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ORIENT PAPER AND INDUSTRIES LTD. AND
ANR. ETC. ETC.

v.

STATE OF ORISSA AND ORS. ETC.

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OCTOBER 30, 1990

[L.M. SHARMA, T.K. THOMMEN AND K.N. SAIKIA, JJ.]

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Orissa Forest Produce (Control of Trade) Act, 1981: Section 1(3) and 3 Amendment and Validation Acts 1987 and 1989 and Notifications dated September 21, 1988—Whether null and void—Rescindement of contracts—Permissibility of.

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The appellants/petitioners in each of the two Appeals Writ Petitions are contractors. They had entered into agreements with the State of Orissa in terms of which they had obtained exclusive rights and licences to fell, cut and remove bamboos from certain specified areas for the purpose of converting them into pulp. The agreements were due to expire on 30th September 1989. There contracts were rescinded by the Orissa Forest Produce (Control of Trade) Act, 1981 (Act 22 of 1981) which, in respect of bamboos, came into force w.e.f. 1.10.1988, when Orissa Forest Produce (Control of Trade) Amendment Act, 1989 (Act 4 of 1989) came into force. By virtue of the provisions of the Act and the notifications issued thereunder, the contractors were divested of all their contractual rights.

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Being aggrieved the appellants in both the appeals filed writ petitions in the High Court praying for a declaration that the Act 22 of 1981 and the notification of 21.9.1988 issued under Section 1(3) of the said Act have no application to the contracts entered into between the appellants and the State of Orissa and for a direction that the State be prohibited from enforcing the provisions of the said Act and to allow the appellants to cut and remove the bamboos from areas covered by the contracts. It was urged by the appellants that their rights in respect of bamboos are not annulled or affected by reason of Act 22 of 1981 as their rights are in the nature of *profit a prendre*, and thus not susceptible of repudiation by statutory rescission of contracts. They relied on a decision of this Court in *State of Orissa and Others v. The Titaghur Paper Mills Co. Ltd. and Anr.*, [1985] 3 SCR 26. The High Court rejecting their contention that the rescission of their contracts did not affect their pre-existing rights which allegedly originated in grant inde-

pendent of any agreement of parties, held that the contractors were replaced by the agents and that the decision in *Titaghur's* case did not deal with the question arising in the present case. The High Court accordingly dismissed the writ petitions. Hence these two appeals by the contractors.

The appellants Straw Products Ltd. filed in this Court a writ petition under Art. 32 of the Constitution praying *inter alia* for a declaration that Act 4 of 1989 and the notification dated 21.9.1988 (S.R.O. No. 666 of 1988) and (S.R.O. 667 of 1988) are null and void. Orient Paper and Industries Ltd., the appellants in the other appeals also filed a writ petition for a declaration that Act 16 of 1987 and Act 15 of 1987 (1st and 2nd Amendment Acts) and Notification dated 21.9.1988 (S.R.O. No. 667 of 1988) are null and void.

Before this Court besides the arguments advanced before the High Court by the appellants/petitioners it was further urged that the Act suffers from the vice of excessive delegation of powers to the Government and separate notification should have been issued to bring the amended provisions into the principal Act. The respondent-State controverted the arguments of the appellants and asserted that the Acts in question are constitutionally valid.

Dismissing the appeals and writ petitions, this Court,

HELD: Any right or interest granted or recognised under such agreement was not an independent or pre-existing right or interest to survive the statutory rescission of the contract. Legislation has superseded all inconsistent and contrary rights. No right or interest or grant, whether contractual or prerogative in character in origin, whatever be its nature, source and scope, can survive a superseding valid legislation. The decision in *Titaghur* is consistent with the proposition that all rights derived by the contractors, including *profit a prendre* were granted in terms of the agreements. All such rights are conditioned by and totally dependent on the agreements. Whatever mutual rights or obligations accrued or arose between the parties to those agreements are purely contractual in character and incidence. [495E-F & D]

All rights recognised under the bamboo contracts thus perished as from the date on which Act 22 of 1981 came into force in respect of bamboos in the areas in question, i.e. as from 1.10.1988 being the date specified in terms of section 1(3). [498B]

A While the protection and management of the forests, 22 of 1981, as its title and preamble indicate, are meant to control and regulate trade in forest produce by creating a State monopoly, the later statute has rescinded all contracts for the purchase, sale, gathering or collection of forest produce and has repudiated all rights created under such contracts and all grants of *profit a prendre*. The bamboo contractors, B are, therefore, not entitled to claim any independent right inconsistent with the statute as from the date specified under Section 1(3) namely 1.10.1988. [500A-B]

C Smuggling in forest produce has been a serious threat to national economy. No society can tolerate activities endangering the morale and economy of the people. This substantive evil with its corrupting and debilitating influence is sought to be remedied by legislative control of trade in forest produce through State monopoly. These measures are undoubtedly well within the province of the legislature and reasonable and rationally adapted to the end sought. [501F-G]

D The legislative findings and the subject-matter of the legislation, the area of its operation; its purpose and intent; its legislative history; the objects and reasons for the amendment made consequent on judicial decisions, the vice that is sought to be remedied, the legislative response to compelling necessities; all this lends support to the presumption in favour of reasonableness, legality and constitutionality of the legislative actions in question. [501G-H]

E All rights and interests contrary to and inconsistent with the statute accordingly stands rescinded. There is no excessive delegation in such statutory grant of power. [502A-B]

F *M/s. Utkal Contractors and Joinery (P) Ltd. and Ors. v. State of Orissa*, [1987] Supp. SCC 751 & [1987] 3 SCC 279; *The State of Orissa v. Sudhansu Sekhar Misra and Ors.*, [1968] 2 SCR 155, 162; *Krishna Kumar v. Union of India*, JT (1988) 3 SC 173, 187, 192; *Gangabai w/o Rambilas Gilda v. Chhabubai w/o Pukharaji Gandhi*, [1982] 1 SCR 1176, 1182; *Prakash Amichand Shah v. State of Gujarat and Ors.*, [1985] Supp. 3 SCR 1025, 1052, *Sreenivasa General Traders and Others v. State of Andhra Pradesh and Others etc.*, AIR 1983 SC 1246; *Attorney General v. De Keyser's Royal Hotel Ltd.*, [1920] AC 508; *Thakur Jagannath Baksh Singh v. The United Provinces*, AIR 1946 PC 127, para 17; *East End Dwelling Co. Ltd. v. Finsbury Borough Council*, 1952 AC 109, *Shamrao V. Parulekar v. The District Magistrate, Thana, Bombay*, [1952] SCR 683; *Sardar Inder Singh v. The State of*

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Rajasthan, [1957] SCR 605; *Her Majesty the Queen v. Burah*, [1877-78] 5 IA 178, 194-95; *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. The Asstt. Commissioner of Sales Tax and Ors.*, [1974] 2 SCR 879; *Harishanker Bagla v. The State of M.P.*, [1955] 1 SCR 380, 388; *Akadasi Padhan v. State of Orissa*, [1963] Supp. 2 SCR 691; *Hamdard Dawakhana (Wakf) Lal Kuan, Delhi and Anr. v. Union of India and Ors.*, [1960] 2 SCR 671, 678-79; *Mahant Motidas v. S.P. Sahi*, AIR (1959) SC 942, 948, referred to.

CIVIL APPELLATE/ORIGINAL JURISDICTION: Civil Appeal Nos. 4346-47 of 1988.

From the Judgment and Order dated 7.10.1988 and 30.9.1988 of the Orissa High Court in O.J.C. Nos. 3235 and 3100 of 1988.

AND

Writ Petition Nos. 1132/88 and 474/89.

(Under Article 32 of the Constitution of India).

A.K. Ganguli, Dr. Shankar Ghose, F.S. Nariman, Parag Tripathi, A.T. Patra, P.N. Gupta, Praveen Kumar, S.R. Agarwal, Sandeep Agarwal, P.N. Misra, R.F. Nariman and R.K. Jena for the Appellants/Petitioners.

N.S. Hegde, Additional Solicitor General, S.C. Roy and G. Rath, Advocate Generals, Orissa, R.K. Mehta and Ms. Mona Mehta for the Respondents.

The Judgment of the Court was delivered by

THOMMEN, J. These appeals by special leave arise from the judgments of the Orissa High Court in O.J.C. No. 3235 of 1988 and O.J.C. No. 3100 of 1988. The High Court dismissed the appellants' writ petitions praying for a declaration that the Orissa Forest Produce (Control of Trade) Act, 1981 ('Act 22 of 1981') and the Notification No. 6F-10/88/21691/FFAH dated September 21, 1988 issued under section 1(3) of the said Act have no application to the contracts entered into between the appellants and the State of Orissa and for a direction to prohibit the respondent-State from enforcing the provisions of the said Act in pursuance of the said notification in respect of the said contracts and to allow the appellants to cut and remove bamboos from the areas covered by the contracts. One of the appellants in C.A. No. 4347 of 1988, namely, Straw Products Ltd. filed Writ Petition No. 474 of 1989 under Article 32 of the Constitution for a declaration that Ordinance No. 1 of 1989, the Orissa Forest Produce (Control of Trade) (Amendment) Act, 1989 ('Act 4 of 1989'). Notification No. 6F-10/88/21691/FFAH dated 21.9.1988 (S.R.O. No. 666 of

- A 1988) and Notification No. 6F-10/88/21693/FFAH dated 21.9.1988 (S.R.O. No. 667 of 1988) are null and void and for certain other reliefs. The appellants in C.A. No. 4346 of 1988, namely, Orient Paper & Industries Ltd. and another filed Writ Petition No. 1132 of 1988 (as amended in 1989) under Article 32 of the Constitution praying for a
- B declaration that the Orissa Forest Produce (Control of Trade) (Amendment and Validation) Act, 1987 ('Act 16 of 1987') and Orissa Forest Produce (Control of Trade) (Second Amendment) Act, 1987 ('Act 15 of 1987'); Ordinance No. 1 of 1989 and the Act which replaced it (Act 4 of 1989); Notification No. 6F-10/88/21691/FFAH dated September 21, 1988 (S.R.O. No. 666 of 1988); and Notification No. 6F-10/88/21693/FFAH dated September 21, 1988 (S.R.O. No. 667
- C of 1988) are null and void, and for certain other reliefs. The parties in these appeals and writ petitions shall hereinafter be conveniently referred to as 'the contractors'.

- The contractors had entered into agreements with the State of Orissa in terms of which they had obtained exclusive rights and
- D licences to fell, cut and remove bamboos from certain specified areas for the purpose of converting them into pulp. The agreements would have expired on September 30, 1989. These agreements are generally referred to as the "bamboo contracts". These contracts were rescinded by Act 22 of 1981, which, in respect of bamboos, as we shall presently
- E see, came into force as from 1.10.1988. The contractors contend that their rights in respect of bamboos are not annulled or affected by reason of Act 22 of 1981. Their rights, they say, are in the nature of *profit a prendre*, and are not susceptible of repudiation by statutory rescission of contracts. They rely upon a decision of this Court in *State of Orissa and Others v. The Titaghur Paper Mills Co. Ltd. & Another*, [1985] 3 SCR 26.
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The bamboo contract was considered by this Court in *Titaghur* (supra) with reference to the question whether the amount payable under the contract was exigible to purchase tax under the Orissa Sales Tax Act, 1947 (as amended in 1977). This Court held:

- G "..... the Bamboo Contract is not and cannot be a contract of sale of goods. It confers upon the Respondent Company a benefit to arise out of land, namely, the right to cut and remove bamboos which would grow from the soil coupled with several ancillary rights and is thus a grant of a
- H *profit a prendre*"

Being a benefit to arise out of land, the contractors had an interest in immovable property. So stating, this Court observed that the fact that the agreement under which this interest in immovable property was created was not evidenced by a registered document did not derogate from its character as a grant because section 90 of the Registration Act exempted it from registration. The question which arose in that decision was whether the amount payable under the bamboo contract was exigible to purchase tax. The answer depended on the basic question as to whether it was a contract of sale of goods or a contract conferring an interest in immovable property. It was in answering that question and in coming to the conclusion that it was not a contract of sale of goods, but a grant of an interest in immovable property, that the Court made an observation about the exemption from registration under section 90 of the Registration Act. But whether the contract itself or any right or interest stipulated or granted or recognised under the contract was invalid for want of registration was not a question which was directly or substantially in issue in that case. Whether any right or interest was granted independently of or prior to contract was not directly or even indirectly considered. We refer to this aspect of the decision in *Titaghur*, [1985] 3 SCR 26 because much of the challenge against the validity of the impugned provisions turns on the question as to whether the right arising under the bamboo contract was a contractual right so as to be affected by Act 22 of 1981 and the notifications issued thereunder. On this question, *Titaghur* (supra) is neither *res judicata* nor precedent.

We may at this stage refer to the reliefs sought in Writ Petition No. 1132 of 1988 (as amended in 1989). The writ petitioner in that case has challenged the validity of Act 16 of 1987. This challenge is no longer sustainable in view of the decision of this Court in *M/s. Utkal Contractors and Joinery (P.) Ltd. and Others v. State of Orissa*, [1987] Supp. SCC 751 upholding the validity of the Orissa Forest Produce (Control of Trade) (Amendment and Validation) Ordinance, 1987, which was repealed by Act 16 of 1987. The writ petitioner has also challenged the validity of Act 15 of 1987 by which clause (b) of sub-section (2) of section 5 of Act 22 of 1981 was deleted and section 12 of the said Act was substituted by a new provision. These amendments are, in our view, procedural changes and a valid exercise of legislative power to regulate and control trade in forest produce.

Two forests Acts were in operation in the State of Orissa, i.e., the Indian Forest Act, 1927 and the Madras Forest Act, 1882. These two enactments were repealed by the Orissa forest Act, 1972, which

- A was enacted to consolidate and amend the laws relating to the protection and management of forests in the State. Power is conferred on the Government under the Forest Act, 1972 to constitute any land which is the property of the Government, or over which the Government has proprietary rights, a reserved forest in the manner provided by the Act. Protection and management of forest is the purpose of the Forest Act. Act 22 of 1981 has been, on the other hand, enacted with a view to providing for control and regulation of trade in certain forest produce by creation of State monopoly in such trade. The Statement of Objects and Reasons shows that the main object of creating State monopoly is to prevent smuggling of various kinds of forest produce which has been 'increasing day by day'. State monopoly of trade in forest produce is thus the object of Act 22 of 1981.

- C 'Forest produce' is defined to include bamboo as one of the items. One of the other items is sal seed. The Statement of Objects and Reasons shows that, barring a few items like sal seeds, many other items of minor forest produce were grown in private holdings as well as in the Government owned forest areas. The implication was, therefore, that sal seeds had been grown only on Government land. For the reason, referring to Act 22 of 1981, this Court in *Utkal Contractors and Joinery Pvt. Ltd. and Others v. State of Orissa and Others*, [1987] 3 SCC 279 held:

- E "that scheme of the Act is, therefore, fully in tune with the object set out in the Statement of Objects and Reasons and in the preamble, namely, that of creating a monopoly in forest produce by making the government the exclusive purchaser of forest produce grown in private holdings".

- F So observing, this Court further held:

"that the Act and the notification issued under the Act do not apply to forest produce grown in government forests and that it was not therefore, open to the government to treat the contract dated May 25, 1979 as rescinded."

- G To remove the impediment created by this decision in extending the Act to contracts concerning forest produce grown on Government lands, the Act was amended w.e.f. 5.9.1981 by Ordinance No. 1 of 1987, which was repealed by Act 16 of 1987, the validity of which, as stated earlier, has been upheld by this Court in *M/s. Utkal Contractors and Joinery (Pvt.) Ltd. and Others v. State of Orissa*, [1987] Supp. SCC

751. As a result of Ordinance No. 1 of 1987 and Act 16 of 1987, the vice pointed out by this Court in *Utkal Contractors and Joinery Pvt. Ltd. and Others v. State of Orissa and Others*, [1987] 3 SCC 279 has been removed, and the Act has been made retrospectively applicable with effect from 5.9.1981 to forest produce 'grown or found on land owned by private persons or on land owned by the State Government or in Government forests'. [See section 5(1)(a) as substituted by Act 16 of 1987.]

The principal Act, namely, Act 22 of 1981 "extends to the whole of the State of Orissa". Section 1(3) says the Act 'shall come into force in such area or areas in relation to such forest produce and on such date or dates as the State Government may, from time to time, by notification, specify in this behalf'. Section 2 defines 'forest produce'. Bamboo, as stated earlier, is one of the items of forest produce specified under clause (c) of section 2. The effect of section 1(3), the validity of which is in question in these proceedings, is that the Act comes into force on different dates in respect of different areas and different items of forest produce.

Three notifications were issued on September 21, 1988. Notification No. 6F-10/88/21691/FFAH (S.R.O. No. 666 of 1988) says "... in exercise of the powers conferred upon by sub-section (3) of section 1 of the Orissa Forest Produce (Control of Trade) Act, 1981 (Orissa Act 22 of 1981), the State Government do hereby specify that the said Act shall come into force in the areas covered by Government forests in the State of Orissa in relation to bamboos of all species on the first day of October, 1988". The result of this notification is that, as from 1. 10. 1988, Act 22 of 1981 is made applicable to bamboos of all species in areas covered by Government forests in the State of Orissa. That Act 22 of 1981 is applicable to all Government forests in respect of all forest produce is no longer in doubt in view of Act 16 of 1987. [See *M/s. Utkal Contractors and Joinery (Pvt.) Ltd. and Others v. State of Orissa*, [1987] Supp. SCC 751] Notification No. 6F-10/88/21695/FFAH says "... in pursuance of the powers conferred upon by section 3 of the Orissa Forest Produce (Control of Trade) Act, 1981 (Orissa Act 22 of 1981), the State Government do hereby constitute with effect from the 1st day of October, 1988, the areas covered by Government Forests in the State of Orissa excepting the area covered by the felling series of Jeypore Forest Division listed in the schedule in the district of Koraput, into a unit for extraction of and trade in bamboos of all species which is a forest produce specified in the Notification ... No. 21691/FFAH., Dated the 21st September, 1988 issued under sub-

A section (3) of section 1 of the said Act.” Notification No. 6F-10/88/21693/FFAH (S.R.O. No. 667 of 1988) says “... in exercise of the powers conferred upon by sub-section (1) of section 4 of the Orissa Forest Produce (Control of Trade) Act, 1981 (Orissa Act 22 of 1981) read with sub-rule (7) of the rule 3 of the Orissa Forest Produce (Control of Trade) Rules, 1983, the State Government do hereby appoint

B the Orissa Forest Corporation Ltd. as the agent for extraction of and trade in bamboo of all species, on its behalf, with effect from the first day of October, 1988 in respect of the Unit specified in the notification of the Government of Orissa no. 21695/FFAH dated the 21st Sept., 1988”. The effect of these three notifications dated 21.9.1988 is that as from the specified date, namely, 1st October, 1988, bamboos of

C all species in Government forests in the State of Orissa, come within the purview of Act 22 of 1981, and all contracts for the purchase, sale etc. of bamboos grown or found in the said areas stand rescinded. The agents appointed by the Government have, in respect of the notified units, become the sole repositories of authority to purchase or transport bamboos as from 1.10.1988.

D We shall now read the relevant sections of the Act, in so far as they are material:

E “1(3). It shall come into force in such area or areas in relation to such forest produce and on such date or dates as the State Government may, from time to time, by notification, specify in this behalf”.

“3. Constitution of units—The State Government may divide every specified area into such number of units as it may deem fit:

F Provided that a specified area may be divided into different units for different specified forest produce.”

G “4. Appointment of agents. (1) The State Government may, for the purchase of and trade in specified forest produce on its behalf, appoint one or more agents in respect of different units for all or any specified forest produce and any such agent may be appointed in respect of more than one unit.”

.....”

H Section 5, as it stood before it was amended by Act 4 of 1989, reads:

"5. Restriction on purchase and transport and rescission of subsisting contracts. (1) On the issue of a notification under sub-s. (3) of S. 1 in respect of any area—

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(a) all contracts for the purchase, sale, gathering or collection of specified forest produce grown or found in the said area shall stand rescinded, whether such forest produce is grown or found on land owned by private persons or on land owned by the State Government or in Government forests, and,

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(b) no person, other than—

(i) the State Government.

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(ii) an officer of the State Government authorised in writing in that behalf, or

(iii) an agent in respect of the unit in which the specified forest produce is grown or found.

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shall purchase or transport any specified forest produce in the said area.

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By these provisions and the notifications issued thereunder, the contractors are divested of all their contractual rights. The High Court rejected their contention that the rescission of their contracts did not affect their pre-existing rights which allegedly originated in grant independent of any agreement of parties. The High Court held that the contractors were replaced by the agents. The High Court further held that the decision in *Titaghur*, [1985] 3 SCR 26 which related to the question of exigibility to tax under the Orissa Sales Tax Act did not deal with the question arising in the present cases.

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During the pendency of the proceedings in this Court, Act 22 of 1981 was amended by Act 4 of 1989 with retrospective effect. Subsequent to this amendment, Writ Petition No. 1132 of 1988 was amended. Section 2 of the Amending Act provides:

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"2. In section 5 of the principal Act, for sub-section (1) excluding clause (b) and the explanations thereunder, the

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A following shall be substituted, namely:

‘5. (1) Notwithstanding any provision to the contrary in any other law, on the issue of a Notification under sub-section (3) of section 1 in respect of any area,—

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(a) all contracts for the purchase, sale, gathering or collection of specified forest produce grown or found in the said area and all grants of *profit-a-prendre* including the right to enter upon the land, fell, cut and remove the specified interest produce from the said area, shall stand rescinded, whether such forest produce is grown or found on land owned by private persons or on land owned by the State Government or in Government forests:

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Provided that rescission of such contracts and grants shall not affect the customary rights, if any, of the local Tribals to gather and collect the specified forest produce;

.....”

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This amendment, beginning with the *non obstante* clause, provides that, on the coming into force of Act 22 of 1981 by notification issued under section 1(3), all contracts relating to any specified forest produce for the purchase, sale, collection etc., including grants of *profit a prendre*, whether such produce is grown or found on private land or on Government land or in Government forest, would stand rescinded, but such rescission would not affect customary right, if any, enjoyed by the local tribals to gather and collect specified forest produce.

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This sub-section overrides “any provision to the contrary in any other law”. These words are an expression of the widest amplitude engulfing all rules having the force of law, whichever be the source from which they emanate—statutory, judicial or customary—the only exception, in the context, being the Constitution of India. This means, once brought into force, the sub-section will, subject to the Constitution, operate with full vigour, notwithstanding any statute or judicial decision or any other rule recognising any right or interest or grant inconsistent with or contrary to the provisions of the sub-section.

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Sub-section (2) of section 1 of Act 4 of 1989 says that the Act "shall be deemed to have come into force on the date on which the Orissa Forest Produce (Control of Trade) Act, 1981 (hereinafter referred to as the principal Act) had come into force, i.e. 5.9.81 when the principal Act was notified in the Orissa Gazette." The effect of this amendment is that all contracts and grants relating to the purchase, sale, collection etc. of forest produce, including *profit a prendre*, stood rescinded as from the date on which Act 22 of 1981 came into force in the particular areas in respect of the forest produce in question. The produce in question here being bamboos, the principal Act, as amended by Act 4 of 1989 with effect from 5.9.81, was attracted in full force repudiating all contractual rights or grants of *profit a prendre* relating to bamboos wherever grown or found within the State as from the date specified by the notification issued under section 1(3) of the Act. i.e., 1.10.1988.

The resultant position is that the contractors have lost all their rights under contract or grant respecting bamboos and they are deemed to have lost such rights, not prospectively from 3.4.1989, when the assent of the President to Act 4 of 1989 was first published in the Official Gazette (as per section 3(1)(ii) of the Orissa General Clauses Act, 1937), but from 1.10.1988 which is the date specified in the Notification dated September 21, 1988, issued under section 1(3) of Act 22 of 1981. In other words, the effect of Act 4 of 1989 is that the provisions of that Act are projected backwards and read into Act 22 of 1981, and all the provisions of the principal Act, including the provisions added by the Amending Act, are deemed to have been on the statute book as from 5.9.1981, when the principal Act was notified in the Orissa Gazette, and the principal Act, including the amended provisions, came into force only as from the date specified in the notification issued under section 1(3) which, as seen above, in respect of the bamboos in the areas in question, was 1.10.1988.

Mr. A.K. Ganguli and Dr. Shankar Ghosh, appearing for the contractors, have raised various contentions. They submit that the right of the contractors has arisen not by reason of contract but on the strength of grant. Act 22 of 1981 rescinding contracts did not affect rights in the nature of *profit a prendre* although their agreements in terms stipulate that right. This question, they say, had been concluded as early as 1985 by this Court in *Titaghur* [1985] 3 SCR 26. The bamboo agreements are, therefore, not mere contracts attracted by section 5 of Act 22 of 1981. In any view, they contend, neither Act 22 of 1981 nor the subsequent amendments can affect bamboo contracts,

- A for section 1(3) which provided for coming into force of the Act on different dates in different areas of different items of forest produce is invalid by reason of excessive delegation of power to the Government. They further point out that even assuming that Act 22 of 1981 was validly brought into force in respect of bamboos in the areas in question with effect from 1.10.1988, as provided by the Notification dated
- B September 21, 1988, such notification does not have the effect of bringing into force the provisions of the subsequent Act, namely, Act 4 of 1989, notwithstanding the deeming provisions contained in the latter Act. They submit that the original Act having been brought into force in respect of bamboos as from 21.9.1988 by the aforesaid notification under section 1(3), the subsequent amendment of Act 22 of 1981 by Act 4 of 1989, stating in section 1(2) thereof that the amended
- C provisions are deemed to have come into force as from 5.9.1981, would not introduce into the original Act the amended provisions of Act 4 of 1989, until specifically notified in terms of section 1(3).

- D The Additional Solicitor General, Mr. Santosh Hegde as well as the Advocate General for the State of Orissa, appearing for the respondents, submit that the rights or interests claimed by the contractors arose under the bamboo agreements. They can have no right apart from or independent of contract. Assuming that their right is in the nature of an interest in immovable property, characterised as *profit a prendre* it is nevertheless a right created or granted by contract and
- E there is no independent existence for such right. The decision of this court in *Titaghur*, [1985] 3 SCR 26 is no authority for the proposition that the alleged rights of the contractors arose from a grant independent of contract. All that was, and could have been, decided in that case on the point was that the bamboo contracts were not contracts of sale of goods, but contracts under which a certain interest in immov-
- F able property was created, and the amounts payable under such contracts did not fall within the ambit of the Orissa Sales Tax Act. It is true that the Court used the expression 'grant' but that expression was borrowed from the agreements themselves. One of the parties to each of these agreements, namely, the Government of Orissa is referred to as the Grantor, and the other party, namely, the contractor is referred
- G to as the company. In terms of the agreements, certain rights and interests came to be granted to, or vested in, the contractors. Those rights and interests were granted by the agreements and not independent of the agreements.

- H The Additional Solicitor General points out that Act 4 of 1989, by reason of the deeming provisions, must be projected into Act 22 of

1981, as if the provisions of the later Act had been written into the earlier Act, and as if they formed part of it, as from the date of notification of the earlier Act, i.e., 5.9.1981. But the earlier Act came into force in respect of a particular forest produce in question, i.e., bamboos in all the areas covered by Government forests from such date as was specified by the notification issued under section 1(3), i.e., 1.10.1988. Even assuming, he contends, that section 5(1), as it originally stood, did not have the effect of affecting the contractors' rights, and assuming further that their rights, as claimed by them, flowed from grant, such rights were rescinded as from 1.10.1988. In any view, he contends, no grant or contract can survive legislation rescinding it. The Additional Solicitor General points out that section 1(3) of Act 22 of 1981 cannot be assailed on the ground of excessive delegation, for there is no such vice in the provision and, in any view, it is a valid "conditional legislation". He further submits that Act 22 of 1981 is intended to control and regulate trade in forest produce by creation of State monopoly, and its objects are not identical to the Orissa Forest Act, 1972 which is intended for the protection and management of forests in the State. The legislative object is, therefore, clearly distinct and separate in respect of either enactment. In any view, he submits, both the enactments having been passed by the same legislature, the latter must prevail over the former in case of inconsistency. This is clear from section 22 of Act 22 of 1981. Counsel says that no property of the contractor is acquired as a result of the statute in question, for all that is sought to be accomplished by it is taking over trade with a view to State monopoly, and that the contractors had been given sufficient notice to remove the bamboos already felled and stored by them in the premises. In any view, refund of proportionate royalty has been tendered to them by the Government. Bamboos felled but not removed from the forests prior to the date of the notification will be sold by the Government exclusively to the contractors at the price determined by the Government at Rs.700 per MT minus Rs.310 per MT being the cost of extraction and Rs.115 per MT being the royalty already paid, the total deduction being Rs.425 per MT. Accordingly, the balance sum of Rs.275 per MT is due and payable to the contractors.

We are in complete agreement with the learned Judges of the High Court that the decision of this Court in *Titaghur*, [1985] 3 SCR 26 is not an authority for the proposition that a right or interest was created in favour of the bamboo contractors irrespective and independent of contract. No such question arose, or could have arisen, in that case, for the assessment proceedings in question there arose long

- A before Act 22 of 1981 was enacted. In fact this Court proceeded on the assumption that whatever was the nature of the right or interest that was in question, such right or interest was the creature or result of agreements between parties. What was in issue in that case was whether or not the Orissa Sales Tax Act was attracted. In negating the contentions of the Revenue, this Court held that the contracts
- B crated merely an interest in immovable property and the amounts paid under the contracts did not represent sale or purchase of goods, and the Orissa Sales Tax Act was not attracted. The bamboo contracts conferred upon the contractors a benefit to arise out of land. It was a contractual right relating to immovable property and not relating to goods. This was the crucial issue that was decided in that case regarding bamboo contracts.
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- The authority of *Titaghar*, [1985] 3 SCR 26 is confined to matters which were directly and substantially in issue in that case. It is neither precedent nor *res judicata* for any other matter. "What is of the essence in a decision is its ratio and not every observation found therein
- D nor what logically follows from the various observations made in it." [Per Hegde, J., *The State of Orissa v. Sudhansu Sekhar Misra and Ors.*, [1968] 2 SCR 155, 162]. As stated by one of us (Saikia, J.) in *Krishanu Kumar v. Union of India*, JT 1988 3 SC 173, 187, 192:

- E "The doctrine of precedent, that is, being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain 'propositions wider than the case itself required' A deliberate and solemn decision of court made after argument on question of law
- F fairly arising in the case, and necessary to its determination, is an authority, or binding precedent".

In the words of Lord Halsbury, L.C. [*Quinn v. Leathem*, [1901] AC 495, 506]: Quoted by Hegde, J., *ibid*.

- G " there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the
- H whole law, but governed and qualified by the particular

facts of the case in which such expressions are to be found. The other is that *a case is only an authority for what it actually decides*. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

(emphasis supplied)

See also *Gangabai w/o Rambilas Gilda v. Chhabubai w/o Pukharaji Gandhi*, [1982] 1 SCR 1176, 1182; *Prakash Amichand Shah v. State of Gujarat & Ors.*, [1985] Supp. 3 SCR 1025, 1052 and *Sreenivasa General Traders & Others v. State of Andhra Pradesh and Others etc.*, AIR 1983 SC 1246.

The decision in *Titaghur*, [1985] 3 SCR 26, as we see it, is consistent with the proposition that all rights derived by the contractors, including *profit a prendre*, were granted in terms of the agreements. All such rights are conditioned by, and totally dependent on, the agreements. Whatever mutual rights or obligations accrued or arose between the parties to those agreements are purely contractual in character and incidence.

Any right or interest granted or recognised under such agreement was not an independent or pre-existing right or interest to survive the statutory rescission of the contract. Legislation has superseded all inconsistent and contrary rights. No right or interest or grant, whether contractual or prerogative in character or origin, whatever be its nature, source and scope, can survive a superseding valid legislation. See *Attorney General v. De Keyser's Royal Hotel Limited*, [1920] AC 508. In this context, the observation of the Privy Council in *Thakur Jagannath Baksh Singh v. The United Provinces*, AIR 1946 PC 127, Para 17, is relevant:

"..... if once it be found that the subject-matter of a Crown grant is within the competence of a Provincial Legislature nothing can prevent that Legislature from legislating about it unless the Constitution Act itself expressly prohibits legislation on the subject either absolutely or conditionally."

All rights recognised under the bamboo contracts thus perished as from the date on which Act 22 of 1981 came into force in respect of

A bamboos in the areas in question, i.e., as from 1.10.1988 being the date specified in terms of section 1(3).

B Significantly, no evidence has been placed before us to support the contention that the grant of *profit a prendre* arose independent of, and prior to, contract and the statutory rescission of contract did not affect the grant. Strangely enough, the contractors rely upon their contracts when they seek to assert rights allegedly flowing from grant stipulated under the contracts. The very foundation of this right is traceable to contractual grant. Any such grant perished with its statutory repudiation.

C Subsequent amendment of Act 22 of 1981 by Act 4 of 1989 to include grants of *profit a prendre* was, in our view, merely clarificatory. Assuming that an interest in the nature of *profit a prendre* was vested in or granted to the contractors independent of contract, no such right or interest could survive its statutory repudiation or repeal by the retrospective amendment of section 5(1) by Act 4 of 1989:
D *Thakur Jagannath Baksh Singh v. The United Provinces*, AIR 1946 PC 127.

E We see no substance in the contention that a second notification under section 1(3) of Act 22 of 1981 was required to bring into effect the substituted provisions introduced by Act 4 of 1989. That Act containing the deeming provisions in section 1(2) is deemed to have come into force on the date on which Act 22 of 1981 came into force i.e., on 5.9.1981 when that Act was notified in the Orissa Gazette. Section 1(3) of Act 22 of 1981 being the governing provision for bringing the statute into force with specific reference to particular produce and particular areas as from specified dates, the statute came into force for specific operation in respect of bamboos in the areas in question not on 5.9.1981, but on 1.10.1988, as specified in the Notification dated September 21, 1988 issued by the Government of Orissa relating to bamboos in exercise of its powers under section 1(3) of the principal Act. The effect of the deeming provisions in Act 4 of 1989 is to project backwards the provisions of that Amending Act so as to read them into the principal Act (Act 22 of 1981) as if they were part of the principal Act on the date on which it was notified in the Orissa Gazette, i.e., on 5.9. 1981. The new provisions are thus, in the absence of any inconsistency or absurdity, deemed to have always formed part of the provisions originally enacted. That being the position in law, as an inevitable corollary, the notification issued under section 1(3) is deemed to be applicable to the principal Act with the subsequently substituted
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retroactive provisions written into it; and, no further notification under section 1(3) in respect of Act 4 of 1989 is, therefore, required. to recall the words of Lord Asquith in this context:

“If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.”

(East End Dwelling Co. Ltd. v. Finsbury Borough Council, [1952] AC 109)

To contend that a second notification under section 1(3) of Act 22 of 1981 is required to bring Act 4 of 1989 into force is to cause or permit one's imagination to boggle.

In *Shamarao V. Parulekar v. The District Magistrate, Thana, Bombay*, [1952] SCR 683, Vivian Bose, J. stated:

“... the rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all”

So construed, in the absence of any repugnancy or inconsistency or absurdity, we must read Act 22 of 1981 as if the new provisions had been written into the principal Act ‘with pen and ink’ and the old words scored out. It is significant that while Act 22 of 1981, which “extends to the whole of the State of Orissa” [S. 1(2)], came into force on 5.9.1981 on publication in the Orissa Gazette (see S. 3(1)(ii) of the Orissa General Clauses Act, 1937) the Act in terms of section 1(3) came into force in respect of specific produce in specified areas only on publication of separate notifications. Thus sal seeds were brought under the Act at once and bamboos subsequently by separate notifica-

- A tions. The operation of the Act in respect of specific areas and specific produce is made conditional upon specific notifications, partaking of the character of conditional legislation. So understood, the words 'all grants of *profit a prendre*' introduced by Act 4 of 1989 formed part of the principal Act at all material times, and these words along with the rest of the Act came into force in relation to bamboos in Government
- B forests as from the date specified in terms of section 1(3).

We see no merits in the contention that section 1(3) is invalid by reason of excessive delegation. In *Sardar Inder Singh v. The State of Rajasthan*, [1957] SCR 605, Venkatarama Ayyar, J. referring to the proposition of law, which had the support of the majority of the learned Judges in re. Delhi Laws Act, 1912 [1951] SCR 747 stated:

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"when an appropriate Legislature enacts a law and authorises an outside authority to bring it into force in such area or at such time as it may decide, that is conditional and not delegated legislation, and that such legislation is valid."

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After referring to the observation of Lord Selborne in *Her Majesty The Queen v. Burah*, [1877-78] 5 IA 178 Venkatarama Ayyar, J. concluded thus *ibid*, p. 618:

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"this is clear authority that a provision in a statute conferring a power on an outside authority to bring it into force at such time as it might, in its own discretion, determine, is conditional and not delegated legislation, and that it will be valid, unless there is in the Constitution Act any limitation on its power to enact such a legislation."

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We may in this connection set out the words of Lord Selborne in *Her Majesty The Queen v. Burah*, [1877-78] 5 IA 178, 194-95 to which Venkatarama Ayyar, J. referred:

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"the Legislature determined that, so far, a certain change should take place; but that it was expedient to leave the time, and the manner, of carrying it into effect to the discretion of the Lieutenant-Governor The proper Legislature has exercised its judgment as to place, person, laws, powers; and the result of that judgments has been to legislate conditionally as to all these things. The conditions having been fulfilled, the legislation is now absolute.

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Where plenary powers of legislation exist as to particular

subjects, whether in an Imperial or in a provincial Legislature, they may (in their Lordships' judgment) be well exercised, either absolutely or conditionally. Legislation, conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the Legislature to persons in whom it places confidence, is no uncommon thing; and, in many circumstances, it may be highly convenient ..."

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Venkatarama Ayyar, J. further stated (*ibid*, pp. 618-619.):

..... The reason for upholding a legislative provision authorising an outside authority to bring an Act into force at such time as it may determine is that it must depend on the facts as they may exist at a given point of time whether the law should then be made to operate, and that the decision of such an issue is best left to an executive authority. Such legislation is termed conditional, because the Legislature has itself made the law in all its completeness as regards 'place, person, laws, powers', leaving nothing for an outside authority to legislate on, the only function assigned to it being to bring the law into operation at such time as it might decide

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These observations show that section 1(3) is a true example of conditional legislation, and not delegated legislation, and it is perfectly valid.

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Even if the section were to be seen as a delegation of power, it is a power conferred on the Government to give full effect to the policy behind the legislation. It is with a view to achieving that purpose that the executive has been empowered to choose the time, place and forest produce for bringing the Act into operation having regard to the particular facts and circumstances in the contemplation of the legislature. There is no excessive delegation in such statutory grant of power. [See *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. The Asstt. Commissioner of Sales Tax & Ors.*, [1974] 2 SCR 879 and *Harishanker Bagla v. The State of M.P.*, [1955] 1 SCR 380, 388].

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We see no substance in the contention that Orissa Forest Act, 1972 and Act 22 of 1981, as subsequently amended, address themselves to identical problems so as to make the latter a surplusage. While the Orissa Forest Act, 1972 is concerned with the protection and

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- A management of the forests, Act 22 of 1981, as its title and preamble indicate, is meant to control and regulate trade in forest produce by creating a State monopoly. The later statute has rescinded all contracts for the purchase, sale, gathering or collection of forest produce and has repudiated all rights created by and arising under such contracts and all grants of *profit a prendre*. The bamboo contractors are, therefore, not entitled to claim any independent right inconsistent with the statute as from the date specified under section 1(3), namely, 1.10.1988.
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- C Act 22 of 1981, as seen above, has been enacted to provide for control and regulation of trade in forest produce by creating a State monopoly in that trade. Control through monopoly has become necessary because of rapid increase of smuggling activities in the State. [See *M/s. Utkal Contractors and Joinery (P) Ltd. and Others v. State of Orissa*, [1987] Supp. SCC 751]. All this is clear from the preamble to the Act as well as from the Statement of Objects and Reasons, (published in the Orissa Gazette, Extraordinary No. 325, dated 17.3.1981). The legislative object is sought to be achieved by means of various provisions in the Act, particularly section 3 constituting units of areas specified for the applicability of the Act; section 4 appointing agents in respect of such units; and, section 5 rescinding all contracts relating to forest produce and making agents the sole repositories of authority to purchase and transport forest produce specified in the notification issued under section 1(3) of the Act. Such law creating State monopoly is presumed to be reasonable and in the interests of the general public. [See the principle stated in *Akadasi Padhan v. State of Orissa*, [1963] Supp. 2 SCR 691 at 704-705]. The Act stipulates appointment of agents who must necessarily work strictly on behalf of the State and not for themselves. The sections as such are, therefore, not open to challenge [See *Akadasi Padhan* (supra) at 715-718]. These legislative measures are rationally related to the object sought to be achieved.
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- G We see no substance in the contention that the impugned provisions have resulted in acquisition of rights in land on principles of compensation less favourable to the contractors in comparison to the allegedly like provisions of the Orissa Forest Act, 1972 providing for acquisition under the Land Acquisition Act 1 of 1984. The Orissa Forest Act, 1972, unlike Act 22 of 1981, provides for acquisition of land under the Land Acquisition Act 1 of 1984 when a right (other than a right to forest produce and certain other specified rights) is claimed in that land. This means compensation under the Land
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Acquisition Act is contemplated only where the right claimed is in respect of private land. The Orissa Forest Act does not provide for acquisition or compensation under the Land Acquisition Act where the right claimed is, as in the instant cases, in respect of forest produce grown or found in Government forests. Act 22 of 1981 significantly does not provide for acquisition of land, but for control of trade in forest produce by creating a State monopoly to the exclusion of any private person. No fundamental right of the contractors is affected by such control through State monopoly, particularly when the contractors have been given full liberty to remove all felled bamboos within the stipulated period. In any case, whatever be the consequence of the exclusion of the contractors from trade in forest produce, such exclusion for the purpose of State monopoly has been brought about by authority of law. [See *Akadasi Padhan*, (supra)].

As stated by this Court in *Hamdard Dawakhana (Wakf) Lal Kuan, Delhi and Another v. Union of India and Others*, [1960] 2 SCR 671, 678-679]:

“..... the legislature understands and appreciates the need of the people and the laws it enacts are directed to problems which are made *manifest* by experience and that the elected representatives assembled in a legislature enact laws which they considered to be reasonable for the purpose for which they are enacted. Presumption is, therefore, in favour of the constitutionality of an enactment.

See also *Charanjit Lal Chowdhuri v. The Union of India & Ors.*, [1950] SCR 869; *The State of Bombay v. F.N. Bulsara*, [1951] SCR 682, 708 and *Mahant Moti Das v. S.P. Sahi*, AIR 1959 SC 942, 948.

Smuggling in forest produce has been a serious threat to national economy. No society can tolerate activities endangering the morale and economy of the people. This substantive evil with its corrupting and debilitating influence is sought to be remedied by legislative control of trade in forest produce through State monopoly. These measures are undoubtedly well within the province of the legislature and reasonably and rationally adapted to the end sought. The legislative findings and the subject-matter of the legislation; the area of its operation; its purpose and intent; its legislative history; the objects and reasons for the amendments made consequent on judicial decisions; the vice that is sought to be remedied; the legislative response to compelling necessities. All this lends support to the presumption in

- A favour of reasonableness, legality and constitutionality of the legislative actions in question. All rights and interests contrary to and inconsistent with the statute accordingly stand rescinded.

- B We see no merit in the challenge against the statutory provisions or the notifications issued thereunder or the actions taken in accordance with them. The appeals and writ petitions are accordingly dismissed with costs.

Y. Lal

Petitions dismissed.