

(1974) 06 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 1227 of 1974

Bhaskar Krishnaji

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 20-06-1974

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 106, 127 A, 5, 66, 66 A

Citation : AIR 1975 Kar 55 : (1974) 2 KarLJ 509

Hon'ble Judges : E.S. Venkataramiah, J

Bench : Single Bench

Advocate : K.S. Savanur, for the Appellant;

Judgement

1. The petitioner is the owner of certain agricultural lands situate in Indi Taluk, Bijapur District, which was formerly part of the State of Bombay before the re-organization of States. In the area in which the lands in question are situate, the Bombay Tenancy and Agricultural Lands Act was in force. Under the said Act a ceiling had been imposed on the extent of agricultural lands which a land-holder can possess at 48 acres. But the said provision had however not been brought into operation. After the re-organization of States, the Legislature of the State of Karnataka passed Karnataka Land Reforms Act, 1961 (Act 10 of 1962) (hereinafter referred to as the Act). It was brought into force on 2-40-1965. The Act was amended by Karnataka Act 14 of 1965. The provisions of the Act as amended by Act 14 of 1965 were questioned before the Supreme Court in Writ Petitions Nos. 202 and 205 of 1966. Those two petitions were heard along with another writ petition presented by Golaknath and others--Writ Petition No. 193 of 1966. All the petitions were dismissed by the Supreme Court by a common judgment in I.C. Golak Nath and Others Vs. State of Punjab and Another, It was contended before the Supreme Court in the two cases referred to above that many of the sections of the Act providing for imposing a ceiling on the extent of agricultural holding a person can possess; conferment of title on the tenants in respect of certain lands which were non-resemble under the Act as it stood then;

and payment of compensation in respect of the lands over which the owners would lose their title by virtue of the operation of the Act, were unconstitutional on the ground that they were violative of Articles 14, 19 and 31 of the Constitution. On behalf of the State Government it was contended that the Act could not be attacked on the basis that any of its provisions was violative of Articles 14, 19 and 31 because the Act had been included in the Ninth Schedule by virtue of the Seventeenth Amendment of the Constitution, and, therefore, it had the protection of Article 31-B which precluded any attack based on Part III of the Constitution against any Act included in the Ninth Schedule. It was also urged that the Act was also protected by Article 31-A of the Constitution because it had been enacted by the Legislature for the purpose of bringing about agrarian reform in the State and hence was fully protected by Article 31-A which again precluded any attack against any of its provisions on the ground that they were violative of Articles 14, 19 and 31. Subba Rao, C. J. who pronounced the leading judgment upheld the Act on the ground that it had been included in the Ninth Schedule and hence was protected by Article 31-B of the Constitution. Hidayatullah, J. who wrote a separate Judgment observed that the provisions of the Act as amended by Act 14 of 1966 were valid under the Constitution because they were protected by Article 31-A of the Constitution. Dealing with the provisions of the Act, Hidayatullah, J. was of the opinion that the Act came within the scope of Article 31-A(1) of the Constitution which provided 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, should be deemed to be void on the ground that it was inconsistent with or took away or abridged any of the rights conferred by Article 14, Article 19 or Article 31. After the above decision of the Supreme Court was rendered, the Act was amended by the Karnataka Legislature by Act 1 of 1974 by which many of the provisions of the Act were amended. Act 1 of 1974 came into force on March 1, 1974, on which date it was published in Karnataka Gazette.

2. It is stated in the course of the writ petition that the petitioner had instituted certain proceedings against some of his tenants, who are impleaded as respondents 4, 5 and 6, u/s 14 of the Act and being aggrieved by the result of those proceedings before the courts below he had presented a Civil Revision Petition before this Court u/s 115 of the CPC in C. R. P. No. 1079 of 1973 and that it is still pending According to Section 91 (2) of Act 1 of 1974, all applications and proceedings under the Act relating to resumption of land pending before any court immediately before the date of commencement of Act 1 of 1974 would not have any effect. It is stated in Section 91 (2) of Act 1 of 1974 that those proceedings shall abate. It is submitted that in view of the above provision, this Court in a number of revision petitions which were heard and disposed of already, has taken the view that even proceedings which were pending before this Court and which had emanated u/s 14 of the Act also would abate. Hence feeling aggrieved by the several provisions of Act 1 of 1974, by

which the Act was amended, the petitioner has presented this writ petition.

3. In this writ petition, the petitioner has challenged the validity of some of the clauses in Section 2-A and Sections 5; 7; 8; 14; 15; 41; 42; 44; 45; 47; 57; 59; 63; 66; 66-A; 67; 72; 77; 78; 79-A; 79-B; 79-C; 81; 91; 104; 106; 127-A and Schedule I of the Act as amended by Act 1 of 1974 on the ground that they were violative of Articles 14, 19 and 31 of the Constitution.

4. The following contentions were however urged in support of the petition at the hearing:

(1) that the extent of ceiling fixed by Section 63 of the Act as amended by Act 1 of 1974 was unconstitutional on the ground that the Legislature having once fixed the ceiling had no power to reduce the ceiling without providing for compensation on the basis of market value in respect of the lands which would be taken away from the holder by reason of the reduction of the ceiling;

(2) that the provisions for compensation payable to the landlord whose lands which are in excess of the ceiling and would be taken away under the Act being illusory are violative of Article 31 of the Constitution:

(3) that the deletion of Section 14 of the Act as it stood originally which provided for resumption of certain extent of land which had been leased to tenants, is violative of Article 19(1)(f) and (g) on the ground that an unreasonable restriction is sought to be imposed on the fundamental right to own property and to carry on occupation of agriculture;

(4) that by providing for transfer of title to the tenants, the Act had contravened Article 14, since there was no valid ground to discriminate between the landlord and the tenant;

(5) that the provision regarding the classification and valuation of lands were violative of Articles 14 and 31;

(6) that since the Act had not provided for acquisition of land by the State the Act is not protected by Article 31-A of the Constitution;

(7) that by adopting an artificial definition of the word "family", the State Legislature had tried to interfere with the rights of the members of the family and in particular the minor members of the family were being discriminated against; and

(8) that Section 2 of Act 1 of 1974 under which the Legislature had made a declaration in pursuance of Article 31-C of the Constitution that the provisions of the Act were enacted for giving effect to the policy of the State towards securing the principles specified in Clauses (b) and (c) of Article 39 of the Constitution, was inefficacious as by enacting Act 1 of 1974, the Legislature was not at all doing anything which would fall within the scope of Clauses (b) and (c) of Article 39 of the Constitution.

5. I shall dispose of the last contention urged by Sri K. S. Savanur, learned counsel for the petitioner, namely, that Act 1 of 1974 is not protected by Article 31-C of the Constitution, first. In the circumstances of this case, I find it unnecessary to deal with this aspect of the matter as I am of the view that the Act and Act 1 of 1974 are protected by Article 31-A of the Constitution for the reasons to be given hereafter.

6. The relevant part of Article 31-A of the Constitution reads as follows:--

"Notwithstanding anything contained in Article 13, no law providing for-

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights,

XXX 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, Art. 19 or Art. 31.

XXX Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the selling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

(2) In this article,--

(a) the expression "estate" shall, in relation to any local area, have 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 shall also include-

(i) xxxx

(ii) any land held under ryotwari settlement;

(iii) xxxx

(b) The expression "rights", in relation to an estate, shall 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.

7. It is not disputed that the lands with which we are concerned fall within the meaning of the expression "estate" appearing in Article 31-A of the Constitution. The preamble of the Act states that the Act had been enacted as a uniform law in the State of Karnataka relating to agrarian reform; conferment of ownership on tenants; ceiling of land-holding, and for certain other matters hereinafter appearing. Chapter I of the Act deals with short title, extent and commencement and definitions; Chapter II deals with general provisions regarding tenancies;

Chapter III deals with conferment of ownership on tenants; Chapter IV deals with ceiling of land-holdings; Chapter V deals with restriction on holding or transfer of agricultural lands; Chapter VI deals with provisions for cultivation of uncultivated lands; Chapter VII deals with co-operative agricultural farms; Chapter VIII deals with exemptions; Chapter IX deals with procedure and jurisdiction of Tahsildar and Tribunal; Chapter X deals with offences and penalties: and Chapter XI deals with certain other ancillary provisions. All these provisions, as already mentioned, refer to agricultural holdings. Having regard to these features, Hidayatullah. J. in his judgment in *I.C. Golak Nath and Others Vs. State of Punjab* and Another, was of the opinion that the Act was protected by Article 31-A of the Constitution. It cannot therefore be said that the Act is not dealing with matters referred to in Article 31-A(1) of the Constitution. It is also to be seen that the Act as it was amended by Act 14 of 1965, is also included in the Ninth Schedule of the Constitution. Hence, the Act as it stood prior to coming into force of Act 1 of 1974, is not open to attack on any of the grounds in view of Article 31-B of the Constitution. The question for consideration in this writ petition is whether the Act to the extent it is amended by Act 1 of 1974, is entitled to the protection of Article 31-A of the Constitution.

8. As already mentioned under the Bombay Tenancy and Agricultural Lands Act which was in force in the area in which the lands are situate, there was a provision for fixing a ceiling limit on agricultural holding at 48 acres of jirayat land. Under the Act as it was originally enacted a ceiling was fixed on the extent of land a person or family could hold and any land in excess of that had to be surrendered by him to be dealt with in accordance with the statute. By Act 1 of 1974, Section 63 of the Act as it was originally enacted was substituted by the new Section 63. The relevant part of the new Section 63 reads as follows:--

"63. Ceiling on land.-- (1) No person who is not a member of a family or who has no family and no family shall, except as otherwise provided in this Act, be entitled to hold, whether as land owner, landlord or tenant or as a mortgagee with possession or otherwise or partly in one capacity and partly in another, land in excess of the ceiling area.

(2) the ceiling area for a person who is not a member of a family or who has no family or for a family shall be ten units:

Provided that in the case of a family consisting of more than five members the ceiling area shall be ten units plus an additional extent of two units for every member in excess of five, so however that the ceiling area shall not exceed twenty units in the aggregate.

(3) In the case of a family the ceiling area shall be applied to the aggregate of the lands held by all the members of the family, including the "stridhana" land.

(4) In calculating the extent of land held by a person who is not a member of a family but is a member of a joint family and also in calculating the extent of land held by a member of a family who is also a member of a joint family the share of

such member in the lands held by a joint family shall be taken into account and aggregated with the lands, if any, held by him separately and for this purpose such share shall be deemed to be the extent of land which would be allotted to such person had there been a partition of the lands held by the joint family....."

It is seen from the above provision that the maximum extent of agricultural land which a person, who is not a member of a family or has no family or a family can hold is further reduced.

9. It is well settled that an Act passed by the Parliament or a State Legislature which is inconsistent with any of the provisions in Part III of the Constitution or which is outside the legislative competence of the concerned Legislature, is liable to be struck down as unconstitutional. A provision in a statute is also liable to be declared as unconstitutional if it is inconsistent with any of the other provisions of the Constitution. Unless it is shown that a statute is inconsistent with any of the provisions of the Constitution, it is not open to the Court to strike it down merely on the ground that any of its provisions is either vague and unworkable or is likely to lead to some prejudice. In this case, no question of legislative competence has been raised. All the contentions urged are based on Articles 14, 19 and 31 of the Constitution on the basis that the Act is not protected by Article 31-A of the Constitution. In support of his contention that the Act was not protected by Article 31-A of the Constitution, Sri Savanur relied upon the second proviso to Article 31-A(1) which directs that whenever any land held by a person under his personal cultivation which is within the ceiling limit, applicable to him for the time being in force, is acquired he should be paid compensation at a rate which shall not be less than the market value thereof. It was argued by Sri Savanur that having once fixed a higher ceiling limit u/s 63 as it was originally enacted, the Legislature had no power to reduce the extent of ceiling by substituting it by the new Section 63 in Act 1 of 1974 without providing for compensation at the market value of the land which would have to be surrendered by the owner, in view of the second proviso to Article 31-A(1) of the Constitution. A careful reading of the said proviso to Article 31-A(1), does not support the contention urged by Sri Savanur. What the proviso states is that whenever any land under personal cultivation which is within the ceiling limit applicable to a person as in force on the date of such acquisition is acquired by the State Government, compensation will have to be paid at a rate which shall not be less than the market value thereof. The said proviso does not however impose any fetter on the Legislature to reduce the ceiling limit from time to time if it wishes to do so. A similar contention urged before the Supreme Court in *Kunjukutty Sahib, etc., etc. Vs. The State of Kerala and Another*, was disposed of as follows:--

"We now turn to the three appeals (C. As. Nos. 143, 274 and 309 of 1971). In C. As. Nos. 274 and 309 of 1971 the first point urged before us was founded on Article 31-A(1), second proviso by virtue of which the State can have no power to acquire any portion of land held by a person under his personal cultivation in

the estate, which is within the ceiling limit applicable to him under a law unless the law empowering acquisition provides for compensation at a rate not less than the market value of such land. According to the argument when the amended Act reduced the ceiling limit and required surrender of the land held in excess of the limit fixed by the amended Act, without payment of compensation at market value, it violated the constitutional inhibition contained in the second proviso to Article 31-A(1). We are unable to sustain this contention. It was not disputed that the ceiling limit fixed by the emended Act was within the competence of the legislature to fix; nor was it contended that the ceiling fixed by the original un-amended Act by itself debarred the legislature from further reducing the ceiling limit so fixed. Prior to the amendment undoubtedly no land within the personal cultivation of the holder under the un-amended Act within the ceiling limit fixed thereby could be acquired without payment of compensation according to the market value, but once ceiling limit was changed by the amended Act the second proviso to Article 31-A(1) must be held to refer only to the new ceiling limit fixed by the amended Act. The ceiling limit originally fixed ceased to exist for future the moment it was replaced by the amended Act. The prohibition contained in the second proviso operates only within the ceiling limit fixed under the existing law at the given time. It is true that the new ceiling limit was fixed contemporaneously with the acquisition of the land in excess of that ceiling limit. But it was not contended that a law so fixing the ceiling limit and acquiring the land in excess would offend any provision of the Constitution. This submission must, therefore, be rejected."

In the instant case also the Legislature provided for the reduction of ceiling which had been originally fixed u/s 63 and provided for surrender of the surplus lands. As interpreted by the Supreme Court the second proviso to Article 31-A(1) does not impose any restriction on the power of the State Legislature to reduce the ceiling limit from time to time. It cannot, therefore, be said that the Act as amended by Act 1 of 1974 has ceased to enjoy the protection of Article 31-A of the Constitution,

10. Sri Savanur however relied upon a decision of the Full Bench of the High Court of Sucha Singh Bajwa Vs. The State of Punjab, in support of his argument that the provisions of the Act dealing with the ceiling limit on the extent of land which a family can possess was unconstitutional in view of artificial definition given to the expression "family" u/s 2-A (12) of the Act as amended by Act 1 of 1974. The expression "family" is defined u/s 2-A (12) of the Act as follows:--

"Family" means-

(a) in the case of an individual, who has a spouse or spouses, such individual, the spouse or spouses and their minor sons and unmarried daughters, if any;

(b) in the case of an individual who has no spouse, such individual and his or her minor sons and unmarried daughters;

(c) in the case of an individual who is a divorced person and who has not

married, such individual and his minor sons and unmarried daughters whether in his custody or not; and

(d) where an individual and his or her spouse are both dead, their minor sons and unmarried daughters." It is contended that the definition of the expression being wholly artificial by reason of the use of the said expression in Section 63 for the purpose of determining the ceiling limit, Section 63 had become unconstitutional relying upon the observations of the Full Bench of the Punjab and Haryana High Court in *Sucha Singh Bajwa Vs. The State of Punjab*, The principal reasons given by the High Court of Punjab and Haryana for holding that the Act with which they were dealing was unconstitutional can be gathered from the following extracts from the decision of Bal Raj Tuli, J.:

"It is thus obvious that the husband or the wife or the eldest surviving member of the family, while making the selection, and other junior members by attaining adulthood or getting married, as the case may be, can deprive the other members of the family of the area held by them at his or her own sweet-will. The share of each member of the family has not been defined nor has any restriction been placed on the alienation of that land by the members of the family. Such a provision cannot be said to be in the interest of pr by way of agricultural re form, nay, it is the very negation thereof and cannot be upheld as valid or constitutional.

XX XX XX In my view, the provision for pooling together of the entire land held by the members of the family, as defined on the appointed day, out of which one permissible area in terms of Section 4 of the Act has to be selected, is violative of second proviso to Article 31-A(1) of the Constitution as no provision for payment of compensation in terms of that proviso has been made in the Act, and is, therefore, void. The attack to the provisions of the Act is only barred under Articles 14, 19 and 31 of the Constitution but not under Article 31-A itself or any other Article.

XX XX XX The result of the impugned provision is the expropriation of the land of some members of the family as defined, although the Land of each member so expropriated did not exceed the permissible area prescribed under the Act which, like any other person, he was entitled to continue to hold. If they were to be deprived of that area, a provision should have been made in the Act for paying them compensation at a rate not less than the market value of the land in accordance with the second proviso to Article 31-A(1) of the Constitution."

11. It is significant to note that a decision of the Supreme Court in *Inder Singh and Another Vs. State of Punjab and Others*, which had arisen from the State of Punjab was not brought to the notice of their Lordships at the time of hearing. In that case the Supreme Court was concerned with the validity of Section 32-KK of Pepsu Tenancy and Agricultural Lands Act. Section 32-KK, the validity of which was impeached read as follows.-

"Notwithstanding anything contained in the Act or in any other law for the time

being in force-

(a) where, immediately before the commencement of this Act, a land-owner and his descendants constitute a Hindu undivided family, the land owned by such family shall, for the purposes of this Act, be deemed to be the land of that landowner and no descendant shall, as member of such family, be entitled to claim that in respect of his share of such land he is a landowner in his own right."

Dealing with the above section, the Supreme Court observed as follows:--

"The section first lays down a fiction and then its result. The fiction is that where a landowner and his descendants form a Hindu undivided family, the land owned by such a family shall be deemed to be the land of that landowner. The fiction so enacted is limited only for the purposes of the Act. The result of the fiction again for the purposes of the Act is that no descendants shall, as a member of such family, be entitled to claim that in respect of his share of such land he is a landowner in his own right. There is no doubt that the section has a direct adverse effect on the rights of the descendants of a landowner. It treats such a family as one unit equating the landowner and his descendants with an individual landowner depriving by such equation the descendant of the right to hold a ceiling area for himself. Prima facie, such a provision would infringe Article 19(1) (f) and Article 31 and would be hit by Article 18. Article 31-A, however, provides 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 Articles 14, 19 or 31. If, therefore, Section 32-KK falls within the scope of Article 31-A, it is obviously protected thereunder and the validity of the section is placed beyond any challenge on the ground of its infringing any of the rights under Articles 14, 19 or 31."

Later on in the same decision at para 8 the Supreme Court observed as follows:--

"The contention that the section is not one relating to agrarian reform is hardly sustainable in view of the above-mentioned objects of the Act in general and of Section 32-KK in particular. Similarly, the contention that the section has the effect of defeating the rights of a member of a Hindu undivided family from the family property also cannot be sustained because his rights in the permissible area retained by the land-owner and his right to compensation in respect of the surplus area are not touched by the section. Nor is it possible to say that the section results in the transfer of rights of the descendants of a land-owner in the permissible or surplus area in favour of such landowner. The section does not effect any change in the rights of the descendants as members of a Hindu undivided family or the relationship of the family inter se except to the extent of depriving the descendants of their rights to claim the ceiling area for each of them. The contention as to the validity of Section 32-KK, therefore, must fail."

It is seen from the provisions of the Act that by the provisions of Section 63 of

the Act read with the definition of the expression "family", what is sought to be achieved is the determination of the maximum extent of land which a family as defined in the Act can possess. It does not take away the individual rights of the persons constituting the family. In the extent of the land which is within the ceiling limit, the members of the family retain their rights. In respect of the land which is taken away as surplus land, they continue to have right to receive whatever compensation is provided by the statute. It may be that Section 63 read with the definition of the expression "family", contravenes Articles 14, 19 and 31 of the Constitution. But since the Act and in particular Section 63 which is mainly intended to bring about agrarian reform has the protection of Article 31-A of the Constitution, any attack based on Articles 14, 19 and 31 should fail. With great respect to their Lordships of the Punjab High Court, I regret my inability to agree with the principle enunciated by them, because the second proviso to Article 31-A(1) will not be attracted until the ceiling is fixed. By Section 63, the Act fixes the ceiling limit on the extent of land a family can possess. It is only after the ceiling limit is fixed the question of application of the second proviso to Article 31-A(1) arises, because it refers to land which is within such ceiling limit. Further, the conclusion that the definition of the expression "family", is unconstitutional is reached by holding that it is arbitrary and discriminatory. Such a conclusion cannot be reached without resorting to Article 14 which is not available in view of Article 31-A. Hence the petitioner cannot derive any assistance from the decision of the Punjab and Haryana High Court.

12. It was next contended by Sri Savanur that because there is no acquisition by the State of the surplus lands but there is provision for transferring title in those surplus lands in favour of private individuals, it could not be said that Article 31-A was applicable to the case. Reliance was placed by him on the expression "acquisition by the State of any estate" in Article 31-A(1)(a) of the Constitution in support of this argument. It was argued that acquisition by the State means acquisition by the State and for the State and not acquisition by the State for the benefit of private individuals. Even granting for purposes of argument that the surplus lands beyond the ceiling limit were not being acquired by the State for the State, it is very clear from the provision of the Act that by reason of Sections 63 and 44, the rights of the landowner in the surplus lands would be extinguished. It is seen from Article 31-A(1)(a) that even when the rights in an estate are modified or extinguished, Article 31-A(1) would be attracted. This question is also settled by the Supreme Court in *Ajit Singh v. State of Punjab* AIR 1907 SC 856 as follows:

"It would be noticed that Article 31-A(1)(a) mentions four categories; first acquisition by the State of an estate; second, acquisition by the State or rights in an estate; third, the extinguishment of rights in an estate, and, fourthly, the modification of rights in an estate. These four categories are mentioned separately and are different. In the first two categories the State "acquires" either an estate or rights in an estate. In other words, there is a transference of an estate or the rights in an estate to the State. When there is a transference of

an estate to State, it could be said that all the rights of the holder of the estate have been extinguished. But if the result in the case of the extinguishment is the transference of all the rights in an estate to the State, it would properly fall within the expression "acquisition by the State of an estate". Similarly, in the case of an acquisition by the State of a right in an estate it could also be said that the rights of the owner have been modified since one of the rights of the owner has been acquired.

It seems to us that there is this essential difference between "acquisition by the State" on the one hand and "modification or extinguishment of rights" on the other that in the first case the beneficiary is the State while in the latter case the beneficiary of the modification or the extinguishment is not the State....." This Court also has taken the same view in *Babu Rao v. State of Mysore* (1970) 1 Mys LJ 1, which is a case arising under the Act. Hence, there is no substance in this submission also.

All other contentions relating to the provisions dealing with surrender of surplus land, classification and valuation of lands are again raised on the basis of Articles 14, 19 and 31 of the Constitution. Since I have come to the conclusion that these provisions are fully protected by Article 31-A of the Constitution, they should fail.

It was lastly argued that by taking away the lands beyond the ceiling limit, the Legislature had tried to attack the very basic structure of the society as it had deprived a large number of persons of their source of livelihood. This argument may have to be addressed elsewhere. This Court is concerned only with the constitutionality of the provisions.

No other contention is urged.

The petition, therefore, fails and it is rejected.

13. Petition dismissed.