PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
NARAYAN SHAMRAO PURANIK AND OTHERS

DATE OF JUDGMENT25/10/1982

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
VENKATARAMIAH, E.S. (J)
MISRA, R.B. (J)

CITATION:
1983 AIR 46 1983 SCR (1) 655
1982 SCC (3) 519 1982 SCALE (2)948

ACT:
States Reorganization Act, 1956-Sub-s. (3) of s. 51-Power of Chief Justice to appoint any place other than principal seat for sittings of Judges and division Courts-Scope and effect.
States Reorganisation Act, 1956-Permanent piece of legislation-Provisions of sub-ss. (2) and (3) of s. 51 not ebbed out by lapse of time.
Interpretation of statutes-A statute can be abrogated only by express or implied repeal-Cannot become inoperative by lapse of time.
Letters Patent authorising establishment of High Courts-"Erect and establish"-Meaning of.

HEADNOTE:
Sub-s. (3) of s. 51 of the States Reorganization Act, 1956, provides that notwithstanding anything contained in sub-s. (1) or sub-s.(2) thereof the Judges and division Courts of the High Court of a new State may also sit at such other place or places in that State as the Chief Justice may, with the approval of the Governor, appoint.
Prior to the constitution of the States Reorganization Commission, leaders of political parties from the Marathi-speaking areas in the country had signed an agreement called the 'Nagpur Pact' which ultimately formed the basis for the creation of the Maharashtra State. Clause (7) of this agreement stipulated that the provision with regard to the establishment of a permanent Bench of the High Court at Nagpur shall apply mutatis mutandis to the Marathwada region. The States Reorganisation Act, 1956 brought into being the new State of Bombay with effect from November 1, 1956. By virtue of sub-s.(1) of s. 49, the existing High Court of Bombay was deemed to be the High Court for the New State of Bombay and, by a Presidential Order issued under sub-s. (1) of s. 51, Bombay was declared to be its principal seat. The then Chief Justice issued an order under sub-s. (3) of s. 51 appointing Nagpur to be a place at which the Judges and division Courts of the High Court would also sit with effect from November 1, 1956. The Bench at Nagpur continued to function till May 1, 1960 when the State was bifurcated into Maharashtra and Gujarat and s. 41 of the

Bombay Reorganisation Act, 1960 provided for the establishment of a permanent Bench at Nagpur.

Due to the continued demand of the people of Marathwada region and the passing of a unanimous resolution in support by the Legislative Assembly the
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State Government recommended to the Central Government in 1978 that a permanent Bench of the High Court be established at Aurangabad under sub s. (2) of s. 51 and simultaneously made preparations, in consultation with the Chief Justice for setting up the Bench. However, when it became evident that the Central Government would take time in reaching a decision on the proposal, it was decided, in view of the preparations made and the mounting expectations of the people, that, pending the establishment of a permanent Bench under sub s. (2) of s 51, resort be had to the provisions of sub-s. (3) thereof. Accordingly, on August 27,1981, the Chief Justice, with the prior approval of the Governor of the State, issued an Order under sub-s. (3) of s. 51 appointing Aurangabad as a place at which the Judges and division Courts of the High Court of Judicature at Bombay may also sit.

The respondents challenged the validity of the order and the High Court set aside the same on the following grounds:

1. The Act being of a transitory nature, the exercise of the power under sub-s. (3) of s. 51 after a lapse of 26 years was constitutionally impermissible.

2. There was no nexus between the purpose. and objects of the Act and the setting up of Aurangabad as an additional venue for sittings of Judges and division Courts of the High Court.

3. After the bifurcation of the bilingual State of Bombay, the power of the Chief Justice under sub. s. (3) of s. 51 would no longer be exercised as the State of Maharashtra was not a 'new State' within the meaning of s. 51 read with s. 2(1) of the Act.

4. The Order was bad in law as it had brought about a territorial bifurcation of the High Court. Under sub-s. (3) of s. 51 the Chief Justice had neither the power to establish a Bench at any place nor the power to issue administrative directions for filing or institution of proceedings at such a place.

Allowing the appeal,
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HELD: The Act is a permanent piece of legislation enacted- by Parliament under Articles 3 and 4 of the Constitution. Section 14 of the General Clauses Act, 1897, provides that, where, by any Central Act or Regulation, any power is conferred, then, unless a different intention appears, that power may be exercised from time to time as occasion arises. A statute can be abrogated only by express or implied repeal. It cannot fall into desuetude or become inoperative through obsolescence or by lapse of time. The powers conferred on the President and the Chief Justice under sub-ss. (2) and (3) of s. 51 are intended to be exercised from time to time as occasion arises, as there is no intention to the contrary manifested in the Act. The assumption that these provisions have ebbed out by lapse of time is plainly contrary to the meaning and effect of s. 69 of the Act which in terms provides that Part V which contains s. 51 shall have. effect subject to any provision that may be made on or after the appointed day with respect to the High Court of any State by the Legislature or any other authority having power to make such provision.

Further, the opening words of s. 41 of the Bombay Reorganisation Act, 1960 manifest a clear legislative intention to preserve the continued existence of the provisions contained in s. 51 of the States Reorganisation Act, 1956. [669 B-C, 668 E-G, 670 A-B]
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R.v. London County Council, L.R. [1931] 2 K B. 215 referred to.

2. It cannot be said that the impugned Order is not directly connected with the reorganisation of States. There has been a long-standing demand for the establishment of a permanent Bench of the Bombay High Court at Aurangabad. A solemn assurance in this behalf had been given to the people of Marathwada region by cl. (7) of the 'Nagpur Pact'. Under the scheme of the Act it would appear that having constituted a High Court for the new State of Bombay and conferred jurisdiction on it under s. 52 in relation to the territories of the new State, Parliament left it to the various high Constitutional functionaries designated in s. 51 to determine the place where the principal seat of the High Court should be located and places where permanent Bench or Benches of the High Court may be established, or where the Judges and division Courts of the High Court may also sit. While Nagpur was given a Bench by an order issued under sub-s (3) of s. 51 and the arrangement made permanent by s.41 of the Bombay Reorganisation Act, 1960, the proposal for setting up a permanent Bench at Aurangabad is still under the active consideration of the Central Government. [670 D, 671 H, 672 A-B, 661 B, 670 H, 671 F-G, 672 A]

3. The expression "new State" occurring in sub-s. (1) of s. 49 of the Act is defined in s. 2(1) to mean "a State formed under the provisions of Part II". The State of Bombay was a 'new State' formed under s. 8 of the Act which occurs in Part II. The High Court of Bombay was the High Court for the new State of Bombay within the meaning of sub-s. (1) of s. 49 and therefore the provisions of s. 51 are still applicable. Sub-s. (1) of s. 28 of the Bombay Reorganisation Act, 1960 provides that as from May 1,1960, there shall be a separate High Court for the State of Gujarat and that the High Court of Bombay shall become the High Court for the State of Maharashtra and sub-s, (2) thereof provides that the principal seat of the Gujarat High Court shall be at such place as the President may, by notified order, appoint. It is significant that the Act contains no similar provision with regard to the principal seat of the High Court of Bombay. That being so, the continued existence of the principal seat of the Bombay High Court at Bombay is still governed by sub-s. (1) of s. 51. If there is continued existence of sub-s. (1) of s. 51 in relation to the principal seat of the High Court for a new State, a fortiori there is to an equal degree, the continued existence of the provisions contained in sub-ss. (2) and (3) of s. 51. That the Legislature pre-supposed the continued existence of s. 51 in relation to the High Court of Bombay is clear from the opening words of s. 41 of the Bombay Reorganisation Act, 1960 which provides for the setting up of a permanent Bench of the High Court at Nagpur. That section begins with the words "Without prejudice to the provisions of s. 51 of the States Reorganisation Act, 1956". Thus while enacting that section, Parliament retained in tact the power conferred on the President of India and the Chief Justice under s. 51 of the States Reorganisation Act, 1956. [666 D, 665 H, 666 E-G, 657 C-E]

4. (a) The Constitution and structure of a High Court depends on the statute creating it. It is clear from sub-ss.

(1) and (2) of s. 51 that the President has the power to appoint the principal seat of the High Court for a new State and also establish a permanent Bench of that High Court at one or more places within the State. Under these provisions the President has the power not only to define the territorial jurisdiction of the permanent Bench in relation to the
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principal seat but also confer on it exclusive jurisdiction to hear cases arising in the territory falling within its jurisdiction. The creation of a permanent Bench under sub-s. (2) of s. 51 must therefore, bring about a territorial bifurcation of the High Court. In contrast, the power of the Chief Justice to appoint, under sub-s. (3) of s. 51, the sittings of the Judges and Division Courts of the High Court at places other than the place of the principal seat or the permanent Bench, is in the unquestioned domain of the Chief Justice, the only condition being that he must act Justice, the only condition being that he must act with the approval of the Governor. It is basically an internal matter pertaining to the High Court. The Chief Justice has full power, authority and jurisdiction in the matter of allocation of the business of the High Court and this flows not only from the provisions contained in sub-s. (3) of s. 51 but inheres in him in the very nature of things. The non obstante clause contained in sub-s. (3) of s. 51 gives an over riding effect to the power of the Chief Justice. There is no territorial bifurcation of the High Court merely because the Chief Justice directed under sub-s. (3) of s. 51 that the Judges and division Courts shall also sit at Aurangabad. The Judges and division Courts at Aurangabad are part of the same High Court and they exercise jurisdiction as Judges of the High Court of Bombay at Aurangabad.[673 G, 675 H, 676 A-C, D-H, 677 A]

Seth Manji Dhana v. Commissioner of Income-tax, Bombay
JUDGMENT:
Bombay on July 22, 1958), approved.

Manickam Pillai Subbayya Pillai v. Assistant Registrar, High Court of Kerala, Trivandrum, AIR (1958) Kerala 188; overruled.

(b) It is difficult to comprehend how the Chief Justice can arrange for the sittings of the Judges and Division Courts at a particular place unless there is a seat at that place. It may be true in the juristic sense that the seat of the High Court must mean "the principal seat of such High Court" i.e. the place where the High Court is competent to transact every kind of business from any part of the territories within its jurisdiction. It is impossible to conceive of a High Court without a seat being assigned to it. The place where its jurisdiction can be invoked is an essential and indispensable feature of the legal institution known as 'Court'. Where there is only one seat of the High Court it must necessarily have all the attributes of the principal seat. But where the High Court has more than one seat, one of them may or may not be the principal seat according to the legislative scheme. When the Chief Justice makes an order in terms of sub s. (3) of s. 51 that Judges and Division Courts of the High Court shall also sit at such other place, the High Court in the generic sense has also a seat at such other place. It is both sound reason and commonsense to say that the High Court of Bombay is located at its principal seat at Bombay, but it also has a seat at the permanent Bench at Nagpur. Besides administering Justice, the High Court has the administrative control over the subordinate judiciary in the State. The High Court must

necessarily carry on the administrative functions from the principal seat but it may have more than one seat for transaction of judicial business.[673 A-G]

Nasiruddin v. State Transport Appellate Tribunal, [1976] 1 S.C.R. 505; distinguished.

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(c) Provisions similar to sub-s. (3) of s. 51 of the Act existed in almost all the Letters Patent of the Acts under which the various High Courts have been constituted. Clause 31 in each of the Letters Patent under which the High Courts of Calcutta, Madras and Bombay were established provided for "exercise of jurisdiction elsewhere than at the ordinary place of sitting of the High Court" Whenever a High Court was established by Letters Patent under s. 1 of the Indian High Courts Act, 1861, or under s. 113 of the Government of India Act, 1935. The High Court was 'erected and established' at a particular place mentioned in the Letters Patent. The expression 'erect and establish' in relation to a High Court meant nothing more than to indicate the establishment of the High Court at a particular place where the High Court was competent to transact every kind of business arising from any part of the territory within its jurisdiction. [674 C, 675 F, 674 E-F, 675 B-C]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3379 of 1981

Appeal by Special leave from the Judgment and order dated the 14th December, 1981 of the Bombay High Court in Writ Petition No. 1104 of 1981.

F.S. Nariman, Arvind V. Savant and M.N. Shroff for the Appellant.

A.L. Settwal, and Mrs. Jayshree Wad for Respondent No. 1.

D.R. Dhanuka, Lalit Bhasin, Vinay Bhasin, Suraj M. Shah and Vineet Kumar for Respondent No. 2.

L.N. Sinha, Attorney General, M.K. Banerjee, Additional Solicitor General of India and Miss A. Subhashini for Respondent No. 3.

S.B. Bhasme, S.V. Tambwekar and R.G. Bhadekar for Interveners 1-6.

V.N. Ganpule for Intervener No. 7.

The Judgment of the Court was delivered by

SEN, J. This appeal by special leave is directed against the judgment and order of the Bombay High Court dated December 14, 1981. By its judgment the High Court struck down an order dated August 27, 1981 by which the Chief Justice of the Bombay High Court, in exercise of his powers under sub-s. (3) of s. 51 of the States Reorganization Act, 1956 (Act XXXVII of 1956) (for short 'the Act') with the prior approval of the Governor of Maharashtra, directed that the Judges and Division Courts of the High Court of

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Bombay shall also sit at Aurangabad with effect from August 27, 1981 for the disposal of cases arising out of the Marathwada region of the State of Maharashtra.

By an order dated May 4, 1982 we allowed the appeal and set aside the judgment of the High Court since it did not appear to us that the impugned order issued by the Chief Justice suffered from any infirmity, legal or constitutional. We now proceed to give our reasons.

By virtue of sub-s. (1) of s. 49, the High Court of

Bombay exercising immediately before the appointed day i.e. November 1, 1956, jurisdiction in relation to the existing State of Bombay, was deemed to be the High Court for the new State of Bombay constituted under sub-section (1) of s. 8 of the Act. Immediately before the appointed day, i.e. on October 27, 1956, the Central Government while telegraphically communicating to the then Chief Justice (Chagla, C.J.) the issue of a Presidential Order under sub-s. (1) of s. 51 of the Act appointing Bombay to be the principal seat of the High Court for the new State of Bombay with effect from November 1, 1956, conveyed that as from that date the High Court shall function only at that place unless the Chief Justice issued an order under sub-s. (3) of s. 51 of the Act that temporary Benches may also function at other places. The then Chief Justice was advised that he should issue such notification on the appointed day, i.e. November 1, 1956, for the establishment of Circuit Benches at Nagpur and Rajkot with a view to preserve the continuity of judicial administration, since the High Court of Madhya Pradesh had its principal seat at Nagpur and the High Court of Saurashtra at Rajkot, prior to the appointed day. The then Chief Justice accordingly issued an order under sub-s. (3) of s. 51 of the Act with the prior approval of the Governor by which he appointed Nagpur and Rajkot to be places at which the Judges and Division Courts of the Bombay High Court would also sit with effect from November 1, 1956. The two Benches at Nagpur and Rajkot continued to function till May 1, 1960 when the bilingual State of Bombay was bifurcated into two separate States-The State of Maharashtra and the State of Gujarat-by the Bombay Reorganization Act, 1960 (Act, XI OF 1960).

Prior to the constitution of the States Reorganization Commission in December 1953, leaders of political parties from the Marathi-speaking areas in the Vidarbha and Marathwada regions and of the then State of Bombay signed an agreement or pact called

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the Nagpur pact on September 23, 1953 which formed a basis for joint representation to the States Reorganization Commission and was the basis for the formation of Maharashtra as a new State for the Marathi-speaking people of the former State of Bombay, the Vidarbha region of the former State of Madhya Pradesh, and the Marathwada region of the erstwhile State of Hyderabad. CI. (7) of the Nagpur Pact provides that the provision with regard to the establishment of a permanent Bench of the High Court at Nagpur shall apply mutatis mutandis to the Marathwada region.

It appears that due to continued demand of the people of Marathwada region for the establishment of a permanent Bench of the High Court at Aurangabad under sub-s. (2) of s. 51 of the Act, the State Government first took up the issue with the then Chief Justice (Kantawala, C.J.) in 1977. On March 22, 1978, the State Legislative Assembly passed a unanimous resolution supporting a demand for the establishment of a permanent Bench of the High Court at Aurangabad to the effect:

> "With a view to save huge expenses and to reduce the inconvenience of the people of the Marathwada and Pune regions in connection with legal proceedings, this Assembly recommends to the Government to make a request to the President to establish a permanent Bench of the Bombay High Court having jurisdiction in Marathwada and Pune regions, one at Aurangabad and the other at Pune."

The said demand for the constitution of a permanent Bench of the High Court at Aurangabad was supported by the State Bar

Council of Maharashtra, Advocates'. Association of Western India, several bar associations and people in general. It is necessary here to mention that the resolution at originally moved made a demand for the setting up of a permanent Bench of the High Court of Bombay at Aurangabad for the Marathwada region, and there was no reference to Pune which was added by way of amendment. Initially, the State Government made a recommendation to the Central Government in 1978 for the establishment of two permanent Benches under sub-s. (2) of s. 51 of the Act, one at Aurangabad and the other at Pune, but later in 1981 confined its recommendation to Aurangabad alone.

The State Government thereafter took a Cabinet decision in January, 1981 to establish a permanent Bench of the High Court at
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Aurangabad and this was conveyed by the Secretary to the Government of Maharashtra, Law & Judiciary Department, communicated by his letter dated February 3, 1981 to the Registrar and he was requested, with the permission of the Chief Justice, to submit proposals regarding accommodation for the Court and residential bungalows for the Judges, staff, furniture etc. necessary for setting up the Bench. As a result of this communication, the Chief Justice wrote to the Chief Minister on February 26, 1981 signifying his consent to the establishment of a permanent Bench at Aurangabad. After adverting to the fact that his predecessors had opposed such a move and had indicated, amongst other things, that such a step involved, as it does, breaking up of the integrity of the institution and the Bar, which would necessarily impair the quality and quantity of the disposals, he nonetheless went on to say:

> "As against that I am personally aware of the difficulties to which the litigant public of Marathwada is subjected to, in regard to their causes in this High Court since the Marathwada area became a part of the Bombay State with effect from 1.11.1956, resulting virtually in the stifling of the genuine litigation therefrom. Grievances on this count are many and genuine to my knowledge. Establishment and continued existence of the Benches in the High Courts of Madhya Pradesh, Uttar Pradesh, Bihar, Kerala and a Bench at Nagpur in our own State, make it difficult for them to believe that their claim for a Bench alone is liable to be ignored because of any such view of the Law Commission or the Jurists. This only goes to deepen the bitterness and sense of injustice that is prevalent among them."

It however became evident by the middle of June, 1981 that the Central Government would take time in reaching a decision on the proposal for the establishment of a permanent Bench under sub s. (2) of s. 51 of the Act at Aurangabad as the question involved a much larger issue, viz. the principles to be adopted and the criterion laid down for the establishment of permanent Benches of High Courts generally. This meant that there would be inevitable delay in securing concurrence of the Central Government and the issuance of a Presidential Notification under sub-s. (2) of s. 51 of the Act. On June 12, 1981, the State Government accordingly took a Cabinet decision that pending the establishment of a permanent Bench under
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sub-s. (2) of s. 51 of the Act at Aurangabad for the Marathwada region, resort be had to the provisions of sub-s. (3) thereof. On June 20, 1981 Secretary to the Government of

Maharashtra, Law and Judiciary Department wrote to the Registrar stating that there was a possibility of the delay in securing concurrence of the Central Government and the issuance of a notification by the President under sub-s. (2) of s. 51 of the Act for the establishment of a permanent Bench at Aurangabad and in order to tide over the difficulty, the provisions of sub-s. (3) of s. 51 of the Act may be resorted to and he therefore requested the Chief Justice to favour the Government with his views in the matter at an early date. On July 5, 1981, the Law Secretary waited on the Chief Justice in that connection. On July 7, 1981 the Chief Justice wrote a letter to the Chief Minister in which he stated that the Law Secretary had conveyed to him the decision of the State Government to have a Circuit Bench at Aurangabad under sub-s. (3) of s. 51 pending the decision of the Central Government to establish a permanent Bench there under sub-s. (2) of s. 51 of the Act. The Chief Justice then added:

> "I agree that some such step is necessary in view of the preparations made by the Government at huge costs and the mounting expectations of the people there."

Rest of the letter deals with the problem of finding residential accommodation for the Judges, staff, increase in strength of Judges etc.

On July 20, 1981, the Law Secretary addressed a letter to the Registrar requesting him to forward, with the permission of the Chief Justice, proposal as is required under sub-s. (3) of s. 51 for the setting up of a Bench at Aurangabad. In reply to the same, the Registrar by his letter dated July 24, 1981 conveyed that the Chief Justice agreed with the suggestion of the State Government that action had to be taken under sub-s. (3) of s. 51 of the Act for which the approval of the Governor was necessary and he enclosed a copy of the draft order which the Chief Justice proposed to issue under sub-s. (3) of s. 51 of the Act. On August 10, 1981, the Law Secretary conveyed to the Registrar the approval of the Governor. On August 27, 1981, the Chief Justice issued an order under sub-s. (3) of s. 51 of the Act to the effect:

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> "In exercise of the powers conferred by sub-s. (3) of s. 51 of the State Reorganization Act, 1956 (No. 37 of 1956) and all other powers enabling him in this behalf, the Hon'ble the Chief Justice, with the approval of the Governor of Maharashtra, is pleased to appoint Aurangabad as a place at which the Hon'ble Judges and Division Courts of the High Court of Judicature at Bombay may also sit."

The High Court has set aside the impugned notification issued by the Chief Justice under sub-s. (3) of s. 51 of the Act on the following grounds, namely: (1) The impugned order issued by the Chief Justice under sub-s. (3) of s.51 of the Act was not directly connected with or related to problems arising out of the reorganization of the States i.e. there is no nexus between the purpose and objects of the Act and the setting up of Aurangabad as a venue for additional seat of the High Court, (2) The provisions of the Act and in particular of s. 51 were not intended to be operative in definitely and they were meant to be exercised either immediately or within a reasonable time and therefore the exercise of the power by the Chief Justice under sub-s. (3) of s. 51 of the Act appointing Aurangabad as a place where the Judges and Division Courts of the High Court may also sit after a lapse of 26 years is constitutionally

impermissible, (3) The State of Maharashtra was not a new State within the meaning of s. 51 read with s. 2(1) of the Act after the bifurcation of the bilingual State of Bombay into the State of Maharashtra and the newly constituted State of Gujarat under s. 3 of the Bombay Reorganization Act, 1960 and therefore the power of the President of India to establish a permanent Bench or Benches of the High Court under sub-s. (2) of s. 51 of the Act and that of the Chief Justice to appoint with the prior approval of the Governor a place or places where the Judges and the Division Courts of the High Court may also sit under sub-s. (3) thereof, can no longer be exercised, (4) The power conferred on the Chief Justice under sub s.(3) of s. 51 of the Act to appoint a place or places where the Judges or the Division Courts of the High Court may also sit, does not include a power to establish a Bench or Benches at such places, and he had no power or authority under sub-s. (3) of s. 51 of the Act to issue administrative directions for the filing or institution of proceedings at such a place and (5) The impugned notification issued by the Chief Justice under sub-s. (3) of s. 51 of the Act was a colourable exercise of power and therefore liable to be struck down. We are afraid, the High Court has proceeded on wholly wrong premises.

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Section 51 of the Act provides as follows:

"51. Principal seat and other places of sitting of High Courts for new States.

(1) The principal seat of the High Court for a new State shall be at such place as the President may, be notified order, appoint.

(2) The President may, after consultation with the Governor of a new State and the Chief Justice of the High Court for that State, by notified order, provide for the establishment of a permanent bench or benches of that High Court at one or more places within the State other than the principal seat of the High Court and for any matters connected therewith.

(3) Notwithstanding anything contained in subsection (1) or sub-section (2), the Judges and Division Courts of the High Court for a new State may also sit at such other place or places in that State as the Chief Justice may, with the approval of the Governor, appoint."

There questions arise for consideration in this appeal: (1): Whether the power of the President under sub-s. (2) of s. 51 of the Act or that of the Chief Justice of the High Court under sub-s. (3) of s. 51 of the Act, can no longer be exercised due to lapse of time. (2) Whether the exercise of power by the Chief Justice under sub-s. (3) of s. 51 of the Act appointing Aurangabad to be a place at which the Judges and Division Courts of the High Court shall also sit is co-related to the reorganization of the States, or he has no nexus with the object and purposes sought to be achieved by the Act and is only a part of the demand for decentralization of the administration justice in general. (3) Whether the power of the Chief Justice under sub-s. (3) of s. 51 of the Act does not include a power to establish a Bench or Benches at such place or places carving out territorial jurisdiction for such Benches and authorising the filing or institution of proceedings at such places.

It is difficult to agree with the High Court that the High Court of Bombay is not the High Court of a new State

within the meaning
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of sub-s. (1) of s. 49 of the Act, merely because the bilingual State of Bombay was bifurcated into two separate States of Maharashtra and Gujarat under s. 3 of the Bombay Reorganization Act, 1960. Nor do we see any valid basis for the view taken by the High Court that the power of the President to establish a permanent Bench or Benches of the High Court under sub-s. (2) of s. 51 of the Act or that of the Chief Justice to appoint, with the approval of the Governor, a place or places where the Judges and Division Courts may also sit under sub-s. (3) of s. 51 of the Act, can no longer be exercised, in relation to the High Court of Bombay. It was right by not disputed before us that the High Court of Bombay was the High Court for the new State of Bombay within the meaning of sub-s. (1) of s. 49 of the Act and therefore the provisions of s. 51 of the Act are still applicable. That must be so because the High Court of Bombay owes its principal seat at Bombay to the Presidential Order issued under sub-s. (1) of s. 51 of the Act. The expression "new State" occurring in sub-s. (1) of s. 49 of the Act is defined in s. 2(i) to mean "a State formed under the provisions of Part II". The State of Bombay was a new State formed under s. 8 of the Act, which occurs in Part II. The Bombay Reorganization Act, 1960 (Act No.XI of 1960) which reconstituted the erstwhile State of Bombay into the State of Maharashtra and the State of Gujarat provides, inter alia, by sub-s. (1) of s. 28 that, as from the appointed day, i.e. May 1, 1960, there shall be a separate High Court for the State of Gujarat and that the High Court of Bombay shall become the High Court for the State of Maharashtra. Sub-s. (2) of s. 28 of that Act provides that the principal seat of the Gujarat High Court shall be at such place as the President may, by notified order, appoint. It is rather significant that the Bombay Reorganization Act, 1960 contains no similar provision with regard to the principal seat of the High Court of Bombay. That being so, the continued existence of the principal seat of the Bombay High Court at Bombay is still governed by sub-s. (1) of s. 51 of the Act. This conclusion of ours is reinforced by the opening words of s. 41 of that Act which provides for the setting up of a permanent bench of the Bombay High Court at Nagpur, and it reads:

> "41. Permanent Bench of Bombay High Court at Nagpur-Without prejudice to the provisions of s. 51 of the States Reorganization Act, 1956, such Judges of the High Court at Bombay, being not less than three in
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> number, as the Chief Justice may from time to time nominate, shall sit at Nagpur in order to exercise the jurisdiction and power for the time being vested in that High Court in respect of cases arising in the districts of Buldana, Akola, Amravati, Yeotmal, Wardha, Nagpur, Bhandara, Chanda and Rajpura:
>
> Provided that the Chief Justice may, in his discretion, order that any case arising in any such districts shall be heard at Bombay."

The legislative intent is clear and explicit by the use of the words "Without prejudice to the provisions of s. 51 of the States Reorganization Act, 1956". The legislature pre-supposed the continued existence of s. 51 of the Act in relation to the High Court of Bombay. That shows that while enacting s.41 of the Act, Parliament retained the power of the President of India both under sub-s. (1) and sub-s. (2) of s.51 of the Act and that of the Chief Justice under sub-

s. (3) thereof. If there is continued existence of sub-s. (1) of s.51 of the Act in relation to the principal seat of the High Court for a new State, a fortiori, there is, to an equal degree, the continued, existence of the provisions contained in sub-ss. (2) and (3) of s. 51 of the Act. This is also clear from the provisions of s. 69 of the Act which in terms provides that Part V which contains s.51 of the Act shall have effect subject to any provision that may be made, on or after the appointed day with respect to the High Court of a new State, by the Legislature or any other authority having power to make such provision.

Nor can we subscribe to the proposition that the power of the President under sub-s. (2) of s. 51 of the Act, or that of the Chief Justice of the High Court of a new State under sub-s. (3) of that section, can no longer be exercised due to lapse of time. The High Court is of the view that the provisions of the Act and in particular of s. 51 were meant to be exercised either immediately or within a reasonable time of the reorganization of the States and therefore the exercise of the power by the Chief Justice under sub-s. (3) of s. 51 of the Act appointing Aurangabad as a place where the Judges and Division Courts of the High Court may also sit, after a lapse of 26 years, is constitutionally impermissible. Any other view, according to the High Court, is bound to give rise to a very anamolous situation as in nine out of sixteen States not affected by the Act,

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the creation of a permanent Bench of a High Court must be by an Act of Parliament while in seven new States formed under the Act, the same could be achieved by a Presidential Notification under sub-s. (2) of s. 51 of the Act. Furthermore, in States where the High Courts were established by Letters Patent, the powers conferred on the Chief Justices of the High Courts qua sittings of single Judges and Division Courts can be exercised only with legislative sanction whereas under sub s. (3) of s. 51 it can be done by the Chief Justice of the High Court for a new State, with the approval of the Governor of that State. Such a construction of the provisions of s. 51 of the Act would, according to the High Court, result in creating discrimination between the States. The reasoning of the High Court that the Act being of a transitory nature, the exercise of the power of the President under sub-s. (2) of s. 51 of the Act, or of the Chief Justice under sub-s. (3) thereof, after, a lapse of 26 years, would be a complete nullity, does not impress us at all. The provisions of sub-ss. (2) and (3) of s. 51 of the Act are supplemental or incidental to the provisions made by Parliament under Arts. 3 and 4 of the Constitution. Art. 3 of the Constitution enables Parliament to make a law for the formation of a new State. The Act is a law under Art. 3 for the reorganization of the States. Art. 4 of the Constitution provides that the law referred to in Art. 3 may contain "such supplemental, incidental and consequential provisions as Parliament may deem necessary". Under the scheme of the Act, these powers continue to exist by reason of Part V of the Act unless Parliament by law otherwise directs. The power of the President under sub-s. (2) of s. 51 of the Act, and that of the Chief Justice of the High Court under sub-s. (3) thereof are intended and meant to be exercised from time to time as occasion arises, as there is no intention to the contrary manifested in the Act within the meaning of s. 14 of the General Clauses Act. The High Court has assumed that the provisions of sub-ss (2) and (3) of s. 51 of the Act have 'ebbed out' by lapse of time. This assumption is plainly

contrary to the meaning and effect of s. 69 of the Act which in terms provides that Part V which contains s. 51 of the Act, shall have effect subject to any provision that may be made on or after the appointed day with respect to the High Court of any State, by the Legislature or any other authority having power to make such provision.

It is a matter of common knowledge that Parliament considered it necessary to reorganize the existing States in India and to provide for it and other matters connected therewith and with that end in view, the States Reorganization Act, 1956 was enacted. As a result

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of reorganization, boundaries of various States changed. Some of the States merged into other States in its entirety, while some States got split and certain parts thereof merged into one State and other parts into another. These provisions were bound to give rise, and did give rise, to various complex problems. These problems are bound to arise from time to time. The Act is a permanent piece of legislation on the Statute Book. Section 14 of the General Clauses Act, 1897 provides that, where, by any Central Act or Regulation, any power is conferred, then unless a different intention appears, that power may be exercised from time to time as occasion arises. The Section embodies a uniform rule of construction. That the power may be exercised from time to time when occasion arises unless a contrary intention appears is therefore well settled. A statute can be abrogated only by express or implied repeal. It cannot fall into desuetude or become inoperative through obsolescence or by lapse of time. In R. v. London Country Council(1), Scrutton L.J. put the matter thus:

> "The doctrine that, because a certain number of people do not like an Act and because a good many people disobey it, the Act is therefore "obsolescent" and no one need pay any attention to, it is a very dangerous proposition to hold in any constitutional country. So long as an Act is on the statutebook, the way to get rid of it is to repeal or alter it in Parliament, not for subordinate bodies, who are bound to obey the law, to take upon themselves to disobey an Act of Parliament."

As to the theory of desuetude, Allen in his 'Law in the Making, 5th edn. p. 454 observes:

> "Age cannot wither an Act of Parliament, and at no time, so far as I am aware, has it ever been admitted in our jurisprudence that a statute might become inoperative through obsolescence."

The learned author mentions that there was at one time a theory which, in the name of 'non-observance' came very near to the doctrine of Desuetude, that if a statute had been in existence for any considerable period without ever being put into operation it may be of little or no effect. The rule concerning desuetude has

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always met with such general disfavour that it seems hardly profitable to discuss it further. It cannot be said that sub-s. (2) or (3) of s. 51 of the Act can be regarded as obsolescent. The opening words of s. 41 of the Bombay Reorganization Act, 1960 manifest a clear legislative intention to preserve the continued existence of the provisions contained in s. 51 of the Act. It was as recent as December 8, 1976 that the President issued a notification under sub-s. (2) of s. 51 of the Act for the establishment of a permanent Bench of the Rajasthan High Court at Jaipur. The High Court is therefore not right in observing that the

provisions of s. 51 of the Act were not intended to be operative indefinitely and they were meant to be exercised either immediately or within a reasonable time, or that the powers of the President or the Chief Justice thereunder can no longer be exercised in relation to the High Court of Bombay.

The conclusion reached by the High Court that the impugned notification issued by the Chief Justice under sub-s. (3) of s. 51 of the Act was not directly connected with the reorganization of the States, or had no nexus with the objects and purposes sought to be achieved by the Act but was only as part of the demand for decentralization of the administration of justice in general, can only be justified as a necessary corollary flowing from its views expressed on other aspects of the matter. The creation of 14 new States by Part II of the Act based on a linguistic basis virtually led to the re-drawing of the political map of India as a whole. Even after the reorganization of the States in 1956, the political map of India continued to change owing to the growing pressure of political considerations and circumstances. The formation of the linguistic State of Bombay constituted under s. 8 of the Act became the source of struggle between the Gujarati and Marathi-speaking people as a result of which the State of Bombay was further bifurcated in 1960. These political changes necessarily affected the constitution and structure of the High Court. Under the Constitution, Parliament alone has the legislative competence to make a law relating to the subject under Entry 78 of List I of the Seventh Schedule which reads:

> "78. Constitution and organisation (including vacations) of the High Courts except provisions as to officers and servants of High Courts: persons entitled to practise before the High Courts:

Under the scheme of the Act, it would appear that having constituted a High Court for the new State of Bombay under sub-s.

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(1) of s. 49 of the Act and conferred jurisdiction on it under s. 52 in relation to the territories of the new State, Parliament left it to the various high Constitutional functionaries designated in the three sub-sections of s. 51 of the Act to determine the place where the principal seat of the High Court should be located and places where permanent Bench or Benches of the High Court may be established or where the Judges and Division Courts of the High Court may also sit. on the reorganization of the States as from the appoint day, i.e. November 1, 1956, the territories of the new State of Bombay formed under s. 8 of the Act and with it the jurisdiction of the High Court was considerably extended. The merger of the new territories of the Vidarbha region of the former State of Madhya Pradesh and the Marathwada region of the erstwhile State of Hyderabad together with the Saurashtra region of the newly constituted State of Gujarat was an additional source of strength of the High Court. It became necessary for the more convenient transaction of judicial business to establish, as from the appointed day, two Benches of the High Court at Nagpur and Rajkot to deal with matters arising from Vidarbha and Saurashtra regions respectively. The formation of the separate State of Gujarat in 1960 under s. 3 of the Bombay Reorganization Act, 1960 resulted in severance of ties not only with the Saurashtra region but also with the Gujarat districts over which the High Court had exercised jurisdiction for about a century. The High Court of Bombay therefore underwent a major transformation in 1956 when the

bilingual State of Bombay was formed under s. 8 of the Act and then again in 1960 when with the formation of a separate State of Gujarat under s. 3 of the Bombay Reorganization Act, the residuary State of Bombay was to be known as the State of Maharashtra. Nagpur which ceased to be the seat of the High Court of the new State of Madhya Pradesh, was given a Bench by an order issued by the then Chief Justice of the High Court under sub s. (3) of s. 51 of the Act. The arrangement was made permanent by s. 41 of that Act which provided for the establishment of a permanent Bench at Nagpur to deal with cases arising out of the Vidarbha region. It was a solemn assurance given to the people of the Marathwada region of the erstwhile State of Hyderabad by cl. (7) of the Nagpur Pact that the provision with regard to the establishment of a permanent Bench at Nagpur shall also apply mutatis mutandis to the Marathwada region.

There has been a long-standing demand ever since the formation of the bilingual State of Bombay under s. 8 of the Act for the establishment of a permanent Bench of the Bombay High Court at
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Aurangabad under sub-s. (2) of s. 51 of the Act for the disposal of cases arising out of the Marathwada region of the State of Maharashtra and the matter is still under the active consideration of the Central Government. Pending the decision of the Central Government regarding the establishment of a permanent Bench of the High Court under sub-s. (2) of s. 51 of the Act at Aurangabad for the Marathwada region, the Chief Justice of the Bombay High Court issued the impugned order for the establishment of a Bench at Aurangabad with effect from August 27, 1981.

The only other point to be considered, and this was the point principally stressed in this appeal, is whether the power conferred on the Chief Justice under sub-s. (3) of s. 51 of the Act to appoint a place or places where the Judges and Division Courts may also sit, does not include a power to establish a Bench or Benches at such place or places, nor that he had any power or authority thereunder to issue administrative directions for the filing or institution of proceedings at such a place. There is quite some discussion in the judgment of the High Court on the distinction between the "sittings" of the Judges and Division Courts and the "seat" of the High Court and after going into the history of the constitution of the various High Courts in India and the Letters Patent constituting such High Courts, the High Court holds that the exercise of the power by the Chief Justice under sub-s. (3) of s. 51 of the Act is bad in law as it brings about a territorial bifurcation of the High Court. According to the High Court, the Judges and Division Courts at Aurangabad were competent to hear and decide cases arising out of the districts of the Marathwada region assigned to them by the Chief Justice, but the Chief Justice had no power or authority under sub s. (3) of s. 51 of the Act to issue administrative directions for the filing or institution of proceedings at such a place. The judgment of the High Court mainly rests on the decision of the Kerala High Court in Manickam Pillai Subbayya Pillai v. Assistant Registrar, High Court Kerala, Trivandrum(1) and the minority view of Raina, J. in Abdul Taiyab Abbasbhai Malik & Ors. v. The Union of India & Ors.,(2) following the Kerala view.

It is not necessary for our purposes to go into the distinction sought to be drawn between the "sittings" of the Judges and Division Courts at a place and the "seat" of the High Court. It is
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difficult to comprehend how the Chief Justice can arrange for the sittings of the Judges and Division Courts at a particular place unless there is a seat at that place. It may be true in the juristic sense that the seat of the High Court must mean "the principal seat of such High Court," i.e. the place where the High Court is competent to transact every kind of business from any part of the territories within its jurisdiction. It is impossible to conceive of a High Court without a seat being assigned to it. The place where it would sit to administer justice or, in other words, where its jurisdiction can be invoked is an essential and indispensable feature of the legal institution, known as a Court. Where there is only one seat of the High Court, it must necessarily have all the attributes of the principal seat. But where the High Court has more than one seat, one of them may or may not be the principal seat according to the legislative scheme. It is both sound reason and commonsense to say that the High Court of Bombay is located at its principal seat at Bombay, but it also has a seat at the permanent Bench at Nagpur. When the Chief Justice makes an order in terms of sub-s. (3) of s. 51 of the Act that Judges and Division Courts of the High Court shall also sit at such other places, the High Court in the genetic sense has also a seat at such other places. We may drew some analogy from the provisions of Art. 130 of the Constitution which reads:

> "130. The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint."

It is necessary to emphasize that besides administering justice, the High Court has the administrative control over the subordinate judiciary in State. The High Court must necessarily carry on its administrative functions from the principal seat, i.e. the place where the High Court transacts every Kind of business in all its capacities. The High Court as such is located there, but it may have more than one seat for transaction of judicial business. The constitution and structure of the High Court depends on the statute creating it. The decision in Nasiruddin v. State Transport Appellate Tribunal(1) is not directly in point as it turned on the construction of the provisions of the U.P. High Courts (Amalgamation) order, 1948. It is however an authority for the proposition that after the
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amalgamation of the High Court of Allahabad and the Chief Court of Oudh, the two High Courts ceased to exist and became Benches of the newly constituted High Court by the name of the High Court of Judicature at Allahabad. Further, the Court held that a case "instituted" at a particular Bench had to be "heard" at that Bench. It recognized that there can be two seats of the High Court without a principal seat.

It must here be mentioned that provisions similar to sub-s.(3) of s. 51 of the Act existed in almost all the Letters Patent or the Acts under which the various High Courts have been constituted. While introducing the Bill of 1861 in the British Parliament for the establishment of the High Courts for the Bengal Division of the Presidency of Fort William and also at Madras and Bombay, Sir Charles Wood, Secretary of State for India, laid stress on the advantage of the Judges of the new Courts going on circuit to try criminal cases. He said:

> "Now according to the provisions of this Bill, the Judges of the Supreme Court may be sent on circuit

throughout the country.....It may be impossible in a country like India to bring justice to every man's door, but at all events the system now proposed will bring it far nearer than at present."

When we examine the constitution of the various High Courts in India, one thing is clear that whenever a High Court was established by Letters patent under s. 1 of the Indian High Courts Act, 1861 called the Charter Act, or under s. 113 of the Government of India Act, 1935, the High Court was created and established at a particular place mentioned in the Letters Patent. S. 1 of the Charter Act provided that it shall be lawful for Her Majesty, by Letters Patent under the great seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William at Bengal for the Bengal Division of the Presidency of the Fort William, and by like Letters Patent, to erect and establish like High Courts at Madras and Bombay for these Presidencies respectively. In pursuance of these provisions by Letters Patent issued by Her Majesty in 1862, the Chartered High Courts of Calcutta, Madras and Bombay were established. In virtue of the powers conferred by s. 16 of the Act the Crown by Letters Patent established in 1866 at Agra a High Court of Judicature for North-Western Provinces for the Presidency of Fort William, to be called a High Court of Judicature for North
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Western Provinces. The seat of the High Court for the North Western Provinces was shifted from Agra to Allahabad in 1869 and its designation was altered to the High Court of Judicature at Allahabad by Supplementary Letters Patent issued in 1919 in pursuance of s. 101 (5) of the Government of India Act, 1915. The expression "erect and establish" in relation to a High Court meant nothing more than to indicate the establishment of the High Court at a particular place where the High Court was competent to transact every kind of business arising from any part of the territory within its jurisdiction.

Cl. 31 of the Letters Patent for the High Court of Calcutta provides for "exercise of jurisdiction elsewhere than at the ordinary place of sitting of the High Court" and it reads as follows:

"And we do further ordain that whenever it shall appear to the Governor General in Council convenient that the jurisdiction and power by these our Letters Patent, or by the recited Act, vested in the said High Court of Judicature at Fort William in Bengal, should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court, or at several such places by way of circuit, the proceedings in cases before the said High Court at such place or places shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India."

The Letters Patent for the High Courts of Madras and Bombay are mutatis mutandis in almost the same terms. Cl. 31 of these Letters Patent similarly provided for "exercise of jurisdiction elsewhere than at the ordinary place of sitting of the High Court." It would appear therefrom that the power to direct that the High Court shall sit at a place or places other than the usual place of sitting of these High Courts was a power of the Governor-General in Council, and the proceedings in cases before the said High Courts at such place or places were to be regulated by any law relating

thereto which had been or might be made by competent legislative authority for India.

It is clear upon the terms of s. 51 of the Act that undoubtedly the President has the power under sub-s. (1) to appoint the principal

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seat of the High Court for a new State. Likewise, the power of the President under sub-s. (2) thereof, after consultation with the Governor of a new State and the Chief Justice of the High Court for that State, pertains to the establishment of a permanent Bench or Benches of that High Court of a new State at one or more places within the State other than the place where the principal seat of the High Court is located and for any matters connected therewith clearly confer power on the President to define the territorial jurisdiction of the permanent Bench in relation to the principal seat as also for the conferment of exclusive jurisdiction to such permanent Bench to hear cases arising in districts falling within its jurisdiction. The creation of a permanent Bench under sub-s. (2) of s. 51 of the Act must therefore bring about a territorial bifurcation of the High Court. Under sub-s. (1) and sub-s. (2) of s. 51 of the Act the President has to act on the advice of the Council of Ministers as ordained by Art. 74(1) of the Constitution. In both the matters the decision lies with the Central Government. In contrast, the power of the Chief Justice to appoint under sub-s.(3) of s. 51 of the Act the sittings of the Judges and Division Courts of the High Court for a new State at places other than the place of the principal seat or the permanent Bench is in the unquestioned domain of the Chief Justice, the only condition being that he must act with the approval of the Governor. It is basically an internal matter pertaining to the High Court. He has full power, authority and jurisdiction in the matter of allocation of business of the High Court which flows not only from the provision contained in sub-s.(3) of s. 51 of the Act but inheres in him in the very nature of things. The opinion of the Chief Justice to appoint the seat of the High Court for a new State at a place other than the principal seat under sub-s. (3) of s. 51 of the Act must therefore normally prevail because it is for the more convenient transaction of judicial business. The non obstante clause contained in sub-s. (3) of s. 51 given an overriding effect to the power of the Chief Justice. There is no territorial bifurcation of the High Court merely because the Chief Justice directs under sub-s. (3) of s. 51 of the Act that the Judges and Division Courts shall also sit at such other places as he may, with the approval of the Governor, appoint. It must accordingly be held that there was no territorial bifurcation of the Bombay High Court merely because the Chief Justice by the impugned notification issued under sub-s. (3) of s. 51 of the Act directed that the Judges and Division Courts shall also sit at Aurangabad. The Judges and Division Courts at Aurangabad are

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part of the same High Court as those at the principal seat at Bombay and they exercise jurisdiction as Judges of the High Court of Bombay at Aurangabad. The Chief Justice acted within the scope of his powers. We see no substance in the charge that the impugned notification issued by the Chief Justice under sub-s. (3) of s. 51 of the Act was a colourable exercise of power.

As to the scope and effect of sub-s. (3) of s. 51 of the Act, the question came up for consideration before Chagla, C.J. and Badkas, J. in Seth Manji Dana v.

Commissioner of Income-tax, Bombay & Ors.(1) decided on July 22, 1958. This was an application by which the validity of r. 254 of the Appellate Side Rules was challenged insofar as it provided that all income-tax references presented at Nagpur should be heard at the principal seat of the High Court at Bombay, and the contention was that the result of this rule was that it excluded income-tax references from the jurisdiction of the High Court functioning at Nagpur. In repelling the contention, Chagla, C. J. observed :

> "Legally, the position is quite clear, under section 51 (3) of the State Reorganization Act, the Judges sitting at Nagpur constitute a part of the High Court of Bombay. They are as much a part of the High Court of Bombay, and if we might say so distinguished part of the High Court of Bombay, as if they were sitting under the same roof under which Judges function in Bombay. All that happens is that the Chief Justice, under the powers given to him under the Letters Patent distributes the work to various Judges and various Divisional Benches, and acting under that power he distributes certain work to the Judges sitting at Nagpur."

He then continued:

> "All that rule 254 does is to permit as a matter of convenience certain matters to be presented at Nagpur to the Deputy Registrar. If rule 254 had not been enacted, all matters would have to be presented at Bombay and then the Chief Justice would have distributed those matters to different Judges, whether sitting in Bombay or at Nagpur. It is out of regard and consideration for the

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> people of Vidarbha and for their convenience that this rule is enacted, so that litigants should not be put to the inconvenience of going to Bombay to present certain matters. Therefore, this particular rule has nothing whatever to do either with section 51 (3) of the States Reorganisation Act or with the Constitution."

With regard to r. 254, he went on to say :

> "Now, having disposed of the legal aspect of the matter, we turn to the practical aspect, and let us consider whether this rule inconveniences the people at Nagpur. If it does, it would certain call for an amendment of that rule. Now, there is particular reason why all Income Tax References should be heard in Bombay and that reason is this. The High Court of Bombay for many years, rightly or wrongly, has followed a particular policy with regard to Income Tax References and that policy is that the same Bench should hear Income Tax References, so that there should be a continuity with regard to the decisions given on these References. I know that other High Courts have referred to this policy with praise because they have realised that the result of this policy has been that Income Tax Law has been laid down in a manner which has received commendation from various sources. The other reason is and we hope we are not mistaken in saying so that the number of Income Tax References from Nagpur are very few. If the number was large, undoubtedly a very strong case would be made out for these cases to be heard at Nagpur."

He then concluded :

> "After all, Courts exist for the convenience of the litigants and not in order to maintain any particular system of law or any particular system of

administration. Whenever a Court finds that a particular rule does not serve the convenience of litigants, the Court should be always prepared to change the rule."

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The ratio to be deduced from the decision of Chagla, C. J. is that the Judges and Division Courts sitting at Nagpur were functioning as if they were the Judges and Division Courts of the High Court at Bombay.

In Manickam Pillai's case (supra), the Kerala High Court held that the curtailment of the territorial jurisdiction of the main seat of the High Court of a new State is a necessary concomitant to the establishment of a permanent Bench under sub-s. (2) of s. 51 of the Act while contrasting sub-s. (3) with sub-s. (2). There, a question arose whether the temporary Bench of the High Court of Kerala with its principal seat at Ernakulam created by the Chief Justice at Trivandrum by an order issued under sub s. (3) of s. 51 of the Act was not the High Court of Kerala, and the Judges and Division Courts sitting at Trivandrum were precisely in the same position as Judges and Division Courts sitting in the several court-rooms of the High Court at its principal seat in Ernakulam. In other words, the contention was that the Judges and Division Courts sitting at Trivandrum could only hear and dispose of such cases as were directed to be posted before them by the Chief Justice but no new case could be instituted there. Raman Nayar, J. (as he then was) speaking for the Court held that the Trivandrum Bench was not the High Court of Kerala and the Judges and Division Courts sitting at Trivandrum could hear and dispose of only such cases as may be assigned to them. With respect, we are of the opinion that the view expressed by Chagla, C. J. in Manji Dana's case, (supra), is to be preferred. Chagla, C. J. rightly observes that the Judges and Division Courts at a temporary Bench established under sub-s. (3) of s. 51 of the Act function as Judges and Division Courts of the High Court at the principal seat, and while so sitting at such a temporary Bench they may exercise the jurisdiction and power of the High Court itself in relation to all the matters entrusted to them.

In the result, the appeal must succeed and is allowed. The judgment and order passed by the High Court is set aside and the writ petition filed by respondent No. 1 is dismissed. In terms of the order passed by us on May 4, 1982, we direct that in accordance with the notification issued by the Chief Justice of the High Court of Bombay dated August 27, 1981, the sittings of the Judges and Division Courts may be held and continue to be held at Aurangabad with full and normal powers to entertain and dispose of all matters

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arising out of the Marathwada region, that is to say, the area comprising the districts of Aurangabad, Bhir, Jalna, Nanded, Osmanabad and Parbani. All cases pertaining to that region and pending as on May 4, 1982 at the main seat of the High Court at Bombay shall be dealt with and disposed of as the Chief Justice of the High Court may direct. consistently with the terms of the aforesaid notification dated August 27, 1981.

There shall be no order as to costs.

H. L. C. Appeal dismissed.

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