14. The learned Counsel for the petitioners placed [illegible] on three judgments. The first [illegible] *Ram Mehar* v. *Mst. Dakhan*, 9 (19[illegible]) DLT 44 [illegible] question for consideration before the Division Bench in that case was [illegible]

"5. The [illegible] question to be determined in [illegible] law. Either [illegible] rule of succession [illegible] the Delhi Land Reforms Act [illegible] of succession in the Hindu S[illegible] govern the parties [illegible] Succession Act applies [illegible] the plaintiff and the defendant [illegible] to succeed to their late [illegible] he Delhi Land Reforms [illegible] apply then the succession [illegible] ding to the provisions of Section 50 of that Act. According [illegible] an unmarried daughter succeeds to a Bhumidar only if there is no superior heir. On the other hand, a married daughter does not succeed at all. The defendant is a married daughter and, therefore, she does not have any right to succeed her father. The Delhi Land Reforms Act is an earlier Act and the question whether it has been expressly or impliedly overruled is to be determined by reference to Section 4 of the Hindu Succession Act, 1956."

15. The Division Bench in the said case observed:

"5. The language of Section 4(1)(b) shows that any law in force immediately before the commencement of the Act shall cease to apply to Hindus if it is inconsistent with the provisions of the Act. The provisions of the Delhi Land Reforms Act are inconsistent with the Hindu Succession Act as has already been stated before. Thus, if there was no Sub-section (2) this question could have had to be decided against the plaintiff. However, Sub-section (2) states that the Act will not affect the provisions of any law which is in force if it provides for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings. The question of succession, therefore, depends wholly on whether the Delhi Land Reforms Act is a law which prevents the fragmentation of agricultural holdings or fixes ceilings on agricultural holdings or provides for the devolution of tenancy rights in respect of such holdings."

16. The Division Bench in the case of *Ram Mehar* (supra) contended that the DLR Act is a law which prevents the fragmentation of agricultural holdings, etc. and held that:

"19. In view of the conclusion that the Delhi Land Reforms Act provides for the prevention of the fragmentation of agricultural holdings and also, at the material time fixed ceilings on agricultural holdings and also dealt with the devolution of tenancy rights on such holdings, it must be held that this law is saved by Section 4(2) of the Hindu Succession Act and is not repealed by the provisions of the Hindu Succession Act. This would mean that the rule of succession governing Bhumidars is to be found in Section 50 of the Delhi Land Reforms Act and not in the Hindu Succession Act, 19[illegible]"

[illegible] Counsel for the petitioners, [illegible] above-

mentioned decision, submitted that it was only because of Section 4(2) of the HSA that the rule of succession with regard to agricultural land was to be as per Section 50 of the DLR Act and not in accordance with the HSA. Hence, with the omission of Section 4(2) of the HSA by virtue of the Amendment Act, the rule [illegible] in Section 50 of the DLR Act is no longer saved and has, in fact, been [illegible] effect from [illegible], the date the Amendment Act came into force [illegible]

18. For [illegible] values, the learned Counsel for the petitioners [illegible] a decision of a learned Single Judge of this Court in the case of *Smt. Mukesh* [illegible] s. v. *Bharat Singh* [illegible]., 149 (2008) DLT 14[illegible] that case [illegible] was held that

"7. Due to Sub-section (2) [illegible] the Hindu Succession Act, 1956 the rule of succession [illegible] under the Hindu [illegible] 1956 was subject to any law [illegible] time being in force relating to agricultural holdings. Thus, if [illegible] an agricultural holding was stipulated in any local law applicable to an agricultural holding, provisions thereof would apply relating to devolution of interest in a holding. The effect of deletion of Sub-section (2) to Section 4 of the Hindu Succession Act, 1956 due to the promulgation of the Hindu Succession (Amendment) Act, 2005 is that with effect from the date when the Amending Act was promulgated succession would be as per the Hindu Succession Act, 1956.

8. *Prima facie*, the Amending Act of 2005 cannot be read retrospectively as the Amending Act has not been given a retrospective operation. Meaning thereby, successions which had taken place prior to the promulgation of the Amendment Act of 2005 cannot be disturbed.

9. Section 3 of the Amending Act has substituted the existing Section 6 of the Hindu Succession Act. One gets a clue of the legislative intent when one looks at Sub-section (3) of Section 6, as amended. It stipulates that where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 his interest in the property of a joint family governed by Mitakshara Law shall devolve by testamentary or intestate succession and not by survivorship. A daughter is given a share equal to that of a son.

10. In respect of the co-parcenery property the right of a daughter to receive a share equal to that of a son applies only if the death of male Hindu is after commencement of the Amendment Act, 2005."

19. In the above-mentioned case, the owner of the agricultural land holdings had expired on 10.6.1993 and thus it was on that date that succession to his property opened. As per the law then applicable, succession was in favour of the sons. Since the Amendment Act could not be read retrospectively, the appeal in the case of *Mukesh* v. *Bharat Singh* (supra) was dismissed

20. The learned Counsel for the petitioners pointed out that the facts of the present case are different from that of *Ram Mehar* (supra) and *Mukesh* v. *Bharat Singh* (supra) inasmuch as the owner of the disputed agricultural land in the present case Late Shri Inder Singh, died on 15.12.2006 *i.e.* after the Amendment Act had already come into force and after Section 4(2) had been omitted from the HSA. Thus, the protection to Section 50 of the DLR Act given by Section 4(2) of the HSA [illegible]

applicable in the case of *Ram Mehar* (supra) did not exist any longer. Also, since, in the present case, the owner of the disputed agricultural land died in the year 2006, the amended provisions of the HSA would apply, which, in the case of *Mukesh v. Bharat Singh* (supra) were not applicable as the succession had opened on 10.6.1993, prior to the said amendment.

21. The third decision referred to by the learned Counsel for the petitioners was that of the present Bench itself in the case of ***Smt. Har Naraini Devi and Another v. Union of India and Others***, 162 (2009) DLT 663 (DB)=W.P. (C) 2887/2008—Decided on 11.9.2009. In that case, this Court had agreed with the contentions of the respondents that [illegible] the DLR Act had been placed in the Ninth Schedule [illegible] the Constitution of [illegible] in 1964, it was covered by the immunity provided [illegible] 31B, and was thus beyond the pale of challenge on the ground of [illegible] of the rights conferred in Part III of the Constitution.

22. The learned Counsel for the petitioners argued that Article [illegible] immunity to Acts placed in the [illegible] Schedule of the Constitution [illegible] such immunity was subject to the [illegible] competent Legislature to [illegible] amend its provisions. While settling [illegible] the provisions of Article [illegible] in this judgment, we had emphasized [illegible] words "subject to the [illegible] competent Legislature to repeal or amend it". Referring to those words, it was contended by the learned Counsel for the petitioners that Parliament being a competent Legislature had amended the HSA in 2005 and had thus omitted Section 4(2) of the Act. It was this very Section that was saving Section 50 of the DLR Act and its deletion with effect from 9.9.2005 signified an implied repeal of Section 50 of the DLR Act (a State law) and inasmuch as it became repugnant to the provisions of Sections 2, 8 and 9 of the HSA (a Union Law), the same was liable to be quashed.

23. Apart from this, the learned Counsel for the petitioners submitted that the facts of the present case differed from that of *Smt. Har Naraini Devi's* case (supra) inasmuch as in that case the owner of the disputed property died on 6.6.1997, that is, prior to the coming into force of the Amendment Act in 2005, and, thus, before Section 4(2) of the HSA had been omitted. In the present case, succession opened on 15.12.2006, after Section 4(2) of HSA had been omitted with effect from 9.9.2005. Also, in the case of *Smt. Har Naraini Devi* (supra), the only challenge against Section 50 of the DLR Act was on the ground that it was violative of the fundamental rights as given in the Constitution of India however in the present case the challenge is also on the ground of it being repealed by a subsequent statute.

24. In response to the above arguments, the learned Counsel for the respondent Nos. 3 to 5 also relied strongly on the decisions of *Ram Mehar* (supra) and *Smt. Har Naraini Devi* (supra). It was contended by the learned Counsel for the said respondents that this Court in the case of *Smt. Har Naraini Devi* (supra) clearly held that "Section 50 (a) of the said Act cannot be challenged because of Article 31B of the Constitution and because it had been placed in the Ninth Schedule to the Constitution in 1964, that is, prior to 24.4.1973".

25. It was submitted that the DLR act is a special enactment enacted especially to deal with agricultural land and for the prevention of fragmentation of agricultural holdings, for the fixation of ceilings and for the devolution of tenancy rights in respect of such holdings and would, therefore, prevail despite the Amendment

Act omitting Section 4(2) of the HSA. It was further submitted that the removal of Section 4(2) of the HSA did not imply a repeal of Section 50 of the DLR Act and the immunity provided by Article 31B to Acts placed in the Ninth Schedule of the Constitution would continue.

26. Another contention of the learned Counsel for the said respondents was that in the Seventh Schedule of the Constitution of India which prescribes the three lists of subjects on which the Union, State or both legislatures can make laws respectively, Entry 5 of List III, which is the Concurrent list, includes 'succession' and Entry 6 includes 'Transfer of property except agricultural land'. On the other hand, List II, which is the State List, at Entry 18, has 'Land' including every form of land whether agricultural or not. Thus it was submitted by the learned Counsel for the respondents that this clearly shows the intention of the legislature to allow only the State to enact laws regarding agricultural land.

27. Finally, the learned Counsel for the said respondents also relied on extracts of the decision in the case of *Ram Mehar* (supra) to support the argument that the DLR Act is a special enactment dealing with agricultural land and thus the rule of succession set out in Section 50 of the DLR Act has to be considered as the rule of succession to tenancy rights. Thus, according to the said learned Counsel, this provision is saved from repeal by the HSA.

28. It is in the light of these arguments, that the questions posed in paragraph 10 above need to be answered. We may straightaway say that the answers to the questions are that the rule of succession contained in Section 50 of the DLR Act has been repealed by virtue of the omission of Section 4(2) of HSA in 2005 and that, as a result, the rule of succession would be the one prescribed under the HSA (as amended). Consequently, the petitioners, being female, have the right to succeed to the disputed agricultural land inasmuch as succession opened out, in this case, on 15.12.2006 on the death of Late Inder Singh.

29. Section 4(2) as it existed prior to its omission in 2005 declared that nothing contained in the HSA would be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings. This Court, in the case of *Ram Mehar* (supra) found that the DLR Act was such a law and because of Section 4(2), the rule of succession laid down in the DLR Act would be unaffected by the provisions or rule of [illegible] prescribed under HSA. It was [illegible] because of Section 4(2) that this Court, in *Ram Mehar* (supra) decided that the applicable rule of [illegible] would be [illegible] provided under the DLR Act. Had Section 4(2) not been there [illegible] (supra) [illegible] been decided differently and the rule of [illegible] given in the HSA would [illegible] been applicable.

30. It is necessary to examine Section 4 of the [illegible] which stipulates that the HSA is to have an overriding effect. Sub-section (1) specifically provides as under:

> "4. *Overriding effect of Act*—(1) Save as otherwise expressly provided in this Act,—
>
> (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement

of this Act sh[illegible] with [illegible] for which provis[illegible] in this Act;

(b) any other law in for[illegible] mediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act."

31. By virtue of clause (a) of Sub-section (1) of Section 4 of the HSA, any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force ceased to have effect upon the commencement of the HSA in respect of any matter for which provision was made in the HSA. In other words, in respect of matters provided in the HSA, Hindu law including any custom or usage as part of that law stood abrogated. Similarly, by virtue of Clause (b) of Section 4(1) of the HSA, any other law in force immediately before the commencement of the HSA, ceased to apply to Hindus insofar as it was inconsistent with any of the provisions of the HSA. The laws in force, of course, included statute law such as the DLR Act. Thus, by virtue of Section 4(1)(b), Section 50 of the DLR Act would cease to operate and apply to Hindus to the extent it was inconsistent with the HSA. In *Ram Mehar* (supra), this Court held that the said provisions of the DLR Act were inconsistent with the HSA. Thus, if no reference was made to Sub-section (2) of Section 4 as it then existed, the HSA had virtually abrogated the provisions of Section 50 of the DLR Act in its application to Hindus to the extent of the inconsistency between the rule of succession prescribed in the HSA and the rule of succession stipulated in the said Section 50 of the DLR Act.

32. It is only because of Sub-section (2) of Section 4 of the HSA that the operation and effectiveness of the provisions of the DLR Act was saved inasmuch as it was declared that nothing in the HSA shall be deemed to affect the provisions of any law for the time being in force providing for (1) the prevention of fragmentation of agricultural holdings or (2) for the fixation of ceiling or (3) for the devolutions of tenancy rights in respect of such holdings. Since the DLR Act was held to be such a law, its provisions, which included Section 50, were unaffected by the enactment of the HSA. It is apparent that while there was a general abrogation/repeal of laws — personal, customary and statutory — to the extent they were inconsistent with the provisions of the HSA, the provisions of certain laws like the DLR Act were specifically saved or excluded from the general abrogation/repeal.

33. Now, the omission of Sub-section (2) of Section 4 of the HSA by virtue of the Amendment Act of 2005 has removed the specific exclusion of the DLR Act from the overriding effect of the HSA which hitherto existed because of the said Sub-section (2). The [illegible] is obvious. The protection or shield from obliteration which Sub-section (2) provided having been removed, the provisions of the [illegible] have overriding [illegible] even in respect of the provisions of the DLR A[illegible] Act, not so much a[illegible] implied repeal [illegible] where [illegible]/abrogation whi[illegible] hitherto existed [illegible] Sub-section (2) of Se[illegible], by virtue of [illegible] of 2[illegible] [illegible]ous act of Parliament. The int[illegible] this [illegible]tion given to the DLR Act and oth[illegible] the DLR Act gets relegated to a p[illegible] subs[illegible] to the [illegible]tent of inconsistency in the provision[illegible] two acts.

34. We shall now d[illegible] with the contention of the learned Counsel for the respondent Nos. 3 to 5 that in view of the decision of this Court in *Smt. Har Naraini Devi* (supra), Section 50 of [illegible] Act cannot be [illegible] challenge because of Article 31B of the Constitution and because [illegible] DLR [illegible] placed in the Ninth Schedule to the Constitution in 1964. It [illegible] true that [illegible] *Naraini Devi* (supra) [illegible] had concluded that Section 50(a) of the DL[illegible] not be challenged [illegible] use of Article 31B [illegible] ase, the challenge [illegible] on the ground of alleged violation of Article [illegible] 21 of the Constitution [illegible] re, the challenge is [illegible] on [illegible] amendment of [illegible] statute. We have seen [illegible] immunity g[illegible] Article [illegible] subject to [illegible] er of any competent Legislature to re[illegible] the pr[illegible] se the DLR Act). The HSA and the [illegible] Act [illegible] 2005 have be[illegible] by Parliament and there is no challenge [illegible] Parliament's competency. We have already indicated as to how the effect of omission of Sub-section (2) of Section 4 of the HSA is to abrogate the provisions of the DLR Act to the extent of inconsistency with the provisions of the HSA. Clearly, the immunity under Article 31B is not a blanket immunity and is subject to the power of any competent Legislature to repeal or amend the protected Act. This is exactly what Parliament has done. Thus, the argument raised on behalf of the respondent Nos. 3 to 5 is clearly untenable.

35. For the aforesaid reasons, we hold that the provisions of the HSA would, after the amendment of 2005, have overriding effect over the provisions of Section 50 of the DLR Act and the latter provisions would have to yield to the provisions of the HSA, in case of any inconsistency. The rule of succession provided in the HSA would apply as opposed to the rule prescribed under the DLR Act. The petitioners are, therefore, entitled to succeed to the disputed agricultural land in terms of the HSA. The respondent Nos. 1 and 2 are directed to mutate the disputed agricultural land, to the extent of Late Shri Inder Singh's share, in favour of the petitioners and respondent Nos. 3, 4 and 5 as per the HSA.

36. The writ petition is allowed to the aforesaid extent. The parties are left to bear their respective costs.

Writ Petition allowed.

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170 (2010) DELHI LAW TIMES 589

DELHI HIGH COURT

Dr. S. Muralidhar, J.

ASSOCIATION FOR WELFARE OF DELHI STOCK BROKER & ORS. —Petitioners

versus

UNION OF INDIA & ORS. —Respondents

W.P.(C) No. 17349 of 2004—Decided on 3.6.2010

Securities Contract (Regulation) Act, 1956 (SCR) — Securities and Exchange Board of India, 1992 — Sections 12(2), 28 — Securities and Exchange Board of India Rules, 1992 — Rule 3 — SEBI (Interest Liability Regularisation) Scheme, 2004 — Regulation 10, Clause (bb) of Schedule III(7)(?) (bb) — Wri[illegible]