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taxing entries in the legislative Lists I and II of the Seventh Schedule are entirely separate from other entries. Entry 26 of List II deals with trade and commerce and has nothing to do with taxing or recovering amounts realised wrongly as tax. It is said that s. 11 (2) regulates trade and commerce and the State legislature therefore was competent under Entry 26 of List II to enact it. We have not been able to understand what such a provision has to do with the regulation of trade and commerce; it can only be justified as a provision ancillary to a taxing statute. If it cannot be so justified—as we hold that it cannot—we are unable to uphold it as regulating trade and commerce under Entry 26 of List II. There is in our opinion no element of regulation of trade and commerce in a provision like s. 11 (2).

We are therefore of opinion that the State legislature was incompetent to enact a provision like s. 11 (2). We may also add that the provision contained in s. 20(c), being consequential to s. 11 (2) will fall along with it. In consequence it was not open to the Sales Tax Officer to ask the appellant to make over what he had collected from the purchasers wrongly as sales tax. It is not disputed, as appears from the final assessment order of the Sales Tax Officer, that the appellant was not liable to pay the amount as sales tax for the relevant period. We therefore allow the appeal and quash the assessment order dated September 27, 1956 insofar as it is based on s. 11 (2). The appellant will get his costs in this Court as well as in the High Court.

Appeal allowed.

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RAFIQUENNESSA

v.

LAL BHADUR CHETRI (DEAD) THROUGH HIS REPRESENTATIVES AND OTHERS

(P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, J. C. SHAH, N. RAJAGOPALA AYYANGAR AND S. M. SIKRI JJ.)

Retroactivity—Enactment of the Act pending appeal—Appeal if governed by the Act—Assam Non-Agricultural Urban Areas Tenancy Act, 1955 (Assam Act No. 12 of 1955), s. 5.

The appellant sued the lessee, the predecessor of the respondents, for ejection on the latter's failure to deliver possession of a leased land at the expiration of the stipulated period. Under the covenant the lessee was entitled to build a house for residential purposes. The trial Court decreed the appellant's claim whereupon the lessee filed an appeal. While the appeal was pending the Assam Non-Agricultural Urban Areas Tenancy Act was passed, and thereafter the lessee prayed for permission to take an additional ground under s. 5 of the Act. Before that date, the High Court had taken the view that this provision of the Act was applicable to pending proceedings. The lower appellate court allowed the lessee's plea and ultimately allowed the appeal and set aside the decree passed by the trial Judge in favour of the appellant, concluding that the two houses had been constructed by the lessee within five years after the taking of the lease and that entitled the lessee to claim the benefit of s. 5 of the Act. The High Court on appeal, following its earlier decision about the applicability of the provisions of s. 5 to pending proceedings, summarily dismissed the appeal, but granted a certificate for leave to appeal to this Court.

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Held: (i) A statutory provision is retroactive either when it is so declared by express terms, or the intention to make it retroactive clearly follows from the relevant words and the context in which they occur.

Re. Athlumney Ex parte Wilson, (1898) 2 Q.B.D. 547, referred to.

(ii) The provisions of the Act clearly indicate that the legislature wanted the beneficial provisions enacted by it to take within their protection not only leases executed after the Act came into force, but also leases executed prior to the operation of the Act.

The plain object of s. 5 is to protect the tenants who have built a permanent structure either for business or for residence, provided it has been built within 5 years from the date of contract of tenancy, even though those constructions had been made before the date of the Act.

(iii) A suit which was pending when the Act came into force would be governed by s. 5(1) (a) and an appeal arising from a suit which had been decided before the Act came into force, would likewise be governed by s. 5(1) (a), provided it is pending after the date when the Act came into force, for an appeal pending in a continuation of the suit.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 549 of 1962.

Appeals from the judgment and orders dated August 1, 1958 and March 13, 1959 of the Assam High Court in S.A. Nos. 86 of 1958 and 14 of 1959 respectively.

N. C. Chatterjee, K. P. Sen and P. K. Chatterjee, for the appellant (in C.A. No. 549 of 1962).

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B. P. Maheshwari, for respondents Nos. 1(a) to 1(e)
 (in C.A. No. 549 of 1962).

Behrul Islam and *R. Gopalakrishnan*, for the appellant
 (in C.A. No. 569 of 1963).

D. N. Mukherjee, for the respondent (in C.A. No. 569/
 63).

February 24, 1964. The Judgment of the Court was
 delivered by

Gajendragadkar
 C. J.

GAJENDRAGADKAR C.J.—These two appeals which have been brought to this Court with a certificate issued by the Assam High Court, raise a short question about the construction and effect of section 5 of the Assam Non-Agricultural Urban Area Tenancy Act, 1955 (No. 12 of 1955) (hereinafter called 'the Act'). The relevant and material facts which have led to the suits from which these two appeals respectively arise, are similar, and so, it would not be necessary to state them in detail in regard to both the matters. We would, therefore, mention the facts broadly in C.A. No. 549/1962, in dealing with the common point raised for our decision. The appellant in this case is Mst. Rafiquennessa who sued the predecessor of the respondents for ejection. It appears that Lal Bahadur Chetri has executed a registered lease-deed in favour of the appellant on the 14th February, 1946. The lease covered an open plot of land and under the covenant the lessee was entitled to build a house for residential purposes. In the ordinary course, the lease was due to expire on the 12th February, 1952, and the lessee had agreed to deliver vacant possession of the land at the expiration of the stipulated period. Accordingly, a notice to quit was served on him to vacate on the 12th February, 1952. He, however, did not comply with the notice and that led to the present suit by the appellant for eviction (No. 149 of 1952). In support of her claim, the appellant alleged that the lessee had contravened the terms of the lease inasmuch as he had sublet the premises built by him, and so, that was an additional ground for evicting the lessee. The sub-lessees were accordingly joined as defendants to the suit.

The lessee Chetri alone resisted the suit. The sub-tenants let into possession by him did not join issue with the appel-

tant. The trial Judge decreed the appellant's claim whereupon the lessee Chetri filed an appeal in the Court of the Sub-Judge, Lower Assam District, Gauhati, challenging the validity and the correctness of the decree passed against him (Civil Appeal No. 24/1953).

While the appeal was pending, the Act was passed and was published in the Assam Gazette on the 6th July, 1955. Thereafter, when the appeal came on for hearing before the lower appellate Court, the tenant filed an application praying that he should be permitted to take an additional ground under s. 5 of the Act. Before that date, the Assam High Court had taken the view that the said provision of the Act was applicable to the pending proceedings between landlords and tenants for eviction and that was the basis on which the tenant Chetri wanted to support his appeal. The lower appellate Court allowed the tenant's plea, framed an additional issue in pursuance of it and sent the matter back to the trial Court for a finding.

On remand, the trial Court took evidence and after local inspection, made a finding that the two houses proved to have been built by the tenant must be regarded as permanent in relation to the locality of the plot. He, however, found that there was no evidence to show when the said houses were constructed. Part of the finding was challenged by the tenant before the lower appellate Court. The lower appellate Court ultimately allowed the appeal and set aside the decree passed by the trial Judge in favour of the appellant. The conclusion of the lower appellate Court was that the two houses had been constructed by the tenant within five years after the taking of the lease and that entitled the lessee to claim the benefit of s. 5 of the Act.

The appellant then preferred a second appeal in the High Court of Assam (No. 86/1958). Following its earlier decision about the applicability of the provisions of s. 5 to pending proceedings, the High Court summarily dismissed the said appeal. Thereafter, the appellant applied for and obtained a certificate from the High Court and with the said certificate the present appeal has been brought before us. Pending these proceedings, the tenant Chetri died and his heirs and legal representatives Mst. Tulsa Devi and others

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have been brought on the record and will be described as respondents hereafter. Thus, the only point which arises for our decision is whether the Assam High Court was right in taking the view that the provisions of s. 5 applied to the proceedings between the parties which were pending at the relevant time before the lower appellate Court.

Appeal No. 569 of 1963 arises from a suit filed by the appellant Wahedulla against his tenant, the respondent Abdul Hamid. The relevant facts are similar to those in C.A. No. 549/1962. In this case also, the Act came into force while the appeal was pending before the lower appellate Court and by the application of s. 5 respondent's claim to continue in possession has been upheld and the appellant's claim for ejecting the respondent has been rejected. The High Court granted certificate to the appellant when it was told that the appellant proposed to challenge the correctness of its earlier decision holding that s. 5 of the Act applied to the pending proceedings.

The Act was passed by the Assam Legislature in order to regulate in certain respects the relationship between landlord and tenant in respect of non-agricultural lands in the urban areas of the State of Assam. It contains fourteen sections and the scheme which is evident in the operative provisions of the Act is to afford protection to the tenants by regulating in certain respects the relationship between them and their landlords in respect of the lands covered by the Act. Section 3(c) defines a 'landlord' as meaning a person immediately under whom a tenant holds but does not include the Government. While s. 3(d) defines a 'permanent structure' in relation to any locality as meaning a structure which is regarded as permanent in that locality, the 'tenant' and 'urban area' are defined by clauses (g) and (h) respectively. Section 4 imposes an obligation on the tenant to pay rent for his holding at fair and equitable rates, and the proviso prescribes that in case of any dispute as to fair rent between the parties, the rent which was paid by the tenant immediately before the dispute shall be deemed to be fair and equitable unless a competent court decides to the contrary. Section 6 provides for compensation for improvements; s. 7 provides for enhancement of rent by contract; s. 8 deals with enhancement of rent without contract; s. 9

authorises the Court to make an order as to enhancement of rent; s. 10 prohibits illegal realisation beyond the prescribed amount; s. 11 provides for notice for ejection; s. 12 prescribes the procedure in which the notice has to be served; and s. 13 confers rule-making power on the State Government. Section 14 repeals the earlier Tenancy Act.

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Having thus broadly considered the scheme of the Act, it is necessary to read s. 5, the effect of which is the main point of controversy between the parties before us. Section 5(1) reads thus:—

“Notwithstanding anything in any contract or in any law for the time being in force—(a) where under the terms of a contract entered into between a landlord and his tenant whether before or after the commencement of this Act, a tenant is entitled to build, and has in pursuance of such terms actually built within the period of five years from the date of such contract, a permanent structure on the land of the tenancy for residential or business purposes, or where a tenant not being so entitled to build, has actually built any such structure on the land of the tenancy for any of the purposes aforesaid with the knowledge and acquiescence of the landlord, the tenant shall not be ejected by the landlord from the tenancy except on the ground of non-payment of rent; (b) where a tenant has effected improvements on the land of the tenancy under the terms whereof he is not entitled to effect such improvements, the tenant shall not be ejected by the landlord from the land of the tenancy unless compensation for reasonable improvements has been paid to the tenant”.

Sub-section (2) prohibits the ejection of any tenant from the land of the tenancy except in execution of a decree for ejection passed by a competent civil Court; and sub-section (3) prohibits the execution of a decree for ejection on the ground of non-payment of rent within a period of 30 days from the date of the decree, and allows the tenant to pay into the executing Court the entire amount due from him under

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the decree within the said period, whereupon the decree has to be entered as satisfied.

Mr. Chatterjee contends that the Assam High Court was in error in coming to the conclusion that the proceedings which were pending between the parties at the appellate stage on 6th July, 1955 when the Act came into force, fell to be governed by the provisions of s. 5. He argues that at the relevant date when the suit was filed by the appellant, he had acquired a right to eject the tenant under the terms of the tenancy, and he contends that where vested rights are affected by any statutory provision, the said provision should normally be construed to be prospective in operation and not retrospective, unless the provision in question relates merely to a procedural matter. It is not disputed by him that the legislature is competent to take away vested rights by means of retrospective legislation. Similarly, the legislature is undoubtedly competent to make laws which over-ride and materially affect the terms of contracts between the parties; but the argument is that unless a clear and unambiguous intention is indicated by the legislature by adopting suitable express words in that behalf, no provision of a statute should be given retroactive operation if by such operation vested rights are likely to be affected. These principles are unexceptionable and as a matter of law, no objection can be taken to them. Mr. Chatterjee has relied upon the well known observations made by Wright J. in *in re Athlumney Ex parte Wilson*⁽¹⁾, when the learned Judge said that it is a general rule that when the Legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them. He added that there was one exception to that rule, namely, that, where enactments merely affect procedure and do not extend to rights of action, they have been held to apply to existing rights. In order to make the statement of the law relating to the relevant rule of construction which has to be adopted in dealing with the effect of statutory provisions in this connection, we ought to add that retroactive operation of a statutory provision can be inferred even in cases where such retroactive operation appears to be clearly implicit in the

(1) [1898] 2 Q. B. D. 547.

provision construed in the context where it occurs. In other words, a statutory provision is held to be retroactive either when it is so declared by express terms, or the intention to make it retroactive clearly follows from the relevant words and the context in which they occur.

Bearing in mind these principles, let us look at s. 5. Before doing so, it is necessary to consider s. 2 which provides that notwithstanding anything contained in any contract or in any law for the time being in force, the provisions of this Act shall apply to all non-agricultural tenancies whether created before or after the date on which this Act comes into force. This provision clearly indicates that the legislature wanted the beneficent provisions enacted by it to take within their protection not only leases executed after the Act came into force, but also leases executed prior to the operation of the Act. In other words, leases which had been created before the Act applied are intended to receive the benefit of the provisions of the Act, and in that sense, the Act clearly affects vested rights of the landlords who had let out their urban properties to the tenants prior to the date of the Act. That is one important fact which is material in determining the scope and effect of s. 5.

Now, s. 5 itself gives an unmistakable indication of the legislative intention to make its provisions retrospective. What does s. 5 provide? It provides protection to the tenants who have actually built within five years from the date of leases executed in their favour, permanent structures on the land let out to them for residential or business purposes, and this protection is available either when the construction of the permanent structure has been made by the tenant in pursuance of the terms of the lease, or even without any term of that kind and the landlord had knowledge of it and had acquiesced in it. Thus, the plain object of s. 5 is to protect the tenants who have built a permanent structure either for business or for residence, provided it has been built within 5 years from the date of contract of tenancy. Therefore, cases where permanent structures had been built within 5 years of the terms of contract, would fall within s. 5(1)(a), even though those constructions had been made before the date of the Act. Thus, the very scheme of s. 5(1)(a) clearly postulates the extension of its protection to

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constructions already made. That is another point which is significant in dealing with the controversy between the parties before us.

There is yet another point which is relevant in this connection. S. 5(1)(a) provides that the tenant shall not be evicted by the landlord from the tenancy except on the ground of non-payment of rent, provided, of course, the conditions prescribed by it are satisfied. If the legislature had intended that this protection should operate prospectively, it would have been easy to say that the tenant shall not be sued in ejection; such an expression would have indicated that the protection is afforded to the suits brought after the Act came into force, and that might have introduced the element of prospective operation; instead, what is prohibited by s. 5 (1)(a) is the eviction of the tenant, and so, inevitably, the section must come into play for the protection of the tenant even at the appellate stage when it is clear that by the proceedings pending before the appellate court, the landlord is seeking to evict the tenant, and that obviously indicates that the pending proceedings are governed by s. 5(1)(a), though they may have been initially instituted before the Act came into force.

Incidentally, an appeal pending before the lower appellate court is a continuation of the suit, and so, there is no difficulty in holding that a suit which was pending when the Act came into force would be governed by s. 5(1)(a) and an appeal arising from a suit which had been decided before the Act came into force, would likewise be governed by s. 5(1)(a), provided it is pending after the date when the Act came into force. Therefore, we are satisfied that the Assam High Court was right in coming to the conclusion that the dispute between the parties in the present case must be governed by the provisions of s. 5(1)(a). It is common ground that if s. 5(1)(a) is held to apply, the decrees passed against the appellants in both the appeals cannot be successfully challenged.

The result is, the appeals fail and are dismissed with costs. One set of hearing fees.

Appeals dismissed.