

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.328 of 2014

1. Bipin Tiwari S/O Sri Chandrika Tiwari Permanent Resident Of Raja Ganw, P.O And P.S- Jia Pokhar, Block- Thakurganj, District- Kishanganj, And Presently Residig At Narbada Bagan, Road No. 4, Champasari, P.S- Pradhan Nagar And District- Darjeeling.

.... Petitioner/s

Versus

1. The State Of Bihar Through Principal Secretary, Department Of Revue And Land Reforms, Old Secretariat, Patna.
2. The Collector Cum District Magistrate, Kishanganj, District- Kishanganj.
3. The Sub- Divisional Officer, Kishanganj, District- Kishanganj.
4. The Circle Officer, Thakurganj, District- Kishanganj.

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 5951 of 2014

1. Lalan Prasad Son Of Late Gautam Prasad Permanent Resident Of Village - Nawduba, P.S. Churli Court, P.O. Thakurganj, District - Kishanganj And Presently Residing At Hill Cart Road, Ganjagali, P.S. Silliguri And District Darjeeling

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Department Of Revenue And Land Reforms, Old Secretariat, Patna
2. The Principal Secretary, Department Of Revenue And Land Reforms, Old Secretariat, Patna
3. The Collector Cum District Magistrate, Kishanganj, District Kishanganj
4. The Sub - Divisional Officer, Kishanganj, District - Kishanganj
5. The Circle Officer, Thakurganj, District Kishanganj

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 3651 of 2014

1. Krishna Prasad Son Of Late Terash Prasad Resident Of Churli, P.S. - Kurli Koat, Block - Thakurganj And District - Kishanganj

.... Petitioner/s

Versus

1. The State Of Bihar Through Principal Secretary, Department Of Revenue And Land Reforms, Old Secretariat, Patna
2. The Collector Cum District Magistrate, Kishanganj, District Kishanganj

3. The Sub-Divisional Officer, Kishanganj, District - Kishanganj
4. The Circle Officer, Thakurganj, District - Kishanganj

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 3678 of 2014

1. Ravi Kumar Prasad Son Of Sri Sri Ram Babu Prasad Resident Of Birna Bari,
P.O. - Pipriasthan, P.S. - Thakurganj, Block - Thakurganj And District - Kishanganj

.... Petitioner/s

Versus

1. The State Of Bihar Through Principal Secretary, Department Of Revenue And
Land Reforms, Old Secretariat, Patna
2. The Collector Cum District Magistrate, Kishanganj, District Kishanganj
3. The Sub-Divisional Officer, Kishanganj, District - Kishanganj
4. The Circle Officer, Thakurganj, District - Kishanganj

.... Respondent/s

Appearance :

(In CWJC No. 328 of 2014)

- For the Petitioner/s : Mr. Ramesh Kumar Agrawal, Adv.
For the Respondent/s : Mr. Sanjeev Kumar, AC to SC-30

(In CWJC No.5951 of 2014)

- For the Petitioner/s : Mr. Ramesh Kumar Agrawal, Adv.
For the Respondent/s : Mr. Abbas Haider, SC-16.
Mr. Ramesh Chandra, AC to SC-16.

(In CWJC No. 3651 of 2014)

- For the Petitioner/s : Mr. Ramesh Kumar Agrawal, Adv.
For the Respondent/s : Mr. Ashok Kumar. SC-11
Mr. Amresh Kumar, AC to SC-11.

(In CWJC No. 3678 of 2014)

- For the Petitioner/s : Mr. Ramesh Kumar Agrawal, Adv.
For the Respondent/s : Mr. Sheo Shankar Prasad, SC-10.
Mr. Anil Kumar, AC to SC-10.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

CAV JUDGMENT

Date: 27-01-2015

Shivaji Pandey,J

Heard counsel for the parties. As in all the cases, identical
questions have been raised, as such, all the cases are being disposed of by
a common order.

For brevity, the facts of CWJC No. 328 of 2014 is being taken into consideration.

In the present case i.e CWJC No. 328 of 2014, the petitioner has challenged the order dated 28th August 2013 (Annexure-7) passed in Record No. 05 of 2012-13 by the Sub-Divisional Officer, Kishanganj (Respondent no.3) under Section 6(3) of the Bihar Agricultural Land (Conversion for Non-agricultural purposes) Act, 2010 (hereinafter, in short, referred to as the 'Conversion Act') by which he has arbitrarily and illegally levied Rs.1,11,251/- as conversion fee and Rs.155,625/- as penalty being 50 per cent of the conversion fee on the petitioner's land and issued demand notice dated 28th August 2013 (Annexure-8) against the petitioner for payment of total amount of Rs.1,66,876/-.

Filtering the unnecessary facts, petitioner runs a brick kiln in the name and style 'M/s Narayan Tiwari Bricks' situated in village Raja Ganw in the district of Kishanganj. The brick kiln was established in the year 2005-06. As has been claimed, the area of the brick kiln is 1.67 Acre, out of total area of 3.27 acres of land and rest 1.67 acres of land is used for drying the raw bricks for 3 – 4 months and later on it is used for agricultural purpose.

Before establishing the brick kiln petitioner had obtained license under the Bihar Minor Mineral Concession Rules 1972 and also takes Emission Consent Order every year since 2005-06 from the Bihar State Pollution Control Board. It has further been submitted that the petitioner is also holding Tax Identification Number under the provisions

of the Bihar Value Added Tax Act, 2005 and regularly paying VAT to the State of Bihar.

The State of Bihar has enacted the Conversion Act, 2010 which was published in the Bihar Gazette dated 6th April 2010 but the same has been enforced from 1st October 2012 vide Notification No. 362(8) dated 28th April 2011 and published in the Bihar Gazette No. Patna 515 dated 1st October 2012, in pursuance thereof the Government of Bihar has also framed the Bihar Agriculture Land (Conversion for Non-agricultural purposes) Rules, 2011 (hereinafter, in short, to be referred to as the 'Conversion Rules'). The same has been published in the Bihar Gazette dated 16th March 2011.

After publication of the Rules under the Gazette Notification, as has been stated in the writ application, petitioner applied in the prescribed form before the Sub-divisional Officer, Kishanganj for grant of permission under the Conversion Act on 18th January 2012. Further filed an application dated 12th January 2013 for permission to convert the land for running brick kiln stating that 1.60 acres of land is used for kiln and the raw bricks are spread and dried over the rest 1.67 acres of land which is subsequently used for agricultural purpose but no order was passed by the Sub-divisional Officer on the said application filed by the petitioner for grant of permission and, as such, petitioner could not deposit the conversion fee with the State Government.

The Circle Officer, Thakurganj vide his order dated 14th February 2013 passed in Record No. 5 of 2012-13(Annexue-7) has recommended to the Sub-divisional Officer for permission to the



petitioner after realizing the conversion fee and penalty and, accordingly, the Sub-divisional Officer vide order dated 3rd March 2013 directed his Office for issuance of show cause notice in form-5(a) under Section 6(1) of the Conversion Act. Subsequently, a show cause notice was issued on 13th March 2013 in Form-5(a) under Section 6(1) of the Conversion Act with the allegation that the petitioner has converted his agricultural land for non-agricultural purpose in unauthorized manner after commencement of the Conversion Act without obtaining required permission as provided under the conversion Act used the land for non-agriculture purpose was directed to file the show cause why Rs.45,815/- be not levied as conversion fee on the entire area of land i.e. 3.27.21 acres and further Rs.22,908/- be not imposed as penalty being 50 per cent of the conversion fee. But the fact remains that the petitioner did not file the show cause and the Sub-divisional Officer by his order dated 16th May 2013 directed to issue a revised notice, thereby directed to file show cause for not paying Rs.1,11,251/- as conversion fee, including 50 per cent penalty i.e. Rs.55,625/- be not imposed. As per the petitioner, he filed a show cause dated 18th July 2013(Annexure-6) but no hearing was given, no further date was fixed and vide order dated 28th August 2013 confirmed the amount of conversion fee, including the penalty, as has been mentioned in the order.

Counsel for the petitioner has challenged the impugned order on the following grounds:

- i) The conversion Act 2010 has been enacted and notified vide Gazette Notification dated 16th April 2010 stating that the Governor of Bihar has granted his assent on



12th April 2010 but by mere Gazette Notification, the Act has not been enforced in view of Section 1(3) of the conversion Act, the Government has notified the enforcement of the Act vide Notification dated 1st October 2012 giving retrospectivity from the date of its Gazette Notification. It has been submitted that by Gazette Notification, issued under Section 1(3) the Act cannot be made effective from anterior date i.e. the date of Gazette Notification of the Act but it will apply prospectively from the date it has been enforced in terms of notification issued under Section 1(3) of the Conversion Act.

ii) The Conversion Act was not workable so long the Rule was not framed under the Act as the Act provides that certain steps are to be taken for permission in terms of the Rules framed by the State Government for that proformas have been prescribed thereunder. In absence of the Rules the Act was not workable or operational. The Rule has been framed on 15th March 2011, at best it can be said that the Act was made operational from the aforesaid date.

iii) The 3rd point that has been raised, Section 4 of the Conversion Act provides the conversion fee for non-agricultural purpose will be levied at 10 per cent of the market value of the land in the area notified by the Government from time to time but as per the petitioner, no



Gazette Notification has been published declaring value of land either under the Conversion Act or under the Indian Stamp Act, 1899 and in absence of Gazette Notification, it cannot be said the market value has been notified by the State Government which is sine qua non, in absence of the same imposition of fee and penalty is not sustainable in law. The market value of the land determined by the Collector under the Indian Stamp Act, 1899 cannot be utilized for imposition of the conversion fee in absence of the same being notified in the official Gazette. and

iv) The 4th point raised by the petitioner is that the conversion fee can be levied only with regard to the portion of agricultural land which is used for non-agricultural purpose permanently and not for the use for temporary period, as has been claimed that in certain portion of the land, he has established the brick kiln and rest portion of the land is used for drying the raw bricks for 3 – 4 months and thereafter the same is again used for agricultural purpose and, as such, the charge of levy of fee for conversion of agricultural land cannot be extended to those areas which is used for temporary period of 3 – 4 months for drying the raw bricks in the sun light.

AIR 1979 SC 592 (Md. Rashid Ahmad v. State of U.P.) (pg.598).

1998(3) PLJR 686 (M/s Vishnu Sugar Mills Ltd. V. State of Bihar)

(1988(1) SCC 202 (P.Kesavan v. Ammukutty Amma, Para-10)

AIR 1983 Pat 311(M/s Sree Bahariji Mills Lt d. V. State).

1985 BRLJ 92 (Ram Sagar Prasad v. Agriculture Produce Market Committee).

(2010)1 SCC 730 (Rajendra Agricultural University v. Ashok Kumar Prasad).

AIR 1976 SC 263 (Govindlal v. Agr. P.M.Committee).

The counsel for the State has refuted the argument and submitted that the Conversion Act has been enforced and imposed from the date the Governor of Bihar granted assent and the same was notified in the official Gazette. Under Section 1(3) of the Conversion Act, the State Government has been delegated with the power to make enforcement of the Act either prospectively or retrospectively for that the Government has power to issue Notification Section 1(3) of the Conversion Act. The framing of Rule is not the condition precedent for enforcement of the Act. If the Act has provided sufficient mechanism for the operation of the Act, in absence of Rules, it cannot be said that the Act is not workable.

Counsel for the State has relied on the judgments reported in:

AIR 2009 SC 3041 (J.H.Truck Owners Assocn. V. S.A. Coal Dealer & Truck Owner Assocn.)

AIR 1959 All 393 (Banarasi Das v. U.P.Govt., Para-36).

(2000)3 SCC 607 (Dilip v. Mohd. Azizul Haq, Para-9)

AIR 1966 SC 1607 (Ram Parshad v. State of Punjab, Para-17)

AIR 1964 SC 464 (Sajjan Singh v. State of Punjab, Para-12 & 13)

AIR 2005 SC 137 (Virender Singh Hooda v. State of Baryana, Para-30 to

32)

(2009)8 SCC 492 (Janta Truck Owners Assn. v. Shailang Area Coal Dealer and Truck Owner Assn., Para-21, 22, 28).

Before examining the issues that have been raised by the parties, it will be appropriate to take birds' eye view on the provisions of the Conversion Act.

Section 1(1) provides short title, extent and commencement of the Act. Section 1(2) provides that it shall extend to the whole of the State of Bihar, except any area constituted as a municipal area under the Bihar Municipal Act, 2007 or part thereof or which is under a cantonment. The extent of the Act will be the same as provided in the Bihar Tenancy Act, 1885. The Act shall not be applicable to any extent if the area comprising the agriculture land is notified as commercial, industrial or urban area either by publication of Master Plan or by any other mode. Section 1(3) provides that the Act shall come into force on such date as the Government by notification appoint.

Section 2 is the definition Section, in Section 2(a) agriculture land has been defined as land used for agriculture and allied activities. Section 2(b) defines conversion which provides change of land used from agriculture to non-agriculture purposes. Section 2(g) defines the 'competent authority' which means the Sub-divisional Officer in whose jurisdiction the concerning agriculture land or a part thereof is situated. Section 2(h) defines the 'prescribed procedure' which means procedure prescribed by Rules or by any



government order made by the Government under this Act. Notification has been defined under Section 2(i) which means a notification published in the Bihar Gazette and the word 'notified' shall be construed accordingly. Section 2(l) defines 'market value' which means the value of the agriculture land as determined by the Collector under the provisions of the Indian Stamp Act, 1899.

Section 3 of the Conversion Act deals with Land use Conversion where in sub-section (1) it states that agriculture land in the State shall not be used for non-agriculture purpose, without the prior permission of the competent authority. Sub-section (2) provides that an application for such conversion of agriculture land for non-agriculture purpose shall be made before the competent authority in the form prescribed along with conversion fee as notified under Section 4. Sub-section (3) provides that if the conversion fee so paid as per sub-section (2) is found to be less than the fee prescribed, a notice shall be issued by the competent authority to the applicant within 30 days of the receipt of the application intimating him the deficit amount. As per sub-section(4), the applicant shall deposit the deficit fees indicated in the notice issued under sub-section(3) within 30 days of the receipt of such notice. Sub-section(5) of Section 3 provides that in case the applicant does not deposit the deficit fees indicated in the sub-section (3) within 30 days of the receipt of such notice, the competent authority shall issue a second notice to the applicant directing him therein to deposit the deficit fee within 15 days of the receipt of notice. If the applicant fails to comply with the



direction, his application is liable to be rejected. Under sub-section(6) the competent authority may reject the application either in full or in part within 90 days from the date of receipt of the application or receipt of the deficit amount whichever is later, provided that in case such applications are rejected, the reasons for such rejection shall be recorded in writing and communicated to the applicant. In case the aforesaid conversion has been made after the coming into force of the Bihar Act 21 of 1993 and prior to the commencement of this Act, it will be incumbent on the person responsible for the conversion to apply to the competent authority stating therein the fact of the said conversion within a period of 6 months from the date of the commencement of this Act along with conversion fee provided in Section 4 of the Act and along with an additional conversion fee of 1 per cent of the current market value of the land concerned, failing which the competent authority shall proceed in accordance with section 6 of the Act. It has further been provided that if conversion has been made prior to the commencement of the Bihar Act 21 of 1993 and the person concerned requires and applies for a conversion order, he may be allowed to convert, subject to the provisions of this Act and on payment of the conversion fee as specified in Section 4(1) of the Act. Sub-section(7) of Section 3 provides that on receipt of the application, the competent authority shall proceed according to the provisions of the Act provided that if no order is passed on such application, within the time prescribed in sub-section(6), the applicant concerned shall intimate the competent authority by

registered post regarding the non-receipt of the desired permission by him. On the receipt of such intimation, the competent authority shall grant the required permission within a fortnight of such receipt, otherwise the required permission shall be deemed to have been given.

Further it has been provided that if the application has been rejected in part or full, the conversion fee as deposited by the applicant shall be refunded to him in proportion of the land against which the permission could not be granted.

Section 4 is the charging Section to provide power to levy and collect conversion fee and the same provides that with effect from the date of the commencement of this Act, every occupier or owner of agriculture land shall have to pay a conversion fee for non-agriculture purposes, at the rate of 10 per cent of the market value of the land in areas 'as may be notified by the Government from time to time'. Sub-section (2) provides that after permission for conversion of his agriculture land for non-agriculture purposes is accorded the land owner shall pay rent/cess in respect of the portion of land for which the permission has been accorded at the rate of ten times of the rent/cess of that portion of land being paid by him prior to such conversion under the relevant provisions of the Bihar Tenancy Act 1995 or Rules/Instructions, if any, issued thereunder.

Section(5) provides that the competent authority i.e. the Sub-divisional Officer shall be competent to pass order in respect of the land situated within his territorial jurisdiction. Sub-section (2) of



Section 5 provides that the competent authority may refuse to convert the land on the ground of adequate conversion fee having not been paid or that the conversion is likely to cause a public nuisance, or that the landholder is unable or unwilling to comply with the conditions that may be imposed under sub-section (3) of the Section. Sub-section(3) provides that the Sub-Divisional Officer may impose conditions for conversion for following objects, namely, in order to secure the public health, safety and convenience and in case of land which is to be used as building sites, in order to ensure further that the dimensions, arrangement and accessibility of the sites are adequate for the health and convenience of occupiers or are suitable locally. Sub-section (4) of Section 5 provides that if the purpose of any land has been converted in contravention of an order passed or of a condition imposed under any of the foregoing sub-sections, the competent authority may serve a notice on the person responsible for such contravention, directing him, to use the land for its original purpose within 6 months of the service of the notice or to take such other steps as may be required in order that the land may be used for its original purpose, or that the condition may be satisfied. In failure to comply the direction, the competent authority under that sub-section may take necessary steps to ensure compliance of his order and any cost incurred in doing so will be recoverable from such person as if it were an arrear of land revenue.

Section 6(1) of the Act provides that the competent authority may initiate proceeding suo motu or on a report submitted by the Anchal Adhikari concerned regarding the conversion of

agriculture land for non-agriculture purpose by the person after the commencement of this Act. After receipt of information, the competent authority initiated proceeding, after giving due hearing, would pass order giving direction to pay requisite conversion fee, along with penalty as specified in sub-section(3) of this Section.

Section 69(2) of the Act provides, if the competent authority is of opinion that any agriculture land has been put to non-agriculture use without obtaining the permission as provided for under Section 3 the agriculture land shall be deemed to have been converted into non-agriculture purpose.

Section 6(3) of the Act provides that in case of unauthorized conversion, the competent authority shall impose a penalty of 50 % of the conversion fee over and above the conversion fee for the said land specified under Section 4(1) of the Act.

Section 6(4) provides the competent Authority would impose penalty for unauthorized conversion at the rate of 50 per cent of the conversion fee along conversion fee and the same is to be paid within 3 months of the order in such manner, as may be specified.

Section-7 talks about exemption from conversion fees and provides that conversion may be allowed in a case, issue and policy appertaining to industry notified as such in this regard by the Department of Industry, Government of Bihar, but no conversion fee shall be payable therein. It further provides that the applicant may apply to the competent authority for this who will allow conversion as per the provisions of this Act.

Section 8 provides that no permission for conversion shall be required in respect of the following:

- a) Land owned by the State Government.
- b) land owned by a local authority which is used for any community purpose so long as the land is not used for commercial purpose.
- c) land used for religious, social or charitable purposes so long as the land is not used for commercial purpose,
- d) land used for household micro-industries involving traditional occupation, not exceeding one acre,
- e) land used for small shops subject to maximum of 500 square feet,
- f) land used for such other purposes as may be notified by the Government from time to time, and
- g) land use specified in Section 23(2) of The Bihar Tenancy Act, 1885.

There is a provision for appeal and revision under Section 9 of the Act against the order of the competent authority and Section 10 speaks about overriding effect over the other laws for the time being in force, custom, uses having the force of law or contract or judgment, decree or order of a court or any other authority.

Section 11 provides the Government will have a jurisdiction to issue direction for giving effect to the provisions of the Act. Section 12 stipulates the bar of jurisdiction. Section 14 relates to power to remove difficulties, provides that if any difficulty arises in giving effect to the



provisions of this Act, the Government may, by an order published in the Bihar Gazette makes such arrangements not consistent with the provision of this Act, as it appears to be necessary or expedient for removing the difficulty and Section 15 authorizes the Government to frame the Rule and publish the same by necessary notification for the purpose of carrying out the provisions of this Act.

Giving retrospective effect to the Act.

Let us examine the first point as to whether the Government has jurisdiction to make the Act effective from the retrospective date i.e. the date beyond the date of Notification published in the official Gazette in terms of Section 1(3) of the Act i.e. from the date the Act has been passed by the Legislature of the State.

The principle of retrospectivity of the Act has come for discussion quite often at different forums and fields. The Cardinal principle that has emerged in every discussion is that the Parliament and the State Legislature have plenary powers of legislation within their legislative field committed to them and subject to certain constitutional restrictions, they can legislate prospectively as well as retrospectively. Every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation but the rule in general is applicable where the object of the statute is to effect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to effect existing rights, it is deemed to be prospective only. The provisions which touch a right in existence at the passing of the



statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. Every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect. The logical corollary of the general rule is that retrospective operation is not taken to be intended, unless that intention is manifested by the express words or necessary implication. There is a subordinate rule to the effect that a statute or a section in it is, not to be construed so as to have larger retrospective operation than its language renders necessary.

In *Md. Rashid Ahmad v. the State of U.P.* reported in AIR 1979 SC 592 the principles of retrospectivity was one of the subject matter for consideration before the Hon'ble Supreme where the Hon'ble Court has said that the retrospective operation is not to be given to the statute so as to impair an existing right or obligation other than as regards the matter of procedure unless that effect cannot be avoided without doing violence to the language of enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only. It will be apt to quote Para-28 of the judgment which is follows:

Para-28. Perhaps no rule of construction is more firmly established than this - that retrospective operation is not to be given to a statute so as to impair an existing right or obligation other than as regards the matter of procedure, unless that effect



cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in a language which is fairly capable of either interpretation, it ought to be construed as prospective only. But where, as here, it is expressly stated that an enactment shall be retrospective, the courts will give it such an operation. It is obviously competent for the legislature, in its wisdom, to make the provisions of an Act of Parliament retrospective. That is precisely the case here. In *Quinn v. Prairiedale*, (1958) 25 WWR 241 where a subsequent enactment provided that the relevant section should be deemed never to have been contained in the earlier statute, it was held to be sufficient to rebut the presumption against retrospectivity.

In *K.S.Paripoornan v. State of Kerala* reported in (1994)5 SCC 593 the Hon'ble Supreme Court has considered the obligation of Section 23(a) of the Land Acquisition Act retrospectively. There the Hon'ble Court considered the principle governing the retrospectivity of the Act. The Hon'ble Court has reiterated the same view that there will not be retrospective construction, unless the language clearly makes such construction necessary. In other words, the amendment will usually take effect only from the date of its enactment and will have no application prior to transactions, in the absence of an expressed intent or an intent clearly implied to the contrary. In deed, there is a presumption that an amendment shall operate prospectively. The Hon'ble Supreme Court has further said that the statute would not operate prospectively if it creates new right and duties arising out of the past transaction. The question



whether a particular statute operates prospectively only or has retrospective operation also will have to be determined on the basis of the effect it has on existing rights and obligations, whether it creates new obligations or imposes new duties or levies new liabilities in relation to past transactions. All it depends on intention of Legislature It is relevant to quote Para 64, 65 and 66 of the judgment which is as follows:

“Para:64 A statute dealing with substantive rights differs from a statute which relate s to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive rights is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is a clear indication that such was not the intention of the legislature. A statute is regarded as retrospective if it operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. By virtue of the presumption against retrospective applicability of laws dealing with substantive rights transactions are neither invalidated by reason of their failure to comply with formal requirements subsequently imposed, nor open to attack under powers of avoidance subsequently conferred. They are also

not rendered valid by subsequent relaxations of the law, whether relating to form or to substance. Similarly, provisions in which a contrary intention does not appear neither impose new liabilities in respect of events taking place before their commencement, nor relieve persons from liabilities then existing, and the view that existing obligations were not intended to be affected has been taken in varying degrees even of provisions expressly prohibiting proceedings.

Para-65. These principles are equally applicable to amendatory statutes. According to Crawford:

"Amendatory statutes are subject to the general principles relating to retroactive operation. Like original statutes, they will not be given retroactive construction, unless the language clearly makes such construction necessary. In other words, the amendment will usually take effect only from the date of its enactment and will have no application to prior transactions, in the absence of an expressed intent or an intent clearly implied to the contrary. Indeed there is a presumption that an amendment shall operate prospectively."

Para-66. The dictum of Lord Denman, C.J. in *R. v. St. Mary, Whitechapel*¹ that a statute which is in its direct operation prospective cannot properly be called a



retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing, which has received the approval of this Court, does not mean that a statute which is otherwise retrospective in the sense that it takes away or impairs any vested right acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect to transactions or considerations already past, will not be treated as retrospective. In *Alexander v. Mercouris*¹⁹ Goff, L.J., after referring to the said observations of Lord Denman, C.J., has observed that a statute would not be operating prospectively if it creates new rights and duties arising out of past transactions. The question whether a particular 1 (1848) 12 QB 120, 127 : 17 LJMC 172 : 116 ER 811 19 (1979) 3 All ER 305 : (1979) 1 WLR 1270⁶³⁶ statute operates prospectively only or has retrospective operation also will have to be determined on the basis of the effect it has on existing rights and obligations, whether it creates new obligations or imposes new duties or levies new liabilities in relation to past transactions. For that purpose it is necessary to ascertain the intention of the legislature as indicated in the statute itself.”

The Hon’ble Supreme Court in the case of *Janardan Reddy v. The State*, reported in AIR 1951 SC 124 considered the principle of

retrospective operation of the Act where it has been said that every legislation is prospective unless it is given retrospective effect, expressly or by necessary intendment in the following terms:

Para-7: “In our opinion, the contention of the Attorney General on this point is correct. There appears no reason why in the present case the normal mode of interpreting a legislation as retrospective only should be departed from. It was contended by Mr. Pritt that the interpretation sought to be put by the State on Article 136 will require the insertion of the word ‘hereafter’ in the clause for which there was no justification. We are unable to accept this contention because prima facie every legislation is prospective and even without the use of the word ‘hereafter’ the language of Article 136 conveys the same meaning.

Again the matter came up how the statute has to be read into in the case of Punjab Tin Supply Co. v. Central Government, reported in AIR 1984 SC 87 where the question arose about the operation of notification issued under Section 3 of the Act retrospectively and the Hon’ble Court said that the substantive Act generally operates prospectively and there is a presumption against retrospectivity, if they affect the vested right and obligation, unless the legislative intention is clear and conclusive. It is relevant to quote Para 17 of the judgment which is as follows:

Para -17. All laws which affect substantive rights generally operate prospectively and @ page- SC 94 there is a presumption against their retrospectivity if they affect



vested rights and obligations unless the legislative intent is clear and compulsive. Such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. Hence the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. If the language is clear and unambiguous effect will have to be given to the provision in question in accordance with its tenor. If the language is not clear then the Court has to decide whether in the light of the surrounding circumstances retrospective effect should be given to it or not.

In the case of *Garikapati v Subbiah Choudhry* reported in AIR 1957 SC 540 the Hon'ble Supreme Court dealt with the proposition retrospectivity in the following manner. The golden rule of construction 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 a claim in litigation at the time when the Act was passed. It will be relevant to quote Para-25 of the judgment which is as follows:

Para-25 In construing the article of the Constitution we must bear in mind certain cardinal rules of construction. It has been said in *Hough v. Windus*, 1884-12 QBD 224 at p.237 (V) that "statutes should be interpreted, if possible, so as to respect



vested right. "The golden rule of construction 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 a claim in litigation at the time when the Act was passed. Leeds and County Bank Ltd. v. Walker, (1883) 11QBD 84 at p.91(W); Moon v. Durden, (1848)2 Ex 22:76 RR 479 at p.495 (X). The following observation of Rankin C.J. in Sadar Ali v. Dalimuddin, (K) (supra) at p.520 (of ILR Cal):(at p.643 of AIR)is also apposite and helpful: "Unless the contrary can be shown the provision which takes sway the jurisdiction is itself subject to the implied saying of the litigant's right. "In Janardan Reddy v. The State, 1950 SCR 940 at pp.946, 947) : (AIR 1951 SC 124 at pp.126-127)(Y) Kania C.J. in delivering the judgment of the Court observed that our Constitution is generally speaking prospective in its operation and is not to have retroactive operation in the absence of any express provision to that effect. The same principle was reiterated in Keshavan Madhava Menon v. State of Bombay, 1951 SCR 228:(AIR 1951 SC 128) (Z) and finally in Dajisaheb Mane v. Shankar Rao Vithal Rao. 1955-2 SCR 872 at pp.876-877: ((S) AIR 1956 SC 29 at p.31) (Z1) to which reference will be made in greater detail hereafter."

Again the Hon'ble Supreme Court has considered the principles of law on prospectivity or retrospectivity in the case of Suhash Pophale v.

Oriental Insurance Co. Ltd. reported in (2014)4 SCC 657. It will be relevant to quote Para- 45 to 54 of the judgment which is as follows:

“Para-45. There is another aspect of the matter. Mr. Raval, learned senior counsel for the respondents has contended that the appellants submission that he was protected under the Bombay Rent Act, and that protection has been continued under the Maharashtra Rent Control Act, 1999, is not available before the Estate Officer. The question, therefore, comes to our mind as to what happens to the rights of the appellant made available to him under the State Act at a time when the erstwhile company had not merged in the first respondent Government Company? Can it be said that he was occupying the premises without the authority for such occupation? Can it be said that with the application of the Public Premises Act to the premises occupied by the appellant, those rights get extinguished? It has been laid down by this Court time and again that if there are rights created in favour of any person, whether they are property rights or rights arising from a transaction in the nature of a contract, and particularly if they are protected under a statute, and if they are to be taken away by any legislation, that legislation will have to say so specifically by giving it a retrospective effect. This is because prima facie every legislation is prospective (see para 7 of the Constitution Bench judgment in Janardan

Reddy Vs. The State reported in AIR 1951 SC

124). In the instant case, the appellant was undoubtedly protected as a deemed tenant under Section 15A of the Bombay Rent Act, prior to the merger of the erstwhile insurance company with a Government Company, and he could be removed only by following the procedure available under the Bombay Rent Act. A deemed tenant under the Bombay Rent Act, continued to be protected under the succeeding Act, in view of the definition of a tenant under Section 7(15)(a)(ii) of the Maharashtra Rent Control Act, 1999. Thus, as far as the tenants of the premises which are not covered under the Public Premises Act are concerned, those tenants who were deemed tenants under the Bombay Rent Act continued to have their protection under the Maharashtra Rent Control Act, 1999. Should the coverage of their premises under the Public Premises Act make a difference to the tenants or occupants of such premises, and if so, from which date?

46. It has been laid down by this Court through a number of judgments rendered over the years, that a legislation is not be given a retrospective effect unless specifically provided for, and not beyond the period that is provided therein. Thus, a Constitution Bench held in Garkiapati Veeraya Vs. N. Subbiah Choudhry reported in



AIR 1957 SC 540 that in the absence of anything in the enactment to show that it is to be retrospective, it cannot be so constructed, as to have the effect of altering the law applicable to a claim in litigation at the time when the act was passed. In that matter, the Court was concerned with the issue as to whether the appellants right to file an appeal continued to be available to him for filing an appeal to the Andhra Pradesh High Court after it was created from the erstwhile Madras High Court. The Constitution Bench held that the right very much survived, and the vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

47. Similarly, in Mahadeolal Kanodia Vs. The Administrator General of West Bengal reported in AIR 1960 SC 936, this Court was concerned with the retrospectivity of law passed by the West Bengal legislature concerning the rights of tenants and in paragraph 8 of the judgment the Court held that:-

The principles that have to be applied for interpretation of statutory provisions of this nature are well-established. The first of these is that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective; they are retrospective only if by express words or by necessary

implication.

48. In *Amireddi Raja Gopala Rao Vs. Amireddi Sitharamamma* reported in AIR 1965 SC 1970, a Constitution bench was concerned with the issue as to whether the rights of maintenance of illegitimate sons of a sudra as available under the Mitakshara School of Hindu Law was affected by introduction of Sections 4, 21 and 22 of the Hindu Adoption and Maintenance Act, 1956. The Court held that they were not, and observed in paragraph 7 as follows:-

A statute has to be interpreted, if possible so as to respect vested rights, and if the words are open to another construction, such a construction should never be adopted.

49. The same has been the view taken by a bench of three Judges of this Court in *J.P. Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad Vs. Induprasad Devshanker Bhatt* reported in AIR 1969 SC 778 in the context of a provision of the Income Tax Act, 1961, in the matter of reopening of assessment orders. In that matter the Court was concerned with the issue as to whether the Income Tax Officer could re-open the assessment under Section 297(2) (d) (ii) and 148 of the Income Tax Act, 1961, although the right to re-open was barred by that

time under the earlier Income Tax Act, 1922. This Court held that the same was impermissible and observed in paragraph 5 as follows:-

The reason is that such a construction of Section 297 (2) (d) (ii) would be tantamount to giving of retrospective operation to that section which is not warranted either by the express language of the section or by necessary implication. The principle is based on the well-known rule of interpretation that unless the terms of the statute expressly so provide or unless there is a necessary implication, retrospective operation should not be given to the statute so as to affect, alter or destroy any right already acquired or to revive any remedy already lost by efflux of time.

50. In Arjan Singh Vs. State of Punjab reported in AIR 1970 SC 703, this court was concerned with the issue of date of application of Section 32KK added into the Pepsu Tenancy and Agricultural Lands Act, 1955. This Court held in paragraph 4 thereof as follows:-

It is a well-settled rule of construction that no provision in a statute should be given retrospective effect unless the legislature by express terms or by necessary implication has made it retrospective and that where a provision is made retrospective, care should be taken not to extend its retrospective effect beyond what was

intended.

51. In *Ex-Capt., K.C. Arora Vs. State of Haryana* reported in 1984 (3) SCC 281, this Court was concerned with a service matter and with the issue as to whether an amendment in the law could take away the vested rights with retrospective effect. The Court held that such an amendment would be invalid if it is violative of the present acquired or accrued fundamental rights of the affected persons.

52. In the case of *K.S. Paripoornan Vs. State of Kerala* reported in AIR 1995 SC 1012, a Constitution Bench of this Court was concerned with the retrospective effect of Section 23(1A) introduced in the Land Acquisition Act. While dealing with this provision, this Court has observed as follows:-

A statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive rights is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is a clear indication that such was not the intention of the legislature. A statute is regarded retrospective if it



operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. By virtue of the presumption against retrospective applicability of laws dealing with substantive rights transactions are neither invalidated by reason of their failure to comply with formal requirements subsequently imposed, nor open to attack under powers of avoidance subsequently conferred. They are also not rendered valid by subsequent relaxations of the law, whether relating to form or to substance. Similarly, provisions in which a contrary intention does not appear neither impose new liabilities in respect of events taking place before their commencement, nor relieve persons from liabilities then existing, and the view that existing obligations were not intended to be affected has been taken in varying degrees even of provisions expressly prohibiting proceedings. (See: Halsbury's Laws of England, 4th Edn. Vol. 44, paras 921, 922, 925 and 926).

53. In the case of Gajraj Singh Vs. State Transport Appellate Tribunal reported in AIR 1997 SC 412, the Court was concerned with the provisions of Motor Vehicle Act and repealing of some of its provisions. In para 30 referring to Southerland on Statutory Construction (3rd

Edition) Vol.I, the Court quoted the following observations:-

Effect on vested rights Under common law principles of construction and interpretation the repeal of a statute or the abrogation of a common law principle operates to divest all the rights accruing under the repealed statute or the abrogated common law, and to halt all proceedings not concluded prior to the repeal. However, a right which has become vested is not dependent upon the common law or the statute under which it was acquired for its assertion, but has an independent existence. Consequently, the repeal of the statute or the abrogation of the common law from which it originated does not efface a vested right, but it remains enforceable without regard to the repeal.

In order to become vested, the right must be a contract right, a property right, or a right arising from a transaction in the nature of a contract which has become perfected to the degree that the continued existence of the statute cannot further enhance its acquisition.

54. Having noted the aforesaid observations, it is very clear that in the facts of the present case, the appellants status as a deemed tenant was accepted under the state enactment, and therefore he could not be said to be in unauthorised occupation. His right granted by the



state enactment cannot be destroyed by giving any retrospective application to the provisions of Public Premises Act, since there is no such express provision in the statute, nor is it warranted by any implication. In fact his premises would not come within the ambit of the Public Premises Act, until they belonged to the respondent No.1 i.e. 1.1.1974.

The corollary is that if the respondent No. 1 wanted to evict the appellant, the remedy was to resort to the procedure available under the Bombay Rent Act or its successor Maharashtra Rent Control Act, by approaching the forum thereunder, and not by resorting to the provisions of the Public Premises Act.”

From the above proposition it is very clear that unless the statute shows by express or by necessary intendment that the Act has retrospective operation, it will have prospective effect and in that background we will have to consider the present issue that has been brought before this Court.

Section 1(3) of the Conversion Act provides that it shall come in operation from the date the Government appoints by notification in the official Gazette. As has been discussed above, on reading of the provisions of the Conversion Act it specifically states in what manner the Act has been operational and applicable specifies three contingencies situation deals with conversion of the land first that the land has been converted prior to the Act 21 of 19932, the 2nd situation deals

with where conversion of land has been made after operation of Act 21 of 1993 and prior to commencement of this Act and in the 3rd situation, the conversion of land has been made after commencement of this Act. The conversion Act stipulates certain paraphernalia are to be performed, either by the person who has already converted the land or is intending to convert the land.

Counsel for the petitioner has put emphasis that Section 1(3) of the Conversion Act has used the word 'shall' which indicates it is mandatory. Every time the use of expression 'shall' indicates its colour mandatory but it is not always true rather it is dependant on nature and colour of statute.

The provisions of the Conversion Act prima facie do show that the Act will be made operational from the date it is notified by the State Government, not prior to the Notification. So this Court on consideration of the above proposition arrives to the conclusion that the Act will be operational from the date it is notified by the State Government, the State Government by notification cannot make the operational form anterior date i.e. from the date when it has been passed and received assent from the Hon'ble Governor, as it appears to this Court the Section 1(3) of the Act does not authorize to give retrospectivity to the Statute.

The 2nd point that has been raised by the State is that the State has been given power to identify the date for its operation but that does not mean that the State has been given the power to make it retrospective when the legislation from its intendment shows that it will

have prospective effect from the date of Notification by the State Government.

Counsel for the State has submitted that there is no illegality in giving effect to the Conversion Act from the date it has received the assent of the Hon'ble Governor as it will be deemed that the Act has commenced from the date it received assent of the Hon'ble Governor, not from the date it has been notified by the Government.

There is no trouble in accepting the submission of the State that the Act has been brought into existence after assent of the Governor but the Act has not become operational, the provisions of the Act have been made operational from the date it has been notified by the State Government. The existence of an Act is one matter but making the law enforced is another matter. When the Legislature is intending the Act will not be operational unless certain condition is fulfilled and without its fulfillment, the provisions of the Act cannot be said to have become operational.

This issue had come for consideration before the Hon'ble Supreme Court in the case of Orissa State V. Chandrashekhar, reported in AIR 1970 SC 398). It relates to Ceiling Act, where also similar issue has been dealt with by the Hon'ble Supreme Court while considering the enforcement of the provisions of the Ceiling Limit provided under the Ceiling Act. The fact of that case was that Orissa Land Reforms Act received assent of the President on October 17, 1960 by Section 1(3) of the Principal Act. It was provided that the Act would come into force in whole or in part on the date or dates as the Government may from time to



time by Notification appoint and different dates may be appointed for different provisions of the Act. By Notification certain provisions of the Ceiling Act other than contained in Chapter-III and IV were brought into force. Chapter-IV deals with Section 38 to 52 providing ceiling limit of the land was not brought into operation. The Legislature of the State of Orissa amended the Principal Act of Act 13 of 1965. Amendments were made in the Principal Act where the ceiling area was provided.

There the question arose for consideration about the application of the ceiling area and the Court was considering as to when the ceiling limit prescribed thereby became effective and the rest land will vest in the State Government. The Hon'ble Supreme Court said that law cannot be said to be in force unless it is brought into operation by legislative enactment or by the exercise of authority by delegate empowered to bring into operation.

The Hon'ble Supreme Court held that the Act may not be a law in force until the power is exercised by the State Government to issue an appropriate notification. The provisions will be deemed to be a law in force. It will be appropriate to quote Para-5, 7, 8 & 9 which are as follows:

“Para 5 : Before the High Court it was urged on behalf of the land-holders that when the principal Act was enacted it became law in force, and the ceiling limit prescribed thereby became effective even though Ch. IV was not extended by a notification under Section 1 (3) of the Act, and since the subsequent legislation seeks to restrict the ceiling limit and to vest the



surplus land in the Government under Section 45 as amended, there is compulsory acquisition of land which may be valid only if the law provides for payment to the land-holder for extinction of his interest, the market value of that part of the surplus land which is within the ceiling limit under the principal Act. This argument found favour with the High Court. In their view the expression "law in force" must be "construed only in the constitutional sense and not in the sense of its actual operatives", and on that account it must be held that "there was a ceiling limit already provided by the principal Act as it was law in force within the meaning of that expression as used in the second proviso to Article 31-A". They proceeded then to hold that Section 47 of the Act as amended provided for payment of compensation at a rate which is less than the market value of the land falling within the ceiling limit as originally fixed under Act 16 of 1960, and the guarantee of the second proviso to Article 31-A of the Constitution is on that account infringed. We are unable to accept this process of reasoning. The right to compensation which is not less than the market value under any law providing for the acquisition by the State of any land in an estate in the personal cultivation of a person is guaranteed by the second proviso only where the land is within the ceiling limit applicable to him under any law for the time being in force. A law cannot be said to be in force unless it is brought into operation by legislative enactment, or by the

exercise of authority by a delegate empowered to bring it into operation. The theory of a statute being in operation in a constitutional sense" though it is not in fact in operation has, in our judgment, no validity.

Para 7 The decision of this Court (Sx in?) A. Thangal Kunju Mudaliar v. M. Ven Kitachalam Potti, (1955) 2 SCR 1196 = (AIR 1956 SC 246) on which the High Court relied lends no support to the views expressed by them. In that case the Travancore State Legislature enacted Act 14 of 1124 (M. E.) to provide for investigating cases of evasion of tax. The Act was to come into force by Section 1 (3) on the date appointed by the State Government by notification. The States of Travancore and Cochin merged on July 1, 1949 and formed the United State of Travancore and Cochin. By Ordinance 1 of 1124 (M. E.) all existing laws of the Travancore State were to continue in force in the United State. By a notification the Government of the United State brought the Travancore Act 14 of 1124 (M. E.) into force, and referred cases of certain tax-payers for investigation to the Commission appointed in that behalf. The tax-payers challenged the authority of the Commission to investigate the cases. They contended that the Travancore Act 14 of 1124 (M. E.) not being a law in force when the United State was formed the notification bringing the Act into force was ineffective. The Court rejected that plea. Section 1 (3) of Travancore Act 14 of 1124 (M. E.) was existing law on July 1,



1949 and continued to remain in force by virtue of Ordinance 1 of 1124 (M. E.) The notification issued in exercise of the power under Section 1 (3) of the Travancore Act 14 of 1124 (M. E.), reference of the cases of the petitioners, the appointment of the authorised officials and the proceedings under the Act could not be questioned because Section 1 (3) was existing law on July 1, 1949.

Para 8 In A. Thangal Kunju Musaliar's case, (1955) 2 SCR 1196 = (AIR 1956 SC 246) the contention that Travancore Act 14 of 1124 (M. E.) was not law in force until a notification was issued bringing into operation the provisions of the Act, authorising the appointment of a Commission, and referring the cases of tax-payers to the Commission, was rejected. The Court held that Section 1 (3) was in operation on July 1, 1949 and the power to bring into force the provisions of the Travancore Act was exercisable by the successor State. It was not held that the other provisions of the Act were in force even before an appropriate notification was issued. In the case in hand Section 1 (3) of the principal Act was in force, but Ch. IV of the Act was not brought into force. The argument that provisions of the Act which by a notification could have been but were not brought into force, must still be deemed to be law in force, derives no support from the case relied upon.

Para 9 Section 1 (3) of Act 16 of 1960 is undoubtedly a law

in force, but until the power is exercised by the State Government to issue an appropriate notification the provisions of Ch. IV could not be deemed to be law in force, and since no notification was issued before Ch. IV of the principal Act was repealed, there was no ceiling limit applicable to the landholders under any law for the time being in force which attracted the application of the second proviso to Article 31-A.

On the basis of the aforesaid proposition of law, though the Act has come into existence but the provisions of the Act is not to be treated in force till the Notification was issued by the State Government, specifically notifying the enforcement of the Act.

In the present case, admittedly though the Act has come into effect on 12th April 2014 but the provisions of the Act has been in force through Notification dated 1st October 2012. So this Court is of the view that the contention of the counsel for the State that the Act cannot be deemed to have been in force from 12th April 2010 cannot be accepted and the same is rejected.

This Court is of the view that the Act has come into force from the date of notification issued by the State Government and the nature of the statute shows that it has prospective effect and cannot be given retrospective effect by a delegate, looking to the nature of structure of the Statute does not authorize to make it effective from the anterior date.

The next question raised by the Counsel for the petitioners is that absence of the Rule is not workable.

Counsel for the petitioner has submitted that the nature of duty

that has been imposed for getting approval for converting the land other than for agricultural purpose requires certain formalities to be done by the land holders and there the Act has provided the form has to be filed as provided under the Rules.

As Section 3 of the Conversion Act stipulated that an application to be filed before the competent authority for conversion of agricultural land for non-agricultural purpose in the form prescribed along with conversion fee. Section 3(3) of the Act also stipulates that in case of non-deposit of the fee again the competent authority will issue a second notice to the applicant to deposit the deficit court-fee. Section 3(6) stipulates about the information to the applicant with respect to accepting the proposal for conversion of the land or part land or reject the application entirely. The Act shows that Section 3 specifically provided the application in the prescribed form along with the conversion fee.

The principle governing this field is that if the statute itself is inbuilt and can be made operational even without framing of the Rule, then workability of the Act is not dependent on the framing of the Rules. When the Legislature enacts a skeleton Act leaving the other important mechanism to be provided by the Executive, in absence of the same, the provisions of the Act cannot be made workable unless the Rule is framed. If the statute is workable even without framing of the Rule, the same has to be given effect to.

That principle has been enunciated in the case of J.H. Truck Owners Association v. S.A.Coal Dealer & Truck Owner Association, reported in AIR 2009 SC 3041 where the Hon'ble Supreme



Court has said that if the state provides certain things to be done subject to Rules, any action taken without framing the Rules would not render any action invalid. If the statute is workable even without framing of Rule the same has to be given effect to. The law itself, except in certain situation, does not envisage vacuum. It will be apt to quote Para-24 and 31 of the judgment which is as follows:

“Para-24. The Memorandum was issued in the name of the Governor. It is not in dispute that it was authenticated in terms of clause (2) of Article 166 of the Constitution. The power was exercised by the State under the provisions of the Act. The said order was to remain in force till Rules are framed in the prescribed manner.”

The provisions of the Act mandate that the unladen weight and laden weight must be determined. Indisputably, weighing devices had to be provided for the said purpose. It is true that for the said purpose Rules may have to be framed. It is, however, a well settled principle of law that even in a case where the statute provides for certain things to be done, subject to Rules, any action taken without framing the Rules would not render any action invalid. If a statute is workable even without framing of the Rules, the same has to be given effect to. The law itself except in certain situations does not envisage vacuum.

Para-31. We may, in this behalf, refer to a decision of this Court in *T. Cajee v. U. Jormanik Siem and another* [(1961) 1 SCR 750]. The question which arose for



consideration therein was as to whether in absence of any law regulating the appointment and succession of Chiefs and Headmen, a notice issued to the respondent therein to show cause as to why he should not be removed from his office, was valid. The respondent questioned the said legality of the show cause notice as also the order of suspension passed against him on the grounds :- AIR 1961 SC 276

"(i) That he could not be removed by administrative orders but only by making a law;

(ii) that the Executive Committee could not take any action in this case, and

(iii) that the order of suspension was ultra vires."

Wanchoo, J., speaking for the Court opined as under :-

"The High Court seems to be of the view that until such a law is made there could be no power of appointment of a Chief or Siem like the respondent and in consequence there would be no power of removal either. With respect, it seems to us that the High Court has read far more into para 3(1)(g) than is justified by its language. Para 3(1) is in fact something like a legislative list and enumerates the subjects on which the District Council is competent to make laws. Under para 3(1)(g) it has power to make laws with respect to the appointment or succession of Chiefs or Headmen and



this would naturally include the power to remove them. But it does not follow from this that the appointment or removal of a Chief is a legislative act or that no appointment or removal can be made without there being first a law to that effect. The High Court also seems to have thought that as there was no provision in the Sixth Schedule in terms of Articles 73 and 162 of the Constitution, the administrative power of the District Council would not extend to the subjects enumerated in para 3(1). Now para 2(4) provides that the administration of an autonomous district shall vest in the District Council and this in our opinion is comprehensive enough to include all such executive powers as are necessary to be exercised for the purposes of the administration of the district. It is true that where executive power impinges upon the rights of citizens it will have to be backed by an appropriate law; but where executive power is concerned only with the personnel of the administration it is not necessary - even though it may be desirable - that there must be laws, rules or regulations governing the appointment of those who would carry on the administration under the control of the District Council.

"The said decision has been noticed by this Court in Surinder Singh v. Central Govt., [(1986) 4 SCC

667]. It was held therein :- AIR 1986 SC 2166

"6. The High Court has held that the disposal of property forming part of the compensation pool was "subject" to the rules framed as contemplated by Sections 8 and 40 of the Act and since no rules had been framed by the Central Government with regard to the disposal of the urban agricultural property forming part of the compensation pool, the authority constituted under the Act had no jurisdiction to dispose of urban agricultural property by auction-sale. Unless rules were framed as contemplated by the Act, according to the High Court the Central Government had no authority in law to issue executive directions for the sale and disposal of urban agricultural property. This view was taken, placing reliance on an earlier decision of a Division Bench of that court in Bishan Singh v. Central Government. The Division Bench in Bishan case took the view that since the disposal of the compensation pool property was subject to the rules that may be made, and as no rules had been framed, the Central Government had no authority in law to issue administrative directions providing for the transfer of the urban agricultural land by auction-sale. In our opinion the view taken by the High Court is incorrect. Where a statute confers powers on an authority to do certain acts



or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. In other words framing of the rules is not condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression "subject to the rules" only means, in accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are framed there is not void and the authority is not precluded from exercising the power conferred by the statute."

From the above view it shows that the exercise of power conferred by the statute does not depend on the existence of Rule unless the statute sufficiently provides mechanism for workability of the Act. In the present case sub-section(3) of Section 2 provides that the application has to be filed in the form prescribed under the Rules. In absence of the Rule, the statute cannot be treated to be workable. So this Court is of the view that when the legislature provides that an application has to be filed in a prescribed form, then the application can only be entertained in that form alone and in absence of the Rule, prescribing the form, the application for permission for conversion cannot be filed. So this Court is of the view that in absence of the Rules, the proposition that has been laid by the petitioner that the Act is not workable is accepted. The Rule has

come into existence with effect from March 2011 and, as such, the status would be treated to be workable from the date of existence of Rule.

The 3rd point that has been raised by the counsel for the petitioner that market value of the land cannot be determined unless value of land is notified in the official Gazette. In the Act it has been provided that every occupier or land owner will pay the conversion fee for non-agricultural purpose at the rate of 10 per cent of the market value of the land as may be notified by the Government from time to time. It has been said that the market value of the land will be that which has been notified by the Government in the official Gazette. As the notification has been defined in Section 2(i) of the conversion Act to mean the Notification published in the Bihar Gazette and 'notified' shall be construed accordingly. Market value has been defined in Section 2(l) means value of agriculture land as determined by the Collector under the Indian Stamp Act, 1899. Though the Collector under the Indian Stamp Act 1899 from time to time has power to fix the value of the land will not ipso facto be the basis for charging 10 per cent of the market value of the land unless the same is notified in the official Gazette. In the present case, admittedly no Gazette Notification has been issued by the State Government notifying the value of the land, whereas the State has argued that the market value has been defined in Section 2(l) of the Act where it provides that the market value of the agricultural land will be the value of the land as has been determined by the Collector under the Indian Stamp Act 1899.

The question arises as to whether the valuation fixed by



the Collector of the land under the Indian Stamp Act will be sufficient for charging 10 per cent of the market value of the land without issuing notification in the official Gazette. It is well known principle of law that when the legislature has provided that certain thing has to be done in a particular manner, that thing has to be done in that manner alone. This is the old theory which is being followed even before enforcement of our Constitution.

First of all this principle has been decided in the case of Nazir Ahmad v. King Emperor reported in AIR 1936 PC 253 and the same has been reiterated in the case of Pune Municipal Corporation v. Harakchand Misirimal Solanki reported in 2014(3) SCC 183.

This Court has addressed somewhat similar issue as in the case of M/s Bahariji Mills Ltd. V. State, reported in AIR 1883 Pat. 311. There the Court has said that unless and until notification is published in the Bihar Gazette, the schedule is not to be treated amended.

There the question was raised that Ata, Suji and Maida were not included in the Schedule of the Act in the list of items notified in the schedule of the Act. The marketing Committees have no jurisdiction to direct the petitioners to collect the market fee and pay market fee thereon. This Court has said, the power in this regard has to be exercised under Section 39 only by notification. The expression 'notification' has been defined by Section 4(36) of the Bihar and Orissa General Clauses Act 1917 to mean 'a notification in the Gazette'. As there was no suggestion for enforcement of the Act in a different manner, it was held that unless the order is published in the Gazette, the Schedule was not treated to have been

amended. It is relevant to quote Para-7 of the judgment which is as follows:

“Para-7: The question as to when the schedule to the Act got amended appears to be simple. The power in this regard has to be exercised under Section 39 only by a notification. The expression ‘notification’ has been defined by Section 4(36) of the Bihar and Orissa General Clauses Act 1917 to mean ‘a notification in the Gazette.’ Section 28 of the General Clauses Act provides that where in any Bihar Act, it is directed that any notification shall be issued, such notification shall be deemed to be duly made if it is published in the Gazette unless the Act otherwise provides. Section 39 is not suggesting any alternative method and, therefore, it must be held that until the order was published in the Bihar Gazette, the schedule was not amended. The language of Section 39 does not suggest that the schedule could be amended with retrospective effect by a later notification. I, therefore, hold that the schedule stood amended on 15th May 1980 when the order in this regard dated 12th February 1972 was published in the Bihar Gazette and not earlier.”

Similar view has been reiterated in the case of *Rajendra Agricultural University v. Ashok Kumar Prasad*, reported in AIR 2010(1) SCC 730 (Para-11 and 12).

In view of aforesaid discussion, this Court is of the view that mere fixation of market value under the Indian Stamp Act 1899 will not be sufficient for charging 10 per cent of the market value unless that market value is notified in the official Gazette. So it is a legislative mandate that the charging of fee can be made only after due notification in the official Gazette. Admittedly till date the Government has not issued notification in the official Gazette and the argument of the counsel for the State that there is no need for publication in the official Gazette as the value of the land fixed by the Collector under the Indian Stamp Act 1899 is sufficient, is not acceptable and the same is rejected.

In view of aforesaid discussion these writ petitions succeed and the demand of penalty conversion fee and imposed by the impugned notifications are hereby declared completely illegal and the same are hereby quashed.

All writ petitions are allowed

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(Shivaji Pandey, J)