clear from the observations extracted above not only accepted the evidence furnished by chemical test in that case but, in fact, commended the aid of science to the investigation of criminal cases. The learned single Judge having independently accepted the defence version in that case, had merely in the passing referred to the observations of the Gujrat High Court. We, therefore, affirm the second formulation and hold that phenolphthalein test evidence is admissible in Law and can certainly be relied upon against the accused.

(33) In case *Kapur Singh's case* (supra) even if by implication, is taken to be laying down the proposition that chemical test in question carried out by the investigating officer after apprehending the accused is not admissible in evidence, then we hold that it does not lay down the correct law and we overrule the same for the very reasons for which we have recorded our dissent from Gujrat view which the learned single Judge had, it appears, approvingly quoted.

(34) In the present case we unhesitatingly repel the contention on behalf of the defence that phenolphthalein powder might have been transferred to the hands of the accused in the alleged struggle with the Vigilance Inspector. Why would Vigilance Inspector keep his hands smeared with phenolphthlein powder to transfer some of it to the hands of the accused? This would amount to attributing criminality to the Vigilance Inspector and not mere excess of enthusiasm for the success of the prosecution case, which we cannot believe.

(35) For the reasons aforementioned, we find no merit in this appeal and dismiss the same.

S. S. Sandhawalia, C.J.—I agree.

N.K.S.

Before S. S. Sandhawalia, C.J. & P. C. Jain, J.

BAJINDER SINGH and another,—*Petitioners*

versus

THE ASSISTANT COLLECTOR and others,—*Respondents.*

Civil Writ Petition No. 565 of 1981.

January 13, 1983.

Punjab Village Common Lands (Regulation) Act (XVIII of 1961) as amended by Punjab Village Common Lands (Regulation) Haryana Amendment Act (2 of 1981)—Jurisdiction of the civil Courts taken away retrospectively by sections 13, 13-A and 13-D as introduced by the amending

Act—Judgments and decrees passed by such courts in valid exercise of their jurisdiction rendered inoperative—Legislature by enacting the amending Act—Whether trenching upon the judicial powers of the Courts—Amending Act—Whether unconstitutional.

Held, that in our Constitution, though there is no cut and dried division betwixt the judicial and the legislative functions in a penumberal area, yet it is now precedentially settled beyond doubt that legislature cannot intrude into the strictly judicial wing of the State in order to reverse or set aside a duly rendered judgment of a Court. In our jurisprudence any blatant legislative intrusion into the pristinely judicial wing of a State is unconstitutional. Once that is so, by inserting section 13 in the Punjab Village Common Lands (Regulation) Act, 1961 with effect from 1961 (*vide* Haryana Amendment Act 2 of 1981) the legislature has blatantly intruded into the judicial field by obliterating a valid exercise of jurisdiction by civil Courts for over two decades and abrogating the vested public and private rights lawfully adjudicated upon right up to the final Court in some cases. From 1961 to 1981 the Civil Courts within the field allocated to them adjudicated on the matters brought before them and validly exercised their jurisdiction by rendering judgments thereon. The present section 13 inserted by Act 2 of 1981 seeks to set all this at naught and to wipe off by a single stroke of a pen all judgments and decrees rendered by the civil Courts in valid exercise of the jurisdiction vested in them. These judgments of the trial Courts may well have received affirmance at the hands of the High Court and for that matter of the Supreme Court itself. It is well settled that a judgment of a court of competent jurisdiction validly rendered cannot be reversed and abrogated by a mere legislative fiat because the judicial and legislative wings are separate and distinct and cannot trespass or trench into each other's fields. Just as a Court of law cannot legislate and enact laws, the legislature cannot possibly adjudicate on the individual rights and liabilities of the parties and render judgment itself, nor can it abrogate such an adjudication validly made by the Court by reversing or nullifying the same. In essence even a single judgment validly rendered cannot be overridden or declared *non-est* by legislative mandate alone. The simple subterfuge of declaring that the civil Courts or other validly constituted Tribunal or judicial authority is denuded of jurisdiction retrospectively would *ipso facto* automatically render a valid exercise of jurisdiction earlier as invalid and *non-est.* By a blanket device of this nature a valid exercise of judicial power by Courts of competent jurisdiction cannot be wiped off as if it had never existed at all. Thus, the retrospective abrogation of the jurisdiction of civil Courts validly exercised by them from 1961 onwards by the Punjab Village Common Lands (Regulation) Haryana Amendment Act (2 of 1981), clearly amounts to a trenching upon the judicial power by the legislature. Consequently, the fictional substitution of section 13 with effect from May, 1961 and thereby giving retrospectivity thereto from the said date, is held to be unconstitutional and is struck down.

(Paras 6, 9, 10, 11, 12, 13 and 18).

Bajinder Singh and another *v.* The Assistant Collector and others
(S. S. Sandhawalia, C.J.)

Case referred by a Division Bench consisting of Hon'ble Mr. Justice M. R. Sharma and Hon'ble Mr. Justice M. M. Punchhi to a larger Bench on 3rd November, 1981 for decision of an important question of law involved in the case. The larger Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. M. R. Sharma and Hon'ble Mr. Justice K. S. Tiwana again referred the case to the Division Bench on 5th August, 1982 after answering the relevant question, for decision of the case. The Division Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice Prem Chand Jain finally decided the question on 13th January, 1983 and referred the case again to Single Bench for final decision.

Amended Petition under Article 226 of the Constitution of India praying that the following reliefs be granted:—

(i) *a writ in the nature of a writ of* certiorari *be issued calling for the records of Respondent No.* 1 *relating to the application, Annexure P.* 2 *and the impugned order Annexure P.* 3, *and after a perusal of the same, the impugned application, Annexure P.* 2 *and the impugned order Annexure P.* 3 *be quashed and Respondent No.* 1 *be restrained from taking any further proceedings on the application, Annexure P.* 2;

(i) (*a*) *it may be declared that Sections* 13, 13-*A and* 13-*D of the Punjab Village Common Lands (Regulation) Act,* 1961, *as inserted by Sections* 4 *and* 5 *of Haryana Act No.* 2 *of* 1981 *are* ultra vires *the Constitution of India;*

(*ii*) *any other suitable writ, direction or order that this Hon'ble Court may deem fit in the circumstances of the case be issued;*

(*iii*) *an* ad interim *order be issued restricting the Respondent No.* 1 *from taking any further proceedings on the application Annexure P.* 2 *and from enforcing the order Annexure P.* 3 *pending the decision of this writ petition; and*

(*iv*) *costs of the petition be allowed to the petitioners.*

Anand Swarup, Senior Advocate with Sanjiv Pabbi, Advocate, *for the Petitioners.*

Harbhagwan Singh, A.G., Haryana with G. L. Batra, Senior D.A.G., *for respondents.*

U. D. Gaur, Advocate, *for interveners.*

M. S. Bedi, Advocate, *for respondent No.* 2.

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Would the retrospective abrogation of the jurisdiction of the Civil Courts validly exercised for over two decades and the consequent setting at naught of all judgements and decrees so rendered, amount to a trenching upon the judicial power by the legislature is the starkly significant question in these two cases. More specifically the constitutionality of the recently inserted section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 with retrospective effect from the 4th of May, 1961 by Haryana Act No. 2 of 1981 is assiduously assailed on the ground aforesaid.

2. The factual matrix may be taken from 565 of 1981—*Barjinder Singh* v. *State of Haryana etc.* The petitioners therein claim to be the owners in possession of agricultural land measuring 181 Kanals 10 Marlas situate in village Dandauta, Tehsil Guhla, District Kurukshetra, on the basis of a decree of the civil court dated the 13th of November, 1973. The Sarpanch of the Gram Panchyat Dandauta filed an application under section 13-A of the Punjab Village Common Lands (Regulation) Act 1981 (hereinafter called the Act) as amended by Haryana Act 34 of 1974, before the Assistant Collector, 1st Grade, Kaithal, who by his order, dated the 13th of October, 1975 set aside the decree of the civil Court in favour of the petitioners. Thereafter the petitioners preferred C.W.P. No. 5922 of 1975 challenging the above-said order which was allowed by the Division Bench on the 10th of September, 1979,—*vide* judgment annexure P. 1, and the order of the Assistant Collector, 1st Grade, Kaithal was quashed. However, the legislature of the State of Haryana passed the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1980 (Act No. 2 of 1981) which received the assent of the President of India on the 31st of January, 1981 and was published in the Gazette on the 12th of February, 1981.

3. The Gram Panchayat, Dandauta again filed an application, annexure P. 2, under section 13-A of the Act on the 29th of January, 1981 in the Court of the Assistant Collector, 1st Grade, Guhla for setting aside the decree of the Civil Court passed in suit No. 1391 of 13th November, 1973 in favour of the petitioners and the consequent mutation No. 311 of village Dandauta. The grievance of the writ petitioners is that not only has the Assistant Collector, 1st Grade entertained the aforesaid application but has passed an

interim order annexure P. 3, dated the 29th of January, 1981, restraining the petitioners from cultivating the above-said land and from making any changes therein. The writ petitioners challenged the very constitutionality of sections 13, 13-A and 13-D, as inserted by Act No. 2 of 1981 on the same grounds on which the earlier section 13-A introduced by the Amending Haryana Act of 1974 was struck down by the Division Bench in *The Karnal Co-operative Farmers Society Ltd.* v. *Gram Panchayat, Pehowa and others.* (1).

4. The stand taken on behalf of the respondent-State and the Assistant Collector, 1st Grade, Guhla is that the assailed amendments introduced by Act 2 of 1981 are valid and constitutional. It is claimed that the legislature can enact any law retrospectively so as to nullify the effect of a judgement and even the blanket abrogation of the validly exercised jurisdiction by the Civil Courts over 20 years does not amount to any trespass into the judicial field.

5. It is manifest that the issue of the constitutionality of the challenged provisions is pristinely legal. It is, however, apt to view the matter in its particular and somewhat peculiar legislative history. As originally enacted section 13 of the Act prescribed that no Civil Court shall have any jurisdiction over any matter arising out of the operation of the said Act. Apparently as a result of the interpretation placed by the Courts with regard to the nature of the bar to the jurisdiction of civil Court the legislature chose to make an amendment therein by the Punjab Village Common Lands (Regulation) Haryana Act 34 of 1974, which came into force on 12th November, 1974. By virtue of this amendment the original section 13 was substituted and two new sections, namely, sections 13-A and 13-B were added to the Act. These amendments were made the subject-matter of challenge in the *Karnal Co-operative Farmers' Society's case* (supra). The Division Bench in an exhaustive judgment came to the conclusion that sub-section (3) of section 13-A was *ultra vires* and since the other provisions of the said section revolved around the same, therefore, the whole of the section was unconstitutional and was consequently struck down. It was noticed that no challenge to the vires of section 13-B had been pressed.

(1) 1976 P.L.J. 237.

6. The respondent-State of Haryana apparently accepted the said judgment and did not appeal against the same. However, as a necessary consequence it enacted the Punjab Village Common Lands (Regulation) Haryana Amendment Act No. 2 of 1981. Thereby substantial changes in the existing section 13 were made and as already noticed these were sought to be introduced retrospectively from two decades earlier, that is, the 4th of May, 1961. Similarly the existing sections 13-A and 13-B were omitted from the statute book with effect from the 12th of November, 1974 and new sections 13-A, 13-B, 13-C and 13-D were inserted retrospectively with effect from the 4th of May, 1961. To have a correct perspective of the statutory provisions including section 13 which is pointedly the subject-matter of challenge before us, the successive legislative changes so brought about in Haryana may first be juxtaposed against each other:—

1961 *Act*	1974 *Act*	1981 *Act*
13. Bar of jurisdiction of Civil Courts.	4. Substitution of section 13 of Punjab Act 18 of 1961.	4. Substitution of Section 13 of Punjab Act 18 of 1961.
No civil court shall have any jurisdiction over any matter arising out of the operation of this Act.	For section 13 of the principal Act, the following section shall be substituted, namely— '13. *Bar of jurisdiction.*—No civil court shall have jurisdiction:— (a) to entertain or adjudicate upon any question as to whether any land or other movable property or any right or interest in such land or other immovable property vests or does not vest in a Panchayat under this Act; or (b) in respect of any other matter which any officer is empowered by or under this Act to determine; or (c) to question the legality of any action taken or any matter decided by any authority empowered to do so under this Act.	For Section 13 of the principal Act, the following section shall be substituted and *shall be deemed to have been substituted with effect from 4th day of May,* 1961, *namely.*— 13. *Bar of jurisdiction.*—No civil court shall have jurisdiction— (a) to entertain or adjudicate upon any question whether— (i) any land or other immovable property is or is not *shamlat deh;* (ii) any land or other immovable property or any right, title or interest in such land or other immovchayat under his Act; (b) in respect of any matter which any revenue court, officer or authority is empowered by or under this Act to determine; or

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	13-A. *Certain decrees to be set aside and fresh trial of cases.*—(1) Where a decree has been obtained from a civil court by any person against any panchayat in respect of any land or other immovable property on the grounds of its being excluded from *shamilat deh under* clause (g) of section 2 or on any of the grounds mentioned in sub-section (3) of section 4, and the copies of the relevant entries of the revenue records had not been produced in support of the averments made in the plaint, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer authoirsed by the State Government or any inhabitant of the village, wherein the land or other immovable property is situate may, within a period of two years from the date of coming into force of the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1974, make an application for setting aside the decree to the Assistant Collector of the first grade having jurisdiction in the Village wherein the land or other immovable property is situate.	(c) to question the legality of any action taken or matter decided by any revenue court, officer or authority empowered to do so under this Act.
	(2) On receipt of the application, the Assistant Collector of the first grade shall summon the record of the suit from	13-A. Adjudication.—(1) Any person or in the case of a Panchayat either the panchayat or its Gram Sachiv, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorised by the State Government in this behalf claiming right, title or interest in any land or other immovable property vested or deemed to have been vested in the Panchayat under this Act, may, within a period of two years from the date of commencement of the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1980, file a suit for adjudication, whether such land or other immovable property is *shamlat deh* or not and whether any land or other immovable property or any right, title or interest therein vests or does not vest in a Panchayat under this Act, in the court of the Assistant Collector of the first grade having jurisdiction in the area

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	the Civil Court concerned and also serve a notice, in the manner prescribed, on the decree-holder. (3) After the record of the suit has been received and the service of the notice has been effected on the decree-holder the Assistant Collector of the first grade shall examine the record and hear the decree holder in order to satisfy himself as to whether the copies of the relevant entries of the revenue records in support of the averments made in the plaint had been produced during the trial of the suit. If he is satisfied that the copies of the said entries had not been so produced he shall set aside the decree.	wherein such land or other immovable property is situate. (2) The procedure for deciding the suits under sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908. 13-B & 13-C. 13-D. *Provisions of this Act to be over-riding.*— The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any law, agreement, instrument, custom, usage, decree or order of any court or other authority.

Ere I advert in some detail to the aforesaid provisions it becomes necessary to elaborate albeit briefly the concept of trenching upon the judicial power by the legislature. In our Constitution, though there is no cut and dried division betwixt the judicial and the legislative functions, in a penumberal area, yet it is now precedentially settled beyond doubt that legislature cannot intrude into the strictly judicial wing of the State in order to reverse or set aside a duly rendered judgment of a Court. Since the matter is now concluded by the binding precedents of the final Court it is unnecessary to elaborate the same on principle. Nearly four decades ago in *Basanta Chandra Ghose and others* v. *Emperor* (2) this distinction was highlighted by Chief Justice Spens in the following words:—

> "The distinction between a 'legislative' act and a 'judicial' act is well known, though in particular instances it might not be easy to say whether an act should be held to fall

(2) AIR 1944, F.C. 86.

in one category or in the other. The legislature is only authorised to enact laws. Some of the pending proceedings hit at by clause (2) of section 10 may raise questions of fact and their determination may wholly depend upon questions of fact and not upon any rule of law, as for instance, when it is alleged that on order of detention was not really the act of the authority by whom it purports to have been made or that it was a *mala fide* order or one made by a person who had not been authorised to make it. A direction that such a proceeding is discharged is clearly a judicial act and not the enactment of a law".

However, a more elaborate and authoritative enunciation of this concept was given by Chief Justice Hidayatullah speaking for the Constitution Bench in the context of the subsequent validation of a taxing provision in *Shri Prithvi Cotton Mills Ltd.* v. *Broach Borough Municipality and others* (3) the following terms:—

"* * *, Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A Court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances."

Reiterating the above view even more forcefully Hegde J., in *The Municipal Corporation of the City of Ahmedabad and another* v. *The New Shrock Spg. & Wvg. Co., Ltd.* (4) observed as under:—

"The State of Gujarat was not well advised in introducing this provision. That provision attempts to make a direct inroad into the judicial powers of the State. The Legislatures under our Constitution have within the prescribed limits, powers to make laws prospectively as well as retrospectively. By exercise of those powers, the legislature can remove the basis of a decision rendered by a competent court thereby rendering that decision ineffective. But no legislature in this country has power to

(3) AIR 1970 S.C. 192.
(4) AIR 1970 SC 1292.

ask the instrumentalities of the State to disobey or disregard the decisions given by Courts. The limits of the power of legislatures to interfere with the directions issued by courts were considered by several decisions of this Court."

The crucial sanctification of this principle is, however, provided by the celebrated case of *Smt. Indira Nehru Gandhi* v. *Shri Raj Narain,* (5). Therein the challenge was to Article 329-A of the Constitution inserted by the thirty-ninth Amendment thereof whereby the validly rendered judgment of the Allahabad High Court voiding the election of Smt. Indira Nehru Gandhi to the Lok Sabha was sought to be reversed and nullified. Clause (4) of the aforesaid Article 329-A retrospectively abrogated the application of the existing election law to the election petition pertaining to the Prime Minister and further enacted that notwithstanding the judgment declaring such an election to be void the said election would continue to be valid in all respects and any such judgment and finding thereon shall be deemed always to have been void and of no effect. Clause (5) thereof further mandated the Supreme Court to decide any appeal or cross-appeal against the aforesaid judgment in conformity with the provisions of clause (4). The Supreme Court by majority unhesitatingly struck down the aforesaid two clauses thereby establishing in essence that even by a resort to a constitutional amendment the applicability of the existing election laws could not be retrospectively abrogated and a valid judgment of a Court of law could not be legislatively rendered null and void or *non-est.* Thus even the final amending power of the Constitution also could not make a blatant intrusion into the judicial wing of the State in order to reverse or set aside the final judgment of a Court of competent jurisdiction.

7. A later enunciation by even a larger Bench in *Madan Mohan Pathak and another* v. *Union of India and others* (6) has reiterated this principle and explained and limited the somewhat wide ranging observations in *Shri Prithvi Cotton Mills' case* (supra) in the following words :—

"* *. We do not think this decision lays down any such wide proposition as is contended for on behalf of the Life

(5) AIR 1975 S.C. 2299.
(6) AIR (1978)2 S.C.C. 50.

> Insurance Corporation. It does not say that whenever any factual or legal situation is altered by retrospective legislation, a judicial decision rendered by a Court on the basis of such factual or legal situation prior to the alteration, would straightaway, without more, cease to be effective and binding on the parties. It is true that there are certain observations in this decision which seem to suggest that a Court decision may cease to be binding when the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. But these observations have to be read in the light of the question, which arose for consideration in that case.

and again—

> * * *. If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation. We are, therefore, of the view that, in any event, irrespective of whether the impugned Act is constitutionally valid or not, the Life Insurance Corporation is bound to obey the writ of mandamus issued by the Calcuttta High Court and to pay annual cash bonus for the year April 1, 1975 to March 31, 1976 to Class III and IV employees."

8. In the analogous field of American Constitutional law, wherein the separation of the judicial and legislative powers is somewhat more distinct, the position is identical and has been summarised as follows at pages 318-19 of Volume 46, of the American Jurisprudence 2d—

> "The general rule is that the legislature may not destroy, annul, set aside, vacate, revense, modify, or impair the final judgment of a court of competent jurisdiction, so as to take away private rights which have become vested by the judgment. A statute attempting to do so has been

held unconstitutional as an attempt on the part of the legislature to exercise judicial power, and as a violation of the constitutional guarantee of due process of law. The legislature is not only prohibited from reopening cases previously decided by the Courts, but is also forbidden to affect the inherent attributes of a judgment. That the statute is under the guise of an act affecting remedies does not alter the rule......"

9. To conclude on his aspect it appears to be axiomatic that in our jurisprudence any blatant legislative intrusion into the pristinely judicial wing of the State is unconstitutional.

10. Once that is so the core question before us is whether by inserting section 13 in the Act retrospectively with effect from 1961 (*vide* Haryana Amendment Act 2 of 1981) the legislature has blatantly intruded into the judicial field by obliterating a valid exercise of jurisdiction by Civil Courts for over two decades and abrogating the vested public and private rights lawfully adjudicated upon right up to the final Court in some cases. For the detailed reasons delineated hereafter the answer to this question, in my view, appears to be plainly in the affirmative.

11. Now a close analysis would indicate that section 13, as originally enacted in 1961, had created only a limited bar against the Civil Court's jurisdiction with regard to only those matters which strictly arose out of the operation of the Act. Consequently all issues which arose outside or were beyond the provisions of the Act were not necessarily excluded from the plenary jurisdiction of the Civil Courts. This was so interpreted, as it is well settled that a total exclusion of the plenary jurisdiction of the ordinary courts of law is not to be easily inferred. Consequently in the area, not covered by the specific bar, the Civil Courts undoubtedly had jurisdiction to adjudicate on matters ancillary to those provided under the Act and determine the private and public rights of the parties. There is no manner of doubt that from 1961 till 1974 the Civil Courts within the field assigned to them validly exercised their jurisdiction and rendered judgments and decrees which achieved finality either by affirmance by the superior Courts or because of the fact that they were not so challenged. The specific and particular example is the decree of the Civil Court dated the 13th of November, 1973 in favour of the petitioners in C.W.P. 565

of 1981 which in a way was affirmed by the Division Bench in C.W.P. No. 5922 of 1975 decided on the 10th of September, 1979, by quashing any interference therewith by the Assistant Collector. Later by Haryana Act No. 34 of 1974 the legislature substituted section 13 and further inserted sections 13-A and 13-B in the Act. As already noticed sub-section (3) of section 13-A empowered the Assistant Collector of the 1st Grade to set aside the decrees of the Civil Courts in certain contingencies but the whole of section 13-A was struck down as unconstitutional in the *Karnal Co-operative Farmers Society's case* (supra). Therefore plainly enough from 1961 to 1981 the civil Courts within the field allocated to them adjudicated on the matters brought before them and validly exercised their jurisdiction by rendering judgments thereon.

12. The present section 13 inserted by Act 2 of 1981 seeks to set all this at naught and to wipe off by a single stroke of pen all judgments and decrees rendered by the civil Courts in valid exercise of the jurisdiction vested in them. As has been said earlier, these judgments of the trial Courts may well have received affirmance at the hands of the High Court and for that matter of the Supreme Court itself. As already noticed it is well settled that a judgment of a court of competent jurisdiction validly rendered cannot be reversed and abrogated by a mere legislative fiat because the judicial and the legislative wings are separate and distinct and cannot trespass or trench into each other's fields. Just as a Court of law cannot legislate and enact laws, the legislature cannot possibly adjudicate on the individual rights and liabilities of the parties and render judgment itself, nor can it abrogate such an adjudication validly made by the Court by reversing or nullifying the same. In essence even a single judgment validly rendered cannot be overridden or declared *non est* by legislative mandate alone. This is the hallowed rule emerging from *Smt. Indira Nehru Gandhi's case* where even by a constitutional amendment the judgment of the Allahabad High Court declaring the election of the Prime Minister to be void could not be reversed or overridden. What, therefore, cannot even be effected by resort to the final source of law, namely, the Constitution or its amendment, can obviously be not achieved indirectly by ordinary legislation purporting to retrospectively abrogate plenary jurisdiction of the Civil Courts. If that be so with regard to even a single judgment, can it possibly be said that thousands of judgments validly rendered by the Civil Courts over two decades which at the time admittedly had jurisdiction and had

conferred vested rights on the parties can be set at naught by the simplistic device or subterfuge of declaring that all the civil Courts would be deemed to be denuded of jurisdiction retrospectively.

13. In a way the heart of the matter is whether the plenary jurisdiction of the civil Courts having been duly exercised can be retrospectively abrogated by a legislative flat. There is no manner of doubt that within limits the legislature may bar the jurisdiction of the Civil Court prospectively in a limited arena. This also can be done only within a narrow field subject to legal limitations. Even when a bar of jurisdiction is imposed prospectively by a statute, there usually is provided an alternative forum or Tribunal for the adjudication of a list arising thereunder. Courts have gone to the length of observing that normally there should be a provision not only for a Tribunal but also at least an appellate if not a revisional forum. In the absence of such like safeguards, a provision totally excluding the plenary jurisdiction of civil courts may well smack of arbitrariness and thus be violative of Article 14 of the Constitution. Again, the settled rule of interpretation is that an absolute bar against the jurisdiction of civil courts, even with adequate safeguards, is not to be easily inferred and even where it is imposed by the statute if the action is outside the same, it would again become amenable to the jurisdiction of ordinary courts of law. Now, if that be so with regard to even a prospective bar against the civil courts, it would seem that the aforesaid conditions, safeguards and limitations cannot easily be satisfied in the case of a retrospective blanket bar against the ordinary courts of law where they had already exercised their jurisdiction. It is not easy to conceive a situation of providing an alternative Tribunal for the retrospective adjudication of the dispute or a hierarchy of appellate and revisional forums for matters already and validly decided by courts of competent jurisdiction twenty years earlier and affirmed by the superior courts. The vested public and private rights of the citizens duly adjudicated and affirmed finally by the superior courts should not and indeed cannot be taken away by the legislature purporting to denude the courts of their jurisdiction retrospectively, because, in essence, it would only be a device or a cloak to trench into the judicial field and nullify and render *non est* what has already been lawfully and finally adjudicated upon. Therefore, in the present context, to enact, in essence, that all civil judgments and decrees rendered over a period of twenty years should become *non est,* is to my mind a blanket invasion into the judicial field by the legislature through the dubious device of abrogating the very jurisdiction duly exercised by the Civil Courts at

the material time. It was rightly contended before us that if these were to be permitted the whole theory and the concept that the legislature cannot enter into the judicial field would be rendered farcical and illusory. The simple subterfuge of declaring that the Civil Courts or other validly constituted Tribunal or judicial authority is denuded of jurisdiction retrospectively would *ipso facto* automatically render a valid exercise of jurisdiction earlier as invalid and *non est.* I am unable to subscribe to what appears to me as an untenable proposition that by a blanket device of this nature a valid exercise of judicial power by Courts of competent jurisdiction can be wiped off as if it had never existed at all.

14. Lastly even a plain comparison of the provisions of section 13, as originally enacted or later substituted in 1974 with those in the present amendment is indeed meaningful. The learned Advocate General, Haryana, was fair enough to state that the present section 13 is undoubtedly wider in scope and width than the earlier provisions. Plainly enough, by a single stroke it retrospectively takes away the jurisdiction of the Civil Courts right with effect from 1961, even where private and public rights have been adjudicated thereunder. If the earlier provisions of section 13-A introduced by Act 34 of 1974 which provided *inter alia,—vide* sub-section (3) thereof for the setting aside of the earlier civil decrees on certain specified conditions were opined to be somewhat in the nature of a trespass into the judicial field and otherwise held unconstitutional then the present provision by comparison would appear to be a wholesale invasion of the judicial wing. Therefore, even on the narrow point that the *Karnal Co-operative Farmers Society's case* had rendered unconstitutional the whole of section 13-A the present provision of section 13 seems to be equally, if not doubly within the ambit of its ratio. It deserves reiteration that the State did not choose to challenge the said judgment by way of appeal earlier (and indeed it attempted to conform thereto by the present amendment) nor was the correctness of the same now assailed before us. Therefore, on the added ground of the *Karnal Co-operative Farmers Society's case* also, there seems to be little option but to strike down the present provision which undoubtedly is wider in scope and width than the earlier provisions of section 13-A (3).

15. There is undoubtedly one recognised method (which stands judicially sanctified) whereby a statute which has been declared invalid by a judgment may be validated and the earlier judgment rendered ineffective or inoperative. It has been repeated times out

of number that if a legislature having the requisite competence makes a change in the law retrospectively whereby it takes away the very foundation or the basis on which such judgment was rested, the same would obviously be rendered ineffective. This principle, however, operates in the narrow field where the statutory change can be made fictionally retrospective to erode the very corner-stone on which the judgment may be founded. The limitations on this rule have already been earlier noticed and quoted from *Madan Mohan Pathak's case* (supra). Now what is significant herein is that no change worth the name in the earlier substantive law spelt out in the Punjab Village Common Lands Act 1961 is sought to be introduced by either the impugned section 13 or sections 13-A to 13-D now inserted by Act 2 of 1981. The core provisions of section 2(g) defining Shamilat Deh in its detailed five sub-clause remain wholly untouched as also other material provisions which are equally unaltered. Undoubtedly what constitutes Shamilat Deh and its definition is the bed-rock on which the super-structure of the remaining provisions of the Act is raised. The questions of title whether certain land is or is not Shamilat Deh and the issues ancillary thereto stem primarily from this base. Consequently the original foundation on which all the judgments and civil decrees were rendered by the Civil Courts over 20 years remains intact and inviolate even after the amending provisions of 1981. Therefore it cannot even remotely be said (nor was it even argued before us) that the very basis or foundation of those judgments, namely the statutory provisions on which they rested and the rights of the parties upon which they are operated were in any way so fundamentally altered as to render such judgments wholly illusory. It would thus be manifest that the well-known and accepted method of rendering an earlier judgment or judgments ineffective has not even remotely been resorted to in the present case. The impugned amendments, therefore, do not at all come within the cloak of any such protection.

16. *Shri Prithvi Cotton Mills Ltd.* v. *Broach Borough Municipality,* (7) was heavily relied upon by the learned Advocate General, Haryana in seeking to sustain his stand. I am, however, unable to see how this case or other cases analogous thereto would advance the case of the respondent-State. In this case the levying of a tax by the *Broach* Borough Municipality under section 13 of the Bombay Municipal Boroughs Act 1925 was sought to be validated by the

(7) AIR 1974 S.C. 192.

subsequent Gujarat Imposition of Taxes by the Municipalities (Validation) Act, 1963. In upholding the validation, the Court held that the legislature did possess the power to levy tax on the lands and buildings and the validating Act had retrospectively removed the infirmity for such a levy under the existing provisions. This in essence presents the converse case where an earlier infirmity in a taxing statute (even where so declared by a Court of law) is cured by the legislature having the competence to remove the illegality or invalidity retrospectively. It is by now well accepted that a competent legislature by a retrospective amendment may remove any defect or illegality and thereby validate and make legal what was originally not so. However, the converse thereof is not necessarily true. From this it does not inevitably follow that an adjudication by a Court of competent jurisdiction which when rendered was perfectly valid and legal can be made illegal and *non est* years therefore by the purported device of taking away the jurisdiction of the Civil Courts in a blanket fashion. This seems to flow from the elaboration and the enunciation in *Madan Mohan Pathak's case* (supra). To put it tersely, a legislature having the requisite competence and power may within narrow limits cure a defect retrospectively in order to validate any action or earlier legislation but cannot retrospectively invalidate and render null and void judgments of a Court of competent jurisdiction which at the time of their rendering were fully within the four-corners of the law.

17. In sum, the stand on behalf of the respondents may be put in a syllogism. It was submitted that the legislature has the power to bar the jurisdiction of civil Courts prospectively. Equally it was contended that the legislature has also the right to enact laws retrospectively. On these premises it was argued that these two should be joined together to coin a right to even take away the validly exercised jurisdiction of the civil Courts retrospectively without any qualification. I am unable to accept any such blanket submission. As has already been noticed even the prospective bar to the ordinary jurisdiction of the Civil Courts can be made only within strict limitations. Similarly the power to retrospectively enact and validate is itself hedged with many a condition. Reference has already been made copiously to high authority with regard to the prohibition on the legislative wing on the firm basis of the separation of powers to reverse a judgment or decree validly rendered by a Court of competent jurisdiction. Within this field, therefore, it seems impossible that if a single judgment cannot be overridden yet a series of judgments validity rendered may be simply

nullified by the simplistic device of retrospectively denuding the Courts of their jurisdiction. To my mind holding otherwise would be jettisoning the hallowed concept of the separation of the legislative and the judicial arena.

18. For the detailed reasons aforesaid, the retrospective abrogation of the jurisdiction of civil courts validly exercised by them from 1961 onwards by the impugned section 4 of the Punjab Village Common Lands (Regulation) Haryana Amendment Act 2 of 1981, clearly amounts to a trenching upon the judicial power by the legislature. Consequently, the relevant part of the aforesaid section fictionally substituting Section 13 with effect from the 4th day of May, 1961 and thereby giving retrospectivity thereto from the said date, is held to be unconstitutional and is hereby struck down.

19. At this very stage it calls for notice that the prospective operation of Section 13 was not challenged before us and inevitably we pronounce no opinion whatsoever thereon.

20. As a necessary consequence of the above in C.W.P. No. 565 of 1981 (*Barjinder Singh etc.* v. *State of Haryana etc.*) the decree of the civil court passed in suit No. 1391 dated the 13th of November, 1973 in favour of the petitioners which was earlier sustained by the Division Bench in C.W.P. No. 5922 of 1975 decided on the 10th of September, 1979 is hereby upheld and the impugned application annexure P/2 and the impugned order, annexure P/3 in proceedings to set aside the same are hereby quashed. The petitioners would be entitled to their costs.

21. It would appear that a number of other issues may well arise in R.S.A. 1213 of 1970 (*Gram Sabha* v. *Jai Lal etc.*) the same shall, therefore, go back before the Single Bench for a decision on merits in accordance with the answer to the significant legal question aforesaid.

Prem Chand Jain, J.—I agree.

N. K. S.