

(1974) 03 CAL CK 0006
In the Calcutta High Court

Dayamaya Debi and Others		APPELLANT
	Vs	
State of West Bengal and Others		RESPONDENT

Date of Decision : 22-03-1974

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 15, 19, 20
Hindu Succession Act, 1956 — Section 30, 6
West Bengal Estates Acquisition Act, 1953 — Section 15, 16, 17, 4, 5
West Bengal Land Development and Planning Act, 1948 — Section 8
WEST BENGAL LAND REFORMS ACT, 1955 — Section 14, 14J, 14K, 14L, 14M

Citation : 78 CWN 639

Hon'ble Judges : P.K. Banerjee, J

Bench : Single Bench

Advocate : Arun Kumar data, Ganga Narayan Chandra and Nandalal Pal for the Petitioner in C.R. No. 6197-98W of 1972, Basanta Kumar Panda and Santimoy Panda for the Petitioner in C.R. No. 6022-29W of 1972, Mihir K. Roy for the Petitioner in C.R. No. 6021W of 1972, Swadesh Bhunia for the Petitioner in C.R. No. 6866W and 2882W/72, for the Appellant; Sachindra C. Das Gupta and Usha Datta in C.R. 6022-29(W)/72 for the State, Birendra Kumar Roy Chowdhury, Tapan Kumar Sen Gupta, Pramatha Nath Palit in C.R. N. 6021-29(W)/72 for the State, H.C. Sen and Sakti Prosad Mukherjee in C.R. 6021(W)/72 for the State, for the Respondent

Judgement

P.K. Banerjee, J.—In this Rule the petitioners challenge the vires of the West Bengal Land Reforms (Amendment) Act, 1972 which was assented to by the President on 4th May, 1972. By the said amendment in particular Chapter IIB was inserted by section 13 of the said Act. Chapter IIB introduces into the Act, sections 14 (J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X and Y) and section 16 of the Act. The said sections are in the following terms: -

14J. The provisions of this Chapter shall have effect notwithstanding anything to the contrary contained elsewhere in this Act or in any other law for the time being in force.

14k. In this Chapter, ...

- (a) "ceiling area" means the extent of land which a raiyat shall be entitled to own;
- (b) "charitable purpose" includes relief of the poor, medical relief or the advancement of education or of any other object of general public utility;
- (c) "family", in relation to a raiyat
 - (i) himself and his wife, minor sons, unmarried daughters, if any,
 - (ii) his unmarried adult son, if any, who does not hold any land as a raiyat,
 - (iii) his married adult son, if any, where neither such adult son nor the wife nor any minor son or unmarried daughter of such adult son holds any land as a raiyat,
 - (iv) widow of his predeceased son, if any, where neither such widow nor any minor son or unmarried daughter of such widow holds any land as a raiyat,
 - (v) minor son or unmarried daughter, if any, of his predeceased son, where the widow of such predeceased son is dead and any minor son or unmarried daughter of such predeceased son does not hold any land as a raiyat,but shall not include any other person.

Explanation 1. - For the purpose of this Chapter, an adult unmarried person shall include a man or woman who has been divorced and who has not remarried thereafter:

Provided that where such divorced man or woman is the guardian of any minor son, or unmarried daughter, or both, he or she, together with such minor son or unmarried daughter, or both, shall be deemed to be a separate family.

Explanation II. - References in this clause to wife, son or daughter shall, in relation to a raiyat who is a woman, be construed as references to the husband, son or daughter, respectively, of such woman;

- (d) "irrigated area" means an area specified as such by the State Government, by notification in the Official Gazette, being an area which is, or is in the opinion of the State Government capable of being, irrigated, at any time during the agricultural year commencing on the 1st day of Baisakh, 1377 B.S. , from any State canal irrigation project or State (power driven deep tubewells) irrigation project;
- (e) "orchard" means a compact area of land having fruit bearing trees grown thereon in such number that they preclude, or when fully grown would preclude, a substantial part of such land from being used for any agricultural purpose;
- (f) "standard hectare" means, -
 - (i) in relation to an agricultural land, an extent of land equivalent to-
 - (a) 1.00 hectare in an irrigated area.

(b) 1.40 hectare in any other area;

(ii) in relation to any land comprised in an orchard, an extent of land equivalent to 1.40 hectare.

14L. On and from the commencement of the provisions of this Chapter, no raiyat shall be entitled to, in the aggregate, any land in excess of the ceiling area applicable to him u/s 14M.

14M. (1) The ceiling area shall be-

(a) in the case of a raiyat, who is an adult unmarried person, 2.50 standard hectares;

(b) in the case of a raiyat, who is the sole surviving member of a family, 2.50 standard hectares;

(c) in the case of a raiyat having family consisting of two or more, but not more than five members, 5.00 standard hectares;

(d) in the case of a raiyat having a family consisting of more than five members, 5.00 standard hectares, plus 0.50 standard hectare for each member in excess of five, so, however, that the aggregate of the ceiling area for such raiyat shall not, in any case, exceed 7.00 standard hectares;

(e) in the case of any other raiyat, 7.00 standard hectares.

(2) Notwithstanding anything contained in sub-section (1), where in the family of a raiyat, there are more raiyats than one, the ceiling area of all the other raiyats in the family shall not, in any case exceed, -

(a) where the number of members of such family does not exceed five, 5.00 standard hectares;

(b) where such number exceeds five, 5.00 standard hectares, plus 0.50 standard hectare for each member in excess of five, so however, that the aggregate of the ceiling area shall not, in any case, exceed 7.00 standard hectares.

(3) For the purpose of sub-section (2), all the lands owned individually by the members of a family or jointly by some or all the members of such family shall be deemed to be owned by the raiyats in the family.

(4) In determining the extent of land owned by the raiyats in a family or the sole surviving member of a family or an adult unmarried person, the share of such raiyat or raiyats, or such sole surviving member, or such adult unmarried person, as the case may be, in the lands owned by a cooperative society, company, co-operative farming society, Hindu undivided family or a firm shall be taken into account.

Explanation- For the purpose of this sub-section, the share of a raiyat in a family or the sole surviving member of a family or an adult unmarried person in the

lands owned by a co-operative society or a joint family shall be deemed to be the extent of land, which would be allotted to such raiyat or person had such lands been divided or partitioned, as the case may be.

(5) The lands owned by a trust or endowment other than of a public nature, shall be deemed to be lands owned by the beneficiaries under the trust or endowment and each such beneficiary shall be deemed to be a raiyat under this Act to the extent of the share of his beneficial interest in the said trust or endowment.

14N. (1) If any question arises as to whether any land is or is not within an irrigated area, such question shall be determined by the prescribed authority in such manner as may be prescribed.

(2) The State Government shall prescribe such authority as it may think fit for the determination of the question referred to in sub-section (1).

14O. (1) Any person who is aggrieved by any determination made by the prescribed authority u/s 14N may, within thirty days from the date of such determination or within such further time as the appellate authority may, on sufficient cause being shown, allow, prefer an appeal to such authority as the State Government may, by notification in the Official Gazette, specify in this behalf, against such determination.

(2) On receipt of such appeal, the appellate authority may, after giving a reasonable opportunity to the appellant of being heard, confirm, modify or reverse the determination made by the prescribed authority.

14P. In determining the ceiling area, any land which was transferred, by sale, gift or otherwise or partitioned, by a raiyat after the 7th day of August, 1969, but before the date of publication, in the Official Gazette, of the West Bengal Land Reforms (Amendment) Act, 1971, shall be taken into account as if such land had not been transferred or partitioned, as the case may be.

14Q. (1) Subject to the provisions of sub-section (2), the ceiling area for a co-operative society, company, co-operative farming society, Hindu undivided family or a firm, as the case may be, shall not exceed the sum total of the ceiling area of each member of such co-operative society, company, co-operatives farming society, Hindu undivided family or each partner of such firm:

Provided that for the purpose of determining the ceiling area referred to in this sub-section, any land held separately by a person, who is a member of a co-operative society, company, co-operative farming society of Hindu undivided family or a partner of a firm, shall be deducted from the ceiling area referred to in section 14M, so that the sum total of the area of land held by such person, whether as such member or partner or individually or as a member or a family, may not, in any case, exceed the ceiling area applicable to him under sec 14M.

(2) Where a raiyat owns land comprised in orchards, whether or not in addition to other land the ceiling area in relation to such raiyat shall be increased by 2.00

standard hectares or the actual area of the land comprised in orchards, whichever is the lesser.

(3) If the State Government, after having regard to all the circumstances of the case is satisfied that a corporation or institution established exclusively for a charitable or religious purpose, or both, or a person holding any land in trust, or in pursuance of any other endowment, creating a legal obligation exclusively for a purpose which is charitable or religious, or both, requires land, as district from the income derived from such land, for the due performance of its obligations, it may, by notification in the Official Gazette, increase the ceiling area for such corporation or institution or person to such extent as it may think fit.

14R. The provisions of section 14M shall not apply-

(a) to any land owned as a raiyat by a local authority or any body or authority constituted or established by or under any law for the time being in force:

(b) for such period as may be specified by the State Government by notification in the Official Gazette, to any land in such hilly portion of the district of Darjeeling as may be specified in the said notification.

14S. (1) On the commencement of the provisions of this Chapter, any land owned by a raiyat in excess of the ceiling area applicable to him shall vest in the State free from all incumbrances.

(2) Where any land vested in the State under sub-section (1) is being cultivated by a bargadar, the right of cultivation of such bargadar in relation to any such vested land which, including any other land owned or cultivated by him is in excess of 1.00 hectares, shall, on the commencement of the provisions of this Chapter, stand terminated.

(3) Every bargadar shall, in relation to the land which hectares is authorised by sub-section (2) to retain under his cultivation, become, on and from the date of commencement of the provisions of this Chapter, a raiyats.

14T. (1) Every raiyat owing land in excess of the ceiling area shall furnish to the Revenue Officer in such form and within such time as may be prescribed, a return containing the full description of the land which hectares proposes to retain within the ceiling area applicable to him u/s 14M and a full description of the land which is in excess of the ceiling area and such other particulars as may be prescribed.

(2) Where there are more raiyats than one in a family, the return referred to in sub-section (1) shall be furnished by the head of the family or any other raiyat in accordance with the provisions of that sub-section.

(3) The Revenue Officer may, on receipt of a return submitted under sub-section (1) or sub-section (2), or on his own motion, determine the extent of land which is to vest in the State u/s 14S and take possession of such lands.

(4) If a raiyat fails to furnish, without any reasonable excuse, the return referred to in sub-section (1), or sub-section (2), within the prescribed time or wilfully makes any omission or incorrect statement in such return, he shall be punishable with fine, which may extend to one thousand rupees.

14U. (1) Except where he is permitted, in writing by the Revenue Officer so to do a raiyat owing land in excess of the ceiling area applicable to him u/s 14M, shall not, after the publication, in the Official Gazette, of the West Bengal Land Reforms (Amendment) Act, 1971 transfer, by sale, gift or otherwise or make any partition of any land owned by him or any part thereof until the excess land, which is to vest in the State u/s 14S has been determined and taken possession of by or on behalf of the State.

(2) If a raiyat makes any transfer, where by sale, gift or otherwise, of any land in contravention of the provisions of sub-section (1), the State Government may, in the first instance, take possession of land, equal in area to the land, which is to vest in the State, from out of the land owned by such raiyat and where such recovery from the raiyat is not possible from the transferee:

Provided that where the transferee is a person who is eligible for allotment of surplus land in accordance with the provisions of this Act, the State Government may, instead of enforcing its right to recover the land or an equal amount of land, recover from the transferor the amount which hectares had received as consideration for the transfer of such land.

(3) Any raiyat who transfers any land in contravention of the provisions of sub-section (1) shall be punishable with fine, which may extend to two thousand rupees, or with imprisonment for a term which may extend to six months or with both.

14V. The principles on which, and the manner in which, compensation for the vesting of any land in the State under the provisions of this Chapter is to be determined and given shall be such as are specified in Chapter III of the West Bengal Estates Acquisition Act, 1953.

14W. (1) A raiyat who possesses, after the commencement of the provisions of this Chapter, any land in excess of the ceiling area shall be liable to pay to the State Government for the period for which hectares has possessed such land, such compensation for the use and occupation of such land as the Collector may fix in the prescribed manner.

(2) Any sum payable by a raiyat as damages for use and occupation of any land shall be recoverable as a public demand.

14X. No. Civil Court shall have jurisdiction to decide or deal with any question or to determine any matter which is by or under this Chapter required to be decided or dealt with or to be determined by the Revenue Officer or other authority specified therein and no orders passed or proceedings commenced shall be called in question in any Civil Court.

14Y. If any raiyat acquires any land, whether by transfer, inheritance or otherwise, after the commencement of the provisions of this Chapter, and such land together with the land owned by him, exceeds the ceiling area applicable to him u/s 14M, the area of land which is in excess of such ceiling area shall vest in the State and all the provisions of this Chapter relating to ceiling on holding shall apply to such land".

Section 16 runs as follows: -

16.(1) The produce of any land cultivated by a bargadar shall be divided as between the bargadar and the person whose land hectares cultivates:

(a) in the proportion of 50:50 in a case where plough, cattle, manure and seeds necessary for cultivation are supplied by the person owing the land,

(b) in the proportion of 75:25 in all other cases.

(2) The bargadar shall tender, within the prescribed period, to the person whose land hectares cultivates, the share of the produce due to such person.

(3) Where any share of produce tendered under sub-section (2) is accepted by the person whose land is Cultivated by the bargadar, each party shall give to the other a receipt, in such form as may be prescribed, for the quantity of the produce received by him.

(4) If the person whose land is cultivated by the bargadar refuses to accept the share of the produce tendered to him by the bargadar, or to give a receipt therefore, the bargadar may deposit within the prescribed period, such share of the produce with such officer or authority as may prescribed and such deposit shall discharged the bargadar from his obligation to driver the share of the produce to the person whose land hectares cultivates:

Provided that where the quantity of the produce deposited by the bargadar is lesser than the quantity of the produce due to the person whose land hectares cultivates, the obligation of the bargadar with regard to the delivery of the deficiency in relation to the produce shall continue.

(5) Where a deposit referred to in sub-section (4) has been made, the prescribed officer or authority shall

(a) give to the bargadar a receipt in such from as may be prescribed stating therein the quantity of the produce deposited by the bargadar and the particulars of the person for whom the produce has been deposited; and

(b) give intimation of such deposit, in such form and in such manner as may be prescribed, to the person for whom the produce has been deposited.

(6) Where any produce is deposited under sub-section (4) and the person for whom the produce has been deposited does not take delivery of such produce within fifteen days from the date of service on him of the intimation of such deposit, the officer or authority referred to in sub-section (4) may sell such

produce" and deposit the proceeds of such sale of conducting the sale, in the credit of the person for whom the produce has been deposited and give intimation of such deposit to such person, in such form and in such manner as may be prescribed.

(7) The bargadar shall store or thresh the produce-

(a) at such place as may be agreed upon between him and the person whose land hectares cultivates, or

(b) where there is disagreement between them, at such place as may be fixed by him after giving notice, in writing, served in the prescribed manner to the person whose land hectares cultivates;

Provided that the person whose land is cultivated by the bargadar may, at any time during the storage or threshing of produce, enter the place where the produce has been stored or is being threshed for the purpose of inspecting the storage or threshing as the case may be, of the produce".

2. u/s 1(2) of Act XII of 1972, section 13 by which Chapter IIB was inserted came into force on 15th February, 1971, sections 2,3,4,5 and 6, clause (ii) of section 7, sections 8,9,10,11 and 12, sub-section (2) of section 19, sections 22,23,24,25,26 and 27 came into force on 12th February, 1971.

3. The case of the petitioner as made out in the petition is that the petitioner is in possession of 25 acres of lands under the personal cultivation. They are enjoying the said properties as they have retained these lands after the vesting of the estate in the State with an enactment of the West Bengal Estates Acquisition Act. u/s 4 of the West Bengal Land Reforms Act, the petitioners were also allowed to continue to enjoy the said lands in their personal cultivation. Before the present amendment it was specifically provided that no raiyat shall be entitled to own more than 25 acres of land, excluding homestead. It is stated that this ceiling area is being reduced by the present amendment. It is further stated that by the present amendment the unit for retention has been changed from the individual to be family basis and the ceiling limit for retention of the lands has been reduced and the compensation for the surplus land was fixed at a rate less than the market rate.

4. No affidavit has been filed by the Respondent State denying the allegations regarding the facts stated hereinbefore but the learned Advocates for the State have argued the case on the question of law and challenged the contention of the petitioners that the Act is ultra vires.

5. Mr. Arun Kumar Datt (Jr.) assisted by the Mr. N. Pal appeared in C.R. No. 6197(W) of 1968. Mr. Bhunia appeared in civil Rule No. 6866(W) and 2882(W) 72 Mr. Basanta Kumar Panda assisted by Mr. Santimoy Panda appeared for the petitioners in C.R. No. 6027-29(W) of 1972. Mr. Mihir Roy appeared in Civil Rule No. 6021(W) of 1972 for the petitioners. Mr. Hemendra Chandra Sen appeared in C.R. No. 6021-29(W) of 1972. Mr. Das Gupta appeared in C.R. No. 6021-29(W)

of 1972 and Mr. Roy Chowdhury appeared in C.R. No. 6197-98(W) of 1972 on behalf of the State Government to oppose the rule.

6. Mr. Arun Kumar Dutt (Jr.) contended that the concept on ceiling area introduced under the definition of family in section 14K(c) of Chapter IIB of the West Bengal Land Reforms Act is arbitrary, unreasonable artificial and has no nexus with the concept of family under the Hindu Law and section 14K(c) read with the explanation are in contravention of sections 6 and 30 of the Hindu Succession Act of 1956. Mr. Dutt further contended that the scheme of agrarian reforms is primarily based on the definition of holding as defined u/s 2(6) of the Principal Act and holding being treated as assessment of revenue in connection with the agricultural land and the individual unit for assessment of revenue for a holding has been taken away by imposition of a ceiling area on the basis of family and as such is violative of Art. 19 of the Constitution. The third point argued by Mr. Dutt is that the ceiling area of family after omitting the provisions of section 4(3) of the Principal Act is fraud on the Principal Act and a colourable exercise of power and is violative of Art. 31A proviso (2) of the Constitution of India.

7. Mr. Bhunia contended that the amendment is not protected by Art. 31A of the Constitution of India. It is further stated by Mr. Bhunia that even if the legislation is for agrarian reforms the protection under Article 31-A is not available and the statute is violative of Article 31-A second proviso.

8. Mr. Bhunia secondly contended that the West Bengal Land Reforms Act cannot have protection of Art. 31A of the Constitution of India as the lands which were sought to be vested in the State by means of insertion of Chapter IIB of the West Bengal Lands Reforms Act are not estate within the meaning of Art. 31A of the Constitution. The term "estate" under the Bengal Tenancy Act cannot be related to the concept of any expression vis-a-vis Hindu Joint family as a unit. It will appear, according to Mr. Bhunia, that under the Bengal Tendency Act the concept of a raiyat holding a land was an individual concept at all. Mr. Bhunia, therefore, challenged section 14K, and 14M being violative of Arts. 14, 19 and 31 of the Constitution. Mr. Bhunia further contended that Chapter IIB is violative of Arts. 20, 25 and 26. Mr. Bhunia contended that section 14P is also violative of Art. 31A, firstly on the ground that between 7.8.69 and 8.2.71 there was no ceiling limit and there was no bar to the transfer made during the period cannot be considered for the purpose of retention of the lands in questions.

9. Mr. Basanta Kumar Panda contended firstly that the change of ceiling from individual basis to family unit is un-constitutional. The State Government has no jurisdiction to legislate on personal law. The concept of the term "family" is different in section 14M and 23B of the same Act. It is further argued that in case of acquisition of land for personal cultivation and reduction from the ceiling area prescribed by the West Bengal estates Acquisition Act and /or the West Bengal Land Reforms Act unless market value is given for such acquisition the amendment is ultra vires of Art. 31A proviso (2). The transfer of land by a raiyat

between the period 7.8.69 and 8.2.71 cannot be considered for the purpose of fixing the quantum of retained land under the amended provision on the basis of the family unit and transfer cannot be affected retrospectively. The word "head of the family" not having been defined, there is no liability of any member of the family to file a return in forms VII and any member of a family can be compelled to file return regarding lands which shall vest in the State. Mr. Panda argued that the reduction of the share from 40% to 25% in so far as the owners are concerned affected the right of the owner and as such is violative of the Constitutional guarantee.

10. Mr. Mihir Roy appearing for the petitioners in C.R. No. 6021(W) of 1972 contended that the definition of family is contrary to the Hindu Law and is violative both of Hindu and Mohammadan Law and is violative of Art. 15(1) of the Constitution of India. Mr. Roy contended that section 14K(c) (ii) provides for unmarried adult son but no provisions has been made for unmarried daughter and as such it has discriminated between the son and daughter on the ground of sex. Mr. Roy contended that no provision has been made for the mother in the definition of family who is class I heir under the Hindu Law.

11. Mr. Roy secondly contended that the orchard is not an agricultural land as such the same is not protected under Art. 31A of the Constitution of India.

In the result, the argument of the learned Advocate for the petitioners have boiled down to the following questions for determination.

(1) Whether the impugned Act, in particular Chapter IIB is violative of Art. 31A of the Constitution of India.

(2) Whether the impugned Act is violative of the Hindu Succession Act, in particular, sections 6 and 30 of the said Act.

(3) Whether the transfer between the period 7.8.69 and 8.2.71 is bad in law.

(4) Whether the orchard is an agricultural land and can be said to be a part of the scheme of agrarian reform and

(5) Whether the Act is violative of Arts. 15, 20, 25 and 26 of the Constitution of India.

On these broad questions, Mr. Roy Chowdhury" standard contention is that the legislature has a power to amend the West Bengal Land Reforms Act and the amendment is protected by Art. 31A as the Act is a part of the scheme of agrarian reform. Secondly it is contended that the manner of agrarian reforms fixes the ceiling area under the personal cultivation and transfer of the excess land is protected under Art. 31A of the Constitution of India. The provisions is ancillary to the land reforms, as such transfer is only to defeat the law or scheme of agrarian reforms and as such is protected under Art. 31A of the Constitution of India.

12. Mr. Das Gupta contended that under the West Bengal Estates Acquisition Act,

the ceiling was provided u/s 6 with effect from the date of vesting in the State. Under sec 4 of the West Bengal Estates Acquisition Act the intermediary was only given right in the land was given by the W. B. Estates Acquisition Act but only an intermediary can retain some lands, if so allowed by the authorities concerned.

13. The West Bengal Land Reforms (Second Amendment) came into force and only the right of retention was taken away, and a lesser quantum of land was allowed to be retained. It is argued by Mr. Das Gupta that taking away that right of retention is not violative of Art. 31A second proviso. It is further argued by Mr. Das Gupta that the State Legislature is competent to make amendment in respect of the Act regarding the land reforms and they are competent to legislature altering the ceiling. Mr. Das Gupta further argued that the West Bengal Land Reforms Act is protected under Art. 31B of the Constitution and that the Act was included in the 9th Schedule. It is argued by Mr. Das Gupta that if any amendment of the West Bengal Land Reforms Act trenches upon a different field then and then only the question of protection under Art. 31B arises but it is argued that if no new field is covered by the amendment the protection by Art. 31B continues. Mr. Das Gupta further contended that the present legislation has nothing to do with the personal law of any citizen but only for the purpose of the Act the right of retention of a person who is a member of a family has been regulated. Apart from the West Bengal Land Reforms Act, the personal law of any citizen has not been affected at all and it was never the intention of the legislature to affect the personal law of any citizen. It is argued by Mr. Das Gupta that the orchard, homestead etc. are included in the definition of the words "agricultural land".

14. Mr. H. C. Sen on behalf of the Respondent further adopted the arguments of Mr. Roy Chowdhury and Mr. Sachin Das Gupta.

15. Before I deal with the questions raised whether Chapter IIB is violative of Art. 31A of the Constitution I will deal with the other points taken by the petitioners.

16. The learned Advocate for the petitioners contended that the impugned Act is violative of Hindu Law or Hindu Succession Act, in particular sections 6 and 30 of the said Act.

17. Mr. Sachin Das Gupta on behalf of the Respondent contended that the provision made in the West Bengal Land Reforms Act was not one on the personal law of Hindu but now the ceiling is to be calculated with the reference to the members of the family of a raiyat. Therefore it is argued by Mr. Das Gupta that there is no basis of the argument for the petitioners that the artificial definition of the "Hindu joint family" is given in this legislation. In my opinion, if the statute is protected under Art. 31A of the Constitution of India, this provision cannot be said to be ultra vires, otherwise, however there is no question that the artificial definition of "Hindu family" must fail being violative of Arts. 14, 19 and 31. Similar questions arose in a case reported in AIR 1967 S.C., 1776 (4) Inder

Singh v. State of Punjab). The Supreme Court held upholding the validity of section 32 KK of the Pepsu Tenancy and Agricultural Lands Act, 1955 as follows: -

2. Mr. Mani's contention were: (1) that under Hindu Law every coparcener in a Hindu undivided family acquires right in the property of such coparcenery on birth and is entitled to a right of joint possession and enjoyment of its entire property, that S. 32-KK deprives such a coparcener of his rights of property in that it takes away the rights of the descendants of the land owner to claim for themselves the permissible area and vest them in the head of the family alone so that there is not only an infringement of the right to hold property under Art. 19(1) (f) but also discrimination in favour of the head of the family infringing thereby Article 14; (2) that the effect of S. 32-KK is that where an undivided family is possessed of land, instead of each of the descendants getting a ceiling area of 30 standard acres, the head of the family alone gets 30 standard acres and therefore the section is violative of Article 31; (3) that the section being applicable only to Hindu undivided families, infringes Article 15(1) inasmuch as it discriminates by reason only of religion such families as against other undivided families in Punjab amongst communities other than Hindus and (4) that the section cannot be said to be legislation whose object is agrarian reform and, therefore, is not protected by Article 31-A.

(3) Section 32-KK, the validity of which is impeached in this appeal, reads as follows: -

Notwithstanding anything contained in this Act or in any other law for the time being in force: -

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

The section first lays down a fiction and then its result.

The fiction is that where a landowner and his descendants form a Hindu undivided family, the land owned by such a family shall be deemed to be the land of that landowner. The fiction so enacted is limited only for the purposes of the Act. The result of the fiction again for the purposes of the Act is that no descendants shall, as a member of such family, be entitled to claim that in respect of his share of such land hectares is a landowner in his own right. There is no doubt that the section has a direct adverse effect on the rights of the descendants of a landowner. It treats such a family as one unit equating the landowner depriving by such equation the descendant of the right to hold a ceiling area for himself. Prima facie, such a provision would infringe Article 19(1) (f) and Article 31 and would be hit by Article 13. Article 31-A however, provides that notwithstanding anything contained in Article, 13, no law providing for the

acquisition by the State of any estate or of any rights therein or the extinguishments or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Arts. 14, 19 or 31. If, therefore, S. 32-KK falls within the scope of Article 31A, it is obviously protected thereunder and the validity of the section is placed beyond any challenge on the ground of its infringing any of the rights under Articles 14, 19 or 31.

(4) In *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, , this Court laid down that Art. 31A properly construed envisages agrarian reform and provides for the acquisitions, extinguishment or modification of proprietary and various other kinds of subordinate rights in a tenure called the "estate" solely for that purpose and must be limited to it. The Court held that the Act impugned there did not contemplate any agrarian reform or seek to regulate the rights inter se between the landlords and tenants or modify or extinguish any of the rights appertaining to jaman right leaving all the characteristics intact and, therefore, did not come within the purview of Art. 31-A. In *Ranjit Singh and Others Vs. State of Punjab and Others*, , this Court considered the scope of that decision and held that the word "estate" in Art. 31-A should be given a liberal meaning and that the changes proposed by the Punjab Consolidation Acts passed since 1984 and onwards were included in the general scheme of planning of rural areas and the productive utilisation of vacant and waste lands, that if agrarian reforms were to succeed, mere distribution of land to the landless was not enough, that there should be a proper planning of rural economy and conditions and that a scheme which makes villages self-sufficient cannot but be regarded as part of larger reforms which consolidation of holdings fixing of ceilings on lands and utilising of vacant and waste lands contemplate. It is not necessary to refer to other decided cases as this decision clearly points out that the fixing of ceiling on lands and provisions relating to it would form part of land constitute agrarian reform and; therefore, such provisions would have the protection of Art. 31A".

18. Mr. Bhunia and Mr. Roy Chowdhury contended that those cases have no relevancy in so far as the West Bengal Land Reforms Act is concerned. In those cases the right of a co-parcener in a joint family accrues in the property of such coparcenary on birth but so far as we are concerned we are governed by the Dayabhag School of Hindu Law and therefore those cases do not apply in terms to the Hindu undivided family under the Dayabhag School of Hindu Law. It appears to me, however, that under the Dayabhag School of Hindu Law no heir has any right to the property of his father during his life time. Therefore, if a provision is made giving the raiyat of some lands with reference to the member of his family to which those members had no right whatsoever during the life time of the father it cannot be said to be unreasonable to that extent. Even if, therefore, the statute itself is not protected under Art. 31A of the Constitution of India, it cannot be said that the provision for limiting the ceiling area with reference to the member of the family of a raiyat under the Dayabhag School of Hindu Law be unreasonable to the extent of violative of Arts. 14, 19 and 31 of

the Constitution. In my opinion, Mr. Das Gupta is right in his contention when he stated that the present legislation is not one on the personal law of any raiyat but is one of agrarian reform and is a part of the scheme of agrarian reforms. In so far as the raiyat who are governed by Mitakhara School, the Supreme Court Cases referred to above applies in all forces.

19. The next arguments of the petitioners are that the definition of "family" is discriminatory on the ground of religion. This question will not be relevant if the Act comes within the protection of Art. 31A of the Constitution of India. In any case it does not appear to member that the definition of "family" for the purpose of fixing the quantum of ceiling area is a legislation on the personal law of Hindu but is only fiction for the purpose of fixing the quantum of ceiling area. Under the W. B. Land Reforms Act a raiyat can retain under s. 14M of W. B. Land Reforms Act and it is possible for the purpose of the Act to enlarge or limit the meaning of the word "family".

20. The next question raised by the learned Advocate for the petitioners is that the homestead and orchard cannot be said to be agricultural land and cannot be a part of the scheme of agrarian reforms. Assuming the provisions relate to the agrarian reforms.

21. Mr. Arun Kumar Dutt (Jr.) contended that the word "orchard" has been defined in section 14K(e) of the Act. "Orchard" means a compact area of land having fruit bearing trees grown thereon in such manner that they preclude, or when fully grown would preclude, a substantial part of such land from being used for any agricultural purposes. u/s 14Q it has been provided that for the purpose of fixing the ceiling are the raiyat who owned land comprised in orchard will be given to 2 standard hectares or actual area of the land comprised in orchard whichever is lesser for the retention by the said raiyat. The word "orchard" as defined in the Act cannot be said to be one used for agricultural purposes. In section 2 of the Act it has been specifically provided that the "holding means the land or lands held by a raiyat and treated as a unit for assessment of revenue and raiyat has been defined to mean a person who holds land for purposes of agricultural.

22. Reading these three definitions together it appears to member that "orchard" has been kept beyond the scope of land held by a raiyat and used for agricultural purposes. The definition of "orchard" itself precludes from the use of the land which is for agricultural purposes. It has not been said anywhere in the four corners of the statute or by an affidavit filed by the Respondent that "orchard" land or that a part of the scheme of agrarian reform even if it is held that Art. 31A has protected the present legislation.

23. Mr. Das Gupta contended that orchard is an agricultural land and relied upon the case reported in (S.P. Watel and others v. State of U.P. AIR 1973 S. C., 1293). In the said case the Supreme Court was considering whether the grove land is an agricultural land or not. In paragraphs 16, 19 and 20 the Supreme

Court held as follows:

16. Section 2(6) of the U.P. Tenancy Act, 1939 defines "grove-land" as meaning "any specific piece of land in a mahal; or mahals having trees planted thereon in such numbers that they preclude, or when full grown will preclude the land or any considerable portion thereof from being used primarily for any other purpose, and the trees on such land constitute a grove" Section 2(7) defines the word "holding". It means a parcel or parcels of land held under one lease. Section 2(10) defines the word "land" as meaning of crops or as grove land or for pasturage. It does not include land for the time being occupied by buildings or appurtenant thereto other than the buildings which are improvements. The word "grove-holder" is defined in S. 205 of the said Act. A person who has planted a grove on land which was let or granted to him by a landlord for the purpose of planting a grove is called a "grove-holder" of the grove.

19. The Act as a whole is protected by Article 31A of the Constitution. Shri Garg's contention, however, is that as S. 2(1) (d) is not at all connected with agricultural reforms it cannot receive the protection of Article 31A and will be open to challenge for violation of Articles 14, 19 and 31 In terms S. 2(1) (d) does not appear to be connected with the object of agricultural reform. But a close scrutiny of its context and the object of the Act would reveal that it is so connected.

20. All other clauses of S. 2(1) except cl. (d) are clearly connected with the object of agricultural reform. They include in an "agricultural area" only such land as is being used for growing crop as a grove or as a pasture land on the date specified in S. 2(1). The proviso to S. 2(1) (c) expressly excludes from "agricultural area" land which is occupied by buildings, not being improvements and land appurtenant to such buildings. Having regard to this proviso, it is difficult to believe that S. 2(1) (d) was intended by the legislature to apply to land which is not an agricultural area. "Agriculture" means "the science and the art of cultivating the soil including the gathering in of the crops, and the rearing of live-stock; farming (in the widest sense)". (Shorter Oxford Dictionary, 3rd Edn. Vol I, p. 37). So, ordinarily "agricultural area" would mean an area used for cultivation or farming. Section 2(1) includes groves also. Clause (d) should take its colour from this inherent meaning of "agricultural area" which is being defined in S. 2(1)".

24. In my opinion, the principles laid down in this case does not support Mr. Das Gupta's contention but on the other hand supports the contention put forward by the petitioners. In 1972 Act "orchard" has been specifically defined not to mean agricultural land. In our Act "raiyyat" means persons or institution holding land for the purpose of agricultural. In that view, therefore, it is clear that orchard cannot be said to be an agricultural land on a part of scheme of agrarian reforms and it cannot come under the protection of Art. 31A of the Constitution of India.

25. Mr. Arun Kumar Dutt (Jr.), Mr. Basanta Panda and Mr. Bhunia contended that section 14P is ultra vires. Section 14P provides that in determining the ceiling area, any land which was transferred by sale, gift or otherwise or partitioned by a raiyat after the 7th day of August, 1969 shall be taken into account as if such land had not been transferred or partitioned, as the case may be.

26. Section 14P provides that if any ceiling area is transferred after 7th day of August, 1969 and before the publication of the present amendment on 8th May, 1972 such land will be considered to be land of the raiyat for the purpose of fixing the ceiling area u/s 14M of the Act. Before the enactment of the present legislation, even though the raiyat had a right to transfer the land upto the enactment of the present legislation still for the purpose of determination of ceiling area, that transfer will not be recognised at all and will be considered as the land held by a raiyat. Take for instance a raiyat had 5 hectares of land having a family consisting of 5 members and before the enactment of the present legislation after the enforcement of ceiling area, the said raiyat will not be entitled to retain even 5 hectares of land. If the Act comes within the protection of Art. 31A, the petitioner cannot challenge the same under Arts. 14, 19 and 31 of the Constitution, still the particular provisions of section 14P of the Act is violative of Art. 31A second proviso. It appears further that before the enforcement of the ceiling area between 7th August, 1969 and the commencement of the present Act, admittedly the petitioner could transfer the said land. It means that the raiyat would be forced to surrender the land actually held by him although it is within the ceiling limit as provided by the Act XII of 1972 without payment of the market value thereof. In a similar provision under Kerala Land Reforms Act in particular section 85 (1). Explanation was struck down by the Supreme Court in a case reported in AIR 1972 S.C., 2097 (Kunjukutty v. State of Kerala). The Supreme Court approved the decision of the Kerala High court, (F.B.), reported in U.N. Narayan Nair v. State of Kerala. AIR 1971 Kerala, 98, The Kerala High Court struck down section 85 of the said Act in the following terms as quoted in the Supreme Court judgement at page 2104: -

Section 85 provides for the surrender of excess land, but sub-sec. (1) thereof contains an explanation which we think cannot stand. Under the explanation, subject to certain exceptions, any land transferred by a person holding land in excess of the ceiling area between the 18th December, 1957 (the date of publication of the Kerala Agrarian Relations Bill) and the date of the publication of the Kerala Land Reforms Bill, 1963 (here we think that ceiling means the ceiling area under the Act, for it does not appear there was any ceiling area during the period in question) is to be regarded as still held by him for the purpose of fixing the extent of land to be surrendered by him and such surrender is to be made out of the land still held by him. This can lead to absurd results. For example, supposing a person holding land just one cent in excess of the ceiling area had transferred some lands between the dates mentioned and bought the lands now held by him, possibly at a higher price, he will have to surrender all his land for the nominal compensation provided by sec 88. No

doubt absurdities like this can only be attacked under Article 14, 19 or 31 which are not available in the case of a legislation protected by Art. 31A, but, there is the second proviso to sub-clause (a) of clause (1) of the article which enjoins the payment of compensation not less than the market value for the acquisition of any land within the ceiling limit under the law for the time being in force. The effect of the explanation is to offend this proviso since it means that even land held by a person within the ceiling limit applicable to him under the Act (the law for the time being in force within the meaning of the article) can be taken away for the nominal compensation payable u/s 88 by the fiction of regarding lands disposed by him within the dates mentioned as if those lands were still held by him although the transfer remains untouched, in other Words as if the ceiling limit for such a person is different from the ceiling limits person who had not disposed of land between the relevant dates. That is not so. The ceiling limits imposed by the, as if the ceiling limit for such a person is different from the ceiling limits for persons who had not disposed of land between the relevant dates. That is not so. The ceiling limits imposed by the Act are the same for all, but, in the case of a person who has so disposed of land, that land is to be regarded as still held by him (although, in fact, it is not) for the purpose of calculating the extent of the land to be surrendered by him, and the surrender is to be made out of the land still held, even if its effect be to leave him with land less than the ceiling limit, indeed with no land at all, If a fixation by which land not held by a person could be taken into account for the determination of the excess land to be surrendered by him, and he could be forced to surrender land actually held by him although it is within the ceiling limit without payment of the market value thereof, were permitted the proviso in question could easily be rendered nugatory. That would be to mock the proviso".

After quoting the said observations, the Supreme Court held in paragraph 12 as follows: -

12. This reasoning seems to us to be unexceptionable and the learned Advocate General was wholly unable to offer any serious criticism of these observation. It is clear that by virtue of the second proviso to Art, 31A (1) land within the ceiling limit is expressly protected against acquisition by the State unless the law relating to such acquisition provides for compensations which is not less than its market value. No attempt was made to take the impugned explanation out of this constitutional inhabitation. We, therefore, do not find any reason to differ from the conclusions of the High Court".

27. I have therefore, no hesitation to hold that the principles laid down by the Supreme Court apply in the present case and section 14P of the West Bengal Land Reforms Act cannot be upheld being violative of Art. 31A second proviso.

28. The next question raised by Mr. Bhunia is that the amendment is violative of Arts. 20, 25, and 26 of the Constitution of India and Mr. Roy argued that it is violative of art. 15 of the Constitution of India. It appears to member that the provision of the Act is not violative of Arts. 25 and 26 of the Constitution,

inasmuch as, the said provision does not violate the right of any person to practise religion freely or to administrate the properties of the religious order or institution according to law. Section 14Q (3) only provides to give the power to the State Government to decide how much land can be retained by a corporation or institution established exclusively for a charitable or religious purposes and nothing more. Mr. Bhunia relied upon the cases reported in *Sri Digyadarsan Rajendra Ramdassjivaru Vs. The State of Andhra Pradesh*, and AIR 1972 S.C., 1586 (17) (*E.R.J. Swami v. State of Tamil Nadu*). On the basis of the decisions Mr. Bhunia argued that section 14M (5) of the Act is ultra vires of Arts. 25 and 26. It is argued that the said section is vague and against the principle of Hindu Law.

29. In the case reported in (*E.R.J. Swami v. State of Tamil Nadu* AIR 1972 S.C., 1586) the Supreme Court held that the protection of Art. 25 or 26 is not limited to matters of doctrine or belief. They extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral part of religion. In the said case the provision of section 55, 56 and 116 regarding the nature of appointment of Archaka were ultra vires of Arts. 25 and 26. The Supreme Court held that it is not violative of Arts. 25 and 26 of the Constitution on the ground that such appointment does not trench the proviso either of religious practice or a matter of religion.

It has been held in the case reported in (*Digyadarsan Rajendra Ramdassji Varu v. The State of Andhra Pradesh* AIR 1970 S.C., 181) that the freedom of religion in the constitution is not confined to religious beliefs only: it extends to religious practice as well subject to the restrictions which the constitution itself has laid down. Under Art. 26(b), therefore, a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rights and ceremonies are essential according to the tenets of the religion and no outside authority has any jurisdiction to interfere with its decision in such matter.

30. It appears to member further that Arts. 25 and 26 have protected the right of a citizen to practice religion but their right to acquire or administrate property could be regulated by enactment as the right to own, acquire or administrate property is not the matter of religion, a religious practice or ritual, and observances, ceremonies and modes of worship to which the said articles 25 and 26 relate.

31. So far the argument as to violation of Art. 15(1) of the Constitution of India is concerned, I find no merit in the contention. There is no discrimination on the ground of sex at all. The member of the family as defined made no discrimination on the ground of sex.

32. Now I come to the real question of controversy as to whether the present legislation is protected by Art. 31A second proviso of the Constitution of India.

33. The arguments advanced on these points by the learned Advocate appearing

for the petitioner can be divided in three heads: firstly, that the provision is not an enactment of agrarian reform and secondly even if it is an enactment of the agrarian reform, this is not protected by second proviso of Art. 31A as the market value regarding the compensation has not been given and thirdly whether the compensation provided u/s 14V of the Act is one for assessment of compensation at not less than market value of the land acquire.

Art. 31A of the Constitution of India is in the following terms before the amendment in 1964:-

31A. (1) Notwithstanding anything contained in article 13, no law providing for-

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

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporation either in the public interest or in order to secure the proper management of any of the corporation, or

(d) the extinguishments or modification of any rights accruing by virtue of any agreements, lease of licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31:

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31:

Provided that where such law is a law made by Legislature of a State , the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

(2) In this article, -

(a) the expression "estate" shall in relation to any local area, have the same meaning as that expression or its local equivalent has in the extinguish law relating to land tenures in force in that area, and shall also include any jagir, inam or other similar grant and in the State of Madras and Kerala any janmam right;

(b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat,

under-raiyat or other intermediary and any rights or privileges in respect of land revenue.

After the amendment in 1964, Art. 31A reads as follows: -

"31A(1) Notwithstanding anything contained in article 13, no law providing for-

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

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or license for the purpose of searching for or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

Shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or 31:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the president, has received his assent:

Provide further that where any law makes any provisions 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 him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payments of compensation at a rate which shall not be less than the market value thereof.

(2) In this article-

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

(i) any jagir, inam or muafi or other similar grant and in the State of Tamil Nadu and Kerala, any janman right;

(ii) any land held under ryotwari settlement;

(iii) any land held or let for purpose of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agriculturists, labourers and village artisans;

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

34. It is significant to note that proviso II of Art. 31A was not in the original bill which was placed before the Parliament but was introduced by the Select Committee before it was passed by the Parliament and the said amendment was passed by the Parliament introducing second proviso to Art. 31A of the Constitution. Art. 31A as it stands to day means that no law providing for acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights shall be deemed to be void on the ground of violation of Arts. 14, 19 and 31 if such law made by the Legislature of the State has received the assent of the President and secondly further where any such law which makes a provision for the acquisition by the State of any estate and such land is held under the 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 such person under any law for the time being in force unless it provides for payment of compensation at a rate which shall not be less than the market-value thereof. "Estate" has been defined to include among other any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land and forest land etc.

35. Mr. Bhunia, contended that the word "estate" cannot include the land held by a raiyat under the West Bengal Land Reforms Act. Both Mr. Dutt and Bhunia contended further that the concept of family unit as holding was not in existence in relation to local area that is in West Bengal where Bengal Tenancy Act applies. Under the Bengal Tenancy Act the concept of family unit in relation to estate does not at all arise. There is no equivalent, it is alleged, of family holding within the meaning of the word "estate" and therefore the Act is not protected under Art. 31A of the Constitution of India.

36. The arguments, as advanced by Mr. Dutt, Mr. Bhunia, Mr. Panda and Mr. Roy, in my opinion, did not give full effect to the definition of the word "estate" as defined under Art. 31A of the Constitution of India. Art. 31A (2) (a)(iii) makes it clear that "estate" shall also include any land held or let for the purposes of agriculture or for the purposes ancillary thereto even if it is found that the expression "estate" in relation to any local area does not bring in the concept of family unit as in the present case under the Bengal Tenancy Act, still the word "estate" has been defined to include "any land held or let for the purpose of

agriculture" or for the purpose ancillary thereto. It does not make any difference if the term "estate" had a different meaning under the Bengal Tenancy Act. If it is found that the land is held or let for the agricultural purposes, it will be covered by the definition of the "estate" under Art. 31A.

Therefore if the Act is protected under any other provisions of Art. 31A it cannot be said to be ultra vires of Art. 31A only because the estate in relation to a family unit is non-existent in relation to land tenure as contained in the Bengal Tenancy Act. In my opinion, if any land held or let for the purpose of agriculture this will come within the mischief of the definition of "estate" under Art. 31A(2) (a) (iii) of the Constitution of India. There is therefore no substance in the contention raised by the learned Advocates on behalf of the petitioner in so far as this aspect of the case is concerned.

37. It is argued by Mr. Dutt, Mr. Bhunia, Mr. Panda as well as Mr. Roy that Chapter IIB is not a legislation for the agrarian reform or a part of the scheme of reforms. In 1953, The West Bengal Estates Acquisition Act was enacted to provide for the acquisition of estates, of rights of intermediaries therein and of certain rights of raiyats and under-raiyats and of the rights of certain other persons in lands comprised in estates. If the rights of raiyats and under-raiyats and the rights of intermediaries vested in the State free from all incumbrances, the tiller of the soil and the estate came face to face by the said statute indeed the right of intermediaries and a raiyat intermediaries became direct tenant under the state. u/s 6 of the said Act the intermediary was allowed to retain such land as allowable under the said Act and u/s 5 of the said Act every raiyat holding any land under an intermediary shall hold the same directly under the State, as if the State had been the intermediary and on the same terms and conditions as immediately before the date of vesting and every raiyat holding under an intermediary shall be bound to pay to the State rent and other dues in respect of the land, accruing on and from the date of vesting. Shortly put the intermediary's right and interest vested in the State and the person on the soil became direct tenant under the State. It was found necessary, consequent to the vesting of the estate to make provision to regulate the relation between the tenants under erstwhile intermediary and their status vis-a-vis State to which the lands stood vested from 14th April, 1955 to that end in view, The West Bengal Land Reforms Act X of 1956 was enacted. In the preamble of the said Act it was stated that the act to reform the law relating to land tenure consequent on the vesting of all estates and of certain rights in the State. It will appear, therefore, that this Act, namely, West Bengal Land Reforms Act, 1955 is nothing but a process in the scheme of agrarian reforms. In the object and reasons of the said Act it has been made clear as follows: -

Abolition of Zamindari system has been effected by the West Bengal Estates Acquisition Act, 1953, which provides for the vesting of all estates and the rights of every intermediary therein in the State free from all incumbrances. It is necessary to follow up that Act by a comprehensive measure of land reforms so

as to remodel the existing system of land tenure by providing for such matters as-

- (a) the right, obligations and incident in respect of the holdings or raiyats;
- (b) limitation on transfer and sub-letting of land so as to prevent accumulation of hands or any land being acquired by non-agriculturists;
- (c) control and regulation of the share-produce system of cultivation ;
- (d) introduction of a rational system of assessment on land, consolidation of holdings, formation of co-operative farms and concessions and facilities for such farms;
- (e) maintenance and revision of record of rights; and
- (f) other matters in regard to rights in land and management therefore".

38. It will appear subsequent there to that West Bengal Land Reforms Act underwent number of amendments but the purpose was always the same. In my opinion, it cannot be argued that the West Bengal Land Reforms Act is not one on agrarian reform or is not a scheme for the agrarian reform. It appears that it is too late to hold that the present legislation is not one relating to agrarian reform or is not a scheme for an agrarian reform. In my opinion, therefore, the present legislation comes within the ambit of Art. 31A if the other provisos are found to have been followed, the Act cannot be said to be invalid.

39. The question, therefore, arises whether the second proviso of Art. 31A of the Constitution of India has been followed and that the market value for the vesting lands has been given.

40. Mr. Basanta Panda and Mr. Bhunia contended that the provision has made for the payment of compensation u/s 14V of the West Bengal Land Reforms Act which provides that a compensation will be made according to the provision in Chapter III of the West Bengal Estates Acquisition Act, 1953. Chapter III provides the preparation of compensation assessment roll, filing and disposal of objections to the compensation assessment roll u/s 15(a) and thereafter the produce for gross income and net income u/s 16 of the said Act. The assessment of compensations are made u/s 17 of the said Act. Section 17 of the West Bengal Estates Acquisition Act is in the following terms: -

17. Assessment of compensation (1) After the net income has been computed u/s 16 of the Compensation Officer shall proceed to determine the amount of compensation payable to intermediaries in accordance with the following table, namely: -

TABLE

Net income and amount of compensation payable

Net income Amount of compensation payable

For the first Rs.500 or less of net income. Twenty times of such net income.

For the next Rs. 500 or less of net income. Eighteen times of such net income.

For the next Rs. 1,000 or less of net income. Seventeen times of such net income.

For the next Rs. 2,000 or less of net income. Twelve times of such net income.

For the next Rs. 1,000 or less of net income. Ten times of such net income.

For the next Rs. 15,000 or less of net income. Six times of such net income.

For the next Rs.80, 000 or less of net income. Three times of such net income.

For the balance of the next income. Two times of such balance of net income.

Provided that in the case of an intermediary referred in clause (i) of sub-section 1 of section 6, compensation payable to such intermediary shall be a perpetual annuity, or where the interest of the intermediary is terminable or is liable to be exhausted, an annuity for such number of years as may be prescribed, having regard to the circumstances, equal to the annual income from the estate or interest of such intermediary excluding the portion thereof which the intermediary has retained under the provisions of sub-section (1) of section 6.

Provided further that in the case of an intermediary-

(a) whose income consisted only of rent in kind the computed value of which does not exceed Rs. 1,000 per year, or

(b) whose income from rent in kind taking the commuted other income from his estate for interest which have vested in the State u/s 5 does not exceed the sum mentioned in clause (a),

the compensation payable to such intermediary shall be an annuity payable for a period of twenty-five years, equal to the net annual income from the estates or interests in respect of which the intermediary received rent in kind and in the case of an intermediary mentioned in clause (b), the amount of such annuity shall be excluded from his net income for the purpose of assessing the compensation payable to him under the general provisions of sub-section (1).

(2) (a) Where an intermediary is the holder of a temporary interest, the compensation payable to such intermediary in respect of such interest shall not exceed the amount of net income which the intermediary would have derived from such interest during the unexpired period thereof, or

(b) where the interest of an intermediary is subject to a usufructuary mortgage, the compensation payable to such intermediary shall be apportioned between him and his unfructuary mortgage, in such proportion as may be just and fair having regard to the unexpired period of the usufructuary mortgage.

(3) The sum referred to in sub-clause (v) or sub-clause (vi) of clause (b) of sub-

section (1) of section 16 shall be payable to the corporation, institution or person, as the case may be, as a perpetual annuity".

41. It will be found that a Raiyat whose lands vest would get payment of compensation according to the net income of the land vested. A Raiyat having a net income of Rs. 500/gets 20 times but one having income more than Rs. 80000/- is get two times thereof.

42. Therefore, it is to be considered whether this assessment of compensation is not less than market value of the land sought to be vested. As I have already said that the West Bengal Estates Acquisition Act was enacted in 1954 and came into force on 14th April, 1955 providing that the intermediary can retain u/s 6 of the W. B. Estates Acquisition Act 25 acres of agricultural land. It will appear from section 6 that an intermediary can retain apart from 25 acres of agricultural land, 15 acres of non-agricultural land in khas possession, land comprised in homestead, tank fisheries, land comprised in tea garden or orchard or land used for the purposes of poultry farming or dairy etc.

Section 4 of the West Bengal Land Reforms Act before the present amendment provided as follows: -

4. (1) Subject to the other provisions of this Act, a requisition shall on and after the commencement of this Act be the owner of his holding and the holding shall be heritable and transferable.

(2) Nothing in sub-section (1) shall entitle a raiyat to subsoil rights.

(3) No raiyat shall be entitled to own more than twenty-five acres of land, excluding homestead:

Provided that -

(a) in the case of a Co-operative Farming Society, such society may own a total area as provided for in section 43;

(b) in the case of persons who have retained lands under clauses (h), (i) and (j) of sub-section (1) of section 6 of the West Bengal Estates Acquisition Act. 1953, on the vesting of estates in the State under that Act, the limit of twenty-five acres shall not apply to them, only in respect of any land so retained by them;

(c) in the case of such portions of the district of Darjeeling as may be declared by notification by the State Government to be hilly portions, the limit of twenty-five acres shall not apply to a raiyat.

(4) Notwithstanding anything in sub-sec (1), the holding of a raiyat, excluding his homestead, shall be sold by the prescribed authority in the prescribed manner after such enquiry as it thinks fit and after giving the raiyat an opportunity to show cause against the action proposed to be taken if-

(a) he has without any reasonable cause used the land comprised in the holding or a substantial part thereof for any purpose other than agriculture;

(b) he has without any reasonable cause ceased to keep the land or any substantial part thereof under personal cultivation for a period of three consecutive years or more except when such land is under a usufructuary mortgage mentioned in section 7;

(c) he has without any reasonable cause failed to bring the land comprised in the holding or any substantial part thereof under personal cultivation within three consecutive years of the date on which this Act comes into force or of the date on which hectares came into possession of such land, whichever is later;

(d) he has let out the whole or part of the holding:

Provided that nothing in this sub-section shall prevent the raiyat from cultivation any part of his holding by a bargadar.

(5) On the holding of a raiyat being sold as aforesaid, his ownership therein shall cease and the rights of the lessee, if any, shall terminate and the raiyat shall be entitled to receive the surplus sale proceeds after deducting the expenses for conducting the sale".

43. Section 4(1) provides that the raiyat shall on and after the commencement of this Act be the owner of the holding and the holding shall be heritable and transferable. Section 4(1) was brought into force by notification with effect from 7th June, 1965. Therefore, the raiyat holding a land under the West Bengal Land Reforms Act became the owner of the land and his right was heritable and transferable. u/s 4(3) of the West Bengal Land Reforms Act, before the present amendment a raiyat had a right to hold 25 acres of land. Section 4(3) of the West Bengal Land Reforms Act came into force on 22nd October, 1963.

44. Therefore, it appears that under the West Bengal Land Reforms Act section 4(3) provides that a raiyat can own 25 acres of land and the said section was brought into force 22nd October, 1963. As I have already stated that section 4(1) was brought into force from 7th June, 1965, therefore, after 7th June, 1965 a raiyat became the owner of his holding was heritable and transferable and that a raiyat also is entitled to own 25 acres of land including housestead. A Co-operative Farming Society similarly can hold a total area of land as provided in section 4(3) of the said Act. Section 4(3) (b) provides that person who have retained lands under clauses (h), (i) and (j) of sub-section (1) of section 6 of the West Bengal Estates Acquisition Act, on the vesting of estates in the State under that Act, the limit of twenty-five acres shall not apply to them.

45. It will appear, therefore, that in 1963 the raiyat under the West Bengal Land Reforms Act had a ceiling area affixed at 25 acres of land. It will further appear that under the West Bengal Estates Acquisition Act a person in khas possession of land after the intermediary and raiyat interest vested in the State, can retain 25 acres of agricultural land. Under both the Act, therefore, the ceiling area was fixed at 25 acres of land. Broadly speaking in respect of nay raiyat who is not a Co-operative Farming Society or who has not retained any land under clauses

(h), (i) and (j) of sub-section (1) of section (6) of the West Bengal estates Acquisition Act, in relation to the Co-operative Farming Society or a person under clauses (h), (i) and (j) of sub-section (1) of section 6, the limit of 25 acres shall not apply. Such was the law of ceiling area when the President Act III of 1971 was promulgated on 8th February, 1971. By the said Act new Chapter 2B was inserted and there was an amendment of section 4 of the Act. I have not referred to the other amendments as those were not argued before member and it was not necessary for the purpose of this case as argued by the learned Advocates for the petitioner.

After the President Act, the new Act being Act XII of 1972 was enacted. The objects and reasons of the two Acts, namely, President Act III of 1971 and the present Act are as follows: -

The West Bengal Land Reforms Act, 1955 includes provision for imposing ceiling on the extent of land which an individual raiyat may own and such ceiling has been fixed at 25 acres. This provision is also in orchards as well as lands held by religious and charitable institutions, trusts and endowments, which the intermediaries were permitted to retain under the West Bengal Estates Acquisition Act, 1953. After giving careful consideration to the various aspects of land reform measures, which are necessary in the interests of social justice as also of agricultural production, it has been decided to amend the provisions of the West Bengal Land Reforms Act with a view to imposing ceiling on family basis on the aggregate area of land held by all the raiyats in a family and modifying the provisions relating to exemptions with regard to orchards and lands held by religious and charitable institutions, trusts and endowments. It has also been considered necessary to reduce the level of ceiling and impose different levels of ceiling in regard to lands in irrigated area and lands in other areas. Opportunity has also been taken to further safeguard the interests of share-croppers, raiyats and tribal raiyats. The present measure is being enacted to achieve the above objectives.

2. The Committee constituted under the proviso to sub-section (2) of section 3 of the West Bengal State Legislature (Delegation of Powers) Act, 1970 (17 of 1970) has been consulted before enactment of this measure as a President's Act".

The West Bengal Land Reforms (Amendment) Act, 1970 (President's Act 16 of 1970) and the West Bengal Land Reforms (Amendment) Act, 1971 (President's Act 3 of 1971), were enacted by the President during the terms of President's Rule in West Bengal from the 19th March, 1970 to the 1st April, 1971. The life of these two Acts was due to expire on the 1st April, 1972.

2. By the West Bengal Land Reforms (Amendment) Act, 1970, the position of the bargadar had been safeguarded. The grounds for termination of cultivation by a bargadar had been restricted, the security of the tenure of a bargadar in respect of at least 1 hectare of land had been ensured, the right of cultivation by a bargadar had been made hereditary and the bargadar's share of the produce

had been raised from 60 percent to 75 percent where the owner did not supply plough, cattle manure and seeds.

3. By the West Bengal Land Reforms (Amendment) Act, 1971 the ceiling on agricultural land had been fixed on a family basis on the aggregate area of land held by all the raiyats in a family. The scope of exemption from the operation of the law of ceiling had been curtailed. The amendment also safeguarded further the interests of bargadars and of tribal raiyats and permitted a raiyat to execute equitable mortgage for obtaining credit from banks and other financial institution.

4. The West Bengal Land Reforms (Amendment) Ordinance, 1972 (West Bengal Ordinance No IX of 1972), was promulgated to keep alive the provisions made by the two President's Acts.

5. The Bill seeks to enact the provisions made by the said Ordinance, subject to certain modifications to plug loopholes and to expedite disposal of cases".

It appears clearly from the and reasons of Act III of 1971 which was re-enacted by Act XII of 1972 that the West Bengal Land Reforms Act 1955 provides for the ceiling on the extent of land which an individual raiyat may own and such ceiling was fixed at 25 acres and that it is also clear from the reasons for the enactment that "after careful consideration to the various aspects of land reform measures, which are necessary in the interests of social justice as also of agricultural production, it has been decided to amend the provisions of the West Bengal Land Reforms Act with a view to imposing ceiling on family basis on the aggregate area of land held by all the raiyats in a family and modifying the provisions relating to exemptions with regard to orchards and lands held by religious charitable institutions, trusts and endowments." It is also clear from the reasons for enactment which was fully protected in the words of the statute that it was intended to reduce the level of ceiling and impose different levels with a view to impose ceiling on family basis on the aggregate area of land held by all the raiyats in a family and modifying the provisions relating to exemptions with regard to orchards and lands held by religious and charitable institutions etc. The same provision was re-enacted under the present Act XII of 1972 and for the same purposes as is found in the enactment.

46. Mr. Arun Kumar Dutt (Jr.), Mr. Panda and Mr. Bhunia argued that the provision is not a good law, inasmuch, as there was already a ceiling area fixed by the law in force which has been reduced by the present legislation on land reforms without providing the compensation at a rate "not less than the market value thereof for such acquisition.

47. Mr. Biren Roy Chowdhury on behalf of the opposite party- Respondent argued that Chapter IIB is protected under Art. 31A of the Constitution. The statute provides for compensation u/s 14V of the Act. As the statute is protected under Art. 31A of the Constitution, the challenge of Arts. 14, 19 and 31 cannot be entertained. It is further argued by Mr. Roy Chowdhury that the compensation which is provided in section 14V of the Act is the market value and what has

provided in section 14V is only the mode of determination of the market value on the basis of Chapter III of the West Bengal Estate Acquisition Act. Mr. Roy Chowdhury referred to the different amendments relating to Art. 31A of the Constitution of India beginning from first amendment and ending with 24 and 25 amendments of the Constitution. The whole basis of the amendment of the Constitution by insertion of Art. 31A of the Constitution of India is that to keep the legislation regarding land reform outside the ambit of the judicial interference by the Court. It is well known that Art. 31A was inserted by first amendment after Patna High Court struck down the Bihar Land Reforms Act 1950. Before the amendment of Art. 31A, the Patna High Court in the case reported in AIR 1951 Patna, 91 (Kameshwar Singh v. State of Bihar) held that the Bihar Land Reforms Act, 1950 is ultra vires as the compensation provided is violative of Art. 14 of the Constitution of India. The Parliament amended the Constitution of India with retrospective effect by insertion of Arts. 31A and 31B in the Constitution of India and Bihar Land Reforms Act 1950 was included in the 9th Schedule of the Constitution. Thereafter again the Bihar Land Reforms Act 1950 was challenged before the Supreme Court after the insertion of Art. 31A and 31B of the Constitution and the Supreme Court held that the Bihar Land Reforms Act is valid except sections 4(b) and 23(f) of the Act as the purpose of the later provision does not fall within the definition of the phrase "public purpose" ((15) The State of Bihar Vs. Sir Kameshwar Singh,) or in the other words the challenge of the petitioner regarding the colourable exercise of power by the legislature was upheld. The provision of section 4(b) and 23(f) was regarding the outstanding arrears of rent. In paragraph 55 of the said judgement it has been held as follows: -

55. Wills in his constitutional Law, at page 816, offers the same opinion, Nichols on "Eminent Domain", (Vol. 1, at page 97) has expressed a contrary opinion and reference has been made to the decision in "Cincinnati v. Louisville ETC, (1912) 233 US 390. An examination of this case, however, does not disclose that any such proposition was stated therein. It was held in that case that a Bill to restrain the enforcement of a State statute regulating fire insurance rights was a valid law in the State of Kansas. It was not necessary to decide in this case whether under compulsory acquisition power the State has the power to acquire choses in action or money, but it cannot be seriously disputed that such an acquisition amounts to a forced loan and that the desired result can be more appositely obtained in exercise of the police power of the State than of the power of eminent domain or compulsory acquisition of property and that compensation in such a case is the same amount of money that is being taken and in the case of a chose in action the amount of money that it would produce. In this situation it cannot be held that fifty percent of the outstanding arrears was compensation in any sense of that expression for the acquisition. The true position is that the State took over all the arrears and decided to refund fifty percent of them and forfeit the rest. The validity of this acquisition has to be decided independently of the acquisition of the estates. It has no connection with land reform or with any

public purpose. It stands on the same footing as other debts due to zamindars or their other movable properties, which it was not the object of the Act to acquire. As already stated, the only purpose to support this acquisition is to raise revenue to pay compensation to some of the zamindars whose estates are being taken. This purpose does not fall within any definition however wide, of the phrase "public purpose" and the law therefore to this extent is unconstitutional".

Still thereafter the Supreme Court in the case reported in((3) Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others,) and (The State of West Bengal Vs. Subodh Gopal Bose and Others,) and (The State of West Bengal Vs. Bela Banerjee and Others,) held that the compensation should be market value of the property and by 4th amendment of the Constitution of India, Art. 31A and 31B were amended and the adequacy of compensation for the purpose matters coming within the meaning of Art. 31A was made beyond the purview of judicial interference and was made not justiciable.

The next amendment of Art. 31A came by way of 17th amendment of the Constitution in 1964. The said amendment bill presented in the Parliament did not contain the second proviso to Art. 31A of the Constitution of India. The matter, it appears, was referred to by the Select Committee and when it came back from the Select Committee, the Select Committee introduced the second proviso to the Art. 31A and in Art. 31B, 9th Schedule, number of acts were inserted including the one, namely, West Bengal Estates Acquisition Act as well as West Bengal Land Reforms Act. The matter then went back to the Parliament and the

Parliament accepted the Select Committee's report and thereafter the amendment bill went to the Rajya Sabha and the 17th Amendment came into force with effect from 20th June, 1964. Before the Amendment, the Minister-in-charge of Legal Affairs specifically pointed out to a question that the introduction of proviso (2) will make it open to the person to go to the Court and challenge if he feels it should be challenged, that the market value has not been paid for the land which has been acquired from him that point should be made clear. The Minister-in-charge of Legal Affairs replied as follows: -

It is precisely so because it limits a power of any State Legislature to acquire land within ceiling except on payment of market value. That means there can be no valid State Legislature without providing for payment of compensation. The full market value when it seeks to acquire land falling within the ceiling limit even if that is done it will be invalid".

(Parliamentary Debat-Vol. 48, No. II, Rajya Sabha Official Report, 1018).

I am conscious that for the purpose of interpretation of Art. 31A, Parliamentary Debat, Report of the Select Committee etc. cannot be relied upon but there is no doubt that they are relevant for the proper understanding of the circumstances under which it was passed and the reasons which necessitated (Chiranjit Lal

It is however clear that Art. 31A saves a law regarding the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights from the challenge of Arts. 14, 19 and 31. I have not referred to other sub-art of Art. 31A because they are not necessary for our purpose. If it is found that such law is a State law which has been reserved for the President and has received his assent and secondly if such law makes provision for acquisition by the State of any estate and any land comprised is held by a person under personal cultivation and such law has provided compensation at the rate not less than the market value thereof. That law in the present case is one regarding the acquisition by the State of any estate and is one further a law provides for the scheme of agrarian reform, is cannot be doubted.

48. It cannot further be contended and it has not been argued by the Respondent that these lands which are sought to be vested are not within the personal cultivation. In all these cases it has been asserted by the petitioner that the lands are retained lands of the petitioners. With the ceiling area and is within the personal cultivation of the petitioner and no affidavit has been filed by the Respondent challenging the assertion made by the petitioners. Therefore, it must be held that the lands are retained lands of the petitioner either under the West Bengal Estates Acquisition Act and under the West Bengal Land Reforms Act before the insertion of Chapter 2B of the Act and that they are in personal cultivation of the petitioner.

49. The main question, therefore, which arises for the consideration of this Court is whether there was a reduction in the ceiling area by this amendment and secondly whether the compensation not less than the market value has been provided in the Act.

50. Mr. Roy Chowdhury contended that the State Government has a right to amend the West Bengal Land Reforms Act and also to amend retrospectively. If they have so amended, it cannot be challenged as violative of Art. 31A of the Constitution of India. It is argued by Mr. Roy Chowdhury that as soon as the West Bengal Land Reforms Act is amended, the law which was in force till the time of the amendment becomes non-existent and only law which is to be tested whether there was a violation of Art. 31A is a law, as amended on the date when the amendment came into force. It appears to member that Mr. Roy Chowdhury is wholly wrong in his contention. I have already stated that an intermediary had the option to retain such land as retainable u/s 6 of the West Bengal Estates Acquisition Act. He can retain 25 acres of agricultural land excluding homestead. He can retain non-agricultural land upto 15 acres. He can retain tank fisheries in khas possession. He can retain orchard etc. as is allowable u/s 6 of the Act. Therefore, under the West Bengal Estates Act an intermediary or a raiyat in khas possession of the land had a right to retain some land within the ceiling limit fixed by the Act. The West Bengal Land Reforms Act enacted in order to reform the law relating to land tenure, consequent on the vesting of all estates and of

certain rights therein in the State. Section 4(3) of the Act, in particular, prescribed the limit of the retainable land. Under the said section the raiyat can retain and the rights of a raiyat in respect of those lands which he held as raiyat and holding were made heritable and transferable and the raiyat became the owner of this holding. There are however some restrictions about the transfer of the holding but we are not concerned for the purpose of this case to advert to that provision. The facts remain that the raiyat who held of a holding under the West Bengal Land Reforms Act was entitled to retain 25 acres of land.

51. It is also true that a raiyat of intermediary in possession of land and the land being retainable u/s 6 of the West Bengal Land Reforms Act can retain the same under the law when the amendment Act which is impugned before me came into force.

52. Now we are to test whether the said amendment is violative of Art. 31A second proviso. It has not been disputed by filing an affidavit that the petitioners have in the possession under the personal cultivation of the lands which are allowable to be retained u/s 6 of the West Bengal Estates Acquisition Act or u/s 4(3) of the West Bengal Land Reforms Act before the amendment. If it is found that the compensation given under the Act is less than the market value of the land in question then the Act cannot be said to be protected under Art. 31A second proviso.

53. The argument advanced by the respondent, in particular, by Mr. Roy Chowdhury is that the compensation provided in the Act, namely section 14V is not less than the market value of the land in question which is sought to be vested. We are now to see whether the provision provides for the assessment of the market value at all. The "market value" has been construed by the different Courts in India including the Supreme Court to mean the value of something which can fetch in an open market in which a willing buyer may give to a willing seller.

54. Mr. Roy Chowdhury contended that the mode of determination of the compensation as contained in section 14V read with Chapter III of the West Bengal Estates Acquisition Act is for the assessment of compensation of the land sought to be acquired at a rate not less than the market value thereof. I have no hesitation in holding that the mode of compensation under the W. B. Estates Acquisition Act is wholly arbitrary and had the Act not been protected under Art. 31A of the Constitution of India, the Act would have the same fate as it happened to Bihar Land Reforms Act. It is quite clear that the assessment of compensation on the basis of the valuation of the net profit and the poorer section getting 20 times of the valuation and the richer section getting 2 times thereof cannot be said to be compensation at the rate not less than the market value thereof Article 31A second proviso clearly provides that the land within the ceiling limit cannot be acquired unless full compensation not less than the market value is given. In my opinion, the determination under Chapter III of the West Bengal Estates Acquisition Act is not a determination of the market value but as

it is protected under Art. 31A, it is immune from challenge of Arts. 14, 19 and 31. Adequacy of compensation could not be agitated in the Court. In my opinion, the Act XII of 1972 does not provide a method for determination of compensation not less than the market value of the land within the ceiling area and as such it is violative of Art. 31A proviso (2). As soon as the cover of Art. 31A is taken away, the assessment of compensation at less than the market value becomes violation of Art. 14, 19 and 31 and also the violation of Art. 31A. In my opinion, therefore, section 14V of West Bengal Land Reforms Act cannot be protected.

Mr. Roy Chowdhury however contended that the compensation has not been based on the market value which was upheld by the Supreme Court in the case reported in (B. Shankara Rao v. State of Mysore AIR 1969 S.C., 453). Mr. Roy Chowdhury relied upon the paragraphs 4, 5 and 6 which are follows: -

4. On behalf of the petitioners learned counsel stressed the argument that the inamdar of the estate was completely deprived of any sort of compensation in regard to the category of lands mentioned in section 9(1) (i). It was said that in regard to the permanent tenants, the compensation was fixed at 20 times of the land revenue, but in the case of quasi-permanent tenants the compensation is 75 percent of the value payable by the quasi-permanent tenants under S. 6(2). That is to say, the Government recovers a premium u/s 6(2) at 40 times the land revenue and hands over 75 percent as compensation to the holder of the inam estate. It was contended that compensation was not fixed on the basis of the market value on the date of acquisition and that the guarantee embodied in Article 31(2) of the Constitution has been violated.

5. In support of this argument reference was made to the decision of this Court in The State of West Bengal Vs. Bela Banerjee and Others,), in which this court observed that while under Entry 42 List III the Legislature was given discretionary power to lay down the principles which should govern determination of the amount to be given to the owner of the property appropriated. Article 31(2) of the Constitution requires that such principles must ensure what is determined as payable must be "compensation", i. e. a just equivalent of what the owner has been deprived. Whether such principles take into account all the elements which make up the true value of the property appropriated and exclude matters which are to be neglected is a justiciable issue to be adjudicated by the Court. The Court, therefore, held in that case that the West Bengal Land Development and planning Act 1948 which was enacted primarily for the settlement of immigrants who had migrated into West Bengal due to communal disturbances in East Bengal and which any section 8 provided that the compensation to be awarded for compulsory acquisition to the owner of the land was not to exceed the market value of the land on 31st December, 1964 was ultra vires of the Constitution and void under Article 31(2) of the Constitution . At page 564 of the report (SCR)=(at p. 173 of AIR) the Court observed as follows: -

Turning now to the provisions relating to compensation under the impugned

Act, it will be seen that the latter part of the proviso to sec 8 limits the amount of compensation so as not to exceed the market value of the land on December 31, 1946, no matter when the land is acquired. Considering that the impugned Act is a permanent enactment and lands may be acquired under it many years after it came into force, the fixing of the market value on December 31, 1964, as the ceiling on the land at the time of the acquisition is arbitrary and cannot be regarded as due compliance in letter and spirit with the requirement of Article 31(2)".

In our opinion, this principle cannot apply in testing the validity of the impugned Act in the present case. Article 31(2) before its amendment by the Constitution (4th Amendment) Act reads as follows: -

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

But Article 31A was added in the Constitution with retrospective effect by section 4 of the Constitution (st Amendment) Act, 1951 which provides as follows:

4. After Article 31 of the Constitution, the following article shall be inserted, and shall be deemed always to have been inserted namely:

31A. Saving of laws providing for acquisition of estates, etc. -

(1) Notwithstanding anything in the foregoing provisions of this part, no law providing for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by any provisions of this Part:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent

(2) In this article-

(a) the expression "estate" shall, retain to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land-tenures in force in that area, and shall also include any jagir, inam or muafi or other similar grant,

(b) the expression "rights in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder or intermediary

and any rights or privileges in respect of land revenue".

Article 31A was amended again by section 3 of the Constitution (4th Amendment) Act, 1955 with retrospective effect. Section 3 of the Constitution (4th Amendment) Act reads as follows: -

(a) for clause (1), the following clause shall be, and shall be deemed always to have been, substituted, namely: -

(i) Notwithstanding anything contained in Article 13, no law providing for-

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

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property; or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers or corporations, or of any voting rights of share-holder thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, by mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or taken away or abridge any of the rights conferred by Article 14, Article 19 or Article 31.

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent; and (b) in clause (2), -

(i) in sub-clause (a), after the word "grant" the words "and in the State of Madras and Travancore-Cochin, any janman right" shall be, and shall be deemed always to have been, inserted.

(ii) in sub-clause (b), after the word "tenure-holder" the words "raiyat, under-raiyat" shall be, and shall be deemed always to have been, inserted".

6. In the present case, it is plain that under Article 31A as introduced by the 1st Amendment to the Constitution or as altered by the 4th Amendment, the impugned Act is protected from attack in any Court on the ground that it contravenes the provisions of Article 31(2) of the Constitution. The reason is that the impugned Act is a law providing for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of such rights as contemplated by Article 31A of the Constitution. The impugned Act

provides for acquisition of the rights of inamdars in inam estates in Mysore State and it is intended to abolish all intermediate holders who were termed as superior holders and to establish direct relationship between the Government and occupants of land in the Inam Villages in respect of which notifications had been issued. The legislation was under-taken as a part of agrarian reform which the Mysore State Legislature proposed to bring about in the former State of Mysore. The impugned statute, therefore, falls under the protection of Article 31A of the Constitution and cannot be challenged on the ground that Article 31 has been violated, that no principle of compensation has been provided or that the compensation provided for is illusory or inadequate".

55. In my opinion, the compensation of just equivalent at a rate fixed in 1964 was upheld because the Supreme Court held that the Act was protected under Art. 31A of the Constitution and it cannot be disputed that if the Act is protected under Art. 31A or the Act as amended was inclined in Art. 31B of the Constitution, the challenge to the Act by the petitioner in this case would have failed straight-away more so when it cannot be disputed that the Act is a part of the scheme of agrarian reform. I, however, hold that before the amendment there was a ceiling limit fixed by a competent legislature and that law was in force and therefore to take land within ceiling limit which in my opinion is being done in this case by reduction of ceiling limit the State Legislature must provide for compensation at a rate not less than the market value thereof but it has not been provided and as such the protection of Art. 31A is not extended to the present amendment.

56. Therefore, in my opinion, the case reported in ((11) B. Shankara Rao Badami and Others Vs. The State of Mysore and Another,) cannot support the case of the Respondent made out before me.

Mr. Roy Chowdhury contended on the basis of the decision of the Supreme Court reported in ((18) I.P. Vajravelu Mudaliar v. The Special Deputy Collector AIR 1965 S.C., 1017) that as the statute has provided the mode for determination of compensation, it is immune from challenge regarding the adequacy of the compensation. In my opinion, the Supreme Court made it clear that Art. 31A would only apply to a law made for acquisition by the State of any "estate" and it has subsequently been interpreted in respect of the matters relating to agrarian reforms. It appears however that in order to come within the protection of Art. 31A for acquisition of land within the ceiling area, the compensation not less than the market value must be provided. Mr. Roy Chowdhury however contended on the basis of the judgement of P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, . It appears to me clear from the judgement that if the land is within the ceiling limit, the compensation must be paid which must not be less than the market value and therefore what will be the market value or just equivalent to the same must be considered. If a principle laid down, the Court is competent to consider whether the principle is such which shall provide for just equivalent of what the owner has been deprived of or the principles which the

Legislature can prescribe are only principles for ascertaining a "just equivalent" of what the owner has been deprived of. The Supreme Court has said in paragraph 14 as follows:

A scrutiny of the amended Article discloses that it accepted the meaning of the expressions "compensation" and "principles" as defined by this Court in *The State of West Bengal Vs. Bela Banerjee and Others*,). It may be recalled that this Court in the said case defined the scope of the said expressions and then stated whether the principles laid down take into account all the elements which make up the true value of the property appropriated and exclude matters which are to be neglected, is a justiciable issue to be adjudicated by the court. Under the amended Article, the law fixing the amount of compensation or laying down the principles governing the said fixation cannot be questioned in any court on the ground that the compensation provided by that law was inadequate. If the definition of "compensation" and the question of justiciability are kept distinct, much of the cloud raised will be dispelled. Even after the amendment, provision for compensation or laying down of the principles for determining the compensation is a condition for the making of a law of acquisition or requisition. A Legislature if it intends to make a law for compulsory acquisition or requisition, must provide for compensation or specify the principles for ascertaining the compensation. The fact that Parliament used the same expressions, namely, "compensation" and "principles" as were found in Art. 31 before the Amendment is a clear indication that it accepted the meaning given by this Court to those expressions in *The State of West Bengal Vs. Bela Banerjee and Others*, . It follows that a Legislature in making a law of acquisition or requisition shall provide for a just equivalent of what the owner has been deprived of or specify the principles for the purpose of ascertaining the "just equivalent" of what the owner has been deprived of. If Parliament intended to enable a Legislature to make such a law without providing for compensation so defined, it would have used other expressions like "price" "consideration" etc. In *Craies on Statute Law*, 6th Edn., at p. 167, the relevant principle of construction is stated thus:

There is a well-known principles of construction that where the legislature used in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted unless a contrary intention appears".

The said two expressions in Art. 31(2) before the Constitution (Fourth Amendment.) Act have received an authoritative interpretation by the highest Court in the land and it must be presumed that Parliament did not intend to depart from the meaning given by this Court to the said expressions.

The Supreme Court also stated in paragraph 15 as follows: -

15. The real difficulty is, what is the effect or ouster of jurisdiction of the court to question the law on the ground that the "compensation" provided by the law is not adequate? It will be noticed that the law of acquisition or requisition is not

wholly immune from scrutiny by the court. But what is excluded from the court's jurisdiction is that the said law cannot be questioned on the ground that the compensation provided by that law is not adequate. It will further be noticed that the clause excluding the jurisdiction of the Court also used the word "compensation" indicating thereby that what is excluded from the Court's jurisdiction is the adequacy of the compensation fixed by the legislature the argument that the word "compensation" means a just equivalent for the property acquired and therefore, the Court can ascertain whether it is a "just equivalent" or not, makes the amendment of the Constitution nugatory. It will be arguing in a circle. Therefore, a more reasonable interpretation is that neither the principles prescribing the "just equivalent" nor the "just equivalent" can be questioned by the Court on the ground of the inadequacy of the compensation fixed or arrived at by the working of the principles. To illustrate: a law is made to acquire a house; its value at the time of acquisition has to be fixed; there are many modes of valuation, namely, estimate by an engineer, value reflected by comparable sales, capitalisation of rent and similar others. The application of different principles may lead to different results. The adoption of one principle may give a higher value and the adoption of another principle may give a lesser value. But nonetheless they are principles on which and the manner in which compensation is determined. The court cannot obviously say that the law should have adopted one principle and not the other, for it relates only to the question of adequacy. On the other hand, if a law lays down principles which are not relevant to the property acquired or to the value of the property at or about the time it is acquired, it may be said that they are not principles contemplated by Art. 31(2) of the Constitution. If a law says that though a house is acquired, it shall be valued as a land or that though a house site is acquired, it shall be valued as an agricultural land or that though it is acquired in 1950 its value in 1930 should be given, or though 100 acres are acquired compensation shall be given only for 50 acres, the principles do not pertain to the domain of adequacy but are principles unconnected to the value of the property acquired. In such cases the validity of the principles can be scrutinized. The law may also prescribe a compensation which is illusory: it may provide for the acquisition of a property worth lakhs of rupees for a paltry sum of Rs. 100/-. The question in that context does not relate to the adequacy of the compensation, for it is no compensation at all. The illustrations given by us are not exhaustive. There may be many others falling on either side of the line. But this much is clear. If the compensation is illusory or if the that under various laws dealing ceiling limits. It is well known principles prescribed are irrelevant to the value of the property at or about the time of its acquisition, it can be said that the Legislature committed a fraud on power and, therefore, the law is bad. It is a use of the protection of art. 31 in a manner which the Article hardly intended".

57. It appears that second proviso of Art. 31A makes it clear that in respect of acquisition of land within the ceiling limit under personal cultivation of any person, the compensation at not less than the market value must be provided for

such acquisition. If the principles laid down in Bela Banerjee's case as well as in the case reported in (Vajravelu v. Sp. Dy. Collector AIR 1965 S.C., 1017) must apply and unless the principle lays down for determination of compensation at not less than the market value of the land, there will be violation of Art. 31A proviso 2. In the present case, in my opinion, the compensation in Chapter III of the West Bengal Estate Acquisition Act provided does not in any way relate to fixation of compensation at a rate not less than market value of the land sought to be vested in the State.

Mr. Roy Chowdhury relied upon the case reported in ((1) Ajit Singh Vs. State of Punjab and Another,) in support of his contention. The Supreme Court interpreted the second proviso of Art. 31A (1) of the Constitution and stated in paragraph 10 as follows:

10. Let us now see whether the other part of the second proviso throws any light on this question. It would be noticed that it refers to with land reforms, no person apart from certain exceptions can hold land beyond a ceiling fixed under the law. Secondly, the proviso says that not only the land exempted from acquisition should be within the ceiling limit but it also must be under personal cultivation. The underlying idea of this proviso seems to be that a person who is cultivating land personally, which is his source of livelihood, should not be deprived of that land under any law protected by Article 31A unless at least compensation at the market rate is given. In various States most of the persons have already been deprived of land beyond the ceiling limit on compensation which was less than the market value. It seems to us that in the light of the considerations mentioned above the words "acquisition by the State" in the second proviso do not have a technical meaning, as contended by the learned counsel for the respondent. If the State has in substance acquired all the rights in the land for its own purposes, even if the title remains with the owner, it cannot be said that it is not acquisition within the second proviso to Article 31-A.

In my opinion, this case and the observation of the Supreme Court does not at all support the contention put forward by Mr. Roy Chowdhury but on the other hand it supports the contention of the petitioner. On the facts, however, the Supreme Court held that the acquisition in respect of the land does not amount to any acquisition by the State of any land. On facts it was held that the land which is a subject-matter of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act and the scheme for inclusion thereof in common land of the village was owned by the Panchayat and used for the common purposes. It does not amount to acquisition by the State within the second proviso at all. And therefore it was held as follows: -

In the context of the 2nd proviso, which is trying to preserve the rights of a person holding land under his personal cultivation, it is impossible to conceive that such adjustment of the rights of persons holding land under their personal cultivation in the interest of village economy was regarded something to be compensated for in cash".

57. Mr. Roy Chowdhury as well as the learned Advocates for the petitioners heavily relied upon the decision reported in ((7) Kunjukutty Sahib, etc., etc. Vs. The State of Kerala and Another,) and contended that the principles laid down in the said case support the case of the respective parties. In the said case the Supreme Court was considering the Kerala Land Reforms Act (1 of 1964) as amended by Act 35 of 1969. The Kerala High Court struck down section 85(1) explanation as void offending second proviso of Art. 31A (1) of the Constitution of India. The Supreme Court upheld the order of the Kerala High Court in the case reported in (V.N. Narayanan Nair v. State of Kerala AIR 1971 Kerala, 98,) Full Bench and struck down section 85(1) explanation. Their Lordship of the Supreme Court quoted the observation of the Kerala High Court in paragraph 11 with approval.

In my opinion, this judgement does not support the contention of the Respondent but it supports the case of the petitioner here as I have said that the petitioner upto date when the amendment came into effect was entitled to retain 25 acres of land u/s 4(3) of the un-amended West Bengal Land Reforms Act which was operative from 22nd October, 1963. They are further entitled to retain 25 acres of land under the West Bengal Estates Acquisition Act which was operative from 14th April, 1955 and from 14th April, 1956 in case of raiyati intermediary therefore with the amendment of West Bengal Land Reforms Act impugned in this acquisition their ceiling area was reduced and the compensation paid in accordance with the principle laid down in the West Bengal Estates Acquisition Act cannot be compensation at less than the market value of the land vested and the principle laid down therein is not for the purposes of fixation of compensation at the market value of the land.

59. It is well known that the compensation provided in the W. B. Estates Acquisition Act is not the market value of the land an intermediary is deprived of. It is much less than the market value thereof. In the mode for determination of compensation it was never intended to pay the market value at all. In the assessment of compensation, the poorer intermediary would get 20 times of the net rent but the richer intermediary would get 2 times. However the provisions are not protected by Art. 31A of the Constitution and there is no doubt that the W. B. Act is so protected, the provision would have been ultra vires Arts 14, 19 and 31. If, therefore, it is compensation is illusory and does not tend to fix the compensation at a rate not less than the market value of the lands vested and the Act is not protected under Art. 31A of the Constitution, the said provision cannot be said to be ultra vires. In the present case S. 14V does not tend to fix the market value as compensation for the vesting of lands above the ceiling area as such the provisions is ultra vires of Arts. 14, 19, 31 and 31A being violative of Art. 31A second proviso.

60. Mr. Das Gupta however contended on the basis of the Supreme Court decision reported in (Kunjukutty Sahib, etc., etc. Vs. The State of Kerala and Another,) and in particular Mr. Das Gupta relied upon the paragraph 14 of the

said case which runs as follows: -

14. We now turn to the three appeals (C.As. Nos.143, 274 and 309 of 1971). In C. As. Nos. 274 and 309 of 1971 the first point urged before us was founded on Art. 31-A (1), second proviso by virtue of which the State can have no power to acquire any portion of land held by a person under his personal cultivation in the estate which is within the ceiling limit applicable to him under a law unless the law empowering acquisition provides for compensation at a rate not less than the market value of such land. According to the argument when the amended Act reduced the ceiling limit and required surrender of the land held in excess of the limit fixed by the amended Act, without payment of compensation at market value, it violated the constitutional inhibition contained in the second proviso to Article 31-A (1). We are unable to sustain this contention. It was not disputed that the ceiling limit fixed by the amended Act was within the competence of the legislature to fix; nor was it contended that the ceiling fixed by the original unamended Act? by itself debarred the legislature from further reducing the ceiling limit so fixed. Prior to the amendment undoubtedly no land within the personal cultivation of the holder under the unamended Act within the ceiling limit fixed thereby could be acquired without payment of compensation according to the market value, but once ceiling limit was changed by the amended Act the second Proviso to Art. 31-A (1) must be held to refer only to the new ceiling limit fixed by the amended Act. The ceiling limit originally fixed ceased to exist for future the moment it was replaced by the amended Act. The prohibition contained in the second proviso operates only within the ceiling limit fixed under the existing law at the given time. It is true that the new ceiling limit was fixed contemporaneously with the acquisition of the land in excess of that ceiling limit. But it was not contended that a law so fixing the ceiling limit and acquiring the land in excess would offend any provision of the Constitution. This submission must, therefore, be rejected".

It is argued by Mr. Das Gupta on these premises that the ceiling limit which was there in Kerala case ceased to exist and it was replaced by amended Act within the ceiling limit at the given time. In this case, it will appear that the Kerala Land Reforms Act 1964 came into force on 1st January, 1970 when the notification u/s 82 was made in the judgement reported in ((7) Narayanan Nair v. State of Kerala (F. B.) AIR 1971 Kerala, 98). In paragraph 44 it has been made clear that the Kerala Land Reforms Act 1964, in particular section 83 imposing the ceiling limit and the acquisition of the land in excess of the ceiling area was never brought into force though section 82 specified a higher ceiling limit. If the Act was not brought into force then the observation of the Supreme Court will apply in all forces but if it has already been brought into force by the subsequent amendment by which the ceiling limit was reduced and the surplus land sought to be vested in the State, in my opinion, the compensation not less than the market value must be given according to Art. 31A proviso 2. In the case reported in (Kunjukutty v. State of Kerala AIR 1972 S.C., 2097) it has been made clear that it is competent for the State to amend the ceiling area or it also repeal it but

the answer to the point raised before me is not given in the present decision. It will be found that the Kerala Act was not given effect to, in so far as, the ceiling area is concerned before 1st January, 1970. Therefore before January 1970 there was no ceiling area applicable to any person so as to attract proviso 2 of clause (1) of Art. 31A of the Constitution of India. Similar question was raised in the case reported in ((16) The State of Orissa v. Chandrasekhar Singh Bhoi AIR 1970 S.C., 398). In the said case the Supreme Court was considering the vires of Orissa Land Reforms Act 1960 as amended by Act 15 of 1955. The Supreme Court held in paragraph 5 as follows: -

5. Before the High Court it was urged on behalf of the land-holders that when the principle Act was enacted it became law in force, and the ceiling limit prescribed thereby became effective, even though Ch. IV was not extended by a notification u/s 1(3) of the Act, and since the subsequent legislature seeks to restrict the ceiling limit and to vest the surplus landing the Government u/s 45 as amended there is compulsory acquisition of land which may be valid only if the law provides for payment to the land-holder for exhibition of his interest, the market value of that part of the surplus land which is within the ceiling limit under the principle Act. This argument found favour with the High Court. In their view the expression "law in force" must be "construed only in the constitutional sense and not in the sense of its actual operativeness", and on that account it must be held that "there was a ceiling limit already provided by the principle Act as it was law in force within the meaning of that expression as used in the second proviso to Article 31A". They proceeded then to hold that section 47 of the Act as amended provided for payment of compensation at a rate which is less than the market value of the land falling within the ceiling limit as originally fixed under Act, 16 of 1960, and the guarantee of the second proviso to article 31-A of the Constitution is on that account infringed. We are unable to accept this process of reasoning. The right to compensation which is not less than the market value under any law providing for the acquisition by the State of any land in an estate in the personal cultivation of a person is guaranteed by the second proviso only where the land is within the ceiling limit applicable to him under any law for the time being in force. A law cannot be said to be in force unless it is brought into operation by legislative enactment, or by the exercise of authority by a delegate empowered to bring it into operation. The theory of a statute being "in operation in a constitutional sense" though it is not in fact in operation has, in our judgement, no validity.

In paragraph 9 also the Supreme Court held as follows: -

9. Section 1(3) of Act 16 of 1960 is undoubtedly a law in force, but until the power is exercised by the State Government to issue an appropriate notification, the provisions of Ch. IV could not be deemed to be law in force, and since no notification was issued before Ch. IV of the principle Act was repealed, there was no ceiling limit applicable to the land-holders under any law for the time being in force which attracted the application of the second proviso to Article 31-A".

61. In the Orissa case, therefore, as there was no notification by the State Government under the Orissa Land Reforms Act. the ceiling area never came into force and therefore when the amendment was made reducing the ceiling area, it cannot be said to be violative of Art. 31A proviso (2). The Supreme Court held that " A law cannot be said to be in force unless it is brought into operation by legislative enactment, or by the exercise of authority by a delegate empowered to bring it into operation". In case of West Bengal Land Reforms Act, there was already a ceiling area brought into operation by notification dated 22nd October, 1963 (vide S.4 (3) of the Act).

In the case reported in (Narayanan v. State of Kerala AIR 1971 Kerala, 98) it is explicit on the point and in the paragraph 44 of the said judgement the Hon"ble Judges of the said Court stated as follows: -

44. The ceiling area under the amended Act is lower than the ceiling area under the original Act. It is contended that, in so far as the amended Act provides for the acquisition of land within the original ceiling area (namely, of the difference between the two ceiling areas), the second proviso to clause (1) of Article 31-A requires the payment of compensation at a rate not less than the market value, so long as the land is held under personal cultivation. But, it is clear from a reading of this article that the law for the time being in force referred to therein when it says that "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 unless the law relating to the acquisition of such land provides for payment of compensation at a rate which shall not be less than the market value thereof" is the law regarding ceiling in force at the time the acquisition is made, not a law which at that is no longer in force. The contention that once there is a law fixing the ceiling limit there can thereafter be no acquisition within that ceiling limit, without payment of at least the market value, even if the law be replaced or otherwise repealed, seems to us quite unsustainable. Here, the actual vesting of the excess land in the Government u/s 86(4), in other words, the acquisition of the land by the Government, takes place only after the coming into force of section 83 imposing the ceiling limit and the acquisition is only of land in excess of and not of land within the ceiling area. The prohibition against holding land in excess of the ceiling limits does not involve any acquisition by the State. Such acquisition takes place only when, upon surrender or assumption of the excess land, the land vests in the Government u/s 86(4). Before that, the Land Board has to determine which is the land, to be surrendered and issue notice demanding the surrender. Moreover, section 83 of the original Act imposing a ceiling limit was never brought into force although section 82 specifying a higher ceiling limit than section 82 of the amended, Act, was. Therefore, when the amended Act came into force, there was no ceiling limit applicable to any person so as to attract the second proviso to clause (1) of Article 31A. The ceiling was imposed only by the amended Act and there is to be no acquisition within that ceiling, see 1970-1 SCWR 306= (State of Orissa Vs. Chandrasekhar Singh Bhoi, etc.,). That decision is also authority for what we

have already said, namely, that the law in force referred to in the second proviso to cl. (1) of Article 31-A is the law in force at the time the acquisition is made and not, as the Orissa High Court seems to have thought, the law in force at the time when the law for acquisition was made. That in that case the Supreme Court disposed of a contention similar to that raised before us only on the second of the reasons we have stated, namely, that the previous law providing for a ceiling limit had not been brought into force when the subsequent law fixing a lower ceiling limit and providing for the acquisition was made, does not mean that, had the previous law fixing a higher limit been brought into force, it would have continued to be "the law for the time being in force" within the meaning of the proviso in question, notwithstanding its replacement or outright repeal. The power of a legislature to fix the ceiling limit is not exhausted by a single exercise thereof. The legislature can, as pointed out by Hidayatullah, J. , (as he then was) in *Golak Nath's* case, AIR 1969 SC 1643 reduce the ceiling limit from time to time or do away with it altogether and what is relevant is only the ceiling limit according to the law in force at the time of the acquisition".

62. In our case I have already said that there was a law in force in respect of the ceiling area held by a raiyat or intermediary either under the West Bengal Land Reforms Act being section 4(3) of the West Bengal Land Reforms Act or under West Bengal Estates Acquisition Act being section 6 of the West Bengal Estates Acquisition Act. In my view, therefore, paragraph 14 of the Supreme Court judgement does not support the extreme proposition raised by Mr. Roy Chowdhury as well as by Mr. Das Gupta.

63. Mr. Roy Chowdhury and Mr. Das Gupta contended that Art. 31B of the Constitution of India gives protection to the present legislation. Art. 31B of the Constitution was amended in 1964 and West Bengal Land Reforms Act was inserted in the 9th Schedule. There all amendments before the insertion of West Bengal Land Reforms Act in the 9th Schedule are protected from challenge under part III of the Constitution of India. The present legislation however was enacted in 1971, it is argued, as the legislature can amend retrospectively as well as prospectively. The amendment is immune from challenges in respect of the legislation regarding the agrarian reforms. In my opinion, this argument is wholly misconceived. If this argument is correct, then all the amendments of the Act including the 9th Schedule subsequent to the inclusion is immune from challenge under Art. 31B of the Constitution of India. In view of the Supreme Court decisions reported in AIR 1969 S.C., 168(9) (*Ramanlal v. State of Gujarat*), AIR 1965 S.C., 845 (*Sajjan Singh v. State of Rajasthan*) *State of Orissa Vs. Chandrasekhar Singh Bhoi, etc.*, , this argument must be rejected. I will only refer to *State of Orissa Vs. Chandrasekhar Singh Bhoi, etc.*, at page 400 that "by the amendments made in the Constitution by the 17th Amendment Act the principle Act is incorporated in the Ninth Schedule to the Constitution with effect from June 20, 1964. The Act is therefore not liable to be attacked on the plea that it is inconsistent with or takes away or abridges any of the fundamental rights conferred by Part III of the Constitution. But the power of the competent

Legislature to repeal or amend the Act incorporated in the Ninth Schedule is not thereby taken away. The amending Act passed after the enactment of the Constitution (Seventeenth Amendment) Act, 1964 does not therefore qualify for the Article 31B See Ramanlal Gulabchand Shah Vs. The State of Gujarat and Others, : Sri Ram Ram Narain Medhi Vs. The State of Bombay, . The position is not disputed.

64. Mr. Das Gupta however argued that the West Bengal Land Reforms Act is protected under Art. 31B as the legislation is in respect of the agrarian reforms and land reference. Mr. Das Gupta referred to the case reported in (Ramanlal Gulabchand Shah Vs. The State of Gujarat and Others,). Paragraph 10 of the said case is as follows: -

10. The first question to consider is the vires of the addition to S. 65 by the Amending act, which addition has been shown in the section quoted already. This matter has to be considered with reference to Arts. 31A and 31B read with the Ninth Schedule. The protection is claimed on the basis of these two articles by the State. Article 31B no doubt gives protection to all statutes listed in Schedule IX of the Constitution and this Act is o listed. But it was listed before the amendment of S. 65 and that amendment cannot be said to have been considered when the Amendment of the Constitution was made. That Amendment if accepted as unassailable will have the indirect effect of amending the original Schedule IX by including something in it which was not there before. This is undoubtedly beyond the competence of any State Legislature. The argument of the learned Attorney General that the general scheme of the Preamble and the provisions of S.44 made applicable by S. 65 (2) both of which have the protection of Art. 31-B must give protection is fallacious. Even if the preamble and S. 44 could be read (and we do not decide that they can be so read) to give validity it is clear that the preamble talked only of landholders and the addition of the words to S. 65 is intended to apply the principle to non-landholders. Similarly the provisions of S. 44 under the unamended Act, could not have been made applicable to such landholders. The amendment of S. 65 was really carrying the Act into new fields and not being considered as an amendment of the Constitution, how can it claim the protection given to the unamended Act" Therefore Art. 31-B and the Ninth Schedule cannot be called in aid".

65. Mr. Das Gupta wanted to argue on the basis of the observation of the Supreme Court that if the legislation was in the test of the land reform or land reforms which was included in the 9th Schedule, then it is protected under Art. 31B even though the amendment was subsequent to the inclusion. It is argued that unless the amendment trenches upon a different field or a new field it is protected under Art. 31B. In my opinion, this is wholly untenable argument. In that case all amendments under the West Bengal Land Reforms Act subsequent to the inclusion of the 9th Schedule will be valid and protected under Art. 31B of the Constitution of India. In my opinion, if this argument or Mr. Das Gupta is to

be accepted that will mean, amending the original 9th Schedule by including something in it which was not there before and the Supreme Court has said that such amendment is beyond the competence of the State Legislature the challenge of the petitioners. In so far as, sec 16 of the parent Act is concerned, in my opinion, is not ultra vires as this comes within the preview of the scheme of agrarian reform and it is protected under Art. 31-A of the Constitution of India and proviso 2 to /art. 31-A (2) has no application.

66. Chapter IIB is for ceiling on holding. Section 14J provides that the sections of this Chapter will prevail notwithstanding anything to the contrary contained elsewhere in this Act or in any other law for the time being in force. Section 14K is a definition clause by which ceiling area has been defined to mean the extent of land which a raiyat shall be entitled to own. "Family" has been defined in this Act "orchard" has also been defined which precludes the use of the land for the agricultural purposes. Section 14L provides that no raiyat shall be entitled to own, in the aggregate any land in excess of the ceiling area applicable to him u/s 14M and section 14M provides for the extent of ceiling area which a raiyat may hold. Therefore section 14M provides for the reduction of the ceiling area which was there u/s 4(3) of the West Bengal Land Reforms Act till the introduction of the present amendment Section 14V provides for the rate of compensation. Reading all these things together it appears to me that there was a ceiling area under the personal cultivation of the raiyat u/s 4(3) of the West Bengal Land Reforms Act. "Personal cultivation" has been defined by the Act to mean the cultivation by a person of his own land on his own account, by his own labour, or by the labour of any member of his family, or by servant or labourers on wages payable in cash or in kind not being a share of the produce or both. Therefore, it appears, that a raiyat having more than ceiling area contained in section 14M which he was entitled to hold u/s 4(3) of the West Bengal Land Reforms Act before the amendment will not be entitled to won that land as the same will be in excess of the ceiling area provided in section 14M of the Act or in the other words there was a reduction in the ceiling area of holding.

67. I have already held that the compensation provided in section 14V cannot be said to be a compensation not less than the market value of the land in question. I am, therefore, of the opinion, that section 14L, 14M, 14V are ultra vires of Art. 31A proviso. I have already held that sections 14P and 14U are ultra vires on the same ground. Section 14N, 14O and 14Q cannot be given effect or it becomes nugatory if the ceiling area prescribed u/s 14M is ultra vires. Therefore, in my opinion, sections 14N and 14O are ultra vires on the same ground. Section 14S cannot be given effect to if section 14M is not a valid piece of legislation. Therefore Section 14S also must be declared to be ultra vires. Section 14T provides for filing the return by the raiyat in respect of the land in excess of ceiling area applicable to him u/s 14M. If section 14M is not a valid piece of legislation, the question of filing return by the raiyat does not arise.

In that view of the matter, in my opinion, the Rule must be made absolute.

Sections 14L, 14M, 14N, 14O, 14P, 14Q, 14S, 14T, 14U, 14V; 14W and 14Y are ultra vires of Art. 31-A proviso 2 of the Constitution of India.

There will be no order as to costs.

Operation of the order is stayed for 6 months from to-day.