A **RAJA BAHADUR GIRIWAR PRASAD NARAIN SINGH**

v.

DUKHU LAL DAS & ORS.

April 20, 1967

B [K. N. WANCHOO, C.J., V. BHARGAVA AND G. K. MITTER, JJ]

Bihar Land Reforms Act, 1950 (*No.* 30 *of* 1950), *ss.* 3 *and* 4—*Notification vesting estate published in Official Gazette and not in newspapers—Effect—Date of vesting.*

The plaintiff-respondents obtained a lease from defendant 1-appellant, of certain rights in the estate of defendant 1, and paid him the
C lease-money. By a notification published in the Official Gazette, the estate of defendant 1-appellant was vested in the defendant 2-State under the Bihar Land Reforms Act. Thereupon, the State called upon the plaintiff to pay the lease-money to it, which the plaintiff did under protest. The plaintiff filed a suit claiming the refund of the lease-money from either of the defendants, which he had been forced to pay to each of the defendants. The trial court decreed the suit against the State. The State appealed, and the High Court held defendant 1 was liable
D to refund the money and set aside the decree against the State. In appeal, this Court

HELD : Defendant 1 had the right to collect the lease-money and not the State.

There was no publication in two issues of two newspapers as required by s. 3(2) of the Act when the notification was published in the Official
E Gazette. This omission brought about non-compliance with the mandatory provision of s. 3(2) requiring publication in at least two issues of two newspapers with the result that s. 5(a) of the Act did not become applicable at that time and, consequently, defendant No. 1 continued to be the proprietor and was not divested of his rights in the estate by this notification at that stage. On the record of this case, no material was forthcoming to show that the notification was ever published in any newspapers even subsequently; but, in the lower courts, the case
F proceeded on the basis of the admission by defendant 1 himself that he was dispossessed on a later date and it was with effect from that later date he was divested of his proprietory rights. Consequently, he had the full right to grant the lease to the plaintiff on the relevant earlier date and the rights under that lease were exercised by the plaintiff during the period when defendant 1 was still the proprietor. [772 H-773 D]

G The direction in sub-s. (2) of s. 3 of the Act for publication of the notification in at least two issues of two newspapers was mandatory and not merely directory. The notification had a far reaching effect. It deprived the owner of his vested rights as a proprietor of the estate and vested those rights in the State Government. This alteration in the rights was to be brought about by notifications issued in respect of individual estates of a proprietor and it appears that it was because of this importance of the notification that the legislature did not consider it
H sufficient that the notification should be published in the Official Gazette only. If the intention of the Legislature was that the publication in the two newspapers need not be taken into account in order to attract the provisions of s. 4(a) of the Act, this intention could have been clearly expressed by laying down in the principal part of s. 4 itself that the

consequences were to ensue "on the publication of the notification under sub-s. (1) of s. 3 in the Official Gazette. By not qualifying the word "publication" in this section with the adjectival clause "in the Official Gazette", the Legislature must be held to have clearly indicated that the notification must be published fully in accordance with the manner laid down in sub-s. (2) of s. 3 of the Act. So far as the date of vesting is concerned, its definition could not naturally depend on all the five minimum publications envisaged in sub-s. (2) of s. 3. There was no certainty that the publication of the notification in either of those two issues of the newspapers would be on the same date on which the notification is published in the Official Gazette nor could there be any certainty that in the two issues of the other newspaper also, the notification would be published on the same date. In these circumstances, it was obviously necessary to lay down the exact date with effect from which the vesting of the estate in the State Government was to take effect. That is the reason why the date of vesting was defined in s. 2(h) of the Act and it laid down that the date of vesting is to be the date of publication in the Official Gazette. This definition was, therefore, incorporated to make it sure that the date of vesting in every case could be determined without any uncertainty, or ambignity and the vesting will only come into force and effect after the notification is actually published in at least two issues of two newspapers as required by sub-s. (2) of s. 3 of the Act. [764 F-H; 765 F-766E]

The fact that the amendment of sub-s. (2) of s. 3 was not made retrospective can only lead to the inference that, though the legislature, after the passing of the Amending Act, did away with the necessity of publication of the notification in the newspapers, it did not retrospectively make effective those notifications, in respect of which there had been failure to comply with the requirements of sub-s. (2) of s. 3, by omitting the publication in two issues of two newspapers. [770 E-G]

Raza Buland Sugar Co. Ltd. v. *Municipal Board, Rampur,* [1965] 1 S.C.R. 970, referred to.

Rabati Ranjan and Anr. v. *State of Bihar,* A.I.R. 1953 Patna 121, disapproved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 911 of 1964.

Appeal from the judgment and decree dated November 1, 1961 of the Patna High Court in Appeal from Original Decree No. 398 of 1957.

B. Sen and *U. P. Singh,* for the appellant.

B. R. L. Iyengar and *S. N. Mukherjee,* for respondent Nos. 1-9.

D. P. Singh and *K. M. K. Nair,* for respondent No. 10.

The Judgment of the Court was delivered by

Bhargava, J. This appeal raises a question of interpretation of the provisions of the Bihar Land Reforms Act, 1950 (No. 30 of 1950) (hereinafter referred to as "the Act") which came into force initially on 11th September, 1950. On 12th March, 1951, the Act was declared void by the High Court at Patna on the

A ground that its provisions violated Article 14 of the Constitution. On 18th June, 1951, the Constitution First Amendment Act came into force. Thereafter, on 6th November, 1951, a notification was issued under s. 3(1) of the Act in respect of the property of defendant No. 1 (appellant in this appeal) declaring that the estates of defendant No. 1 had passed to and become vested in
B the State. The notification was published in the Official Gazette of Bihar on 14th November, 1951. It is disputed whether it was also published in any newspapers at that time. Defendant No. 1, however, continued in possession of the estates. On 12th April, 1952, defendant No. 1 granted a lease to the plaintiff (now represented by respondents 1 to 9 in this appeal) for three years for collection of Bidi leaves in land situated in the estate of defendant
C No. 1. It is common ground that collection of Bidi leaves starts from 1st May and ends about the 15th of June, so that, for the year 1952, the plaintiff was to collect Bidi leaves between 1-5-1952 and 15-5-1952. Under the terms of the lease, the plaintiff had to pay a sum of Rs. 22,500/- each year to defendant No. 1 and was, in addition, required to furnish a sum of Rs. 7,500/- as
D security. For the year 1952, the plaintiff did pay the sum of Rs. 30,000/- to defendant No. 1. On 5th May, 1952, this Court held that the Act was valid and constitutional. On 12th June, 1952, the lease dated 12th April, 1952 was registered. On the very next day, on 13th June, 1952, a Proclamation was issued by the State Government, defendant No. 2 (respondent No. 10 in this
E appeal), stating that the estates of defendant No. 1 had been taken over by the Government under the Act. On 21st November, 1952, defendant No. 2 gave a notice to the plaintiff to show cause why the lease granted to him by defendant No. 1 should not be cancelled. On 18th April, 1953, the plaintiff was informed by defendant No. 2 that as an existing lessee he may continue in
F possession till final orders of the Government are passed. On 2nd May, 1953, another notice was given by defendant No. 2 to the plaintiff that unless the plaintiff paid to defendant No. 2 the lease money for the previous year 1952, he will not get the lease for the year 1953. Thereupon, under protest, the plaintiff paid the lease money to defendant No. 2 for both the years 1952 and 1953. On 4th June, 1954, the Bihar Land Reforms (Amend-
G ment) Act 20 of 1954 (hereinafter referred to as "the Amending Act") came into force. The effect of this amendment will be noticed hereafter. On 31st January, 1955, the plaintiff filed a suit claiming a decree against either defendant No. 1 or defendant No. 2, for the two sums of Rs. 7,500/-, which he had deposited as security, and Rs. 22,500/- which he had been forced to pay to
H each of the two defendants. On 28th June, 1957, the trial Court decreed the suit for the sum of Rs. 7,500/- only against defendant No. 1 and for the sum of Rs. 22,500/- against defendant No. 2. On 14th October, 1957, defendant No. 2 filed an appeal

before the High Court and on 13th June, 1958, cross-objections were filed on behalf of defendant No. 1 as well as the plaintiff. The High Court decided the appeal on 1st November, 1961, holding that defendant No. 1 had no rights under which he could grant the lease to the plaintiff and was, therefore, liable to refund not only the sum of Rs. 7,500/- furnished as security, but also the sum of Rs. 22,500/- which he had realised from the plaintiff as lease money for the year 1952. The decree of the trial Court against defendant No. 2 for Rs. 22,500/- was set aside, as defendant No. 2 was held entitled to realise the lease money even for the year 1952. Thereupon, defendant No. 1 has come up to this Court in this appeal on certificate granted by the High Court.

In this appeal, learned counsel for defendant No. 1 stated that he was no longer challenging the decree insofar as it directs payment of Rs. 7,500/- to the plaintiff by way of refund of the security amount which had been furnished. It was conceded that at least with effect from 13th June, 1952, defendant No. 1 was no longer claiming the rights of ownership in the estate, and since he had already received the lease money of Rs. 22,500/- for the year 1952 from the plaintiff, the security was no longer required. Consequently, in this appeal we are only concerned with the question whether, for the year 1952, the lease money was payable to defendant No. 1 or to defendant No. 2 by the plaintiff, and this question obviously depends on whether defendant No. 1 was still the owner of the estate when he gave the lease to the plaintiff on 12th April, 1952 and continued to be so until 13th June, 1952, or whether he had ceased to be the owner of the property with effect from 14th November, 1951, and the property from that date vested in defendant No. 2. On this aspect, various pleas were taken by defendant No. 1 for urging that he continued to be the owner and was not divested of the property with effect from 14th November, 1951; but we need deal with only one single ground which we consider settles the point in favour of defendant No. 1.

The ground on which we think defendant No. 1 should succeed is that when defendant No. 2 issued the declaration dated 6th November, 1951, that declaration was published as a notification in the Official Gazette of Bihar only and not in two issues of two newspapers. To appreciate the effect of this omission, the relevant provisions of the Act and the effect of subsequent amendments made by the Amending Act may be explained. Section 3 and part of s. 4 of the Act which are relevant for this purpose, as they were enacted initially in the year 1950, are reproduced below :—

> "3. Notification vesting an estate or tenure in the State—(1) The State Government may, from time to time, by notification, declare that the estates or tenures

A of a proprietor or tenure-holder, specified in the notification, have passed to and become vested in the State.

(2) The notification referred to in sub-section (1) shall be published in the Official Gazette and at least two issues of two newspapers having circulation in the State of Bihar, and a copy of such notification shall be sent by B registered post, with acknowledgment due, to the proprietor of the estate recorded in the general registers of revenue-paying or revenue free lands maintained under the Land Registration Act, 1876 (Ben. Act VIII of 1876), or in case where the estate is not entered in any such registers and in the case of tenure holders, to C the proprietor of the estate or to the tenure holder of the tenure if the Collector is in possession of a list of such proprietors or tenure-holders together with their addresses, and such posting shall be deemed to be sufficient service of the notification on such proprietor or, where such notification is sent by post to the tenure-D holder, on such tenure-holder for the purposes of this Act.

(3) The publication and posting of such notification, where such notification is sent by post, in the manner provided in sub-section (2), shall be conclusive evidence of the notice of the declaration to such proprietors or E tenure-holders whose interests are affected by the notification."

"4. Consequences of the vesting of an estate or tenure in the State—Notwithstanding anything contained in any other law for the time being in force or in any contract, on the publication of the notification F under sub-section (1) of section 3, the following consequences shall ensue, namely :—

(a) Subject to the subsequent provisions of this Chapter, such estate or tenure including the interests of the proprietor or tenure-holder in any building or part of a building comprised in such estate or tenure and G used primarily as office or cutchery for the collection of rent of such estate or tenure, and his interests in trees, forests, fisheries, jalkars, hats, bazars and ferries and all other sairati interests as also his interest in all sub-soil including any rights in mines and minerals, whether discovered or undiscovered, or whether being worked H or not, inclusive of such rights of a lessee of mines and minerals, comprised in such estate or tenure (other than the interests of raiyats or under raiyats) shall, with effect from the date of vesting, vest absolutely in the

State free from all incumbrances and such proprietor or tenure-holder shall cease to have any interests in such estate or tenure, other than the interests expressly saved by or under the provisions of this Act.

. . . . . ."

It is to be noted that under s. 4 of the Act, the consequences mentioned in clause (a) were to ensure only "on the publication of the notification under sub-section (1) of section 3". Unless there was such publication, the estate did not vest in the State Government. Section 3(1), no doubt, lays down that the content of the notification to be issued will itself recite that the estates of the proprietor concerned, specified in the notification, have passed to and become vested in the State. The mere issue of such a notification, however, did not bring about the vesting of the estate in the State. The vesting was brought about by clause (a) of s. 4 of the Act, and that clause could only become applicable on the notification under sub-section (1) of s. 3 being published. The manner of publication of the notification is laid down in sub-section (2) of s. 3 which required at the relevant time in November, 1951 that the notification shall be published in the Official Gazette and in at least two issues of two newspapers having circulation in the State of Bihar. There was, thus, a direction for publishing the notification not only in the Official Gazette, but also in at least two issues of two newspapers.

It was urged by learned counsel for defendant No. 2 before us that the direction for publishing the notification in issues of 2 newspapers should be held by us to be merely directory and not mandatory and, consequently, the mere publication of the notification in the Official Gazette should be held to be publication of the notification required by s. 4 of the Act. It is correct, as urged by him, that the mere use of the word "shall" in s. 3(2) is not finally determinative of a particular direction in a law being mandatory and there have been occasions when it has been held that though the word "shall" has been used by the legislature, the direction given by the legislature is only meant to be directory. In the present case, however, we cannot accept the submission that the direction in sub-s. (2) of section 3 of the Act for publication of the notification in at least two issues of two newspapers was merely directory and not mandatory. The notification had a far-reaching effect. It deprived the owner of his vested rights as a proprietor of the estate and vested those rights in the State Government. This alteration in the rights was to be brought about by notifications issued in respect of individual estates of a proprietor and it appears that it was because of this importance of the notification that the legislature did not consider it sufficient that the notification should be published in the Official Gazette only. Sub-Section (2) of section 3 of the Act, therefore, contained the

A clause requiring the publication in at least two issues of two newspapers. In this provision, the use of the adjectival clause "at least" is very significant. By laying down that the publication must be in at least two issues of two newspapers, the Legislature clearly indicated the importance that it attached to this publication in the newspapers. A minimum of two issues of two news-
B papers was mentioned for publication of the notification to emphasise that this requirement was necessary and had to be fulfilled before the notification could have the effect of divesting a proprietor of his rights in the estate and vesting them in the State Government.

C In this connection, our attention was drawn to the definition of "date of vesting" contained in clause (h) of section 2 of the Act which lays down that "date of vesting" means, in relation to an estate or ttnure vested in the State, the date of publication in the Official Gazette of the notification under sub-section (1) of section 3 in respect of such estate or tenure. It was urged that the date of vesting having been defined with reference to the
D publication of the notification in the Official Gazette only, the publication in the two issues of two newspapers should not be held to be mandatory and the provisions of section 4 should become applicable to the estate merely on the publication of the notification in the Official Gazette which determined the date of vesting. We do not think that this submission has any force. It
E is correct that, to determine the date of vesting, the publication in the two issues of two newspapers is not to be taken into account; but that does not necessarily mean that the publication in the two newspapers could be dispensed with in order to bring about vesting of the estate in the State Government. If the intention of the Legislature was that the publication in the two newspapers need
F not be taken into account in order to attract the provisions of s. 4(a) of the Act, this intention could have been clearly expressed by laying down in the principal part of s. 4 itself that the consequences were to ensue "on the publication of the notification under sub-section (1) of section 3 in the Official Gazette". By not qualifying the word "publication" in this section with the adjectival clause "in the Official Gazette," the Legislature must be held to
G have clearly indicated that the notification must be published fully in accordance with the manner laid down in sub-section (2) of section 3 of the Act. So far as the date of vesting is concerned, its definition could not naturally depend on all the five minimum publications envisaged in sub-s. (2) of section 3. The notification had to be published in one issue of the Official Gazette. It
H had also to be published in two different issues of one newspaper and two different issues of another newspaper. This was the minimum publication required bv s. 3(2) of the Act. It is also clear that, if a notification is to be published in two different issues

of one newspaper, that publication cannot be on one single date. The two issues of the same paper will naturally be those coming out on two different dates. Further, there was no certainty that the publication of the notification in either of those two issues of the newspapers would be on the same date, on which the notification is published in the Official Gazette, nor could there be any certainty that in the two issues of the other newspaper also, the notification would be published on the same date. In these circumstances, it was obviously necessary to lay down the exact date with effect from which the vesting of the estate in the State Government was to take effect. That is the reason why the date of vesting was defined in s. 2(h) of the Act and it laid down that the date of vesting is to be the date of publication in the Official Gazette. This definition was, therefore, incorporated to make it sure that the date of vesting in every case could be determined without any uncertainty, or ambiguity. The effect of this definition is that whatever be the dates on which the notification is published in the two issues of two newspapers, the vesting is to take effect from the date of publication in the Official Gazette. In some cases, the notification in the two issues of the newspapers could be prior to the date of its publication in the Official Gazette and, in some cases, it could follow that publication. Whatever be the order in which the notification is published in the Official Gazette and the two issues of the newspapers, the vesting is to take effect from the date of publication in the Official Gazette only. If it is published in issues of the newspapers subsequently, the vesting would be retrospectively with effect from the date of publication in the Official Gazette; but the vesting will only come into force and effect after the notification is actually published in at least two issues of two newspapers as required by sub-s. (2) of section 3 of the Act.

Learned counsel for defendant No. 2, in this connection, relied on the principle laid down by this Court in *Raza Buland Sugar Co. Ltd.* v. *Municipal Board, Rampur*(1), where, under s. 131(3) of the U.P. Municipalities Act No. II of 1916, a Board was required to publish, in the manner prescribed in s. 94, the proposals framed under sub-section (1) and the draft rules framed under sub-section (2) along with a notice in the form set forth in Schedule III, when taking proceedings for imposition of a tax. Section 94(3), which provided for the manner of publication, read thus :—

> "Every resolution passed by a Board at a meeting shall, as soon thereafter as may be, published in a local paper published in Hindi and where there is no such

(1) [1965] 1 S.C.R. 970.

A local paper, in such manner as the State Government may, by general or special order, direct."

In that particular case, the Municipal Board of Rampur, which had imposed the tax, published the proposals in Hindi in a newspaper which was published in Urdu, even though there was no special or general order made by the State Government laying down
B that the proposals may be published in a manner different from that given in the first part of s. 94(3). This Court held : "As we have said already, the essence of s. 131(3) is that there should be publication of the proposals and draft rules so that the tax-payers have an opportunity of objecting to them, and that is provided in what we have called the first part of s. 131(3); that is man-
C datory. But the manner of publication provided by s. 94(3) which we have called the second part of s. 131(3), appears to be directory and so long as it is substantially complied with, that would be enough for the purpose of providing the tax-payers a reasonable opportunity of making their objections. We are, therefore, of opinion that the manner of publication provided in s. 131(3)
D is directory." On the analogy of that decision, it was argued that the purpose of the publication of the notification under sub-s. (1) of s. 3 of the Act was to inform the proprietors or tenure-holders of the estates concerned, and that purpose could be served by publication in the Official Gazette and, in addition, by compliance with the further provision which required a copy of the notification to be sent to the proprietor or tenure-holder concerned.
E In this connection, our attention was also drawn to the fact that sub-s. (3) of section 3 of the Act was amended retrospectively by the Amending Act. Section 4 of the Amending Act reads as follows :—

"4. In section 3 of the said Act (the Bihar Land
F Reforms Act 1950).—

(a) for sub-section (2), the following sub-section shall be substituted namely :—

"(2) The notification referred to in sub-section (1) shall be published in the Official Gazette. A copy of
G such notification shall be sent by registered post, with acknowledgment due, to the proprietor of the estate recorded in the general registers of revenue-paying or revenue-free lands maintained under the Land Registration Act, 1876, or in case where the estate is not entered in any such registers and in the case of tenure-holders,
H to the proprietor of the estate or to the tenure-holder of the tenure if the Collector is in possession of a list of such proprietors or tenure-holders together with their addresses, and such posting shall be deemed to be suffi-

cient service of the notification on such proprietor or, where such notification is sent by post to the tenure-holder, on such tenure-holder for the purposes of this Act."; and

(b) in sub-section (3) the words "and posting" shall be omitted and shall be deemed always to have been omitted and for the words, brackets and figure "where such notification is sent by post in the manner provided in sub-section (2)", the words "in the Official Gazette shall be substituted and shall be deemed always to have been substituted."

Clause (b) of this section makes amendment in sub-section (3) of section 3 of the Act and brings about two changes. The effect of these two changes was that the proprietor or the tenure-holder concerned, whose interests were affected by the notification under section 3, was to be deemed to have notice of the declaration merely because of the publication of such notification in the Official Gazette. This amendment was introduced so as to be deemed to have been made from the date on which the Act initially came into force, so that, even though this amendment was brought about by the Amending Act, sub-section (3) of section 3 has to be read as it stands amended in the Act which was applicable at the relevant time in November, 1951. It was urged on the basis of this retrospective amendment that the mere publication in the Official Gazette, ignoring the publication in the two newspapers, or the posting of the notice, had become under the law conclusive evidence of the notice of the declaration to the proprietor or the tenure-holder concerned and, consequently, the additional publication in two issues of the two newspapers could no longer be held to be mandatory. The purpose of giving information to the proprietor or the tenure-holder concerned having been fully achieved by publication in the Official Gazette, any further manner of publication should not be held to be mandatory. This submission, however, ignores the fact that the declaration contained in the notification issued under sub-section (1) of section 3 of the Act affects not only the rights of the proprietor or the tenure-holder concerned, but also of other persons. The subsequent provisions of the Act show that secured creditors of the proprietor, as a result of the vesting of the estate in the State Government, lose their security and are required to take proceedings under s. 14 of the Act in order to realise the debt owed to them by the proprietor. Similarly, persons holding mining leases from the proprietors are affected by this vesting of the estate in the State Government and divesting of the proprietors of their rights. There are also provisions which show that courts are to take action or refuse to entertain suits of the nature laid down in the Act after the notification is published and comes into

A force. The publication of the notification under sub-s. (2) of section 3 of the Act cannot, therefore, be held to be for the sole purpose of conveying information to the proprietors or the tenure-holders and, consequently, the publication in the Official Gazette could not serve the full purpose of publication laid down in the said sub-section.

B Reliance was also placed on a decision of a Division Bench of the Patna High Court in *Rebati Ranjan and Another* v. *The State of Bihar and Others*(1) where, interpreting this very law, that Court held : "I do not think that the argument of the learned counsel is correct. In my opinion, the publication in the two newspapers referred to in s. 3(2) and the despatch of the copy of the C notification by registered post to the proprietor of the estate are not mandatory provisions in the sense that failure to comply with those provisions would invalidate the notification made under s. 3(1). The provision as to the publication and posting of the notification to the proprietor is merely directory. It cannot have been the intention of the legislature that the validity of the notification issued D under s. 3(1) should depend upon the subsequent action of the authorities in publication and posting of the notification. The provision enacted in s. 3(2) is merely intended for the purpose of giving information to the proprietors concerned. This view is supported by the phrasing of s. 3(1) which states that the State Government may, from time to time, by notification, declare that "the estates or tenures of a proprietor or tenure-holder, specified in the E notification, 'have passed to and become vested' in the State." The phrase "have passed to and become vested", grammatically construed, must mean that on the date the notification is issued the title to the estate becomes vested in the State Government irrespective of any question as to the publication and posting contemplated in s. 3(2). It is also important to notice that s. 2(h) defines "date F of vesting" to mean in relation to an estate or tenure vested in the State, the date of publication in the Official Gazette of the notification under sub-s. (1) of s. 3 in respect of such estate or tenure." With respect, we are unable to agree with the view expressed by that Court. It appears that, in giving this interpretation, the Court ignored several salient features. The Court did not notice that, G even though sub-s. (1) of s. 3 required the notification to state that the estates have passed to and become vested in the State, the actual vesting was not the result of the mere issue of that declaration by the State Government. The vesting took effect as a result of the provision contained in s. 4(a) of the Act and that laid down that this effect was to come into force on publication of the notification. No notice was taken of the fact that in s. 4 the publication H laid down was not confined to the publication in the Official Gazette. The Court further did not appreciate the significance

(1) A. I. R. 1953 Patna 121.

of the expression "at least" used in sub-s. (2) of s. 3 and the further fact that this sub-section did not merely in general terms direct publication in newspaper but went on to specify that the notification must be published as a minimum in two issues of two newspapers. Such a requirement indicates the emphasis laid by the legislature on this manner of publication. The Court also did not consider the aspect that the definition of "date of vesting" in s. 2(h) of the Act could have been intended only for the purpose of designating with certainty the date from which the proprietor was divested of his rights so as to vest them in the State Government. On the consideration of all these aspects, we hold that, in order to divest a proprietor of his rights in the estate, it was essential that the notification be published in at least two issues of two newspapers.

In this connection, another aspect is that s. 4 of the Amending Act also amended sub-s. (2) of s. 3 of the Act and by this amendment, the requirement of publication in at least two issues of two newspapers was omitted. It is significant that this amendment, bringing about this omission in sub-s. (2) of s. 3 of the Act, was not made retrospective in the manner in which the amendments in sub-s. (3) of s. 3 were made retrospective. If the intention of the legislature, when passing the Amending Act, was that even notifications issued earlier, which had been published in the Official Gazette without being published in two issues of two newspapers, should be made fully effective so as to bring about divesting of the rights of the proprietor in the estate, that intention could have been easily indicated by making this amendment also retrospective. The fact that the amendment of sub-s. (2) of s. 3 was not made retrospective can, therefore, only lead to the inference that, though the legislature, after the passing of the Amending Act, did away with the necessity of publication of the notification in the newspapers, it did not retrospectively make effective those notifications, in respect of which there had been failure to comply with the requirements of sub-s. (2) of s. 3, by omitting the publication in two issues of two newspapers. In this connection, it may be mentioned that, in the case before us, even in the trial Court, it appears to have been assumed that the amendment of sub-s. (2) of s. 3 omitting the requirement of publication in the newspapers was also retrospective and that is also the basis on which tht High Court proceeded. The fact that this amendment in sub-s. (2) of s. 3 was not retrospective was noticed only during the course of the hearing of this appeal in this Court and, since it was a pure question of law, we allowed the case to be argued on its basis, even though it appears that in the High Court, because of failure to realise that this amendment was not retrospective, the finding of the trial Court that the estate of defendant No. 1 had vested in the State of Bihar by virtue of notification

A dated 14th November, 1951, issued under s. 3 of the Act, was not challenged during the hearing of the appeal. Factually, it appears from the pleadings of the parties that, on behalf of the plaintiff as well as defendant No. 1, the case put forward was that the notification of 6th November, 1951 was only published in the Gazette on 14th November, 1951, but was not published in any newspapers so far as the parties were aware. The pleadings on facts having been specifically taken and the case having been fought out on that basis in the trial Court, we considered it right that the omission on the part of defendant No. 1 in the High Court noticed in its judgment should not be allowed to stand in the way of defendant No. 1 basing his case on the correct interpretation of law.

C Coming to the factual aspect, it appears that, in the plaint, the plaintiff had specifically pleaded that, though a notification purporting to vest the estate of defendant No. 1 in defendant No. 2 was published in the Official Gazette of 14th November, 1951, yet it was neither published in two newspapers, nor a copy of it was sent to defendant No. 1 as required by s. 3(2) of the D Bihar Land Reforms Act, 1950, at the time. This pleading was contained in clause (a) of para 13 of the plaint. Defendant No. 1 also, in para 9 of his written statement, pleaded that "So far as this defendant is aware, no notification was ever published in any newspaper of the State of Bihar, nor any notice under registered cover was sent to him under section 3(2) of the Bihar Land E Reforms Act". Defendant No. 2, in para 11 of its written statement, put forward its pleading in reply to paras 13 and 14 of the plaint and, in doing so, stated in general terms that, in fact, all the provisions of law were complied with. The further pleading was that "Although facts as noted in clauses (b) and (c) are correct, the allegation made in clause (a) is not wholly correct. It is not true that copy of the notification was sent by registered F post for the first time as noted in this paragraph." This pleading on behalf of defendant No. 2, thus, shows that defendant No. 2 did not put forward any specific plea with regard to the publication of the notification in the newspapers, the omission of which had been mentioned in para 13 of the plaint. The specific pleading was only with regard to the copy of the notification being sent G to defendant No. 1. In para 13 of the written statement also, there was a pleading only in general words that there was valid notification and publication according to the provisions of the law. So far as the plaintiff and defendant No. 1 were concerned, they could only plead ignorance of the publication in the newspapers and could not give any positive evidence of the negative H fact of non-publication. Defendant No. 2 alone could have specifically pleaded that the notification was published in two issues of two newspapers, if that was a true fact; but defendant No. 2 failed to do so.

The evidence on this point also could only be produced on behalf of defendant No. 2 to prove the actual publication in the newspapers. So far as defendant No. 1 was concerned, he supported his pleading in his written statement when, in the witness-box, he stated that he was not aware of any publication of notification of vesting of his estate in the year 1951 in any newspaper. On behalf of defendant No. 2, it appears that no attempt was made to lead evidence to prove this publication in the newspapers. Only one witness, Radhika Prasad, who had been working in the office of the Additional Collector, was produced to indicate the manner in which the notification was dealt with. In his examination-in-chief, the only positive evidence which he gave was that the notice in respect of the notification published in the Official Gazette on 14th November, 1951, was sent for service on defendant No. 1 through a Nazarat peon. He did not make any statement that it was published in any newspaper. In cross-examination, however, when effort was made on behalf of defendant No. 1 to make sure that there was no publication in the newspapers, the witness stated that that notification had been published in 'Bihar Sandesh' and 'Bihar Samachar'. He did not, even at that stage, state that it was published in two issues of those two newspapers. Further, it appears that he had no personal knowledge, nor any such knowledge derived from records on which reliance could be placed. He admitted that there was no note in the order-sheet regarding the publication of the notification in the newspapers, and that, in his office, there were no cuttings of the newspapers. Payments were also not made to the newspapers from his office. It seems from his further reply that his knowledge was derived from a letter received from the Government regarding the publication of the notification in the said newspapers. Even that letter has not been produced and the witness did not give fully the contents of that letter. All that he stated was that the letter from the Government was regarding the publication of the notification in those two newspapers. This content of the letter does not indicate whether the letter was merely a direction from the Government to have it published, or contained any material showing that there already had been publication of the notification in these newspapers. It was in view of these circumstances that, when this case came up before this Court on an earlier date, the Court decided to give an opportunity to defendant No. 2 to produce the issues of the newspapers. Even though adequate opportunity was offered, learned counsel, who appeartd before us to represent defendant No. 2, expressed his inability to produce them. Failure to produce the issues of the newspapers, in which the notification might have been published, can only lead to the inference that there was, in fact, no such publication, particularly in the state of evidence noticed above. In the circumstances, we have come to the conclusion that, in fact, there was no publication

A in two issues of two newspapers as required by s. 3(2) of the Act when the notification was published on 14th November, 1951 in the Official Gazette. This omission brought about non-compliance with the mandatory provision of s. 3(2) requiring publication in at least two issues of two newspapers, with the result that s. 4(a) of the Act did not become applicable at that time and, conse-
B quently, it must be held that defendant No. 1 continued to be the proprietor and was not divested of his rights in the estate by this notification at that stage. On the record of this case, no material was forthcoming to show that that notification was ever published in any newspapers even subsequently; but, in the lower courts, the case proceeded on the basis of the admission by defen-
C dant No. 1 himself that he was dispossessed on 13th June, 1952 and it was with effect from that date that he was divested of his proprietary rights. Consequently, he had the full right to grant the lease to the plaintiff on 12th April, 1952 and the rights under that lease were exercised by the plaintiff during the period when defendant No. 1 was still the proprietor. The lease-money was, in these circumstances, rightly realised by defendant No. 1 from
D the plaintiff. Defendant No. 2, in which the rights did not vest until 13th June, 1952, had no right to realise the lease-money for the year 1952, because, by the time the rights vested in defendant No. 2, the collection of Bidi leaves for that year had been completed by the plaintiff. In the circumstances, on this ground alone, defendant No. 1 is entitled to succeed in respect of the decree for the sum of Rs. 22,500/- which he was not liable to
E pay, so that the decree against him has to be vacated. Instead, the decree for this sum has to be passed against defendant No. 2, as the sum of Rs. 22,500/- realised by defendant No. 2 from the plaintiff was not justified under law, because the rights of the lessor had not vested in defendant No. 2 for the year 1952.

F As a result, the decree passed by the High Court is set aside and the decree made by the trial Court is restored. In the circumstances of this case, we direct parties to bear their own costs of this appeal.

Y.P. *Appeal allowed.*