

(1981) 03 PAT CK 0007
In the Patna High Court
Case No : C.W.J.C. No. 3192 of 1979

Rohtas Industries Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 25-03-1981

Acts Referred:

Constitution of India, 1950 — Article 213, 265

Citation : (1981) 29 BLJR 688 : (1982) 49 STC 276

Hon'ble Judges : K.B.N. Singh, C.J.; P.S. Sahay, J

Bench : Division Bench

Advocate : Shrinath Singh, G.C. Bharuka, Amalendu Kumar Sinha and Tej Bahadur Singh, for the Appellant; Chunni Lal, Government Pleader V and S.K.P. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

K.B.N. Singh, C.J.—The petitioner, a joint-stock company, has prayed for quashing the demands of sales tax contained in three letters dated the 2nd December, 1978, 16th February, 1979, and 18th June, 1979 (annexures 2, 3 and 5), respectively. The demands in question relate to exploitation of bamboos made by the petitioner from forest coupes in pursuance of an agreement of lease entered into between the petitioner and the State Government in the year 1968. The petitioner has also prayed for quashing of an order of the Commissioner of Commercial Taxes dated the 7th May, 1979 (annexure 4), upholding the orders of the Assistant Commissioner of Commercial Taxes to the effect that the petitioner was liable to pay -sales tax in relation to the transactions of exploitation of bamboos by the petitioner from the Government forest- coupes leased out to it by the State.

2. The petitioner-company owns a paper factory at Dalmianagar and for the purpose of manufacture of paper it entered into an agreement for exploitation of bamboos from the forests with the State of Bihar through the Divisional Forest Officer, Hazaribagh (respondent No. 4). The agreement was for grant of lease of

the right of exploiting bamboos on the terms and conditions mentioned therein for twelve years, i. e., from the year 1968-69 to 1979-80. For silvicultural purposes a year is deemed to begin from the 16th October and end on the 13th June. The petitioner agreed to pay a minimum royalty of Rs. 1,05,000 a year under Clause 2(a) of the agreement, but as provided under Clause 2(c) thereof, a revision was made on the 1st July, 1975, and the minimum royalty payable by the petitioner was raised to Rs. 3,03,000 a year instead of Rs. 1,05,000 as fixed originally. The annual minimum royalty was payable by the petitioner irrespective of the fact whether, for its own default or due to any other cause, the petitioner-company is unable to exploit bamboos from the leased out forest coupes. It is provided under Clause 6(a) of the agreement that if the petitioner-company fails to start work of exploitation of bamboos from the forest coupe even after the lapse of two months reckoning from the 15th October each year, the Divisional Forest Officer can lawfully sell the coupe to another party or exploit it departmentally in order that silvicultural operations may not lag behind, and the sale proceeds will be appropriated by the Government although the petitioner-lessee shall have to pay the stipulated minimum royalty. Clause 7 of the agreement provides that, if the petitioner fails to remove any bamboo within the section or coupe of the forest the felling of which is obligatory, as per rules in schedule D, within the period allotted for such operation, it shall forfeit the right to cut or remove such bamboos and they shall be the property of the Government and the petitioner shall be liable to pay certain fines and charges. Clause 16 of the agreement provides that the lessee will not be entitled to any compensation whatsoever from the lessor for any loss that may be sustained by the lessee by reason of fire or tempest or flood or violence of any army or of mob or other irresistible force or natural calamity or by reason of theft by any person or persons. The clause further provides that in the event of the forest department setting fire to the forest for silvicultural purposes the lessee will be responsible for safeguarding the forest produce sold to him and no compensation will be paid by the Government for losses arising out of such controlled silvicultural burning or general forest fire. Clause 17 of the agreement provides that on completion of work in any section of the annual coupe or in the event of the termination of the agreement by efflux of time, if the lessee had failed to cut the bamboos fit to be cut or had not removed the bamboos cut from the limits of the section or coupe or from the leased area, those products would become the absolute property of the lessor and the Divisional Forest Officer will be at liberty to sell, remove or otherwise deal with the same in such manner as he may think and the lessee shall also forfeit all its rights under the agreement to exploit any further bamboo that may at that date remain unexploited and in no case will be entitled to any compensation whatsoever in respect thereof. The petitioner, under the terms of the lease, has the right to use forest roads and forest lands, without payment of any additional amount therefor, for temporary storage of bamboos on the lands inside the coupe, subject to certain restrictions on such use, as provided under certain clauses of the agreement.

3. In view of the above provisions in the lease, the petitioner asserts that the agreement is for carrying out forestry (silviculture) operation by the State through the lessee and the mode and manner of exercising the rights to exploit, which terms includes felling, conversion, collection, extraction, removal and transport, have been subjected to various restrictions and obligations under the agreement and the acts of the lessee in violation of such restrictions and obligations have been subjected to penalties and damages, as provided in Clauses 6(a), 8(e), 13, 18, etc.

4. Under schedule D of the agreement, the petitioner cannot object to the free removal of bamboos from the annual coupe by the right-holders for their own domestic and agricultural use, as specified in the permit issued by the Range Officer nor shall the petitioner neglect or object to the sale of bamboos to the Turies at the rates fixed by the Divisional Forest Officer. Similarly, under Clause 5 of schedule D of the agreement, it has been provided that the demand of the local non-right-holders for purchase of bamboos on the rates fixed by the Divisional Forest Officer shall have priority and the petitioner shall meet all the local requirements at the rate to be fixed by the forest department and the bamboos are to be sold to the local people at the price fixed by the Divisional Forest Officer and the petitioner has to abide by the directions of the Divisional Forest Officer and any contravention thereof has been made liable to special penalties.

5. On the aforesaid basis, the petitioner has submitted that there was no sale of goods in the transactions under the agreement (annexure 1) attracting the provisions of the Sales Tax Act. The petitioner has further relied upon the information given by the Divisional Forest Officer that the Commissioner of Commercial Taxes, on the advice of the law department, had decided that no sales tax was required to be paid on the auction of forest area prior to 1st January, 1975, and as such the petitioner was not liable to pay any sales tax with regard to the agreement in question which was entered into in 1968. The petitioner asserts that on the basis of the above information conveyed by the Divisional Forest Officer, the petitioner did not take into account any amount as sales tax in computing its cost of production and ultimate sale price of its products.

6. The petitioner's grievance is that in spite of this position, by the impugned annexure 2 dated the 2nd December, 1978, respondent No. 4 demanded sales tax on the amount of the proportionate value of the actual extraction of bamboos during the periods 1975-76, 1976-77 and 1977-78 amounting to Rs. 16,220.52 as detailed in the said annexure. The petitioner contended that it was not liable to pay sales tax, the agreement being of the year 1968, i. e., prior to the 1st January, 1975. But, instead of accepting this contention of the petitioner, respondent No. 4 served on it annexure 3 dated the 16th February, 1979, demanding a revised and enhanced amount of Rs. 41,184 as sales tax on the ground that the tax would be payable not on the basis of actual extraction, but

on the basis of the minimum royalty payable by the petitioner as lessee.

7. The petitioner made a representation to the Commissioner of Commercial Taxes (respondent No. 2) praying for a direction to the authorities not to demand any sales tax from the petitioner under the agreement (annexure 1), which was, however, rejected vide his order dated the 7th May, 1979 (annexure 4). Thereafter, on the 18th June, 1979, respondent No. 4 issued another notice (annexure 5) to the petitioner to the effect that if the petitioner failed to pay the sales tax demanded under annexure 3 within fifteen days that amount would be adjusted out of the amount of security deposited by the petitioner and the petitioner's operation under the agreement (annexure 1) would be stopped.

8. It is further stated in the petition that the Bihar Sales Tax Act, 1959 (hereinafter referred to as the 1959 Act), which made provisions for levy of sales tax on various commodities and provided the machinery for assessment and collection thereof, stood repealed by Section 54 of the Bihar Sales Tax Ordinance, 1976 (Bihar Ordinance No. 209 of 1976), promulgated by the Governor of Bihar and published in the official Gazette on the 23rd August, 1976. According to Section 1(3) of that Ordinance, it was to come into force on such date as the State Government might by notification in the official Gazette appoint, and might fix different dates for different provisions of the Ordinance. The relevant notification was issued on the 29th November, 1976, by which the State Government brought into effect from the 1st January, 1977, all the provisions of the said Ordinance, except Section 53 thereof, i. e., the rule-making power. This Ordinance, as provided under Article 213(2)(a) of the Constitution of India, ceased to operate with effect from the 12th January, 1977.

9. The petitioner further asserts that Bihar Ordinances Nos. 38 of 1977, 101 of 1977, 163 of 1977 and 208 of 1977 were promulgated by the Governor of Bihar within the outer limits for expiry of the respective earlier Ordinances as provided under Article 213(2)(a) of the Constitution. Each of the aforesaid Ordinances provided for repeal of the Bihar Sales Tax Act, 1959, as well as the immediately preceding Ordinance, under the erroneous impression that the Bihar Sales Tax Act, 1959, revived after the earlier Ordinances ceased to be in force. The provision for coming into force of each of these Ordinances was the same, as contained in Section 1(3) of Ordinance No. 209 of 1976, mentioned above. But no notification to bring the provisions of each of these Ordinances was issued by the State Government with the result that all these Ordinances expired one after the other under the mandatory provision contained in Article 213(2)(a) of the Constitution, without coming into force even for a day. According to the petitioner, therefore, from 12th January, 1977, i. e., when Ordinance No. 209 of 1976 expired by efflux of time, to the 26th December, 1977, when new Ordinance No. 257 of 1977 was enforced, there was no sales tax law in operation in the State of Bihar. Thereafter, Ordinances Nos. 34 of 1978, 97 of 1978, 39 of 1979, 85 of 1979 and 112 of 1979 were promulgated one after the other within the outer limits provided under Article 213(2)(a) of the Constitution before the

expiry of the earlier Ordinances, providing for repeal of the 1959 Act as well as the immediately preceding Ordinance. The provision for enforcing the provisions of the Ordinance was the same, as in the case of earlier Ordinances, but no notification, as contemplated therein, was issued by the Government for bringing into force the provisions of the Ordinance. Accordingly, under the constitutional mandate under Article 213(2)(a) of the Constitution, all these Ordinances expired. Thus, after Ordinance No. 257 of 1977, which was enforced from the 26th December, 1977, expired on the 26th April, 1978, there was no sales tax law in operation till the filing of the writ application.

10. The State has filed a counter-affidavit asserting that sales tax was payable by the petitioner in respect of the transactions made by virtue of the agreement (annexure 1) and that the opinion given by the Commissioner of Commercial Taxes is of no help to the petitioner, inasmuch as it was liable to pay sales tax under the law imposing sales tax and there was no estoppel against the statute. It is further asserted that it is not correct to say that the State of Bihar (forest department) is not a dealer under the Sales Tax Act as respondent No. 4 is a dealer within the meaning of the Sales Tax Act and has obtained a registration certificate as provided u/s 9 of the said Act. Copies of the registration certificates have been filed as annexures A and A/1 to the counter-affidavit.

11. Mr. Shrinath Singh, the learned counsel appearing on behalf of the petitioner, has urged the following points in support of his contention that the petitioner is not liable to pay sales tax in respect of the transactions in question.

(1) In the transaction embodied in the agreement (annexure 1) and the acts of the parties pursuant thereto there has been no sale of goods to attract the Sales Tax Act.

(2) In any case the transaction is a conferment for consideration of rights of user and enjoyment, in which the consideration for any goods appropriated cannot be allocated.

(3) In any case the transaction is a sale of immovable property.

(4) The transaction is really a part of forestry (silvicultural operation) by the owner (State) to preserve and maintain the forest as a profitable property. The forestry (silvicultural operation) is not done by the owner (State) through the agency of the petitioner.

(5) The transaction cannot be said to be for sale of bamboos, because even on cutting, felling, removal and storage, the property in the bamboos does not pass to the petitioner, because under Clause 5 of schedule D of . the agreement, the local non-right-holders have a right of purchase at a rate to be fixed by the Divisional Forest Officer.

(6) The minimum royalty is not sale price, on which tax could be calculated. To test whether the transaction and the acts pursuant to that are sale of bamboos for the sale price of royalty, let us think of a year in which for any reason, no

bamboo has been lifted and thus no goods transferred on any possible point of view. Still the minimum royalty of Rs. 3,03,000 is payable and paid. If this payment is dubbed as sale price, then the question is "sale price" for what ? Since there has been no transfer of goods and, therefore, no sale, then the payment is not the sale price. And if in any such probable year, the payment is not sale price and the transaction is not sale of goods, then in no year can it be that.

(7) The State Government is estopped from demanding any sales tax in respect of the period before the first notice and demand on the 2nd December, 1978.

(8) No sales tax is payable as the State of Bihar in its forest department is not a dealer.

(9) There has been no sales tax law in force in the State of Bihar during the relevant time.

12. So far as the submissions made with regard to points Nos. (1) to (5) are concerned, the principal question for determination is whether the agreement in question is a lease or a licence. If it is a lease of immovable property, there will be no liability to pay sales tax, as no sales tax is payable on the sale of goods of immovable property. If, however, the agreement is a licence, by which the petitioner has been permitted to go over the land, cut and remove bamboos and to appropriate the same and the right to go on the land was ancillary to the real purpose of the contract, what the agreement envisaged is a minimum price for extraction of bamboos by whatever name the price may be called. I have referred above, in some detail, to the terms of the agreement on which the petitioner relied to show that the agreement was a lease of immovable property and the right to exploit the trees was circumscribed by various restrictive provisions contained in the lease even exposing the petitioner to prosecution for any breach thereof. It is not necessary to refer in any greater detail to the terms of the agreement, inasmuch as the question as to whether the agreement is a lease of immovable property or a licence to exploit trees stands concluded by an unreported decision of a Bench of this Court in the case of Titaghur Paper Mills Co. Ltd. v. State of Bihar (C.W. J.C. No. 619 of 1978 disposed of on the 15th May, 1979) (reported in [1980] 45 STC 130) wherein a similar agreement has been interpreted and held to be a licence, to go on the land to cut and remove bamboos and to appropriate the same, and sales tax was leviable thereon. The Bench relied on a decision of the Supreme Court in the case of State of Madhya Pradesh and Others Vs. Orient Paper Mills Ltd., , in relation to a somewhat similar agreement. Mr. Shrinath Singh fairly conceded that in view of the aforesaid Bench decision, he would not have urged these points, but he has urged them so that it may be open to the petitioner to agitate these questions in the Supreme Court, in case this writ petition is decided against the petitioner. Following the aforesaid Bench decision of this Court and the decision of the Supreme Court in the case of State of Madhya Pradesh and Others Vs. Orient Paper Mills Ltd., , the first five contentions raised by Mr. Shrinath Singh have to be rejected without

any elaborate discussion thereof.

13. As regards the sixth point, the main argument is that the minimum royalty is not sale price, on which tax could be calculated for any of the years in question. This point also stands concluded by the decision of the Supreme Court in the case of State of Madhya Pradesh and Others Vs. Orient Paper Mills Ltd., relevant portion of which may be reproduced:

We are satisfied that despite its description, the deed confers in truth and substance a right to cut and carry timber of specified species. Till the trees are cut, they remain the property of the owner, namely, the appellant. Once the trees are severed, the property passes. "Royalty" is a feudalistic euphemism for the "price" of the timber. We may also observe that the question before us is not so much as to what nomenclature would aptly describe the deed but as to whether the deed results in sale of trees after they are cut. The answer to that question, as would appear from the above, has to be in the affirmative.

It may be mentioned that the definitions of the expressions "goods", "sale" and "sale price" in the Bihar Sales Tax Act are in substance similar to those in the Madhya Pradesh General Sales Tax Act, which was the subject-matter of decision in State of Madhya Pradesh and Others Vs. Orient Paper Mills Ltd., on the relevant question. In Section 2(j) and 2(p) of the Bihar Act, "goods" and "sale" are deemed to include articles attached to and forming part of the immovable property, which are agreed to be severed under a contract of sale, while under the M. P. Act, "goods" includes all growing crops, grass, trees, plants and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale.

14. As regards point No. (7), that the State is estopped from demanding sales tax in respect of the period before the first demand notice dated the 2nd December, 1978, the plea is one of promissory estoppel, based on averments made in paragraphs Nos. 14 and 15 of the writ application. It is stated therein that the Commissioner of Commercial Taxes, after obtaining the opinion of the law department, has decided that no sales tax was payable in respect of auction of forest area, and, on the basis of that the Divisional Forest Officer (respondent No. 4) informed the petitioner that the petitioner was not liable to pay any sales tax with regard to the agreement in question which was entered into in 1968. The petitioner, acting on the faith and belief of the aforesaid intimation that the petitioner was not liable to pay any sales tax in respect of the exploitation of bamboos, did not take into account any amount as sales tax in computing the cost of production and ultimate sale price of its products. It is also urged that it was not the case of the State that the petitioner had any indication before the 1st January, 1975, that sales tax was payable in respect of the"" agreement. The petitioner, for the first time, learnt from the demand notice dated the 2nd December, 1978 (annexure 2), that it was liable to pay sales tax in respect of the transactions carried on the basis of the agreement in question. In paragraph No. 7 of the counter-affidavit, the stand taken by the State is that even if there was

such a decision by the Commissioner of Commercial Taxes (respondent No. 2), that cannot help the petitioner as there can be no estoppel against the statutes making the petitioner liable. Mr. Chunni Lai, the learned Government Pleader, appearing on behalf of the State, has relied on a decision of the Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , in support of his contention. That decision supports the contention of Mr. Chunni Lal that as the petitioner has incurred liability to pay sales tax under the sales tax law with effect from the 1st January, 1975, when the Divisional Forest Officer got himself registered as a dealer, there can be no estoppel against the statute. The liability to pay tax arises under the charging section of the statute and it does not require any prior notice about such a liability having been incurred. The fact that the assessee has not, for one reason or the other, collected the tax from purchasers is of no consequence at all. The doctrine of promissory estoppel cannot be applied in the teeth of an obligation or liability imposed by law, and neither the Government nor a private party can be compelled under the doctrine to do an act prohibited by law.

15. Coming to point No. (8) that the State of Bihar in its forest department is not a dealer has not seriously been pressed by Mr. Shrinath Singh, and rightly, in view of annexures A and A/1 to the counter-affidavit filed on behalf of the respondents. Annexure A is a certificate of registration as a dealer u/s 9 of the 1959 Act in the name of the Divisional Forest Officer, Koderma .Division of the Government of Bihar, for dealing in sale of timber and bamboos with effect from the 1st January, 1975. Annexure A/1 is another certificate of registration u/s 13 of the Bihar Sales Tax Ordinance, 1976, dated the 12th June, 1978, for dealing in sales of biri leaves, timber and bamboos.

16. The ninth and the last contention of Mr. Shrinath Singh is that no sales tax law being in force in the State of Bihar during the relevant period., no sales tax can be levied. I have already mentioned that the demand is in respect of the years 1975-76, 1976-77 and 1977-78. His attack is two-pronged. The argument, firstly, proceeds on the footing that at the point of time when the demands were made by three letters dated 2nd December, 1978, 16th February, 1979, and 18th June, 1979 (impugned annexures 2, 3 and 5), there was no sales tax law in existence, and therefore, no valid demand of sales tax could be made by the impugned annexures. The demand of sales tax has been made in respect of the transactions of sale during the years 1975-76, 1976-77 and 1977-78. The liability to pay tax is incurred under law levying sales tax and if it is so properly incurred the liability is not washed away if the taxing statute ceases to be in existence in a subsequent period, when the liability is kept alive under the repealing statute. It is another matter as to what will be the machinery for its quantification or realisation or both, in case the machinery for its realisation is not kept alive as the remedy for realisation by a suit, unless it is time-barred, is available to the State under the ordinary law of the land. Not only the liability, which accrued under the 1959 Act, but the machinery for its realisation also, have been kept alive under the repeal and saving Section 54 of Bihar Ordinance

No. 209 of 1976. Similar provision has been made in regard to liability which accrued during the period of the 1959 Act and Bihar Ordinance No. 209 of 1976, and, similarly, in all the subsequent Ordinances to which I shall revert later in some detail. What I mean to emphasise is that there was positive legislative intent to keep the liability alive. There is, therefore, no scope for argument that the liabilities which accrued were meant to be lapsed with the repeal of the Act or the Ordinance and no demand in respect thereof could be made subsequent thereto. Even if Ordinance No. 209 of 1976 lapsed after six weeks of the meeting of the legislature, without the next Ordinance having been enforced after due promulgation its saving clause will have enduring effect and will keep alive the liability which accrued and the Act itself for the purpose, as if this Ordinance has not been passed, and will not lapse with the lapse of the Ordinance : vide *State of Orissa Vs. Bhupendra Kumar Bose, and Ram Nagina Singh and Others Vs. S.V. Sohni and Others*, .

17. The other limb of the argument is that there was no sales tax law in existence during the period for which the demand was made, and Article 265 of the Constitution was a bar to the levy or collection of sales tax. There cannot be any quarrel with the proposition that in view of Article 265 of the Constitution, a tax could be levied only if there is a valid law authorising imposition. As already mentioned, tax is demanded in respect of the periods 1975-76, 1976-77 and 1977-78. The period of three years can be divided into three blocks. Mr. Shrinath Singh concedes that some part of the aforesaid three financial years is covered either by the 1959 Act or the Ordinances. Block I consists of two parts, the first part from the 1st January, 1975, to the 31st December, 1976, and the second part from the 1st January, 1977, to the 12th January, 1977. Mr. Singh concedes that the liability to pay the tax during the first part is covered by the Act and the liability during the second part is covered by Ordinance No. 209 of 1976. Block II comprises of the period from the 13th January, 1977, to the 25th December, 1977. After the expiry of Ordinance No. 209 of 1976 on the 12th January, 1977, under Article 213(1)(a) of the Constitution, Mr. Singh's contention is that there was no tax law in force creating any liability for payment of sales tax. The basis of the argument is that although during this period there were five Ordinances promulgated and published, namely, Ordinances Nos. 38, 101, 163, 208 and 221 of 1977, their provisions were not made applicable which was required to be so made by a notification in the official Gazette by the State Government u/s 1(3) of each of those Ordinances. Block III is in relation to the period from the 26th December, 1977, to the 26th April, 1978. It is admitted by Mr. Singh that Ordinance No. 257 of 1977 was in operation authorising imposition of sales tax, but when it expired on the 26th April, 1978, by virtue of Article 213(1)(a) of the Constitution, the liability has not been kept alive for the reason that although four Ordinances, being Ordinances Nos. 34 and 97 of 1978 and 39 and 84 of 1979, had been promulgated thereafter, but their provisions have never been brought in force by the requisite notification, as required u/s 1(3) of the respective Ordinances till the date of filing of the writ petition, or till the date of

the arguments. Thus, there was a hiatus between the period 13th January, 1977, to the 25th December, 1977, in Block II, when no Ordinance was in force, so as to create a liability to pay sales tax, in absence of there being any Act or Ordinance in force. It is also submitted that so far as the period covered by the Act and the first Ordinance No. 209 of 1976 and Ordinance No. 257 of 1977 are concerned, it must be deemed that they were not kept alive, by the subsequent Ordinances, which were never brought in force.

18. The learned counsel appearing on behalf of the State has conceded that the provisions of only two of the Ordinances, namely, Ordinance No. 209 of 1976 and Ordinance No. 257 of 1977, were brought in force, while in respect of the other" eight Ordinances, mentioned above, he concedes, though promulgated, their provisions were not brought in force as required by Section 1(3) of those Ordinances. This is a sad reflection on the functioning of the law department and the sales tax department of the State during the relevant period. It is a pity that after all the troubles taken including obtaining instructions of the President of India under Article 213(1)(a) in promulgating these Ordinances, a simpler step to notify the date from which the provisions of the Ordinances could come into effect was not taken. This shows utter carelessness on the part of those who were at the helm of affairs for promulgating those Ordinances in such an important matter as levy of sales tax, which is perhaps the largest source of State revenue. A little care on the part of the authorities concerned would have saved unnecessary harassment to the litigant public and would have saved time of the court, where long arguments had to be advanced on behalf of the State to justify the imposition of sales tax.

19. The argument advanced on behalf of the State is that the 1959 Act, a permanent one, was repealed by Ordinance No. 209 of 1976, which was a temporary measure to die after six weeks of the assembling of the Legislature of the State. Then the permanent Act is revived, the intention of the legislature being to keep the sales tax law alive. In the alternative, he submitted that even if the old Act does not survive, the Ordinance has an enduring effect and its effect is still in force. Under the saving clause of the Ordinance, the liability is still saved and the demand can be recovered. The effect of the saving clause did not die on account of the natural death or expiry of the period of the Ordinance.

20. It will be relevant in this regard to refer to the history of the sales tax law in the State of Bihar. It was first imposed in the State of Bihar in the year 1944 by Bihar Act 6 of 1944, and the preamble of the Act shows that it was intended to augment the revenue of the State. It was replaced by the 1947 Act (Bihar Act 19 of 1947). The preamble of the 1959 Act is of wider importance, inasmuch as it was enacted to consolidate and amend the law relating to the levy of tax on the sales and, in certain cases, purchases of goods in Bihar. In spite of the repeal of the 1944 Act the 1947 Act kept alive the liabilities which accrued under the 1944 Act under the repeal and saving provisions. Similar provisions had been made in the 1959 Act keeping alive the liabilities, etc., under the 1947 Act and the Act

itself for its realisation, etc. Ordinance No. 209 of 1976 had been promulgated "to consolidate and amend the law relating to the levy of tax on the sale and, in certain cases, purchase of goods in Bihar" (same as the 1959 Act). The learned counsel on behalf of the State has urged that the purpose behind the Ordinance was to consolidate the law and not to put an end to the sales tax law after the Ordinance, which was a temporary measure, ceased to exist, and reliance has been placed on the following passages in the Craies on Statute Law, Sixth Edition, at page 136 :

The true effect of consolidating Acts is to combine in a consecutive form the provisions scattered about the statute-book in order to avoid repetitions and remove inconsistencies.

And also on the following passage at page 361 :

The very object of consolidation is to collect the statutory law bearing upon a particular subject, and to bring it down to date, in order that it may form a useful code applicable to the circumstances existing when the consolidating Act was passed" : Administrator-General of Bengal v. Prem Lal Mullick (1895) 22 IA 107.

Reliance is also placed on the following passage in Maxwell on the Interpretation of Statutes (Eleventh Edition) at page 23 :

If an Act is instituted an Act to consolidate previous statutes, the courts may lean to a presumption that it is not intended to alter the law and may solve doubtful points by aid of such presumption of intention rejecting the literal construction. And, even where the Act is to amend and consolidate the Law of Bankruptcy, Chitty, J., holds it reasonable to infer that the legislature intended the law to stand.

A close analysis of the provisions of the Act and Ordinance No. 209 of 1976 will show that the Ordinance intended not only to keep the sales tax law alive, but further intended to expand its scope and plug its loopholes, to check evasion of tax. The preamble also shows that the purpose of the Ordinance was to consolidate and amend the law. Some of these material changes made in the parent Act only need be noticed. The definition of "business" in Section 2(d) has been enlarged to include sale transactions which were without profit-motive and casual sales. Certain additions have been made in the definition section and expressions, such as "goods carrier", "importer", "manufacture", "Joint Commissioner", "month", etc., necessitated by the changes made in the main provision of the Act, have been included. These additions enlarged the field of operations of the sales tax law and they surely intended to keep the sales tax law alive. A close scrutiny of the charging Section 3 will also indicate that the same result was intended. Section 3 does not allow grace period of thirty days before a dealer can be made liable to pay sales tax as existed in the Act. The dealer becomes liable on the following day when the said dealer exceeds the specified quantum. The specified quantum has been indicated in the section itself, which was not in the earlier Act. The other provisions of the Ordinance also incorporate

the provisions of the Act with slight changes here and there.

Section 54 of the Ordinance, dealing with repeal and saving, is rather important and may usefully be reproduced :

54. Repeal and savings.-(1) The Bihar Sales Tax Act, 1959 (Bihar Act XIX of 1959) (hereinafter referred to as the said Act) is hereby repealed :

Provided that nothing in this repeal shall affect or be deemed to affect-

(i) any right, title, obligation or liability already acquired, accrued or incurred for anything done or suffered, in respect of the period immediately preceding this repeal,

(ii) any legal proceeding or remedy whether initiated or availed of before or after this repeal, in respect of any such right, title, obligation or liability,

(iii) the levy, assessment or recovery of any tax or the imposition or recovery of any penalty, in respect of such period

under the provisions of the said Act; and all proceedings under the said Act in respect of all matters aforesaid shall be initiated and disposed of or continued and disposed of, as the case may be, as if this Ordinance had not been promulgated; and for this purpose all taxing authorities or Inspectors appointed u/s 8, and the Tribunal constituted u/s 7 of this Ordinance shall exercise all powers and perform all duties conferred by or under the said Act upon the corresponding authorities appointed u/s 8 or Section 34A thereof.

(2) All rules, orders and appointments made, notifications published, certificates granted, powers conferred and other things done under the said Act and in force on the commencement of this Ordinance shall, so far as they are not inconsistent with or until they are not modified, superseded or cancelled under this Ordinance be deemed to have been respectively made, published, granted, conferred or done under this Ordinance.

From the aforesaid provision, it is apparent that all rights, title, obligations and liabilities, which accrued under the 1959 Act, have been kept alive and the Act itself, for the purpose of enforcing them as if the Ordinance was never passed. Therefore, in respect of the liability that accrued under the Act, the Act will be deemed to be alive notwithstanding the coming into force of the Ordinance, under the deeming provision of Section 54 of the Ordinance. It is important to note that all subsequent Ordinances, which followed Ordinance No. 209 of 1976 except Ordinance No. 221 of 1977 (which merely amended Ordinance No. 208 of 1977 in certain respects) under their repeal and saving clause not only repealed the previous Ordinances, but also the 1959 Act, in similar terms as in Ordinance No. 209 of 1976, which has been quoted earlier, keeping alive the liability incurred under the Act and the Act itself for that purpose. This is very significant and indicative of the legislative intent that the 1959 Act which was a permanent statute, was intended to be repealed temporarily only so long as the Ordinance in

question was alive. Otherwise, it was not necessary in all the eight subsequent Ordinances to say that the Act of 1959 was repealed and the liability incurred under the said Act was kept alive, as also the Act for the purpose, under the deeming provisions.

21. The provisions of the first four Ordinances Nos. 38, 101, 163 and 208 of 1977, which were duly promulgated on the expiry of the first Ordinance No. 209 of 1976 after it lapsed under Article 213(2)(a) of the Constitution, were not made applicable by necessary notification, as required u/s 1(3) of each of the Ordinances. However, it is significant that in the fifth Ordinance that followed, namely, Ordinance No. 257 of 1977, which was published and promulgated on the 26th December, 1977, and the provisions of which have been made effective by necessary notification u/s 1(3) of the said Ordinance, the saving and repeal provision incorporated in Section 54 is in similar terms as in the first Ordinance No. 209 of 1976, which repeals the 1959 Act and keeps the liability incurred under the Act alive, and the Act is also kept alive for the purpose of its realisation, etc. The only rational meaning that we can give to this provision is that the legislature intended that the Act will revive after the lapse of Ordinance No. 209 of 1976 or other Ordinances. It is, therefore, manifest that all the relevant periods for which the demands were made in the three blocks were covered, firstly under the 1959 Act, secondly under Ordinance No. 209 of 1976 and thereafter again under the Act and in the last block under Ordinance No. 257 of 1977.

22. In this connection the argument of Mr. Shrinath Singh, the learned counsel for the petitioner, is that after the 1959 Act was repealed by Ordinance No. 209 of 1976, it ceased to have effect, unless it was expressly revived. He has submitted that after the first Ordinance No. 209 of 1976, the Act of 1959 lapsed and after the first Ordinance, which was duly notified, lapsed, no tax law was in the field to make the petitioner liable during the period 13th January, 1977, to 25th December, 1977, as the subsequent Ordinances, namely, Ordinances Nos. 38, 101, 163 and 208 of 1977, though promulgated, were never brought in force by necessary notification. After the 1959 Act was repealed by Ordinance No. 209 of 1976, it will be deemed to have ceased to be there on the statute book. He has further submitted that after Ordinance No. 209 of 1976 lapsed on the 12th January, 1977, the subsequent four Ordinances, namely, Ordinances Nos. 38, 101, 163 and 208 of 1977, were never brought into force. Thereafter the only Ordinance which was duly enforced was Ordinance No. 257 of 1977, which came into force on the 26th December, 1977, and expired on the 26th April, 1978. The result will be that after the repeal of the 1959 Act and lapse of Ordinance No. 209 of 1976 there was no tax law in existence during the period from the 13th January, 1977, to the 25th December, 1977, and no sales tax could be levied.

23. Against the contention of the State that the Act will be revived on the expiry of the Ordinance and the saving clause of the Ordinance will have enduring effect, Mr. Shrinath Singh, the learned counsel for the petitioner, has submitted

that to revive an Act, it must be expressly so stated, in view of Section 9 of the Bihar and Orissa General Clauses Act. He has also submitted that the effect of the repeal of the 1959 Act was that the Act did not exist on the statute book. Section 9 of the Bihar and Orissa General Clauses Act reads as follows :

In any Bihar and Orissa Act or Bihar Act it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially, repealed expressly to state that purpose.

The learned counsel has further submitted that by virtue of Section 34 of the Bihar and Orissa General Clauses Act, Section 9 of the said Act will apply in case of Ordinance also. Relevant portion of Section 34 of the said Act may usefully be quoted:

The provisions of this Act shall apply,-

(a) ...

(b) in relation to any Ordinance promulgated by the Governor under Article 213; of the Constitution or any Regulation made by the Governor under paragraph 5 of the Fifth Schedule to the Constitution, as they apply in relation to Bihar Acts made by the State Legislature :

...

24. It is true that Section 34 says that the General Clauses Act will apply to an Ordinance also, but it will apply to such of the provisions which admit of application in relation to an Ordinance. There is a clear distinction between repeal of an Act and lapsing of an Ordinance by efflux of time. Where an Ordinance expires by efflux of time, it is not a repeal of an enactment, so as to attract Section 9 of the Bihar and Orissa General Clauses Act. The view I have taken gains support from a decision of this Court in the case of *Kedarnath Gupta v. Nagindra Narayan Sinha* AIR 1954 Pat 97, wherein it has been held as follows :

But Section 9 has no relevance to the present case, for Bihar Act 3 of 1947 was not repealed. It was a temporary Act, which expired on 14th March, 1952, on the expiry of its terms.

To the same effect is the decision of the Punjab High Court in the case of *Surjan Singh v. East Punjab Government* AIR 1957 Punj 265, which is in relation to Section 7 of the Punjab General Clauses Act, which is in pari materia with Section 9 of the Bihar and Orissa General Clauses Act, and in which a Bench decision of the Lahore High Court in the case of *Karim Shah v. Zinat Bibi* AIR 1941 Lah 175 was referred to. The Lahore decision has relied upon a Full Bench decision of the Allahabad High Court in the case of *B. Bansgopal Vs. Emperor* wherein Section 30 of the U.P. General Clauses Act, which is in similar terms as Section 34 of the Bihar and Orissa General Clauses Act (except the provision incorporated by coming into force of the Constitution), was held not to attract Section 6 of the U.P. General Clauses Act, which was similar to Section 9 of the Bihar and Orissa

General Clauses Act.

25. In support of his submission, Mr. Shrinath Singh has also relied on a decision of the Supreme Court in the case of *State of Orissa Vs. Bhupendra Kumar Bose*, , for holding that the effect of repeal of the Act by a temporary Act does not attract the provisions of Section 8 of the Bihar and Orissa General Clauses Act, which is in similar terms as Section 6 of the Central General Clauses Act, so that the Act could be revived after it is repealed. The aforesaid decision does not support the extreme contention of the learned counsel, relevant portion of which may usefully be quoted :

It is true that the provisions of Section 6 of the General Clauses Act in relation to the effect of repeal do not apply to a temporary Act. As observed by Patanjali Sastri, J., as he then was, in *S. Krishnan and Others Vs. The State of Madras*, , the general rule in regard to a temporary statute is that in the absence of special provision to the contrary, proceedings which are being taken against a person under it will ipso facto terminate as soon as the statute expires. That is why the legislature can, and often does, avoid such an anomalous consequence by enacting in the temporary statute a saving provision, the effect of which is in some respects similar to that of Section 6 of the General Clauses Act.

In that case, the question was as to whether the validation of the Cuttack Municipal election by a temporary Act, after it was declared to be invalid, would survive after the lapse of the Ordinance and it was held that it survived. Their Lordships observed as follows :

In our opinion, having regard to the object of the Ordinance and to the rights created by the validating provisions, it would be difficult to accept the contention that as soon as the Ordinance expired, the validity of the elections came to an end and their invalidity was revived. The rights created by this Ordinance are, in our opinion, very similar to the rights with which the court was dealing in the case of *Steavenson* 151 ER 1024 and they must be held to endure and last even after the expiry of the Ordinance.

In the case of *Gooderham and Worts Ltd. v. Canadian Broadcasting Corporation* AIR 1949 PC 90, while dealing with the effect of expiry of a temporary Act, repealing certain provisions of the Canadian Radio Broadcasting Act, 1932, the parent Act, it was held by their Lordships as follows :

The repeal effected by the temporary legislation was only a temporary repeal. When by the fiat of Parliament the temporary repeal expired the original legislation automatically resumed its full force. No re-enactment of it was required.

To the same effect is the decision in the cases of *Patel Kana Kachra v. Jadeja Bhikhubha Pathubha* AIR 1953 Sau 195, *The Commissioner of H.R. and C.E., Madras Vs. Perarulala Ramanuja Jeer and Others*, and *the King v. Rogers* 103 ER 891. These decisions, though given in different contexts in relation to temporary

statutes, amending provisions of parent Act, are in principle against the contentions of Mr. Shrinath Singh.

26. The Principles of Statutory Interpretation by Justice G.P. Singh (as he then was) may also be usefully referred to. It has been observed at page 339 (Second Edition), while dealing with Section 6 of the General Clauses Act, 1897, as follows :

When a temporary Act expires, Section 6 of the General Clauses Act, 1897, is as follows: which in terms is limited to repeals, has no application. The effect of expiry, therefore, depends upon the construction of the Act itself. The leading authority on the point is the dicta of Parke, B., in *Steavenson v. Oliver* 151 ER 1024.

Craies on Statute Law, Seventh Edition, page 419, may usefully be referred to, which also supports the view I have taken :

If an Act which repeals an earlier Act is itself only a temporary Act, the general rule is that the earlier Act is revived after the temporary Act is spent, and inasmuch as ex hypothesi the temporary Act expires and is not repealed, the rules of construction laid down by Sections 11(1) and 38(2) of the Interpretation Act, 1889, do not apply. But there will be no revivor if it was clearly the intention of the legislature to repeal the earlier Act absolutely.

There is thus no substance in the ninth contention of Mr. Shrinath Singh as well.

27. On 2nd January, 1981, when this case was placed for judgment, the learned Government Pleader No. 5, Mr. Chunni Lai, on behalf of the State submitted that an Ordinance had been promulgated curing the lacuna, if any, in some of the earlier Ordinances and requested that the judgment may not be delivered on that day. As a matter of fact, at the close of the argument, it was submitted on behalf of the State that an Ordinance was in the offing and as the instruction of the President under Article 213(1) of the Constitution had to be obtained it may take some time and the judgment may be deferred for some time to avoid any fresh writ being filed in relation to the Ordinance on the same question. The case again appeared in the list under the hearing "To be mentioned" on the 20th January, 1981, when counsel for the State put in the Ordinance in question. The learned counsel for the petitioner prayed for time for making submission with regard to the impugned Ordinance. After another adjournment on the ground of absence of Mr. Shrinath Singh, the case was placed on 30th January, 1981, under the hearing "To be mentioned" when both sides were heard on the Ordinance in question. Mr. Chunni has submitted that this Ordinance has been promulgated on the 7th January, 1981, and published in the Bihar Gazette on the next day, that is, 8th January, 1981, and its English version on the 10th January, 1981. It consists of two sections and Section 2, which is relevant, may usefully be quoted here :

2. Validation of certain actions taken under Bihar Ordinance No. 115 of 1980 and

other Ordinances on the subject promulgated earlier.-(1) Notwithstanding anything contained in Sub-section (3) of Section 1 of the Bihar Sales Tax Ordinance, 1977 (Bihar Ordinance No. 38 of 1977), and subsequent Ordinance on the subject promulgated by the Governor of Bihar including the Bihar Sales Tax Third Ordinance, 1980 (Bihar Ordinance No. 115 of 1980), between the period commencing from the 9th January, 1977, when the Bihar Sales Tax Ordinance, 1977 (Bihar Ordinance No. 38 of 1977), was promulgated and ending on 11th August, 1980, when the Bihar Sales Tax Third Ordinance, 1980 (Bihar Ordinance No. 115 of 1980), was promulgated, all the said Ordinances shall be incorporated in and form part of this Ordinance and this Ordinance shall operate retrospectively in terms of the incorporated Ordinances respectively for the periods commencing with the dates of their publication in the official Gazette in the same way and to the same extent as if these incorporated Ordinances had been immediately brought into operation from their respective dates of publication in the official Gazette, all orders made, directions and notifications issued, taxes and penalties imposed, rights acquired, liabilities incurred or proceedings taken under any provisions of the aforesaid period and till the commencement of this Ordinance shall always be deemed to have been made, issued, imposed, acquired, incurred or taken, as the case may be, according to law as if this Ordinance had been in operation at all material times.

(2) The provisions of this section shall have effect notwithstanding anything contained in any judgment, decree or order of any court, tribunal or any other authority.

A reference to the above Ordinance supports the argument of Mr. Chunni Lal that the lacuna, if any, in the earlier Ordinances, which were duly published but its provisions were not brought into effect by necessary notification as required under the Ordinance, has been overcome by this Ordinance and the respective Ordinances by this Ordinance have been brought into operation from the dates of their publication in the official Gazette. The contention of Mr. Shrinath Singh that it does not has no substance in view of the deeming provision of this new Ordinance, which brings the earlier Ordinances also into operation and makes the action taken under those Ordinances as if the present Ordinance was in operation on those dates. This in a way also supports the view I have taken earlier that the legislative intent was never to permanently repeal the 1959 Act. The repeal was intended only during the period that an Ordinance was in force and its provisions operative.

28. All the contentions raised on behalf of the petitioner having been rejected, the application is dismissed, but, in the circumstances of the case, without costs.

P.S. Sahay, J.

29. I agree.