

(1959) 01 GAU CK 0002

In the Gauhati High Court

Case No : Civil Rule No's. 120, 121, 122, 138, 139 and 141 of 1958

Anil Kumar Bhattacharjee and Others

APPELLANT

Vs

Deputy Commissioner and Collector and Others

RESPONDENT

Date of Decision : 23-01-1959

Acts Referred:

Assam Fixation on Ceiling of Land Holdings Act, 1956 — Section 13, 18, 2, 6, 7
Constitution of India, 1950 — Article 14, 19(1), 19(5), 20, 245

Citation : AIR 1959 Guw 147

Hon'ble Judges : Sarjoo Prosad, C.J;G. Mehrotra, J

Bench : Division Bench

Advocate : S.K. Ghose, J.P. Bhattacharjee and N.M. Lahiri, in Civil Rule Nos. 120, 121 and 122 of 1958, N.M. Lahiri, in Civil Rule Nos. 139 and 141 of 1958 and S.N. Sen, J.C. Medhi, K. Buzarbarua and B.K. Goswami, in Civ. Rule 138 of 1958, for the Appellant; S.M. Lahiri, General and D.N. Medhi, Sr. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sarjoo Prosad, C.J.—The common question, which we have to decide in these applications is about the constitutional validity of the Assam Fixation of Ceiling on Land Holdings Act, 1956 (Assam Act I of 1957), which came into force on 15-2-1938 and received the assent of the President on 7-12-1956.

2. The attack on the legislation is directed on various grounds. It is urged : that the impugned Act is not within the legislative competence of the State Legislature, as it is not covered by any of the items in either the State or the Concurrent Legislative list given in the Constitution of India; that it purports to acquire private property of individuals without any public purpose and without providing for adequate payment of compensation and puts a limitation on the right to acquire, hold or dispose of property and is, therefore, hit by Articles 19 and 31 of the Constitution; that the provisions in regard to payment of compensation are merely illusory and the legislation is a colourable piece of legislation as under cover of putting a ceiling on land holdings, it purports to

acquire property without giving adequate opportunity to the persons affected to show cause against the acquisition or even to make such acquisition justiciable.

Some of the provisions of the said Act are also assailed on the ground that they offend against Article 14 of the Constitution and the other provisions relating to fundamental rights and amount to unauthorised delegation of essential legislative powers. It is further argued that as a measure of agrarian reform the legislation is wholly unnecessary; and although the legislation in form is intended to benefit the tenants, for all practical purposes it does not in fact improve the conditions and advantages, which they already enjoy under the existing laws of the land; on the contrary, in several aspects it is submitted, the impugned Act is calculated to prejudice the interest of the tenants.

It is, therefore, prayed that the impugned Act may be declared ultra vires the State Legislature and that the authorities should be restrained by appropriate writs from taking any action against the petitioners on the authority of the said enactment. In some of the cases, it is also urged that the Act does not offer adequate protection to the rights of the mortgagee or of the tenant on the land, who are not given any opportunity of being heard prior to the notice of acquisition.

3. The Respondents claim that the Act in question is essentially an agrarian legislation, complementary to the Assam State Acquisition of Zamindaries Act, 1951 (Assam Act XVIII of 1951), and brought into being with the object of removing social inequities in the matter of land tenures and for a fair distribution of ownership and control of agricultural lands, which would best serve the common interest of the public, thereby eliminating concentration of wealth and means of production, which are impediments to the economic and agricultural development of the country.

All this has been done in pursuance of the general policy of the Planning Commission on land reforms, throughout the Indian Union. According to the Respondents, the Act, under challenge, purports to remove intermediaries between the actual tiller of the soil and the State by encouraging peasant proprietorship, with a view to improve the economic and social conditions of cultivators. It is also submitted that the Act in question is within the competence of the State Legislature and is covered by item 18 of List II and Item 42 of List III of the Seventh Schedule to the Constitution; the President having given his assent to the legislation, it is fully protected by Article 31A of the Constitution and as such any question of its repugnancy to Articles 14, 19 and 31 of the Constitution does not arise.

The other attacks on the legislation have also been controverted by the learned Advocate-General, who appears for the State. He submits that the Act makes ample provision for payment of compensation and the acquisition of land in excess of the prescribed limit is in public interest; and in any case, it does not offend against any of the fundamental rights enshrined in the Constitution.

4. Before I embark upon an examination of the points raised at the Ear, it is necessary to refer to some of the salient features of the impugned legislation, in order to have an idea of the indention and objects of the statute and the purpose which it is intended to serve. The Preamble to the Act indicates that the legislation has been enacted to impose ""limits on the amount of land that may be held by a person."" Section 2 lays down the exceptional cases, to which the provisions of the Act do not apply including "lands held for special cultivation of tea or purposes ancillary thereto."

Section 3 gives the definitions of various expressions or terms used in the body of the legislation. I may refer to some of those definitions which are relevant here. "Land" has been defined in the section to mean "land which is or may be utilised for agricultural purposes or purposes subservient thereto, and includes the sites of buildings appurtenant to such land." The word "land-holder" has been defined as having the same meaning in the Act, which is assigned to it in the Assam Land and Revenue Regulation, 1886; the term "landlord" has been defined to mean a person immediately under whom a tenant holds, but does not include the Government; and the term "owner" includes proprietor, land-holder or settlement holder as defined in section 3 of the said Regulation, excepting Government.

The expression "public purpose" includes "a purpose connected with settlement of land with actual cultivator or co-operative farming society." Next comes Section 4, which is the crucial section and fixes the ceiling on existing holding. It provides that "notwithstanding anything to the contrary in any law, custom or agreement, no person, either by himself or through any member of his family, shall be entitled to hold as owner or tenant, lands which exceed the limit of 150 bighas in the aggregate."

Sub-section (3) of Section 4, as amended by Assam Act XVII of 1957, further provides that "no benami transfer made after the twelfth day of November, 1955, shall be taken into account in determining the limit upto which the transferor shall be entitled to hold lands under sub-sec. (1) above, and in such case the limit and the excess land of the transferor shall be determined as if the transfer has not taken place." Section 5 provides for submission of returns by persons holding land in excess of the ceiling to the Collector, giving the particulars of all their lands in a prescribed form and stating therein their selection of plot or plots of lands, not exceeding in the aggregate the limit fixed, which he desires to retain.

Section 6 further provides that if a return is not submitted and the person concerned does not intimate his selection within a prescribed period as required u/s 5, the Collector may obtain information through prescribed agency and select the plot or plots of lands which such person is entitled to retain and the plot or plots which are in excess; and u/s 7, the Collector on the basis of those materials, is to prepare a draft statement showing, among other particulars, the total area of lands held by such persons on their own behalf and on behalf of

their family, the specific plots selected for retention with them, and also the lands in excess of the limit fixed.

The draft statement as provided is then required to be published in relevant places specified in the section and a copy thereof is also to be served on the person or persons concerned; and if any objection is received within thirty days of the service, the objections are to be considered by the Collector, after giving the objector an opportunity of being heard. The section further lays down that a person aggrieved by an order of the Collector under the foregoing provision may within thirty days of the order, prefer an appeal to the State Government.

It also provides that the State Government may of its own motion call for any record relating to the draft statement at any time within 60 days of the order of the Collector and after giving the person or persons concerned an opportunity for being heard, pass such orders as it deems fit. The order of the State Government or the Collector, when no appeal is preferred, is to be final; and the draft statement so finalised, when republished in the manner already indicated will not be open to question in any Court of law.

The Statement (subject to the provisions of Section 19) is then submitted to the State Government for necessary action; and then on the authority of Sec. 8, the State Government shall acquire such excess land by publishing in the official Gazette a notification to the effect that such lands are required for a public purpose. The above publication shall be conclusive evidence of the notice of acquisition to the person or persons holding such lands; and on publication of the notification, u/s 9 of the Act all rights, title and interests of such person or persons in such excess lands shall stand transferred to the State Government with effect from the date of publication of the notification, free from encumbrances created by him or them.

Sections 10 and 11 lay down the procedure to be followed by the Collector to serve a copy of the notification on the persons holding such excess lands and taking possession of the same. Then follow various provisions laying down the principles of compensation and the manner in which it is to be paid. Section 12 shows that the compensation is to be apportioned between the owner and the tenant, if any under occupation, in certain proportions.

It is important to notice that u/s 13 of the Act, when the land acquired is subject to a mortgage or charge, the creditors are to be paid out of the compensation money to the extent of the claim proved before the Collector or any other officer empowered in this behalf; but if the total claim exceeds the compensation amount, then the creditors are entitled to proportionate claims. A right of appeal is provided u/s 31 of the Act against orders passed under Sections 12 and 13, which are otherwise final and not open to question in any Court (vide; Section 32),

We have then a separate Chapter in the Act (Chapter III) for disposal and settlement of the excess land acquired u/s 8 of the Act. u/s 16, if there is any

cultivating tenant in occupation of the land acquired from an owner, he is given the option of taking settlement of such land on condition, that the area of the land so settled, together with any other lands held by him or any member of his family, either as tenant or as owner, does not exceed the ceiling fixed u/s 4; and further that he pays to the State) Government a compensation not exceeding the amount of compensation payable by the Government for acquisition thereof, against which any proportionate amount payable to him is to be set off.

In the land so settled with the tenant, he acquires the status of a land-holder as defined in the Assam Land and Revenue Regulation, 1886, or of an occupancy tenant as defined in the Goalpara Tenancy Act, 1929 or the Sylhet Tenancy Act, 1966, as the case may be. Where the excess land is acquired from a tenant, the State Government is entitled to settle it with the sub-tenant, if there is any in occupation, subject to the above ceiling and where there are no sub-tenants, with any person falling within the purview of the various clauses mentioned in Section 17 of the Act in their preferential order.

These clauses refer to a cultivator who has been rendered landless, a co-operative farming society consisting of actual landless cultivators and any landless cultivator. u/s 18, if a tenant, who is in occupation of any land acquired by the Act, but refuses to obtain settlement of such land in the manner prescribed in Section 16, shall acquire no right, title and interest in such land and shall be liable to ejectment. Section 20 of the Act puts a bar to any further acquisition of land beyond the ceiling and u/s 21, there is a penalty provided for contravention thereof.

It is not very relevant to refer to some of the other provisions of the Act, except Sections 31 and 32 to which reference has been already made earlier. Section 31 provides for appeals to a District Judge against any orders passed under Sections 12 and 13 of the Act, relating to assessment and payment of compensation; and u/s 32, except as otherwise expressly provided, no decision or order made in exercise of any power conferred by or under the provisions of the Act is to be called in question in any Court.

5. Even a casual review of these provisions leaves no doubt that while putting a ceiling on land holdings, the Act has necessarily to provide for the acquisition by the State of lands held beyond the ceiling and for proper distribution thereof to deserving persons. If the legislation had not so provided, the sole object of putting a ceiling on land holdings would have been frustrated and the legislation would not have served any useful purpose.

The provisions in the Act for acquisition of land, for payment of compensation and for fair distribution of land to deserving persons with a view to increase wealth and production are necessary corollaries to the main objective which the Act has in view, as indicated in its preamble of placing a ceiling on land holding.

The impugned legislation, therefore, serves in substance a four-fold purpose : (i) it provides the maximum limit beyond which no person, landlord or tenant is

entitled to hold lands; (ii) it provides for acquisition of lands in excess of the limit by the State on payment of compensation to the owners; (iii) and then for settlement of these lands with the tenants, if there are any, in order to remove intermediaries between the State and the tillers of the soil and create peasant proprietors; and (iv) lastly where there are no such tenants, with other deserving and landless persons.

Mr. Sen, from whom we had the benefit of the leading argument in these cases, has contended that the whole object of the Act is contained in the preamble itself and the Court should not look beyond the preamble to ascertain the purpose of the legislation. In support of his contention, he has relied on certain passages in *Craies on Statute Law*. It cannot be doubted that the "preamble precedes the words of enactment, and is in the nature of a recital of the facts operative on the mind of the law-giver in proceeding to enact."

It may also be assumed that the *via media* suggested by the learned Jurist is "to regard the preamble as conclusive in so far as it elucidates the intention" of the Legislature; but the preamble alone cannot be held to be conclusive of the intent and purpose of the legislation. The object, purpose and intent of the legislation have to be gathered from the various provisions of the Statute itself and not merely from an isolated examination of the preamble, which may indicate the primary object in view, but may not refer in detail to certain other objects, which are incidental and essential to the working out of the primary object of the legislation.

As pointed out by Mahajan, J., in the *The State of Bihar Vs. Sir Kameshwar Singh*, "it is unnecessary to state in express terms in the statute itself the precise purpose for which property is being taken provided from the whole tenor and intendment of the Act it could be gathered that the property was being acquired either for purposes of the State or for purposes of the public and that the intention was to benefit the community at large."

It is, therefore, open to this Court to judge the purpose and intention of the legislation from the various provisions contained in the Act, and this makes it easier to decide on the question of its legislative competence.

6. The legislation, as I have shown, is of a composite character. It provides for a limit of land tenure and also for acquisition by the State of lands in excess of that limit. As such, there was ample legislative authority in the State Legislature to enact the law under Entry 18 of the State Legislative list and Entry 42 of the Concurrent Legislative List read with Articles 245 and 246 of the Constitution of India. Item No. 18 of List II, which is the State List in the Seventh Schedule to the Constitution, provides that the State Legislature has power to legislate in respect of land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land, etc., while Entry 42 of the Concurrent List, List III in that Schedule, provides for legislation in respect of acquisition and

requisitioning of property in regard to which both the State Legislature and the Parliament have authority to make laws, as provided by Clause (2) of Article 246. It is now well settled that these entries in the legislative lists have to be construed in their widest amplitude. The authority of the State Legislature, therefore, to make laws on these subjects cannot be questioned, unless the legislation is found to be repugnant to some of the other provisions in the Constitution. The main attack of Mr. Serais based upon Clause (2) of Article 31 of the Constitution; but, even if the statute were not saved under Article 31A of the Constitution, the compulsory acquisition of property envisaged by the Act is for a public purpose and the Act specifies the principles on which, and the manner in which the compensation is to be determined and paid to the owners of the lands to be acquired. The public purpose underlying the Act is quite apparent inasmuch as it aims not only at putting a ceiling on land holding, but also at removing intermediaries between the tiller of the soil and the State, creating peasant proprietors, and making a distribution of lands to landless persons, thereby seeking to increase wealth and production to the larger interest of the community. It is, therefore, wrong to suggest that the legislation does nothing more than deprive A of his private property in order to give it to B: which only means robbing Peter to pay Paul. If this were true, there would be of course no public purpose at all, though in some cases acquisition Or requisition of property even for an individual may be for a public purpose. It is not so much the use of the property by the public which matters, as the acquisition being useful to the public. If the purpose for which the acquisition is made results in benefit or advantage to the public, it is a "public purpose" though the acquisition may be in favour of a private corporation or of individuals. It is not of the essence of the public purpose that the entire community or even a considerable portion thereof should directly enjoy or participate in the acquisition. As observed in *Hamabai Framjee Petit v. Secy. of State for India in Council*, 42 IA 44 : AIR 1920 PC 20 the phrase "public purpose," whatever it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals is directly and vitally concerned. I also agree that where property is acquired in exercise of the right of "eminent domain" it can be done only for a public purpose : this condition is the content of the power itself and Article 31(2) of the Constitution is based on that assumption. It is, however, beyond question now that a legislation which aims at agrarian reforms by nationalising the means of production, or eliminating concentration of lands in the hands of a few individuals or even at removing intermediaries between the Government and the tillers of the soil so as to increase wealth and production is a legislation for a public purpose. Under the Act itself, "public purpose" includes a purpose connected with settlement of land with actual cultivator Or co-operative farming society. The legislation, therefore, which is impugned before us is not open to challenge on the ground of lack of public purpose. The Act also lays down the principles on which compensation is to be determined and the manner of its payment. Under Clause (2) of Article 31 itself, the adequacy or inadequacy of the compensation payable is not justiciable.

The argument that u/s 32 of the Act, the Courts are precluded from scrutinising whether any particular acquisition is with or without any public purpose and that a notification u/s 8 is conclusive of the matter has no substance, because any acquisition under the ambit of the Act must be held to be for such a purpose, as otherwise the action of the officer or officers concerned and responsible for it would be ultra vires the Act itself. We have already noted that the impugned Act has received the assent of the President. Therefore, it must be held that the Act is not repugnant to Article 31 of the Constitution.

7. The doctrine of colourable legislation has no application where there is ample legislative competence and the Legislature has proceeded to legislate on a field assigned to it under the Constitution. In that case, the legislation cannot be assailed as being colourable whatever the reasons behind the legislation. If the Legislature concerned has constitutional authority to pass a law in regard to a particular subject", it is not for the Courts to divine and scrutinise the policy, which led to the enactment; but, where in purporting to legislate on a particular field of legislation, the Legislature has done something, which lies beyond the ambit of its authority and has no rational bearing on the subject of the legislation, the doctrine of colourable legislation or legislative incompetence can be invoked to declare the provision ultra vires. Here, it would be futile to urge that the provision for acquisition of land in excess of the ceiling fixed by the Act had nothing to do with the object of putting a ceiling on land; in fact, the two objects are inter-twined and run through the gamut of the law, without which the legislation would be altogether useless. The principles on which the doctrine of colourable legislation rests have been elaborately expounded in the leading decision of the Supreme Court in *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, I had occasion to dwell on this subject at some length in my earlier decision in relation to the constitutionality of the Assam State Acquisition of Zamindaries Act, 1951, and the Supreme Court in affirming our decision in *Raja Bhairebendra Narayan Bhup Vs. The State of Assam*, reiterated the principle thus:

"It has been said that the impugned Act constitutes a colourable exercise of legislative power, for while it purports to specify the principles on which and the manner in which the compensation is to be determined and given, it actually makes provisions which result in illusory" compensation or no compensation at all. The doctrine of colourable legislation is relevant only in connection with the question of legislative competency as explained by this Court in *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, Here there is no question of any legislative incompetency. The gravamen of the present complaint is as to the quantum of compensation, which, in view of the Article 31A cannot be raised."

The decisions cited by Mr, Seta do not govern the present case. In *The State of Bihar Vs. Sir Kameshwar Singh*, the Supreme Court declared some of the sections of the Bihar Land Reforms Act, 1950 (Act 30 of 1950), to be void and inoperative on the ground that those provisions had really no connection with the

subject of the legislation. The only purpose of those provisions was to raise revenue and had no connection with land reforms for any public purpose.

8. I have tried to scan the various provisions of the Act and I find that none of those provisions offends against the Articles of the Constitution or is bad for illegal and wide delegation of powers. I may here deal with the charges levelled against some of the specific sections of the Act. It is contended that u/s 8 of the Act, the publication of the notification in the official Gazette is conclusive evidence of the acquisition being for a public purpose; and while an appeal is provided u/s 31 of the Act against the orders of compensation made under Sections 12 and 13, there is no such right of appeal against the order of acquisition which is final u/s 32 of the Act and is not open to question in any Court. It is, therefore, argued that the Act in effect makes the existence of a public purpose for any particular acquisition non-justiciable. I have already referred to this argument earlier. If the Act is not vitiated for lack of any public purpose, Section 8 cannot be questioned on that ground. The fact that in some individual case the provision may be abused by the Executive authorities is no ground for declaring the section to be ultra vires. The particular acquisition may be challenged as ultra vires the Act itself; and in any case, the legislation does not and cannot deprive this Court of the Constitutional power which it possesses of looking into such cases of abuse, if any. Besides, u/s 7(2) of the Act, there is provision for publication of a draft statement and of giving general and special notice so that objection may be presented within the period prescribed; and in case of any adverse order passed by the Executive officers, an appeal lies to the Government before the statement is finally published. These statutory safeguards may afford adequate guarantee against any abuse of power under the Act or executive high-handedness. A similar provision in the Assam State Acquisition of Zamindaries Act, 1951, was held valid both by this Court as also by the Supreme Court. Much reliance has been placed on the observations of Chakravarti, C.J. in *Satya Narayan Nathani Vs. State of West Bengal* and *Another*, It was a case of requisition of some premises under the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 (Act 5 of 1947).

The learned Judges in that case dismissed the appeal against the order of the single Judge of that Court refusing to issue a writ of mandamus as prayed for. The learned Chief Justice, however, observed that where the Act under which the requisition order was made is governed by Article 31(2) of the Constitution, the question whether the particular order made under it was actually supported by a public purpose as contemplated by the Act was also justiciable; the Legislature could not create a wall of immunity around orders made under that Act and exclude judicial scrutiny of such orders as to their existence or the character of the purpose. These observations, as I have shown, do not help the contentions in the present case.

9. It is urged that u/s 7 of the Act, there is no provision for service of notice,

either upon the mortgagee or upon the tenant, so that they are deprived of any opportunity of being heard in the matter of preparation of the draft statements contemplated by the section; and further, while the landlord is given the option u/s 6 of the Act of selecting the plot or plots which he desires to retain, there is no such choice either to the mortgagee or to the tenant. There appears to be some misconception as to the true import of these provisions. Section 6 applies both to tenant and landlord, so that if a tenant holds land in excess of the ceiling, he is as much liable to submit returns and entitled to make his choice as the landlord is. I shall come to the case of a tenant who holds less than the ceiling fixed, at a later stage. The mortgagee of course does not enjoy any such right; but the publication of the general notices under Sub-section (2) of Section 7, enables all those interested in the lands to raise such objections as can be legitimately raised and appeal against the disposal of those objections, if necessary under Sub-section (3). The interest of the mortgagee is that of an encumbrancer. It is true that u/s 9 of the Act, on the publication of the notification u/s 8, all rights, title and interests in the excess lands vest in the Government with effect from that date, free from encumbrances; but there is provision for payment of compensation to the mortgagee u/s 13 of the Act and, as I have already said, there is a right of appeal against any order passed under that section. If the acquisition of the interest is for a public purpose on payment of compensation, I do not see how the mortgagee can legitimately challenge the legislative authority to acquire.

10. I have been impressed with the argument addressed on Section 18 of the Act. Section 16 provides that if there is a cultivating tenant in occupation of the land acquired from an owner, then he shall have the option of taking settlement of such land, on payment of compensation; but if he does not take settlement of such land as prescribed, he shall acquire no right, title and interest in such land and shall be liable to ejectment. It is pointed out that the Act makes a serious discrimination between a cultivating tenant holding land under a landlord, who owns land more than the maximum; fixed under the Act and one who holds under a landlord having less than the maximum. In the former case, the interest of the cultivating tenant is put in serious jeopardy, if the landlord chooses to opt out of the tenant's land and retain the other portions of his own land; and if the cultivating tenant is so impecunious as not to be able to pay the amount of compensation claimed, he is liable to be thrown out of his land, for no fault of his own.

All these serious consequences follow without his ever having an opportunity to object at any stage of the proceedings. It is therefore, argued that the Act offends against Articles 14 and 19(1) of the Constitution and creates an unjust and inequitable situation for the small and even impoverished cultivating tenants and thereby defeats the very purpose which it pretends to serve, namely of benefiting that class. The above argument is quite plausible and there is much substance in the contention. Perhaps the Legislature might have done well to leave such tenants unaffected by the acquisition, subject to payment of fair rent

to the Government; but if the public purpose is to acquire land held in excess of the maximum and make those lands available for distribution to landless persons, they had to be acquired free from encumbrances and free of the subsisting tenancies, if any.

The object also appears to be to make those-tenants, owners of their own lands. There is enough scope in the Act for enabling such tenants to acquire-the landlords-interest on payment of a reasonable amount of compensation in easy instalments against which their own share, which is a major share, is to be set off; and in any case, under Clause (b) of Section 16(1), the amount payable cannot be any higher than the compensation paid by the State Government for acquisition thereof. I therefore, do not think that even section 18 offends against any of the provisions of the Constitution. If it did, it would have vitiated the Act itself, because, in my opinion, it is inextricably bound up with the other essential provisions of the Act. Incidentally, it has been also contended that the provision as to payment of compensation is illusory, because in making the acquisition, the State may pay nothing from the public exchequer, but it may realise the entire amount from the cultivating tenant. I do not see much in the point.

The legislation does provide for payment of compensation by the State Government to the owners of the lands so acquired; how later the Government would settle the lands and on what conditions and how it would recoup and replenish the amount paid does not affect the validity of the present legislation. In any event, the Government is not entitled to raise from the tenant more than the amount of compensation paid for the acquisition. It has been also contended that in respect of payment of compensation there is no distinction made in the Act" between the privileged class of tenant and an occupancy tenant, because under the local Land laws, the privileged tenant enjoys a higher status than that of any other class of tenant and is not liable to eviction by the landlord, except in very special circumstances mentioned in the law.

It is true that in the Act itself, there is no reference to the privileged tenant as such. For purposes of compensation, he has probably been equated with an occupancy tenant u/s 12(2) (i) of the Act. The compensation payable to the occupancy tenants in case of cultivable land is 35 times the annual land revenue and that to any other tenant, not an occupancy tenant, 30 times the "land revenue, out of the aggregate compensation, which is 50 times the land revenue. The tenant has I thus the major share of the compensation. The fact that no special consideration has been shown to the privileged tenant in matters of compensation, in preference to the occupancy tenant, will not necessarily invalidate the legislation.

In the ultimate analysis an essential part of the scheme of the Act appears to be to make them owners of the lands which they cultivate: and any distinction existing between these variouls classes of tenants vis-a-vis the landlord was intended to be wiped off. Therefore, the provision is not repugnant to Article 14 of the Constitution.

11. In some of these cases, it has been also suggested that the legislation impugned puts a bar on future acquisition of property (Vide Section 20 of the Act) and makes certain offences penal under the Act and is, therefore, hit by Articles 19(1)(f) and 20 of the Constitution. It is urged that the petitioners are thus deprived of the right to dispose of land which may be unproductive and unprofitable and replace them by acquisition of lands, which may be not only fertile, but suitable for rearing and cultivating special varieties of cash crops.

It is, therefore, said that the restrictions imposed on the right to acquire, hold and dispose of property are quite unreasonable and are hit by Article 19(1)(f) of the Constitution and cannot be saved under Clause (5) of that Article. The argument, in my opinion, is misconceived. The Act does not prohibit disposal or acquisition of land so long as the holder thereof keeps within the bounds of the maximum, limit prescribed by the Act: within the limit, transfers and acquisitions can freely take place; and having regard to the purposes of the Act, it cannot be maintained that the restrictions placed by the Act are unreasonable and not in the interest of the general public. I do not see how the Act offends against Article 20 of the Constitution, if the Act is otherwise a valid law in force and the penalties provided relate to the violation of its provisions.

12. The argument regarding wide and illegal delegation of powers to the Executive authority centred on the interpretation of Sections 6, 7 and 8 of the Act, with which I have already dealt earlier. It is also suggested in this context that u/s 2(c) (i) of the Act, the provisions of the Act do not apply to lands held for special cultivation of tea or "purposes ancillary thereto." It is argued that these purposes are not explained and the decision on those points is largely left to Executive discretion.

It is also pointed out that the definition of "land" as given in the Act is vague and here again the decision as to the nature of lands "subservient to" agricultural purposes are left to executive bodies. The above expressions are now commonly in vogue in analogous statutes and can be easily understood with reference to their context. On matters of detail discretion has to be left to the Executive or Administrative authorities and the Legislature could not be expected to provide for each and every contingency so long as it lays down the general principles of the law.

It cannot be reasonably contended that on these grounds there has been any delegation of legislative power to the Executive authorities. After having carefully examined the above contentions, I come to the conclusion that the Act impugned is not hit by any of the provisions of the Constitution and is not repugnant to them. I have been persuaded to enter into all that discussion because of the elaborate arguments addressed at the Bar, though I am inclined to agree with the learned Advocate-General that if the legislation is held to be protected under Article 31A of the Constitution, much of the discussion would be unnecessary.

It cannot be doubted at the same time that a legislation of the type, which

serves to deprive individuals of their rights and has a far-reaching effect on social and economic reconstruction, demands careful scrutiny from those charged with the duty of protecting rights and liberty and any pains taken over a subject of such importance cannot be said to be ill spent.

13. I will, therefore, now take up the question whether the impugned legislation is protected by Article 31A of the Constitution. The Article provides inter alia that notwithstanding anything contained in Article 13, no law providing for the acquisition by the State of any "estate or of any rights therein" or the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31, provided that such a law made by the Legislature of a State has received the assent of the President.

In the said Article, the expression "estate" in relation to any local area, has the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and includes any jagir, inam or muafi or other similar grants. The expression "rights" in relation to an estate has also been defined in that Article to include "any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue".

Thus the words "any rights therein" have a very wide sweep and cover the rights of proprietors, and raiyats in the "estate". We are not directly concerned here with the acquisition of "estates", as with "the acquisition of lands belonging to landlords and tenants in those estates". It is clear on the terms of the legislation that these acquisitions are to be made by the State; Government and on the notification being published u/s 8 of the Act, the Lands acquired vest in the State.

There is also no question that the impugned legislation has received the assent of the President. The only point, therefore, which remains is whether the acquisition of the landlord's or the tenant's interest in the lands as contemplated by the legislation falls within the meaning of the expressions "rights in estate" or "extinguishment or modification of any such rights". As shown above, the definition of the word "rights" in relation to an estate, as given in Article 31A is very comprehensive and includes any rights vesting in a proprietor or raiyat or other intermediary in the "estate."

It cannot be seriously disputed that the lands sought to be acquired fall within the ambit of an "estate" as defined in the existing laws relating to land tenures in the State of Assam. Therefore, the impugned Act is protected by Article 31A of the Constitution and no further question of its being repugnant to Articles 14, 19 and 31 of the Constitution arises. The point is almost covered by two recent decisions of the Supreme Court, which considered the constitutional validity of certain cognate laws on the subject of the present legislation, though in slightly different forms. In *Sri Ram Ram Narain Medhi Vs. The State of Bombay*, the vires of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1956 (Bombay

Act No, XIII of 1958), was challenged by petitions under Article 32 of the Constitution. The said Act purported to amend an earlier Act, the Bombay Tenancy and Agricultural Lands Act, 1948 (Bombay Act No, LXVII of 1948). The Act in question had received the assent of the President and came into force in August, 1956. The legislation was a measure of agrarian reform and its object was to bring about distribution and ownership and control of agricultural lands so as best to serve the common good. The object was sought to be achieved by fixing ceiling areas of lands, which could be held by a person, by prescribing what was an economic holding. It also sought to equitably distribute lands between the landlords and the tenants and, with just exceptions in favour of the landholder, it provided for transfer by way of compulsory purchase of all the other lands to tenants in occupation of the same. Under this statute, the State itself did not directly take possession of the lands, but provided for the transfer thereof from the landlords to the tenants. The enactment thus affected relations between landlords and tenants provided for transfer and alienation of agricultural lands, aimed at land improvement and broadly stated, was a legislation in regard to rights in or over land, covered by Entry 18 of List IV of the Seventh Schedule to the Constitution. In dealing with the application of Article 31A of the Constitution to the law impugned in that case, the Supreme Court relying upon its observations in the earlier decision in *Raja Sri Sailendra Narayan Bhanja Deo Vs. The State of Orissa*, stated the law in these words:

"Even if there was any ambiguity in the expression, the wider significance should be adopted in the context of the objectives of the Act as stated above.

We are, therefore, of opinion that the expression "estate" had the meaning of any interest in land and it was not confined merely to the holdings of landholders of alienated lands. The expression applied not only to such "estate" holders but also to land holders and occupants of unalienated lands." I see no cogent reason why the same meaning of the expression "any estate or of any rights therein" should not be extended to the subject of the present enactment. It is also significant that Section 32F of the Bombay Act, which provided that in case the tenant failed to purchase the land held by him from his landlord his tenancy in respect thereof was liable to be terminated and the tenant was to be summarily evicted, was held to be valid. The above section is in pari materia with Section 18 of the Assam Act, impugned in these cases.

An authority still more in point is another recent judgment of the Supreme Court in *Atma Ram Vs. The State of Punjab and Others*, which considered the constitutionality of the Punjab Security of Land Tenure Act (Act X of 1953), which was challenged by the landholders through petitions under Article 32 of the Constitution. The said Act prescribed a limit to landholding, which was termed the permissible limit" and also conceded to the land owner "right of reservation" of land out of the entire area held by him in the State for "self-cultivation" upto the "permissible limit".

The Act also purported to create a pool of the surplus area in excess of the

reserved area for resettlement of tenants, who were liable to pay rent to the landlord when inducted, and the Act made provision for conferring on certain classes of tenants the right to purchase lands held by them from the land owner. The legislation was attacked on the ground inter alia that it was repugnant to Article 19(5) of the Constitution but this was repelled with reference to Article 31A of the Constitution.

The Supreme Court pointed out that "if it is held that the provisions of the impugned statute lay down the law for the modification of rights in estates, as defined in sub-art. (2) of Article 31A, none of the grounds of attack founded on any of the provisions of arts. 14, 19 or 31, can avail the petitioners". Their Lordships, after an analytical and illuminating discussion of the amplitude of the expression "any estate or of any rights therein" as used in Article 31A, concluded thus:

"As the connotation of the term "estate" was different in different parts of the country, the expression "estate" described in Clause (2) of Article 31A. has been so (broadly defined as to cover all estates in /the country, and to cover all possible kinds of rights in estates, as shown by Sub-clause (b) of Clause (2) of Article 31A.

***** The expression "rights" in relation to an estate has been given an all inclusive! meaning comprising both what we have called, for the sake of brevity, the "horizontal" and Vertical" divisions of an estate. A proprietor in an estate may be the proprietor holding the entire interest in a single estate, or only a co-sharer proprietor. The provisions aforesaid of Article 31A, bearing on the construction "of the expression "estate" or "rights" in an estate, have been deliberately made as wide as they could be, in order to take) in all kinds of rights--quantitative and qualitative--in an area co-extensive with an estate Or only a portion thereof.

But it has been suggested that the several interests indicated in Sub-clause (b), quoted above, have been used with reference to the area of an entire estate, but knowing as we do, that a raiyat's or an under-raiyat's holding generally is not co-extensive with the area of an entire estate but only small portions thereof, it would, in our opinion, be unreasonable to held that the makers of the Constitution were using the expression "estate" or "rights" in an estate, in-such a restricted sense.

Keeping in view the fact that Article 31A was enacted by two successive amendments--one in 1951 (First Amndment), and the second in 1955 (Fourth Amendment)--? with retrospective effect, in order to save legislation effecting agrarian reforms, we have every reason to hold that those expressions have been used in their widest amplitude, consistent with the purpose behind those amendments. A piece of validating enactment purposely introduced into the Constitution with a view to saving that kind of legislation from attacks on the ground of constitutional invalidity, based on Articles 14, 19 and 31, should not be

construed in a narrow sense. On the other hand, such a constitutional enactment should be given its fullest and widest effect, consistently with the purpose behind the enactment, provided, however, that such a construction does not involve any violence to the language actually used."

The above principles clearly govern the case of the legislation with which we are concerned in these cases; I, therefore, hold that the Act impugned before us is fully protected under Article 31A of the Constitution.

14. The Petitioners have, therefore, failed to make out any reasonable ground to justify the issue of a writ by this Court and the impugned legislation having been held to be valid, the authorities concerned are entitled to take any appropriate action authorised by the law. The result is that these applications must be rejected and the rules discharged with costs, hearing fee Rs. 300/- to be distributed equally in each case.

G. Mehrotra J.

15. These petitions have been filed under Article 226 of the Constitution challenging the constitutionality of the Assam Fixation of Ceiling on Land Holdings Act, 1956 (Assam Act 1 of 1957) hereinafter called the impugned Act. By the impugned Act the Assam Legislature has fixed the limit of the land which can be held by a person himself or through any member of his family as an owner or as a tenant.

Provision has also been made under the Act for acquisition of the excess land held by a person and the distribution of the same. The impugned Act also provides for ceiling on future acquisitions. In some of these cases notices have been issued to the petitioners under the impugned Act and writ in the nature of Mandamus commanding the opposite parties not to give effect to the impugned Act has been claimed.

The constitutionality of the impugned Act has been challenged on a number of grounds. It is urged, firstly, that the impugned Act is not covered by any legislative list. Though the Act purports to be one fixing the ceiling of the land to be held by a person, it in effect provides for acquisition of land. Secondly it is urged that it is a colourable legislation. Under the garb of legislating in respect of land, the legislature has enacted a law providing for acquisition of land.

Thirdly it is urged that the impugned Act contravenes the provisions of Article 19(1)(f) of the Constitution inasmuch as it places an unreasonable restriction on the rights of the owners to hold and possess property. The vires of the Act has further been challenged on the ground that it contravenes Article 31(2) of the Constitution of India inasmuch as it is neither an acquisition for a public purpose, nor does it provide for the amount of compensation or principles on which compensation can be determined.

It is also urged in this connection that it is not a law which is protected under Article 31A of the Constitution and thus the validity of the impugned Act will have

to be tested with the touchstone of the fundamental rights enshrined under Articles 14, 19 and 31 of the Constitution. Lastly it was urged that it is a piece of excessive delegation; arbitrary and naked power has been given to the Government without laying down the principles and any rules of conduct in the Act itself.

Regarding the question of the legislative competence of the impugned Act, it is urged on behalf of the State that the impugned Act is covered by item No. 18 of List II of the Seventh Schedule to the Constitution and thus the Assam Legislature was competent to enact the present law under Article 240(3) read with item 18 of List II of the Seventh Schedule to the Constitution.

It is also urged that the impugned Act comes within item No. 42 of List III of the Seventh Schedule to the Constitution. Entry No. 18 of List II of the Seventh Schedule is in these words:--

"Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

This entry read along with Article 246(3) of the Constitution vests in the State legislature exclusive power to make laws with respect to "rights in or over land", and land tenures including the relation of landlord and tenant. This item deals with the landlord's rights in land in relation to his tenant and any law which has the effect of modifying or curtailing the rights of the landlords in the land and expanding or extending the rights of the tenant will thus be covered by this entry.

The Act provides for curtailing the extent of the land to be held by any person and also for distribution of the excess land to tenants. Such a law will come within the ambit of entry No. 18 of list II of Seventh Schedule. It is well settled that the heads of legislation given in the various lists should not be construed in a narrow and pedantic sense but should be given a large and liberal interpretation. It was observed by the Judicial Committee of the Privy Council in AIR 1935 158 (Privy Council) that

"in interpreting a constituent or organic statute such as the Act, that construction most beneficial to the widest possible amplitude of its powers must be adopted."

The Federal Court in AIR 1941 16 (Federal Court) has pointed out that the items in the list are not to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it.

A similar view was also expressed by the Supreme Court in *Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City*, and *Thakur Amar Singhji Vs. State of Rajasthan*, I see no reason to accept the contention of the petitioner that the words "rights in or over land" in entry 18 of List II should be so interpreted as to exclude the impugned Act. The Act as I have already pointed out, by fixing the ceiling of the land to be held by the owner modifies the right of

the land-holder in or over the land.

In fact the counsel for the petitioners could not seriously contend that the Act will not be covered by entry 18 of List II of Seventh Schedule to the Constitution. The argument in fact was that although, the Act purports to be one under entry 18 of List II, it provides for acquisition. Even if that argument is accepted, the Act will be covered by entry 42 of List III of Seventh Schedule to the Constitution. In any view of the matter therefore it cannot be said that the Assam Legislature had no competency to enact the impugned Act.

16. Coming to the next contention that the impugned Act is a colourable legislation, it is necessary to examine how far the doctrine of colourable legislation is applicable to this case and what is the ambit of such a doctrine affecting the vires of a law made by any legislature. The point has been well settled by the decisions of the Supreme Court that a colourable legislation simply means a legislation which while transgressing constitutional limitations in actuality is made to appear as if it were quite constitutional.

In considering therefore the validity of a legislation the court must have regard to the real character of the legislation and not merely to the form in which it is clothed. If the subject-matter in substance is something which is beyond the legislative powers of the particular legislature to legislate upon, the form in which the law is clothed would not save it from condemnation. This is based on the principle that what cannot be done directly cannot be done indirectly.

As has been pointed out by Lord Halsbury in the case of "Madden v. Nelson and Fort Shephard Rly. Co. 1899 AC 626 --"you cannot do that indirectly which you are prohibited from doing directly". In K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, it was observed that

"if the constitution of a State distributes the legislative powers amongst different bodies which have to act within their respective spheres marked cut by specific legislative entries, or if there are limitations on the legislative authority in the shape of Fundamental Rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect, and it is to this latter class of cases that the expression "colourable legislation" has been applied in certain judicial pronouncements".

At another place in the same case it was observed as follows :--

"The contention of Mr. Narasaraaju really is that though apparently it purported to be a taxation statute coming under Entry 46, List 2 (Taxes on agricultural income), really and in substance it was not so. It was introduced under the guise of a taxation statute with a view to accomplish an ulterior purpose namely, to inflate the deductions for the purpose of valuing an estate so that the

compensation payable in respect of it might be as small as possible. Assuming that it is so, still it cannot be regarded as a colourable legislation in accordance with the principles indicated above, unless the ulterior purpose, which it is intended to serve, is something which lies beyond the powers of the Legislature to legislate upon. The whole doctrine of colourable legislation is based upon the maxim that you cannot do indirectly what you cannot do directly. If a Legislature is competent to do a thing directly, then the mere fact that it attempted to do it in an indirect or disguised manner cannot make the Act invalid."

The doctrine of colourable legislation also does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a law, the motives which impelled it to act are really irrelevant. On the other hand if the legislature lacks competency, the question of motives does not arise at all. Whether a statute is constitutional or not is thus always a question of the power of the legislature, vide Cooley's Constitutional Limitations, Vol. 1, page 379, It is not necessary to multiply the authorities on this point. On a consideration of all the authorities it will be clear that the doctrine of colourable legislation is only another form of the doctrine of competency of the legislature. The only point urged in this connection was that although the preamble of the Act states that the Act has been enacted to put ceilings on the land to be held by a person, it in effect is a legislation which deals with the acquisition of land. Even assuming this argument to be correct that under the guise of a legislation covered by item 18, List II of the Seventh Schedule to the Constitution it is a legislation which comes under item No. 42, List III of the Seventh Schedule, the Act will not be ultra vires inasmuch as the State legislature was competent to enact a law relating to the subject-matter of item No. 42 of List III of the Seventh Schedule also.

17. Mr. Sen appearing for some of the petitioners has relied upon certain passages from "Grazes on Statute Law" Fifth Edition, to show that the preamble is to be regarded as conclusive in so far as it elucidates the intention of Parliament expressed in the enacting part. His contention is that as the preamble of the impugned Act only lays down that the Act is to out ceiling on the right of any person to hold land, no other intention is permitted to be deduced from the enactment; I am unable to accept this argument. The preamble is not exhaustive. There are many Acts in which the provisions of enactment extend far beyond the preamble. The evil recited in the preamble may be the chief motive for the legislation but the remedy may consistently and wisely be extended beyond the cure of that evil. If the words of the preamble are not so large and extensive as in other parts of the enactment and upon a review of the whole it can be said that the larger expression used in other parts shows what the intent of the legislature is, it is the duty of the court to give effect to the larger expression notwithstanding that the phrases of less import may be contained in the preamble (Doed Bywater v. Brandling (1828) 7 BC 643 and Badri Prasad Vs. Ram Narain Singh, If the enacting words can be shown to go beyond the

preamble effect must be given to them. In order to decide about the competency of the legislature to enact the particular law it is necessary to examine the Act as a whole to ascertain its pith and substance, the words of the preamble alone are not to be looked into for that purpose.

18. It was then contended that the law although purports to bring about agrarian reform, it has neither in effect achieved any such objective, nor was it necessary to bring about the same reform as has already been brought about under the Acts which were already in force. The condition of the tenants had already improved under the existing Acts. These considerations to our mind, are not relevant to decide the question of the competency of the legislature to enact a particular law." The law cannot be struck down on the ground that it has not in effect achieved the purpose for which it was sought to be enacted or that it does not in any manner improve the lot of the tenants. That is a matter of legislative policy and the courts will not go into that question.

19. The main point to be considered therefore is how far the present Act comes under Article 31A of the Constitution. It cannot be disputed that if the Act comes within the purview of any of the clauses of Article 31A of the Constitution, the law will be immune from attack on any of the grounds based on the provisions of Articles 14, 19 and 31 of the Constitution. It has therefore been argued by the counsel for the petitioner that the provisions of Article 31A (1; (a) is not attracted. Article 31A was first introduced in the Constitution by the First Constitutional Amendment of 1951. Thereafter it was amended under the Fourth Constitutional Amendment of 1954. The Article protects the law which provides for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights. The expression "estate" in relation to any local area has been made by Clause 2 (a) of this Article to have the same meaning as that expression or its equivalent has in the existing law relating to land tenures in force in that area. Sub-clause (b) of Clause (2) of Article 31A defines "rights" as follows :--

"the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, under-proprietor, tenure-holder (raiya under-raiya) or other intermediary and any rights or privileges) in respect of land revenue."

It is contended that the impugned Act is not a law which provides for the acquisition of an estate or extinguishment or modification of any rights in the estate as defined under the Assam Land and Revenue Regulation. The argument in substance is that the preamble of the Act only shows that the law has been enacted to make provision for imposition of limitation on the amount of land that may be held by a person, it does not deal with the question of acquisition or extinguishment of the rights of the intermediary at all. This argument loses sight of the fact that the opening words of Article 31A not only embrace within its scope laws which provide for acquisition of an estate or any rights therein but also the modification of the rights in the estate. Any law which cuts down the extent of the land held by a person, cannot be said to be anything else than a

law modifying the rights of the estate-holder in respect of his estate. In fact one of the arguments advanced by the petitioners' counsel is that the limitation placed on the amount of land that may be held by a person under the impugned Act is a restriction placed on the rights of the person to hold property within the meaning of Article 19 of the Constitution and it has to be justified on the ground that the restriction is a permissible one under Article 19(5). This argument itself presupposes that the fixation of ceiling of land is a modification of the rights in the land of the person who holds the land. It is also clear from the examination of the provisions of the Act that the excess land is acquired by the State. After it has been acquired provision has been made for its distribution. It cannot therefore be said that it is not a law contemplated by the provisions of Article 31A. The other line of argument in this connection is that what is acquired is the land and not an estate as defined under the Assam Land Revenue Regulation. In the year 1951 the Assam State Acquisition of Zamindaris Act 1951 was passed. This Act extended to (a) the permanently-settled areas of the districts of Goalpara and Garo Hills and the Karimganj subdivision of the Cachar district and (b) the Lakhraj estate within the boundaries of permanently settled estate and (c) the "acknowledged estates" in the Bijni and Sidli Duars settled with the Rajas of Bijni and Sidli. u/s 3 of the Assam State Acquisition of Zamindaris Act, 1951, the State Government by a notification could declare that the estate or tenure of a proprietor or tenure-holder specified in the notification, shall stand transferred to and vest in the State free from all encumbrances. This Act as indicated above, dealt with the permanently settled areas of Assam and provided for acquisition of the estate. The validity of this Act was also impugned and it was held by this court and affirmed by the Supreme Court that the Act is intra vires and that is protected by the provisions of Article 31A. The impugned Act however had to be enacted to provide for the acquisition of the estate in the Districts other than the permanently-settled districts of Assam. As is clear from S. 1 of the impugned Act, the Act extends to the districts of Lakhimpur, Sibsagar, Nowgong, Darrang, Kamrup, Goalpara and Cachar in the State of Assam. Section 2 of the impugned Act enumerates the land to which the Act will not apply.

In Section 3 of the impugned Act, "agriculture" has been defined to include horticulture, and the "family" to include a joint family, and by "Explanation" "joint family" has been defined to mean a family of which the members are descendants from a common ancestor and have a common mess and shall include wife or husband as the case may be, but shall exclude married daughters and their children; land has been defined as "land which is or may be utilised for agricultural purposes or purposes subservient thereto, and includes the sites of buildings appurtenant to such land."

Section 4 then lays down that "notwithstanding anything to the contrary in any law, custom or agreement, no person, either by himself or through any member of his family, shall be entitled to hold as owner or tenant, lands which exceed the limit of 150 bighas in the aggregate." Section 5 then, provides for the submission of returns by persons holding lands in excess of the ceiling and Section 6 gives

power to the Collector to collect information from other agencies.

After the return has been submitted and information collected, the Collector has to prepare a draft statement showing the total area of lands held by persons on their own behalf and on behalf of their family, the specific plots selected for retention with them, and also the lands in excess of the limit fixed u/s 4. The draft statement is then to be published in the offices of the Deputy Commissioner and the Subdivisional Officer and the copy of the statement is to be served on the person or persons concerned in the manner prescribed.

If any objection is filed within thirty days of the service it is to be considered by the Collector after giving an opportunity to the objector to be heard and a right of appeal has been given to a person aggrieved by an order of the Collector to the State Government. Revisional power has also been given to the State Government. The draft statement is then finalised and it is then submitted to the State Government. Thereafter u/s 8, the State Government acquires such excess land by publishing in the Official Gazette a notification to the effect that such lands are required for a public purpose and such publication is conclusive evidence of the notice of acquisition to the person or persons holding such land.

After the notification the land vests in the State and thereafter the notice is served of the notification on persons holding excess lands. Power has been given to the Collector to take possession of the land and Section 12 then provides for the principles on which compensation is to be awarded. The proviso to Section 12 (1) lays down that

"if the land is under occupation of a tenant, then the compensation shall be apportioned between the owner and the tenant, and the share of the owner shall be, if the tenant has acquired occupancy right 15 times, and in other cases 20 times, such annual land revenue."

Under Clause (2) of Section 12 where the excess which has been acquired is held by a person as a tenant thereon, the principles on which the compensation for his tenancy rights are to be awarded is given and the compensation for the acquisition of the tenancy right is also to be apportioned between the tenant "and the sub-tenant in occupation of the land under the said sub-section of Section 12. From Section 4 it is clear that ceiling has been put on the right of a person to hold land both as an owner and as a tenant and further it is clear from Section 12 that on acquisition of excess land, the compensation in respect of the same is to be apportioned between the owner of the right which" has been acquired and the person who is in occupation of the said land.

The question therefore to be considered is how far the land acquired or the land in respect of which limitation has been put on the rights of the owner or tenant is an estate within the meaning of the Assam Land and Revenue Regulation. Section 3 (b) of the Assam Land and Revenue Regulation is in the following terms :--

" "estate" includes-

- (1) any land subject, either immediately or prospectively, to the payment of land revenue, for the discharge of which a separate engagement has been entered into;
- (2) any land subject to the payment of, or assessed with a separate amount as land revenue, although no engagement has been entered into with the Crown for mat amount;
- (3) any local area for the appropriation of the produce or products whereof a license or farm has been granted under rules made by the Provincial Government u/s 155, Clause (e) or Clause (f);
- (4) any char or island thrown up in a navigable river which under the laws in force is at the disposal of the Crown;
- (5) any land which is for the time being entered in the Deputy Commissioner's register of revenue-free estates as a separate holding."

We are only concerned with Clauses (b) (1) and (b) (5) of Section 3. The contention in substance is that what is sought to be acquired or the modification of the right if any, is only in respect of the part of an estate and not the estate as a whole. The petitioners in the present case excepting the petitioners who are tenants and whose cases will be dealt with later, held land subject to the payment of land revenue and for the discharge of which a separate engagement had been entered into and it is their right in respect of such an estate which has been modified by putting a limit to their right to hold such an estate. If therefore an estate includes part of an estate, the impugned Act will be covered by the provisions of Article 31A.

20. In the case of *Atma Ram Vs. The State of Punjab and Others*, recently decided by their Lordships of the Supreme Court it has been held that the part of an estate is included in the word "estate". In this case their Lordships were considering the constitutionality of the Punjab Security of Land Tenure Act 1953 as amended by Act 11 of 1955. It was held that having regard to the background of the Punjab Land Tenure Act, the Act was covered by the words "any estate or of any rights therein" in Article 31A(1)(a) of the Constitution.

Under S, 3 of the Assam Land and Revenue Regulation the word "proprietor" means the owner of any estate permanently settled or entered on the Deputy Commissioner's register of revenue-free estates and "land-holder" means any person deemed to have acquired the status of a land-holder u/s 8. In *Atma Ram Vs. The State of Punjab and Others*, (ibid) it was observed that the rights in an estate may be either quantitative or qualitative that is to say, rights in an estate may be held by persons having different qualities of rights in lands constituting an estate, as a result of sub-infeudation.

Under the State a large number of persons-variously called the proprietors,

zamindars, malguzars, inamdars and jagirdars etc., hold parcels of land, subject to the payment of land revenue. An estate, thus, is an area of land which is a unit of revenue assessment, and which is separately entered in the Land Revenue Collector's register of revenue-paying or revenue-free estates. In actual practice the holder of each specified portion or share of an estate, holds his portion for his own exclusive use and occupation.

Such a division of an estate is a quantitative or a vertical division of an estate. But there may also be a horizontal or qualitative division of the lands in an estate, effected by the process of sub-infeudation. The lands in an estate may in their entirety or in portions, be let out to what in Eastern India are known as tenureholders. Having considered the whole matter it was held in the case that the words "any estate or of any rights therein" in Article 31A(1)(a) were of the widest amplitude and covered not only entire estates but also portions thereof.

In this case the later Full Bench decision of the Punjab High Court in the case of the State of Punjab and Others Vs. S. Kehar Singh and Others, was overruled and the earlier Full Bench decision in the case of Bhagirath Ram Chand Vs. State of Punjab and Others, was accepted.

21. In another recent case of the Supreme Court in Sri Ram Ram Narain Medhi Vs. The State of Bombay, the constitutionality of the Bom. Tenancy and Agricultural Lands (Amendment) Act, 1956 was challenged. The Supreme Court held that the Act was *intra vires*. The Bombay amending Act of 1956 further amended the Bombay Tenancy and Agricultural Lands Act, 1948. It provides for such distribution of the ownership and control of agricultural land as was considered best to subserve the common good. This amending Act was enacted with a view to achieve the objective of establishing a socialistic pattern of society in the State within the meaning of Articles 38 and 39 of the Constitution.

The Act provided for fixation of ceiling of areas of land which could be held by a person and by prescribing what was an economic holding. It sought to equitably distribute the lands between the land-holders and the tenants, and except in those cases where the land-holder wanted the land for cultivating the same personally, transferred by way of compulsory purchase all other lands to tenants in possession of the same with effect from April 1, 1957, which was called as the "tillers day" and provision was also made for disposal of balance of lands after purchase by the tenants, the basic idea underlying the Act being to prevent the concentration of agricultural land in the hands of landholders to the common detriment

The tiller was brought into direct contact with the State eliminating the land-holders who were intermediaries. This Act was held to be covered by entry No. 18 in List II of the Seventh Schedule to the Constitution and it was further held to be immune from the attack on grounds based on Articles 14, 19 and 31 of the Constitution as it was held to be covered by Article 31A of the Constitution. It was held in this case that the word "estate" had the meaning of any interest in

land and that the Act was enacted for the extinguishment or modification of rights in estates.

It is not necessary to consider the other argument advanced in the Bombay case to the effect that the Act did not provide for acquisition of the estate by the State or Bombay. In the impugned Act provision has been made for compulsory acquisition by the State of Assam of the excess land and there is no provision for compulsory purchase by the tenants direct in occupation. The scheme of the impugned Act as indicated above is to acquire the land and then resettle it with the persons in occupation within certain limits.

Another line of argument which was considered in the Bombay case was that the transfer of right to the tenant in occupation was only a temporary suspension of the owner's right and was thus not covered by the provisions "of Article 31A. This argument was repelled and it was held that the Act completely extinguished the right of the owner and at any rate it amounted to modification of his rights in the estate. In view of these two decisions of the Supreme Court it is not necessary to examine in detail the history of the land tenure legislation in Assam.

It is sufficient to point out that the impugned Act provides for the modification of the right of the owner of the estate. It was further contended that even assuming that the section, when it puts limit on the rights of the owner to hold 150 bighas land, modifies the right of the owner in the estate, the same argument cannot apply to the case of the acquisition of the rights of a tenant. The rights of a tenant in the land cannot be regarded as an estate within the definition given of the word in the Assam Land Revenue Regulation.

The answer to this contention is that Article 31A does not only embrace a law providing for acquisition or extinguishment of the estate but also a law providing for the extinguishment and the modification of any right in the estate. The tenant's interest in the land is certainly a right in the estate. The other argument advanced in this connection is that if the owner chooses not to retain the land in the actual occupation of tenants, those lands will be acquired by the State and if the tenant in occupation is not in a position to pay and get settlement of the land in his favour or that the land is in excess of the limit to which he is entitled to hold, he will be ejected therefrom. This amounts to deprivation of his tenancy rights and as, such a right is not an estate under the Assam Land and Revenue Regulation, the Act in so far as it effects such a right, is not protected under Article 31A.

This contention has no substance. There will be very few cases in practice where the actual tiller of the soil if he is offered settlement of the land and is given option to acquire a higher status, will refuse to get the settlement. As a tenant of the land he would get a portion of the compensation on acquisition of the owner's right by the state in the said land, and that very compensation can be utilised by him in payment of the money which he would be required to pay as the price of the settlement with him of the land.

Apart from that even if it be accepted that he might be ejected for non-payment of the price and such an ejectment amounts to deprivation of his right as a tenant, it is nonetheless a right in the estate and the law providing for such an acquisition will be covered by Article 31A of the Constitution. In my opinion therefore the impugned Act is covered by Article 31A of the Constitution and is immune from attack on the ground that it violates the fundamental rights guaranteed under Articles 14, 19 and 31 of the Constitution.

It is not necessary therefore, to examine the contention whether the restriction, placed on the right of the owner of an estate is a reasonable restriction within the meaning of Article 19(5) of the Constitution. It is also not necessary to go into the question whether the Act was for public purpose or not. The public purpose is as much a requirement of Article 31 of the Constitution as the payment of compensation. Article 31 of the Constitution was itself amended twice to bring it in consonance with the programme for establishing a socialistic pattern of society as contemplated in the directive principles of the State policy. Article 31(2) was originally in the following terms :

"No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given."

It was substituted by the present Clause (2) of Article 31 which reads as follows :

"No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate."

The present Clause (2) makes it abundantly clear that the existence of a public purpose is one of the requirements of Article 31(2) of the Constitution. I should however point out that even if the Act was not covered by Article 31A of the Constitution, I would have held that the impugned Act was for a public purpose and provided for compensation and that the Act was not violative of Article 31(2) of the Constitution.

22. It was then contended that the Act was bad by reason of excessive delegation of legislative power. I have not been able to appreciate this line of the argument advanced by the counsel for the petitioners. The principles are very well laid down in the Act itself and it cannot be said that any essential legislative function has been delegated to the executive. The maximum land which can be

retained by an owner or a tenant has been set out in the Act itself and it cannot be said that the Act itself does not lay down the rule of conduct for the guidance of the executive.

Reference was made in this connection to Section 2(c)(i) of the impugned Act which provides that the provisions of this Act shall not apply to lands held for special cultivation of tea or purposes ancillary thereto. It is said that the Act does not define what cultivations are regarded as cultivations ancillary to the cultivation of tea. It may be open to the executive to treat any cultivation which is in fact ancillary to the cultivation of tea as non-ancillary and thus coming within the ambit of the Act.

It gives an opportunity to the executive to discriminate between persons placed in the same situation and apply the Act to one and not to the other. We do not think that there is any substance in this contention. What are the cultivations which are ancillary to the special cultivation of tea is easily determinable and it cannot be said that the section delegates any essential legislative function to the executive. If action has been taken under the Act in respect of any land which is held for cultivation for purposes ancillary to the cultivation of tea, such action will be examinable by Courts and can be set aside on the ground that it is beyond the powers of the executive and is mala fide; but that is no ground for striking down the Act as ultra vires.

It was contended that the definition of the word "land" is also very vague and does not lay down any criteria for the guidance of the State Government in determining which land can be regarded as a land utilised for agricultural purposes or purposes subservient thereto. The power to apply the Act is unguided and unfettered and it is possible to exercise it at the sweet will and discretion of the State Government in favour of a single individual.

If the power in a particular case is exercised arbitrarily, it can always be struck down as being mala fide, but it cannot be said that the Act itself is bad as it is an excessive piece of delegation or is discriminatory. It was observed in the case of *Pannalal Binjraj Vs. Union of India (UOI)*, as follows :

"It may also be remembered that this power is vested not in minor officials but in top-ranking authorities like the Commissioner of Income Tax and the Central Board of Revenue who act on the information supplied to them by the Income Tax officers concerned. This power is discretionary and not necessarily discriminatory and abuse of power cannot be easily assumed where the discretion is vested in such high officials vide *Matajog Dobey Vs. H.C. Bhari*. There is moreover a presumption that public officials will discharge their duties honestly and in accordance with the rules of law. (Vide *People of the State of New York v. John E. Van De Carr etc.*, (1905) 199 US 552: 50 Law Ed 305). It has been observed by this Court in *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another*, with reference to the possibility of discrimination between assesseees in the matter of the reference of their cases to

the Incline-tax Investigation Commission that "it is to be presumed unless the contrary were shown, that the administration of a particular law would be done "not with evil eye & unequal hand" and the selection made by the Government of the cases of persons to be referred for investigation by the Commission would not be discriminatory.

This presumption, however, cannot be stretched too far and cannot be carried to the extent of always holding that there must be some undisclosed and unknown reason for subjecting certain individuals or corporations to hostile and discriminatory treatment (Vide *Gulf Colarado etc. v. W. H. Ellis* (1897) 165 U.S. 150 : 41 LawEd 666) There may be cases where improper execution of power will result in injustice to the parties. As has been observed, however, the possibility of such discriminatory treatment cannot necessarily invalidate the legislation and where there is an abuse of such power the parties aggrieved are not without ample remedies under the law (vide *Dinabandhu Sahu Vs. Jadumoni Mangaraj and Others*, What will be struck down in such cases will not be the provision which invests the authorities with such power but the abuse of the power itself."

23. It was also urged that the Act does not provide for an opportunity being given to a mortgagee of a land to file objections to acquisition of the land. The contention is that if any portion of the estate is mortgaged by the owner, he may select not to retain that portion and if he chooses not to retain the said land, the land will be compulsorily acquired by the State Government free from encumbrances. The interest of the mortgagee therefore will be extinguished without payment of any compensation. Section 13 of the Act provides for the manner in which the compensation is to be paid. It can be paid in cash in one or more equal annual instalments within five years from the date of acquisition. Clause (b)(i) of Section 13 lays down that where the land acquired is subject to a mortgage or charge, the creditor shall be paid out of the compensation money to the extent of the claim proved before the Collector or any other officer empowered in this behalf, provided that where the amount of total claim exceeds the compensation money, the creditors shall be paid proportionately in order of priority determined by him. Clause (b)(ii) of Section 13 provides that "the creditors whose debts are secured by mortgage or charge on the land acquired shall, within 60 days from the date of notification u/s 8, prefer claim in writing before the Collector who shall thereupon proceed with and dispose of the claim".

There is therefore provision for the payment pf mortgage money to the creditor and the machinery has been provided for determination of the claim of the creditor. It cannot therefore be said that the mortgagee's interest has been wiped off without making provision for discharge of his debt. It is also clear from the perusal of Sections 5, 6 and 7 of the impugned Act that any person who is affected by the choice made by the owner or the tenant to retain or not to retain any particular land can file objection and any order passed by the Collector is appealable. It cannot therefore be said that a person who is interested in

opposing the selection by an owner or a tenant of the land is without any remedy.

24. It was then urged that Section 8 of the Act provides that the publication shall be conclusive evidence of the notice of acquisition to the person or persons holding such land, which does not provide for a specific notice to the persons in occupation of the land or mortgagees of the land. Section 8 provides that the acquisition is to be made by publication in the official gazette of a notification to that effect and it only makes such a publication in the official gazette a conclusive evidence of notice. Section 10 then provides that after publication of notice the Collector shall cause a copy of the notification to be served in the manner prescribed on the person or persons holding such excess lands.

It cannot therefore be said that the section is violative of the principles of natural justice inasmuch as it does not provide for notice to the person whose rights are affected by the acquisition. Moreover even if this contention is accepted, to my mind it cannot be a ground for holding the Act itself to be unconstitutional. If there has been any acquisition without giving an opportunity to the person whose rights have been affected to be heard, such an order of acquisition may be set aside, but that can be no ground for holding the impugned Act to be unconstitutional. Reliance was placed on the following passage in (S) Satya Narayan Nathani Vs. State of West Bengal and Another,

"Such an Act cannot, by enacting that Government may acquire or requisition any property which may appear to be needed for a public purpose, create a wall of immunity around orders made under the Act and exclude judicial scrutiny as to the existence or the character of the purpose. If such a provision does occur in such an Act, it may, as a matter of language, mean that Government will be the sole judge as to whether a public purpose exists and also of whether the property is needed for such a purpose, but it would be wholly unconstitutional and wholly ineffective."

This passage only points out that any provision in the Act which shuts out judicial scrutiny of the existence of public purpose both for the Act as well as the order will be unconstitutional. In the impugned Act I find nothing which "creates a wall of immunity" against judicial scrutiny. If the wall of immunity has been created against judicial scrutiny of the existence of public purpose in the Act it has been done by Article 31A of the Constitution and not any provision of the impugned Act. Reliance was then placed on the following passage in the case of Sri Luxmi Janardan Jew and Another Vs. State of West Bengal and Others, in support of the proposition that if the Act does not provide for opportunity to be heard to a person who is being deprived of his property under the Act, such an Act will be unreasonable:--

"There is a line of cases in England which is authority for the general proposition that in the absence of statutory provisions to the contrary, no man can be deprived of his property without having an opportunity of being heard."

This case to my mind is distinguishable on facts and the observation is to be read

in the context. Apart from this the unreasonableness of an Act is not a distinct head under which an Act can be declared ultra vires. If the Act does not provide for an opportunity to be heard to a person who is deprived of his property it will be struck down as it will be an unreasonable restriction on his right and will not be protected by Article 19(5) of the Constitution. The impugned Act being covered by Article 31A, the question of its unconstitutionality on the ground that it contravenes Article 19 does not arise.

25. Lastly it was contended by Mr. Medhi that the definition of land in the Act is very vague and as non-filing of returns and acquisition of land in excess of the limit has been made penal, the provision defining land should have been clearer: We do not think that the definition of land is vague nor that the impugned Act is violative of Article 20 of the Constitution. I have carefully examined some American authorities cited by Mr. Medhi in support of his contention but am constrained to hold that they have no bearing on the question in issue.

26. In the result therefore I am of opinion that there is no force in these petitions and they should be rejected with costs.