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to enter into contracts without the written consent of defendant No. 1 Intizar Hussain could even be regarded as agent of the plaintiff for making this offer and with the acceptance of this offer there came into existence a contract between the parties themselves *i.e.*, the plaintiff and defendant No. 1 without the intervention by any agent of defendant No. 1. But in any case the General Manager had given specific authority to Intizar Hussain to enter into this particular contract and whether he had authority or not otherwise to make a bargain on behalf of defendant No. 1, he did receive authority to enter into this particular agreement.

The main plea on behalf of defendant No. 1 if we hold the telephonic talk to be proved is that the written consent of defendant No. 1 was essential before a contract could be entered into by defendant No. 2 on behalf of defendant No. 1. To this contention there are two answers. The first is that in accordance with section 237 of Contract Act if the agent has apparent authority to enter into a particular contract on behalf of the principal the contract is valid even though in fact he has no such authority. The plaintiff had no knowledge of the term relating to written consent between defendant No. 1 and defendant No. 2. If he found that the General Manager of defendant No. 1 had agreed on the telephone to this contract he would be justified in presuming that henceforth Intizar Hussain had authority to enter into this contract. Any term in a contract of agency which places restrictions on the authority of an agent is unavailing against parties who are not aware of such term if the circumstances are such as to confer an apparent authority on the agent to act on behalf of the principal.

Another aspect of the matter is this. A term like this binds the agent. It does not bind the principal who is entitled at any time to waive it. If the principal has given directions to the agent that he is not to act on his behalf in the absence of certain circumstances, the principal can still confer upon him authority in the absence of those circumstances for acting on his behalf. The term between the parties that the agent will not without the written consent of the principal enter into a contract on his behalf does not create a law which debars the principal henceforth from conferring authority on the agent in violation thereof. The law of this country allows the principal to confer authority by word of mouth, and this right of his is not at all affected by a condition which he has himself imposed on his agent. The condition he can always withdraw or waive. At the same time there is an element of estoppel in the circumstances with which we are dealing. The principal having in fact orally agreed to a bargain being struck by his agent cannot afterwards plead that he had no right to confer authority on the agent. The other party is entitled to rely upon the word of the principal and regard the contract as good and binding. In the present case it is a matter for consideration that if it was defendant No. 1 who wanted to enforce the agreement, the plaintiff would have no answer.

Whether we regard the agreement, therefore, as a contract between defendant No. 1 and the plaintiff or we regard it as a contract between the plaintiff and defendant No. 2 as representative of defendant No. 1 it is binding on defendant No. 1.

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There only remains the objection raised by the plaintiff-appellant that the appeal before the High Court was not properly constituted as defendant No. 2 was not made a party within the period of limitation. It is true that if defendant No. 2 was a necessary party to the appeal his addition as a party after the period of limitation could not have cured the defect in the constitution of the appeal. Defendant No. 2 was, however, not a necessary party to the appeal. The plaintiff had secured decrees against both defendants. Defendant No. 1 when it filed the appeal was not asking for any relief against defendant No. 2 and it only wanted to get rid of the decree passed against it in favour of the plaintiff. *Prima facie* the only necessary party to the appeal was the plaintiff. A contention is put forward that defendant No. 2 had a right of contribution in case the plaintiff applied for executing the decree with respect to the sum of Rs. 3,000, but the complaint on this question should have been made by defendant No. 2. He took no objection to the constitution of the appeal in the High Court and before us he had not appeared at all. He himself filed no appeal against the decree of the High Court.

As a result this appeal is accepted, the decree of the High Court is set aside, and the decree of the trial Court is restored. The plaintiff-appellant shall have his costs in the High Court as well as in this Court. Costs of the suit will be paid as ordered by the trial Court.

A. H. *Appeal accepted.*

P L D 1963 Supreme Court 251

Present: *A. R. Cornelius, C. J., S. A. Rahman, Fazle-Akbar, B. Z. Kaikaus and Hamoodur Rahman, JJ*

Civil Appeal No. 10-D of 1962

TOFAZZAL HOSSAIN AND OTHERS—Appellants

versus

THE PROVINCE OF EAST PAKISTAN AND OTHERS—Respondents

AND

Civil Appeal No. 23-D of 1962

G. AFROZ ARA BEGUM AND OTHERS—Appellants

versus

THE PROVINCE OF EAST PAKISTAN AND OTHERS—Respondents

Tofazzal Hossain v. Province of East Pak.

Cornelius, C J, S. A. Rahman, Fazle-Akbar, Kaikaus and Hamoodur Rahman, JJ

Civil Appeals Nos. 10-D and 23-D of 1962, decided on 1st April 1963.

(On appeal from the judgment and order of the High Court of East Pakistan, Dacca, dated the 21st February 1961, in Writ Petitions Nos. 37 of 1959 and 157 of 1958.)

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(*a*) *East Bengal State Acquisition and Tenancy Act, 1950 (XXVIII of 1951), S. 3(1)—"All interests" acquired by Notification—Not necessary to specify each one of such interests.* [p. 259]*A*

(*b*) *Interpretation of Statutes—Amendment of provision of Act—Amended provision given retrospective effect from date of enforcement of Act—Provision in its amended form applies not only to references to such provision in the Act itself but also to rules, bye-laws, and notifications issued under the Act—East Bengal State Acquisition and Tenancy Act, 1950 (XXVIII of 1951), S. 20 (2)(a)(b) amended, with retrospective operation, by East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance (XII of 1960).* [p. 260]*B* et seq

(*c*) *East Bengal State Acquisition and Tenancy Act, 1950 (XXVIII of 1951), S. 20 (2)(a)(b) as amended by East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance (XII of 1960)*—Hats *and* Bazaars *declared by amendment not to have ever been included in cls. (a) and (b) of subsection (2) of S. 20—Notification No. 4847-L. R., dated 2nd April 1956, acquiring "all lands" In* khas *possession of rent-receivers other than classes of lands falling under S. 20 (2)(a)(b)*—Held, *possession of* Hats *and* Bazaars *had passed to Government by means of the Notification.* [p. 262]*C*

(*d*) *Legislature—(Empowered to make relevant laws)—May make laws amending existing laws whether during pendency of proceedings before a Court or after decision of a proceeding involving application of existing law—[Supreme Court's decision that* Hats *and* Bazaars *were covered by provisions of S. 20 (2) (a) (b), East Bengal State Acquisition and Tenancy Act, 1950 (XXVIII of 1951)—Governor's Ordinance (East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance (XII of 1960) declaring* Hats *and* Bazaars *never to have been so included].* [p. 262]*D*

(*e*) *Writ—Petition—(New point : whether property was of nature of* waqf*)—Not raised in concise statement before Supreme Court—Also, previously abandoned before High Court—Other party not admitting plea as to* waqf*—Inquiry requiring voluminous evidence—Point not allowed to be raised in appeal before Supreme Court.* [p. 262]*E*

M. H. Khondkar Senior Advocate Supreme Court (*Abdus Sobhan* Advocate Supreme Court with him) instructed by *A. Wadud Mian* Attorney for Appellants.

Maksumul Hakim Advocate-General East Pakistan and *A. B. Mahmud Hussain* Senior Advocate Supreme Court (*T. H. Khan* Advocate Supreme Court with him) instructed by *A. W. Mallik* Attorney for Respondents (C. A. No. 10-D of 1962).

Tafazzal Ali Senior Advocate Supreme Court (*Mozammel Haque* Advocate Supreme Court with him) instructed by *S. S. Hoda* Attorney for Appellants.

Maksumul Hakim Advocate-General East Pakistan and *A. B. Mahmud Hussain* Senior Advocate Supreme Court (*Shafiqur Rahman* Advocate Supreme Court with him) instructed by *A. W. Mallik* Attorney for Respondents (C. A. No. 23-D of 1962).

Dates of hearing : 23rd and 25th January 1963.

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JUDGMENT

B. Z. KAIKAUS, J.—This judgment will deal with Civil Appeals Nos. 10-D and 23-D of 1962, the main point argued in which is common.

These appeals arise out of proceedings taken by the Government under the East Bengal State Acquisition and Tenancy Act, 1950. By this Act the Government was empowered *inter alia* to acquire all interests of the kind specified in the Act, of persons described as rent-receivers. "Rent-receiver" as defined in the Act means "any proprietor or a tenure-holder and includes even a *raiyat* or an under-*raiyat* whose land has been let out." By notifications made under section 3 of the Act, the East Pakistan Government acquired all interests of all rent-receivers in the various districts of East Pakistan. The rent-receivers were under the Act entitled, subject to a maximum, to retain possession of certain categories of their lands as tenants under the Government though the land henceforth vested in the Government. Pursuant to the vesting in the Government of the interests of rent-receivers in their lands, the Provincial Government also took possession of 'hats' and 'bazars' belonging to rent-receivers which were in their *khas* possession. The right of Government to take possession of hats and bazars which were in the *khas* possession of the rent-receivers was challenged by a writ petition in the East Pakistan High Court in *Yousuf Ali Chowdhury and others* v. *The Province of East Pakistan* (1), the contention on behalf of the rent-receivers being that they were entitled to retain possession of 'hats' and 'bazars' as tenants under the Government. The petitioners in that writ petition failed in the High Court, but on appeal to the Supreme Court they succeeded to the extent that hats in *khas* possession were held to be covered by clauses (*a*) and (*b*) of section 20 (2) of the Act, so that the rent-receivers were entitled to retain possession of them as tenants under the Government. The decision of the Supreme Court is reported as *Yousuf Ali Chowdhury and others* v. *The Province of East Pakistan* (2). After the decision of the Supreme Court seventeen petitions were filed in the High Court of East Pakistan in which rent-receivers claimed that they were entitled to retain possession of the hats belonging to them in spite of the acquisition of their interests under the East Bengal State Acquisition and Tenancy Act. During the pendency of these petitions, an Ordinance was promulgated by the Governor of East Pakistan which provided that clauses (*a*) and (*b*) of section 20 (2) were to be deemed to be amended so as never to have included a hat or bazar. The East Pakistan High Court found that the amendment was intended to have retrospective effect, with the result that all hats were henceforth excluded from clauses (*a*) and (*b*) of section 20 (2) and the Government became entitled to their possession. Some other contentions were raised before the High Court by the petitioners which were all repelled and all the seventeen petitions were dismissed. Against the orders in two of these petitions, two petitions for special leave were filed in this Court which were admitted giving rise to appeals

(1) P L D 1958 Dacca 138

(2) 1959 P S C R 104=P L D 1959 S C (Pak.) 467

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Nos. 10-D and 23-D of 1962. The main argument on behalf of the appellants in these two appeals is that without a further notification the amending Ordinance does not effect hats in the possession of the appellants.

Before proceeding to consider the contentions raised by the appellants it will be proper to reproduce the relevant provisions of the East Bengal State Acquisition and Tenancy Act, 1950 :—

CHAPTER II

3. (1) At any time after the commencement of this Act, it shall be lawful for the Provincial Government to acquire, by notification in the Official Gazette, with effect from such date as may be specified in the notification (hereinafter referred to as the notified date),—

(*i*) all interests of such of the rent-receivers as may be specified in the notification, in their respective estates (taluks, tenures, holdings or tenancies), as the case may be, in any district, part of a district or local area, and

(*ii*) all interests of all rent-receivers whose properties are, for the time being, under the management of the Court of Wards under the Court of Wards Act, 187[illegible], in their respective estates, (taluks, tenures, holdings or tenancies), as the case may be,

including all their interests in all sub-soil and rights to minerals in such estates, (taluks, tenures, holdings or tenancies).

(2) Subject to the provisions of subsections (2), (3), (4), (5) and (6) of section 20, the Provincial Government may also, simultaneously with or at any time after the publication of a notification under subsection (1) in respect of the interests of any rent-receiv in any estate, (taluk, tenure, holding or tenancy), acquire, by notification in the Official Gazette, with effect from such date as may be specified in the notification (hereinafter referred to as the notified date), (all or any of the lands in his *khas* possession of which he shall not be entitled to retain possession under the said section and so much of the lands in his *khas* possession as has been acquired under this subsection and has not vested in the Provincial Government under clause (*a*) of subsection (4), shall vest absolutely in the Provincial Government free from all incumbrances).

. . . . . .

(3) The notification referred to in subsection (1) or subsection (2) shall be in such form and shall contain such particulars as may be prescribed.

(4) On and from the date specified in a notification under subsection (1),—

(*a*) all interests of the rent-receivers in the estates, (taluks, tenures, holdings or tenancies) specified in the notification, including their interests in all lands in their *khas* possession, and interests in all sub-soil and rights to minerals, in such estates, (taluks, tenures, holdings or tenancies) and also including the interests of any such rent-receiver in any building or part of

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a building standing on any such land and used primarily as office or cutchery for the collection of rent of any estate, (taluk, tenure, holding or tenancy), shall vest absolutely in the Provincial Government free from all encumbrances :

Provided that nothing in this clause shall apply to any building within the homestead of the rent-receiver concerned ;

(*f*) all such rent-receivers shall be entitled to hold as tenants directly under the Provincial Government such of their *khas* lands as has not been acquired under subsection (2) and shall be liable to pay to the Provincial Government, the rent determined for such lands under section 5 ;

5. As soon as may be after the publication of a notification under subsection (1) of section 3, the Revenue Officer shall determine, according to the principles laid down in sections 23, 24, (25, 25-A), 26, 27 and 28, the rent of every parcel of lands in the *khas* possession of all rent-receivers specified in such notification and comprised in the estates, taluks, tenures, holdings or tenancies to which such notification relates.

CHAPTER IV

(20) (1) On the acquisition of the interests of rent-receivers in any area under Chapter V, no rent-receiver, cultivating *raiyat*, cultivating under-*raiyat* or non-agricultural tenant shall be entitled to retain possession of any of his *khas* lands in such area except as provided in subsection (2).

(2) A rent-receiver, a cultivating-*raiyat*, a cultivating under-*raiyat*, or non-agricultural tenant shall be entitled to retain as a tenant under the Provincial Government, possession of—

(*a*) lands covered by his homestead or any other building belonging to him with necessary adjuncts thereto, other than such building or part of a building outside his homestead as is used primarily as office or cutchery for the collection of rents of any estate, taluk or tenure and may be decided to be acquired by the Provincial Government ;

(*b*) land in his *khas* possession of the following classes (other than derelict tea gardens), namely :—

(*i*) lands used for agricultural or horticultural purposes including tanks,

(*ii*) lands which are cultivable or which are capable of cultivation on reclamation, and

(*iii*) vacant non-agricultural lands :

Provided that the aggregate quantity of all lands of the classes referred to in the clauses (*a*) and (*b*) in the whole Province so retained in possession by a rent-receiver, a cultivating *raiyat*, a cultivating under-*raiyat* or a non-agricultural tenant shall not exceed three hundred and seventy-five standard *bighas* or an area determined by calculating at the rate of ten standard *bighas* for each member of his family, whichever is greater.

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CHAPTER V

44. Notwithstanding anything contained in any other law for the time being in force or in Chapter II of this Act or in any contract, but subject to the provisions of clauses (*a*), (*b*), (*c*) and (*d*) of subsection (4) of section 3 (and subsection (3) of section 46-E), on the publication of a notification in the Official Gazette under subsection (2) of section 43, declaring that a Compensation Assessment roll has been finally published, the *following consequences shall ensue, namely* :—

(1) all the interests of all the proprietors in their respective estates, of all the tenure-holders in their respective tenures and of all other rent-receivers in the holdings or tenancies respectively let out by such rent-receivers within the area to which such roll relates or in such parts of such estates, tenures or *holdings, or tenancies, as the case may be,* as are within such area including the interests of all such proprietors, tenure-holders and other rent-receivers in all lands comprised in such estates, tenures and holdings or tenancies or part of such estates, tenures and holdings or tenancies within such area which are in the *khas* possession of such proprietors, tenure-holders and other rent-receivers and the interests of all such rent-receivers in all sub-soil including any rights to minerals in such estates, tenures and holdings or tenancies or part of such estates, tenures and holdings or tenancies within such area other than the interests which have already been acquired under Chapter II (or subsection (3) of section 46-E) shall, with effect from the first day of the agricultural year next following the date of publication of such notification in the Official Gazette, be deemed to have been acquired by the Provincial Government and vest absolutely in the Provincial Government free from all encumbrances but subject to the rights of such proprietors, tenure-holders and other rent-receivers specified in clause (2) ;

(2) each proprietor, tenure-holder and other rent-receiver, whose interests in any estate, tenure or holding or tenancy or in any part of any estate, tenure or holding or tenancy, as the case may be, within the area to which such roll relates, are acquired under this Act, shall, with effect from the first day of the agricultural year next following the date of publication of such notification in the Official Gazette, be entitled to retain possession of and hold, subject to the provisions of this Act, as a tenant directly under the Provincial Government all lands of which he is entitled to retain possession under Chapter IV and, be liable to pay rent for such lands to the Provincial Government ;

(3) The interests of all cultivating *raiyats*, cultivating under-*raiyats* and non-agricultural tenants in all lands held by such *raiyats*, under *raiyats* and non-agricultural tenants within the area to which such roll relates in excess of the lands of which such *raiyats*, under-*raiyats* or non-agricultural tenants are entitled to retain possession under Chapter IV, including the interests in the sub-soil of all lands so held in excess and all

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rights to minerals therein (other than the interests which have already been acquired under any other provision of this Act) shall, with effect from the first day of the agricultural year next following the date of publication of such notification in the Official Gazette, be deemed to have been acquired by the Provincial Government and vest absolutely in the Provincial Government free from all encumbrances ;

The amending Ordinance promulgated by the Governor of East Pakistan in 1960 during the pendency of these cases in the High Court of East Pakistan is in the following words :

"In section 20 of the said Act,

"(*i*) in subsection (2), for the explanation, the following new subsection shall be added, namely,

"(2-*a*) Notwithstanding anything contained in any other law for the time being in force or in any instrument or in any judgment or decree or order of any Court, lands of the classes referred to in the clauses (*a*) and (*b*) of subsection (2) do not include *and shall be deemed never to have included*—

"(*i*) any land or building in a Hat or Bazar * * * * *"

The two notifications published by the Governor under section 3 by which the interests of rent-receivers in Noakhali the district with which we are concerned in these two appeals were acquired are the following :

No. 4831-L. R., 2nd April 1956. In exercise of the power conferred by subsection (1) of section 3 of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act XXVIII of 1951), as amended by the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1956 (East Bengal Ordinance III of 1956), it is hereby notified, for the information of all concerned, that the Governor is pleased to acquire, with effect from the 14th April 1956, all interests of all rent-receivers in their respective estates, taluks, tenures, holdings and tenancies *situated in the district of Noakhali*, including their interests in all sub-soil and rights to minerals in such estates, taluks, tenures, holdings and tenancies, except the interests and rights which have already been acquired by, and have already vested in the Provincial Government under the provisions of the said Act.

No. 4847-L. R., 2nd April 1956. In exercise of the power conferred by subsection (2) of section 3 of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act XXVIII of 1951), as amended by the East Bengal State Acquisition and Tenancy (Amendment) Ordinance 1956 (East Bengal Ordinance III of 1956), it is hereby notified, for the information of all concerned, that the Governor is pleased to acquire, with effect from the 14th April 1956, all lands in the *khas* possession of all rent-receivers situated in the district of Noakhali, other than the classes of lands coming under clauses (*a*) and (*b*) of subsection (2) of section 20 and other than such lands as have already been acquired by, and have

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already vested in, the Provincial Government under the provisions of the said Act.

It will be observed that by virtue of subsection (1) of section 3, the Provincial Government is empowered to acquire the interests of rent-receivers in their estates, taluks, tenures, holdings or tenancies. By virtue of section 4 of the Act on the publication of a notification by the Government even the whole of the land in the *khas* possession of the rent-receiver vests in the Government. By virtue of clause (*f*) of subsection (4) of section 3, however, the rent-receivers are entitled to retain as tenants under the Government such of their *khas* land as has not been acquired by a notification under subsection (2) of section 3. This means that unless there be a notification under subsection (2) the whole of the *khas* land of a rent-receiver remains in his possession as tenant under the Government. By a notification under subsection (2) the Government can take possession of such of the *khas* land of the rent-receiver as is not protected by section 20. Subsection (2) of section 20 which provides for the retention of part of *khas* land by the rent-receivers is not directly applicable to an acquisition by the Government under subsection (1) of section 3. Section 20 (2) relates primarily only to an acquisition under Chapter V of the Act as will appear from subsection (1) of section 20. An acquisition under section 3 (1) is under Chapter II of the Act and its incidents are not the same as those of an acquisition under Chapter V, the effect of which is stated in section 44 and section 20. In the case of an acquisition under Chapter V, section 20 (2) being directly applicable, a rent-receiver is not entitled when this acquisition takes place to retain land in his *khas* possession except to the extent specified in subsection (2) of section 20, but in the case of a notification under subsection (1) of section 3, he remains entitled by virtue of clause (*f*) of subsection (4) of section 3 to retain the whole of his *khas* land as tenant under the Government. If in such a case the Government wants to deprive him of the possession of his *khas* land, it has to issue a further notification under subsection (2) of section 3 and in that case the possession of the whole of his *khas* land which is not retainable under subsection (2) of section 20 also passes to the Government. He continues, however, to retain possession of the land permitted to him by section 20.

The distinction, stated above, is important, because if section 20 (2) was directly applicable to an acquisition under section 3 (1) the main argument put forward by learned counsel for the appellants would lose force. That argument may be stated thus: the *khas* land of the appellants has been taken away by the second of the two notifications reproduced above, that is, the notification under subsection (2) of section 3 relating to *khas* land; this notification states that it does not apply to land mentioned in clauses (*a*) and (*b*) of section 20 (2); at the time when the notification was issued clause (*b*) included hats as held by the Supreme Court in *Yousuf Ali Chowdhury's case*; the notification, therefore, does not cover hats and a subsequent

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amendment of section 20 (2) by which hats are included therein does not affect the notification, because the notification will cover only such land as was contemplated by it when it was issued. If subsection (2) of section 20 were directly applicable to the case of an acquisition under section 3, the right of the Government to take possession of even the *khas* land except to the extent specified in subsection (2) of section 20 would arise by the notification under subsection (1) of section 3 and that notification being applicable to "all interests" of rent-receivers without any exception the argument that the notification has not within its contemplation certain lands would not be available. With respect to the second notification the contention as already stated is that by a specific reference to clauses (*a*) and (*b*) of subsection (2) of section 20 the land that was included in clauses (*a*) and (*b*) was not being affected by the notification, and it is the content of clause (*b*) at the time of the notification that has to be considered.

It may be stated here that as a matter of fact at the hearing our attention was not drawn to clause (*f*) of subsection (4) of section 3. It was assumed on all hands that section 20 (2) was directly applicable to a notification under subsection (1) of section 3 and it appeared to us that it was not necessary to determine the effect of the amendment on the second notification, because the first notification read with section 20 ( ) enabled the Government to take possession of all lands except those which could be retained by the rent-receiver by virtue of section 20 (2). When we called upon learned counsel for the appellants to explain how he could get rid of the effect of the first notification for by that notification the possession of the whole of the *khas* land of the appellants was to pass to the Government except to the extent provided for in clauses (*a*) and (*b*) of subsection (2) of section 20 and by the amending Ordinance hats were deemed to have been excluded from clauses (*a*) and (*b*) from the very commencement of the Act, he had practically no answer. All that he was able to say was that the first notification was illegal because the words used were "all interests" and this was not a proper specification of interests of rent-receivers as required by law. His precise contention was that the particulars of all the lands to which the notification relates should have been mentioned in the notification and it was only then the notification would be valid. This is a hopeless argument. If "all interests" are affected by a notification, it is not necessary to specify each one of those interests.

However, the reply of learned counsel was based on a misapprehension of the true effect of a notification under subsection (1) of section 3. It is only by a notification under subsection (2) of section 3 that the possession of the *khas* land of a rent-receiver will pass to the Government (except of course to the extent mentioned in subsection (2) of section 20). A simple notification under subsection (1) of section 3 does not deprive the rent-receiver of the possession of his *khas* land. He will remain in possession of his *khas* lands as tenant under the Government till there is a notification under subsection (2) of section 3 and for depriving him of any of his *khas* lands the

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Government has to rely upon such notification. The argument, therefore, which was put forward by learned counsel for the appellants as to the necessity of a further notification has to be considered.

Properly analysed, though learned counsel for the appellants has not put it thus, the argument amounts to this: when a statute is amended, will this amendment affect only the particular provision which is amended or will it affect the references to that provision in other instruments. The amendment here is of clauses (*a*) and (*b*) of subsection (2) of section 20. It provides that clauses (*a*) and (*b*) of subsection (2) of section 20 shall be read as if from the very day on which the Act was originally enacted they never included any hat or bazar. To these clauses (*a*) and (*b*) there may be a reference in other instruments. Shall we while interpreting those instruments read (*a*) and (*b*) with reference to their context as it existed on the date of the instrument or as it was altered by the retrospective amendment? In the present cases the reference is in a notification by the Government. Shall we in that notification construe clauses (*a*) and (*b*) as if they included hats and bazars? The argument put forward on behalf of the appellant is that at that time the intention of the Government was to exclude whatever was implied in clauses (*a*) and (*b*) and the later amendment does not affect the intention of the notification.

It appears to us that at least in relation to references to the amended provision in the same Act or in rules, bye-laws, and notifications under the same Act, the amendment shall have effect as if the references were to the amended provision. The presumption is that the Legislature when it provides that a particular expression shall be deemed to have a particular content from the very day that the Act in which it appears was enacted has in its contemplation the whole effect of this change of meaning on the various provisions of the Act. The Legislature is dealing with the expression not as a part of a section but as a part of the whole Act. Any other view would lead to confusion and anamolies. References to subsection (2) of section 20 will be found in subsection (2) of section 3 and sections 9 and 9-A of this very Act. If we were to read subsection (2) of section 3 as if the reference in it to subsection (2) of section 20 was to be construed as reference to the unamended provision the result would be that the amendment of subsection (2) of section 20 will not enhance the power of Government to take over *khas* lands in case of an acquisition under section 3 for that power depends on subsection (2) of section 3.

If references in the sections of the same Act are affected by the amendment, the same principle should apply to rules, bye-laws and notifications under the Act which after they are issued can properly be regarded as parts of the same Act, for they are the result of an exercise of a subordinate legislative power delegated by the same Act and, in accordance with well established views on the subject of subordinate Legislation, they only fill in the details in a frame-work provided by the Legislature. It will lead to a great deal of confusion if the meaning of expressions in rules, bye-laws, etc. was to be different from their meaning in the

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sections of an Act. The instrument with which we are here dealing is a notification under the very Act in which amendment has been made. It should ordinarily be construed in the same way as a section of the Act.

This is one answer to the contention of learned counsel for the appellants, but there are other reasons why this contention cannot be accepted. The main argument as already stated is that the intention of the Government in issuing the second notification was to exclude from the operation of the notification what was at that time contained in clauses (*a*) and (*b*) of subsection (2) of section 20. Now, had the Government made in this notification any distinction as regards the various lands which were in the *khas* possession of the rent-receivers, there may have been some room for an argument of this kind, but by the notification the Government acquired all lands in the *khas* possession of all rent-receivers, except the lands which by law they were entitled to retain. A perusal of the notification makes it clear that the intention was to acquire all that could legally be acquired. The Government was not applying its mind to the question as to which land of the rent-receivers should be taken and which should be permitted to remain with them. It was taking possession of whatever the law allowed it to take. The notification is just a formal compliance with the requirements of subsection (2) of section 3. If the intention was to acquire all that by law could be acquired and by a retrospective amendment even hats and bazars could be acquired then the notification does operate to affect the hats also.

One other method of deciding the question before us is to consider the intention of the amending Ordinance of 1960. The position of the Provincial Government from the very start was that hats and bazars were excluded from clauses (*a*) and (*b* of subsection (2) of section 20. In fact the Government succeeded in this contention before the High Court in *Yousuf Ali Chowdhury's case*. In the Supreme Court the Provincial Government again urged that hats were excluded, but the decision went against it. The East Bengal State Acquisition and Tenancy Act was then amended with retrospective effect by means of this Ordinance. The obvious object and intention of the Ordinance was to validate the notification which had been issued by the Governor. The Legislative Authority in this case is the Governor and the Governor is the head of the Provincial Government that was contesting *Yousuf Ali Chowdhury's case* and it is he who had issued the notification. It is safe to presume under the circumstances, that the intention of the Ordinance was to give full legal effect to the notification. No new notification was issued by the Governor and obviously the notification already issued was regarded sufficient for the acquisition under subsection (2) of section 3 of hats also. So unless we were to hold that the words which were used were incapable of giving effect to the intention of the Legislature we should hold in favour of that intention. The words used are that hats shall be deemed never to have been included in clauses (*a*) and (*b*) of subsection (2) of section 20. They are

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surely not incapable of the interpretation that references to clauses (*a*) and (*b*) in the Act or in rules and notifications issued under the Act are to be construed accordingly.

We would, therefore, hold that by means of the second notification issued by the Governor, the possession of the hats had also passed to the Government and the *rent-receivers* are not entitled to retain them.

Some other arguments were put forward which have to be noticed. It was urged that the amending Ordinance was *ultra vires* of the Governor because he had no jurisdiction to curtail the jurisdiction of the Supreme Court and an amendment of the Act which nullifies a decision given by the Supreme Court amounts to an interference with the jurisdiction of the Supreme Court. The argument is altogether misconceived. The jurisdiction of this Court is the jurisdiction to decide and the Ordinance does not provide that the Supreme Court shall not have jurisdiction to decide any matter which it was otherwise empowered to decide. A Legislature which has power to make laws regarding rights of persons can make such laws whether during the pendency of a proceeding before a Court or after a decision has been given by the Court and it cannot be said that the Legislature has by exercising such power affected the jurisdiction of the Court. A statute which changes rights of parties and does not relate to any procedural matter does not affect the jurisdiction of any Court. It affects only rights of parties. The power of the Legislature is not affected by the pendency of a proceeding before a Court or the existence of judgment by a Court.

Another contention which relates only to appeal No. 10-D is that the property in dispute constitutes a *waqf*. This point finds no place in the concise statement, and was abandoned before the High Court. The Provincial Government did not admit that the property was *waqf*. The question as to whether it was *waqf*, would have to be decided on the basis of voluminous evidence produced and was, therefore, not a fit subject for determination in a writ petition.

Yet another contention and which is common to both appeals is that the High Court was wrong in rejecting the writ petitions in so far as they related to some of the petitioners. What happened is that in both the writ petitions affidavits in support of the writ petitions had been filed only by one of the petitioners. In Writ Petition No. 37 of 1959, affidavit had been filed by Tofazzal Hossain petitioner No. 1 only and in Writ Petition No. 157 of 1958 affidavit had been filed by Lutfur Rahman petitioner only. Relying upon rules framed by the East Pakistan High Court relating to the filing of writ petitions which provided for affidavits to be sworn by petitioners in writ petitions, the High Court rejected both the writ petitions except in so far as they related to the particular petitioner who had filed the affidavit. It is contended before us that the High Court was wrong in taking too technical view of the relevant rule and it is even contended that the rule framed by the High Court is *ultra vires*. It is not necessary to go into the details of the question raised in this connection, because we have fully heard on the merits all the appellants in both the appeals and we are of the opinion that appeals should fail on merits. Both the appeals are dismissed, but as the amending Ordinance was promulgated during the pendency of the writ petitions the parties shall bear their own costs in both Courts.

A. H. *Appeal dismissed.*

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Present : A. R. Cornelius, C. J. and B. Z. Kaikaus, J

ASIF ALI SHAH—Petitioner

versus

THE SUPERINTENDING ENGINEER, QUETTA CIRCLE, QUETTA AND ANOTHER—Respondents

Asif Ali Shah v. S. E. Quetta
Cornelius, C J and Kaikaus, J

Civil Petition for Special Leave to Appeal No. 203 of 1962, decided on 13th February 1963.

(On appeal from the judgment and order of the High Court of West Pakistan, Lahore, dated the 6th April 1962, in Writ Petition No. 314 of 1962).

Special Leave to Appeal to Supreme Court—Petition for—Taken back by Attorney for filing annexures—Such annexures along with petition filed 70 days after time—Application for condonation of delay submitted not as a pre-requisite in such a case but only to "meet objection of the Court's office"—Petition, held, *barred by time—Client's ignorance of necessity of dealing with Attorney—Not sufficient excuse to condone default—(Client's remedy against Attorney)*: [p. 263]*A* et seq

S. A. Saeed Advocate Supreme Court instructed by *Hussain & Co.* Attorneys (absent) for Petitioner.

Respondents not represented.

Date of hearing : 13th February 1963.

JUDGMENT

Cornelius, C J

CORNELIUS, C. J.—This petition is barred by time by 70 days. Mr. S. A. Saeed appears as Advocate for the petitioner, and lays the blame on the Attorney, Ch. Feroz Din. It seems that the petition, which mentions a number of *annexures*, was filed within time without the *annexures*, in the first instance. The office note shows that the petition itself was taken back by the Attorney, to be completed and returned. It was actually returned *70 days* after expiry of limitation. It is not clear whether it was the Attorney or the client who was responsible for this delay. An application for *condonation* was filed separately later, and the excuse was given that "the annexures are not part of the order