

(1994) 07 MP CK 0014

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 418 of 1983

Usha Devi Malhotra and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 15-07-1994

Acts Referred:

Constitution of India, 1950 — Article 363A
Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 — Section 2, 9
Madhya Pradesh Land Revenue Code (Amendment) Act, 1979 — Section 57(1)
Madhya Pradesh Land Revenue Code, 1959 — Section 158, 158(2), 57

Citation : (1995) 40 MPLJ 113 : (1995) MPLJ 113

Hon'ble Judges : D.M. Dharmadhikari, J

Bench : Single Bench

Advocate : A.K. Chitaley and A.G. Dhande, for the Appellant; L.S. Singh, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

D.M. Dharmadhikari, J.

The petitioner No. 1- Smt. Usha Raje is the daughter of ex-ruler of Indore State - Maharaja Yeshwant Rao Holkar. Petitioner No. 2 is the husband of the petitioner No. 1. Petitioner No. 3 called Princess Usha Trust was constituted by an indenture of trust created by the late ex-ruler executed by him on 10-4-1950. The petitioner No. 4 - Devi Ahilyabai Educational Trust was constituted by a trust-deed executed on 18-12-1973 by Princess Usha Devi who transferred all the properties to the charitable trust.

Maharaja Yeshwantrao Holkar, the ex-ruler was the owner of all the lands within the Holkar State which included agricultural lands. Before 1950 the Indore Land Revenue and Tenancy Act, 1931 governed the law relating to the land tenures in the erstwhile Holkar State. "Under Section 27 of the said Act of 1931 the entire land of Holkar State was the property of Maharaja and no person could get any portion of the land without a lawful authority from him. The said Act created any

one tenure "PATTEDAR TENANT" which was defined in the said Act as the tenant which has been or whose predecessor-in-interest has been, declared under the orders of the Government, to have a right of "PATTEDAR TENANT" in his holding including in a person lawfully recorded in respect of his holding as a "RAIYAT PATTEDAR." Thus, the "PATTEDAR TENANT" held land under a grant made by the ruler. The agricultural land held by the ruler himself was not held by him under any tenure.

On 22-4-1948, the rulers of Gwalior, Indore and certain princely States in Central India entered into a covenant for the formation of the erstwhile United State of Gwalior, Indore and Malwa (Madhya Bharat). The rulers, thereby gave their sovereignty in favour of a new State which emerged under the Covenant known as the United State of Madhya Bharat by State succession.

Articles 12 and 14 of the said covenant provided for recognizing private properties of the rulers. Under the said Articles, the ruler of each covenant State was entitled to the full ownership, use and enjoyment of all private properties belonging to him on the date of his making over the administration of that State to the Rajpramukh. The succession of such private properties was to be in accordance with the law and custom applicable to the throne of the each covenanting State.

Pursuant to the covenant, a list of private properties of the ex-rulers was prepared and was endorsed by Government of India under the signature of Shri V. P. Menon, Secretary to the Government of India in the Ministry of State.

On 10-4-1950, the ex-ruler created the private trust named as "Princess Usha Trust" of which Princess Usha Devi was the beneficiary. Thereafter on 18-12-1973 a public charitable trust was constituted in the name "Devi Ahilyabai Educational Trust" to which the properties of the private trust - Princess Usha Trust, were transferred.

The facts and events narrated above have not been denied or disputed by the respondents in their return. The trust-deeds said to have been executed on 10-4-1950 creating Princess Usha Trust and dated 18-12-1973 creating Public Charitable Trust by name Devi Ahilyabai Educational Trust have not been filed in this petition and it is not clear from the orders of the revenue authorities that those were placed before it and were read and interpreted by it so as to ascertain its legal effect.

A short legislative history concerning the agricultural land in question would also be necessary. As has been stated above, law relating to land tenure in erstwhile Holkar State was governed by the Indore Land Revenue and Tenancy Act, 1931. In the erstwhile State of Madhya Bharat which was successor to the Holkar State, Madhya Bharat Land Revenue and Tenancy Act of 1950 was enacted on 1-5-1950. The Act of 1950 recognised various tenures or tenancies defined as "Tenant", "Pucca Tenant", "Ordinary Tenant", "Sub-Tenant", "Concessional Holder" and "Holder of service holding". It is not the case of the respondents that

the land held by the petitioners was in any of the above capacities as defined under the provisions of the Act of 1950.

The Madhya Bharat Land Revenue and Tenancy Act, 1950 was repealed by the Madhya Pradesh Land Revenue Code, 1959 (hereinafter referred to as Code). Section 157 of the Code provides that there shall be one class of tenure holders of land held from the State to be known as "Bhumiswami." "Bhumiswami" is defined in Section 158 of the Code as including a person, who at the time of coming into force of the Code holds land in Madhya Bharat region as a "Pucca Tenant" or as a "Moufidar", "Inamdar" or "Concessional Holder" as defined in the Madhya Bharat Land Revenue and Tenancy Act. It is nobody's case that the ex-rulers or the petitioners held the land comprised in the covenant in any of the above defined categories of tenure holders under the Madhya Bharat Act of 1950 or the Code of 1959. The petitioners also do not answer the description of "Government Lessee" as defined in Section 181 of the Code. The petitioners also cannot be held to be holding the- land as "Occupancy Tenant" as defined in Section 185 of the Code because the expression includes any of the following persons who at the coming into force of the Code held in Madhya Bharat region :-

- a) any Inamdar land as a tenant, or as a sub-tenant or as ordinary tenant;
- b) any land as Raiyatwari sub-lessee;
- c) any Jagir land as a sub-tenant or as tenant of a sub-tenant or;
- d) any land of a proprietor as a sub-tenant or as a tenant of a sub-tenant of any of the description of Madhya Bharat statute.

The Ceiling and Agricultural Holdings Act, 1960 (hereinafter referred to as Ceiling Act of 1960) was enacted on 28-9-1960. The Ceiling Act was applicable to "tenure holders", "Government Lessees" and "Occupancy Tenant" by virtue of the definition clauses contained in Section 2(h) and (p) of the Ceiling Act which are relevant and are, therefore, reproduced hereunder :-

"2(h) : "holder" means a tenure holder or an occupancy tenant or a Government lessee of land within the State and the expression "to hold land" or "holding land" shall be construed accordingly."

"2(p) : Words and expression used but not defined in this Act and defined in the Madhya Pradesh Land Revenue Code, 1959 (20 of 1959), shall have the meaning respectively assigned to them in that Code."

The expression "tenure holder" used in the definition clause of Section 2(h) of the Ceiling Act by virtue of definition clause (p) of the said section would cover a tenure holder mentioned in Chapter XII in Section 158 of the Code, which will include only specified categories of Bhumiswamis defined therein. As would be clear from the aforesaid historical events and legislative changes, the ex-ruler had received the agricultural land in question as private properties which were saved to him under the Covenant and neither the ex-ruler nor the petitioners as

trustees of the two trusts created by him held the land in any of the capacities as Bhumiswamis, "Government Lessee" or "Occupancy Tenant" as defined in the Code of 1959.

On coming into force of the Ceiling Act on 28-9-1960 or the date notified as "appointed date" u/s 2(b) of the said Act neither the ex-ruler nor the present petitioners were affected by the Ceiling Act which was not applicable to the land held by them. They, therefore, did not submit any return under the Ceiling Act and were not required to submit the same by any of the competent authorities under the said Ceiling Act.

The effect of the Amendment Act being the main question for consideration in this case, the Amendment Act in its entirety is being reproduced hereinunder :-

"THE MADHYA PRADESH LAND REVENUE CODE .

(AMENDMENT) ACT, 1979 (No. 8 OF 1979) :

(Received the assent of the Governor on the 11th April 1979; assent first published in the "Madhya Pradesh Gazette"(Extraordinary), dated the 12th April, 1979.)

An Act further to amend the Madhya Pradesh Land Revenue Code, 1959.

Be it enacted by Madhya Pradesh Legislature in the Thirtieth Year of the Republic of India as follows :-

1. Short title. - (1) This Act may be called the Madhya Pradesh Land Revenue Code (Amendment) Act, 1979.

Amendment of Section 57. - In sub-section (1) of Section 57 of the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959), (hereinafter referred to as the Principal Act), for the proviso, the following proviso shall be substituted, namely :-

"Provided that nothing in this section shall, save as otherwise provided in this Code, be deemed to affect any rights of any person subsisting at the coming into force of this Code in any such property."

Amendment of Section 158.-- Section 158 of the Principal Act, shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely :-

"(2) A Ruler of an Indian State forming part of the State of the Madhya Pradesh who, at the time of coming into force of this Code, was holding land or was entitled to hold land as such Ruler by virtue of the covenant or agreement entered into by him before the commencement of the Constitution, shall, as from the date of coming into force of this Code, be a Bhumiswami of such land under the Code and shall be subject to all the rights and liabilities conferred and

imposed upon a Bhumiswami by or under this Code."

Explanation- In this section, the expression "ruler" and "Indian State" shall have the same meanings as are assigned to these expressions in clauses (22) and (15) respectively of Article 366 of the Constitution of India."

Amendments made by Sections 2 and 3 to have retrospective effect.- Amendments made by Sections 2 and 3 shall form part and shall be deemed to have formed part of the Principal Act from the commencement thereof.

Repeal. - The Madhya Pradesh Land Revenue Code (Amendment) Ordinance, 1979 (No. 2 of 1979) is hereby repealed."

As a result of the amendment to the Code above mentioned by the aforesaid Amendment Act (No. 8 of 1979) the competent authority under the Ceiling Act issued a notice on 8-9-1964 in the name of the ex-ruler calling upon him to submit a return. The petitioners informed the competent authority that the ex-ruler was dead by that time and the petitioners as trustees of a private trust created by the ex-ruler and as holders of land from the ex-ruler, are not covered by the Ceiling Act.

By order passed on 16-11-1973 (Annexure-D), the competent authority overruled the objections of the petitioners and held the Ceiling Act applicable. At the instance of the petitioners, in appeal the Board of Revenue on 3-2-1975 remanded the matter to the Competent Authority for recording evidence and then deciding the objections raised by the petitioners. After recording evidence, the competent authority finally overruled the objections and held that except for 353.58 acres all other lands were surplus land under the Ceiling Act and would vest in the State.

The petitioners then filed an appeal against the said decision to the Board of Revenue which was allowed by Board of Revenue by order dated 17-12-1982 (Annexure-E) only to the extent of land which is now governed by Urban Land (Ceiling and Regulations) Act as it was outside the purview of the Ceiling Act. Against that part of the decision excluding the urban land from the purview of the proceedings under the Ceiling Act, the State of Madhya Pradesh filed a writ petition registered as M. P. 1068/84 in this Court and by order passed on 29-8-1988, the Division Bench of this Court did not interfere in that order merely on the ground that the impugned order of Board of Revenue was only a remand order. The Division Bench gave liberty to both the parties to raise all necessary pleas about the applicability of the Ceiling Act and the Urban Ceiling Act to the lands in question after the order of remand was carried out and the competent authority finally decides the matter. A copy of the order passed in M. P. 1068/84 which constitutes record of proceedings of this Court, was produced before me and I find that the Division Bench in the case (supra) has refused to interfere in the remand order made for deciding the applicability of Urban Ceiling Act and left all legal questions open for being canvassed by the parties at the appropriate stage.

So far as the applicability of Ceiling Act is concerned "to the agricultural land, the Board of Revenue by the order dated 17-12-1982 (Annexure-E) impugned in this petition has on detailed discussion of the facts and construction of the relevant provisions of law involved, overruled the objections of the petitioners that the Ceiling Act has no application to the lands in their possession. The Board of Revenue has remanded the matter again to the Competent Authority only for the purpose of making an investigation or enquiry as to which properties or lands are in urban agglomeration so as to attract the provisions of Urban Ceiling Act and the extent of lands which are being used by the Army as firing range and is excluded as agricultural lands for the purpose of Agricultural Ceiling Act.

The main contention advanced by the petitioners that the agricultural lands held by them from the ex-ruler and the private trust created by him are not governed by the Ceiling Act, having been finally rejected by the Board of Revenue as an appellate authority under the Ceiling Act the petitioners have approached this Court in this writ petition.

The learned counsel Shri A. K. Chitle, Senior Advocate for the petitioners, mainly advanced two arguments. The first submission is that prior to 1979 i.e. before sub-section (2) to Section 158 of the Code was inserted to include an ex-ruler holding agricultural land in the definition of a Bhumiswami along with the others, the ex-ruler or the trustees in possession of the land under the two trusts created by him were not "Holders of land" for the purpose of, the applicability of the Ceiling Act. The effect of the amendment of the Code was to make the ex-ruler a Bhumiswami so as to subject him to all the rights and liabilities conferred and imposed upon him by or in this Code. According to the learned counsel, the language of sub-section (2) of Section 158 inserted by 1979 Amendment Act No. 8 is very clear to show that the ex-ruler became Bhumiswami for the limited purposes of the Code. The argument of the learned counsel for the petitioners is that in the absence of any corresponding amendment to the Ceiling Act, the ex-ruler or transferees from the ex-ruler are not covered by the provisions of Ceiling Act and the amendment to the Code has no such effect as is sought to be given by the Competent Authorities under the Ceiling Act.

Shri Chitle argues that the definition clause in Section 2(h) and (p) of the Ceiling Act defining the word "Holder" to include in it "tenure holder", "Occupancy Tenant" or "Govt. Lessee" as defined in the Land Revenue Code, 1959 are those categories of holders of agricultural land as are to be found in the Code on the date of coming into force of the Ceiling Act, 1960. According to him any subsequent amendment to the Code cannot be read into the definition clause contained in Section 2(h) read with Section 2(p) of the Ceiling Act. According to the learned counsel for petitioners the aforesaid definition clauses of the enactment is a piece of legislation by incorporation and the provisions of the Code existing then defining the holders of agricultural land get cemented or incorporated as though by ink or print in the Ceiling Act and any subsequent amendment to the Code cannot be read into the Ceiling Act. Reference is made

and reliance is placed on the decision of Supreme Court in the case of Bolani Ores Ltd., and passages from the Book Principles of Statutory Interpretation by G. P. Singh, 5th Edition at pages 190 to 195.

Another limb of the argument advanced on behalf of the petitioners is that by insertion of sub-section (2) to Section 158 by amendment to the Code in 1979, the legislature could not have intended to make applicable the Ceiling Act to the properties of the ex-ruler or transferees from him because a corresponding amendment, which could have been easily made, to the Ceiling Act, was not made. The learned counsel argues that even otherwise the amendment to the Code does not fit in with the scheme of the Ceiling Act so as to read it as part of the Ceiling Act. The learned counsel took this Court through the various provisions of Ceiling Act to demonstrate that even after giving retrospective effect to Section 158(2) of the Code, several provisions become unworkable and impracticable if Ceiling Act is applied to the properties of the ex-rulers or the transferees from him. For example, he points out that Section 4 invalidates the transfers effected between the submission of the Bill on 1-1-1971 to the commencement of the Ceiling Act on 7-3-1974. The transfers effected prior to 1971 or subsequent to 1974 upto 1979 when the Code in Section 158(2) was amended is not covered by the said provisions. Similarly, it is pointed out that Section 5 of the Ceiling Act places a complete embargo on all transfers after coming into force of the Ceiling Act except with permission of the Collector in writing. The argument is that this provision of restriction or freezing on all transfers could not be retrospectively applied to the transfer of the ex-ruler even if retrospective effect is given to Section 158(2) of the Code.

Much emphasis was laid by the learned counsel for the petitioners on the provisions of Section 9 of the Ceiling Act which prescribes a period of 3 months from the appointed date for submission of return by the holder of the land. It is submitted that the ex-ruler who becomes a Bhumiswami only by an amendment of the Code in 1979 could not have availed the limitation of 3 months for submitting the return as the appointed date is 7-3-1974 as notified in Section 2(b) of the Ceiling Act and that definition clause has not consequently been amended after the amendment made to the Code by insertion of sub-section (2) to Section 158. According to the learned counsel sub-section (2) to Section 158 has, therefore, a limited operation and effect only for the purpose of the Code and it could not be given effect to or made applicable to the provisions of the Ceiling Act.

The second contention advanced by Shri Chitale on behalf of the petitioners is that the agricultural land held by ex-ruler having been transferred first in the year 1950 to Princess Usha Trust and thereafter to the Charitable Educational Trust, there was a transfer of the Trust properties to the trustees. The trustees having received the properties from the ex-ruler which was saved to the ex-ruler under the covenant, do not answer the description of being "holders of agricultural lands" as "tenure holders", "Occupancy tenant" or "Government

lessee" and the trustees of the two trusts cannot be held to be "holders" as defined in Section 2(h) of the Act. The provisions of Ceiling Act cannot be made applicable to their properties. In support of his contention that on creation of a private trust the legal title is transferred from the author of the trust and vests in the trustees, reliance is placed on the following decisions reported in AL. PR. Ranganathan Chettiar Vs. AL. PR. AL. Periakaruppan Chettiar, Rajammal v. Srirangathammal AIR 1920 PC 119 and Kishangopal v. Nathulal AIR 1956 M.B. 236.

Shri L. S. Singh, Dy. A.G. on behalf of the respondents representing the Ceiling authorities supports the impugned orders which hold the Ceiling Act applicable to the lands in question. He relies on the provisions contained in Article 363A of the Constitution. By Article 363A of the Constitution recognition granted to ruler of Indian State ceased after 1971 and the privy purses were abolished on and from the commencement of Constitution (26th Amendment) Act, 1971. The argument advanced by the learned Dy. A. G. is that as a result of constitutional amendment by insertion of Article 363A, the ex-ruler lost whatever special status and privileges they possessed and became ordinary citizens to be dealt with at par with other citizens of the country. They, thus, were brought at par for the purposes of application of all laws of the land. In repelling the arguments advanced by the petitioners, the learned Dy. A. G. submits that sub-section (2) of Section 158 inserted in the Code with retrospective effect from 1959 i.e. from the date of commencement of the Code, has to be given its full effect for the purpose of the Ceiling Act which came into force in 1960. It is argued that the ex-ruler became an ordinary citizen as a result of introduction of Article 363A to the Constitution and became a "Bhumiswami" u/s 158(2) of the Code right from the commencement of the Code. The ex-ruler was, thus, a tenure holder described as Bhumiswami and has to be held as covered by the provisions of Ceiling Act.

The learned Dy. A. G. also submits that there is no apparent conflict or inconsistency between the provisions contained in Section 158(2) of the Code and the Ceiling Act and they can be reconciled with each other without any practical difficulty.

So far as the properties held by the two private trusts are concerned, reliance is placed on a Division Bench decision of this Court in the case of Idol of Shri Radhaji and Others Vs. State of Madhya Pradesh and Others, to contend that the private trusts as holders of agricultural lands are also governed by the Ceiling Act and are not exempt from the operation of it.

The main question that falls for consideration is the effect of sub-section (2) of Section 158 introduced by Amendment Act No. 8 of 1979 to the Code with retrospective effect from the commencement of the Code in the year 1959 for the purpose of the application of the Ceiling Act to the lands in question. The Ceiling Act defines "holder" in Section 2(h). The expression "tenure holder", "Occupancy Tenure" and "Government lessee" used in the said definition clause has to be assigned the same definition and meaning as to be found in the

M.P.L.R. Code of 1959 by virtue of provisions contained in Section 2(p) of the Ceiling Act. The question whether the provisions contained in Section 2(h) and (p) is a piece of legislation by reference or by incorporation is also the subject matter for consideration of this Court. Craies on Statute Law in its 7th Edition at page 29 explains the meaning of the word legislation by reference as under :

"Legislation by reference occurs where an earlier enactment is amended, applied, etc., by a mere specific reference to the section or part affected without any description of its subject-matter, necessitating in consequence resort to the enactment cited to appreciate what the later enactment is effecting."

As compared to the "legislation by reference", "legislation by incorporation" is a legislative device adopted for the sake of convenience only to avoid verbatim reproduction of the provisions of the earlier Act into later. When an earlier Act or certain of its provisions are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been "bodily transposed into it." The effect of incorporation is admirably stated by LORD ESHER, M.R. :

"If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act as if they had been actually written in it with the pen, or printed in it."

(See Principles of Statutory Interpretation by Justice G. P. Singh, 1992, 5th Edn. at page 190)

The question before this Court is whether Section 2(h) and (p) is any instance of "legislation by reference" or "legislation by incorporation." This aspect is necessary because in a case of "legislation by reference" modification, repeal or re-enactment of the statute that is referred will also have effect for the statute in which it is referred, but, in the case of "legislation by incorporation" any change in the incorporated statute by way of amendment or repeal has no repercussion on the incorporating statute. It is a question always of construction whether a particular former statute is merely referred to or cited in a later statute or is wholly or partially incorporated therein.

(See Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another, and The Special Land Acquisition Officer, City Improvement Trust Board, Mysore Vs. P. Govindan,

The provisions in Section 2(h) and 2(p) show a combined use of two modes of legislation "by reference" and "by incorporation." The provision, in so far as it contains specification of categories of holder of agricultural land viz. "tenure holder", "Occupancy tenant" and "Government lessee" is concerned, appears to be a "legislation by incorporation" of Section 158 of the Code in the Ceiling Act, as it existed on the date of the commencement of the Ceiling Act in 1960. It is so because it was necessary for the purposes of the Act to specify with certainty

and definiteness the categories of holders of agricultural lands who would be governed by the Ceiling Act on the "appointed day" notified u/s 2(b) of the said Act. The categorization of holders of agricultural land to whom the Ceiling Act was to be made applicable could not have intended by the legislature to be left uncertain and dependent on the future amendments to the Code. The definition of "holder" in Section 2(h) and Section 2(p) read with the provisions contained in Section 158 of the Code became fructified and as if cemented in the Ceiling Act so that subsequent amendment to the Code would have no effect on the working of the several provisions of the Ceiling Act. Any other interpretation of the relevant definition clauses of the Ceiling Act in Section 2 would make working of the Ceiling Act impracticable and almost impossible. The remaining provisions contained in Section 2(p) except the 3 categories of holder of agricultural land, mentioned in definition clause in Section 2(h), may be construed as a piece of legislation by reference meaning thereby that there is reference to the Code generally for words and expression not defined in the Code.

The above exercise of interpreting the provisions of law in the Code and in the Ceiling Act have become necessary because where legal provision is vague and unclear, it is the duty of the Court to make an attempt to find out what the legislature might have intended or aimed at in enacting or amending a particular provision. Cardozo in his lectures "Nature of Judicial Process" has referred to the lecture of Gray on "Nature and Sources of the Law" which reads as under :-

"that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine what the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present."

(See Selected writings of Benjamin Nathan Cardozo, Pallon Publications, at page 111)

The legislature in amending the Code to include the ex-ruler in definition of Bhumiswami does not expressly intend to make the amendment of the Code applicable to the Ceiling Act as there is no corresponding amendment introduced in the Ceiling Act. There was no such intention of giving effect to the amended Code for the purposes of Ceiling Act also becomes apparent if the two provisions are compared and tried to be reconciled to put them into the operation. The amendment was not intended to affect Ceiling Act is clear from the fact that ex-ruler if read as "Bhumiswami" in the Ceiling Act would make the Ceiling Act impracticable and unworkable in respect of the agricultural lands held by the ex-ruler or his transferees under a transfer effected before the commencement of the Code or the Ceiling Act.

The scheme of the Ceiling Act if examined critically shows that the operation of Ceiling Act in its various provisions centres round the "appointed day" notified u/

s 2(b) of the Ceiling Act. The Ceiling area has to be determined as on "Appointed Day" as provided in Section 7. u/s 9, the return is to be submitted to the competent authority within 3 months from the appointed date to be notified u/s 2(b) of the Ceiling Act. The collection of information by the competent authority u/s 10 is only in the event of failure on the part of the holder to submit the return within the prescribed time. All transfers made after publication of the bill i.e. between 1st September, 1971 and before appointed date i.e. 7th March, 1974 are to be reviewed and if necessary to be set aside if they are effected to defeat the provisions of the Ceiling Act. A complete ban or embargo is placed on future transfers after the appointed date u/s 5 of the Ceiling Act.

All the above provisions of the Ceiling Act become unworkable if the ex-ruler, who becomes Bhumiswami for the purposes of the Code, is read into the Ceiling Act as the "holder" defined in Section 2(h) of the Act from the commencement of the Code in 1959 or the Ceiling Act in 1960. It is also to be noticed that Section 158(2) has been given retrospective effect from the date of commencement of the Code, but, it is not possible to give such retrospective effect to the said provision for the purposes of the Ceiling Act without express retrospective legislative provision to that effect in the Ceiling Act. The ex-ruler, for the purposes of the Ceiling Act, if read as "Bhumiswami" would become so only from the date of introduction of sub-section (2) to Section 158 in the Code in the year 1979. The Code has to be applied prospectively for the purposes of its application to the Ceiling Act in the absence of express retrospective legislation to that effect in the Ceiling Act. The ex-ruler, on the "appointed day", as defined in Section 2(h) of the Ceiling Act, was not a Bhumiswami. In 1979 when the ex-ruler was included in the definition of Bhumiswami by retrospective amendment to Section 158 the "appointed date" notified under the Ceiling Act was a past event. The Ceiling Act through its various provisions, as examined above, intended to operate on the "holdings" defined in Section 2(i) read with Section 2(h) of the Ceiling Act which were existing on "appointed day" and included within it the specified categories of holders mentioned in Section 2(h) of the said Act which did not include ex-ruler. The inclusion of ex-ruler, by reading Section 158(2) of the Code into the Ceiling Act, prospectively from 1979 can have no effect on the right of the ex-ruler and cannot deprive him of the agricultural land which he could hold on the "appointed date" due to inapplicability of the provisions of the Ceiling Act on that date. The retrospective effect given to the provisions contained in Section 158(2) of the Code cannot have the same retrospective effect for the purposes of the Ceiling Act without express corresponding retrospective amendment of the Ceiling Act.

Seen from the any of the angles discussed above Section 158(2) cannot have and is not intended to have any effect on Ceiling Act which remains undisturbed by the legislature in the absence of any amendment to the Ceiling Act corresponding with the amendment to the Code.

Last remains the question with regard to the properties held by the two trusts.

The two trust-deeds have not been produced in this Court. The learned counsel in the course of argument sought time to produce them, but, the request was not allowed as the petition is pending in this Court since 1983. The two trusts deeds also do not appear to have been produced before the competent authority as there is no mention of its contents in the order passed by the authority. Assuming for the sake of argument in favour of the respondents that a creation of a private trust by the ex-ruler or Princess Usha Devi does not amount to transfer of the land and the ex-ruler should be deemed to have held the land, in spite of the creation of the trust, the ex-ruler being not a "holder" for the purposes of the Ceiling Act, the creation of trust and transfer has no effect on the lands in possession of the petitioners as heirs of the ruler or as trustees.

The learned counsel for the petitioners has read a few relevant provisions of the Indian Trusts Act. Placing reliance on the decisions (*supra*), it was urged that creation of a trust necessarily involves transfer of properties by the author of the trust and vesting the same in the trustees for the enjoyment of the beneficiaries so as to fulfil the object of the trust. Assuming for the sake of the argument that the two private trusts result in transfer of the agricultural land from the ex-ruler or his heirs to the trustees of the private trusts, since the ex-ruler or the heirs were not "holders of the agricultural land" within the meaning of the Ceiling Act, there was no prohibition on them in the Ceiling Act to transfer the lands. The trustees of the private trusts who received the lands under the trust-deeds do not answer the description of being either a "tenure holder", "Occupancy tenant" or "Government lessee." The trustees of the private trusts, as transferees from the ex-ruler of the land in question do not hold the land in any tenure right from the Government. The trustees are not included in the definition of "Bhumiswami" as defined in Section 158 as it stood prior to or after the amendment of the Code, and hence are not included in the definition of "holder" as defined in Section 2(h) of the Ceiling Act. In either case if the creation of trust results in transfer of the land or it does not, the lands held by the ex-ruler or the trustees are not held by them in any of the capacities defined in Section 158 of the Code or Section 2(h) of the Act. The conclusion, therefore, is that the agricultural lands in question in possession of the ex-ruler or his successors or the trustees of the private trusts are not governed by the provisions of the Ceiling Act and the insertion of sub-section (2) to Section 158 of the Code has no such effect as to make applicable the provisions of the Ceiling Act to the lands held by them.

Before concluding, a few words have to be stated to meet the argument advanced by the learned counsel for the State on the provisions of Article 363A of the Constitution. By Constitution (26th Amendment) Act 1971 brought into force w.e.f. 28-12-1971, special recognition and privileges granted to the ex-rulers of Indian State ceased and sums payable to them as Privy Purses are abolished. The above constitutional provision does not *ex facie* intend to deprive the ex-rulers of their pre-existing right in any of their private properties and creates no new disability on them from retrospective date. Article 363A cannot be read and interpreted to mean that any agricultural land saved to and retained

by ex-ruler under a constitutional recognition of any agreement or covenant would stand divested and would vest in the State. It appears that Section 158 of the Code was amended keeping in view the provisions of Article 363A of the Constitution. The proviso added to Section 57(1) by the Amendment Act to the Code, in fact, saves the existing rights of any person subsisting at the coming into force of the Code. Ownership in all other lands vests in the State. The provisions of Section 57(1) with the proviso added to it by the Amendment Act of 1979 has been reproduced above. (See *infra* para 13). The constitutional provision in Article 363A does not have the effect of depriving the ex-ruler of all his private properties which were saved to him in his capacity as the ex-ruler, prior to the amendment to the Constitution. Article 363A of the Constitution has no retrospective effect and such intention is also not expressed from its language. The argument built up on behalf of the respondent/State on Article 363A of the Constitution, therefore, crumbles as it has a very weak foundation.

Consequently, the petition succeeds and is hereby allowed. The order dated 17-12-1982 (Annexure-E) passed by the Board of Revenue is hereby quashed. In the circumstances, I leave the parties to bear their own costs. The amount of security, if any, be refunded to the petitioners.