We are therefore of opinion that the finding of the High Court that the loss took place due to the negligence of the railway servants and, consequently, of the railway administration, is justified.

We therefore dismiss the appeal with costs.

Appeal dismissed.

MOHANLAL CHUNILAL KOTHARI

v.

TRIBHOVAN HARIBHAI TAMBOLI

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR and T. L. VENKATARAMA AIYAR, JJ.)

Suit—Decree—Law changed during pendency of appeal—Appellate Court, if bound to apply changed law—Retrospective operation—Bombay Tenancy and Agricultural Lands Act (Bom. LXVI of 1948, s. 88 (1)(d)—Bombay Tenancy Act, 1939, s. 3A(1).

Certain lands were situated in the erstwhile State of Baroda before it became a part of the State of Bombay by merger. The Bombay Tenancy and Agricultural Lands Act, 1948, was extended to Baroda on August 1, 1949. Suits were filed in the Civil Court by appellants—landlords against the respondents who were their tenants on the ground that the latter became trespassers with effect from the beginning of the new agricultural season in May, 1951. Decrees for possession were passed by the Civil Court in favour of landlords and the same were confirmed by the first appellate court. However, the High Court accepted the appeals and dismissed the suits. It was held that under the provisions of s. 3A(1) of the Bombay Tenancy Act, 1939, as amended, a tenant would be deemed to be a protected tenant from August 1, 1950 and that vested right could not be affected by the notification dated April 24, 1951 issued under s. 89 (1) (d) of the Act of 1948 by which the land in suit was excluded from the operation of the Act. The notification dated April 24, 1951 had no retrospective effect and did not take away the protection

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afforded to tenants by s. 3A. The landlords came to this Court by special leave. It was conceded that the appellants' suits for possession would fail if the Act applied to the tenancies in question, because in that case only revenue courts had jurisdiction to try them. However, reliance was placed on notification dated April 24, 1951 which excluded the land in suit from the operation of the Act. It was also contended on behalf of appellants that the subsequent notification cancelling the first one, could not take away the rights which had accrued to them as a result of the first notification.

Held, that the notification dated April 24, 1951 was cancelled by another notification dated January 12, 1953. The second notification was issued when the matter was still pending in the first court of appeal. The suits had therefore to be decided on the basis that there was no notification in existence which would take the disputed lands out of the operation of the Act. The first appellate court was wrong in holding that the suits had to be decided on the basis of facts in existence on the date of filing of the suits.

Held, further, that the second notification cancelling the first one did not take away any rights which had accrued to the landlords. If the landlords had obtained an effective decree and had succeeded in ejecting the tenants as a result of that decree which may have become final between the parties, that decree may not have been re-opened and the execution taken thereunder may not have been recalled. However, it was during the pendency of the suit at the appellate stage that the second notification was issued cancelling the first and the court was bound to apply the law as it was on the date of its judgment.

Held, also, that clauses (a), (b) and (c) of s. 88(1) applied to things as they were on the date of the commencement of the Act of 1948 whereas clause (d) authorised the State Government to specify certain areas as being reserved for urban non-agricultural or industrial development, by notification in the Official Gazette, from time to time. It was specifically provided in clauses (a) to (c) that the Act, from its inception, did not apply to certain areas then identified, whereas clause (d) had reference to the future. The State Government could take out of the operation of the Act such areas as in its opinion should be reserved for urban non-agricultural or industrial development. Clause (d) would come into operation only upon such a notification being issued by the State Government. In Sukharam's case, this Court never intended to lay down that the provisions of

clause (d) were only prospective and had no retrospective operation. Unlike clauses (a) to (c) which were clearly prospective, clause (d) had retrospective operation in the sense that it would apply to land which would be covered by the notification to be issued by the Government from time to time so as to take that land out of the operation of the Act of 1948, granting the protection. So far as clauses (a) to (c) were concerned, the Act of 1948 would not apply at all to lands covered by them, but that would not take away the rights conferred by the Act of 1939 which was repealed by the Act of 1948. Section 89(2) specifically preserved the existing rights under the repealed Act. Sukharam's case was about the effect of clause (c) on the existing rights under the Act of 1939 and it was in that connection that this Court observed that s. 88 was prospective. However clause (d) is about the future, and unless it has the limited retrospective effect indicated earlier, it will be rendered completely nugatory. The intention of the legislature obviously was to take away all the benefits arising out of the Act of 1948 (but not those arising from the Act of 1939) as soon as the notification was made under clause (d).

Sakharam v. *Manikchand Motichand Shah*, (1962) 2 S.C.R. 59, explained.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 282 & 283 of 1959.

Appeals by special leave from the judgment and decree dated December 18, 1956, of the Bombay High Court at Bombay in Second Appeals Nos. 233 and 185 of 1955 respectively.

G. S. Pathak, O. C. Mathur, J. B. Dadachanji and *Ravinder Narain*, for the appellants.

S. G. Patwardhan and *K. R. Choudhri*, for the respondents.

1962. May 2. The Judgment of the Court was delivered by

SINHA, C.J.—These two appeals, by special leave, directed against the judgment and decree of a single Judge of the Bombay High Court, raise a common question of law, and have, therefore, been heard together. This judgment will govern both the cases. The appellants were plaintiff-landlords,

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and the respondents were tenants-in-possession of certain lands which were situate in the erstwhile State of Baroda before it became part of the State of Bombay, by merger. The Bombay Tenancy and Agricultural Lands Act (Bombay Act LXVII of 1948)—which hereinafter will he referred to as the Act—was extended to Baroda on August 1, 1949. The suits out of which these appeals arise had been instituted by the appellants on the basis that the tenants—respondents had become trespassers on the service of notice in March 1950, with effect from the beginning of the new agricultural section in May 1951. As the defendants did not comply with the terms of the notice and continued in possession of the lands, to which they had been inducted, the landlords instituted suits for possession in the Civil Court. The Trial Courts and the Court of Appeal decreed the suits for possession. But on second appeal by the tenants, the learned Single Judge. who heard the second appeals, allowed the appeals and dismissed the suits with costs throughout.

It is not disputed that if the provisions of the Act were applicable to the tenancies in question, the plaintiffs' suits for possession must fail, because these were instituted in the Civil Courts, which have Jurisdiction to try the suits only if the defendents were trespassers. It is equally clear that if the tenants could take advantage of the provisions of the Act, any suit for possession against a tenant would lie in the Revenue Courts and not in the Civil Courts. But reliance was placed upon the notification issued by the Bombay Government on April 24, 1951, to the following effect :

> "In exercise of the powers conferred by clause (d) of sub-section (1) of Section 88 of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bombay LXVII of 1948) the Government of Bombay is pleased to specify the area

> within the limits of the Municipal Borough of Baroda City and within the distance of two miles of the limits of the said Borough, as being reserved for Urban, non-agricultural or industrial development"

The learned Judge of the High Court, in disagreement with the Courts below, held that under provisions of s. 3A(1) of the Bombay Tenancy Act, 1939, as amended, a tenant would be deemed to be a protected tenant from August 1, 1950, and that that vested right could not be affected by the notification aforesaid, issued by the Government under s. 88(1)(d), which had the effect of putting the lands in question out of the operation of the Act. In other words, the learned Judge held the notification had no retrospective effect so as to take away the protection afforded to the tenants by s. 3A, aforesaid.

The learned counsel for the appellants contended, in the first instance, that the notification, set out above, under s. 88 (1)(d) operated with effect from December 28, 1948, when the Act came into force. In this connection, reliance was placed upon the decision of this Court, pronounced by me sitting in a Division Court, in the case of *Sakharam* v. *Manikchand Motichand Shah*, (1) in these words :

> "The provisions of s. 88 are entirely prospective. They apply to lands of the description contained in cls. (a) to (d) of s. 88(1) from the date on which the Act came into operation, that is to say, from December 28, 1948. They are not intended in any sense to be of a confiscatory character. They do not show an intention to take away what had already accrued to tenants acquiring the status of 'protected tenants".

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It is necessary, therefore, to make some observations explaining the real position. In that case, the question then in controversy had particular reference to s. 88(1)(c), which is the only provision quoted at page 2 of the blue print of the judgment. That case had nothing to do with cl. (d) of s. 88(1). In that case, the lands in dispute lay within two miles of the limits of Poona Municipality. It is clear, therefore, that the inclusion of cl. (d) of s. 88(1) was a slip and certainly was not relevant for consideration in that case. The provisions of s. 88(1) are as follows :

> "Nothing in the foregoing provisions of this Act shall apply :—
>
> (a) to lands held on lease from the Government a local authority or a co-operative society;
>
> (b) to lands held on lease for the benefit of an industrial or commercial undertaking;
>
> (c) to any area within the limits of Greater Bombay and within the limits of the Municipal boroughs of Poona City and Suburban, Ahmedabad, Sholapur, Surat and Hubli and within a distance of two miles of the limits of such boroughs; or
>
> (d) to any area which the State Government may, from time to time, by notification in the Official Gazette, specify as being reserved for urban non-agricultural or industrial development.

It will be noticed that cls. (a), (b) and (c) of s. 88(1) apply to things as they were at the date of the enactment, whereas cl. (d) only authorised the State Government to specify certain areas as being reserved for urban non-agricultural or industrial development, by notification in the Official Gazette,

from time to time. Under cls. (a) to (c) of s. 88(1) it is specifically provided that the Act, from its inception, did not apply to certain areas then identified; whereas cl. (d) has reference to the future. Hence, the State Government could take out of the operation of the Act such areas as it would deem should come within the description of urban non-agricultural or for industrial development. Clause (d), therefore, would come into operation only upon such a notification being issued by the State Government. The portion of the judgment, quoted above, itself makes it clear that the provisions of s. 88 were never intended to divest vested interests. To that extent the decision of this Court is really against the appellants. It is clear that the appellants cannot take advantage of what was a mere slip in so far as cl. (d) was added to the other clauses of s.88(1), when that clause really and did not fall to be considered with reference to the controversy in that case. In other words, this Court never intended in its judgment in *Sakharam's case*(1) to lay down that the provisions of cl.(d) of s.88(1) aforesaid were only prospective and had no retrospective operation. Unlike cls. (a), (b) and (c) of s.88(1), which this Court held to be clearly prospective, those of cl.(d) would in the context have retrospective operation in the sense that it would apply to land which could be covered by the notification to be issued by the Government from time to time so as to take those lands out of the operation of the Act of 1948, granting the protection. So far as cls. (a), (b) and (c) are concerned, the Act of 1948 would not apply at all to lands covered by them. But that would not take away the rights conferred by the earlier Act of 1939 which was being repealed by the Act of 1948. This is made clear by the provision in s.89(2) which preserves existing rights under the repealed Act. *Sakharam's case* (1) was about the effect of cl. (c) on

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the existing rights under the Act of 1939 and it was in that connection that this Court observed that s.88 was prospective. But cl. (d) is about the future and unless it has the limited retrospective effect indicated earlier it will be rendered completely nugatory. The intention of the legislature obviously was to take away all the benefits arising out of the Act of 1948 (but not those arising from the Act of 1939) as soon as the notification was made under cl. (d). This is the only way to harmonise the other provisions of the 1948—Act, conferringcertain benefits on tenants with the provisions in cl. (d) which is meant to foster urban and industrial development. The observations of the High Court to the contrary are, therefore, not correct.

But the matter does not rest there. The notification of April 24, 1951, was cancelled by the State Government by the following notification dated January 12, 1953:

> "Revenue Department, Bombay Castle, 12th January, 1953. Bombay Tenancy and Agricultural Lands Act, 1948.
>
> No.9361/49: In exercise of the powers conferred by clause (d) of sub-section (1) of Section 88 of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bombay LXVII of 1948). The Government of Bombay is pleased to cancel Government Notification in the Revenue Department No.9361/49 dated the 24th/25th April, 1951".

It would thus appear that when the matter was still pending in the Court of Appeal, the judgment of the lower Appellate Court being dated September 27, 1954, the notification cancelling the previous notification was issued. The suit had, therefore, to be decided on the basis that there was no notification in existence under s.88(1)(d), which could take the disputed lands out of the operation

of the Act. This matter was brought to the notice of the learned Assistant Judge, who took the view that though, on the merger of Baroda with Bombay in 1949, the defendants had the protection of the Act, that protection had been taken away by the first notification, which was cancelled by the second. That Court was of the opinion that though the Appellate Court was entitled to take notice of the subsequent events, the suit had to be determined as on the state of facts in existence on the date of the suit, and not as they existed during the pendency of the appeal. In that view of the matter, the learned Appellate Court held that the tenants-defendants could not take advantage of the provisions of the Act, and could not resist the suit for possession. In our opinion, that was a mistaken view of the legal position. When the judgment of the lower Appellate Court was rendered, the position in fact and law was that there was no notification under cl.(d) of s.88(1) in operation so as to make the land in question immune from the benefits conferred by the Tenancy Law. In other words, the tenents could claim the protection afforded by the law against eviction on the ground that the term of the lease had expired. But it was argued on behalf of the appellants that the subsequent notification, cancelling the first one, could not take away the rights which had accrued to them as a result of the first notification. In our opinion, this argument is without any force. If the landlords had obtained an effective decree and had succeeded in ejecting the tenants as a result of that decree, which may have become final between the parties, that decree may not have been re-opened and the execution taken thereunder may not have been recalled. But it was during the pendency of the suit at the appellate stage that the second notification was issued cancelling the first. Hence, the Court was bound to

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apply the law as it was found on the date of its judgment. Hence, there is no question of taking away any vested rights in the landlords. It does not appear that the second notification, cancelling the first notification, had been brought to the notice of the learned Single Judge, who heard and decided the second appeal in the High Court. At any rate, there is no reference to the second notification. Be that as it may, in our opinion, the learned Judge came to the right conclusion in holding that the tenants could not be ejected, though for wrong reasons. The appeals are accordingly dismissed, but there would be no order as to costs in this Court, in view of the fact that the respondents had not brought the second notification cancelling the first to the pointed attention of the High Court.

Appeal dismissed.

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BIRLA COTTON SPINNING & WEAVING MILLS

v.

WORKMEN AND OTHERS

(P. B. GAJENDRAGADKAR, K. SUBBA RAO, K. N. WANCHOO, J. C. SHAH and N. RAJAGOPALA AYYANGAR, JJ.)

Industrial Dispute—Standardisation of wage structure—Designation of workmen.

The dispute between the respondents and the appellants regarding mistries and line jobbers was referred to the Tribunal regarding the increase and standardisation of wages and regarding the designation of workmen doing the work of fancy jobbers and their pay. The appellant contended that an earlier award of 1951 had not been terminated and that the reference was incompetent. The Tribunal directed standardisation on the basis of the Bombay Scheme. The Tribunal