

(1978) 09 PAT CK 0012
In the Patna High Court
Case No : Civil Revision No. 310 of 1977

Koshila Devi

APPELLANT

Vs

Parvati Devi

RESPONDENT

Date of Decision : 06-09-1978

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(2)
Constitution of India, 1950 — Article 246, 254, 254(2)

Citation : AIR 1979 Patna 65 : (1979) PLJR 49

Hon'ble Judges : S.K. Jha, J;B.P. Jha, J

Bench : Division Bench

Advocate : Rameshwar Nath Rai and Ali Mozaffar, for the Appellant; Fanish Singh and Gopal Shankar, K.D. Chatterji, General, for the Respondent

Final Decision : Allowed

Judgement

B.P. Jha, J.—By virtue of an order dated 21st July, 1978 a learned single Judge referred this civil revision petition to a Division Bench for deciding the correctness of the judgment of H.L. Agrawal, J. in Smt. Dil Kuer and Others Vs. Hari Chandar Prasad and Others, . H.L. Agrawal, J. is of the opinion that the court shall grant probate or letters of administration provided the will is registered in view of Section 16 (2) (iii) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act 12 of 1962) (hereinafter to be referred to as the Act), H.L. Agrawal, J. is further of the opinion that the provisions of Article 254(2) of the Constitution shall apply to the present case.

2. I respectfully disagree with the opinion of H. L. Agrawal, J. for the reasons mentioned below.

3. It is relevant to quote Article 254(2) of the Constitution which runs as follows :--

"254 (2). Where a law made by the Legislature of a State 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;"

If the Legislature of a State has enacted any law in respect of the matters enumerated in the concurrent list then, in that case, the law made by the Legislature of State shall prevail in the State provided it has been reserved for consideration of the President and has received his assent. In the present case, the Act was reserved for the consideration of the President and it received the assent of the President.

4. The only question for consideration is: whether the Act falls within one of the matters enumerated in the concurrent list or not?

5. In my opinion, the answer must be given in negative. The present Act falls within Item 18 of List II (State List). Item 18 of List II is as follows :

"18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural leases; colonization."

In my view, the present Act does not fall within any of the matters enumerated in List III (concurrent list) and hence the provisions of Article 254(2) of the Constitution do not apply to the present Act. If it is so, then the provisions in the Act shall not prevail upon the provisions of the Indian Succession Act, 1925 (Central Act XXXIX of 1925) (hereinafter referred to as the Central Act) which was enacted by the Central Government. Wills, intestacy and succession fall within item 5 of the concurrent list. The impugned Act is not covered by item 6 of the concurrent list. In the present case there is no conflict between the matters enumerated in concurrent list. In the present case the Act occupies the field as enumerated in List II and the "wills" occupy the field as enumerated in item 5 of List III. In this circumstance, I hold that the question of repugnancy also does not arise.

6. A person applies for grant of probate or letters of administration u/s 273 of the Central Act. A complete machinery has been set up for grant of probate or letters of administration under the provisions of the Central Act. If it is so, the court granting or refusing the probate or letters of administration shall be governed by the provisions of the Central Act and not by the provisions of the impugned Act. If it is so, the court granting the probate or letters of administration cannot refuse to grant the same simply because the will is not registered in accordance with Section 16 (2) (in) of the Act. It is relevant to quote Section 16(2) (iii) of the Act which runs as follows :

"16 (2) (iii). No land shall be transferred, exchanged, leased, mortgaged, bequeathed or gifted without a document registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908)."

7. In my opinion, the provision contained in Section 16 (2) (iii) is confined to the provisions of the Act. In my view, the aforesaid provision contained in the Act does not apply to the grant of probate or letters of administration by a court. The aforesaid provision contained in the Act is confined to the Act itself. The authorities mentioned in the Act can refuse to accept a will if it is not registered for the purpose of the Act. The aforesaid provision contained in the Act has been enacted to check frivolous transfers between the parties for the purpose of the Act. The aforesaid provision in the impugned Act does not apply beyond the ambit of the Act. The ceiling authorities are certainly entitled to refuse to accept an unregistered will for the purpose of the impugned Act. If the will is not registered then the land shall go back to the original transferor.

It has been enacted for the purpose that the surplus land should not be transferred by the transferor to the transferee. In order to check the frivolous action of the transferor, this provision has been enacted. In my opinion, it is not at all necessary that the wills should be registered for the purpose of granting probate or letters of administration as there is no such provision in the Indian Succession Act nor in the Indian Registration Act. In view of the fact that the impugned Act does not fall within any matters enumerated in the concurrent list and hence Article 254(2) does not apply to the present case, in my opinion, the decision given by H.L. Agrawal J. in Smt. Dil Kuer and Others Vs. Hari Chandar Prasad and Others, is not correct.

8. In this circumstance, I hold that court granting probate or letters of administration can grant it in a case where the will is an unregistered one. Hence, I allow the civil revision application, set aside the judgment of the court below dated 18-12-76 and direct the District Judge of Saran to proceed in the matter in accordance with law as mentioned in the Indian Succession Act. In the circumstances of the case, there will be no order as to cost.

S.K. Jha, J.

9. With great respect I agree that this civil revision application should be allowed and the rule made absolute. In deference, however, to the views of H. L. Agrawal, J. in the case of Smt. Dil Kuer and Others Vs. Hari Chandar Prasad and Others, , which we propose to overrule by this judgment, I proceed to deal with the matter at some length.

10. The question for determination before us in this case is as to whether the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter to be referred to as the Ceiling Act) can in any way be said to militate against any of the provisions of "an existing law", namely, the Indian Succession Act 1925 (XXXIX of 1925) hereinafter to be referred to as the Central Act) and as to what is the true import and content of the provisions of

Section 16 (2) (iii) of the Ceiling Act.

11. We cannot unduly simplify the task of distinguishing between the powers of divided jurisdictions. It is not possible to make a clean cut between the powers of the various legislatures, to wit, the Union Parliament and the State Legislatures; they are bound to overlap from time to time. The classic observation of Sir Maurice Gwyer, C.J., in the case of AIR 1941 47 (Federal Court) is apt in this context (at p, 51 of AIR) :

"It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee whereby the impugned statute is examined to ascertain its "pith and substance", or its "true nature and character", for the purpose of determining whether it is legislation with respect to matters in this list or in that : "

It is thus well settled that subjects must overlap and where they do, the question must be asked; what in pith and substance is the effect of the enactment and in what laws is its true nature and character to be found? H.L. Agrawal, J. has proceeded upon the chain of reason that Section 16 (2) (iii) of the Ceiling Act having enjoined, inter alia, that no land shall be bequeathed without a document registered under the provisions of the Indian Registration Act, 1908 must have precedence over the Central Act which does not require any registration of wills. The learned Judge went on to say that since the subject of legislation fell within the concurrent list, i.e. List III of the 7th Sch. in item No. 6 thereof and since presidential assent has been given to the Ceiling Act which had been reserved for the consideration of the President, it must override the provisions of the Central Act on account of the provisions of Article 254(2) of the Constitution of India.

I venture to say that the entire chain of reasoning of H.L. Agrawal J., proceeds upon certain amount of confusion and is fallacious. As I have already observed above, subjects must overlap and where they do, the question that must invariably and inevitably be asked is; what in pith and substance is the effect of the enactment and in what laws is its true nature and character to be found? The extent of invasion by the States into the field of competent Union Legislation is an important matter "not because", as Lord Porter has observed in the case of *Prafulla Kumar Mukherjee v. Bank of Commerce Ltd. Khulna* (AIR 1947 PC 60) the validity of an Act can be determined by discriminating between degrees of invasion, but for the purpose of determining what is the pith and substance of the impugned Act." The question, therefore, is not, has it trespassed more or less, but is the trespass, whatever it be, such as to show that the pith and substance of the Act in question is not "land" but "wills, intestacy and succession". In each case like the instant one, one has to consider what the

substance of the Act is and whatever its ancillary effect, attribute it to the appropriate list according to its character.

12. In this context, one has to bear in mind that the distribution of legislative powers between the Union and the States has to be judged first keeping in view the provisions of Article 246 of the Constitution. If a particular subject is covered by the express provision of Article 246 of the Constitution, the question of invoking the provisions of Article 254 shall not arise except in cases of repugnancy between the provisions of a Union Act and a State Act in respect of any matter enumerated in the concurrent list. Article 246 of the Constitution reads thus:

"246 (1) Notwithstanding anything in Clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Sch. (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in Clause (3), Parliament, and, subject to Clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Sch. (in this Constitution referred to as the "concurrent list").

(3) Subject to Clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in list II in the Seventh Sch. (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

It will be seen, as it goes without saying, that if the subject-matter of a particular legislation falls exclusively with-in any of the items enumerated in List I, i.e., the Union List, no amount of presidential assent to any State enactment encroaching upon the field exclusively assigned to the Union Parliament can validate it. It shall be void ab initio and shall be struck down as invalid on the ground that it has trespassed into a field which is forbidden to it by Article 246. So also, if the Union Parliament purports to legislate on a subject which is assigned exclusively to the State under any of the items enumerated in the State List, i.e. List II, the Union Act, to the extent of such clear contravention, must invariably be struck down as trenching upon a field not assigned to it under the Seventh Schedule read with Article 246 of the Constitution.

13. The question of repugnancy between an Act passed by the Union Parliament and one passed by the State Legislature can arise only in respect of the purported exercise of power by either legislature with regard to a subject enumerated in any of the items of List III, i.e., the concurrent list. It is only in order to facilitate the Court to determine as to which particular statute and to what extent is valid or invalid that the framers of our Constitution engrafted in it

Article 254. Even at the cost of repetition, I would prefer to reproduce all the provisions of Article 254 which reads thus :

"254. (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or 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 law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State 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 the President and has received his assent, prevail in that State :

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

From the provision of Article 254(1) of the Constitution, it would appear that any provision of law made by a State Legislature which is repugnant to any provision of law made by Parliament, which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the concurrent list which is subject to the provision of Clause (2), the law made by the Parliament, whether passed before or after the law made by the Legislature of such State, or the existing law, shall prevail, Clause (2) of Article 254, which is to some extent an overriding provision over Article 254(1), lays down that if one of the matters enumerated in the concurrent list is legislated upon by a State Legislature and such law contains any repugnant provision to an earlier law made by the Parliament or any existing law with respect to that very subject-matter then the law made by the State Legislature shall prevail subject to the condition that it had been reserved for the consideration of the President and has been duly assented to by him,

The proviso gives further power to the Union Parliament for enacting from time to time any law with respect to a subject-matter covered by a State legislation including a law adding to, amending, varying or repealing the State law. The question of invoking the overriding powers of the State Legislature as enjoined in Article 254(2), it is now well settled, can arise only in cases of repugnancy. And, such repugnancy must be in respect of a subject-matter of legislation falling within an item of the concurrent list with regard to which both the Parliament and the State Legislature have purported to enact.

14. I shall, therefore, test the reasoning of H. L. Agrawal, J. keeping in mind

these well-settled principles of law. The learned Judge has treated the provisions of Section 16 (2) (iii) of the Ceiling Act as covering a field assigned to the Legislature under item 6 or List III, i.e. with regard to "registration of deeds and documents". With great respect, I venture to say that this argument cannot be held to be tenable as would appear from the preamble to the Ceiling Act. It has been enacted to provide for fixation of ceiling, restriction on sub-letting and resumption by certain raiyats for personal cultivation of land, acquisition of status of raiyat by certain under raiyats and acquisition of surplus land by the State in the State of Bihar and matters connected there-with.

Section 2 (f) of the Ceiling Act defines "land" as meaning land which is used or capable of being used for agriculture or horticulture and includes land which is an orchard, Kharhur or pasturage or the homestead of a land-holder. In the explanation to Section 2 (f) "homestead" has again been further explained as meaning a dwelling house for the purpose of living or for the purpose of letting out on rent together with any courtyard, compound, attached garden, orchard and out-building and includes any out-building for the purpose connected with agriculture or horticulture. It would thus be seen that the Ceiling Act is an Act covering primarily the agricultural land and incidentally homestead having a nexus with agriculture or horticulture. Let us now look to the provisions of Section 16 (2) (iii), Section 16 (2) (iii) reads thus:

"No land shall be transferred, exchanged, leased, mortgaged, bequeathed or gifted without a document registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908)."

It is clear from the definition that the subject-matter of Section 19 (2) (iii) is agricultural or horticultural land. Can it then be said that the provisions of Section 16 (2) (iii) of the Ceiling Act, while dealing with certain transfers or bequests, are the subject-matter within item 5 or item 6 of List III? Certainly item 5 of List III, which deals, inter alia, with wills, intestacy and succession, has got nothing to do with the Ceiling Act. So also, the subject regarding the transfer of property other than agricultural land or registration of those documents mentioned in item 6 of List III cannot by any stretch of imagination be said to cover the subject-matter of legislation of the State law, namely, the Ceiling Act. My learned Brother has already made reference to item 18 of List II which includes land, i.e., rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

It has already been noticed that the definition of "land" in Section 2 (f) of the Ceiling Act read with the preamble to the Act makes it obvious that the said Act is a piece of Legislation exclusively under item 18 of the State List (List II). The entire Ceiling Act deals either with rights in or over agricultural land or transfer and alienation of agricultural land and land improvement. It can, therefore, by no stretch of imagination be taken to cover any of the subjects enumerated either in item 5 or item 6 of the concurrent list. Certainly -- and I say so with certain

amount of confidence -- provisions of Section 16 (2) (iii) even if they be disintegrated from the Act as a whole, which it is not permissible for us to do, can at best be said to deal with transfers or bequests of agricultural land, but that too it is not possible to hold by dissecting the various provisions of the said Act. The well-settled position in law is, as observed by Venkatarama Aiyar, J., speaking for the Supreme Court in *A.S. Krishna Vs. State of Madras*, that to ascertain the true character of the legislation which falls to be considered in such cases, one must have regard to the enactment as a whole, to its objects and to the scope and effect of its provisions. It would be quite an erroneous approach to the question to view such a statute but as an organic whole, but as a mere collection of sections, then disintegrate it into parts, examine under what heads of legislation those parts would severally fall and by that process determine what portion thereof fell within one list and what within another list. The Ceiling Act, therefore, must be considered as an organic whole for the purpose of determining as to under which item of which list this piece of legislation can be said to fall. It needs no persuasion or argument to hold that the whole of the Ceiling Act in pith and substance is a legislation in respect of one of the matters falling exclusively within the domain of the State Legislature, namely, entry 18 of list II. It cannot even incidentally be said to trench upon a field covered by a Union Legislature or an existing Central law. As was observed by the Privy Council in the case of AIR 1947 72 (Privy Council) which was a case u/s 107 of the Govt. of India Act, 1935, corresponding to the provisions of Article 254(1) of our Constitution:

"Section 107 (Government of India Act, 1935) has no application in a case where the Province (State) could show that it was acting wholly within its powers under the provincial list and was not relying on any power conferred on it by concurrent list and accordingly questions of repugnancy do not arise in such a case". (Vide placitum), (words within parenthesis are mine).

The Ceiling Act is limited to the agricultural lands and as a whole, as already observed above, it falls within the powers given to the State by item 18 of List II of the Seventh Schedule. The Indian Succession Act, which was an existing Central Act, is a piece of legislation falling exclusively within item 5 of the concurrent list (List III) covering, inter alia, the field of wills, intestacy and succession. In such cases, therefore no question of repugnancy arises. Calling into aid the principles of Art, 254 (2) of the Constitution, therefore, is fallacious. If authority need be cited for this well-settled proposition of constitutional law that the provisions of Article 254 of the Constitution can be pressed into service only in cases of repugnancy between a Union Act and a State Act in respect of a matter covered by any of the entries in List III, I may merely refer to some of the decisions of the Supreme Court.

In the case of *Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd.*, it has been held that the Kerala Essential Articles Control (Temporary Powers) Act, 1961 is not a legislation with respect to electricity and therefore does not fall

under entry 38 of List III. The main purpose of the Electricity (Supply) Act, 1948, it was held, was for rationalisation of production and supply of electricity and the regulation contemplated in entries 43 and 44 of List III was not regulation of the business of production, distribution and supply of electricity of the corporation. It was further held that the question of repugnance arises only in cases where both the legislations fall within the same entry in List III. There can, therefore, be no question of repugnance between the Electricity Act and Electricity (Supply) Act on the one hand and the Kerala Act on the other, since the former fell within List I or List III and the latter in List II.

In the case of *Prem Nath Kaul Vs. The State of Jammu and Kashmir*, Gajendragadkar, J., as he then was, speaking for the Supreme Court, held that the essential condition for the application of Article 254(1) is that the existing law must be with regard to one of the matters enumerated in the concurrent list and unless it is shown that the repugnance is between the provisions of a subsequent law and those of an existing law in respect of the specific matters, that Article would be inapplicable,

15. It is a consequence of the doctrine of pith and substance that once a law in pith and substance falls within a legislative entry, an incidental encroachment of an entry on another list does not affect its validity. In the case of *Gallagher v. Lynn* ((1937) AC 863) where the provisions of the Milk and Milk Products Act (Northern Ireland), 1934 were being considered, it was held by the House of Lords that the impugned Act was in pith and substance an Act to protect the health of the inhabitants of Northern Ireland and though it incidentally affected trade, it was not passed "in respect of trade. Similarly, while scanning the provisions of the Ceiling Act, it was clear that in pith and substance it is a Legislation on land falling exclusively within item 18 of List II. The existing Central Act, namely, the Indian Succession Act was a matter directly covered by item 5 of List III. The main purpose of the Ceiling Act, as already pointed out above, is for regulating the acquisition of status of raiyat by certain under-raiyats, acquisition of surplus land by the State and fixation of ceiling restriction. Judged in this light, the provisions of Section 16 (2) (iii) of the Ceiling Act cannot but be held to be a machinery for regulating the purpose of the Ceiling Act.

Apart from the definition of "land" in Section 2 (f) of the Ceiling Act, some other provisions of the Act need be noticed here. Section 5 (1) (i) of the Ceiling Act says that it shall not be lawful for any family to hold, except as otherwise provided under that Act, land in excess of the ceiling area. Clause (ii) of Sub-section (1) of Section 5 further enjoins that if a landholder holds land in excess of the ceiling area then with effect from the commencement of the 1972 amendment Act till the publication of notification u/s 15, no such land-holder can transfer any land except with the previous permission of the Collector in writing. The Collector may refuse to give such permission if, for reasons to be recorded in writing, he is satisfied that the transfer is proposed to be made with a mala fide intention of defeating the object of the Ceiling Act.

Clause (iii) of Section 5 (1) further empowers the Collector to make enquiries in respect of any transfer of land by a landholder "whether by a registered instrument or otherwise" made after 22-10-59 and if the Collector is satisfied that the transfer in question was made with the object of defeating the provisions of the Act or was in contravention thereof or for retaining benami or farzi land in excess of the ceiling area, he (the Collector) may annul such transfer after giving reasonable notice to the parties concerned to appear and be heard. It will be seen, therefore, that irrespective of the fact whether there is a document registered or not, the registration of a deed of transfer of which the subject-matter is agricultural land falling within the ambit of the Ceiling Act does not give any seal of sanctity to it nor does it bind the revenue authorities under the Ceiling Act. The object and the main purpose of the provisions of the Ceiling Act being with regard to fixation of ceiling area and non-retention of any surplus land other than the ceiling fixed, the question by the revenue authorities to be gone into in such cases is as to whether the acquisition by virtue of such transfer was bona fide or not.

The revenue authorities in such cases have to determine a number of pertinent points, namely, whether by virtue of the transfer one seeks mala fide to retain some land in excess of the ceiling area by creating documents in the name of persons benami or farzi; whether at any time or through acquisition even bona fide a land-holder comes in possession of any land on any future date which is surplus over the ceiling area fixed by the Ceiling Act. In all such cases, therefore, the revenue authorities are guided by considerations of bona fides or otherwise of the transfers in question. Mere registration of any deed of transfer, as I have already observed, even does not make any particular transaction binding on the revenue authorities if such a transfer has been effectuated either for the purpose of retaining illegally some area of land in excess of the ceiling area which a person was not entitled to retain or by acquisition of any new land where a landholder is likely to exceed the ceiling area permissible under the Act for him to retain. It is in this context that the provisions of Section 16 (2) (iii) must be viewed.

16. On the contrary, it shall be seen, the Indian Succession Act is an Act to consolidate law applicable to intestate and testamentary succession and such intestate and testamentary succession fell exclusively within entry 5 of List III, as already pointed out above. The upholding of the view of H.L. Agrawal, J., would lead to such absurdities and anomalies which the Courts shall not permit in construing the provisions of the two Acts. If at all, for the sake of argument, it be assumed that the provisions of Section 16 (2) of the Ceiling Act pertain to the subject of testamentary or intestate succession either directly or indirectly in the purported exercise of the legislative power under entry 5 of List III, then, so far as the State of Bihar is concerned, no probate or letters of administration can be granted on the basis of a will which is not registered in accordance with the provision of the Indian Registration Act, 1908. On the contrary, a person on the basis of any will which covers properties falling within the State of Bihar and

elsewhere or, for instance, the State of West Bengal, is at liberty to apply for probate or letters of administrations in either of the two States.

While, on the one hand, the court in the State of Bihar shall refuse to grant probate or letters of administration on the basis of an unregistered will, the court in West Bengal, where there may not be any provision corresponding to the provision of Section 16 (2) (iii) of the Ceiling Act shall be at liberty to grant such probate or letters of administration. It is a universal rule that the jurisdiction of a court of probate is not to go into the questions of title but merely to judge the genuineness of any will in question. Whereas, on the one hand, the courts in the State of Bihar by refusing to grant probate or letters of administration on the ground of non-registration of the will shall be holding it to be not genuine impliedly, the grant of probate or letters of administration of the same will by courts in another State would be deemed to have given a seal of genuineness to such a document notwithstanding the fact that it is not registered. Can the two pieces of legislation be, therefore, viewed as H.L. Agrawal, J., has viewed the provisions of Section 16 (2) (iii) of the Ceiling Act?

The answer is obvious: the provisions of Section 16 (2) (iii) cannot be so construed as to result in the aforesaid absurdities and anomalies. Apart from that, the provisions of Part VII of the Indian Succession Act dealing with protection of the properties of deceased and those of Part VIII thereof dealing with representative title to properties of a deceased on succession will be rendered wholly nugatory, if it be held that the Ceiling Act has been enacted under any of the entries of List III. All the provisions of the whole of Part IX of the Indian Succession Act, namely, probate, letters of administration and testamentary assets of deceased shall be held to be abrogated by mere insertion of such an incidental provision like Section 16 (2) (iii) off the Ceiling Act. I have, therefore, no hesitation in holding that the court of probate which has to determine merely the question of genuineness or otherwise of a will cannot refuse to grant either probate or letters of administration with regard to a will which is not registered.

17. A question may be posed that the aforesaid view will render the provisions of Section 16 (2) (iii) of the Ceiling Act with regard to registration of wills in the matter of bequests otiose and nugatory. My answer to that question is clear and unequivocal. Firstly, & 16 (2) (iii) merely deals, if at all, with wills covering agricultural lands and, that too merely for the purpose of enabling the revenue Courts under the Ceiling Act to decide as to whether, by virtue of such bequests, a person has come into possession of and is likely to retain land in excess of the ceiling area. In the event of such a contingency, the revenue courts under the Ceiling Act shall certainly take into consideration for the purpose of deciding the question of the bona fides or otherwise of the transaction as to whether in spite of the will having been probated or letters of administration having been granted on the basis thereof it should be held to be binding and entitling the person in whose favour the bequest has been made to retain any land in excess of the

ceiling area or not.

As already observed earlier, if by virtue of such bequest a land-holder comes in possession of any area of land in excess over the ceiling area, that will be illegal in view of the provisions of Section 5 (1) (i) of the Ceiling Act. It would thus be seen that the provisions of Section 16 (2) (iii) in so far as they incidentally touch upon the matter of registration of wills and bequests being unregistered documents, such incidental trenching upon the field of legislation or otherwise cannot be attributable to the legislative power of the State either under entry 5 or entry 6 of List III which must be confined to and be read as only covering the legislative field assigned to the State Legislature exclusively under item 18 of List II. Thus considered, there is no anomaly, no inconsistency and no repugnancy between the State Act, namely, the Ceiling Act and the Indian Succession Act, namely, the existing Central Act.

18. In the result, therefore, I am constrained to hold that the judgment of H.L. Agrawal, J., in the case of Smt. Dil Kuer and Others Vs. Hari Chandar Prasad and Others, does not lay down a correct position in law and must be and is hereby overruled. The application, therefore, as observed by my learned Brother, must succeed.