

(1975) 10 OHC CK 0010

In the Orissa High Court

Case No : O.J.C. No's. 1322 to 1330, 1332 to 1339 and 1341 to 1343 of 1974

Sankar Kumar Bhattar and Others

APPELLANT

Vs

Tehsildar-cum-Revenue Officer and Others

RESPONDENT

Date of Decision : 21-10-1975

Acts Referred:

Orissa Land Reforms (Amendment) Act, 1974 — Section 15(1), 67

Citation : AIR 1976 Ori 103

Hon'ble Judges : G.K. Misra, C.J.; S.K. Ray, J

Bench : Division Bench

Advocate : R. Mohanty, S.C. Ray and N. Ray, for the Appellant; B. Pal and N. Prusty and Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Ray, J.—The main question for consideration in these writ applications is whether the amendment of Section 15 (1) of Orissa Land Reforms Act (hereinafter referred to as "the Act") on 2-10-1973 conferring exclusive jurisdiction on the Revenue Officer to decide the dispute of the existence of the relationship of landlord and tenant would oust the jurisdiction of the Sub-Judge to adjudicate upon the self-same dispute in suits filed by landlords against the alleged tenants before the amendment came into operation and pending before him on the date of such operation of the amendment.

2. Relevant facts may now be stated. The petitioners in these writ applications are admittedly "landlords in respect of 163.24 acres of land situated in Basta tahsil in the district of Balasore, comprised in two chaks, having purchased landlords' interest from late Muralidhar Bhattar and Gopikrushna Bhattar. They filed two suits in the Court of the Sub-Judge, Balasore, one on 25-4-1973 in respect of 110.84 acres of disputed lands registered as O. S. No. 35 of 1973 and the second on 20-6-1973 registered as O. S. No. 48 of 1973 in respect of 51.93 acres of the disputed lands. In both these suits they prayed for permanent injunction restraining the opposite parties from disturbing their peaceful

possession over the suit lands alleging that the latter having no manner of right, title to or interest in respect of the same were threatening to trespass upon it. The case of the opposite parties in their written statements filed in the aforesaid two suits is that they are bhag chasis in respect of the disputed lands for more than thirty years, denying the plaint allegation that they are totally unconnected with the disputed lands threatening to trespass thereupon.

The petitioners prayed for interim injunction in the suits, but the same was refused on 26-6-1973. The Sub-Judge however, appointed a receiver to take charge of the cultivation on 30-11-1973 with regard to the entire disputed lands of about 163 acres.

3. Issues were struck in the civil suits of which issue No. 3 runs as follows:--

"Is the suit maintainable in law in the Civil Court?"

The Sub-Judge decided this issue preliminarily in the two suits against the petitioners and dismissed the suit on 22-8-1974. The petitioners, thereafter, carried the matter to the District Judge, Balasore in Sub-Judge Appeals Nos. 38 and 39 of 1974. The District Judge by his judgment dated 24-2-1975 allowed these appeals holding that the suits are maintainable and remanded the same for trial of the other issues. Against these judgments of the District Judge the opposite parties have filed Miscellaneous Appeals 51 and 52 of 1975 as also Civil Revisions Nos. 175 and 176 of 1975 by way of abundant caution, in case Miscellaneous Appeals are not maintainable. These two Miscellaneous Appeals and Civil Revisions have been kept pending awaiting the final decisions in these writ applications.

4. In the meantime on 2-10-1973 the President's Act 17 of 1973 was enacted which was later on incorporated into Orissa Act 9 of 1974 by which the Act was amended, inter alia, by introducing Clause (d) in Section 15 (1) and inserting new Sections 36-A and 36-B. On 28-12-1973, after the enactment of the aforesaid President's Act, the tenants-opposite parties filed O. L. R. Cases Nos. 34 to 57 of 1973 in the revenue Court u/s 36-A of the Act for settlement of portions of disputed lands as indicated in each case in their favour alleging that the lands were non-resumable and for determination of fair rent and compensation payable in respect of those lands to the landlords. The landlords-petitioners filed petitions before the Revenue Officer for stay of proceedings before him till the final disposal of the civil suits, but those petitions having been rejected, the present writ applications have been filed.

5. The principal issue both in the civil suits as also in the proceedings before the Revenue Officer is regarding existence of relationship of landlord and tenants between the petitioners and the opposite parties in respect of the disputed lands. The sole question for determination, therefore, is as to whether by reason of the amendment of the Act, the Civil Court, i.e., the Sub-Judge, Balasore, loses jurisdiction to adjudicate upon this issue in favour of the Revenue Officer or still retains it. If the Revenue Officer is held to have exclusive jurisdiction, his order

rejecting the application for stay of the proceedings before him must be upheld and the decision of the District Judge dated 24-2-1975 passed in Sub-Judge Appeals 38 and 39 of 1974 must be set aside. In that eventuality Miscellaneous Appeals 51 and 52 of 1975 and Civil Revisions 175 and 176 of 1975 must necessarily succeed and further proceedings in the civil suits must be stayed until after the question of existence or otherwise of relationship of landlord and tenant between the petitioners and opposite parties is decided finally.

6. To appreciate the nature and effect of the amendment of the Act, it is necessary to extract the relevant provisions of the Act which governed the matter in controversy before the amendment and the amendments relevant for the present purpose. Pre-amendment relevant provisions are Sections 3, 15 (1), 34-A, 35, 61 and 67 of the Act. They read as follows :--

"3. Act to override other laws:--Save as otherwise provided the provisions of this Act shall have effect, notwithstanding anything to the contrary in any other law, custom or usage or agreement, decree or order of the Court.

15. Recovery of rent and dispute between landlord and raiyat or tenant:--(1) any claim for recovery of arrears of rent by a landlord and any dispute between a landlord and his raiyat or tenant as the case may be as regards:--

(a) the quantum of the rent payable; or

(b) tenant's possession of the land and his rights to the benefits under this Act; or

(c) the right of the landlord to terminate the tenancy of a tenant u/s 14;

shall be decided by the Revenue Officer on an application to be filed by any party interested :

Provided that an application in respect of a claim for recovery of arrear of rent shall be filed before the Revenue Officer in the prescribed manner within one calendar year from the date on which such arrear falls due and in other cases within sixty days from the date on which the dispute arises.

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34-A. Consequences of failure of landlord to apply u/s 26:-- In any case where the landlord in respect of any land fails to apply in accordance with the provisions of Section 26 the Revenue Officer shall, on the expiry of the period specified in the said section, consider the application filed by the tenant in respect of such land and after giving the persons interested an opportunity of being heard determine the particulars of the resumable and non-resumable lands along with the other matters required to be determined under Sections 27 and 28 and on such determination the remaining provisions of this Chapter, so far as may be, shall apply :

Provided that if in any such case the landlord contests the claim on the ground

that the applicant is not the tenant and the tenant succeeds in establishing his claim the Revenue Officer shall, after giving the tenant an opportunity of selecting the non-resumable lands, determine the aforesaid particulars, so far as may be, in accordance with the selection, if any, made by the tenant:

Provided further that if the landlord does not contest the claim as aforesaid he shall have the right to select the re-sumable land and the said particulars shall, so far as may be, be determined in accordance with the selection, if any, made by the landlord.

35. Failure of both landlord and tenant to apply u/s 26 :--Where both the landlord and the tenant in respect of any land fail to apply in accordance with the provisions of Section 26 the Revenue Officer may within six months from the expiry of the period specified in the said section and subject to such rules as may be made in that behalf after giving the persons interested an opportunity of being heard determine the particulars of the resumable and non-resumable lands along with the other matters required to be determined under Sections 27 and 28 and on such determination the remaining provisions of this Chapter, so far as may be, shall apply.

61. Orders to be final:-- Any order passed under any of the provisions of this Act shall, subject to any order passed in appeal or revision as the case may be, be final and shall not be called in question in any Court of law.

67. Bar of jurisdiction of Civil Courts:-- Save as otherwise expressly provided in this Act no Civil Court shall have jurisdiction to entertain any suit or proceeding so far as it relates to any matter which any officer or other competent authority is empowered by or under this Act to decide."

7. Amendments relevant for solving the present problem are contained in Sections 7 and 13 of the Amending Act of 1973 (President's Act No. 17 of 1973). Section 7 has amended Section 15 (1) of the principal Act by introducing Clause (d) in Sub-section (1) thereof and Section 13 has inserted new sections, namely, Sections 36-A and 36-B after Section 36 of the principal Act. These two sections of the amending Act are extracted herein-below:--

"7- In Section 15 of the principal Act,

(a) in Sub-section (1),--

(i) in Clause (c), the word "or" shall be added at the end;

(ii) after Clause (c), the following clause shall be inserted, namely:--

"(d) the existence of the relationship of landlord and tenant";

(b) in Sub-section (2), for the words, brackets and letters "in cases under Clauses (b) and (c) thereof, the words, brackets and letters "in cases under Clauses (b), (c) and (d) thereof" shall be substituted."

"13. In Chapter III of the principal Act, after Section 36, the following sections

shall be inserted, namely:--

"36-A. Notwithstanding anything contained in the foregoing provisions of this Chapter but, subject to the provisions of Sub-section (2) of Section 24, where neither the landlord nor the tenant, having a right to make an application u/s 26 in respect of any land, has made such application, the Revenue Officer may on an application made in that behalf by the tenant within two years from the commencement of the Orissa Land Reforms (Amendment) Act, 1973 and after giving the parties interested an opportunity of being heard, declare the whole of such land to be non-resumable and determine the fair and equitable rent and the compensation payable by the tenant in respect of the land in accordance with, the provisions of Section 28 and on such determination, the provisions of Sections 29 to 33 (both inclusive), 35-A and 36 shall, so far as may be, apply.

36-B. Where no application is made u/s 36-A by the tenant, the Revenue Officer may on his own motion within one year from the expiry of the period specified in the said section, take all such action and in such manner as is provided in that section".

8. It has been held by this Court in two cases, that is, in the case of *G. Vasudeva v. M. Chinamadu* (1972) 1 Cut WR 218. and in the case of *Biranchi Pradhan v. Jagannath Patra* (1973) 39 Cut LT 835, that Section 15 of the Act as it stood prior to amendment did not confer exclusive jurisdiction on the Revenue Officer to determine the controversy as to the relationship of landlord and tenant and, accordingly the Civil Court had jurisdiction to entertain and decide a suit for injunction by the landlord against a trespasser involving such a dispute arising out of the defence plea that the defendant is a bhag chasi and not a trespasser. The Revenue Officer may decide the question of existence of relationship of landlord and tenant in a proceeding under pre-amended Section 15 of the Act if such relationship is put in issue, but his finding would neither be final nor conclusive between the parties and will yield to the finding of the Civil Court on the self-same point.

9. On a perusal of the amended provisions, it is clear that Section 7 (a) (ii) of the amending Act has not been made expressly retrospective in operation, but yet it has conferred exclusive jurisdiction on the Revenue Officer to decide the dispute between landlord and raivat or tenant as to the existence of relationship of landlord and tenant between them. It has been established by a long catena of decisions that to continue to prosecute a suit already duly initiated before the plaintiff's right to sue is taken away statutorily is itself a vested right, and carries with it the vested right of appeal. Unless the contrary can be shown. Section 15 (1) of the Act which purports to take away the jurisdiction of the Civil Court will itself be subject to implied savings of pending litigations. The golden rule of construction always is that in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to pending litigations at the time when the enactment was passed. Only one decision need be referred to in this

connection which is the case of Garikapatti Veeraya Vs. N. Subbiah Choudhury, .

10. It is therefore, to be considered if Section 15 (1) (d) can be construed as retrospective by necessary intendment so as to oust the jurisdiction of the Civil Court in respect of pending suits on 2-10-1973 when the amending Act came into force. This section has, therefore, to be read along with Sections 3, 36-A, 61 and 67 of the Act and construed and interpreted together. Section 3 of the Act occurring in Chapter I provides that notwithstanding anything to the contrary in any other law, custom or usage or agreement, decree or order of Court, the provisions of the Act shall have effect except as otherwise provided therein. In other words, it directs that provisions of the Act shall override other laws, including decrees or orders of Court. Chapter II of the Act deals with raiyats and tenants. Section 12 thereof empowers the Revenue Officer to decide all disputes between a raiyat and his landlord relating to letter's right to evict a raiyat u/s 8 or to rights conferred under Sections 4, 9 and 10 or the raiyat's right to possession of the land and his rights to the benefits under the Act.

Section 13 deals with rent payable by tenants. Section 14 provides grounds for eviction of a tenant. Section 15 is mandatory and directs that disputes between a landlord and his raiyat or tenant of the nature specified in Clauses (a) to (d) of Sub-section (1) shall be decided by the Revenue Officer. This chapter also contains provisions for partition of a holding amongst co-sharer raiyats, power to remit or reduce rent or to impose additional rent on account of lands lost by the raiyats by diluvion or lands gained by gradual accretion, as the case may be, and also provides that surrender or abandonment by raiyat or tenant will be valid only on approval of the Revenue Officer, Chapter III deals with the subject of resumption of land for personal cultivation, determination of resumable or non-resumable lands, fixation of compensation for non-resumable lands and empowers the Revenue Officer absolutely to do everything that is to be done in this regard. Chapter IV deals with ceiling and disposal of surplus land. Chapter V deals with administrative machinery for implementation of land reforms. In all these matters Revenue Officer has been given exclusive jurisdiction to act. Section 58 is a provision for appeal against any order passed by the Revenue Officer under any of the sections enumerated therein to the prescribed authority, that is to say, the authority prescribed by the rules made by the Government under the Act. Section 59 deals with revisional power of the Collector and of the Board of Revenue and period of limitation for such revision. It also confers on the Collector or the Board of Revenue, as the case may be, suo motu power of revision. Section 60 contains a power of review.

Section 61 expressly confers finality on any order passed under any of the provisions of the Act subject to appeal or revision as the case may be and excludes the jurisdiction of the Civil Court to scrutinise the validity or otherwise of such orders. Lastly Section 67 is an express provision barring jurisdiction of Civil Court. It provides that unless the Act expressly provides otherwise, no Civil Court shall have jurisdiction to entertain any suit or proceeding so far as it

relates to any matter which any officer or other competent authority is empowered by or under the Act to decide. Thus, it appears from the aforesaid scheme of the Act that there is a hierarchy of authorities to administer the provisions of the Act and those authorities are competent to decide all questions of fact and law which fall to be considered under any of the provisions of the Act. Thus, apart from creating a complete code which authorises investment of powers in the said hierarchy of authorities to administer the Act, it also creates new rights and provides new remedy. The Revenue Officer is thus, the only competent authority to decide the dispute regarding existence of relationship of landlord and tenant between the petitioners and the opposite parties as is indicated in Section 15 (1) (d) of the Act and the legislative intent is quite clear that such dispute must be decided in accordance with provisions of the Act, notwithstanding the pendency of a suit in the Civil Court regarding the self-same matter and notwithstanding the general law that the right of suit including right of appeal is a vested right. This conclusion is fortified by the language of Section 15 (1) of the Act requiring the Revenue Officer to decide all disputed questions enumerated in Clauses (a) to (d) thereof as mandatory. The expression used is, "shall be decided by the Revenue Officer on an application to be filed by any party interested". This provision shall be given effect to u/s 3 notwithstanding anything to the contrary in any other laws (even judge-made law recognising a vested right of suit), custom or usage or agreement, decree or order of Court.

There are a number of cases of high authorities dealing with specific statutes in which it has been laid down that ouster of jurisdiction of Civil Court can be implied even retrospectively in the sense that the jurisdiction of Civil Court even in a pending suit is taken away in view of the scheme and amplitude of language used in various sections of those statutes. A few of them are noticed hereinbelow.

11. In the case of State of Uttar Pradesh and Others Vs. Shah Mohammed and Another, , the plaintiff filed a suit in 1955 for a declaration that he was not a foreigner and that he was still a citizen of India. The suit was dismissed, but was allowed in the first appellate Court. The Union of India came to the High Court in a second appeal. During the pendency of this second appeal Rule 30 under the Citizenship Act came into operation which ran as follows:--

"Authority to determine question of citizenship of another country.-- (1) If any question arises as to whether, when or how any person has acquired the citizenship of another country, the authority to determine such question shall, for the purpose of Section 9(2), be the Central Government

(2) The Central Government shall in determining any such question have due regard to the rules of evidence specified in Schedule III."

Section 9(2) of the Citizenship Act ran as follows:--

"If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority in such manner and having regard to such rules of evidence, as may be prescribed in

this behalf."

It was argued in the High Court by the plaintiff that Rule 30 could not be operated retrospectively so as to affect pending litigation. As against this it was argued on behalf of the Government that by reason of the citizenship Rule 30 which was enforced in 1956 the Civil Court had no jurisdiction to decide the question of citizenship. In these rival contentions their Lordships of the Supreme Court said as follows :--

"Counsel for respondent No. 1 has relied on a decision of a learned Single Judge of the Allahabad High Court in *Abida Khatoon and Another Vs. State of U.P. and Others*, which was followed in the present case. There it was observed that a litigant, after filing a suit acquired a vested right to have all questions determined by the Court in which the suit was filed and that the institution of the suit carried with it all the rights of appeal then in force We are unable to agree. In our judgment from the amplitude of the language employed in Section 9 which takes in persons in category (2) mentioned above, the intention has been made clear that all cases which come up for determination where an Indian citizen has voluntarily acquired the citizenship of a foreign country after the commencement of the Constitution have to be dealt with and decided in accordance with its provisions. In this view of the matter the entire argument which prevailed with the Allahabad Court can have no substance."

In the case of *State of Kerala Vs. Ramaswami Iyer and Sons*, , a civil suit was instituted for refund of excess sales tax and was decreed for Rs. 7,000 and odd. This decision was confirmed by Kerala High Court. After filing of the suit Act 18 of 1955 was enacted incorporating Section 23-A without expressly making the same retrospectively operative. From the scheme of the Act their Lordships said :--

".....Where the Legislature sets up a Special tribunal to determine questions relating to rights or liabilities which are the creation of a statute, the jurisdiction of the Civil Court would be deemed to be excluded by implication."

12. The matter is made crystal clear by Section 67 of the Act which provides that no Civil Court shall have jurisdiction to entertain any suit or proceeding so far as it relates to any matter which any officer or other competent authority is empowered by or under the Act to decide except as otherwise expressly provided. The question arises as to what is the meaning of the expression "entertain any suit" in this section. Having regard to its context and considered along with Sections 3, 15 (1) and 61, the word "entertain" would refer to not only filing of the suit in the Civil Court but would also include dealing with that suit in that Court until final hearing or determination. This meaning is predicated by the scheme of the Act and the legislative intent to confer absolute and exclusive power on the Revenue Officer and a hierarchy of authorities to decide all disputes between the landlord and his raiyat or tenant inclusive of a dispute as to existence of relationship of landlord and tenant specified in various sections of the Act and to administer its provisions. The meaning of the word "entertain"

may in certain cases mean merely "to receive or accept" and not to a later stage subsequent to such reception, but whether the word "entertain" means one or the other would depend on the entire scheme of a statute in which that expression occurs and the legislative purpose underlying that scheme. In the instant case, as indicated above, the expression "to entertain any suit" would mean not only to file but also to deal with the suit till its final determination. Similar view has been taken in a few decided cases noticed herein-below.

In the case of *The Samarth Transport Co. (P) Ltd. Vs. The Regional Transport Authority, Nagpur and Others*, , the petitioner filed applications before Regional Transport Authority for renewal of his permits which expired on 31st December, 1959. These applications were filed on 24th August, 1959 before any approved scheme envisaged in Section 68-F of Motor Vehicles Act was given effect to. While his applications for renewal were pending, the scheme was approved. Thereafter pursuant to Clause (a) of Sub-section (2) of Section 68-F the applications were rejected. Section 68-F (2) (a) runs as follows :--

"(2) For the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the Regional Transport Authority may, by order,--

(a) refuse to entertain any application for the renewal of any other permit."

It was argued on behalf of the petitioner that as his applications were filed before approval of the scheme Regional Transport Authority could not exercise its power to refuse to entertain his applications because the point of time indicated by the word "entertain" refers to the time when they were filed. In rejecting this contention, their Lordships stated as follows:--

".....This power does not depend upon the presentation of an application by the State Transport Undertaking for a permit. This power is exercisable when it is brought to the notice of the Authority that there is an approved, scheme and, to give effect to it, the application for renewal cannot be entertained. By the time the application for renewal came to be disposed of, admittedly the scheme had been approved by the Government of Bombay and the routes in question were included in the said scheme. Therefore, the Authority was within its rights not to entertain the applications filed by the petitioner.....The word "entertain" may mean "to receive on file or keep on file", and in that sense the authority may refuse to keep an application on its file by rejecting it either at the time it is filed or thereafter. It does not connote any time but only describes the scope of the duty under that clause. It can only mean that the Authority cannot dispose of the application on merits but can reject it as not maintainable."

This decision though relied upon by Mr. Mohanty for the petitioners rather supports the case of the opposite parties.

In the case of *Lakshmi Rattan Engineering Works Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur and Another*, , the Assistant Commissioner of Sales Tax rejected the memorandum of appeal filed before him as defective under proviso to Section 9

(i) of the U. P. Sales Tax Act, 1948 on the ground that the memorandum of appeal though filed well within time, was not accompanied by the chalan showing the deposit of admitted tax as required; by the said proviso. The proviso ran as follows:--

"Provided that no appeal against an assessment shall be entertained unless it is accompanied by satisfactory proof of the payment of the amount of tax admitted by the appellant to be due, or of such instalments thereof as may have become payable."

The meaning of the word "entertain" came in for consideration. Considering various cases and various meanings of the word "entertain" appearing in the dictionary their Lordships held that the meaning of the word "entertain" in the proviso would be "admit to consideration". They refused to accept the meaning of the word "entertain" as filing of the application or admission of the application by the Court and said that it should be interpreted as meaning to proceed to consider the application. They, therefore, said that when the proviso speaks of entertainment of the appeal as such, it means that the appeal as was filed will not be admitted to consideration unless there is satisfactory proof available of the making of the deposit of admitted tax. Though their Lordships were interpreting law relating to procedure, nevertheless, they accepted such meaning of the word "entertain" taking into consideration the real object of the law.

In the case of Hindusthan Commercial Bank Ltd. Vs. Punnu Sahu (Dead) through Legal representatives, , the appellant moved the executing Court under Order 21, Rule 90, Civil P. C. to set aside the sale. This application was rejected by the executing Court on the ground that he was not an interested party. On appeal the Allahabad High Court held that he was an interested party entitled to apply Order 21, Rule 90, Civil P. C., but nevertheless maintained the order of dismissal of the application on the ground that as the appellant had not complied with the requirements of Order 21, Rule 90 as amended by the Allahabad High Court his application was not maintainable. The amended proviso with which they were concerned read thus:--

"Provided that no application to set aside a sale shall be entertained--

(a)

(b) unless the applicant deposits such amount not exceeding twelve and half per cent. of the sum realised by the sale or furnishes such security as the Court may, in its discretion, fix except when the Court for reasons to be recorded dispenses with the requirements of this clause."

Other portions of the clause need not be extracted. This Clause (b) was added on 1st June, 1957, but the application for setting aside sale was made on 2nd January, 1957. The appellant did not give security as provided in the newly amended clause nor did the Court call upon him to do so. Their Lordships appear to hold that since the amended proviso came into operation while the application

for setting aside sale was pending it applied and held that the expression "entertain" meant "adjudicate upon" or "proceed to consider on merits". That expression in the proviso would not refer only to the point of time when the proceedings were initiated. Though again the expression "entertain" which was construed by their Lordships occurred in a procedural law, nevertheless, the underlying principle appears to be that a meaning is to be attributed to that expression in the context of the subject-matter of the law in which it occurs.

In the case of Kadir Mohammed v. Augusthy Verghese 1969 Ker LT 739, the expression "entertain" occurring in Section 32 of Act 1 of 1964 was construed This section reads:

"During the pendency of an application for determination of fair rent before a Land Tribunal, no Court shall entertain any suit for eviction of the applicant from the holding to which the application relates"

The other portions of the section not being relevant are not extracted. In this case the plaintiff filed a suit for partition and recovery of possession of two items of property. In regard to item No. 1 the plea of defendant No. 2 who was not a sharer, was that he was a tenant in respect of this item of property. The plaintiff's case in respect thereof was that he was just a caretaker of that property. The controversy, therefore, was whether this defendant was only an agent or a tenant. This defendant had filed as early as 1962 a petition for fixation of fair rent before the Land Tribunal which was pending by the date of institution of the suit. Their Lordships were faced with two alternative meanings of the word "entertain". One was not to receive it at all and the other was not to deal with it judicially by considering it on merits. Their Lordships accepted the second meaning in the following words :--

"The entertainment of a proceeding means that point of time when it is being considered and the ban on entertaining a suit, therefore, operates at the point of time at which it is heard by the Court. It is not obligatory on the Court to reject or return the plaint, merely because of the pendency of a fair rent application, but it should not hear the matter, that is to say, try the suit, so long as the petition for fixation of fair rent is pending." In construing the word "entertain" in Section 32 and in reaching the aforesaid meaning, they guided themselves by the following principles:--

"The object of a statute is relevant to the construction thereof and it is legitimate to adopt a liberal construction that makes the provisions meaningful and effective. The law must be so interpreted as to advance the remedy and to suppress the mischief which prompted the enactment, if need be even by departing from the dictionary meaning or the popular meaning of the words used. It is well settled that; while a rewriting of the section is not part of the judicial power, if one construction will lead to an absurdity while another will give effect to what commonsense would show as obviously intended, the construction which would defeat the ends of the Act must be rejected, even if the same words

in the same section and even in the same sentence have to be construed differently....."

13. Mr. Mohanty gave stress in support of his view point on the case of Dewaji Vs. Ganpatlal, . The facts of this case may be stated in brief. The plaintiff-respondent gave the disputed land to the defendant-appellant in the year 1950-51 on condition that at the end of the year the lease will stand determined and the appellant will hand over possession. On 7th May, 1951 the plaintiff-respondent served a notice on the appellant requiring him to suit the suit land. The defendant-appellant, however, continued to remain in possession. Thereupon the plaintiff filed the suit on 17th September. 1951 praying for dispossession. On 15-11-1951 the Berar Regulation of Agricultural Leases Act, 1951 came into force, Section 16 whereof provided:--

"Except as otherwise provided in this Act, no Civil Court shall entertain any suit instituted, or application made, to obtain a decision or order on any matter which a Revenue Officer is by or under this Act, empowered to determine, decide or dispose of."

The defendant's plea was that he had been recorded as a "protected tenant" under the 1951 Act and that the Civil Courts had no jurisdiction to eject him. The trial Court held, that the defendant was not a protected tenant and that the Civil Court had jurisdiction. Defendant appealed to the District Judge who held that the Civil Court had jurisdiction. By the time the appeal was heard. Section 16 of the 1951 Act had been substituted by Sections 16, 16-A and 16-B of the Berar Regulation of Agricultural Leases (Amendment) Act 1953. Section 16-B of the latter Act provided as follows:--

"16-B. Except as otherwise provided in this Act, no Civil Court shall entertain any suit instituted, or application made, to obtain a decision or order on any matter which a Revenue Officer is by or under this Act, empowered to determine, decide or dispose of."

Construing Sections 16, 16-A and 16-B of the amending Act of 1953 their Lordships gave a restricted meaning to the word "entertain" and said:

".....We cannot find any words in Sections 16, 16-A and 16-B which can lead to the necessary inference that these provisions were intended to apply to appeals pending when the 1953 Act came into force. It is true that the word "whenever" is wide but Section 16-A uses the words "suit or proceeding" and these words do not ordinarily indicate appellate proceedings. Further, Section 16-B uses the word "entertain" and not the words "entertain or try any suit" as contained in Section 15 (2) of the 1951 Act. If the intention was to affect pending proceedings, the word "try" along with the word "entertain" would have been used in Section 16-B of the 1953 Act. It seems to us that the intention was not to apply the 1953 Act to pending appeals....."

This case is clearly distinguishable. Their Lordships took the restricted meaning

of the word "entertain" in view of the language of 1951 Act which, according to them, indicated that the Legislature intended" that the word "entertain" shall have restricted meaning since in the amending Act the word "try" was dropped. This case, therefore, does not help Mr. Mohanty.

Mr. Mohanty again relies upon a decision of an English Court of appeal in the case of *Beadling v. Goli* (1923) 39 TLR 128. There the provision in Section 1 of the Gaming Act, 1922, that no action for the recovery of money u/s 2 of the Gaming Act, 1835 shall be entertained in any Court, was held to be not retrospective in regard to actions which had been commenced before the passing of the Act and in which judgment had not been given when the Act came into force.

In course of judgment their Lordships felt bound by a decision of an earlier case (*Smithies v. National Association of Operative Plasters* (1909) 25 TLR 205) where similar expression was held not to be retrospective. In *Smithies'* case the Court of Appeal took the view that Section 4 of the Trade Disputes Act, 1906 was not intended to be retrospective. Similarly, in *Headling's* case they reached the conclusion that the intention of the Legislature was that the Act will not be retrospective. This decision, therefore, cannot be of any practical assistance to Mr. Mohanty. On the other hand, it shows that in construing expressions in a statute and to determine the extent of their operation or their retrospectivity the intention of the legislature has to be gathered. That being the guiding principle in construing terms and expressions in statutes, which has been elaborately stated in *Kadir Mohammed's* case 1969 Ker LT 739 (*supra*), no decision dealing with a statute can be a precedent in another case dealing with a different statute. In each case the legislative intent has to be ascertained with reference to the scheme and object of each statute under consideration before determining the true meaning of any disputed term of expression occurring in any such statute.

It is not necessary, therefore, to refer to all the cases cited by Mr. Mohanty separately where the meaning of the word "entertain" has been arrived at by looking to the particular statutes concerned in those cases.

14. On the aforesaid considerations, as already stated above, the meaning of the expression "to entertain any suit" in Section 67 would be to receive and to deal with it or to admit it to consideration, and the process of entertaining would continue until the suit is finally determined. The net result would be that the Court of the Sub-Judge would lose the further jurisdiction to decide the question of existence of relationship of landlord and tenant between the petitioners and the opposite parties after coming into force of the President's Act 17 of 1973.

15. Mr. Mohanty took another point with regard to applicability of Section 36-A to the present case on the ground that when a receiver has been appointed the provisions of the Act will not apply and, in this connection, he has relied upon Section 73 (d). This provision of law reads as follows:--

"73. Act not to apply to certain lands:-- Nothing contained in this Act, shall apply--

(a)

(b)

(c)

(d) to the lands for the time being under management of the Civil, Revenue or Criminal Courts."

One apparent meaning of this section is that the provisions of the Act will not apply to lands which were under the management of Civil, Revenue or Criminal Courts at the time when the Act came into force. But where a receiver has been appointed in suits filed after the commencement of this section, the exception provided in this section cannot be invoked. The subsequent suit is to be decided with reference to the cause of action which arose on the date of its institution. This section must be interpreted in harmony with other provisions of the Act and cannot be given a meaning which would defeat its main provisions. The other meaning which is also attributable to this section is that while the lands are in custodia legis pending the final determination of the lis, the other provisions of the Act regarding landlord and tenant would not apply to ad hoc tenants inducted upon the lands for the purpose of cultivation by the Court or by receiver during the pendency of the suit. Therefore, the ad hoc tenants who are inducted by the Court or receiver cannot claim any benefit under the Act. The aforesaid meaning is the only appropriate meaning that is to be given to this section having regard to the object of the Act. This point, therefore, has no substance.

16. Another point was raised by Mr. Mohanty that the dispute to the extent of relationship of landlord and tenant u/s 15 (1) (d) of the Act cannot be determined by the Revenue Officer as the dispute was not raised before him within 60 days as provided thereunder. He, however, did not press this point. This is not the stage to raise that question, because it involves questions of fact. He may raise that question before the Revenue Officer where the proceeding is pending for whatever it is worth.

17. In the result, all the contentions of Mr. Mohanty having failed, there is no merit in these writ applications which are dismissed. The opposite parties are entitled to costs which are assessed at RS. 200/-.

G.K. Misra, C.J.

18. I agree.