IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA No. 28998 of 2023

With

CAN No. 1 of 2024

R.D.B. Builders Private Limited & Anr.

Versus

The State of West Bengal & Others

Mr. Soumya Majumder, Sr. Adv.
Mr. Mainak Ganguly
Mr. Siddharth Shroff

.....For the petitioners.

Mr. Pradip Kumar Dutta, Sr. Adv.
Mr. Chanchal Kumar Dutta
Ms. K. Mallick

.....For the private respondent.

Mr. Amal Kr. Sen, Ld. A.A.G.
Mr. Sabyasachi Mondal

.....For the State.

Hearing Concluded On : 04.02.2026

Judgment on : 26.02.2026

Krishna Rao, J.:

1. The petitioners have filed the present writ application challenging the orders passed by the respondent no. 2 on 3rd July, 2023 and 31st July, 2023, which reads as follows:

> *"**4.** Therefore, considering all the above and in continuation of the order dated 03.07.2023 passed in the matter, it is hereby ordered that:*
>
> *(i) The promoter shall pay to the petitioners mentioned in para 3 above, a compensation which will be the amount equal to 10% of the purchase value of their respective flats with a simple interest @12% from the date of making over possession of the flat to the respective petitioner to the date of paying the compensation. This amount may also be set of against pending payments on the part of the petitioners, if any, in which case interest will not be applicable on the amount so set off. The payment will have to be made within three months from the date of this order.*
>
> *(ii) The promoter shall pay to the petitioners mentioned in para 3 above, further compensation at the rate of 12% per annum (simple interest) on the total payment received from the respective petitioners till the completion date mentioned in their agreements for the period commencing from the date following the date of completion as specified in the agreement to the actual date of handover of possession of the flat, and such compensation may be adjusted against any pending payment from the respective petitioner to the promoters. The payment in this regard will also have to be made within three months of the date of this order.*
>
> *(iii) In the event of the promoters not paying the compensations as determined under paragraphs (i) and (ii) above within the time stated therein, the petitioners may file complaint with the appropriate authority for taking action against the promoters in terms of Section 13 of the Promoters Act, 1993, if they*

> *are so advised, in addition to taking recourse to any other remedy as may be available under the laws for realising the compensation amount."*

2. The ground of filing the present writ petition against the impugned orders is *Coram non-judice.* The contention of the petitioners is that the respondent no.2 has passed the impugned orders under the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 but the Hon'ble Supreme Court in the case of ***Forum for People's Collective Efforts (FPCE) and Another Vs. State of West Bengal and Another*** reported in ***(2021) 8 SCC 599*** has repealed the said Act upon enactment of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA").

3. The petitioner no.1 was registered as a "promotor" in terms of Section 3(5) of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 (hereinafter referred to as the Act of 1993) and the petitioner no. 2 is the Director of the petitioner no.1 company.

4. As per permission granted by the Authorized Officer under the Act of 1993 on 30th June, 2005, the petitioners have constructed buildings consisting of 64 flats and 45 Car parking spaces at the Premises No. 196D/2, Picnic Garden Road, Kolkata- 700039. The private respondent nos. 4 to 10 have entered into and executed separate individual agreements with the petitioners for purchase of their respective flats.

5. A dispute arose between the petitioners and the private respondents with regard to the flats delivered to the private respondents. The private respondents made complaint before the concern authority under Section 6 of the Act of 1993 on the allegation that the area of the flats delivered by the petitioners was not according to the agreement and the common area of 3 cottahs of land was surreptitiously sold by the petitioners. The concern authority had passed an order under Section 6 of the Act of 1993 by partly allowing the complaint filed by the private respondents. Being aggrieved with the said order, the private respondents had filed Revisional Application under Section 6A of the Act of 1993 and the petitioners had challenged the said order by filing writ petition being WP No. 7626(W) of 2008. The writ petition filed by the petitioners was disposed of on 24th September, 2008, giving liberty to the petitioners to file revisional application before the concern authority under Section 6A of the Act of 1993.

6. On 19th December, 2008, both revisional applications were disposed of by the Revisional Authority by a common order. The private respondents challenged the said order by way of WP No. 3036 (w) of 2009 and the said writ petition was disposed of on 23rd July, 2009, by setting aside the order passed by the revisional authority and remanded the matter back to the revisional authority for hearing the revisional applications afresh.

7. The Revisional Authority disposed of the revisional applications by an order dated 11th July, 2011. Being aggrieved with the said order, the

private respondents have filed a writ petition before this Court being WPA No. 2470 of 2012. The said writ petition was disposed of by this Court on 6th January, 2022, by setting aside the order passed by the Authorized Officer and remanded the matter back to the Authorized Officer i.e. the Secretary, Government of West Bengal, Housing Department with the direction to hear both the revisional applications afresh after giving an opportunity of hearing to all the parties and to pass a reasoned and speaking order within a period of three months from the date of communication of the order.

8. The Authorized Officer, i.e. the Principal Secretary after hearing both the parties, issued a show cause notice on 3rd July, 2023 and had passed an order dated 31st July, 2023, which are the subject-matter of the present writ petition.

9. The private respondents have initiated the proceeding under the Act of 1993 in the year 2006 and the same was finally disposed of by the Principal Secretary on 31st July, 2023.

10. During the pendency of the writ petition before this Court against the order passed by the Authorized Officer dated 11th July, 2011, the Hon'ble Supreme Court in the case of ***Forum for People's Collective Efforts (FPCE) (supra),*** held that:

> ***"183.*** *Before the WB-HIRA, the State Legislature had also enacted WB Act, 1993. Upon receiving the assent of the President, the Act was published in the Calcutta Gazette, Extraordinary on*

9-3-1994. Some of the salient provisions of the Act are detailed below:

(i) Section 3 provides for registration of promoters who construct or intend to construct a building and for obtaining permission for construction.

(ii) Section 4 provides for the validity of the certificate of registration and for cancellation.

(iii) Section 5 provides for appeals.

(iv) Section 6 provides for adjudication of disputes by an officer appointed by the State Government for adjudication.

(v) Section 7 provides that the promoter shall before taking any advance payment for deposit, which shall not be more than 40% of the sale price, enter into a written agreement for sale which shall be registered.

(vi) Section 8 restrains additions or alterations without the consent of the transferee and for rectification of defects.

(vii) Section 9 contains a prohibition on a promoter creating a mortgage or charge without the consent of the purchaser after entering into an agreement.

(viii) Section 10 requires the formation of a cooperative society.

(ix) Section 11 provides for the promoter to covey title to the cooperative society.

(x) Section 12 provides for insurance against loss or death.

(xi) Section 13 provides for penalties.

(xii) Section 14 provides for offences by companies.

(xiii) Section 15 provides for rule-making powers.

(xiv) Section 16 provides for exemption to constructions by the State Government Housing Board and by the Housing and Urban Development Corporation.

(xv) Section 17 provides for repeals and the earlier legislation of 1972 is repealed.

The above provisions are repugnant to the corresponding provisions which are contained

> *in RERA. These provisions of the WB Act, 1993 impliedly stand repealed upon the enactment of RERA in 2016, in accordance with Sections 88 and 89 read with Article 254(1) of the Constitution. Hence, we clarify with abundant caution that our striking down of the provisions of WB-HIRA in the present judgment-t will not, in any manner, revive WB Act, 1993, which was repealed upon the enactment of WB-HIRA since WB Act, 1993 is itself repugnant to RERA, and would stand impliedly repealed.*
>
> ***184.*** *For the above reasons, we have come to the conclusion that WB-HIRA is repugnant to RERA, and is hence unconstitutional. We also hold and declare that as a consequence of the declaration by this Court of the invalidity of the provisions of WB-HIRA, there shall be no revival of the provisions of the WB Act, 1993, since it would stand impliedly repealed upon the enactment of RERA.*
>
> ***185.*** *Since its enforcement in the State of West Bengal, the WB-HIRA would have been applied to building projects and implemented by the authorities constituted under the law in the State. In order to avoid uncertainty and disruption the jurisdiction of this Court under Article 142 is necessary. Hence, in exercise of the jurisdiction under Article 142, we direct that the striking down of WB-HIRA will not affect the registrations, sanctions and permissions previously granted under the legislation prior to the date of this judgment."*

11. Now, the petitioners have raised the issue that in the year 2021, the Hon'ble Supreme Court has repealed the Act of 1993, thus the order passed by the respondent no.2 under the Act of 1993 is without any jurisdiction and became *Corum non- judice*.

12. It is the contention of the petitioners that in the judgement, the Hon'ble Supreme Court has categorically mentioned about registrations,

sanctions and permissions previously granted will not affect but the Hon'ble Court has not mentioned about the pending proceeding, thus all the proceedings are to be transferred to RERA. He submits that the respondent no. 2 ought to have transferred the proceeding before the RERA authorities but instead of the same has proceeded with the matter and passed the impugned order without any jurisdiction or authority after repealing of the Act of 1993.

13. Sections 88 and 89 of RERA, reads as follows:

> ***"88. Application of other laws not barred.—****The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.*
>
> ***89. Act to have overriding effect.—****The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."*

14. The Hon'ble Supreme Court in the case of ***Forum for People's Collective Efforts (FPCE) and Another (supra)*** has dealt with the provisions of Sections 88 and 89, which reads as follows:

> ***"150.*** *Now, it is in this background that it becomes necessary to analyse the provisions of Sections 88 and 89 of the RERA. Section 88 stipulates that the application of other laws is not barred : the provisions of the legislation "shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force". At the same time, Section 89 provides for overriding effect to the provisions of the RERA when it stipulates that it "shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force". The interpretation of these provisions and their interplay will have an*

important bearing on the outcome of the present controversy. This is because, as we noticed earlier in this judgment, the State of West Bengal had originally supported its legislative authority over the subject governed by WB-HIRA on the ground that the State enactment falls within the ambit and purview of List II of the Seventh Schedule. However, though this submission was specifically pressed in the counter-affidavit, it has been expressly given up in the oral and written submissions tendered before this Court by the State of West Bengal. The submission now of the State of West Bengal accepts that in essence and in substance, WB-HIRA contains a substantial overlap with the provisions of the RERA and is a law which the State Legislature enacted in exercise of its legislative authority under Article 246(2) while legislating on subjects in the Concurrent List. The State of West Bengal submitted that WB-HIRA, like RERA is enacted with reference to the subjects incorporated in Seventh Schedule List III Entries 6 and 7. Simply put, the submission of the State of West Bengal is four-fold : firstly, though there is a substantial overlap between the State and the Central enactments and both of them govern the same subject-matter and field, there is no constitutional prohibition on the State Legislature enacting legislation on a subject in the Concurrent List which is virtually identical to Central legislation in the same list; secondly, Section 88 of the RERA contains an expression that its provisions shall be in addition to, and not in derogation of any other law for the time in force; this being an indicator that Parliament contemplated that RERA can coexist with analogous State legislation; thirdly, the inconsistencies between WB-HIRA and RERA are of a minor nature and wherever the State enactment contains provisions at variance with the Central law, the former will have to yield to the latter, and fourthly, the provisions of Section 92 of the RERA demonstrate that where Parliament intended to repeal a specific State legislation — Maharashtra Act II of 2014 — only that legislation was repealed.

151. *While considering these submissions which have been articulated by Mr Rakesh Dwivedi, learned Senior Counsel, it becomes necessary to dwell on two lines of precedent of this*

Court. The first line of precedent analyses provisions analogous to Section 88 of the RERA and would shed light on what is the ambit of a provision which states that the statute is in addition to and not in derogation of any other law for the time being in force. The second line of precedent explores the meaning of the expression "in any other law for the time being in force". Does this expression in Section 88 freeze the applicability of that provision to laws which were in force when RERA enacted or does it also apply to laws which may be enacted subsequently?

152. *The first line of precedent will facilitate judicial evaluation of Section 88. In M.D. Frozen Foods Exports (P) Ltd. v. Hero Fincorp Ltd. reported in (2017) 16 SCC 741, a Bench of two Judges of this Court analysed three issues of which the first is of relevance to the present case. That issue was :*

> *"11.1. (i) Whether the arbitration proceedings initiated by the respondent can be carried on along with the Sarfaesi proceedings simultaneously?"*

The appellant in that case had borrowed monies from the respondent by creating a mortgage against deposit of title deeds. The account became a non-performing asset resulting in the lender invoking the arbitration clause of the agreement with the borrower. Prior to it, a notification was issued under which the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act") were applied to certain non-banking financial institutions, including the respondent. The respondent issued a notice under Section 13(2) of the SARFAESI Act. In the course of the arbitration proceedings, an interim order was passed from which proceedings were carried in appeal under Section 37 of the Arbitration and Conciliation Act, 1996, resulting in the dispute travelling to this Court. Sections 35 and 37 of the SARFAESI Act are in the following terms:

> *"**35. The provisions of this Act to override other laws**.— The provisions of this Act shall have effect, notwithstanding*

anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

* * *

***37. Application of other laws not barred**.—The provisions of this Act or the Rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force."*

153. *Sanjay Kishan Kaul, J. adverted to the above definition in the course of the judgment. The Court noted the earlier decision in Transcore v. Union of India reported in (2008) 1 SCC (Civ) 116 holding that by virtue of Section 37, the SARFAESI Act is in addition to and not in derogation of the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("the RDDB Act"). The "only twist" was that instead of the recovery process being under the RDDB Act, the Court was concerned with an arbitration proceeding. In this context, the Court observed :*

"30. The only twist in the present case is that, instead of the recovery process under the RDDB Act, we are concerned with an arbitration proceeding. It is trite to say that arbitration is an alternative to the civil proceedings. In fact, when a question was raised as to whether the matters which came within the scope and jurisdiction of the Debts Recovery Tribunal under the RDDB Act, could still be referred to arbitration when both parties have incorporated such a clause, the answer was given in the affirmative. That being the position, the appellants can hardly be permitted to contend that the initiation of arbitration proceedings would, in any manner, prejudice their rights to seek relief under the Sarfaesi Act."

There was, in other words, no question of an election of remedies and the provisions of the Sarfaesi Act provide a remedy in addition to the provisions of the Arbitration Act. Sarfaesi proceedings, the Court held, are in the nature of enforcement proceedings, while arbitration is an "adjudicatory process".

154. *In KSL & Industries Ltd. v. Arihant Threads Ltd. reported in (2015) 1 SCC (Civ) 462, a three-Judge Bench of this Court considered a reference made by a two-Judge Bench following a difference of opinion on the interpretation of Section 34 of the RDDB Act. In that case, the High Court had set aside the order of the Debts Recovery Appellate Tribunal, in view of the bar contained in Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA"). Section 32 of the SICA contained a provision giving overriding force notwithstanding anything inconsistent contained in any other law except the Foreign Exchange Regulation Act, 1973 and the Urban Land (Ceiling and Regulation) Act, 1976, among other instruments. Section 32(1) was as follows:*

> *"**32. Effect of the Act on other laws**.— (1) The provisions of this Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973) and the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) for the time being in force or in the memorandum or articles of association of an industrial company or in any other instrument having effect by virtue of any law other than this Act."*

155. *The RDDB Act which was a later enactment of 1993 contained Section 34 giving it overriding effect:*

> *"**34. Act to have overriding effect**.—(1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the*

time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the Rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989).”

156. *Now, sub-section (1) of Section 34 gives overriding effect to the RDDB Act notwithstanding anything inconsistent contained in any other law for the time being in force. On the other hand, sub-section (2) provides that the provisions of the Act and its Rules would be in addition to and not in derogation of certain other named statutes. Adverting to the provisions of Section 34(2), S.A. Bobde (as the learned Chief Justice then was) observed:*

“36. Sub-section (2) was added to Section 34 of the RDDB Act w.e.f. 17-1-2000 by Act 1 of 2000. There is no doubt that when an Act provides, as here, that its provisions shall be in addition to and not in derogation of another law or laws, it means that the legislature intends that such an enactment shall coexist along with the other Acts. It is clearly not the intention of the legislature, in such a case, to annul or detract from the provisions of other laws. The term “in derogation of” means “in abrogation or repeal of”. Black's Law Dictionary sets forth the following meaning for “derogation”:

‘derogation.—The partial repeal or abrogation of a law by a later Act that limits its scope or impairs its utility and force.’

It is clear that sub-section (1) contains a non obstante clause, which gives the overriding effect to the RDDB Act. Sub-section (2) acts in the nature of an exception to such

an overriding effect. It states that this overriding effect is in relation to certain laws and that the RDDB Act shall be in addition to and not in abrogation of, such laws. SICA is undoubtedly one such law."

157. *The Court held that the effect of sub-section (2) was to preserve the powers of the authorities under SICA and save the proceedings from being overridden by the RDDB Act. The Court held that both SICA and the RDDB Act were special laws within their own sphere :*

> *"39. There is no doubt that both are special laws. SICA is a special law, which deals with the reconstruction of sick companies and matters incidental thereto, though it is general as regards other matters such as recovery of debts. The RDDB Act is also a special law, which deals with the recovery of money due to banks or financial institutions, through a special procedure, though it may be general as regards other matters such as the reconstruction of sick companies which it does not even specifically deal with. Thus, the purpose of the two laws is different."*

158. *The Court noticed that Section 34(2) of the RDDB Act specifically provides that its provisions would be in addition to and not in derogation of the other laws mentioned in it, including SICA. The expression "not in derogation" was then construed in the following observations:*

> *"49. The term "not in derogation" clearly expresses the intention of Parliament not to detract from or abrogate the provisions of the SICA in any way. This, in effect must mean that Parliament intended the proceedings under SICA for reconstruction of a sick company to go on and for that purpose further intended that all the other proceedings against the company and its properties should be stayed pending the process of reconstruction. While the term "proceedings" under Section 22 of the SICA did not originally include the RDDB Act, which was not there in existence.*

Section 22 covers proceedings under the RDDB Act."

Consequently, the Court in KSL & Industries Ltd. case answered the reference by holding that the provisions of the SICA, in particular Section 22, shall prevail over the provisions for the recovery of debts in the RDDB Act.

159. *To complete this trinity of judgments between 2015 and 2019, there is a three-Judge Bench decision of this Court in Pioneer Urban Land & Infrastructure Ltd. v. Union of India. This Court considered a challenge to the constitutional validity of the amendments made in 2018 to IBC 2016, pursuant to a report of the Insolvency Law Committee. Under the amended provisions, allottees of real estate projects were deemed to be financial creditors, triggering the applicability of the Code to real estate developers. The three-Judge Bench considered, in the course of its decision, the provisions of the RERA. The Court adverted to the provisions of Sections 88 and 89 of the RERA on the one hand and to Section 238 of IBC which is in the following terms:*

> *"**238. Provisions of this Code to override other laws**.—The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

160. *R.F. Nariman, J. speaking for the three-Judge Bench noted that:*

160.1. *There is no provision analogous to Section 88 of the RERA in IBC and the latter is meant to be a complete and exhaustive statement of the law insofar as its subject-matter is concerned.*

160.2. *While the non obstante clause of RERA came into force on 1-5-2015, the non obstante clause of IBC came into force on 1-12-2016.*

160.3. *The amendments to IBC had come into force on 6-6-2018.*

161. *In this backdrop, the Court did not accept the submission that RERA being a special enactment would have precedence over IBC which is a general enactment dealing with insolvency. In this backdrop, the Court observed:*

> *"25. … From the introduction of the Explanation to Section 5(8)(f) of the Code, it is clear that Parliament was aware of RERA, and applied some of its definition provisions so that they could apply when the Code is to be interpreted. The fact that RERA is in addition to and not in derogation of the provisions of any other law for the time being in force, also makes it clear that the remedies under RERA to allottees were intended to be additional and not exclusive remedies. Also, it is important to remember that as the authorities under RERA were to be set up within one year from 1-5-2016, remedies before those authorities would come into effect only on and from 1-5-2017 making it clear that the provisions of the Code, which came into force on 1-12-2016, would apply in addition to RERA."*

162. *The Court noted the decision in KSL & Industries in which it was held that notwithstanding the non obstante clause contained in the RDDB Act which was later in time than the non obstante clause in SICA and the principle that the later Act would prevail over the earlier, this principle was departed from only because of the of the presence of a provision, like Section 88 of the RERA, which was contained in the RDDB Act which made it clear that the Act was meant to be in addition and not in derogation of other statutes. Distinguishing the decision, the Court observed:*

> *"27. In view of Section 34(2) of the Recovery Act, this Court held that despite the fact that the non obstante clause contained in the Recovery Act is later in time than the non obstante clause contained in the Sick Act, in the event of a conflict, the Recovery Act i.e. the later Act must give way to the Sick Act i.e. the*

> *earlier Act. Several judgments were referred to in which ordinarily a later Act containing a non obstante clause must be held to have primacy over an earlier Act containing a non obstante clause, as Parliament must be deemed to be aware of the fact that the later Act is intended to override all earlier statutes including those which contained non obstante clauses. This statement of the law was departed from in KSL & Industries only because of the presence of a section like Section 88 of the RERA contained in the Recovery Act, which makes it clear that the Act is meant to be in addition to and not in derogation of other statutes. In the present case, it is clear that both tests are satisfied, namely, that the Code as amended, is both later in point of time than RERA, and must be given precedence over RERA, given Section 88 of the RERA."*

163. *Therefore, the Court in Pioneer Urban Land & Infrastructure Ltd. case held that RERA and IBC must be held to coexist and in the event of a clash, RERA must give way to IBC.*

164. *The second line of precedent has been relied upon by Mr Rakesh Dwivedi on behalf of the State of West Bengal, as an aid to the construction of the expression "law for the time being in force". In the decision of the Constitution Bench in Sasanka Sekhar Maity v. Union of India, A.P. Sen, J. construed the provisions of the second proviso to Article 31-A(1) of the Constitution and the expression "any law for the time being in force". The argument was that this expression must mean the West Bengal Estate Acquisition Act, 1953 only. Rejecting the submission, the Constitution Bench held:*

> *"27. Such a construction, if we may say so, would create a serious impediment to any kind of agrarian reform. The ceiling on agricultural holdings, once fixed cannot be static, unalterable for all times. The expression "any law for the time being in force" obviously refers to the law imposing a ceiling. Here it is the West Bengal Land Reforms (Amendment) Act, 1971 (President's*

Act 3 of 1971) and now the West Bengal Land Reforms (Amendment) Act, 1971 (W.B. Act 12 of 1972) which introduced Chapter II-B imposing a new ceiling on agricultural holdings of raiyats. That is the law for the time being in force, and no land is being acquired by the State under Section 14-L within the ceiling limits prescribed therein.

28. It will be noticed that the second proviso to Article 31-A(1) refers to the "ceiling limit applicable to him", which evidently refers to the law in question and not earlier law, that is Section 6(1) of the West Bengal Estates Acquisition Act, 1953. It will be noticed that both Section 4(3) and Section 6(2) of the West Bengal Land Reforms Act, 1955 stood deleted by the West Bengal Land Reforms (Amendment) Act, 1971 (President's Act 3 of 1971) and thereafter by the West Bengal Land Reforms (Amendment) Act, 1972 with retrospective effect from 12-2-1971."

165. *In Thyssen Stahlunion GmbH v. SAIL, a two-Judge Bench of this Court considered the expression "for the time being in force" in the context of an arbitration agreement and agreed with the view of the High Courts of Bombay and Madhya Pradesh, which had held that the expression not only refers to the law in force at the time when the arbitration was entered into but also to any law that may be in force in the conduct of the arbitration proceeding. Speaking for the Bench, D.P. Wadhwa, J. held :*

"35. Parties can agree to the applicability of the new Act even before the new Act comes into force and when the old Act is still holding the field. There is nothing in the language of Section 85(2)(a) which bars the parties from so agreeing. There is, however, a bar that they cannot agree to the applicability of the old Act after the new Act has come into force when arbitral proceedings under the old Act have not commenced though the arbitral agreement was under the old Act. Arbitration clause in the contract in Rani Constructions (Civil Appeal No. 61 of 1999) uses the expression "for the time being in force" meaning thereby

that provision of that Act would apply to the arbitration proceedings which will be in force at the relevant time when arbitration proceedings are held. We have been referred to two decisions — one of the Bombay High Court and the other of the Madhya Pradesh High Court on the interpretation of the expression "for the time being in force" and we agree with them that the expression aforementioned not only refers to the law in force at the time the arbitration agreement was entered into but also to any law that may be in force for the conduct of arbitration proceedings, which would also include the enforcement of the award as well. The expression "unless otherwise agreed" as appearing in Section 85(2)(a) of the new Act would clearly apply in Rani Constructions in Civil Appeal No. 61 of 1999. Parties were clear in their minds that it would be the old Act or any statutory modification or re-enactment of that Act which would govern the arbitration. We accept the submission of the appellant Rani Constructions that parties could anticipate that the new enactment may come into operation at the time the disputes arise. We have seen Section 28 of the Contract Act. It is difficult for us to comprehend that arbitration agreement could be said to be in restraint of legal proceedings. There is no substance in the submission of the respondent that parties could not have agreed to the application of the new Act till they knew the provisions thereof and that would mean that any such agreement as mentioned in the arbitration clause could be entered into only after the new Act had come into force. When the agreement uses the expressions "unless otherwise agreed" and "law in force" it does give an option to the parties to agree that the new Act would apply to the pending arbitration proceedings. That agreement can be entered into even before the new Act comes into force and it cannot be said that agreement has to be entered into only after the coming into force of the new Act."

166. *The decision of a two-Judge Bench in MCD v. Prem Chand Gupta, considered*

Regulation 4(1) of the Services Regulations of 1959 which commenced with the expression "Unless otherwise provided in the Act or these Regulations, the rules for the time being in force and applicable to government servants in the service of the Central Government shall, as far as may be, regulate the conditions of service of municipal officers and other municipal employees". The Court rejected the submission that the rules for the time being in force would be those which were in existence when the Services Regulations of 1959 were promulgated and not any later rules. S.B. Majmudar, J. held that whenever the question of the regulation of conditions of service of municipal officers comes up for consideration, the relevant rules in force at that time have to be looked into. As such, the scope and ambit could not be frozen as of 1959. Hence, the phraseology "rules for the time being in force" would necessarily mean rules in force from time to time and not the rules in force only at a fixed point of time in 1959.

167. *Another two-Judge Bench of this Court in Yakub Abdul Razak Memon v. State of Maharashtra, while construing the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and its interplay with the Terrorist and Disruptive Activities (Prevention) Act, 1987, speaking through P. Sathasivam, J. (as the learned Chief Justice was then), held:*

> *"1554. Section 1(4) of the JJ Act was added by amendment with effect from 22-8-2006. In fact, this provision gives the overriding effect to this Act over other statutes. However, it reads that the Act would override "anything contained in any other law for the time being in force". The question does arise as to whether the statutory provisions of the JJ Act would have an overriding effect over the provisions of TADA which left long back and was admittedly not in force on 22-8-2006. Thus, the question does arise as to what is the meaning of the law for the time being in force. This Court has interpreted this phrase to include the law in existence on the date of commencement of the Act having overriding effect and the law which may be*

enacted in future during the life of the Act having overriding effect."

168. *In State (UT of Chandigarh) v. Rajesh Kumar, Brijesh Kumar, J. considered the expression "for the time being in force" in the Law Lexicon and held that it must be interpreted keeping in mind the context in which it is used :*

> *"10. A perusal of the meaning of the expression "for the time being" by different authors, based on decided cases makes it clear that it cannot be said that it must in every case indicate a single period of time. It may be for an indefinite period of time depending upon the context in which the phrase is used. It is also evident that generally it denotes an indefinite period of time, meaning thereby, the position as existing at the time of application of the rules, maybe, amended or unamended. Therefore, to come to a conclusion as to whether it is for one time or for indefinite period of time, the context, purpose and the intention of the use of the phrase will have to be seen and examined."*

169. *Similarly, in Deptt. of Customs v. Sharad Gandhi, a two-Judge Bench of this Court considered a case where the respondent had been discharged of offences under Sections 132 and 175 of the Customs Act, 1962. The Additional Chief Metropolitan Magistrate allowed an application for discharge holding that there was a complete bar with regard to prosecution under the Customs Act, 1962, and that the Collector of Customs only had the power to confiscate the goods and impose a penalty for a breach of Section 3 of the Antiquities and Art Treasurers Act, 1972. Amongst other issues, the Bench had to interpret the meaning of Section 30 of the Antiquities and Art Treasurers Act, 1972, which reads as follows:*

> *"**30. Application of other laws not barred**.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Ancient Monuments Preservation Act, 1904 (7 of 1904) or the Ancient Monuments and Archaeological Sites*

and Remains Act, 1958 (24 of 1958), or any other law for the time being in force."

170. *K.M. Joseph, J., speaking for the two-Judge Bench, observed:*

> *"39. We would think that though the words "any other law for the time being in force" have been used, the context for the use of the provision is not to be overlooked. We have referred to the relevant provisions of the two specific enactments which show that the said legislation also deals with antiquities as it deals with cognate subjects, namely, ancient monuments and archaeological sites. The common genus is manifest. The legislative intention was to declare that the Antiquities Act should not result in the provision contained in allied or cognate laws being overridden upon passing of the Antiquities Act. Full play was intended for the provisions contained in relation to antiquities contained in the two enactments. Despite the passage of the Antiquities Act, a prosecution for instance would be maintainable if a case is otherwise made out under the two enactments in relation to antiquity. The Antiquities Act in other words is not to be in derogation of those provisions. They were to supplement the existing laws. It is therefore in the same context that we should understand the words "any other law for the time being in force". For instance, there may be laws made by the State Legislatures which relate to antiquity. There may be any other law which deal with a subject with a common genus of which the specific law would be an integral part. It is all such laws which legislature intended to comprehend within the expression "any other law for the time being in force". Take for example, a case where there is a theft of an antiquity. Can it be said that the prosecution under Section 379 would not be maintainable. The answer will be an emphatic No. Certainly, the prosecution will lie. The Sale of Goods Act, 1930 which relates to movable items generally will be applicable, to the extent that it is not covered by any provision in the Acts in question. The Contract Act, 1872 may continue to be applicable. But it is not the*

question of applying general laws that engage the attention of the legislature. The intention behind Section 30 was as noted is to provide for any other law which deal with antiquity to continue to have force and declare its enforceability even after passing of the Antiquities Act. In that view of the matter we are of the view that the words "any other law for the time being in force" must be construed as ejusdem generis.

171. *These decisions indicate that the expression "any other law for the time being in force" does not necessarily mean, such laws as were in existence when the statutory provision was enacted. To the contrary, it widely considered to means not just the laws which were in existence when the statutory provision was enacted but also such laws which may come into existence at a later stage. On the other hand, another line of judicial precedent also suggests the meaning to be ascribed to the expression must bear colour from the context in which it appears, and not devoid of it.*

172. *For instance, in National Insurance Co. Ltd. v. Sinitha, in the context of a policy of insurance, the expression "for the time being in force" was held to mean provisions then existing. The decision related to Sections 144 and 163-A of the Motor Vehicles Act, 1988, in which Section 163-A was subsequently inserted. In the context of adjustment of compensation, a two-Judge Bench of this Court held that Section 144 would not override Section 163-A because of the use of the expression "laws for the time being in force" would encompass only existing provisions of the Motor Vehicles Act, 1988, and not those inserted in the Act later. Speaking for the Bench, J.S. Khehar, J. (as the learned Chief Justice was then) observed :*

> *"16. Section 144, it may be pointed out, is a part of Chapter X of the Motor Vehicles Act, 1988, which includes Section 140. Section 144 of the Act is being extracted herein:*
>
> *'**144. Overriding effect**. — The provisions of this Chapter shall have effect notwithstanding anything contained in any*

other provision of this Act or of any other law for the time being in force.'

Even though Section 144 of the Act mandates that the provisions of Chapter X (which includes Section 140) have effect notwithstanding anything to the contrary contained in any other provision of the Act or in any other law for the time being in force, Section 144 of the Act would not override the mandate contained in Section 163-A for the simple reason that Section 144 provided for such effect over provisions "for the time being in force" i.e. the provisions then existing, but Section 163-A was not on the statute book at the time when Section 144 was incorporated therein. Therefore, the provisions contained in Chapter X would not have overriding effect over Section 163-A of the Act.

17. As against the aforesaid, at the time of incorporation of Section 163-A of the Act, Sections 140 and 144 of the Act were already subsisting, as such, the provisions of Section 163-A which also provided by way of a non obstante clause, that it would have by a legal fiction overriding effect over all existing provisions under the Act as also any other law or instrument having the force of law "for the time being in force", would have overriding effect, even over the then existing provisions in Chapter X of the Act because the same was already in existence when Section 163-A was introduced into the Act."

This again indicates that it is the statutory context and scheme which will determine the nature and ambit of the expression "any other law for the time being in force".

***173.** In the case of RERA, the expression "law for the time being in force" is used in Section 89 as well as in Section 2(zr) and Section 18(2). Section 2(zr), as noticed earlier, stipulates that words and expression used in the Act, but not defined in it and defined in any law for the time being in force or in municipal laws or other relevant*

laws of the appropriate Government, shall have the meaning assigned to them in those laws. Evidently, a law for the time being in force in Section 2(zr) is not frozen in point of time as on the date of the enactment of RERA. Likewise, Section 18(2) of the RERA imposes an obligation to the promoter to compensate allottees for the loss caused due to a defective title to the land and the provision stipulates that the claim for compensation shall not be barred by limitation provided "under any law for the time being in force". However, in Section 89, "law for the time being in force" is used in general sense of all the provisions of the Act, vis-à-vis, provisions of other Acts.

174. *From our analysis of the provisions of the RERA on the one hand and of WB-HIRA on the other, two fundamental features emerge from a comparison of the statutes. First, a significant and even overwhelmingly large part of WB-HIRA overlaps with the provisions of the RERA. These provisions of the RERA have been lifted bodily, word for word and enacted into the State enactment. Second, in doing so, WB-HIRA does not complement RERA by enacting provisions which may be regarded as in addition to or fortifying the rights, obligations and remedies created by the Central enactment. The subject of the provisions of the State enactment is identical, the content is identical. In essence and substance, WB-HIRA has enacted a parallel mechanism and parallel regime as that which has been entailed under RERA. The State Legislature has, in other words, enacted legislation on the same subject-matter as the Central enactment. Not only is the subject-matter identical but in addition, the statutory provisions of WB-HIRA are on a majority of counts identical to those of RERA. Both sets of statutes are referable to the same entries in the Concurrent List — Entries 6 and 7 of List III — and the initial effort of the State of West Bengal to sustain its legislation as a law regulating "industry" within the meaning of List II Entry 24 has been expressly given up before this Court (as we have explained, for valid reasons bearing on the precedents of this Court).*

175. *In assessing whether this overlap between the statutory provisions of WB-HIRA and RERA makes the former repugnant to the latter*

within the meaning of that expression in clause (1) of Article 254, it becomes necessary to apply the several tests which are a part of our constitutional jurisprudence over the last seven decades. Repugnancy can be looked at from three distinct perspectives. The first is where the provision of a State enactment is directly in conflict with a law enacted by Parliament, so that compliance with one is impossible along with obedience to the other. The second test of repugnancy is where Parliament through the legislative provisions contained in the statute has enacted an exhaustive code. The second test of repugnancy is based on an intent of Parliament to occupy the whole field covered by the subject of its legislation. In terms of the second test of repugnancy, a State enactment on the subject has to give way to the law enacted by Parliament on the ground that the regulation of the subject-matter by Parliament is so complete as a code, so as to leave no space for legislation by the State. The third test of repugnancy postulates that the subject-matter of the legislation by the State is identical to the legislation which has been enacted by Parliament, whether prior or later in point of time. Repugnancy in the constitutional sense is implicated not because there is a conflict between the provisions enacted by the State Legislature with those of the law enacted by Parliament but because once Parliament has enacted a law, it is not open to the State Legislature to legislate on the same subject-matter and, as in this case, by enacting provisions which are bodily lifted from and verbatim the same as the statutory provisions enacted by Parliament. The overlap between the provisions of WB-HIRA and RERA is so significant as to leave no manner of doubt that the test of repugnancy based on an identity of subject-matter is clearly established. As the decision in Innoventive Industries [Innoventive Industries Ltd. v. ICICI Bank, emphasises, laws under this head are repugnant even if the rule of conduct prescribed by both the laws is identical. This principle constitutes the foundation of the rule of implied repeal. The present case is not one where WB-HIRA deals not with matters which form the subject-matter of the parliamentary legislation but with other and distinct matters of a cognate and allied nature. WB-HIRA, on the contrary, purports to occupy the same subject as that which has been

provided in the parliamentary legislation. The State law fits, virtually on all fours, with the footprints of the law enacted by Parliament. This is constitutionally impermissible. What the legislature of the State of West Bengal has attempted to achieve is to set up its parallel legislation involving a parallel regime.

176. *But the submission which has been articulately presented before the Court on behalf of the State of West Bengal is that Section 88 of the RERA itself allows for the existence of State statutes by enacting Sections 88 and 89, which stipulate that its provisions shall be in addition to and not in derogation of the provisions of any other law for time being in force and override only inconsistent provisions. For the purpose of the present discussion, we may accept the hypothesis of the State of West Bengal that the expression "any other law for the time being in force" does not, in the context of Section 88, imply the applicability of the provision only to laws which had been enacted before RERA. Conceivably, as the judgments of this Court construing similar expressions indicate, the trend has been to broadly configure the meaning of the expression by extending it to laws which were in existence and those which may be enacted thereafter. In other contexts, such an interpretation has not been accepted but, for the purpose of the discussion, we will proceed on the hypothesis which has been put forth by the State of West Bengal that "law for the time being in force" within the meaning of Section 88 would also include subsequent legislation. The submission is that since Section 88 allows for the existence of other laws by adopting the "in addition to and not in derogation of" formula, Parliament did not intend to exclude State legislation even though it is identical to that which has been enacted by Parliament. This submission is also sought to be buttressed by adverting to Section 92 of the RERA, under which only the Maharashtra Act was repealed.*

177. *Now, in assessing the correctness of the submission, it is necessary to construe Section 88 in its proper perspective. Unless this is done, the Court would be doing violence to the intent of Parliament and to the constitutional principles*

which are embodied in Article 254. Parliament envisaged in Section 88 of the RERA that its provisions would be in addition to and not in derogation of other laws for the time being in force. True enough, this provision is an indicator of the fact that Parliament has not intended to occupy the whole field so as to preclude altogether the exercise of legislative authority whether under other Central or State enactments. For instance, Section 71 of the RERA specifically contemplates [in the proviso to sub-section (1)] that a complaint in respect of matters covered by Sections 12, 14, 18 and 19 is pending in the adjudicating fora constituted by the Consumer Protection Act, 1986. The person who has moved the consumer forum may withdraw the complaint and file an application before the adjudicating officer constituted under RERA. The effect of Section 88 is to ensure that remedies which are available under consumer legislation, including the Consumer Protection Act, 2019, are not ousted as a consequence of the operation of RERA. Of course, it is also material to note that both sets of statutes, namely, the Consumer Protection Act(s) and RERA, have been enacted by Parliament and both sets of statutes have to be, therefore, harmoniously construed. Section 88 of the RERA does not exclude recourse to other remedies created by cognate legislation. Where the cognate legislation has been enacted by a State Legislature, Section 88 of the RERA is an indicator that Parliament did not wish to oust the legislative power of the State Legislature to enact legislation on cognate or allied subjects. In other words, spaces which are left in RERA can be legislated upon by the State Legislature by enacting a legislation, so long as it is allied to, incidental or cognate to the exercise of Parliament's legislative authority. What the State Legislature in the present case has done is not to enact cognate or allied legislation but legislation which, insofar as the statutory overlaps is concerned is identical to and bodily lifted from the parliamentary law. This plainly implicates the test of repugnancy by setting up a parallel regime under the State law. The State Legislature has encroached upon the legislative authority of Parliament which has supremacy within the ambit of the subjects falling within the Concurrent List of the Seventh Schedule. The

exercise conducted by the State Legislature of doing so, is plainly unconstitutional."

15. Section 6 of the General Clauses Act, 1897, reads as follows:

> *"**6. Effect of repeal.—**Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—*
>
> *(a) revive anything not in force or existing at the time at which the repeal takes effect; or*
>
> *(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or*
>
> *(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or*
>
> *(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or*
>
> *(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;*
>
> *and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."*

16. In the case of ***Keshavan Madhava Menon Vs. State of Bombay*** reported in ***1951 SCC 16,*** the Hon'ble Supreme Court held that:

> *"**5.** The High Court considered it unnecessary to deal with or decide the first question and disposed of the application only on the second question. The High Court took the view that the word "void" was used in Article 13(1) in the sense*

of "repealed" and that consequently it attracted Section 6 of the General Clauses Act, which Act by Article 367 was made applicable for the interpretation of the Constitution. The High Court, therefore, reached the conclusion that proceedings under the Indian Press (Emergency Powers) Act, 1931, which were pending at the date of the commencement of the Constitution were not affected, even if the Act were inconsistent with the fundamental rights conferred by Article 19(1)(a) and as such became void under Article 13(1) of the Constitution after 26-1-1950. The High Court accordingly answered the second question in the affirmative and dismissed the petitioner's application.

10. *Article 372(2) gives power to the President to adapt and modify existing laws by way of repeal or amendment. There is nothing to prevent the President, in exercise of the powers conferred on him by that Article, from repealing say the whole or any part of the Indian Press (Emergency Powers) Act, 1931. If the President does so, then such repeal will at once attract Section 6 of the General Clauses Act. In such a situation all prosecutions under the Indian Press (Emergency Powers) Act, 1931, which were pending at the date of its repeal by the President would be saved and must be proceeded with notwithstanding the repeal of that Act unless an express provision was otherwise made in the repealing Act.*

11. *It is, therefore, clear that the idea of the preservation of past inchoate rights or liabilities and pending proceedings to enforce the same is not foreign or abhorrent to the Constitution of India. We are, therefore, unable to accept the contention about the spirit of the Constitution as invoked by the learned counsel in aid of his plea that pending proceedings under a law which has become void cannot be proceeded with. Further, if it is against the spirit of the Constitution to continue the pending prosecutions under such a void law, surely it should be equally repugnant to that spirit that men who have already been convicted under such repressive law before the Constitution of India came into force should continue to rot in jail. It is, therefore, quite clear that the Court should construe*

the language of Article 13(1) according to the established rules of interpretation and arrive at its true meaning uninfluenced by an assumed spirit of the Constitution.

12. *Article 13(1) with which we are concerned for the purposes of this application is in these terms:*

> *"**13. (1)** All laws in force in the territory of India immediately before the commencement of this Constitution, insofar as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void."*

It will be noticed that all that this clause declares is that all existing laws, insofar as they are inconsistent with the provisions of Part III shall, to the extent of such inconsistency, be void.

13. *Every statute is prima facie prospective unless it is expressly or by necessary implications made to have retrospective operation. There is no reason why this rule of interpretation should not be applied for the purpose of interpreting our Constitution. We find nothing in the language of Article 13(1) which may be read as indicating an intention to give it retrospective operation. On the contrary, the language clearly points the other way. The provisions of Part III guarantee what are called fundamental rights. Indeed, the heading of Part III is "Fundamental Rights". These rights are given, for the first time, by and under our Constitution. Before the Constitution came into force there was no such thing as fundamental right. What Article 13(1) provides is that all existing laws which clash with the exercise of the fundamental rights (which are for the first time created by the Constitution) shall to that extent be void. As the fundamental rights became operative only on and from the date of the Constitution the question of the inconsistency of the existing laws with those rights must necessarily arise on and from the date those rights came into being. It must follow, therefore, that Article 13(1) can have no retrospective effect but is wholly prospective in its operation. After this first point is noted, it should further be seen that Article 13(1) does not in terms make the existing laws which are*

inconsistent with the fundamental rights void ab initio or for all purposes. On the contrary, it provides that all existing laws, insofar as they are inconsistent with the fundamental rights, shall be void to the extent of their inconsistency. They are not void for all purposes but they are void only to the extent they come into conflict with the fundamental rights.

14. *In other words, on and after the commencement of the Constitution no existing law will be permitted to stand in the way of the exercise of any of the fundamental rights. Therefore, the voidness of the existing law is limited to the future exercise of the fundamental rights. Article 13(1) cannot be read as obliterating the entire operation of the inconsistent laws, or to wipe them out altogether from the statute book, for to do so will be to give them retrospective effect which, we have said, they do not possess. Such laws exist for all past transactions and for enforcing all rights and liabilities accrued before the date of the Constitution.*

15. *The learned counsel for the appellant has drawn our attention to Articles 249(3), 250, 357, 358 and 369 where express provision has been made for saving things done under the laws which expired. It will be noticed that each of those articles was concerned with expiry of temporary statutes. It is well known that on the expiry of a temporary statute no further proceedings can be taken under it, unless the statute itself saved pending proceedings. If, therefore, an offence had been committed under a temporary statute and the proceedings were initiated but the offender had not been prosecuted and punished before the expiry of the statute, then, in the absence of any saving clause, the pending prosecution could not be proceeded with after the expiry of the statute by efflux of time. It was on this principle that express provision was made in the several articles noted above for saving things done or omitted to be done under the expiring laws referred to therein.*

16. *As already explained above, Article 13(1) is entirely prospective in its operation and as it was not intended to have any retrospective effect there was no necessity at all for inserting in that article*

any such saving clause. The effect of Article 13(1) is quite different from the effect of the expiry of a temporary statute or the repeal of a statute by a subsequent statute. As already explained, Article 13(1) only has the effect of nullifying or rendering all inconsistent existing laws ineffectual or nugatory and devoid of any legal force or binding effect only with respect to the exercise of fundamental rights on and after the date of the commencement of the Constitution. It has no retrospective effect and if, therefore, an act was done before the commencement of the Constitution in contravention of the provisions of any law which, after the Constitution, becomes void with respect to the exercise of any of the fundamental rights, the inconsistent law is not wiped out so far as the past act is concerned for, to say that it is, will be to give the law retrospective effect. There is no fundamental right that a person shall not be prosecuted and punished for an offence committed before the Constitution came into force. So far as the past acts are concerned the law exists, notwithstanding that it does not exist with respect to the future exercise of fundamental rights.

17. *We, therefore, agree with the conclusion arrived at by the High Court on the second question, although on different grounds. In view of that conclusion, we do not consider it necessary to examine the reasons of the High Court for its conclusion. In our opinion, therefore, this appeal fails, and is dismissed."*

17. Real Estate (Regulation and Development) Act, 2016, came into force with effect from 25th March, 2016. The Hon'ble Supreme Court repealed the Act of 1993 by a judgment dated 4th May, 2021. While repealing the Act of 1993, the Hon'ble Supreme Court taken into consideration of Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the Act of 1993. The Hon'ble Supreme Court while taking into consideration of Sections 88 and 89 of RERA and Article 254(1) of the Constitution of India has repealed the Act of 1993.

18. The Act of 1993 is repealed by a judgment of the Hon'ble Supreme Court dated 4th May, 2021. On the said date, a writ proceeding being WPA No. 2470 of 2012 was pending before this Court against the order passed by the Authorized Officer under the Act of 1993. The said writ petition was disposed of on 6th January, 2022, directing the Authorized Officer i.e. the Secretary Government of West Bengal, Housing Department to hear the revisional applications of both the parties and after giving an opportunity of hearing to the parties and to pass appropriate reasoned and speaking order within a period of three (3) months from the date of communication of the order. In compliance of the order of this Court, the Authorized Officer has passed the impugned order.

19. There is nothing in the judgment passed by the Hon'ble Supreme Court which takes away the right of the pending proceeding under the Act of 1993. The Hon'ble Supreme Court has not passed any specific order that the repeal of the Act of 1993 would be effective retrospectively. The Hon'ble Court also not passed any order for transfer of all pending cases under the Act of 1993 to the concern authorities under RERA.

20. In these circumstances, it is to be inferred that if there is at all any expression of intention, it is to keep Section 6 of the General Clauses Act applicable to the pending litigation.

21. In the case of ***State of Punjab & Ors. vs Bhajan Kaur & Ors.*** reported in ***(2008) 12 SCC 112,*** the Hon'ble Supreme Court held that:

> ***"14.*** *Reference to Section 6 of the General Clauses Act, in our opinion, is misplaced. Section 217 of the 1988 Act contains the repeal and saving clause. Section 140 of the 1988 Act does not find place in various clauses contained in sub-section (2) of Section 217 of the 1988 Act. Sub-section (4) of Section 217 of the 1988 Act reads thus:*
>
> > *"217. (4) The mention of particular matters in this section shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals."*
> >
> > *What is, therefore, otherwise saved in Section 6 of the General Clauses Act, inter alia, is the right. It reads as under:*
> >
> > *"6. Effect of repeal.—Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—*
> > *(a)-(b)****
> > *(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;"*
> >
> > *Section 6 of the General Clauses Act, therefore, inter alia, saves a right accrued and/or a liability incurred. It does not create a right. When Section 6 applies, only an existing right is saved thereby. The existing right of a party has to be determined on the basis of the statute which was applicable and not under the new one. If a new Act confers a right, it does so with prospective effect when it comes into force, unless expressly stated otherwise.*
>
> ***16.*** *It is now well-settled that a change in the substantive law, as opposed to adjective law, would not affect the pending litigation unless the*

legislature has enacted otherwise, either expressly or by necessary implication."

22. Section 8 of the Bengal General Clauses Act, 1899, reads as follows:

> *"**8. Effect of Repeal**- Where any Bihar and Orissa Act (or Bihar Act) repeals any enactment hitherto made, or hereafter to be made, then, unless a different intention appears, the repeal shall not-*
>
> *a) revive anything not in force or existing at the time at which the repeal takes effect; or*
>
> *b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or*
>
> *c) after any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or*
>
> *d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or*
>
> *e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.*
>
> *and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."*

23. The function of Section 8 of the Bengal General Clauses Act, 1899, which correspondences to Section 6 of the Central General Clauses Act, 1897, is to attach a saving clause in terms of its provisions to even such repealing Acts as do not contain a saving clause, except where the repealing Act makes it clear that no saving is contemplated. But the

effect of the provision is only to save and not to add or enact anything new. What it saves from is extinction by the repeal and what it saves are rights and liabilities accrued under the repealed Act, including the right under that Act to institute proceedings in respect of them and proceedings already instituted. The scope of the provision is thus confined, as the scope of all saving provisions must by their very nature be, to the original scope of what is saved. It is not wider. The section does not extend any repealed Act as regards its duration, nor enlarges any such Act as regards its scope, but only preserves accrued rights and liabilities as they were under the repealed Act and proceedings, so far as they might be commenced or continued under it by excluding from them the operation of the repeal. Such scope of the section is brought out pointedly by the section itself when it adds to all rights, liabilities and penalties preserved by it the qualifying words "under any enactment so repealed" and when, in providing for the enforcement of accrued rights and liabilities and the institution or continuance of proceedings, it adds the qualifying words "as if the repealing Act had not been passed." The whole effect of the section therefore is only to keep off the repealing Act from the matters mentioned in it and thereby make it possible for the repealed Act to take effect in regard to them as if it had not been repealed. But there is no absolute saving in the sense that the rights, liabilities, remedies and proceedings saved by the section are saved altogether, freed even from the limitations which were attached to them under the repealed Act. Those limitations would remain, because what is done is only that, for the limited purposes

mentioned, the operation of the repealed Act is restored. The rights and liabilities saved are rights and liabilities as accrued or incurred under the repealed Act; and remedies can be pursued and proceedings instituted or continued only so far as that Act would warrant them, if not repealed.

24. This Court finds that the private respondents initiated proceedings against the writ petitioners in the month of December, 2006, under Section 6 of the Act of 1993 and the same was pending when the Act of 1993, is repealed by the order of the Hon'ble Supreme Court dated 4th May, 2021. The Hon'ble Court has not passed any order that the pending proceeding under the Act of 1993 is to be transferred or terminated or cancelled. Taking into consideration of Section 6 of the General Clauses Act, this Court did not find any illegally in the impugned order passed by the Principal Secretary dated 3rd July, 2023 and 31st July, 2023.

25. **WPA No. 28998 of 2023** is thus **dismissed**. Accordingly, **CAN No. 1 of 2024** is **disposed of**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)