The Indian Law Reports

Before D. S. Tewatia and D. B. Lall JJ.

DURGA—*Petitioner*

versus

GRAM PANCHAYAT SARHALA—*Respondent.*

Criminal Revision No. 48 of 1974

March 13, 1978.

Constitution of India 1950 as amended by the Constitution (Forty-second Amendment) Act, 1976—Article 227—Amendment of—Whether retrospective—Pending cases—Whether governed by the amended article.

Held, that the powers of the High Courts under the original Article 227 of the Constitution of India 1950 extended over all Courts and Tribunals within their respective jurisdiction. As a result of the Constitution (Forty-second Amendment) Act, 1976, this power of superintendence has been restricted over the courts subject to its appellate jurisdiction only and thereto only such orders of such Courts could be interfered with as are subject to appeal or revision. Article 227 confers a substantive right on the litigants to invoke the said jurisdiction and the said right unlike a procedural right could be taken away only by either express words to that effect or by necessary intendment. The principle is well settled that where a statute is passed pending an action as distinct from after the date of the cause of action strong and distinct words are necessary to alter the vested rights of either litigant as they stood at the commencement of the action. There is an equally well settled principle firmly established and accepted by the courts that unless the contrary could be shown, a provision which took away the jurisdiction of a Court is itself subject to implied saving of litigant's right and since there is nothing in the amending Article 227 to indicate to the contrary, the right of the petitioner to continue with the pending petition under the original Article 227 must be held to have been saved. The provisions of amended Article 227 would, therefore, not govern the decision of the pending cases in the High Courts as the amendment in Article 227 in its very nature is prospective in operation. (Paras 3, 7 and 8)

Case referred by Hon'ble Mr. Justice D. S. Tewatia on 8th August, 1977 to a larger Bench for decision of an important question of law involved in the case. The Division Bench consisting

of Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice D. B. Lal observed that the petition can now be set down for hearing before the learned Single Judge for decision on merits on 13th March, 1978. The Hon'ble Mr. Justice S. S. Dewan finally decided the case on 23rd October, 1978.

Petition under Article 227 of the Constitution of India for revision of the order of the Court of Mr. Behari Lal, Judicial Magistrate 1st Class, Hoshiarpur, dated 28th August, 1973, upholding the decision of the Gram Panchayat of village Sarhala Mundian.

Malook Singh, Advocate, *for the petitioner.*

P. S. Mann and G. S. Grewal, Advocates, *for the respondent.*

JUDGMENT

D. S. Tewatia, J. (Oral)—

(1) The important question that falls for determination is as to whether the provisions of article 227 of the Constitution of India are retrospective in nature.

(2) The relevant facts to the extent which bear upon the question posed are that the Gram Panchayat of village Sarhala Mundian issued to the petitioner notice under section 21, clause (2) of the Gram Panchayat Act, 1952 (hereinafter referred to as the Act) requiring him to remove the encroachment pointed out in the notice by a stipulated date. He disregarded the said notice whereupon the Gram Panchayat initiated proceedings against him. He dissociated himself from the proceedings with the result that the Gram Panchayat proceeded *ex parte* against him, recorded evidence, and under section 23 of the Act imposed a fine of Rs. 25 on him, conditionally, i.e. if he was to remove the encroachment by a certain date then he would not have to pay the fine, but if he failed to do so then he would have to pay the said fine. He was also required to pay the penalty of Rs. 2 per day till the removal of the encroachment in question. That order was challenged in revision. The revisional Court set aside the order and remanded the case back to the Gram Panchayat with the direction that the proceedings were to be taken in the presence of the petitioner. The Gram Panchayat in question started de novo proceedings this time in the presence of the petitioner. However, again it reached the same conclusion i.e. they found the petitioner guilty of encroaching the Panchayat land and fined him Rs. 25 and imposed penalty of Re. 1 per day till the removal

of the encroachment in question. He challenged that order in the Court of Judicial Magistrate First Class, Hoshiarpur, who dismissed the revision petition,—*vide* his order dated August 28, 1973. This order has been impugned by the petitioner under article 227 of the Constitution of India. Before the matter could be set down for hearing for final decision, original article 227 came to be amended and when the petition came up for hearing before me sitting singly, the learned counsel for the respondent raised a preliminary objection that in view of the amendment of article 227 as a result of the Constitution (Forty-second Amendment) Act, 1976, this Court was left with no jurisdiction to interfere with the impugned order. In support of his submission, reference was made to clause (5) of the amended article 227 of the Constitution. I referred the matter to a larger Bench by order dated August 8, 1977 and that is how this petition has been laid before us for the determination of the question aforesaid.

(3) The power of the High Courts under the original article 227 extended over all Courts and Tribunals within their respective jurisdiction. As a result of the Constitution (Forty-second Amendment) Act, 1976, this power of superintendence has been restricted over the Courts subject to its appellate jurisdiction only, and thereto only such orders of such Courts could be interfered with as are subject to appeal or revision.

(4) The point raised on behalf of the respondents is that the impugned order of the Magistrate First Class, Hoshiarpur, is neither appealable nor revisable and, therefore, the same stands outside the jurisdiction of this Court by virtue of the provision of clause (5) of article 227 of the Constitution of India. The relevant provisions of the amended article 227 of the Constitution are in the following terms :—

> "(1) Every High Court shall have superintendence over all courts subject to its appellate jurisdiction.
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> (2) ** ** **
>
> (3) ** ** **
>
> (4) ** ** **
>
> (5) Nothing in this article shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision."

(5) The learned counsel for the petitioner on the other hand has urged that the provision of article 227, as it has emerged after the amendment, does not, either expressly or impliedly, take away the jurisdiction of the High Court to deal with the pending cases over which, under the original article, it had the jurisdiction. In support of his submission, he placed reliance on the Single Bench decision of this Court in *Karnail Singh* v. The *Under Secretary Development (Co-operation), Punjab and others* (1) as also on a Full Bench decision of the Bombay High Court in *Shripatrao Dajisaheb Ghatge and another* v. *The State of Maharashtra and another* (2).

(6) Harbans Lal, J. who decided *Karnail Singh's case* (supra) in his short judgment referred to section 58 of the Constitution (Forty-second Amendment) Act, 1976 which provided that pending writ petitions under article 226 would be disposed of in accordance with the amended article 226 and held deductively that if the intention had been to make the provisions of article 227 also retrospective then similar provision, as the one in section 58 aforesaid, would also have been made in regard to the decision of the pending matters in accordance with the amended article 227. Though we agree with the conclusion of Harbans Lal, J. that article 227 is not retrospective in nature, but the reason aforesaid given with respect thereto has not appealed to us and we would return to this aspect after taking note of the Full Bench decision of the Bombay High Court for in that decision also a similar reliance has been placed on the provisions of section 58 aforesaid.

(7) Tulzapurkar, Acting Chief Justice (as he then was) who delivered the opinion in *Dajisaheb Ghatge's case* (supra), held the provisions of amended article 227 not to be retrospective in nature for four reasons :—

(i) that article 227 confers a substantive right on the litigants to invoke the said jurisdiction and the said right unlike a procedural right could be taken away only by either express words to that effect or by necessary intendment. In this context, it was also mentioned by the learned Chief Justice that the amended article 227 in its very nature is prospective in operation;

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(1) 1977 P.L.J. 356.
(2) A.I.R. 1977 Bombay 384.

(ii) that the principle is well settled that where a statute is passed pending an action as distinct from after the date of the cause of action, strong and distinct words are necessary to alter the vested rights of either litigant as they stood at the commencement of the action;

(iii) that there is a well settled principle firmly established and accepted by the Courts that unless contrary could be shown a provision which took away the jurisdiction of a Court is itself subject to implied saving of litigant's right and since there was nothing in the amending article 227 to indicate to the contrary, the petitioner's right to continue the pending petition under the original article 227 must be held to have been saved; and

(iv) that Parliament was aware of the pending cases and wherever it wanted the pending cases to be subjected to the amended provisions, it expressly provided as it did so in regard to the petitions pending under article 226 by enacting specific provisions to that effect in section 58 of the Constitution (Forty-second Amendment) Act, 1976 and, therefore, since no such express provision was made in regard to the matters pending under original article 227 so the pending cases were intended to be dealt with under the original article 227.

(8) We have reservation only about the fourth reason otherwise we agree entirely with the reasoning of the learned Chief Justice in coming to the conclusion that the provisions of amended article 227 would not govern the decision of the pending cases in the High Courts, and the following observations from the judgment can be noticed with advantage:—

"In view of our aforesaid conclusion, it will be easy to deal with the principal question raised before us, namely, whether the pending petitions filed and admitted by this Court under the unamended Art. 227 prior to 1st February, 1977 are to be heard and disposed of in accordance with the original or unamended Art. 227 or their disposal is governed by the amended Art. 227 and the answer to the question primarily depends upon whether the amended Art. 227 has been given any retrospective operation so as to cover the pending petitions. On reading the amended

Art. 227 and comparing the same with the original or unamended one it will appear clear that a couple of changes have been effected. In the first place sub-art. (1) of the original Art. 227 conferred on the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercised jurisdiction, whereas in the amended sub-art. (1) the words 'and tribunals' have been deleted and the words 'subject to its appellate jurisdiction' have been substituted after the words 'all courts', in other words, this amendment purports to take away the High Court's superintendence over 'tribunals'. Secondly a new sub-art. (5), which was not there in the original article, has been inserted in the amended article with the result that a limitation has been placed on the High Courts power of judicial superintendence over judgments of inferior courts, namely, that such judicial superintendence will be available to the High Court only in cases where such judgments are otherwise subject to an appeal or revision to the High Court. It was conceded by Mr. Paranjpe before us that the phrase "subject to its appellate jurisdiction" occurring in sub-art. (1) read with sub-art. (5) clearly shows that for invoking the High Court's power of judicial superintendence it would be enough if the inferior court's judgment to question which the power is to be invoked, was subject to either an appeal or revision to the High Court. Sub-arts. (2), (3) and (4) of the original Art. 227 have remained the same in the amended article. But apart from the aforesaid changes effected it is clear that the amended Article 227 has not been given any retrospective operation either by express words or by necessary intendment and the amended article is clearly prospective in operation. That being the position since we have come to the conclusion that Art. 227 is not procedural but confers a right of action on a litigant it is obvious that all petitions pending as on 1st February, 1977 will have to be heard and disposed of in accordance with the original or unamended Art. 227. The general rule applicable in that behalf has been stated in Craies on Statute Law (7th Edition) at p. 401 thus:—

'It is a general rule that when the legislature alters right of parties by taking away or conferring any right of action, its enactment unless in express terms they apply to

pending actions do not affect them. But there is an exception to this rule viz. where the enactment merely affects the procedure and do not extend to rights of parties—(Per Jessel M.R. in Re Joseph Suche & Co. Ltd. (3)."

Moreover, here we are concerned with the question at a stage when the right to move the Court conferred by Article 227 has been exercised or put in action and proceedings have been commenced. In such a case the pending proceedings must be disposed of in accordance with the original Article 227. Secondly, we find considerable force in the contention of Mr Seervai that in the context of S. 58 of the 42nd Amendment Act, 1976 which makes the amended Art. 226 applicable to pending petitions filed under the original Article 226 and in the absence of a similar provision in regard to pending petitions under the unamended Article 227 a reasonable inference should be drawn that the Parliament did not intend to apply the amended article to pending petitions. In this behalf it must be remembered that the amendment of the Article 227 by the 42nd Amendment Act, 1976 was a part and parcel of series of amendments that were effected or brought about in the Constitution and the amendment of original Article 227 will have to be considered along with other amendments, particularly the amendments that have been effected in the connected Article 226 and the special provision made in section 58 as to pending petitions under Article 226. Looking at the question from this angle it will appear clear that section 58 of the 42nd Amendment Act, 1976 the Parliament has made special provision with regard to pending petitions under Article 226 and has by that provision enacted that such pending petitions shall be dealt with in accordance with the amended Article 226 and it is also clear that a similar provision in regard to pending petitions under the unamended Article 227 has not been made and, therefore, a reasonable inference arises that Parliament did not intend that pending petitions under the original Article 227 should be governed by the amended Article 227. Mr Paranjpe sought to explain the insertion of section 58 in

(3) (1875)1 Ch.D. 48 at p. 50.

the Constitution on the basis that it was necessary to make some provision principally in respect of interim orders that had been passed by the High Courts in pending petitions under the original Article 226 while Mr Bhabha tried to explain it on the basis that because the original Article 226 contained an admixture of procedural and substantive rights, the special provision of section 58 was necessary and since the original Art. 227 was purely procedural and the amended Article 227 took away the jurisdiction of the High Court over the tribunals a provision akin to S. 58 was unnecessary. It is not possible to accept either of the explanations as valid; in the first place section 58 does not principally deal with interim orders passed in pending petitions under the original Article 226 but deals with both as to what should happen to interim orders as also the pending petitions themselves and secondly as discussed earlier, the original Article 227 did not deal with procedural matters but conferred a substantive right on the litigant and as such it is not possible to accept the argument that the amended Article 227 has merely taken away the High Court's jurisdiction over tribunals but it has purported to abridge the litigant's right to move the High Court against the decisions or orders of tribunals. It is, therefore, clear that inference suggested by Mr. Seervai arises that Parliament did not intend that pending petitions under the original Art. 227 should be governed by the amended Article 227.

In the above context it will be useful to refer to the principle which is well established and which is applicable in cases a statute is enacted when actions are pending and the principle is that where a statute is passed pending an action as distinct from 'after the date of the cause of action' strong and distinct words are necessary to alter the vested rights of either litigant as they stood at the commencement of the action. *Midland Rly Co.* v. *Pye* (4) and *Turnbull* v. *Forman* (5). This principle was invoked and applied by this Court in *Sudkya Ramji* v. *Md. Issak* (6). Applying this principle here it will be clear that pending petitions under the original Article 227

(4) (1961) 10 C.B. (N.S.) 179.

(5) (1885) 15 Q.B.D. 234.

(6) A.I.R. 1950 Bom. 236.

will not be affected by the amended Article, inasmuch as there are no words at all, much less strong and distinct words, in the amended Article 227 which suggest either expressly or by necessary implication that any alteration was intended in the right of the petitioners to continue and complete their proceedings in accordance with the article as it stood at the commencement of their action.

Mr. Seervai next relied upon section 6(e) of the General Clauses Act, 1897 as also on the principle enunciated by the Privy Council in the leading case of *Colonial Sugar Refining Co. Ltd.* v. *Irving* (7) for saving the pending petitions from the operation of the amended Article 227. According to him, by deleting the words 'and tribunals' occurring in the original Art. 227 the amended Article 227 has in effect partially repealed the original article, inasmuch as, the High Court's power of judicial superintendence in respect of the decisions and orders of the tribunals is completely taken away and therefore under section 6(e) of the General Clauses Act the pending petitions under the original Article 227 will have to be proceeded with as if the amendment by way of repeal had not been made. Further he pointed out that in Colonial Sugar Refining Co. case the Judiciary Act, 1903 (under which Her Majesty in Council ceased to be a Court of Appeal from the decisions of the State Supreme Court and in its place the High Court of Australia was substituted as the forum of appeal against such decision) was passed during the pendency of an action in the Court of first instance and the Privy Council in its decision recognised the position that from the date of initiation of original action the suitor had a right of appeal to the superior tribunal according to law as it stood at the commencement of that proceeding. He strongly relied upon the following observations made by their lordships in that case, which appear at page 372 of the report:

"The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only

(7) 1905 A.C. 369.

question is, was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a mere matter of procedure ? It seems to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him is very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested." He urged that both under section 6 of the General Clauses Act as well as under the aforesaid principle of Colonial Sugar Refining Co.'s case the pending petitions filed under the original Art. 227 will have to be continued heard and disposed of as if the amended article was not applicable, for according to him by parity of reasoning it could legitimately be said that each of the petitioners' right to move this Court under the original Art. 227 for invoking supervisory jurisdiction of this Court had accrued to each one of them and got vested in each no sooner each one of them had commenced his original action or proceeding for enforcing his right under the concerned enactment before the concerned authority thereunder. Alternatively he contended that quite independently of S. 6 of the General Clauses Act there is a well settled general principle that unless a contrary can be shown the provision which takes away the jurisdiction of a Court is itself subject to implied saving of the litigant's right and the pending petitions here would fall within that principle.

We shall deal with the contention based on S. 6 of the General Clauses Act and that based on the principle of *Colonial Sugar Refining Co.'s case* (7) (*supra*) separately. Section 6 of the General Clauses Act deals with the effect of repeal of an enactment and under S. 6(c) it has been provided that the repeal of an enactment "shall not effect any right accrued" under the enactment so repealed and under S. 6(e) it has been provided that "any proceeding in respect of any such right" (meaning the accrued right) under S. 6(c) has to be continued as if the repeal had not taken place. In our

view, having regard to the provisions of S. 6(c) and S. 6(e) it will be difficult to apply these provisions to pending petitions under the original Article 227 unless we accept the further argument of Mr. Seervai that no sooner each of the petitioners commenced his original action or proceeding for enforcing his right under the concerned enactment before the concerned authority a substantive right to move the High Court under the original Article 227 had accrued to him. However, it is unnecessary for us to go that far and hold that S. 6(c) would apply to the pending petitions under the original Article 227, for, in our view, the general principle which has been invoked by him alternatively and which is applicable quite independently of S. 6 would govern the disposal of these pending petitions. Since we are not resting our judgment on the provisions of S. 6(e) of the General Clauses Act, it is unnecessary to deal with or discuss two or three cases on which Mr Bhabha relied including English decision in *Director of Public Works* v. *H. Po Sang* (8), for contending that the pending petitions would not be saved under S. 6(e) of the said Act. According to Mr Seervai, quite independently of the provisions of S. 6 of the General Clauses Act there is a well settled principle firmly established and accepted by Courts that unless contrary can be shown a provision which takes away the jurisdiction of a court is itself subject to implied saving of litigant's right and since there is nothing in the amended Article 227 to indicate to the contrary the petitioner's right to continue the pending petitions under the original Article 227 must be held to have been saved. He contended that it cannot be disputed that the amended Article 227 clearly takes away the supervisory jurisdiction of the High Court over tribunal qua their decisions or orders and since there is nothing to indicate to the contrary in the amended article, such amended article which takes away the High Court's supervisory jurisdiction over tribunals must be regarded as being subject to implied condition and litigant's right to continue the action which he has commenced before the amended article has come into force is

(8) (1961) 2 All ER 721.

clearly saved. In this behalf strong reliance was placed by him upon two decisions, one a Full Bench decision of the Calcutta High Court in the case of *Sadar Ali* v. *Doliluddin Ostagar* (9), where the principle has been enunciated and the other of the Supreme Court in the case of a *Garikapati Veeryada* v. *N. Subiah Choudhry* (10), in which the principle has been approved. In the Calcutta case the question that arose for determination was whether or not the appellants had a right to file Letters Patent Appeal from the decision of a single Judge sitting in second appeal in the absence of a certificate from him and that the case was a fit one for appeal and the question had arisen in the context of new Letters Patent requiring such a certificate which had come into effect on 18th January, 1928. The Full Bench held that the date of presentation of second appeal to the High Court was not the date which determined the applicability of the amended Clause 15 requiring permission or certificate of the deciding judge for further appeal but the date of institution of suit was the determining factor. It may be stated that the question was not decided by reference to S. 6 of the General Clauses Act, but upon general principles governing the question of retrospective operation of the amended Letters Patent. Chief Justice Rankin in the course of judgment observed thus: (at p. 643 of AIR):

"In this view the only question which remains is the question whether the new clause can be given retrospective effect. The provision that the new Letters Patent shall come into force on the date of publication in the Gazette does not operate to give it such effect. Nor does the fact that the jurisdiction and authority of the Court is the primary subject of the Letters Patent found a valid argument to the effect that after the date of commencement the Court can have no authority to entertain such an appeal as this. Unless the contrary can be shown the provision which takes away jurisdiction is itself subject to the implied saving of the litigants rights."

(9) A.I.R. 1928 Cal. 640.
(10) A.I.R. 1957 S.C. 540.

The above general principle enunciated by Rankin, C. J. has been referred to with approval by the Supreme Court in *Garikapati Veeraya's case,* (10) (*supra*) at two places in para 25 and para 43 of the judgment. We may point out that in para 48 where the aforesaid principle has been referred to a second time the position becomes clear that in the context of question which the Supreme Court was required to consider in that case, the aforesaid principle has been accepted as a principle of general applicability quite apart from S. 6 of the General Clauses Act. The question of construing Article 13 of the Constitution in the context of President's Adaptation Order whereby S. 109 and S. 110 of Civil P.C. were brought in conformity with Article 133 was dealt with by the Court in that para and while dealing with that question the Court has observed thus :

(at pp. 562, 563 of AIR).

"We now pass on to consider another construction of Article 133 which appears to us to be quite cogent. We have seen that Ss. 109 and 110 of the Civil P.C. were adapted by the President's Order and the valuation had been raised from Rs. 10,000 to Rs 20,000 in order to bring it into conformity with Article 133. Clause 20 of that Adaptation Order itself provided that such adaptation would not affect the vested rights. Therefore, those litigants who had a vested right of appeal from judgments, decrees or final orders of a High Court in a civil proceeding arising out of a suit or proceeding instituted prior to the Constitution and which involved a right of property valued at over Rs 10,000 but below Rs 20,000 are still to be governed by the old Ss. 109 and 110. This means that the words "judgment, decree or final order" occurring in Ss. 109 and 110 of the Code as adapted must be read as a judgment, decree or final order made after the date of the adaptation other than those in respect of which a vested right of appeal existed before the adaptation and which were preserved by Cl. 20. If Ss. 109 & 110 must be read in this way why should not Article 133 be read as covering all judgments, decrees or final

orders of a High Court passed after the commencement of the Constitution other than those in respect of which vested right of appeal existed from before the Constitution? It is said that there is no saving provision to Article 133 like Clause 20 of the Adaptation Order and, therefore, Article 13 cannot be read in a restricted way. This argument. is unsound and here the observations of Rankin, C. J., in the Special bench case of Calcutta referred to above become opposite, namely, that the provision which takes away jurisdiction is itself subject to the implied saving of the litigant's right."

It will thus appear clear that quite apart from S. 6 of the General Clauses Act the aforesaid general principle could be said to be well established and applying that principle here it can be said that since in the amended Article 227 there is no indication to the contrary the proceedings by way of petitions, which have been validly commenced under the original Article 227 and which are pending at the time when the amended Article 227 has come into operation, will have to be dealt with and disposed of in accordance with the original Article 227 inasmuch as, the petitioner's right to continue the validly instituted petitions upto the end cannot be affected by the amended Article 227.

Coming to the Colonial Sugar Refining Co's. (7) (supra) it is obvious that the principle laid down there was in the context of the accepted position that right of appeal was regarded as having been vested in a suitor no sooner he commenced his original action and the question would be whether the principle could be extended to the original action itself in the sense that once it is instituted or commenced, the litigant could be said to have acquired a vested right to continue the same uneffected by any alternation in the law. In that context it will be useful to refer to a decision of the Federal Court in *Venuyopay's case*, (11), where the Federal Court has taken the view that a right to continue a duly instituted suit is in the nature of a vested right and it cannot be taken away except by a clear indication of

(11) A.I.R. 1943 FC 24.

intention to that effect. In that case a suit had been instituted in 1932 in British India with respect to property situate in British India and also in Burma. In 1937 Burma became separate from British India and a question arose whether the suit could be continued in the British Indian Court where it had been instituted and the Federal Court ruled that it could be so continued even after Burma has been separated. On the basis of S. 38 of the English Interpretation Act (equivalent to S. 6 of our General Clauses Act) which governed the interpretation of the Constitution Act two rival contentions were urged. On the one hand it was contended that what was saved under the said section was a substantive right under the repealed enactment and Cl. (e) of sub-section (2) of S. 38 could not be invoked in cases where the substantive right was not taken away by the repealing Act but the forum or method of enforcing it was changed. On the other hand, it was contended that the right to obtain relief in a suit pending at the time when the repealing enactment came into operation was itself in the nature of substantive right. The Federal Court did not decide that point but preferred to rest its judgment on the principle enunciated by the *Privy Council in Colonial Sugar Refining Co's. case* (7) (supra). Even that decision was sought to be distinguished on behalf of the appellant on the ground that the right of appeal against a decree stood on a different footing from a right to continue a suit to its normal termination but the Federal Court negatived the contention by saying that the Court was unable to see any distinction between the two cases and it extended the principle of *Colonial Sugar Refining Co.* case to the latter case. Justice Varadachariar observed in that behalf thus :

"It will be noticed that in that case the Judiciary Act was passed during the pendency of the action in the Court of first instance and their Lordships, decision recognised that, from the date of the initiation of the action, the suitor had a right of appeal to a superior tribunal according to the state of the law as it stood at the time of the commencement of the proceeding. This necessarily involves the recognition of an equally valuable right that

the proceedings should in due course be tried and disposed of by the tribunal before which it had been commenced. This principle that a statute should not be so interpreted as to take away an action which has been well commenced has been affirmed in various cases in differing circumstances. In (1850) 9 CB 551, it was observed by Wilde, C. J. that:

"It must have been well known to both branches of the Legislature that strong and distinct words would be necessary to defeat a vested right to continue an action which has been well commenced. Of. (1875) 1 Ch. D 48 and see also (1904) ILR 27 Mad 538 and (1909) ILR 32 Mad 140." 'On parity of reasoning we are inclined to hold that the petitioners herein would be entitled to continue their pending petitions and have them disposed of in accordance with the original Art. 227.

Having regard to the above discussion we hold that the pending petitions under the original Article 227 will not be affected by the amended Article 227 and must be dealt with and disposed of in accordance with the origional or unamended Article 227."

(9) Relevant provisions of sub-section 2 of section 58 of the Constitution (Forty-second Amnedment) Act are in these terms :—

"In particular, and without prejudice to the generality of the provisions of sub-section (1) every pending petition before a High Court which would not have been admitted by the High Court under the provisions of Article 226 as substituted by Section 38 if such petition had been made after the appointed day shall abate and any interim order (whether by way of injunction or stay or in any other manner) made on, or in any proceedings relating to, such petition shall stand vacated :

Provided that nothing contained in this sub-section shall affect the right of the petitioner to seek relief under any other law for the time being in force in respect of the matters to which such petition relates and in computing the period of limitation, if any, for seeking such relief, the

period during which the proceedings relating to such petition were pending in the High Court shall be excluded."

(10) Our reasons for holding that the aforesaid provisions of section 58 of the Constitution (Forty-second Amendment) Act, 1976 do not necessarily suggest that wherever the Parliament desired that the pending petitions were to be dealt with in accordance with the amended provisions of the Constitution, they expressly provided for that, are that in our opinion the wording specially of the provisions of clause (3) of article 226 made the clarification contained in sub-section (2) of section 58 of the Constitution (Forty-second Amendment) Act necessary. Clause (3) of article 226 is in the following terms :—

(1) * * * * *

(2) * * * * *

(3) No petition for the redress of any injury referred to in sub-clause (b) or sub-clause (c) of clause (1) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force."

(11) A perusal of the said clause would leave no doubt that it contained an interdict against the Courts entertaining any petition for the redress of any injury referred to in sub-clause (b) or sub-clause (c) of clause (1), but it was silent about the petitions already entertained by the High Courts. In other words clause (3) sought to create a bar at the threshold in regard to the petitions for the redress of any injury referred to in sub-clause (b) or sub-clause (c) of clause (1), but was silent, about the petitions which already stood entertained. Since the Parliament desired that all such matters in the first instance be dealt with by the statutory authority empowered by the statute and thus lighten the burden of the High Courts before which huge arrears are pending, without in no manner affecting the rights of the litigants to invoke the jurisdiction of the High Courts after exhausting the alternative remedy, for if they still felt dissatisfied they could again invoke the jurisdiction of the High Court under article 226, so it had to give retrospective effect to the aforesaid clause.

(12) Under article 227 of the Constitution, the Parliament did not, while amending article 227 want to take away the jurisdiction of the High Courts over the pending matters, for if it had done so, it would have denied justice to the petitioners whose matters were pending before the High Courts, as unlike the litigant, whose writ petitions were pending in the High Courts and which had been made to abate by the provisions of section 58 of the Constitution (Forty-second Amendment) Act, 1976, and who could look for justice from the High Court again after exhausting the alternative remedy provided by the statute, the petitioners under article 227 had nowhere to go if their pending petitions had been made to abate.

(13) For the reasons aforesaid, we hold that the provisions of clause (1) of article 227 and consequently the provisions of clause (5) of article 227 of the Constitution of India were never intended to operate retrospectively and therefore, they are held to be prospective in nature.

(14) The petition can now be set down for hearing before the learned Single Judge for decision on merit.

H.S.B.

Before M. R. Sharma, J.

NASIB SINGH—*Petitioner.*

versus

OM PARKASH and another,—*Respondents.*

Civil Revision No. 1464 *of* 1975.

October 23, 1978.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2) (i)—Proviso—Dispute regarding quantum of rent—Tenant depositing without protest rent at the rate claimed by the landlord—Such tenant—Whether debarred from claiming trial of the issue relating to quantum of rent.

Held, that the proviso to section 13(2) (i) of the East Punjab Urban Rent Restriction Act, 1949 nowhere mentions that a tenant