. This Act will be hereinafter referred to as Amending Act of 1951. By this Amending Act, for the words "for five years" in Section 1, sub-section (3) the words and figures "up to and including 14th March, 1954" were substituted. It is important to notice that the Act of 1947 and the Amending Act of 1949 both received assent of the Governor-General in accordance with the provisions of S.107 of the Government of India Act, 1935 The Amending Act of 1951 did not, however, receive assent of the President under Article 254 of the Constitution.

14. It was submitted by the Advocate-General on behalf of the appellants that no order of eviction can be passed in these suits by reason of S.11 of the Bihar Act of 1947. Section 11 states that notwithstanding anything contained in any agreement or law to the contrary and subject to the provisions of Section 12, where a tenant is in possession of any building, he shall not be liable to be evicted therefrom, whether in execution of a decree or otherwise, except in certain circumstances which are specified in the section itself. Sub-section (2) states that a landlord who seeks to evict his tenant under sub-section (1) shall apply to the Controller for a direction in that behalf. The Advocate General referred also to the definition of the word "tenant" which according to the Act means

> "any person by whom, or on whose account, rent is payable for a building and includes a person continuing in possession after the termination of the tenancy in his favor."

The argument was addressed that the appellants are tenants within the meaning of the Act of 1947, that a complete and exclusive machinery for eviction is provided by the Act of 1947, that the tenancy of the appellants cannot be determined by a notice to quit, that the-appellants are liable to be evicted only for non-payment of rent or breach of the conditions of tenancy, and that in any case the Civil Court has no jurisdiction to grant a decree for eviction. The Advocate General contended that there can be no order of eviction except in accordance with the provisions of sub-section (2) of Section 11 of the Act. It was conceded by the learned counsel on behalf of the respondents that if section 11 of the Act of 1947 was valid and operative, the judgment under appeal cannot stand and there can be no decree for eviction passed against the appellants. But the learned counsel attacked the constitutional validity of section 11 of the Act. Learned counsel stressed the argument that the Act of 1947 came to an end on 14th March, 1952, and even if the Act was extended by the amending Act of 1951, the extension did not give validity to those provisions of the earlier Act which are repugnant to the provisions of the Civil Procedure Code, Indian Contract Act and the Transfer of Property Act. The argument of the learned counsel is founded on the circumstance that no assent of the President was taken to the Amending Act of 1951.

15. The dispute, therefore, turns on the question whether the Amending Act of 1951 extends and continues the validity of the Act of 1947 beyond 14th March, 1952.

16. It was contended by the Advocate General in the first place that the Act of 1947 and the Amending Act of 1951 were enacted by the State Legislature on a matter falling entirely within the State Legislative List. The argument was that the legislation fell entirely within Item 18 of the State List, viz.,

> "Land, that is to say, rights in or over land, land tenures including the relation of landlord

and tenant, and the collection of rents." The Advocate General attempted to bring the case within the principle of - *'Megh Raj v. Allah Rakhia[7]',* in which the Judicial Committee held that S.107 of the Government of India Act, 1935 had no application in a case where the Province could show, as it did in that case, that it was acting wholly within its powers under the Provincial List and was not relying on any power conferred on it by List III of the Concurrent List. In that case it was argued that the Punjab Restitution of Mortgaged Lands Act, 1938, was invalid in that a number of its provisions were in fact legislation on matters falling within List III, namely, Items 7, 8 and 10 of that List. It was held by the Judicial Committee that the impugned Act which dealt with mortgages on agricultural lands was legislation falling entirely within Item 21 of the Provincial Legislative List, that is, land or any interest in land and, therefore, no question of repugnancy could arise by reason of the fact that the Act might trench to certain extent upon the items in the Concurrent Legislative List, viz., Items 7, 8 and 10. But it is impossible, in my opinion, to accept the argument of the Advocate General that in enacting the

Act of 1947 and the Amending Act of 1951 the legislature was acting wholly within its powers under Item 18 of the List III, 7th Schedule. The Act of 1947 deals not with land or rights in or over land or with land tenures but the Act deals with letting of buildings and the regulation of rent of such buildings and the prevention of unreasonable eviction of the tenants therefrom.

Section 2 defines "Building" to mean any building or hut or part of a building or hut, let or to be let separately for residential or nonresidential purposes and includes (i) the garden, grounds and out-houses, if any, appurtenant to such building or hut or part of such building or hut; and (ii) any furniture supplied by the landlord for use in such building or hut or part of a building or hut. Section 4 states that notwithstanding anything contained in any agreement or law to the contrary and subject to such orders as the Controller may pass in any case, where a tenant is in possession of any building, it shall not be lawful for any landlord to increase the rent or claim any rent in excess of the rent which was, on the notified date, payable for such building. Sections 5 and 6 prescribe the procedure by which the Controller may determine the fair rent of buildings in occupation or not in occupation of tenants. Section 10 prohibits the landlord from cutting off or withholding any of the amenities enjoyed by the tenant. Section 11 states that notwithstanding anything contained in any agreement or law to the contrary and subject to the provisions of section 12, where a tenant is in possession of any building, he Shall not be liable to be evicted therefrom, whether in execution of a decree or otherwise except in the circumstances specified in the section itself. Section 18 provides that a person aggrieved by an order of the Controller may prefer an appeal in writing to the Commissioner of the Division within fifteen days. Section 18 states that the decision of the Commissioner and subject only to such decision an order of the Controller shall be final, and shall not be liable to be questioned in any Court of Law whether in a suit or other proceeding by way of appeal or revision. It is apparent from an examination of these provisions that in enacting the Act of 1947 the State Legislature was acting under the powers conferred by Items 6, 7 and 13 of the Concurrent List, viz., (a) Transfer of Property other than agricultural land, (b) Contracts including partnership, agency, and other special forms of contracts, but not including contracts relating to agricultural land and (c) Civil Procedure. If this conclusion is correct, the provisions of Article 254 will come into play for the Parliament and the

State Legislature have concurrent authority to legislate on matters enumerated in Items 6, 7 and 13 of the Concurrent List. Since the Amending Act of 1951 did not receive assent of the President, the Act of 1947 would be void and inoperative to the extent its provisions are repugnant to a law made by Parliament or to any provision of existing law with respect to the matters enumerated in the Concurrent List.

17. The second contention of the Advocate General is that the Amending Act of 1951 did not create any new law nor did it constitute a fresh piece of legislation, that the assent of the President was not requisite in order to resolve the repugnancy mentioned in Article 254 of the Constitution. The Advocate General argued that the extension of the life of an Act was not re-enactment nor was it new legislation that though the assent of the President was not taken to the Amending Act of 1951, the provisions of the Act of 1947 continued to be fully valid and operative even after 14th March 1952. In support of his argument the Advocate General referred to - *'The State of Bombay* ***v.*** *Heman Santlal*[8]*,* in which the question arose whether the Bombay Land Requisition Act, 1948, was "existing Law" within the meaning of Article 31(5) of the Constitution. The duration of the Act was fixed up to 31st March 1950 but section 3(1) stated that the Act may be extended for a further period of two years on condition that the Provincial Government should issue notification to that effect. No notification was issued by the Provincial Government but in 1950 the Legislature itself extended the Act of 1948 for two years by enacting the Bombay Land Requisition (Amendment) Act of 1950. It was argued before the High Court that the Act of 1948 as amended by the Act of 1950 was not "existing law" within the meaning of Article 31(5), and since the Act granted power to the Provincial Government to requisite land not merely for a public purpose the Act was in contravention of Article 31(2) and to that extent was void. The argument was rejected by the High Court on the ground that the phrase "existing law" should be construed to mean not merely actual operation of the Act of 1948 but also its potential operation in the sense that the Act had within it the potentiality of being extended up to 31st March, 1952. It was therefore, held that the Bombay Act of 1948 as amended by Bombay Act of 1950 was "existing law" within the meaning of Article 31(5). The ratio of the Bombay ease is, therefore, of no assistance to the case of the appellants. The question at issue in AIR 1952 Bombay 16 was different, viz., what is the correct interpretation to be placed on the phrase "existing law" in Article 31(5). No question was raised or argued under Article 254 of the Constitution and the effect of the absence of the President's assent to an Amending Act was not considered in that case. The Advocate General also relied upon the American case - *'United States v. Powers*[9]*',* in which the Supreme Court had to construe the Connally Act of 22nd February, 1935, which originally provided that it should cease to be in effect on 16th June, 1937, but it was extended prior to 16th June, 1937, uptill 30th June, 1939. It was held by the Supreme Court that the amended Act authorized a prosecution for violations committed prior to 16th June, 1937 under an indictment returned subsequent thereto but prior to 30th June, 1639. Douglas, J., stated

> "due to the amendment, the Act has never ceased to be in effect. No new law was created; no old one was repealed. Without hiatus of any kind, the original Act was given extended life."

The ratio of this ease is also not in point. The question at issue was a matter of construction. The decision was that as a matter of construction the amended statute in that case should be

interpreted as if it had been originally passed in its amended form that the amendment had become a part of the original enactment. In the present case the problem is different. It is a matter not of construction but of constitutional validity. The argument of the Advocate General is that the Amending Act is not a fresh piece of legislation but that it is quasi-legislative or administrative activity. The Advocate General referred to section 1(3) of the Act of 1947 which originally empowered the State Government to fix by notification for what period the Act shall remain in force. It was argued that by passing the Amending Act of 1951, the Bihar Legislature was not passing any new legislation, but was doing what the State Government by notification could have done under the Act of 1947. In my opinion,
the argument proceeds upon a misconception. The power to amend an Act is vested in
the legislature and is part of the legislative power. Neither the judiciary nor the executive government have power to amend existing legislation; though the legislature may delegate its legislative authority to these agencies to a limited extent. In form the Act of 1951 merely amends section 3(1) of the original Act and extends its life for further period of two years till 31st March 1954. But in substance the legislature is re-enacting all the provisions of the Act of 1947 for a further period of two years. The Amending Act in fact continues the operation of all the exceptional powers and rights and duties conferred by the 1947 Act till 14th March, 1954. The Amending Act is therefore a piece of legislation which the legislature is competent to enact. The subject-matter of the Amending Act is exactly the same as that of the Act of 1947 and in enacting the Amending Act, the State Legislature was manifestly exercising its authority under Items 6, 7 and 13 of the Concurrent List. It follows that the President's assent was necessary to the Amending Act if repugnancy was to be avoided under Article 254 of the Constitution. In the absence of such assent, it must be held that section 11 of the Act of 1947 is void and inoperative to the extent it is repugnant to the provisions of the law made by the Parliament.

18. I turn next to the question - what is the precise conflict or repugnancy between section 11 of the Act of 1947 and the Law made by Parliament in this case? It is necessary to state at the outset that the doctrine of "occupied field" cannot be invoked to test the validity of a State Law under Article 254 of the Constitution. In an Australian case Isaacs, J., expressed the doctrine in the following terms

> "If, however, a competent legislature expressly or impliedly evinces its intention of covering the whole field, that is a conclusive test of inconsistency where another legislature assumes to enter to any extent upon the same field." - *'Clyde Engineering Co. Ltd. v. Cowburn[10]',*

But in the frame work of the Indian Constitution the Concurrent List is not a forbidden field to the State Legislature and the mere fact that the State Legislature has legislated on a matter in the Concurrent List is not enough to attract the mischief of Article 254. There must be actual repugnancy between such legislation and existing law as required by Article 254(1) and then and then only would the existing law prevail to the extent of the repugnancy and not otherwise. There is a further reason why the doctrine of "occupied field" cannot be applied as a proper constitutional test. Modern legislation covers matters of infinite complexity and variety which often overlap and intersect. There can be no analogy between such legislation and a picture of a two dimensional field. The test of "covering the field" is, therefore, an ambiguous test and is deceptive and of little assistance. What then is the correct test of repugnancy between two

competing statutes? In - *'Victoria v. The Commonwealth[11]',* Dixon, J. states :

> "Substantially it amounts to this. When a State law, if valid, would alter, impair or detract from the operation of the law of the Commonwealth Parliament, then to that extent it is invalid. Moreover, if it appears from the
> terms, nature or the subject matter of a Federal enactment that it was intended
> as a complete statement of the law governing a particular matter or set of rights or duties, then for a State law to regulate or apply to the same matter or relation is regarded as a detraction from the full operation of the Commonwealth law and so is inconsistent."

On behalf of the respondents, stress was laid upon the argument that section 11 is repugnant to the provisions of the Civil Procedure Code and the Contract Act. It was pointed out that section 11 sets up a special tribunal and enacts a special procedure for eviction of tenants from buildings and the jurisdiction of the Civil Court was expressly ousted. Section 11 further enacts that even if landlord had obtained a decree against the tenant for eviction, the tenant is not liable to be evicted in execution of the decree. Section 11 therefore affects not merely the substantive right of the landlord, but also his procedural right. I think that sections 11(1) and 11(2) oust the jurisdiction of the Civil Court even in a case where the landlord seeks the eviction of the tenant for non-payment of rent or for breach of condition of tenancy. The substantive right of the landlord may not be affected, but section 11 requires that the landlord must enforce his right before the special tribunal and according to the special procedure prescribed. The material facts of the present case are parallel to those of - *'Kishorilal Poddar v. Debi Prasad Kajriwala[12]',* It was held by the Full Bench in that case that the Civil Court had no jurisdiction in view of the provisions of section 11 of Bihar Act of 1947 to grant a decree to the landlord in a suit brought by him for ejecting the tenant after terminating the tenancy by a notice to quit. The decision of the Supreme Court in - *'Brijraj Krishna v. S.K. Shaw and Brothers'[13],* is also important. In that case the Supreme Court held that Bihar Control Act of 1947 set up a complete machinery for the investigation of those matters upon which the jurisdiction of the Controller to order eviction of a tenant depends, and it expressly made this order final subject to the decision of the Commissioner. As the Act has entrusted the Controller with a jurisdiction which includes the jurisdiction to determine the preliminary state of facts, the order of the Controller cannot be questioned in a Civil Court even if he had wrongly determined the preliminary state of facts. It is relevant therefore to determine if section 11 is in conflict with the provisions of the Civil Procedure Code. Reference was made on behalf of the respondent to section 9 of the Civil Procedure Code which lays down that courts shall have jurisdiction to try all suits of civil nature. But I think that there is no repugnancy or conflict between section 9 of the Civil Procedure Code and section 11 of the Act. For section 4 of the Civil Procedure Code enacts that in the absence of any specific provision to the contrary, nothing in the Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force. It was held by the Federal Court in - *'United Provinces v. Mt. Atiqa Begum[14]',* that these qualifying words preclude the argument that an Act which bars civil remedy in certain cases was repugnant to the provisions of the Code of Civil Procedure. For a similar reason I think that section 11 of the Act of 1947 is not repugnant to section 37 of the Indian Contract Act which lays down that parties to a contract must either perform or offer to perform their respective promises. But there is a qualification of the statement by the words "unless

such performance is dispensed with or excused under the provisions of any other law." Since the statement of the general law is qualified, it cannot be argued that section 11 is inconsistent with section 37 of the Indian Contract Act. The principle is that where the paramount legislation does not purport to be exhaustive or unqualified, a qualification or restriction introduced by another law cannot be repugnant to the provisions in the paramount law. In - *'Hume v. Palmer*[15]*',* the Commonwealth Legislature had passed a Navigation Act and it was contended that some of its provisions were repugnant to the United Kingdom Merchant Shipping Act, 1894. Section 2 of the Colonial Laws Validity Act, 1865 says that "any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the Colony to which any such law may relate" was declared to be void and inoperative to the extent of such repugnancy. The argument was rejected by the High Court since section 735 of the United Kingdom Merchant Shipping Act provided for the Legislature of any British Possessions repealing any provisions of that Act relating to ships registered in that Possession.

19. It was submitted by the learned counsel for the respondents that section 11 was also repugnant to certain provisions of the Transfer of Property Act. This argument has more substance and must be carefully examined. Under Article 254 there must be direct proof of the conflict established before the court should conclude that State legislation is void. It should also be remembered that where a State Law is inconsistent with Union law, it is pro tanto and only pro tanto invalid. It is, therefore, the Court's duty to see, if it is possible to compare the two enactments so to speak quantitatively, in order that what is excessive or contradictory in the State enactment and nothing more shall be deemed void. Section 106 of the Transfer of Property Act provides that in the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy. Section 108(q) states that in the absence of a contract or local usage to the contrary, the lessee is bound to put the lessor into possession of the property. Section 111(h) enacts that a lease of immoveable property determines on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other. All these provisions of the Transfer of Property Act are overridden by section 11 of the Act of 1947 which states that notwithstanding anything contained in any agreement or law to the contrary and subject to the provisions of section 12, where a tenant is in possession of any building, he shall not be liable to be evicted therefrom, whether in execution of a decree or otherwise, except - (a) in the case of a month to month tenant, for non-payment of rent or breach of the conditions of the tenancy; (b) in the case of any other tenant, on the expiry of the period of the tenancy, or for nonpayment of rent, or for breach of the conditions of the tenancy. Under section 11 a tenancy may not, therefore, be determined by the landlord on giving a notice to quit nor is the lessee liable to put the lessor into possession of the property on the determination of the lease. Section 2 of the Act of 1947 further defines "tenant" to
mean any person by whom or on whose account, rent is payable for a building and includes a person continuing in possession after the termination of the tenancy in his favour. By giving this artificial meaning to the word "tenant" the landlord is prevented from evicting a person whose tenancy has been determined by a valid notice to quit and who is in possession of the building as a trespasser. Section 11 adversely affects the rights of the landlord in this respect and is repugnant

to the provisions of the Transfer of Property Act and must be held to be void and inoperative to this extent.

20. For these reasons I agree with the conclusion of my learned brother Narayan J. that these appeals must be dismissed.

Das, J.

21. I was a party to the order as a result of which these two second appeals have come before this larger Bench. Having heard learned Counsel for the parties and having had the advantage of seeing the judgments proposed to be delivered by my learned brethren, I now think that the points formulated in the order of reference dated the 23rd July, 1952, were stated in somewhat wide terms.

22. The question of law which has now been argued before us lies within a very narrow compass: that question is, if section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, stands in the way of the plaintiffs getting a decree for eviction against the defendants who, it has been found, continued in occupation of the building after the tenancy in their favour had been terminated by a valid notice to quit long before the first Ordinance on the subject - the Ordinance of 1946 - came into force. The determination of that question depends on the answer to two points: firstly, if section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, to be referred to hereinafter as the Control Act of 1947, is repugnant to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List within the meaning of Article 254(1) of the Constitution of India; secondly, in case there is any such repugnancy, is section 11 of the Control Act of 1947 void to the extent of the repugnancy by reason of the circumstance that the Bihar Buildings (Lease, Rent and Eviction) Control (Amendment) Act, 1951, which extended the duration of the Control Act of 1947 beyond the 14th of March, 1952 and up to the 14th of March, 1954, was not reserved for the consideration of the President and did not receive his assent under clause (2) of Article 254 of the Constitution of India?

23. It is now well settled that in performing the difficult duty of deciding on the constitutional validity of an Act passed by a competent Legislature, or a provision of such an Act, it is "a wise course for those on whom the duty is thrown to decide each case which arises as best they can, without entering more largely upon an interpretation of the statute than is necessary for a decision of the particular question in hand" - *'Citizens Insurance Co. v. Parsons*[16]*',* In the ultimate analysis the decision must depend upon the words of the Constitution which the Court is interpreting. Clause (1) of Article 254, so far as it is material for our purpose, is in these terms :

> "If any provision of a law made by the Legislature of a State is repugnant to ... any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the existing law shall prevail, and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void."

There is no dispute that when the question is whether a State legislation is repugnant to an

existing law, the onus of showing its repugnancy and the extent to which it is repugnant, must be on the party attacking the validity of the State legislation; furthermore, the repugnancy must exist in fact and not depend merely on a possibility. Therefore, it is necessary to understand, first, what is meant by the word 'repugnant'. In two Australian cases the meaning of the word has been discussed. In - *Attorney-General for Queensland v. Attorney-General for Commonwealth', 20 Com-W LR 148(Supra)* Higgins J. said at pp.167-168 :

> "What does 'repugnant' mean? I am strongly inclined to think that no Colonial Act can be repugnant to an Act of the Parliament of Great Britain unless it involves, either directly or ultimately, a contradictory proposition - probably, contradictory duties or contradictory rights."

In - *'Clyde Engineering Co. Ltd. v. Cowburn', 37 Com WLR 466* (supra)the same learned Judge observed :

> "When is a law 'inconsistent' with another law? Etymologically, I presume that things are inconsistent when they cannot stand together at the same time; and one law is inconsistent with another law when the command or power or other provision in one law conflicts directly with the command or power or provision in the other. Where two Legislatures operate over the same territory and come into collision, it is necessary that one should prevail; but the necessity is confined to actual collision, as when one Legislature says 'do' and the other says 'don't.'"

The opinion of the majority of Judges (Knox, C.J., and Gavan Duffy, J., with the concurrence of Isaacs, J.) was put somewhat differently :

> "Two enactments may be inconsistent although obedience to each of them may be possible without disobeying the other. Statutes may do more than impose duties: they may, for instance, confer rights; and one statute is inconsistent with another when it takes away a right conferred by that other even though the right be one which might be waived or abandoned without disobeying the statute which conferred it."

24. It has been contended before us that the provisions of the Control Act of 1947 are repugnant, in the above sense, to some of the provisions of the Code of Civil Procedure, the Indian Contract Act and the Transfer of Property Act. The Concurrent List (List III) of the Seventh Schedule to the Constitution of India shows that Contracts (not including contracts relating to agricultural land), Civil Procedure and Transfer of Property other than agricultural land, are all subjects in that List, vide Items 6, 7 and 13. The jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in the Concurrent List is also a subject within that List, see Item 46. I have no doubt in my mind that the Control Act of 1947 in its true nature, scope and effect is legislation with regard to the aforesaid items of the Concurrent List. The learned Advocate-General did very faintly suggest that the legislation in question might come within the ambit of Item 18 of the State List. This suggestion is not worthy of acceptance. As Kania, C.J., observed in - *'Ramkrishna Ramnath v. Secretary, Municipal Committee, Kamptee', AIR 1950 SC*

11 at p.13(supra),

> "it may be natural when considering the ambit of an express power in relation to an unspecified residuary power, to give a broad interpretation to the former at the expense of the latter; the case, however, is different where, as in the Constitution Act, there are two complementary powers, each expressed in precise and definite terms. There can be no reason in such a case for giving a broader interpretation to one power rather than to the other."

Item 18 of the State List cannot, in my opinion, be given such an enlarged meaning as to include, and even override, several items of the Concurrent List. In - *'Kameshwar Singh v. State of Bihar', AIR 1951 Patna 91(Supra),* I observed at page 118:

> "Entry 18 is undoubtedly very comprehensive, but the different entries in the State List must be read together, in a broad and liberal spirit no doubt, but not so as to make one entry cancel or override another entry or make another entry meaningless."

In my opinion, the same principle will apply here, and legislation which in its true nature, scope and effect is legislation with regard to items in the Concurrent List, cannot be forced into the ambit of Item 18 of the State List.

25. That there is a direct conflict between Section 11 of the Control Act of 1947 and certain provisions of the Transfer of Property Act seems to me to be beyond doubt. As a matter of fact, the argument before us proceeded on the footing that Section 11 of the Control Act of 1947 was repugnant to existing law as defined in Article 366, clause (10), of the Constitution of India. Learned counsel for the parties did not think it necessary to go elaborately into the question of the extent to which Section 11 and other provisions of the Control Act of 1947 were repugnant to the provisions of the Transfer of Property Act, Civil Procedure Code and. the Indian Contract Act. My learned brother, Ramaswami, J., has dealt with the repugnancy between Section 11 of the Control Act of 1947 and certain provisions of the Transfer of Property Act. I entirely agree with that part of his judgment. The repugnancy of Section 11 of the Control Act of 1947 with certain provisions of an existing law with respect to transfer of property other than agricultural land, is sufficient for determination of the first point. In my opinion, it is unnecessary to go into the further question if Section 11 or any other provision of the Control Act of 1947 is repugnant to the provisions of the Code of Civil Procedure or the Indian Contract Act. Therefore, I wish to reserve my final opinion on that question. There are provisions in the Control Act of 1947 which not merely override a contract entered into by the parties, but substitute a different contract by the determination of a fair rent. As we are not concerned with those provisions, it is unnecessary to consider whether Section 37 of the Indian Contract Act will save those provisions or avoid a repugnancy between those provisions and the provisions of the Indian Contract Act. So far as these two appeals are concerned, no question of any repugnancy with the provisions of the Indian Contract Act really arises. The plaintiffs-respondents had terminated the tenancy of the appellants long before the Control Act of 1947 had come into force. The tenancy was terminated even before the Ordinance of 1946 came into force. After the termination of the tenancy no contractual relation between the parties subsisted and the appellants were mere trespassers. It is

the artificial definition of the word 'tenant' in the Control Act of 1947 which creates a repugnancy between Section 11 of the Control Act of 1947 and certain provisions of the Transfer of Property Act.

26. With regard to the provisions of the Civil Procedure Code also, I do not wish to express any final opinion. Section 9 of the Code of Civil Procedure itself states that the civil courts have jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is either expressly or impliedly barred. Section 4 (1) of the Civil Procedure Code saves, 'inter alia', any special jurisdiction or power conferred or any special form of procedure prescribed by or under any other law for the time being in force. I think it is possible to argue that S.11 of the Control Act of 1947 goes further than mere conferment of special jurisdiction or power or prescribing a special procedure. It prevents the execution of a decree passed by a court of competent jurisdiction and takes away the power given to that court by Section 38 of the Code of Civil Procedure . If and when that question arises, it may be necessary to decide whether Section 11 of the Control Act of 1947 is repugnant to Section 38 or any other provision of the Code of Civil Procedure. That question does not, however, arise in the present case, because the Ordinance of 1946 came into force during the pendency of the suits and before any decree was passed. I would, therefore, pronounce no opinion on the question whether Section 11 is or is not in conflict with certain provisions of the Code of Civil Procedure.

27. I now turn to the second point. In view of the finding that Section 11 of the Control Act of 1947 is repugnant to certain provisions of an existing law with respect to one of the matters enumerated in the Concurrent List, namely, transfer of property other than agricultural land, clause (1) of Article 254 of the Constitution of India clearly comes into play. The next point, therefore, is if clause (2) of Article 254 saves section 11. This brings us to a consideration of the Bihar Buildings (Lease, Rent and Eviction) Control (Amendment) Act, 1951, hereinafter to be referred to as the Amending Act of 1951. It is admitted that though the Control Act of 1947 received the assent of the Governor-General on the 14th of March, 1947, the Amending Act of 1951 was neither reserved for the consideration of the President nor did it receive his assent. There was another Amending Act passed in 1949 (Bihar Act 7 of 1950). By that Amending Act the Control Act of 1947 was to remain in force for five years from the 14th of March, 1947. That Amending Act also received the assent of the Governor-General. Therefore, the Control Act of 1947 would have expired on the 14th of March, 1952; but its duration was extended up to the 14th of March 1954, by the Amending Act of 1951. The contention of the learned Advocate-General is that the Amending Act of 1951 did not require the assent of the President, and even without such assent S.11 of the Control Act of 1947 continues in full force and effect even after the 14th of March, 1952. The learned Advocate-General has given three reasons in support of that contention. They are (1) the Amending Act of 1951 is not 'new' legislation but merely continues and extends the duration of the Control Act of 1947; (2) there is no provision in the Amending Act of 1951 which can be said to be repugnant to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List; and (3) the Amending Act of 1951 is not referable to any item in the Concurrent List. To substantiate the first reason the learned Advocate-General has relied on two decisions; - *'The State of Bombay v. Heman Santlal', AIR 1952 Bombay 16(supra)* and - *'United States v. Powers', (1939) 307 US 214(supra)*. Neither of those decisions are in point, for the reasons given by my learned brethren, with whom I respectfully agree. There can be no doubt that the Amending Act of 1951 is a piece of legislation having been passed by a competent Legislature. Assuming that the Amending Act of 1951

merely continued and extended the duration of the Control Act of 1947, it did, in my opinion, require the assent of the President so as to bring into operation clause (2) of Article 254 of the Constitution of India. It is necessary to understand the scheme of Article 254 of the Constitution. Article 254 is more or less on the same lines as Section 107 of the Government of India Act, 1935. It was pointed out by Sulaiman, J., in - *'Subramanyan Chettiar v. Muttuswami Goundan[17]',*

> "While in Canada the solution where a repugnancy exists is mostly a judge-made law, in the Indian Act the principle is embodied in Section 107.....The principle of repugnancy embodied in Section 107 was presumably borrowed from the trend of decisions in Canadian cases."

Article 254 of the Constitution, like Section 107 of the Government of India Act, 1935, is in two parts: the first part states in what circumstance the existing law shall prevail, the second part states in what circumstance the law made by the legislature of a State shall prevail over existing law. One may roughly say that the first part embodies the general principle in the case of repugnancy, and the second part provides the constitutional machinery for an exception. For interpreting Article 254 of the Constitution of India with regard to the questions in hand, it is unnecessary to invoke in aid the doctrine of "the occupied field" or any of the four propositions which Lord Tomlin laid down in - *Attorney-General for Canada v. Attorney General for British Columbia[18]',* The Amending Act of 1951 continued the provisions of the Control Act of 1947, S.11 of which has been found to be repugnant to certain provisions of an existing law with respect to transfer of property other than agricultural land. Such continuance would, in my opinion, require the assent of the President so as to make the State law prevail over the existing law. The question whether the Amending Act of 1951 is a new Act or not is immaterial for the purpose of Article 254 of the Constitution. The Governor-General gave his assent to the duration of the Control Act of 1947 for five years. Those five years ended on the 14th of March, 1952. The State legislature enacted the Amending Act of 1951 for extending the duration of the Control Act of 1947. Such extension would not resolve
the repugnancy by reason of the earlier assent of the Governor-General, because the
earlier assent was to the duration of the Act for five years only. If the intention was to make the State law prevail over existing law beyond the period of five years, fresh assent of the President was necessary to get the desired effect under clause (2) of Article 254 of the Constitution.

28. The second and third reasons given by the learned Advocate-General may, I think, be disposed of in a few words. The Amending Act of 1951 must be referred to the very items of the Concurrent List under which the Control Act of 1947 was passed; otherwise the resulting absurdity will be that there is no legislative power under which the State legislature could pass the Amending Act of 1951. The Amending Act may not itself contain a provision which is repugnant to an existing law, but it continues provisions which are so repugnant. It is, I think, the continuance of repugnant provisions which requires the assent of the President in order to make them prevail over existing law. If that were not the meaning of Article 254 of the Constitution, then, after having obtained the assent of the President for certain repugnant provisions, the duration of which is fixed for one year, the State legislature might go on extending the repugnant provisions for an indefinite period That, I think, would make the assent of the President a meaningless formality. Clause (2) of Article 254 shows clearly enough that the assent of the President is not a meaningless formality. Under that clause, the law made by the legislature of the

State has to be reserved for the consideration of the President, and if after such consideration the President gives his assent, the law so made shall prevail over an existing law to which it is repugnant. Thus the assent of the President is not a mere formality; it deliberately provides for a constitutional machinery by which certain repugnant provisions will prevail in a particular area in spite of the repugnancy. The argument of the learned Advocate-General, if accepted, will make the assent of the President a mere meaningless formality.

29. For these reasons I agree with the conclusion of my learned brethren that the Amending Act of 1951 not having been reserved for the consideration of the President and not having received his assent does not make S.11 of the Control Act of 1947 prevail over those provisions of the Transfer of Property Act to which it is repugnant beyond and after the 14th March 1952, and S.11 is void to the extent off that repugnancy. I agree, therefore, that the two appeals must be dismissed with costs.
Appeals dismissed.

Cases Referred.

[1]5 Ind App 178 (PC)
[2] AIR 1952 Bom 16
[3](1939) 307 USR 214
[4]5 Ind App 178 (PC)
[5](1884) 9 AC 117
[6]1949 FCR 595
[7]74 Ind App 12 (PC)
[8] AIR 1952 Bom 16
[9](1939) 307 US 214
[10]37 Com WLR 466 at p.489
[11]58 Com WLR 618
[12]29 Pat 71 (FB)
[13]1951 SCJ 238
[14]1940 FCR 110
[15]38 Com WLR 441
[16](1882) 7 AC 96
[17] AIR 1941 FC 47
[18](1930) AC 111