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March 2.

PREM NATH KAUL

v.

THE STATE OF JAMMU & KASHMIR

(S. R. DAS, C. J., S. K. DAS, P. B. GAJENDRAGADKAR, K. N. WANCHOO and M. HIDAYATULLAH, JJ.)

Landed Estate, Abolition of—Validity of enactment—Legislative Competency of Yuvaraj Karan Singh—Jammu and Kashmir Big Landed Estate Abolition Act, XVII of 2007.

This appeal challenged the validity of the Jammu and Kashmir Big Landed Estate Abolition Act, XVII of 2007 which was enacted by Yuvaraj Karan Singh on October 17, 1950, in exercise of the powers vested in him by s. 5 of the Jammu and Kashmir Constitution Act 14 of 1996 (1930) and the final proclamation issued by Maharaja Hari Singh on June 20, 1949, by which he entrusted all his powers and function to the Yuvaraj. The object of the Act was to improve agricultural production by abolishing big landed estates and transferring land to the actual tillers of the soil. The suit out of which the present appeal arises was brought by the appellant in a representative capacity for a declaration that the Act was void, inoperative and ultra vires and that he was entitled to retain peaceful possession of his lands. Both the trial Court as also the High Court in appeal found against him and dismissed the suit. Hence this appeal by special leave.

The validity of the Act was challenged mainly on the ground that Yuvaraj Karan Singh had no authority to promulgate the Act. It was contended that (1) when Maharaja Hari Singh conveyed his powers to the Yuvaraj by his proclamation of June 20, 1949, he was himself a constitutional monarch and could convey no higher powers, (2) the said proclamation could not confer on the Yuvaraj the powers specified therein, (3) the powers of the Yuvaraj were substantially limited by his own proclamation issued on November 25, 1949, by which he sought to make applicable to his State the Constitution of India, that was soon to be adopted by its Constituent Assembly, in so far as it was applicable, (4) as a result of the application of certain specified Articles, including Art. 370 of the Constitution of India to the State of Jammu Kashmir, the Yuvaraj became a constitutional monarch without any legislative authority or powers and (5) the decision of the Constituent Assembly of the State not to pay compensation was invalid since the Assembly itself was not properly constituted.

Held, that Yuvaraj Karan Singh, when he promulgated the Act, had the power to do so and its validity was beyond question.

It was indisputable that prior to the passing of the Independence Act, 1947, Maharaja Hari Singh like his predecessors, was an absolute monarch so far as the internal administration of his State was concerned. Section 3 of the Regulation 1 of 1991 (1934) issued by the Maharaja not only preserved all his pre-existing powers but also provided that his inherent right to make any regulation, proclamation or ordinance would remain unaffected. The Constitution Act 14 of 1996 (1939) promulgated by him did not alter the position. Sections 4 and 5 of that Act preserved all the powers that he had under s. 3 of the Regulation 1 of 1991 and s. 72 preserved his inherent powers so that he remained the same absolute monarch as he was before.

With the lapse of British paramountcy on the passing of the Independence Act, 1947, the Maharaja continued to be the same absolute monarch, subject to the agreements saved by the proviso to s. 7 of the Act, and in the eyes of international law could conceivably claim the status of an independent sovereign.

It was unreasonable to suggest that the provisions of the Instrument of Accession signed by the Maharaja on October 25, 1947, affected his sovereignty, in view of cl. 6 thereof, which expressly recognised its continuance in and over his State.

There was no substance in the argument that as a result of his proclamation issued on March 5, 1948, which replaced the emergency administration by a popular interim Government headed by Sheik Mohammad Abdullah and constituted a Council of Ministers who were to function as a cabinet, the Maharaja became a constitutional monarch. The cabinet had still to function under the Constitution Act 14 of 1996 (1939) under the overriding powers of the Maharaja.

When the Maharaja on June 20, 1949, therefore, issued the proclamation authorising the Yuvaraj to exercise all his powers, although for a temporary period, it placed the Yuvaraj in the same position as his father till the proclamation was revoked. The Maharaja was himself an absolute monarch and there could be no question as to his power of delegation.

In Re. Delhi Laws Act, 1912, [1951] S.C.R. 747, referred to.

The proclamation issued by the Yuvaraj on November 25, 1949, did not vary the constitutional position as it stood after the execution of the Instrument of Accession by the Maharaja nor could it in any way affect the authority conferred on the Yuvaraj by his father.

The contention that the application of certain specified Articles of the Indian Constitution to the State by the Constitution (Application to Jammu and Kashmir) Order (C. O. 10) issued by the President on January 26, 1950, affected the sovereign powers of the Yuvaraj was not correct.

Neither the scheme of Art. 370 nor the explanation to cl. (1) of that Article contemplated that the Maharaja was to be a constitutional ruler. The temporary provisions of that Article were

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based on the assumption that the ultimate relationship between India and the State should be finally determined by the Constituent Assembly of the State itself. So, that Article could not, either expressly or by implication, be intended to limit the plenary legislative powers of the Maharaja. Till the Constituent Assembly of the State, therefore, made its decision, the Instrument of Accession must hold the field.

The initial formal application of Art. 385, which was subsequently deleted from the list of Articles applied to the State, could not justify the conclusion that it had adversely affected the legislative powers of the Yuvaraj.

There was no substance in the contention that the decision of the Constituent Assembly not to pay compensation was invalid as the Assembly itself was not properly called or constituted. There could be doubt that the Yuvaraj was perfectly competent to issue the proclamation dated April 20, 1951, in variation of the Maharaja's, under which the Assembly was ultimately constituted, and so the Assembly was properly convened.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 152 of 1955.

Appeal by special leave from the judgment and order dated March 25, 1953, of the Jammu and Kashmir High Court in Civil First Appeal No. 4 of 2009.

N. C. Chatterjee, Gopi Nath Kunzru and *Naunit Lal*, for the appellants.

H. N. Sanyal, Additional Solicitor General of India, Jaswant Singh, Advocate General for the State of Jammu and Kashmir, R. H. Dhebar and *T. M. Sen*, for the respondent.

1959. March 2. The Judgment of the Court was delivered by

Gajendragadkar J.

GAJENDRAGADKAR, J.—This appeal by special leave arises from a suit filed by the appellant in a representative capacity (Civil Suit No. 4 of 2008) against the State of Jammu & Kashmir praying for a declaration that the Jammu & Kashmir Big Landed Estate Abolition Act, XVII of 2007 (hereinafter called the Act) is void, inoperative and ultra vires of Yuvaraj Karan Singh who enacted it and for a further declaration that the appellant was entitled to retain the peaceful possession of his lands.

It appears that the validity of the Act was similarly challenged by Maghar Singh by his suit filed on the Original Side of the High Court of Jammu & Kashmir (Civil Suit No. 59 of 2007); and Mr. Justice Kilam who had heard the said suit had rejected the plaintiff's contentions and held that the Act was valid.

When the appellant' suit came for trial before the District Court it was conceded on his behalf that the points raised by him against the validity of the Act had been decided by Mr. Justice Kilam and that, in view of the said decision, the appellant could not usefully urge anything more before the District Court. The learned District Judge who was bound by the decision of Mr. Justice Kilam applied it to the suit before him and held that the Act was valid and that the appellant was not entitled to the two declarations claimed by him. In the result the appellant's suit was dismissed.

Against this decree the appellant preferred an appeal in the High Court of Jammu & Kashmir (Civil Appeal No. 4 of 2009). Maghar Singh whose suit had been dismissed by Mr. Justice Kilam had also preferred an appeal (No. 29 of 2008) before the High Court. The two appeals were heard together by a Division Bench of the High Court which held that the Act was valid and that the appellants were not entitled to any declaration claimed by them. Both the appeals were accordingly dismissed.

Against the decree passed by the High Court dismissing his appeal the appellant applied to the High Court for leave to appeal to this Court. The said application was, however, dismissed. Thereupon the appellant applied for, and obtained, special leave to appeal to this Court.

In dealing with this appeal it is necessary to narrate in some detail the events which took place in Kashmir and the constitutional changes which followed them in order to appreciate fully the background of the impugned legislation. A clear understanding of this background will help us to deal with the appellant's case in its proper perspective. In 1925 Maharaja

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Hari Singh succeeded Maharaja Pratap Singh as the Ruler of Kashmir. It appears that for some time prior to 1934 there was public agitation in Kashmir for the establishment of responsible government. Presumably as a sequel to the said agitation Maharaja Hari Singh issued Regulation 1 of 1991 (1934). The Regulation began with the statement of policy that it was the declared intention of the Maharaja to provide for the association of his subjects in the matter of legislation and the administration of the State and that it was in pursuance of the said intention that the Regulation was being promulgated. This Regulation consisted of 46 sections which dealt with the legislative, executive and judicial powers of the Maharaja himself, referred to the subjects which should be reserved from the operation of the Regulation, made provision for the constitution of the Legislature of the State, conferred authority on the Council to make rules for specified purposes and referred to other relevant and material topics. It is relevant to refer to only two sections of this Regulation. Section 3 provides that all powers legislative, executive and judicial in relation to the State and its government are hereby declared to be, and to have been always, inherent in and possessed and retained by His Highness the Maharaja of Jammu & Kashmir and nothing contained in the Regulation shall affect or be deemed to have affected the right and prerogative of His Highness to make and pass regulations, proclamations and ordinances by virtue of his inherent power. Section 30 lays down that no measure shall be deemed to have been passed by the Praja Sabha until and unless His Highness has signified his assent thereto. The Regulation leaves it to the absolute discretion of His Highness whether to assent to such a measure or not.

Five years later the Maharaja promulgated the Jammu & Kashmir Constitution Act 14 of 1996 (1939). From the preamble to this Constitution it appears that, before its promulgation, the Maharaja had issued a proclamation on February 11, 1939, in which he had announced his decision as to the further steps to

be taken to enable his subjects to make orderly progress in the direction of attaining the ideal of active co-operation between the executive and the Legislature of the State in ministering to the maximum happiness of the people. In accordance with this desire the text of the Constitution contained in Regulation 1 of 1991 was thoroughly overhauled and an attempt was made to bring the amended text into line with that of similar Constitutions of its type. This Constitution is divided into six parts and includes 78 sections. Part 1 is introductory. Part 2 deals with the executive; Part 3 with the Legislature; Part 4 with the Judicature; Part 5 contains miscellaneous provisions; and Part 6 provides for repeal and saving and includes transitional provisions. It is significant that s. 5 of this Act, like s. 3 of the earlier Regulation, recognises and preserves all the inherent powers of His Highness, while s. 4 provides that the State was to be governed by and in the name of His Highness, and all rights, authority and jurisdiction which appertain or are incidental to the government of the State are exercisable by His Highness except in so far as may be otherwise provided by or under the Act or as may be otherwise directed by His Highness. The other provisions of the Act are all subject to the overriding powers of His Highness specifically preserved by s. 5. As we will point out later on, in substance the Constitutional powers of the Maharaja under the present Act were exactly the same as those under the earlier Act.

While the State of Jammu & Kashmir was being governed by the Maharaja and the second Constitution as amended from time to time was in operation, political events were moving very fast in India and they culminated in the passing of the Indian Independence Act, 1947. Under s. 7 (1) (b) of this Act the suzerainty of His Majesty over the Indian States lapsed and with it lapsed all treaties and agreements in force at the date of the passing of the Act between His Majesty and the Rulers of the Indian States, all obligations of His Majesty existing at that date towards Indian States or the Rulers thereof, and all powers,

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rights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise. The proviso to the said section, however, prescribed that, notwithstanding anything in para. (b), effect shall, as nearly as may be, continue to be given to the provisions of any such agreement as therein referred to in relation to the subjects enumerated in the proviso or other like matters until the provisions in question are denounced by the Ruler of the Indian State on the one hand or by the Dominion or Province concerned on the other hand, or are superseded by subsequent agreements. Thus, with the lapse of British paramountcy the State of Jammu & Kashmir, like the other Indian States, was theoretically free from the limitations imposed by the said paramountcy subject to the provisions of the proviso just mentioned.

On October 22, 1947, the tribal raiders invaded the territory of the State; and this invasion presented a problem of unprecedented gravity before the Maharaja. With the progress of the invading raiders the safety of the State was itself in grave jeopardy and it appeared that, if the march of the invaders was not successfully resisted, they would soon knock at the doors of Srinagar itself. This act of aggression set in motion a chain of political events which ultimately changed the history and political constitution of Kashmir with unexpected speed.

On October 25, 1947, the Maharaja signed an Instrument of Accession with India which had then become an Independent Dominion. By the First Clause of the Instrument the Maharaja declared that he had acceded to the Dominion of India with the intent that the Governor-General of India, the Dominion, Legislature, the Federal Court and any other Dominion Authority established for the purpose of the Dominion shall, by virtue of the Instrument of Accession, subject always to the terms thereof and for the purposes only of the Dominion, exercise in relation to the State of Jammu & Kashmir such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India on August 15, 1947.

We may usefully refer to some other relevant clauses of this Instrument. By cl. 3 the Maharaja agreed that the matters specified in the Schedule attached to the Instrument of Accession were the matters with respect to which the Dominion Legislature may make laws for this State. Clause 5 provides that the Instrument shall not be varied by any amendment of the Government of India Act, 1935, or of the Indian Independence Act, 1947, unless such amendment is accepted by the Maharaja by an Instrument supplementary to the original Instrument of Accession. By cl. 7 it was agreed that the Maharaja would not be deemed to be committed to the acceptance of any future Constitution of India nor would his discretion be fettered to enter into agreements with the Government of India under any such future Constitution. Clause 8 is very important. It says that nothing in the Instrument affects the continuance of the Maharaja's sovereignty in and over his State, or, save as provided by or under the Instrument, the exercise of any powers, authority and rights then enjoyed by him as Ruler of the State, or the validity of any law then in force in the State. The Schedule attached to the Instrument refers to four topics, defence, external affairs, communications and ancillary, and under these topics twenty matters have been serially enumerated as those in respect of which the Dominion Legislature had the power to make laws for the State. Thus, by the Instrument of Accession, the Maharaja took the very important step of recognising the fact that his State was a part of the Dominion of India.

Meanwhile, the invasion of the State had created tremendous popular fervour and patriotic feelings in resisting the act of aggression and this popular feeling inevitably tended to exercise pressure on the Maharaja for introducing responsible and popular government in the State. The Maharaja tried to pacify the popular demand by issuing a proclamation on March 5, 1948. By this proclamation he stated that in accordance with the traditions of his dynasty he had from time to time provided for increasing association of his people with the administration of the State with the object of

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realising the goal of full responsible government at as early a date as possible, and he added that he had noted with gratification and pride the progress made so far and the legitimate desire of his people for the immediate establishment of a fully democratic constitution based on adult franchise with a hereditary Ruler from his dynasty as the constitutional head of an executive responsible to the Legislature. It appears that before this proclamation was issued the Maharaja had already appointed Sheikh Mohammed Abdullah who was then the popular leader of the people as the head of the emergency administration. By the proclamation the Maharaja replaced the emergency administration by a popular interim government and provided for its powers, duties and functions pending the formation of a fully democratic constitution. Clause 1 of the proclamation provides for the composition of the Ministry, whereas by cl. 2 the Prime Minister and other ministers are required to function as a cabinet and act on the principle of joint responsibility. A Dewan appointed by the Maharaja is to be a member of the Cabinet. Clause 4 provides that the Council of Ministers shall take appropriate steps, as soon as restoration of normal conditions has been completed, to convene a National Assembly based on adult franchise having due regard to the principle that the number of representatives from each voting area should, as far as practicable, be proportionate to the population of that area. Clause 5 then lays down that the Constitution to be framed by the National Assembly shall provide adequate safeguards for the minorities and contain appropriate provisions guaranteeing freedom of conscience, freedom of speech and freedom of assembly. Clause 6 states that when the work of framing the Constitution is completed by the National Assembly the Constitution would be submitted through the Council of Ministers to the Maharaja for his acceptance. The proclamation ended with the expression of hope that the formation of a popular interim government and the inauguration in the near future of a fully democratic Constitution would ensure the contentment, happiness and the moral and material advancement

of the people of the State. Though under this proclamation a popular interim government was set up, the constitutional position still was that the popular government had theoretically to function under the Constitution of 1939. It appears that before the popular government was thus installed in office the Maharaja had deputed four representatives of the State to represent the State in the Constituent Assembly called in the Dominion of India to frame the Constitution of India.

After the popular interim government began to function the political events in the State gathered momentum and the public began to clamour for the framing of a democratic Constitution at an early date. When the atmosphere in the State was thus surcharged, the Maharaja issued his final proclamation on June 20, 1949, by which he entrusted to Yuvaraj Karan Singh Bahadur all his powers and functions in regard to the government of the State because he had decided for reasons of health to leave the State for a temporary period. "Now therefore I hereby direct and declare", says the proclamation, "all powers and functions whether legislative, executive or judicial which are exercisable by me in relation to the State and its government including in particular my right and prerogative of making laws, of issuing proclamations, orders and ordinances, or remitting, commuting or reducing sentences and of pardoning offenders, shall, during the period of my absence from the State, be exercisable by Yuvaraj Karan Singh Bahadur". As subsequent events show this was the last official act of the Maharaja before he left the State.

After Yuvaraj Karan Singh took the Maharaja's place and began to function under the powers assigned to him by the said proclamation, the interim popular government installed earlier was functioning as before. On November 25, 1949, Yuvaraj Karan Singh issued a proclamation by which he declared and directed that the Constitution of India shortly to be adopted by the Constituent Assembly of India shall, in so far as it is applicable to the State of Jammu & Kashmir, govern the constitutional relationship between

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the State and the contemplated Union of India and shall be enforced in the State by him, his heirs and successors in accordance with the tenor of its provisions. He also declared that the provisions of the said Constitution shall, as from the date of its commencement, supersede and abrogate all other constitutional provisions inconsistent therewith which were then in force in the State. The preamble to this proclamation shows that it was based on the conviction that the best interests of the State required that the constitutional relationship established between the State and the Dominion of India should be continued as between the State and the contemplated Union of India; and it refers to the fact that the Constituent Assembly of India which had framed the Constitution of India included the duly appointed representatives of the State and that the said Constitution provided a suitable basis to continue the constitutional relationship between the State and the contemplated Union of India. On January 26, 1950, the Constitution of India came into force.

This proclamation was followed by the Constitution (Application to Jammu & Kashmir) Order, 1950 (C. O. 10) which was issued on January 26, 1950, by the President in consultation with the Government of Jammu & Kashmir and in exercise of the powers conferred by cl. (1) of Art. 370 of the Constitution. It came into force at once. Clause (2) of this order provides that for the purposes of sub-cl. (i) of Art. 370 of the Constitution, the matters specified in the First Schedule to the Order correspond to matters specified in the Instrument of Accession governing the accession of the State of Jammu & Kashmir to the Dominion of India as the matters with regard to which the Dominion Legislature may make laws for that State; and accordingly the power of Parliament to make laws for that State shall be limited to the matters specified in the said First Schedule. Clause (3) provides that, in addition to the provisions of Art. 1 and Art. 370 of the Constitution the only other provisions of the Constitution which shall apply to the State of Jammu & Kashmir shall be those specified in the

Second Schedule to the Order and shall so apply subject to the exceptions and modifications specified in the said Schedule. The First Schedule to the Order specified 96 items occurring in the Union List; while the Second Schedule set out the Articles of the Constitution made applicable to the State together with the exceptions and modifications. Later on we will have occasion to refer to some of these Articles on which the appellant has relied.

It appears that, after the interim popular Government took office, the Revenue Minister made a statement of policy at a meeting of the special staff of revenue officers held in the Governor's office on August 13, 1950. The Minister stated that whatever the difficulties, the Cabinet was determined to go ahead and transfer the proprietorship of the land to the tiller. The main idea underlying the proposed agricultural reform was that a landlord shall not possess more than 20 acres of agricultural land. In addition he would be allowed 8 kanals for his use and Sagzar and 4 kanals for his second house if in existence, and 10 kanals for Bedzar or Safedzar. It was contemplated that a committee would be appointed to settle the details and other matters incidental to the said agricultural plan.

It was presumably in pursuance of this plan adopted by the interim Cabinet that the Act was promulgated by Yuvaraj Karan Singh on October 17, 1950. The preamble to the Act shows that it was promulgated because no lasting improvement in agricultural production and efficiency was possible without the removal of the intermediaries between the tiller of the soil and the State, and so, for the purpose of improving agricultural production, it was expedient to provide for the abolition of such proprietors as own big landed estates and to transfer the land held by them to the actual tiller. The Yuvaraj enacted the law in exercise of the powers vested in him under s. 5 of the Constitution Act of 1996 and the proclamation issued by Maharaja Hari Singh on June 20, 1949. The Act consists of 47 sections and purports to carry out its

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policy of improving the agricultural production of the State by providing for the extinction of the proprietors' titles and the transfer of the lands to the tillers, and by setting up a self-contained machinery for the carrying out of the scheme of the Act and for settlement of all incidental disputes arising thereunder.

For the purpose of this appeal, however, it is necessary to refer to a few relevant sections which deal with the broad features of the extinction of the proprietors' rights and the transfer of lands to the tillers. S. 2 of the Act inter alia defines land, proprietor and tiller, while s. 3 excludes certain specified lands from the operation of the Act. Section 4, sub-s. (1) provides for the extinction of the right of ownership in certain lands and it lays down that notwithstanding anything contained in any law for the time being in force, the right of ownership held by a proprietor in land other than the land mentioned in sub-s. (2) shall, subject to the other provisions of the Act, extinguish and cease to vest in him from the date the Act comes into force. Sub-section (2) of s. 4 enumerates lands which are excluded from the operation of sub-s. (1). They are (a) units of land not exceeding 182 kanals including residential sites, Bedzars and Safedzars, (b) Kahikrishmi areas, Araks, Kaps and unculturable wastes including those used for raising fuel or fodder, and (c) orchards. The proviso to sub-s. (2) gives government the power to dispose of lands mentioned in cl. (b) in such a manner as may be recommended by the committee to be set up for that purpose. Section 26 of the Act deals with the question of payment to the proprietors. It provides that there shall, until the Constituent Assembly of the State settles the question of compensation, with respect to the land expropriated under this Act, be paid by the government to every proprietor who has been expropriated, an annuity in the manner indicated in the section. In other words, subject to the final decision of the Constituent Assembly, s. 26 contemplates the payment of annuity to the expropriated proprietors according to the scale prescribed in the section. With the rest of the sections we are not concerned in the present appeal.

After the Act was enacted by the Yuvaraj he issued a proclamation on April 20, 1951, directing that a Constituent Assembly consisting of representatives of the people elected on the basis of adult franchise shall be constituted forthwith for the purpose of framing a Constitution for the State of Jammu & Kashmir. The proclamation sets out the manner in which members of the said Constituent Assembly would be elected and makes provisions for the holding of the said elections. It also authorised the Constituent Assembly to frame its own agenda and make rules for regulating its procedure and the conduct of its business. The preamble to this proclamation shows that the Yuvaraj was satisfied that it was the general desire of the people that a Constituent Assembly should be brought into being for the purpose of framing a Constitution for the State and that it was commonly felt that the convening of the said Assembly could no longer be delayed without detriment to the future well-being of the State. The Yuvaraj also felt no doubt that the proclamation issued by the Maharaja on March 5, 1948, in regard to the convening of the national assembly as per cls. 4 to 6 no longer met the requirements of the situation in the State. Thus this proclamation was intended to meet expeditiously the popular demand for the framing of a democratic constitution; and it indicates that a decisive stage had been reached in the political history of the State.

In accordance with this proclamation a Constituent Assembly was elected and it framed the Constitution for the State. By the Constitution thus framed the hereditary rule of the State was abolished, and a provision was made for the election of a Sadar-i-Riyasat to be at the head of the State. On November 13, 1952, the Yuvaraj was elected to the office of the Sadar-i-Riyasat and with his election the dynastic rule of Maharaja Hari Singh came to an end.

On November 15, 1952, the Constitution (Application to Jammu & Kashmir) Second Amendment Order, 1952 (C. O. 43) was issued; and it came into force on November 17, 1952. By this Order the earlier Order of 1950 was amended as a result of which all references

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in the said Order to the Rajpramukh shall be construed as references to the Sadar-i-Riyasat of Jammu & Kashmir. Similarly in the Second Schedule to the said Order some amendments were made. On the same day a Declaration (C. O. 44) was made by the President under Art. 370, sub-art. (3) of the Constitution that from November 17, 1952, the said Art. 370 shall be operative with the modification that for the explanation in cl. (1) thereof the new explanation shall be substituted. The effect of this new explanation was that the government of the State meant the person for the time being recognised by the President, on the recommendation of the Legislative Assembly of the State, as the Sadar-i-Riyasat of Jammu & Kashmir acting on the advice of the Council of Ministers of the State for the time being in force. On November 18, 1952, Yuvaraj Karan Singh was recognised as the Sadar-i-Riyasat of Jammu & Kashmir.

On May 14, 1954, another Constitution (Application to Jammu & Kashmir) Order (C. O. 48) was made by the President which inter alia applied Art. 31A and 31B to the State with certain modifications and included the Act in the Ninth Schedule of the Constitution. The last two Orders were issued subsequent to the enactment of the Act and so they would have no bearing on the decision of the points raised before us. We have briefly referred to them for the sake of completing the narrative of the material events.

The validity of the Act is impeached mainly on the ground that Yuvaraj Karan Singh had no authority to promulgate the said Act. It is this argument which has been urged before us by Mr. Chatterjee in different and alternative forms that needs careful examination. The first attack against the competence of Yuvaraj Karan Singh proceeds on the assumption that at the time when Maharaja Hari Singh conveyed his powers to Yuvaraj Karan Singh by his proclamation of June 20, 1949, he was himself no more than a constitutional monarch and as such he could convey to Yuvaraj Karan Singh no higher powers. Let us first deal with this argument. Prior to the passing of the Independence Act, 1947, the sovereignty of Maharaja

Hari Singh over the State of Jammu & Kashmir was subject to such limitations as were constitutionally imposed on it by the paramountcy of the British Crown and by the treaties and agreements entered into between the Rulers of the State and the British Government. It cannot be disputed that so far as the internal administration and governance of the State were concerned Maharaja Hari Singh, like his predecessors, was an absolute monarch; and that all powers legislative, executive and judicial in relation to his State and its governance inherently vested in him. This position has been emphatically brought out by s. 3 of Regulation 1 of 1991 (1934). Though by this Regulation Maharaja Hari Singh gave effect to his intention to provide for the association of his subjects in the matter of legislation and administration of the State, by s. 3 he fully preserved in himself all of his pre-existing legislative, executive and judicial powers. Section 3 not only preserves the said powers but expressly provides that nothing contained in the Regulation shall affect or be deemed to have affected the right and prerogative of His Highness to make and pass regulations, proclamations and ordinances by virtue of his inherent authority. It is thus clear that the rest of the provisions of the Regulation were subject to the overriding powers preserved by His Highness.

It is, however, urged that this constitutional position was substantially altered by the subsequent Constitution Act of 1996 (14 of 1996). We are unable to accept this argument. Sections 4 and 5 of this Act in terms continue to preserve all the powers legislative, executive and judicial as well as the right and prerogative of His Highness just as much as s. 3 of Regulation 1 of 1991. It is significant that the provisions of Pt. II which deals with the executive, like those of Pt. III which deals with the Legislature, begin with the express provision that they are subject to the provisions of ss. 4 and 5. In other words, the powers conferred on the executive and the Legislature, limited and qualified as they are, are made expressly subject to the overriding powers of His Highness.

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Besides, there are specific provisions in the Act which clearly emphasise the preservation of the said powers. Section 24 which enumerates the reserved matters over which the Praja Sabha had no authority to legislate provides by cl. (i) that the provisions of the Act and the rules made thereunder and their repeal or modifications constitute reserved matters. Besides cl. (j) confers on His Highness the authority to add other specified matters to the list of reserved matters from time to time. These provisions make it clear that his Highness could enlarge the list of reserved matters thereby limiting the jurisdiction of the Praja Sabha. Similarly the legislative procedure prescribed by s. 31, sub-ss. (2) and (3) clearly shows that it is only such bills as received the assent of His Highness that became law, His Highness's power to assent or not to assent to the bills submitted to him being absolutely unfettered. The ordinances issued by His Highness under s. 38 cannot be repealed or altered by the Praja Sabha by virtue of s. 39; and lastly s. 72 expressly preserves the inherent power and prerogative of His Highness. Thus there can be no doubt that though this Act marked the second step taken by His Highness in actively associating his subjects with the administration of the State, it did not constitute even a partial surrender by His Highness of his sovereign rights in favour of the Praja Sabha. So far as the said powers are concerned, the constitutional position under this Act is substantially the same as under the earlier Act.

It is contended by Mr. Chatterjee that the prerogative rights which are preserved by ss. 5 and 72 of this Act represent only such rights as had not been entrusted to the Praja Sabha; and in support of this contention he referred us to the observation made by Dicey that "the discretionary authority of the Crown originates generally not in Act of Parliament, but in the prerogative—a term which has caused more perplexity to students than any other expression referring to the constitution. The prerogative appears to be both historically and as a matter of actual fact nothing else than the residue of discretionary or arbitrary

authority, which at any given time is legally left in the hands of the Crown" (1). This observation has been cited with approval by the House of Lords in the case of *Attorney-General* v. *De Keyser's Royal Hotel Ltd.* (2). We do not see how this statement can assist us in determining the constitutional status, and the extent of the powers, of Maharaja Hari Singh in relation to the governance of the State. The said discussion in Dicey's treatise has reference to the special features of the history of English constitutional development; and it would naturally be of no relevance in dealing with the effect of the Constitution of 1996 with which we are concerned. As we have just indicated this Constitution emphatically brings out the fact that the Maharaja was an absolute monarch and in him vested all the legislative, executive and judicial powers along with the prerogative rights mentioned in ss. 5 and 72.

Whilst this was the true constitutional position the Independence Act, 1947, was passed by the British Parliament; and with the lapse of the British paramountcy the Rulers of Indian States were released from the limitations imposed on their sovereignty by the said paramountcy of the British Crown and by the treaties in force between the British Government and the States; this was, however, subject to the proviso prescribed by s. 7 of the Independence Act under which effect had to be given to the provisions of the agreements specified in the proviso, until they were denounced by the Rulers of the States or were superseded by subsequent agreements. In the result, subject to the agreements saved by the proviso, Maharaja Hari Singh continued to be an absolute monarch of the State, and in the eyes of international law he might conceivably have claimed the status of a sovereign and independent State. But it is urged that the sovereignty of the Maharaja was considerably affected by the provisions of the Instrument of Accession which he signed on October 25, 1947. This argument is clearly untenable. It is true that by cl. 1 of the

(1) Dicey on "Law of the Constitution", 9th Ed., p. 424.

(2) [1920] A.C. 508, 526.

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Instrument of Accession His Highness conceded to the authorities mentioned in the said clause the right to exercise in relation to his State such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the said Dominion on August 15, 1947, but this was subject to the other terms of the Instrument of Accession itself; and cl. 6 of the Instrument clearly and expressly recognised the continuance of the sovereignty of His Highness in and over his State. We must, therefore, reject the argument that the execution of the Instrument of Accession affected in any manner the legislative, executive and judicial powers in regard to the government of the State which then vested in the Ruler of the State.

There is one more argument which has been urged before us on the question of Maharaja Hari Singh's powers. It is said that when Maharaja Hari Singh issued his proclamation on March 5, 1948, replacing the emergency administration by a popular interim government headed by Sheikh Mohammad Abdullah and constituting a Council of Ministers who were to function as a Cabinet and act on the principle of joint responsibility, he virtually introduced a popular democratic government in the State, surrendered his sovereign rights, and became a constitutional monarch. There is no substance in this argument. The proclamation merely shows that, under pressure of public opinion and as a result of the difficult and delicate problem raised by the tribal raid, the Maharaja very wisely chose to entrust the actual administration of the government to the charge of a popular Cabinet; but the description of the Cabinet as a popular interim government did not make the said Cabinet a popular Cabinet in the true constitutional sense of the expression. The Cabinet had still to function under the Constitution Act 14 of 1996 (1939) and whatever policies it pursued, it had to act under the overriding powers of His Highness. It is thus clear that until the Maharaja issued his proclamation on June 20, 1949, all his powers legislative, executive and judicial as well as his right and prerogative vested in him as before. That is why the argument that Maharaja

Hari Singh had surrendered his sovereign powers in favour of the Praja Sabha and the popular interim government, thereby accepting the status of a constitutional monarch cannot be upheld.

The next point which calls for our decision is: What was the effect of the proclamation issued by Maharaja Hari Singh in favour of Yuvaraj Karan Singh on June 20, 1949? The terms of this proclamation have already been set out by us. There is no doubt that, during the temporary period that the Maharaja wanted to leave the State for reasons of health, he conferred on Yuvaraj Karan Singh all his powers and functions in regard to the government of the State. Since the Maharaja was himself an absolute monarch, there was no fetter or limitation on his power to appoint somebody else to exercise all or any of his powers. There was no authority or tribunal in the State which could question his right or power to adopt such a course. As Chief Justice Kania has observed in *Re: Delhi Laws Act, 1912* (1) "A legislative body which is sovereign like an autocratic Ruler has power to do anything. It may, like a Ruler, by an individual decision, direct that a certain person may be put to death or a certain property may be taken over by the State. A body of such character may have power to nominate someone who can exercise all its powers and make all its decisions. This is possible to be done because there is no authority or tribunal which can question the right or power of the authority to do so". Similarly, Mahajan, J., has observed in the same case that "The Parliament being a legal omnipotent despot, apart from being a legislature simpliciter, it can in exercise of its sovereign power delegate its legislative functions or even create new bodies conferring on them power to make laws"; and the learned Judge added that "whether it exercises its power of delegation of legislative power in its capacity as a mere legislature or in its capacity as an omnipotent despot, it is not possible to test it on the touchstone of judicial precedent or judicial scrutiny as courts of justice in England cannot inquire into it". In his judgment Mukherjea, J., has also made similar

(1) [1951] S.C.R. 747, 765, 766, 889, 969.

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observations after quoting the words of Sir Edward Coke in regard to the "transcendent and absolute power and jurisdiction of Parliament". What is true of the British Parliament would be truer about an absolute and despotic monarch, the exercise of whose paramount power as a sovereign is not subject to any popular and legislative control. If that be the true position, the proclamation issued by Maharaja Hari Singh authorising Yuvaraj Karan Singh to exercise all his powers would clothe him with all such powers and he would be in the same position as his father so long as the proclamation stood.

Besides, it would be permissible to observe that though the proclamation purports to have been issued on the ground that Maharaja Hari Singh was leaving the State for a temporary period for reasons of health, it was clear even then that the temporary departure of the Maharaja really meant his permanent retirement from the State. It was realised by him as much as by his subjects that to face the stress and strain caused by the unusual problems raised by the act of aggression against the State, it was necessary that he should quit and young Yuvaraj Karan Singh should take his place. Thus considered the proclamation really amounted to his abdication and installation by him of Yuvaraj Karan Singh as the Ruler of the State. It is, however, not necessary to consider any further this aspect of the matter in dealing with the authority of Yuvaraj Karan Singh, because, as we have just held, Maharaja Hari Singh was competent to delegate his powers to Yuvaraj Karan Singh for a temporary period as his proclamation purported to do; and by virtue of such delegation, Yuvaraj Karan Singh was clothed with all the authority which his father possessed as the Ruler of the State until the proclamation was revoked. Therefore the argument that Maharaja Hari Singh's proclamation issued on June 20, 1949, did not confer on Yuvaraj Karan Singh the specified powers cannot be accepted.

The next contention is that the powers of Yuvaraj Karan Singh were substantially limited by the proclamation issued by him on November 25, 1949. We are not impressed even by this argument. By this

proclamation Yuvaraj Karan Singh purported to make applicable to his State the Constitution of India which was shortly going to be adopted by the Constituent Assembly of India in so far as was applicable; in other words, this proclamation did not carry the constitutional position any further than where it stood after and as a result of the execution of the Instrument of Accession by Maharaja Hari Singh. It is thus clear that the proclamation did not affect Yuvaraj Karan Singh's authority and powers as the Ruler of the State which had been conferred on him by the proclamation of his father issued in that behalf.

Mr. Chatterjee, however, has very seriously pressed before us his contention that, as a result of the application of certain specified articles of the Constitution to the State of Jammu & Kashmir, all vestiges of sovereignty which Yuvaraj Karan Singh could have claimed had vanished; and in consequence he had become merely a constitutional monarch of the State without any legislative authority or powers. Indeed it is this part of the case on which Mr. Chatterjee placed considerable emphasis. In this connection, it would be relevant to recall that by the Constitution Order 10, in addition to the provisions of Art. 1 and Art. 370, certain other provisions of the Constitution were made applicable to the State with exceptions and modifications as specified in the Second Schedule. Articles 245, 254 and 255 as well as Art. 246 as modified from Pt. XI of the Constitution were applied to the State. Similarly from Pt. XIX Art. 366 was applied, and from Pt. XXI Arts. 370 and 385 were applied. In this connection it is also necessary to bear in mind that Pt. VI which deals with the States in Pt. A of the First Schedule has not been applied, nor has Pt. VII which consisted of Art. 238 been applied. Art. 238 provides for the application of provisions of Pt. VI to States in Pt. B of the First Schedule. Schedule Seven which consists of the three Legislative Lists has also not been applied. It is thus clear that though by the application of Art. 1 the State became a part of the territory of India and constituted a State under Part B, the provisions of

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Pt. VI and Pt. VII did not apply to it nor did the Schedule prescribing the three Legislative Lists. This fact is of considerable importance and significance in dealing with the appellant's contention.

Since Mr. Chatterjee has strongly relied on the application of Art. 370 of the Constitution to the State in support of his argument that the Yuvaraj had ceased to hold the plenary legislative powers, it is necessary to examine the provisions of this Article and their effect. This Article was intended to make temporary provisions with respect to the State of Jammu & Kashmir. It reads thus:

"*Art. 370*: (1) Notwithstanding anything in this Constitution,—

(a) the provisions of article 238 shall not apply in relation to the State of Jammu & Kashmir;

(b) the power of Parliament to make laws for the said State shall be limited to—

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation.—For the purposes of this article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

(c) the provisions of article 1 and of this article shall apply in relation to that State;

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify;

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification."

Clause (1) (b) of this Article deals with the legislative power of the Parliament to make laws for the State; and it prescribes limitation in that behalf. Under paragraph (1) of sub-cl. (b) of cl. (1) Parliament has power to make laws for the State in respect of matters in the Union List and the Concurrent List which the President in consultation with the Government of the State declares to correspond to matters specified in the Instrument of Accession; whereas in regard to other matters in the said Lists Parliament may, under paragraph (ii), have power to legislate for the State after such other matters have been specified by his order by the President with the concurrence of the Government of the State. It is significant that paragraph (i) refers to consultation with the Government of the State while paragraph (ii) requires its concurrence.

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Having thus provided for consultation with, and the concurrence of, the Government of the State, the explanation shows what the Government of the State means in this context. It means according to the appellant, not the Maharaja acting by himself in his own discretion, but the person who is recognised as the Maharaja by the President acting on the advice of the Council of Ministers for the time being in office. It is on this explanation that the appellant has placed considerable reliance.

Sub-clauses (c) and (d) of cl. (1) of the Article provide respectively that the provisions of Art. 1 and of the present Article shall apply in relation to the State; and that the other provisions of the Constitution shall apply in relation to it subject to exceptions and modifications specified by the Presidential order. These provisions are likewise made subject to consultation with, or concurrence of, the Government of the State respectively.

Having provided for the legislative power of the Parliament and for the application of the Articles of the Constitution to the State, Art. 370, cl. (2) prescribes that if the concurrence of the Government of the State required by the relevant sub-cls. of cl. (1) has been given before the Constituent Assembly of Kashmir has been convened, such concurrence shall be placed before such Assembly for such decision as it may take thereon. This clause shows that the Constitution-makers attached great importance to the final decision of the Constituent Assembly, and the continuance of the exercise of powers conferred on the Parliament and the President by the relevant temporary provisions of Art. 370(1) is made conditional on the final approval by the said Constituent Assembly in the said matters.

Cl. (3) authorises the President to declare by public notification that this article shall cease to be operative or shall be operative only with specified exceptions or modifications; but this power can be exercised by the President only if the Constituent Assembly of the State makes recommendation in that behalf. Thus the proviso to cl. (3) also emphasises the importance

which was attached to the final decision of the Constituent Assembly of Kashmir in regard to the relevant matters covered by Art. 370.

The appellant contends that the scheme of this Article clearly shows that the person who would be recognised by the President as the Maharaja of Jammu & Kashmir was treated as no more than a constitutional Ruler of the State. In regard to matters covered by this Article he could not function or decide by himself and in his own discretion. The consultation contemplated by this Article had to be with the Maharaja acting on the advice of the Council of Ministers and the concurrence prescribed by it had to be similarly obtained and given, and that brings out the limitations on the powers of the Maharaja. It is also urged that the final decision in these matters has been deliberately left to the Constituent Assembly which was going to be convened for the framing of the Constitution of the State, and that again emphasises the limitations imposed on the powers of the Maharaja.

This argument assumes that under the explanation to Art. 370(1) it is the person recognised by the President as the Maharaja who has to act on the advice of the Council of Ministers in relation to matters covered by Art. 370. But, it is possible to take the view that the said clause really indicates that in recognising any person as the Maharaja of the State the President has to act on the advice of the Council of Ministers for the time being in office under the Maharaja's proclamation dated March 5, 1948. If that be the true construction of the explanation, then the argument that, before the Maharaja is consulted or his concurrence is obtained, he must act on the advice of his Ministers would not be valid. We would, however, like to deal with the argument even on the assumption that the construction put by the appellant on the explanation is right.

On the said construction the question which falls to be determined is: Do the provisions of Art. 370(1) affect the plenary powers of the Maharaja in the matter of the governance of the State? The effect of the application of the present Article has to be judged in

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the light of its object and its terms considered in the context of the special features of the constitutional relationship between the State and India. The Constitution-makers were obviously anxious that the said relationship should be finally determined by the Constituent Assembly of the State itself; that is the main basis for, and purport of, the temporary provisions made by the present Article; and so the effect of its provisions must be confined to its subject-matter. It would not be permissible or legitimate to hold that, by implication, this Article sought to impose limitations on the plenary legislative powers of the Maharaja. These powers had been recognised and specifically provided by the Constitution Act of the State itself; and it was not, and could not have been, within the contemplation, or competence of the Constitution-makers to impinge even indirectly on the said powers. It would be recalled that by the Instrument of Accession these powers have been expressly recognised and preserved and neither the subsequent proclamation issued by Yuvaraj Karan Singh adopting, as far as it was applicable, the proposed Constitution of India, nor the Constitution Order subsequently issued by the President, purported to impose any limitations on the said legislative powers of the Ruler. What form of government the State should adopt was a matter which had to be, and naturally was left to be, decided by the Constituent Assembly of the State. Until the Constituent Assembly reached its decision in that behalf, the constitutional relationship between the State and India continued to be governed basically by the Instrument of Accession. It would therefore be unreasonable to assume that the application of Art. 370 could have affected, or was intended to affect, the plenary powers of the Maharaja in the matter of the governance of the State. In our opinion, the appellant's contention based on this Article must therefore be rejected.

The application of Arts. 245, 254 and 255, and of Art. 246 as modified, does not seem to have any bearing on the question of the authority and powers of the Ruler of the State. Their application merely serves to provide for the legislative powers of the Parliament

to make laws in respect of matters covered by Art. 370. Incidentally we may point out that the application of Arts. 246 and 254 as provided by the Constitution Order 10 of 1950 has been subsequently modified by the Constitution Order 48 of 1954. Similarly Art. 255 which was originally applied by the first Order has been deleted by the latter Order. This shows that it was subsequently realised that the original application of the said Articles prescribed by the earlier Order was more anticipatory and notional and required either suitable modification or cancellation.

The appellant has then relied upon the provisions of Art. 385. It provides:

"*Art. 385.*—Until the House or Houses of the Legislature of a State specified in Part B of the First Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body or authority functioning immediately before the commencement of this Constitution as the Legislature of the corresponding Indian State shall exercise the powers and perform the duties conferred by provisions of this Constitution on the House or Houses of the Legislature of the State so specified."

It is difficult to see how this Article supports the appellant's contention. In fact it is not easy to appreciate what the application of this Article to the State really meant. As we have already pointed out the application of the specified Articles to the State was not intended to affect, and constitutionally could not have affected, the form of the government prevailing in the State and the plenary legislative powers of the Maharaja in regard to the government of the State. As in regard to the application of Arts. 245, 254 and 255, so in regard to this Article as well, it was subsequently realised that the application of the Article was purely notional and could serve no purpose. That is why by C. O. 48 of 1954 this Article has been deleted from the list of Articles applied to the State. It seems to us that the initial formal application of this Article cannot justify the appellant's case that the plenary legislative powers vesting in the Ruler of the State

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were not only affected but, as the appellant contends, completely extinguished. The constitutional position in regard to the government of the State continued to be the same despite the application of this Article. In dealing with the application of this Article and Arts. 245, 254 and 255, it would be permissible to rely on the rule of construction set out in Maxwell that "a thing which is within the letter of a statute is generally to be considered as not within the statute unless it is also the real intention of the Legislature" (1). It is evident that the Constitution-makers have treated the problem of Kashmir on a special basis and that though the association of Kashmir with India which began with the Instrument of Accession has been steadily and gradually growing closer and closer on a democratic basis, it still presents features not common to any other State included in the Union of India. We have no doubt that at the time when the Act was passed the plenary legislative powers of the Yuvaraj had not been affected in any manner. The result is that Yuvaraj Karan Singh was competent to enact the Act in 1950 and so the challenge to the validity of the Act on the ground that he did not possess legislative competence in that behalf cannot succeed.

It is clear that the validity of the Act cannot be challenged on the ground that the Act did not provide for the payment of compensation. For one thing s. 26 of the Act did contemplate the payment of compensation. Besides, as the law of the State then stood, there was no limitation on the legislative power of the Ruler such as is prescribed by Art. 31 of the Constitution; and Art. 31 had not been then applied to the State. Subsequently when Art. 31(2) was extended to the State the Act no doubt became the existing law and it has been saved by the new and modified cl. (5) of the said Article.

There is another aspect of the matter to which reference must be made. Section 26 of the Act had left the final decision on the question of the payment of compensation to the Constituent Assembly of the State; and it is common ground that the Constituent Assembly has decided not to pay any compensation. Mr. Chatterjee contends that this decision is

(1) Maxwell on "Interpretation of Statutes", 10th Ed., p. 17.

invalid because the Constituent Assembly itself was not properly called and constituted. There is no substance in this argument. After Yuvaraj Karan Singh was put in charge of the duties of governing the State by Maharaja Hari Singh by his proclamation issued on June 20, 1949, he began to function as a Ruler and was entitled to exercise all his powers in that behalf. He realised that the original plan of Maharaja Hari Singh to call a national assembly which he announced on March 5, 1948, would not meet the requirements of the situation which had radically changed; and the Yuvaraj thought that a Constituent Assembly on a broader basis should be called and should be entrusted with the task of framing a Constitution without any delay. It is idle to suggest that the Yuvaraj was bound to convene the national assembly on the same lines as were laid down by Maharaja Hari Singh in his proclamation and with the same object, for the same purpose, and subject to the same conditions. It was for the Yuvaraj to consider the situation which confronted him and it was within his competence to decide what solution would satisfactorily meet the requirements of the situation. We have no doubt that the Yuvaraj was perfectly competent to issue the proclamation on April 20, 1951, under which the Constituent Assembly ultimately came to be elected and convened. If the Constituent Assembly was properly constituted and it decided not to pay any compensation to the landlords it is difficult to understand how the validity of this decision can be effectively challenged.

That leaves only one question to be considered. It is contended that the Act is invalid under Art. 254 of the Constitution because it is inconsistent with the two earlier Acts, No. 10 of 1990 and No. 4 of 1977. It is unnecessary to enquire whether there is any repugnancy between the Act and the earlier Acts to which the appellant refers. In our opinion the argument based on the provisions of Art. 254 must be rejected on the preliminary ground that it is impossible to invoke the assistance of this Article effectively because in terms the essential conditions for its application are absent in the present case. This argument assumes that under Art. 254(1) if there is repugnancy between

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any provision of a law made by the Legislature of a State and any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then subject to the provisions of cl. (2), the law made by the Legislature of the State was to the extent of the repugnancy void. The appellant concedes that there is no scope for applying the provisions of cl. (2) of Art. 254 which deals with cases where the subsequent law has been reserved for the consideration and assent of the President; but this aspect of the matter itself shows that the whole Article would in substance be inapplicable to the State. Clause (2) of Art. 254, which is its integral and important part, postulates that the Legislature of the State, in enacting a law on the relevant matter may reserve it for consideration of the President and his assent, and thereby save the consequences of cl. (1); and cl. (2) was clearly inapplicable to the State. Besides, it is clear that the essential condition for the application of Art. 254(1) is that the existing law must be with respect to one of the matters enumerated in the Concurrent List; in other words, unless it is shown that the repugnancy is between the provisions of a subsequent law and those of an existing law in respect of the specified matters, the Article would be inapplicable; and, as we have already pointed out, Schedule Seven which contains the three Legislative Lists was not then extended to the State; and it is, therefore, impossible to predicate that the matter covered by the prior law is one of the matters enumerated in the Concurrent List. That is why Art. 254 cannot be invoked by the appellant. On this view, it is not necessary to consider whether the construction sought to be placed by the appellant on this Article is otherwise correct or not.

The result is that all the grounds urged by the appellant against the validity of the Act fail, and so it must be held that the High Court was right in taking the view that the plaintiff had not shown that the Act was ultra vires. The appeal accordingly fails and is dismissed with costs.

Appeal dismissed.