THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 04.06.2010

+ **WP (C) 6435/2007**

NIRMALA & OTHERS … Petitioners

versus

GOVERNMENT OF NCT OF DELHI & OTHERS … Respondents

Advocates who appeared in this case:-

For the Petitioners : Mr Vinod Sehrawat
For the Respondent No.1 : Mr A.K. Gupta
For the Respondent Nos.3 & 4 : Mr Anshu Mahajan

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MS JUSTICE VEENA BIRBAL

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J

1. Through this writ petition, the petitioners are seeking a direction for quashing / setting aside Section 50 of the Delhi Land Reforms Act, 1954 (hereinafter referred to as 'the DLR Act') as being violative of Articles 14, 16 and 19 of the Constitution of India, and also being impliedly repealed by the Hindu Succession (Amendment) Act, 2005. The petitioners are also seeking a direction to the respondents to mutate the disputed agricultural land left by the deceased husband of petitioner No. 1, equally, in favour of the petitioners and respondent Nos. 3, 4 and 5.

2. The petitioners herein are the widow (petitioner no. 1) and two minor daughters (petitioner Nos. 2 and 3) of Late Shri Inder Singh, the owner of the disputed land, who died intestate on 15.12.2006. Prior to his marriage with petitioner No.1 (Nirmala), Late Shri Inder Singh was married to another lady called Nirmla (shown as Nihali Devi in the counter-affidavit), with whom he had two sons and a daughter. He married petitioner no. 1 in 1997, after the death of his first wife in 1995. Respondent Nos. 3, 4 and 5 are the children of Late Shri Inder Singh and his first wife.

3. Late Shri Inder Singh had *bhumidhari* rights in respect of agricultural land to the extent of 1/6th share in Khata No. 136/132 consisting of Kh. No. 30/24 (4-16) and Kh. No. 31/13/1/2 (1-8) ad-measuring 6 Bighas 4 Biswas and 1/6th share in Khata No. 78/76 consisting of Kh. No. 35/1 (4-16), 35/2 (4-16), 9/1 (3-14), 10 (4-15), 27 (0-3), 36/4/2 (3-10), 5/2 (4-4), 6 (4-16), 7/2 (2-12), 14/1/2 (1-4), 54/45 (0-18) and 51 (0-2) ad-measuring 35 Bighas 10 Biswas. The total agricultural land ad-measuring 41 Bighas 14 Biswas (hereinafter referred to as the disputed agricultural land) is situated in the revenue estate of village Tazpur Kalan, Delhi.

4. After the death of Late Shri Inder Singh on 15.12.2006, petitioner no. 1 moved an application before the concerned Tehsildar on 05.02.2007, to mutate the above-mentioned disputed agricultural land in favour of the petitioners, but he refused to do so in view of Section 50 of the DLR Act. Being aggrieved by the decision of the Tehsildar, petitioner no. 1 called a meeting of the Panchayat of the village and in that meeting dated

12.02.2007, it was unanimously decided by the Panchayat as well as by respondent Nos. 3-5, that the petitioners be allotted 1/3rd share in the disputed agricultural land holdings owned by the deceased Shri Inder Singh. In pursuance of this decision, the petitioners were given possession of their share. But even then, respondent Nos. 3-5 were creating hindrances and not allowing the petitioners to work in their fields properly. Petitioner no. 1 also approached the concerned S.D.M and Deputy Commissioner of the area in March 2007, but her application was not entertained. Hence, the present writ petition was filed in August 2007.

5. Before we consider the issue at hand, it would be pertinent to set out the legislative developments. The DLR Act came into force on 20.07.1954. Its preamble states that it is "*[a]n Act to provide for modification of zamindari system so as to create an uniform body of peasant proprietors without intermediaries, for the unification of the Punjab and Agra systems of tenancy laws in force in the State of Delhi and to make provision for other matters connected therewith*". Section 50 of the Act provided that only male members of a family had the primary right of succession to agricultural land; it excluded female members from succeeding to such land holdings when male lineal descendants were available. Section 50 of the DLR Act is reproduced hereunder:

> "**50. General order of succession from males. -** Subject to the provisions of section 48 and 52, when a *Bhumidhar* or *Asami* being a male dies, his interest in his holding shall devolve in accordance with the order of the succession given below:

(a) Male lineal descendants in the male line of the descent :

Provided that no member of this class shall inherit if any male descendant between him and the deceased is alive:

Provided further that the son or sons of a predeceased son howsoever low shall inherit the share which would have devolved upon the deceased if he had been then alive:

(b) Widow
(c) Father
(d) Mother, being a widow;
(e) Step mother, being a widow;
(f) Father's father
(g) Father's mother, being a widow;
(h) Widow of a male lineal descendant in the male line of descent;
(i) Brother, being the son of same father as the deceased;
(k) Unmarried sister;
(l) Brother's son, the brother having been a son of the same father as the deceased;
(m) Father's father's son;
(n) Brother's son's son;
(o) Father's father's son's son;
(p) Daughter's son."

6. Thus, clause (a) of Section 50 requires that whenever a male *bhumidhar* or *asami* dies, the property shall first devolve upon the male lineal descendants in the male line of descent, howsoever low to the exclusion of female descendants. Given the fact that the chances of there being no male lineal descendants at all are extremely low, the property in all likelihood will not devolve upon the female descendants in any case.

7. The Hindu Succession Act, 1956 (hereinafter referred to as 'the HSA') was passed and came into force on 17.06.1956. The preamble of the HSA emphasized that it was *'[a]n Act to amend and codify the law relating*

to intestate succession among Hindus'. However, Section 50 of the DLR Act was protected by Section 4(2) of the HSA which made it clear that nothing contained in the HSA would affect any provision of law for the time being in force which provided for the prevention of fragmentation of agricultural holdings or for the fixation of ceiling or for the devolution of tenancy rights in respect of such holdings. Section 4(2) of the HSA is reproduced hereunder:

> "**4. Overriding effect of Act.**
>
> (1) xxxx xxxx xxxx xxxx xxxx
>
> (2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings."

8. In 1964, the DLR Act was placed in the Ninth Schedule of the Constitution of India (Entry 61), by virtue of the Constitution (Seventeenth Amendment) Act, 1964, with effect from 20th June 1964. Article 31B of the Constitution provides that no Act that has been placed in the Ninth Schedule can be the subject matter of challenge on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by the provisions of Part III of the Constitution. Article 3IB reads as under:-

> "**Art. 31B. Validation of certain Acts and Regulations.-** Without prejudice to the generality of the provisions contained in Article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment,

> decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, **subject to the power of any competent Legislature to repeal or amend it,** continue in force."
>
> (emphasis supplied)

9. In 2005, the HSA was amended by Parliament by passing the Hindu Succession (Amendment) Act, 2005 (hereinafter referred to as 'the Amendment Act'), which came into force on 09.09.2005. By virtue the Amendment Act, Section 4(2) of the HSA was omitted.

10. In the backdrop of this legislative history, the main questions that arise for our consideration in this case is:-

> "Whether Section 50 of the DLR Act has been repealed by the Amendment Act inasmuch as by omitting Section 4(2) of the HSA, 1956, it has removed the immunity that the DLR Act had with respect to the laws of succession in respect of agricultural land?
>
> Also, if that be the case, do the petitioners, being female, now have the right to succeed to the disputed agricultural land ?"

11. The main contention of the counsel on behalf of the petitioners was that due to the omission of Section 4(2) of the HSA, the rule of succession as contained in Section 50 of the DLR Act has been eclipsed and thus, after 09.09.2005, only the rule of succession provided under the HSA (as amended) is applicable to Hindus in respect of all properties in India, including agricultural land. Also, because of the substitution of the old Section 6 of the HSA by the new one, the petitioners have become co-parceners of disputed agricultural land along with the sons of Late Shri

Inder Singh, and thus all the petitioners have acquired rights, equal to those of respondent Nos. 3-5, in the property in question.

12. The learned counsel for the petitioners submitted that due to the omission of Section 4(2) and substitution of the old Section 6 of the HSA by the new one, by virtue of the Amendment Act, the State law contained in Section 50 of the DLR Act has become repugnant to the Union law contained in Sections 6, 8 and 9 of the HSA and the said Section 50 of the DLR Act is thus void.

13. The relevant sections of the HSA are reproduced hereunder:-

Old Section 6 before substitution by the Amendment Act:-

> **"6. Devolution of interest of coparcenary property.-** When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:
>
> PROVIDED that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.
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> *Explanation I:* For the purposes of this section, the interest of Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.
>
> *Explanation 2:* Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein."

New Section 6 after the Amendment Act:

> **6. Devolution of interest in coparcenary property**.-(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-
>
> (a) by birth become a coparcener in her own right in the same manner as the son;
>
> (b) have the same rights in the coparcenary property as she would have had if she had been a son;
>
> (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:
>
> Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.
>
> (2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.
>
> (3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,-
>
> (a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.- For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect-

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation.-For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation.- For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court."

Sections 8 and 9:

"8. General rules of succession in the case of males. - The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter-

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of two classes, then upon the agnates of the deceased; and

(d) lastly , if there is no agnate, then upon the cognates of the deceased.

9. Order of succession among heirs in the Schedule. - Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession."

14. The learned counsel for the petitioners placed reliance on three judgments. The first case is that of ***Ram Mehar v. Mst. Dakhan*: 1973 (9) DLT 44**. The main question for consideration before the Division Bench in that case was as follows:

"**5**. The main question to be determined in this case is solely a question of law. Either the rule of succession in

the Delhi Land Reforms Act or the rule of succession in the Hindu Succession Act governs the parties. If the Hindu Succession Act applies, then the plaintiff and the defendant have to succeed to their late father as co-heirs each entitled to an equal share. If the Delhi Land Reforms Act is to apply then the succession has to be according to the provisions of Section 50 of that Act. According to that Section an unmarried daughter succeeds to a *Bhumidar* only if there is no superior heir. On the other hand, a married daughter does not succeed at all. The defendant is a married daughter and, therefore, she does not have any right to succeed her father. The Delhi Land Reforms Act is an earlier Act and the question whether it has been expressly or impliedly overruled is to be determined by reference to Section 4 of the Hindu Succession Act, 1956."

15. The Division Bench in the said case observed:

> "**5.** The language of Section 4(1)(b) shows that any law in force immediately before the commencement of the Act shall cease to apply to Hindus if it is inconsistent with the provisions of the Act. **The provisions of the Delhi Land Reforms Act are inconsistent with the Hindu Succession Act as has already been stated before. Thus, if there was no sub-section (2) this question could have had to be decided against the plaintiff.** However, sub-section (2) states that the Act will not affect the provisions of any law which is in force if it provides for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings. The question of succession, therefore, depends wholly on whether the Delhi Land Reforms Act is a law which prevents the fragmentation of agricultural holdings or fixes ceilings on agricultural holdings or provides for the devolution of tenancy rights in respect of such holdings."
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> (emphasis supplied)

16. The Division Bench in the case of ***Ram Mehar*** *(supra)* contended that the DLR Act is a law which prevents the fragmentation of agricultural holdings, etc. and held that:-

> "19. In view of the conclusion that the Delhi Land Reforms Act provides for the prevention of the fragmentation of agricultural holdings and also, at the

> material time fixed ceilings on agricultural holdings and also dealt with the devolution of tenancy rights on such holdings, **it must be held that this law is saved by section 4(2) of the Hindu Succession Act and is not repealed by the provisions of the Hindu Succession Act.** This would mean that the rule of succession governing *Bhumidars* is to be found in section 50 of the Delhi Land Reforms Act and not in the Hindu Succession Act, 1956."
>
> (emphasis supplied)

17. The learned counsel for the petitioners, laying emphasis on the above-mentioned decision, submitted that it was only because of Section 4(2) of the HSA that the rule of succession with regard to agricultural land was to be as per Section 50 of the DLR Act and not in accordance with the HSA. Hence, with the omission of Section 4(2) of the HSA by virtue of the Amendment Act, the rule specified in Section 50 of the DLR Act is no longer saved and has, in fact, been repealed with effect from 09.09.2005, i.e., the date the Amendment Act came into force.

18. For persuasive values, the learned counsel for the petitioners relied on a decision of a learned single Judge of this court in the case of ***Smt. Mukesh & Ors. v. Bharat Singh & Ors.***: **2008 (149) DLT 114.** In that case, it was held that:-

> "7. Due to Sub-section (2) to Section 4 of the Hindu Succession Act, 1956 the rule of succession stipulated under the Hindu Succession Act, 1956 was subject to any law for the time being in force relating to agricultural holdings. Thus, if succession to an agricultural holding was stipulated in any local law applicable to an agricultural holding, provisions thereof would apply relating to devolution of interest in a holding. **The effect of deletion of Sub-section (2) to Section 4 of the Hindu Succession Act, 1956 due to the promulgation of the**

Hindu Succession (Amendment) Act, 2005 is that with effect from the date when the Amending Act was promulgated succession would be as per the Hindu Succession Act, 1956.

8. Prima facie, the Amending Act of 2005 cannot be read retrospectively as the Amending Act has not been given a retrospective operation. Meaning thereby, successions which had taken place prior to the promulgation of the Amendment Act of 2005 cannot be disturbed.

9. Section 3 of the Amending Act has substituted the existing Section 6 of the Hindu Succession Act. One gets a clue of the legislative intent when one looks at Sub-Section (3) of Section 6, as amended. It stipulates that where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 his interest in the property of a joint family governed by Mitakshara Law shall devolve by testamentary or intestate succession and not by survivorship. A daughter is given a share equal to that of a son.

10. In respect of the co-parcenery property the right of a daughter to receive a share equal to that of a son applies only if the death of male Hindu is after commencement of the Amendment Act, 2005."

(emphasis supplied)

19. In the above-mentioned case, the owner of the agricultural land holdings had expired on 10.06.1993 and thus it was on that date that succession to his property opened. As per the law then applicable, succession was in favour of the sons. Since the Amendment Act could not be read retrospectively, the appeal in the case of ***Mukesh v. Bharat Singh*** *(supra)* was dismissed.

20. The learned counsel for the petitioners pointed out that the facts of the present case are different from that of ***Ram Mehar*** *(supra)* and ***Mukesh v. Bharat Singh*** *(supra)* inasmuch as the owner of the disputed

agricultural land in the present case, Late Shri Inder Singh, died on 15.12.2006 i.e. after the Amendment Act had already come into force and after Section 4(2) had been omitted from the HSA. Thus, the protection to Section 50 of the DLR Act given by Section 4(2) of the HSA as applicable in the case of ***Ram Mehar*** *(supra)* did not exist any longer. Also, since, in the present case, the owner of the disputed agricultural land died in the year 2006, the amended provisions of the HSA would apply, which, in the case of ***Mukesh v. Bharat Singh*** *(supra)* were not applicable as the succession had opened on 10.06.1993, prior to the said amendment.

21. The third decision referred to by the learned counsel for the petitioners was that of the present Bench itself in the case of ***Smt. Har Naraini Devi and Another v. Union of India and Others*** **(W.P. (C) 2887/2008)** decided on 11.09.2009. In that case, this court had agreed with the contentions of the respondents that since the DLR Act had been placed in the Ninth Schedule of the Constitution of India in 1964, it was covered by the immunity provided in Article 31B, and was thus beyond the pale of challenge on the ground of violation of any of the rights conferred in part III of the Constitution.

22. The learned counsel for the petitioners argued that Article 31B provided immunity to Acts placed in the Ninth Schedule of the Constitution but such immunity was subject to the power of any competent legislature to repeal or amend its provisions. While setting out the provisions of Article 31B earlier in this judgment, we had emphasized the words "subject to the

power of any competent legislature to repeal or amend it". Referring to those words, it was contended by the learned counsel for the petitioners that Parliament being a competent Legislature had amended the HSA in 2005 and had thus omitted Section 4(2) of the Act. It was this very section that was saving Section 50 of the DLR Act and its deletion with effect from 09.09.2005 signified an implied repeal of Section 50 of the DLR Act (a State law) and inasmuch as it became repugnant to the provisions of Sections 6, 8 and 9 of the HSA (a Union law), the same was liable to be quashed.

23. Apart from this, the learned counsel for the petitioners submitted that the facts of the present case differed from that of ***Smt. Har Naraini Devi's case*** *(supra)* inasmuch as in that case the owner of the disputed property died on 06.06.1997, that is, prior to the coming into force of the Amendment Act in 2005, and, thus, before Section 4(2) of the HSA had been omitted. In the present case, succession opened on 15.12.2006, after Section 4(2) of HSA had been omitted with effect from 09.09.2005. Also, in the case of ***Smt. Har Naraini Devi*** *(supra)*, the only challenge against Section 50 of the DLR Act was on the ground that it was violative of the fundamental rights as given in the Constitution of India however in the present case the challenge is also on the ground of it being repealed by a subsequent statute.

24. In response to the above arguments, the learned counsel for the respondent Nos. 3 to 5 also relied strongly on the decisions of ***Ram Mehar***

(supra) and ***Smt. Har Naraini Devi*** *(supra)*. It was contended by the learned counsel for the said respondents that this court in the case of ***Smt. Har Naraini Devi*** *(supra)* clearly held that "Section 50 (a) of the said Act cannot be challenged because of Article 31B of the Constitution and because it had been placed in the Ninth Schedule to the Constitution in 1964, that is, prior to 24.04.1973".

25. It was submitted that the DLR act is a special enactment enacted especially to deal with agricultural land and for the prevention of fragmentation of agricultural holdings, for the fixation of ceilings and for the devolution of tenancy rights in respect of such holdings and would, therefore, prevail despite the Amendment Act omitting Section 4(2) of the HSA. It was further submitted that the removal of Section 4(2) of the HSA did not imply a repeal of Section 50 of the DLR Act and the immunity provided by Article 31B to Acts placed in the Ninth Schedule of the Constitution would continue.

26. Another contention of the learned counsel for the said respondents was that in the Seventh Schedule of the Constitution of India which prescribes the three lists of subjects on which the Union, State or both legislatures can make laws respectively, Entry 5 of List III, which is the Concurrent list, includes 'succession' and Entry 6 includes 'transfer of property except agricultural land'. On the other hand, List II, which is the State List, at Entry 18, has 'Land' including every form of land whether agricultural or not. Thus it was submitted by the learned counsel for the

respondents that this clearly shows the intention of the legislature to allow only the State to enact laws regarding agricultural land.

27. Finally, the learned counsel for the said respondents also relied on extracts of the decision in the case of ***Ram Mehar*** *(supra)* to support the argument that the DLR Act is a special enactment dealing with agricultural land and thus the rule of succession set out in Section 50 of the DLR Act has to be considered as the rule of succession to tenancy rights. Thus, according to the said learned counsel, this provision is saved from repeal by the HSA.

28. It is in the light of these arguments, that the questions posed in paragraph 10 above need to be answered. We may straightaway say that the answers to the questions are that the rule of succession contained in Section 50 of the DLR Act has been repealed by virtue of the omission of Section 4(2) of HSA in 2005 and that, as a result, the rule of succession would be the one prescribed under the HSA (as amended). Consequently, the petitioners, being female, have the right to succeed to the disputed agricultural land inasmuch as succession opened out, in this case, on 15.12.2006 on the death of Late Inder Singh.

29. Section 4(2) as it existed prior to its omission in 2005 declared that nothing contained in the HSA would be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings. This Court, in

the case of ***Ram Mehar*** *(supra)* found that the DLR Act was such a law and because of Section 4(2), the rule of succession laid down in the DLR Act would be unaffected by the provisions or rule of succession prescribed under HSA. It was only because of Section 4(2) that this Court, in ***Ram Mehar*** *(supra)* decided that the applicable rule of succession would be as provided under the DLR Act. Had Section 4(2) not been there, ***Ram Mehar*** *(supra)* would have been decided differently and the rule of succession given in the HSA would have been applicable.

30. It is necessary to examine Section 4 of HSA which stipulates that the HSA is to have an over-riding effect. Sub-section (1) specifically provides as under:-

> **"4. Over-riding effect of Act.** – (1) Save as otherwise expressly provided in this Act, -
>
> (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;
>
> (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act."

31. By virtue of clause (a) of sub-section (1) of section 4 of the HSA, any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force ceased to have effect upon the commencement of the HSA in respect of any matter for which provision was made in the HSA. In other words, in respect of matters provided in the HSA, Hindu law including any custom or usage as part of that law stood abrogated. Similarly, by

virtue of clause (b) of Section 4(1) of the HSA, any other law in force immediately before the commencement of the HSA, ceased to apply to Hindus in so far as it was inconsistent with any of the provisions of the HSA. The laws in force, of course, included statute law such as the DLR Act. Thus, by virtue of Section 4(1)(b), Section 50 of the DLR Act would cease to operate and apply to Hindus to the extent it was inconsistent with the HSA. In ***Ram Mehar*** *(supra)*, this Court held that the said provisions of the DLR Act were inconsistent with the HSA. Thus, if no reference was made to sub-section (2) of Section 4 as it then existed, the HSA had virtually abrogated the provisions of Section 50 of the DLR Act in its application to Hindus to the extent of the inconsistency between the rule of succession prescribed in the HSA and the rule of succession stipulated in the said Section 50 of the DLR Act.

32. It is only because of sub-section (2) of Section 4 of the HSA that the operation and effectiveness of the provisions of the DLR Act was saved inasmuch as it was declared that nothing in the HSA shall be deemed to affect the provisions of any law for the time being in force providing for (1) the prevention of fragmentation of agricultural holdings or (2) for the fixation of ceiling or (3) for the devolutions of tenancy rights in respect of such holdings. Since the DLR Act was held to be such a law, its provisions, which included Section 50, were unaffected by the enactment of the HSA. It is apparent that while there was a general abrogation / repeal of laws – personal, customary and statutory – to the extent they were inconsistent with

the provisions of the HSA, the provisions of certain laws like the DLR Act were specifically saved or excluded from the general abrogation / repeal.

33. Now, the omission of sub-section (2) of Section 4 of the HSA by virtue of the Amendment Act of 2005 has removed the specific exclusion of the DLR Act from the overriding effect of the HSA which hitherto existed because of the said sub-section (2). The result is obvious. The protection or shield from obliteration which sub-section (2) provided having been removed, the provisions of the HSA would have overriding effect even in respect of the provisions of the DLR Act. It is, in fact, not so much a case of implied repeal but one where the protection from repeal / abrogation which hitherto existed has now been removed. The omission of sub-section (2) of Section 4, by virtue of the amendment of 2005 is very much a conscious act of Parliament. The intention is clear. Parliament did not want this protection given to the DLR Act and other similar laws to continue. The result is that the DLR Act gets relegated to a position of subservience to the HSA to the extent of inconsistency in the provisions of the two acts.

34. We shall now deal with the contention of the learned counsel for the respondent Nos. 3 to 5 that in view of the decision of this Court in ***Smt Har Naraini Devi*** *(supra)*, Section 50 of DLR Act cannot be the subject matter of challenge because of Article 31B of the Constitution and because the DLR Act had been placed in the Ninth Schedule to the Constitution in 1964. It is true that in ***Smt Har Naraini Devi*** *(supra)*, we had concluded that Section 50(a) of the DLR Act could not be challenged because of

Article 31B but, we must not forget that in that case, the challenge was on the ground of alleged violation of Articles 14, 15 and 21 of the Constitution. Here, the challenge is also based on an amendment of the statute. We have seen that the immunity granted under Article 31B is subject to the power of any competent legislature to repeal or amend the protected Act (in this case the DLR Act). The HSA and the Amendment Act of 2005 have been enacted by Parliament and there is no challenge to Parliament's competency. We have already indicated as to how the effect of omission of sub-section (2) of Section 4 of the HSA is to abrogate the provisions of the DLR Act to the extent of inconsistency with the provisions of the HSA. Clearly, the immunity under Article 31B is not a blanket immunity and is subject to the power of any competent legislature to repeal or amend the protected Act. This is exactly what Parliament has done. Thus, the argument raised on behalf of the Respondent Nos. 3 to 5 is clearly untenable.

35. For the aforesaid reasons, we hold that the provisions of the HSA would, after the amendment of 2005, have over-riding effect over the provisions of Section 50 of the DLR Act and the latter provisions would have to yield to the provisions of the HSA, in case of any inconsistency. The rule of succession provided in the HSA would apply as opposed to the rule prescribed under the DLR Act. The petitioners are, therefore, entitled to succeed to the disputed agricultural land in terms of the HSA. The respondent Nos. 1 & 2 are directed to mutate the disputed agricultural land,

to the extent of Late Shri Inder Singh's share, in favour of the petitioners and respondent Nos. 3, 4 and 5 as per the HSA.

36. The writ petition is allowed to the aforesaid extent. The parties are left to bear their respective costs.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

JUNE 04, 2010
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