

(1967) 01 OHC CK 0014

In the Orissa High Court

Case No : O.J.C. No's. 329 and 341 of 1965 and 12, 13, 14, 15, 16, 17, 18, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 99, 105, 106, 109, 132, 133, 134, 135, 172 and 183/66

Chandrasekhar Singh Bhoi and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 30-01-1967

Acts Referred:

Constitution of India, 1950 — Article 13(3), 14, 19, 226, 31
General Clauses Act, 1897 — Section 2(8), 3, 3(13)
Orissa Land Reforms (Amendment) Act, 1965 — Section 2, 2(4), 2(5), 25, 27
Orissa Land Reforms Act, 1960 — Section 1, 1(3) 2, 13, 14, 2(30)
Orissa Tenants Relief Act, 1955 — Section 2(3)

Citation : (1967) 33 CLT 263

Hon'ble Judges : Ahmad, C.J.;Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ahmad, C.J.—This is a batch of thirty-two petitions-all filed by the intermediaries (ex-landlords) under Article 226 of the Constitution of India. They have been argued in four sets:O.J. Cs. Nos. 12 of 1966, 13 of 1966, 14 of 1966, 15 of 1966, 16 of 1966, 17 of 1966, 18 of 1966, 37 of 1966, 38 of 1966, 39 of 1966, 40 of 1966, 41 of 1966, 42 of 1966, 43 of 1966, 44 of 1966, 45 of 1966,46 of 1966, 47 of 1966,48 of 1966,49 of 1966, 99 of 1966, 109 of 1966, 132 of 1966, 133 of 1966, 134 of 1966 and 135 of 1966 by Mr. Narasaraju ; O.J. Cs. Nos. 329 of 1965, 105 of 1966, 106 of 1966 and 183 of 1966 by Mr. Asok Das: O.J.C. No. 341 of 1965 by Mr. A.S.N. Murty: and O.J.C. No. 172 of 1966 by Mr. C.V. Murty. All these petitions raise a common point as to the validity and constitutionality of the Orissa Land Reforms (Amendment) Act 1965 (hereinafter called the Amending Act). Therefore, they have been heard together. It is however not necessary to refer to these cases separately for the arguments advanced before us, though in four sets, are substantially the same. The original Act, which the Amending Act amends, is the Orissa Land Reforms Act, 1960 (hereinafter

referred to as the Principal Act).

2. These Acts as claimed therein are the necessary progressive legislations relating to agrarian reforms and land tenures consequent on the gradual abolition of in tel me diary interest. The common dominant purpose underlying these enactments is twofold: (i) To restrain the intermediaries from resuming their entire lands (held by a tenant) for the purpose of personally cultivating them and to fix a ratio of what is permissible to be resumed, and (ii) To impose a general ceiling on the lands held by any person

under personal cultivation.

3. The Principal Act is divided into six chapters. Chapter I is the preliminary Chapter and covers 3 sections including the definition section-Section 2. Chapter II is about "Raiyats and Tenants" and has twenty sections-from Section 4 to Section 23. The heading of Chapter III which consists of four teen sections, from Section 24 to Section 37, is "Resumption of land for personal cultivation". It is followed by Chapter IV which deals with "Ceiling and Disposal of excess land", and has fifteen s-ections-from Section 38 to Section 52. Chapter v. relates to "Administrative machinery for the implementation of land reforms", and is spread over five sections-from Section 53 to Section 57. Chapter VI is Miscellaneous Chapter consisting of nineteen sections-Section 58 to Section 76.

4. By the Amending Act Chapters III and IV of the Principal Act save and except their headings, have been wholly deleted and substituted by two complete new Chapters III and IV, though under the same old headings. In Chapter I of the Principal Act most of the definitions given in the various clauses of Section 2 have been amended. The amendments made in Chapter II of the Principal Act are only in respect of six of its sections -sections, 4, 9, 13, 14, 22 and 23. In Chapter v. of the Principal Act the amendment made is confined to the addition of a new section which is as Section 56-A. The amendment made in the last Chapter VI of the Principal Act is only in relation to five of its sections-Sections 58, 65, 67, 68 and 72.

5. The Amending Act by the provisions made therein, has introduced two main alterations in the Principal Act: (1) It has reduced the ratio of land made permissible to be resumed by the intermediary from the possession of a tenant; and (2) It has scaled down the ceiling limit of the land held by a person" under personal cultivation.

6. Section 26 of the old Chapter III of the Principal Act provides that-

If the extent of the land of a landlord held under personal cultivation and through tenants, together exceeds three basic holdings the landlord shall be entitled to resume not more than two thirds in standard acres from each tenant and in any other case, the extent of such resumptions shall not exceed three-fourths

The definition of "basic holding" as used therein is given in Section 2(4) of that Act. It reads:

"basic holding" means an area of land measuring five standard acres."

And in Section 2(30) of the Principal Act a "standard acre" is defined to mean "one acre of perennially irrigated land or two acres of seasonably irrigated land, or two acres of rain-fed land, or 4 acres of dry land".

7. Now, by Section 25 of the new Chapter III of the Amending Act, the area of the resumable land has been reduced. This section provides that:

25. The extent of resumable lands shall not be more than one half of the lands in respect of each tenant, measured in standard acres only.

Further, the definition of "basic holding" as given in Section 2(4) of the Principal Act has been amended by the Amending Act to mean "'an area of land measuring two standard acres".

8. Further, the definition of the standard acre as originally given in Section 2(30) has been substituted by the following standard acre" means the unit of the measurement of land equivalent to one acre of Class I land, or one acre and a half of Class II land, or three acres of Class II land, or four acres of Class IV land." Also a new Section 2(5)-a has been added by the Amending Act to explain classes of land. Thereunder, classes of land means:

Class I - Irrigated land which is assured of water supply for not less than two hundred and forty days during the year.

Class II-Irrigated land which is assured of water supply for at least one hundred and twenty days, but less than two hundred and forty days during the year.

Class III - Irrigated land which is not covered by Class I of Class II and other lands in which paddy is usually grown.

Class IV - Any other land.

Thus, the extent of the resumable land under Chapter III is by the Amending Act reduced from two-thirds or three fourths to a uniform ratio of half.

9. The other important alteration effected by the Amending Act, as already stated, is in the reduction of the ceiling limit in respect of the land held by a person under personal cultivation. The original provision about the ceiling limit as given in Section 38 of the old Chapter IV of the Principal Act was that

38. The ceiling area of land shall be five basic holdings:

Provided that Government if they are satisfied that it is expedient in the public interest so to do, may suo motu or on application of any person interested vary by notification from time to time the extent of the ceiling area in respect of any locality....

The principle for calculating this ceiling limit is given in Section 39 of the Principal Act which reads:

39(1): Save as otherwise provided in this Act, no person shall, after the commencement of this Act hold land under" personal cultivation in excess of the limit (hereinafter referred to as "ceiling limit") determined in the following manner:

(a) If the person is an individual with or without a family, or is a company or other body corporate the limit shall be one ceiling area:

Provided that where the members of the family exceed five in number, the ceiling limit shall be one ceiling area together with one basic holding on account of each member in excess of five, so however as not to exceed two ceiling areas in the aggregate. Explanation- "Family" in relation to a person for the purposes of this clause means the person, the wife or husband, as the case may be, and the dependent children and grandchildren of such person.

(b) If the person is a joint Hindu Mitakshara family, the ceiling limit shall be one ceiling area together with one basic holding on account of each additional member, if any, in excess of five, so however as not to exceed a maximum of two ceiling areas in the aggregate.

(2) In computing the ceiling limit-

(a) in respect of a person under Clause (a) of Sub-section (1) who holds lands as separate property and has also interest in land held by a joint Hindu Mitakshara family being a member thereof, the extent of land equivalent to the share of such person in the ceiling limit in respect of the joint family at a notional partition thereof, on the commencement of this Act, shall be taken into account and, shall be shown in the return u/s 43 as lands to be retained by such person;

(b) lands leased out by a person during disability shall be deemed to be in personal cultivation of such person and not of the person to whom it has been so leased out;

(c) lands given by a person on mortgage with possession, shall be deemed to be in personal cultivation of such person and not of the mortgagee.

(3) Nothing in Sub-section (1) shall apply to lands held by a privileged raiyat within the meaning of Sub-clause (a) of Clause (24) of Section 2." Thereafter Section 40 of the Principal Act enumerated the details of the lands which were to be kept out of account in computing the ceiling limits. It reads as follows:

40. For the purpose of computing the limit u/s 39, the following classes of lands shall be excluded

(a)

(b) Orchards used as such from before the 30th day of March, 1959

(c)

(d) Tanks and irrigation sources to the extent of the area of water spread and

embankments of such sources where no crop is or can be raised in any part of the year;

(e)

(f)

Lastly, Section 41 of the Principal Act mentioned the classes of land which the Government by notification had the authority to declare as exempted from the operation of the limit u/s 39.

10. Now, in the Amending Act, an exhaustive definition of the "ceiling area" has been provided in the very definition Section 2(5) whereunder it is said to mean "an extent of land equivalent to twenty standard acres". And in the body of the new Chapter IV Section 37 of the Amending Act directs that:

37(1) No person shall hold after the commencement of this Act lands as landholder or raiyat under personal cultivation in excess of .the ceiling area determined in the manner hereinafter provided.

Explanation:For the purposes of this Chapter a person includes a company or any other corporate body or a joint Hindu Mitakshara family.

(2) Nothing in this Chapter shall apply to lands held by a privileged raiyat or to sugarcane farms owned by and operated by sugar factories

Further, by Section 39 of the Amending Act many of the other concessions which were originally allowed under old Sections 40 and 39 of the Principal Act have now been curtailed and cut down. The new Section 39 of the Amending Act reads as follows:

39. In determining the ceiling area in respect of a per bon the following principles shall be followed, namely:

(1) lands in possession of a tenant or a mortgagee shall be deemed to be lands in personal cultivation of the person;

(2) lands covered by homestead, orchards and plantations to the extent of ten acres in the aggregate, shall not be taken into account;

(3) paddylands covered by a notification u/s 38 shall be and other lands so covered shall not be, taken into consideration;

(4) lands granted prior to the date of commencement of the Orissa Land Reforms (Amendment) Act 1965, to any member or past member of the Armed Forces as gallantry award, shall not be taken into account, during the life time of such member;

(5) tanks with their embankments to the extent of ten acres in the aggregate shall not be taken into account.

11. In its preceding Section 38 is provided the scheme of exemption from ceiling.

That corresponds to Section 41 of the Principal Act and read as follows;

38. Government on the application of the person interested may, by notification, from time to time, declare such lands to be exempted from the operation of Sub-section (1) of Section 37, as, in the opinion of Government, constitute efficiently managed farms, orchards or plantations situated in compact blocks in which heavy investments have been made, and whose break-up is likely to lead to a fall in agricultural or industrial production

12. Thus it is obvious-and it is not denied-that the ceiling as originally provided in Chapter IV has been by the Amending Act scaled down,-in the case of Class I lands by about 30 acres, in the case of Class II lands by about 20 acres, in the case of Class II lands by about 15 acres, and in the case of Class IV lands by about 15 acres. Further, besides these, as already stated many of the other original concessions as well which were allowed under the Principal Act in special cases have now been curtailed as in the case of Hindu Mitakshara families or where the members of the family exceed five in number, or where the lands are used for plantations or as orchards, cattle breeding farms, irrigation tanks, etc.

13. The learned Advocate-General who appears for the opposite parties in all these cases has not disputed this claim of the Petitioners. In other words, both the parties agree that by the Amending Act the two important alterations which have been brought about in the parent Act are: (i) that the ratio of lands resumable by the intermediary has been reduced and (ii) that the ceiling limit of the lands held by a person under his personal cultivation has been scaled down. Therefore, on the footing of this admitted position the main point that falls for consideration is whether as claimed by the Petitioners the Amending Act or any of the provisions made therein is unconstitutional or illegal.

14. At this place it may be useful to note that the alterations made by the Amending Act are not confined to these two points alone. Besides them there are mostly other alterations made therein, but they are mostly consequential alterations; therefore, they will be referred to hereafter as and when found necessary.

15. Further, before the main submissions made in this case on behalf of the contesting parties are taken up for consideration it may also be necessary to have in view a brief synopsis of the various agrarian legislations which have been from time to time enacted in the State of Orissa since after the 15th August, 1947.

16. The first in the chain of these enactments was the Orissa Tenants Protection Act 1948 which was subsequently amended by the Orissa Tenants Protection (Amendment) Act, 1953. That was followed by the Orissa Estates Abolition Act 1951, which provides mainly for the abolition of all rights, title and interest in land of intermediaries, between the raiyat and the State, and for their vesting in the latter. Next to it came the Orissa Tenants Relief Act, 1955, which has repealed and replaced the Orissa Tenants Protection Act, 1948. It was after this

last enactment that in the year 1960 the Principal Act, namely the Orissa Land Reforms Act 1960 was put on the statute book. It received the assent of the President on the 17th October 1960 and was published in the Extraordinary issue of the Orissa Gazette on the 11th November 1960- Section 1 of the Principle Act provides that:

1. (1) This Act may be called the Orissa Land Reforms Act, 1960.

(2) It extends to the whole of the State of Orissa.

(3) It shall come into force in whole or in part, on

such date or dates as the Government may from time to time by notification appoint, and different dates may be appointed for different provisions of this Act.

It is however, not disputed that until the 25th September 1965 there was no notification made by the Government appointing any date for the coming into force of the Principal Act either in whole or in part. In the meantime, the Constitution (seventeenth) Amendment Act, 1964, was enacted on the 20th June 1964, whereunder the following three new changes have been incorporated in Article 31A..

(A) A second proviso has been inserted in its Clause (1) after the first;

(B) For the old Sub-clause (a) of Clause (2) a new subclause has been substituted to enlarge the definition of the word "estate; and

(C) In the Ninth Schedule there has been added a fresh list of enactments including the Principal Act, as entry No. 52 thus making them immune from attack as provided in Article 31B.

17. But it appears that the Government of Orissa had by then already decided to give further relief to the tenants firstly by reducing the ratio of the resumable lands and secondly by further cutting down the area of the ceiling as provided in the Principal Act, and it is as already stated these two main objects which were subsequently achieved by the enactment of the Amending Act. This Amendment Act received the assent of the President on the 11th August 1965 and was published in the Orissa Gazette on the 17th August, 1965.

18. Thus, armed with the immunity of the Principal Act as provided in Article 31B. of the Constitution, and assured of further reliefs as brought about by the Amending Act, the State Government for the first time by the notification No. 63375-Re. 55/65-R dated the 25th September, 1965, brought the Principal Act as amended by the Amending Act-barring its two amended Chapters III and IV -into force with immediate effect. Soon thereafter its new amended Chapter III was put into force from the 9th December, 1965 by another notification No. 78619-Re. 78/65-R. dated the 8th December 1965. But it is the admitted case of the parties that though Chapter III has been by now notified to have been put into force, with immediate effect, there has been so far no step taken by the Government for the resumption of any land as provided thereunder; nor any

notification uptill now has been issued to bring the amended Chapter IV into force.

19. Thus, it was at this stage that the Petitioners, being aggrieved with the aforesaid two notifications, viz.,: 6375 Re. 55/65 dated the 25th September 1965 and No. 78619-Re. 78/65-R. dated the 8th December 1965, have filed the present petitions under Article 226 of the Constitution, claiming therein that the Amending Act, is ultra vires, unconstitutional and illegal and for the issue of an appropriate writ, order, or direction-restraining the State from taking any action thereunder.

20. It is the common case of the parties that the Principal Act having been included in the Ninth Schedule of the Constitution, is protected by the immunity as provided under Article 31B of the Constitution. Thus, to this extent there is no controversy. But the learned Advocate General has gone a step further and contended-though only I must say as a proposition of law, without relying on it in support of the case-that the immunity thus obtained by the Principal Act is not confined to that Act alone, but extends also to the amendments subsequently made therein by the Amending Act. In our opinion, there is no substance in this contention and it has to be rejected. This point now stands finally concluded by the decisions of the Supreme Court in *Sajjan Singh Vs. State of Rajasthan*, , and *Sri Ram Ram Narain v. State of Bombay* AIR 1965 S.C. 459. In the former case the learned Chief Justice, who spoke for the Court observed:

The effect of the last clause in Article 31B is to leave it open to the respective legislatures to repeal or amend the Act, which has been included in the Ninth Schedule. In other words the fact that the said Acts have been included in the Ninth Schedule with a view to make them valid, does not mean that the Legislatures in question which passed the said Acts have lost their competence to repeal them or to amend them. That is one consequence of the said provision; the other inevitable consequence of the said provision is that if a Legislature amends any of the provisions contained in any of the said Acts, the amended provision would not receive the protection of Article 31B and its validity may be liable to be examined on the merits.

It is, therefore, now too late to claim that the amendments now made in the Principal Act by the Amending Act are also equally immune from attack under Article 31B of the Constitution. The learned Advocate-General, therefore, rightly, as just stated, has not in the course of his arguments, laid any reliance on Article 31B in support of the constitutional validity of the Amending Act. The entire submission made on behalf of the State in support of the constitutional validity and legality of the provisions made in the Amending Act has been based and rested exclusively on the am bit and import of the general immunity provided in Article 31A of the Constitution.

21. We therefore now proceed to examine the respective submissions of the parties on the applicability or otherwise of the general immunity as provided in

Article 31A of the Constitution.

22. This part of the submission has been divided into two parts-one relating to the resumption of land for personal cultivation as provided in the new Chapter III of the Amending Act and the other relating to ceiling and disposal of excess land as provided in Chapter IV of that Act. We take up the latter first.

23. In Chapter IV of the Amending Act, the fixation of ceiling limit is provided in Section 45. This Section 45 provides that:

With effect from the beginning of the year following the date of final statement referred to in Sub-section (3) of Section 44 the interests of the person to whom the surplus lands relate and of all landholders mediately or immediately under whom the surplus lands were being held, shall stand extinguished and the said lands shall vest absolutely in the Government free from all encumbrances

The provisions made in this Section 45 of the Amending Act therefore leave no doubt that the lands held by a Landholder or Raiyat, in excess of the ceiling area-described therein as "surplus lands" are not as a result of the proceeding taken in Chapter IV, transferred to or vested in the Raiyats, as provided in the case of resumption of lands u/s 30 of the amended Chapter III, but, as laid down in Section 45, they initially vest in the Government and it is only thereafter that the Government have to settle those lands with the Raiyats, as provided by Section 51 of the amended Chapter IV. The opening words of Section 51 confirm this view which reads as follows:

Settlement of surplus lands vested in Government u/s 45 shall be made with persons as raiyats....

Therefore, the nature of transfer effected as a result of the operation of the provisions made in Section 45 is one of compulsory acquisition as understood in Article 31 of the Constitution. As such the transfer effected thereunder is not saved by the qualifying words of Sub-clause (2-A) of Article 31. What that Sub-clause (2-A) provides is that

Where a law does not provide for the transfer of ownership or right to possession of any property to the State or to a Corporation owned by or controlled by the State, it shall not be deemed to provide for compulsory acquisition or requisitioning of property notwithstanding that it deprives any person of his property.

Here however as already stated what results from the operation of the provisions made in Section 45 of the new Chapter IV of the Amending Act is the vesting of the surplus land in the Government; this results in transfer of the ownership of the landholder or the raiyat, as the case may be, to the Government. Necessarily, therefore, the transfer effected thereunder amounts to a case of compulsory acquisition as contemplated in Article 31(2-A).-see *Sri Ram Ram Narain v. State of Bombay* AIR 1965 S.C. 459. It is a well established rule of construction that unless otherwise necessary or provided either expressly by implication, an

expression or phrase, if used in a statute or enactment is, to be presumed to have been used therein throughout in the same sense

24. In the context here, there is no valid reason to hold that the word "acquisition" as used in Sub-clause (a) of Clause (1) .286 of Article 31A has not the same import and content as that word has in Article 31(2-A). Therefore, had there been no immunity provided for such a legislation relating to "estate" in Article 31A of the Constitution, it may have been vulnerable to the attack under Article 31 of the Constitution. But as the impugned legislation relates to "estates" the acquisition made thereunder of the lands of such estate by the State, is immune from such attack to the extent as laid down in Clause (1) of Article 31A. The operation of that Clause (1) of Article 31A is however made subject to two provisos, the second or the latter having been in- "corporated as already stated, by the Constitution (Seventeenth) Amendment.

25. The second proviso to Clause (1) of Article 31A reads thus:

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 ceiling limit applicable to him under any law for the time being in force, or any building or structure standing thereon, or appertaining 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.

The contention made on behalf of the Petitioners is that the vesting of the surplus lands as provided in Section 45 of the

Amending Act-notwithstanding the general provisions made in the main body of Clause (1) of Article 31A, is hit by this second proviso and therefore the scheme as now provided in the new Amended Chapter IV of the Principal Act relating to fixation of ceiling limit is unconstitutional and illegal.

26. This contention of the Petitioners is based on two assumptions:

(i) That at the time the Amending Act was enacted there was already a ceiling limit applicable to the Petitioners under the original provisions of the Principal Act, notwithstanding the admitted fact that there was at no point of time before the enactment of the A mending Act, any notification issued by the Government for the coming into force of the Principal Act as required under its Sub-section (3) of Section 1. In other words the Principal Act was, all along since the assent thereto given by the President-was published in the official gazette, if not for any other purpose at least in the constitutional sense a "law for the time being in force" within the meaning of that expression as used in the aforesaid second proviso, and

(ii) That the difference of the areas between the two ceilings, one originally provided under the Principal Act and the other now provided in the Amending Act

has always been held by them under their personal cultivation. Therefore, it has been submitted that as the provision made in Section 45 of the new Chapter IV of the Principal Act for the determination of compensation for the surplus lands which are thereunder to vest in Government, is not based on the market value, but on the fifteen times value of the fair and equitable rent of the surplus lands, the provisions made therein for fixation of the ceiling limit are hit by the terms of the aforesaid second proviso and as such they are constitutionally invalid and illegal.

27. The fact that the compensation as provided in Section 47 of the new Chapter IV of the Amending Act is not based on the market value is not disputed. But the submission made by the learned Advocate-General is that neither of the two assumptions, made on behalf of the Petitioners for the application of the said second proviso to the facts, of their case is correct; and therefore that proviso has no application to the new amended Chapter IV of the Amending Act. In support of this contention, the learned Advocate-General has advanced to main grounds:

(i) That at no point of time before the enactment of the Amending Act, there was any ceiling limit applicable to the Petitioners under any "law for the time being in force; in other words, the submission made by him is that as admittedly there was at no point of time any notification issued by the Government for the coming into force of the Principal Act as provided in its Sub-section (3) of Section 1, there is no substance made in the claim made on behalf of the Petitioner that the Principal Act was nonetheless "a law for the time being in force" within the meaning of that expression as used in the aforesaid second proviso.

(ii) Secondly, that there is no evidence on record to prove that the surplus lands which are to vest in the Government u/s 45 of the amended Chapter IV, are held by the Petitioners under their personal cultivation.

28. Thus, the controversy between the parties in regard to the question as to whether the new amended Chapter IV is attracted by the second proviso to Sub-clause (1) of Article 31A rests on the answer to the aforesaid two points. If both are to be answered in favour of the Petitioners as claimed by them, it has to be held that the provisions made in the new amended Chapter IV are attracted by the aforesaid second proviso; and as the compensation allowed in Section 47 of the new Chapter IV for surplus lands which are to vest in the State Government u/s 45 is admittedly not based on the market value, the provisions made therein for the fixation of the ceiling area and the disposal of the surplus lands, have to be held as constitutionally invalid and illegal. But if the aforesaid two points or either of them is to be answered against the Petitioners, the new amended Chapter IV is to be held as not covered by the aforesaid second proviso and as such it will stand protected by the general immunity provided in favour of such a legislation in the main Clause (1) of Article 31A. We therefore take up these two points for discussion in the order as already stated.

29. The decision of the first question turns on the consideration as to whether at any point of time before the ./ enactment of the Amending Act the Principal Act was the "law for the time being in force" as understood within the meaning of that expression in the aforesaid second proviso.

30. The arguments on behalf of the Petitioners have been mainly advanced by Mr. Narasaraju and Mr. Asok Das. They have both stressed that notwithstanding the fact that, at no point of time before the enactment of the Amending Act there was any notification issued by the Government for the coming into force of the Principal Act, as provided in its Sub-section (3) of Section 1, the Principal Act was in the constitutional sense all along in force as contemplated in the aforesaid second proviso, and have, in support thereof, laid reliance on the import and effect of Article 31B of the Constitution. That Article reads as follows:

31B. Without prejudice to the generality of the provisions contained in Article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void or ever to have become void on the ground that such Act, Regulation, or provision is inconsistent with or takes away or abridges any of the rights conferred by any provision of this Part, and notwithstanding any judgment, decree or order of any Court or tribunal to the contrary, each of the said Acts, and Regulations shall, subject to the power of the competent legislature to repeal or amend it, Continue in force.

31. It is common case of the parties as stated above, that long before 11-8-1965 when the Amending Act received the assent of the President, the Principal Act was already incorporated in the Ninth Schedule of the Constitution by the Constitution (Seventeenth) Amendment Act on the 20th June 1964. Obviously, therefore this date, 20th June 1964, was the turning point in the life of the Principal Act. The main question, therefore, that arises for consideration is: What is the effect of the, immunity that was conferred on the Principal Act-in terms of Article 31B of the Constitution by virtue of its being incorporated in the Ninth Schedule on the 20th June 1964. This will depend on the consideration of the following two questions:

- (i) What was the legal and constitutional position of the Principal Act as it stood before its inclusion in the Ninth Schedule on the 20th June 1960, and
- (ii) What was the additional advantage which accrued to the Principal Act in terms of Article 31B after its incorporation in Ninth Schedule on that date.

32. Now, as to the first question two points are undisputed:

- (i) That the Assent given by the President to the Principal Act was published as far back as on 11th November 1960, and
- (ii) That notwithstanding the publication of the assent of the President, the Principal Act was put into force as contemplated by its Section 1(3), for the first time on the 25th September 1965, that is to say, long after the date of its incorporation in the Ninth Schedule on the 20th June 1961. That being so, can it

be said as claimed on behalf of the Petitioners that the Principal Act was a "law for the time being in force"-all along during this first phase of its life preceding its incorporation in the Ninth Schedule.

33. This takes us to the investigation of the most controversial question that has been raised in this case, namely the import and content of the expression "in force" as used in Article 31. Unfortunately, in the Constitution itself, there is no general definition provided for this expression. Had it been so, the matter would have been plain and simple. No doubt some definition of this expression is to be found in Article 13(3)(b) and in Explanation I to Article 372. But those definitions are obviously meant for the limited purpose as expressly stated therein and are inclusive in nature. Therefore, those definitions do not convey not only the plain natural meaning of the expression, but also something which is in addition there to made to be included therein *Delworth v. Commissioner of Stamps* 1889 A.C. 99, (at pages 105 and 106). Article 13(3)(b) pleads thus:

"(3) In this article unless the context otherwise requires,

(a)

(b) "Laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of the Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

Obviously, therefore, the definition of the expression "law in force" as given in Article 13(3)(b) is not its ordinary or grammatical meaning-*vide Bhau Ram Vs. B. Baijnath Singh*, and *Sant Ram and Others Vs. Labh Singh and Others*, . The same again is the case with the definition given in Explanation I to Article 372. The Explanation states that-

Explanation I-The expression "law in force" in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution, and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

Therefore, the clarifications made in either of these aforesaid articles of the Constitution is not of any avail in construing the expression "in force" as used in second proviso to Article 31A(1).

34. No doubt the expression "law in force" has been generally used as synonymous or interchangeable with the expression "existing law", both by the Supreme Court and by the Federal Court *vide-Edward Mills v. The State of Ajmer* AIR 1965 S.C. 25. *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another*, , and AIR 1941 16 (Federal Court) . But as to the general meaning of the expression "existing law" also the Constitution is silent. What the Constitution says about this expression in Article 366(10) is:

(10). "Existing law" means any law, ordinance, order, bye-law, rule or regulation passed or made before the commencement of the Constitution by any legislature authority or person having authority to make such law, ordinance, order, bye-law, rule or regulation.

This is substantially the same as what is stated in Explanation 1 to Article 372. Therefore, the fact that the expression "law in force" is synonymous with the expression "existing law" is also of no avail in taking us any further.

35. Necessarily, therefore, in, the absence of any provision made in the Constitution for the definition of the expression "law in force" or as to the import and meaning of the expression "in force" we have to fan back on their grammatical and ordinary meaning.

36. The dictionary meaning of the expression "in force" is "in effect". That, therefore, clearly imports into it an element of operativeness; in other words, in order that an Act may be said to be "in force" it must be in operation. The same is the view expressed on this point in *Corpus Juris Secundum*, Volume 32, Page 959. Therein, while dealing with the question of time when a Bill becomes effective, or operative, it has been pointed out that

The time when a bill becomes effective may depend not only upon the terms of the statute itself, as discussed *infra* 400, but also on applicable provisions of the Constitution, or statutory provisions and general statutes. By the express terms of general constitution or statutory provisions, there is usually prescribed some definite time subsequent to its passage when, in the absence of a special provision fixing a different time, every statute or at least every statute of a general nature shall take effect. Under common provisions of this kind statutes take effect at a certain fixed day, or a designated number of days after the end of the legislative session during which statutes are passed, or a certain length of time after their passage or approval, or on publication, or the proclamation announcing them in force, as discussed *infra* 404-408. Within specified limits the time when an Act goes into effect may be committed to the discretion of administrative officials, or made dependent on the occurrence of a contingency as discussed *infra* 410. The general rule is that a statute speaks from the time it goes into effect, whether the effective time is the day of commencement, or some future day to which the power enacting the statute has postponed the time of its taking effect. The fixing of a date either by the statute itself or by a constitutional provision when a constitution shall be effective, is equivalent to a legislative declaration that the statute shall have no effect until the designated date; and since a statute not in effect cannot be considered by the Court, the period of time intervening between its passage and its taking effect is not to be counted, but such a statute must be construed as though passed on the day when it took effect. When a bill has been passed by the legislature and signed by the Governor, it becomes a law in the sense that it may not be changed or modified by the Courts, and a statute may become a law on passage even though by its own provisions its effective date is postponed. In this connection, it

has been said that "passage of an Act" is understood to refer to the time when it is stamped with the requisite approval by the Legislature and the chief executive but that the going into effect of a bill refers to its becoming actually operation as an existing law. It has been said that a statute may have a potential existence although it will not go into operation until a future time, and that until the time arrives when it is to take effect and be in force, a statute which has been passed by both houses of legislature and approved by the executive has no force whatsoever for any purpose. Before that time, no rights may be acquired under it and no one is bound to regulate his conduct according to its terms, and all acts purporting to have been done under it prior to that time are void.

37. Therefore, this much of the submission made by the learned Advocate-General seems to be correct that unless an Act is in operation it cannot be attracted by the expression "law in force".

38. But this by itself does not conclude the matter; for there yet remains another important question to be answered in this connection, namely, : When can a piece of legislation be said to have come into operation for the first time-however technical and limited that form of operation may be? And "it is the answer to this question which in my opinion, in the context of the present controversy will be effectively clinching and helpful.

39. In the Constitution there is no provision made as to the time when a statute becomes effective, nor there is any such specific provision made in any other statute or Act barring what is stated about it in Sections 2(8) and 3 of the Orissa General Clauses Act which substantially correspond to Sections 3(13) and 5 of the General Causes Act. Sections 2(8) and 3 of the Orissa. General Clauses Act read as follows:

2(8): Commencement used with reference to an Act shall mean the day on which the Act comes into force," and

3(1): Where any Orissa Act is not expressed to come into operation on a particular day, then

(i) in the case of an Orissa Act made before the

commencement of the Constitution it shall come into operation if it is an Act of the Legislature, on the day on which the assent thereto of the Govern

or, the Governor-General, or His Majesty as the case may require, is first published in the official gazette; and

(ii) in the case of an Orissa Act made after the commencement of the Constitution, it shall come into operation on the day on which the assent thereto of the Governor or the President as the case may require is first published in the official gazette.

(2) Unless the contrary is expressed, an Orissa Act shall be construed as coming into operation immediately on the expiration of the day preceding its

commencement.

40. The rules of general construction as to the date or time when an Act is to be taken to have come into operation have been substantially borrowed from the English law. In *T.K. Musaliar v. Venkatachalam* 7, Bhagwati, J., who spoke for the Court while referring to this fact observed:

The general rule of English law as to the date of commencement of a statute since 1797 has been and is that if no other date is fixed for its coming into operation, it is in force from the date it received assent 33 Geo. 3 or 13. The same rule has been adopted in the aforesaid Section 5 of the General Clauses Act, 1897" (corresponding to Section 3 of the Orissa General Clauses Act).

Therefore, had the Principal Act been silent on the point as to when it was to come into operation, it would have been construed to have come into operation on the day the assent thereto given by the President was published in the Official Gazette. Here, however, in Section 1(3) of the Principal Act there is, as already stated, an express provision made to the effect that

It shall come into force in whole or in part on such date or dates as the Government may from time to time by notification appoint, and different dates may be appointed for different provisions of the Act

As such the problem which presents itself for our consideration is as to the implication and effect of such a provision made in an Act, on the date of its operativeness, namely whether in such a case the same rule of construction as laid down in Section 3 of the Orissa General Clauses Act is to apply or any other rule of construction.

41. The contention of the learned Advocate-General in answer to this part of the enquiry is that in such a case the general rule of construction laid down in the aforesaid section will have no operation, but what will apply is the express provision made in Sub-section (3) of Section 1 of the Principal Act; in other words the Act will come into force on the date that is fixed by the notification as provided in the Act and not at any time prior to it. The difference, if any, which is, according to the learned Advocate-General, brought about by including such a provision in the enactment is that it only makes the enactment a conditional legislation (see *Queen v. Burah* L.R. 5 IndAp 178, and *State of Bombay Vs. Narothamdas Jethabai and Another*, , in the sense that it does not directly fix the period for its own commencement but leaves that to be done by some external authority like the Government as in this case; but thereby it does not give any commencement to the Act. In my opinion, this contention of the learned Advocate-General cannot be accepted in its entirety. This contention of the learned Advocate-General is no doubt correct to the extent that such a provision makes the enactment conditional in the sense that the operativeness of the provisions relating to the rights and liabilities that are created thereunder is made dependant on the exercise of power by the external authority as provided therein, but that does not seem to bar the operation of that specific provision

itself which postpones the commencement of the rest of the enactment. Therefore, in that limited or what may be called constitutional sense, the enactment comes into operation from the date as provided in the aforesaid provision of the Orissa General Clauses Act; otherwise the contrary view contended by the learned Advocate-General will lead to a very anomalous position. It cannot be denied that as provided in its Section 1(3) the Principal Act could-after the assent thereto given by the President was published in the official gazette-come into operation on any date fixed by the notification issued thereunder. But any notification issued under Sub-section (3) of Section 1, could be valid and legal only if that Sub-section itself was in operation right from the date on which the assent thereto given by the President was first published in the official gazette as provided in Section 3 of the Orissa General Clauses Act. If that were not so and if Sub-section (3) of Section 1 of the Principal Act were not already in operation right from that date, then no order issuing notification could be validly passed in exercise of the power given under the Principal Act and if passed that order or notification could not but be void. Thus there is no way out but to hold that whatever may be the limitations placed by Sub-section (3) of Section 1 of the Principal Act in regard to the date of operativeness of the other detailed provisions made therein, Section 1 of the Principal Act had itself been in operation right from the date on which the assent given thereto by the President was first published in the official gazette. In other words, the making of the operativeness of the detailed provisions made in the Act, depending on the issue of any notification as provided in that Act itself, does not restrict or debar the Act from coming into operation at least in the limited or constitutional sense, right from the date as provided in the Orissa General Clauses Act. What is, therefore, subsequently brought into force as a result of the notification issued thereunder is only the detailed provisions whereunder the rights and liabilities are created. Therefore unless otherwise provided by the Constitution or any independent statute, an Act which is prevented from coming into force in accordance with the rule as laid down in the General Clauses Act, and is directed to come into force thereafter by a provision made in that Act itself, is not, in the constitutional sense in any way different from the one which is silent as to the date or time from which it commences or comes into operation.

42. In this view of the matter, therefore, the application of the provisions of the General Clauses Act may give rise to two results:

(i) When the Act passed by the Legislature is silent on the point as to when it is to come into force: In that case it will commence to operate right from the date as a whole; in other words in that case not only the Act, in the constitutional sense will come into force, but the whole body of it whereby the rights and liabilities are created; and

(ii) When the operativeness of the Act, despite the publication of the assent given thereto by the President is made dependant on the issue of any order or notification as provided in that Act itself; In that case the operativeness of the

Act as a whole is split up into two parts: one in regard to the operativeness of the Act as such in the limited or constitutional sense, and the other in regard to the operativeness of that body of the Act whereby rights and liabilities are created. Otherwise-as already stated the notification or order, as provided therein cannot be validly issued, and if issued it will have to be held to be ineffective in law.

Therefore, the result is that so long as the date and time of the operativeness of the Act passed by the Legislature of a State is to be governed and regulated by the aforesaid provision in the General Clauses Act, or by the specific provision made in that Act itself, the result will be the same so far as the date of operativeness of the Act in the constitutional sense is concerned. The difference in the two cases will be only in regard to the date of operativeness of that body of the Act whereunder rights and liabilities are created. To put it differently, an Act or statute even in a case where the date of its operativeness is made dependant on the issue of a notification as provided therein, will in its limited or constitutional sense, come into force as provided in the General Clauses Act.

43. This is elaborately explained in the illuminating judgment of Bhagwati, J., in the aforesaid decision of the Supreme Court in *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another*, . In that case also, a similar point arose for consideration and it was held that-

If therefore the same principle prevailed in that State (Kerala) Travancore Act 14 of 1124 would have come into force on 7th March 1949 when it was passed by the Travancore Legislature.

What prevented that result? The answer obviously points to Section 1(3) which authorises the Government to bring the Act into force on a later date by issuing a notification. But could Section 1(3) operate to postpone the commencement of the Act unless that section itself was in force?

One must therefore concede that Section 1(3) came into operation immediately the Act was passed, for otherwise it could not postpone the coming into operation of the Act. To put the same argument in another way, if the entire Act including Section 1(3) was not in operation at the date of its passing, how could Government issue any notification under that very section? There must be some law authorising the Government to bring the Act into force. Where is that law to be found unless it were in Section 1(3)?

To the same effect are the weighty observations made by Sir Maurice Gwyer, C.J. in AIR 1941 16 (Federal Court) which has been quoted copiously, Chagla C.J., in support of the similar view taken by him on that point in *The State of Bombay Vs. Heman Santlal Alreja*, Therefore, notwithstanding the limitation imposed by Sub-section (3) of Section 1 of the Principal Act as to when the other detailed provisions made therein were to come into force this much is clear that in the constitutional or limited sense the Principal Act came into operation right from the date when assent given thereto by the President-was published in the official

gazette.

44. It is true that the observations made in *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, , and *Rama Shanker Tewari Vs. State*, ., (which have been relied on by the learned Advocate-General in support of his contention) are susceptible to the construction that the phrase "law in force" must be understood in its natural sense of its being the law in fact in existence and in operation. There are, however, two points which have to be carefully observed in appreciating the full import of the observations made in these two cases. In the first place these observations were made in the back ground of the criminal liability that was claimed to have arisen in those two cases by the contravention of certain statutory provisions which were brought into operation by subsequent legislation. In other words, what was the subject-matter of discussion in those cases was the operativeness of that part of the statutes whereunder rights and liabilities were created, and not the operativeness of that part of the statutes which related to their coming into force in the constitutional sense. Secondly, it was the admitted case of both the parties in those cases that on the date when the criminal act was committed, the penal provisions of those Acts were not in force and that the same had been brought into force retrospectively by a subsequent amendment made therein. Therefore, under those circumstances the question that arose for consideration was whether, as a result of the retrospective operation of those penal provisions the liability created thereunder could be fixed in respect of the criminal act which was already committed long before the amendment regarding their retrospective operation was made; and it was in answer to this question that the aforesaid observations were made in those cases. They are, therefore clearly distinguishable and are of no avail in solving the controversy which is at present before us. In the present case the import and meaning of the expression "law in force" has to be construed exclusively in relation to the constitutional provisions made in Article 31B which does not relate to any liability and much less to any criminal liability. Secondly, the subject-matter in reference to which the expression "in force" has been used in Article 31B is not in relation to any right or liability which is created under the Acts and Regulations incorporated in the Ninth Schedule, but in relation to the vice of invalidity which all of them were apprehended to suffer from for the reason of their being inconsistent with or of their taking away or abridging any of the rights conferred by any of the provisions of Part III, or for the reason of their being already deprived of their claim of continuing in force as a result of any adverse judgment, decree, or order of any Court or tribunal. There is no doubt that an Act or Regulation can be challenged once it has received the assent of the President or Governor, even if the whole of it or a part of it has not come into operation. So, if a Court can strike down an Act or Regulation under Article 13, on the ground of contravention of the fundamental rights-once it has come into force in the constitutional sense,-notwithstanding the fact that the whole of it has not come into operation, the Constitution can declare that notwithstanding its such inconsistency with, or taking away or

abridging any of the rights conferred by any provision of Part III, and notwithstanding any such judgment or decree the Act or Regulation shall continue in force. In this context, therefore, the operativeness of the Act or Regulation is to be construed only in the constitutional sense and not in the sense of its actual operativeness.

45. This, therefore, disposes of the first question as to the legal and constitutional position of the Principal Act as it stood before its incorporation in the Ninth Schedule.

46. Next we come to the other question viz. as to the additional advantage which was intended to be conferred thereon by Article 31B, on its incorporation in the Ninth Schedule.

47. Article 31B is easily divisible into two parts. The first part, in so far as relevant for our purposes reads:

None of the Acts and Regulation specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void or ever to have become void.

In the second part it is stated that-

Notwithstanding any judgment, decree, or order of any Court or tribunal to the contrary, each of the said Acts and Regulations shall ... continue in force.

The obvious purpose underlying the first part of this, article is to provide immunity both prospectively and retrospectively to the Acts and Regulations specified in the Ninth Schedule which may have been otherwise assailed as void on the ground that such Acts or Regulations were inconsistent with, or took away or abridged any of the rights conferred by the provisions of Part III of the Constitution. Had that immunity not been provided, these Acts and Regulations or any provisions thereof, when assailed as void on the ground that they were inconsistent with or took away or abridged the right conferred by Part III of the Constitution must have, to the extent of such contravention, not only ceased to continue in force but also must have suffered as if they had never come into force notwithstanding the fact that these Acts or Regulations (like the Principal Act) may have already come into force right from the date the assent thereto of the President was published in the official gazette. It was, therefore, considered necessary to have this Article 31B as also the other Article 31A incorporated in the Constitution, because it was realised that legislative measures adopted by certain States for giving effect to the policy of "agrarian reform" which was accepted by the party in power, faced serious challenge in Courts of law on the ground that they contravened the fundamental rights guaranteed to the citizens by Part III of the Constitution, as elaborately explained by the Supreme Court in *Sajjan Singh Vs. State of Rajasthan*, . Thus, the object underlying the provision made in the first part of Article 31B was mainly to remove this fatal impediment from the way of the operativeness of those Acts and Regulations in other words, to enable those Acts and Regulations to continue in force as before. Accordingly,

it was laid down in the first part that-

None of the Acts and regulation specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void or ever to have become void.

Once, therefore, they ceased to be void or to have become void the impediment in the way of their being in force stood removed and as such they again thereafter continued to be in force as if that impediment had never come in their way. Thus, they were saved from being attacked in future on the ground that such Act or Regulation or any provision thereof was inconsistent with or took away or abridged any of the rights conferred by any of the provisions of Part III, of the Constitution.

48. In the meantime, however, some of these Acts and Regulations had already been made subject of attack in law Courts and declared void by their judgments, orders, or decrees. Therefore, in order to further clarify and emphasise the retrospective operation of immunity conferred by the first part of Article 31B it was in the second part specifically provided that notwithstanding any judgment, decree or order of any Court or tribunal to the contrary, each of the said Acts and Regulations shall continue in force. In other words, as contended by Mr. Narasaraju the second part of Article 31B is not entirely unconnected with, and independent of, the first part, but is intended only to give full effect to the retrospective operation of the immunity already provided in the first part Or, to put it differently it is to those Acts or Regulations or any provision thereof which, under the first part, cannot be deemed to have become void, that the second part applies but with this difference that in the first part it was the apprehension of their being declared void in future which was removed by declaring the same valid both prospectively and retrospectively; while in the second part it was the actual impediment of invalidity which was already brought about by the judgment, decree or order of the Court or tribunal, that was got expressly removed and declared as not in any way affecting their continuance in force.

49. Thus the purpose underlying both the parts of Article 31B was only to remove the impediment which threatened to come or had already come, in the way of their coming into force and not to bring those Acts or regulations into force. They were, as a matter of fact, already in force at least within the meaning of the expression as already explained.

50. That is the reason why we find that Article 31B proceeds on the assumption that the Acts and Regulations specified in the Ninth Schedule were already in force when they were incorporated therein. Had it not been so, the expression "Act and Regulations specified in the Ninth Schedule" would not have been used without any qualification. There is nothing to suggest that the immunity given to those Acts and Regulations was based on the assumption that they were already in actual operation in the sense that the provisions made therein as to the rights and liabilities were also in force, and that it did not attract those Acts and Regulations which were though in force, but only in the limited or constitutional

sense. No doubt, an Act or Regulation may be challenged, as already stated once it has received the assent of the President or the Governor-irrespective of the consideration whether the whole of it or a part of it has not come into operation. Therefore in the first part it has been provided that the Acts and Regulations specified in the Ninth Schedule shall not be deemed to be void, or ever to have become void-without any qualifying words to suggest that this immunity will apply only if the Acts or Regulations had already been in operation in the full or actual sense of that expression as contended by the learned Advocate-General. This view also gets support from the provision made in the second part of Article 31B. That is based on the principle that if a Court can strike down an Act or Regulation on the ground that it contravenes the fundamental rights once it has come into force in the constitutional sense even if the whole of it has not come into operation, the Constitution can declare that notwithstanding such judgment, decree or order the Act or Regulation shall continue in force. The words "shall continue in force" necessarily imply that on the date of the inclusion in the Ninth Schedule they were in force -may it be either in its actual sense or only in its limited or constitutional sense. If the intention was otherwise, that is to say if the intention was that they would continue in force only if the Acts or Regulations were in full or actual operation, proper words or expressions to that effect should have been used to give effect to that intention. But no such words or expressions are to be found in the Article. Thirdly, the use of the words "judgment, decree or order to the contrary" do not import any restriction as to the actual operation. Lastly the provision made therein that those Acts and Regulations were open to be repealed or amended by the competent legislature also lends support to, and in any case is not inconsistent with the view that the Acts and Regulations were already at least in the constitutional sense in force before their incorporation in the Ninth Schedule. In this connection it may also be noted that the Principal Act had already received the assent of the President on the 17th October 1960. Therefore, in the context of Article 31B, it would not be unreasonable to presume that the President, while giving his assent thereafter to the Amending Act must have proceeded on the assumption that the Principal Act was already in force-see *Mahant Sankarsan Ramanuj v. State of Orissa* 1962 S.C.D. 137 and *Sankarsana Ramanuja Das Vs. State of Orissa and Another*, . Therefore, this circumstance further lends support to the conclusion already come to. In my opinion, the submission made by the learned Advocate-General overlooks and fails to give effect to the language used in the Article. For all these reasons, we hold that the submission made by the learned Advocate. General that the words "shall continue in force" apply only to those Acts or Regulations which were in actual operation, cannot be accepted.

51. The contention urged by the learned Advocate-General, however, is that if in fact the Principal Act was already in force right from the time or date when the President's assent thereto was first published in the official gazette or from the date when it was incorporated in the Ninth Schedule, how could that concept be consistent with the specific provision made in Sub-section (3) of Section 1 of the

Principal Act that it

shall come into force in whole in part on such date or dates as the Government may from time to time by notification appoint and different dates may be appointed for different provisions of the Act

In my opinion the answer to this question is to be found in the discussions already made, namely that the provision in Sub-section (3) of Section 1 of the Principal Act refers to the operativeness of its detailed provisions whereunder rights and liabilities have been created, and it does not control the coming into force of the Act in its constitutional sense. Thus, the additional advantage which was conferred on the Principal Act as a result of its incorporation in the Ninth Schedule was confined to the immunity that it received under Article, 31B, and did not include any element of operativeness either in the limited or constitutional sense, or in the actual or literal sense. In other words it is not correct to say that it came into force either in the constitutional sense or actual literal sense because of the provision made in Article 31B and its incorporation in the Ninth Schedule. It was, as already stated, in force since long before its incorporation therein. In that view of the matter, it is not necessary here to deal with the other branch of the submission made by the learned Advocate-General that the Principal Act being a State Act, could not be brought into force, nor any of its provisions got amended by any provision made in the Constitution (Seventeenth) Amendment Act, which was enacted by Parliament in exercise of the special power given to it under Article 368, and not by virtue of the power it has as a legislative body.

52. We, therefore, now revert to the direct question involved in the case, namely, whether the ceiling limit as provided in the Principal Act, is attracted by the expression "ceiling limit applicable to him under any law for the time being in force" as used in the second proviso to Article 31A(1)? This second proviso lays down 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 such land as is within the ceiling limit applicable to him under any law for the time being in force, unless the law relating to such acquisition provides compensation at a rate which shall not be less than the market value thereof. Therefore, in order that the validity of such a law for acquisition may be successfully challenged by the holder of the land on the ground of inadequacy of consideration, two points have to be made out

(i) That there is a ceiling limit already provided under a "law for the time being in force" ; and (ii) That the ceiling limit was applicable to him.

53. We have already come to the conclusion that the Principal Act having a ceiling limit provided therein was in the constitutional sense-as contemplated in Article 31B- "a law in force" at the time when the Amending Act was enacted. Therefore, the only question that now remains for consideration in connection

with the compliance of the first requirement is (whether the expression, "in force" as used in the second proviso to Article 31A(1) has the same import and meaning as in Article 31B. The claim made on behalf of the Petitioners is that it is so and this claim has not been very seriously challenged by the learned Advocate-General. On principle as well there seems to be no valid ground for holding otherwise. It is a well established rule of construction, that unless otherwise provided either expressly or by implication, every word and expression should, as a rule be construed to have the same import and meaning when used in the same statute at different places. It is more so in the case of a constitutional document and therefore, as there is nothing in the context either of the second proviso to Article 31A(1) or 31 B to suggest to the contrary, the expression "in force" as used in both of them has to be construed to have the same import and meaning.

54. Secondly, the scheme underlying the Constitution (Seventeenth) Amendment Act also lends support to the Same view. The Seventeenth Amendment falls into two parts, -one relates to amendment of Article 31A whereby the second proviso has been added to it ; the other part relates to the addition of a number of amendments (items 21 to 64) in the Ninth Schedule. And both form part of the common subject-matter, namely, agrarian reform, the latter providing immunity to the enactments incorporated therein from attack on the ground of any contravention of Articles, 14, 19 and 31 and thus avoiding any hindrance that may have been created in the effective implementation of the agrarian reform- and the former providing protection to the ceiling limit, once fixed under any law for the time being in force, from any further onslaught by the general immunity provided under Article 31A in order to secure to that extent the interest of the individual. Thus, on the one hand by the immunity provided under the main body of Article 31A the operation of the fundamental rights, despite the provision made VOL. XXXIII in Article 31 was restricted; on the other, by the second proviso added to it they were restored to the extent they were attracted by the ceiling already fixed under any law for the time being, in force as provided therein. In this background of the scheme" underlying the Seventeenth Amendment it is unreasonable to hold that the Acts and Regulations which were included thereby in the Ninth Schedule as items 21 to 64:, were, notwithstanding the fact that they had the ceiling limit already provided in them not intended by the framers of that Act to be attracted by the expression "any law for the time being in force" as used in the second proviso to Article 31A(1).

55. Thus, on the facts of this case the conclusion is irresistible that there was a ceiling limit already provided in the Principal Act as the "law for the time being in force", within the meaning of that expression as used in the second proviso to Article 31A(1).

56. The other requisite necessary to be proved is whether the ceiling limit provided in the Principal Act was applicable to the Petitioners at the time when the Amending Act was enacted. Unfortunately on this part of the case the

learned Advocate-General has not made any submission-namely, on the question that even if the Principal Act was the "law for the time being in force" at the time when the Amending Act enacted the ceiling provided in the Principal Act was not applicable to the Petitioner. In my opinion the expression "ceiling limit applicable to the holder of the land" has been used in the second proviso with reference to the link or relationship between the ceiling limit and the holder of the land and not with reference to the operativeness of that ceiling limit to him. The concept of operativeness to the extent necessary is provided therein by the use of the expression "any law for the time being in force and therefore it was not necessary to import that concept again in the expression "ceiling limit applicable to the holder of the land". Further it is not unknown that where two views are possible and the meaning of the words and the expression used is not clear or compelling, that construction is to be adopted which will achieve a harmonious scheme and smooth working and give effect to all the clauses of the legislative provision-see *Sheikh Gulfan and Others Vs. Sanat Kumar Ganguli*, ; *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, .

57. Lastly, in support of this view that there is a vital inter-relation between the second proviso and the inclusion of the enactments in the Ninth Schedule, and that the second proviso was intended to attach itself to the ceiling limit which was already provided in the Acts and Regulations included in that Schedule, our attention has also been drawn by Mr. Narasaraju to the Explanation given at the end of the Ninth Schedule in regard to its Entry No. 55-which relates to the Rajasthan Tenancy Act, 1955. That Explanation reads as follows:

Any acquisition made under the Rajasthan Tenancy Act, 1955 (Rajasthan Act III of 1955) in contravention of the second proviso to Clause (1) of Article 31A shall, to the extent of the contravention be void.

I must concede that I have not been able to get a very clear picture of the tenancy legislations of the State of Rajasthan and the import and impact of this Explanation on those legislations. Therefore as at present advised I do not express any conclusive opinion on this part of the submission made by Mr. Narasaraju. But even so, this much seems to be definite that it does not go in any way counter to the conclusion we have come to.

58. It follows therefore that at the time the Amending Act was enacted there was already a ceiling limit applicable to the Petitioners under the original provisions of the Principal Act.

59. This by itself, however, does not attract the operation of the second proviso to Article 31 A(1) to the vesting of the surplus lands u/s 45 of the new Chapter IV unless on the facts of these cases it is further found that the difference of the areas between the two ceiling limits-the one originally fixed under the Principal Act and the other now fixed under the Amending Act, has always been held by them under personal cultivation. In my opinion, the claim of the Petitioners as to this requisite of the second proviso is not much open to any dispute. It is the

admitted case of the parties that the ceiling area as originally provided in Chapter IV of the Principal Act has been by now, as a result of the provisions made in the new Act, in Chapter IV, reduced. Therefore, this difference between area., between the two ceiling limits is now under the amended Section 45 of the new Chapter IV, to vest in the Government. Section 43 of the new Chapter IV lays down the necessary directions for the preparation and publication of the draft Statement showing ceiling and surplus lands. It reads as follows:

43(1)-The Revenue Officer, on receipt of the return under Sub-section (1) of Section 40, after considering all relevant materials available to him and the selection made by the person concerned under the said Sub-section, of the lands to be retained by him, shall record his findings in a draft statement showing

- (a) the area held under personal cultivation as a land holder or raiyat.
- (b) the area so held in excess of the ceiling area, herein after referred to as the "surplus lands";
- (c) the specific parcels of land to be retained in personal cultivation and the total area thereof;
- (d) the specific parcels comprising the surplus lands under Clause (b);
- (e) lands if any exempted u/s 39 ; and
- (f) such other particulars as may be prescribed;

Provided that no part of the lands held by a Company or any other corporate body of which the person concerned may be a member or shareholder shall be shown as surplus lands in respect of such person.

(2) Subject to the rules made in that behalf, the draft statement under Sub-section (1) shall be published inviting objections from persons interested, and the Revenue Officer after hearing the objections if any received within thirty days of such publication and making such enquire"s as he deems necessary, may by order (after) recording his reason in writing, alter or amend all or any of the particulars specified in the draft statement:

Provided that in cases where a revised return is due to be submitted under Sub-section (2) of Section 40 the Revenue Officer shall prepare the draft statement under Sub-section (1) after consideration of such return, if any

Therefore under Sub-section (1)(b) of the aforesaid Section 43 the lands to be recorded as the surplus lands in the draft statement have necessarily to be a part of the area held under the personal cultivation by a person as a landholder or a raiyat. This provision is substantially the same as the one provided in Section 45 of the old Chapter IV of the Principal Act. Thus, the surplus lands both under the Principal Act and under the Amending Act as provided in the aforesaid sections, constitute a part of the area held under personal cultivation. In other words, the difference between the areas of the two ceiling limits must necessarily cover the

lands which are under the personal cultivation of the landholder or raiyat. Therefore, in view of the admitted fact that the compensation payable for the difference between the areas of the two ceiling limits is to be determined on the basis of the fifteen times of the fair and equitable rent u/s 47(1) of the new amended Chapter IV and not on the basis of the market value as provided in the second proviso to Article 31A(1), the provisions relating to ceiling and disposal of surplus lands, as laid down in Chapter IV of the Amending Act, are hit by the limitation imposed under the aforesaid proviso.

60. It needs no argument to say that the doctrine of fraud on the Constitution is not confined only to legislative competence, but covers also a case where the legislation is done by ignoring the limitations imposed on the competency of the

legislature-See K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, and Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, . In the former case of Gajapati Narayan Deo it has been observed

A distinction however exists between a legislature which is legally omnipotent, like the British Parliament and the laws promulgated by which could not be challenged on the ground of incompetency and a legislature which enjoys only a limited or qualified jurisdiction. If the Constitution of a State distributes the legislative powers amongst different bodies which have to act within their respective spheres marked out 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 of 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. The idea conveyed by the expression is that although apparently a legislature in passing a statute, purported to act within the limits of its powers yet in substance and reality it transgressed these powers, and the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise. As was said by Duff, J. in *Attorney-General for Ontario v. Reciprocal Insurers* L.R. 1924 A.C. 328, 337. Where the law making authority is of a limited or qualified character, it may be necessary to examine with some strictness the substance of the legislation for the purpose of determining what is it that the legislature is really doing."

In other words, it is the substance of the Act that is material and not merely the form or outward appearance, and if the subject-matter is something which is beyond the powers of that legislature to legislate upon, the form in which the law is clothed would not save it from condemnation."

Now, in the present case what is enacted in the second proviso of Article 31A(1) for the protection of the ceiling limit applicable to a landholder under any law for

the time being in force from any onslaught under the cover of the main body of Article 31A is undeniably prospective in operation and therefore operates as a limitation on future legislation. As such, in view of our finding that the Principal Act was the "law for the time being in force" within the meaning of that expression as used in the aforesaid second proviso, it has to be held that the State Legislature in enacting Chapter IV of the Amending Act has transgressed the limits imposed upon it by that proviso. In that sense, therefore, the provisions made in the new Chapter IV of the Amending Act constitute a fraud on the Constitution and as such they are ultra vires, void and illegal.

61. It needs no saying that the new Amended Chapter IV of the Principal Act being hit by second proviso to Article 31A(1) of the Constitution the provision made therein, in its Section 47(1) for compensation assumes a pivotal position in the entire scheme as made therein, for ceiling limit and disposal of surplus lands. Therefore, if Section 47(1) is held invalid and unconstitutional as we have held, the entire provision made in the new Chapter IV of the Amending Act for ceiling and disposal of surplus lands has to go.

62. In that view of the matter we think it is not necessary to have any separate discussion with regard to the constitutional validity of any of the individual provisions or sections of this new Chapter IV.

63. Mr. Asok Das however has specifically drawn our attention to the views of the provision made in Explanation I to Section 52 which falls in that Chapter. It provides that

An increase in the acreage in terms of a standard acre shall be deemed to have resulted in future acquisition, only if such increase is due to an improvement as a result of irrigational facilities provided by Government.

The submission made by Mr. Das as to this Explanation is that once there is an improvement made in the quality of the lands in possession of the landholder for the reason of the irrigational facilities provided by Government, that will logically in view of the scheme as provided in the new amended Chapter IV of the Principal Act, lead to a certain increase in the acreage of lands held in possession of the landholder. As such, in case the total area of the lands in his possession exceeds thereafter the ceiling limit the excess as provided in the scheme will vest in the State and in that case again the compensation payable will not be at the market rate, but at the rate as provided in Section 47(1) of the Amending Act. Thus.:Mr. Das contends that independent of what may be held about the new Chapter IV as a whole, this Explanation to Section 52 has to be struck down, in any case for this reason alone against for others, as unconstitutional and invalid; for by the time that stage comes, it would not be any longer available to the State to contend that there was no notification issued as provided in Sub-section (3) of Section 1 of the Principal Act, and as such the Act was not in force. On principle there seems to be much force in this contention; but I think at this stage this aspect of the matter is wholly academic. It may be that no such

improvement is over made at all and secondly even if ever such a contingency arises that will affect only the validity of Explanation I to Section 52 alone, and not of the scheme as a whole, and as the Explanation is obviously severable from the rest of the provisions that alone will stand struck out and not the entire amended Chapter-See A.P. Krishnasami Naidu etc. Vs. State of Madras, .. For these reasons, therefore we, as at present advised do not consider it necessary to give any concluded opinion on this part of the submission made by Mr. Das.

64. We then come to the last contention which still remains to be considered in this connection. That has been advanced by Mr. Narasaraju and seems to be very much far reaching and comprehensive in its scope and impact. It suggests to engulf not only the constitutional validity of the amended Chapter III but also that of the amended Chapter IV. Therefore, before we take up the points which have been urged exclusively as against the constitutionality and validity of Chapter III, it would be convenient to dispose of this point first, it being common to both Chapters III and IV.

65. This part of the submission made by Mr. Narasaraju is based on the footing-which legally speaking is not disputed that the immunity granted under Article 31A of the Constitution is engrafted on the fundamental rights solely for the purpose of giving effect to the agrarian reforms and thereby to protect such a measure as far as possible, from frequent and constant onslaughts in Courts of law for the reason of their in-fraction if any of the fundamental rights as laid down in Articles 14, 19 and 31 so that the era of the socialist pattern of society which those agrarian reforms profess to proclaim may be ushered in at the earliest. On that assumption, it has been contended that once this object of giving effect to agrarian reforms has been achieved under any legislation already enacted for that purpose, there is no further justification left, thereafter, for any other new legislation on the same subject. Such a subsequent legislation would in that case be only a pretence for agrarian reform, but in reality a contrivance to deprive the owners of their right of property, in the agrarian lands in a manner not consistent with Articles 14, 19 or 31 of the Constitution. In other words, it is contended that, such a legislation would be colourable, legislation or a fraud on the Constitution; as such, it would not be protected by the immunity granted in Article 31A and would be constitutionally void, for the reason of its contravention of the rights as, laid down in, Articles 14, 19 and 31.

66. In making this submission, it is not disputed that the provisions of the Amending Act are not beyond the legislative competence of the State Legislatures, or that the subject matter that they deal with is not an "estate" within the meaning of Article 31A. Nonetheless it is submitted, that once, in exercise of that competence a legislative measure has already been enacted for the purpose of agrarian reform in, the estates, the objective implicit in Article 31A stands fully served, leaving thereafter no further jurisdiction for any subsequent, legislation on the same subject.

67. This submission of Mr. Narasaraju may be conveniently discussed in two

parts:

- (i) One on the assumption that the subsequent legislation as it stands does not overreach the object implicit in Article 31A of the Constitution, and
- (ii) Secondly on the assumption that in fact it does over reach that object The first part is taken up first.

68. There is no dispute that the present legislation was enacted by the State Legislature to enable the State as pointed out in *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, , and subsequently reiterated in *Karimbil Kunhikoman Vs. State of Kerala*, , and *A.P. Krishnasami Naidu etc. Vs. State of Madras*, - "to implement its next objective in land reform, namely, fixing of limits to the extent of agricultural lands that may be owned or occupied by any third person, disposal of any land held in excess of the prescribed maximum, and the further modification of rights of landowners and tenants in agricultural holdings"-and all with a view: firstly to make the agricultural land available for all in proportion to the availability of land and not to allow it to remain any more, as had been the case so far, as the preserve and monopoly of only a few privileged classes of people; and secondly to make the tiller of the soil its owner. Further, it cannot also be denied that all these three objectives underlying the concept of agrarian reform were already very much provided for in the provisions made in the Principal Act. In other words, thereunder, there was already a ceiling limit fixed; a provision made for disposal of surplus lands; and necessary restrictions imposed on the resumption of the lands in the cultivating possession of the tenants. Therefore, the question raised is whether in these circumstances any subsequent legislation made thereafter, though on the same subject-yet within the competence of the Legislature-either to further curtail the ceiling limit already fixed or to further reduce the ratio of the resumable land-is but a contrivance for expropriation in the disguise of agrarian reform or a pretence to deprive the citizens of their precious right of property in a manner not permissible under Article 31 or Article 19-more particularly when it is done by the simple device of postponing the issue of the executive notification as provided in the case of the Principal Act here.

69. In my opinion, the answer to this question has to be given in the negative-though at the same time it must be made clear that this answer, as already assumed, is subject to two conditions (i) that the subsequent legislation is one within the competence of the legislature and, (ii) that it does not overreach the objective implied in Article 31A of the Constitution It is, true that where there are two competing legislative jurisdictions-one superior and the other limited-the latter cannot exercise legislative jurisdiction in respect of subject-matter concurrently within the jurisdiction of both, if the field is already occupied by an enactment made by the former. In the present case however there is no such competition between any two rival legislative jurisdictions. Here both the legislations the Principal Act, and the Amending Act,-have been enacted by the same Legislature in respect of a subject over which the, State, Legislature-as

already presumed for this part of the discussions has undoubted jurisdiction. It is a well established principle of constitutional law that within the field allotted to the, States Legislature under the State list, or within their own spheres the powers of the State Legislatures are as large and as complete as they are in a sovereign Parliament-see AIR 1941 16 (Federal Court) . In that view of the matter, it is always open, to the State Legislature to exercise that jurisdiction as many times as it may consider necessary and in the exercise of that jurisdiction, to have as many successive enactments as considered necessary and desirable, either by way of repeal or amendment of the former-subject of course to the limitations if any that may have been imposed on it, either expressly or by implication, by the Constitution whereunder that legislative -authority is constituted. If that were not so, the entire doctrine of amendment and repeal will necessarily stand wholly negatived and nullified. Therefore, it cannot be said that any enactment relating to land reform once made is not open to be ever thereafter amended, altered or repealed; secondly such is never the implication and

purpose of the provision made in Article 31A. What Article 31A provides is only in the nature of an immunity to such a legislation from any attack on the ground of its infraction of the fundamental rights as laid down in Articles 14, 19 and 31. It does not either directly or indirectly constitute any bar or limitation on the legislative authority of the State as to any subject-matter which falls within its jurisdiction. Secondly, as observed in *K.C. Gajapati Narayan Deo v. State of Orissa* 13, ".the question whether the law was a colourable legislation and as such was void, did not depend on the motive or the bonafides of the Legislature in passing that law, but upon the competency of the Legislature to pass that particular law and what the Courts have to determine in such a case is whether though the Legislature has purported to Act within the limits of its powers, it has, substance and in reality transgressed those powers the transgression being velied by what appears on proper examination to be a mere pretence or disguise; the whole doctrine of colourable legislation is based upon the maximum that you cannot do indirectly what you cannot do directly." Therefore, there is no escape from the conclusion that if the subsequent legislation as the Amending Act is here, is within the legislative competence of the State Legislature and does not over-reach the objective underlying Article 31A of the Constitution, it is as much protected by the immunity laid down in Article 31A as any former enactment already made on that subject.

70. Then comes the second part of the submission which is based on the assumption as already stated, that though within the legislative competence, it over-reaches the object implicit in 31A of the Constitution.

71. On principle there can be no two opinions that such a legislation is a colourable piece of legislation and as such not protected under Article 31A of the Constitution. But it has to be noted that the invalidity of the legislation in such a sense is based-not on the ground that there was already a legislation made on

the subject and therefore there could be no other successive legislation about it, but on the ground, as observed in *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*,⁷² that "Article 31A deprives citizens of their fundamental rights. Such an Article cannot be extended by interpretation to over-reach the object implicit in the Article." Therefore, in the form as advanced by Mr. Narasuraju this second part of his submission also fails. Further, on merit there is no justification to hold that the Amending Act over-reaches the object implicit in Article 31A. In the case of *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, the controversy (centered round the validity of Madras Act 32 of 1955 which was enacted with a view to regulate the rights in relation to the "Asthnam". Their Lordships notwithstanding the fact that the Asthanam was held to be an estate refused the immunity of Article to that Act on the "ground, as observed therein that-

Such acts have no relation to land tenures and they are purely acts of expropriation of a citizen's property without any reference to agrarian reform.

and or, in other words, that the act-

Does not effectuate any agrarian reform and regulate the rights inter se between landlords and tenants.

That was, therefore, a case considered on its own facts, as is evident from the following observations made by the Supreme Court about it in the subsequent case of *Ranjit Singh and Others Vs. State of Punjab and Others*, -

No doubt Kochunni's case²² considered a bare transfer of the rights of the sthanee to the toward without alteration of the tenure and without any pretence of agrarian reform, as not one contemplated by Article 31A, however liberally construed. But that was a special case and we cannot apply it to cases where the general scheme of legislation is definitely agrarian reform and under its provisions something ancillary to it, in the interests of rural economy has to be under taken to give full effect to the reforms.

Therefore, unless in the present case it is found that the provisions made in the Amending Act do not effectuate any agrarian reform it cannot be held that they have over-reached the object implicit in Article 31A of the Constitution. This therefore takes us to the consideration of the question whether the provisions made in the Amending Act do or do not effectuate any agrarian reform within the meaning of the phrase as already stated,

72. It is not denied that under the Principal Act the main and substantive purpose was, to give effect to agrarian reform, but if that is so, it cannot be denied that the purpose underlying the Amending Act is not the same, or that it is in any way different to what is provided in the Principal Act-though it is a different matter that the degree of reform envisaged in the Amending Act may be comparatively wider, but all the same it is in the same field and in the same direction, Mr. Narasuraju, in this connection has specifically drawn out attention

to the facts of a typical case, in O.J.C. No. 45 of 1966, in support of his proposition that the object underlying the Amending Act though in form agrarian is not, in reality, agrarian at all. The area of the land held by the landholder (of that petition), it is stated, is only 2.35 acres. The whole of it is said to be in possession of his tenant. Thus, the landholder as a result of the operation of Amending Act, is entitled to the resumption of only half the area namely 1.18 acres as provided in Section 25 of the amended Chapter III, but the land held by the tenant himself is said to be more than 30 acres. Therefore, in such a case, it is contended, any restriction imposed on the right of the landholder as to the resumption of his entire land as has been done under Chapter III of the Amending Act, can never be any law for effecting agrarian reform with in the meaning of that expression as already referred to above; it can at best be only a cloak or pretence for depriving the land holder (of that case) of his property and thereby augmenting the area of the tenant already in possession of much more than that. In fact, it is stated that in such a case the landholder would be doubly punished. Firstly, he would be deprived of his land and the area of the tenant would be augmented much beyond what is possessed by him. Secondly, he would be denied the right of full compensation for the non-resumable land given to his tenant as provided in the second proviso to Article 31A(1) of the Amending Act the entire land in possession of the tenant would be deemed to be in his personal cultivation. In my opinion, none of these consequences in the background of any isolated case or class of cases, howsoever unjust or bad they may appear to be, can be, a valid ground for holding that the scheme underlying the Amending Act as a whole, is not agrarian reform and has nothing to do with the alteration of the tenure-vide *Ranjit Singh v: State of Punjab*²⁴. In this connection we may usefully refer to a similar instance which was brought to the notice of the Supreme Court in connection with the operation of the Bihar Land Reforms Act, 1950 in the case of *The State of Bihar Vs. Sir Kameshwar Singh*, . Therein it has been observed (in paragraph 53) while dealing with such a situation that It is by no means easy to impute a dishonest motive to the legislature of a State, and hold that it acted mala fide and maliciously in passing the Bihar Land Reforms Act or that or it perpetrated a fraud on the Constitution by enacting this law. It may be that some of the provisions of the Act may operate harshly on certain persons or a few of the zamindars and may be bad if they are in excess of the legislative power of the Bihar Legislature, but from that circumstance it does not follow that the whole enactment is a fraud on the Constitution. From the premises that the estates of half a dozen zamindars may be expropriated without payment of compensation, one cannot jump to the conclusion that the whole of the enactment is a fraud on the Constitution or that all the provisions as to payment of compensation are illusory. At best, they are illusory only in the case of some only of the large body of persons affected by it."

Besides, on a close examination, it is clear as already discussed above, that the scheme underlying the Amending Act is undoubtedly one relating to agrarian reform. Therefore the case of one solitary instance can be no evidence of the fact

that the object of the Amending Act is not agrarian reform. Then so far as the grievance about loss of compensation is concerned that also, in my opinion, has no substance. The true rule of law which is applicable in the case of resumption is the one to be found in Section 25 of the new Chapter III of the Amending Act. What is provided in its Section 39(I) of Chapter IV is exclusively for the purpose of working out the scheme relating to ceiling. The purpose underlying that provision is that as far as possible the lands in possession of a tenant or a mortgagee may not be included in the parcel which the landholder may wish to retain for his personal cultivation, and not to deprive him of the ceiling limit as a result of the resumption proceeding u/s 25 of the new Chapter III of the Amending Act. That is the reason why we find that there is a specific provision made in Section 40(2) in Chapter IV, that on the completion of the resumption proceeding a revised return shall have to be filed by the landholder so that the loss if any which he may have suffered as a result of the provision made in Section 39(I), may be made up thereafter. Thus looked at, there is no substance in the contention that the landholder has been as a result of the provisions made in Section 39(I) of new Chapter III of the Amending Act, put to any loss in the matter of compensation. Therefore the submission made by Mr. Narasaruju that the object underlying the Amending Act is not implementation of agrarian reform, or that it is only a cloak or pretence to deprive the landholder of his property is without substance.

73. Next we pass on to the points which have been raised exclusively in respect of the constitutionality and validity of the new Chapter III of the Amending Act.

74. As against the validity and constitutionality of the provisions made in Chapter III of the Amending Act, the main line of attack is based on the footing that the provisions made therein do not relate to any "estate" within the meaning of Article 31A. In support of this contention, the grounds advanced are mainly two. Before, however we enter into the merits of these contentions, it may be useful to recall here afresh to our memory the two broad changes or alterations which have been brought about in the old Chapter III of the Principal Act by the new Chapter III of the Amending Act. They are:

- (i) That the extent of the ratio of the resumable lands has been, under the amended Chapter, III, reduced from thirds to three fourths, as provided in the Principal Act, to a uniform ratio of one half ; and
- (ii) That the rate of compensation payable for the non-resumable area has been reduced from market value as given in Section 30 of Chapter III of the Principal Act, to ten times the fair rent of the land as provided in Section 28 of Chapter III of the Amending Act. Further, there is, over and above it, a clause added that "the compensation payable under this Sub-section shall in no event exceed 50 per cent of the market value of the land."

75. Relying on these two broad amendments made by the, Amending Act in Chapter III of the Principal Act, the first ground urged on behalf

of the Petitioners in support of their claim that this legislation is not in respect of an estate is that what is substantially aimed at therein is to reduce the quantum of compensation which, under the Principal Act, was payable to the landholder and not to effect any agrarian reform in any estate. Therefore it is claimed that the new Chapter III of the Amending Act is a piece of colourable legislation in the guise of a claim for giving effect to agrarian reform and as such Article 31A. has no application to the enactment. In support of this contention reliance has been placed by the Petitioners on the decision in *Maharana Shri Jayvantsinghji Ranmalsinghji etc. Vs. The State of Gujarat*, . On principle it is correct to say that if, as a result of any agrarian reform, the rights inter se between a landholder and a tenant have already been determined and ascertained and on the finalisation of that process, the title in the non-resumable lands has already passed to the tenant, as contemplated by Section 28 of the Principal Act, and what the landlord is to get thereafter as a consideration for the non-resumable land is only compensation, the relationship of the parties is no more thereafter, in respect of that non-resumable land, that of landlord and tenant, but it is in substance that of creditor and debtor. There fore, if subsequent thereto any reduction is made in the rate of compensation payable by the tenant to the landholder, that would obviously reduce in quantum the compensation payable for the lands already made non-resumable. As such, the subsequent legislation made for the reduction in the rate of compensation will not be in respect of any estate or to give effect to any agrarian reform, but to give relief to the tenant in relation to the compensation payable by him to the landholder.

77. But that is not the case here. In the present case, as already stated, the provisions made in the Principal Act as to the rights and liabilities of the parties never came into force until the Amending Act was enacted. Therefore the title of the land held by the landholder was not yet in any way affected by the provisions of the Principal Act. The quantum of .he so called non-resumable land was not yet, by that time, fixed and much less can it be said that it had already vested in the tenant or that the title of the landholder in the resumable portion was made altogether absolute or final thereunder. In other words the relationship of the parties in respect of all the lands held by the landholder continued to remain as that of landlord and tenant; and in respect of no land of his it was yet converted into that of creditor and debtor and as such the principle of law as laid down in the case of *Jayyantainghiji v. State of Gujarat* AIR 1962 S.C., has no application to the facts of the case here. The subject-matter of controversy in that case was the validity of the provisions of the Bombay Land Tenure Abolition Laws (Amendment) Act, 1958. The grievance made was that Sections 3, 4 and 6 of that Act made almost all non-permanent tenants into permanent tenants and thereby deprived the Petitioners there (landlords) of the higher purchase price which they were entitled to get u/s 32 and the succeeding sections of the Tenancy Act, 1948. This grievance was based exclusively on the footing that the title of the Petitioners to the lands sold by the tenants who were entitled to the benefits of Sections 32 to 32-H passed immediately to the tenants on the Tillers"

Day (1st day of April 1957) and there was a completed purchase or sale thereof, between those Petitioners and the tenants before the coming into force of the aforesaid Bombay. Act of 1958. This was so is also evident from a, subsequent decision of the Supreme Court in *Sri Ram Narain, v. State of Bombay* AIR 1965 S.C. 459. Therein it was observed that:

The title of the landlord to the land passes immediately to the tenant on the Tillers" Day and there is a completed purchase or sale-thereof, as between landlord and tenant. The tenant is no doubt given a locus penittntiae and an option of declaring whether he is or is not willing to purchase the land held by him as a tenant. If he fails to appear or make a statement that he is not willing to purchase the land, the Tribunal shall by an order in writing declare that such" tenant, is not willing to purchase the land and that the purchase is ineffective. It is only on such declaration by the Tribunal that the purchase becomes ineffective. If no such declaration is made by the Tribunal the purchase would stand as statutorily effected on the I Tillers" Day and will continue to be operative the only obligation on the tenant then being payment of the price in the mode determined by the Tribunal. If the tenant commits default in the payment of such price, either in lump sum or by instalments, as determined by the Tribunal, Section 32-H, declares the purchase to be ineffective, but in that event the land shall then be at the disposal of the Collector to be disposed of by him in the manner provided therein. Here also the purchase continues to be effective as from the Tillers" Day till such default is committed and there is no "question of a conditional purchase or sale taking place between the landlord and the tenant. The title to the land which was vacated originally in the landlord passes to the tenant on the Tillers" Day, or the alternative period, prescribed in that behalf. This title is defeasible only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land. or committing default in the payment of the price thereof as determined by the Tribunal. The tenant gets a vested interest in the land defeasible only in either of those cases and it cannot therefore be said that the title of the landlord to the land is suspended for any period definite or indefinite.

It was in that view of the matter, therefore, that their Lordships in the aforesaid case of *Jayyantainghiji v. State of Gujarat* AIR 1962 S.C., held that

Article 31A has no application to the present, cases, inasmuch as there was no acquisition by the State of any estate or any rights therein or the extinguishment or modification of any such rights. On April 1, 1957, the tenure-holders ceased to be tenure holders in respect of the lands held by non-permanent tenants. The relation between the tenure-holders and tenants has changed from that of landlord and tenant to that of creditor and debtor. When, therefore, the impugned Act of 1958 affected the rights of the Petitioners as creditors to get a certain sum of money from the debtors it did not provide for the acquisition by the

State of any estate or of any rights therein; nor did it provide for the

extinguishment or modification of any such rights. Therefore, Article 31A has no application and cannot save the impugned Act, 1958.

In other words, the ratio decidendi of the aforesaid case was that the rights between the landlord and tenant had already been altered or perfected into there of creditor and debtor before the provisions of the Bombay Act of 1958 were enacted; and thus the effect of this new legislation was to disturb the rights already vested in the landlord as a creditor, and not to bring about any change in his position quo landlord which he held before that change came into operation. Therefore, on the facts of this case as already stated, that decision can be of no avail to the Petitioners.

78. The second ground urged in support of the contention that the legislation made under the Amending Act is not in relation to an "estate" is based on the basic import and implication of the expression "tenure." It is true as observed in Kochunni v. State of Madras and Kerala²², that Article 31A. deals with a tenure called "estate". Therefore, it has been contended that unless the subject-matter of the legislation is a tenure it cannot be saved by the immunity granted thereunder. "Tenure" as defined in Black's Law Dictionary (Fourth Edition) page 1639 in:

The mode of system of holding lands or tenement in subordination to some superior which, in the feudal days, was the leading characteristic of real property, or, to put it differently, a tenure is-

"the direct result of feudalism which separated dominicum directum (dominion of the soil) which is placed mediately or immediately in the Crown, from the dominion title (the possessory title), the right to the use and profits in the soil, designated by the term "seisin

It follows, therefore, that the word "tenure" denotes holding of land by a tenant under his lord and it is only appropriate where the feudal relationship of lord and tenant exists. As such it has been stressed that in order that an estate may be a tenure, it is necessary that it should have both a landlord and tenant therein. This is so, it is urged, is also clear from the fact that if on the principle of ejusdem generis the expressions raiyat and under-raiyat as used in Sub-clause (b) of Clause (2) of Article 31A is read in its context, it should be so construed as to be consistent with the expression "other intermediary" as used therein. Therefore, it has been argued that unless it is found that in the estate of a raiyat or under-raiyat both the interests of landlord and tenant co-exist, that estate will not be a tenure and as such any legislation made in relation thereto will not be a legislation in respect of an estate within the meaning of Article 31A. Accordingly, in that view of the matter, it has been submitted that as

the possession of a bhagchassi over the difference of the areas of land between the two ratios fixed for the purpose of resumption under the Principal Act and the Amending Act is not possession of a tenant as contemplated in the law of

landlord and tenant, the land cultivated by a bhagchassi is not an "estate"; as such, the entire Chapter III which deals with such a land is not protected by Article 31A. The word "tenant" it is argued-within the meaning of the general law of landlord and tenant-as defined in Jowitt's Dictionary (page 1728) means "a person who holds land", or as defined in Section 3(23) of the Orissa Tenancy Act, means "a person who holds land under another person". Therefore, in order that a person may be said to "hold" land he must have therein some right or title as observed in *Phaku v. Haris Chandra* AIR 1953 All. 407. But a bhagchassi, as held in *Jadab Chandra Santra Vs. Gopal Chandra Debnath*, ; *Tajuddin Khan v. Ram Prasad Bhagat* ILR All. 217 ; *Sheikh Pokhan v. Rajani Kamal Chakrabarty* 23 C.W.N. 614 and *Jatindra v. Abdul Aziz Mian* 32 C.L.J. 83, or as even defined in Section 2(31) of the Principal Act, has no right whatsoever in the land under his cultivation. In Section 2(31) of the Principal Act "tenant" means-

a person who has no rights in the land of another but under the system generally known as bhag, sanja, khata or such similar expression, or under any other system, law, contract, custom, or usage, personally cultivates such land on payment of rent in cash or in kind or in both, on condition of delivery to that person....

Therefore, it is contended that a bhagchassi is not a tenant as understood in the general law of landlord and tenant and the extended definition of the word "tenant" as given in the aforesaid Section 2(31) of the Principal Act is only a device to expropriate the landlord of his land under the cloak and disguise of agrarian reform. A bhagchassi is at best a servant on contract of the landlord. Therefore in the eye of the law the possession of a bhagchassi is the possession of the landlord; as such, in the absence of a tenant thereon on the land cultivated by a bhagchassi on behalf of the landlord or landholder, is not an estate within the meaning of Article 31A.

79. It is true that within the meaning of the general law of landlord and tenant a person, in order to be a tenant has to hold some interest in the land in his possession as is clear also from the definition of the word "tenant" as given in Section 2(23) of the Orissa Tenancy Act. Therefore, for a bhagchassi to be called tenant, it must be proved that he has some interest vested in the land in his possession. Otherwise, he cannot be called a tenant, within the meaning of the general law of landlord and tenant. The question, however, whether a bhagchassi is within that meaning of a tenant or not, will depend on the facts of each case and on the terms of the contract between him and the owner of the land. It may be that in some cases under the contract he may not have any interest in land and as such he will not be a tenant as defined above; but it may be that in other cases, under the contract the position may be otherwise and he may have an interest and as such his position, in the eye of law in those cases, may be that of a tenant. The decisions cited by Mr. Das in *Jadab Chandra Santra Vs. Gopal Chandra Debnath*, ; *Tajuddin Khan v. Ram Prasad Bhagat* ILR All. 217; *Sheikh Pokhan v. R. Kamal Chokrabarty* 23 C.W.N. 614; and *Jatindra v. Abdul Aziz Mian*

32 C.L.J. 83 C.W.N. 505. C.L.J. 83, are the typical illustrations of the former class of cases while the decision in *Secretary of State v. Govind* 21 C.W.N. 505, cited by the learned Advocate-General is the typical illustration of the latter class. By far and large however it has to be conceded that a bhagchassi has no interest in the land under his cultivation. Therefore, in most cases he is not a "tenant" within the implication of that expression as used in the general law of landlord and tenant. That question, however, for the purpose of deciding the point under discussion is only of academic value; for even if a bhagchassi is not a tenant within the meaning of the general law of landlord and tenant the position will simply reduce itself to this-that the land of the land holder, though in possession of a bhagchassi will not be held to be saddled with any tenancy; as such the interests both of landlord and tenant will not co-exist in such land.

80. But this difference in the position of the land in possession of a bhagchasi will not, as we will presently find, affect the decision of the point raised before us; as, in either case it is not disputed that the land will form part of a bigger whole, which as defined in Article 31A(2)(a) and as is the position at least in the State of Orissa will invariably be an "estate" within the meaning of Article 31A. Art 31A (2) of the Constitution, inter alia, provides that

the expression "estate" shall, in relation to any local area have the same meaning as that expression or its local equivalent has in any existing law relating to land tenures in force in that area and shall also include....

The inclusive portion of the definition is not relevant for our present purposes. Therefore, it is not quoted here.

81. Now this much is admitted-that in the existing law relating to tenures which was in force in this State, on the date when the Amending Act or the Principal Act was enacted, there was already a definition provided of the word "estate" in the Orissa Tenancy Act and that word was defined to mean therein-

land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands prepared and maintained under the law for the time being in force, by the Collector of a district; and includes Government Khasmahal and revenue-free lands not entered in any register; and includes also the sub-proprietary interests" (interests of sub-proprietor).

While in the Madras Estates Land Act which is applicable to certain areas of Orissa, it is stated to mean

"any permanently settled estate or temporarily settled zamindari or any portion of such permanently settled estate or temporarily settled zamindari which is separately registered in the office of the Collector

Thus, in either case the land in dispute will form part of one or the other of the units as defined in these two Acts. Accordingly, as held in *Atma Ram Vs. The State of Punjab and Others*, , they being part of an estate are as much attracted by the immunity of Article 31A as the estate itself. The relevant observation

made therein on this point is in these words:

"The expression "rights" in relation to an estate" has been given an all inclusive meaning comprising both what we have caned 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 estate but only small portions thereof, it would in our opinion be unreasonable to hold 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 amendment) 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 validity, 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."

And this view has been uniformly reiterated by the Supreme Court in all its subsequent decisions like those in *Karimbil Kunhikoman Vs. State of Kerala*, , and *Ranjit Singh and Others Vs. State of Punjab and Others*, .

82. Irrespective, therefore, of the fact whether a bhagchasi in cultivating possession of the land of a land-holder is or is not a "tenant" as understood in the law of landlord and tenant or whether therein for that reason both the interests of landlord and tenant do or do not co-exist, the broad fact remains that being parts of a bigger unit known as "estate" as -defined in Article 31A(2) of the Constitution, these lands are by themselves estates. That being so, there is no substance in the contention made on behalf of the Petitioners that the land in possession of a bhagchasi is not an "estate" or that the artificial definition of the word "tenant" as provided in Section 2(31) of the Principal Act has been designed therein purposely to make thereby the land in possession of a bhagchasi an estate and thus to save the legislation made in regard thereto, immune from any attack as contemplated by Article 31A. Even if there had been no such definition of the word "tenant" as provided in Section 2(31) of the

Principal Act, the land held by a bhagchasi would have even then been an estate for the reasons already stated-though it is a different matter that in that case the relief provided in those two Acts (The Principal Act and the Amending Act) may not have been available thereunder for a person as defined in the aforesaid Section 2(31) of the Principal Act. That would however have amounted to a complete negation of the policy so far consistently followed till then, in all the previous agrarian legislations right from 15th August 1947-as is evident from the definition of the word "tenant" as given in Section 2(1)(g) of the Orissa Tenants Protection Act, 1948; and, Section 2(1)(f) of the Orissa Tenants' Relief Act, 1955. But that was not so intended. On the contrary, the intention was that the agrarian reform contemplated under these two Acts (Principal Act and Amending Act) should be only a step forward in the same direction. That is the reason why we find that in Section 2(34) of the Principal Act there is a specific provision made that:

Words and expressions used in this Act but not defined, shall have the same meaning as assigned to them in the Tenancy Act, laws, rules, regulation, customs, or usage, in force in any part of the State of Orissa, and the Transfer of Property Act, 1882, as the case may be

The only difference that we find in the definition of the word "tenant" as given in the Orissa Tenants Protection Act or in the Orissa Tenants Relief Act and the one given in the Principal Act is that in the latter Act there is an additional expression added to it, namely, "who has no rights in the land of another" But that-as already stated-does not make any difference in so far as the position of the land held by such a tenant vis-a-vis the concept of an estate as defined in Article 31A. is concerned.

83. It is true that the expression "raiyat and under raiyat" as used in Sub-clause (b) of Article 31A(2) having been preceded by the words "proprietor, sub-proprietor, under-proprietor, tenure-holder" all having therein the essential element of intermediary and at the other end having been immediately followed by the expression "other intermediary" may prima facie on the principle of ejusdem generis give an impression that the words "raiyat and under-raiyat" as used therein are as well qualified by that expression "intermediary" and as such get their tenor and colour from it. This view does no doubt get support from what has been observed in *Ajab Singh Vs. State of U.P. and Others*, . But if accepted it will necessarily lend to the conclusion at least in relation to part of an estate as just discussed that the definition of the word "estate" as given in Clause 2(a) of Article 31A is not self-contained and in certain respects it has to be supplemented by what is provided in Clause (2)(b) of that Article in respect of "rights in relation to an estate". In my opinion, if I may say so with all respect, this view is not correct. But here, instead of going into any detailed discussion over the matter, it will suffice to say that it stands concluded by the decision of the Supreme Court in *Karimbil Kunhikoman Vs. State of Kerala*, . Therein it has been observed (at page 730) that:

"It will be seen therefore that so far as the meaning of the word "estate" is concerned, there was no change in Sub-clause (a) and the only change was with respect to the inclusive part of the definition of the word "estate". The word "estate" has all along been defined to have the same meaning in relation to any local area as that expression or its local equivalent has, in the existing law relating to land tenures in force in that area. It is also remarkable that the word "intermediary" does not occur in Sub-clause (a) though it occurs in Sub-clause (b). The definition in Sub-clause (a) is self-contained and there is no scope for importing any idea of intermediary in the definition from Sub-clause (b). The reason why the words "other intermediary" are used in Sub-clause (b) which defines rights in relation to an estate, is that the sub-clause mentions a number of intermediaries as such like sub-proprietors, under-proprietors, tenure-holders but does not give a complete enumeration of all intermediaries that may be existing in estates all over India, and therefore uses the words "other intermediaries" to bring in all kinds of intermediaries existing in an estate.... Therefore, when the words "raiyat" and "under raiyat" were added in Sub-clause (b) in 1955, it was further enumeration in a class already there; further, as held in State of Bihar Vs. Rameshwar Pratap Narain Singh and Others, , their inclusion in the circumstances and in the particular setting showed that the words "or other intermediary" did not necessarily colour or qualify the meaning to be attached to these tenures. The meaning of the word "estate" has however to be found in Sub-clause (a) and it is the words used in that sub-clause only, which will determine its meaning irrespective of whether any intermediary existed in an estate or not."

And this view has been again reiterated in the case of Ranjit Singh and Others Vs. State of Punjab and Others, . Further, it is also to be noted that in both these cases the legislations under challenge were in relation to lands whereon there was no tenant within the meaning of the law of landlord and tenant. Despite that, it was held in both of them that the relevant legislations made, relating to such lands, were in respect of estates within the meaning of Article 31A. Therefore, there is no substance in the contention raised on behalf of the Petitioners that a bhagchassi not being a "tenant" within the meaning of the law of landlord and tenant the land as such under his cultivation is not an estate. In that view of the matter the observations made in Ajab Singh Vs. State of U.P. and Others, , if I may say so with all respect, cannot be accepted as good law.

84. Alternatively it is contended that even if these lands in dispute are held to be estates within the meaning of Article 31A. of the Constitution that will make no difference in the conclusion already arrived at In other words, it is said that in that case also it will be beyond the immunity provided in Article 31A. To support this contention two reasons have been advanced. In the first place it is said that the statutory transfer of interest in the non-resumable lands u/s 30 of the amended Chapter III being in favour of a third party, namely bhagchassi it will not amount in law to extinguishment or modification of an rights therein, as contemplated by Clause (1)(a) of Article 31A. Secondly, it is said that apart from

that, the transfer being in part in favour of the State as provided in Sub-clause (1)(a) of that Article, and as such it will be hit by the second proviso to it. In my opinion, none of these two reasons advanced on behalf of the Petitioners is sustainable. The first of these two contentions is based on the assumption that in Sub-clause (1)(a) of Article 31A the two expressions "acquisition" and "extinguishment or modification" have two distinct and separate connotations and have been used therein in contradistinction to each other; therefore one cannot mean the other; as such any transfer of interest in an estate or any transfer of a portion of that estate as such to a third person namely bhagchaesi, is not immune from attack thereunder on the plea that such a transfer to a bhagchassi is "extinguishment or modification" of interest in that estate. In my opinion, independent of the consideration whether this

contention is on merit correct or not, it now stands concluded by the authoritative decision given by the Supreme Court on this point in *Atma Ram Vs. The State of Punjab and Others*, . Therefore this contention has to be rejected on that ground alone. In that case the proposition urged on behalf of the landholder that "the extinguishment or modification of any right" in an estate within the meaning of that expression in Article 31A does not comprehend or attract any case of transfer of any portion of that estate quo State to a third person like a bhagchassi, or any substitution of such a person thereunder in place of its holder either in respect of whole or part, was outright rejected; and rejecting that contention their Lordships observed:

In our opinion it is not necessary to discuss this rather metaphysical argument because in our opinion it is enough for the purpose of this case to hold that the provisions of the Act amount to modification of the landowner's rights in the lands comprised in his estate or holding. The act modifies the landowner's substantive rights particularly in three respects as indicated above: namely (i) it modifies his right of settling his lands on any terms or to anyone he chooses; (ii) it modifies if it does not altogether extinguish, his right to cultivate the "surplus" area as understood under that Act; and (iii) it modifies his right of transfer in so far as it obliges him to sell lands not at his own price but at a price fixed under the statute and not to anyone but to specified persons in accordance with the provisions of the Act set out above. Thus there cannot be the least doubt that the provisions of the Act very substantially modify the land owner's right to hold and dispose of his property in any estate or a portion thereof. It is therefore clear that the provisions of Article 31A save the impugned Act from any attack based on the provisions of Articles 14, 19 and 31 of the Constitution.

Subsequently this view was again affirmed by the Supreme Court in *Gangadharrao Narayanrao Majumdar Vs. The State of Bombay and Another*, . Therefore the Petitioner's contention that the transfer of any interest in an "estate" or in any portion thereof as such to a bhagchassi is not extinguishment or modification as contemplated in Clause (1)(a) of Article 31A. has no force. Likewise, the second contention also, made on behalf of the Petitioners is without

substance. The word "acquisition" as used in Article 31A has to be understood as already stated above-within the meaning of that expression as explained in Clause (2-A) of Article 31. Therefore, unless it is established that what is vested in a bhagchassi as a result of the operation of Clause (1)(a) of Article 31A is a transfer of ownership or right of possession of that land to the State, it cannot be held that such a transfer amounts to any acquisition as provided in Article 31(2-A). The provisions made in the amended Chapter III and more particularly in its Section 30 makes it clear that the person who is mainly benefited thereunder is the tenant and not the State of Orissa. Therefore, the transfer that is effected under Clause (1)(80) of Article 31A cannot be held to be acquisition. But on behalf of the Petitioners it has been urged that though prima facie u/s 30 of the amended Chapter III the person who is benefited as a result of the transfer effected thereunder is the tenant, but obviously there are two rights relating to much a land which, as a result thereof pass directly to the State of Orissa and therefore in that view of the matter the process of transfer as laid down therein is equivalent to acquisition as defined in Article 31A. These two rights which are said to pass to the State of Orissa as a result of the transfer effected u/s 30 of the amended Chapter III are firstly the right to collect rent from bhagchassi and secondly the right to evict him from possession of the land. The submission made is that originally these rights vested in the landholder, but after the operation of Section 30 of the amended Chapter HI they pass to the State of Orissa. Therefore, it is claimed that the provision made therein amounts to acquisition. In support of this contention reliance has been placed by Mr. Das on the decision of the Supreme Court in *The State of West Bengal Vs. Subodh Gopal Bose and Others*, . In my opinion that decision is of no avail to him in support of this contention. It is true that the right of eviction of a bhagchassi from possession by the landholder is a right of property and it is one of those elements which all go to constitute right of ownership or what is known in law as right of property. In the present case however this right of eviction does not pass to the State of Orissa; it is simply extinguished; or in other words the landholder is simply deprived of this right; it does not pass to the State. Therefore such a modification or extinguishment of right is not acquisition-as held both in the majority and minority judgments of the case, in *The State of West Bengal Vs. Subodh Gopal Bose and Others*, . In the majority judgment it has been clearly stated that although the right of a purchaser to annual, under-tenures and evict under-tenants is curtailed by the new Section 37 (of the Act impugned there), by enlarging the scope of the exceptions of the old section, but the abridgment of the right thus effected is not so substantial as to amount to a deprivation of the property within the meaning of Article 31(1) and (2) as it stood at that time. Therefore, the mere extinguishment or modification of a right which originally the landholder had in the matter of evicting a bhagchassi from possession as provided in the amended Chapter III is not a case of transfer of that right to the State of Orissa ; as such it is not acquisition.

85. Likewise it is incorrect to say that as a result of the operation of the

provisions made in the amended Chapter there is any transfer effected from the landholder to the State of Orissa, of the right of collecting rent from bhagchassi in respect of the non-resumable land that is left vested in him. Therein are only two sections in that Chapter which speak on this point. They are Sections 27 and 33. Section 27 inter alia lays down that;

The Revenue Officer shall on the expiry of the period specified in Section 26 consider the applications received thereunder, and after giving the parties interested an opportunity of being heard, determine the particulars of the resumable lands and also of the non-resumable lands so far as may be in accordance with the selection if any made by the landholder u/s 26, along with the fair and equitable rent payable in respect of the non-resumable lands.

Thereafter Sub-section (1) of Section 33 directs that-

The fair and equitable rent determined u/s 27 shall be payable-

(a) if the landlord is a raiyat or landholder to the person immediately under whom such raiyat or landholder was holding the land; and

(b) in any other case, to the immediate landholder. Explanation: For the purpose of Clause (b) the term "landholder shall include Government.

Therefore, though this much is true that as a result of the operation of the provision made in Section 30 of the amended Chapter III the rent of the non-resumable land is made payable to the person immediately under whom such a raiyat or landholder was holding the land, including the Government, but that rent is not the old rent which was being paid by the bhagchassi to the landholder; it is an entirely new liability created u/s 27. Therefore it cannot be claimed that what the State gets after the operation of the provision made in Section 30 of the amended Chapter III is the original rent which the bhagchassi was formerly paying to the landholder. The rent which a bhagchassi pays after the operation of Section 30 is, as already stated, a new liability created after a fresh determination under the aforesaid Section 27. Secondly it is to be noted that the landholder whether he may be a raiyat or an under-raiyat was not holding the land in possession of a bhagchassi free of rent. He was paying some rent to his landlord for that land-may that super landlord be a third party or the State. Therefore what the State now gets on the change of the status of the bhagchassi u/s 30 of the amended Chapter III is only that which the State or the super landlord, before the vesting of his estate in the State of Orissa, used to get formerly from the landholder, though it is a different matter that the quantum of this rent has been re-determined u/s 27 of that Chapter. Looked at therefore from that point of view what substantially passes to the State of Orissa on the operation of the provisions of Section 30 of the amended Chapter III is the rent which was payable by the landholder to his super landlord and not the rent which was payable by the bhagchassi to the landholder. Therefore, so far as the right of the landholder in the matter of getting rent from his bhagchassi is concerned that is made extinct and annihilated and is not transferred to the State. In other

words what the State gets thereafter is in substance nothing new and different to what the State or the super landlord may was already receiving even before that change from the landholder though now on a new basis. This therefore cannot amount to transfer of the right of collecting rent which was payable by a bhagchassi from the landholder to the State of Orissa. Thus, this second part of the contention also has to fail. In that view of the matter there is no substance in the contention that "the vesting of the non-resumable land in the bhagchasi is in substance a case of acquisition and as such it is hit by the second proviso to Article 31 A(1) of the Constitution.

86. Lastly relying on the submission already referred to above, that a bhagchassi is not a "tenant" within the general meaning of that expression in the law of landlord and tenant it has been contended on behalf of the Petitioners that the Amending Act suffers from lack of legislative competence, inasmuch as Chapter III of the Amending Act is not covered by any of the items of Entry No. 18 of List II of the Seventh Schedule of the Constitution, whereunder it is claimed to have been enacted. In my opinion there is no substance in this contention. This Entry No. 18 as stated therein, relates to: Land, that is to say rights in or over land, tenures including the relation of landlord and tenant and collection of rents transfer and alienation of agricultural land; land improvement and agricultural loans; colonisation". It is obvious therefore that this entry is not confined to the relation of landlord and tenant alone but covers a much wider field including those of "rights in or over land", "land tenures" in general, and "transfer and alienation of agricultural land". Further constitutionally speaking it is well established, as held in AIR 1941 16 (Federal Court) , that the items in the several lists of the Seventh Schedule should not be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary and subsidiary matters which could fairly and reasonably be said to be comprehended in it. Judged therefore in the light of those considerations it cannot be accepted that release of the land from the possession of the landholder that of a bhagchassi as envisaged in Chapter III of the amending Act is not covered by the general expressions used in the I aforesaid entry like "rights in or over land", or "transfer and alienation of agricultural land" or "land tenures"" The same argument was advanced against the validity of the Punjab Security of Land Tenure Act (Punjab Act 10 of 1963) in Atma Ram Vs. The State of Punjab and Others, . That challenge was repelled by the Supreme Court and it was held that it was a legislation fully covered by Entry No. 18 in List II of the Seventh Schedule. Therefore, we find no justification to agree with the submission made on behalf of the Petitioners that Chapter III of the Amending Act suffers from any lack of legislative competence.

87. Before, however, we close this judgment, it is necessary to mention that over and above these broad points a few other minor points have also been pressed in support of the petitions though not very seriously. One of them is that the amendments made in the fundamental rights of Part III of the Constitution are all invalid and to support this contention reliance has been mainly placed on the

observation made in this connection in the minority judgment of the Supreme Court in *Sajjan Singh Vs. State of Rajasthan*, . Relying on that observation, it has been contended that it is beyond the competency of Parliament to make any amendment in Part III of the Constitution. Accordingly it is claimed that the amendments made in Chapter III of the Constitution particularly those provided in Articles 31A and 31B are void. Therefore, neither Article 31A. nor Article 31B can legally protect the Amending Act from attack on the ground that it contravenes the provisions of Articles 14, 19 and 31. In our opinion, it is not necessary to go into the merits of this contention and for the purpose of this case it will suffice to say that the majority judgment in that case did not accept the correctness of this proposition. Therefore, on that ground alone this point fails.

88. The second point relates to the claim as to the invalidity of some of the specific provision of the Amending Act like Sections 12 and 16 of Chapter II of the Principal Act and Section 80 of Chapter IV of the Amending Act. The grievance made in respect of these sections is that they suffer from the vice of excessive delegation and as such they are void. The provision made in Section 12 relates to the appointment of an authority for the decision of disputes between the landlords and tenants relating to-(i) the landlord's right to evict a raiyat, u/s 8 or (ii) the rights conferred under Sections 4, 9 and 10; or (Hi) the raiyat's right to possession of the land and his right to the benefits under the Act. An application filed before the authority appointed for the adjudication of any of these disputes as laid down thereunder, has to be made in the prescribed manner and within the period provided therein. On receipt of such an application the authority appointed is to make an enquiry and pass orders as he deems fit and thereafter, to take such steps as he may think necessary to give effect to the order passed by him. Section 16 relates to disputes in regard to the identity of land and provides that-

If any dispute arises as to the identity of the tenants in cultivation of any land, such dispute shall, after such enquiry as may be prescribed, be decided by the Revenue Officer on his own motion or on the application of the landlord, or any person claiming to be in such cultivation and the Revenue Officer may pass such order as he may deem necessary.

Then comes the amended Section 50 which relates to payment of compensation. The second proviso to Section 50 lays down that

"interest shall cease to run on the person failing to appear to receive the compensation or any part thereof, in accordance with the rules made in that behalf, and on such failure the compensation amount shall be kept as revenue deposit."

Therefore, it is to be noted that the provisions made in Sections 12 and 16 relate to the constitution of the judicial authority for the purpose of deciding disputes in regard to matters stated therein, while Section 50 in its second proviso, makes provision for the making of rules necessary to decide as to when it may be, said

that any landholder has failed to appear to receive compensation or any part thereof. In law, a delegated legislation, involves delegation of rule-making power which constitutionally may be exercised by the administrative agent. This means that the Legislature having laid down the broad principles of its policy in the legislation may then leave the details to be supplied by the administrative authority. Thus, when the delegate is given the power to make rules and regulations in order to fill in the details necessary to carry out and subserve the purposes of the legislation, the manner in which the requirements of the statute are to be met, and the rights therein created are to be enjoyed, it is an exercise of delegated legislation- vide *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, - It is true that the Legislature cannot delegate its essential legislative functions and must lay down the legislative policy and principle and must afford guidance for carrying out such policy before it delegates subsidiary power in that behalf. In other words, as observed in *Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others*,

the self effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation, and it has to be only in relation to a subsidiary or ancillary purpose for carrying out the policy clearly laid down in the legislation itself.

Judged from this point of view, I find it difficult to hold that the Power given under the second proviso to Section 50 for the purpose of making rules as to when a person is to be judged as having failed to appear to receive the compensation in whole or in parts is uncanalised or devoid of any guidance in the legislation itself. There is a detailed procedure laid down in the body of the Amending Act, ending in Section 50, as to how compensation is to be assessed, determined and split up into instalments, and therefore to be "paid in terms of the instalments as laid down thereunder. Therefore it cannot be said that the authority empowered thereunder for the purpose of judging whether a "person has failed" to-appear to" receive the compensation in whole or in part, has been given any unguided delegati an in the matter of framing rules for the purpose or abject of those detailed provisions referred to in the body of the legislative enactment. Equally immune from such attack are, the provisions made in the first two Sections (12 and 16). The decision thereunder by the authority has necessarily to be made in the light of the general principles laid down in the Act. In my opinion, therefore, this contention also has to be rejected.

89. The last contention centres round the validity of Section 27 of the amended Chapter IV. It has already been quoted in extenso. The Explanation given to Sub-section (1) of Section 37 provides that-

for the purpose of this chapter a person includes a company or any other corporate body or joint Hindu Mitakshara family

In view of this Explanation the grievance made is that the word "person", as used therein seems to include even the wives of the member's of the joint Hindu Mitakshara family,; therefore, the Stridhan property of the Hindu females married in the joint Mitakshara family is also to be equally attracted in the pool of the family land. Thus the Amended Principal Act, in the garb of effecting agrarian reform is said to bring about a change in the Mitakshara School of Hindu laws as to Stridhan property and as such an the principle of law as laid down in Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, and P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, , the impugned legislation is void. On principle, as already stated, there can be no two opinions that the sale abject underlying the provisions made in Article 31A is to implement agrarian reform and therefore it there is legislation which is made for a purpose different to agrarian reform it cannot be protected by the immunity of Article 31A. There is however no substance in the contention as already discussed that the legislation made in the Amending Act is not for the purpose of implementing agrarian reform, or is for a purpose different to it. Further, a bare reading of the Explanation to Section 37(1) of the Amending Act firmly confirms that it does not include the wife of a coparcener as a member of the joint Hindu family, and in law as it wen known the wife of a coparcener in a joint Hindu Mitakshara family is not a member thereof. Therefore, she cannot be said to have been included therein by the provision made in this Section 37. As such, there is no force in the contention that the provision made in that section has no bearing on agrarian reform or that it by implication amends or alters any rule of the Mitakshara School of Hindu law.

90. These are all the points., which have been advanced in common in support of all the petitions. Mr. A.S.N. Murty, however, who is the Petitioner in O.J.C. No. 341 of 1965 and has argued his case !n person has further, relying on the law as laid down in P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, submitted that apart from these considerations the Amending Act is invalid for want of compensation. In the aforesaid case of P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, it has been observed that

When a Court says that a particular legislation is a colourable one it means that the legislature has transgressed its legislative powers in a covert or indirect manner; it adopts a device to outstep the limits of its power. Applying the doctrine to the instant case t he Legislature cannot make a law in derogation of Article 31(2) of the Constitution. It can, therefore only make a law of acquisition or requisition by providing for compensation in the manner prescribed in Article 31(2) of the Constitution. If the Legislature, though ex-facie purports to provide for compensation or indicates the principles for ascertaining the same, but in effect and substance takes away a property with out paying compensation for it, will be exercising a power which it does not possess.

But these observations were made in the background of an enactment which was not for any agrarian reform and as such was not attracted by Article 21-A of the

Constitution. In the present case, we are concerned with an enactment which as already stated above, is one relating to agrarian reforms and as such is fully protected by Article 31A. That being so, the question of compensation as provided in Article 31A is not open to be raised under Article 31A, as a ground of attack against the validity of this legislation. Accordingly this point also fails.

91. In the result, therefore, the conclusion we come to is that Chapter III of the Amending Act is a valid piece of legislation, or in other words, it does not suffer from any invalidity; but Chapter IV of the Amending Act is unconstitutional and invalid and accordingly it is struck down. All the Petitioners are, therefore allowed in part to the extent as stated above, and the opposite parties are directed not to give effect to the provisions of Chapter IV of the Amending Act. The Petitioners will be entitled to costs. Hearing fee Rs. 250.00 (Rupees two hundred and fifty only) in each of the four sets.

Misra, J.

92. I agree